

FAO-M-374-2009

1

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

FAO-M-374-2009

Date of decision : 08.01.2016

Indu Bala

... Appellant

Versus

Vipin Sharma

... Respondent

***CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MRS. JUSTICE REKHA MITTAL***

Present: Ms.Arti Bansal, Advocate
for the appellant.

Mr. Amit Khatkar, Advocate (Legal aid counsel)
for the respondent.

REKHA MITTAL, J.

The present appeal lays challenge to the judgment and decree dated 14.10.2009 passed by the Additional District Judge, Yamuna Nangar at Jagadhri whereby the petition filed by the appellant under Section 13 of the Hindu Marriage Act 1955 (in short 'the Act') for a decree of divorce has been dismissed.

The facts relevant for disposal of the present appeal are that marriage of the parties was solemnized on 05.10.2003 and a son was born out of their wedlock on 25.09.2004. The appellant prayed for a decree of divorce on the ground that she was subject to maltreatment, abuse and torture on account of demand of dowry despite the fact that every demand

and wish of the respondent and his family members was satisfied at the time of marriage. On 11.10.2004, she was given beatings by the respondent on the pretext that her father failed to give a car and an amount of ₹1 lac in cash, demanded by the respondent. On 07.09.2005, she was given merciless beatings by the respondent on instigation of his family members for failure of her parents to meet the aforesaid demand. The father of the appellant paid ₹50,000/- to the respondent on 10.09.2005 and as a result, behaviour of the respondent and his family members improved temporarily. She was again giving beatings by the respondent on 07.12.2005. The appellant reported the matter to the police, a Panchayat was convened where the respondent and his family members confessed their guilt in writing and gave an undertaking to keep the appellant properly. Her agony and misery further increased as she gave birth to a female child on 04.07.2006. The respondent and his family members started cursing her for having brought ill luck. The respondent made an additional demand of money for installing expeller in the mill owned by him. The father of the appellant arranged ₹50,000/- and gave it to the respondent on 25.11.2007. The respondent was still not satisfied and gave merciless beatings to the appellant. The matter was again reported to the police on 10.12.2007 and the dispute was settled as the respondent and his family members confessed their guilt. The behaviour of the respondent turned from bad to worse and beatings became a matter of routine. A day before filing of the petition, the appellant was given beatings. When her parents intervened, the respondent and his sister openly declared that the

appellant will not be kept in the matrimonial home till their demand was fulfilled.

The respondent filed the written statement and in turn denied the allegations that either any demand of dowry was made or the appellant was harassed or maltreated on account of demand of dowry. The parties were residing happily in village Khajuri with parents of the respondent but the parents of the appellant started interfering and on their instigation, the appellant started demanding separate residence. She called her parents and uncle, who threatened that either he should reside separately with the appellant at Yamuna Nagar, otherwise they would take the appellant to their home and implicate him in false cases. He was given beatings on his refusal to accept demand of separate residence at Yamuna Nagar. He got treatment from Civil Hospital, Naharpur and the matter was reported to the police but the same was not pursued as the appellant and her parents apologized for their misconduct. However, to buy peace, the respondent hired a house at Yamuna Nagar and started residing there with the appellant and the minor children. The behaviour of the respondent did not improve. On 22.04.2008, her parents came and took her along with them but the minor children were left with the respondent. The appellant lodged a false complaint against the respondent for offence punishable under Sections 498-A, 406 of the Indian Penal Code (in short 'IPC') qua demand of car, cash, motor cycle or gold.

The pleadings of the parties led to framing of following issues by the learned trial Court:-

1. *Whether the respondent has treated the petitioner with cruelty on the grounds mentioned in the petition, if so, to what effect?OPP*
2. *Whether the present petition is not maintainable?OPR*
3. *Whether the petitioner has no locus standi to file the present petition?OPR*
4. *Whether the petitioner has concealed the true and material facts from the court, if so, to what effect?OPR*
5. *Relief.*

The trial Court permitted the parties to adduce evidence. The appellant appeared in the witness box and examined Sushil Sharma her father PW-2. The respondent was not later permitted to lead evidence as his defence was struck off on 28.07.2009 due to his failure to pay maintenance pendente lite.

On due consideration of the pleadings of the parties, issues framed for determination and the evidence adduced by the appellant, the learned trial Court rejected claim of the appellant that the respondent (husband) is guilty of subjecting her to cruelty of the kind sufficient to grant a decree of divorce.

