

In the High Court of Punjab and Haryana at Chandigarh
FAO-44-M of 2004
Date of decision: 07.07.2015

Vijay Appellant
Vs.
Dayawanti Respondent
(Under Section 13 of the Hindu Marriage Act)

(ii) FAO-59-M of 2004
Date of decision: 07.07.2015

Vijay Appellant
Vs.
Dayawanti Respondent
(Under Section 9 for restitution of conjugal rights.)

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Argued by:Mr.A.S.Gulati, Advocate
for the appellant (in both the appeals).

Mr. Surinder Saini, Advocate
for the respondent (in both the appeals).

RAJ RAHUL GARG,J.

By this judgment, the aforementioned two FAOs shall be disposed of. Vijay-husband has filed a petition for divorce on the ground of cruelty against Dayawanti-wife. The aforesaid petition was dismissed by Shri Satish Ahlawat, the then Ld. Additional District Judge, Hisar, vide judgment and decree dated 22.08.2003.

Dayawanti-wife has instituted a petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act (for short the Act') against her husband-Vijay, which was allowed by Shri Satish

Ahlawat, the then Ld. Additional District Judge, Hisar, vide judgment and decree dated 22.08.2003.

Feeling aggrieved with the aforementioned both the judgments, Vijay-husband has come up in the aforesaid two appeals before this Court.

Brief facts of both the cases are like this; that the parties got married on 29.06.1993. No issue was born out of this wedlock. As per Vijay-husband, Dayawanti-wife treated him with cruelty, causing great apprehension in his mind that it is harmful and injurious for him to live with her. Husband alleged cruelty against the wife like this; that wife is a high-tampered lady; used to hurl filthy and abusive words (*kutta-kamina*); she was not doing house-hold work. She left matrimonial home several times without his permission and was brought back by convening Panchayat. She even called bad names to the husband and his family members in public. Once, she even locked-up his parents in a room and did not provide them food for 24 hours. His father even disowned him by making a declaration in the news paper on 13.06.1999. She left the matrimonial home in January, 2001 and made a false complaint to the police at Hisar. The matter was compromised to the effect that the wife would not live with the parents of the husband but would live at Jaipur. Accordingly, they started living at Jaipur in a rented room. They live there for 5 days. However, Dayawanti-wife left Jaipur without his permission and came to Hisar. As per desire of wife, Vijay-husband took a house at Surya Nagar, Hisar on rent. Even then,

she had taken all the dowry articles from the aforesaid house declaring that she was not happy to live with the husband and also threatened him as well his family members to implicate them in a false case. She also declared in the Panchayat that her marriage was performed against her wishes and under the pressure of her family members. It is also the allegation of the husband that the wife always avoiding to sleep with him. Whenever, he tried to sleep with her, she used to give beatings and abused him, thereby, causing mental and physical cruelty to him. In January 2002, wife filed a false complaint against him and his family members. In response to that complaint, police called him in the police station where wife insulted him and his parents.

Wife contested this divorce petition. She denied the aforesaid allegations of cruelty levelled against her by the husband. She admitted that number of cases are pending between the parties including the case under Sections 498-A/406 IPC. It is the plea of the wife that had there been any cruelty on her part then the divorce petition would have been filed much earlier instead of filing the same after 9 years of marriage.

In another petition seeking restitution of conjugal rights, she alleged that due to non-fulfillment of demand of dowry, her husband expelled her with humiliation from her matrimonial home with few clothes on 05.11.2001. All the *Istridhan* articles were retained by him. She lodged a case FIR No. 388 dated 03.06.2002 under Sections 498-A/406 IPC. Divorce petition filed by the husband is based on false

allegations.

While contesting the petition for restitution of conjugal rights, husband denied that due to non-fulfillment of demand of dowry, he ever expelled his wife from matrimonial home with few clothes. He also denied having kept all *Istridhan* articles with him. However, filing of criminal case under Sections 498-A/406 IPC against him and his family members was admitted by him. It was alleged that the aforesaid case is a false case. It was further alleged that since his wife subjected him to cruelty, therefore, he had filed a divorce petition against her. Thus, he prayed for dismissal of petition for restitution of conjugal rights.

From the pleadings of the parties following issues were framed:

Issues framed in divorce petition:-

- (i) Whether the petitioner is entitled to a decree of divorce on the grounds alleged? OPP*
- (ii) Relief.*

Issues framed in petition for restitution of conjugal rights :-

- (i) Whether the petitioner is entitled to restitution of conjugal rights on the grounds alleged? OPP*
- (ii) Relief.*

After taking oral as well as documentary evidence and hearing both the counsel for the parties, the learned Additional District

Judge, Hisar, dismissed the divorce petition holding that husband has failed to prove any ground of cruelty against his wife whereas allowed the petition filed by wife for restitution of conjugal rights holding that the evidence brought on record shows that the wife is ready and willing to live with the husband but it is the husband who is avoiding and not permitting the wife to live with him.

Assailing the aforementioned two judgments of the even date, recorded by Shri Satish Ahlawat, the then Ld. Additional District Judge, Hisar, the appellant-husband has come up before this Court with the grouse that the learned trial Court has not appreciated the evidence on record and erred in holding that the husband has failed to prove the ground of cruelty against his wife and further that without reasonable cause he has been avoiding to live with the wife or that she is ready and willing to live with him.

We have heard Shri A.S.Gulati, Advocate, learned counsel for the appellant and Shri Surinder Saini, Advocate, learned counsel for the respondent besides appraising the entire evidence and material coming on record.

