

Before S.S. Saron, J

JASBIR KAUR,—Plaintiff/Appellant

versus

BALBIR SINGH,—Defendant/Respondent

F.A.O. NO. 160/M OF 1989

20th November, 2002

Hindu Marriage Act, 1955—S.13—Wife seeking dissolution of marriage after 17 years of solemnisation on the ground of desertion and cruelty—Allegation of adultery by husband against wife—Whether amounts to cruelty—Held, yes—However, when such an allegation is substantiated by cogent and reliable evidence it would not constitute cruelty—Parents of the wife proving the fact of her adultery—Allegations made by the husband stand duly established and substantiated—Wife not entitled to take benefit of her own wrong—Wife's appeal dismissed while upholding the order of the trial Court.

Held, that false accusation of adultery by one spouse against another amounts to cruelty. In case the allegation of the respondent in his written statement that the appellant was having illicit relations were false, it would amount to mental cruelty. However, when the allegation set up as a defence in the written statement is substantiated by cogent and reliable evidence, it would not amount to cruelty.

(Para 12)

Further held, that the parents of the appellant—wife have come forward and clearly stated that it was the wife who was at fault as she was living with another person. In this back-ground the honour of the family has been kept of paramount consideration. In this view of the matter, the appellant—wife cannot take benefit of her own wrong. In other words, she cannot on the one hand live with another person and at the same time claim divorce from her husband. This would not be in consonance with the social milieu and the environment of the kind in which the parties live. Hence, no fault

can be found with the order of the trial Court which would warrant interference by this Court.

(Paras 17 & 22)

Sarwan Singh, Sr. Advocate with N.S. Rapri, Advocate *for the appellant*

D. Khanna, Advocate *for the respondent.*

JUDGMENT

S.S. SARON, J

(1) This appeal has been filed by the wife against the judgment and decree dated 27th September, 1989 passed by the learned Additional District Judge, Patiala, whereby her petition for the grant of divorce on the ground of desertion and cruelty has been dismissed.

(2) Smt. Jasbir Kaur the appellant herein filed a petition under Section 13 of the Hindu Marriage Act (Act for short) for dissolution of the marriage between the parties by a decree of divorce. Marriage between the parties was solemnized about 17 years before the filing of the petition which was filed on 29th July, 1988 according to Sikh rites at village Shadipur, Police Station Ghula, District Kurukshetra. After marriage the parties lived as husband and wife at village Nurpur, District Sangrur, for about seven years. The parties had two sons namely Joginder Singh and Amarjit Singh. Thereafter the parties shifted to Patiala at Jujhar Nagar, Patiala, and lived there till 1981. It is alleged that during the stay of the appellant at village Nurpur, the respondent husband and his other family members used to nag, taunt, maltreat and misbehave with her. They were demanding dowry and other articles in cash or kind. The respondent is stated to be a Nihang Singh and addicted to excessive intoxications. The appellant after seven years of marriage had shifted to Patiala, took a house on rent and with two buffaloes which she took from her parents started a dairy. The respondent never used to come to the house and he always remained with the caravan of the Nihangs and with bad company. Whenever he came he used to say to prepare meal of 30-35 persons. It is further stated that in June, 1981, the respondent committed a murder in Jujhar Nagar Patiala, in which the appellant and her brother were also involved along with the respondent. In the said case the appellant and her brother were tried by the Court of learned

Additional Sessions Judge, Patiala and were acquitted in January, 1983. The appellant and her minor children took a house on rent at Dhaka colony, Patiala, and the respondent went to his village Nurpur alongwith his parents. After that the respondent never came nor met his minor children. Neither did he pay anything towards maintenance to the appellant or to his children. Now the appellant and her children were spending their days with meagre income. About 10 days earlier to the filing of the petition, the respondent is stated to have come along with some 8-9 other nihangs at late hours and he started abusing the appellant in the presence of her brother Kashmir Singh and one Gurbux Singh. The respondent gave burchha blows to the outer-wooden door of the house of the appellant, threw brick bats in the courtyard and threatened the appellant with dire consequences. The matter was reported to the police but no action was taken. On these grounds, the appellant prayed for the grant of divorce.

