

Pawna Devi Vs. Chuni Lal

Pawna Devi Vs. Chuni Lal

SooperKanoon Citation : sooperkanoon.com/890152

Court : Himachal Pradesh

Decided On : Apr-10-1997

Reported in : II(1998)DMC1

Judge : Lokeshwar Singh Panta and; Arun Kumar Goel, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1), 24 and 25; ;[Code of Civil Procedure \(CPC\) , 1908](#) - Order 14, Rule 1 - Order 41, Rule 33

Appeal No. : F.A.O. (HMA) No. 29 of 1994

Appellant : Pawna Devi

Respondent : Chuni Lal

Advocate for Def. : Om Parkash, Adv.

Advocate for Pet/Ap. : R.K. Sharma, Adv.

Judgement :

Arun Kumar Goel, J.

1. This appeal is directed against the judgment and decree dated 10.12.1993 passed by District Judge, Kangra at Dharamshala in H.M. A. No. 16-D /III/93, whereby marriage between the parties has been dissolved by a decree of divorce under Section 13 of the Hindu Marriage Act.

2. Parties to the case were married on 9.3.1994 at village Sidhpur, Mauza Khanyara, Tehsil Dharamshala District Kangra and they have a son who was born on 24.7.1987. Cruelty was pleaded to be the ground for dissolution of marriage by the respondent (hereinafter referred to as the 'husband') against the appellant (hereinafter referred to as the 'wife'). According to the husband, after the marriage for sometime parties lived cordially, however, after 5-6 months the behaviour of the wife became indifferent towards the husband and his family members as she would pick up quarrel on small pretext and would also leave the house without the consent of the husband. Not only this, the wife would also hurl filthy abuses. Father of the wife was informed of such behaviour when he took her away, but with the intervention of the relations and friends settlement was brought around when the wife agreed to behave properly and lived peacefully with her husband. Still the wife resumed her old behaviour immediately after this settlement and above all she also withdrew from the society of the husband besides having refused to perform her matrimonial obligation. At this point of time when a settlement was about to be brought around by the husband, the wife refused and left for her parental house. In those circumstances a petition for divorce came to be filed by the husband which was however compromised between the parties as is evident from the copy of the order dated 6.11.1986 passed in H.M.A. No. 80/86 by District Judge, Kangra at Dharamshala. This order was passed on the statements of the parties which have also been placed on record, pursuant to which order the parties went home together. Despite this, the wife did not mend her ways, although she had been provided with a separate residence and kitchen. In the year 1989 after having picked up quarrel with the husband, wife left her matrimonial home permanently and all efforts made by the husband in this behalf proved futile. Further case of the husband was that he has been harassed by the wife who indulged in making false allegations in petition for maintenance failed by her in relation to claim of dowry by him, maltreatment as well as second marriage. According to husband he was threatened by the wife that he would be done to death. This claim of the husband was contested and resisted by the wife who denied all the averments made against her.

3. On the other hand, it was pleaded by the wife that it is she who has been subjected to cruelty and maltreatment because of her having brought insufficient

dowry. Case of the wife further was that she was thrown out of the house by the husband after having been administered merciless beatings and at no point of time she left her matrimonial house of her own accord. It was specifically pleaded that the husband has remarried on 7.2.1992 with one Baby.

4. On the aforesaid pleadings the parties went to trial on the following issues :

(1) Whether the respondent has treated the petitioner with cruelty as alleged?
OPP

(2) Relief.

5. Trial Court after examining the evidence and hearing the parties decided Issue No. 1 in favour of the petitioner and thus granted him the relief of dissolution of marriage by a decree of divorce by means of impugned judgment which findings are questioned by the wife in the present appeal.

6. Mr. R.K. Sharma, learned Counsel for the wife has urged that the ground of cruelty alleged by the husband has not been proved as there was no sufficient evidence to establish the same, judgment is cryptic and assigns no reason. It was further submitted that the evidence of the wife had not been discussed by the Trial Court and issue relating to cruelty as pleaded by the wife regarding second marriage of the husband had not been framed, therefore, his client has been prejudiced. In these circumstances, it was submitted by Mr. R.K. Sharma that the impugned judgment and decree was liable to be set aside and alternatively the case needs to be remanded back after framing necessary issue and calling for fresh decision in accordance with law.

