

Punjab-Haryana High Court

Jagjit Singh vs Smt. Gurmit Kaur on 17 January, 1995

Equivalent citations: I (1996) DMC 450, (1996) 112 PLR 133

Author: S Saksena

Bench: S Saksena

JUDGMENT Sarojnei Saksena, J.

1. Appellant-husband has filed this appeal against the judgment and decree of the Trial Court in Hindu Marriage Act Case No. 15 of 1989 decided on 19.3.1991.

2. The appellant filed the petition under Section 13 of the Hindu Marriage Act (hereinafter referred to as to Act), on the ground that the respondent-Gurmit Kaur was married to him on 18.11.1984 at Karnal, according to Hindu rites. Thereafter, they cohabited at Jagadhri and performed their matrimonial obligations, Gurmit Kaur gave birth to a daughter on 7.11.1985 out of this wed-lock. He contended that right from the very beginning of the marriage, the respondent's attitude towards him and towards his family members was cruel. She used to insist that he should leave his family and settle down at Karnal. Since the petitioner was looking after his old parents, unmarried sister and three brothers, he could not accede to her wishes which further strained relations between the two. She started quarrelling on trivials. In the beginning of 1986, once in that extreme mood of quarrelling, she fell down his mother on the floor, and she sustained injuries thereby. She has caused mental and physical cruelty to the appellant. Her this cruel behaviour caused a reasonable apprehension in the mind of the petitioner that it could be harmful and injurious for the appellant to live with the respondent. In the month of May, 1986, the respondent left the matrimonial home without any reasonable cause or excuse. After a week, her father came to him and asked to shift his business from Jagadhri to Karnal, failing which the respondent will not be allowed to join him. Again, he expressed his inability to leave his family members, but enraged his father-in-law, who left saying that the respondent would not be sent to Jagadhri. He lodged a report at Police Station, Jagadhri, on 9.6.1986 to that effect. Thereafter, the petitioner and his parents made several efforts to bring her back, but all in vain. Since then, the respondent has not come back to the matrimonial home. Hence the petition for dissolution of marriage by a decree of divorce is filed on the ground of cruelty and desertion.

3. The respondent raised certain preliminary objections and denied that he ever behaved with cruelty or she is guilty of desertion. She also denied that she asked the appellant to leave Jagadhri and shift his business to Karnal or she has started quarrelling on trivials or once she fell down his mother, who sustained injuries thereby. She averred that the appellant and his mother tortured her on the ground of not bringing sufficient dowry in the marriage. After the birth of the female child, her life was made a hell. She was turned out of the matrimonial home in May, 1986 by the appellant. She also denied that her father came to the appellant and asked him to shift his business to Karnal otherwise respondent would not be sent. The appellant and the members of his family have turned out the respondent with her small child retaining her all her dowry articles and Jewellery. Once, her father came to enquire why she was turned out of the house, then also a scene was created by the appellant and by the members of his family, so her father had to go back. According to her, she is still willing to join the appellant. But appellant cannot take advantage of his own wrong by seeking a

relief of divorce on the ground of her alleged cruelty and consequent desertion. His father made several attempts for reconciliation.

4. On these pleadings, four issues were framed and parties led their evidence. The Trial Court disbelieved the appellant's evidence that the respondent behaved cruelly or she has deserted the appellant. As both the grounds were held not proved' the petition was dismissed.

5. The appellant's learned Counsel contended that from the parties evidence on record, it is amply proved that the respondent insisted that the appellant should shift his business to Karnal and should leave his family at Jagadhri. Since he refused to accede to this, she started behaving cruelly. She also fell down his mother, who sustained injuries. Thereafter in May, 1986 she left the matrimonial home on her own. She is a teacher at Karnal. She does not want to come back at Jagadhri to join the appellant. Though, in her written statement as well on oath, she has stated that she is willing to come back, that is nothing but a hallow offer to frustrate appellants attempt to seek divorce on the ground of desertion. He has relied on Ramesh Kumar Gambhir v. Sudesh Gambhir, 1978 H.L.R. 317, Khanindra Chandra Dass v. Kusum Dass @ Kanchandas, 1991 (1) H.L.R. 388; and Sanat Kumar Aggarwal v. Mrs. Nandini Aggarwal, 1990(1) H.L.R. 567. Appellants learned Counsel has further argued that since there is total break down of their marriage, marriage should be dissolved by a decree of divorce. For this proposition he has relied on Rajinder Singh Bajwa v. Manjit Kumar Bajwa, 1990 (1) H.L.R. 639; Ratneshwar Mishra v. Premlate Devi and Anr., 1987 (1) H.L.R. 225; and Gurjit Singh v. Rupinder Kaur, 1988 (2) H.L.R. 645 = I (1989) DMC 366.

