
(1966) 03 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. (M) 91-D of 1965

Madan Mohan Kohli

APPELLANT

Vs

Smt. Sarla Kohli

RESPONDENT

Date of Decision : 14-03-1966

Acts Referred:

Hindu Marriage (Amendment) Act, 1956 — Section 10(1), 9(2)

Citation : AIR 1967 P&H 397

Hon'ble Judges : H.R. Khanna, J

Bench : Single Bench

Advocate : S.N. Chopra, for the Appellant; Daljit Singh, for the Respondent

Final Decision : Dismissed

Judgement

H.R. Khanna, J

1. This is an appeal by Madan Mohan against the judgment and decree of learned Subordinate Judge 1st Class, Delhi, whereby he dismissed the petition of the appellant u/s 9 of the Hindu Marriage Act for a decree for restitution of conjugal rights against Shrimati Sarla Kohli respondent.

2. The parties were married, according to Hindu rites, on 1st February 1960 at Delhi. The appellant is a Matriculate and is employed as a clerk in a Bank, while the respondent is a Graduate and is employed as a coin-note examiner in the Reserve Bank of India. New Delhi. After the marriage the parties lived together for about 4 or 5 months whereafter the respondent started living at the house of her parents. In November 1960 the respondent gave birth to a daughter, who is now living with the respondent. In July 1961 attempts were made for reconciliation and the parties lived together for about ten days. Since then the respondent is living separate from the appellant. A petition was filed on 12th June 1962 by the respondent, against the appellant u/s 10 of the Hindu Marriage Act for Judicial separation but the same was dismissed in default on 5th March 1963 when none of the parties appeared in Court. The present petition for a

decree for restitution of conjugal rights u/s 9 of the Hindu Marriage Act was filed by the appellant on 26th December 1963, According to the appellant, the conduct of the respondent after the marriage has been objectionable. A few days after the marriage the respondent wanted the appellant to live separately from the rest of his family but he declined to do so and this caused annoyance to the respondent. The respondent also was arrogant and considered herself superior to the appellant because of her higher education and income. It is alleged that the respondent slipped away from the house of the appellant a few months after the marriage with the intention to withdraw herself from the society of the appellant. Attempts were made at reconciliation and to bring the respondent to the house of the appellant, but as those attempts yielded no substantial result the appellant filed the present petition for a decree for restitution of conjugal rights.

3. The respondent to her reply denied the allegations of the appellant that she asked him to live separately from other family members or that she considered herself superior or assumed arrogant attitude. According to the respondent she was kept as a prisoner in the appellant's house and was not treated well on the ground that she had not brought efficient dowry. The appellant and his parents were further stated to have subjected the respondent to cruelty so as to cause a reasonable apprehension in her mind that it was harmful or injurious for her to live with the appellant. It was added that an attempt had also been made to kill the respondent by administering poison to her in her food. The respondent claimed that the circumstances, under which she was made to live in the appellant's house, left her with no alternative font to leave the house of the appellant. The appellant was further stated to have charged the respondent with adultery with Malak Ram, who was the husband of the sister of the respondent and was the maternal uncle of the appellant. This allegation, according to the respondent, was false and amounted to cruelty. In replication the appellant reiterated the allegations made by him in the original petition and also averred that the charge of adultery against the respondent and Malak Ram had rightly made.

4. Following issues were framed in the case:

1. Whether the respondent has withdrawn from the society of the petitioner without reasonable excuse.
2. Relief.

The trial Court held that the allegation of the respondent that she had been given beating by the appellant and had been subjected to acts of violence, had not been substantiated. Likewise, the allegation of the respondent that she was maltreated for not bringing sufficient dowry or that an attempt was made to administer poison to her, was held to have not been proved. It was, however, held that the appellant had made a false charge against the respondent of committing adultery with Malak Ram and this amounted to cruelty. The respondent was, in the circumstances, held justified in withdrawing herself from

the society of the appellant. The allegation of cruelty against the appellant was also held to have been substantiated, because besides the charge of infidelity no interest was taken by the appellant when the respondent gave birth to a daughter and no money was sent by him for the maintenance of the daughter. In the result the petition was dismissed.

5. I have heard Mr. Chopra on behalf of the appellant and Mr. Daljit Singh on behalf of the respondent, and am of the view that the present petition is liable to be dismissed. According to Sub-section (2) of Section 9 of the Hindu Marriage Act, nothing shall be pleaded in answer to a petition for restitution of conjugal rights which shall not be ground for judicial separation or for nullity of marriage or for divorce. The stand of the respondent is that the appellant has treated the respondent with such cruelty as to cause a reasonable apprehension in her mind that it would be harmful or injurious for her to live with the appellant and her case is covered by Clause (b) of Sub-section (1) of Section 10 of the Hindu Marriage Act, which makes a provision for a decree for judicial separation on the above ground, and as such the appellant is not entitled to a decree for restitution of conjugal rights. The Court below in holding that the appellant had treated the respondent with cruelty, has mainly relied upon the allegation that the appellant made a false charge of adultery against the respondent. In this connection I find that Exhibit D. 3 is the letter which was sent by the appellant to the respondent. Though this letter does not bear any date, it refers to a previous notice dated 7th April 1962 which had been sent through counsel, and it seems that Bus letter was sent soon after that. In the course of this letter the appellant stated:

"The fact is that Shri Malak Ram is at the root of the whole trouble and has seduced and has abducted you from my house for his sexual satisfaction and has further stealthily removed cash, jewellery, clothings etc., worth Rs. 10,000/- from my house with your connivance.

