

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.

FAO No.139-M of 2006

DATE OF DECISION: January 12, 2015.

Birmati

....APPELLANT

VERSUS

Braham Parkash

....RESPONDENT

CORAM :HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Ms. Pratibha Yadav, Advocate
for the appellant.

None for the respondent

SNEH PRASHAR, J.

1. This appeal under Section 28 of the Hindu Marriage Act, 1955 (for short 'the Act') by Birmati appellant-wife assails the judgment and decree dated 11.03.2006 passed by the learned Additional District Judge, Rewari dismissing HMA Case No.11 dated 28.02.2002, filed by her for dissolution of her marriage with the respondent-husband.

2. The facts extracted from the record are as under:

Appellant-Birmati was married to respondent Braham Parkash on 26.03.1988 at Village Nakhrola according to Hindu rites and ceremonies. They lived together as husband and wife, but no issue was born out of the wedlock. The allegation of the appellant was that soon after the marriage, Braham Parkash and his mother had started harassing and torturing her

for bringing insufficient dowry. Braham Parkash was addicted to drinking and playing lottery and used to waste money on the same because of which he always faced financial crunch. He pressurized her to bring money from her parents. She used to be left to starve and also used to be given severe beatings as she was unable to fulfil his demands. He was also not physically fit to discharge his marital obligations.

It was further alleged that after her father died in 1990, she started residing in village Kumbhawas along with her mother. When Braham Parkash came to know that she has a share in the pensionary benefits of her father, he took her back to the matrimonial home in village Tikli. There was no improvement in his conduct and he again wasted all money in gambling and drinking. Thereafter in 1999, a Panchayat was convened at village Tikli and finding that the society of Braham Parkash at village Tikli was not good, it was agreed that he will live with her at village Kumbhawas where her mother and maternal uncles were residing. They lived together at Kumbhawas up to January 2000, but in the last days of the said month Braham Parkash left village Kumbhawas and threatened her not to come to her matrimonial home otherwise she would be eliminated. Since then, he never turned up and deserted her without any reasonable cause. Submitting that the respondent had again become addicted to drinking and gambling etc. and had refused to reside with her

and further that he had filed a false complaint against her under Section 494/506 of the Indian Penal Code, the appellant prayed for dissolution of their marriage by a decree of divorce.

3. Respondent-Braham Parkash contested the claim of the appellant. The preliminary objections raised by him were that the Civil Court at Rewari had no territorial jurisdiction to try the petition and that the appellant had remarried during subsistence of her first marriage with him and hence, had not come to the Court with clean hands.

Replying on merits, the respondent admitted the relationship between the parties but denied that he or his mother had ever maltreated the appellant or had demanded any dowry. He further denied that he was addicted to vices like drinking and gambling and used to waste money on the same. He further denied that he had ever agreed before any Panchayat to live with the appellant at village Khumbawas. According to him, he and the appellant had last resided together at village Tikli. The appellant on her own had left his conjugal company without any reasonable cause. She had since remarried with Bir Singh and is living with him in adultery. On a complaint filed by him, process had been initiated by the learned Additional Chief Judicial Magistrate, Gurgaon. As such, he prayed for dismissal of the petition.

4. On the pleadings of the parties, the learned trial Court framed

the following issues:

- (i) Whether the respondent had treated the petitioner with cruelty as alleged?OPP
- (ii) Whether the respondent has deserted the petitioner as alleged?OPP
- (iii) Whether this Court has no jurisdiction to try the present petition?OPR
- (iv) Relief.

Both the parties adduced evidence in support of their respective contentions.

5. Learned trial Court vide judgment and decree dated 11.03.2006 dismissed the petition assailing which Birmati appellant-petitioner preferred the instant appeal.

6. Submissions made by counsel for the appellant have been considered and copies/attested copies of the statement of the witnesses examined by the parties, supplied by the learned counsel for the appellant during the course of arguments, have been perused.

7. By way of the instant petition appellant-Birmati sought dissolution of her marriage with respondent-Braham Parkash on the grounds (i) that she had been treated with cruelty by the respondent and his mother; (ii) that she had been deserted by the respondent without any reasonable

cause.

Learned counsel for the appellant argued that the allegations of cruelty levelled against the respondent were reiterated by the appellant in her statement made on oath. She testified that the respondent and his family members were not satisfied with the dowry given to her at the time of marriage. They demanded a Maruti Car and as she was unable to fulfil their demand, she was often given beatings and was left to starve. She also deposed that the respondent was addicted to various vices, like consuming liquor heavily gambling and playing lottery and used to waste his entire money on the same and then would pressurize her to bring money from her mother.

Learned counsel contended that it was on the intervention of the Panchayat and in compliance of its decision, that the appellant along with the respondent had started residing with her mother at village Kumbhawas but in January 2000, he left her there and returned to his village Tikli and thereafter never looked back to enquire about her welfare. Rather, he filed a false criminal complaint under Section 494 of the Indian Penal Code levelling an allegation that the appellant had contracted second marriage and was living in adultery with one Bir Singh. No substantive and reliable evidence could be led by the respondent to support his allegation. The very fact that he had levelled false allegation involving the character of his

wife amounted to cruelty by him towards her. In addition to the same, he could not adduce any evidence to prove that he had ever made an effort to bring back the appellant to her matrimonial home after he had left her in January 2000 at village Khumbawas without any fault on her part, which proves that he intentionally deserted her.

