
(1968) 03 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 78-M of 1966

Mst. Raj Kumari

APPELLANT

Vs

Ram Parkash Singal

RESPONDENT

Date of Decision : 18-03-1968

Acts Referred:

Hindu Marriage Act, 1955 — Section 10

Citation : (1968) 03 P&H CK 0009

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Advocate : Kuldip Singh, for the Appellant; Har Parshad and Dr. A.S. Anand, for the Respondent

Final Decision : Allowed

Judgement

P.D. Sharma, J.—The facts giving rise to this first appeal against an order and decree of the learned Additional District Judge, Ambala, briefly stated are these: Ram Parkash Singal and Smt. Raj Kumari were married according to Hindu rites on 11th December, 1962, at Hoshiarpur. Thereafter the couple lived together for some time at Ambala Cantonment and then at Delhi. Subsequently Ram Parkash Singal filed the present application u/s 10 of the Hindu Marriage Act, hereinafter called as the Act, on the 28th May, 1965, in the Court of the Additional District Judge, Ambala, for judicial separation against his wife alleging that she was not in favour of his sending money to his aged parents and infirm brother who mainly depended on him and when he did not listen to her protestations she started abusing him and at times would not even cook his meals. She is said to have procured some tawiz in order to create hatred in his mind against his parents. Finally she left him and since then had been living with her parents at Hoshiarpur.

2. The respondent denied the facts set up by her husband in support of his prayer for judicial separation and added that up to the month of July, 1964, she had been living with her husband -the petitioner, happily although at times he

would observe that he did not like her and that the had net brought sufficient dowry from her parents. She further stated that the petitioner's mother also had been telling her that she was neither good looking nor had brought any dowry in the marriage. In fact the mother had been instigating her son the petitioner to desert her and on her advice he gave her beating and turned her out of the house. The respondent also urged that in case the petitioner's plea found favour with the Court and a decree for judicial separation was granted against her, she may be allowed Rs. 150/- per mensem as maintenance u/s 25 of the Act.

3. The trial Judge framed the following issues:

1. Whether the petitioner is entitled to judicial separation on the grounds stated in para 5 of the petition.

2. In case issue No. 1 is decided in favour of the petitioner to what amount of alimony and maintenance is the respondent entitled u/s 26 of the Act ?

3. Relief.

He found issue No. 1 in favour of the petitioner and under issue No. 2 allowed the respondent Rs. 60/- per mensem by way of permanent alimony. In the result the petitioner was granted a decree for judicial separation against the respondent and he was directed to pay Rs.60/- per mensem by way of permanent alimony till her life time under certain conditions Smt. Raj Kumari has impugned the correctness and propriety of the above in the present appeal. She will, hereinafter be referred to as the appellant.

4. The Learned Counsel for the appellant contended that the trial Judge had not properly appraised the evidence on the record and also urged that even if the facts found by him were accepted as correct then also these did not furnish a good ground for granting a decree for judicial separation. I agree with him for the reasons as follows. The parties mainly relied on the oral testimony of a few witnesses cited by them at the trial. Inder Singh A.W. 1, a neighbour of the petitioner's father at Ambala Cantonment said that once the petitioner's mother came out from her house weeping and took him inside and showed a few tawiz lying on the sofa set. The appellant on his enquiry is said to have admitted that these tawiz had been handed over to her by her brother who was at Kashmir and were meant to produce hatred in the mind of the petitioner against his parents. He is stated to have seen at another time the appellant abusing the petitioner in the presence of his mother. The appellant told the witness that she would continue to misbehave till the petitioner stopped from maintaining his aged parents The witness is neither a relation nor a friend of the petitioner's family. In these circumstances it is difficult to believe that the appellant would have so readily disclosed the state of her mind and the purpose for which the tawiz had been obtained by her. Vishwa Nath A.W. 2 supported the statement of the first witness. His evidence too appears to be a concoction for the reasons given by me while ignoring the testimony of A. W. 1. Mohd. Hasinud din A. W. 3 was examined to explain the object for which the tawiz of the kind said to have been recovered

from the appellant's possession are used. The learned Additional District Judge did not rely on this part of the evidence adduced by the petitioner and so I need not examine it in detail which for obvious reasons deserves scanty consideration. Amar Nath A.W. 4 and Pishori Lal A.W. 5 were neighbours of the parties when they were living at Delhi Shaddara According to them the appellant used to quarrel with her husband and at times abused him in their presence. The first of them is working in the same firm as the petitioner. The second was a landlord of the parties. They appeared to be tutored witnesses and in all probability gave their evidence on account of their connections with the petitioner. Ram Parkash Singal petitioner as A W. 6 corroborated the contents of his petition.

5. In rebuttal, Panna Lal R. W. 1 and Kashmiri Lal R. W. 2 who visited the parties house when they were residing at Shahdara Cantonment said that they found them living amicably. Goverdhan Das a relation of the petitioner said that in the month of July, 1964, he met the appellant at Jullundur when she told him that she had been belaboured by the petitioner and then turned out of the house. Khazan Singh R. W. 4 and Raja Ram R. W. 6 residents of Ambala Cantonment deposed that the parties never quarrelled. Smt. Raj Kumari appellant as R.W. 7 and his brother Mohinder Pratap as R. W. 6 supported the former's case as disclosed in her written statement. The evidence led by the appellant convincingly rebutted the testimony of a few witnesses cited by the other side. There was thus hardly any cogent evidence on the record to prove the petitioner's case. Even if for arguments sake it may be conceded that the facts as alleged by him are true then also these hardly furnish a good ground for granting a decree for judicial separation, because the same are normal incidents of conjugal life. In this connection reference may be made to *Kaslefsky v. Kaslefsky* (1950) 2 All E.L.R. 398, and *Rukman Kanta v Faquir Chand* AIR 1960 P&H 493.

6. The appeal is, therefore, allowed and the order and decree of the learned Additional District Judge are vacated. The petition u/s 10 of the Hindu Marriage Act is dismissed but there will be no order as to costs.