

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.

CMM 160 of 2015 and  
FAO-M-403 of 2015 (O&M)

Date of Decision: February 27, 2018

Jasdeep Kaur

.....Appellant

Vs.

Randeep Singh

.....Respondent

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

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Present: Appellant Jasdeep Kaur in person.  
Mr. B.P. Singh Gill, Advocate for the respondent.

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**M.M.S. BEDI, J.**

The appellant-wife has preferred this appeal against the order dated May 30, 2015 granting decree of divorce nullifying the marriage of the appellant with the respondent under Section 13 (1) (ia) of the Hindu Marriage Act.

As per the averments in the petition filed by the respondent-husband, the marriage between the parties was solemnized on December 17, 2011 at Ludhiana. It was alleged in the petition that the appellant-wife had come from Canada to India for marriage and there was an understanding between them that the appellant-wife would call the respondent-husband to Canada and for this purpose the appellant-wife and her family had demanded a sum of Rs.20 lacs under the garb that the amount was required for completing immigration formalities and settling the respondent-husband in

Canada. It was claimed in the petition that parents of the respondent-husband were able to arrange only a sum of Rs.10 lacs and the marriage was performed on December 17, 2011 at Ludhiana. The marriage was registered on December 22, 2011. The appellant-wife refused to consummate the marriage on the pretext that she would consummate the marriage only when the respondent-husband and his family members paid the remaining amount of Rs.10 lacs. The respondent-husband though felt anguished but did not press for consummation of the marriage. He claimed that on account of said conduct of the appellant-wife, he suffered mental agony.

The appellant-wife returned to Canada on January 26, 2012 with a promise that she would call the respondent-husband to Canada after completion of the requisite immigration papers but she did not take any step to call the respondent-husband to Canada rather avoided the calls of the respondent. It is averred in the petition that she threatened him not to call her. The behaviour of the appellant-wife was allegedly arrogant and she used to utter derogatory words against the respondent and his family members. During her stay, she refused to perform any matrimonial obligations and remained busy in shopping and other activities. The said conduct resulted in insult and mental agony to the respondent-husband. The allegation was levelled in the petition that the appellant-wife and her close relations including parents were involved in anti social activities and they were usurping the property of one Manjot Kaur, sister-in-law of the appellant. The appellant-wife had allegedly threatened the respondent-husband to face dire consequences in case he dared to approach or call her. The appellant-wife refused to join the company of the respondent-husband.

After service, the appellant-wife contested the petition for divorce alleging that material facts had been suppressed by the respondent. It was admitted that she had come from Canada for marriage but it was denied that any promise for shifting to Canada on payment of sum of Rs.20 lacs was made. The marriage was with the mutual choice of the parties. The reason for performing the marriage at Ludhiana was that the family of the respondent was residing in Ludhiana and they did not agree to go to Ferozepur for solemnisation of the marriage. The family of the appellant had spent a sum of Rs.4,50,000/- on the marriage function and golden ornaments. A sum of Rs.5,00,000/- was also given to the respondent at the time of the marriage but the respondent and his family members were not satisfied with the dowry and demanded cash from the family of the appellant. Amount of Rs.2 lacs was paid in cash to the respondent in January, 2012 but despite the said fact she was harassed. The brother of the appellant had allegedly given a sum of Rs.8,25,000/- in cash to the respondent and his family members in August, 2012 pursuant to their demand. The factum of parties having gone for honeymoon to Goa on January 15, 2012 is admitted but all the expenses were borne by the appellant and her family members. She was abused and slapped by the family of the respondent. On her return, the mother of the respondent-husband had slapped the appellant as she did not agree to their illegal demand to get share from her family property. The allegation that she refused to consummate the marriage was denied. All the other allegations were denied specifically. Regarding the allegation of involvement of the family members of the appellant in illegal activities regarding Manjot Kaur,

it was clarified in the reply that Manjot Kaur had committed fraud with the family of the appellant and a case was registered against her as FIR No.92 dated 15.06.2013 and another case was registered in Canada and to save their skin respondent and his family members levelled false allegations against them. A specific allegation has been levelled that the respondent and his family members demanded Rs.50 lacs from the appellant and her family members.

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

- “1. Whether the respondent has deserted the petitioner and subjected him to cruelty? OPA
2. Whether the present petition is not maintainable? OPR
3. *Relief.*”

The lower Court, on appreciation of evidence, decided issue No.1 in favour of the respondent, whereas issue No.2 was decided against the appellant. On the basis of findings on issue No.1 and 2, the marriage between the parties has been dissolved by decree of divorce.

The lower Court has given a finding to the effect that the appellant has not deserted the respondent but so far as cruelty is concerned, the trial Court has observed as follows:-

“17. Whereas it being in evidence of the petitioner that he had tried to contact the respondent who failed to respond and never visiting India thereafter though she was capable of doing so and with regard to non consummation of marriage the petitioner and respondent staying apart since 26.01.2012 though for technical

reasons ground of desertion would not be available as a ground for dissolution of marriage but collective effect of aforesaid circumstances, where respondent failed to appear to contradict the allegations would definitely amount to cruelty and petitioner as such proved to have suffered cruelty at the hands of respondent the issue is answered accordingly”.

Perusal of the above said finding indicates that the factum of appellant having stayed apart from the respondent-husband since January 26, 2012 has been considered to be a parameter for determining the cruelty. So far as non-consummation of marriage is concerned, the lower Court arrived at a conclusion that on account of appellant having not appeared to contradict the said allegation, the same could be presumed by the Court.

The appellant has appeared in person claiming that she has come all the way from Canada to contest her matrimonial right.

