

Chander Kanta alias Chander Wati v. Dial Chand (Tek Chand, J.)

name of an officer borne on the Select List can never be removed except in the event of a grave lapse on the part of the member in the conduct or performance of duties, as expressed in the proviso to regulation 7. The said proviso deals with only "a special review of the Select List" and when considered in the light of the requirements of regulation 5 must mean a special review other than the review and revision required to be made every year under sub-regulation (4) of regulation 5". None of the petitioners now being on the Select List or holding a post in the senior time-scale of the Indian Administrative Service, it is not strictly necessary to go into the merits of the controversy on account of the situation as it prevails today, but because of the importance of the issues raised in this petition and the pressure of the counsels arguments we have thought it necessary to examine their validity in some detail.

(28) In the result, this petition fails and is dismissed. In the circumstances, there would be no order as to costs.

S. B. CAPOOR, J.—I agree.

R.N.M.

APPELLATE CIVIL

Before Tek Chand, J.

CHANDER KANTA ALIAS CHANDER WATI,—*Appellant*

versus

DIAL CHAND,—*Respondent*

F.A.O. 21-M of 1966

March 1, 1968

Hindu Marriage Act (XXV of 1955)—S. 9—Petition for restitution of conjugal rights by husband—Requirements for grant of such application—Indecent and false accusation hurled upon the wife—Whether affords reasonable excuse for her to decline to live with her husband—Evidence Act (I of 1872)—S. 8—Wife making complaints of maltreatment and cruelty against her husband in letters to her brother—Such letters—Whether admissible.

Held, that the legal requirement for the grant of a petition for restitution of conjugal rights by the husband is to see whether a wife has withdrawn from the society of the husband without reasonable cause, and the second requirement is that the Court must be satisfied with the truth of the statements made in such a petition, and lastly, there should be no legal grounds why the relief should not be granted. While granting restitution to the husband it has to be seen whether there was a reasonable cause for the wife to leave the husband, where a reasonable excuse exists, the Court may in its discretion refuse relief. Where a wife cannot live in the house of her husband with self-respect and dignity, and where indecent and false accusation and insults are hurled upon her that would furnish to her a reasonable excuse for declining to live with her husband.

(Para 14)

Held, that distinction has to be brought out between a complaint and a statement. If a person makes a complaint of having been ill-treated or assaulted, the making of a complaint is relevant evidence as to the conduct. The distinction between a mere statement and a complaint is of fundamental importance. The complaint is expressive of feeling and is made—unlike a bare statement—with a view to redress punishment and it may be made to someone in authority such as the police or to a parent or to some other person to whom the complaint is justly entitled to look for assistance and protection. The conduct of a party levelling complaints and seeking protection from maltreatment is evidence of *res gestae*. Hence letters by the wife addressed to her brother making complaints of maltreatment and cruelty against her husband are admissible in view of the provisions of section 8 of Indian Evidence Act.

(Para 7)

First Appeal from the order and decree of Shri Banwari Lal Singal, Additional District Judge, Hissar, dated the 7th January, 1966, granting a decree for restitution of conjugal rights in favour of the husband against the wife.

Petition for restitution of conjugal rights under section 9 of the Hindu Marriage Act.

B. S. GUPTA, ADVOCATE, for the Appellant

TIRATH SINGH, ADVOCATE, for the Respondent.

TEK CHAND, J.—This is a first appeal from the order of Additional District Judge, Hissar, passing a decree for restitution of conjugal rights in favour of Dial Chand against his wife Shrimati Chander Kanta alias Chander Wati. The parties were married on 20th of June, 1963 and a daughter was born on 31st of December, 1964 and

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on 19th of July, 1965, an application was made by the husband under section 9 of the Hindu Marriage Act for the restitution of conjugal rights. The case of the husband was that the parties were living in Hissar and their relations were cordial till February, 1965. The wife then picked up quarrel with him and left her husband's house to live with her mother in Hissar. This, she did, without his permission and she declined to come back despite the efforts of Panchayats to persuade her. The contention of the husband is that as his wife had withdrawn herself from his society without reasonable excuse, he was entitled to a decree for restitution of conjugal rights.

