

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

FAO No.M-358 of 2009.

DATE OF DECISION: February 05, 2015.

ARSHDEEP KAUR

....APPELLANT.

VERSUS

BHARAT MASIH

....RESPONDENT.

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

**Present: Mr. P.S. Dhaliwal, Advocate for the appellant.
None for the respondent.**

SNEH PRASHAR, J.

1. A petition was filed by Arshdeep Kaur, appellant-petitioner for dissolution of her marriage with Bharat Masih, respondent by way of a decree of divorce. The petition was dismissed with costs and assailing the judgment and decree dated 05.09.2009 passed by learned Additional District Judge, Moga, Arshdeep Kaur filed the instant appeal.

2. The facts culminating to the initiation of the instant appeal are as under:-

Petitioner Arshdeep Kaur and respondent Bharat Masih were married on 31.08.2006 at Gurdwara Dashmesh Nagar, Moga, by way of Anand Karaj ceremony. Prior to marriage, the petitioner used to visit the Beauty Parlour run by Kiran, sister of respondent Bharat Masih at Kacha Zira Road, Moga. The respondent also used to come to the Beauty Parlour

and they fell in love and got married on 31.08.2006 without the consent of their parents.

The petitioner averred that the respondent represented to her that he is B.Sc. and a Lab Technician and was running a Lab at Solan, from which he was having sufficient source of income. She told him that she had passed course of Air-hostess from a reputed institution. The respondent allured her for marriage by saying that they will go abroad and settle there.

The petitioner further pleaded that on 01.09.2006, she went to Solan with the respondent. They took a room on rent and started living together. Suddenly, the attitude of the respondent changed on 02.09.2006. He started compelling her to bring money from her parents as her father was in Dubai. He openly told her that he had married her because he was interested in money. She expressed to him that she was unable to ask for money from the parents as the marriage was performed without their consent. He offered to talk to her parents himself and as the time passed, his behaviour became so cruel that he started beating her. She was locked in a room and was not allowed to talk to neighbours. He threatened to do away with her in case she did not obey him and did not ever provide to her daily necessities of life.

It was alleged by the petitioner that on 09.09.2006 when she was locked in a room, she managed to talk to a person passing from the street. She gave the telephone number of her parents to him and requested him to ask her parents to save her from the clutches of the respondent. On

receipt of information, her mother alongwith local police and some respectables came to Solan. When the respondent learnt about arrival of the police, he fled away. She was rescued by her mother and she returned to her parental home with her. The respondent threatened her on telephone and insisted on his demand for money. He filed a writ petition under Article 226 of the Constitution of India before the Punjab and Haryana High Court. She appeared in that petition and informed the Court that she wanted to live with her parents and the petition was dismissed. In a petition under Section 9 of the Hindu Marriage Act, 1955 (in short “the Act of 1955”) filed by the respondent, she was summoned. The matter was put up before Lok Adalat, but the respondent then withdrew that petition.

Submitting that she had been treated with utmost cruelty by the respondent, the petitioner prayed for dissolution of their marriage by a decree of divorce.

3. The respondent contested the petition. In his written statement, he pleaded that the marriage between him and the petitioner had taken place on 10.08.2006 by way of Anand Karaj ceremony and the date of marriage had been wrongly mentioned by the petitioner in her pleadings. He further alleged that after the marriage they lived together as husband and wife at New Sodhi Nagar Zira Road, Moga. The mother and brother of the petitioner took her from his house on 11.09.2006 on the pretext that she will return after 2-3 days, but she did not come back thereafter. The fact that prior to marriage the parties had love affair was

admitted by the respondent and he disclosed that since the parents of the petitioner were not happy with the marriage, he and the petitioner filed a petition for protection before the Punjab and Haryana High Court which was allowed on 08.09.2006.

According to the respondent, when the petitioner did not return from her parental home, he filed a writ of habeas corpus, but the petition could not mature because of pressure of the brother and mother of the petitioner, who despite request by him refused to send her back. As regards, the petition under Section 9 of the Act of 1955 filed by him, he alleged that it was got withdrawn by the petitioner from the Court by producing some other person. He then filed an application for restoration of the petition. He pleaded that the petitioner was kept by him with all love and affection and her allegation of cruelty was false and baseless. Denying that he had raised demand for money or had confined the petitioner at Solan, he prayed for dismissal of the petition.

4. On the pleadings of the parties, following issues were framed:-

- (1) Whether the respondent has treated the petitioner with cruelty? OPP
- (2) Whether the petitioner is entitled to a decree of divorce? OPP.
- (3) Relief.

5. To substantiate her pleadings, the petitioner stepped into the witness box as PW1 and reiterated her allegations. To corroborate her

version, she examined her mother PW2 Manjit Kaur. The documents tendered by her are copy of the order dated 26.09.2006 of the High Court Ex.P1, certified copy of the order dated 15.09.2007 of the Court of Civil Judge (Senior Division) exercising the powers of District Judge, Moga Ex.P2, certified copy of the plaint Mark-PX and certified copy of the statement Mark-PY.

