

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

FAO 7031 of 2014 (O&M)
Date of Decision: September 5, 2018

Rohtash KanwarAppellant

Vs.

Sudesh DeviRespondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL.

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Present: Mr.R.A. Sheoran, Advocate for the appellant.

Mr. Vivek Khatri, Advocate for the respondent.

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M.M.S. BEDI, J.

This is husband's appeal against the order dated May 1, 2014 passed by District Judge, Family Court, Hissar, dismissing his petition for divorce filed against the respondent-wife on the ground of cruelty and desertion. The lower Court has held that the appellant is not entitled to take the benefit of his own wrong as he has refused to take the respondent along without any sufficient reason.

The appellant had filed the divorce petition by pleading in his petition that he was married to the respondent on March 30, 1998 and his brother Parkash Kanwar also got married on the same day with the sister of the respondent, namely, Monika. The marriage of the appellant was attended by only 10/15 persons and it was a simple marriage. At the time of marriage the appellant was serving in Indian Army and posted in Assam.

After marriage both the respondent and her sister Monika came to their matrimonial home but the respondent started quarreling on trifle matters with the appellant. No issue was born out of the wedlock. So far as the sister of the respondent is concerned she lived happily with her husband Parkash Kanwar and had two children out of the their wedlock. The family members of the appellant had tried their level best to make the respondent understand that she should live peacefully and in harmony with the appellant but she was a lady of high temperament and used to quarrel on petty matters. The respondent threatened the appellant and his family members to involve them in the dowry case or to commit suicide. As a result of the above said behaviour of the respondent, the appellant was under great mental stress. The appellant had taken the respondent to his place of posting in Assam and Sangroor but her behaviour did not change. On account of behaviour of the respondent, the appellant had been rebuked by the Army officers. The respondent insisted that she would either live at her parental home or at Village Sulakhni. The appellant had brought the respondent to Village Sulakhni but there also she used to quarrel with the appellant and his family members and threatened them to implicate in false cases. The respondent did not do any household work at her matrimonial home in Village Sulakhni or at the place of appellant's posting and used to leave the matrimonial home and go to Deras and remained there for months without informing the appellant and his family. The mother of the respondent used to threaten to kill the appellant. Their conversation had been recorded wherein the mother of the respondent was found telling Monika that she has certain 'gunda elements' and would get the appellant killed. The appellant received letters

from the respondent where she admitted her guilt and that she would not commit suicide. The respondent got aborted herself three time without the knowledge and consent of the appellant as she did not want to have any child. The said act of the respondent caused mental agony and cruelty. The uncle of the respondent along with his sons including respondent's brother, namely, Manjeet were sent by her family to kill the appellant. They had taken away all clothes alleging that same had been given by them. In this manner, the appellant was defamed in the whole village. The appellant pleaded that he had booked two railway tickets of West Bengal where a quarter was allotted to him, whereas the respondent absconded with gold and money as a result of which the appellant got cancelled her ticket. The respondent had been living with her parents since 2009 and has got no intention to return to the matrimonial home. The respondent has also deserted the appellant.

The respondent, in her written statement, denied all the allegations and pleaded that the appellant and his family members were harassing and torturing her on account of non-fulfilling of their demand of dowry. The respondent was being humiliated by the appellant and his family members as she was unable to bear a child. The appellant and his family members want to get rid of the respondent by obtaining divorce. The respondent claimed that she had been subjected to cruelty and harassment by the appellant many a times by giving her muscular beatings. The respondent denied that she was ever taken to the place of posting of the appellant. The respondent also denied to have ever demanded to live at the parental home of the appellant at Village Sulakhni. The allegation of respondent's living in

‘Deras’ without information was also denied. Respondent levelled allegations of beatings against the appellant and claimed that she had been working in the fields also. The allegations of recording of conversation were denied. The respondent averred that she was called ‘Banjh’ (infertile lady) by the appellant and his family members. The respondent was never taken for medical check-up for her infertility. Allegations of extending threats to the appellant or his family members were also denied. The respondent claimed that she never left her matrimonial home at Village Sulakhni and was still living and residing there.

On the pleadings of the parties, following issues were framed:-

- “1. Whether the petitioner is entitled for decree of divorce on the ground as alleged in the petition? OPP.
2. Whether the petition is not maintainable? OPR.
3. Whether the petitioner has no locus standi and cause of action to file the present petition? OPR.
4. Relief.”

