

Bhupinder Kumar Son Of Shri Desh Raj vs Smt. Versha Rani Wife Of Bhupinder Kumar
on 6/10/2004

JUDGMENT

V.M. Jain, J.

1. This appeal has been filed by the husband against the judgment and decree dated 6.1.1995 passed by the Additional District Judge, whereby the divorce petition, filed by the husband, was dismissed.

2. The facts, in brief, are that Bhupinder Kumar (husband) filed a petition under Section 13 of the Hindu Marriage Act against respondent-wife, Smt. Varsha Rani, on 20.5.1993, alleging therein that the marriage between the parties was solemnised on 11.5.1990 and that on the next day of the marriage, the respondent-wife started bleeding and was immediately taken to a private nursing home and the lady doctor, who examined her, advised the couple not to indulge in sexual intercourse for a minimum period of one month and at that time the doctor had stated that the respondent-wife was having a pregnancy of 11 weeks (wrongly stated as 11 months). It was alleged that the respondent had concealed the fact regarding her pregnancy from the appellant. It was alleged that the appellant came to know that the respondent was having illicit relations with her Jija, Anil Kumar, in whose house she was residing before the marriage and she was working as a nurse in Medical College Hospital, Rohtak, since prior to her marriage. Various other allegations regarding cruelty were also levelled against the respondent-wife including the allegations that Anil Kumar aforesaid, along with certain Gundas had assaulted the petitioner on 13.7.1990 and has threatened him whereupon a complaint was filed by the petitioner with the Police in this regard which was later on withdrawn on 19.7.1990 when the matter was compromised. It was further alleged that with the intervention of the Panchayat, the parties got separated from the joint family and hired a rented house and started living there, but the respondent continued visiting the house of Anil Kumar aforesaid in the absence of the petitioner. It was alleged that the petitioner never had sexual intercourse even for once with the respondent as she did not allow him to come near her and this also amounted to cruelty and that without there being any sexual intercourse between the petitioner and the respondent, the respondent-wife had delivered a female child. It was alleged that again on 12.12.1990, Anil Kumar, along with certain Gundas, assaulted the petitioner and the petitioner sustained various injuries and was admitted in the Medical College Hospital, Rohtak from where he was discharged on 15.12.1990 and during that period, the respondent-wife never bothered to attend to the petitioner in the Hospital and rather she herself consumed some pills on 15.12.1990 and got admitted herself in the Hospital and lodged a false complaint against the petitioner with the Police but on investigation, the said complaint was found to be false and the case was closed. It was alleged that the respondent had taken away all the house-hold articles lying in the rented house on 15.12.1990 and started living in her parents house and in this manner, she deserted the petitioner since 15.12.1990. It was further alleged that on 12.1.1991, the petitioner filed a petition for restitution of conjugal rights. Thereafter, the respondent filed a criminal complaint under Section 107/151, C.P.C., against the petitioner and got him arrested by the Police and he was discharged by the Magistrate on the same day after hearing the petitioner in the said case. It was alleged that thereafter the petitioner was called to the house of one Subhash Bhalla and when the petitioner went there, he found the respondent, her father and 4-5 other persons present there and they threatened the petitioner to withdraw the petition under Section 9 of the Hindu Marriage Act and when the petitioner refused to do so, he was caused injuries. However, at the asking of Subhash Bhalla, the petitioner did not lodge any report with the Police. It was alleged that thereafter, the respondent filed a petition under Sections 498A/406, I.P.C., against the petitioner on 13.8.1991 and his family members and got them arrested in the said case. However, the learned Magistrate discharged the mother, brother and the sister of the petitioner but charged the petitioner under Section 406, I.P.C.,

which complaint was still pending. It was alleged that this had caused great humiliation to the petitioner and his family members. It was alleged that the respondent-wife continued to threaten the petitioner from time to time whereupon the petitioner made a complaint to the various dignitaries for taking action against them. It was alleged that the petitioner was entitled to the dissolution of marriage on the grounds of desertion and cruelty.

