

In the High Court of Punjab and Haryana at Chandigarh

FAO-M-360-2009 (O&M)
Date of decision: 01.04.2015.

Surinder Kaur

..... Petitioner

Vs.

Ravinder Singh

..... Respondent

**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?

Present: Ms. Samya Singh, Advocate
for the appellant.

None for the respondent.

RAJ RAHUL GARG.J.

This appeal is instituted by Surinder Kaur (wife) against the impugned judgment and decree dated 31.10.2009 rendered by Sh. Nirbhow Singh Gill, the then Additional District Judge, Nawanshahr whereby the decree of divorce was granted in favour of husband-Ravinder Singh dissolving his marriage with Surinder Kaur on the ground of cruelty and desertion leaving the parties to bear their own costs. The husband was also directed to pay a sum of ₹2,15,000/- gross amount as permanent alimony to the wife within 3 months from the date of judgment and decree.

Brief facts of the case are like this; that husband-Ravinder Singh sought decree of divorce on the ground of cruelty and desertion alleging that he was married to Surinder Kaur on 18.02.1993 at village Barnala, District Nawanshahr. The marriage was solemnized as per Sikh rites and rituals. No child was born out of this wedlock. Regarding cruelty,

it is the case of husband that right from the very beginning of the marriage, wife started misbehaving, insulting him without any reason. Her behaviour towards him and his family members was rude, insulting, contemptuous and aggressive. She refused to give love and affection due towards husband from his wife. She is short tempered lady. She used to get angry at trivial matters. On the second day of her marriage she started abusing and saying that she had been married against her wishes with him. She was not happy staying with him and further that she wanted to get married in a big city to a rich man. She also said that she hates him and his suffocating small village. She also misbehaved and fought with his parents without any reason or cause. She used to insult, abuse and humiliate him and his family members in the presence of relatives and friends. After few days of marriage she refused to prepare tea for his relatives and friends stating that she was not their servant. Even at home she refused to cook meal for him and his family members and even did not care to bring a glass of water on his asking. She had been comparing her family with his family and used to consider her family as superior to them.

It was further alleged that appellant-wife left her matrimonial home after about 3 months of the marriage of her own and without asking him or his parents. After lot of persuasion by the respondent-husband, respectables and members of Panchayat, she came back about 2 months. Thereafter, after 3 months, she again left the matrimonial home without informing and asking the husband. As per husband at that time, wife was pregnant but without disclosing the same she got aborted the child at her parents' house. He tried to bring her back many times but she refused.

However, in the month of October 1996, due to intervention of Panchayat

and others, wife came back to her matrimonial home. She stayed at her matrimonial home only till April 1998 and then left again for her parental house without asking or informing him and his family members. Since then she has been residing at her parents' house and has refused to join the company of husband. Many attempts were made to bring her back even through Panchayat but she clearly refused to live with him. Under these circumstances, it was pleaded that husband has suffered great mental agony and was thus treated with cruelty by the wife and deserted him for a period of more than 2 years immediately preceding the presentation of the petition without any just and reasonable cause.

On the other hand, the appellant-wife contested the petition besides several legal objections. Each and every allegation regarding cruelty and desertion was specifically denied. It is the case of the wife that she belongs to a poor family. Her husband started saying that she is not beautiful and not of his status. He also started saying that he would get divorce from her and marry to a beautiful and rich girl. On this, the dispute has arisen between the parties and the same was compromised, but inspite of that the husband did not mend his ways and his behavior. He had been telling her that he would get divorce from her and marry a rich girl. She gave full respect to her husband and his family members during her stay at her matrimonial home. The allegations mentioned by the husband in his petition have been levelled only in order to get rid of her. In fact, she had always remained obedient to her husband and his family members. Her father is not alive. Being a daughter of poor parents, she tried her level best to cooperate with the husband and his family members but he was not happy with this marriage. Many times he told her that he would not keep her in his

house and would get divorce from her. Many times he gave beatings to her but she tolerated all that with the hope that her house may not be ruined. It was further denied that she ever left her matrimonial home of her own or without asking him and his family members. Wife also denied that she was pregnant as such it was pleaded that question of abortion does not arise. She never refused to join the company of her husband. It is further the case of the wife that she was turned out of her matrimonial home by her husband, after giving severe beatings. She had to reside with her parents. On 07.07.1996, a compromise was effected between the parties, thereafter, she stayed in her matrimonial house till June 1999. In June 1999, she was again turned out of her matrimonial home by her husband in three clothes after giving her severe beatings. Thereafter, she and her family members many times asked the husband to keep his wife in his house but he frankly refused and said that he would get divorce from her and marry again with a beautiful and rich lady. It was further alleged that the husband cannot be allowed to take benefits of his own wrongs. Even today, she is ready and willing to join the company of her husband. She has not deserted her husband. With these pleas, dismissal of petition with costs was prayed.

