

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

FAO No. 431 of 2000

Judgement reserved on: 6.1.2006

Date of Decision: January 13 , 2006

Smt. Jyotsna

...Appellant.

Versus.

Desh Raj

. Respondent.

Coram:

***The Hon'ble Mr. Justice Deepak Gupta, Judge.
Whether approved for Reporting?***

For the Appellant(s): Mr. Yoginder Paul, Advocate.

For the Respondent(s): Mr. Ashwani Pathak, Advocate.

Deepak Gupta, J.

This appeal under Section 28 of the Hindu Marriage Act is directed against the judgment of the learned District Judge, Mandi in HMA petition No.18 of 1998 decided on 5.8.2000 whereby he has granted a decree for dissolution of the marriage by divorce in favour of the husband.

The brief facts necessary for decision of the case are that the parties were married on 17.7.1995 at Mandi. One daughter Anamika was born out of the wedlock on 16.5.1996. In the petition, it was alleged that after the marriage, the wife behaved in a proper manner for a period of three months and thereafter without any rhyme and reason, she started picking quarrels with her husband and her in laws.

She also started leaving the marital home without giving information and without the consent of her husband and used to return late in the night. She was requested by her husband to mend her ways. According to the husband, in January, 1996, the wife asked him to get the house in which they were residing and which was in the name of his father transferred to his name. She also wanted him to get the ancestral property transferred in his name. It is alleged that the wife used to use inflammatory and derogatory language towards the husband and other members of his family. The husband is a lawyer and he had just started practice. According to him, due to the behaviour of his wife, he could not attend to his profession properly and at a time when he was not earning much, his wife, wanted him to spend lavishly much beyond his means. In addition to the general allegations, there were some specific allegations also. It was also alleged that in March, 1997, the respondent-wife in the presence of the husband picked up a quarrel with his father. She is alleged to have used foul language against his father and spat on his face. Thereafter, she left the house. In May, 1997, the husband asked the wife to come back to his house and to live properly. She came back and lived for about 15 days but then left her matrimonial home along with her ornaments, clothes etc. It is alleged that even thereafter, the wife defamed, harassed and humiliated the husband-petitioner before his clients, colleagues and general public even in the Court premises. She

is alleged to have used abusive language against him and levelled absolutely false allegations against him. It is also alleged that on 8.6.1998, the wife came to the Court complex along with her minor daughter Anamika who was running a high fever. She threw the ailing child on the table of the petitioner and left the court complex leaving the child with the father. On 22.6.1998, the wife along with her father is alleged to have gone to the native village of the husband and abused him and his parents. Thereafter they allegedly gave beatings to the mother and snatched the child who was living with them and took her away. When the husband tried to intervene, the wife also beat him and abused him. On the basis of these allegations, the divorce was sought on the grounds of cruelty and desertion.

The respondent- wife denied all the allegations levelled against her. The trial Court on the basis of the pleadings framed the following issues on 5.1.1998:-

1. Whether respondent is guilty of cruelty as alleged?OPP
2. Whether respondent has deserted the petitioner as alleged? OPP
3. Relief.

Both the parties led evidence. The husband examined himself and 13 other witnesses. On the basis of the evidence led, the learned trial Court decided issue No.1 with regard to cruelty in favour of the

petitioner-husband and allowed his petition and the marriage between the parties was dissolved. This appeal has been fled by the wife.

I have heard Shri Yoginder Paul, learned counsel for the appellant- wife and Shri Ashwani Pathak, learned counsel for the respondent – husband.

According to the Shri Yoginder Paul, the learned trial Court has totally mis-construed the evidence. He further submits that the earlier acts of cruelty prior to 1997 have been condoned by the husband and therefore, they cannot be taken into consideration. He also submits that the acts of cruelty have not been properly set out as required by Section 23 of the Hindu Marriage Act. He further submits that all the witnesses examined were interested witnesses and as such, no reliance can be placed on their testimony. He also submits that there are material contradictions in the statements of the witnesses.

I have gone through the judgment of the learned trial Court as well as the entire record.

PW1, has on oath, repeated the allegations which have been made in the petition for divorce. He has also produced copies of the letters which were sent by him to his father in law. These letters are Ex.PW1/A (dated 19.1.1997) and PW1/B (dated 19.3.1998). He has also proved a copy of the letter Ex.PW1/C (dated 14.10.1997) addressed to one Jitender. According to him, his father had retired as a teacher. His brother was earlier a lawyer and then had joined

service. He had got married to the respondent-wife but she treated him with cruelty and left the marital home. A suggestion has been put to him that there is some custom in Mandi that the wives proceed to their parental homes and return to the matrimonial homes late in the night, after taking the meals. This by itself indicates that the wife was spending more time after marriage at her parental home than in the matrimonial home. The suggestion put to this witness is that since there is an up-hill walk to his house, the wife who was working as teacher would first go to her parents' house. He has denied the suggestion that it was at his asking that the wife had to spend most of her time at his parental home. He has stated that he had engaged a maid servant to look-after the wife when she was pregnant and his mother was also residing with him at that time. He has spoken of the various incidents from 1997 till the date of filing of the petition especially with regard to the incidents when his wife visited his office and the Court premises and insulted him in presence of his clients and colleagues. According to him his brother was suffering from a heart problem and the doctor had advised him complete bed rest. His brother remained on leave without pay and was living with his family with the petitioner at Mandi. This was not liked by his wife who despite the fact that his brother required peace and rest created a lot of problem with regard to his brother shifting from Shimla to Mandi. He

has stated that in March 1997, his wife fought with his father and spat on his face.

