
(2001) 03 P&H CK 0161
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 166-M of 1995

Vinod Kumar Gambhir

APPELLANT

Vs

Veena Gambhir

RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 151
Hindu Marriage Act, 1955 — Section 10, 13(1), 23(1)

Citation : (2001) 3 CivCC 243 : (2001) 3 RCR(Civil) 502

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Mr. R.K. Jain, for the Appellant; Mr. Sanjay Vij, for the Respondent

Judgement

R.L. Anand, J.—Vinod Kumar Gambhir (husband) has filed the present appeal and it has been directed against the judgment and decree dated 11.10.1995 passed by Additional District Judge, Gurgaon who dismissed his petition under Section 13 of the Hindu Marriage Act (for short "the Act") which was filed on 22.9.1992.

2. It may also be stated here that the appellant Vinod Kumar had also made an alternative prayer in the said petition for the grant of a decree for judicial separation. It was, inter alia, pleaded by the petitioner that he was married with respondent Veena Gambhir according to Hindu rites on 6.11.1983. After the marriage, the parties resided together as husband and wife and they cohabited with each other as such. Out of this wedlock a male child was born by the name of Amit Gambhir in the month of October, 1985 who is now in the custody of his mother Veena Gambhir. It was also pleaded by the appellant that the respondent lived with him upto December, 1985 and thereafter she left the matrimonial home. It was alleged by the appellant that the respondent was under the influence of her parents and she wanted that the appellant should live as "Ghar Jawai" with her parents. She deserted the petitioner without any sufficient cause. Giving instances of cruelty, it was pleaded by the husband that on 1.8.1986. two

persons were deputed by the respondent who kidnapped him to the Grindlays Bank and threatened him to obey the orders of the parents of the respondents. They also threatened the petitioner that they will get him suspended with the help of a Union Minister. They also threatened that the petitioner will be got involved in criminal cases. Political pressure was also exercised by the respondent. The petitioner persuaded the respondent not to depute such type of persons, but to no effect. So much so, the petitioner also filed a petition u/s 13 of the Act in the month of September 1987 against the respondent which was dismissed by the trial court. Appeal against the judgment and decree of the trial Court was also dismissed by the High Court. That petition was, according to the petitioner, not pursued properly by him with the hope that a good sense may prevail on the respondent with the passage of time, but to no effect. On 13.4.1990, the petitioner was involved by the respondent in a false case under sections 107/151 of the Code of Criminal Procedure in Police Station City, Gurgaon. The petitioner was arrested, handcuffed and was taken on foot from the Police Station to the court through the market. He was released on bail and as a result of this arrest, the reputation of the petitioner was badly damaged. The respondent again made a report on 13.4.1990 in the Police Station City Gurgaon that she had been beaten by the petitioner with iron rod. The police directed the respondent to get herself medically examined by the Doctors of the Government Hospital but she refused to do so as the allegations of beating made by her were false to the knowledge of the respondent.

3. The other instance pleaded by the husband was that the respondent forcibly occupied one room along with a kitchen in the house of his family members and she falsely claiming herself to be the true owner of the said portion, filed a suit before the civil court praying for grant of a decree in her favour declaring her as owner of the said portion. But in that suit, only the relief of injunction was granted by the trial court. By falsely claiming herself to be the true owner of the property, the respondent caused mental tension to the petitioner.

4. The third instance of cruelty pleaded by the appellant is that the respondent did not allow him to see his minor child Amit Gambhir and this had also caused mental tension to him. So much so, the respondent has asked the petitioner several times to return her dowry articles but in fact there was no dowry given to the petitioner at the time of marriage. With these broad allegations, the appellant made a prayer for dissolution of marriage by a decree of divorce and in the alternative prayed for passing of a decree u/s 10 of the Act for judicial separation.

