

Suresh Sharma Vs. Dr. Sukhdev Sharma

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Court : Himachal Pradesh

Decided On : May-25-2005

Reported in : I(2006)DMC144

Judge : Deepak Gupta, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 2, 10, 13 and 19; ;[Constitution of India](#) - Article 142

Appeal No. : F.A.O. No. 190 of 1996

Appellant : Suresh Sharma

Respondent : Dr. Sukhdev Sharma

Advocate for Def. : G.D. Varma, Sr. Adv. and; Romesh Verma, Adv.

Advocate for Pet/Ap. : Ramakant Sharma, Adv.

Disposition : Appeal allowed

Judgement :

Deepak Gupta, J.

1. This unfortunate matrimonial dispute between two educated persons is a clear reflection of the absence of sexual education even amongst so-called well educated persons.

2. The respondent/husband is employed as a Professor of Science in H.P. University. The appellant-wife is employed as a lecturer in Political Science in Senior Secondary School at Indora in District Kangra. The two were married on 7.12.1989. Differences arose on the wedding night itself. The genesis of the differences makes sad reading. The husband filed the petition for divorce under Section 13 of the [Hindu Marriage Act, 1955](#) in the Court of the District Judge, Solan on 22nd March, 1991. It was alleged that the marriage had taken place in Tehsil Arki, District Solan, H.P. The grounds of divorce were cruelty and desertion.

3. The allegations made in the petition were that just after the marriage on the wedding night itself the husband discovered that the wife was suffering from a venereal disease i.e. Syphilis. It is alleged that this caused great mental agony to the petitioner. According to the husband the wife did not submit to the sexual advances of the husband on the first night due to the fact that she was suffering from such a disease. The husband alleges that the wife refused to have sexual intercourse on the wedding night and, therefore, caused mental agony to the husband, which amounts to cruelty.

4. It is also alleged that thereafter the husband left for Shimla to join his duties at H.P. University and the respondent left for her parental home and since then they have not resided together. Some allegations with regard to the husband having been maltreated by the brothers of the wife have also been made. The allegation was that the brothers had kidnapped and beat the husband at the instance of wife.

5. The wife filed her reply. In reply a preliminary objection was raised that the Court at Solan had no jurisdiction to try the petition since the marriage had taken place at Hamirpur. It was alleged that the affidavit filed by the husband that the marriage had taken place at Arki was false. It was also alleged that the husband and wife had last resided together not at Arki but at Shimla and, therefore, the Court at Solan had no jurisdiction to entertain and decide the petition. The allegation that the wife was suffering from a venereal disease was denied. The allegation that the brothers of the wife had kidnapped and beaten the husband was also denied. On the other hand it was alleged that the husband had made illegal demands of dowry and had beaten the wife regarding which she had lodged

an FIR No. 40/91, at Police Station, Boileauganj, Shimla.

6. The Trial Court, on the basis of the pleadings, framed the following issues:

(1) Whether the respondent, after solemnization of the marriage, has treated the petitioner with cruelty? ...OPP

(2) Whether this Court has no jurisdiction to entertain, try and determine the present petition? ...OPR

(2A) Whether the Court has no territorial jurisdiction to try and decide the petition, as alleged? ...OPR

7. The Trial Court held that the Court had jurisdiction to decide the matter. It also held that it stood proved on record that the wife after solemnized of marriage had treated the petitioner with cruelty. The main ground for holding that the wife was guilty of cruelty was that the wife had made false allegations regarding demand of dowry and had levelled false accusations against the husband. The Trial Court, therefore, granted a decree for dissolution of the marriage in favour of the husband and against the respondent wife.

8. This appeal has been filed by the wife challenging the said decree dated 30.4.1996 passed by the Additional District Judge, Solan in HMA Petition No. 1-NS/3 of 1991.

9. I have heard learned Counsel for the parties and have also gone through the record of the case.

10. Mr. Ramakant Sharma, learned Counsel for the appellant-wife has submitted that the approach of the Court below was highly skewed in favour of the husband. According to him the learned Court below has totally misread the evidence and has selectively taken out certain portions of the evidence which suited the husband and has not read the evidence as a whole. While the minor faults of the wife have been blown out of the proportion the bigger faults of the husband have been glossed over. According to him it was the husband who had filed a false affidavit and, therefore, was not entitled to any relief.

