

Pooja Sharma v. Vikrant Sharma , 2015 PLRonline 0107

Punjab and Haryana High Court

JUSTICE AJAY KUMAR MITTAL, MRS. JUSTICE SNEH PRASHAR, JJ.

Pooja Sharma v. Vikrant Sharma

FAO No.M-100 of 2014

05.02.2015

(i) [Hindu Marriage Act](#), 1955 (25 of 1955) Section 13 - There being enough evidence to establish that the appellant and her family members had subjected the respondent to mental and physical cruelty and also that the appellant was leading an adulterous life which was worse kind of mental cruelty caused to the respondent, the conclusion irresistible is that the marriage between the parties had reached a dead end from where there is no chance of retrieval. [Para 19]

(ii) Evidence act S. 112 - DNA test - Presumption is rebuttable - Presumption of being legitimate child attached with the birth of the child born during the continuance of a valid marriage can be rebutted by producing cogent evidence - The period during which the respondent alleged that he had been subjected to physical and mental cruelty by the appellant with the active help of her father spreads from 2004 to November, 2008 - When the relations between the parties were strained, it cannot be said to be improbable that although they were living under the same roof, but they were not having sexual intimacy - The deposition of the respondent-husband that he had no access to the wife when the child was conceived was affirmed by the DNA test report - The said evidence produced by him was sufficient proof of the plea raised by him.[Para 13]

(iii) CrPC S. 125- Maintenance - Claim made by wife and daughter - Appellant-husband unable to prove non-access to wife - DNA test showed appellant was not the biological father of the child - Non-access to wife stands proved - Husband could not be compelled to bear the fatherhood of the child.

Ms. Pushpinder Kaur, and Ms. G.K. Mann, for the appellant. Mr. Daldeep Singh, for the respondent.

SNEH PRASHAR, J. - A petition under Section 13 of the Hindu Marriage Act, 1955 (in short "the Act of 1955") was filed by Vikrant Sharma respondent- petitioner for dissolution of his marriage with Pooja Sharma, appellant- respondent by way a decree of divorce. The petition was allowed and assailing the judgment and decree dated 03.12.2013 passed by

learned Additional District Judge, Amritsar, Pooja Sharma filed the instant appeal.

2. The facts extracted from the record are as under:-

The marriage between the parties was solemnized on 09.02.2003 at Amritsar, according to Hindu rites and ceremonies. After marriage, they cohabited as husband and wife at Amritsar and Panipat and out of their wedlock, a daughter namely, Afsan was born on 30.01.2004, who is presently in custody of her father. Another daughter was born on 23.08.2008, whose legitimacy was in dispute.

Vikrant Sharma averred that since inception of the marriage, the attitude of Pooja Sharma towards him and his family members was cruel, insulting, derogatory and intolerable. Her father, Naresh Kumar Dhami, a politician, had an evil eye on his house as it was situated in a posh locality in Green Avenue, Amritsar. He instigated his daughter to be rude and harsh towards her in-laws family. For sometime, Pooja Sharma did not act according to his wishes, but after the birth of daughter Afsan, there was complete change in her behaviour. She started threatening to shoot everyone in the family if they did not fall in line with her. She also alleged that in case they wanted to get rid of her, they have to pay atleast `50,00,000/-. She refused to perform the household duties and picked quarrels on petty matters to degrade him and his parents. She even threatened to break the hands and legs of their daughter Afsan. In order to save the life of his daughter, he kept tolerating the harsh behaviour of the appellant.

On 11.09.2004, the father of the appellant through his associate Sohan Singh filed a false complaint in the Court of Judicial Magistrate Ist Class, Amritsar and also got registered a First Information Report No.23 of 2006 under Sections 326, 323, 324, 379 and 411 of the Indian Penal Code (for short "I.P.C.") against him at Police Station 'B' Division, Amritsar. The father of the appellant created such an atmosphere and harassed him so much that he was left with no alternative than to sell his residential house on throw away price. Thereafter, he alongwith the appellant started living separate from his family and settled at Panipat, but their relations became even more worse because in his absence and without his permission the appellant would leave the house for hours daily. She would even leave the daughter alone in the house.

