

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

F.A.O.-M-228 of 2016
Date of Decision: 10.05.2018

Sakshi Kapoor

....Appellant (s)

Versus

Anil Kumar

Respondent(s)

***CORAM:- HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE HARI PAL VERMA***

Present:- Mr. Gaurav Tangri, Advocate
for the appellant(s).

None for the respondent.

HARI PAL VERMA, J.

The appellant-Sakshi Kapoor has preferred the present appeal challenging the judgment dated 07.04.2016 passed by learned Additional District Judge, Karnal, whereby the petition filed by the appellant under Section 13 of the Hindu Marriage Act (for brevity, “the Act”) seeking dissolution of marriage by way of decree of divorce, was dismissed.

Briefly stated, the appellant-wife filed a petition under Section 13 of the Act for divorce. As per the appellant, the marriage between the parties was solemnized on 15.02.2009 and out this wedlock, a female child was born. After the marriage, the respondent-husband indulged in

gambling and cricket betting and certain complaints were also filed against him, including a complaint under Section 138 of the Negotiable Instruments Act, 1881 as well as FIR No.196 dated 20.04.2013 under Section 420 registered at Police Station City Fatehabad. In order to fulfill his vices, the respondent pledged gold jewellery and lost money, jewellery, articles etc. in gambling. The appellant and her parents tried to persuade the respondent not to indulge in such activities, but it did not have any affect on the respondent. Rather, he (husband) started giving merciless beatings to the appellant and harassed her. Under these compelling circumstances, the appellant had to leave her matrimonial home, as the respondent continued to indulge in bad vices. During this period, the respondent visited the parental house of the appellant several times in late night hours with an assurance that he will mend his ways. Believing that the respondent will improve, the appellant, being an emotional lady and considering the future of their daughter, came back to her matrimonial home. However, the behaviour of the respondent did not change and he continued with his vices. The respondent is a habitual gambler who continuously indulged in cricket betting. He has spent all his earnings in gambling and cricket betting. It has also been alleged that the respondent and his family members even tried to kill the appellant by strangulating her with the help of a *chunni*. Thus, the appellant left her matrimonial home along with her daughter. In this manner, the respondent is guilty of causing physical and mental cruelty upon the appellant without her being at fault. Therefore, the appellant had filed a petition under Section 13 of the Hindu Marriage Act seeking dissolution of marriage.

Though the respondent-husband has contested the petition, but has not disputed the solemnization of marriage between the parties and birth of a female child from this wedlock. It has been averred that the respondent remained admitted in Rehabilitation Centre, Dehradun from 10.06.2014 to 13.09.2014 in order to get rid of his bad habits and after getting treatment, he was living a normal life. The respondent requested the appellant to join his company, but she has virtually refused, obviously under the influence of her mother, who is bent upon to spoil their matrimonial life. The respondent is willing to keep and maintain the appellant-wife as well as his daughter.

Learned Family Court after hearing both the sides and appreciating the evidence so adduced, dismissed the divorce petition and returned a finding that though the respondent was in bad company but now, he has reformed after taking treatment from Dehradun and the instances narrated by the appellant are not of such grave nature, which may amount to mental cruelty so as to call for dissolution of marriage. The relevant part of the findings so recorded by the Family Court read as under:-

“19. From the evidence available on record and the differences arose between the parties, this Court is of the view that the respondent was in the bad company earlier. He was betting on Cricket (satta). Now he has reformed himself after taking treatment in Dehradun. He is doing a job. There were differences on some issues as respondent was in the habit of gambling. The allegations made by the petitioner about physical cruelty has not proved at all. No such complaint was ever made against the respondent or his family members in the Woman Cell or any other Police Station, Karnal or at Fatehabad. Admittedly, respondent was shunted out from his

job but later on, when the matter was enquired by the Federal Bank, respondent was found innocent and he was given 'Experience Certificate' Mark-C. At present, respondent is working and getting handsome salary. Petitioner is also working /doing job in bank. Therefore, they can live their life happily. The instances given by the petitioner are not such which may amount to mental cruelty to dissolve the marriage as the allegations are general in nature and these trifling matter should not be made prestige issue. Both are earning presently. Previous conduct of the respondent is also not so serious which would amount to cruelty. Hence, from the above discussion, it is held that instances of cruelty are not such, which would amount matrimonial offences to dissolve the marriage. Accordingly, issue No.1 is decided against the petitioner."

In these circumstances, the appellant has filed the present appeal challenging the judgment and decree passed by the Family Court.

Notice of this appeal was issued to the respondent for 28.09.2016, which was duly served upon him, but the respondent did not put in appearance. Thereafter, this Court vide order dated March 27, 2017 issued fresh notice to the respondent for 26.10.2017, but as the respondent could not be served, this Court vide order dated 26.10.2017, ordered service upon the respondent by way of publication in the newspaper "Dainik Bhaskar" for 12.03.2018. But despite service by way of publication, no one put in appearance on behalf of the respondent. In these circumstances, before proceeding against the respondent *ex-parte*, it was ordered that service be effected upon him through registered post as well as through his counsel Mr. Balraj Sangwan, Advocate, District Courts, Karnal, who represented the respondent before the Family Court.

