

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

FAO No.M-141 of 2012 (O&M)
Date of Decision:29th January, 2016

Kusum ..Appellant

versus

Rajesh @ Raju ..Respondent

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

Present: Mr. J.S.Saneta, Advocate, for the appellant.

Mr. Surender Deswal, Advocate, for the respondent.

RAJIVE BHALLA, J.

The appellant-wife challenges judgment and decree dated 01.5.2012, passed by the Additional District Judge (Fast Track Court), Karnal, dismissing her petition for grant of a decree of divorce.

Counsel for the appellant submits that the evidence on record, particularly depositions, by the appellant, her father Ajmer Singh, (PW2) and her uncle Shamsheer Singh (PW-3) prove that the appellant was treated with such a degree of cruelty as is sufficient to dissolve the marriage. The trial court has rejected the pleadings and evidence though they prove repeated harassment, beatings, demands of dowry and refusal to allow the appellant into the matrimonial home. The trial court has held that as there is no evidence that the respondent is a habitual drunkard or that he was booked under the Punjab Excise Act, 1914, nor has any medico-legal report been produced to prove the allegation that the respondent

beat the appellant under the influence of liquor. A perusal of the evidence on record reveals that the appellant has deposed in clear and consistent terms that the respondent would beat the appellant while under the influence of liquor. The respondent has not been able to rebut these allegations. The mere fact that there is no medico legal report or that the respondent was not booked under the Excise Act etc. does mean that the appellant and her witnesses have deposed falsely. The demand for dowry and its payment have been proved by the clear and cogent depositions by the appellant, her father and her uncle but has been negated on the ground that the respondent owns two shops, 1-1/2 acres of land and a big house and, therefore, would not demand dowry. A demand of dowry has nothing to do with a person owning property. The appellant's allegation that she was treated with cruelty by the respondent and his family members after the birth of a female child, has been overlooked. The plea of desertion has been negated by holding that it has not been proved that the respondent created such a situation that would compel the appellant to leave the matrimonial home.

Counsel for the respondent, on the other hand, submits that the trial court has, after appraisal of the pleadings and the evidence, recorded clear and cogent findings, negating the pleas of cruelty and desertion. Apart from the oral statements made by the appellant and her witnesses there is no evidence of any beating, proved whether by oral or medical evidence. The allegations of consuming liquor and then beating the appellant, have been found to

be false. The allegation of demand of dowry or maltreatment, after the birth of a minor child, remains unsubstantiated for want of any corroborative evidence. Counsel for the respondent further submits that the respondent has been acquitted of charges under Sections 406 and 498-A of the Indian Penal Code, thereby proving that allegations of demand of dowry, harassment etc. are false. As it is the appellant who has levelled false allegations which she is unable to prove, she cannot take advantage of her own wrong.

We have heard counsel for the parties, perused the impugned judgment and appraised the record.

The parties were married on 6.3.2003, at Karnal, according to Hindu rites and ceremonies. A female child was born to them on 27.8.2005. The appellant alleges that her father spent more than Rs.3 lac (three lac only) on the marriage and handed over sufficient dowry to the respondent and his relatives. The respondent and his mother were not satisfied with the quantity and quality of the dowry and also began taunting the appellant for not bringing a motorcycle. A week after the marriage, the appellant returned to her parental home and narrated these facts to her parents but was assured that she should not worry. The respondent came to fetch the appellant after a gap of one month. The appellant returned, with the respondent, to her matrimonial home where the respondent and his parents began harassing her by raising a demand for a motorcycle. After the respondent came home drunk at odd hours, he would regularly beat the appellant. The appellant requested the respondent not to consume liquor and beat her and also informed his

