

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**F.A.O. No. M-114 of 2014
Date of Decision: 26.8.2015**

Major Sachin Vasdev

.....Appellant

Vs.

Mrs. Sudha

.....Respondent

**CORAM:- HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MS. JUSTICE NAVITA SINGH**

Present:- Mr. Rajesh Sethi, Advocate and
Ms. Paramjit Kaur Deol, Advocate
for the appellant.

Ms. Promila Nain, Advocate for
the respondent.

Navita Singh, J.

The appeal in hand is directed against the judgment and decree dated 26.11.2013 passed by Additional District Judge, Fast Track Court, Amritsar whereby the petition filed by the appellant under Section 13 of the Hindu Marriage Act, 1955 was dismissed.

As per the petition, the marriage between the parties was solemnised on 5.3.2003 in a simple manner. A male child was born to the parties. The petition was filed eight years after the marriage and it was alleged therein that soon after the parties tied the nuptial knot, the respondent misbehaved with the appellant in the house of his uncle and she treated the appellant with cruelty when they moved to Faizabad where the appellant was posted, being in the Army. The respondent picked up fight on trivial matters. In August, 2003, when the appellant was posted at Hisar, he

fell ill and was hospitalised. The respondent did not look after him. After the appellant was discharged from the hospital, the couple was invited to dinner by some senior officer but the respondent refused to accompany him. When he returned, she was furious that appellant had left her and and gone. The respondent refused to attend the social functions with the appellant.

In September 2004, the appellant was allotted a house and when they reached there, the respondent made a serious issue out of the fact that she did not like the manner in which certain boxes were kept in different rooms. In December 2004, the parties were invited to dinner and after that the respondent fought with the appellant and left the matrimonial home and went to Lucknow. In January, 2005, the respondent went to Pathankot with the appellant after she had decided to separate as the marriage was not working. In February, 2005, the appellant went for a training and the respondent told him that she was not ready to live with his parents in Amritsar. A separate family accommodation was arranged for her and the respondent misbehaved with a sepoy who was left to guard the house in which the respondent was living. In May/June, 2006, the respondent shifted to the house of her in-laws and had been living with them since then. The respondent refused to shift with him when he was posted at a place near Nakodar and then at Pune. In October, 2009, the appellant was in Gurgaon for treatment for his back and during his treatment also the respondent quarrelled with him and made him sign some letters that he wanted to leave the Army.

In January 2010, the appellant informed the respondent that two of his colleagues would be coming over to meet them but the respondent

walked out of the house and went away in an auto rickshaw. She was found at the railway station but she fought with him over there and slapped him. In April, 2010 the respondent, on a surprise visit by the appellant, told him that he had landed without information because he suspected her character. In Pune, the parties lived together and the appellant narrated his woes to Col. Karan Singh and his wife who spoke to the appellant and respondent to diffuse the situation. The respondent, however, left the guest room and she was again found on the railway station. She tried to jump before a moving train but the incident was averted as the train was slow and the appellant was able to pull her back. He was man handled by the respondent for doing so.

In September/ October, 2010, the couple quarreled in the car and the respondent started hitting the appellant. They had to go to the police and ultimately, the matter was resolved as the appellant and the respondent promised not to fight. However, in January, 2011, the respondent again started showing her true colours and insisted that the appellant transfer all his money in her account and she wanted to encash all the shares and mutual funds etc. to which the appellant agreed.

Besides giving the dates as above, it was pleaded that those were the few incidents which the appellant could recollect but there were many more as there was constant nagging by the respondent and persistent misdemeanor.

The respondent in her reply alleged that the appellant had not come with clean hands and that she was rather a victim of cruelty at his hands. She was treated as an orderly by the appellant and he used to assault

her physically. All the allegations made in the petition were denied in entirety and it was averred that the appellant always wanted to have his way irrespective of the bad health of the respondent and would insist that she visited his colleagues with him and attended all the dinners and social functions. She was forcibly sent back from Hisar from October 2003 to February 2004 and again in April 2004. She had narrated her part of the story to the senior officers in the military who were shocked to see the injury marks on her person and they used to reprimand the appellant for that. The respondent joined company of the appellant as and when he was on a family station and had never neglected or refused to perform her duty as a wife.

