

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-7777-2016 (O&M)
Date of Decision:05.07.2019

Vinod Kumar

. Appellant

Vs.

Smt. Suman Lata

. Respondent

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE HARNARESH SINGH GILL

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

Mr.Ramender Chauhan, Advocate,
for the respondent.

RAKESH KUMAR JAIN, J.

The husband is in appeal against the judgement and decree dated 17.9.2016 passed in favour of the respondent-wife by which a decree of divorce has been granted to her.

In brief, the marriage of the parties was solemnized on 27.4.2001 at Bhiwani as per Hindu rites and ceremonies. Three children are born out of the said wedlock namely, Simran, Priyanshu and Hitesh. The respondent filed a petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 [for short 'the Act'] for seeking a decree of divorce on the ground of cruelty. She has alleged that the appellant has always been unsatisfied with the dowry and used to maltreat and harass her for not bringing a car. She has further averred that the appellant is a habitual drunkard and used to waste his entire salary on it whereas she has acquired M.A. degree and the post of Government teacher with her own efforts. It is also alleged that the appellant used to keep the respondent confined in a room by tying her hands

and legs throughout night without providing her any meal. She has constructed a house at Meham after taking home loan and spent ₹60,000/- for opening a hotel for her husband which was closed by him within 10 days and the furniture etc. was sold in order to satisfy his bad habit of drinking. It is also averred that the appellant used to force his minor child Hitesh, who was 2 years old, to consume liquor and used to torture the respondent by keeping her and children awake whole night by putting their life at threat. It is also stated that he used to make filthy remarks and accusation about her character. He used to bring some vagabond type persons to the house and used to ask the respondent to serve them liquor and entertain them and on her protest used to harass her in their presence. It is also averred that although she had spent about 12 years with the appellant and gave birth to three children yet had never enjoyed a happy married life as it always ran into rough weather. It is alleged by the respondent that she kept on tolerating the atrocities and cruelty of the appellant with a hope that with the passage of time everything would be alright but the behaviour of the appellant continued to be rude and rough towards her while living together and on 26.7.2013 at about 11.00 PM, the appellant after giving merciless beatings to her and children threw them out from matrimonial home which was though constructed by her after taking home loan. It is also alleged that she had moved an application on 29.7.2013 to the Human Rights Commission at New Delhi about the atrocities of her husband but to no effect.

On the other hand, the appellant has averred in his reply before the Court below that he was instrumental in the education of the respondent of her B.Ed. from Jammu and Kashmir and MA from M.D. University, Rohtak. It is alleged that the house was constructed by him in Village Kharkhara but the respondent insisted to sell the house as she wanted to

move to Meham. They started living at Meham and after some time they have constructed a house but she had allegedly developed illicit relations with one Pardeep Dalal of village Rithal and started property dealing with him and therefore, the petition has been filed for seeking a decree of divorce. All other allegations made by the respondent were denied by him in his reply.

On the pleadings of the parties, the learned Court below framed the issues on 09.02.2015. Both the parties led their respective evidence.

The learned Court below while deciding issues No.1 & 2 together opined that the appellant has been causing cruelty to the respondent and therefore, a decree of divorce was granted to her.

In this regard, the learned Court below has observed that the respondent had been paying the school fee of all the minor children which she has proved vide receipts Ex. P1 to P3 and Ex. PW4/A and Ex. PW4/B and has raised the construction of the residential house by making payment of the loan which she has proved vide Ex.P4. It is also observed that the respondent had moved an application against the appellant to the concerned police vide Ex.PW2/A and the appellant was challaned by the police vide Ex.PW2/B. It is also found by the Court that the respondent had made a complaint against the appellant to the Human Rights Commission, New Delhi, which has been brought on record as Mark 'A'. The Court below, while referring to a decision of the Supreme Court rendered in a case ***"Samar Ghosh Vs. Jaya Ghosh"*** (2007) 4 SC 511 has observed that the act and conduct of the appellant towards respondent was of cruelty as he had been torturing her physically also in order to satisfy his sadistic pleasure.

Aggrieved against the judgment and decree of the learned Court below, the present appeal has been filed, which was delayed by 48 days.

The delay was condoned by this Court and after notice, the parties were directed to appear before the Mediation and Conciliation Centre of this Court to explore the possibility of a compromise because the Court had found that there are three children of the parties to the *lis*. The matter could not be resolved in the Mediation because of the non-cooperation of the parties and the matter was referred back to this Court for the decision on merits.

Learned counsel for the appellant has submitted that the learned Court below has committed an error in accepting the petition of the respondent without looking into the fact that the parties have three children out of the said wedlock and the allegations made by the respondent have not been proved by leading cogent evidence. It is submitted that actually the differences between the parties has arisen when the respondent had acquired the degree of M.A. and joined government service. It is submitted that the appellant-husband is not in a position to match the status of the respondent-wife otherwise the allegations of dowry cannot be believed after the expiry of 12 years of marriage especially when both the parties are having three children out of the wedlock.

On the other hand, learned counsel for the respondent has submitted that the behaviour of the appellant was not good from the beginning as he had always been pressing hard for car in dowry which the respondent could not afford and the marriage could survive for 12 years because the respondent had been tolerating the misbehaviour of the appellant while considering the interest of her three minor children and had ultimately taken the bold step of filing the petition for seeking a decree of divorce when the appellant had started making allegations against her character also that she was having illicit relations with some other person. It is also submitted

by him that all the evidence brought on record by the respondent indicates that she has been looking after the matrimonial affairs herself and had also worked hard to get M.A. degree and the government job. It is further submitted by him that the respondent has categorically stated in para No.8 of the petition filed under Section 13 of the Act about the accusation of the appellant about her character about which the appellant has stated in so many words in para No.9 of the preliminary objections that the respondent is having relations with one Pardeep Dalal of Village Rithwal. It is further submitted that the appellant has made the same statement in para No.3 of his affidavit dated 16.8.2016 which is on record as Ex.RW1/A6. It is thus submitted that this allegation of the appellant that the respondent is having illicit relations with one Pardeep Dalal of Village Rithwal without there being any basis or evidence, which could have been led by him before the Court below, is sufficient for the Court below to have granted the decree of divorce.

Learned counsel for the appellant has submitted that the learned Court below has not granted decree of divorce on this count but he could not deny that the allegations have been made by the appellant in the written statement about the character of the respondent and also in his affidavit which has been filed by him in his examination-in-chief.

We have heard learned counsel for the parties and perused the available record with their able assistance.

Although this Court has tried to reunite the parties through the process of mediation but due to non-cooperative attitude of both the parties, the said endeavor could not materialize. On merits, the Court below has referred to the documentary evidence on record to form an opinion that the respondent has been shouldering the entire burden of the matrimonial home,

acquired the decree of M.A. with her toil and got the government job of a teacher. It is also found by the Court below that though there is no medical record about the torture having been caused by the appellant to the respondent but the very fact that the respondent has made the complaints to the police on the basis of which the appellant was challaned and the complaints having been made to the Human Rights Commission about the misbehaviour of the appellant not only with the respondent but with the children as well and the very fact that the appellant has openly made an allegation against the respondent of having an illicit relations with one Pardeep Dalal of Village Rithal is sufficient to prove that the appellant has been treating the respondent with cruelty for which she has been justified in seeking the decree of divorce.

No other point has been raised.

In view of the aforesaid facts and circumstances, we do not find any merit in the present appeal for the purpose of interference and hence, the same is dismissed though without any order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

05.07.2019

Vivek

Whether speaking /reasoned : *Yes/No*

Whether Reportable : *Yes/No*