(2) The wife resisted the application and stated that she had been mal-treated almost from the beginning of her marriage by her husband and his mother. The latter was not satisfied with the dowry which she had brought. She had been subjected to acts of violence and not contented with that, the husband had levelled accusations of adultery which were absolutely false and without any basis. On that pretext, he used to maltreat her. She was subjected to physical and mental cruelty causing a reasonable apprehension in her mind that it would be harmful and injurious for her to live with her husband. The husband threatened to physically assault her when he had come to her mother with whom she was living and even used force to drag her from the house of her mother. On the grounds of physical and mental torture, she resisted the application. The trial court framed the following issues:—

- (1) Whether the applicant has been cruel to the respondent and if so, with what effect ?
- (2) Whether proper verification has been made on the reply and if not, its effect?
- (3) Relief ?

As the second issue was not pressed, no finding was given on it. The evidence led by the parties may now be considered. As the onus was placed upon the respondent, her witness were examined first.

(3) The respondent made her statement as R.W. 4 and stated that soon after her marriage, her husband said that he wanted a wrist watch and that the radio set which had been given to him was of inferior quality. She was desired to convey this to her mother. But the mother declined to change the radio as she had already spent about Rs. 4,000 or Rs. 5,000 on her marriage. After her marriage, she

was keen to live with her husband who was serving at Hoshiarpur but her mother-in-law would not let her live with her husband. The husband felt annoyed with her because she had not received a good dowry. He forbade her to visit her mother a week after the marriage and when she insisted to go, she was beaten. She also complained that she used to receive frequent beatings and her husband used to increase the volume of the radio so that her cries might not be heard outside. She had complained of her cruel treatment to her elder brother Dharam Chand, R.W. 3. Her father had died sometime ago. In cross-examination, she stated that she had a diploma in tailoring and maintained herself by stitching clothes. In answer to the question put to her in cross-examination, she said that her husband had been accusing her of having illicit connection with her lawyer Shri Mohan Lal and he also used to level general allegations of bad character against her. She said that she had been telling him that Mohan Lal was like a brother to her and was a friend of her brother Dharam Chand. She had written letters to her brother who lived in Delhi complaining of the mal-treatment suffered by her from her husband.

(4) Her first witness is a Municipal Commissioner, Hissar, Shri Girdhari Lal whose house is close to that of her mother. He related an incident of July or August, 1965. When he had returned to his house from his shop, he was informed that Chander Kanta had come to his house and her husband and some other women were present outside his house. The husband asked the witness to bring Chander Kanta out but he advised him not to lose his temper and the dispute should be settled peacefully. At the intercession of this witness and some others, Panchayat was called where an oral compromise was arrived at and it was decided that the husband would be at liberty to take his wife to his house from her mother's place at 8.00 p.m. In his cross-examination, this witness stated that the husband wanted to take his wife to his own house when he had asked him to bring her out of his house. The Panchayat met in the house of Chander Kanta's mother at 8.00 p.m. The husband had come to the house of his mother-in-law but Chander Kanta had already left for Delhi with her brother Dharam Chand.

(5) The next witness is Multani Ram, R.W. 2 who is a next-door neighbour of Chander Kanta's mother. He stated that it was on 4th of July, 1965, that the husband had come in the afternoon to

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his mother-in-law's place and asked her to send his wife with him and she told him that as Dharam Chand, her son, and brother of Chander Kanta was at Delhi, the matter should be decided in his presence at Hissar before Chander Kanta could be sent with the husband. There was unpleasantness on this occasion and the husband caught hold of Chander Kanta by her arm and attempted to drag her in order to take her to his house. Chander Kanta then caught hold of her mother's arm so that she could not be forcibly taken out of the house. One Madan separated them and thereupon Chander Kanta and her mother entered the house of R.W. 1, Shri Girdhari Lal, Municipal Commissioner. A number of persons had collected there. One Surinder who is said to be a friend of the husband had made objectionable observations against the character of Chander Kanta, on this occasion. In his cross-examination, he stated that Chander Kanta was pushed outside the house by catching hold of her arm by the husband and the Panchayat came to her mother's house a week after the incident. He also deposed to the compromise arrived at by which it was agreed that her husband should take her at 8.00 p.m. from her house but before that, her brother Dharam Chand had left with her for Delhi.

(6) R.W. 3 is Dharam Chand, who is brother of Chander Kanta. He stated that his sister had been complaining to him of the maltreatment she got from her husband. He received letters from his sister Exhibits R/1 to R/4. He came to Hissar and found that his sister was in weak health and she wept and complained to him of the way she was being maltreated. He met the husband who expressed his annoyance and conveyed to him his suspicions against her character. In cross-examination, Dharam Chand stated that a daughter was born to Chander Kanta in the husband's house. He also said that the husband had suspected that her lawyer Mohan Lal was having illicit relation with Chander Kanta. He also said that this complaint was made to him by the husband two years ago and that would be in December, 1963. He also told the Panchayat that the husband had been saying that he suspected his wife of having illicit relations with Mohan Lal and others. Dharam Chand stated that it was decided that he should take his sister to Delhi on that date at 5.00 p.m.

