

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-M-163-M-2006(O&M)
Date of Decision:04.05.2016

Baljinder Kaur

.....Appellant

Vs

Pardeep Kumar

.....Respondent

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Rajiv Vij, Advocate
for the appellant.

RAJ MOHAN SINGH J.

CM-13476-CII-2006

This is an application under Order 41 Rule 27 CPC read with Section 151 CPC for permission to adduce additional evidence. Perusal of this application shows that the appellant intends to adduce additional evidence. The particulars of additional evidence have not been given inasmuch as that the particulars viz. names of the witnesses to be examined are not forthcoming. The application is vague and does not contain legal requirements of law. Applicant being American citizen cannot be absolved of legal requirement of law. Ignorance of law cannot be allowed to be a shield to claim production of

additional evidence in appeal.

The applicant having failed to get the decree through attorney cannot be permitted to seek denovo trial under the garb of production of additional evidence at this belated stage. Finding no substance in the application, the same is dismissed.

FAO-M-163-M-2006

[1]. Appellant-wife feeling dissatisfied with the judgment and decree dated 18.01.2006 passed by the Additional District Judge (Adhoc), Jalandhar has filed the present appeal.

[2]. Appellant filed a petition under Section 13 of Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') for dissolution of marriage with the respondent/husband-Pardeep Kumar. Appellant pleaded in the petition that her marriage was solemnized with the respondent on 15.06.1997, according to Hindu rites and ceremonies. After the marriage, she joined the company of the respondent in village Samrari, Tehsil Phillaur, District Jalandhar. Appellant-wife filed the petition for divorce with the following allegations/pleadings:-

- a) After the settlement of the marriage, father and other relatives of the respondent came to meet the father of the appellant about 3 days prior to the marriage. They insisted upon sufficient dowry to be given in the

marriage. They also demanded that honouring of in-laws be done with rings to all of them. They compelled the father of the appellant-wife to serve good food to the members of the marriage party by serving non-vegetarian food and liquor. Since father of the appellant-wife was not in a position to serve non-vegetarian food to the members of the marriage party as he belonged to a vegetarian family, the father of the respondent and other relatives became annoyed and insulted the father of the appellant and stated that in future he would be taught a lesson.

b) After marriage the appellant-wife handed over valuable articles and ornaments to the respondent and his parents including valuable furniture, beddings, clothings, utensils and gold ornaments. These articles were lying in the custody of the respondent.

c) Immediately after the marriage, the respondent and his family members started harassing the appellant and were not satisfied with the dowry. The husband and in-laws

maltreated the appellant on the ground of inadequacy of dowry and caused physical as well as mental cruelty to the appellant/wife. She was given beatings many a times.

d) The appellant wife further contended in the petition before the trial Court that after one week of marriage, the respondent asked her father to pay Rs.4 lacs to go abroad. The in-laws further proclaimed that the marriage of the respondent was solemnized with the appellant-wife with a view to send the respondent to U.S.A, otherwise they were not ready to solemnize the marriage between them. Father of the wife was not ready to pay the amount of Rs.4 lacs. The father of the respondent took the ornaments from the wife on the pretext that the same were to be kept in a locker as there was apprehension of theft or dacoity in the house. Thereafter, the ornaments were never given to the appellant by the respondent and his family members. The appellant was deprived of her ornaments on the occasion of marriage and other

functions. Even these were not given while going to U.S.A. Appellant further alleged that during her stay in India, she was given merciless beatings many a times by the respondent, his mother and sister. Appellant went back to U.S.A.

e) In the year 1998, respondent made a call to the appellant in U.S.A that she should ask her father to send Rs.4 lacs to father of the respondent as he wanted to go foreign country. Appellant alleged that the payment was made by her father to the father of the respondent, but later on, she came to know that it was a mere pretext to extract money. When the father of the appellant demanded back the amount, he was given threats of breaking the matrimonial ties between the parties.

f) On 27.01.1999, there was a marriage of sister of the appellant-wife in India. The appellant informed the respondent that she would be coming to India. The respondent told her that she should not come to his house as he was ousted by his father from the house.