(3) The respondent-Balbir Singh filed his written statement. The factum of marriage between the parties and the children from the wedlock has been admitted. It was however stated that the parties resided at village Nurpur, for about nine years and then they lived at Patiala, up to June, 1988, i.e. immediately before the filing of the petition for divorce by the appellant. The allegations of nagging, taunting, maltreatment and misbehaviour as also regarding demand of dowry in cash or kind have been denied. Rather, it is stated that the house in which the appellant used to reside was purchased with the money of the respondent by mortgaging the land belonging to him at village Nurpur. The appellant is stated to be a clever lady and she purchased the house in her own name and the name of the respondent was not included as the respondent is a very simple and honest person, and was not having any ill-will in his mind against the appellant. Besides, it is stated that the parties have two sons aged 16 years and 14 years respectively and as such how could he demand dowry. It is also denied by the respondent that he is a nihang Sikh or is addicted to excessive intoxications. The other allegations levelled by the appellant have also been denied. It is stated that the appellant was having illicit relations with a married person namely Pritam Singh s/o Kartar Singh, who is the brother of the respondent's brother-in-law Kulwant Singh. The wives of respondent and Kulwant Singh are sisters. The appellant told the respondent that Pritam Singh would live with her and that the respondent may or may not live with her. The involvement

in the murder case is admitted. However, it was denied that the respondent committed the murder. It is rather stated that the murder was committed by the appellant along with other persons as she was having illicit relations with the person who was murdered. The respondent was falsely involved in that case and thus was acquitted. The other allegation of the appellant that 8/9 Nihangs came at the house and started abusing her has been denied. No such happening ever took place in the presence of Kashmir Singh and Gurbux Singh as alleged. The fact that the respondent gave a barchha blow on the outer wooden door of the house, threw brick bats in the courtyard or even threatened the appellant with dire consequences have been denied. The allegation of desertion has also been denied.

On these pleadings, the learned Additional District Judge, framed the following issues :—

1. Whether the respondent has deserted the petitioner ? OPA.
2. Whether the respondent has treated the petitioner with cruelty ? OPA.
3. Relief.

(4) The learned Additional District Judge,—*vide* his detailed judgment and decree dated 27th September, 1989 dismissed the petition of the petitioner wife as a consequence of which the present appeal has been filed.

(5) I have heard the learned counsel appearing for the respective parties and given due consideration to their respective submissions.

(6) Shri Sarwan Singh, learned Senior Advocate has contended that the learned Additional District Judge, gravely erred in passing the impugned order inasmuch as the case of the appellant for grant of divorce was established from the reading of the written statement itself. It is contended that the respondent in para 5 of the written statement has stated as follows :—

“.....The fact remains that the petitioner is having an illicit relations with Pritam Singh, son of Kartar Singh, (who

is also married) who is brother of Kulwant Singh. Kulwant Singh is brother-in-law (Sandoo) of the respondent. The petitioner told the respondent that Pritam Singh will live with her, the respondent may or may not, live with her.”

(7) In view of the above averment of the respondent, it is contended by the learned Senior Advocate that the said allegation made against the appellant of her having illicit relations with Pritam Singh is by itself an act of cruelty which would warrant the grant of divorce in her favour. In support of his contention, he has relied upon the judgement of the Hon'ble Bombay High Court in the case of **Jaishree Mohan Otavnekar versus Mohan Govind Otavnekar** (1) He also relied upon the case titled **Smt. Vimla Ladhakhi versus Chandra Prakash Ladkani** (2).

(8) On the other hand Mr. D. Khanna, learned counsel appearing for the respondent vehemently contended that the allegations made by the respondent in the written statement are in fact duly substantiated inasmuch as the parents of the appellant Smt. Jasbir Kaur namely Kartar Kaur DW-1 mother of the petitioner and Dassa Singh, DW-2 father of the petitioner appeared as witnesses for the respondent husband and duly proved the allegations. Therefore, it is contended that the said assertion of the respondent stands duly substantiated from the evidence of the appellant's own parents. As such no fault could be found with the order of the learned trial Court in this regard.

