

Punjab-Haryana High Court

Usha Rani vs Sham Lal on 21 November, 2007

Equivalent citations: (2008) 149 PLR 454

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Bench: S Sunder

JUDGMENT Sham Sunder, J.

1. This appeal is directed against the judgment and decree dated 26.4.2002, rendered by the Court of Shri B.C. Rajput, the then District Judge, Bathinda vide which the petition under Section 13 of the Hindu Marriage Act for dissolution of marriage filed by Sham Lal, petitioner, was accepted.

2. The facts, in brief, are that Sham Lal, respondent-husband was married on 2.10.1998 to Usha Rani, appellant-wife, according to Hindu Rites and Rituals at Bathinda. After the solemnization of the marriage. Usha Rani started residing with her husband. The parties cohabited with each other. It was stated that the behaviour and attitude of Usha Rani was very aggressive towards Sham Lal and his family members. She used to insult Sham Lal, in the presence of her family members. She was very incooperative. She tried to dominate the petitioner, as well as his family members. She used to taunt the petitioner that he was inferior to her as she was earning more salary than him. However, the petitioner continued tolerating such cruel comments, for the sake of harmony in the matrimonial life. She never respected the parents of the petitioner. The petitioner requested her several times to change her behaviour and attitude but she refused to do so. Usha Rani, who was working as Postal Assistant in City Post Office, Bathinda used to spend her break hours from 11.00 a.m. to 2.30 p.m. somewhere outside her matrimonial home and the Post Office. She used to visit her parental house, as well as the houses of her friends, during the break period, without informing the petitioner, as well as his family members. It was further stated that the parents of the wife, used to interfere in the lives of the parties. The wife used to hand over her entire salary to her parents, which was quite against the moral ethics. When she was asked by the petitioner not to do so, she threatened the petitioner with dire consequences. She was never satisfied with the job of the petitioner, and used to torture him. Aggrieved by the behaviour and attitude of Usha Rani, Sham Lal moved an application to Manila Wing for settlement of his matrimonial problem. Thereafter, Usha Rani moved a false application to the police under Sections 498A/406 of the Indian Penal Code, alleging that Sham Lal, her husband and his family members were demanding dowry articles, from her, and her parents. She also levelled certain false allegations, against Sham Lal and his family members. A compromise was effected between the parties, on 16.8.1999. The complainant, so made, by Usha Rani was withdrawn. However, under the garb of that compromise, she got transferred the Maruti Car bearing No. PB-05-7394, in her name illegally, which was purchased by the father of Sham Lal. Sham Lal also lost his job because of the complaint filed by Usha Rani. Thereafter, he had to stay at home for a period of about seven months. Usha Rani gave an affidavit stating that she would reside separately in upper portion of the house of her husband and would respect him and his family members. The parties separated from the joint family and started residing, in upper portion of the house. Even thereafter, the behaviour of Usha Rani did not change. She became more cruel and abusive towards the petitioner. The petitioner joined the company, namely LIFE in which he was working as Medical Representative at Bathinda. The respondent and her family members pressurized the petitioner to move from his parental house to some other place. Under that

pressure, the petitioner left the job with LIFE Company and joined Camlin Company, which was having its office at Karnal. Thereafter, the parties settled at Karnal. A daughter was born out of the wed-lock in the year 2000, but the behaviour and attitude of the respondent, did not change, even after the birth of female child. The respondent used to torture her daughter in order to mentally harass the petitioner. She was not taking care of the daughter. The petitioner tried to prevail upon Usha Rani but she did not change her attitude. She was not in the habit of serving food to the petitioner. It was further stated that, on the asking of her parents, she left the matrimonial home on 10.9.200, without the consent of the petitioner. She also took all Istri Dhan, with her, at the time of leaving the house of the petitioner. The petitioner and his family members tried a number of times to prevail upon Usha Rani, to come and live with them, but she was not ready. It was further stated that the respondent treated the petitioner with utmost cruelty, and deserted him. Accordingly, a petition under Section 13 of the Hindu Marriage Act, was filed, in the Court of the District Judge, Karnal, but the same was transferred to the. Court of District Judge, Bathinda, by this Court.

