

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

512

FAO No.M-94 of 2009

DATE OF DECISION: January 20, 2015.

KRISHNA @ KALAWATI

....APPELLANT.

VERSUS

RAJINDER

....RESPONDENT.

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

Present: Mr. Amit Singla, Advocate for the appellant.

Mr. Sanjiv Gupta, Advocate for the respondent.

SNEH PRASHAR, J.

1. This appeal was filed assailing the judgment and decree dated 14.06.2008 passed by learned District Judge, Jind, dismissing HMA Case No.60 of 2007 under Section 13 of the Hindu Marriage Act, 1955 (in short “the Act of 1955”) filed by appellant-wife Krishna @ Kalawati for dissolution of her marriage by a decree of divorce with respondent-husband Rajinder.

2. Precisely, the relevant facts which need elaboration are as under:-

Appellant Krishna was married to respondent Rajinder on 07.05.1998 at village Kalwan, Tehsil Narwana (Jind), as per Hindu rites

and ceremonies. Parties lived together as husband and wife after marriage but no child was born out of the wedlock.

The appellant averred that from the very beginning of the marriage, the behaviour of respondent Rajinder and his family members towards her was very rude. Being greedy persons, they were not satisfied with the dowry given by her parents and often quarreled and maltreated her on that count. She spent several sleepless nights and suffered severe mental pain. She explained to the respondent that her father was unable to fulfil their illegal demands but he remained adamant and his attitude continued to remain harsh towards her. She used to remain without meal for days together. Once the respondent and his family members even tried to administer poison to her. The mental and physical harassment and disturbance in the daily routine caused a reasonable apprehension in her mind that it would be harmful and injurious to continue to live with the respondent.

On 15.01.2005, the respondent and his family members persuaded her to bring a colour television and a motorcycle from her father within 15 days. She was threatened that in case their demand is not fulfilled, she would be killed. She was given severe beatings and was turned out of the matrimonial home in bare three clothes. She came to her parental home and disclosed her tale of woes to her father, who without condoning the cruelty went to the house of the respondent alongwith some respectable persons in the form of a Panchayat and tried to resolve the matter by mutual settlement, but the respondent and his family members

remained adamant and reiterated their demand for a colour television and a motorcycle. Her father gave ₹5,000/- to the respondent and expressed inability to fulfil his other demands. She was then restored to the matrimonial home. Thereafter, on 20.02.2006, she was again turned out of the matrimonial home by the respondent and his family members in bare three clothes. The efforts of Panchayat convened by her father to reconcile the matter proved futile. The respondent and his family members retained her Istridhan articles and bluntly refused to settle her. Her father and the Panchayat members were insulted and pushed out. Since 20.02.2006, she had been living with her parents at village Kalwan (Jind). The respondent had never bothered to enquire about her welfare and had deserted her without any lawful excuse. Thus, submitting that she apprehends danger to her life at the hands of the respondent and had been deserted by him without any reasonable cause, the appellant prayed for dissolution of their marriage by a decree of divorce.

3. The respondent contested the petition. He denied entire allegations of the appellant relating to demand of dowry by him and his family members as well as maltreatment/ physical assault on the appellant. He further denied that he had ever tried to administer poison to the appellant or had threatened to burn her alive in the event of non-fulfillment of his demands etc. Payment of ₹5,000/- to him by father of the appellant was also denied. According to him, he suffered mental problem and fell ill. During the period of his illness, the appellant left the matrimonial home without bothering for him. He took treatment and after

he recovered, he made all efforts to bring the appellant back to the matrimonial home, but she and her family members flatly refused to do so. It was decided during the Panchayat meeting that the appellant will have no claim against him and if necessary they will take divorce through the Court of law. The written compromise was said to be with the Panchayat.

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

(1) Whether the petitioner is entitled to a decree of divorce on the grounds of cruelty, as alleged in the petition? OPP.

(2) Relief.

5. During evidence, the appellant appeared herself as PW3 and reiterated her allegations in the shape of her affidavit Ex.P3. To support her version, she examined PW1 Sunil Dutt, a neighbour, who deposed through his affidavit Ex.P1 and her brother PW2 Krishan, who made deposition in the form of affidavit Ex.P2.

