
(2000) 08 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3641 of 1997 (O and M)

Harpal Singh

APPELLANT

Vs

Manvinder Kaur and Another

RESPONDENT

Date of Decision : 17-08-2000

Acts Referred:

Dowry Prohibition Act, 1961 — Section 2

Citation : (2001) 1 DMC 436

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : M.L. Saggat, for the Appellant; P.S. Khurana, for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Singhal, J.—Smt. Manvinder Kaur, wife of Harpal Singh filed suit for the recovery of Rs. 1,05,000/- as the value of the dowry articles given to Harpal Singh by her parents at the time of her marriage which took place on 10.10.1983. Harpal Singh, his mother Smt. Bhagwanti and father Jagan Singh were arrayed as defendants. It was alleged in the plaint that at the time of marriage, Harpal Singh and his mother imposed condition that her marriage would take place with Harpal Singh only if her parents gave dowry per their demand. Her parents gave dowry as listed in Annexure A enclosed with the plaint due to this demand of Harpal Singh and his mother Smt. Bhagwanti. If her parents had not given dowry per their demand, her marriage with Harpal Singh would not have taken place. Defendants took dowry articles to their house and they misappropriated the articles of dowry which were meant to be used by her and which was her Istridhan property. After six months of her marriage, her parents gave one scooter to Harpal Singh bearing No. DLX-7301 so that defendants felt appeased and treated her with love, respect and dignity. Harpal Singh and his mother Smt. Bhagwanti did not treat her with love, respect and dignity. They treated her shabbily. Intervention of the respectables and the

relatives did not have any effect on their treatment towards her. Eventually, she was turned out of the matrimonial home in March, 1985 when she was in family way. At her parents house, she gave birth to a daughter. Defendants forgot her. They did not bother about her or her daughter. Efforts were made by her parents to rehabilitate her in the matrimonial home but to no avail. She claimed interest @ 18% per annum on the value of the articles of dowry.

2. Defendants contested the suit, Inter alia, urging that it was not a valid marriage between Harpal Singh and Manvinder Kaur. Smt. Manvinder Kaur was married in June, 1981 to one Manmohan Singh son of Joginder Singh. Her marriage with Manmohan Singh was subsisting when she contacted this marriage with Harpal Singh. Her marriage with Harpal Singh is void ab initio and is no marriage in the eye of law. When her parents were confronted that when she was already married to one Manmohan Singh and her marriage with him was subsisting, how she was passed on to him in marriage, they gave no satisfactory reply. In June, 1985, when she was sent to her parents for delivery, she took all the valuables and gold ornaments with her which are in her possession as mentioned in Schedule R1 attached to the written statement. Petition u/s 11 of the Hindu Marriage Act was filed in the Court of Mr. B.S. Bedi, Additional District Judge, Ludhiana. Her marriage was declared void ab initio by the learned Additional District Judge, Ludhiana vide judgment dated 25.7.1989. Her appeal was dismissed by the High Court on 13.11.1990. Complaint filed u/s 498A read with Section 120B, I.P.C. by her father was dismissed. Similarly, complaint filed under Sections 406, 420, 506, read with Section 120B, I.P.C. by her father was also dismissed. No revision was filed. It was denied that they put forth this condition that this marriage would take place only if she brought dowry. No such condition was imposed. It was further urged that in some respects list Annexure A is wrong and in some respects it is exaggerated. It was denied that scooter No. DLX-7301 was given by her parents. It was rather purchased in May, 1985 by the defendant from one Ashok Kumar. It was denied that she was ever ill-treated by any of the defendants.

3. Additional Senior Subordinate Judge, Ludhiana vide order dated 9.1.1995 decreed the plaintiff's suit for the recovery of Rs. 30 000/-. Harpal Singh and his mother were directed to return articles namely one double bed, one sofa set, one steel almirah, one fridge, and one peti. Defendants' counter-claim was allowed to the tune of Rs. 6,673.50 p. against the plaintiff in view of the fact that her marriage with Harpal Singh had been adjudged void by Additional District Judge, Ludhiana as it had taken place in contravention of Section 5(i) of the Hindu Marriage Act.

4. Defendants-Harpal Singh and his mother Smt. Bhagwanti went in appeal which was dismissed by Additional District Judge, Ludhiana vide order dated 12.8.1996. Still not satisfied, Harpal Singh has come up in further appeal to this Court.

