
(1982) 11 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 665 of 1981 in F.A.O. No. 106M of 1980

Mrs. Kamal Nainjit Kehr

APPELLANT

Vs

Sqn. Leader P.S. Kehr

RESPONDENT

Date of Decision : 09-11-1982

Acts Referred:

Hindu Marriage Act, 1955 — Section 13

Citation : (1982) 11 P&H CK 0005

Hon'ble Judges : Surinder Singh, J;S.S. Sandhawalia, J

Bench : Division Bench

Advocate : Brij Mohan Lal, for the Appellant; H.L. Sibal with Mr. S.C. Sibal, for the Respondent

Final Decision : Dismissed

Judgement

Surinder Singh, J.—This Letters Patent Appeal has been filed by Mrs. Kamal Nainjit Kehr (wife) against the judgment of the learned Single Judge rendered in F.A.O. No. 106-M of 1980. The facts may be briefly noticed.

2. The parties were married at Jullundur in December, 1973. They lived together at Lucknow from February 12 to April 5, 1974 during the posting of the respondent husband at the station. The appellant suspected the fidelity of the respondent and felt that he was neglecting her. According to the appellant, the respondent was having an illicit relation with a widow. Though the appellant continued to live in the house of her father-in-law at Gurdaspur, but when the respondent was transferred to Jorhat he came to Gurdaspur to take the appellant to that station. Both of them proceeded to Jorhat in their car. In the way, they stayed at Delhi for some time where some trouble arose between them and as a result, the brother of the appellant came and took her to Chandigarh. This was in October 1976 after which the parties never lived together.

3. A petition u/s 13 of the Hindu Marriage Act for dissolution of marriage was filed by the respondent which was contested by the appellant who pleaded that

she had been maltreated and neglected by the respondent and that he had been spending most of his time moving about with a rich widow of about forty years of age, who was in no way related to him. The trial Court, i.e., the Additional District Judge recorded the evidence of the parties and after considering the same, dismissed the petition of the husband as per judgment dated February 13, 1980. Against the said decision, the respondent filed F.A.O. which was accepted by the learned Single Judge by means of the impugned judgment dated June 3, 1981 and a decree for dissolution of marriage was passed in favour of the respondent.

4. The sole submission made by the learned counsel for the appellant in this appeal is that the allegation of mental cruelty made by the respondent had not been substantiated from the evidence on the record. The contention is that all that the appellant had alleged, is that the respondent had been moving about with a rich widow and this would not tantamount to an allegation of adultery. We fail to agree with the logic of this contention. The respondent in his application for dissolution of marriage filed before the trial Court made a specific allegation that the appellant had perpetrated mental cruelty upon him and in support of his plea, he narrated several incidents. He highlighted the fact that the appellant had made accusation against his character. As already noticed, the appellant took up the stand in her written statement that the respondent had been moving about with a widow who was not related to him. In her evidence before the court, she further alleged that he drank heavily and used to come to the house late at night. According to the finding of the learned Single Judge the rich widow referred to above, was the real sister of the mother of the respondent having an eldest child of the age of thirty-eight years. The learned Single Judge further inferred that it could not be easily accepted that the wife would not know the relationship of this widow with the respondent. In this state of the evidence, it was rightly held by the learned Single Judge that the accusation made by the appellant would amount to mental cruelty. In regard to the incident which happened at Delhi, the learned Single Judge went into the relative merits of the respective contentions of the parties and found that the version set up by the appellant did not appear to be believable especially in the light of a letter (Exhibit P/1) written by her brother in which the brother himself referred to the incident as "really shocking". The finding of fact arrived at by the learned Single Judge in this behalf does not call for any review in this appeal.

5. The learned counsel for the appellant has referred to *Paras Ram Vs. Kamlesh*, where in it was held that mere allegation of adultery made against a spouse in defence in a written statement does not by itself amount to cruelty. The ratio of the said authority is however not attracted to the present case where there was a specific averment made by the respondent in his application for dissolution of marriage that the appellant had made allegations against his character by alleging that he was moving about with an elderly widow most of the time and on this account he had been neglecting her. This allegation, as already noticed was not denied. On the other hand, the appellant reiterated the same in her written

statement Paras Ram's case (supra) has, therefore, no application to the facts of the present case.

6. No other point has been argued in this appeal which is without force and is consequently dismissed, but with no order as to costs.

S.S. Sandhawalia, C.J.

7. I agree.