6. In the alternative, the appellant's learned Counsel's prayer is to grant a decree of judicial separation Reliance is placed on Ashim Ranjan Poddar v. Smt. Anusree Poddar, 1991(1) H.L.R. 611.

7. Respondent's learned Counsel has strongly stressed that right from the very beginning of her married life, she was treated cruelly by her husband and by her mother-in-law. Oh that account, that proper hospitality was not shown to the members of bridegroom party at the time of marriage and sufficient dowry were not given. The appellant used to beat her at the instance of his mother. After the birth of the female child she was further tortured and finally in April, 1986 she was turned out of her house. She never asked the appellant to shift to Karnal nor her father ever made such a demand. Thereafter, also in 1988 once, the respondent came to matrimonial home alongwith her child in the lap but she was denied entry in the house so she had to go back. No doubt, the parties are living separately since April, 1986, the appellant has filed this petition on 4.3.1989 but he has utterly failed to prove the ground of cruelty or desertion. Simply by proving the factum of desertion, he cannot obtain a decree of divorce on this ground, unless he proves the other essential ingredients of desertion that is animus deserendi. The respondent has not permanently forsaken the company of the appellant. She is still willing to come back to her matrimonial home but the appellant is adamant not to take her back. He has stated so and on oath also to support his contention. He has relied on Rajinder Kumari v. Padam Parkash, A.I.R. 1985 Punjab and Haryana 232; Surinder Singh v. Smt. Suresh, 1991 M.L.J. 538 = II (1991) DMC 467; Inder Sain v. Saroj Bala, Vol.17 M.L.J. (Supp.) Page 251; Uma Wanti v. Ram Dayal, 1986 M.L.J. 86 and Hanuman Prasad Rajak v. Kashibai, 1993 M.L.J. 147.

8. The authorities cited by both the sides lay down broad principles when the ground of desertion can be said to be proved but every decision has its own facts. In Hanuman Prasad Rajak's case (supra), the divorce petition of the husband was rejected on the ground that wife is willing to join the husband unconditionally and the husband has failed to prove cruelty and elements of desertion. In Uma Wanti's case (supra), on evidence, it was held that the wife did not voluntarily leave the matrimonial home but she was compelled to do so due to maltreatment and beatings given by the husband. Hence no animus deserendi on the part of the wife was proved, ground of cruelty was also held not proved. Hence the petition was dismissed. It is further held that husband has to prove beyond reasonable doubt the factum of separation as well as animus deserendi throughout the entire period of two years before filing the petition. Desertion means intentional permanent forsaking and abandonment of one spouse by the other without the other's consent and without reasonable cause. It is a total repudiation of obligations of marriage.

9. In Inder Sain's case (supra), the parties were married in 1967, petition for divorce was filed in 1988 on the ground of desertion and cruelty. It was held that such a delayed petition means lapses on the part of the wife, if any, have been condoned. Hence divorce petition was rejected with costs. In Surinder Singh's case (supra), also ground of cruelty and desertion were not proved. Separation between spouses for a long time was held not to amount of desertion unless intention to break marriage is proved. In Rajinder Kumari's case (supra), also, it is reiterated when the ground of desertion can be held to be proved. It is held that the offence of desertion was said to commence when factum of separation and the animus deserendi co-existed, it is not necessary that they should commence at the same time. But, ultimately at one point of time the animus deserendi had to co-exist.

10. In Khanindra Chandra Dass's case (supra), the wife alleged cruelty by husband but failed to prove any physical or mental torture to justify her leaving matrimonial home to break the marriage. Considering other facts also it was held that wife deserted husband without any reasonable cause. In Ramesh Kumar Gambhir's case (supra), the dispute between the parties was whether wife should come back on her own or husband should go to fetch her. The Court directed that the point of desertion should be judged on the initial fault. It was held that wife withdrew from the society of the husband without reasonable excuse. Hence ground of desertion was proved. In Sanat Kumar Aggarwal's case (supra), also since the wife made an effort to join the matrimonial home, decree of divorce was granted on the ground of desertion.

11. In Gurjit Singh's, Rajinder Singh Bajwa's and Ratneshwar Mishra's cases (supra), it is held that living apart is a symbol indicating the disruption of the essence of marriage and its long continuance would indicate disruption of the marriage itself, if the marriage is irretrievably broken down. The decree of divorce should be granted.

