

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

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FAO No.M-122 of 2011

DATE OF DECISION: January 15, 2015.

Satish Kumar

....APPELLANT.

VERSUS

Pooja

....RESPONDENT.

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

Present: Mr. Rakesh Nagpal, Advocate for the appellant.

Mr. Rajiv Dhawan, Advocate for the respondent.

SNEH PRASHAR, J.

1. A petition under Section 13 (1) (ia) and (ib) of the Hindu Marriage Act, 1955 (in short “the Act of 1955”) for dissolution of marriage by a decree of divorce was filed by respondent-wife Pooja against her husband-appellant Satish Kumar, which was allowed by learned Additional District Judge, Kaithal, vide judgment and decree dated 17.03.2011. Assailing the said judgment and decree, the instant appeal was preferred by appellant-husband.

2. The relevant facts garnered from the record are as under:-

Marriage between the parties was solemnized on 21.07.2003

at Kaithal, according to Hindu rites and ceremonies. After marriage, they cohabited as husband and wife and established their matrimonial home at Delhi. A son namely, Naman was the offspring of the wedlock born on 20.06.2004, who is presently in custody of respondent Pooja.

The averments of Pooja were that her parents had given sufficient dowry and cash amount etc. to Satish Kumar and his family at the time of marriage but they were not satisfied and turned out to be greedy persons. From the very inception of marriage, they started demanding valuable articles like colour TV, refrigerator, motorcycle, washing machine and cash of ₹1 lac etc. as additional dowry. As she was unable to fulfill their demands, she was tortured and maltreated.

Quoting certain specific incidents, Pooja alleged that on 21.07.2003, ₹5,000/- being Shagun amount lying with her, were stolen by Satish Kumar. On 25.10.2003, when she again came to her matrimonial home, she noticed that her gold ornaments, Sarees and watch etc. had been stolen away by Satish Kumar and his family members. When she tried to enquire about the stolen articles, she was badly beaten by them. She used to be physically assaulted over petty matters and many a times was not even permitted to take meals.

On 29.06.2004, when she delivered a child in the hospital, nobody came to take her back to the matrimonial home. She reached home on her own in a critical condition. A number of times Satish Kumar tried to leave her at unknown places. Her father gave ₹50,000/- to him as loan which he never returned. Being upset by the atrocities she was facing, her

father left home for some unknown destination and till date his whereabouts were not known.

In June, 2007, she left her private job under compelling circumstances and on 30.06.2007 during night time she was given severe beatings by Satish Kumar and his family members insisting on their demand for additional dowry and in the following morning she was forced to leave the matrimonial home and was thrown out in bare three clothes alongwith the minor son.

Eversince 01.07.2007 she alongwith her son was living at her paternal home at the mercy of her poor and aged mother and the respondent had never bothered to enquire about her welfare, rather she was being abused by him on telephone in most filthy language. Submitting that she had been deserted without any reasonable cause by her husband Satish Kumar for a continuous period of more than two years immediately preceding the presentation of the petition i.e. w.e.f. 01.07.2007, respondent Pooja prayed for a decree of divorce dissolving their marriage on the said ground and on the ground that she had been treated with cruelty by him.

3. The petition was contested by appellant-husband Satish Kumar. In the written statement filed by him, a preliminary objection with regard to territorial jurisdiction of the District Court at Kaithal to try and entertain the present petition was raised. He also alleged that Pooja was guilty of suppressing true and material facts. She had herself left the matrimonial home for the reason known to her and without any sufficient

cause. He denied the allegation that he and his family members ever demanded dowry or ill-treated Pooja. The father of Pooja was said to be a poor man being a street hawker having meager income and therefore was not even able to afford maintenance expenses of the family what to say of giving dowry to Pooja and her two sisters.

It was further pleaded by the appellant-husband that he was working at a cloth shop in Delhi but as the shop came under sealing, he became unemployed. Pooja demanded money from him for her unreasonable pleasures which he was unable to provide and on that she would pick up quarrels with him and his family members. She was also in the habit of picking up telephone calls during night time and when he would object, she raised quarrel.

The appellant added that at the time of marriage, the qualification of Pooja was only 10+2. After marriage, she passed degree in Commerce and he paid entire expenses for her higher education. Her sister stayed with them and even her expenses were borne by him. Alleging that Pooja brutally treated her child and demanded from him cash and a fixed deposit in the bank in her name and when he expressed his inability to satisfy her, she raised quarrel and left the matrimonial home, the appellant sought dismissal of the petition.

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

(1) Whether the respondent is guilty of deserting the petitioner for a continuous period of more than two years

immediately preceding the presentation of petition with an intention of not joining the company of petitioner? OPP.

(2) Whether the respondent is guilty of treating the petitioner with cruelty after solemnization of marriage? OPP.

(3) Whether this court has got no jurisdiction to try and maintain the petition? OPR.

(4) Whether the petition is not maintainable in view of the provisions of section 23 of Hindu Marriage Act? OPR.

(5) Relief.

5. Both the parties adduced evidence to substantiate their respective contentions.

6. Considering the evidence and the submissions made on behalf of the parties, learned trial Court finding that Pooja (petitioner) was subjected to cruelty at the matrimonial house by her husband Satish Kumar, passed a decree for divorce and dissolved the marriage of the parties.

7. Feeling aggrieved by the judgment and decree dated 17.03.2011, appellant Satish Kumar preferred the instant appeal.

8. The submissions made by Mr. Rakesh Nagpal, Advocate, learned counsel representing the appellant and Mr. Rajiv Dhawan, Advocate, learned counsel representing the respondent have been heard and the record has been perused.