5. Notice of the petition was given to the respondent who filed reply controverting and denying the allegations contained therein. On the contrary, the respondent submitted that she was beaten by the petitioner with iron rods, slaps and fist blows and thus she was left with no alternative but to report the matter to the police. However, since the petitioner is a very influential person, no case for serious offences was registered against him, and only a case under sections

107/151 of the Code of Criminal Procedure was registered. The respondent specifically denied that she forcibly occupied one room and a kitchen in the house of the family members of the petitioner or that she falsely claimed herself to be true owner of the said portion. She pleaded that this portion of the house had fallen to her share in a family settlement and after dismissal of the earlier divorce petition, when the petitioner tried to forcibly dispossess her, she was left with no alternative but to file a suit restraining him from doing so. It was also pleaded that the petitioner never cared to look after the minor son of the parties. The child was brought up by the respondent from her own salary. The petitioner had even no love and affection for the child. She had been continuously living in the matrimonial home but the behaviour of the petitioner was bad and she was turned out of the matrimonial home on account of bringing inadequate dowry. The respondent had every right to insist for return of the dowry articles, it was also pleaded that the respondent never deserted the petitioner, and rather it is the petitioner who turned the respondent out of the matrimonial home. Also, it was pleaded by the respondent that the present petition is barred by the principle of res judicata because the petitioner had earlier filed a petition section 13 of the Act against her on the identical grounds, which was dismissed by Additional District Judge, Gurgaon vide judgment and decree dated 10.12.1988.

6. The petitioner filed rejoinder to the written statement filed by the respondent, reiterating the averments made in his petition and denying those contained in the written statement. From the pleadings of the parties, the trial Court framed the following issues :-

1. Whether marriage between the parties is liable to be dissolved for the reasons given in the petition ?
2. Whether the petition is barred by the principle of res judicata ?
3. Whether the husband is not entitled to the relief of decree of divorce on the grounds mentioned in the preliminary objections mentioned in the written statement ?
4. Relief.

7. The parties led oral and documentary evidence in support of their respective claims and I will deal with this evidence in the subsequent paras of this judgment, but at this stage, I would like to say that on the conclusion of the proceedings in the petition, issues Nos. 1 and 2 were decided against the appellant and in favour of the respondent whereas issue No. 3 was decided against the respondent. Finally, the divorce petition filed by the petitioner was dismissed for the reasons given in paras 7 to 16 of the impugned judgment and these paras are quoted below:-

"7. Previously also, a divorce petition was filed by the petitioner against the respondent and the same was dismissed vide judgment dated 10.12.1988 passed by Mr. K.K. Chopra, the then Additional District Judge, Gurgaon. Copies of

the petition, written statement and the judgment passed in that case have been placed on the file of this case. Original file of that case has also been summoned in this case. A perusal of the copy of the petition Exhibit R.6 of the previous case and the petition of this case shows that the averments made in para Nos. 1 to 6 of the previous petition decided on 10.12.1988 and in para Nos. 1 to 6 of the present petition are the same. In the previous petition Exhibit Rs. 6, vide judgment dated 10.12.1988 it was held that the petitioner was not able to prove that the respondent was guilty of desertion and cruelty. An appeal was filed against the judgment dated 10.12.1988 and the same was dismissed by the Hon"ble High Court. It has been admitted by the parties that the averments made in para Nos. 1 to 6 of the previous petition and para Nos. 1 to 6 of this petition are the same and that the appeal filed against the judgment dated 10.12.1988 passed by Mr. K.K. Chopra, the then Addl. District Judge, Gurgaon, was dismissed by the Hon"ble High Court, thus the judgment dated 10.12.1988, Ex. R.8 operates as res judicata so far as the allegations of desertion and cruelty levelled by the petitioner in para Nos. 3 to 6 of the petition are concerned. (The averments made in para Nos. 1 to 2 are of formal nature). As such, the allegations in para Nos. 1 to 6 of the present petition cannot be looked into again by virtue of judgment dated 10.12.1988. 8. It was contended by the learned counsel for the petitioner that the petitioner was involved in a false case u/ss 107/151 Cr.P.C. at P.S. City Gurgaon on 13.4.1990 on a false complaint lodged by the respondent. In that case, the petitioner was handcuffed and taken to the court of concerned Magistrate on foot through the market. Because of this, social reputation of the petitioner was badly damaged. The proceedings initiated against the petitioner u/ss 107/151 Cr.P.C. were dropped by the court. In the report lodged by the respondent with the police, it was mentioned by her that her brother Bharat Bhushan had reached there after she was beaten by the petitioner. During his statement in the court as R.W.4, it was stated by Bharat Bhushan, brother of the respondent, that he had met his sister when she was going to the police post. On 13.4.1990, the respondent had reported to the police that she was beaten by the petitioner with iron rod. The police directed her to get herself medico-legally examined from General Hospital, but she refused to get herself medically examined. These facts show that a false report was lodged by the respondent with the police on 13.4.90 on the basis of which, proceedings u/ss 107/151 Cr.P.C. were initiated against him. By lodging a false report against the petitioner on 13.4.1990 and initialing proceedings against him u/ss 107/151 Cr.P.C. which were later on dropped by the court, the respondent has treated the petitioner with cruelty. In support of his arguments, he has drawn support from *Inder Motion Tiwari v. Manju Tiwari* 1 (1985) D.M.C. 498 *Rajinder Bhardwaj v. Mrs. Anita Sharma* 1993(1) H.L.R. 38S and *Rajinder Kumar v. Daryodhan Lal* 1980 H.L.R. 301.

