

(2003) 02 P&H CK 0233

In the Punjab And Haryana At Chandigarh

Case No : First Appeal from Order No. 79-M of 2000

Baldev Singh

APPELLANT

Vs

Rani alias Harmeet Kaur

RESPONDENT

Date of Decision : 05-02-2003

Acts Referred:

Hindu Marriage Act, 1955 — Section 13

Citation : (2003) 135 PLR 164 : (2004) 1 RCR(Civil) 418

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : Salil Bali, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—This is husband's appeal challenging the judgment and decree passed by learned Additional District Judge, Sirsa. dated 1.4.2000 dismissing his petition for dissolution of marriage u/s 13 of Hindu Marriage Act, 1955 (for short to be referred as "the Act") on account of desertion and cruelty.

2. The marriage between the parties was solemnized on 23.3.1993. The appellant has sought dissolution of marriage alleging that the respondent is a lady of quarrelsome nature and short temperament and, therefore, she could not adjust in the family of the appellant, it is further alleged that the respondent pressurised the appellant to settle down at Mandi Dabwali or Bathinda City. She used filthy language against the appellant and his family members. She refused to do the house hold works. The respondent used to leave the house of the appellant without his consent and knowledge. She never gave due respect to the appellant and his parents. The respondent even insulted the appellant in the presence of his friends and relatives saying that her parents had ruined her life by marrying her in village with the appellant who does not know the standard of living a life of high status. It is further alleged that the respondent conceived pregnancy in the month of March, 1994 and this fact was confirmed by the doctors of Civil Hospital, Goriwala on 25.5.1995 and the respondent was

examined. However, the respondent left the matrimonial house on 28.5.1994 and aborted the pregnancy without the consent and knowledge of the appellant. The appellant has further stated that he convened a Panchayat at the house of the respondent's father after the respondent filed a petition u/s 125 of Cr.P.C. and a petition u/s 9 of the Act wherein it was decided to dissolve the marriage by mutual consent. The petition for dissolution of marriage was filed on 27.9.1995 but the respondent did not give her consent for dissolution of marriage on 10.10.1995. Again the Panchayat intervened and a petition u/s 13-B of the Act was filed on 2.11.1995. The statements of the parties were recorded on 3.11.1995 and the case was adjourned to 4,5.1996. However, the respondent did not give her consent for dissolution of marriage on 4,5.1996 and consequently, the petition was dismissed.

3. The respondent-wife filed a written statement controverting the allegations made in the petition and stated that she had been serving the entire family of the appellant and tried her level best to satisfy them but it is the appellant who used to taunt the respondent on some petty matters and always tried to insult and misbehave her. She denied that she ever left the house of the appellant with her own accord. Rather she was taken to her parental house by the appellant and she used to come back to her matrimonial home at his asking. She further stated that she had been giving due respect to her in laws and had been tolerating all their taunts for not bringing more and more dowry from her parents. She denied that she ever refused to have sexual intercourse with the appellant or used to kick the appellant on such occasion. She denied that she was ever pregnant or she was checked up at village Goriwaia at all. She stated that she never became pregnant during the stay with the appellant and hence the question of abortion did not arise. Regarding the appellant's petitions for dissolution of marriage by mutual consent, she stated that it is the appellant who backed out from the compromise in the Panchayat.

4. Learned trial Court dismissed the petition holding that the allegations of the wife were usual in nature and were not sufficient to hold that the husband was treated with cruelty. Referring to the settlement arrived at between the parties before the Panchayat, the trial Court found that the dismissal of the petition for dissolution of marriage by mutual consent does not amount to cruelty, may be for whatever reason. The Court also found that outdoor ticket Ex.PA relied upon by the appellant to prove pregnancy is a document manipulated by the appellant in order to prepare a ground for divorce. The said document has neither the names of the husband or father of respondent nor her address, nor her age. Even such document does not contain signatures of Harmeet Kaur. The doctor does not know her personally nor he wrote any identification mark of the patient on the outdoor ticket.

5. It have heard learned counsel for the appellant and with his assistance, gone through the record of the case. I am unable to take a different view than the one taken by the trial Court.

6. Learned counsel for the appellant has vehemently argued that the action of the wife in carrying out the abortion without the consent of the appellant amounts to cruelty. However, the appellant has not been able to prove that the respondent was ever pregnant. He has referred to the statement of PW-2 Dr. Sanjiv Goyal who proved the outdoor ticket Ex. PA in this respect. The statement of Dr. Sanjiv Goyal does not depict that outdoor ticket Ex.PA relates to the respondent. He has not obtained the signatures of Harmeet Kaur on any paper nor written any identification mark. The outdoor ticket does not contain the name of the father or husband or even address of Harmeet Kuar. He has stated that the patient was diagnosed as having pregnancy on the history given by her. The said statement alongwith outdoor ticket Ex.PA is not sufficient to hold that it was the respondent who was pregnant.

7. The counsel for the appellant has further referred to the efforts made by the Panchayat for reconciliation and the fact that the parties agreed to dissolve the marriage. Since the respondent, inspite of agreement before the Panchayat, has refused to honour such settlement in the court of law, it is alleged that it will amount to cruelty. The appellant has not produced any member of the Panchayat with whose efforts the parties tried to settle their dispute. Although the respondent has produced RW-2 Sher Singh who has stated that dowry articles were returned, but the fact remains that the wife has not stated in the court that she is agreeable for dissolution of marriage by mutual consent. It is that statement alone before the Court which can form the basis for dissolution of marriage by mutual consent. If she has some reservation of dissolution of marriage by mutual consent it can not be said that it amounted to cruelty so as to entitle the appellant to seek dissolution of marriage on that ground. The appellant has not been able to prove any of the allegations of cruelty so as to seek dissolution of marriage. Learned trial Court has discussed the entire evidence in detail. The view taken by the trial Court is possible view in law. I do not find any ground to take a different view than the one taken by the trial Court. Consequently, the appeal is dismissed.