3. The respondent, namely, Usha Rani put in appearance and filed written statement, wherein, she took up various objections, and contested the petition. It was pleaded that the petitioner had no locus standing or cause of action to file the petition. The marriage between the parties was admitted. Birth of a female child, was also admitted. It was denied that Usha Rani ever treated the petitioner and his family members with cruelty. It was also denied that she ever abused the petitioner and his family members. It was also denied that the behaviour and attitude of respondent towards the petitioner and his family members was cruel. On the other hand, it was stated that she always respected the petitioner and his family members and remained with them, as a dutiful wife of the petitioner. It was further stated that soon after the marriage, the petitioner, his parents and other family members started maltreating her, on the ground, that she had brought insufficient dowry. It was further stated that the parents of the respondent spent Rs. 7,65,000/- on her marriage and dowry articles/Istri dhan of the respondent. Even then the petitioner and the parents were not satisfied. A demand of Rs. One lac, in cash, as additional dowry was raised. The petitioner and his family members, used to beat the respondent mercilessly, and held out threats to kill her. It was denied by the respondent, that she ever claimed that she was earning more salary than the petitioner. The petitioner used to beat the respondent on petty matters. The petitioner was not working and he used to take the salary of the respondent from her. He was addicted to liquor and used to spend the salary of the respondent, in consuming liquor. It was denied that the respondent ever compelled the petitioner to live separately, from his parents. It was denied that the respondent ever visited her parental house or the house of any of her friends, during break hours, or without informing the petitioner. It was further stated that the cruelty meted out to the respondent at the hands of the petitioner and his family members was tolerated by her with the hope that better sense may prevail upon them. The respondent was turned out of her matrimonial home in three wearing clothes, after giving her severe beatings. The entire dowry articles were kept by the petitioner and his family members. The parents of the respondent gave a sum of Rs. 2,50,000/-, in cash, to the petitioner, and his parents to purchase a Maruti Car. Maruti Car No. PB-05F/7394 was purchased by the father of the petitioner respondent herein in the name of one Labh Singh. The respondent came to her parental house and narrated the entire story to her parents., On 16.8.1999, Vinod Kumar brother of the respondent, along with Vijay Kumar son of Mithu Ram and Balour Chand son of Bishan Dass, went to the house of her in-laws and requested the petitioner and his family

members not to mal-treat the respondent. They assured mat they would keep her nicely. They also promised to get the car transferred, in the name of the respondent, but even then the behaviour of the petitioner and his family members remained cruel. It was further stated that the respondent was satisfied with the job of the petitioner. It was further stated that when the respondent was compelled by the circumstances, she got registered a case under Sections 498A and 406 of the Indian Penal Code, against the petitioner, and his family members. It was denied that the car, in question, was purchased by the father of the petitioner, from his own funds. It Was further stated that a suit was filed by the father of the petitioner, regarding the said Car and an application for injunction moved therein, was dismissed. It was denied that the respondent ever gave an affidavit, that she would reside separately, in the upper portion of the house of the father of the petitioner. She never pressurized the petitioner to move out of his parental home. It was further stated that the petitioner with mala fide intention, took the respondent, to Karnal, by saying that he got some better job there, he did not do any work there, and used to beat the respondent, he also tried to kill her. The petitioner then brought the respondent to Bathinda and again stated maltreating her. Ultimately, she was turned out of her matrimonial home, by the petitioner, and his parents, as she could not arrange to bring Rs. one lac, demanded as additional dowry. It was denied that the respondent ever gave beating to her female daughter. On the other hand, it was stated by the respondent, that the petitioner and his family members used to taunt the respondent, by asking that she was unable to give birth to a male child, though they wanted him. 'It was denied that the parents of the respondent ever interfered into the family life of the parties. The remaining allegations, were also denied being wrong.

3. On the pleadings of the parties, the following issues were struck:

i) Whether the respondent Committed such acts of cruelty as alleged in the petition? OPP

ii) Whether the petition is not maintainable as alleged in paras No. 1 and 2 of the preliminary objection of the reply? OPR

iii) If issue No. I is proved, whether the petitioner is entitled to grant of decree of divorce? OPP

4. The petitioner examined Kulwant Rai (PW1), Head Constable Dalbir Singh (PW2), Jaspal Singh (PW3), Amarjit Singh (PW4), Ram Partap (PW5) and he, himself appeared in the witness box as PW6.