Feeling aggrieved against the judgment and decree passed by the learned trial Court, the present appeal has been preferred by the appellant Indu Sharma.

Learned counsel for the appellant has contended that the appellant was tortured physically and mentally during her stay in the matrimonial home for a period of about 4 years. The learned trial Court

should not have doubted her veracity in absence of any cogent explanation by the respondent (husband) for his refusal to resume matrimony. It is further contended that in absence of any defence by the respondent, there is no reason to brush aside duly sworn testimony of the appellant corroborated in material particulars by her father. It is further argued that no sensible girl would like to set her house on fire at the cost of living at the mercy of her parents if she is happily placed in her matrimonial home more particularly in the circumstances that there are two children born out of the wedlock and they are in custody of their mother. The last submission made by counsel is that the appellant has narrated her tale of woe by a specific reference to the dates when she was subject to physical beatings on account of demand of a car and money. In addition, it is submitted that refusal of the respondent (husband) to pay maintenance to his wife and children in compliance with the order passed by the trial Court is another instance of cruelty.

Counsel for the respondent has supported the judgment passed by the learned trial Court with the submissions that the same is well founded in the light of materials on record. It is argued that there was no occasion for the respondent to make any demand of dowry or giving beatings on failure of her parents to meet such demand. As a matter of fact, the appellant herself is a guilty spouse as she did not like to live with the respondent due to huge difference in their educational background and the respondent being resident of a village. The appellant persistently demanded to have a residence in the city and in order to satisfy her

demand, the respondent hired accommodation and the parties started residing separately. Had the appellant been harassed and maltreated by the respondent on the pretext of demand of dowry, there was no reason for her to shift to the rented accommodation and reside there with the husband. The respondent was given injuries by the parents and relatives of the appellant which led to initiation of criminal proceedings for offence under Section 326 IPC. The appellant being the guilty spouse cannot be allowed to take advantage of her own wrong to seek dissolution of marriage of the parties.

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

The learned trial Court in paras 15 to 18 has discussed the material on record, adduced by the appellant (wife) but concluded in para 19 that the appellant has not been able to substantiate the allegations of cruelty either in respect of demand of dowry or consequent maltreatment. On a careful consideration of pleadings of the parties, statement of the appellant and her father and the discussion / observations recorded in paras 15 to 18 of the judgment of the learned trial Court, we are unable to accept the contentions of the appellant that the findings recorded by the learned trial Court are either the result of wrong reading of evidence or non application of mind. The learned trial Court has noticed that the appellant in the petition has made reference to certain dates when she was allegedly given beatings, the dates on which the matter was reported to the police and was compromised but in her statement on oath by way of

affidavit in examination in chief, she for the reasons best known, has not made reference to any of the dates. As per plea of the appellant, she was given beatings on 07.12.2005, 10.12.2007 and the matter was reported to the police but the respondent and his family members confessed their guilt and compromise was reduced in writing. She did not produce any document either in regard to information to the police or the respondent and his family members having confessed their guilt or a settlement by way of compromise having been reduced into writing. As is well known, it is very easy to level allegations but it is difficult to substantiate the same. The appellant failed to adduce tangible, cogent and convincing evidence to establish her plea that she was subject to cruelty of the kind that can constitute a ground for a decree of divorce. We would hasten to add that it appears that as the appellant has done 10+2 and a course of beautician whereas the respondent (husband) is illiterate and was residing in the village, the appellant was not feeling comfortable during her stay in the matrimonial home and for that reason she even raised a demand for separate residence in the city. Admittedly, the parents, brother and the uncles of the appellant are facing criminal trial for offence punishable under Section 326 IPC for inflicting injuries to the respondent (husband). The learned trial Court, on a detailed consideration of the pleadings of the parties, evidence adduced by the appellant has correctly recorded a positive finding that the appellant (wife) has failed to establish that she was subject to cruelty in the matrimonial home and therefore, negated her plea for grant of a decree of divorce. We do not find any error much less

illegality in the findings recorded by the learned trial Court. The mere fact that the respondent (husband) did not pay maintenance pendente lite before the trial Court as resulted in denying him to raise any defence or adduce any evidence, is not sufficient to record a finding that the respondent is guilty of cruelty and the marriage of the parties is liable to be dissolved.

In view of what has been discussed hereinabove, finding no merit, the appeal is dismissed leaving the parties to bear their own costs.

(RAJIVE BHALLA)
JUDGE

(REKHA MITTAL)
JUDGE

January 08, 2016.

Davinder Kumar