The appellant made his deposition as PW5 and examined four more witnesses, i.e. Major Mdhukar Jha as PW1, Lt. Col. Amit Kumar Singh as PW2, Lt. Col. (retd) Krishan Gopal Vasdev as PW3 and Col. Karan Singh as PW4. In rebuttal, the respondent appeared as DW1 and examined Naval Kishore Sharma as DW2. The trial Court discussed the evidence in detail and not being convinced of the veracity of the allegations made by the appellant, dismissed the petition.

It would be seen from the petition itself that the appellant made no such allegation as would bring out a case of cruelty, making it impossible for him to live with the respondent. Very small incidents were mentioned which show that trigger could be from either side. No serious allegations of “cruelty” as such were levelled. There was nothing pleaded or proved that it had become impossible for the appellant to live with the respondent on account of her conduct as would amount to absolute torture.

Counsel for the appellant argued that the incidents narrated in the petition and in the evidence may not be of great magnitude in themselves but constant misbehaviour by the wife even on small issues was sufficient cruelty. She misbehaved with the orderly of the appellant, misbehaved with him in front of his colleagues and seniors and kept nagging him and troubling him every now and then and, therefore, it was not possible for a man working in the disciplined force to do justice to his duty. Reference was also made to Ex.P2 which was a complaint made by the respondent to the Commanding Officer of the appellant in which she mentioned that she was convinced that her husband was having extra marital relations with some woman/girl whom he wanted to marry after seeking divorce from the respondent. She was also stated to be ASC Officer posted in Manipur. It was contended that the complaint was made during the pendency of the petition which would also amount to cruelty though that situation had not arisen before filing of the petition as there was no such complaint.

Counsel for the appellant also made reference to the statement of Col. Karan Singh (PW4) who spoke that the appellant had been confiding in him about his relationship with his wife and that the respondent had called him on phone from railway station New Delhi stating that she wanted to go to Rajashtan to meet her husband or he should be sent home immediately. She threatened to commit suicide if she was not allowed to go to the training area to meet her husband. The respondent was, however, taken to Ludhiana by her brother. At one point of time, the respondent had made a call to the witness telling him that the appellant had taken leave and

visited her without prior intimation as he suspected her character. The respondent got a call from the appellant once, stating that he was at Pune Railway Station and respondent had tried to jump before a moving train.

It was argued on behalf of the appellant that if there were small bickerings between the parties, there was no reason for Lt. Col. (Retired) Karan Singh a senior officer and Lt. Col. (Retried) Krishan Gopal Vasdev, father of the appellant to have come and deposed against the wife. Lt. Col. Amit Kumar Singh also came as a witness of the appellant.

Counsel for the respondent, on the other hand, pointed out that Karan Singh PW4 admitted in his cross-examination that he had no personal knowledge about the facts and whatever he had stated in his affidavit (examination-in-chief) regarding behaviour of the respondent, that was based on what the appellant had told him. Similarly, father of the appellant admitted in his cross-examination that the respondent gave him due respect and in turn he also reciprocated. He also stated that sufficient gifts were given by the relatives of the respondent at the time of marriage which belied the allegation in the petition that the marriage was a simple one and nothing had been given from the side of the respondent. He also said that when the respondent was living in a separate family accommodation at Amritsar, he had visited the respondent, i.e. his daughter-in-law and requested her to shift back to the house of her in-laws to which she agreed. She had put a condition that her son should be looked after by the grandfather, i.e. the witness himself and he promised to do so.

Reference was made to certain letters Ex.DB to Ex.DI, which were written by the appellant to the respondent showing that he had normal

relationship with the respondent. He conveyed to her that he loved her and wrote about management of money, studies etc., of his son and other matters which any normal spouse would share with the other. In the letters, he wrote that the respondent needed to continue with her job as they required to save money and also he would take some loan and they wanted to buy some land. He would ask the respondent to visit his father who, he said, would pick her up and then drop her back at her place. He also asked her to take good care of the child and to protect him from cold etc. None of the letters was suggestive of any kind of bad breath between the parties, and, therefore, the allegations in the petition that soon after the marriage, the respondent had started treating the appellant cruelly and by and by made his life hell, cannot be believed.

