
(1971) 04 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 100-M of 1969

Smt. Bhago

APPELLANT

Vs

Bant Singh alias Balwant Singh

RESPONDENT

Date of Decision : 23-04-1971

Acts Referred:

Hindu Marriage Act, 1955 — Section 9

Citation : (1971) 04 P&H CK 0030

Hon'ble Judges : Gopal Singh, J

Bench : Single Bench

Advocate : J.S. Chawla, for the Appellant; D.S. Kang, for the Respondent

Final Decision : Dismissed

Judgement

Gopal Singh, J.—These are two appeals directed against the judgment of Shri Suchet Singh Kalha, Additional District Judge, Patiala dated August 7, 1969. F.A.O. No. 100-M of 1969 has been filed by Smt. Bhago against her husband Bant Singh alias Balwant Singh from the decree for restitution of conjugal rights granted to the husband against the wife u/s 9 of the Hindu Marriage Act, 1955 (hereinafter called the Act). F.A.O. 101-M/1969 is also by the wife against the husband from the order of refusal to grant decree to the wife for judicial separation u/s 10 of the Act. Both the petitions were directed to be tried together. Evidence was led in petition filed on behalf of the wife.

2. The parties were married some time in 1959 at village Chhat. After the Marriage, they lived together at the village of the husband, Roshanpur Jhungian. The wife filed petition u/s 10 of the Act on March 18, 1936. The petition u/s 9 of the Act was presented by the husband on May 23, 1966. In her petition, the wife stated that the husband used to make demands of money from her and compelled her to approach her parents and brothers to meet those demands and it was impossible for her to meet those demands, that he used to give her beating and cruelly treat her and that the cruel treatment meted out to her by the husband caused a reasonable apprehension in her mind that it would be

harmful or injurious for her to live with the husband. The husband in his petition u/s 9 of the Act alleged that she had withdrawn herself from his society four months prior to the presentation of the petition, that she had developed illicit connections with Prem Singh and Jit Singh of village Nagla and with Joginder Singh of village Roshanpur Jhungian, that she eloped with Prem Singh and that he had to take out proceedings u/s 100, Criminal Procedure Code and obtained warrants for her search in the house of Prem Singh because of her having eloped with him and been found to be staying in his house. The allegations made by one spouse were denied by the other in reply and the respective stands taken by him or her in the petition were reiterated. The controversy between the parties gave rise to the following issues. The issues framed in the petition filed on behalf of the wife are as follows:-

1. Whether the respondent is treating the petitioner with cruelty?
2. Whether the respondent has turned out the petitioner from his house and has since then deserted her?
3. Whether the respondent forced the petitioner to bring more money from her parents?
3. The issues framed in the petition filed by the husband are as follows:-
 1. Whether Mst. Bhago respondent has developed a love-affair with Prem Singh?
 2. Whether the respondent, in the absence of the petitioner, eloped with Prem Singh and Jit Singh and has thus withdrawn from the society of the petitioner with any reasonable excuse?
 3. Whether the petitioner's husband is not entitled to the decree for restitution of conjugal rights on the ground that he has brought allegation of unchastity etc. against the respondent?
 4. Whether Bant Singh has ill-treated and abandoned the respondent for about 2 1/2 years?
 5. Whether Bant Singh petitioner is guilty of physical and mental cruelty to his wife and there has been cessation of marital relations between the parties for a long period?
 6. Whether Bant Singh is guilty of continued disregard of marital obligations?
 7. Whether it will be dangerous to the health of the wife, if she is sent to her husband's house?

4. The trial Court gave finding in the petition filed on behalf of the husband that the wife had withdrawn from the society of the husband and she had failed to substantiate the plea of cruelty advanced on her behalf. In the result, the Court granted decree to the husband against the wife for restitution of conjugal rights. As the wife was found to have failed to prove the ground for judicial separation, her petition was disallowed.

5. The counsel appearing on behalf of the wife in F.A.O. No. 100-M of 1969 directed against the decree granted to the husband against the wife for restitution of conjugal rights has confined his arguments to issue No. 3, which runs as follows:-

Whether the petitioner's husband is not entitled to the decree for restitution of conjugal rights on the ground that he has brought allegation of unchastity etc. against the respondent?

