

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-342 of 2009

DATE OF DECISION: MAY 12, 2015

JYOTI

...APPELLANT

VERSUS

MOHIT

...RESPONDENT

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

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. SAMRAT MALIK, ADVOCATE FOR THE APPELLANT.
MR. SANJIV KODAN, ADVOCATE FOR THE RESPONDENT.

M. JEYAPPAUL, J.

1. Aggrieved by the dismissal of the petition under Section 13 of the Hindu Marriage Act, 1955 praying for divorce on the ground of cruelty and desertion, the appellant-wife Jyoti has preferred the present appeal against her husband.

2. In nutshell, the averment in the petition filed by appellant Jyoti is that the appellant and the respondent were not blessed with any child out of their marriage that took place on 25.6.2007. The respondent, his uncle and aunt used to demand dowry from the appellant and her parents as they were not satisfied with the dowry given at the time of marriage. They maltreated the appellant for not giving gold chain to the mother and aunt of the respondent, gold ring to the uncle of the respondent and gold earrings to the sisters of the respondent. All of them tortured the appellant for not bringing luxury car and cash amount to the tune of ₹11 lacs. The

respondent and his family members taunted the appellant saying that she was not beautiful as she was dark complexioned. The respondent also pressurized her to bring a sum of ₹10 lacs from her father for purchasing a flat at Dwarka (Delhi). On her refusal, the respondent gave her severe beatings. Anjali, cousin of the respondent, who was the member of AMWAY pressurized the appellant through the respondent to bring a sum of ₹15 lacs for investment in the said company and on her refusal, the cousin of the respondent pressurized the respondent to get rid of the appellant and perform second marriage. Due to physical and mental torture given by the respondent and his family members, the appellant fell ill in the month of June, 2008 and was admitted to Max Hospital, Gurgaon on 13.5.2008. During that period, the respondent never cared for her. The respondent also used to threaten to kill her brother Abhinav. On 13.6.2008, when the appellant refused to accede to the demand of ₹11 lacs from her father, the respondent created a scene and started beating her. When she shouted for help, neighbours came and rescued her from the clutches of the respondent. The respondent also deserted the appellant on 13.6.2008 without any reasonable excuse. A criminal case under Section 498-A, 406, 323 and 506 IPC was also filed by the appellant against the respondent. Having thus alleged, the appellant sought for divorce on the ground of cruelty and desertion.

3. The respondent having controverted the allegations levelled against him by the appellant contended in his written statement that no dowry was demanded, nor was it given to him in marriage. He denied to

have rebuked the appellant or her family members for not bringing luxury car and cash to the tune of ₹11 lacs. On 13.6.2008, the appellant and her brother turned him out from his matrimonial home. Four family members of the respondent were found innocent by the police and as a result of which, no challan was laid as against those members in the FIR registered at the instance of the father of the appellant. The respondent denied the allegation that he pressurized the appellant to bring a sum of ₹15 lacs for investment in AMWAY company. It is submitted by the respondent that the appellant has not made out a case for divorce.

4. The trial Court having framed the issue as to whether the appellant was entitled to a decree of divorce on the grounds as mentioned in the petition, examined the appellant as PW1 and her father Baldev Singh as PW2 on the side of the appellant and the respondent as RW1, returned a finding that the appellant failed to establish the alleged cruelty committed by the respondent.

5. The fact remains that the marriage between the appellant and the respondent was solemnized on 25.6.2007. It is the admitted case of both the parties that the appellant and the respondent started living separately from 13.6.2008 onwards. It is to be noted that no serious allegation of desertion was made in the petition by the appellant. In fact, no argument was advanced by the counsel for the appellant as regards the plea of desertion made by the respondent. We also went through the entire evidence of the appellant as well as the evidence of PW1 and PW2. In our considered view, there is no serious charge as against the respondent that he

deserted the appellant-wife with an intention to put an end to the matrimonial relationship. Therefore, we have no hesitation to conclude that the appellant failed to prove the plea of desertion as one of the grounds for divorce by putting forth necessary pleadings and also by adducing satisfactory evidence.

6. The potential plea set up by the appellant is that the respondent subjected the appellant to cruelty not only by demanding dowry, but also by pressuring her to bring money. It has also been alleged that she was beaten severely by the respondent.

7. On thorough scanning of the evidence of PW1 and PW2, we find that both of them have spoken in one voice that the respondent, though not demanded any dowry at the time of marriage, made a demand of luxury car and cash amount of ₹11 lacs. PW1 has categorically deposed that she received severe beatings at the hands of the respondent for she had not brought cash as demanded by the respondent. She came out with a specific incident that took place on 13.6.2008 when she was beaten up by creating a scene by the respondent as she refused to comply with the demand of ₹11 lacs from her father.

8. True it is that PW2 is none other than the father of PW1. The incident of cruelty spoken to by PW1 had taken place only at her matrimonial home. The appellant has come out with maltreatment meted-out to her by the respondent and his family members. It is only the family members of the respondent who would have been present in the matrimonial home. PW2 who was informed of these incidents by her daughter after she

left the matrimonial home had spoken about all those incidents as detailed by her daughter. His evidence just corroborates the evidence of PW1.