The photographs on record show the couple in good mood with their child and also the appellant stated in his cross-examination that the photographs Ex.DW1/1 to Ex.DW1/13 were the photographs of the last pleasure trip of the couple in March, 2011. The word 'pleasure trip' used by him would make it obvious that the relationship between the appellant and the respondent was normal and for that reason, they went on such a trip. The appellant also admitted that during that trip, he and the respondent had cohabited, "ignoring the past", which would mean that any cruelty prior to that, if at all, had been condoned by the appellant.

The appellant pleaded that in January 2005, the respondent had gone to Pune with him after she had decided to separate as the relationship between them was not sustainable. However, his averment loses credibility from the letters admittedly written by him, which are of 2005 till December

and depicted love of the appellant for his wife. He wrote to her frequently, at least once a week, and none of those letters, is in any way, suggestive of any lack of interest in the marriage on the part of the respondent.

The appellant also admitted that respondent had been taking leave (she was working as teacher) to join the company of her husband at different occasions and even on his asking. There did not appear to be any serious differences at all.

Coming to Ex.P2, which is a complaint made by the respondent to the senior officer of the appellant, though that in itself may be said to be an act of cruelty on the part of the respondent, yet it would be of no consequence to the appellant as it was not put to the respondent in her cross-examination and it was exhibited in the evidence of the appellant. The document which was signed by the respondent should have been got exhibited in her cross-examination after she admitted it to be correct. In any case, no undue importance can be attached to the mere fact that the complaint Ex.P2 was filed by the respondent which, stand alone, would not constitute cruelty so grave as to grant divorce. All the other allegations levelled by the appellant did not amount to cruelty as discussed above. Also, the complaint was made after the petition for divorce was filed and it may not be an unusual or unexpected act on the part of the wife who was by that time hurt and angry enough for being dragged in Court for dissolving a marriage which did not seem to have been wrecked in any manner.

Courts are required to be cautious in granting decree of divorce and marriages are not to be dissolved merely because the spouse seeking divorce is desirous of it. Even irretrievable breakdown of a marriage is no

ground for divorce and in the instant case, no cruelty or irretrievable breakdown was proved. The reported cases referred to by counsel for the appellant, i.e. K. Srinivas v. K. Sunita, 2015(1) RCR (C) 38, K. Srinivas Rao v. D.A. Deepa, 2013(2) RCR (C) 232, Vijaykumar Ramchandra Bhate v. Neelam Vijaykumar Bhate, 2003(2) RCR (C) 813, Jyotsna Sharma v. Gaurav Sharma, 2015(3) RCR (C) 164, Pooja Sharma v. Vikrant Sharma, 2015(3) RCR (C) 174, K. Radha Raju v. K. Seetharama Raju, 2001(3) FJCC 273, Narain Datt Sharma v. Santosh Sharma, 1986(1) HLR 573, Balwinder Kaur v. Surjeet Singh, 2009(2) RCR (C) 74, Smt. Sadhana Srivastava v. Arvind Kumar Srivastava, 2006(1) RCR (C) 107 and Arun Jalan v. Capt (now Major) Ramesh Chand Jalan, 1998(2) DMC 177, would differ on facts. No criminal case was lodged here by the wife nor there were any scandalous allegations either against the appellant or any of his family members. Most of the reported cases related to situations where false complaints were moved by the wife against the husband but in the present case, no criminal complaint was made and it may be repeated here that the isolated incident regarding filing of Ex.P2 which was not proved as per law, was not sufficient cruelty in given facts and circumstances.

For the reasons given above, the appeal must fail and is dismissed.

(NAVITA SINGH)
JUDGE

26.08.2015
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(RAJIVE BHALLA)
JUDGE