(9) The question that requires consideration on the basis of the contentions urged by the respective counsel is whether the allegations made by the respondent in his written statement would amount to cruelty against the appellant.

(10) In the case in hand Smt. Kartar Kaur who is the mother of the appellant appeared as a witness for the respondent husband. In her deposition in the Court as RW-1 she had stated that the appellant is her daughter. Besides, she has clearly stated that the appellant was residing with one Pritam Singh in Jiwan Nagar, Patiala

(1) 1987 H.L.R. 395

(2) AIR 1996 Madhya Pradesh 86

and that the said Pritam Singh is brother of her son-in-law. She has also stated that the appellant has illicit relation with said Pritam Singh. She was subjected to substantial cross-examination. The specific assertions of the appellant having illicit relations with Pritam Singh could not be shaken rather in the cross-examination Smt. Kartar Kaur, RW-1 also denied the suggestion that the appellant had purchased the house in Dhakka Colony, Patiala, with the earning of her brother Kashmir Singh. The allegation of the respondent residing at Nurpur for the last seven years separately from the petitioner was also denied. She also denied the fact that her husband and son-in-law were opium addicts.

(11) To somewhat similar effect is the statement of Dessa Singh RW2, who is the father of the appellant and appeared as a witness for the respondent. He in his statement has deposed that the respondent used to treat the appellant nicely and they never quarrelled with each other and were leading a happy married life. However for the last one and half year they were living separately. It is then clearly stated that the appellant was residing with one Pritam Singh brother of his son-in-law and that the appellant has illicit relations with said Pritam Singh. The appellant with the help of Pritam Singh aforesaid has turned out the respondent from her house at Patiala. She also stated that the house at Patiala was purchased with the money of the respondent. Despite his lengthy cross-examination nothing could be elicited with regard to the factum of the petitioner not living with Pritam Singh at Patiala.

(12) It is no doubt that false accusation of adultery by one spouse against another amounts to cruelty. In case the allegation of the respondent in his written statement that the appellant was having illicit relations were false, it would amount to mental cruelty. However, when the allegation set up as a defence in the written statement is substantiated by cogent and reliable evidence, it would in my view not amount to cruelty. A Division Bench of this Court in *Paras Ram versus Kamlesh* (3) has held as follows :—

“ the settled legal position that a false allegation of adultery against a spouse amounts to cruelty in the eye of law. However, it would be a far cry to infer

therefrom that an allegation of adultery, whether proved or not, would by itself be the mathematical equivalent of legal cruelty. It is not, and in my view cannot possibly be the law, that a factually true allegation of adultery whether made otherwise **or in defence in a written statement would amount to cruelty.** In this field the truth or otherwise of such an allegation is the crux of the matter. 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 falsely 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 for divorce.** Such a proposition is unwarranted either on the language of the statute or on principle. **This apart, holding so might well frustrate a true and open trial of a matrimonial offence of adultery because it might well inhibit a spouse to raise such a defence, even though it may be factually true..” (emphasis added)**

(13) **Paras Ram’s** case, (*supra*) was remanded and again came up for consideration in appeal in the case titled ***Kamlesh versus Paras Ram*** (4). This court in *Kamlesh’s* case (*supra*) held that the term; ‘legal cruelty as known to matrimonial law is that item of cruelty which the law recognises as an instance. It was observed that making a false allegation of adultery by one spouse against the other was an instance of legal cruelty. That is to say it has inherently an element of cruelty and the law recognises it. It was held that elemental cruelty

does not *ipso facto* mean that it would entitle the aggrieved spouse to a relief under Section 13(1)(a) of the Hindu Marriage Act. The learned Single Judge, made the following meaningful observations in *Kamlesh's case (supra)* :—