3. The said petition was contested by the respondent by filing the written reply controverting the allegations contained in the petition. It was denied that she was having illicit relations with her brother-in-law, Anil Kumar, or that she had deserted the petitioner. It was alleged that the child delivered by her was conceived from her husband. It was denied that her husband did not have sexual intercourse with her and alleged that the child was born on 11.2.1991. It was alleged that the petitioner had suffered injuries when he had fallen from a running train. It was denied that she had consumed any pills or that any incident as alleged, had taken place at the house of Subhash Bhalla. She admitted having filed a criminal complaint and it was alleged that the petitioner was a greedy person and was making demands for dowry, etc.

4. On the pleadings of the parties, various issues were framed. Both the sides led evidence. After hearing both the sides and perusing the record, the trial Court dismissed the divorce petition holding that the petitioner had failed to prove that he was entitled to dissolution of marriage by a decree of divorce on the ground of cruelty and desertion. Aggrieved against the same, the petitioner husband filed the present appeal in this Court.

5. During the pendency of the appeal, the appellant-husband filed application under Order 41 Rule 27, C.P.C., seeking permission to place on record various documents including certified copy of the order dated 1.10.1999, passed by the J.M.I.C., Rohtak, vide which appellant, Bhupinder Kumar, was acquitted of the charge under Sections 406/498A, I.P.C., in the criminal complaint filed by his wife, Smt. Varsha.

6. I have heard the learned counsel for the parties and have gone through the record carefully.

7. Learned counsel appearing for the appellant husband submitted before me that the appellant husband had produced sufficient evidence on the record to show that respondent wife had caused cruelty to him by not only making false complaints with the police against him which were later on withdrawn but also by filing false criminal complaint under Sections 406, 498A I.P.C., in which the appellant husband was acquitted and in this view of the matter, it would be clear that the respondent wife had caused cruelty to the appellant husband and as such appellant husband was entitled to the dissolution of marriage by way of decree of divorce on the ground of cruelty. On the other hand the learned counsel appearing for the respondent wife submitted before me that the appellant husband had failed to prove that the respondent wife had caused cruelty to him and that the trial Court had rightly dismissed the divorce petition filed by the appellant husband.

8. After hearing the learned counsel for the parties and perusing the record, in my opinion, present appeal must be allowed and the judgment and decree passed by the learned Additional District Judge must be set aside and a decree of divorce be passed in favour of the appellant husband and against the respondent wife on the ground of cruelty. At the time when the appellant husband had filed divorce petition against respondent wife it was alleged by him in the divorce petition that the respondent wife had filed a false complaint under Sections 406, 498A I.P.C. against the petitioner husband, his two unmarried sisters and brother at Gohana and she got all of them arrested by the police and later on they were released on bail. It was further alleged that the learned Judicial Magistrate Gohana had subsequently discharged the mother, brother and both sisters of the petitioner of the various charges but had charged the appellant

husband under Section 406 I.P.C. only which was still pending. It was alleged that this had caused great humiliation, insult, disrespect and disgrace to the petitioner and his family members and had lowered their status in the public. In the written statement filed by the respondent wife, it was alleged that a complaint under Sections 406, 498A I.P.C. was filed because of the regular dowry demands made by the petitioner. It was alleged that it was the petitioner who had humiliated, deserted and disregarded the respondent wife. Thus it would be clear that the reply filed by the respondent wife by way of written statement, with regard to the allegations regarding filing of complaint under Sections 406, 498A I.P.C., that even though she had filed the said complaint against the petitioner husband and his other family members including his mother, brother and two unmarried sisters, yet the mother, brother and two sisters of the petitioner husband were discharged by the learned Magistrate and only the appellant husband was charged. As per the allegations made in the petition and the written statement it would be clear that the said criminal complaint was still pending at the time when the divorce petition was filed. When Smt. Varsha Rani, respondent wife appeared in the witness box as RW-1, she deposed during examination in chief that she had filed a case against the accused petitioner under Sections 406, 498A I.P.C. and that the said case was still pending. Even Bhupinder Kumar, appellant while appearing in the witness box as PW-2 during examination in chief had stated that the respondent had filed a case against him for the offences under Sections 406, 498A I.P.C. and all the members of his family were involved in that case and that he was still facing the charge under Section 406 I.P.C. whereas the other accused had been discharged. As referred to above, the divorce petition filed by the appellant husband was dismissed by the learned Additional District Judge on 6.1.1995 and aggrieved against the same he had filed the present appeal in this court. During the pendency of the appeal, the appellant had filed an application under Order 41 Rule 27 C.P.C. for placing on record a certified copy of the judgment passed by the learned Judicial Magistrate while deciding the aforesaid complaint under Sections 406, 498A I.P.C., Certified copy of the judgment dated 1.10.1999 passed by the learned Magistrate was also filed alongwith the said application. Notice in the said application was given to the counsel for the other side. During the course of arguments it was not disputed before me by the learned Counsel for the respondent wife that in the said criminal complaint filed by her against the appellant husband under Sections 406/498A I.P.C., the appellant husband had been acquitted by the learned Judicial Magistrate vide judgment dated 1.10.1999, copy of which was produced on behalf of the appellant husband alongwith the application for additional evidence. It was also admitted before me by the counsel for the parties, during the course of arguments, that the said judgment dated 10.10.1999 passed by the Judicial Magistrate, acquitting the appellant husband in the complaint under Sections 406/498A I.P.C., had become final inasmuch as no appeal or revision was filed against the said judgment dated 1.10.1999. Since the said judgment dated 1.10.1999 came into existence during the pendency of the present appeal and the correctness of the same was not disputed before me by the learned counsel for the respondent wife, it shall be taken to have been admitted by the counsel for the respondent that in the said criminal complaint filed by the respondent wife against the appellant husband under Sections 406/498A I.P.C., the appellant husband was acquitted by the learned Magistrate.

