

Surinder Singh Vs. Tejinder Kaur

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Court : Delhi

Decided On : Aug-21-1986

Reported in : 1987(12)DRJ78

Judge : S.S. Chadha, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1)

Appeal No. : First Appeal No. 181 of 1984

Appellant : Surinder Singh

Respondent : Tejinder Kaur

Advocate for Pet/Ap. : Mohinder Goel and; S.K. Luthra, Advs

Judgement :

S.S. Chadha, J.

(1) F.A.O. 189/84 is an appeal under Section 28 of the [Hindu Marriage Act, 1955](#) against the judgment and decree of Shri R.C. Jain, Additional District Judge, Delhi dated 27/7/1984 dissolving the marriage between the parties by a decree of divorce under Section 13(1)(ia) and (ib) of the Said Act. F.A.O. 181/84 is also an applauder Section 28 of the said Act against the order dated 27/7/1984 of Shri R.C. Jain, Additional District Judge, Delhi under Section 27 of the Act directing the husband to pay a sum of Rs. 5,000.00 to the wife towards compensation in

respect of the articles mentioned in list, Ex. RW-1/1 and further directing the payment of the sum of Rs. 175.00 per month towards maintenance and education of the minor son. Both these appeals are disposed of by this common order.

(2) The case of the husband as set out in the petition and the defense of the wife as set out in the written statement has succinctly been set out in the judgment of the trial Court and may be seen from there. The first issue in the case is whether the wife treated the husband with cruelty after the solemnization of the marriage. The second issue is whether the wife deserted the husband for a continuous period of not less than two years immediately preceding the presentation of the petition. The trial Court considered the entire evidence and the material brought on the record and after hearing the counsel for the parties gave its findings. The trial Court referred to the two incidents of cruelty of 11/11/1975 and 22/11/1977 and the Conduct of the parties relating to it and came to the conclusion that the acts of commission and omission on the part of the wife and her other family members were bound to result in the great physical and mental torture of the husband and no husband can be expected to endure such a conduct for a long: time. The finding is returned that such a conduct of the wife squarely falls within the term 'cruelty'. On a consideration of the facts, circumstances and the entire evidence, the trial Court concluded that the wife has treated the husband with cruelty. It was also found that the husband has successfully established on the record that the wife has withdrawn from his society ever since 11/1/1976 with the intention of bringing the cohabitation permanently to an end. In the result, the marriage between the parties is dissolved by a decree of divorce under Section 13(1)(ia) and (ib) of the said Act. F.A.O. 189 of 1984 is directed against this judgment and decree.

(3) During the pendency of the proceedings before the trial Court, an; application under Section 27 of the said Act was also made by the wife claiming the return of various articles as detailed in the list. The trial Court after evaluating the evidence on the record ordered the husband to pay a sum of Rs. 5,000.00 to the wife towards her claim in 'respect of the articles at Sl. Nos. 14 to 22, 25, 26 and 29 in the list, Ex.RW-I/I. The trial Court also, in exercise of the powers under Section 26 of the Act directed the husband to pay Rs. 175.00 per month to the wife towards

the maintenance and education of the minor son Amandeep Singh till further orders. F.A.O. 181/84 is directed against this part of the order.

(4) The main submission of Shri Mohinder Goel, the learned counsel for the appellant-wife is that the trial Court has failed to appreciate the pleadings of the parties and the evidence produced by the parties in support of the case. The evidence produced by the husband is alleged to be beyond the pleadings of the parties. It is urged that the trial Court has wrongly decided both the issues as the relevant oral and documentary evidence has not been correctly appreciated. The learned counsel took me through the pleadings of the parties and the relevant evidence on the record.