The respondent further alleged that because of the indifferent behaviour shown by the appellant he came back to Amritsar in the month of June, 2006 and took a rented accommodation separate from his family in Gali No.3, Gopal Nagar, Amritsar. The appellant created such an atmosphere that he had no access to her for marital relations. He still lived with her to save his reputation and for the welfare of his minor daughter. On 09.09.2007, when his parents came to meet them, Pooja Sharma started threatening them and her entire act and version was video-graphed by him in his mobile phone (a VCD and copy of its transcript was attached with the petition). In January, 2008, the appellant informed him that she was pregnant. He became suspicious as they were not having sexual intercourse since long. On 23.08.2008, when the daughter was born, he decided to get the DNA test done of the newly born child. The swab samples were sent to a private company i.e. Easy DNA to ascertain the paternity of the child. The report of DNA analysis excluded him of being

biological father of the child. When he disclosed this to the appellant, instead of apologizing, she admitted that she was having extramarital physical relations with other persons and he could do whatever he wanted. She then became totally out of control. Sometimes, she would leave the house at 7:00 AM and return next morning at 10:00 AM. Sometimes she would go in the evening and come back late night leaving both children with him. The behaviour of the appellant left no choice for him to leave the matrimonial home alongwith his daughter Afsan. At this, he was threatened by the appellant and her father of dire consequences and of implicating them in false criminal cases.

On 08.11.2008, he gave an application to Senior Superintendent of Police, Amritsar, which was pending enquiry. His brother-in-law and sister-in-law Vivek Handa and others filed criminal Misc. No.M-14442 of 2009 (O&M) against State of Punjab and others before the Punjab and Haryana High Court at Chandigarh. The High Court ordered for DNA analysis to ascertain if he (Vikrant Sharma) was the biological father of Vaibhavi. On receipt of the DNA report, it was held that he was not the biological father of the child whereas appellant Pooja Sharma was the biological mother. On the basis of the report, the High Court vide order dated 22.04.2013 quashed the proceedings of First Information Report No.75 dated 27.04.2009 registered under Sections 420, 509, 197, 182 and 120-B of I.P.C. at Police Station 'C' Division, Amritsar. Submitting that the report clarified that the appellant was in adultery with some person, but his identity was not in his knowledge and that the act and conduct of the appellant had caused mental as well as physical cruelty to him, the respondent prayed for a decree of divorce on the said grounds.

3. The appellant contested the petition. In the written statement filed by her, she raised preliminary objections with regard to maintainability of the petition and suppression of true and material facts by the respondent.

Replying on merits, the appellant admitted that she was legally wedded wife of the respondent and pleaded that two daughters were born out of their wedlock i.e. on 31.01.2004 and 23.08.2008. She alleged that the respondent had been levelling false and baseless allegations against her with a malafide intention. Her elder daughter Afsan was illegally and unlawfully removed from her custody. She also stated that from the very beginning of marriage, the conduct of the respondent and his family members towards her was cruel, insulting and derogatory. She tried her level best to pull on with the marriage with the hope that some day better sense would prevail upon them. She also tolerated their cruel behaviour for the sake of her minor daughters. She denied that her father had any ill-will or evil eye on her matrimonial home.

Levelling counter allegations, the appellant pleaded that her marriage was solemnized with great pomp and show and huge dowry in the shape of jewellery, gifts, cash etc. was given, but the respondent and his family members being greedy persons were not satisfied and they started raising demands for more dowry. Her mother-in-law called her with abuses and objectionable terms and she was given merciless beatings by the respondent and other family members and after the birth of second daughter on 23.08.2008, the respondent demanded `10 lacs in the shape of FDR in the name of the minor daughter. She was mercilessly beaten as she was unable to fulfil the demand. She denied that any incident, as

narrated by the respondent, had taken place on 09.09.2007. The VCD was said to be forged, fabricated and tampered. According to the appellant, the parents and relatives of the respondent were interfering in their day to day matrimonial life and it was mutually decided by her and the respondent to live separate from the family. Since the respondent could not establish his business at Panipat, they shifted back to Amritsar.