9. A perusal of the aforesaid judgment dated 1.10.1999 passed by the learned Magistrate acquitting the appellant husband in the complaint under Sections 406/498A I.P.C. would show that Bhupinder Kumar, appellant was charged under Sections 406/498A I.P.C., to which he had pleaded not guilty and thereafter the respondent wife (who was the complainant) had appeared in the witness box as PW1 and had also produced other witnesses in support of her case. However, after hearing both sides and perusing the record, the learned Magistrate found that the complainant (wife) had miserably failed to prove the guilt of the accused (husband) for the offence under Sections 406/498A I.P.C.. Resultantly the appellant husband was acquitted of the charges levelled against him. In my opinion, a perusal of the aforesaid judgment dated 1.10.1999, passed by the

learned Magistrate would clearly show that the respondent wife had levelled false allegations for the offences under Sections 406/498A I.P.C. against the appellant husband by filing false criminal complaint against him and ultimately after trial he was acquitted in the said criminal case and in my opinion, this would clearly prove that the respondent wife had caused mental cruelty to the appellant by filing false complaint under Sections 406/498A I.P.C. against him

10. Besides the above allegations of cruelty against the respondent wife, which stands fully proved on the record, it was also alleged by the appellant husband in the divorce petition that on 12.12.1990 respondent wife through her Jija and other bad elements again got the appellant assaulted near the Railway Station when he was coming from Delhi and was caused grievous injuries as a result of which he was admitted in Medical College Hospital, Rohtak and remained admitted till 15.12.1990 and during this period of respondent wife never came to attend him and rather she intentionally took some drugs on 15.12.1990 and got herself admitted in Medical College Hospital, Rohtak and filed some false report against him with the police even though the petitioner was already admitted in the hospital on that day. It was further alleged that after inquiry when the police found the complaint to be false, then respondent wife made a statement stating therein that she had taken some wrong tablets herself and then the case was "filed". These allegations were made by the petitioner in para 12 of the divorce petition. In the written statement filed by the respondent wife the allegations were controverted and it was alleged that the petitioner was never assaulted through her Jija and in fact the petitioner had fallen down from the train while coming from Delhi to Rohtak. With regard to the other allegations contained in para 12 of the petition there was a vague denial saying that the rest of the para was wrong and denied. In fact there was no specific denial to the various other allegations made by the petitioner husband in para 12 of the divorce petition, and as such those allegations shall be deemed to have been admitted by the respondent wife.

