

Balbir Kaur Vs. Dhir Dass

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Court : Punjab and Haryana

Decided On : Nov-02-1978

Reported in : AIR1979P& H162

Judge : M.R. Sharma, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 13(1); [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 97

Appeal No. : F.A.F.O. No. 95-M of 1977

Appellant : Balbir Kaur

Respondent : Dhir Dass

Judgement :

1. Balbir Kaur appellant was married to the respondent in March 1971. She claims that on the same day her doli was taken to the house of the respondent when about an hour there after she felt some pain in the abdomen. She was accompanied by her maternal, uncle Hardial Singh A. W. 4, her brother Jagser Singh and Chhoti Nain when it was suggested to the respondent and his parents that she should be provided with some medical treatment. Their request was not acceded to. On the other hand, she was asked to leave the house which she did and reached her father's house in the evening. She put in a petition on 24-2-1977 for divorce under S. 13(1)(ib) of the [Hindu Marriage Act, 1955](#) (hereinafter called the Act) on the ground that the respondent had deserted her for a continuous period of not less than two years immediately preceding the presentation of the petition for divorce. These allegations were denied in the written statement filed by the respondent who averred therein that he was and continues to be willing to keep the petitioner (now appellant) in his house as his wife. He also set up the plea that the petitioner herself withdrew from his company without any reasonable and probable cause and that in 1976 he had to take out a warrant under S. 97, Criminal Procedure Code, to get her recovered from illegal detention, On the pleas raised by the parties, the learned trial Judge framed the following issues:--

1. Whether the respondent had deserted the petitioner for a continuous period of more than two years immediately preceding the presentation of the petition?

2. Whether petition is not properly presented and if so to what effect?

On issue No. 1 the learned trial Judge disbelieved the story put forth by the petitioner that she had to leave the house of the respondent after about an hour of her arrival there. He also held that since the respondent took steps to get the petitioner recovered by taking out a warrant under S. 97, Criminal Procedure Code, he had

been ready and willing to keep the petitioner in his own house, as his wife. On these findings, issue No. 1 was decided against the appellant. Issue No. 2 was not pressed and decided against the respondent. In view of the aforementioned findings, the learned trial Judge dismissed the petition filed by the appellant.

2. In this appeal, I have gone through the evidence with the help of the learned counsel. In support of her case, the appellant appeared as PW 1 and stated that she was married to the respondent about six years prior to the date on which she appeared as a witness in the Court. On that, very day, her doli was taken to the house of the respondent. There she got an attack of acute pain in the abdomen. Her brother Jagser Singh, her maternal uncle Hardial Singh A. W. 4 and Chhoti Nain had accompanied her. The respondent told them that she would not get any medical treatment and that they should take her away. She was brought back to her parental home under these circumstances. In cross-examination, she admitted that the marriage of her sister was solemnised one day prior to her marriage and she denied having remained ill prior to her marriage. She also stated that the respondent's father had taken a written Ex. A 1 from her father to the effect that the relations between the parties had come to an end and that both the Parties were at liberty to perform another marriage.

3. Atma Dass A. W. 2 is the father of the appellant. He has substantially corroborated her statement. He also denied the suggestion made to him in cross-examination that prior to her marriage the appellant had been suffering from some disease. Even though he stated that he got the appellant treated by Medical Practitioners yet he could not give the names of the Doctors who had prescribed medicines for her, He also deposed about the arrangement incorporated in Ex. A. 1 whereby parents of both the spouses had put an end to the relationship between the parties regardless of the fact whether that arrangement was legally tenable or not. Dan Singh A. W. 3 is an attesting witness of the document marked as Ex. 1 A. 1. The last witness produced by the appellant is her maternal uncle Hardial Singh A. W. 4 who has substantially corroborated her statement on all the material points.

4. As against this evidence, the respondent appeared as his mm witness and stated that the appellant lived with him at his house in village Lapra for about one year. Thereafter he became chela of one Mahant Lal Dass of village Daun Kalan. She stayed with him there also. On July 2, 1976, she was taken away from his house by her father in his absence. Thereafter, he brought a panchayat to the house of the appellant's father, which included amongst others Sh. Ram Singh R. W. 2 and the Panchayat requested the father of the appellant to send the latter along with them so that she may live with the respondent but he did not accede to this request He further stated that he put in an application in the court of the learned Judicial Magistrate First Class, Patiala, and got warrants under S. 97. Cr.P.C., in the execution of which the appellant was produced before the learned Magistrate before whom she stated that she wanted to continue living in the house of her father. He then filed a civil suit for injunction seeking an order of restraint against the father of the appellant and her to the effect that she may not be given away in marriage. In cross-examination, he admitted that he never sent any money order to the appellant nor did he send her any registered letter. He also denied the suggestion that he obtained the warrants in order to pressurise and insult the appellant. It was further accepted by him that he did not collect any panchayat from village Lapra for requesting the appellant and her father that she be sent to his village to live with him. Barn Singh B. W. 2 was a co-villager of the respondent and he supported him on the point that the

latter had taken a Panchayat to the village of the father of the appellant which had unsuccessfully requested him (the father of the appellant) to send the appellant with the respondent. This is the entire oral evidence led in the case.