The allegation that she used to leave the matrimonial home for long hours was alleged by the appellant to be baseless and concocted. It was submitted that her father alongwith other respectables had visited her in-laws family with a request that they should not unnecessarily harass her or physically assault her. He had also requested not to raise demand for more dowry as he was not in a position to meet their demands. However, the respondent gave her merciless beatings and turned her out of the matrimonial home alongwith her newly born daughter, on which First Information Report No.21 dated 22.01.2009 was registered against him and his family members at Police Station Civil Lines, Amritsar, after thorough investigation by Pardeep Yadav, IPS, Assistant Superintendent of Police, City-II, Amritsar Further, the DNA report relied upon by the respondent was alleged to have been procured by him in conspiracy with his family members with a malafide intention to outrage her modesty and to lower her reputation in the estimation and eyes of the public at large. The validity and admissibility of the DNA report was disputed as it was said to be false and fictitious. Affirming that the respondent is the biological father of daughter Vaibhavi and that all her belongings including dowry articles and jewellery etc. had been retained and misappropriated by the respondent and his family members, a prayer for dismissal of the petition was made by the appellant.

4. Respondent filed rejoinder controverting the objections raised by the appellant and on the pleadings of the parties, following issues were framed:-

(1) Whether behaviour of the respondent towards the petitioner is very cruel? OPP (2) If issue No.1 is proved, whether plaintiff is entitled for decree of divorce from his wife Pooja? OPP. (3) Whether the petition is not maintainable? OPR. (4) Whether petitioner is estopped by his own act and conduct from filing the present petition? OPR. (4-A) Whether the petitioner is entitled for dissolution of his marriage with respondent by way of decree of divorce on the ground of adultery? OPP.

(5) Relief.

5. To substantiate his allegations, the respondent stepped into the witness box as PW4; he further examined PW1 Madan Lal, Sub Inspector, who proved documents Ex.P1 to Ex.P7; PW2 Harjit Singh Pannu, Superintendent of Police, who conducted inquiry into the complaint Ex.P1 given to the Punjab State Human Rights Commission; PW3 Gurpreet Singh, who proved copy of news item published in Amritsar Kesari Ex.PW3/1; PW5 Shee Ch Venkateshwar Goud, Technical Officer-II of the Office of Center for DNA Finger Printing and Diagnostics, Hyderabad, who produced all relevant documents and proved the DNA report Ex.PW4/12.

On the other hand, appellant Pooja Sharma appeared as RW4 and made a self serving

statement. She examined Rajan Verma RW1, Naresh Kumar RW2, Vikas Bhaskar RW3, who corroborated her version and tendered in evidence certified copy of order dated 11.10.2010 Ex.R1 and copy of order dated 17.09.2009 of the High Court Mark-2.

6. Considering the evidence adduced by the parties and the submissions made on their behalf, learned trial Court came to the conclusion that the appellant in connivance with her father had subjected the respondent and his family members to cruelty by filing criminal cases against them one after the other and by subjecting him and his brother Gaurav Sharma to physical torture and further that the marriage between the parties was emotionally and practically dead. It was also held that act of adultery on the part of the appellant was also a cause of worse kind of cruelty to the respondent.

In view of the findings on the issues, the petition was allowed with costs and a decree of divorce dissolving the marriage between the parties was passed.

7. Feeling aggrieved by the judgment and decree dated 03.12.2013 passed by learned Additional District Judge, Amritsar, Pooja Sharma preferred the instant appeal.

8. We have heard the submissions made by Ms. Pushpinder Kaur and Ms. G.K. Mann, learned counsel representing the appellant and Mr. Daldeep Singh, learned counsel representing the respondent.

9. It is apparent from the rival contentions of the parties that the respondent levelled allegations against the appellant relating not only to temperamental discord and certain willful acts on her part which caused him physical and mental cruelty, but also a peculiar and serious allegation reflecting on her chastity. The respondent admitted that the elder daughter Afsan was born on 30.01.2004 out of his wedlock with the appellant, but disputed the legitimacy of the second female child Vaibhavi born on 23.08.2008. He stated and proved that after the second daughter was born, he decided to get his DNA test conducted with the DNA of the child and thus sent the swab samples to a private company namely, Easy DNA to ascertain the paternity of the child. The report of DNA analysis excluded him as the biological father of the child. The copy of the report given by Easy DNA tendered in evidence by the respondent is Ex.PW4/1.