7. On the other hand Pt. Om Parkash, learned Counsel for the husband has supported the judgment of the Trial Court while controverting all the pleas raised on behalf of the wife. It was further pointed out by the learned Counsel for the husband that making baseless and false allegations not only in her pleadings but also persisting with those during the course of evidence and in this Court tantamount to cruelty on the part of the wife and on this ground the husband is entitled to the decree of divorce in addition to the grounds pleaded by him. So far

the plea of non-framing of issue is concerned, two fold submission was made by Pt. Om Parkash; firstly that non-framing of issue is immaterial as the parties were alive to their respective pleas raised in their pleadings and the wife has gone on record to give evidence in support of her such plea of second marriage. Therefore, she cannot be permitted to urge that non-framing of issue has materially prejudiced her; secondly it was pointed out that the issue having not been claimed at the time of framing of issues before the Trial Court, the party, wife in the present case, shall be deemed to have waived that plea. According to learned Counsel for the husband there is enough, reliable and trustworthy evidence on record to sustain the claim of his client and in support of his this plea, it was pointed out that the wife has made frivolous complaints against the husband to police, his department and other Authorities resulting in lowering his client in the estimation of public.

8. It may be appropriate to point out here that cruelty has not been defined under the Hindu Marriage Act (hereinafter referred to as the 'Act') and there can be no strait-jacket formula so as to define the cruelty as it would depend upon on number of circumstances and facts of the case. At a particular point of time an angry look or a particular gesture a saucy mild joke or an ironic over tone may perpetuate cruelty than a party being actually physically manhandled. Similarly, day-to-day behaviour of one party is another factor which may lead to disturbing the mental peace and harmony. When these small incidents get piled up the burden thereof becomes heavy to bear for the party concerned. Similarly, sex is an important part of the married life between a husband and a wife which in fact keeps the parties together. Refusal to discharge matrimonial obligation of which sex is a very vital and important link leads to mental cruelty more particularly where the parties are young. In such a case without there being any physical cruelty, still it would be all case of gross cruelty on the part of the spouse denying to submit to sex. Cruelty, further has to be determined on factors, viz. social status of the parties, background from which they come and upbringing of the parties and public opinion about them in the locality. In these circumstances it has to be judged whether the cruelty is of such a character so as to cause danger to life or health. Where the wife alleges beatings from her husband, in the social set up of our society it would not be expected of a Hindu wife to produce a medical certificate to prove her plea

of her having been beaten up by her husband.

9. In a recent decision of the Hon'ble Apex Court in case *V. Bhagat v. Mrs. D. Bhagat*, 1994 (1) All India Hindu Law Reporter 74 (SC), II (1993) DMC 568 (SC), the Hon'ble Apex Court explained that mental cruelty is that conduct which inflicts upon such party such mental pain and suffering as would make it not possible for that party to live with the other. It must be of such a nature that the parties could not reasonably be expected to live together. Regard must be had to the social status educational level of the parties and the society they move in. These are some of the broader species of the cruelty and the present case has to be seen whether the cruelty pleaded by the husband is proved or not.

10. So far the plea regarding non-framing of issue about second marriage of the husband with one Baby is concerned, it may be appropriate that it does not in any way prejudice the wife for two reasons. Firstly despite there being no issue while appearing as RW1 she led evidence in support of her this plea and secondly mere non-framing of issue is of no significance because the parties had gone to trial knowing their case fully well. In this behalf guidance can be taken from case *Kunju Kesavan v. M.M. Philip & Ors.*, AIR 1964 Supreme Court 164. In the face of this position it cannot be said by any stretch of imagination that simply because issue regarding second marriage of the husband was not framed which has resulted either causing any prejudice to the wife or has resulted in failure of justice. Secondly, no doubt it was the duty of the Court to have framed necessary issues on the basis of the pleadings under Order XIV of the Code of Civil Procedure. In any event parties are also expected to be vigilant at such time and in case there was any omission on the part of the Court it could have been insisted on framing other/ further issues which the Court omitted to frame. In case of non-framing of an issue by the Court, the plea in that behalf shall be deemed to have been given up by the parties concerned. If any pronouncement in support of this proposition is required a reference can be usefully made to case *Union of India & Anr. v. Mis. Goverdhan Dass, P.A.*, Revenue Law Reporter, 1973 page 14. In this view of the matter, the plea raised by the learned Counsel for the wife on account of non-framing of issue is hereby rejected.

