

Smt. Raj Rani versus Vinay Gupta

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-M No. 153 of 2009 (O&M)

Date of decision: 07.10.2015.

Smt. Raj Rani

.....Appellant.

Versus

Vinay Gupta

.....Respondent.

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MS. JUSTICE NAVITA SINGH**

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. Deepak Sharma, Advocate, for the appellant.

Mr. R.P.S. Ahluwalia, Advocate, for the respondent.

NAVITA SINGH, J.

The appellant herein challenges judgment and decree dated 21.03.2009, passed by the Additional District Judge, Ambala, vide which the marriage between the parties was dissolved on a petition filed under Section 13 of the Hindu Marriage Act, 1955 (Act for short), by the respondent-husband.

2. The respondent knocked the door of the Court with a prayer to dissolve the marriage between the parties, which was solemnized on 10.02.2000. No child was born out of the wedlock. The averments in the petition were that the marriage was a simple ceremony with just a few dowry articles given by the parents of the appellant at that time. The behaviour of the appellant with the respondent was rude and rough and she

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started nagging him just after twenty days of the marriage. She would refuse to cook and also taunted the respondent that he was less educated than her and would pick up quarrels at the drop of a hat. After two months of the marriage, she left the matrimonial home without the knowledge of the respondent and/or his family members. In April, 2000, the respondent brought her back and she assured that she would live peacefully in the matrimonial home. However, in July, 2000, she again went to her parents and during the interregnum when she was living with the respondent, she did not mend her ways.

3. On 18.07.2000, the respondent went to the house of the appellant along with his father. Parents of the appellant begged pardon for the behaviour of their daughter and the appellant came to live with the respondent. However, she behaved well for fifteen days and again started showing her true colours. She was away from the matrimonial home from August, 2000 to April, 2002 with only intermittent visits to the matrimonial home.

4. On 20.06.2002, the appellant fell ill and she remained admitted in Civil Hospital, Ambala City, till 23.06.2002 and during that time the medical advice was that an opinion from psychiatrist should be sought. However, she refused to consult the psychiatrist. In July, 2002, she went to the house of her parents for good, taking all her ornaments with her.

5. On 10.08.2002, the respondent along with his father and two other persons took a panchayat to the house of the appellant, but she refused to accompany them. Every now and then meetings were held between the two families, but the appellant did not agree to join the respondent.

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6. At the time of marriage, horoscope of the appellant was shown to the respondent and his family, according to which, her date of birth was 11.12.1973, but later on the respondent was able to lay hands on certain documents which proved that her actual date of birth was 11.12.1960. The true age of the appellant had been intentionally concealed.

7. The respondent, as was expected, denied all the allegations in the petition and averred that her parents had spent Rs.3,00,000/- on the marriage and sufficient dowry was given. She totally denied that her behaviour in the matrimonial home was not good and that she had left the matrimonial house on different dates as given in the petition. It was pleaded that in fact the siblings of the respondent were in the habit of getting divorce on one pretext or the other and that the elder brother of the respondent was also a divorcee and was suffering from psychiatric problem.

8. Just after two months of the marriage, the respondent and his family members started harassing the appellant for bringing insufficient dowry and demanded Rs.1,00,000/- in cash. The appellant came to know that the respondent was sexually weak and was taking some medicine for that. She was sent to her parental house in October 2000, by the respondent stating that the atmosphere in his own house was not congenial and he would bring her back after 15-20 days. She was, however, taken back in June, 2001, but she was again treated badly.

9. The appellant was tortured for not bearing a child and she was taken for treatment to one Dr. Bansal, who opined that there was no problem with her and that her husband had a problem. The second opinion taken from Dr. N.P. Singh was also to the same effect. After that the

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respondent started taking treatment from Dr. Patnaik in civil hospital as he himself was suffering from some psychiatric problem. The appellant used to be turned out of the house after every few days for bringing more dowry. It was denied that any effort was made by the respondent for reconciliation and she rather pleaded that the parents of the appellant had convened panchayats, but the respondent refused to rehabilitate her. Even the parents of the respondent used to misbehave with the family of the appellant. Regarding date of birth, there was denial about any false information. She also denied that she was admitted in hospital in June, 2002, and that there was any medical advice regarding consulting a shrink.

10. Onus was placed on the respondent to prove that the appellant had deserted him and that he had been subjected to cruelty. He examined his father Moti Ram as PW2, one Ramesh Chand as PW3, Avtar Singh as PW4 and stepped in the witness box himself as PW1. The respondent appeared herself as RW1 and examined her father Paras Jain as RW2 and one Mangat Ram as RW3.

11. The trial Court, after sifting the evidence, separated chaff from the grain and allowed the petition filed by the respondent herein. Reference was made to certain admissions made by the appellant and other evidence was also properly discussed.

12. Counsel for the appellant argued that it was not proved on record that the appellant had subjected the respondent to cruelty and had deserted him. The trial Court erred in deciding the issues regarding cruelty and desertion against the appellant. He contended that rather it was the appellant who was victimized as she was tortured for dowry in the

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matrimonial home. There was categoric demand of Rs.1,00,000/-. The respondent was sexually weak and was taking medicine for that, which was another factor constituting cruelty towards the appellant. The respondent, in October 2000, took the appellant to the house of her parents asking her to stay there for about three weeks as the atmosphere in his own house was not good and assured that he would take her back after things improved. However, he did not take her back and whenever he visited her in the house of her parents he would put off her request for taking her back with him on one pretext or the other. The appellant also bore the brunt of being taunted and tortured for not bearing a child, though actually it was the husband who was responsible for it.

