

Punjab-Haryana High Court

Archna Sharma vs Suresh Kumar Sharma on 20 December, 1993

Equivalent citations: I (1995) DMC 133, (1994) 108 PLR 702

Author: G Garg

Bench: G Garg

JUDGMENT G.C. Garg, J.

1. This is wife's appeal. Appellant herein will be referred to as the wife whereas respondent as the husband.

2. This appeal has arisen out of a petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed on April 24, 1990 by the husband seeking divorce on the ground of cruelty. The petition was allowed by the learned Additional District Judge, Rohtak and marriage between the parties was dissolved by a decree of divorce. It is in these circumstances, the wife has filed the present appeal.

3. Marriage between the parties took place on December 12, 1988 according to Hindu rites in Delhi. The couple was blessed with a male child in the second week of November, 1989. At the time of marriage the wife was employed as teacher in Delhi whereas the husband was employed as a clerk in a bank in Delhi. As per allegation of the husband, dispute started right from the beginning. The allegations as levelled by the husband in the petition for seeking divorce on the ground of cruelty have been detailed in the divorce petition and deserve to be noticed at this stage. After the marriage, the parties stayed at Rohtak till December 28, 1988 and thereafter left for Delhi. They stayed at the house of parents of the wife for some time and thereafter they took a flat on rent near the parental home of the wife and shifted to that place. They continued visiting Rohtak, where parents of the husband is resided, off and on. The allegation of the husband is that the wife always considered herself superior to him both in status and education, she being a post-graduate and he being a graduate, and consequently never extended love and affection to him. She had been using derogatory remarks against him by saying that he was only a clerk and she was Master of Commerce and employed as a teacher. After the birth of the child in Sunder Lal Jain Hospital in Delhi, she went to her parental home with the child from the Hospital in spite of the fact that the husband requested her to accompany to Rohtak where the ultimately went on December 19, 1989. Her attitude towards the parents of the husband was disparaging. It was ultimately alleged that on December 29, 1989, Smt. Urmila mother of the wife came to Rohtak in the late hours of the evening, she hurled abuses while entering the house of the husband and started shouting that she will take away her daughter along with the child to Delhi. The husband and his parents became stunned. The mother of the wife was accompanied by a few muscle men who had been brought by her in a taxi. In the circumstances, the matter was reported to the police. Some policemen came there and took into custody the driver of the taxi, Laxmi Kant, Ram Kumar Sharma, Pankaj Anand, Dinesh Kumar, Adarsh Kumar and Sanjay Sharma. In the morning of December 30, 1989, father of the wife reached Rohtak, he approached the parents of the husband with folded hands and begged pardon for what had happened on the previous night. He was extremely apologetic and assured the husband and his family that no such thing shall take place in future. The wife and the child continued residing with the husband and his parents at Rohtak. It is the further allegation of the husband that on March 13,

1990, the mother of the wife came to Rohtak to meet her daughter when she got manoeuvred some writing from her. On March 19, 1990, father of the wife along with Police came from Delhi and took away the wife and the child with him on the basis of a warrant of recovery issued by the Munsif Magistrate, Delhi. The husband and his father went to Delhi on the same day when the wife and the child were produced before the Munsif Magistrate, Delhi. They moved an application asking for custody of the wife and the child but the wife made a statement, that she will reside with her parents and will not go to her husband's house.

4. In the circumstances, the Munsif Magistrate, Delhi passed an order permitting the parents of the wife to take the wife and the child with them. It is the further allegation that the husband was being treated by the wife's parents as a student, they being teachers, and never cared a bit for his feelings. The wife who is also employed as teacher would come to the house of the husband late in the evening from her parents' house and even at that time she would not be in a proper mood. When she was asked to prepare tea and refreshment, she would give a blunt reply that the husband himself should prepare tea etc., she being already tired. In the circumstances, it is further pleaded that the husband passed his days and nights, under a great stress and strain and developed depression in the body and mind. The attitude of the wife and her parents caused mental agony and physical torture to him. In the end, it was pleaded that the wife and her parents went to the extent of raiding the house of the husband with the help of some muscle men, they obtained search warrants from the Court on the basis of false and fake allegations and ultimately obtained the custody of the wife and the child. It is on these facts, the husband filed a petition that he reasonably apprehends that it will not be possible for him to lead a married life with his wife and the only remedy open to him is to seek dissolution of marriage by a decree of divorce.

