

**Narinder Singh Vs. Rekha @ Pushpa**

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**SooperKanoon Citation :** [sooperkanoon.com/699409](http://sooperkanoon.com/699409)

**Court :** Delhi

**Decided On :** Feb-12-2007

**Reported in :** AIR2007Delhi118; 138(2007)DLT36; I(2007)DMC510; 2007(94)DRJ142

**Judge :** S. Muralidhar, J.

**Acts :** [Hindu Marriage Act, 1955](#) - Sections 13(1); Indian Penal Code (IPC) - Sections 494

**Appeal No. :** FAO No. 121/1984

**Appellant :** Narinder Singh

**Respondent :** Rekha @ Pushpa

**Advocate for Def. :** Puneet Aggarwal, Adv.

**Advocate for Pet/Ap. :** P.K. Bhardwaj, Adv

**Disposition :** Appeal dismissed

**Judgement :**

**S. Muralidhar, J.**

1. This appeal by the appellant is directed against the judgment dated 7.4.1984, passed by the learned Additional District Judge, dismissing the

appellant/husband's petition, HMA. No. 274/83, seeking dissolution of his marriage with the Respondent/wife on the ground of cruelty under Section 13(I)(ia) of the [Hindu Marriage Act, 1955](#) ('Act').

2. The parties were married on February 12, 1980 in Agra according to Hindu religious rites and lived for 8 days thereafter in the first instance. They again lived together for a very brief while between April 21 and April 23 of 1980.

3. In support of his plea that he had been treated cruelly by the respondent the Appellant husband cited three specific instances. The first was that the 'respondent's behavior was arrogant, irritating, insulting and nagging and she created scenes in the house and refused to serve even tea to the friends and visitors of the appellant'. The second was that on April 21, 1980 'the respondent quarrelled with the wife of the maternal aunt of the petitioner Shri Ami Chand at his house without any justification'. The third was that 'on April 5, 1981 in order to pressurise the petitioner to succumb to her unreasonable demand she sent a gang of 17 persons to his father when he was attending Pooja at a temple of Sri Krishan Mandir, Patparganj Road, Khureji, Delhi. They insulted and intimidated his father openly with dire consequences and also threatened not to allow the brother and sister of the petitioner to be married in the brotherhood if the petitioner failed to act as to whims and pleasure of the respondent'.

4. The appellant examined himself as PW-1. In his cross-examination he admitted that although he was working in the Cabinet Secretariat, he was mostly posted on the borders at non-family stations. He also stated that at the time of marriage, he had been posted in Srinagar and that before he was again transferred to Delhi in 1981, he never visited Agra, where the Respondent was staying. therefore, he came to know of the misbehavior of the Respondent during this period from his parents, brother and sister.

5. Two other witnesses were examined on the side of the appellant. The first was PW-2, Jai Singh who deposed about the incident of April 5, 1981 when the father of the Respondent had come for a meeting and discussion about the dispute between the parties. The next witness, Shri Madho Singh, PW-3 also spoke of the meeting of April 5, 1981.

6. The Respondent examined herself as RW-1 and maintained that it was she who had been ill-treated at her husband's house. She denied that her father had threatened the appellant in the manner alleged or that she ever misbehaved with the appellant. RW-2, Purshotam Singh, RW-3, Dhiraj Singh and RW-4, Moti Lal, father of the respondent have all supported the version of the Respondent.

7. After analyzing the evidence, the Trial Court in a detailed judgment has returned the following findings:

(a) The total number of days when the petitioner and his wife were living together were 11 and the total number of days the respondent lived at the house of the petitioner were 18.

(b) The allegations made by the appellant against the respondent to show that she had treated him cruelly were of a general nature. The Trial Court found: 'Except that she had refused to serve tea to friends and visitors and that she had quarrelled with the wife of the maternal uncle of the petitioner Shri Ami Chand on April 21, 1980, no mis-conduct or mis-demeanour has been specified by the petitioner'.

(c) The non-production of Shri Ami Chand or his wife, with whom the Respondent is alleged to have quarrelled 'gives rise to an adverse presumption against the petitioner's case'.

