

Birender Kumar versus Smt. Suneel Devi

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

**FAO-M No. 116 of 2014 (O&M)
Date of decision: 31.08.2015.**

Birender Kumar

.....Appellant.

Versus

Smt. Suneel Devi

.....Respondent.

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

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?

Present: Mr. S.K. Tripathi, Advocate, Advocate, for the appellant.

Mr. Ashish Kumar Yadav, Advocate, for the respondent.

NAVITA SINGH, J.

This appeal is preferred against the judgment and decree dated 24.12.2013 passed by Additional District Judge, Rewari, whereby petition filed by the appellant under Section 13 of the Hindu Marriage Act, 1955, was dismissed.

2. The appellant had sought divorce on the ground of cruelty. The marriage between the parties took place on 07.03.2000 and one male child was born to them on 13.07.2002. It was alleged that the respondent was a greedy, quarrelsome, cruel and cunning woman, full of hatred towards the parents of the appellant. She did not like him and used to publicly humiliate him. She would grab the entire salary of the appellant and spend lavishly on herself and family on her parental side. She was in

Birender Kumar versus Smt. Suneel Devi

the habit of making frivolous complaints against the appellant to his superiors in the Military and threatened to involve him and his parents in criminal cases.

3. The respondent did not want to live with the parents of the appellant and demanded an independent bungalow in the city. She wanted the appellant to sell the agricultural land and purchase a house for her. When the appellant expressed his inability, she became furious. At times she would shout at the top of her voice and collect people from the neighbourhood and all entreaties for living peacefully in the matrimonial home, fell of deaf ears. At one point of time, she left the matrimonial home in the absence of the appellant and took the jewellery with her. Ultimately, she joined him at Pune where he was allotted an official accommodation. In Pune, the child was born and when the parents of the appellant visited them for seeing the new born, the respondent insulted them and compelled them to leave.

4. Thereafter, in April, 2004, the appellant was posted at a non-family station and the respondent was living with his parents, but she left them along with the child and went to her parents. She also, in connivance with her father and another relative, tried to sell the agricultural land of the appellant by fraud, but the attempt was foiled.

5. The appellant then took the respondent to his place of posting in Patiala in 2007, but the behaviour of the respondent did not improve and her demand for a 'kothi' remained persistent. She also levelled false allegations of illicit relations against the appellant. Despite all persuasion

Birender Kumar versus Smt. Suneel Devi

and adjustment on the part of the appellant, the hostility of the respondent did not reduce.

6. The respondent using her influence obtained an order from the Company Commander of the appellant and got a joint account in Axis Bank, Patiala, in the name of the parties, but retained the passbook, cheque book and ATM card. She withdrew the entire salary of the appellant on 02.12.2008 and squandered it away. She even poisoned the Company Commander against the appellant and got him humiliated at the hands of the officer. When the appellant's father tried to intervene, she threatened that she would kill the appellant by adding poison in the food and get all his service benefits after his death. It became impossible for the appellant to live with his wife. Hence, the petition.

7. Admitting the factum of marriage and birth of the child, the respondent denied all the allegations made against her and per contra pleaded that she was herself a victim of cruelty at the hands of the appellant and his family. She was tortured for not getting sufficient dowry and she lived with the appellant in the vain hope that some dawn would bring peace in her married life. It was averred that the appellant failed to discharge the matrimonial and social obligations towards the respondent and the child and further that it was the appellant himself who had deserted the respondent and the child. All the instances of alleged cruelty narrated in the petitioner were controverted.

8. The appellant appeared as PW3 and examined his father Dhani Ram as PW2 and one Vijay as PW4. The Company Commander Captain

Birender Kumar versus Smt. Suneel Devi

Bahadur Singh came forward as PW1, but he only produced in evidence the documents Ex. P1 to Ex. P11. His testimony did not relate to any of the averments in the petition and he was not a witness in relation to the matrimonial discord between the parties. On the other hand, the respondent appeared as her own witness as RW1 and examined her father Lal Singh as RW2. So far as the examination-in-chief of the parties is concerned, the narration in the respective pleadings was reproduced.

9. It may be pointed out at the outset that the respondent made a complaint Ex. R1, which she had admittedly made to the superior officers of the appellant in which she claimed maintenance and also alleged that her husband was in relationship with another woman. The complaint was made on 07.11.2008.

10. Counsel for the appellant argued that the respondent having made false allegations against the appellant regarding illicit relations with one Vidhya Cheatri, cruelty was proved as the allegation of adultery was not substantiated from any material on record. Though the Court can take cognizance of such facts as are pleaded in the written statement or stated in evidence by the other party which may amount to cruelty and divorce can be granted on that count, yet it would suffice to say here that those allegations should be shown to be palpably false. This aspect was thoroughly discussed by the Court below and it was felt that the allegations could not be said to be totally false. Father of the appellant, namely, Dhani Ram (PW2) said that he did not know whether his son had illicit relations with Vidhya Cheatri and even Vijay (PW4) said that he could not say whether the

Birender Kumar versus Smt. Suneel Devi

appellant was having such an affair or not. On the other hand, the respondent maintained her stand that she had rightly alleged in the complaint Ex. R1 about the illicit relations and she maintained her stand in evidence as well. The respondent categorically stated that she was aware of the illicit relations between the appellant and Vidhya Cheatri while the parties were residing in Patiala. No question was put to her as to how she was aware about any such affair and when she said that she had seen the appellant and the said woman in such a relationship, no pertinent question was put to her on that point. The respondent was bold enough to put the averments in writing while making the complaint Ex. R1 whereas the appellant failed to examine any witness who could say that there was no such relationship. Even the Company Commander Captain Bahadur Singh was not examined as a witness regarding the relations between the parties or regarding the officer having any knowledge about that but he was brought in the witness box by the appellant to prove certain documents. It was nowhere pleaded or shown either by examining Captain Bahadur Singh or otherwise that any inquiry was made and the allegation in Ex. R1 was found to be false. So far as the appellant is concerned, he himself would obviously deny the aspersion. The allegation that the respondent had attempted to paint the appellant as a wicked man before the Company Commander was not proved as Captain Bahadur Singh was not examined as a witness.

11. Other allegations made in the petition regarding cruelty were of general character and no such instance was pleaded and proved as would

Birender Kumar versus Smt. Suneel Devi

show that the appellant was subjected to utmost cruelty and it became impossible for him to live with the respondent. The parties are from rural background and the standard of cruelty would, therefore, be different as compared to couples from urban background. Not cooking meals, not serving tea and not offering water to the parents of the appellant on their visit to the couple are not such things as can be magnified to such an extent as to grant divorce to the appellant. Insistence on the part of the respondent to live separately or to get a house for the respondent would also not amount to cruelty grave enough to dissolve the marriage. The appellant levelled all possible allegations against his wife and even said that she had tried to sell his land by fraud. He was adamant on getting divorce by hook or by crook and put so many things in his petition that little did he realize that that would rather go against him.

12. Therefore, it cannot be said that the appellant was able to prove his case before the trial Court and that the decree of divorce was wrongly declined to him.

13. The appeal is dismissed.

(RAJIVE BHALLA)
JUDGE

(NAVITA SINGH)
JUDGE

31.08.2015
Ramesh

Whether to be referred to reporter: Yes/No