

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

FAO-M-127-2010(O&M)

Date of decision : 09.10.2015

Gurvinder Singh

... Appellant

Versus

Daljit Kaur

... Respondent

***CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MRS. JUSTICE REKHA MITTAL***

Present: Ms.Baljit Kaur, Advocate
for the appellant.

Mr.H.N.S.Gill, Advocate
for the respondent.

REKHA MITTAL, J.

The present appeal lays challenge to the judgment and decree dated 24.12.2009 passed by the Additional District Judge (Adhoc), Patiala whereby the petition filed by the appellant for a decree of divorce under Section 13 of the Hindu Marriage Act, 1955 (for brevity 'HMA') has been dismissed.

The marriage of the parties was performed on 26.11.2000 at Samana and one son born from this wedlock on 22.01.2001 is in custody of the respondent. The appellant has accused the respondent (wife) of treating him with cruelty. It is averred that behaviour of the respondent remained cruel towards the appellant and his parents as she used to pick up quarrel with them on petty matters and insult them. The family of the appellant is Sikh by religion but the respondent asked him to get his long hair cut to which he did not agree.

The respondent got hair of the child cut by performing *mundan* ceremony but

the appellant and his family remained mum. She refused to prepare food for the family by saying that she was not their servant. When his mother fell ill, the respondent did not bother to know about her health. The respondent left the matrimonial house along with the minor child in the first week of August 2003. The appellant went to his in-laws' house to bring her back but she did not agree. She extended threats to involve the appellant and his family in a false dowry case. It is further averred that on 23.12.2004, the respondent along with her brother Bikkar Singh and 40/50 persons armed with deadly weapons entered his house and forcibly occupied one of the rooms and put her luggage there. His father (appellant's) made several representations to the SSP, District Judge, Patiala and also to the Human Rights Commission, Punjab but the police failed to register the case because of influence of father of the respondent being a dealer of fire arms. On 08.05.2005 aforesaid Bikkar Singh along with 4/5 persons came to the house of the appellant and hurled abuses. Bikkar Singh gave a kirpan blow on the right shoulder of Shankar Singh (father of the appellant) and Jagroop Singh gave a soti blow on the left shoulder and knees of Shankar Singh. The respondent also gave a soti blow to the appellant and his father. His father remained admitted in Rajindra Hospital, Patiala but no action was taken by the police due to influence of father of the respondent. On representation made by his father to the SSP, Patiala, FIR was registered relating to the said incident. As a counter blast to the said FIR, the respondent and her father involved the appellant and his other family members in proceedings under Section 107/151 of the Code of Criminal Procedure. They were also falsely involved in FIR No.494 under Sections 452, 323, 324, 109, 148 and 149 of the Indian Penal Code. The respondent has caused mental as well as physical cruelty to the appellant and his other family members.

The respondent filed the written statement and, in turn, controverted the averments set up in the petition. She has denied all the averments on the basis whereof she has been accused of treating her husband and his family members with cruelty. It is averred that the appellant and his family members raised demand of more dowry including money for setting up business of the appellant and her father paid ₹2 lacs for the said purpose but it did not satisfy the appellant and his family. She was maltreated and tortured on account of demand of dowry. She never left the matrimonial home and is continuously residing there in house No.2F, Gali No.6, Partap Nagar, Patiala. She was turned out of the matrimonial home for some period but was rehabilitated there by her father and respectables. She has denied the allegations in regard to occurrences dated 23.12.2004 and 08.05.2005. FIR No.494 was registered against the appellant and his family members as they attacked the answering respondent. On completion of investigation, challan was presented in the Court and charge was framed against them.

The appellant preferred replication reiterating his stand taken up in the petition while denying the allegations in regard to demand of dowry or maltreatment of the respondent in this regard.

The controversy between the parties led to framing of following issues by the trial Court:-

- 1. Whether the respondent has been treating the petitioner with cruelty?OPP*
- 2. Relief.*

The learned trial Court permitted the parties to lead evidence in support of their respective pleadings. The appellant examined Balwant Singh PW1, Jaswinder Singh PW2, Jujhar Singh PW3, Ram Lal PW4, Harmel Singh PW4 (doubly marked), HC Madan Lal PW5, Gurjant Singh PW5 (again

doubly marked), Shankar Singh PW7 and himself appeared as PW6. He tendered into evidence copy of the judgment Ex.PX.

To rebut evidence of the appellant, the respondent examined herself and Jagroop Singh RW2 and tendered into evidence documents Ex.R2 and Ex.R3.

