

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

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FAO No.213-M of 2003.

DATE OF DECISION: February 04, 2015.

Sanjeev Kumar alias Sanjeev SharmaAPPELLANT.

VERSUS

Smt. Rekha RaniRESPONDENT.

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE SNEH PRASHAR**

**Present: Mr. Anshuman Chopra, Advocate
for the appellant.**

**Mr. Kuldip Sanwal, Advocate
for the respondent.**

SNEH PRASHAR, J.

1. A petition under Section 13 of the Hindu Marriage Act, 1955 (in short “the Act of 1955”) for dissolution of marriage by a decree of divorce was filed by appellant-husband Sanjeev Kumar against his wife-respondent Rekha Rani, which was dismissed by learned Additional District Judge, Sangrur, vide judgment and decree dated 14.08.2003. Assailing the said judgment and decree, the instant appeal was preferred by the appellant-husband.

2. In precise, the facts extracted from the record are as under:-

The marriage between the parties was solemnized on 05.12.1997 at Patiala according to Hindu rites and ceremonies. After marriage, they resided together as husband and wife in the matrimonial home at Malerkotla for a period of about one month.

Petitioner Sanjeev Kumar averred that during the period Rekha Rani was living with him, her behaviour towards him and his family members and other relations was unaccommodating, humiliating and torturous. Whenever he tried to consummate the marriage, she avoided to do so and gave an impression that her marriage had been solemnized without her free will and consent. In order to get rid of him, she started compelling him to break the matrimonial tie or she would involve him and his family members in some criminal case. Because of her attitude he went in depression.

It was further pleaded by the petitioner that in order to put pressure on him, the respondent intentionally injured her with a razor on 15.01.1998. Her parents were called from Patiala and were told about the untoward incident, on which they took her with them to Patiala. Subsequently, on assurance tendered by the parents and also by the respondent by way of writing dated 26.04.1998 in the presence of Om Parkash and Gurcharan Singh, Member Block Samiti, she was rehabilitated at the matrimonial home. The respondent still did not mend her ways and continued to create unpleasant atmosphere in the house. One day, without informing him or anyone in the family she left the matrimonial home and took away with her all gold ornaments and

valuable clothes etc. On enquiry, when he came to know that she had gone to Patiala, he then lodged a report at Police Station Malerkotla vide Daily Diary Report No.15 dated 30.04.1998. Thereafter, she never returned to the matrimonial home and kept residing separately without any reasonable cause mainly with an intention to end the matrimonial alliance permanently.

Lastly, the petitioner pleaded that the respondent filed a complaint before Women Cell, Patiala, levelling wrong and false allegations against him and his family members. She got recorded her statement before the said Cell on 19.03.1999 wherein she levelled false allegations against his brother with a view to malign him and his family. Submitting that during her stay in the matrimonial home, the respondent with her act and conduct created such a torturous atmosphere that it was no longer possible for him to live with her under the same roof, the petitioner prayed for dissolution of their marriage by a decree of divorce on the grounds of cruelty and desertion.

3. The respondent contested the petition. The preliminary objections raised by her were with regard to maintainability of the petition and cause of action etc. Replying on merits, she admitted the factum of marriage with the petitioner and submitted that it was under forced and compelling circumstances that she was residing with her parents at Patiala. She pleaded that on 29.04.1998 she was given severe beatings and was turned out of the matrimonial home in three wearing clothes by the petitioner. She denied all allegations levelled against her as false and

vexatious and submitted that in fact she was a victim of cruelty at the hands of the petitioner and his family members.

The respondent emphatically denied that she had not offered herself to the petitioner for consummation of marriage or had herself injured her arm on 15.01.1998. According to her, the injury on her arm was result of beatings given to her by the petitioner. Soon after marriage, the petitioner and his family members had started expressing dissatisfaction over the dowry articles given by her parents which they felt were not according to their status. They openly told that they expected a Maruti car, cash amount of ₹50,000/- and a gold necklace weighing 4 Tolas for the mother-in-law. Under the influence of his sister Renu Bala, her husband Maklesh Kumar and his father Om Parkash, the petitioner harassed and maltreated her. She denied having given any such assurance in writing as pleaded by the petitioner and submitted that the alleged writing was made by the parties in good faith and with an intention to rehabilitate her in the matrimonial home. Disclosing that a petition under Section 125 of the Code of Criminal Procedure (in short "Cr.P.C.") and a criminal complaint under Sections 406, 498-A and 120-B of the Indian Penal Code (in short "I.P.C.") had been filed by her and also submitting that she was always ready and willing to join the conjugal company of the petitioner, she prayed for dismissal of the petition.