relatives. The relatives, instead of asking the respondent to mend his ways, encouraged him to harass the appellant. The appellant continued to bear the cruel conduct of the respondent and his relatives. The appellant was not allowed to use her ornaments or wear new clothes on the occasion of festivals. The appellant was threatened that if she did not provide a motorcycle, she would continue to be tortured. The birth of a female child made matters worse. The harassment intensified and the respondent and his parents demanded Rs.50,000/- in the month of December, 2005. The appellant's father paid Rs.50,000/- to them but in February, 2006, the appellant was turned out of her matrimonial home after she was beaten mercilessly. The appellant had no option but to return to her parents home and remained there for six months. The appellant's father convened a panchayat. The respondent raised a demand for a motorcycle and a buffalo before the panchayat. The appellant's father told the respondent that he had already given Rs.50,000/- in cash, in December, 2005 and they could purchase a motorcycle with this money. The appellant's father, however, gave a buffalo, valued at Rs.30,000/- to the respondent but the respondent and his family members did not mend their ways as they raised a demand for purchase of a cow valued at Rs.13,000/- in April, 2007 which was duly paid. The appellant's father thereafter refused to pay any more money and provide anything more.

The respondent and his family members gave merciless beatings to the appellant and turned her out of the matrimonial house, with her infant child. The appellant stayed in the house of a

neighbour and on the next day made her way to her parents' house where she narrated the entire occurrence. The appellant's father convened a panchayat but the respondent insulted the panchayat and demanded Rs, one lac and a motorcycle as dowry. Another panchayat was convened on 25.1.2009 but the respondent and his family members refused to settle the matter. A third panchayat was convened on 01.2.2009 but without success. The appellant has also pleaded that the sister of the respondent was married to the brother of the appellant but the respondent and his family members threatened that they would not perform the gauna (muklawā) ceremony and turned the appellant out of the matrimonial home.

The respondent filed a written statement denying averments in the petition and instead pleaded that the petitioner-appellant was habitual to leaving the matrimonial home of her own choice and despite his requests not to leave the matrimonial home, did not pay any heed. The respondent is still ready and willing to live with her. The respondent also pleaded that the appellant is a quarrelsome lady who is not ready to settle down. The respondent denied the allegations of demand of dowry, harassment, humiliation and the pleadings that the respondent is a drunkard who returns at odd hours and then beats the appellant or that he received any dowry or raised any demand for money, received any money or a buffalo etc. The respondent also denied that on the birth of a female child, they taunted the appellant that she had added a burden to their family or that she was beaten up and turned out of her matrimonial house, as alleged by the appellant.

The learned trial court, after appraisal of the pleadings, framed the following issues:-

- “ 1) Whether the marriage between the parties is liable to be dissolved on the ground mentioned in the petition?OPP
- 2) Whether the petition is not maintainable?OPR
- 3) Relief.”

The appellant stepped into the witness box as PW1, examined her father Ajmer Singh as PW2 and her uncle Shamsheer Singh as PW3. The appellant also tendered a report prepared under section 173 of the Code of Criminal Procedure as Mark 'PA', a copy of the FIR registered against the respondent as Mark PB and closed her evidence.

The respondent stepped into the witness box as RW1 examined Santro alias Boli wife of Ram Kumar, a neighbour, as RW2 and Mamu Ram son of Chatru Ram as RW3.

After considering the pleadings and in the evidence, the trial court, held that the appellant has not been able to prove her pleas of cruelty or desertion and therefore, dismissed the petition.

A perusal of the pleadings and the evidence reveals that the appellant wife has sought divorce on the grounds of cruelty and desertion based upon demands of dowry, constant beating and turning the appellant out of the home. The trial court has rejected these allegations and though we may not agree with some of the reasons assigned by the trial court but as the evidence on record does not prove the allegations of cruelty and desertion are not inclined to accept the appeal.