5. In rebuttal, the respondent examined Devinder Singh (RW1), Varinder Kumar Bhola (RW2) and she, herself, appeared in the witness box as RW3.

6. After hearing the learned Counsel or the parties, and on going through the evidence, on record, the trial Court came to the conclusion, that the acts of cruelty alleged by the petitioner, were not proved. However, the trial Court came to the conclusion, that the false allegations, enumerated in the written statement, by the respondent, that the petitioner and his family members demanded a sum of Rs. One lac as dowry; that the petitioner used to take away whole of her salary and he used to spend the same on drinking liquor and bad habits; that the petitioner and his family members used

to beat her mercilessly; and that at Karnal the petitioner tried to kill her, but she saved herself with great difficulty, were false, which caused cruelty to the petitioner, and as such, were sufficient to grant a decree of divorce. It was further held by the trial Court, that the marriage between the parties had irretrievably broken and, as such, there was no chance of their living together. Accordingly, the trial Court accepted the petition, and granted the decree of divorce.

7. Feeling aggrieved, against the judgment and decree of the trial court, the instant appeal was filed by the appellant-wife.

8. I have heard the learned Counsel for the parties and have through the evidence, on record, carefully.

Learned counsel for the appellant-wife, vehemently contended that the trial Court, was completely wrong, in coming to the conclusion, that the appellant-wife made false allegations, in the written statement, which amounted to cruelty. He further contended that the appellant did not make any false allegation, in the written statement. He further contended that, whatever, allegations were made by the appellant-wife, in the written statement, were reiterated by her, in her statement while appearing as, RW3, in the petition. It is no doubt true that subsequent events, as held in *Surbhi Agrawal v. Sanjay Agrawal* 2000(2) All India Hindu Law Reporter 52, could be taken into consideration for deciding a petition under Section 13 of the Hindu Marriage Act. However, it may be stated here, that no false allegation, was made, by the respondent-wife in the written statement. Whatever allegations were made by her, in the written statement, were reiterated by her, in her statement, when she appeared as, RW3, as her own witness. In the written statement, it was in clear-cut terms, sated by Usha Rani, respondent, that a sum of Rs. 1,00,000/- by way of additional dowry was demanded by the husband, and his family members, but she was unable to meet their demands, as a result thereof, she was turned out of her matrimonial home. It was also alleged by the respondent, in the written statement, that the petitioner used to take away whole of her salary, and spend the same on drinking liquor, and bad habits. It was also averred, by the respondent, in the written statement, that she used to be maltreated and beaten by the petitioner and his family members. She also stated, in the written statement that at Karnal, the petitioner tried to kill her, but she saved herself with great difficulty. Usha (RW3) in her statement dated 17.4.2002, made before the trial court on oath, stated in her examination-in-chief in clear cut terms, that her husband, Sham Lal, told her that if she wanted to live, in her matrimonial home, she should bring Rs. 1,00,000/-, from her parents, or otherwise she could go. She also, in unambiguous terms, stated in the said statement, that the family members of the petitioner turned cruel towards her, in their behaviour. She also stated in her examination-in-chief, that out of her salary, she never paid any amount to her parents, and after receiving the same, she used to hand over the same to her husband, or her father-in-law. She further stated in her examination-in-chief, that her husband was transferred from Bathinda to Karnal, by his employer, because he became addicted to drinking and intoxicants. Since Usha Rani, a married woman, was subjected to cruelty, in connection with the demand of dowry, she was left with no other alternative, than to get a criminal case registered, against the respondent, and his family members. Exhibit P5, is a copy of the First Information Report, which was got exhibited by Sham Lal, petitioner, in his statement. In the said First Information Report, it was in clear cut terms, stated by Usha Rani, that the petitioner and his family members i.e., his father-in-law,