(5) In para 7 of the petition, the husband has alleged that he stayed with the parents of the wife at Ghaziabad for only few days and during the stay the wife and her parents used to taunt the husband and used to insult the husband with the sole object to humiliate and degrade the husband and that the husband had been tolerating all the taunts with the hope and expectation that on one day a wiser counsel would prevail upon the wife and the husband would be in a position to enjoy the married life but all the hopes of the husband in this regard ended in smoke when on 11/11/1975 the husband was beaten by the wife's father Shri G.S. Chawla, her brothers Inderjit Singh, Jagjit Singh and Surjit Singh in the presence of the wife and they all insulted the husband and consequently the husband was rescued by the neighbour and the husband stayed on that night with the neighbour. These allegations are substantiated by Surinder Singh as Public Witness. 2 when he entered the witness box. The wife as R.W. 1 and her father as R.W. 2 have totally denied these allegations in the witness box. In the written statement, in reply to the allegations made in para 7 of the petition, it is not concealed that there was some quarrel. The blame for the same is put on the husband who is alleged to be abusing the wife and her parents. It is admitted that the husband was taken away by neighbour and slept for the night in his house. Apart from it, R.W.3 Shri Inderjit Singh, brother of the wife even in the examination-in-chief admitted that on 11/11/1975 when the husband was eating the food the parties had some altercations. In addition, there are two letters, one dated 25/11/1975, Ex. Public Witness-2/1 admittedly written in the hand of the wife

in which she has apologised about the conduct of her father and brothers. She wrote another letter dated 26/11/1975, Ex. Public Witness-2/2 to the father of the husband similarly apologizing for the conduct of her father and herself. It is highly improbable that the wife was forced to write Exs. Public Witness-2/1 and Public Witness-2/2 under threat or coercion or she appended her signatures on a blank paper. If that was so, surely she would have come out with that stand in any case before the filing of the petition. I am unable to agree that this act of cruelty was either not pleaded or not established on the record. The second incident of beating is of. It is pleaded in para 29 that the husband and his aged father were beaten by S/Shri Manjeet Singh and Inderjeet Singh, the brothers of the wife on 22/11/1977 at Ghaziabad and the husband lodged F.I.R. in Kotwali, Ghaziabad for this incident. The husband has deposed that on 22/11/1977 he and his father went to Ghaziabad where Manjeet Singh and Inderjeet Singh, brothers of the wife gave him beating, that he lodged a report with Kotwali, Ghaziabad, that Ex. Public Witness-2/12 is the carbon copy of the F.I.R. and that he and his father were also medically examined on that day at Ghaziabad hospital. Dr. K.K. Karoli, of District Hospital, Ghaziabad has appeared in the witness box as Public Witness 1 and deposed about the medical examination of the husband and his father. Exs. Public Witness-1/A and Public Witness-1/B are the two reports prepared on 22/11/1977 and bear the signatures of the witness. The injuries have been detailed therein. In the cross-examination, a suggestion is made that the injuries in the case could be sustained by a fall on the road-side. All injuries are simple but are on the different sides of the human body and were caused due to blunt object against hard substance. It is preposterous to suggest that both the husband and his father sustained these injuries by successive falls on the road side. There are no allegations that a false F.I.R. was recorded. Dr. K.K. Karoli of the District Hospital, Ghaziabad is an independent witness whose testimony deserves to be accepted.

(6) The third incident after the filing of the petition is of 8/10/1980 when the husband was going to Ghaziabad in a train and was given a beating by Shri Inderjeet Singh, brother of the wife. The husband lodged an F.I.R., copy Ex. Public Witness-2/13. The trial Court rightly came to the conclusion that nothing material has been elicited in the cross-examination of the husband so as to show or suggest that his version about the said occurrences and conduct of the wife and

her brothers is not correct. There is hardly any cross-examination for the occurrences of 22/11/1977 and 8/10/1980. The testimony of the husband remains unchallenged in that regard and has to be accepted. The findings recorded by the trial Court that the wife has treated the husband with cruelty are affirmed.