11. So far the plea regarding the judgment being cryptic and the evidence of the wife having not been discussed by the Trial Court is concerned, it hardly needs to be emphasised that in case the judgment of a Court cannot be supported for the reasons given therein, then the appellate or revisional Court is not precluded from examining whether the decision arrived at is sustainable for reasons other than those which were recorded by the Court while passing the judgment. When this test is applied to the facts of the present case it was safely be said that mere non-elaborate discussion of the evidence of the wife cannot by itself be made a ground to set aside the impugned judgment and decree as urged on behalf of the learned Counsel for the wife. There is enough evidence produced by the husband to show that the behaviour on the part of the wife is of such a nature which leads to one and irresistible conclusion that she had treated the husband with such cruelty as it had become difficult for him to live with the wife. Persistent leaving of the house without any rhyme or reason, using filthy/abusive language, as well as recurring misbehaviour on the part of the wife stands duly proved which clearly establishes the plea of cruelty on the part of the wife. In this behalf statement of PW 1- husband and cross-examination of RW 2 Amar Singh clearly shows that the cause, conduct and behaviour of the wife was of such a nature which amounts to cruelty against the husband. No doubt wife while appearing as RW 1 as well as her father as RW 3 have made an attempt to dislodge the claim of the husband. After weighing the evidence led by the parties we are of the view that the wife has failed to dislodge evidence of cruelty placed on record of the file. Here it may be appropriate to take into account Ex. RW 2/A a typed writing produced by Amar Singh RW 2 who is a nephew in collateralship of the husband. It is not understood as to what prompted this witness to have brought this document duly typed which he has brought from Dharamsala after having it typed out at his own expense. It is further not understood as to whether this was got typed by him before the incident alleged in this document or after his having gone to Dharamsala and then got this document typed. Another circumstance is that this document is signed by Amar Singh RW 2, Chuni Lal Pradhan and Des Raj, but this was not got signed from RW 1-wife. In case there was any such thing, then ordinarily this document would have been signed by the wife also. Besides this other two signatories, namely, Chuni Lal Pradhan and Des Raj have not been examined although it was suggested to

the PWs in cross-examination that Chuni Lal was the President of the Panchayat. In case this document was genuine then ordinarily the wife would have examined either both or at least one of them.

12. A learned Single Judge of this Court in case *Nimrat Preet Singh Bhullar v. Kamaljit Bhullar*, 1990 (2) Sim. L.C. 137, 11 (1991) DMC 87, has observed that while determining cruelty the entire matrimonial relationship is to be considered and has further held that the Court should make an assessment of human nature and behaviour and the domestic life of the spouses to be surveyed as a whole before assessing their future relations. This decision of the learned Single Judge was upheld by a Division Bench of this Court per judgment reported in case *Kamaljit Bhullar v. Nimrat Preet Singh Bhullar*, 1991 (1) Sim. L.C. 156 (1) (1991) DMC 490. While deciding the appeal filed by the wife against the judgment of the learned Single Judge, the Division Bench placed reliance on a decision of the Apex Court reported in case *Dr. N.C. Dastane v. Mrs. S. Dastane*, AIR 1975 SC1534, which has also been relied by the Trial Court.

13. As already pointed out cruelty is a bundle of facts, if proved would enable a party to ask for dissolution of marriage by a decree of divorce. There can be so many acts which may ultimately lead to mental cruelty. In this behalf it may be further pointed out that if the allegations made in advance by the contesting spouses remain unproved, they will also constitute cruelty. In the present case it has come on the file of this case that Criminal Case No. 150-II/93 titled as *Pawna Devi v. Chuni Lal & Anr.*, under Sections 494, 498-A and 506, IPC was pending in the Court of Chief Judicial Magistrate at the instance of the wife, and the parties were not at variance with this complaint had been dismissed by the Trial Court against which the wife had filed the appeal before this Court. Making of a false allegation that too an unproved one by the wife against the husband regarding his alleged second marriage with one Baby according to learned Counsel for the husband tantamounts to an act of grave cruelty against his client. Besides this the filing of frivolous complaints to his office, police and other Authorities are also such cruel acts on the part of the wife on account whereof the cruelty got aggravated. No suggestion was put in cross-examination to the husband that the wife had not filed such complaints.

14. It being well-settled that false, defamatory, scandalous, malicious/baseless and unproved allegations made against the spouses' in letters and complaints lodged against such spouse to superiors or to persons in authority are cruelty; in these circumstances, there does not appear to be any good reason to say that unproved false and baseless assertions made in the written statement do not tantamount to cruelty. Besides this, in this context it may be also appropriate to point out that imputation stating that the husband has remarried by the wife in her written statement as well as while appearing as RW1 without any foundation prima facie makes out a case of mental cruelty set up by the husband and therefore, the plea regarding cruelty raised by the husband stands established.

15. In the present case the matrimonial relations between the parties in the background, facts and circumstances besides the clear cut unproved assertions on the part of the wife regarding husband having married one Baby, establishes beyond any shadow of doubt that the marriage between the parties has irretrievably broken down. In fact this plea and the complaints made by the wife in the office, to the police as well as to other person in authority further shows the mental torture, disgrace and harassment through which the husband had undergone. In these circumstances, there can be hardly any fault which can be found with the judgment of the Trial Court. According to the learned Counsel for the husband, the complaint lodged by the wife under Section 494, etc. IPC was totally false and frivolous wherein in order to defend himself he had to appear in Court, get himself bailed out and after a protracted trial his client and other person arrayed as accused in the said complaint has been acquitted, therefore Pt. Om Parkash submits that this also adds, to the acts of cruelty on the part of the wife.