He, however, has admitted that in June, 1997 he had forgiven his wife for all that she had done previously. However, even after she came back, she did not improve. According to him, she came to the Court premises and disturbed him. She went to his office and created a scene and also vilified him in the presence of his colleagues, friends and clients. A suggestion was put to him that since he was busy in his Court work as well as in social work and with his work as member of the Communist Party, he did not spend sufficient time at home. It would be pertinent to mention that with regard to the various acts of cruelty after 1997, the petitioner-husband has not been subjected to any proper cross-examination.

PW2 Lokesh Kapoor is an Advocate at Mandi. He knows both the parties. According to him, he had intervened and he along with Narinder Thakur, Advocate visited the house of the petitioner's wife in August, 1998. According to him, the wife did not seem to be in a mood to settle the matter. He has stated that the wife used to come to the Court complex and humiliate her husband. She created a nuisance in the Court complex about 25 -30 times. She used to follow the husband even when he went to the Court room. He has specifically talked about the incident of November 1998, when he along with another Advocate was sitting and the respondent –wife came along

with her daughter and created a nuisance. In cross-examination, it has been suggested that the wife used to come to the Court premises to meet the petitioner – husband. From the cross-examinations, it is apparent that even after filing of the divorce petition, the wife has been creating nuisance in the Court complex.

PW3 Mahesh Kumar is a cousin of the petitioner – husband. According to him whenever he visited the house of the parties, he found that the wife was very intolerant towards the friends and relatives of the husband. She did not participate in any social activities of the husband's family. Whenever he went, he found that the meals, tea etc were prepared and served by the husband and not by the wife. According to him, on 22.6.1998, the wife along with her father visited the native village of the husband. The husband's mother was feeding the daughter of the parties. The wife started fighting with her mother-in-law and hit her with a chappal and hurled filthy languages at her mother in law. She also slapped the witness when he tried to intervene. She also abused her husband and thereafter took away the child. In cross-examination, a suggestion has been put to this witness that fights between daughters-in law and mothers-in law are a common occurrence.

PW4 Prashant is a Regional Manager of Crystal Credit Corporation, Mandi. According to him, he is a client of the husband. He states that he saw the respondent-wife while sitting near the table

of the petitioner-husband in the Court compound on various occasions and that in the month of February, the respondent visited the office of the petitioner when she was also sitting in the office. The respondent continued to stand in the stairs for a considerable period of two hours instead of sitting in the office and during that period the child carried by her was continuously weeping.

PW5 Pradeep Parmar is an Advocate at Mandi. He has corroborated what has been stated by the petitioner and PW2. According to him on 18.2.1999 the respondent came to the Court compound and took away the files of different cases, which had been kept on a table. When the respondent was contacted over telephone with a request to return the files, she denied her involvement. Consequently, a complaint was lodged with the police vide Ex.PW5/A which is on the record.

PW6 Uma Nand is a Document Writer and friend of the petitioner. According to him, he visited the matrimonial home on 3 – 4 occasions and every time the meals were prepared and served by the petitioner – husband. The wife instead of doing such work would use derogatory language with the guests and friends of the petitioner.

PW7 Dhan Dev is the father of the petitioner. He has supported the case put-forward by the petitioner and states that the wife always treated them in a very a rude manner. She called them fools and uncultured people.

PW8 Narender Thakur, is also an Advocate. He states that he attended the marriage of the petitioner. According to him, the petitioner being a communist had clearly stated that he would not accept dowry and would take only one rupee as token of **Shagun** at the time of his marriage. Even the expenses of the reception (Dham) were borne jointly by both the families. According to him, the wife used to behave in an extremely un-courteous manner with the petitioner, his friends and guests. He also states that the elder brother of the petitioner was staying with him and the wife created a number of scenes which was to the detriment of the health of the brother who was suffering from a heart ailment. He also states that the wife used to visit the court compound once or twice a week and humiliated the petitioner in the presence of his clients and colleagues. According to him, he had tried to bring about reconciliation between the parties but even at that time the respondent – wife had behaved in a aggressive and insulting manner and had refused to settle the matter.

PW9 Vijay Kumar is a receptionist in hotel Aryan Bungalow Mandi, where the husband- petitioner has his office in one room. According to this witness, the respondent wife visited the hotel on more than 20 occasions and her behaviour with the husband was always aggressive. She used to enter the hotel premises forcibly. According to him on one occasion, she came to the hotel along with her parents. They inquired about the whereabouts of her husband who

was not there. They had threatened that they would throw out all the articles lying in the office of the petitioner and show him his proper place.

