

IN THE HIGH COURT OF HIMACHAL PRADESH  
SHIMLA

FAO (HMA) No.5 of 2001

Date of Decision: August 31,2006

Dalip Singh	<b>Versus</b>	Appellant
Meena Kumari & another		Respondents

*Coram:*

**The Hon'ble Mr.Justice Deepak Gupta,J.**

*Whether approved for reporting ?<sup>1</sup>*

**For the Appellant : S/Sh. S D Gill and Imran Khan,  
Advocates.**

**For respondent No.1 : Sh. Ajay Sharma, Advocate.**

---

Deepak Gupta, J. (Oral)

The present appeal is directed against the judgment and decree of the learned Additional District Judge (II), Kangra at Dharamshala, in HMP No.2-P/97/71-P-III/95 dated 31<sup>st</sup> October, 2000, whereby he has dismissed the petition for divorce filed by the husband-appellant.

The appellant-husband, who is serving in the Indian Army, filed a petition for grant of divorce, under Section 13 of the Hindu Marriage Act, 1955, on three grounds i.e. adultery, cruelty and

---

<sup>1</sup> *Whether the reporters of Local Papers may be allowed to see the judgment ?*

desertion. It is alleged that the marriage between the parties took place as per Hindu rites on 16<sup>th</sup> May, 1993. The husband Dalip Singh and the wife Meena Kumari lived together for about 10 days and on 27<sup>th</sup> May, 1993 the appellant-husband left to join his place of posting. According to the allegations made in the petition, after the appellant left for the place of his posting, illicit relations developed between Meena Kumari and Dharam Chand (father of the appellant-husband) and they had voluntarily sexual intercourse a number of times till 22<sup>nd</sup> September, 1993, when the respondent-wife left her matrimonial house and started living with her parents. According to the appellant-husband, he was informed by his mother about the illicit relations between his wife and his father. Other allegations with regard to the mental cruelty and desertion were also leveled against the respondent-wife.

In reply, the respondent-wife controverted the allegations leveled against her. According to her, she infact was turned out of the matrimonial house by the appellant and his parents on 22<sup>nd</sup> September, 1993. According to her, a false story has been concocted by her husband in collusion with his parents and absolutely baseless and wild allegations have been leveled against her.

At the very outset, it would be pertinent to mention here that the order sheets of the trial court shows that on 30<sup>th</sup> October, 1995, a statement was made on behalf of respondent No.2 that he does not want to file reply to the petition. Surprisingly, despite

this statement having been made, reply has been placed on record of the learned trial court. This reply does not bear any seal of the court or any signature or stamp of the court showing that it was filed with the permission of the Presiding Officer. This reply appears to have been filed along with the rejoinder filed by the appellant-husband. Both, rejoinder filed by the appellant-husband and reply filed by respondent No.2 have been typed on the same typewriter. Both these documents are typed on judicial papers. Rejoinder filed by the appellant-husband is typed on the judicial paper bearing Sr.No.835708 whereas reply filed by the father is on judicial paper bearing Sr.No.835707. This clearly shows that the reply was filed by the father in collusion with his son i.e. appellant-husband.

Another important factor which is to be noticed is that prior to the proceedings being filed in the court, a notice was issued on behalf of the appellant-husband to the respondent-wife on 9<sup>th</sup> February, 1994. In this notice, no allegation of adultery was leveled against the respondent-wife. In case the respondent-wife had developed illicit relations with her father-in-law, as is now sought to be made out and the appellant's mother had informed him about the same by sending letters to him in the year 1993, there is no reason why this aspect of the matter was not mentioned in the aforesaid notice.

The main evidence with regard to the adultery is the evidence of the appellant-husband, who states that he was informed about the illicit relations between his wife and his father by

his mother. According to him, he has seen his wife and his father in compromising position and he admits in the cross-examination that his mother wrote 4-5 letters to him but these letters were not filed with the petition. In fact, the appellant-husband has proved on record the statement of respondent-Meena Kumari made before the Army Authority, in which she has stated that her father-in-law left her in her parental house and she has further stated that the behaviour and conduct of her father-in-law not above board and that father-in-law wanted to have illicit relations with her. PW-4 is the mother, who has supported the case of her son. PW-5 Birbhan Singh has stated that he was President of the Panchayat, at the relevant time and was informed by the mother of the appellant that her husband has having illicit relations with her daughter-in-law. According to Hari Ram (PW-6), who is one of the neighbourer, he saw the respondent-wife and her father-in-law in a compromising position.

The learned trial court, on appreciation of the entire evidence, has come to the conclusion that no reliance can be placed on the statements of the appellant's witnesses. Statement of respondent No.2 is so defamatory and demeaning that in my opinion it should not be quoted in the judgment. It is apparent from the record of the case that the appellant-husband and his parents have cooked up and leveled absolutely false and baseless allegations against the wife. The story of adultery has been cooked up only with a view to obtain a decree for divorce. There are inherent contradictions in the statements of the witnesses. Whereas in the notice issued to the

respondent-wife, it has been stated that the appellant-husband had left home for joining duty on 30<sup>th</sup> May, 1993 and came back to his village on 24<sup>th</sup> September, 1993. In the statement made by the appellant-husband in the court, he has stated that he left for his duty on 27<sup>th</sup> May, 1993 and returned from leave on 20<sup>th</sup> September, 1993. Obviously these dates in the statement have been changed. The mother of the husband PW-4 and father respondent No.2 have in their statements stated that wife Meena Kumari entered the room of his father-in-law and had sexual intercourse with him on 27<sup>th</sup> and 28<sup>th</sup> May, 1993. If the husband was in the village till 30<sup>th</sup> May, 1993 this was not possible. It is, therefore, obvious that the date has been changed to May 27, 1993 only for this purpose. Similarly, the husband in his statement has stated that he saw his wife and his father in compromising position on 20<sup>th</sup> September, 1993. Admittedly, the wife left matrimonial home on 22<sup>nd</sup> September 1993. Previously, the husband had stated that he came back to the village on 24<sup>th</sup> September, 1993. If he came back on 24<sup>th</sup> September, 1993 how he could have seen his wife and his father in compromising position on 20<sup>th</sup> September, 1993. This totally shatters the case of the appellant-husband.

Keeping in view the aforesaid facts and circumstances, I am of the considered opinion that the petition for divorce has been filed by the appellant-husband in collusion with his father as well as his mother. Therefore, I find no infirmity in the

judgment of the learned trial court. The appeal is dismissed. There will be no order as to costs.

CMP No.102 of 2002

Infructuous.

August 31, 2006  
(D)

(Deepak Gupta),J.