(7) In the letters addressed to her brother, Chander Kanta has expressed her bitterness at the maltreatment and the indignities she had been made to suffer and is begging her elder brother to come

and protect her. She has referred to the abuses and the other maltreatment which is being meted out to her and which is becoming unbearable, in particular to the suspicions as to her chastity. She also complained that her husband came with some desperate characters and tried to enter her mother's house forcibly and attempted to break open the door in order to assault her. Her letters show that she had been making allegations of cruelty, maltreatment and the imputations made by her husband against her character.

The lower Court has declined to take into consideration the evidence of these four letters as according to him, they were admissions in her own favour and as such, not admissible in evidence. One of these letters Exhibit R/2 is dated 13th of November, 1964. It was written at a time when she was in advanced stage of pregnancy. A daughter was born to her seven weeks later. In view of the provisions of section 8 of the Indian Evidence Act, the letters, in so far as they point her conduct, are not inadmissible. A distinction has to be brought out between a complaint and a statement. If a person makes a complaint of having been ill-treated or assaulted, the making of a complaint is relevant evidence as to the conduct. The distinction between a mere statement and a complaint is of fundamental importance. The complaint is expressive of feeling and is made—unlike a bare statement with a view to redress the punishment and it may be made to some one in authority such as the police or to a parent or to some other person to whom the complainant is justly entitled to look for assistance and protection. The conduct of a party levelling complaints and seeking protection from maltreatment is evidence of *res gestae*. These letters have been wrongly held to be inadmissible in evidence.

(8) I may now turn to the evidence led by the husband. He appeared as A.W. 2 and stated that his monthly emoluments were Rs. 118, whereas his wife was earning anything from Rs. 5 to Rs. 6 per day. He denied having maltreated her or of having levelled an allegation against her character or complaint of inadequate dowry. He denied any dispute having occurred when he had gone to her mother's house to persuade her to return. He also admitted in cross-examination that when he had taken the Panchayat to the house of her mother-in-law, Shri Mohan Lal, Advocate, intervened to persuade Chander Kanta to accompany her husband to the latter's house.

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(9) A.W. 1 is Mukhi Piare Lal. His house is at a short distance from that of Dial Chand. He merely stated that he had never seen the husband treating his wife cruelly.

(10) No other evidence was produced by the husband.

(11) In his judgment, the lower Court observed that no high-handedness was proved if the husband exercised his right to take his wife and if for that purpose, he caught hold of Chander Kanta by her hand. It is difficult to agree with this observation. He was using force against her and dragging her against her will and she clutched to her mother and tried to resist forcible attempts which were being made by her husband to drag her to his house. Had it not been for the intervention of one Madan, the husband might have taken her by physical force against her will. It is not possible to agree with the lower Court's observation that it is permissible to a husband in these circumstances to forcibly drag his unwilling wife to his house if she does not wish to come. That, in my view, will be an instance of cruel treatment. It is again difficult to accept the denial of the husband that he never maltreated her and that he never accused her of adultery or that he ever suspected illicit relations with Shri Mohan Lal, Advocate or with anybody else. If the husband had never accused his wife of adultery, it is difficult to believe that she or her brother would invent this accusation in order to bolster up a false ground in order to defeat the husband's application for restitution of conjugal rights. No respectable woman would resort to such a course and proclaim, that her character and her chastity had been a matter of suspicion by her husband. This is not in consonance with the conduct of Hindu girls. The approach of the lower Court to the matters in issue has been erroneous. When accusations are levelled against the chastity of an innocent wife, these are bound to cause her acute mental anguish for there is nothing more precious to her than her chastity and good name. Such accusations can have a very serious effect upon the mental and physical health of a young woman. There is satisfactory evidence on the record of physical violence to which Chander Kanta was subjected by her husband while she was in an advanced stage of pregnancy.

(12) The next question is whether in these circumstances, a husband should be entitled to a decree for the restitution of conjugal rights. In a well considered judgment by Grover J. in *Mst. Gurdev*

Kaur v. Sarwan Singh (1) the provisions of section 9 of the Hindu Marriage Act reproduced below were analysed:—

“9(1) When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

(2) Nothing shall be pleaded in answer to a petition for restitution of conjugal rights which shall not be a ground for judicial separation or for nullity of marriage or for divorce.”