The appellant examined DSP Rajinder Kumar Sheoran as PW1 and sister of the respondent, namely Monika as PW 2 and himself as PW3 whereas the respondent examined herself as RW1.

On appreciation of evidence, the lower Court dismissed the petition referring to the various judgments defining expression “cruelty”. The trial Court arrived at a conclusion that it was the respondent who had been humiliated for demand of dowry and she was maltreated. The Court gave a finding that the respondent had not committed any act which could be

said to be dangerous to life, limb or health of the appellant and her conduct did not show that she had treated the appellant in such a manner that it caused even mental cruelty. The ground of desertion also did not find favour with the lower Court as such issue No.1 was decided against the appellant. Issue Nos. 2 and 3 were not pressed as such they were decided against the respondent. As a result of finding on issue No.1, the divorce petition was dismissed.

Mr. R.A. Sheoran, learned counsel for the appellant has contended that the lower Court has acted illegally in dismissing the petition for divorce as the grounds of cruelty stand established from the cogent evidence placed on record.

With the assistance of counsel for both the parties, we have gone through the record. So far as the ground of cruelty is concerned, the appellant had examined Rajinder Kumar Sheoran, DSP as PW1 who proved that FIR No. 170 of 2011 was registered against the appellant at P.S. Barwala at the instance of respondent Sudesh Devi but it was found false and he had verified the investigation. Monika is the real sister of respondent who has made a statement in the shape of affidavit Ex.PW2/A to prove the forcible entry of the respondent in the house of appellant and the instances of physical assault as well as damage to the house-hold articles; threatening the appellant to withdraw the divorce petition otherwise he would be killed. She also stated that on October 24, 2010 it was found that in Village Sulakhni, locks of the boxes and almirahs were broken and the valuable articles were stolen by the respondent. Though her husband, the real brother of the appellant, did not appear as a witness but Monika proved

that her husband Parkash Kanwar had filed a criminal complaint against the respondent and his cousin Atin which was pending in the Court of JMIC, Hissar. Rohtash Kanwar, appellant himself appeared at PW3 and deposed on the lines of his pleadings and produced his affidavit in examination -in-chief as Ex.PW3/A. He made an attempt to prove CD which contains the conversation between Monika and her mother-in-law recorded by Monika wherein the respondent had extended threats to the life of the appellant by making various telephone calls through her mother and other relatives.

In order to rebut the allegations of cruelty and desertion the respondent had appeared herself as RW1.

The lower Court dismissed the petition holding that the acts attributed to the respondent would fall within the purview of petty quibbles and the trifling differences and quarrels are expected in ordinary course in every matrimonial relationship. The testimony of Monika was disbelieved on the ground that her husband Parkash Kanwar, who is real brother of appellant was not examined as he failed to prove as to whose phone was used for recording. The testimony of Monika PW2 was also disbelieved on the ground that in order to save her matrimonial life with Parkash Kanwar, the real brother of appellant, she was compelled to depose against her own sister.

The lower Court has given advantage to the respondent on appreciation of evidence on the ground that she had to file a protection petition under Protection of Women from Domestic Violence Act, 2005, against the appellant and the husband of Monika as well as her mother-in-law whereupon all of them were specifically named and the brother of the

appellant was restrained from misbehaving with her and from doing any violent act against her vide order dated March 12, 2011.

With the assistance of counsel for both the parties, we have gone through the statements of the witnesses and re-appreciated the evidence produced on the record. The testimony of PW1 DSP was disbelieved holding that such witness had made an attempt to outrage the modesty of respondent when she was summoned by him in his office for verification of facts pertaining to the criminal case registered by her and she had also filed a complaint against PW1 before the Court of Illaqa Magistrate, Hissar besides that she had filed complaints before SP, Hissar and Chief Minister, Haryana, as well as Mahila Aayog as per his admission in the cross-examination as such he being inimical towards her. The testimony of PW2 against the respondent did not find favour with the lower Court.