11. On the other hand Mr. G.D. Verma, learned Senior Counsel appearing for the wife has supported the judgment and decree of the learned Trial Court. He submits that the wife had levelled false allegations against the husband. These allegations have caused great mental agony to the husband and amount to cruelty and as such the divorce has rightly been granted in favour of the husband. He also contends that the marriage is a dead one since the parties have admittedly not lived together ever since the year 1989 and, therefore, the decree of divorce should not be set aside.

12. The first question to be considered is whether the Trial Court had jurisdiction to decide the claim petition. Section 19 of the [Hindu Marriage Act, 1955](#) provides that every petition under the Act shall be presented in the local limits of the District Court in whose jurisdiction either the marriage was solemnized or the respondent at the time of presentation of the petition resides or where the parties to the marriage last resided together.

13. In the present case the husband had alleged that the marriage had taken place at village Palyani, P.O. Dhundhan, Tehsil Arki, District Solan, H.P. He has also filed an affidavit in support of this allegation. This averment was contested by the wife. Even in his statement the petitioner states that his marriage took place in village Palyani. However, in cross examination he admits that the 'barat' went from Palyani to village Ubhak in District Hamirpur. He also admits that the actual ceremony of marriage was performed in village Ubhak. Therefore, his contention that the marriage took place at village Palyani is not correct. His Counsel has also failed to point out any material on record to show that the marriage ceremony has taken place at District Solan.

14. On behalf of the husband it is alleged that 'barat' came back from village Ubhak to village Palyani. There the husband and wife resided together for 4 days. Thereafter, it is alleged that the husband went to Shimla and the wife to her paternal home. The husband has reiterated this in his statement. According to him due to the fact that the wife was suffering from some venereal disease she did not have sexual intercourse with him. He came to Shimla and the wife went to her house. He said that he never resided with her thereafter. He admits that his house

is at Shimla where he has been residing for the last more than 20 years. He is employed as a Professor in H.P. University. He has denied the suggestion that the 'barat' came back to Shimla and that the couple had come back to Shimla after the marriage. He has denied the suggestion that after the marriage he and his wife remained at Shimla for 4 days and thereafter she went to join her duties as Lecturer in the school at Indora. He however admits that his wife is working as a Lecturer. He has denied the suggestion that he and his wife had been living together at Shimla together on various dates till the year 1991.

15. P. W. 3 Sant Ram states that 'barat' went from Palyani to Bhota and came back the next day. He states that the permanent residence of the husband is at Shimla.

16. The respondent-wife has stated that after the wedding which took place at Hamirpur the 'barat' came back to Shimla and that she stayed with her husband in a building at Comley Bank locality. According to her she lived at Shimla till 19th December, 1989.

Thereafter she went to Indora to join her duty as Lecturer in Political Science. She states that in the holidays she again came back on 25.12.1989 and stayed with her husband at Shimla till 31.12.1989. She states that the second time when she came, her husband started asking her that they should get a mutual divorce or that she should get Rs. 3 lacs as dowry. According to the wife she and the husband lived at Shimla in their house in Comley Bank in the first week of April, 1990 and then again in June, 1990. According to her she last lived with her husband at Shimla in February, 1991 when the husband beaten her up and she lodged an FIR Ext. R-1 at Police Station Boileauganj in Shimla.

17. In cross-examination she has admitted that in the FIR Ext. R-1 she has stated that from 8.12.1989 to 19.12.1989 she lived at village Palyani. She has denied the suggestion that she never met the husband after 19.8.1989 (sic). Probably the suggestion was for 19.12.1989. She has denied the suggestion that she never lived with the husband at Shimla. She stated that she got the FIR recorded on the date when the occurrence had taken place. She has denied the suggestion that barat came back to Palyani and not to Shimla.

18. R. W. 2 Laxman Dass is aged about 80 years and knows both the parties. He states that his daughters-in-law are the first cousins of the husband-Sukhdev. According to him the marriage between the parties had taken place at village Ubhak, District Hamirpur according to Hindu rites. He was a member of the barat. He states that he had entertained the barat with tea at village Chalera where he had joined the barat and proceeded to village Ubhak. After the wedding he had returned with the barat and came back to Shimla. He further states that he came to know from the parents of the girl that she was being ill-treated by the husband. He says that in the end of December, 1990 at about 7-8 p.m. he had gone to the house of the husband at Comley Bank, Shimla. At that time the husband and wife were fighting with each other. When he had tried to intervene the husband had told him that he should not interfere in their personal matters. This witness states that the petitioner had been maltreating the respondent and had beaten her in his presence. He states that he has always seen the husband and wife living at Shimla and not at village Palyani.