(d) Although in the petition it was alleged that on April 5, 1981, the Respondent sent a gang of 17 persons to Delhi to threaten him and his family, the appellant did not allege 'that the father of the respondent with 16 persons had come. It was also not mentioned that they came to coerce him to succumb to the demand of the respondent that he should sever his connection from his parents...' 'Thus the testimony of the petitioner is an improvement upon the case pleaded in the petition and there are material omissions also'.

(e) The statements of the witnesses on behalf of the appellant PW-2 and PW-3 did not substantiate the case that the father of the respondent and others had threatened or intimidated the appellant. On the contrary they showed that the

father of the respondent had come with the object of resolving the dispute between the parties.

(f) 'The evidence on the record shows that the petitioner and other members of his family deserted the respondent and not vice-versa.

8. After examining the records of the case, the evidence and considering the submission of the counsel for the parties, this Court does not find any infirmity in the judgment of the Trial Court that warrants interference in appeal. This Court concurs with the findings of the Trial Court extracted hereinabove that the appellant has miserably failed to establish the case that respondent treated him cruelly. It is indeed extraordinary that the only ground substantially urged to show that the respondent treated him cruelly was that she refused to serve tea to the appellant's friends and family members. Far from this being sufficient to demonstrate cruelty, it is also frivolous considering that the parties lived together for as little as 11 days and that all this is supposed to have happened very soon after the marriage. The foundation for a case of cruelty in a marriage, cannot certainly be built on such frivolous pleas.

9. Further, considering that the appellant himself was posted outside Delhi for most of the time, his entire case of cruelty is founded upon hearsay evidence of his family members. For the reasons best known to him, he has chosen not to examine them as witnesses. This completely weakens the case of the appellant. The Trial Court is right in concluding that the other witnesses cited by the appellant do not establish the allegations of rude behavior of the father of the respondent wife at the meeting stated to have taken place on April 5, 1981.

10. For all of the above reasons, this Court finds no ground to interfere with the judgment of the Trial Court.

11. Towards the ends of his submissions, counsel for the appellant sought to place reliance on a recent judgment of the Hon'ble Supreme Court in Naveen Kohli v. Neelu Kohli : AIR 2006 SC1675 to contend that where parties have lived separately for a long number of years, the Court was bound to take note of that fact and grant divorce on the ground of irretrievable breakdown of marriage. It

appears that the observations in Naveen Kohli were made in the facts of that case and cannot be uniformly applied in all cases irrespective of facts particularly where the estrangement, as in this case was on account of one of the parties. Here it is the appellant husband who, as rightly so found by the Trial Court, has deserted his wife. He cannot be allowed to take advantage of his own act of desertion and thereafter contend after several years that he should now be granted divorce on the ground of long years of separation. That would be putting a premium on the erring party who has failed to make out a case of cruelty alleged against the wife. In this context, a reference may also be made to the judgment of the Supreme Court itself in *Shyam Sunder Kohli v. Sushma Kohli* 2004(2) HLR 513 where the Court observed as under:

12. On the ground of irretrievable break down of marriage, the Court must not lightly dissolve a marriage. It is only in extreme circumstances that the Court may use this ground for dissolving a marriage. In this case, the respondent at all stages and even before us, has been ready to go back to the Appellant. It is the Appellant who has refused to take the Respondent back. The Appellant has made baseless allegations against the Respondent. He even went to the extent of filing a complaint of bigamy, under Section 494, IPC, against the Respondent. That complaint came to be dismissed. As stated above, the evidence shows that the Respondent was forced to leave the matrimonial home. It is the Appellant who has been at fault. It can hardly lie in the mouth of a party who has been at fault and who has not allowed the marriage to work to claim that the marriage should be dissolved on the ground of irretrievable break down. We, thus, see no substance in this contention.

12. For all of the above reasons, the appeal is without merit and is dismissed with costs quantified at Rs. 10,000/- which will be paid by the appellant to the respondent within a period of four weeks from today.