

(1989) 10 P&H CK 0069
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 206-M of 1985

Captain (Now Major) Rajinder Pal Singh Bajwa	APPELLANT
Vs	
Mrs. Manjit Kaur Bajwa	RESPONDENT

Date of Decision : 18-10-1989

Acts Referred:

Hindu Marriage Act, 1955 — Section 10, 10(1)

Citation : (1990) 97 PLR 445

Hon'ble Judges : M.S. Liberhan, J

Bench : Single Bench

Advocate : Surjit Kaur Tonque, Sunil Parwar and K.K. Duggal, for the Appellant;
H.S. Brar and P.S. Teji, for the Respondent

Final Decision : Allowed

Judgement

M.S. Liberhan, J.—The appellant has challenged the judgment and decree dated 3-8-1985 of the learned District judge, Kapurthala, declining his petition for divorce.

2. The divorce was sought on the grounds of desertion and cruelty. The appellant was married to the respondent in the year 1979, She had withdrawn from his company since 1981 without his consent and reasonable cause.

3. The acts attributed by the appellant to respondent-wife resulting in cruelty towards him were making of sarcastic remarks by her and her mother, "he is short statured and of black complexion". She did not visit the appellant while he was confined in hospital in August, 1981, when he needed her company the most and rather she asked him for divorce. She imputed false allegations and made character assassination against the appellant. She wrote a letter/ complaint to the Chief of the Army staff, making averments which were false to her knowledge viz. that the appellant had illicit relations with a Mizo girl named Limmi had taken her out of Mizoram in a Government vehicle without the permission of the authorities and was living with her in adultery at Amritsar. It was falsely

attributed to the appellant that he had taken away the ornaments and other household goods. In the complaint to the Chief of the Army Staff, investigation as well as action against the Appellant for his leading an adulterous life was sought. Further a request for return of the goods and deduction of maintenance from his salary and its remission to her, was made.

4. The respondent apart from various other legal pleas taken, controverted the grounds as well as the facts averred. Cordial relations upto April, 1981, as well as the birth of the s6n were admitted. The desertion on her part was denied. She offered herself to live with the appellant. She claimed that on his visit in March, 1982 to Kapurthala, during his joining time, his behaviour and attitude towards her was indifferent. Subsequently, he came with a Mizo girl in the house. On inquiry about that girl by her, she was turned out of the house. She was forced to live with her widowed mother. She had no option but to claim maintenance allowance and in order to claim the same, a complaint was made to the Chief of the Army Staff. She further claimed that the allegations in the complaint were based on information and knowledge. The Army authorities got satisfied and granted her maintenance.

5. The parties went into trial on the following comprehensive issue :-

1. Whether the respondent treated the petitioner with cruelty and deserted him for more than two years and as such he is entitled to a decree of divorce ? OPP.

2. Relief.

6. The learned District Judge came to the conclusion that the real contest is with respect to the making of false allegations against and character assassination of the appellant by the respondent. It was found, that the complaint Exhibit P-I was made only to get maintenance from the petitioner and not to defame him. It was held that it had not been proved that the Mizo girl had contracted marriage with the appellant's younger brother and since she did come with the appeallant from Mizoram the allegations made in the complaint were correct facts, and disclosing of correct facts did not amount to cruelty. It was found that the respondent never deserted the appellant. The prayer for divorce was declined.

7. The learned counsel for the appellant contended that levelling of false and scandalous allegations with respect to the appellant's living in adultery before Army authorities taut-amounts to mental cruelty. The Army authorities found in Court of inquiry proceedings that the allegations were false. The respondent - wife never challenged the said findings any further.

8. The respondent neither challenged the findings of the Army authorities in these proceedings nor asserted the truthfullness of the allegations nor any issue was framed with respect to them. The parties did not go to trial with respect to the truthfullness of the allegations made in the complaint to the Army authorities. The allegations were not proved in these proceedings, hence it amounts to cruelty.