mother in law, brother in law, and sister-in-law, started beating her daily. She also stated, in clear cut-terms, in the First Information Report, that the petitioner and his family members, asked her to bring a sum of Rs. 1,00,000/-, by way of additional dowry, otherwise, she would be done to death. Since the allegations, referred to above, which were made by the respondent, in the written statement, were duly reiterated by her in her statement while appearing, in the trial Court, as also in the First Information Report, got registered by her, it could not be said that the same were false. The Court might not have persuaded itself to believe the statement of the respondent, with regard to the proof of the these allegations for want of sufficient corroboration to the same, through the evidence of the other witnesses, but that did not mean that the said allegations were false. Had the trial court gone through the evidence, on record, carefully, it would have certainly come to the conclusion that the allegations, referred to above, were not false, but were duly reiterated by the respondent in her statement made in the court on oath as also in the FIR Exhibit P5. The conclusion arrived at by the trial court, that the allegations, referred to herein before, being false, caused cruelty to the petitioner, therefore, could not be said to be correct. It was, therefore, merely a case of incorrect reading and appreciation of evidence, which led to arriving at such a wrong conclusion, on the part of the trial Court, leading to the grant of decree of divorce. The findings of the trial Court, in this regard, being incorrect are reversed.

9. The trial Court also took into consideration the circumstance that the marriage between the parties had irretrievably broken and, therefore, there was no chance of their living together, and as such, granted the decree of divorce. As stated above the marriage between the parties took place on 2.10.1998 and the decree of divorce was granted by the lower court on 26.4.2002. Only a period of less than four years had lapsed, between the date of marriage of the parties and the date of grant of decree of divorce. It, therefore, could not be said that the parties had been living separate, from each other, for a long number of years and, as such, the marriage had irretrievably broken and, therefore, it was a fit case in which decree of divorce was required to be granted, on such a ground. Even otherwise, it may be stated here that irretrievable breaking down of marriage, is not one of the statutory grounds provided under Section 13 of the Hindu Marriage Act, on the basis of which, a decree of divorce, could be granted by the Court. The trial Court was, therefore, wrong in coming to such a conclusion. Decree of divorce could not be justified, on the ground, which was not provided under Section 13 of the Hindu Marriage Act. The findings of the trial Court, in this regard, being incorrect are reversed.

10. Learned Counsel for the respondent, however, relied upon *Samar Ghosh v. Jaya Ghosh* to contend that decree of divorce could be validly granted by the Court on the ground, that the marriage between the parties had irretrievably broken. A perusal of the facts of the aforesaid authority, shows that the same are clearly distinguishable, from the facts of the present case. A perusal of the facts of the said authority, reveals that sterilization operation was undergone by one of the spouses without the knowledge of the other spouse; the wife had got herself aborted without medical reason or without the consent of her husband; the parties were not having physical relations, without physical incapacity or valid reason; the wife had unilaterally decided not to have child; the wife sustained reprehensive conduct, and studied neglect towards the husband; it was proved that the wife used to abuse and humiliate the husband; the sustained unjustified conduct affected physical and mental health of the husband; there was frequent rudeness, indifference and

neglect and the action of the wife was aimed at to derive sadistic pleasure. Not only this, both the parties were IAS Officers, and had been living separately, for the last 16 years, without any interaction. It was, in these circumstances, that the Apex Court came to the conclusion, that the wife caused cruelty to the husband, to such an extent, as was sufficient to grant a decree of divorce. Additionally, the fact that the parties had been residing separately for the last 16 years, was also taken into consideration, for the grant of decree of divorce. The facts of the aforesaid authority being distinguishable, from the facts of the present case, no, help can be drawn, by the counsel for the respondent-husband, therefrom.