The appellant-wife came to her parental house, where the respondent joined her. They stayed in the parental house of the appellant. During their stay, the respondent extracted heavy amount from the appellant and her father and he handed over the amount to his parents at village Samrari. On the eve of marriage of her sister, the appellant-wife asked the respondent to bring her ornaments from his parents but the respondent gave beatings to the appellant and threatened that in case such a demand is made, he would discontinue the matrimonial ties with her. Respondent again demanded an amount of Rs.45,000/- from the appellant-wife and her father for releasing the ornaments, which were kept as a security for some deal.

g) During the stay of the appellant in India, she became pregnant. The respondent without consent of the appellant got administered some injection to her and as a result of which the pregnancy entailed in miscarriage. The respondent told the appellant that he was not interested in having a child

from her, as he was only interested to go to U.S.A through her. The act of the respondent caused mental as well as physical cruelty to the appellant.

h) The appellant-wife went back to U.S.A. The respondent made a call to her that his father was interested in visiting Indonesia and he was in need of Rs.80,000/-. The appellant-wife sent the money to the respondent in October, 2001. The respondent made a telephone call to the appellant asking her to get divorce as he would not keep her at any cost and also insulted her as well as her parents.

i) Appellant also alleged that mother of the respondent tried to serve poisonous food to her. On suspicion, she refused to take the meal and threw it away. The act of the mother of the respondent caused cruelty to the appellant. Many a times the respondent threatened the appellant that his main object was to go to U.S.A and he was not interested to maintain matrimonial ties with her. The acts of the

respondent and his family members caused mental as well as physical cruelty to her. On these broad features, the petition under Section 13 of the Act for dissolution of marriage between the parties came to be filed by the appellant-wife through power of attorney.

[3]. The petition was contested by the respondent on all counts. All the allegations were refuted. Locus of the attorney who filed the petition was challenged, besides challenging the attorney deed being forged and fabricated. By taking all the averments of the petition, respondent-husband pleaded that the appellant was quarrelsome and under the effect of liquor, she used to pick up issues in the matrimonial house and was in the habit of creating scene in the house as well as in the neighbourhood of the locality. She deserted the respondent and treated him with utmost cruelty and caused harassment to the respondent and his family members. The allegations of demand of cash in the year 1998 and thereafter, were denied totally. The allegation of administering injection for miscarriage of pregnancy was also denied.

[4]. After completion of pleadings, both the parties went to trial on the issue of cruelty.

[5]. Appellant-wife got examined Paramjit Singh, as attorney on her behalf. Jasvir Singh maternal uncle of the appellant was examined as PW2 and Dilbag Singh, driver of the truck who brought the dowry articles to the house of the respondent was examined as PW3.

[6]. On the other hand, respondent got examined himself as RW-1 and his father Krishan Dev appeared as RW-2. After appraisal of evidence, trial Court dismissed the petition vide judgment and decree dated 18.01.2006. Hence, the present appeal.

[7]. Appeal was admitted on 14.07.2006. Thereafter, matter was listed before the Lok Adalat. Learned counsel for the appellant sought time to get instructions from the appellant who was in U.S.A on many occasions. One Mr. Surinder Kumar, Advocate appeared on behalf of the respondent. Ultimately, on 03.08.2011, learned counsel for the appellant stated before the Lok Adalat that he has not been able to contact his client i.e the appellant who was in America. In the above circumstances, the matter was sent back to High Court as there was no likelihood of the matter being settled by way of any compromise. Before the Co-ordinate Bench of this Court, learned counsel for the appellant showed his inability to contact his client who was living in America. The matter was adjourned for arguments.

Thereafter, two more opportunities were given to the learned counsel for the appellant to seek instructions from the appellant in America including the last opportunity, but on both the occasions, the learned counsel could not contact the appellant, rather made a statement that he had only contacted maternal uncle of the appellant in India. Finding no chance of any rapprochement between the parties, this Court decided to hear the arguments on merits.