5. The document marked Ex. A 1 purports to have been signed by Bhagwan Dass, father of the respondent. It is an arrangement arrived at between him and Atma Dass A. W. 2, father of the appellant, to put an end to the legal status of the parties. The respondent produced copy of the application dated July 6, 1976, for the issuance of a warrant under S. 97, Cr.P.C. presented by him to the learned Judicial Magistrate Ist Class. In this application, it has been specifically mentioned that the appellant was being kept in illegal custody in the house of her own father. Ex. R. 2 is the order dated July 15, 1976, passed by the learned Judicial Magistrate pursuant to which the warrant under S. 97, Cr.P.C. had been issued. Ex. R. 3 is the copy of the statement dated July 15, 1976, made by the appellant before the learned Magistrate wherein she indicated a desire to continue living with her father. In this statement even though the appellant had levelled a charge of desertion against the respondent, yet she did not mention anything about the cruelty alleged to have been meted out to her by him

6. The reasons which prevailed with the learned trial Court for non-suiting the appellant have been indicated earlier. The first reason given was that Atma Dass A. W. 2, father of the appellant, was unable to give the names of the Doctors who had treated the appellant and for that reason the story put forth by the appellant that when she fell sick within about an hour of her arrival in the house of the respondent she was denied medical treatment and turned out of the house by him. The parties were present before me yesterday and are present even today. They and their parents appear to be illiterate, simple village folk and in this situation it is very difficult to expect that Atma Dass A. W. 2 could remember the names of the Doctors who administered medicines to the appellant about five or six years earlier. The second ground given by the learned trial Judge about disbelieving the story is that the appellant was present in the house of the respondent along with her uncle Hardial Singh, A. W. 4, her brother Jagser Singh and Chhoti Nain and as such the respondent could not have possibly retained the dowry and turned the appellant out of his house. In the course of arguments, Mr. Harbans Singh has raised a point that Atma Dass A. W. 2 had alleged that the dowry had been retained by the respondent and that part of the statement made by the witness had not been challenged in cross-examination. It was also brought to my notice that in the document marked as Ex. A. 1 it had been mentioned that "the parties had nothing to give or take any-thing from each other". From this evidence the learned counsel for the appellant wanted me to infer that the dowry given by the father of the girl had been retained by the respondent when he turned her out of his house. But during the discussions which I had with the appellant in the presence of the learned counsel for the respondent it was revealed that the father of the appellant did not give any ornaments in dowry. The few ornaments which the appellant was wearing at that time had been presented to her by the respondent's family and these ornaments were retained at the time when she was asked to leave the house of the respondent. In other words, both the grounds taken up by the learned trial Judge for disbelieving the story put forth by the appellant do not appear to be tenable. It cannot be disputed that Atma Dass A. W. 2 had willingly given the appellant away in marriage and was satisfied in sending his son and his brother as also a barber woman along the bride. If he had any evil Intentions, he would have taken good care that those who accompanied the girl should go well prepared to come back with the ornaments worn by her.

7. The learned trial Judge appears to have been greatly impressed by the fact that the respondent had established his keenness to keep the appellant as his wife in his own house by taking out a warrant under S. 97, Cr.P.C., for getting her relieved from alleged illegal detention. This ground which weighed with the learned trial Judge is equally tenuous as shall be shown hereinafter.

8. If the story put forth by the appellant is accepted which I have done that she was denied medical treatment when she developed abdominal pain on her first arrival at her husband's house and that she was not only denied medical treatment but also turned out of the house, this incident must have left a permanent scar in the mind of the appellant. As a young bride, she was not expecting this type of treatment immediately on her first arrival in the house of her husband. It has also been admitted by the respondent that at least from 1971 to 1973 he did not remit any money to her by money order. If his statement is carefully read, it shows that he and his father started taking panchayats to the house of the father of the appellant only after the latter had made a statement before the learned Judicial Magistrate that she was willingly living in the house of her own father. What emerges from this evidence is that, not only was the appellant inhumanly treated on the, very 1st day of her marriage but she was also continued to be neglected by her husband at least for two years. The latter added insult to injury by making an application to the Court of the learned Judicial Magistrate which contained an express allegation that she was being kept in illegal detention in the house of her own father. In modern times even illiterate and rustic girls do not tolerate such false allegations being levelled against their own parents. In this case it is more so because the parents of the appellant had given her shelter when she had been turned out of the house by her husband. The term 'cruelty' as understood in matrimonial disputes does not merely convey the idea of physical harm which one spouse may receive from the other. It admits in its ambit and scope such acts which might even cause mental agony to the aggrieved party. What acts do cause such an agony depends upon the facts and circumstances of each case. While determining them,, the Court has to take into consideration the status of the parties, the customs and traditions by which they are governed as also the public opinion which prevails in the locality. As I said earlier, even though the appellant had not been given any physical beating, the denial of medical treatment to her on the day she arrived at the house of her husband, the husband turning her out from the house that very day and later on levelling false allegations against her father that she was being kept in illegal detention at his house are the circumstances which when cumulatively considered clearly go to establish that the respondent had treated the appellant with legal cruelty. In this situation, even if the respondent had taken a panchayat to the house of the father of the appellant with a view to bringing her back, she was well within her rights to decline to go with him

9. It is the case of the appellant that right from 1971 onwards the respondent did not take any steps for maintaining her or for making arrangements for her to live with him. Of course during this period, the respondent did take out a warrant under S. 97, Cr.P.C., but even if pursuant to that warrant the appellant was made to spend one or two nights in the house of the respondent, that does not mean that the earlier desertion of the petitioner by the respondent had been wiped out. The application for divorce was filed by the appellant on Feb. 24, 1977, and there is preponderance of evidence that for the last more than two years the respondent did not take any effective steps to undo the effect of cruelty meted out to the appellant during this period. He would be deemed to have deserted the appellant for a period of more than two years before the date of the presentation of this petition. In the circumstances I

hold that the appellant has been able to make out a case for the grant of a decree of divorce under S. 13(1)(ib) of the Act, which I hereby grant in her favour. She will also have her costs throughout.

10. Appeal allowed

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