4. The petitioner filed replication controverting the objections raised by the respondent and reiterated his averments as contained in the petition. On the pleadings of the parties, following issues were framed:-

- (1) Whether the respondent treated the petitioner with cruelty after the solemnization of the marriage? OPA.
- (2) Whether respondent deserted the petitioner for last more than two years immediately preceding the presentation of the petition? OPA.
- (3) Whether the petitioner has got no cause of action to file the present petition? OPR.
- (4) Relief.

5. Both the parties adduced evidence to substantiate their respective contentions.

6. Appraising the evidence adduced by the parties and the submissions made on their behalf, learned trial Court finding that the petitioner had failed to prove that he had been treated with cruelty or had been deserted by the respondent decided Issues No.1 and 2 against him. Issue No.3 was disposed of as not pressed. As a result thereof, the petition was dismissed with costs.

7. Feeling aggrieved by the judgment and decree dated 14.08.2003, appellant Sanjeev Kumar preferred the instant appeal.

8. The submissions made by Mr. Anshuman Chopra, learned counsel representing the appellant and Mr. Kuldip Sanwal, learned counsel representing the respondent have been considered and record has been perused.

9. To begin with, learned counsel for the petitioner argued that after marriage the parties could live together hardly for a period of five months. According to the petitioner, the respondent left the matrimonial home without informing him or his family members and took away with

her all gold ornaments and valuable clothes etc. In that regard, Daily Diary Report No.15 dated 30.04.1998 was got registered by the petitioner at Police Station Malerkotla. It was the version of the respondent also that ever since 29.04.1998 she was residing at her parental home. The instant petition praying for a decree of divorce on the ground of desertion was filed by the petitioner on 03.11.2000. No such evidence substantive or reliable could be produced by the respondent to prove that she had ever made an attempt to return to the matrimonial home and join the conjugal company of the petitioner. Evidently, she had deserted the petitioner without any reasonable cause for the last more than two years preceding presentation of the instant petition.

10. Learned counsel also asserted that the petitioner in addition to his own deposition as AW4 had examined AW3 Om Parkash who corroborated his allegation that the conduct of the respondent towards him was cruel from the very beginning of the marriage. He also examined PW1 Constable Gurmel Singh, who proved Ex.P1 the Daily Diary Report No.15 dated 30.04.1998 registered at Police Station Malerkotla and PW2 Head Constable Banti Devi, who was posted in the Women Cell on 11.12.1998 when the complaint given by the respondent was marked to her for enquiry vide endorsement Ex.P2. She proved the statement dated 26.04.1998 Mark-A of Rekha Rani recorded by her. Learned counsel contended that the respondent perpetrated cruelty on the petitioner not only during her stay in the matrimonial home, but also lost no chance to humiliate and torture him by levelling false allegations in the complaint

given to the police and also during the statement recorded by PW2 Head Constable Banti Devi. Her denial to consummate the marriage and then the false allegations levelled in her statement made before the Women Cell, that the family of her husband had sent his younger brother to dishonour her on the very first night after marriage were the matrimonial offences committed by her which caused severe mental cruelty to the petitioner. On one occasion, she even tried to commit suicide by cutting her arm with a blade with an intention to implicate the petitioner in a false criminal case. The said incident also proved how she subjected the petitioner to mental cruelty.

11. The arguments of learned counsel for the petitioner were controverted with vehemence by learned counsel for the respondent. He submitted that from the very initial stage the stand taken by the respondent was that she was always ready and willing to join the conjugal company of the petitioner. She had very categorically mentioned that only under forced circumstances she was living at her parental home. The petitioner harassed and ill treated her on account of his demand for more dowry; he ousted her from the matrimonial home and thereafter besides all efforts made by her and her family members to reconcile the matter, he did not allow her to return to the matrimonial house. As postulated under Section 23 (1) (a) of the Act of 1955 even where the court is satisfied with the grounds for the relief sought by the petitioner, still it is empowered to refuse the grant of relief where it finds, as indicated by the facts, that the petitioner is taking advantage of his/her own wrongs.