We have considered the contentions of Mr. R.A. Sheoran, learned counsel for the appellant who has vehemently urged that the lower court has acted illegally in disbelieving the testimony of the witnesses. He has submitted the factum that the sister of the respondent having deposed against her, is a clear circumstance that the respondent had treated the appellant and his family members with cruelty and it is not possible for the appellant to stay with her. Counsel has vehemently urged that the respondent had lodged a false FIR and levelled allegations in a complaint to Human Rights Commission which were also found false. Referring to Ex.P16, the report of Human Rights Commission, finding the allegations of the respondent false, it was urged that it was a case of mental cruelty and lodging of criminal case which was ultimately found false has the effect of

causing mental cruelty to a party. It would be sufficient ground for seeking divorce by the appellant. Reliance was placed on the medical documents Ex.P4 to Ex.P10 in support of the contention that the respondent had undergone three abortions and she is also guilty of having given threats to the appellant and his family members besides involving them in a false case. He also submitted that lodging of complaint Ex.P3 to the Commanding Officer of the appellant through S.P. Hissar having been found false, the said act of the respondent would also lead to cruelty. It was claimed that allegation of desertion for 2 years prior to the date of filing of the petition stands established and the ground of desertion has been wrongly ignored.

With the assistance of counsel for the appellant we have carefully gone through the whole evidence from the record of the lower Court and are of the opinion that steps have been taken by the appellant to prove cruelty on the basis of testimony of PW1, his own testimony as PW3 as well as the testimony of PW2. The main allegation is that the respondent had taken steps to falsely implicate the appellant whereas all the complaints and cases of her's were found to be false. The lower Court has, on appreciation of the above said evidence disbelieved the appellant so far as the cruelty is concerned but on the basis of the conduct of the appellant having refused to perform his matrimonial obligation and having not taken any steps to take the respondent back, disentitled the appellant for the matrimonial relief. The statement of PW2 Monika regarding recording of conversation between her and her mother on the phone of Parkash Kanwar was disbelieved for the reason that Parkash Kanwar had not been examined

and that Monika had made deposition in the Court against her sister under the influence of her husband in order to save her matrimonial life.

We have carefully gone through the entire evidence on the record and tried to find out the root cause for the wish of the appellant to seek divorce. The respondent has established on the record and has also taken a specific pleading in context to the said cause. Respondent has also taken up a stand that as she has not been able to bear a child and she was being addressed as “banjh” and that in the garb of divorce petition an attempt was being made to get rid of her. The testimony of DSP PW1 has been disbelieved as the Court arrived at the conclusion that his credibility stood impeached on account of the fact that the said witness had outraged the modesty of the respondent. We do not find any fault in the said observation of the Court. PW1 appears to be an interested person having a vindictive approach towards the respondent as such his testimony is not worthy credence. Any step taken by him to help the appellant and his family members during police proceedings initiated by respondent cannot be treated against the respondent. We are of the considered opinion that testimony of PW1 R.K. Sheoran, has rightly been rejected. So far as the statement of PW2 is concerned, she apparently deposed against her own sister to protect her matrimonial life as she is married to the real brother of the appellant. Testimony of appellant as PW3 has rightly been rejected as he himself is apparently guilty of matrimonial wrong having taken no steps to bring the respondent back as the respondent has been able to establish that he has got malafide intention to get rid of her because she is not in a position to bear a child. The appellant has always been making an attempt to abuse the

process of law. Ex.P14 is a complaint which was got filed by the appellant through his brother seeking an action against the respondent and Atin under Sections 323, 452, 380, 506 IPC. The act of the appellant himself has been subject matter of cruelty under the Protection of Women from Domestic Violence Act, 2005, for short ‘the Act’, as a petition under Section 12 of the Act had been filed. The respondent had been granted interim relief on March 12, 2011. Sudesh Devi, respondent appeared as a witness and produced her affidavit as Ex.RW1/A, wherein she has specifically stated that she is unable to give birth to a child and the divorce petition has been filed on the said sole ground. The appellant wants to get rid of the respondent by getting divorce by using force and steps to harass her. Respondent stated that she herself has been treated with cruelty by the appellant and his family members so that she may leave the matrimonial home under fear. The respondent was many times beaten by the appellant and his family members mercilessly and she was treated like a slave.

In view of the above said circumstances, we do not find any reason to differ with the finding of the lower Court on issue No.1. The appeal is dismissed. The order of the lower Court dismissing the petition for divorce is upheld.

(M.M.S. BEDI)
JUDGE

September 5, 2018 sanjay	(ANUPINDER SINGH GREWAL) JUDGE
Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.