

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. M-204 of 1998

Date of decision: 27.08.2009

Rishi Pal

....Appellant

versus

Luxmi Devi and another

....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD K. SHARMA Present: - Mr. Vishal Gupta,
Advocate,

for the appellant.

None for the respondents.

VINOD K. SHARMA, J.

This appeal by the appellant-husband is directed against the judgment and decree dated 25.9.1998, passed by the learned Additional District Judge, Jagadhri, vide which the petition filed by the appellant under Section 13 of the Hindu Marriage Act, has been ordered to be dismissed.

The appellant filed a petition under Section 13 of the Hindu Marriage Act on the pleadings, that the parties were married according to Hindu rites on 18.4.1984 at village Malakpur Bangar. Out of the wedlock, one daughter, who was aged about 12 years on the date of presentation of the petition, was born, and living with the appellant. In the year 1992, the relations between the parties got strained, as the respondent-wife started going to her parents' house very often FAO No. M-204 of 1998

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unnecessarily and sometime even without the permission of the appellant. The appellant got suspicious and in the middle of September, 1992, when the respondent was at her parental home, the appellant also went there and he came to know that she was in the house of respondent No. 2, and he found them in a compromising position. In spite of having been caught, she did not desist from her activities and continued going to her parental home and reside there with respondent No. 2. He alleged that respondent-wife was leading adulterous life. It was further the case of the appellant, that after the appellant told the parents of the respondent-wife about her illicit relations with respondent No. 2, she started hating the appellant and in spite of best efforts, she could not be brought back to matrimonial home. It was pleaded that the respondent-wife had deserted the appellant-husband.

The respondent-wife also filed a case under Section 498-A IPC against the appellant, in which he was acquitted. The respondent-wife also filed a petition under Section 125 Cr.P.C. On notice, both the respondents controverted

the case set up by the appellant. It was claimed by the respondent-wife, that a sum of Rs.1.00 lac was spent on the marriage. She denied the allegations levelled in the petition. It was claimed, that the appellant was a drunkard and used to pick up quarrels with her on very petty matters. It was the appellant, who made her life hell. She denied having gone to her parental house very often in the year 1992. She also denied the allegations of adultery. It was alleged that the appellant made a demand of Rs.20,000/- (Rupees twenty thousand only), her father brought a panchayat and paid Rs.10,000/- (Rupees ten thousand only) to the FAO No. M-204 of 1998

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appellant and the appellant agreed to keep the respondent-wife with him. But she was again turned out of the house after 20 days of stay at matrimonial home. The case set up in defence was, that the appellant was not happy with the respondent-wife, as she could not give birth to a male child. The allegations of desertion were denied. She, however, admitted having filed the complaint under Section 498-A IPC against the appellant. It was pleaded by the respondent-wife that brotherhood intervened and the matter was got compromised. As already observed above, other allegations were denied. Respondent No. 2 also denied the allegation of adultery.

The learned trial Court, on appreciation of evidence, decided issues of adultery and desertion against the appellant. The learned Court also found the allegations of cruelty to be false and issue of cruelty was also decided against the appellant.

On the question of adultery, the learned Court held that as per pleadings and the evidence, the appellant condoned the act of adultery, furthermore, there was variance in the pleadings and proof on this aspect, therefore, the statement of appellant was not believed. The learned Matrimonial Court on the question of desertion found, that it was the appellant, who was at fault. The learned Court also did not believe the letter on which the reliance was placed to prove the desertion.

The learned Matrimonial Court on the question of cruelty held, that the respondent-wife had not supported the prosecution case, because of intervention of the panchayat, therefore, allegations of false prosecution were not proved.

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This finding of the learned Matrimonial Court cannot be upheld. It may be noticed, that it is the admitted case, that a criminal case was filed against the appellant, which resulted in his acquittal. It is also proved on record, that the parties did not live together thereafter. Therefore, it cannot be said that the respondent had not supported the case because of settlement between the parties. The Hon'ble Division Bench of this Court in Dharam Pal Vs. Smt. Pushpa Devi, AIR 2006 Punjab and Haryana 59 has been pleased to hold, that when wife makes a complaint and the allegations levelled by wife are found to be false then the wife would be guilty of false prosecution against the husband, which amounts to cruelty. It is well settled law, that filing of false criminal case against the spouse is an act of cruelty, on the basis of which the spouse suffering, is entitled to decree of divorce. It is also not in dispute and proved on record, that the respondent-wife is living at her parental home, leaving the minor daughter in custody of her husband. This conduct of the respondent- wife also amounts to mental as well as physical cruelty, as it hampers his performance of duty, as held by this Court in Balbir Kaur Vs. Daljit Singh, 1997(2) RCR (Civil) 121 and Raj (Smt.) Vs. Dalbir Singh, 1997 (2) All India Hindu Law Reporter 82. This Court in case of Raj (Smt.) Vs.

Dalbir Singh (supra) has laid down as under: - "5. Having heard counsel for the respondent who took me through the evidence on the record, I am of the opinion that the findings recorded by the trial court are unassailable and that the present appeal is devoid of any merit. The husband in his petition has alleged that the FAO No. M-204 of 1998

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appellant was a short tempered lady and was constantly misbehaving with him and his family members. He did not plead any instance of misbehaviour in his petition nor did he lead any evidence in this regard. The general plea that the wife was constantly misbehaving is rather vague and not sufficient to hold that the husband was treated with cruelty. In regard to the plea of desertion, the wife herself while appearing as RW1 stated that she had been thrown out of the house after being beaten. She did not state in her examination-in-chief that the husband or his family members ever asked for dowry. Apart from her statement, there is no evidence on the record to show that she was thrown out of the house as alleged by her. Surprisingly, while leaving for her parents house, she left behind a female child who has been brought up by the father. On the other hand, the husband stepped into the witness box as PW1 and stated that the wife had deserted him without sufficient cause and that he took panchayats to her parents house for bringing her back but she refused to come back with him. His version has been supported by other witnesses as well. The trial Court was right in holding that the appellant had deserted her husband without any sufficient cause. According to the wife, she had left the house about four years before the filing of the petition. Consequently, the findings recorded by the trial court are affirmed. In the result, there is no merit in the appeal and the same stands dismissed with no order as to costs." Therefore, even if the ground of desertion and adultery is not proved, still on proved facts, the appellant was entitled to decree of divorce on the ground of cruelty.

This appeal is allowed, the judgment and decree passed by the learned Matrimonial Court is set aside and the petition filed by the FAO No. M-204 of 1998

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appellant-husband under Section 13 of the Hindu Marriage Act is allowed, but with no order as to costs.

Appeal allowed.

(Vinod K. Sharma)

Judge

August 27, 2009

R.S.