5. Appeal when brought was beyond time. Through C.M. 6323-C of 1997, Harpal

Singh has prayed for condonation of delay of 329 days in filing the appeal. It has been stated that the defendant-appellant and the plaintiff-respondent had filed appeal against the judgment and decree of the Trial Court dated 9.1.1995 in the Court of Additional District Judge, Ludhiana. Additional District Judge, Ludhiana dismissed both the appeals vide judgment and decree dated 12.8.1996. He {Harpal Singh) requested their Counsel and his clerk to apply for certified copy of the judgment and decree of the Court of Additional District Judge, Ludhiana. Said copy was applied for vide Application No. 1475 dated 30.8.1996. He had been inquiring from copying agency whether the certified copy of the judgment and decree of Additional District Judge was or was not ready and he was informed every time that the same was not ready. On 25.9.1997, he was supplied with the certified copy of the judgment/decreed dated 12.8.1996 and the grounds of appeal. He bona fide believed that the period of 90 days for filing regular second appeal was to be counted with effect from 25.9.1997 and only 17 days were to be deducted from the period as the certified copy of the judgment and decree of Additional District Judge had been applied for on 30.8.1996. While the RSA was being prepared, it transpired that on the certified copy of the judgment and decree it was mentioned that the same had been prepared on 11.9.1996 and in case limitation was to be counted from 11.9.1996, appeal should have been filed upto 23.11.1996. Appeal was filed on 20.10.1997 and thus there is 329 days" delay in filing the appeal. As per the rules, Harpal Singh should have been informed by the copying agency on 11.9.1996 that the certified copy of the judgment and decree was ready and he should collect them forthwith. No such information was either given to him or his Counsel by the copying agency.

6. This application was opposed by Smt. Manvinder Kaur urging that there is no reason to condone this inordinate delay of 329 days in filing the appeal. Appellant should have collected the certified copy of the judgment and decree on 11.9.1996 or soon thereafter and filed the appeal. Certified copy of the judgment and decree was ready on 11.9.1996. Nothing is mentioned as to how it dawned on the appellant on 25.9.1997 that the certified copy of the judgment and decree was ready and he should collect them. He must have been issued a slip by the copying agency on which are entered the probable dates when the certified copy of the judgment and decree would be ready and he has not attached that slip with this CM so that the Court could see whether after 11.9.1996 which are the dates which had been given to him when the certified copy of the judgment and decree is to be ready for being collected.

7. Learned Counsel for the appellant submitted that delay in filing the appeal should be condoned when the appellant bona fide believed that limitation for filing the appeal has to be computed with effect from 25.9.1997. He took 25.9.1997 as the date of the preparation of the certified copy of the judgment and decree and also as the date of its delivery. In support of this submission, he has drawn my attention to Balwinder Singh Driver Vs. State of Punjab, . Where it was held that where the Counsel had acted bona fide in the matter of calculation

of the period of limitation from the date of actual delivery of copy and not from the date copy as ready, delay in filing the appeal should be condoned.

8. Learned Counsel for the respondent, on the other hand, submitted that such an inordinate delay should not be condoned when the certified copy of the judgment and decree had been prepared on 11.9.1996 but was collected on 25.9.1997 and the appellant should suffer. Why did not he hasten to collect the certified copy of the judgment and decree soon after 11.9.1996 when it had been prepared on 11.9.1996. It was submitted that when the appellant had been sleeping over his rights, no indulgence should be shown to him. In support of this submission, he drew my attention to Mahant Gurmukh Singh Vs. The State of Punjab and Others, .

9. In my opinion, there is no reason to condone delay. Appellant must suffer for recklessness on his part which is culpable. Assuming that delay should be condoned, I do not think the findings of fact recorded by the two Courts below can be interfered with by this Court sitting in second appeal. Defendant Harpal Singh admitted to have received one double bed, one sofa set, one steel almirah, one fridge, one peti, two bed sheets, two quilts and two pillows. He denied having received other dowry articles mentioned in Annexure A. D.Ws. Gurpal Singh and Prem Kumar stated about the receipt of certain articles of dowry by the defendants at the time of the marriage of the plaintiff with Harpal Singh. D.W. Gurpal Singh stated in cross-examination that fridge, dining table with six chairs, two double beds, sofa set, mattresses for double beds, bed sheets, bed cover and two sets of gold were given in dowry by the parents of the plaintiff. He stated with regard to the having of an iron peti, articles of use in kitchen, woollen and silk suits and saris at the time of marriage of the plaintiff with Harpal Singh. Prem Kumar D.W. stated in cross-examination about the giving of fridge, Godrej almirah, one iron peti, one sofa set, double bed with mattresses, bed sheets, dressing table in dowry. He also stated that it could be possible that beddings, quilts, woollen garments, silk saris, suits, electric fans, mixi, articles for use in the kitchen, etc. were given in the marriage. Learned Trial Court felt that when the parents of the plaintiff had given so many dowry articles and even two sets of gold for use of the plaintiff at the time of marriage, it is not probable that the plaintiffs gave no gold ornaments to their son-in-law Harpal Singh or his parents Smt. Bhagwanti and Jagan Singh. Learned Trial Court felt that some other gold ornaments must have been given by her parents to Bhagwanti and Jagan Singh besides the two "sets of gold given to Smt. Manvinder Kaur, plaintiff as is customary in Sikh families. This observation of the learned Trial Court is not without any basis. Articles given in marriage which turn out to be void also constitutes dowry as defined in the Dowry Prohibition Act, 1961. Dowry is defined as follows in Section 2 of the Dowry Prohibition Act, 1961:

"2. Definition of dowry" - In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly -

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or Mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies."

10. With appreciation of evidence made by the two Courts below, there can be no interference in regular second appeal. This appeal fails and is dismissed.