9. It was further contended that the findings arrived at by the learned trial Court cannot be sustained in view of the fact that the sums were based on inadmissible evidence apart from the fact that the evidence was not properly appreciated and was misread. The learned counsel after referring to Rule 182 of the Army Rules 1954 (hereinafter referred to as the Rules) contended that Exhibits R-16, to R-18, R-20, R-22 and R-23 are not admissible. Additionally Exhibits R-16 to R-18 were the affidavits of the father and brother of Mizo girl Limmi, who were alive but were not examined. Affidavits are not admissible in evidence in civil litigation. Facts cannot be proved on the basis of affidavits without granting an opportunity to cross-examine the deponents of the affidavits. Nor the evidence was being recorded on affidavits. The documents Exhibits R- 11 to R-15 and R-19 to R-24 were not proved in accordance with the Evidence Act. The mode of proof of these documents was objected to. Exhibit R-19 was said to be secondary evidence as its original was not proved and since no permission was sought to lead secondary evidence, it was not admissible. It was further contended that Exhibits R-11 to R-23 being part of the Court of inquiry proceedings could not be taken note of in view of Rules 182 of the said Rules.

10. The learned counsel for the appellant further took me through the oral evidence as well as the pleadings of the parties. Exhibits P-I to P-13 and Exhibits R-I to R-23 were also read out. At this stage, it may be made clear that exhibits were not available on the Court record. Learned counsel for the parties produced photostat copies of the exhibits and agreed that the same be placed on record and be read in appeal. Learned counsel for the appellant relied on Smt. Shakuntala Kumari v. Om Parkash Ghai 1981 M. L. J. 197. Raf Kumar Manocha v. Smt- Anskuka Manocha 1983 C. L. R. 134. Paras Ram v. Kamlesh A. I. R. 1982 P. & H. 60. and Paras Ram v. Kamlesh 1988 M. L. J. 68.

11. The learned counsel for the respondent contended that the allegations made in the complaint sent by the respondent were not false and had been made in order to seek the relief of maintenance as she had no means of livelihood and could not depend upon her widowed mother and brothers. The allegations were made on the information received by the respondent. The finding arrived at by the trial Court is based on appreciation of evidence and the Army authorities after holding a Court of inquiry found, that the allegations had been substantiated and, therefore, granted the maintenance to the respondent. The falsity of allegations were to be proved in a judicial trial by the person relying upon them to allege cruelty. It had to be shown by the appellant that the allegations made in the complaint were false and without any basis and then alone he would be entitled to contend the effect of the allegations. It was to be proved in these proceedings that the allegations made in the complaint were false to her knowledge. The allegations stood proved on record to be correct.

12. The learned counsel for the respondent contended that there was no animus on the part of the respondent to desert the appellant as even at this stage, she was without any pre-conditions, ready and willing to live with the appellant. She

made attempts to join her husband in the month of May, 1982 then in June, 1982 and also went to Amritsar with her brother to persuade the appellant to let her live with him without any pre-condition and promised that she would serve him with utmost respect and affection. The reconciliation, however, did not mature because of the bigotry stand taken by the appellant. Even in these proceedings, the appellant categorically stated that he would not join the respondent at any cost. In view of this peculiar situation, there could not be any desertion. The story put forth in evidence with respect to the marriage of the said Mizo girl Lirnmī with the younger brother of the appellant was nothing else but a maladroitness and a clumsy approach to achieve his hidden desire to get divorce by decoying false version in order to prove cruelty. The presence of the Mizo girl in the house of the appellant was not disputed. In view of this there were no false allegations made which amounted to cruelty. Otherwise also, this was normal human wear and tear of the married life. The appellant should have been able to endure in the interest of the matrimonial home. In order to support his contention, he relied on *Kamlesh v. Paras Ram* (1985-1)87 P. L. R. 41.

13. No argument was attempted to be addressed with respect to the admissibility of documents, though the learned counsel for the respondent made a reference to the oral evidence of the respondent as well as the documents produced.