(7) Reliance by the counsel for the wife on 'Reynold Rajamani and another v. Union of India and another', : [1983]1SCR32 , is highly misplaced. It was held there that Section 10 of the Indian Divorce Act specifically sets forth the limited grounds on which a marriage may be dissolved and additional grounds cannot be included by the judicial construction of some other section unless that section plainly intends so. So far as this case is concerned, Section 13 of the said Act specifically states that any marriage solemnized, whether before or after the commencement of the Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party..... '(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or (ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition.....'. Thus the grounds of cruelty and desertion as pleaded by the husband have been specified in the statute and no new ground is being added by interpretive process. It is also contended that the act of cruelty is a solitary act and no dissolution of marriage could be maintained on a solitary act of cruelty. Reliance is placed on 'Chintagunti Jagamadham v. Chintagunti Savithramma', : AIR 1972 AP377 . In that case, it was contended by the counsel for the husband that all that was established on record was that the husband had once beaten the wife and that by itself was not sufficient to hold that he was guilty of such cruelty as would create any apprehension in the mind of the wife so as to cause a reasonable apprehension in her that it would be harmful or injurious to live with her husband and entitle her to live separately and demand maintenance. That case goes against the contention raised. The ill-treatment or treating the wife with cruelty was found as a fact in that case. The wife was granted maintenance by the trial Court and both the first appeal and the second appeal in High Court were dismissed. It would be a question of fact in each case on the appreciation of the evidence whether there was ill-treatment or cruelty. The next case relied upon is 'Gopal Krishan Sharma v. Dr. Mithilesh Kumari Sharma,' : AIR1979 All316 to urge that the

alleged cruelty of the wife's father and brothers is not cruelty within the meaning of Section 13(1)(ia) of the said Act. In that case, the conduct of the mother-in-law with no complicity or interest of the husband being involved in it was not held as treatment with cruelty. On the appreciation of the material on the record, it was found that the conduct of the husband after taking into account the entire matrimonial relationship, surrounding circumstances, character and personality of husband with all his limitations could not be characterised as one of cruelty towards his wife. Even in that case, it was held that the word 'treated' denotes a conscious action and includes an omission which has to be cruel in order to call for a decree of divorce. In the case before me, there are allegations that the wife and her parents used to taunt the husband and used to insult the husband with the sole object to humiliate and degrade him. Then the beating of 11/11/1975 by the wife's father and her brothers was in the presence of the wife and they all insulted the husband. Assuming that the wife was not a party in the beating, yet her omission to rescue her husband is blameworthy. She was an implicit party to the cruelty. The series of acts of cruelty have been established on the record. The three acts complained of and the omission of the wife is of such a grave and weighty nature so as to constitute cruelty within the meaning of Section 13(1)(ia).

(8) The next ground is desertion. Two essential conditions must be there so far as deserted spouse is concerned, namely, (1) factum of separation and (2) intention to bring cohabitation permanently to an end (*animus deserendi*). The essence of desertion is abandonment by one spouse by the other for no good cause. In this case, it is admitted that there was separation of the parties on 11/11/1976. In para 13 of the petition, it is alleged that on 11/1/1976, the brothers of the wife came to Delhi and took along with them the wife without the consent and permission of the husband and they also took away one gold set which includes one necklace, two kantas (2 ear-rings), one ring and 16 sarees. She gave receipt regarding the receipt of the said articles. In the corresponding para 13 of the written statement, there was a mere denial. However, in the subsequent paragraphs, it is alleged that / the husband allowed the wife to leave the house, on 11/1/1976. In the witness box, the Wife deposes that the husband asked her to go out of the house and she left the house in the morning of 11/1/1976. She denies the signatures on the receipt. Ex. Public Witness-2/3. Ext. Public Witness-2/3 is the receipt regarding