5. The petition was resisted by the wife filing a detailed written statement. The wife controverted the allegations of cruelty as levelled by the husband. She submitted that she lived with her husband at the house of her parents upto January 16, 1989 and thereafter took a flat on rent. She specifically denied that she ever considered herself superior to her husband or did not love him. After the birth of a child, she did go to her parents' house but after a few days came to her matrimonial home. She further alleged that her husband in the company of his younger brother came to the house of her parents on December 28, 1989 and demanded some more articles and rupees 25,000/- and threatened to kill her on the next day if the said demand was not fulfilled. Next day on receiving telephone call from Rohtak which was beared by the mother of the wife but could not be followed, she being worried about the well-being of her daughter, came to Rohtak along with some neighbours when the husband and his parents with the connivance of the police got them arrested. Father of the wife came to Rohtak the next morning and was compelled to apologise in writing in the Police Station. It was thereafter that the husband left the rented flat in Delhi and shifted to Rohtak. The visit of the mother of the wife to Rohtak on March 13, 1990 and handing over a letter to her by the wife are admitted. Arrival of the father of the wife along with police and warrants of recovery is also admitted. She alleged that if she had not been rescued she would have been otherwise finished. She has thus, clarified that it was for this reason, she preferred to live with her parents and had, therefore, made statement before the Court refusing to accompany her husband to Rohtak. The wife further claimed that after the marriage she was never treated properly either by the husband or his father. She was in fact mal-treated with utmost cruelty and mental torture by beating her mercilessly

on the pretext of bringing less dowry. She alleged that her father gave sufficient dowry but it did not satisfy the greed of the husband and his family members who had been thereafter demanding articles such as Refrigerator, Videocon Washing Machine, Godrej Almirah, a house in Delhi, twenty-five tolas of gold, dining set etc. It is also the allegation of the wife that her husband got her signatures on a blank paper against her wishes and on the strength thereof withdrew a sum of Rs. 9058.20 paise from her account with the State Bank of India Samepur Branch. Customary gifts are also alleged to have been given at the time of birth of the child. In the situation, it has been lastly prayed that no proper response having been received from her husband or his father, the petition deserves to be dismissed.

6. On the pleadings of the parties following issues were framed:

(1) Whether the petitioner is entitled to decree of divorce on the ground as alleged ? OFF (2) Relief.

7. Learned Additional District Judge by judgment and decree dated September 28, 1991 came to the conclusion that the husband had succeeded in proving the facts which amounted to mental cruelty to him and causing apprehension in his mind that it would not be safe for him to live with his wife. In the circumstances, marriage between the parties was dissolved by a decree of divorce.

8. Learned Additional District Judge, in order to conclude that the husband has succeeded in proving the acts of the respondent which amounted to mental cruelty seems to have taken into condition the cumulative effect of certain matters which are discussed herein-thereafter.

9. The first of these matters is the allegation of the wife in the written statement about the demand of dowry which demand had not been pointed out while moving an application in the Court of Metropolitan Magistrate, Delhi and which application seems to have strained the relations between the parties Mr. O.P. Goyal, Senior Advocate, learned Counsel for the respondent referred to paras 9, 10 and 11 of the written statement to highlight the wild allegations about the demand of dowry and mal-treatment levelled by the wife and which allegations were repeated by her in her statement while appearing as her own witness as RW-1 and remained unsubstantiated, to say, that this in itself amounted to mental cruelty, and in any case have rightly been taken as one of the factors amounting to mental cruelty. These allegations appear to have been made in the written statement for the first time but the question is whether these unsubstantiated allegations could be made a part of the cause in order to grant relief to the husband who sought divorce on the ground of cruelty, without making these allegations as a part of the divorce petition initially or by seeking its amendment.

