

In the High Court of Punjab and Haryana at Chandigarh

FAO-M-194-2015 (O&M)

Reserved on 7.3.2018

Pronounced on 23.3.2018

Seema Rani

.....*Appellant*

Versus

Dheeraj Kumar

.....*Respondent*

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

Present : Mr. Rakesh Nehra, Advocate for the appellant.

Mr. D.K. Tuteja, Advocate for the respondent.

GURVINDER SINGH GILL J.

1. The appellant-wife has filed this appeal challenging judgment and decree dated 10.2.2015 passed by learned District Judge, Rohtak, whereby a petition filed by her under Section 13 of the Hindu Marriage Act (hereinafter referred to as "*the Act*") for dissolution of her marriage with respondent-husband, has been dismissed.
2. As per the case of the appellant-wife set out in her petition under Section 13 of the Act, she was married to respondent-husband on 20.4.2011 according to Hindu rites and ceremonies and they lived together as husband and wife but no child was born out of the wedlock. The marriage had taken place in a temple as it was a love marriage. After marriage when she started residing with respondent-husband, she realized that the respondent-husband and members of

his family were greedy and they were not satisfied with the jewellery brought by her and started giving her beatings. Though her parents, relenting to their demands gave some more jewellery and ₹ 2 lacs in cash but the same did not satisfy them and they raised a demand of ₹ 6 lacs and upon her refusal she was turned out of her matrimonial home in the month of May 2011.

3. In reply, the respondent-husband admitted the factum of love marriage but denied that the marriage was ever consummated. The allegations of demand of dowry and beatings etc. have also been denied. The respondent-husband has taken a stand that in fact they did not live together even for a single day as husband and wife.
4. The parties were put to proof on the following issues:-
 1. Whether the petitioner is entitled for a decree of divorce on the grounds as alleged in the petition? OPP
 2. Relief.
5. While the appellant-wife herself stepped into witness box as PW-1 and also examined her father Raj Kumar Kapoor and maternal uncle Shyam Sunder as PW-2 and PW-3, respectively, the respondent-husband apart from himself stepping into witness box as RW-1 examined his father Shanti Parkash Sharma and one Rohit as RW-2 and RW-3, respectively.
6. The learned lower Court upon considering the evidence on record held that no ground was made out for dissolving the marriage and accordingly dismissed the petition under Section 13 of the Act vide impugned judgment and decree dated 10.2.2015. Aggrieved with the same, the appellant-wife has preferred the present appeal.

7. We have heard learned counsel for the parties and with their able assistance have also perused record of the case.
8. It is not in dispute that the parties had married on 20.4.2011 against the wishes of their parents. While the appellant-wife contends that the marriage had been consummated, the respondent-husband has taken a stand that they did not stay together even for a single day as husband and wife and that the marriage was never consummated. The appellant-wife while in the witness box has stated in tune with the averments made in the petition mainly to the effect that she was not accepted in her matrimonial home and that the respondent-husband and other members of his family were greedy persons and started demanding dowry right from day one and despite her father having given some more jewellery and cash, they were not satisfied with the same and raised more demands and upon her inability and refusal to meet the same, she was turned out of her matrimonial home.
9. PW-2 Raj Kumar Kapoor, father of the appellant-wife, has also stated in support of the case of the appellant-wife. During his cross-examination, a suggestion was given to him that they had arranged to re-marry the appellant-wife with one Deepak, which he denied. PW-3 Shyam Sunder, maternal uncle of the appellant-wife, has also stated in corroboration to the statement made by the appellant-wife.
10. To controvert the aforesaid evidence, the respondent-Dheeraj Kumar, while in the witness box as RW-1, has stated that in fact the parents of the appellant-wife were not happy with the marriage as the same was a love marriage and when they came to know about the marriage they illegally confined the

appellant-wife in their house and did not allow her to meet the deponent. He has further stated that in fact the parties are neighbours and their houses are adjacent to each other and that the appellant-wife did not live with the respondent-husband even for a single day. He further stated that he or other members of his family had never raised any demand of dowry. RW-2 Shanti Parkash Sharma, father of the respondent-husband, and RW-3 Rohit have also stated in support of the case of the respondent-husband. Both have categorically stated that the appellant-wife never resided at her matrimonial home. The learned lower Court while referring to the evidence has, however, returned a finding to the following effect:-