8. Further, learned counsel emphatically asserted that the appellant had been non suited by learned trial Court on the ground that the Court at Rewari had no territorial jurisdiction to entertain and try the present petition. This petition was filed at Rewari because the appellant and the respondent had last resided together at village Khumbawas. Sub-section(iii) of Section 19 of the Act postulates that a petition under the said Act shall be presented to the District Court within the local limits of whose extra ordinary original Civil jurisdiction, the parties to the marriage had last resided together. Since, the parties had resided together till January 2000 in village Khumbawas Tehsil and District Rewari, the District Court at Rewari had the jurisdiction to entertain and try the present petition.

9. The respondent in his pleadings denied having agreed to or having actually resided with the appellant at Village Khumbawas at any point of time. According to him, the parties last resided together at village Tikli which falls within the jurisdiction of District Gurgaon. Evaluating the evidence led by both the parties on the issue, learned trial court observed

that while PW1-Birmati deposed that she and the respondent had lived in village Khumbawas in January 2000, PW2-Samey Singh maternal uncle of the appellant deposed that Braham Parkash had shifted to Khumbawas in December 1999. It was also observed that the appellant failed to examine any resident of village Kumbhawas to prove that she and her husband Braham Parkash had shifted to village Khmbhawas in December 1999 or had lived there upto January 2000. In the said premises it was held that the District court at Rewari had no jurisdiction to entertain and try the present petition.

10. Be that as it may, even if it is taken to be true that the appellant and the respondent had last resided together in village Khumbawas Tehsil and District Rewari, yet as rightly held by learned trial Court, the appellant had utterly failed to prove any of the grounds i.e. cruelty or desertion, on which she had sought dissolution of her marriage with the respondent.

No specific incident could be elucidated by the appellant which could be termed as 'cruelty' towards her by the respondent. Apparently, all her allegations were general in nature having no base to stand on. Evaluating the testimony of the appellant and her maternal uncle PW2-Samey Singh and of the witnesses examined by the respondent, learned trial Court held as under:

“As regards, the allegations of ,maltreatment and

harassment of the petitioner by the respondent for demand of dowry and cash amount, and as regards, the allegations regarding the respondent being a drunkard and being addicted to purchasing lottery tickets, there are bald deposition of PW-1 i.e. the petitioner herself as PW-1 and of PW-2 Samey Singh on the record to prove the same. Admittedly, PW-2 Samey Singh is the maternal uncle of the petitioner and therefore, he is an interested witness especially in the circumstances, when during his cross-examination, he has categorically admitted that a criminal complaint, as preferred by the respondent Under Section 494 IPC, was pending against him, Birmati and Rohtash. The petitioner has not been able to examine any independent witness from her own village or from the village of the respondent to prove the above said allegations/averments, whereas, the respondent has examined Manohar Lal, as RW-2, who happens to be Ex. Sarpanch and Ex. Lamberdar of his village and has categorically deposed in his affidavit Ex.RW2/A that the respondent had never harassed or maltreated his wife i.e. the petitioner, for dowry and has also deposed that the respondent was not addicted to drinking or playing lottery. There are no cogent reasons to disbelieve the above discussed depositions of RW-2 Manohar Lal, which, when coupled with categoric depositions of RW-1, as made in his affidavit Ex.RW1/1 to the same effect, makes it explicit that the petitioner has not been able to prove her harassments and maltreatment at the hands of the respondent for

demand of dowry and also his addiction to the habit of drinking and purchasing lottery tickets.”

11. Indeed, in the set of facts and evidence in hand, there appears no perversity or error in the findings of learned trial Court. It was an admitted fact that the respondent had filed a criminal complaint under Section 494 and 506 of the Indian Penal Code against the appellant, her maternal uncle PW-2 Samey Singh and one Rohtash. There was not only the deposition of the respondent to prove that appellant Birmati had performed second marriage with one Bir Singh during subsistence of her first marriage with him and she was living with said Bir Singh, there was also the testimony of Supyar Devi wife of Bir Singh, who appeared in the witness box as RW3 and deposed, through her affidavit Ex.RW3/A, that Birmati was illegally residing with her husband Bir Singh as his wife. She too stated that she had filed a criminal complaint against Birmati and her husband Bir Singh under Section 494 of the Indian Penal Code in the Court of Chief Judicial Magistrate, Rewari. Besides that she had also given an application containing the said allegation to the Zila Sainik Board, Rewari which held an inquiry and vide report Ex. RW3/B of Secretary of the said Board, it was found that Bir Singh was keeping Birmati in his house as his second wife.

12. The appellant failed to rebut the deposition of RW3-Supyar Devi

and the inquiry report Ex.RW3/B. Thus, the ocular and documentary evidence led by the respondent was sufficient to prove that his allegation that the appellant had contracted second marriage when her first marriage with him was still subsisting, was not whimsical or without any basis . Addressing truth as true was not an allegation which would amount to cruelty within the meaning of Section 13(1) (ia) of the Act.

12. It is quite clear that the appellant by filing the present petition was trying to take advantage of her own wrongs. From that, it follows that her allegation of having been treated with cruelty against the respondent as well as that she had been deserted by him were manufactured by her simply to get rid of the respondent.

13. Resultantly, there being no ground for intervention in the findings of learned trial Court and the appeal being devoid of merit is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

12.01.2015
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