9. On the other hand, it was argued by the learned counsel for the respondent that on 13.4.1990, the respondent was beaten by the petitioner with iron rod and fists and slaps. In this connection, a report was lodged by her with the police

on the same day. The petitioner was an influential person. Because of this reason, instead of registering a case against the petitioner for serious offences, the police registered a case only u/ss 107/151 Cr.P.C. There is no cogent evidence on the file to show that the petitioner was handcuffed and was paraded through the market on foot while being handcuffed. It was also argued by him that from the statement of R. W.2 Dr. Rekha Yadav, who examined the respondent on 13.4.1990 vide M.L.R., copy of which is Ex. R6, it is amply clear that she was medico-legally examined for the injuries suffered by her in the beating given to her by the petitioner. After the respondent was beaten by the petitioner, she was having no option, but to report the matter to the police. The proceedings initiated against the petitioner u/ss 107/151 Cr.P.C. were dropped by the court as the same had continued for a period of six months. The fact that those proceedings were dropped after passing of period of six months, does not show that the allegations made by the petitioner were false. It was also argued by him that statement of Bharat Bhushan RW4 was recorded on 18.4.1984 after a lapse of about four years from 13.4.1990. Human memory fails after sometime. The petitioner cannot draw any help from the fact that during his cross-examination, this witness has stated that he had met the respondent when she was going to the police station, whereas in the report lodged by the respondent with the police, it was stated that Bharat Bhushan had come to her after the beating was given to her. Drawing support from *Hawa Singh v. Santosh alias Guddo* 1988 (1) P.L.R. 18 and *Chander Mohan v. Smt. Neelam Kumari alias Urmil Kumari* 1987 (2) P.L.R. 149, it argued by him that the act of the respondent in reporting the matter to the police that she was beaten by the petitioner with iron rod, fists and slaps, does not amount to cruelty.

10. The arguments advanced by the learned counsel for the petitioner do not find favour with me, whereas those advanced by the learned counsel for the respondent carry weight with me. From the material on the file, it appears that on 13.4.1990, the respondent was beaten by the petitioner with slaps, fists and iron rod. She was medico-legally examined by RW2 Dr. Rekha Yadav of General Hospital, Gurgaon, vide M.L.R., copy of which is Ex. R.6, for the injuries suffered by her. It is correct that in the report lodged by the respondent with the police, it was stated that by her that her brother Bharat Bhushan had reached her house after she was beaten by the petitioner, whereas during his statement as R.W.4, he has stated that his sister had met her while she was going to the police post. The statement of this witness was recorded on 18.4.1994 after a lapse of 4 years from the date when the beating was given to the respondent by the petitioner i.e. on 13.4.1990. Human memory fails after sometime. As such, the petitioner cannot take any help from the discrepancy in the report lodged by the respondent with the police and statement of R.W.4 Bharat Bhushan regarding the place where Bharat Bhushan had met the respondent. A perusal of the order dated 17.12.1990 passed by the City Magistrate, Gurgaon, shows that the proceedings u/ss 107/151 Cr. P.C. were dropped and the petitioner was discharged as the case had continued for a period of more than six months.