An allegation of cruelty must be supported by cogent pleadings, disclosing the date, month and where the cruelty is physical, the nature of the assault and the injuries. The appellant's allegations regarding cruelty pertain to repeated physical assault, particularly when the respondent returned drunk, late at night, the quantum and quality of dowry, demand for a motorcycle, a buffalo, part of which, were satisfied by the appellant's father, taunts after the birth of a female child, the registration of a case under section 498-A of the Indian Penal Code, against the respondent and his mother. The oral evidence produced in support of these allegations are the appellant herself, her father and her uncle.

The allegation of physical abuse has been rejected by the trial court for want of material particulars with respect to date and time, the nature of injuries, absence of any witness and the absence of any medico legal report. At this stage, it would be necessary to point out that physical abuse generally takes place within the four corners of a home and to expect the aggrieved spouse to produce a witness, would be asking for the near impossible but this alone does not enable us to place reliance upon the testimony of the appellant and her witnesses that she was physically assaulted by the respondent when he was drunk as these allegations are not only bereft of any particulars of the nature of the beatings, the injuries suffered, but also deficient as to the date, month etc. or any medical report. The depositions by the appellant's witnesses, who are her father and uncle, are derived from information furnished by the appellant and, even otherwise, do not contain any particulars of the

physical abuse whether soon after the marriage or at any time thereafter. The appellant should have, at least, given some particulars of the nature of physical abuse or at least the nature of injuries but has only made a general reference to the physical abuse when the respondent was drunk. The depositions by her father and uncle are no better and even otherwise, as they draw knowledge from the appellant, cannot be made basis for accepting the allegations of physical cruelty.

As regards cruelty based upon allegations of demand of dowry, namely, demand for money, a motorcycle, a buffalo, some of which the appellant and her witnesses state they satisfied, have been rejected by the court below on the ground that the appellant's father has not been able to prove the source of money, i.e., as the appellant's father was doing a job, he should have produced his passbook to prove that he had withdrawn money for payment to the respondent and as the respondent owned sufficient property, he would not raise a demand for dowry. The reasons assigned by the trial court, though speculative, the evidence may have been accepted as sufficient to prove the allegations but for the fact that these allegations were made subject matter of an FIR No.286 dated 4.5.2009, under sections 406/498-A and 506, of the Indian Penal Code at Police Station City Karnal registered against the respondent and his mother, who have been acquitted after a complete trial. The appellant and her witnesses who have deposed in her favour in the present case, appeared before the Criminal Court and repeated these allegations but have been disbelieved as is apparent from a

copy of judgment dated 19.12.2013, recorded by the Judicial Magistrate 1st Class, Karnal. A perusal of the judgment reveals that allegations in the criminal case and in the present case, are identical. The appellant as PW1, her father as PW2 and her uncle Shamsheer Singh as PW3 deposed about the demand of dowry, harassment etc. The findings recorded by a criminal court are not binding on a civil court but the judgment acquitting the respondent and his mother is relevant and does tend to fortify findings recorded by the trial court that these allegations have not been proved. A perusal of the depositions by the appellant and her witnesses reveal that they have levelled specific allegations relating to demand of money, a buffalo, a cow etc. even before a panchayat convened to resolve the dispute but has failed to produce any independent witness, namely, members of the panchayat.

As regards the plea of desertion, the appellant states that she was turned out of her matrimonial home and was not allowed to return. The respondent has denied this allegation and in fact stated that he is still ready to resume the matrimonial relationship with the appellant but the appellant did not come forward with any positive response.

At this stage, it would be appropriate to point out that actual reason for the dispute appears to be that Priyanka, the respondent's sister, was married to Mukesh, brother of the appellant. The mukhlawa ceremony was to be performed, at a later date. The appellant's father or the respondent's family rejected the match leading to discord between the families and in the matrimonial life of

the parties. The appellant and the respondent may be victims of their family feud but this fact, even if true, cannot be a ground to infer cruelty or desertion by or at the behest of the respondent.

Consequently, finding no merit, the appeal is dismissed.

(RAJIVE BHALLA)
JUDGE

29th January, 2016
VK

(REKHA MITTAL)
JUDGE