[8]. Learned counsel for the appellant contended that the instances of cruelty have been specifically pleaded in the pleadings and attorney who appeared as PW-1 has corroborated the stand taken by the appellant.

[9]. We have heard learned counsel for the appellant and have also gone through the material on record.

[10]. The averments made by the appellant in the petition for divorce showed that even before marriage, a demand was made by the in-laws of the appellant, thereby, demanding that ceremony of honouring the relatives be done by giving rings to them. In addition to that, it was alleged that father of the appellant was compelled to provide good food i.e. non-vegetarian food and liquor in the marriage party. On refusal by the father of the appellant, the father of the respondent and other relatives became annoyed and they insulted the father of

the appellant and stated that in future he would be taught a lesson. If that was so, then, why marriage was solemnized by the father of the appellant on noticing abnormal behaviour of the in-laws? No sane father would like to marry his daughter with such person whose family was hell-bent to get dowry and threatened the father of the girl even before the marriage.

[11]. Secondly, the appellant pleaded that she gave valuable articles to the respondent and his parents just immediately after the marriage and she was harassed because in-laws were not satisfied with the dowry articles. She was maltreated for inadequate dowry. Even after one week of the marriage, the husband of the appellant asked the father of the appellant to give Rs.4 lacs in cash to the respondent, as the respondent wanted to go abroad. He showed his intention that the marriage was solemnized only with a view to go abroad. On showing the helplessness by the father of the appellant, the father of the respondent took the ornaments from the appellant on the pretext that the same were required to be kept in locker because of apprehension of theft and dacoity. The ornaments were never given to the appellant, even on the occasion of the marriage of her sister. Appellant-wife also alleged during her stay in India that she was given beatings but the instances of the beatings are vague enough in terms of time, place and

manner of giving beatings.

[12]. The alleged payment of Rs.4 lacs in the year 1998 to the father of the respondent could not be proved by way of any cogent evidence much less receipts or any source of availability of funds with the father of the appellant. The allegation of administering injection to the appellant wife on her conception could not be proved by way of any medical evidence. The amount allegedly received by the respondent during the period when marriage of sister of the appellant was being solemnized in India could not be brought on record with reference to any material. The payment of Rs.45,000/- also remained unproved for want of evidence. Similarly, the telephonic call by the respondent to the appellant requiring Rs.80,000/- for sending his father to Indonesia and payment made by the appellant to the respondent in the month of October, 2001 could not be proved by the appellant by way of any documentary evidence. The effort of the mother of the respondent to serve poisonous food only remained an allegation without any further proof to establish it. All these allegations alleged in the petition could not be substantiated by the appellant by appearing in the witness-box. Even the petition was filed through an attorney who cannot be privy to the personal knowledge in respect of these allegations.

[13]. It is a settled principle of law that the instances of cruelty being of personal knowledge cannot be proved by the attorney who has no personal knowledge about the alleged instances. Attorney cannot be allowed to appear and depose as witness on behalf of Principal victim in the matters involving personal knowledge. Attorney can appear only as a witness in his own capacity and cannot replace the Principal. The attorney while appearing as PW-1 admitted that he was not a witness to any of the instances alleged by the appellant for constituting cruelty. The cross-examination of PW-1 totally shattered the case of the appellant-wife when he stated that he did not remember the date of the marriage between the parties, nor knew about the Gurdwara where it was solemnized. He even did not know about the composition of the family of the appellant, nor knew the name of the father of the respondent. The witness was totally ignorant about the location of the house of the respondent and even was not in the knowledge of the date when the appellant left for America. He was engaged as attorney only two months prior to filing of the petition. The testimony of the attorney was discrepant on material particulars. The alleged demand made prior to marriage, even, if taken to be an instance, would have given the wife and her family a chance to cancel the marriage. Even otherwise, asking for

honouring with small gifts cannot be taken to be such an incident which would create mental agony in the mind of the appellant after the marriage. Even these allegations could not be proved on record by way of testimony of the appellant herself. Attorney was not at all in picture at the relevant time, therefore, no credibility can be given to the statement of the attorney on this ground also.