However, still no one appeared on behalf of the respondent. This Court has made all sincere and repeated efforts to serve the respondent including by way of publication and registered post, but to no avail. Therefore, this Court has recorded its satisfaction vide order dated May 01, 2018 that the respondent is evading service. Since the respondent has been served by way of publication also, this Court treat it a valid service.

Learned counsel for the appellant has argued that the Court below has lost sight of the fact that virtually it is a broken marriage and nothing could be achieved by keeping the parties tied together to a marriage which has ceased to exist. Involvement of the respondent in gambling and cricket betting is duly established. The respondent remained admitted in Rehabilitation Centre at Dehradun from 10.06.2014 to 13.09.2014 in order to get rid of his bad habits, but still he did not reform himself. No wife would like to leave her matrimonial home unless cruelty is caused to her and the cruelty has to be seen from the point of view of a wife. The admission of the respondent that he is indulged in gambling is in itself sufficient to prove that the respondent has caused mental cruelty to the appellant. The Federal Bank, where the respondent was working had terminated his services, as he had committed a fraud with its customers.

We have heard learned counsel for the appellant and perused the record.

The appellant has sought divorce on the ground of cruelty caused to her by the respondent. She has quoted specific instances in this regard. However, learned Family Court has not appreciated the evidence in its correct perspective. Despite there being enough evidence to show that

the act and conduct of the respondent is sufficient to establish that the respondent has caused cruelty to the appellant. The trial Court had ignored it.

The respondent had committed fraud with many customers of the Federal Bank, where he was employed and for this reason, his services were terminated by the bank on 09.11.20011 after conducting an enquiry against him. Even FIR No.196 dated 20.04.2013 under Section 420 was registered against the respondent at Police Station City Fatehabad. In his affidavit Ex.RW-1/A, the respondent has admitted that he had fallen in bad company and in order to get rid of these bad habits he had remained admitted in Rehabilitation Centre, Dehradun from 10.06.2014 to 13.09.2014 and after taking the treatment, he is living a normal life.

The word 'cruelty' has not been defined in the Hindu Marriage Act. The concept of cruelty varies from case to case. No strait jacket formula can be laid down to gauge the degree of cruelty. In some cases, the allegations so levelled could be just vague and uncertain but in some cases such allegations could be of high magnitude, which may cause damage to the reputation of the other partner, making it difficult for her or him to live in the society. What constitutes mental cruelty, depends upon the facts and circumstances of the each case. In the case in hand, there is no dispute that the respondent has clearly admitted that he was in bad company and was involved in gambling and cricket betting, though the respondent claims that he has left all these bad habits after taking treatment from the Rehabilitation Centre, Dehradun. The respondent has also claimed that he had resigned from his services with Federal Bank w.e.f. 13.01.2011,

but the fact remains that his services were terminated by the bank because of the fraud committed by him on 09.11.2011. The Federal Bank, with which the respondent was working, terminated his service on 09.11.2011. The plea of respondent that he had resigned from the bank is again an attempt to misguide the appellant.

Therefore, this Court finds that involvement of the respondent in gambling, cricket betting and bank fraud is sufficient to establish that he has caused mental cruelty to the appellant, which constrained her to leave her matrimonial home. No lady would like to stay away from her husband. In the case in hand, the parties have a female child also, but without caring for the appellant and her daughter, the respondent has not put any sincere efforts to mend his ways. Even in the proceedings pending before this Court, though this Court has made its best efforts to serve the respondent including by way of publication, registered post and even through the counsel of the respondent who represented him in the Family Court, the respondent has opted not to appear. It shows that he is not interested to maintain his matrimonial home. Considering the nature of allegations levelled against the respondent, which have not been controverted by the respondent in the appeal, we are of the opinion that the respondent is guilty of causing cruelty upon the appellant, which is a sufficient ground for dissolution of marriage. We may make reference to judgment of Hon'ble the Supreme Court in the case of **Naveen Kohli v. Neelu Kohli 2006(4) SCC 558**, wherein it was held as under:-

“Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that

the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.

A law of divorce based mainly on fault is inadequate to deal with a broken marriage. Under the fault theory, guilt has to be proved; divorce courts are presented concrete instances of human behaviour as bring the institution of marriage into disrepute.

We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases do not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist.

Some jurists have also expressed their apprehension for introduction of irretrievable breakdown of marriage as a

ground for grant of the decree of divorce. In their opinion, such an amendment in the Act would put human ingenuity at a premium and throw wide open the doors to litigation, and will create more problems than are sought to be solved.”

Accordingly, the present appeal is allowed and the impugned judgment and decree passed by the Family Court is set aside. Consequently, the marriage between the parties is ordered to be dissolved.

Decree sheet be prepared accordingly.

(M.M.S. BEDI)
JUDGE

(HARI PAL VERMA)
JUDGE

May 10, 2018
AK

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No