“The ground of divorce now available to the petitioning spouse is that the other party has after the solemnization of marriage treated the petitioner with cruelty. It does not *ipso facto* mean that the petitioner has only to allege and prove that the respondent has indulged in act or acts which amount to ‘legal cruelty’. But then he or she has further to prove that it was ‘cruelty’ satisfying the tests of the Hindu Marriage Act. In that Act cruelty as a ground for divorce must mean cruelty of such a character as to cause danger to life, limb or health or to give rise to reasonable apprehension of such danger. After the 1976 amendment in the Hindu Marriage Act, cruelty as a ground for divorce has been brought at par with one existing in the Special Marriage Act. And under the Special Marriage Act, the ground of cruelty has always been understood to mean cruelty as it is understood under the English Law. The effect of *Dastan versus Dastane* AIR 1975 SC 1534 was nullified by causing the 1976 amendment in the Hindu marriage Act. In *Raj Kumar Manocha versus Smt. Anskuka Manocha* 1983 Cur.L.J. (Civ & Cri.) 134, S.P. Goyal, J, relying on *Madan Lal Sharma versus Smt. Santosh Sharma*, 1980 Hindu L.R. 441 (Bom) summed up the position of law on the point with erudite clarity with which I am in respectful agreement.”

(14) The aspect of cruelty by pleadings made in the written statement has also been considered by the Hon'ble Supreme Court in the case of *V. Bhagat versus Mrs. D. Bhagat* (5) In the said case the wife in her written statement and also in the questions put by her counsel to the petitioner therein in the cross-examination had also made allegations that he was a mental patient and that he was not a normal person. He requires psychological treatment to restore his mental health, that he is suffering from mental hallucinations and

to crown it all, to allege that he and all the members of his family are a bunch of lunatics. Consequent upon making such statement, the petitioner V. Bhagat therein amended his divorce petition and prayed for divorce on the grounds of mental cruelty on the basis of the averments made by the respondent in the written statement and the questions put by her counsel in the cross -examination of the petitioner.

(15) The Hon'ble Supreme Court held that mental cruelty in Section 13(1)(i-a) of the Act can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. However, it was held that while arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it was neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined having regard to the facts and circumstances of each case. If it is a case of accusation and allegations, regard must also be had to the context in which they were made. To the similar effect are the observations of the Hon'ble Supreme Court in the case of *G.V.N. Kameswara Rao versus G. Jabilli* (6) wherein it was held that mental cruelty is to be assessed bearing in mind the social status of the parties their custom, traditions, their educational level and the environment in which they live.

(16) It is in this back-ground that the case of the appellant wife for the grant of divorce is to be seen. From the material on record, it is seen that the husband is an illiterate person inasmuch as he has thumb marked his pleadings and the vakalatnama. The wife has however signed in Punjabi script which is also not a signature in running hand. From which it is possible that she could barely sign. The husband sold part of his land and has constructed a house which is in the name of his wife. During the divorce proceedings, it is the husband who claims maintenance pendente lite and litigation expenses. In the reply filed by the wife it is claimed that rather she was entitled to claim maintenance pendente lite and litigation expenses.

(17) The learned Additional District Judge,—*vide* his order dated 15th November, 1988 awarded a sum of Rs. 150 p.m. as maintenance pendente lite to the wife and Rs. 200 as litigation expenses. Thus the position is that the parties to the petition are more or less illiterate and are leading not a very economically healthy life. The husband however, did construct three room house at Patiala, where the family is residing. However, despite the social status and education level it may be noticed that the parents of the appelland wife have come forward and clearly stated that it was the wife who was at fault as she was living with another person namely Pritam Singh. In this back-ground the honour of the family has been kept of paramount consideration. In this view of the matter I am of the view that the appelland—wife cannot take benefit of her own wrong. In other words, she cannot on the one hand live with another person and at the same time claim divorce from her husband. This would not be in consonance with the social milieu and the environment of the kind in which the parties live. The Hon'ble Supreme Court in recent decision in *Savitri Pandey versus Prem Chandra Pandey (7)* declined to grant divorce to the wife by holding that where the party seeking the divorce was trying to take advantage of her own wrong, it could not be said that the marriage was dead for invoking the jurisdiction under Article 142 of the Constitution for dissolving the marriage. Such dissolution could not be based only on the averments made by the parties. It was further held :—

In any proceedings under the Act whether defended or not the Court would decline to grant relief to the petitioner if it is found that the petitioner was taking advantage of his or her own wrong or disability for the purposes of the reliefs contemplated under Section 23(1) of the Act. No party can be permitted to carve out the ground for destroying the family which is the basic unit of the society. The foundation of the family rests on the institution of a legal and valid marriage. Approach of the court should be to preserve the matrimonial home and be reluctant to dissolve the marriage on the asking of one of the parties.”