the fact that she was removing 16 sarees and gold ornaments from the house of her husband. The fact of the removal of these sarees and ornaments clearly establishes that she had the intention of bringing the cohabitation to an end. She has not resumed cohabitation since then. Her conduct after 11/1/1976 shows the animus deserendi. The receipt, Ex. Public Witness-2/3 records an admission that while going away she had taken away 16 sarees and jewellery as mentioned in the receipt. The husband deposed that on 8/3/1976 he went to the house of the wife at Ghaziabad, that he took her to the restaurant and also to a cinema show and that he requested her to accompany him to Delhi but she refused saying that her parents did not send her. She denied the suggestion that on 8/3/1976 the husband had come to her parent's house or had taken her to the movie to persuade her to accompany her matrimonial home. This is, however, belied by the document. Ex. Public Witness-2/A, a letter dated 21/5/1976 admittedly written by her. She admits in this letter that the husband came to her on 8/3/1976, took her to picture and a restaurant and had a talk with her. The husband wrote several letters under certificates of posting and the certificates of posting are Exs. Public Witness-2/7 to Public Witness-2/11 but there is no response from the wife. The wife filed a petition on 18/2/1977 under Section 125 of the Criminal Procedure Code for the grant of maintenance to her and to her child. The Chief Judicial Magistrate, Ghaziabad granted maintenance to her minor son but not to her. A criminal revision before the Additional District Judge, Ghaziabad also failed as also the revision petition in the High Court. A finding is recorded on the evidence and facts that she herself has deserted and under Section 125(4) Criminal Procedure Code . the wife is not entitled to get maintenance allowance if she has deserted herself. She contested these findings in the High Court where her revision petition was dismissed in limine. The inference that may be drawn from these facts established on the record is that the factum of desertion with the intention to bring cohabitation permanently to an end is there. Under Explanation to Section 13, the expression 'desertion' means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wishes of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly. It was, therefore, for the wife to establish a reasonable

cause which she has miserably failed to do. Thus I uphold the finding of the Court below that the wife had deserted the husband for continuously not less than two years immediately preceding the filing of the petition. For the above reasons, F.A.O. 189/84 fails.

(9) Section 26 of the said Act empowers the Court to provide for maintenance .of minor children. A decree for dissolution of marriage has been passed. Power is conferred on the Court to make provision in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children. A sum of Rs. 100.00 per month as maintenance for the minor child was awarded in the proceedings under Section 125(4) of the Code of Criminal Procedure and during the pendency of the proceedings before the trial Court, the husband had himself agreed to enhance the said maintenance by Rs. 75.00 per month. The trial Court in exercise of the powers under Section 26 of the said Act, directed the payment of Rs. 175.00 per month towards the maintenance and education of the minor son till further orders. A half hearted attempt was made by Shri Luthra, the learned counsel for the husband to reduce this quantum. Considering the pay drawn by the husband and the cost of maintenance of the minor, I am not inclined to-interfere in the fixation of this quantum.

(10) The trial Court has also made provision in the decree with respect to the property presented at the time of the marriage which belonged jointly to both the husband and the wife. The list of the articles is Ex. RW-1/1. The articles mentioned at Serial Nos. 14 to 22, 25, 26 and 27 were held to be the joint property which is liable to be distributed or returned. Considerable arguments have been addressed by the counsel for the husband that there was no evidence whatsoever produced by the wife to show that the articles mentioned in the list 'were actually given at the time of the marriage and remained in possession of the husband. The receipt. Ex. Public Witness-2/3 records an admission of the husband that 16 sarees, one gold set which includes one necklace, 2 kantas i.e. 2 ear rings and one ring, four gold bangles, two tops and one ring were handed over to the wife. Obviously this must be her stridhana. If she had brought the, aforesaid items, then it would not be a wild guess that she also brought articles as mentioned in the list, Ex. RW-1/1 for the use of the parties. The Court is not oblivious of the fact that such type of articles

are normally given at the time of the marriage. The details of the articles and their value as mentioned in Ex. RW-I/I is in consonance with the articles mentioned in the receipt. Ex. Public Witness 2/3. Her testimony that the articles mentioned in Ex. RW-I/I were presented to the parties at the time of their marriage is entitled to be accepted. I, therefore, find no reason to interfere with the fixation of quantum of Rs. 5,000.00 towards her claim in respect of the articles at Serial Nos. 14 to 22, 25, 26 and 29 in the list. For the above reasons, F.A.O. 181/84 fails.

(11) The result is that both the appeals fail and are hereby dismissed I leave the parties to bear their own costs.

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