Counsel for the appellant would contend that the learned trial Court failed to appreciate that the respondent (wife) is guilty of such acts and conduct which cumulatively amount to cruelty to form the basis for dissolution of marriage of the parties. The respondent harassed the appellant and his family members to the hilt and made their life miserable. She refused to take any interest in the domestic affairs and serve the appellant and his old aged parents. The parental family members of the respondent committed criminal trespass and caused injuries to the appellant and his family members. The respondent lodged a false FIR against her husband and his family members and the trial in the case culminated in the judgment of acquittal passed by the Judicial Magistrate, Patiala Ex.P6. It is argued with vehemence that as the respondent (wife) initiated the criminal proceedings against the appellant and his family members in which they have been acquitted, this fact alone is sufficient to record a finding that the respondent is guilty of treating her husband and his family with cruelty sufficient to constitute a ground for divorce.

Counsel for the respondent, on the contrary, has supported the judgment passed by the trial Court and would submit that the appellant (husband) is clean shaven with hair cut. The *mundan* ceremony of the child was performed in presence of the appellant and his family members and, therefore, the respondent has been unnecessarily blamed for hair cut of the

child. The respondent is residing in one portion of the matrimonial home and she never had any intention to bring marital relation to an end. She is always ready and willing to conduct according to the wishes of her husband but for the reasons best known to the appellant, she is not being treated well. The respondent lodged FIR No.494 dated 04.09.2005 as she was given injuries by her husband and his family members and remained admitted in Rajindra Hospital, Patiala and her statement as first information was recorded by ASI Karam Chand during her admission there after obtaining opinion of the doctor in respect of her fitness. It is argued that as the respondent never wanted to wreck matrimony in case of conviction of the accused, she did not depose against them despite repeated processes received from the Court. It is further argued that conduct of the respondent (wife) in maintaining her residence in the matrimonial house coupled with her refusal to appear in the Court to depose against her in-laws family members substantiates her plea that she never intended to snap marital ties at any cost whatsoever.

We have heard counsel for the parties and perused the records.

The appellant (husband) has raised general and vague allegations against the respondent for her alleged cruel behaviour towards the appellant and his family members viz her refusal to cook for the family or to bother about health of her mother-in-law. Counsel for the appellant has not disputed that Gurvinder Singh appellant got his hair cut of his own and is clean shaven. It is not plea of the appellant that he got his hair cut at the instance much less insistence of the respondent (wife). This fact alone is sufficient to falsify plea of the appellant that *mundan* ceremony of the child was performed against the wishes of the appellant and his family.

Concededly, no criminal action was initiated against Bikkar

Singh, brother of the respondent in regard to an occurrence which allegedly took place on 20.12.2004. Much stress has been laid by counsel for the appellant that the respondent (wife) is guilty of cruelty as she initiated false criminal proceedings against the appellant and his family by lodging FIR No.494 dated 04.09.2005 which culminated in the judgment of acquittal passed by the Judicial Magistrate, Patiala on 13.08.2009. Counsel for the appellant has not disputed that the aforesaid FIR was registered by the police on the basis of statement of the respondent recorded during her confinement in Rajindra Hospital, Patiala. She was medico legally examined and MLR No.267/P/05/3/9/05 was prepared wherein injuries No.1 to 6 and 8 were stated to be result of sharp edged weapon, injuries No.7 & 9 with blunt weapon and injury No.5,7 and 9 to 11 were kept under observation. On completion of investigation, challan was presented in the Court in January 2006 and the case remained pending before the Court for over a period of 3 years wherein the appellant, his parents and one Sunita @ Pushpa wife of Chander Bhan were charged for committing offences punishable under Sections 452, 324, 323, 148, 149 IPC. A perusal of the judgment passed by the Judicial Magistrate, Patiala Ex.P6 makes it evident that the respondent did not appear in the witness box to depose against her husband and his parents. The matter would have been different had she deposed in the court but found to be unworthy of credence.

Admittedly, the respondent along with minor child of the parties is residing in a part of the matrimonial house. It appears that as the respondent was assaulted and attacked by the appellant and his parents, in the heat of moment, she got recorded her statement as first information. However, with passage of time, she reconciled with her plight and with an intent to continue

her marital ties, opted not to appear in the witness box and depose against her husband and his family so that conviction of the accused may not finish her hopes that later she may be accepted and treated well as a wife by her husband. Under these circumstances, acquittal of the appellant and his family members would not suffice to hold that the respondent is guilty of cruelty. That being so, we do not find any error much less illegality in the judgment impugned. At this stage we would like to add that the respondent has filed on record photographs, showing the appellant, the respondent and their son at various places including their house. These photographs have been taken during pendency of the appeal. The appellant was, therefore, directed to come present but did not come forward.

In view of what has been discussed hereinabove, finding no merit, the appeal is dismissed leaving the parties to bear their own costs.

(REKHA MITTAL)
JUDGE

(RAJIVE BHALLA)
JUDGE

October 09, 2015.

Davinder Kumar