14. There is no litmus test by which cruelty can be found. It is to be judged by taking into consideration numerous factors in particular when the allegations of cruelty relate to mental cruelty. Mental cruelty can only be perceived. There cannot be any watertight compartments i.e. particular facts shall alone constitute mental cruelty. It has to be determined in each case keeping the peculiar facts in view of each case. In a given set of circumstances, an act by itself may constitute cruelty while in the others it may not. The Hon'ble Supreme Court in *Dr. N.G. Dastane Vs. Mrs. S. Dastane*, , pointed out some of the factors which should be taken note of while appreciating the evidence in order to come to a finding of mental cruelty viz, peculiar habits of the parties, ideas, susceptibilities and expectations of profession, their belonging to the strata of society. It was further forewarned that since the fact of finding of cruelty affects the status of the parties, it demands a closer look than those required in cases of pronouncements etc as it is likely to impair the integrity of the matrimonial union which has a significance. The spouses are required to take each other as such with temperamental disharmony and incompatibilities, One has to see the circumstances and the environments in which the parties have been brought up.

15. Undoubtedly, the conduct of the party guilty of cruelty should be of such a nature as it would imperil one's sense of personal safety, mental happiness, job satisfaction, reputation, or it has an adverse effect on the livelihood, status of the person, his right to work peace of the matrimonial home, or there is likely adverse effect on the offspring, social status, traditions, caste and community, public opinion prevailing in the locality. The character of allegations, the mode of life led by the parties and their health are to be kept in view. The acts and

omission which injure the feeling of the other spouse resulting in causing mental agony, which one of them suffers is to be judged not from the magnitude of it but from its nature. Whether an act should be "taken . as an ordinary wear and tear of the married life or an act of cruelty of such nature that it may not be possible but difficult to live with a particular amount of mental peace in those environments. "Home" consists of matrimonial home in Which" "husband "and " wife with the children live. It was once considered to be a fort of a person where one sheds his inhibitions and wants , the minimum mental peace in a cordial atmosphere for getting the miseries, difficulties and other hard realities faced by him during the day while making his living. Mental respect, regard consideration, fore bearing or each other's faults is the concept of the matrimonial home. Though the concept of marriage being a religious affair was kept in tact by the Hindu Marriage Act to some extent but the fact the Legislature attempted to break the old shackles and bondage which were permanent in "nature and were used to come about on account of marriage cannot be lost sight of. Still a great importance was attached to the purity of matrimonial relations and chastity or character of a person. It was given a priority and kept intact.

16. There can be no gain saying that the false allegations of adultery made by a spouse against the one spouse, seeking divorce in an ancillary proceedings, administrative or otherwise, where they were found to be false would constitute legal cruelty. Mere allegations of adultery was of no consequences unless it was established that the allegations Were false. The spouse alleging adultery or unchastity should adduce evidence with respect to the conduct of a party from which it could be reasonably inferred that the party to whom the conduct had been attributed was guilty of such conduct. Simply alleging belief in the truth of allegations and stepping short of alleging that truth relying on the general tranverse, the actual fact alleged must be specifically pleaded and charge must be reiterated

17. Marriage cannot be considered to be a . drab existence of aliveness, It is a launching for a meaningful life, tension free and were right to live in peace and harmony Marriage thrives of consistencies and traditions In matrimonial relations one is expected to respond and not to react. One is required to exercise a reasonable care before attributing allegations of unchastity or living in adultery, As observed earlier the stability of marriage is based on the pillar of mutual understanding and bilateral respect as well as sympathetic understanding. To trust is a greater accomplishment than to be loved as trust provides trust and suspicion breeds suspicion.

18. In the judgment cited by the learned counsel for the appellant it was observed that making of false allegations and making attempts at character assassination or allegations of adultery without anything more amounts to cruelty though the truth in the allegations may deprive it of such character. It was observed to be elementary that the allegations must be proved to be false before the same could be termed as having been resulted in cruelty.

19. The judgment cited by the learned counsel for the respondent, reported in Kamksh's case (supra) was expressly over ruled in Paras Ram's case (supra). So, the respondent could not derive any benefit from it.

