

In the High Court of Punjab and Haryana at Chandigarh

FAO-M-294 of 2011 (O&M)

Date of decision: 29.07.2015

Reshma

..... Appellant

Vs.

Rakesh

..... 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?

Argued by:Mr. Ashwani Gaur, Advocate
for the appellant.

None for the respondent.

RAJ RAHUL GARG,J.

This is wife's appeal against the impugned judgment and decree dated 27.08.2011 rendered by Sh. Parmod Goyal, the then Additional District Judge, Sonapat whereby the petition for divorce instituted by husband-Rakesh on the ground of cruelty and desertion was allowed and the marriage of Rakesh with Reshma was dissolved on both the aforesaid points.

As per the case of Rakesh-husband, he got married to Reshma on 02.05.2004. The marriage was a simple marriage without any dowry. Wife was living in adultery prior to her marriage. She gave

birth to a male child on 17.10.2004 after 9 months pregnancy, in Shanti Bhawan Health Centre, Rataul, Post Office, Khekhera, District Bagpat (UP). Thus wife stayed with the husband only for 21 days i.e. uptill 23.05.2004 at her matrimonial home. She deserted the husband from 23.05.2004 as she never came back to her matrimonial home, thereafter, she has been living with her parents since then. She had filed a false criminal case under Sections 406/498-A IPC against the husband and his family members inspite of the fact that they never demanded any dowry. Wife admitted this fact in the presence of respectables of the village Phulera, her family members and relatives of the petitioner (husband) on 07.11.2004. As there is no possibility of reconciliation between the parties, therefore, the petition was instituted by husband-Rakesh.

Wife contested the petition alleging that the marriage was performed with great pomp and show. Allegation of living in adultery prior to her marriage, was denied. Her pregnancy with a person of her village and giving birth to a male child on 17.10.2004 were also denied. It was pleaded that she never deserted the husband as she was always ready and willing to join her matrimonial home. However, the factum of filing of a criminal case under Sections 406/498-A IPC was admitted. It was also pleaded that the husband and his family members had been demanding dowry. Her stay in matrimonial home only for 21 days i.e. uptill 23.05.2004, was denied. Thus, denying the allegations of cruelty and desertion, dismissal of the petition was prayed.

From the pleadings of the parties following issues were framed:

- (i) Whether the respondent has treated the petitioner with cruelty after solemnization of the marriage, as alleged ? OPP*
- (ii) Whether the respondent has deserted the petitioner for a continuous period of two years without any rhyme or reason ? OPP*
- (iii) Relief.*

After taking evidence of both the sides and hearing both the counsel for the parties and appraising the entire evidence and material coming on record, the impugned judgment dated 27.08.2011 rendered by Sh. Parmod Goyal, the then Additional District Judge, Sonipat, against which wife Reshma has come up in this appeal.

It is not disputed that the parties got married to each other on 02.05.2004. Firstly, the appellant Reshma did not deny the date of marriage in her affidavit Ex.RW1/A which was tendered in evidence at the time of leading of evidence by the appellant Reshma. The factum of birth of a male child to Reshma stands proved from the settlement deed entered into between the parties in the Gram Panchayat of village Phulera. This document is Ex. P2. Contents of this document clearly shows that marriage had taken place on 02.05.2004 and, thereafter, since 07.11.2004, their relation of husband and wife had come to an end. It was also settled in the Panchayat that both the parties would be free to marry at some other place as per their choice. Chaman Singh