Thus, the fact that the proceedings against the petitioner u/ss 107/151 Cr.P.C. were dropped, does not show that the report lodged by the respondent with the police was false. In my opinion, after the respondent was beaten by the petitioner, she was having no option, but to report the matter to the police. It appears that the police for the reasons best known to it instead of registering a case against the petitioner for more serious offences, only arrested him in a case u/ss 107/151 Cr. P.C. To my mind, by reporting the matter to the police after she was beaten by the petitioner, (she) had not treated the petitioner with cruelty. In support of this view, I draw support from 1987(2) P.L.R. 149 and 1988(1) P.L.R. 18. The authorities which have been referred to by the learned counsel for the petitioners on this point are not applicable to the facts of the present case and as such, the same are of no help to the petitioner at all.

11. It was further argued by the counsel for the petitioner that a false case for declaration and permanent injunction was filed by the respondent against the petitioner regarding the portion of the house of the petitioner and his family on the ground that she was owner of that portion. By falsely claiming herself to be owner of that portion, she had treated the petitioner with cruelty. The respondent was keeping Amit, son of the petitioner and respondent, with her. She was not allowing the petitioner and his mother to meet master Amit. By this act also, she had treated the petitioner with cruelty. The respondent has also been beating the mother of the petitioner. This act of the respondent also amounted to cruelty. In support of his arguments, he has drawn support from *Sudesh Kumari Chawla v. Subhash Chander Chawala* 1982 H.L.R. 565; *Atam Parkash Arora v. Neelam* 1981 D.M.C. 43 *Krishna Devi v. Prabhu Dayal* 1983 H.L.R. 540 *Samiti Khanna v. Aroon Khanna* 1992(2) H.L.R. 30 *Harbhajan Singh Monga v. Amarjit Kaur* 1986(1) H.L.R. 634 *Kiren Mandal v. Mohini Mandal* (1989) D.M.C. 104; *Prem Kaur v. Ratti Ram* 1981 H.L.R. 423 *Smt. Parimi Mehar Seshu Vs. Parimi Nageswara Sastry, and Usha v. Vimal Kumar* 1 (1987) D.M.C. 164.

12. On the other hand, it was argued by the learned counsel for the respondent that the respondent was residing in a portion of house consisting of a room and a kitchen of petitioner and his family members. This house had fallen to her share in family arrangement. The petitioner wanted to forcibly evict the respondent and her son from this portion. Fearing forcible dispossession from this portion, a suit for injunction was filed by her. In that suit, the court had restrained the petitioner from forcibly dispossessing the respondent and her son from this portion. It cannot be said that by filing the said suit, the respondent had treated the petitioner with cruelty. It was also argued by him that during his cross-examination as P. W.3, it has been admitted by petitioner Vinod Kumar that her son was got admitted in the school by the respondent and that she was bearing the expenses of his education and maintenance. This shows that the petitioner was not in any way caring for his son master Amit. There is no cogent evidence on the file to show that the respondent had not permitted that the petitioner and his mother to meet master Amit. No application was never filed by the petitioner before the court for the custody of the child or giving direct ion to the respon-

denl to permit the petitioner and his mother to see and meet master Amit. From the material on the file, it cannot be said that the respondent had not permitted the petitioner and his mother to meet master Amit. During his statement in the court as P.W.3, petitioner Vinod Kumar has not uttered even a single word to the effect that his mother was beaten by the respondent. Even the mother of the petitioner has not been produced in the court to prove that she was even beaten up by the respondent. Thus, it cannot be said to have been proved that the respondent had ever given beating to the mother of the petitioner. It was also argue a by him that the authorities referred to by the counsel for the petitioner are not applicable to this case at all.

13. I do not feel inclined to accept the arguments advanced by the learned counsel for the petitioner, whereas those advanced by the counsel for the respondent carry weight with me. From the material on the file, it appears that the respondent along with her son has been residing in a portion of the house of the petitioner and his family members. That portion consisted of one room and kitchen etc. Fearing forcible dispossession from this portion at the hands of the petitioner, a suit for declaration and permanent injunction was filed by her against the petitioner regarding that port ion. alleging that this port ion was given to her in family arrangement and that she was owner of the same. In that suit, the petitioner was restrained from forcibly dispossessing the respondent and her son from that portion. To my mind, by filing such a suit, the respondent had not treated the petitioner with cruelty.

