

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

FAO-M-419 of 2014

Date of Decision: June 1, 2018

Preeti Kumari

.....Petitioner

Vs.

Neelkanth Kumar

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.
HON'BLE MR. JUSTICE HARI PAL VERMA.

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Present: Mr.Santosh Sharma, Advocate for the appellant.

Mr. P.K.S. Phoolka, Advocate for the respondent.

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M.M.S. BEDI, J.

Wife aggrieved by the dismissal of her petition for divorce vide impugned judgment and decree dated August 4, 2014 passed by Additional District Judge, Bhatinda, has preferred this appeal.

The appellant has pleaded in her petition that she was married to the respondent on January 21, 2007. One male child Adarsh was born out of the wedlock who is living with the appellant. A sum of Rs.4 lacs was spent on her marriage and sufficient dowry had been given to the respondent and his family members which included gold ornaments weighing 10 tolas and other household articles. The appellant was treated with cruelty on account of barbarous and abhorrent obscene obnoxious acts of the respondent. It was averred that at the time of marriage it was disclosed that the respondent was posted as Engineer in Dew Soft Company earning a sum

of Rs.30000/- p.m. and will accommodate the appellant for higher studies by incurring necessary expenses but after marriage it transpired that he was a jobless person not doing any work and was not working as Engineer in the above said Company. The appellant continued with her studies in Bhatinda and completed her graduation and PGDCA at Bathinda where a all the expenses had to be borne by her parents. Even the expenses of the delivery of the child were borne by the parents of the appellant. The appellant was taunted by the respondent and his family members for not having brought sufficient dowry as per their expectations. They connived with each other and started humiliating her. The appellant was subject to beating on account of her inability to meet the demand of the respondent and her family members. It has also been alleged in the petition that the respondent was a drunken man habitual of taking liquor. He would insist on the appellant to take liquor with him and on her refusal he would give severe beatings to her. It is averred in the petition that the respondent committed forcible sexual acts against her wishes and moods even during the painful period of menses. The respondent after taking liquor committed sodomy forcibly on account of which painful hue and cry was never cared for and that he continued with his illegal sexual behaviour. Despite all this, the respondent remained malcontent and for fulfilling his lust of unnatural sex and abhorrent respondent forced oral sex on the appellant. When prevented from the painful acts he would give beatings to the appellant physically and mentally. He persistently committed sodomy and despite the resistance of the appellant, she was forced to continue with the unnatural behaviour of the respondent.

The respondent contested the petition on the ground that there was no cause of action. The appellant had come to Bathinda to take examine but did not return under the influence of her parents. The petition had been filed at the instance of her parents. Other allegations were also denied. The respondent denied that any assurance was given that he was posted as Engineer in Dew Soft Company earning Rs.30000/- per month, rather he was serving as a Marketing Agent in a private company and was earning sufficient amount for their livelihood. He was studying and preparing for higher tests. The respondent admitted that he had promised to accommodate the appellant for higher studies and pleaded that he had spent sufficient amount on her studies. Allegations of demand of dowry were denied on the basis of improbabilities claiming that the family of the respondent was a reputed family and father of the respondent was Class I officer in Bihar Government but died in the year 2008 during the tenure of his service. Allegations of consumption of liquor and acts of sodomy were denied.

On the pleadings of the parties, following issues were framed:-

- “1. Whether the respondent has caused physical and mental cruelty to the petitioner? OPP
2. Whether the petitioner is entitled for decree of divorce? OPP.
3. Whether the petition is not maintainable in the present form? OPR.
4. Whether the petitioner has no cause of action or filing the petition? OPR.

5. Relief.”

The lower Court on appreciation of evidence of the parties including the statement of the appellant in support of her averments as PW1 and statement of Vishal as PW2, the brother of the appellant and the statement of respondent himself arrived at a conclusion that the marriage is a sacrament and not a contract and that a heavy onus lay upon the appellant to establish the allegations of commission of oral sex and unnatural sex by the respondent for which no medical evidence or specific instance has been mentioned by her as such. The lower Court was moved by the factum of respondent having filed a petition under Section 9 of the Hindu Marriage Act at Bihar and dismissed the petition.

We have heard counsel for both the parties. During the pendency of the appeal on April 3, 2017 the appellant had waived of her rights for any maintenance and requested for divorce by mutual consent but the said proposal did not materialize.

With the assistance of counsel for both the parties we have gone through the evidence. The nature of the allegations levelled by the appellant are very serious but the said allegations cannot be proved by any corroborative evidence as the acts of sodomy or unnatural sex or oral sex forcibly committed during difficult periods can neither be witnessed by any other person nor such allegations can always be proved by medical evidence. It is pertinent to observe here that the respondent is the resident of Bihar. The appellant belongs to Bathinda. Probability of procuring medical evidence at a distant place for such allegations in above said circumstances,

is remote. The observation of the learned lower Court in that aspect is thus not sustainable and deserves to be set aside.

The parties are blessed with a minor child who was born at Bathinda at the place of parents' home of the appellant. The pleading that the son of the appellant is studying at Rose Marry Convent School in Bathinda cannot be rejected.

The totality of the circumstances available on the record indicate that the appellant has, on account of unbearable circumstances left the matrimonial home. No wife having a child would abandon her matrimonial home if there are no compelling circumstances. The compelling circumstances have been pleaded by the appellant and also proved by her by producing her affidavit Ex.PW1/A. The appellant had remained with her husband at Katihar, Bihar uptill 2010. Merely because the respondent has filed a petition under Section 9 of the Hindu Marriage Act in Bihar is not sufficient enough to arrive at a conclusion that the respondent has made genuine actual efforts for reunion. The controversy has been in the evidence of both the parties regarding the deception that respondent was working as an Engineer with Dew Soft Company. Admittedly he never worked for the said Company. There does not appear to be any reason for the appellant to name a specific company situated at a distant place i.e. Bihar unless and until a representation orally or otherwise had been made by the other party.

Be that as it may, we find that the claim of the appellant has been wrongly rejected. The act of sodomy, forcible sexual intercourse and adoption of unnatural means which are forced upon the other spouse and

result for unbearable pain to the extent that one is forced to stay away would certainly be a ground to seek separation or decree of divorce. No doubt such allegations are very easy to level and difficult to prove. A Court has always to be cautious before accepting such allegations but at the same time if on appreciation of evidence and nature of the allegations corroborated by other circumstances, it is established that it is probable that one of the spouses has indulged in above said unnatural acts, the marriage can be dissolved by a decree of divorce. It is not that in every case such allegations levelled would be deemed to be true. In the present case there are allegations of demand of dowry, beating, commission of unnatural sex, creating such circumstances that the appellant was compelled to leave Bihar 8 years back. The findings of the lower Court on issues No.1 and 2 are thus reversed. It is held that the appellant had been treated with cruelty by the respondent. The cruelty established in the present case is mental as well as physical as such the appeal is allowed. The judgment and decree dated August 4, 2014 passed by Additional District Judge, Bhatinda is hereby set aside. The marriage of the appellant with respondent is dissolved by a decree of divorce.

Decree sheet be drawn.

(M.M.S. BEDI)
JUDGE

June 1, 2018
sanjay

(HARI PAL VERMA)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.