In view of the provisions of Section 23 (2) of the Hindu Marriage Act, imposing statutory duty on every matrimonial Court to make an endeavour to bring about reconciliation between the parties, this Court asked her if it would be possible for her to resume cohabitation with the respondent in the long run. She was also advised to rethink if on payment of some permanent alimony, she could be compensated to agree to divorce. It is pertinent to observe here that she claimed that she could think of accepting the divorce in case her jewellery and expenses borne on the marriage could be returned. We could persuade her to agree to sum of Rs.15 lacs to Rs.20 lacs. The said proposal was put to the husband also. He denied his liability

to return any alleged articles of 'stri dhan' but on persuasions he offered sum of Rs.5 lacs as permanent alimony which amount was not acceptable to the appellant wife. In view of said circumstances, we were compelled to take up the adjudication of this appeal on merits on appreciation of evidence produced by both the parties.

The respondent has taken up a specific plea in the pleadings and made best efforts to establish that the marriage was performed on contractual basis i.e. a sum of Rs.20 lacs had been demanded by family of the appellant to complete the immigration formalities for settling the respondent/ husband in Canada. Pursuant to the said agreement, the parents of the respondent allegedly paid a sum of Rs.10 lacs as such the marriage was performed on December 17, 2011 in Ludhiana. The parties had gone out for honeymoon from January 15, 2012 to January 18, 2012 but the appellant refused to consummate the marriage unless and until the balance of Rs.10 lacs was paid. The refusal for consummation by the appellant was the cause of mental anguish of the respondent. The appellant allegedly returned to Canada on January 26, 2012 with a false promise that she would send the requisite immigration papers but she did not come back.

Counsel for the respondent has vehemently contended that in order to establish that the marriage was not consummated and sum of Rs.10 lacs had been paid he himself appeared as a witness and produced his father Ravinder Singh as PW2, Naranjan Singh as PW3 and Santokh Singh as PW4.

We have gone through the affidavits of the said witnesses who have gone to the extent of saying that the sum of Rs.10 lacs was paid and

demand of remaining sum of Rs.10 lacs was raised by the family of the appellant. They have gone to the extent of stating that the marriage was not consummated. The plea of desertion has also been taken but the lower Court has arrived at a conclusion that the marriage was not liable to be dissolved on the basis of desertion which finding is apparently correct as neither any intention to desert nor actual fact of period of desertion of more than 2 years could be established. The lower Court has arrived at a conclusion that she is capable of coming back but she did not make any effort and failed to respond. The collective conduct of the appellant would bring the action of appellant under the parameters of cruelty especially when the appellant had failed to appear to contradict the allegations of cruelty by appearing in person.

A perusal of the statements of respondent PW1 and Naranjan Singh and Santokh Singh shows that no day, date and time has been specified either in the pleadings or in their testimony regarding payment of Rs.10 lacs.

Learned counsel for the respondent has made an attempt to establish cruelty by referring a document Mark 'D' which is a photocopy of some complaint made by Manjot Kaur, Harminder Kaur and Amarjit Singh, residents of Canada against Hardeep Singh of having committed a fraud against Manjot Kaur in connivance with Jasdeep Kaur, the appellant. Even if it is presumed that the reliance could be placed on this document, the said document will not, in any manner, establish the cruelty as sought to be established against the appellant.

The appellant appearing in person has stated that she being abroad was not able to produce number of documents indicating that the jewellery purchased had been handed over to the respondent's family. The photographs Exs R-2, R-3, R-4 and R-7 indicate that rings were given at the time of the marriage ceremony to the family members of the respondent. The judgment of the lower Court appears to be based upon conjectures and surmises when it arrived at a conclusion that the cruelty is established against the appellant.

On appreciation of evidence, we are of the considered opinion that the witnesses produced by the respondent have not been able to establish the element of cruelty rather it is a case where the husband has tried to take advantage of his wrong by having not made any efforts for resuming cohabitation. The appellant had produced Hardeep Singh who was the brother of the appellant and denied that any demand of Rs.20 lacs for completing the immigration formalities and settling the respondent in Canada was made. Receipt of sum of Rs.10 lacs by the family of the appellant has been denied by him. He has established that pressure was put on the family members of the appellant to pay a cash of Rs.4.50 lacs on the marriage function. Gold ornaments worth Rs.5lacs were given at the time of marriage to the husband and his family members which was proved from the photographs of the album. He has stated that he had given Rs.8.25 lacs cash in August 2012 to the respondent and his family members to fulfill their greed. He also stated that sum of Rs.50 lacs was demanded from the appellant and her family members as a condition for permitting her back in

the home. The said statement of witness has not been considered at all by the lower Court.

In view of the above circumstances, we are of the opinion that the findings of the lower Court that the appellant had treated with cruelty is based upon misreading of evidence and is also founded on unwarranted assumptions and presumptions not established on the evidence produced by the respondent.

In view of said circumstances, the appeal is allowed and the judgment and decree dated May 30, 2015 passed by the lower Court dissolving the marriage on the ground of cruelty are hereby set aside.

Decree sheet be drawn.

It is not out of place to mention here that in case both the parties at any stage arrive at a consensus to dissolve the marriage on settlement of some terms, it will be open to them to approach the Court of competent jurisdiction for dissolution of marriage by a decree of mutual consent.

The application under Section 24 of the Hindu Marriage Act is disposed of as the appeal having been finally decided.

(M.M.S. BEDI)  
JUDGE

February 27, 2018  
sanjay

(GURVINDER SINGH GILL)  
JUDGE

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