20. The undisputed facts which emerges from the record and reading of evidence" as well as the pleadings of the parties, are that the appellant was a Captain in the Army at the time of filing the petition and the wife was a highly qualified lady with a degree of M. Sc. and coming from a respectable family of Army Officers. It was admitted by the respondent in her written statement that the allegations made in the complaint were based on the information and knowledge though evasive reply was filed with respect to the allegations. It was further averred in the written statement that she had no intention to harm the appellant and her only intention was to secure the maintenance.

21. Exhibit P-I was the complaint sent by her on 8-6-1982 to the Chief of the Army Staff wherein it was averred that they led a normal married life upto September 1981 and after that he had taken all the ornaments and other household goods and valuables of the complainant-wife lying at the place of his parents and thrown her out without all the belongings of hers. Further the appellant had developad illicit relations with a Mizo girl named Limmi. She was brought by the appellant in a Government vehicle without permission and against the convoy timings from Mizoram. The appellant an 1 said Mizo girl had cohabited and were living in adultery in a rented house at Amritsar In the end, prayer was made that maintenance be got granted to her, the ornaments, household goods as well as the valuables be got returned to her and the investigation be done with respect to the living of the appellant in adultery.

22. It was not disputed that on complaint the Army authorities ordered Court of Inquiry wherein it was found that the appellant had got nething to do with the said Mizo girl Limmi and she was the legally wedded wife of his younger brother. The findings of the Court of Inquiry are recorded in exhibit P9. I am constained to hold particularly in view of Exhibit P5 wherein the respondent had herself admitted on 25-3-1982, that she was repentent about all what transpired. She admitted that everything was given to her what she wanted. She accepted the blame on herself. There were no new changes or circum- stances which came into existence after this, which provoked the respondent to make such allegations as made in the complaint after 25-3-1982. In her statement on oath as R.W.I, she admitted that the articles were lying with her This shows that the allegations with respect to the articles and other valuables, made in the complaint Exhibit P1, were false to her knowledge.

23. It is proverbial that men may lie but not the circumstances. The scenario of circumstances which emerges from the evidence on record is, that the respondent got sceptical of the character of the husband. Resultantly, one pillar of faith of the matrimonial life stood shaken. Exhibit R. 11 which is addressed to Pramjit Singh Bajwa, brother of the petitioner by Limmi inquiring about the allotment of accommodation etc and asking for certain articles from him. To the

similar effect is the letter R. 1 written by her, though in this letter a reference with respect to the health of the petitioner was made. Similarly a reference to Jojo was also made. Nothing much can be made from Exhibit R. 2 Exhibit R. 3 is another letter alleged to have been addressed by Mr. R S. Bajwa. The letter does not bear any date and only shows love and affection for a child known as Jojo. Similar is the letter Exhibit R. 5 dated 8.4.1981. It only denotes that the petitioner is busy in his studies and his relations with the respondent were cordial. To the same effect is the letter Exhibit R 6 dated 28.4.1981. All these letters show a mutual love and affection between the parties. Exhibit R 4 is another letter written on 4 3 1982 reminding the respondent that her words and conduct have been hurting him in respect of her desire to get divorce and to look after Jojo alone. An attempt was being made to fulfil it. It further gives an indication that the respondent either orally or otherwise at some point of time, taunted the petitioner that she will marry with some person of her liking and appellant took it seriously and left himself to destiny. He offered himself to sign the papers of divorce and further offered to take the Name on himself for divorce in order to keep prestige of the respondent. Through this letter an attempt was made to call it a day. Exhibit R. 10 is a letter written in September 1981, showing that there was some love between the couple. In May 1982 a letter was addressed by Lt Col. R K. Sharma to Devinder. Nothing can be made out from this. Again R 14/R.12 make a reference to a letter dated 28.5.1982 wherein it was pointed out that boorish act on the part of Mr. R. S Bajwa has caused some imaginary predicament to the family of the respondent. It was categorically stated by Lt. Col. Sharma that the petitioner never got married to the alleged Mizo girl and that her elder sister was married to an Officer of the battalion was patently a lie though an averment was made that the petitioner carried the Mizo girl on the non- convey day and he himself inferred from hearsay of Tom, Dick and Harry that the petitioner intends to get married. There appears to be no basis for the said inference shown in the letter. Again in April 1982, there was a letter Exhibit R15/ R13 from Lt. Col Sharma. The reading of this documentary evidence brought on record constrains me to form an opinion that it was only after their relations soured and the respondent lost faith in the matrimonial life for the reasons best known to her which at least had not come on record in the evidence, though the fault can be inferred on the part of the respondent as having been admitted by her on 26.3.1982. Her version of a Mizo girl being taken out and their living in adultery was being decoyed in order to put pressure on the petitioner for what object, is unknown. There is not an iota of evidence on record to suggest that the petitioner ever married the Mizo girl or ever led an adulterous life with her. There is no doubt that the burden of proof that the allegations of character assassination were false resulting in mental cruelty, is on the petitioner seeking divorce. It is again an accepted principle that burden of proof never changes. Here undisputedly the petitioner have stated on oath that the allegations are false and a finding was arrived at by the military authorities in the Court of enquiry proceedings that allegation about the petitioner's living in adultery were false. The truthfulness of the allegations was never the defence. It