9. Learned counsel appearing for the appellant would submit that in spite of the fact that no neighbour was examined, the evidence of PW1 and PW2 proves the plea of the appellant that she was subjected to cruelty.

10. *Per contra*, learned counsel for the respondent contended that non-examination of one of the neighbours who allegedly separated the appellant from the clutches of the respondent when the latter created a scene outside the house, throws doubt on the interested version of PW1 and PW2.

11. It is a normal practice that the neighbours of the husband have a natural common propensity to support the version of the husband. After all the wife has come all the way from her parental house to settle in the matrimonial house. Of course, the appellant should have examined one of the neighbours who separated the respondent from the clutches of appellant. But, in our considered view, the cogent evidence of PW1 and PW2 is not neutralized by non-examination of one of the neighbours.

12. It was submitted by learned counsel appearing for the respondent that PW1 has categorically admitted that for about 1 year when she lived with the respondent, never had she made a complaint to her parents. Counsel for the appellant would counter the above statement made by learned counsel appearing for the respondent and submit that a spouse would make an attempt to save the marriage, as any complaint as against the other spouse and family members may deal a death blow to the matrimonial life.

13. A wife in an Indian set up would definitely wait for the things to settle down. She would not also think in terms of sharing the agony with her parents as they may get perturbed. Further, such sharing may endanger her marital life. At any rate, she would not approach the police with a complaint in her hand, unless she takes a final decision to part ways. Under such practical circumstances, we cannot presume that the appellant had not chosen to lodge any complaint as against the respondent alleging cruelty and harassment at the hands of her husband and his family members as there was no such occurrence in the matrimonial house.

14. The trial Court while dismissing the petition for divorce filed by the appellant made an observation that PW2 Baldev Singh, father of the appellant deposed during the course of cross-examination that the parents and other relatives of the respondent never demanded any dowry articles or money from him directly. Learned counsel appearing for the respondent referring to the above observation of the trial Court would submit that it was the admitted case of the father of the appellant that no demand of dowry articles or money was made by the respondent.

15. The entire evidence of PW2 was thoroughly read by us. It appears that a question was put to PW2 as to whether any demand of dowry was made from him directly either by parents or other relatives of the respondent to which he responded that they had not demanded any dowry directly from him.

16. It is not the case of the appellant that any demand of dowry was directly made from her father. Therefore, the above deposition of PW2

cannot be construed that PW2 admitted that no demand of dowry article was made by the parents or the relatives of the respondent. The assertion made by PW2 was that no direct demand was made by the parents and relatives of the respondent.

17. The trial Court also made an observation that the appellant had not chosen to lodge any complaint during one year period she lived with the respondent. As already observed by us, the appellant had waited patiently just to save the marriage. No woman would rush to the parents or to the police station at the risk of her marital life.

18. It is an admitted position that a criminal case under Section 498-A, 406, 323, and 506 IPC was launched by the appellant through her father. Some of the relatives were given a clean chit even during the course of investigation by the police, inasmuch as no challan was laid as against them. The other accused including the respondent faced trial before the competent trial Court. The criminal case ended in acquittal. The appellant as well as the State preferred an appeal aggrieved by the trial Court. The appellate Court also confirmed the acquittal recorded by the trial Court.

19. In the above facts and circumstances, learned counsel appearing for the respondent would submit that alleged demand of dowry, subjecting appellant to cruelty and harassment does not have any legs to stand upon. Civil cases are decided based on the preponderance of evidence adduced by the parties concerned; whereas a criminal case is decided based on the evidence which would go to establish beyond reasonable doubt the charges framed as against the accused. It may be a case where the appellant

could not establish the charges against the respondent and his family members beyond reasonable doubt. But the evidence adduced by her and her father before the trial Court in the petition claiming a decree of divorce establishes the contention of the appellant that there had been cruelty and harassment committed by the respondent.

20. Of course, learned counsel for the appellant referring to the decision of the Hon'ble Supreme Court in *Naveen Kohli vs. Neelu Kohli, 2006(2) RCR (Civil) 290*, submitted that if the marriage has broken down beyond repair or in other words, the marriage has irretrievably broken down, a decree of divorce can be granted by the Court.

21. In *Anil Kumar Jain vs. Maya Jain, (2009) 10 SCC 415* and also in the latest case in *K.Srinivas vs. K.Sunita, 2014(5) Law Herald (SC) 3793*, it has been categorically held that it is only the Hon'ble Supreme Court which has got plenary powers under Article 142 of the Constitution of India to pass a decree for divorce in order to do complete justice in a case pending before it. No High Court or the Civil Court has the power to grant such a relief by invoking the doctrine of irretrievable break down of marriage.

22. In our considered view, the trial Court has misread the entire evidence and come to a wrong conclusion that the appellant has not established the cruelty alleged as against the respondent. We are of the considered view that the appellant has established through cogent and reliable evidence that she was subjected to cruelty and harassment and that, therefore, she is entitled to a decree of divorce. Consequently, the impugned

judgement stands set aside and the appeal is allowed and the marriage between the parties is dissolved by granting a decree of divorce in favour of the appellant and against the respondent. Decree sheet be prepared accordingly.

23. There shall be no order as to costs.

(M. JEYAPPAUL)
JUDGE

May 12, 2015
Gulati

(RAJ RAHUL GARG)
JUDGE