

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

FAO-M-394 of 2010 (O&M)

Date of Decision: April 23, 2018

Renu

.....Appellant

Vs.

Satbir

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.
HON'BLE MR. JUSTICE GURVINDER SINGH GILL.

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Present: Mr.R.B. Gupta, Advocate for
Mr. Rajesh Bansal, Advocate for the appellant.

Mr. R.S. Mamli, Advocate for the respondent.

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M.M.S. BEDI, J.

Aggrieved by the dismissal of her petition for divorce vide impugned judgment and decree dated October 23, 2010, the wife has preferred this appeal. As per the averments in her petition for divorce, the appellant had married respondent on June 27, 2004 and the parents of the appellant had spent Rs.2 lacs on the marriage besides giving number of articles, clothes and jewellery to the family members of the respondent in dowry. No issue was born out of the wed-lock. The behaviour of the respondent and his family members towards the appellant was non-cooperative and cruel. They were greedy persons not satisfied with the dowry articles as such they started taunting and harassing the appellant on account of more dowry articles. The demand of motorcycle having not been

met, the appellant was given beatings. The appellant was also taunted by the mother of the respondent that she had dark complexion and had not brought sufficient dowry. After four days of the marriage, the respondent left her at her parental house and threatened that he would perform marriage with the elder sister of the appellant as he had a liking for her. The respondent apologized for his conduct on August 10, 2004 before the Panchayat at Village Rajakheri and took the appellant along to the matrimonial home but on the way he again started taunting and beating her as such the very next day, the appellant was sent back. After the intervention of respectables of the village, the respondent used to take her back. As per the averments in the petition, the respondent indulged in heavy drinking and used to taunt and beat the appellant without any reason. It was further alleged that on February 12, 2005, father of the respondent made an attempt to outrage the modesty of the appellant. There are allegations that on August 28, 2006, the respondent and his family members had raised demand for toka, gas cylinder and a sum of Rs.50000/- but on account of said articles having not been given the appellant was given merciless beatings and was thrown out of the matrimonial home as such she was living separately since August 28, 2006. The appellant had also filed a complaint under Sections 406, 498 A, 506 and 34 IPC. A number of panchayats had been convened but matter could not be settled between the parties. The respondent challenged the maintainability of the petition but denied the allegations of cruelty by him and his family members. The demand of toka, gas cylinder and cash was also denied. The lower Court on the basis of the pleadings of the parties, framed the following issues:-

- “1. Whether the petitioner is entitled to a decree for divorce on the grounds as mentioned in the petition? OPP.
2. Whether the petition is not maintainable in the present form? OPR.
3. Whether the petitioner has no locus standi to file and maintain the present petition? OPR.
4. Relief.”

The lower Court decided issue No.1 against the appellant and in favour of the respondent holding as under:-

- (i) The allegations of cruelty and demand of dowry like motorcycle etc. have not been specified in the pleadings or in the evidence.
- (ii) The allegation of demand of dowry are improbable, as the father of the appellant is a poor man and it is not expected that he has spent huge money as alleged by the appellant in the proceedings.
- (iii) The compromise Ex.R-3 arrived at before the Panchayat at Village Rajakheri has not been established by any witness who attended the Panchayat.
- (iv) The allegation of outraging the modesty of the appellant by father of the respondent, is unbelievable.

- (v) No specific date has been mentioned regarding the demand of articles when Toka, Gas Cylinder and Rs.50,000/- were demanded and that no date of beating is established on the record.
- (vi) Compromise Ex.R-3 wherein it is mentioned that sum of Rs.20,000/- has been handed over to Sewa Singh Ex-Sarpanch in lieu of the compromise dated 05.09.2008 does not indicate that there has been demand of dowry.

Issues No.2 and 3 were decided in favour of the respondent and against the appellant and the divorce petition was dismissed.

Counsel for the appellant has vehemently contended that the allegations of demand of dowry would constitute act of mental cruelty. The respondent has taken no steps to perform his part of the matrimonial obligations and that a lady who has been thrown out of the house will not opt to file a divorce petition unless and until she is actually harassed and made to suffer by staying away from the matrimonial home.

We have considered the statement of the appellant made before the Court. The appellant has herself appeared as a witness and supported her averments in the petition for divorce alleging that the respondent had created such circumstances. It is clear from her statement that on account of there being demand of dowry on 28.08.2006 and on account of inability of the parents of the appellant to give the articles, she was given beatings and she was thrown out of her matrimonial home. This fact has not been disputed that the appellant was living separately from the respondent-husband since

28.08.2006. The respondent has not produced any material on the record indicative of his desire to resume cohabitation. The respondent had filed a complaint of cruelty and demand of dowry.

We have considered the panchayat compromise *Ex.R-3*. The said document is not admissible and relevant for arriving at a conclusion that the allegations of cruelty stands established, but the said document is clearly indicative of the fact that the respondent and the appellant on account of the said circumstances were unable to stay together and have been living separately. The appellant who has not been treated with respect for the last 12 years and no steps having been taken by the respondent-husband to perform his matrimonial obligations are clearly indicative that he has neither any intention to keep his wife with respect and honour, nor he has treated her with love and affection. In ordinary course, no wife would leave the matrimonial house in case she is treated with love and affection.

It is not out of place to observe here that the counsel for the respondent has submitted that on account of long separation, the respondent-husband is also not inclined at this stage to stay together and has submitted that he has got instruction to state that respondent-husband has no objection to the appellant wife being granted decree of divorce, but the allegation of cruelty has been denied on account of pendency of some criminal litigation between the parties.

On the basis of the above discussion, we have found that the cruelty levelled by the appellant-wife stands established. The findings of the lower Court are not sustainable, as the allegations of the appellant-wife have not been fairly considered by perusing her statement. The statement of PW-2

Ram Dass and PW-3 Ram Niwas have not been discussed by the lower Court. The appeal is allowed and judgment and decree of the lower Court is hereby set aside. The marriage of the appellant with respondent is dissolved by the decree of divorce on the ground of cruelty. Decree sheet be prepared. Parties are directed to bear their own cost.

Nothing observed in this order will, in any manner, prejudice the rights of the parties in any proceedings.

(M.M.S. BEDI)
JUDGE

April 23, 2018
sanjay

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.