would be reasonable to infer from the date of letter Exhibit P5 when she admitted all blame on her side for breaking the matrimonial home and tendered her apology. I find no reason, nor any was pointed out that some new facts come to her knowledge after 23.3.1982 to make such averments in her complaint dated 8.6.1982, particularly making the character assassination of the petitioner. No bonafide on the part of the respondent can be gathered with respect to her inference as well as the knowledge averred by her for making the allegations. Even in her statement in Court nothing was stated by the respondent that she made any bonafide attempt to inquire or took reasonable care before making such scurrilous and scandalous allegations against her husband which would have resulted in not only lowering down his prestige but might have resulted in depriving him of his livelihood, imperil his status in the society to which he belongs and would have left an indelible impression about the character of the petitioner, father of a minor child/ which would have adversely affected not only the petitioner but the entire life of the child.

24. There is no gain-saying that no defence was raised with respect to the truthfulness of the allegations made in the complaint nor any "issue was" framed, nor any evidence was led nor the marriage of the Mizo girl with Paranjit Singh, brother of the petitioner, was in issue. The finding arrived at by the Court of inquiry was never challenged in these proceedings. In view of these set of circumstances, after reading the oral as well as documentary evidence I am constrained to hold that the respondent made reckless allegations without taking reasonable precaution, care and satisfying herself as an ordinary prudent person should, before making the complaint and seeking action with "respect to the living of the petitioner in adultery in these circumstances it would be reasonable to infer that the allegations were made falsely with vendetta to injure the appellant in the society in his service, in the eyes of his relatives and to imperil his very livelihood, which is dear to one and all.

25. The statement made by the appellant inspires confidence from his letters as well as his attempts to lead a peaceful matrimonial life. It would be reasonable to infer that the allegations made by her were false to her knowledge and had been mala fide. This type of boorish conduct is not expected from an educated wife from such an educated family. This conduct of her can reasonably be taken as amounting to cruelty. I find no force in the contention raised by learned counsel for the respondent that the allegations were made on correct information and knowledge. He has merely made a contention. Nothing in support of it was pointed out. No attending or mitigating circumstances were pointed out or made out which could have provoked the respondent to make such allegations against the petitioner.

26. An attempt was made to show that it was proved that the said Mizo girl Limmi was not married to the younger brother of the petitioner in accordance with law and in view of this it should be inferred that the allegations made were "correct. I have noted this contention to be rejected. It was never an issue

between the parties whether the Mizo girl was married to the younger brother of the petitioner or not. There were no pleadings to this effect nor any such issue was framed nor the parties ever went to trial with respect to the validity of the marriage with Paramjit Singh. In the facts and circumstances of this case the admission of the petitioner's younger brother against his own interest as well as the other circumstantial evidence brought on record was sufficient to prove that the appellant had nothing to do with Limmi. This fact finds support from the statement of P W 4 Lt Col R. K. Sharma who was a gazetted Army Officer and nothing was pointed out against his testimony except that he was a neighbour. No special interest why he would falsely support the appellant's version was pointed out during the course of arguments. I reverse the findings of the trial Court and hold that the respondent without there being any reasonable basis had made false allegations before Army authorities and indulged in character assassination of the appellant which resulted in mental cruelty to the appellant.