12. Indeed, the respondent not only denied the allegation of cruelty levelled by the petitioner but also gave a befitting reply explaining the incidents narrated by him. The foremost allegation of the petitioner was that the respondent did not offer herself to consummate the marriage with him. The respondent on the other hand wholeheartedly expressed her desire in the pleadings as well as during her statement to resume the matrimonial obligations without any condition. The response of the respondent leaves no scope to believe the version of the petitioner.

While recording his findings under Issues No.1 and 2, the observations of learned trial Court in Para No.10 were as under:-

“I have considered the rival contentions and have viewed the same in the light of the pleadings of the parties and also the evidence brought on record, including the documents placed and proved on the file. It is pertinent to record at the onset that, couple of attempts were made to effect a compromise between the warring spouses with the active assistance of both the counsels but, whereas respondent was always willing and ready to go with the petitioner to the matrimonial home, it was the petitioner, who expressed apprehension and his reservation in commencing the cohabitation with the respondent. Petitioner has expressed a fear that he may be implicated by the respondent in some serious problems, as she is a trouble maker of the highest order.”

As noticed above, the petitioner was hesitant in resuming cohabitation with the respondent expressing unfounded fear in his mind. He not only indicated reservation in commencing cohabitation but also levelled wild allegation that she was a trouble maker of highest order to justify his fear/apprehension.

13. No doubt, it was the allegation of the petitioner that on 15.01.1998 the respondent had intentionally injured her arm with a blade,

but replying to this allegation the respondent submitted that the injury suffered by her was result of beatings given to her by the petitioner. She also testified that because of the ill treatment she was facing at the hands of the petitioner, she had herself called her parents and they were not called by the petitioner. She denied that her parents had taken her back on their own volition, rather, she deposed that she was compelled by the petitioner and his family members to leave the matrimonial home and to go with her father. No medical evidence could be produced by the petitioner that the injury was self suffered and was not the result of physical assault by him. Had it been true that the respondent had injured her arm herself with a blade, the natural reaction expected from him in normal course would be that he would have immediately taken her to the hospital. Absence of medical report is a factor to be used as adverse against the petitioner.

14. Further, the petitioner emphatically relied upon the writing dated 26.04.1998 Ex.A3 allegedly prepared between the parties when she had returned to the matrimonial home after the incident of 15.01.1998. He deposed that it was on the assurance tendered by the respondent and her parents that she will not repeat such acts in future and will live properly on which she was brought back to the matrimonial home, but even thereafter there was no change in her behaviour and she used to create unpleasant atmosphere in the family.

The writing dated 26.04.1998 Ex.A3 may have been placed on record by the petitioner, but it was not proved in due process of law.

During cross-examination of respondent Rekha Rani, the document was put to her but she denied her signatures on the same. A perusal of the document shows that the signatures of the respondent were in English and no evidence was led by the petitioner to prove that she was an English knowing person or that the signatures on the document were appended by her. The other signatory of the writing Ex.A3, Gurcharan Singh, Member, Block Samiti, Patiala was not examined by the petitioner. Otherwise also, it appears strange that the writing Ex.A3 was not signed by either of the parents or some elder member of the parental family of Rekha, whereas the plea of the petitioner was that the assurance was given not only by the respondent but also by her parents. The petitioner examined AW3 Om Parkash who stated that the writing Ex.A3 was recorded but he did not state that the said writing bears his signatures or that it was signed by Rekha Rani in his presence. According to him also the assurance was given by parents of the respondent but as observed above the writing Ex.A3 does not bear the signatures of the parents. It appears that the document was an outcome of an afterthought of the petitioner and had been prepared only to create evidence in his favour.

15. No such incident could be narrated by the petitioner which could indicate that the behaviour and conduct of the respondent was rude and harsh towards him. As per findings recorded by learned trial court, the respondent had been found very keen in cohabiting with the petitioner. She had always been ready and willing to accompany him from the court itself. It was also categorically mentioned by learned trial court that there

was every possibility of the parties cohabiting together again and there was no such instance which could be termed as “mental or physical cruelty” towards the petitioner. The facts clearly indicate that the respondent had been residing at her parental home because the petitioner had ousted her from the matrimonial home and despite her willingness to return he had not allowed her to join his conjugal company. For the said reasons, it does not lie in the mouth of the petitioner to say that he had been treated with cruelty or had been deserted by the respondent.

Certainly, there is no error of law or perversity in the findings recorded by learned trial Court which could warrant intervention by this Court. Thus, finding no merit in the appeal, it is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

February 04, 2015.

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Note: Whether to be referred to the Reporter or not? Yes/No.