Husband filed replication in which he reiterated his case and denied the averments of the wife taken in the written statement.

From pleadings of the parties following issues were framed:-

- (i) Whether the respdt. has treated the petitioner with cruelty? OPP*
- (ii) Whether the respdt. has deserted the petitioner without any reasonable cause for two years immediately proceedings the present petition i.e. April 1998? OPP.*
- (iii) Relief.*

After taking oral as well as documentary evidence of both the parties and hearing both the counsel for the parties, the decree of divorce on the ground of cruelty and desertion was passed in favour of husband. A sum of ₹2,15,000/- (gross amount) was awarded as permanent alimony to the wife payable within 3 months from the date of judgment.

Aggrieved by the impugned judgment and decree, wife Surinder Kaur preferred the present appeal.

We have heard learned Ms. Samya Singh, Advocate for the appellant whereas respondent-husband did not choose to appear nor his counsel appeared before us. We have also appraised the entire material coming on record.

The learned trial Court came to the conclusion that wife treated the husband with mental cruelty as she admitted during the course of her cross-examination that she was pregnant at the time, she left the matrimonial house after 7-8 months of the marriage. It is specific case of the husband that she got aborted the child without telling them or their permission.

Wife firstly took the plea in her written statement that she was not pregnant but during the course of her cross-examination she admitted this fact. However, no explanation is furnished by the wife as to why and under what circumstances she aborted the child. As such in the estimation of learned trial Court she has treated the husband with mental cruelty. So far as the above conclusion of the learned trial Court is concerned, it is reasonable but the counsel for the appellant-wife contended that even if that was so, that act of wife stood condoned. Since, it is the case of husband himself that in the month of October 1996, the wife came back to her matrimonial home

and stayed till April 1998. Though, it is the case of the wife that at that time she stayed in her matrimonial home uptill June 1999 yet the fact remains that for about 2 years she stayed in her matrimonial home with respondent-husband, as husband and wife. In the light of this arguments, we consider to hold that even if the act of cruelty was there on the part of the wife on that account but the same stood condoned and now on this point the husband cannot allege that he was treated with mental cruelty and was thus entitled to a decree of divorce.

The next argument which weighted in the mind of the trial Court is this; that the wife herself admitted that the case under Sections 107/151 Cr.P.C. was registered against the husband and his family members. She has admitted that she got a false case registered against him as such it amounts to cruelty on the part of the wife. Again aforesaid argument is misplaced. In fact the wife moved an application before Deputy Commissioner for her rehabilitation in her matrimonial home. This fact is admitted by the husband and even the witnesses examined by him. During his cross-examination as PW-1 husband stated that they had been attending the hearing before the Deputy Commissioner. He further admitted as correct that Deputy Commissioner had instructed them to rehabilitate the appellant-wife. He had instructed them to go to Panchayat for the aforesaid purpose. Under those circumstances, if proceedings under Sections 107/151 Cr.P.C had taken place that would not mean that wife got registered a false case against her husband. In fact these proceedings are preventive action on the part of the police so as to prevent breach of peace. These proceedings terminate after 6 months. Except these proceedings, no other case was got registered by the wife against her husband. Whenever, she was confronted

with the situation that she ever made a complaint against her husband for giving her severe beatings she categorically stated in negative, with the explanation that she did not do that, as she wanted to live with her husband. The conduct of the wife in not lodging a complaint against the husband or not taking any action against the conduct of her husband, not moving any application to the authorities regarding the treatment given by her husband to her; clearly shows that she never intended to break the relationship of husband and wife but wanted to live with him. Her moving application to the Deputy Commissioner for her rehabilitation further shows that she was positive in settling at her matrimonial home. Ex.A-1 writing dated 24.01.2006 made before the Panchayat further shows that the Panchayat was held in pursuance with the application moved by the wife. The matter was brought in the Panchayat by the wife and not by the husband. Ramji, Member Panchayat of village Chankoya appeared in the Court in support of Ravinder Singh-husband as PW-4 which shows that husband had a clout in the village Panchayat. In spite of that the husband has failed to bring on record even a single document showing the proceedings of the Panchayat. This fact negates the case of the husband that he had tried several times through Panchayat to bring back appellant-wife.