On the other hand, respondent Bharat Masih appeared as RW1 and deposing through his affidavit Ex.RA, he tendered documents Ex.R3 to Ex.R9.

6. Considering the evidence adduced by the parties and the submissions made on their behalf, learned trial Court held that the petitioner had miserably failed to establish the ground of 'cruelty' taken by her for seeking divorce from the respondent and decided Issues No.1 and 2 against her.

As a consequence to the findings, the petition for divorce was dismissed.

7. Feeling aggrieved by the judgment and decree dated 05.09.2009 passed by learned Additional District Judge, Moga, Arshdeep Kaur preferred the instant appeal.

8. We have heard the submissions made by Mr. P.S. Dhaliwal, learned counsel representing the appellant and perused the record.

9. At the very outset, it needs to be mentioned that in her pleadings and by way of her affidavit Ex.PA, petitioner Arshdeep Kaur stated that the marriage between her and the respondent was solemnized

on 31.08.2006 at Gurdwara Dashmesh Nagar, Moga, by way of Anand Karaj. The respondent, on the contrary, pleaded that the marriage between the parties had taken place on 10.08.2006 in a Gurdwara and the petitioner had wrongly stated the date of marriage. However, when he stepped into the witness box and deposed through his affidavit Ex.RA, he too testified that the marriage between the parties was solemnized on 31.08.2006 in a Gurdwara according to Sikh rites and ceremonies. In that manner, the controversy which emerged from the pleadings of the respondent regarding the date of marriage got settled with his deposition. In other words, it became an admitted fact that the parties were married on 31.08.2006 at Moga by way of Anand Karaj ceremony.

10. Though there was no question regarding validity of marriage between petitioner Arshdeep Kaur and respondent Bharat Masih, but PW2 Manjit Kaur, mother of the petitioner, tried to raise an issue to that effect also. In her affidavit Ex.PB, she deposed that she was told by her daughter that Bharat Masih and his family members had administered some intoxicant to her and had married her by fraud. In her cross-examination also, she stated that in her complaint filed before Moga police, she had mentioned that the respondent had allured her daughter and had given some intoxicant to her while performing the marriage. Copy of no such complaint could be proved by her. Admittedly, no First Information Report was registered on any such complaint. Moreso, it was not the case of the petitioner, either in her pleadings or in her affidavit, that the respondent had married her by administering some intoxicant to her. Her

deposition as PW1 falsified the testimony of her mother PW2 Manjit Kaur. She admitted without any reservation that her marriage with the respondent was performed with her consent. She also admitted the photograph of marriage Ex.R1 and identified the sister and mother of the respondent in the photograph. It is thus settled that the petitioner had married the respondent of her own volition and without any pressure or influence from any quarter.

11. Opening his arguments, learned counsel for the petitioner urged that it is apparent from the facts put forth by the petitioner as well as the respondent that after marriage the parties did not cohabit as husband and wife even for one day. They were married on 31.08.2006 and on 01.09.2006 they went to Solan and on the very next day the respondent exposed his actual conduct and intentions and started pressurizing the petitioner to ask money from her parents. As the petitioner did not accept his demand, he confined her in a room where she was not even provided necessary amenities of life. It was only when the petitioner was able to send a message to her parents through a passersby that her mother with the help of the local police went to Solan and rescued her from the clutches of the respondent and brought her to the parental home. Learned counsel contended that from the very first day of marriage, the petitioner was harassed and maltreated by the respondent for his demand of huge amount which the petitioner was not ready to convey to her parents as she had married the respondent against their wishes. PW2 Manjit Kaur, mother of the petitioner corroborated the version of the petitioner that

when she went to Solan, she found the petitioner locked in a room and she was able to rescue her only with the help of the police. Learned counsel asserted that it was not necessary for the petitioner to prove that for a long period she had been bearing atrocities of the respondent before she could seek a decree of divorce on the ground that she had been treated with cruelty. The torture and ill treatment she faced for 10 days were sufficient to make her entitled for a decree of divorce on the ground of cruelty.

12. Admittedly, the petitioner and the respondent had love affair before they entered the nuptial tie on 31.08.2006 at Gurdwara Dashmesh Nagar, Moga. The petitioner deposed that after the marriage on 01.09.2006, she and the respondent went to Solan and took a room on rent. From the very next day i.e. 02.09.2006, the behaviour of the respondent changed and he started insisting on her to ask her parents for money because her father was in Dubai and was in a position to pay huge amount. He also told her that he had married her only for money. When she expressed her inability to demand money from her parents as she had married against their wishes, the behaviour of the respondent became all the more cruel. He locked her in a room and also gave her beatings. On 09.09.2006, when she was confined in a room, she was able to talk to some person passing from the street through whom she sent message to her parents and her mother alongwith some respectables and police came to Solan and rescued her.

