

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

FAO-M-249-2006

Decided on : 03.02.2016

Manjeet Kaur

.... Appellant

VERSUS

Surinderpal Singh @ Raja

..... Respondent

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MS. JUSTICE LISA GILL

Present: **Mr.Gagandeep Singh, Advocate, for**
Mr.P.S.Brar, Advocate, for the appellant.

Mr.I.S.Brar, Advocate, for the respondent.

RAJIVE BHALLA, J. (ORAL)

The appellant-wife challenges judgment and decree dated 03.10.2006, passed by the District Judge, Faridkot, whereby a petition filed under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act') for dissolution of marriage, has been allowed.

Counsel for the appellant submits that the trial court has erred in deciding issues No.1, 2 and 3 jointly, thereby causing serious prejudice to the appellant. The mere fact that the respondent-husband may have been acquitted of charges under Sections 406/498-A of the IPC, does not raise an inference of cruelty. The onus of proof in criminal and civil cases is different. The fact that allegations have not been proved in a criminal case cannot enure to

the benefit of a respondent in a matrimonial dispute. The finding that the appellant alleged sodomy and the allegation that the appellant lives in her parental home, are both factually incorrect.

Counsel for the respondent submits that the impugned judgment does not call for interference on any legal or factual ground. The appellant filed a petition under Sections 406/498-A of the IPC which has admittedly been dismissed. The allegations of cruelty and misappropriation of dowry etc. having been found to be false, must necessarily raise an inference of cruelty. It is further submitted that the appellant is temperamental and quarrelsome by nature and insulted the respondent and his family members on petty issues and even levelled false allegations of sodomy before the Chairperson, Punjab State Commission for Women which were investigated by the SSP, Faridkot and found to be false. The appellant has also levelled allegations of sodomy which she could not prove and even otherwise, the parties have been residing apart for the last 19 years.

We have heard counsel for the parties, perused the impugned judgment and find no reason to grant any relief to the appellant.

The parties, as is apparent from the pleadings, were married on 14.05.1995, as per Sikh rites. A female child was born to them and is residing with the respondent-husband. The respondent filed a petition for grant of a decree of divorce on the ground of

cruelty primarily based upon the temperamental and quarrelsome nature of the appellant and levelling false allegations in a complaint filed under Sections 406/498-A of the IPC which was dismissed. The appellant insisted that the respondent-husband lives with her at her parental house. The respondent also alleged that the appellant levelled false allegations of sodomy for which an inquiry was held by the SSP, Faridkot on directions by the Chairperson, Punjab State Commission for Women, but the respondent was exonerated.

The appellant-wife filed a written statement, denying these allegations and submitted that the true facts are that the respondent is a greedy person who demanded dowry though sufficient dowry was given at the time of marriage. The appellant did not leave the matrimonial home but was compelled to return to her parental home and despite a panchayat consisting of Gurcharan Singh, Sarpanch, Jarnail Singh, father of the appellant, Bakshish Singh and Malkiat Singh, the respondent-husband did not agree to resume matrimony.

The respondent filed a replication, denying averments in the written statement and reiterating averments in the petition.

From the pleadings of the parties, the trial court framed the following issues: -

“1. Whether the respondent has left the company of the petitioner without any sufficient cause and has deserted him?

OPA

2. Whether the respondent has treated the petitioner with

cruelty? OPA

3. Whether the petitioner is entitled for decree of divorce?

OPA

4. Relief.”

The parties were thereafter directed to lead their respective evidence and upon due consideration of the pleadings and the evidence, the trial court allowed the petition and dissolved the marriage between the parties on the grounds of cruelty and desertion.

We have heard counsel for the parties and perused the record.

Admittedly, the appellant-wife filed a complaint under Sections 406/498/A of the IPC, alleging cruelty and misappropriation of dowry articles by the respondent, which has been dismissed. The appellant also levelled allegations of sodomy and cruelty against the respondent before the Chairperson, Punjab State Commission for Women, which was investigated by the SSP, Faridkot and found to be false. The trial court has accepted both these grounds while accepting the plea of cruelty and has also held that the appellant has deserted the respondent.

The question, that calls for an answer is, whether dismissal of the criminal complaint and the levelling of allegations of sodomy etc. perpetuate a degree of cruelty sufficient to dissolve the marriage?

A false allegation, cannot by itself, raise an inference of

cruelty but allegations that assassinate the character and conduct of a spouse, as are sufficient to traumatise a spouse, must necessarily raise an inference of cruelty. The appellant had levelled allegations of misappropriation of dowry articles. The respondent had to face a trial and embarrassing questions from the police regarding the allegation of sodomy. Admittedly, the appellant-wife could not prove both these allegations as they were found to be false and in our considered opinion, prove the allegation of cruelty. The allegation by the appellant that she was turned out of the matrimonial home, remains unsubstantiated and as far as the convening of a panchayat etc. they have not been proved and were rejected by the trial court for want of relevant evidence namely witnesses who were part of the panchayat. The trial court has specifically noticed the following facts: -

“15. Efforts have been made for reconciliation between the parties, but without any fruit. Firstly, the petitioner and his mother Jagdish Kaur had gone to the house of the parents of the respondent in March 1997 but she did not agree to come back to the matrimonial house. Second effort was made when the petitioner brought Panchayat to the house of the parents of the respondent in June 1997, but even then she did not agree to join the matrimonial house. Again through the Panchayat by the respondent the matter could not come to any fruitful end. Then for the fourth time the reconciliation efforts were made by the then District Judge Faridkot, where the petition was pending at that time. On 28.6.2004 the statement of Manjit Kaur respondent was recorded where she has admitted that difference exists between the parties and there was no chance of their living together as husband and wife under one roof, meaning thereby that she was not in a mood to live with the petitioner. Then for the fifth time on 21.7.2005 the case was adjourned on the request of both the parties when they agreed to live together but again they came back to the court without any successful result. Now the parties are living separate from each other for

the last ten years and the circumstances of the case and the evidence on record shows that there is not even a little chance for the parties to reunite and I feel that the present marriage is broken marriage and the parties should be allowed to live separate from each other.....”

We are in complete agreement with the opinion recorded by the trial court particularly in view of the facts that allegations of demand of dowry and sodomy etc. have been found to be false and the respondent has been residing separately for the last more than 19 years.

Consequently, finding no merit, the appeal is dismissed.

[RAJIVE BHALLA]
JUDGE

03.02.2016
shamsher

[LISA GILL]
JUDGE