27. Even otherwise on the admitted facts it is, clear, that she had made false averments to the effect that the appellant, had, taken all the articles belonging to her. These allegations were made in the complaint though at a later stage, in her statement on oath in these proceedings under pressure of cross-examination and on account of her own admission in writing in her letter, she was cornered to admit that the allegations with respect to keeping her articles by the petitioner against her wishes and turning her out, were false to her knowledge. No explanation much less an explanation was given in the course of arguments why such false averments were made by her in the complaint dated 8-6-1982. This conduct of the respondent shows her respect for truth and settlement of matrimonial life enduring faults of each other. It further corroborates the version set up by the appellant as stated in the earlier part of the judgment.

28. The learned counsel for the respondent was unable to show and rather addressed no arguments with regard to admissibility of Ex. R 16 to Ex. R 18, Ex. R 20, Ex. R 22, Ex. R 11 to Ex. R 15 which form part of the inquiry proceedings before the Court of inquiry. Exhibit R 16 and R 18 are the affidavits of the person who are alive. Rule 182 of the Army Rules 1954, read as under :-

"182 Proceeding of Court of inquiry not admissible in evidence. The proceeding of a Court of inquiry, or any confession, statement or answer to a question made or given at a Court of inquiry, shall not be admissible in evidence against a person subject to the Act, nor shall any evidence respecting the proceedings of the Court be given against any such person except upon the trial of such person for wilfully giving false evidence before that Court".

A bare reading of the Rule would make it obvious that these documents forming part of the Court of inquiry are not admissible in these Court proceedings. Not only this, the facts stated in the affidavits Exhibits R 16 to R 18 as already observed earlier, cannot be proved without examining their deponents in the Court and giving an opportunity to the other side to cross examine them. They are inadmissible in evidence. On my repeated asking, learned counsel for the

respondent was unable to point out any provision or any contention or reason to hold that these documents are admissible in evidence.

29. It would be further clear from reading the entire evidence that the aforesaid documents have not been proved in accordance with Section 68 of the Indian Evidence Act. Though upon reading the said documents, I have come to the conclusion that the act of cruelty was committed yet I am of the considered view that these documents were not admissible in evidence and an objection to this effect was raised. It would have been advisable to decide the objection at that stage.

30. The contention raised by learned counsel for the appellant that the respondent deserted the petitioner without sufficient cause, has; no force. There is nothing on the record except the bald statement of the appellant that she has deserted him. Nothing has been brought on record to show that any serious effort was made by the appellant to bring her in spite of the fact that in oral evidence the respondent as well as her brother made statements wherein she offered to join the appellant but the said offer was declined by the latter. It leaves me with no doubt that there were matrimonial differences which have not in fact come on record though veiled versions have come on record. I find no sufficient material on the record to hold that the respondent had ever any animus to desert the appellant. In my considered view, the appellant has failed to prove desertion.

31. Even otherwise all attempts made to effect reconciliation have failed. The appellant had lost faith in the respondent to an extent that he is not ready and willing to live with her at any cost. In these circumstances when the things have reached such a pass that it has become impossible for them to live together because of the acts committed by one of the parties which has psychologically affected the other to the extent he has developed repulsion to the other side, it would serve no purpose to keep the marriage intact and make the party suffer. It would be in the interest of justice to dissolve such a marriage. There is no use of keeping the two young persons tied by the matrimonial relationship when they cannot live in peace. Living does not mean mere mechanical living. A person has a right to live and live with dignity and this right has been respected not only in our constitution but by other schools of thought also.

32. While granting relief, one should not run away from realities. The Courts are meant to do justice and not to penalise the parties and try to entangle them in legal squibbles in order to deny the appropriate relief. Attempts should be made to do substantial justice unless the statutory law binds the Courts to take the other course.

33. In view of above observations of mine, the appeal is allowed and the petition for divorce is granted with no order as to costs. The respondent, will however, be at liberty to take appropriate proceedings for claiming maintenance etc. in accordance with law.