Appellant-wife is a fatherless child. She has been residing with her brother and sister. She belongs to a poor family whereas the respondent-husband was owning a truck at the time of his marriage but after sometime he had disposed of the same, obviously for the reason that on account of matrimonial dispute he was to pay the maintenance to the wife. Under these circumstances every girl would like to stay in her matrimonial home as has been done by the appellant-wife. The allegations that she wanted to marry in

a big city with a rich man are unfounded. The other allegations that appellant -wife insulted the respondent-husband and his family members; refused to prepare tea in the presence of relatives and friends; refused to cook meals or to bring a glass of water; are not of the nature so as to hold that the wife treated the husband with mental cruelty. In fact, no date, time or year of the incident finds mention in this regard. The other allegation that after few days of marriage when few relatives and friends of their family came to their house, the appellant-wife refused to make tea, is of vague nature. Names of relatives or friends have not been disclosed nor the date and time of the incident found mentioned. Even, thereafter, wife had gone to her matrimonial home and stayed for about two years in her matrimonial home as husband and wife with Ravinder Singh. Thereafter, now it cannot be said that on account of aforesaid facts, the wife treated the husband with cruelty.

Even during the pendency of the petition, the wife had gone to the house of her husband on 27.04.2009 and stayed there uptill 13.05.2009. There is no dispute about this fact. This further goes to show that wife has never intended to desert her husband. At that time on 20.05.2009, statement of appellant-wife Surinder Kaur, her brother Nirmal Singh and her sister Satnam Kaur were recorded in the Court. The statement of Surinder Kaur is as follows:-

“ On 27.04.2009, I had accompanied my husband to my matrimonial house and stayed there till 13.05.2009. During this period, my husband and my in laws family treated me well and kept me with love and affection. I had returned back to my parental house on 13.05.2009 on the asking of my brother and did not go back to my matrimonial house till today on my own as I was mislead and influenced by my brother. I realised my

mistake and repent the same and I shall not repeat my mistake in future. I also admit my mistake of threatening the petitioner of taking some drastic steps and implicating him in a false case and causing harm to myself and I shall not repeat such like threats or do any such act in future and in case, I do such drastic act, I shall be responsible for the same. I under take to give respect and love to my husband and to live peacefully with him at my matrimonial house.”

From the above statement, it is evident that this statement does not convey any meaning atleast in favour of husband. Her statement that “*I had returned back to my parental house on 13.05.2009 on the asking of my brother and did not go back to my matrimonial house till today on my own as I was mislead and influenced by my brother*” conveys no meaning. Last line of her statement that “*I undertake to give respect and love to my husband and to live peacefully with him at my matrimonial house*” goes to show that she intends to live with her husband at her matrimonial home, she is respectful wife and it is the compelling circumstances at the house of her husband, due to which she was unable to live there or was not allowed to live there in that house. These very lines further go to show that she has not deserted her husband at all.

Desertion means intention to bring matrimonial ties to an end permanently. Even if husband and wife have been living separately for long, that would not constitute desertion. In the case in hand the intention of the wife to bring to an end matrimonial relations permanently, is missing. The learned trial court without discussing the ground of desertion simply concluded in one line that the wife had deserted the husband continuously for 2 years immediately preceding the presentation of the petition. Thus finding of the learned trial Court is unfounded on record and is not sustainable.

Likewise without framing any issue regarding permanent alimony to wife and without taking any evidence on that point, the learned trial Court directed the husband to pay a sum of ₹2,15,000/- (gross amount) as permanent alimony to the wife. As such, for want of evidence, this finding of the learned trial Court is also not sustainable and is set aside with the observation that wife can move application for permanent alimony in accordance with law in the proper forum.

For the reasons recorded above, we conclude to hold that Ravinder Singh husband has failed to prove that Surinder Kaur-wife has treated him with cruelty and further deserted him. Therefore, the findings recorded by the learned trial Court on issues No.1 and 2 are set aside and even the order of permanent alimony is also set aside as indicated above.

This appeal is, accordingly, accepted giving the liberty to the wife to move for permanent alimony in the proper forum in accordance with law.

(M. JEYAPPAUL)
JUDGE

(RAJ RAHUL GARG)
JUDGE

01.04.2015
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