PW10 Ram Singh is a typist working in the court complex. He also states that in February, 1999, the respondent came to the court complex and took away a diary along with 2/3 case files lying on the table of the petitioner which actually belonged to PW5. The suggestion put to this witness is that the wife took away the files at the instance of the petitioner. She, therefore, admits taking away the files.

PW11 Urwashi Walia is also an Advocate at Mandi. She visited the house of the parents of the wife on an invitation extended by her. She further states that the wife told this witness that the petitioner was having illicit relations with his Bhabhi. The mother of the wife also supported this version.

PW12 Suresh Chand is the cousin of the husband- petitioner. He states that he tried to effect reconciliation between the parties but the attitude of the respondent-wife was such that no reconciliation could be brought about.

PW13 Gokal Chand was residing as a tenant in one portion of the house of the petitioner's father at Mandi till 1996. According to him, it was the petitioner-husband who used to sweep and clean the house, cook the meals, clean the utensils, wash the clothes and the wife did nothing.

PW14 Makhan Singh has deposed that he visited the matrimonial home of the parties in June, 1997 in connection with electrical work and found the parties fighting with each other. The respondent – wife used derogatory language and was stressing that she was not interested to reside in the marital home as the petitioner was an uncultured and uncivilized person. At that time the brother of the petitioner was lying sick in the adjoining room .

Human relationships have their ups and downs. There is no marriage where the relationship between the parties is always sweet and cordial. There always will be incidents and some differences are bound to crop up. Sometimes, it may be the husband and sometimes it may be the wife who is to blame. Sometimes both may not be at fault and the fault may be of some other family member. However, it is expected from both the spouses to interact and behave properly and normally with each other especially in the presence of friends and relatives. It is also expected that the spouses should interact and behave like normal social human beings with other family members and friends. A human being is a social person and does not live in isolation. A person has to live with his family and friends. The behaviour of one spouse to the friends and family of the other spouse should be friendly and if for any reason the behaviour cannot be friendly at least it should be courteous. Basic courtesy is something

which is required of any human being and when such basic courtesy is missing then the relationship would be strained.

Marriage is a sacred sacrament and normally the courts are reluctant to end this sacred bondage between two spouses but sometimes a situation does arise where it would amount to injustice not to grant a decree for dissolution of marriage.

In my opinion, this is one of those cases where the husband has proved to the hilt that the wife has behaved with him in cruel manner. No doubt, it is true, as held by this Court in **Om Prakash versus Smt. Sareshta Devi**, AIR 1993 HP 71, that the acts of cruelty which have been condoned cannot be the basis for grant of divorce. In the present case, the husband has admitted that in June, 1997 when he brought back his wife, he condoned the earlier acts of cruelty. Even if the earlier acts of cruelty such as, spitting on the face of father-in law, not cooking meals and staying at the parents house for no cause expect to live upto, some local custom are ignored, there is sufficient evidence on record to show that the wife has been humiliating, harassing and disturbing the husband in his office and Court making his life miserable. It may be true that when matrimonial disputes arise passions run high and parties sometimes get out of control. One or two instances may be ignored. Here, there are numerous instances which have been proved on record where the wife has gone to the court complex and created scenes. She has left the child who was

suffering from high fever in the court compound with the husband. This behaviour itself amounts to cruelty. Thereafter she and her father went to the house of the husband and beat the mother-in law and snatched away the child. The petitioner has proved all his allegations by producing a number of witnesses. Though these witnesses have been cross-examined at length, nothing material could be extracted. In fact the suggestions put to some of these witnesses in cross-examination actually support the case of the husband. The wife did not even have the courtesy to visit the house of her in-laws when her husband's elder brother died after suffering from a prolonged heart ailment. The wife in her statement has not said anything which would detract from the statements of the witnesses. The statement of the witnesses cannot be discarded on the ground that these are the statements of interested witnesses. The petitioner has examined his family members, his colleagues, his friends, his associates, his landlord and an electrician. In a matrimonial dispute, it is only such type of witness(s) who can give evidence and it is not any stranger or third party who may depose with regard to the matrimonial dispute.

On the other hand, the wife has not even produced any witness to support her case. She has not given a single ground in support of her behaviour while appearing in the witness box. On 22.6.1998, she gave beatings to her mother-in law. It was alleged that this was done in the presence of her father. She abused her

husband and beat her cousin. Even her parents or family members did not support her version. The respondent – wife is not only guilty of one but in fact guilty of various acts of cruelty which have been proved on record. Her behaviour has caused immense humiliation to the husband. She has not lived according to the customs and traditions of the area. Therefore, in my opinion, the learned trial Court has rightly held that the wife had treated the husband- petitioner with cruelty and has rightly granted a decree of divorce in favour of the husband-petitioner.

The appeal is without any merit and the same is dismissed with no order as to costs.

January 13, 2006.
s.

(Deepak Gupta)
Judge.