On the other hand, respondent Rajinder appeared as RW1 and deposing through his affidavit Ex.RW1/A reiterated the stand taken by him in his written statement. He also examined RW2 Mahabir, his brother-in-law to corroborate his testimony.

6. Considering the evidence adduced by the parties and the submissions made on their behalf, learned trial Court came to the conclusion that the appellant had not been able to establish that she had been treated with cruelty on account of demand of dowry or had been deserted by the respondent. Accordingly, Issue No.1 was decided against the appellant.

As a result of decision on Issue No.1, the petition was dismissed with costs.

7. Feeling aggrieved by the judgment and decree dated 14.06.2008, appellant Krishna @ Kalawati preferred the instant appeal.

8. The submissions made by Mr. Amit Singla, learned counsel representing the appellant and Mr. Sanjiv Gupta, learned counsel representing the respondent have been considered and the record has been perused.

9. Admittedly, the marriage between the parties was solemnized on 07.05.1998 as per Hindu rites and ceremonies. After marriage, they lived together, the marriage was consummated, but no child was born out of the wedlock. The instant petition claiming a decree of divorce from the respondent-husband was filed by the appellant-wife on 12.05.2007. Her allegations were that she had been ill-treated and physically assaulted as the respondent and his family members were not satisfied with the dowry given by her parents and they demanded valuable articles like colour television and a motorcycle etc. as additional dowry. She went to the extent of levelling allegation that her in-laws family had tried to administer poison to her and had threatened to burn her alive in case she was unable to fulfil their demands. It was also her allegation that she was thrown out of the matrimonial home on 15.01.2005 and after she informed her father about the demand of the respondent and he took a Panchayat to the house of the respondent and paid him ₹5,000/-, she was restored to the matrimonial home, but ultimately on 20.02.2006, she was again turned out

of the matrimonial home and the respondent refused to take her back despite efforts made by her father with the help of Panchayat.

10. The evidence led by the appellant consisted of her self serving statement made through affidavit Ex.P3; the deposition of a neighbour Sunil Dutt, PW1 and her brother Krishan, PW2.

11. Analyzing the pleadings and evidence of the appellant with regard to her allegation that she was maltreated and harassed by the respondent and that an attempt was made to administer poison to her, learned trial Court recorded the following findings:-

“Admittedly, marriage between the parties was held on 7.5.1998. The parties had been living together as husband and wife but no child was born out of this wedlock. Though, the petitioner has claimed that the respondent and his family members were rude and were not satisfied with the dowry given by her parents and she used to spend sleepless nights, weeping and while being in mental pains, she has not given any specific instance. After her marriage on 7.5.1998, the first instance of demand of dowry mentioned by her is of 15.1.2005. She has claimed that earlier to that attempt was made to poison her. When, where, how and in what circumstances, it happened, has not been disclosed by her. The allegations are very serious; there were expected to be sustained and supported by relevant facts, but the petitioner

has been so 'non-serious' in making such serious allegation that even primary details are missing. At what time, on which date, of which month and year, she had been tried to be poisoned and by whom and by which mode, has not been mentioned. What kind of poison it was, how it was going to be administered to her etc., are material particulars which are conspicuously missing.”

12. Further, dealing with the allegation of the appellant that the respondent and his family members demanded valuable articles like colour television and motorcycle as additional dowry, the findings of learned trial Court were as under:-

“Even with regard to the allegations of demand of dowry, the first such demand is mentioned to be of 15.1.2005 for a colour TV and a motor cycle to be fulfilled within 15 days, or in default she was to be burnt alive. As has already been mentioned, marriage is of 7.5.1998. No particular demand of any specific dowry item has been alleged earlier to 15.1.2005. Even respect of this demand, no further details have been elaborated. There is mere mention of turning out from the matrimonial home of the petitioner to her parents. When and how, she came there, has not been mentioned.”