14. During his cross-examination as PW3, it has been admitted by petitioner Vinod Kumar that her son was admitted in the school by the respondent and that the expenses of his education and maintenance were borne by the respondent. This shows that the petitioner was not taking any interest in the up-bringing and education of master Amit. At present, master Amit is about 10 years old. Mad the petitioner and his mother bothered to take interest in his up- bringing, education and showered love on him, he would have himself come to the petitioner and his mother. No application was given by the petitioner for the custody of Amit. No application was ever moved by him in the court for giving direction to the respondent to permit him and his mother to meet and see Amit. Thus, it cannot be said to have been proved on the file that the respondent had not (been) permitting the petitioner and his mother to see master Amit. During his statement in the court as PW3, petitioner Vinod has not stated even a word to the effect that his mother was beaten by the respondent. His mother has also not stepped into witness box to state this she was beaten by the respondent. Thus, it cannot be said to have been proved on the file that the respondent had ever beaten the mother of the petitioner.

15. Further drawing support from *Paramjit v. Ranjit Singh* 1994(3) RCR 591 : 1994(2) H.L.R. 95 *V. Bhagat v. Mrs. D. Bhagat* 1994(1) H.L.R 74 *Urmila Devi and others v. Ravi Parkash* (1984) D.M.C. 339: *K.K. Malhotra v. Kirti Malhotra* 1987(1) H.L.R. 199: *Mrs. Gurveen Kaur v. Ranjit Singh Sandhu* and another

1990(2) H.L.R. 27: Dr. S.P. Trivedi v. Smt. Chanderkal Trivedi 1990(2) H.L.R. 67 Zora Singh v. Gurmel Kaur 1994(2) RCR (Civil) 468 : 1994(2) S.C.C. 346 and Darshan Kumar v. Smt. Manju Rani 1991(1) H.L.R. 543, it was argued by the learned counsel for the petitioner that the allegations made by the respondent in the written statement against the petitioner also amount to cruelty. Even this argument of the learned counsel for the petitioner does not find favour with me. To my mind, the averments made by the respondent in the written statement do not amount to crucify-The authorities referred to by the learned counsel for the petitioner are not applicable to the facts of the present case.

16. In view of my discussion above, I hold that the petitioner has failed to prove that he is entitled to decree of divorce or for judicial separation. Thus, issue Nos. 1 and 2 are hereby disposed of accordingly."

Not satisfied with the judgment and decree of the Additional District Judge. Gurgaon, the petitioner-husband has preferred the present appeal.

8. I have heard Mr. R.K. Jain, Advocate for the appellant and Mr. Sanjay Vij, Advocate appearing on behalf of the respondent and with their assistance, I have gone through the record of the case.

9. It is a common case of the parties that the appellant had earlier filed a petitioner u/s 13 of the Act. This petition was registered in the court of District Judge as Hindu Marriage Act case No. 52 of 16-9.1987. A certified copy of the said petition is Exhibit R-6 (wrongly marked as R-9 for the second time) on the record of the trial court. A reading of paras Nos. 4 to 6 of the said petition would show that the petitioner-husband had made allegations that the respondent had deserted him since December, 1985; that the respondent wanted that the petitioner should live in the house of the former as Ghar Jawai, that the respondent has taken away all the gold and silver ornaments etc. while leaving the matrimonial home; that the respondent had threatened him that he will be involved in some criminal cases and so much so, on 1.8.1986, the respondent deputed two persons for forcibly kidnapping the petitioner. Each and every allegation of the petitioner was denied by the respondent as is evident from her written statement filed to the said petition, a copy of which is also on the record. Finally, the said petition was dismissed by Additional District Judge, Gurgaon by judgment and decree dated 10.12.1988 as is evident from a copy of the judgment Exhibit R-8. In view of dismissal of the first petition u/s 13 of the Act, now I have to see whether any fresh cause of action accrued to the petitioner after 10.12.1988 to file another petition u/s 13 of the Act. But one inference I have to draw against the appellant that he wanted to take divorce from the respondent on one pretext or the other, and when his earlier petition was dismissed being without any merit, he filed the present petition alleging that he could not prosecute his earlier petition with vigilance etc. This is not the correct version. The earlier petition was decided on hot context and the judgment dated 10.12.1988 dismissing the earlier petition has become final. The appellant did not wait for long. He did not make any effort for rehabilitation of the respondent