16. So far as behaviour of the wife is concerned, a reference to the statement of her own witness RW 2 speaks volumes in that behalf which further demolishes the plea raised by the wife against the husband. Similarly, the plea that the husband made claim for dowry against the wife has also not been proved. Looking to the present day stringent provisions of law regarding claim of dowry and statutory presumption raised by operation of law, the allegations if proved lead to very serious consequences against the demanding spouses, husband in the present case. But at the same time if these allegations remain unproved then the

averments made in this behalf would be severe acts of mental cruelty. On this ground also the husband has been able to make out a case of cruelty against his wife.

17. Faced with the aforesaid facts, learned Counsel for the wife persisted with vehemence that the case needs to be remanded after framing issue on the plea of the wife regarding second marriage of the husband with Baby and then to examine the effect of such second remarriage. In view of the findings recorded in this behalf in the body of the judgment, this argument has been raised simply to be rejected. Regarding the aforementioned proposition, reference may be made to cases Mrs. Suresh Bala, Dehradun v. Major Gurmohinder S. Bala, New Delhi, AIR 1983 Delhi 230; Smt. Kalpna Srivastava v. Surendra Nath Srivastava, AIR 1985 Allahabad 253; Netnai Kumar Ghosh v. Smt. Mita Ghosh, AIR 1986 Calcutta 150; Vinod Kumar Sharma v. Nutan Sharma, 1(1986) Divorce and Matrimonial Cases 484; and Smt. Savitri Balchandani v. Mulchand Balchandani, AIR 1987 Delhi 52.

18. In this view of the aforesaid discussion, there is no merit in this appeal which is dismissed accordingly.

19. Now remains the question to be seen whether this Court while considering the matter in appeal can also grant some relief towards permanent alimony to the wife as well as to the minor son of the parties. We are of the view that looking to the circumstances wherein a wife is placed as well, as the plight of the petitioner in the social set up, she would be put in a very disadvantageous position after having been divorced and as such provision needs to be made for her maintenance till she remarries as well as in respect of the minor son of the parties, who is admittedly residing with the wife. This can be done in our view in exercise of the powers vested in this Court under Order 41, Rule 33, CPC as well as by having recourse to the provisions of Sections 24 and 25 of the Hindu Marriage Act. During the course of arguments, learned Counsel appearing for the husband very fairly stated that if such a situation comes up, his client would be more than willing to pay permanent alimony to the wife till she remarries and to the son till he attains majority so that they are not dragged to another round of litigation for the said purpose. Even otherwise passing of such an order would be in consonance with

the public policy and avoiding another round of litigation between the parties. Further, it would provide some social security to the wife and the child. Needless to point out that not only morally but it is the legal duty of the husband to provide for adequate maintenance for his wife and the child. For this reason also we consider it just and proper to order payment of permanent alimony to the wife as well as to the child. It was stated at bar that the salary of the husband is approximately between Rs. 5,000/- to Rs. 6,000/-, besides this, it has also come in evidence that the husband owns 50/60 kanals of land. Husband is a young man of 33 years and has a long way to go in his service career in the public sector undertaking i.e. Life Insurance Corporation of India.

20. In view of the aforesaid circumstances, it is ordered that he shall pay Rs. 700/- p.m. to the wife till she remarries and in case she does not marry, the husband is liable to pay this amount to the wife till her death. In addition to this, a sum of Rs. 500/- p.m. will be payable by the husband to the minor son through the wife with whom the child is admittedly residing and who is fending for the said child. It is made clear that this order of permanent alimony shall be operative with effect from 1.4.1997. It is further ordered that this amount will be remitted either by a bank draft or by a money order by the husband at his own expenses to the wife regularly by 10th of each month commencing from May, 1997; a sum of Rs. 1,200/- for the month of April, 1997 will be remitted in the aforesaid manner by the husband before 30.4.1997 to the wife, who will utilise the amount allowed to the minor son for his education, welfare and upkeep. It is further made clear that in case the husband fails to remit the amount as aforesaid, then the wife shall be entitled to execute this order being a decree of Civil Court against the husband without her being dragged to any further litigation in this behalf. In taking this view we are supported by Division Bench judgment of this Court reported in case Smt. Rachan Kaur v. Shri Bhag Singh, 1996 (1) Sim. L.C. 413, II (1996) 70 (DB), as well as Smt. Saroj Rani v. Sudarshan Kumar Chadha, (1984) 4 Supreme Court Cases 90. It is further directed that any other maintenance awarded in any other proceedings by any Court to the wife or to the minor son, the same shall be liable to be deducted out of the sum of Rs. 1,200 / - as allowed by this judgment to both wife and the son. If at a later stage, wife needs further amount for the education of the son during the period of his minority, liberty is reserved to her to approach this

Court for modification of the order of maintenance qua the son.

21. Costs on the parties.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com