First and foremost argument advanced by learned counsel for the appellant is this; that a criminal case filed by the wife against the husband under Sections 498-A/406 IPC read with Section 34 IPC bearing FIR No. 388 dated 03.06.2002, has been ended up in acquittal vide judgment dated 11.02.2009 rendered by Ms. Bhawna Jain, Ld. Judicial Magistrate 1st Class, Hisar. It was further contended that this

judgment has become final and at present no appeal is pending against the judgment of acquittal. This fact is also confirmed by the counsel for the respondent-wife.

As the aforesaid judgment of acquittal has attained finality, therefore, it is proved on the file that respondent-wife has treated the husband with cruelty. She has levelled allegations against him and his family members which she could not substantiate beyond reasonable doubt. It is settled proposition of law that where a false case of demand of dowry is got registered against the husband and which is ended up in acquittal, it will lead to prove that the wife has treated the husband with cruelty.

In the case in hand, the wife has not only lodged a criminal case under Sections 498-A/406 IPC once but twice. She herself admitted as RW-1 that the first complaint made by her to the police was compromised due to intervention of the police. She had also appeared in the police station in June 2011 when that compromise was effected. To this extent, the statement of husband (PW-1), Bhag Chand Sharma (PW-3) and Parmeshwari Dutt Sharma (PW-4) are believable and establish the factum of cruelty caused by wife to Vijay-husband and other family members. These witnesses have deposed that when a compromise was got effected by the police in the complaint case lodged by Dayawanti-wife against Vijay-husband, Dayawanti-wife was sent to live with Vijay at Jaipur. At the time of compromise, as per Vijay (PW-1), Dayawanti-wife expressed that she did not want to live

in the village Bado Brahmin. As such, he took her to live with him at Jaipur but there as well she did not stay for long. After short duration of 5 days, she left Jaipur and had gone to Hisar to live. Vijay deposed that on the 6th day of their stay at Jaipur, when he had gone to his room for taking lunch, he did not find her there. His landlord told him that she alongwith her luggage had gone to Railway Station, Jaipur. He followed her and found her on the way to Railway Station. Dayawanti-wife told him that instead of Jaipur, she wanted to live in Hisar. With great persuasion, he brought her back to the room. He vacated the room on the same day and came to Hisar by bus. He stayed with the cousin in Urban Estate, Hisar for a night. On the next day with the help of the cousin of Dayawanti, a room was taken on rent in Surya Nagar, Hisar. The entire belongings from village Bado Brahmin was shifted in Tata 407 to that room on the same day. On the next day of their shifting, in the month of July 2001 Dayawanti declared that she did not want to live with him and forcibly ejected him out of the rented room. He then had gone to the house of cousin Bhag Chand Sharma and with his help, he tried to convince Dayawanti but she refused to budge. In January 2002, Dayawanti filed a criminal complaint under Section 498-A IPC against him in which he was sent to the custody and later on released on bail. Bhag Chand Sharma (PW-3) corroborated the aforesaid version of appellant-husband. He also deposed that the police got the dowry articles recovered from the village as well as the rented room. Dayawanti when appeared as RW-1 pleaded her ignorance about

the place from where the recovery of articles was effected by the police. In this manner, the appellant-husband and his family members were harassed at the hands of Dayawanti-wife.

Lodging of false criminal complaint against the appellant-husband and his family members; calling them to the police station; remaining in custody and, thereafter, facing of criminal trial is great trauma for husband and his family members to undergo particularly in a case which ultimately ends up in acquittal and the allegations levelled by the wife remain unproved. As such, since respondent-wife caused cruelty to the husband, therefore, he is entitled to a decree of divorce invoking the provisions of Section 13 (1) (ia) of the Act.

In petition for restitution of conjugal rights, the only plea taken by the wife is her expulsion with humiliation from her matrimonial home on account of non-fulfillment of demand for dowry and further that she wants restitution of her conjugal rights. The allegation of demand of dowry could not be proved by her as discussed above. First time, when she filed a criminal case against the husband for demand of dowry, that was compromised and at that time the cause was found that she did not want to live at village Bado Brahmin but she wanted to stay with her husband at the place of his work. Had demand of dowry actually existed, she would not have compromised the matter and gone with the husband to live. Again, she got registered a case under Sections 498-A/406 IPC in June 2002. In that case, husband and his parents faced trial and wife failed to prove her case beyond

reasonable doubt against them, therefore, the aforesaid case ended up in acquittal and this judgment of acquittal has attained finality. Under these circumstances, the case of the respondent-wife that she was expelled from her matrimonial home with humiliation in few clothes by the husband, cannot be said to be proved.

As it is proved on the file that the wife has treated the husband with cruelty, therefore, she is not entitled to the relief of restitution of conjugal rights.

For the reasons recorded above, the divorce petition i.e. FAO-44-M-2004, is allowed and the impugned judgment dated 22.08.2003 rendered by Shri Satish Ahlawat, the then Ld. Additional District Judge, Hisar, is set aside. The petition for divorce filed by the Vijay-husband is accepted, thereby, dissolving the marriage of appellant-husband Vijay with respondent-wife Dayawanti, invoking the provisions of Section 13 (1) (i-a) of the Hindu Marriage Act. FAO-59-M-2004 is also allowed setting aside the impugned judgment dated 22.08.2003 rendered by Shri Satish Ahlawat, the then Ld. Additional District Judge, Hisar, in a petition for restitution of conjugal rights filed by Dayawanti-wife. Accordingly, the aforesaid petition filed under Section 9 for restitution of conjugal rights is dismissed with costs.

Decree sheet be prepared Accordingly.

(M. JEYAPPAUL)
JUDGE

(RAJ RAHUL GARG)
JUDGE

07.07.2015
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