

Dharam Pal Vs. Smt. Pushpa Devi

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Court : Punjab and Haryana

Decided On : Oct-04-2005

Reported in : AIR2006P& H59

Judge : H.S. Bedi and; Viney Mittal, JJ.

Appeal No. : L.P.A. No. 538 of 2002

Appellant : Dharam Pal

Respondent : Smt. Pushpa Devi

Advocate for Def. : Jaswant Jain, Adv.

Advocate for Pet/Ap. : J.C. Verma, Sr. Adv.,; Amarjit Markan and; Meenakshi Ver

Disposition : Appeal allowed

Judgement :

Viney Mittal, J.

1. The husband is the appellant before this Court. He has challenged the judgment dated July 23, 2001, passed by the learned single Judge whereby on an appeal filed by the respondent-wife, the decree of divorce granted by the learned trial Judge has been set aside.

2. The marriage between the parties was solemnised on September 20, 1977. A divorce petition was filed by the husband in May, 1989 on the allegations that the wife had left the matrimonial home on December 12, 1984 and had started living separately without any justifiable cause. It was also claimed by the husband that during her stay also, she used to quarrel with the parents of the husband and used to threaten the husband with dire consequences. Consequently, divorce was sought by the husband on account of cruelty and desertion.

3. The wife contested the divorce petition. She denied all the allegations levelled against her. It was pleaded by her that the husband and wife had lived in village Randhawa, home village of the husband, upto 1985. In those days, the atmosphere in the State of Punjab was not good and she had to travel to Sirhind every day where she was posted as a Teacher. There was a house of her parents at Sirhind and because of the aforesaid problem, she shifted to that house along with her mother-in-law. However, the wife further pleaded that the divorce petition had been filed by the husband at, the instance of one Bhupinder Kaur, who is a teacher and posted in the same School where the husband was posted. It was further pleaded by the wife that the husband had a soft corner for aforesaid Bhupinder Kaur and that the husband of aforesaid Bhupinder Kaur was posted and residing at Gwalior. The wife further claimed that Panchayats of village Aluna and other neighbouring villages had also represented to the higher authorities of the Education Department to transfer either of the two (husband or Bhupinder Kaur) from the School. It was also alleged that the wife tried to persuade the husband to get his transfer to Sirhind so that they could live together but the husband became annoyed and parted the company of the respondent. He also took away his mother from Sirhind. The wife further maintained that she had tried many times to live with the husband but the husband did not agree for that.

4. A replication was filed by the husband. In the replication, the allegations of any relation between husband and aforesaid Bhupinder Kaur were specifically denied by the husband. It was further stated by the husband that Bhupinder Kaur and children and her husband was residing with her and that false complaints had been made against, him at the instance of the wife and at her behest. The husband further pleaded that the wife had filed a false complaint against him with

the Sub-Divisional Magistrate where the matter was inquired into. She also made complaints to higher authorities in the Education Department. However, the husband was found to be innocent and not at any fault.

5. The wife even chose to file a re-joinder to the replication. In the aforesaid re-joinder, the wife further pleaded that on May 16, 1989, she went to Aluna to meet the husband where he was sitting with Bhupinder Kaur. The husband got annoyed and abused the wife. She further pleaded that the complaints filed by her were not false. She had also pleaded that the Panchayat of the village had also made similar complaints. She maintained that reports of the inquiries had been manipulated by the husband.

6. On the basis of the material available on the record, the learned trial Court found that the wife had withdrawn from the society of the husband without any reasonable excuse for a period of more than two years prior to the filing of the divorce petition. Accordingly, it was held that she had deserted the husband. It was further found by the learned trial Court that the wife had levelled false and frivolous allegations against the husband and the aforesaid fact itself amounted to cruelty. On the basis of the aforesaid findings, the learned trial Court allowed the divorce petition filed by the husband and dissolved the marriage between the parties.

7. The wife filed an appeal before this Court. The learned single Judge allowed the aforesaid appeal.

8. The husband has now filed the present Letters Patent Appeal.

9. We have heard Shri J.C. Verma, learned senior counsel appearing for the appellant and Shri Jaswant Jain learned Counsel appearing for the respondent and with their assistance have also gone through the record of the case.

10. Shri J.C. Verma, learned senior counsel appearing for the appellant has vehemently argued that the wife had levelled false, frivolous and scandalous allegations against the husband. She had also made false complaints with regard to alleged relations between the husband and the aforesaid Bhupinder Kaur. The

said complaints had been inquired into by the higher authorities and were found to be false. Not only this, the wife had also managed complaints from the Gram Panchayat against the husband. Even the aforesaid complaints had been found to be frivolous. On that basis, it has been argued that the wife had acted in such a manner which had not only resulted into character assassination of the husband but had also resulted in mental agony of the husband. Additionally, it has been argued that the evidence on the record showed that the wife was living at Sirhind since the year 1985. She was maintaining a separate residence and was having a separate ration card. On that basis, it has been argued that the wife had abandoned the matrimonial home and had no desire to return back. Accordingly, it has been claimed that the wife was guilty of desertion also.