12. In this case no doubt, appellant has categorically stated that now he is not willing to allow the respondent to join him and he made no efforts to bring her back from her parental home. He has also failed to prove that his wife once in a quarrelsome mood, fell down his mother, who sustained injuries thereby. He has neither examined his mother, nor has proved that after few days of the marriage, his wife has started insisting that he should shift his business to Karnal and leave his

family members at Jagadhri. Since he declined her behaviour became cruel towards him and members of his family. After the birth of the female child in May, 1986 she herself went to her parental home and, thereafter never came back. After May, 1986 her father also once came to him and asked him to shift to Karnal, otherwise the respondent would not be sent back. She lodged a report to that effect on 9.6.1986 which is at Mark A1. His witness Rajinder Kumar PW 2 and Kewal Krishan PW3 have corroborated him on this point. No doubt, they are interested witnesses but on such matters, only relations and friends can depose.

13. The respondent's case is that she was treated cruelly by her mother-in-law and the appellant on the ground that the members of the bride room party were not treated well at the time of marriage, as well as she has not brought sufficient dowry. Strangely enough, this allegation is not put to the appellant in cross-examination. Even her father Amrik Singh RW 6 is also silent on this point. Had it been true, she would have made such a complaint to her father at least or would have given a notice to the appellant. According to her, she was expelled from the matrimonial home in April, 1986. Though, she has pleaded that she was turned out of the matrimonial home in May, 1986. Her witness Prahlad Singh has categorically stated that till April, 1986, she was living happily in her matrimonial home. This proves the hollowness of her sole testimony. About the cruel treatment, she has categorically stated that she never made a complaint to her father but her father has said so. After the birth of the female child, her life became a hell. She gave birth to the female child on 7.11.1985 and she left the house in April (according to her) and in May (according to him) 1986.

14. Respondent has led evidence that Prahlad Singh RW 1 got their marriage settled. RW 1 Prahlad Singh has stated that he was visiting the parties, matrimonial home prior to April, 1986 and he found them living happily. From his evidence, it is clear that he has no grouse against the father of the appellant. But he too has categorically stated that the respondent never told him the reason why the appellant is not willing to keep her. He sent the telegram Ex. R-1 to her father. The telegram is simply to the effect that Amrik Singh was asked by Prahlad Singh to come to Jagadhri immediately for consultation. Below this telegram, whatever is written with pen is not proved. Her father Amrik Singh had simply said that he received this telegram. He has not stated that the writing below the telegram message Ex.R1 is written, signed and dated by him. Thus, the only documentary evidence duly proved by the parties is the report Mark A lodged by the appellant, wherein he has specifically stated that a month before 9.6.1986 his wife has left his house and have gone to her parental home. A week after her leaving, his father-in-law came and asked him to shift to Karnal. Since he refused, his father-in-law gave him a threat that if he is not willing to go to Karnal, Gurmit Kaur will not be sent back to him. Amrik Singh RW4 has admitted that four-five days after Gurmit Kaur came to Karnal in April, 1986. He went to the appellant's house alongwith his relations to bring about reconciliation but his attempts failed.

15. Respondent has stated on oath that she went with her child in 1988 to the appellant's house but she was not allowed entry. Surprisingly, enough, even this fact is not put to the appellant in the cross-examination. No such specific plea is made in the written statement. Madan Lal RW-2 has also stated that in 1988 she came to her matrimonial home but the appellant and his family members refused to keep her. Since this alleged fact is neither proved nor is put to the appellant in cross-examination, she can hardly be relied on this point.

16. Thus, from the parties evidence, it is clear that they have failed to prove the alleged cruelty. But it is duly proved the since May, 1986, they are living separately. Respondent and her father have stated that her father had made an attempt for reconciliation, but no independent witness of such alleged Panchayat is examined by her to prove the fact. No such question is put to the appellant in cross-examination. I have disbelieved her on the point that in 1988, she made an attempt to came to the appellant. At the time of argument, it was stated at the Bar that the respondent is employed as a teacher at Karnal. If this is true she is further required to prove that she made some attempt for her transfer from Karnal to Jagadhri or that she is willing to leave the job. She is graduate and the appellant is only matriculate, as is stated at the bar at the time of argument. The appellant has also proved that his uncle went to bring her back but she declined. That uncle is dead by now.

17. From the parties evidence it becomes apparent that the root cause of differences is that she wants him to shift to Karnal and not to live with his family members. Since he has declined to accede to it, she has refused to come back. Her unconditional offer that she wants to come back to his society, appears to be an offer for offer's sake just to frustrate the appellant's attempt to get the relief of divorce. Since May, 1986, the parties are living separately, thus, desertion is spelt out from the evidence on record. In the aforesaid circumstances, I am of the view that instead of passing a decree of divorce in this case, a decree of judicial separation under Section 13-A of the Act be granted to give the parties another chance to settle their differences and start living together, if they so choose.

18. Hence, the appeal is allowed, the judgment and decree passed by the learned Trial Judge is hereby set-aside. The appellant's alternative prayer under Section 13-A is hereby allowed. The appellant is granted a decree for judicial separation against the respondent under Section 13-A of the Act. No order as to