10. In addition to the above, respondent examined PW5 Venkateshwar Goud posted as Technical Officer-II as well as Technical Examiner in the office of Center for DNA Fingerprinting and Diagnostics, (CDFD), Hyderabad, who testified that in compliance of order of the Court Davinder Kumar and Vijay Girnar, Technical Assistant had received the blood sample of Pooja Sharma, baby Vaibhavi Sharma and Vikrant Sharma. He proved the forwarding note which contained photographs of the person named by him as Ex.PW5/2 to Ex.PW5/4. The other documents proved by him were a letter dated 18.09.2012 sent to the Forensic Science Laboratory by the Registrar General, Punjab and Haryana High Court Ex.PW5/5; case receiving chart received by Vijay Girnar and Davinder Kumar Ex.PW5/6; acknowledgment of the blood sample Ex.PW5/7 signed by the above named persons; his own identity card Ex.PW5/8. Stating that complete secrecy is maintained for conducting the DNA test and the entire procedure is confidential, he produced the typed copy of DNA

report dated 27.03.2013, which was forwarded to the Registrar General, High Court of Punjab and Haryana at Chandigarh. He also proved the certified copy of the report identifying his own signatures and the signatures of Dr. Gori Shankar, Director on the original report. The DNA report is Ex.PW4/12 (consisting of two pages and four enclosures). The conclusion drawn on the DNA test performed on the exhibits provided is as under:-

“CONCLUSION The DNA test performed on the exhibits provided is sufficient to conclude that :

1. The source of exhibit C (Mr. Vikrant Sharma) is not the biological father of the source of exhibit B (baby Vaibhavi Sharma).

2. The source of exhibit A (Ms. Pooja Sharma) is biological mother of the source exhibit B (baby Vaibhavi Sharma).” The above DNA test report confirmed the allegation of the respondent that the second female child born to the appellant was not from his loins. In other words, he was not the biological father of the baby Vaibhavi Sharma whereas appellant Pooja Sharma was her biological mother.

11. Learned counsel for the appellant referred to Section 112 of the Evidence Act (for short “the Act”) which postulates that any person born during the continuance of a valid marriage between his mother and any man or within 280 days after its dissolution, the mother remaining unmarried, shall be conclusive proof of the fact that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been conceived.

Learned counsel asserted that the outlet provided by Section 112 of the Act can be of some favour to a spouse only if it can be shown by that spouse that at the time when the child could have been conceived, the parties had no access to each other. The burden is on the spouse, who wants to dislodge the conclusiveness to show that there was no opportunity for either of the spouses to have access to each other. To support his arguments, learned counsel relied upon *Kanti Devi v. Poshni Ram*, 2001(3) Recent Civil Reports 587.

12. Addressing on the facts in hand, learned counsel urged with vehemence that admittedly the parties were residing together at Amritsar w.e.f. June, 2006 uptill the date the child was born on 23.08.2008. The onus was heavy on the respondent to prove that he had no access to the appellant. There being no evidence of the respondent on that matter, he is debarred from alleging that the child was not born out of the wedlock. The DNA report Ex.PW4/12 had been procured by the respondent in connivance with officials of the Center for DNA testing at Hyderabad.

13. The allegation of the appellant that DNA test report Ex.PW4/12 had been procured by the respondent deserves to be rejected out-rightly as no evidence worth in its name could be produced by her to impeach its validity or authenticity. Undisputedly, the parties were residing together under one roof as husband and wife at the time the second female child was conceived and till the time she was born, but that by itself is not sufficient to reject the dispute regarding legitimacy of the female child raised by the respondent.

As noticed above, the presumption of being legitimate child attached with the birth of the child born during the continuance of a valid marriage can be rebutted by producing cogent evidence. The period during which the respondent alleged that he had been subjected to physical and mental cruelty by the appellant with the active help of her father spreads from 2004 to November, 2008. When the relations between the parties were strained, it cannot be said to be improbable that although they were living under the same roof, but they were not having sexual intimacy. The deposition of the respondent-husband that he had no access to the wife when the child was conceived was affirmed by the DNA test report. The said evidence produced by him was sufficient proof of the plea raised by him. It was the pleading of the respondent and was also his deposition that in June, 2006 when they returned to Amritsar and started living in a rented house, the appellant created such an atmosphere that he was unable to have access to her for having sexual intercourse which caused him severe mental torture, but he continued living with her just to save his reputation in the society and for the welfare of his daughter. He also categorically pleaded and deposed that in January, 2008, when the appellant informed him that she is pregnant, he became suspicious as he did not have sexual intercourse with her since long. After the child was born on 23.08.2008, he decided to get his DNA tested with the DNA of the minor girl and sent the required swab samples to a private company i.e. Easy DNA. The report of Easy DNA Ex.PW4/1 was also tendered in evidence by the respondent. The said report is exactly similar to the report Ex.PW4/12.