(PW-3), Sarpanch of the village Phulera, categorically stated that Reshma d/o Badan Singh, gave birth to a child on 17.10.2004. She was pregnant before marriage i.e. 02.05.2004 having illicit relations with some persons. He further deposed by way of his affidavit Ex. PW3/A that a Panchayat was convened in his village on 07.11.2004, where Reshma, Rakesh and some other persons of the village and relatives of both the parties were present. At that time she admitted her guilt and a compromise was written by both the parties of their free will without any pressure, on 07.11.2004 and the same was duly thumb marked and signed by the persons of the village, Rakesh, Reshma and PW-3 himself. He identified his signatures on Ex. P2. He also identified his stamp as well. This witness was cross-examined but nothing material could be extracted from him. He is the Sarpanch and respectable of the village. There is nothing on record to discredit his statement. To the same effect are the statements of Rakesh-husband as PW2 and his father Rambhaj as PW1. Thus, from the afore-discussed evidence on the file, it stands established that Reshma was pregnant before marriage from a person other than Rakesh and she gave birth to a male child on 17.10.2004 i.e. just after 5 ½ months of her marriage. Whereas at the time of birth of the child, her pregnancy was full term pregnancy. Ex. P1 is the copy of statement of sister Smitha recorded in a criminal case, who proved the birth certificate Ex. PW5/A, which was issued by her and also signed by her. She identified her signatures on that certificate as well the stamp. She deposed that Reshma was admitted in Shanti

Bhawan Health Centre, Rataul, District Bagpat (UP) on 17.10.2004 and on that very day a male child was born to her after completion of 9 months of pregnancy. Above all, the appellant Reshma also appeared as witness and tendered in evidence her affidavit as Ex. RW1/A. Though, she denied the allegation of giving birth to a male child on 17.10.2004 in her examination-in-chief by way of affidavit yet during the course of her cross-examination she admitted in her previous statement in the proceedings under Section 125 Cr. P.C. she had duly admitted that Ex. P2 was thumb marked by her. Ex P2 is the statement between the parties in the Gram Panchayat, Phulera. She had tried to ignore this document. Firstly, stating that Ex.P2 does not bear her signatures and, thereafter, she deposed that Ex.P2 was thumb marked by her father and she herself under force. Again, there is nothing on record to show as to what kind of force and in what manner she was made to sign on Ex.P2. This controversy stood settled when she herself admitted that she had given statement under Section 125 Cr.P.C. that Ex.P2 was thumb marked by her. She further admitted during the course of her cross-examination that she has got a male child. She further deposed that she does not remember his date of birth. When the question was put to her as to if she was willing to get DNA test of her child done for determining the paternity, she clearly refused to do so. Thus, all these facts go to show that Reshma had given birth to a male child on 17.10.2004 whereas she got married to Rakesh only on 02.05.2004. Rakesh and his father categorically stated that Reshma stayed in their

house only for 15-20 days i.e. uptill 23.05.2004 and, thereafter, she gave birth to a male child at her parents' house and did not return to her matrimonial home. In this manner, she had treated the husband with cruelty of grave nature. Though, appellant-Reshma denied the aforesaid fact yet during the course of her cross-examination she admitted that she has been living at her parents' house since 23.05.2004. She also deposed that she did not file any petition for restitution of conjugal rights. All this shows that Reshma got married to Rakesh with a purpose that if after marriage she gives birth to a child, she will not have any social stigma. Ex.P5 is the compromise deed dated 02.03.2006, it is also between the parties. Reshma identified her signatures on this document and also deposed that Ex. P5 carries her photograph. She further admitted that she had never returned to her matrimonial home after the birth of child. Para 3 of this document talks about severance of relationship of husband and wife between the parties. Parties also agreed to live separately. The present petition for divorce was instituted on 09.11.2009. As such there was *animus deserendi* between the parties to live separately. Under the above discussed evidence and circumstances of the case, it is proved on the file that Reshma deserted the petitioner (husband) with an intention to bring the relationship of husband and wife permanently to an end. Ex. P2 and Ex. P5 documents proved the intention of the parties to bring cohabitation permanently to an end and further that the parties have no intention to live together as husband and wife. Under these

circumstances, we find no illegality in the impugned judgment. As such the same is, hereby, affirmed.

For the reasons recorded above, finding no merit in this appeal, maintaining the judgment and decree dated 27.08.2011, this appeal is ordered to be dismissed.

(M. JEYAPPAUL)
JUDGE

(RAJ RAHUL GARG)
JUDGE

29.07.2015
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