(18) The above said observation in my view apply to the facts and circumstances of the present case as the appellant herself is taking advantage of her own wrong. She is living with one Pritam Singh and her own parents have deposed regarding this fact while appearing as witnesses for the respondent – husband.

(19) The judgments referred by the learned counsel for the appellant i.e. *Jaishree Mohan Otavnekar (supra)* and *Smt. Vimla Ladhakni (supra)* may be noticed. In *Jaishree Mohan Otavnekar's* case a petition for divorce was filed by the wife on the ground of cruelty alleged to have been practised by her husband. She gave several instances of physical cruelty as well as mental cruelty. In the reply filed by the husband, he made unwarranted allegations of adultery on the part of the wife. The cruelty alleged by the wife was not established. Therefore, the Hon'ble Bombay High Court held that the husband was guilty of cruelty and the wife was held to be entitled for the grant of divorce. The Hon'ble High Court made a mention of the allegations made in the written statement and found them to be thoroughly wanton and unwarranted. Besides, it turned out that aailable warrant was issued against the wife and bail was given by her. Ultimately, in the criminal case, she was discharged. It was also observed that there was no serious attempt made by the husband even to make good the allegations. In the circumstances it was held that the allegations are unfounded.

(20) In *Vimla Ladkani's* case (supra) the Hon'ble Madhya Pradesh High Court had material on record which went to show that the case of cruelty had been established for the grant of divorce to the husband. Apart from the material, it was also observed that wife in her written statement made false allegation and all the accusation appeared to be incorrect and were held to have no foundation. In these circumstances, it was observed that they did constitute cruelty. Besides, it was observed that making false allegation in open Court about the character of the husband and the family members so as to injure the reputation of the husband amounts to cruelty.

(21) In the facts and circumstances, as already noticed above, the accusation of the husband are not without basis or foundation. In view of the fact that the parents of the appellant wife had deposed against her with regard to her life style. Therefore, in the facts and circumstances of the case, the ratio of the judgment in *Savitri Pandey's*

case (*supra*) applies and the appellant wife is not entitled to have the benefit of her own wrong. Besides the allegations made by the husband in his written statement stand duly established and substantiated.

(22) In the circumstances, no fault can be found with the order of the trial Court which would warrant interference by this Court. Consequently, the appeal is dismissed. However, in the circumstances there shall be no order as to costs.

R.N.R.

Before S.S. Saron, J

VINOD KUMAR—*Petitioner*

versus

THE STATE OF PUNJAB—*Respondent*

CrI. M. No. 11536/M of 1998

20th November, 2002

Prevention of Food Adulteration Act, 1954—Ss. 16, 19(2)(a)(ii) & (b)—Prevention of Food Adulteration Rules, 1955—Rls. 12—A & 32—Sample of sealed packets found to be misbranded as month & year of manufacture/packing not clearly mentioned—Proceeding against a retail dealer for breach of Rl. 32(f)—Sample found not to be adulterated—Dealer selling the sealed packets in the same condition in which they were purchased from the manufacturer—Liability to correctly depict the label as required u/s 32(f) is of the manufacturer—Dealer held to be entitled to benefit of defence u/s 19(2)(a)(ii) & (b)—Criminal proceedings against the dealer liable to be quashed.

Held, that the petitioner would be entitled to the defence permissible u/s 19(2)(a)(ii) and (b) of the Act as the Public Analyst in his report has found that the month of manufacture/package had not been mentioned on the packet. This is the requirement of Rule 32(f) of the Rules. It is not the case of the State that the sample was adulterated or did not conform to the prescribed standard. The case is that the sample of Tata Tea has not been labelled in accordance with the provisions of Rule 32 of the Rules as month of manufacture/packing had not been mentioned on the packet. It is the admitted