[14]. The appellant-wife has tried to allege numerous instances without referring to the time, place and manner of such happenings. The attorney even did not know the date of birth of the appellant. The appellant-wife had mentioned her father's name as Harjinder Pal, whereas as per marriage certificate, name of her father was shown to be Raj Kumar Tiwari. The aforesaid discrepancies remained as a secret for the reasons known to the appellant only. The testimony of the attorney was discrepant and did not advance the case of the appellant in any manner.

[15]. Similarly, the testimony of PW-2 was also discrepant inasmuch that the alleged payment of Rs.4 lacs could not be substantiated by this witness, when he stated that he did not know who actually paid the amount. The alleged payment was made by one Sodhi Singh i.e. the uncle of the appellant, who resided in Germany. The appellant could not bring out as to

when aforesaid Sodhi Singh visited India. The witness did not know the address of Sodhi Singh in Germany. He never resided in the house of the appellant. The testimony of PW-3 was inconsequential in view of the aforesaid attending circumstances.

[16]. Cruelty has not been defined anywhere. The allegation of cruelty could not be based on trivial issues, rather it should have the origin with reference to time, place and manner in which the occurrence took place. Bald statements and allegations of cruelty cannot constitute cruelty in the eyes of law. Mere irritation or annoyance does not constitute cruelty, rather it is spontaneous change of human behaviour based on problems of human being. The cruelty should be of such nature in which it is not reasonably expected to live together. It has wider connotation in terms of its root and configuration. It should be of willful and unjustifiably conduct of the spouse of such degree which may endanger the life of other spouse and may cause bodily injury to the other spouse and the complainant spouse has a reasonable apprehension of such danger. The features and attending circumstances of cruelty have been well defined in **A. Jayachandra Vs. Aneel Kaur, 2005(1) RCR (Civil) 309**, **Sunil Kumar Vs. Pushpa Rani, 2014(1) Hindu Law Reporter, 197** and **Gannath Pathaik Vs. State of Orissa,**

(2002) 2 SCC 619 by the Apex Court.

[17]. Though no uniform yardstick can be laid down for constituting cruelty, the Hon'ble Supreme Court in **Samar Ghosh Vs. Jaya Ghosh, 2007(2) RCR (Criminal) 515** summed up the concept of mental cruelty by holding that no uniform standard can be laid down for guidance, but still instances were enumerated, highlighting cruelty/mental cruelty. Mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty. Mere coldness or lack of affection cannot lead to cruelty.

[18]. In **V. Bhagat Vs. D. Bhagat, AIR 1994 Supreme Court 710**, the underlying principles of mental cruelty were highlighted by the Hon'ble Apex Court. The relevant criteria is that in order to prove mental cruelty or cruelty based on mental disorder of one of the spouse, it has to be proved that it is not possible to live together and the same cannot be reasonably expected also. Ifs and buts of normal life cannot constitute cruelty in view of aforesaid proposition highlighted in different precedents. Even filing of criminal cases per se are not to be construed in any strict sense, unless and until the cases are found to be false. If the instances, so pleaded by the appellant are tested on the touchstone of legal proposition, the case of the appellant does

not stand at the threshold of legal parameters. Appellant-wife did not care to depose personally in the witness-box. The allegations were based on personal knowledge of the appellant. The information was never transferred to the attorney. The testimony of the attorney could not stand to the test of cross-examination.

[19]. Having considered the appeal on merits, this Court does not find any substance in the appeal. Resultantly, this appeal is dismissed.

(RAJ MOHAN SINGH)

JUDGE

04.05.2016

Prince

(M. JEYAPPAUL)

JUDGE