13. The above statement of the petitioner is proved to be a concoction of her own mind from the documents tendered in evidence by

the respondent. Admittedly, the petitioner had left her parental home on her own accord and had voluntarily married the respondent. PW2 Manjit Kaur, mother of the petitioner admitted during her cross-examination that she was not happy with the marriage. It was stated by the respondent also during his deposition as RW1 that when the family members of the petitioner came to know about the marriage, they being not happy started threatening him with the help of local police.

In said circumstance, he alongwith the petitioner filed a petition under Section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") in the High Court on 02.09.2006 against the brother and mother of the petitioner and local police. That petition was disposed of on 08.09.2006. Ex.R5 is the certified copy of the order of the High Court vide which the petition filed by the parties under Section 482 of Cr.P.C. was disposed of. In the order, the presence of petitioners alongwith the counsel stands recorded, which means that on 08.09.2006, the petitioner and the respondent were personally present before the High Court when the order Ex.R5 was passed and direction was given to Deputy Superintendent of Police of the concerned area to look into the matter and take appropriate action in accordance with law in case the petitioners filed an application for protection before him.

14. Ex.R3 is the copy of the petition under Section 482 of Cr.P.C. filed by the petitioners, which shows that the petitioners were duly represented by the same counsel and Ex.R4 is the copy of affidavit of the petitioner duly signed and got attested by her which was annexed with the

petition. The petitioner admitted her signatures on the affidavit Ex.R4 during her deposition.

15. It was missing in the pleadings and evidence of the petitioner that she alongwith the respondent had filed a petition in the High Court seeking direction to Senior Superintendent of Police, Moga, to ensure their safety and provide them protection. The petition was filed on 05.09.2006 and was disposed of on 08.09.2006 in the presence of the parties. The intentional omission of the said true facts from the pleadings and testimony of the petitioner casts a doubt on her credibility.

16. Making an attempt to explain her signatures on the affidavit Ex.R4, the petitioner stated that her signatures were taken on several papers in the Gurdwara and at Solan. The papers were ten in number and were green and white coloured. In the first breath, she categorically denied that she had filed a petition in the High Court on 05.09.2006 seeking protection, but then in her further statement she deposed that petition was filed in the High Court against her parents under pressure of the respondent. The fluctuating testimony of the petitioner exposed the concealment of truth by her.

17. It has already been noticed above that the petitioner alongwith respondent had personally appeared in the High Court on 08.09.2006 in the petition under Section 482 of Cr.P.C. filed by them, yet in her cross-examination the petitioner stated that she was kept confined in a room by the respondent from 02.09.2006 to 09.09.2006 and was not provided even basic necessities. She could not state the name of the

locality or the name of the owner of the house in which they had taken a room on rent. She should have known the said particulars since they had hired the room on 01.09.2006 when they had reached Solan or may be prior to that and at that time there was no dispute between her and the respondent.

18. Petitioner PW1 stated that there was a small window in the room where she was confined which she broke and talked to the person passing from the street and gave him the telephone number of her parents. Which mobile number was given and what was the name of that person to whom she talked, could not be stated by her, rather she deposed that the mobile number of her brother was not known to her. No respectable person, who accompanied her mother, was named or examined. The police officials, whose help was taken by her mother for conducting raid to rescue her, were also not named or examined. The petitioner stated that the police of Solan had come with her mother and after she was rescued, she was taken to the police station where it was written that she was being taken by her parents with her consent. When there was a written document to prove that the petitioner had been rescued by the police from the room she was confined in and had left for her parental home with her mother, it could have been easily produced by the petitioner to support her story.

20. Non production of the material, ocular and documentary, further affirms that the entire story of confinement, maltreatment and demand of dowry from her by the respondent was concocted by the petitioner. When it is apparent that the version of the petitioner was

untrustworthy, there remains no reason to disbelieve the respondent, who testified that after their petition filed under Section 482 of the Code was disposed of by the High Court on 08.09.2006, the family members of the petitioner approached them on 10.09.2006 and requested him to send the petitioner with them assuring that they would again perform the marriage by inviting friends and relatives. The respondent further deposed that when the petitioner and her family members did not contact him and they also refused to send the petitioner, he filed a petition in the High Court alleging illegal detention of the petitioner in which the petitioner appeared and refused to stay with him. In that short span during which the petitioner and the respondent lived together, having married against the wishes of their parents, they remained busy seeking protection from various authorities. Therefore, there was no occasion for the respondent to maltreat the petitioner or demand dowry from her. Undoubtedly, the petitioner miserably failed to prove her allegation that she had been treated with cruelty by the respondent. Accordingly, the findings of learned trial court warrant no intervention and the appeal being devoid of merit is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

February 05, 2015.

jitender

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