13. Counsel for the respondent, per contra, contended that the trial Court passed a well reasoned judgment as the respondent was able to prove his case. The appellant was unsuccessful in showing that there was any demand of dowry and any cruelty meted out to her in relation to that and that the respondent was suffering from any kind of sexual weakness or mental imbalance of the slightest kind.

14. After hearing both sides and going through the records, we tend to agree with the contentions put forth on behalf of the respondent. The discussion made in the lines below would reveal that the respondent was able to make out a case for grant of divorce on the ground of desertion and cruelty and the appellant, without any cogent reason available to her, tried to malign him by saying that he was sexually weak and that he had some psychotic problem and attempted to paint him and his family, black by saying that they had tortured her for dowry.

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15. Most of the cross-examination of the respondent was in the direction of the allegation of demand of Rs.1,00,000/- allegedly made by him and his family. All the suggestions put in that regard were denied. It was suggested to him that he did not make any effort to bring his wife back to the matrimonial home which he also denied and so was denied the suggestion regarding his sexual incapability. The averments in the written statement were put to him in the shape of suggestions, but he denied all of those. He, however, spoke about the period when the appellant had left him and he had brought her back.

16. It was put to the respondent that he was treated by Dr. Bansal, Dr. N.P. Singh and Dr. Patnaik for problems relating to psychiatry, but he denied that he had taken any such treatment. A suggestion was also put to him regarding treatment from PGI and from Dr. Mangat of Sadhaura, which he denied. It would be apt to mention here that the appellant totally failed to produce any evidence on record to show that the respondent had been treated by Dr. Bansal, Dr. N.P. Singh and Dr. Patnaik, much less for any problem relating to psychiatry. She only examined Mangat Ram as RW3, who said that he was practising in Ayurveda and Greek medicines stating that he was a Hakim. He deposed that he had treated the respondent for some sexual and mental problem. However, no record of any kind was produced by the said Hakim. He said that he had studied only up to class VIII. He did not know what kind of medicine he had given to the respondent. He had not taken any training or course in Ayurveda or Unani medicines. He also could not produce any licence to practice the said stream of medicine. He said that he did not maintain any record of his

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patients or the prescription which would show that his deposition was not creditworthy. If he did not maintain any record of medicines given by him to his patients, how it was possible for him to treat them or give medicine to them on subsequent visits, remained unexplained. Because such a witness could be easily procured, the respondent brought him as a witness, but she failed to get the record summoned from civil hospital where the respondent was allegedly treated by different doctors. She, thus, withheld the best evidence and for that, adverse inference is to be drawn against her.

17. Appearing as her own witness, the appellant stated in the examination-in-chief and in the cross-examination that the respondent was sexually weak and the marriage was unsuccessful due to that. It was, therefore, clear that she did not want to live with the respondent and was putting up a cock and bull story about her willingness to live with him only to harass him so that he would not get a divorce. It was rightly observed by the Court below in para 9 of its judgment that a consistent stand was taken by the wife that the husband was suffering from sexual weakness and the marriage was unsuccessful for that reason and no child could be begotten and so it was hard to believe that she would be still willing to live with her husband, i.e. the respondent herein. Conclusion regarding willful desertion by her was rightly arrived at by the trial Court.

18. In the opening line of her cross-examination, the appellant stated that she was born on 11.12.1960 and she admitted that the date of birth of the respondent was 18.11.1973. The averment of the respondent that correct age of the appellant was not disclosed appears to be correct because if it had been disclosed that she was thirteen years older, the

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respondent, in all probability, would not have married her.

19. In the cross-examination, the appellant deposed that she had taken her husband to Dr. Neeru Bansal to a Nursing Home, Polytechnic College in Ambala City, but she did not know whether Dr. Neeru Bansal was a gynaecologist or not. She said that a medical card was prepared in the name of the respondent by the said doctor. However, as mentioned above, no record was got produced from any where. She went on to say that she had also taken her husband to Dr. Vig in CMC, Chandigarh, but she did not even know where the hospital was located. She said that the entire medical record relating to the respondent was available with said Dr. Vig, but surprisingly no effort was made to summon the same. The respondent had rather produced Kisan Vikas Patras in her name which she admitted and also said that the respondent was ready and willing to put his signatures where ever required for encashment of the Kisan Vikas Patras, which were in the joint names of the parties. This would mean that the respondent made effort to settle in the matrimonial home with the appellant, but the latter was not willing to live with him as she herself stated that her husband was sexual weak and the marriage was unsuccessful for that reason.

20. The allegation of the appellant that the respondent was suffering from some kind of sexual weakness and problem in the mind, having not at all been substantiated and the record, which according to the appellant was available, having not been summoned, it can be concluded that rather the appellant treated the respondent with cruelty as she levelled scandalous allegations against him which she miserably failed to prove. The marriage was also not to work as the appellant was thirteen years older than

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the respondent and there is no reason to disbelieve the contention of the respondent that the actual age of the appellant was not disclosed when the marriage was settled.

21. The respondent was, therefore, able to prove successfully that he had been subjected to cruelty by the appellant and also that she deserted him without any sufficient reason. The judgment and decree, therefore, call for no interference.

22. Before parting with the judgment, it may be mentioned that a request for grant of permanent alimony was made by counsel for the appellant, but Section 25 of the Act speaks of permanent alimony to be granted to a spouse 'on an application made' by the party concerned, the appellant is at liberty to file such an application, if so advised, as the same can be filed even subsequent to the passing of a decree under Section 13 of the Act.

23. The appeal is dismissed with liberty, as above.

(RAJIVE BHALLA)
JUDGE

(NAVITA SINGH)
JUDGE

07.10.2015

Ramesh

Whether to be referred to reporter: Yes/No