after 10.12.1988. The appellant filed the present petition for dissolution of his marriage by a decree of divorce levelling various other allegations against the respondent, which according to him amounted to cruelty. The first of such allegations made by him is that the respondent had involved him in proceedings under Sections 107/151 of the Code of Criminal Procedure and in these proceedings, he was arrested and was paraded through the Bazar of Gurgaon; he was kidnapped at the instance of the respondent and these acts of the respondent brought a great defame to him. On the contrary, the stand of the respondent is that she was beaten with fist blows and iron rods and, therefore, she was left with no choice but to report the matter to the police. But the police did not take proper action and no case under any serious offences was registered against the appellant. The appellant was only challaned by submitting a calendra under sections 107/151. Cr.P.C., and filing of calendra by the police is not an act of cruelty against the appellant.

10. I have considered the rival contentions of the Parties and am of the opinion that the above submission of the appellant must fail. The calendra is on the record of the trial Court as Exhibit P-5. A reading of this document would show that it was alleged therein by the respondent that she was married with the petitioner. She brought sufficient dowry according to the capacity of her parents, and on 13.4.1990 she was beaten up by the appellant. To agitate or protect his/her legal rights by any person before a competent authority, per se is not an act of cruelty until and unless it is established on record that such proceedings were initiated with mala fide. If an aggrieved person lodges an F.I.R. or files a report in the police station or with the police, the police has to take action according to law. The record of the trial court fortifies that the respondent did receive injuries and she was medically examined by a doctor of the Government Hospital. She sustained two injuries which were kept under observation subject to x-ray examination. The doctor examining the respondent opined that these injuries were caused by blunt weapon. A medico-legal report in this behalf is available on record as Annexure R.6. In such a situation, where the aggrieved would go? Either he or she will lodge an F.I.R. or make a report or a complaint to the concerned authorities. There is no finding on the record by any court of competent jurisdiction that the complaint filed by respondent Veena Gambhir before the police was false or frivolous to her knowledge or that no such incident had ever taken place. It is unbelievable that the respondent shall fabricate injuries on her person in order to involve her husband in these circumstances. It stood amply proved on record that she sustained injuries which were attributed to her husband i.e. the appellant. She, therefore, in order to protect herself, was left with no alternative but to report the matter to the police, and if the police took action against the appellant which was permissible according to law, how this act itself can be called as an act of cruelty, unless and until it is shown that the said act was clothed with mala fide. In the present case the relations between the parties were already strained. They litigated by way of proceedings u/s 13 of the Act in the first instance. It is also proved on record that between

them, there was civil litigation also. In such a situation, if the husband had taken the law in his own hands, the opposite party had right to approach the competent authorities under the law of the land.

11. The other instance of cruelty pleaded by the appellant is that the respondent occupied one room along with one kitchen in the house of his family members and she falsely claimed herself to be the true owner of the said portion of the accommodation. She consequently filed a civil suit in the court of Senior Subordinate Judge, Gurgaon. This aspect of the matter has also been gone into by me and I am not in a position to formulate an opinion that this act of the respondent amounted to cruelty. The respondent is a legally wedded wife of the appellant. She has a share in the property of the appellant as well as the right of maintenance. She is not a chattel that she may be thrown at the mercy of the public. Even, it is the admitted case of the appellant that the civil court granted injunction in favour of the respondent-wife. If she is in possession of a portion of the property owned by the members of the family of her husband as of a right, eventually or even as a trespasser, she cannot be thrown out forcibly therefrom as her rights are protected under the law. The respondent is not a stranger in the family. She is daughter-in-law of the parents of the appellant and she is the wife of the appellant. If the respondent wants to live in her matrimonial home, it is none of the business of the appellant to turn her out of the said house. There is no finding given by the civil court that the lis filed by the respondent was false, frivolous or vexatious, or it had been filed with a view to harass the appellant or his family members. Thus, the above act of the respondent also, does not amount to cruelty against the appellant.