10. Such a matter came to be considered by a Division Bench of this Court in *Paras Ram v. Kamlesh*, AIR 1982 Punjab & Haryana 60. In that case, wild allegation of adultery was made by the wife in her written statement. An argument was raised that such an allegation would per se amount to legal cruelty entitling the husband to succeed in a petition for divorce on the ground of cruelty. This contention was negatived by the Trial Court. It was pressed into service before the learned Single Judge on the basis of *Smt. Jiwan Lata v. Krishan Kumar*, 1979 Current Law Journal 509. S.P. Goyal, J. (as his Lordship then was) expressing doubt about the correctness of the ratio in *Jiwan Lata's* case (Supra) referred the matter to a larger Bench. The Division Bench over-ruled the law laid down

in Jiwan Lata's case (Supra) and in para 5 of the judgment concluded as under:

"Therefore, before an allegation of adultery can be deemed as legal cruelty it must first be proved as factually false. To highlight, it is a blatantly false allegation of adultery which would amount to legal cruelty and not possibly a true allegation of that nature which cannot give any cause of action to the offending spouse. Once this is so, it would appear to be elementary that any such allegation of adultery must be put to trial and it is only when its falsity or otherwise is determined that any legal consequence can flow therefrom. It would indeed be going too far to hold that a mere allegation by itself and that too made by way of a defence in legal pleadings should become legal cruelty in the eye of law and per se be the ground of divorce."

Again in para 13 of the judgment it was observed :

"It would, therefore, become necessary that the petitioner in such a situation would have to amend the petition and plead the false allegation of adultery amounting to cruelty as a specific ground for matrimonial relief. It is only when this has been made a ground of attack that the petitioner can possibly take advantage of such an allegation, if proved false. Unless the truth or falsity of such allegation made in the written statement is put to trial in the manner aforesaid and it is established one way or the other no legal consequences can flow therefrom for the purpose of Section 13(1)(ia) of the Act. It is, therefore, necessary in such a situation that not only the requisite amendment should be made but a specific and clear issue with regard thereto be framed so that the parties should go to trial thereon with their eyes open."

These allegations of the wife levelled in the written statement which were not put to trial by seeking amendment of the petition could not be taken note of by the learned Additional District Judge even if the same remained unsubstantiated.

11. The other matters which weighed with the learned Additional District Judge to grant divorce on the ground of mental cruelty are, (i) a letter written by the wife to the employer of the husband and (ii) a complaint made by the wife with the Women Cell on May 2, 1990.

12. These two matters are subsequent to the filing of the divorce petition on April 24, 1990. Letter Exhibit PX was written by the wife on July 16, 1991 to the Chairman and Managing Director of the Punjab National Bank, New Delhi, the employer of the husband and the other letter is a complaint made on May 2, 1990 by the wife before the Women Cell. Filing of these complaints is not in doubt. Admittedly, no action has been taken by the blank authorities against the husband by taking cognizance of letter Exhibit PX. Even no enquiry was conducted. Because of the other complaint, the husband and his relations sought anticipatory bail from the Court of Sessions Judge and returned an amount of Rs. 28,000/- to the wife being sale proceeds of the Motor Cycle given to the husband at the time of marriage and the amount withdrawn from the account of the wife, etc. etc.

13. These allegations were not pleaded in the divorce petition by seeking amendment thereof and, therefore, not put to trial. Could these allegations in the circumstances be taken into consideration for arriving at the conclusion that the husband was entitled to divorce on the ground of cruelty ? I

am of the view that these allegations could not be taken note of while granting divorce unless these were made a part of the divorce petition. Support for this view is available from the judgment in Paras Ram's case (Supra) and Smt. Maya v. Brij Nath, 1982 All India Hindu Law Reporter 226. In Smt. Maya's case (Supra) two questions were put to the husband during the course of cross-examination. The one was that he had illicit relations with another woman and the other question was that the wife was administered poison by the mother of the husband with a view to kill her, but the doctor saved her. On the basis of these two questions, the Trial Court concluded that these allegations amounted to acts of cruelty and passed a decree of divorce. While considering this aspect of the matter, it was concluded thus:

"In the instant case, I am of the view that the two questions reproduced above did not pertain to any fact in issue between the parties or were relevant under Sections 146 to 153 of the Indian Evidence Act and, therefore, the Trial Court ought not to have allowed those questions in cross-examination. In any case, if the Trial Court has not exercised its power at the time when the questions were asked the same cannot be made the basis for grant of relief to the husband. In other words, the respondent-husband cannot claim a decree of divorce on facts i.e. alleged acts of cruelty which were never pleaded by him."

14. Mr. O.P. Goyal, Senior Advocate, learned Counsel for the respondent, however, placed strong reliance on Harendra Nath Barman v. Smt. Suprova Barman and Anr., 1989(1) All India Hindu Law Reporter 228, Smt. Kamini Gupta v. Mukesh Kumar Gupta, AIR 1985 Delhi 221 and Parihar (Priti) v. Parihar (Kailash Singh) AIR 1978 Rajasthan 140 to contend that even if the husband did not seek divorce on matters which came into being after the filing of the divorce petition or which were not pleaded in the divorce petition, yet these could be taken into consideration for grant of divorce.

15. In Harendra Nath Burman's case (Supra), the husband while seeking divorce had alleged in his petition that the wife in an earlier petition under Section 125 of the Code of Criminal Procedure had asserted that he (husband) had illegal and illicit connections with one Shirpa, sister's daughter of his wife. The wife far from denying the allegation, re-iterated the same in the written statement. The allegation was not only put to the husband when he appeared as his own witness but was also repeated by the wife while appearing as her own witness. It was in this situation, held that unfounded and baseless allegations of adultery by one spouse against the another constituted mental cruelty. However, in the latter part of the judgment, it was observed as under :

"But even if there was no such allegation made prior to the initiation of this proceeding, such allegations made in the written statement itself and in deposition can and should be taken note of in matrimonial proceedings without driving the petitioner to another proceedings on the ground of such cruelty. While ordinarily a list is to be determined on the cause of action accruing on the date of the initiation of the lis, it is nevertheless well-settled that it is open to a Court, including a Court of appeal, to take notice of events which have happened after the institution of the suit and afford relief to the parties where it is necessary to do in order to shorten litigation or to do complete justice between the parties."

Sitting singly, however, I am bound by the pronouncement of a Division Bench of this Court in Paras Ram's case (Supra).

16. In Smt. Kamini Gupta's case (Supra), there was a definite allegation in the petition for divorce that the wife had called the husband a womaniser, he had been bringing girls in the matrimonial house and that these words were uttered in the gathering of relations of the parties. The allegation was repeated in the written statement as also in the statement made in the Court. Paras 16 and 18 of the aforesaid judgment relied upon by the learned Counsel render him no assistance.

17. In Parihar's case (Supra), the wife wrote two letters to the Army Authorities after filing of the petition for judicial separation, but the said letters seem to have been made a part of the petition when the petition for judicial separation was converted into a petition for divorce on July 7, 1976. In para 29 of the said judgment, it was noticed that the letters were written before the amendment of the Act and before the petition for judicial separation was allowed to be converted into a petition for divorce. It is specifically stated in the concluding portion of the para that those facts were also part of the pleadings and could be made basis for the relief of divorce.

18. Even otherwise, letter Exhibit PX herein written by the wife to the employer of the husband besides not being made a part of the pleadings, has not been referred to in the statement of the husband. No action was stated to have been taken by the bank authorities against the husband after taking notice of letter Exhibit PX. In *Narain Datt Sharma v. Santosh Sharma*, 1986 (1) All India Hindu Law Reporter 573, the complaints made by the wife to the employer of the husband and the police were not only found to be false but inquiries were held and as a result thereof, the husband was demoted. In yet another case, *Vinod Kumar Sharma v. Nutan Sharma*, 1986 (1) All India Hindu Law Reporter, 625, the complaints made by the wife against his husband addressed to his employer and the police were inquired into and found to be baseless. In a given case, complaint made to the employer, if found to be false, can amount to cruelty to the other spouse and may give a cause to seek divorce on the ground of cruelty, but this is not the case here.