19. It is quite obvious that the affidavit of the husband that the marriage had taken place in village Palyani was totally incorrect. As stated by the various witnesses and admitted by the petitioner himself the marriage had in fact taken place at Bhota. The only question which, therefore, needs consideration whether the parties last resided together at village Palyani or at Shimla.

20. According to the petitioner the parties had never cohabited or lived together after a few days of the marriage. According to the wife they had been living at Shimla, though not happily, after the marriage. She has given specific dates and instances of the time when she resided with the husband at Shimla. FIR Ext. R-1 was lodged by the wife at Shimla on 7.2.1991. In this FIR she has also stated that she first lived with her husband from 8.12.1989 to 19.12.1989 at village Palyani thereafter she lived with her husband at Comley Bank, Shimla from 1.4.1990 to 16.4.1990, 3rd week of June, 1990, then 8.7.1990 to 31.8.1990, then in the month of October upto 20th October, 1990, thereafter 12.11.1990 to 17.11.1990, from 29.11.1990 to 31.11.1990. The version of the wife is also supported by R. W. 2 who is in fact more closely related to the husband. According to him in December, 1990 the parties were residing together at Comley Bank, Shimla. Thus, it is clear

that the petitioner-husband has failed to prove the fact that either the marriage took place in the jurisdiction of the Court at Solan or that the parties last resided together at Solan. As such the Trial Court had no jurisdiction in the matter.

21. The husband had his permanent residence at Shimla. As per the evidence which has been proved on record he has been residing at Comley Bank, Shimla for the last many years. Even assuming that after the wedding the barat returned to Palyani then also there is sufficient material on record to show that thereafter the husband and wife had lived together at Comley Bank, Shimla.

22. Normally, after coming to the conclusion that the Trial Court had no jurisdiction this Court would have ordered the return of the petition for presentation in the proper Court. However, in the present case the petition was filed as far back as on 22nd March, 1991. More than 14 years have elapsed and it would not be in the interest of the parties to return the petition and start the trial afresh. The entire evidence is on record and, therefore, I have examined the same to see whether the petitioner has made out a case for grant of divorce or not.

23. The petitioner's allegations are : (i) that on the first night he noticed that the respondent is suffering from a venereal disease and she refused to have sexual intercourse with him; (ii) that the brothers of the respondent tried to kidnap the petitioner for taking him to some tantrik; and (iii) that the respondent has levelled false allegations against the petitioner regarding demand of dowry and ill-treatment in FIR No. 40 of 1991 and this amounts to cruelty.

24. The last ground was taken during the course of the proceeding after amending the petition. The Trial Court has come to the conclusion that the petitioner has failed to prove that the wife was suffering from venereal disease since the petitioner had not led any medical evidence in this behalf. It has also held that the petitioner has failed to prove the allegations that the brothers of the respondent tried to kidnap the petitioner. However, the Trial Court has come to the conclusion that by filing a false complaint regarding a demand of dowry and ill-treatment the respondent wife has acted with cruelty. The Court has held that these allegations are false. The levelling of false allegations amounts to cruelty and, therefore, the husband has been held entitled to get the marriage annulled on this ground.

25. The concept of cruelty has been explained in detail by the Supreme Court in *A. Jayachandra v. Aneel Kaur* : AIR 2005 SC534 , and, therefore, the other authorities cited in this behalf by the learned Counsel for the parties need not be referred to. In paras 10, 11 and 12 the Apex Court has held as follows:

(10) The expression 'cruelty' has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of his spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouses is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, a proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

(11) The expression 'cruelty' has been used in relations to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting

the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the inquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted (see *Sobha Rani v. Madhukar Reddi* AIR 1989 SC 121).

(12) To constitute cruelty, the conduct complained of should be 'grave and weighty' so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than 'ordinary wear and tear of married life'. The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

26. The evidence can now be examined in the light of the above observations. Some of the documents which are very relevant and need to be considered to effectively decide the dispute between the parties are letters Exts. RX1 and RX2 which have been written by the wife to the husband. Great reliance has been placed on these letters by the Trial Court while believing the case of the petitioner. Some letters which were produced by the wife and addressed to her have only marked and not been exhibited. These letters are from the relatives of the husband to the wife. One of these letters is written by the husband to the wife. These letters should have been exhibited in evidence. These letters had come from the proper custody and can be read in evidence. Therefore, these letters being Marks A to D are being taken into consideration while deciding the case. Similarly there are some documents i.e., money order receipts which have been marked G-1 to G-16. These have also come from the proper custody and should have been read in evidence.