“When it was a love marriage and no dowry was given, there was no occasion for the respondent and his family members to raise any such demand and harass her over demand of dowry and that too immediately after the marriage as it is the case of the petitioner that she had resided with the respondent only for a month and it was during this period she was harassed and maltreated over demand of dowry”.

11. The aforesaid observations are rather unfounded for the reason that in a case of love marriage the said element of “love” is between the boy and the girl and if the love marriage happens to be against the wishes of the parents, then usually the wife needs some time to be accepted in her matrimonial home by the other family members of the husband and chances of friction being there between the wife and her in-laws are galore. In the present case, the demands of cash and jewellery are stated to have been made by the respondent-husband

and other members of his family after the marriage when the appellant-wife started residing in her matrimonial home. As such the aforesaid observation that since it was a case of love marriage, there was no occasion for the respondent-husband and other members of his family to raise any demand or harass her over demand of dowry cannot be held to be based on sound reasoning.

12. On the other hand, the stand taken by the respondent-husband that he and his wife did not stay together even for a single day and that the parents of the appellant-wife kept his wife confined and did not permit her to live with him, cannot be accepted as the respondent-husband who had the courage to go in for love marriage against the wishes of his parents would not have chosen to sit quietly at home in case his wife was not permitted to stay with him even for a single day. There is nothing on record to show that he had ever reported the matter to any authorities or had ever filed any habeas corpus or any petition seeking protection or any petition seeking restitution of conjugal rights so as to vindicate his stand. All this rather shows that the appellant-wife was compelled to leave her matrimonial home and to stay with her parents on account of the hostile atmosphere in her matrimonial home.
13. The very fact that the respondent-husband who had contracted love marriage with the appellant-wife has taken a stand that the marriage was never consummated goes a long way to show the kind of person he is, who instead of ensuring that his wife is kept comfortably and in a cordial environment has joined hands with his family in their greed to extract money and valuables from the family of the appellant-wife. Such like conduct would duly qualify to be called as cruelty, so as to entitle the appellant-wife for a decree of

divorce.

14. The plea of the counsel for respondent that the divorce proceedings stand filed by the appellant-wife under the undue influence of her parents is not acceptable as the fact has been cross checked by us while making an attempt to bring about the reconciliation under the statutory obligation of this Court under Section 23 (2) of the Act. The appellant-wife on the basis of her experience of acquaintance with respondent has expressed that she is not herself willing to stay with the respondent and the proceedings for divorce have not been initiated by her under coercion, threat or undue influence of her family members.
15. The present case is an instance of a young girl, who had married the respondent on the basis of sentimental decision taken at a young age as teenager persuaded by the assumed fantasies and expectations. But with the passage of time on facing realities, the dreams built in illusions shattered by the greed and misbehaviour of the respondent.
16. In view of our aforesaid discussion, the findings of lower Court on issue no.1 cannot sustain and are hereby reversed holding that the respondent had treated the appellant with cruelty.
17. Consequently, the appeal merits acceptance and is hereby accepted. The impugned judgment and decree are hereby set aside and the petition under Section 13 of the Hindu Marriage Act, 1955 stands accepted. The marriage of the parties is hereby dissolved by passing a decree of divorce on grounds of cruelty.

18. Decree sheet be prepared. Parties are left to bear their own costs.

(M.M.S.Bedi)
Judge

(Gurvinder Singh Gill)
Judge

March 23, 2018
pankaj

Whether speaking/reasoned Yes/No

Whether reportable Yes/No