19. Filing of complaints before the Women Cell by the wife and getting anticipatory bail from the Sessions Judge by the husband and others is admitted. But what happened thereafter is not known. Moreover, this was not made a ground for seeking divorce on the ground of cruelty. Thus, this complaint renders no cause to the husband to seek divorce on this ground.

20. Coming to the allegations made in the petition, the husband appeared as his own witness as PW-4 and stated that on December 30, 1989 when his father-in-law visited Rohtak, all disputes between the parties were compromised and that there was no dispute between him and his wife.

21. The only allegation of the later date is the visit of wife's mother on March 13, 1990 and manoeuvring a letter from her daughter on the strength of which warrant of recovery was obtained by the parents of the wife from the Metropolitan Magistrate, Delhi where the wife, when produced, made a statement that she would go with her parents. The explanation of the wife as regards this incident, as pleaded in the written statement is that the warrant of recovery was taken to save her life as otherwise her life would have been finished. That why she refused to go to Rohtak and

preferred to live with her parents. She was being treated with cruelty and mental torture by beating her mercilessly on the pretext of bringing less dowry. In her statement while appearing as per own witness as RW-1 the allegation of demand of dowry was re-iterated. She stated that she was not allowed to join her duties on January 16, 1990 on the expiry of her leave and she was not being provided two square meals a day and that she started apprehending danger to her life because of threats given by her father-in-law. The letters written by her were not allowed to be posted. These allegations have undoubtedly remained unsubstantiated. The case of the husband on the other hand, as pleaded, is that the wife and her parents always treated themselves as superior to him and they wanted him to stay with them, There is, however not a word mentioned about these allegations in his statement. These allegations have thus remained only allegations.

22. In the circumstances, can it be said that husband is entitled to a decree of divorce of the ground of mental cruelty. The conditions of our society are such that no wife would ever desire to break her matrimonial home and she would rather do all that is possible to settle her in the husband's house even if she has to suffer a little beyond her tolerance limit. To get re-married or live alone by herself or with a minor child are the matters which are, if not extremely difficult, very difficult. A wife has always a cherished desire to settle in her matrimonial house unless she is either thrown out or forced to leave the same. Especially in a case when she has a burden of bringing up an infant. It must be under the gravest of provocation that the wife in the present case was forced to hand-over a letter to her mother on the strength of warrant of recovery was obtained and she preferred to stay with her parents. This incident alone, in my view, will not give a cause to the husband of such a magnitude so as to entitle him to a decree of divorce on the ground of mental cruelty. The husband in the probability of the situation cannot be said to have suffered mental cruelty especially when he has failed to prove any of the other allegation levelled by him in the divorce petition. In my view, it is not a case where divorce could be granted on the ground of mental cruelty.

23. Mr. O.P. Goyal, Senior Advocate, learned Counsel for the respondent-husband in the end submitted that in the circumstances of this case, it is no longer possible for the parties to live together nor can they be reasonably expected to do so and, therefore, the marriage between the parties be dissolved by a decree of divorce. Reliance in support of the above was placed on M.K. Malhotra v. Kirti Malhotra, 1987 (1) All India Hindu Law Reporter 199 and Smt. Kamini Gupta's case (Supra). These are the cases where there were serious allegations of character assassination by the wife and these were not only put to trial but were put to parties when they appeared in the witness box'. In the case in hand, there is no such allegation. Rather there is a 'tie' in between which may unite the parties and they may live a happy married life. The said 'tie' is their minor child. Moreover, not a much long time has elapsed as yet.

24. For what has been discussed above, I am unable to sustain the judgment and decree passed by the learned Additional District Judge and consequently set aside the same by allowing the present appeal. The parties shall, however, bear their own costs.