12. The third aspect of the case is that the appellant had alleged that the respondent is not allowing him to visit and see the minor child of the parties. This aspect of the matter has also been examined by (sic) in the light of the evidence led by the parties. It is the admitted case of the appellant that the child was born in the month of October, 1985 and the respondent lived in the matrimonial home till the month of December, 1985, meaning thereby the child was hardly of two months in December, 1985. It is unbelievable that a mother will leave her matrimonial home with an infant child who is just two months old unless the circumstances are otherwise. There is no evidence on the record to show that after December, 1985, the petitioner has taken any steps for rehabilitation of the respondent. This point was also agitated by the appellant in his earlier petition which was dismissed and the matter became final. It is the case of the respondent that she was maintaining this child from her own salary and income. If the cause of the appellant was genuine, he could have filed some petition under the Guardianship Act for claiming custody of the child. He could also file a petition to claim visiting rights to see the child. After all, the appellant was the natural guardian of the child. But no such steps have been taken by him. To my mind, this ground was taken just to create a ground for divorce.

13. I have scanned the oral evidence of Vinod Kumar Gambhir appellant who

appeared as PW-3 and am of the opinion that it is not reliable. Me has admitted in his cross-examination that he and his parents were in the house at the lime of his arrest. He has also stated the he did not file any complaint to the higher authorities against his arrest which was on the basis of the report made by the respondent. Also, it has been admitted that the son of the parties was admitted in the school by the respondent and she is bearing the expenses of education and maintenance of the child. As against the statement of the appellant, we have got the statement of the respondent Veena Gambhir who appeared as RW-3. She categorically stated with regard to the incident dated 13.4.1990. She stated that on that day, she demanded her articles of dowry from her husband but he refused to give, and instead beat her with fists, slaps and iron rods, thereafter she went to lodge a report with the police and she was got medically examined by the police. It was also stated by her in her statement that after decision of the divorce case, her husband wanted to oust her from the portion of the house in her possession. She specifically stated that this portion of the house was given to her for residence in a family settlement which was oral. It was also stated that her husband promised that he will get this portion transferred, in her name, but when her husband wanted to oust her by force, she filed a suit for permanent injunction and obtained a stay order from the court. From this statement, I am not in a position to formulate an opinion that the respondent was aggressor at any time and she wanted to cause any physical or mental cruelty to the appellant. Further, I am not in a position to formulate an opinion that the respondent has deserted the petitioner since December, 1985. Thus, I affirm the findings of the trial court on issues Nos. 1 and 2.

14. Lastly, it was argued by the learned counsel for the appellant that the parties were married in the year 1983. They are living separately since December, 1985 and thus, the marriage has broken irretrievably. It was thus argued that there is no chance of compromise or reconciliation between them and, therefore, a decree for dissolution of marriage by way of a decree of divorce should be granted or in the alternative a decree for judicial separation may be passed.

15. This aspect of the case has also been examined by me and I am of the opinion that this contention has to be rejected. It is true that the law of the land is that if a marriage has broken irretrievably, the parties should be allowed to become separate but equally is the law that no person can take advantage of his own wrong. Even if it be accepted that the respondent deserted the appellant since December, 1985 and the parties are living separately since then, but this so happened because of the acts of harassment of the respondent at the hands of the appellant and therefore, the appellant cannot be allowed to make it a shield of this plea that the marriage has broken irretrievably. One more aspect which we must note that the marriage of a Hindu under the old law was a sacrament and it is still a sacrament with some modifications. I also cannot lose sight of a fact that the cases are decided in the High Court and the Supreme Court after years together. The relations between the parties have become soar since long and there seems to be no scope for their living together amicably. Moreover, in

the present case, the husband (appellant) is aged about 42/43 years and the wife (respondent) must be younger by one or two years. The child was born in the year 1985 and by this time, he must be aged 15years. At this stage, granting of a decree of divorce under the flurry of broken marriage will not only cause a great hardship to them but it will mar the future of the child also and it will have a bad effect on the law of the land. Rather, on the other hand, the presence of the child may bring reconciliation between the parties with the passage of time.

Be that as it may. I have examined this appeal from every angle and I am of the opinion that there is no merit in it. There is no scope for interference with the judgment, and decree under appeal. The appeal is, therefore, dismissed, but with no order as to costs.

16. Appeal dismissed.