11. Learned Counsel for the respondent also placed reliance on Harpal Kaur v. Balbir Singh 2001(2) All India Hindu Law Reporter 265 (P&H), Captain (now Major) Rajinder Pal Singh Bajwa v. Manjit Kaur (1990-1) 97 P.L.R. 446, Manjit Kaur v. Avtar Singh 2002(1) Civil Court Cases 268 (P&H), S. Vijay Lakshmi v. S. Bheem Reddy 1998(2) All India Hindu Law Reporter 688, Pawan Kumar v. Smt. Chanchal Kumari and Kanta Sachdev v. Devidas 1998(2) All India Hindu Law Reporter 565, to contend that the acts of the appellant amounted to causing of cruelty to the respondent and, as such, the Court below was right, in granting the decree of divorce. The submission of the counsel for the respondent does not appear to be correct, in this regard. Before touching the factum, as to whether, these authorities are of any help to the case of the respondent, a brief resume of the evidence of the parties, in the petition, is required to be given. Certain acts of cruelty were alleged by the petitioner, in the petition. He, however, did not examine his father and mother, who could be said to be the best persons to depose that he was maltreated. In these circumstances, the solitary statement of the petitioner, was rightly not relied upon by the lower Court. No doubt, the petitioner, in his statement, stated that the wife pressurized him to live separate from his parents. Such a demand even if made, by the wife, could not be said to be causing cruelty to the husband, leading to the grant of decree of divorce. Even if, it is assumed, that the wife sometimes, told the husband that his salary was less than her, that act also did not amount to causing cruelty. No cogent evidence was produced by the respondent that the wife was leaving her office during lunch break, and going to the house of her friends, and parents. The Maruti car was purchased with the money, given by the parents of the wife, and if the same was got transferred, by her, in her name, that did not constitute the act of cruelty. The trial Court, was, thus, right in holding that the aforesaid acts, as alleged by the husband, in his petition, and reiterated in his statement, could only be said to be the normal wear and tear of matrimonial life, and did not amount to causing of cruelty, on the basis whereof the divorce could be granted. In the instant case, the FIR was got registered by the appellant-wife, against the respondent-petitioner and his family members. The petitioner when appeared as, PW6, stated in his cross-examination that no efforts were made to move a petition under Section 482 of the Code of Criminal Procedure, for quashing the FIR. Since the wife was aggrieved, as she was subject to cruelty, in connection with the demand of dowry, by the petitioner, and his family members, she could resort to the legal remedy which was available to her. It was, in these circumstances, that FIR under Sections 498A and 406 of the Indian Penal Code, was got registered by her. It is, therefore, could not be said to be a false criminal case got registered by the wife. In Harpal Kaur's case (supra) it had been found that a false and fictitious case under Sections 498A and 406 of the Indian Penal Code had been got registered, by the wife, against the husband. It was in these circumstances, that it was held that it could be said to be an act of such extreme cruelty, on the part of the wife, having been caused, to the husband, that decree of divorce could be granted. In Captain Rajinder Pal

Singh's case (supra) false allegations of adultery were made by one spouse against the other spouse, seeking divorce. These allegations were found to be false in the ancillary proceedings. It was, under these circumstances, that it was held that the same would constitute legal cruelty, and decree of divorce could be granted. In Manjit Kaur's case (supra), the wife moved an application to the Senior Superintendent of Police alleging that her husband was leading adulterous life, with the wife of his deceased friend. She was unable to prove these allegations. It was, under these circumstances, that it was held that the said false allegations amounted to cruelty and the decree of divorce was granted. In S. Vijaya Lakshmi's case (supra) a false criminal case was got registered, by the wife, as a result thereof, the husband was arrested, by the police, and sent to judicial custody. It was, under these circumstances, that it was held that the conduct of the wife amounted to causing of cruelty to the husband, and the decree of divorce was granted. In Pawan Kumar's case (supra), the allegations of demand of dowry made by the wife were held to be unbelievable. The allegations of the wife that she was turned out of the house, by the husband, by giving her merciless healings, were not believed. It was, under these circumstances, that the decree of divorce was granted. In Kanta Sachdev's case (supra), false FIR was lodged by the wife, against the husband, and his family members. She was unable to satisfactorily explain her conduct of lodging such a police report, against her husband, and his family members. It was held that this amounted to causing cruelty and the decree of divorce was granted.

12. The facts of the aforesaid authorities are distinguishable from the facts of the case in hand. The FIR lodged by the wife, has not been found to be false. The allegations made by the husband in the petition were either not proved or were considered as acts of normal wear and tear of married life. The allegations made by the wife, in the written statement, as stated above, were duly reiterated, by her, in her statement while appearing as, RW3, in the witness box, in the petition. The said allegations, therefore, could not be said to be false. In this view of the matter, no help can be drawn, by the counsel for the respondent-husband, from the aforesaid authorities. The submission of the learned Counsel for the respondent is, therefore, rejected.

13. In view of the reasons recorded herein before, the present appeal is accepted with costs. The impugned judgment and decree dated 26.4.2002 of the trial court are set aside, and the petition filed by the husband under Section 13 of the Hindu Marriage Act, shall stand dismissed.