(13) It was held that if the Court is not satisfied as to the *bona fides* of a petitioner and finds that the petitioner seeks only the substance and not the real rights and duties of married life, it should refuse to order restitution.

(14) On the evidence in the instant case, it seems to me that it is not so much a case of desertion by the wife but of escape and of an attempt to find refuge in the home of her mother and later, of her brother. She was a refugee rather than a deserter and it cannot be said, that Chander Kanta had withdrawn from the society of her husband without justification. The legal requirement in such a case is whether the wife has withdrawn from the society of the husband without reasonable cause, and the second requirement is, that the Court must be satisfied of the truth of the statements made in such a petition and lastly, there should be no legal ground why the relief should not be granted. While granting restitution, it has to be seen whether there was reasonable cause for the respondent to leave the petitioner, where a reasonable excuse exists, the Court may in its discretion refuse relief. In the judgment in *Gurdev Kaur's case*, the case law has been reviewed. Where a wife cannot live in the house of her husband with self-respect and dignity, and where indecent and false accusations and insults are hurled upon her, that would

(1) I.L.R. 1959 Punj. 509=A.I.R. 1959 Punj. 162.

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furnish to her a reasonable excuse for declining to live with her husband.

Grover, J.—Observed:

“Where the husband is guilty of conduct which falls short of legal cruelty in the sense that it is not cruelty of the kind mentioned in S. 10(1)(b) of the Hindu Marriage Act, but his misbehaviour or misconduct is such that the wife is fully justified in separating herself from him, the husband cannot succeed in his petition under S. 9 as it will not be possible for the Court to say that the wife has withdrawn herself from his society without reasonable excuse.

In a case of this nature the petition shall fail not because of any defence set up by the wife under S. 9(2), but it cannot succeed on account of the non-fulfilment of one of the essential ingredients of sub-section (1) of S. 9. Apart from the provisions of S. 9(1) even if a proceeding is undefended it is obligatory on the Court to be satisfied under S. 23(1)(a) that the petitioner is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief.

This makes the position clearer that the Court is bound to take into consideration the conduct of the petitioner. If the petitioner has by his own misdeeds forced his spouse to leave him, he cannot be allowed to take advantage of his own wrong and ask for the assistance of the Court to perpetuate his own wrong doing.”

(15) In *Madan Mohan Kohli v. Smt. Sarla Kohli* (2), Khanna, J., observed:—

“Question which then poses itself for consideration is whether the making of baseless allegation of unchastity and adultery by the husband against the wife amounts to cruelty. The answer to this question in my opinion has to be in the affirmative. There are few things which a woman, especially in the background of Indian traditions, cherishes more than chastity and where a baseless and unfounded charge is made of unchastity and adultery

against a woman, it must in the very nature of things cause her extreme anguish. The fact that the charge was made in a communication addressed to the wife and was not then given publicity, would not go to show that the making of the unfounded charge was not a cruel act."

(16) Pandit, J., in *Shritmati Santosh Kaur v. Mehar Singh* (3) held that where the husband had filed a petition for restitution of conjugal rights on the ground that his wife had withdrawn herself from his company without any sufficient cause, it was for him to prove that fact before he could be granted any relief. Simply because the wife could not establish her defence that the husband had treated her with cruelty, that alone would not entitle the husband to claim relief.

(17) In view of what has happened in the domestic life of the parties and the treatment meted out to the wife by her husband, husband's application for restitution of conjugal rights does not deserve to succeed. I, therefore, allow the appeal and set aside the decree passed by the Additional District Judge for restitution of conjugal rights in favour of the respondent. In the circumstances, I leave the parties to bear their own costs.

K. S.

APPELLATE CIVIL

Before Mehar Singh, C.J., and R. S. Narula, J.

MOHINDER KAUR AND OTHERS,—Appellants

versus

WASSAN SINGH AND OTHERS,—Respondents

Regular Second Appeal No. 1078 of 1964

March 8, 1968

Hindu Succession Act (XXX of 1956)—S. 27—Scope of—Title of the estate of murdered person—Whether can be claimed through his murderer—Father's will in favour of two sons excluding female heirs—One of the sons hanged for murdering his father—His share of the willed property—Whether devolves on surviving son or goes in intestacy.

(3) 1966 P.L.R. 713.