There is no gainsaying the fact that in his petition, the husband made serious allegations against his wife attacking her chastity. Para 5 of the petition runs as follows:-

That there have been no previous proceedings with regard to the marriage except application u/s 100, Criminal Procedure. Code for the issue of a warrant for the search of the respondent but the respondents paramour Prem Singh being a clever and influential man succeeded in avoiding the service of the warrant on the respondent.

Para 7 of the petition is as under:-

That the respondent cultivated connection with one Prem Singh son of Daya Singh of village Nagla, which is a neighbouring village of village Chhat and also had relations with one Joginder Singh of village Roshanpur Jhungian, whose house he used to visit.

6. Not only, the above facts given in the petition filed on behalf of the husband charge the wife with unchastity but also the husband in his statement admitted that she eloped with Prem Singh of village Nag-la. This Prem Singh was admitted to be relation of the brother-in-law of Surjit Singh, brother of the husband. As referred to in the petition itself, the husband in his statement also admitted that he had taken out proceedings u/s 100, Criminal Procedure Code against Prem Singh and Jit Singh for search of their houses and got warrants issued so as to have recovered his wife from their houses. He has in his statement further said that he himself was physically weak whereas his wife was physically strong and she on that score carried on with her paramours and in particular with Prem Singh. It is true that he admitted that upon search being effected in the house of Prem Singh in pursuance of the warrants of search issued by the Magistrate, the wife was not recovered from his house but the fact remains that he has levelled serious allegations against her attacking her modesty and stated facts defamatory of her conduct as a wife.

7. There is no doubt that the wife has failed to give satisfactory evidence as to her having been beaten and her husband having committed physical violence against her except the bare assertion to that effect made by her in her statement but the allegations made by the husband against the wife assailing her chastity and modesty do amount to mental torture to her. Although on the basis of the evidence led, the trial Court has failed to find that these allegations are true and

correct but all the same the fact remains that the husband does malign the wife for the misconduct of her (sic) with her para (sic) and for her having developed with them illicit relations. He also admits that he initiated criminal proceedings for issue of warrants of her search in the houses of Prem Singh and Jit Singh and that in spite of search in pursuance of the warrants issued, she was not actually recovered. The result of actual recovery is immaterial. According to these facts, the husband does concede that the wife is of a loose character and he has openly in his petition filed u/s 9 of the Act as well as in his statement on oath charged his wife with the misconduct of unchastity. The husband has placed on the record copy of an application dated March 2, 1966, Exhibit P 4. That application was made by him u/s 100, Criminal Procedure Code. He has also placed certified copies of the reports made by Lal Singh Station House Officer, Exhibits. P 1. and P. 2. There is a copy of the order of the Magistrate dated March 4, 1966 marked Exhibit P. 3. showing that warrants for search of the wife were issued. These documents were filed in the petition of the wife. This documentary evidence placed on the record coupled with that has been stated by the husband himself in his petition u/s 9 of the Act and the statement made by him in Court clearly point out that the husband with the least hesitation made serious allegations of her lacking chastity and fidelity and of her being a wife of a loose and immoral character and yet the husband has chosen to have decree for restitution of conjugal rights. It is on the basis of these allegations that he approached the Court for restitution of conjugal rights. Claim of husband for restitution of conjugal rights to attain the end of wholesome and harmonious matrimonial relations can ill go together with such serious charges of unchastity and faithlessness as made by the husband against the wife. These allegations do amount to mental torture and they fall within the scope of the word, "cruelty" referred to in clause (b) of sub-section (1) of Section 10 of the Act and are bound to cause reasonable apprehension in the mind of the wife that it would be harmful or injurious for her to live with her husband. In our Indian society, great importance is attached to the sanctity of the tie and purity of matrimonial relations between the husband and wife. Allegations of faithlessness and loose sexual life by the wife as made by the husband do not fit in with his desire to live with her-apart from these allegations amounting to mental cruelty to the wife. It is not a fit case in which decree for restitution of conjugal rights could be granted to the husband against the wife when the allegations of unchastity were made in all earnestness and constitute the basic plea of his petition for restitution of conjugal rights and were persisted with all through the course of the proceedings.

8. For the reasons recorded above, I allow F.A.O. No. 100-M of 1969 and set aside the judgment and decree of the trial Court. F.A.O. No. 101-M of 1969 has not been pressed and is dismissed accordingly. In both the appeals, there will be no order as to costs.