11. Furthermore, with regard to above allegations Bhupinder Kaur, appellant while appearing in the witness box as PW-2 had deposed during examination in chief that on 12.12.1990 when he left the Railway Station, some gundas gave him beatings and he received injuries including injury on his head and he was admitted in Medical College Hospital, Rohtak from where he was discharged on 15.12.1990. He deposed that during this period of his admission in the hospital, the respondent wife or any other relation from her side had not visited him. He further stated that on the evening of 15th when he was discharged, the respondent wife consumed some pills and got herself admitted in the hospital and she reported the matter to the police against him and the police came to arrest him and when he explained to the police that he was not at fault, he was not arrested and that two days later the respondent made a statement to the police that she consumed the pills of her own and thereupon the case was cancelled. During cross examination he denied the suggestion that he had received injuries when he had fallen down from the train. He also denied the suggestion that the respondent had been attending on him during the period of his admission in the hospital. He was not cross examined with regard to the incidents between 12.12.1990 to 15.12.1990, except the one referred to above. When Smt. Varsha respondent appeared in the witness box as RW1, she deposed during examination in chief that the petitioner had received injury while getting down from a train near the railway station and this was a head injury and for three days she continuously remained by the side of his bed when he was suffering from that injury. During cross examination she stated that on the day when the petitioner was discharged from hospital, he went to his house without her knowledge and when she came to his house her mother in law administered calmpose tablets to her and another member of his family told her that either she should run away or they would give her beatings and thereupon she came back. She stated that because of Calmpose tablets she had to be admitted in the hospital. This reply was given by her when she was asked as to whether she was admitted in the hospital alongwith her husband. She stated that she had reported the matter to the police but later she made a statement to the police and withdrew that

application. She further stated that this was done by her because certain relations had collected there and parties had compromised. She denied the suggestion that the story regarding compromise was false or that she withdrew that application as the same was not supported by the medical evidence.

12. From a perusal of the above, in my opinion, it stands proved on the record that the respondent wife had filed a complaint against the petitioner with the police which she later on withdrew of her own. In the said complaint she had levelled allegations regarding some tablets having been administered to her, as a result of which she was admitted in the hospital. Nothing has come on the record to, show that she had withdrawn the said complaint as a result of some compromise or under some pressure. Mere allegations made by her in this regard would not be sufficient especially when these allegations made by the petitioner husband in the divorce petition were not specifically denied by her in the written statement and no such explanation was given by her in the written statement. Thus it would be clear that by making those allegations against the petitioner and his family members the respondent wife had caused mental cruelty to the petitioner husband.

13. Furthermore, it was also alleged by the petitioner husband in the divorce petition that he had filed a petition under Section 9 of the Hindu Marriage Act against the respondent wife on 23.1.1991 and on coming to know about it, as a counter blast the respondent wife had made a false complaint against him under Sections 107/151 Cr.P.C., on 4.3.1991 and got him arrested by the police. It was further alleged that when he was produced before the Executive Magistrate on 4.3.1991, after hearing him the Executive Magistrate discharged the petitioner. This allegation was made by him in para 14 of the divorce petition. Para 14 of the written statement filed by the respondent wife is as under:-

"It is admitted to the extent that the petitioner filed a petition under Section 9 of the HMA on the grounds mentioned in this petition".

From a perusal of the above, it would be clear that the various allegations made by the petitioner in para 14 of the divorce petition had not been controverted by the respondent wife. In fact, there is no denial to these allegations, neither specific nor vague. Thus these allegations stood admitted by the respondent. In my opinion, if the respondent wife got the petitioner arrested in the proceedings under Section 107/151 Cr.P.C. and on the same day he had been discharged by the Executive Magistrate, which fact has not been controverted by the respondent wife, in my opinion, it would be clear that this act of the respondent had also caused mental cruelty to the petitioner husband.

14. Taking all the above mentioned facts into consideration, in my opinion, it would be clear that it stands fully proved on the record that the respondent wife had caused mental cruelty to the appellant husband for which he was entitled to dissolution of marriage by way of decree of divorce. I am further of the opinion that the learned Additional District Judge had erred in law in dismissing the divorce petition filed by the appellant husband especially when from the material available on the record it stands fully proved on the record that the respondent wife had caused mental cruelty to the appellant husband by various acts referred to above.

15. In view of the above, present appeal is allowed, the judgment and decree dated 6.1.1995, passed by the learned Additional District Judge, are set aside and marriage between the parties is dissolved by decree of divorce, allowing the divorce petition filed by the appellant husband.