27. In case the statement of the husband is read it is clear that he was upset with the fact that the respondent did not have sexual intercourse with him on the first night after the wedding. He states that he suffered due to this. According to him the brothers of the wife tried to kidnap him and take the same to some tantrik. He also states that the criminal case lodged against him and the allegations of demand of dowry raised are false and, therefore, he has suffered loss of reputation. He states that the wife was suffering from some 'vaginal' disease. He admits that he has not got his wife medically examined at any time. He admits that he had written one letter to his wife in which he has suggested that they should separate from each other. He states that he does not know whether his mother or wife had been corresponding with each other or that his wife had been sending money to his mother.

28. P.W. 2 has no personal knowledge and his statement is not at all relevant for deciding the issue of cruelty. Statement of P.W. 3 is also only relevant with regard to the fact as to where the marriage occurred.

29. The respondent-wife in her statement has stated that immediately after the marriage the relations between her and her husband were cordial but thereafter

they deteriorated. She states that on and after her second visit to Shimla the husband started asking for mutual divorce. According to her he also asked for dowry of Rs. 3 lakh. She states that the husband had beaten her and with regard to this beating she had got lodged an FIR Ext. R-1. She states that all the family members of her husband treat her very nicely. She states that she had never suffered from any venereal disease and she was never examined by any doctor or other medical practitioner. She states that marriage was consummated on her various visits to Shimla.

30. A perusal of Ext. RX-1 which letter is undated shows that in this letter which has been produced by the husband the wife has made mention to some incident which happened in Shimla in the month of April. Obviously the incident referred to is after the marriage. This clearly shows that they had been together in Shimla in the month of April after the wedding. In this letter she has mentioned that husband got angry with her like a child time and again. She was prepared to bear this anger but there is a limit to what extent she could bear. She has mentioned that she should be forgiven for the mistake she committed on the first night. She writes that she had explained to her husband that she had problems and, therefore, asked her husband to forgive her for this lapse. Ext. RX-2 is a letter dated 13th August, 1990. In this letter also she has written that she may be excused for all her mistakes. She has requested that the husband should forget what has happened on the first night. She also states that she has realized her foolishness and she should not have acted like she did. She has explained her behaviour on the first night by stating that some friend of her had given her some information as to what happens on the first night. The picture painted by her friend was very grim and the wife was under the impression that it was very painful experience to have sex for the first time. Therefore, she had asked her husband to use 'something' on the first night. She has stated that she was totally unaware about sex and it was under these circumstances that she had tried to avoid having sex on the first night.

31. Mark-A is a letter written to the wife by the husband's brother. He has written that God should grant her the strength to bear the extreme pain inflicted on her by her husband. Mark-B and Mark-C are letters written by Kamlesh Kumar nephew of the husband to his Aunt (Mami) i.e., the wife. In these letters also the nephew of

the husband has expressed anguish at the treatment being meted out to the wife by the husband. Mark-D is a letter in the handwriting of the husband addressed to the wife. The allegations in this letter makes sad reading. The husband suspected that the wife was not virgin at the time of the marriage. Without going into the allegations in the letters which are sordid in nature it is quite obvious that the husband was very annoyed with the wife since she did not have sex with him on the wedding night. For this reason and no other, he suspected that she was not a virgin and that she was suffering from some venereal disease. It appears that the husband was suffering from some sort of delusion that since the wife was reluctant to have sex on the wedding night she was not a virgin and was suffering from some sexually transmitted disease. The husband has given no other reason for suspecting the fidelity of the wife. However, a reading of this letter clearly indicates that the marriage between the parties had been consummated. This letter though not signed by the husband has been produced by the wife and is in the same handwriting as in Ext. P-1 copy of the letter written by the husband to the SDM, Arki and produced by the husband. Both the letters are undoubtedly in the same handwriting. There are various other money order receipts on record which show that the wife had been sending money to her in-laws.