9. From the facts elaborated above, it is apparent that respondent Pooja sought dissolution of her marriage with appellant Satish

Kumar on two grounds (i) that she had been treated with cruelty at the hands of the respondent; and (ii) that she had been deserted by the appellant-husband without any reasonable cause since 01.07.2007 i.e. for the last more than two years immediately preceding institution of the petition on 23.03.2010. The only son born out of the wedlock is under her care and custody ever since she is residing separate from the appellant. While according to her, she was beaten and turned out of the matrimonial home along with her minor child in bare three clothes on 01.07.2007, the appellant alleged that she left the matrimonial home on her own volition and without any reasonable cause. The appellant testified that Pooja left Delhi in August, 2007, so according to him also the parties were living separate since August, 2007 may not be from 01.07.2007. It was not the case of the appellant that he had ever visited the parental home of Pooja or had initiated any step taking help of some respectable of the family or brotherhood to bring her back to the matrimonial home. Dealing with issue relating to desertion, following were the findings of learned trial court:-

“The case of the petitioner is that she was turned out of the matrimonial house in three wearing clothes on 1.7.2007 after she was provided beatings by the respondent on account of dowry. When the respondent stepped into the witness box then during cross-examination he categorically admitted that the petitioner had returned from Delhi in August, 2007. In the wake of this blank admission of the respondent, it can be made out that petitioner is residing separately from the respondent since August, 2007. The

present petition has been filed on 23.3.2010 i.e. after more than two years of the separation. The case of the petitioner is that because of the acts of cruelty of the respondent, she was turned out of the matrimonial house whereas the case of the respondent is that the petitioner left the matrimonial house of her own and that too without any reasonable cause. This court is of the views that no lady will leave the matrimonial house unless or unless something unpleasant happens at the matrimonial house. The fact also cannot be lost sight of the minor child born out of the wedlock is also in the custody of petitioner. During the period of more than two years the respondent never paid any visits to the petitioner nor he ever bothered to send any maintenance for the petitioner or the minor child. The bald assertion of respondent that the petitioner left the matrimonial house of her own thus does not inspire confidence. The factum of deserndi and animus deserndi are present in the case in as much as factually the petitioner is residing separately preceding to the presentation of petition. During the period of more than two years the respondent did not take any step for joining the company of petitioner and intention to desert the petitioner thus can be readily inferred and there is no hesitation in holding that the respondent is guilty of deserting the petitioner for a continuous period of more than two years immediately preceding the presentation of the petition.”

10. Learned counsel for the appellant failed to point out any legal or factual error in the above findings of the learned trial Court. Photostat copy of the deposition of respondent Pooja was annexed by the appellant with his appeal but learned counsel could refer to no such portion of her

statement which could raise a question mark on her credibility or conduct. She filed the instant petition on 23.03.2010 i.e. after more than two years of separation from the appellant which could not be attributed to any fault on her part. Thus, the finding of learned trial Court that the appellant was guilty of deserting his wife Pooja deserves to be confirmed.

11. Coming to the second allegation of respondent Pooja that she was subjected to utmost cruelty by the appellant and his family members during her stay at the matrimonial house, learned trial court held as under:-

“As far as the allegations of cruelty levelled by the petitioner are concerned, this court is of the views that even poor people perform the marriage of their daughters to their fullest capacity and it cannot be believed that father of petitioner did not spend anything on the marriage of the petitioner with respondent. The petitioner has placed on record the copy of charge sheet Ex.P1 as per which the respondent along with his family members is facing trial in the court of Shri Rajesh Garg, learned Chief Judicial Magistrate, Kaithal for commission of offences punishable under Section 406 and 498-A IPC. The petitioner has also placed on record provisional certificate issued by University of Delhi Ex.P2, which indicates that the petitioner completed degree of B.Com from July, 2003 to April, 2009. It is own case of the respondent that the petitioner returned from matrimonial house at Kaithal in August, 2007. The case of the respondent is that he had been bearing the expenses for the education of petitioner but if the petitioner was studying till August, 2009, then the question of providing expenses by respondent to the petitioner does not arise at all. There is

nothing to disbelieve the version of the petitioner that she was being subjected to physical beatings by respondent at the matrimonial house and from the evidence led on record this court is satisfied that the petitioner was subjected to cruelty at the matrimonial house.”

12. From the above findings of learned trial court, it is evident that respondent Pooja tendered in evidence a provisional certificate issued by the University of Delhi i.e. Ex.P2 according to which she completed her degree of B.Com from July, 2003 to April, 2009. It was rightly observed that when according to the appellant Pooja left the matrimonial home and came to Kaithal in August, 2007 the version of the appellant that he had been providing expenses to Pooja for her education was wrong at the face of it. Had he ever taken the pains to pay maintenance/ expenses for education of his wife and their minor child, he would have been in a position to plead and prove the date, month and year or atleast the occasions on which he did so. In case he had ever paid her fees, the receipt would have been in his possession. His false assertions coupled with the testimony of Pooja that she used to be beaten, harassed and ill-treated by the appellant and his family members, which was corroborated by her uncle Vijay Kumar son of Puran Chand, PW2 proves that there is truth in version of Pooja and that she had been subjected to cruelty by the appellant.

13. Thus, in our considered opinion, there is no perversity or adversity in the findings of learned trial court which could warrant

intervention by this Court. There being no merit in the appeal, it is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

January 15, 2015.

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