* * * * * So long as you stayed at my house were abusing and quarrelling with me and my parents, and seeking pretext to leave the house because of your illicit relations with Malak Ram. I now learn that you and Malak Ram have disposed of and sold the property stolen from my house and have converted the same to Malak Ram's use. You have been residing for full two years with Malak Ram for illicit purposes and have been postponing me from time to time that you will return to my house and that you will bring the property taken away illegally by you from my house. It has been admitted by you and Malak Ram that you have misappropriated my property and you will stop with the immoral way of life you have been leading. Mr. Malak Ram has further admitted that he will not allow you to leave his house or to return my property. That the reply sent above is in fact given by Sh. Malak Ram through a lawyer and it does not behove you o behave as such. All this has obliged me to seek resort to a court of law and take steps both civil and criminal as advised. The situation has become further serious as you and Malak Ram have threatened me with death and dire consequences for my claiming my properly and asking you to return."

The appellant admits having sent the aforesaid letter and during the course of his evidence as P.W. 7 has deposed that the charge of adultery in Exhibit D-3 is not a false one. The respondent in the course of her statement as R.W.2 has deposed that the allegations levelled against her in the above letter were false and she had no illicit connection with her sister's husband Malak Ram. It is in evidence that Malak Ram is a father of children and the respondent was only 5 or 6 years old when her sister was married to Malak Ram, No attempt was made by the appellant to substantiate his allegation that the respondent had any illicit connection with Malak Ram and as the record stands it cannot but be held that the above allegation had been made without any basis. Indeed, Ram Lal Kohli (P.W 6). who is the father of the appellant, has deposed that no complaint was heard against the respondent about her character.

6. When a husband makes allegation of adultery and unchastity against his wife and she denies it, it is for the husband to show in matrimonial proceedings that he had a reasonable cause to make the allegation. A bare assertion by the husband that his wife was guilty of adultery without any attempt to substantiate the assertion would necessarily lead to the conclusion that the allegation is without any basis. I may in this context refer to the following observations on page 134 of Rayden on Divorce Eighth Edition:--

"It should be observed that if it is desired, in answer to an allegation of making false accusations of adulterous, immoral or other improper conduct, to adduce evidence that the other spouse was in fact guilty of such conduct, this cannot be done by simply alleging belief in the truth of the allegations and. stopping short of alleging that truth, relying on the general traverse; the actual facts alleged must be specifically pleaded."

7. Question, which then poses itself for consideration, is whether the making of baseless allegation of unchastity and adultery by the husband against the wife amounts to cruelty. The answer to this question in my opinion. has to be in the affirmative. There are few things which a woman, especially in the background of Indian traditions, cherishes more than chastity and where a baseless and unfounded charge is made of unchastity and adultery against a woman, it must in the very nature of things cause her extreme anguish. The fact that the charge was made in a communication addressed to the wife and was not then given publicity, would not go to show (hat the making of the unfounded charge was not a cruel act. As things are, the charge in the present case was not only made in letter Exhibit D-3 but was reiterated in the replication and also in the deposition of the appellant as P.W.7

8. Mr. Chopra has laid stress on the fact that the respondent did not set up the writing of letter Exhibit D---3 by the appellant to her as a ground for judicial separation in the petition filed by the respondent for the purpose. This omission on the part of the respondent would not make any material difference and would not, in my view, prevent her from taking up this plea in the present proceedings because there is no rule of estoppel which prevents her from taking up such a

plea.

9. I would, therefore, uphold the finding of the Court below that the appellant was guilty of cruelty in making baseless allegation of adultery against the respondent. I am also of the view that after the above act of cruelty it would be harmful and injurious for the respondent to compel her to live with the appellant. I am fortified in this conclusion by the observations of Shamsheer Bahadur J. in *Iqbal Kaur Vs. Pritam Singh S. Nanak Singh*, . The learned Judge observed--

"When the wife is stated by the husband to be living the life of a prostitute and in the environments of immorality without any proof of these allegations, she can legitimately ask the Court to give a finding that she has a reasonable apprehension in her mind about the harmful or injurious effect of living in the matrimonial home."

In *Gurcharan Singh. v. Waryam Kaur* 1960 62 PLR 127 AIR 1960 P&H 422 one of the circumstances which weighed with Dua J. in upholding the decision of the trial Court in dismissing a petition for restitution of conjugal rights brought by the husband against the wife, was that the husband had attributed immorality and infidelity to his wife.

10. As a result of the above, the appeal consequently fails and is dismissed with costs.