32. The only ground on which divorce had been granted by the Trial Court is that the wife had made false allegations against the husband with regard to demand of dowry and beating her up. Can a person who himself levels scurrilous, false and baseless allegations against his wife be granted divorce on the ground that his wife has filed an FIR against him which may not be wholly true? The allegations made by the husband and not proved by him are so demeaning that all of them are not being repeated in this judgment. He has alleged without any basis that the wife was suffering from venereal disease. He has alleged, again without any basis, that the wife was not a virgin. The allegation made in the petition and the affidavit filed along with the petition were patently false. The husband would have this Court believe that the marriage had taken place at village Palyani which allegation is also found to be false. It is no doubt true that filing of a false and scandalous case by one spouse against the other can amount to cruelty. However, in this case from the evidence on record it cannot be said that the FIR filed by the wife is totally false.

33 The allegation of the wife that the husband has maltreated her is not only supported by her version but also by the version of the witness RW-2 and from the letters written by the brother and nephew of the husband to the wife. In my opinion it was the husband who was mainly responsible for the dispute between the parties and it is he who made the false allegations at the first instance. Merely because there are allegations and counter-allegations which may be false is not a ground to grant divorce. Reference in this behalf may be made to *Gurdip Kaur v. Balbir Singh* 1995 (2) HLR 56; *Mrs. Asha Gupta @ Anju Gupta v. Rajiv Kumar Gupta* .

34. Under Section 2 of the Hindu Marriage Act a party who is a wrong-doer is not entitled to any relief. In view of the above discussion, I am of the considered opinion that the husband has failed to prove that the wife had treated him with cruelty. In fact he is the wrong-doer who first made false allegations against his wife. It was his conduct which was responsible for breaking the matrimonial home and as such he is not entitled to grant of any relief. In this behalf reference may be made to a Division Bench decision of this Court in *Bharti Sharma v. Surinder Kumar Sharma*, 2003 (2) Sim.L.C. 255, wherein it was held as follows:

(28) Thus, in view of the above decisions, the latest position in law is that irretrievability of a marriage by itself is no ground for dissolution of marriage but can be taken into account along with any other ground on which a divorce can be claimed and granted within the framework of Section 13 of the Hindu Marriage Act.

(29) Insofar as the case in hand is concerned, it is true that the parties are now living separately for the last about 15 years. The appellant, however, has specifically stated in her statement that she was still willing to reside with the respondent but the cause of dispute between them is the house. This may though appear not be a very sincere offer the fact, however, remains that the appellant is residing in her parents' house not without a reasonable cause but for the sufficient reason that she was deprived of the ownership of the house which was purchased in her name at Jagadhari. The respondent instead of settling the dispute regarding the ownership of house by amicable means with his wife has created a situation affording reasonable cause to the appellant not to live with him but to live at the

house of her father. Therefore, the long separation between the parties being attributable to the act and conduct of the respondent, he cannot be permitted to take advantage of the plea of irretrievability of the marriage.

35. Mr. G.D. Verma, learned Senior Counsel for the husband has argued that since the marriage is dead and the parties have admittedly not lived together for at least the last 15-16 years it is pointless to continue the marriage. He has relied upon two judgments of the Supreme Court in Ramesh Chander v. Smt. Savitri : [1995]1SCR212 ; Smt. Kanchan Devi v. Promod Kumar Mittal and Anr. : AIR 1996 SC3192 and Pawan Kumar v. Smt. Chanchal Kumari, 1999 (1) SLJ 558, decided by the High Court of Punjab and Haryana.

36. The reliance placed by learned Senior Counsel on Ramesh Chander v. Smt. Savitri (supra), Smt. Kanchan Devi v. Promod Kumar Mittal and Anr. (supra), is totally misplaced. In both these cases the Apex Court granted divorce in exercise of the jurisdiction vested in it under Article 142 of the [Constitution of India](#). Such power is not vested in this Court. Irretrievable breakdown of marriage is not a ground available for grant of divorce. The judgment of the single Judge of Punjab and Haryana High Court reported in Pawan Kumar v. Smt. Chanchal Kumar (supra), cannot be followed in view of the judgment of a Division Bench of this Court in Bharti Sharma v. Surinder Kumar Sharma (supra).

In view of the above discussion I find that learned Court below was not justified in granting a decree for divorce in favour of the husband. The appeal is, therefore, allowed and the judgment and decree passed by Additional District Judge, Solan in HMA Petition No. 1-NS/3 of 1991 dated 30.4.1996 is set aside and the petition under Section 13 of the Hindu Marriage Act filed by the husband is dismissed. The appellant is entitled to the costs of the litigation which are quantified at Rs. 5,000.