11. On the other hand, Shri Jaswant Jain, learned Counsel appearing for the respondent-wife has argued that the mere allegations by the wife in the written statement against the husband could not be treated to be any cruel act on her part. It has further been argued that even if it be taken that the wife had not been able to prove the aforesaid allegations, the said allegations could not be treated to be false or frivolous. Accordingly, Shri Jain has argued that the learned single Judge has rightly rejected the pleas raised by the husband and had accordingly set aside the judgment of the learned trial Court.

12. We have given our thoughtful consideration to the rival contentions of the learned Counsel for the parties and have also gone through the record of the case.

13. A bare perusal of the written statement filed by the respondent-wife proves that she had maintained that the divorce petition had been filed by the husband at the behest of one Bhupinder Kaur who was a teacher and was posited in the same school where the husband was posted. It was further stated by the wife that the husband was having a soft corner towards Bhupinder Kaur and that husband of Bhupinder Kaur was posted and residing at Gwalior. It was further alleged by the wife that Panchayat of village Aluna and other neighbouring villages had also represented to the higher authorities of the Education Department to transfer either the husband or aforesaid Bhupinder Kaur from the School. When the husband filed a replication, he detailed out that on May 16, 1989, the wife had

come to the. School where the husband was posted and had threatened film with dire consequences. She had even filed a complaint against him to the Sub-Divisional Magistrate. The Sub-Divisional Magistrate made an inquiry into the matter but found the complaint to be false. A complaint was made against the husband to the higher authorities in the Education Department also. Even the inquiry conducted by the said authorities found that husband was not at fault and was in fact innocent. Accordingly, a specific plea was taken by the husband in the replication that the aforesaid act of the wife had caused cruelty to the petitioner. The wife filed a re-joinder to the aforesaid replication of the husband. She admitted that she had visited the village Aluna on May 16, 1989 where she found that the husband was sitting with Bhupinder Kaur, However, the wife maintained that husband misbehaved and maltreated her when the Headmistress had to interfere. She, however, admitted in the re-joinder that she had made complaints to the Sub-Divisional Magistrate and to the higher authorities but alleged that the inquiry reports had been manipulated by the husband who was alleged to be influential person. It is, thus clear that the wife had persisted with the allegations levelled by her against the husband in the re-joinder as well. In the re-joinder she further admitted that she was living separately at Sirhind and was having a ration card also. Even while appearing as her own witness as RW6, the wife admitted about her visiting Aluna on May 16, 1989 where she claimed that husband Dharam Pal was sitting with Bhupinder Kaur all alone. She also admitted that she had made complaints against the husband. However, she denied that she had deserted the husband or that she had treated him with cruelty.

14. At this stage we may notice with advantage certain observations made by the Hon'ble Supreme Court of India in the case of Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate : [2003]3SCR607 :

7. The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written, statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1)(ia) of the Act The position of law in this regard has come to be well settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital

relationship is a grave assault on the character honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife viewed in the contest of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law has also come to be firmly laid down by this Court. On going through the relevant portions of such allegations, we find that no exception could be taken to the findings recorded by the Family Court as well as the High Court. We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible.

15. It is, thus, apparent that false allegations levelled by a spouse against the other spouse with regard to his/her character actually amount to cruelty and may lead to mental agony and sufference of the other spouse. The allegations levelled by the wife in the present case are totally unsubstantiated. She had not only levelled allegations against the husband in the written statement but also tried to defame him and made Complaints against him to higher authorities. Inquiries were conducted against the husband. In the aforesaid inquiries, allegations levelled by the wife were found to be false. Accordingly, it can well be inferred that the wife was guilty of such acts that would amount to cruelty against the husband.

16. The wife has also not been able to prove any justifiable reason for her living separately from the husband since the year 1985. Although she did admit to show that she was living separately on account of her employment and disturbed conditions in the State of Punjab but thereafter there was no justification to live separately and maintain a separate household and obtain even a ration card. This fact even shows complete abandonment of marriage by her.

17. The learned single Judge has held that even if the allegations levelled by the wife had not been proved, the same cannot be taken to be false, It has also been observed that making of complaints by the wife also cannot lead to an inference of cruelty. In fact the learned single Judge has drawn an inference against the husband on the ground that he was not serious in resuming cohabitation for the reason best known to him. It has been observed by the learned single Judge that If a wife separates, then it is a matter of serious concern for the husband and he cannot be expected to sit quietly and make no efforts to bring her to the matrimonial home. With respect to the learned single Judge, we cannot subscribe to these views. Once the wife had abandoned the matrimonial home and had not only shown disrespect to the relationship but had made false and frivolous allegations against the husband, the husband could not be expected to resume cohabitation and condone the aforesaid acts of cruelty. Marriage is an institution which has to be respected by both the spouses. If one spouse persists with default and create such circumstances which not only spoil the atmosphere at home but also result in humiliation at the place of work, the other spouse cannot be expected to ignore the aforesaid misconduct. A balance has to be struck. The matrimonial harmony is the responsibility of both the husband and wife.

18. Accordingly, we find that the learned trial Court was justified in holding that the wife had deserted the matrimonial home without any justifiable cause and also that she had committed such acts of cruelty as would give a cause of action to the husband to seek divorce.

19. Consequently, we allow the present appeal and set aside the judgment of the learned single Judge. The judgment of the learned trial Court is restored. As a result thereof, the marriage between the parties shall stand dissolved.