14. In *Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik*. 2014(1) AICLR 976 the Apex Court held as under:-

"We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancement and DNA test were not even in contemplation of the Legislature. The result of DNA test is said to be scientifically accurate. Although Section 112 raises a presumption of conclusive proof on satisfaction of the conditions enumerated therein but the same is rebuttable. The presumption may afford legitimate means of arriving at an affirmative legal conclusion. While the truth or fact is known, in our opinion, there is no need or roof for any presumption. Where there is evidence to the contrary, the presumption is rebuttable and must yield to proof. Interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. In our opinion, when there is a conflict between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former."

15. The respondent-husband's plea that he had no access to the wife when the child was conceived stood corroborated and proved by the DNA test report Ex.PW4/1 and Ex.PW4/12. When the scientific reports proved to the contrary, the respondent could not be compelled to bear the fatherhood of the child. Having arrived at the said conclusion, it follows that the act and conduct of the appellant even when she was living with the respondent was such that she caused him grave mental cruelty.

16. The above is not the only ground of cruelty alleged and proved by the respondent

against the appellant. In addition to it, the respondent testified that the father of the appellant filed a false and frivolous complaint against him and his family members under Sections 498-A/406/317 of I.P.C. and another complaint under Section 420 I.P.C. in which on the application Ex.P1 given by him, an inquiry was got conducted by Senior Superintendent of Police, Ferozepur on the directions of Human Rights Commission, Chandigarh. PW2 Harjit Singh Pannu, Superintendent of Police (Detective), Jagraon, conducted the inquiry and submitted his report Ex.P3. As per the inquiry report Ex.P3, the respondent and his brother, after they were arrested in F.I.R. No.21 dated 22.01.2009, got registered by father of the appellant, they were physically tortured during police custody as a result of which, they had suffered injuries on their persons. On the basis of the inquiry report Ex.P3, the following order dated 20.04.2012 Ex.PW4/5 was passed by the Punjab State Human Rights Commission, Chandigarh : -

“from the proven circumstances that Joginder Singh, Sub Inspector, Investigating Officer of the case, in connivance with Naresh Kumar Dhami, who has lodged FIR against the complainant and his family members, tortured the complainant and his brother. Dowry articles were only to be recovered from the complainant, which were ultimately recovered. Consequently, Vikrant Sharma and Gaurav Sharma were granted compensation to the tune of Rs.25,000/- to be paid by the State of Punjab. At the outset, the Punjab State would pay the amount of compensation, which it shall recover from the pension of the respondent.”

17. Importantly, the respondent also proved that another criminal case bearing F.I.R. No.75 dated 27.04.2009 under Sections 420, 509, 197, 182 and 120-B of I.P.C. at Police Station ‘C’ Division, Amritsar, was got registered by Naresh Kumar, father of the appellant, against him and his family members. Finding that the criminal proceedings launched by Naresh Kumar were nothing but an abuse of process of law, this Court vide order dated 22.04.2013 Ex.PW4/11, had quashed the said First Information Report Ex.R2 and the consequent proceedings.

18. In the light of above facts and circumstances, it is quite apparent that appellant Pooja Sharma in connivance with her father RW2 Naresh Kumar had made frantic efforts to falsely implicate the respondent and his family members in criminal cases with some ulterior motive and to get them harassed and tortured, which amounted to “cruelty” with the meaning of section 13(1)(ia) of the Act of 1955.

It has been held by Hon’ble Apex Court in a recent judgment in K. Srinivas Rao v. D.A. Deepa, 2013(5) SCC 226 that it is now beyond cavil that ‘if a false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce.’

19. Thus, there being enough evidence to establish that the appellant and her family members had subjected the respondent to mental and physical cruelty and also that the appellant was leading an adulterous life which was worse kind of mental cruelty caused to the respondent, the conclusion irresistible is that the marriage between the parties had reached a dead end from where there is no chance of retrieval. Accordingly, the judgment passed by learned trial Court, dissolving the marriage between the parties by a decree of

divorce, calls for no intervention and the appeal being devoid of merit is hereby dismissed.