13. Learned counsel for the appellant could point out no error or perversity committed by learned trial Court in appreciation of the evidence available on file. It is apparent from the pleadings and the

deposition of the appellant that her allegations were not only general but were vague and baseless. Levelling an allegation that the respondent and his family members had tried to administer poison to her could not be taken lightly. In case there was truth in the allegation, the appellant should have been in a position to disclose the date, month and year on which such an attempt was made. The details of the occurrence were also necessarily required to be mentioned. In the absence of said material particulars, the only inference that can be drawn is that the appellant on her own had concocted a false allegation.

14. Not a single incident either of demand of dowry or of infliction of cruelty on the appellant by the respondent and his family members could be pleaded or proved by her. As per her own deposition the respondent demanded a colour television and a motorcycle on 15.01.2005 and threatening to kill her in case she was unable to fulfil the demands had thrown her out of the matrimonial home. The parties were married on 07.05.1998 which means that for almost seven years no such demand was raised by the respondent. Why at that juncture, a demand was raised and the matter became so serious that she was turned out of the matrimonial home, could not be explained by the appellant.

The appellant stated that her father went to the house of the respondent alongwith Panchayat, but did not name any person, who participated in the Panchayat. She examined PW1 Sunil Dutt, who stated that he attended the Panchayats and that demand for dowry had been raised by the respondent in his presence, but admittedly, he was not

named as a Panchayat member either in the pleadings of the appellant or in her deposition made through affidavit Ex.P3. PW2 Krishan, brother of the appellant, also did not state about presence of PW1 in any Panchayat during the meeting of any Panchayat held for settling the dispute between the parties. Hence, PW1 was proved to be a procured witness.

15. The appellant did not state when she returned to the matrimonial home after she was turned out on 15.01.2005. But she went on to depose that on 20.02.2006 she was again turned out of the matrimonial home and all efforts by her father to reconcile the matter with the help of Panchayat proved futile. She also alleged that the respondent retained her Istridhan and refused to settle her at the matrimonial home. In the said allegation of the appellant also, the required material particulars were absent and it indicated that the appellant was making reckless and wild allegations against the respondent-husband having no substance to support the same.

16. The respondent alleged that the appellant left the matrimonial home on her own volition after he developed some mental problem and started taking treatment. Appellant Krishna @ Kalawati admitted during her cross-examination that she left the matrimonial home for the first time on 15.01.2005 and at that time the respondent was suffering from some mental problem. She further stated that even when she was staying in the matrimonial home, the respondent used to take medicines daily for the mental ailment. The respondent tendered in evidence his follow up and discharge card Ex.R1 issued by Department of Psychiatry, according

to which he remained hospitalized at B.D. Sharma Post Graduate Institute of Medical Sciences at Rohtak w.e.f. 04.08.2006 to 02.09.2006. The said document supports the version of the respondent that the appellant left his company when he was unwell and needed her the most for physical and psychological support.

17. Division Bench of the Mysore High Court in **Tirukappa v. Kamalamma, AIR 1966 Mysore 1** noticed that Section 23 of the Act purports to impose certain conditions in the interest of the society at large which is interested in maintaining continuance of matrimonial harmony between the spouses and to prevent the disruption as far as possible. Section 23 (1) (a) of the Act provides that if the Court is satisfied that any of the grounds for granting relief exists and the petitioner who has approached the Court is not taking advantage of his or her own wrong or disability, it shall grant the relief. In other words, where the Court is satisfied with the grounds for the relief, still it is empowered to refuse to grant the relief where it is of the opinion that the petitioner is taking advantage of his or her own wrong.

In the case in hand, it is succinctly proved that the appellant was herself guilty of levelling false allegations against the respondent. It was not the respondent who had deserted her, rather she herself had left his conjugal company without any sufficient cause and to hurt him more had filed the instant petition for divorce just after he had recovered and come out of the illness. In any case, according to the appellant, she left the matrimonial home on 22.02.2006 and the instant petition was filed on

12.05.2007 which means that the ground of desertion was not available to her.

In the above premises, there appears no ground for intervention in the findings of learned trial Court and there being no merit in the appeal, it is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

January 20, 2015.
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Note: Whether to be referred to the Reporter or not? Yes/No.