

a position to secure another employment for various reasons. It will be seen that the petitioner who was working as a regular clerk with the Land Development Bank chose to accept a tenuous appointment as a probationer and he was allowed to continue in service long after the maximum period provided under the rules had expired. He was reappointed undoubtedly on his persistence and the re-employment was also continued for 2½ years on a six-monthly basis. I am of the view that the respondents should not have permitted the petitioner to go beyond the maximum probationary period and under no circumstances re-employed him in the second series of appointment having been found to be deficient in the first one, but after having been so reappointed, it would be most inequitable to throw him out after five long years. The agony of an employee and his family—a wife, young children, may be old parents and others fondly and optimistically looking forward to his future, can well be imagined and should be kept in view by the authorities concerned. An administrator has undoubtedly to take hard decisions but those decisions must not only be taken at the appropriate time but must also not appear to be whimsical or capricious failing which a Court of equity in the facts and circumstances would interfere.

(10) In view of what has been stated above, the order Annexure P-3, is quashed and the petitioner is directed to be reinstated in service forthwith. A further direction is issued to the respondent as in *Sushil Kumar Yadunath Jha's case* (supra) that the petitioner will be entitled to all the benefits flowing from continuity of service with effect from 20th April, 1982 and as a confirmed employee of the Department with effect from 20th October, 1983 and he would be entitled to have his service benefits computed on that basis. The arrears of pay and other allowances with interest at the rate of 18 per cent per annum from the date they fell due till the date of payment would be paid to the petitioner within a period of three months from the date of copy of this judgment is received by the respondents. The costs of the petition are assessed at Rs. 1,500.

J.S.T.

Before Hon'ble Mr. Justice G. R. Majithia.

ARUN KUMAR BHARDWAJ,—*Petitioner.*

versus

MS. ANILA BHARDWAJ,—*Respondent.*

First Appeal from Order No. 157-M of 1990

March 31, 1992.

Hindu Marriage Act, 1955—Ss. 13 (1) (i) & (a)—Indian Penal Code (Act 45 of 1860)—S. 193—Divorce—Allegations of adultery—Sole wit-

ness procured to depose single act of adultery—On facts Court finding witness, a gardener, guilty of giving false testimony in Court—Court while dismissing husband's appeal issuing notice to false witness to show cause why criminal prosecution be not launched against him—Husband directed to secure the presence of the witness in Court—Allegations of cruelty unfounded—Husband not entitled to decree of divorce.

Held, that the version of this witness is unbelievable, *inter alia*, for the following reasons :—

- (i) The husband's plea as enfolded in paragraph 10 of the petition is that the witness was working as a gardener in the park opposite to his parents' house. The witness states that he was working as a gardener in the park attached to the husband's house. The husband is living in a house built on a plot measuring 125 sq. yards and no garden is attached to this house.
- (ii) The witness worked as a gardener in the husband's house for two months. He did not work with any other person except the husband, and prior thereto he had been working with a newspaper vendor.
- (iii) The witness did not immediately disclose about this incident either to the husband or his mother or brothers and only disclosed it 12th/13th days after the marriage of the husband's sister.
- (iv) The witness did not know how many rooms were in the husband's house, where the wife lived. He also did not know the situation of the bed rooms in the husband's house. He also did not know how many members of husband's family lived in the house in the year 1985. He had not seen the husband's father in the house and did not know where he lived.
- (v) The witness' version is that he worked in the husband's house for two months after the marriage of the husband's sister, but the husband as P. W. 1 stated that the witness left the job after May 13, 1985 and he used to visit his house casually till the end of the year 1985.
- (vi) The witness had a shady past. He was involved in a criminal case in which he was assaulted by Ramesh and Mohar Pal. He was treated at Agra and thereafter at Safdarjung Hospital, New Delhi.
- (vii) The version of the witness and that of the husband are irreconcilable. The witness did not see the children of the parties in the house on the day when respondent No. 2 is stated to have indulged in sexual intercourse with the

wife. The witness did not mention the day or the date of the month of April, 1985 when respondent No. 2 allegedly came to the husband's house for sexual intercourse with the wife. The husband in his petition stated that in the afternoon of April 4, 1985, P.W. 2 Man Singh was respondent No. 2 entering the husband's house and peeping through the window of the bed room he gathered that respondent No. 2 was indulging in sexual intercourse with the wife. The two versions are inconsistent and poles apart. The husband allegedly got the information of the alleged act of adultery from P.W. 2 Man Singh and enfolded in the petition. The witness did not own it while appearing in the witness-box.

(Para 8)

Held, that Section 13 (1) (ia) of the Act uses the words, "treated the petitioner with cruelty". The language is laconic; there are no limiting words. All that can be said is that there must be harsh or painful conduct of certain intensity and persistence. It must be determined as a cumulative effect of the circumstances. Assuming that the 'Dharam Bhai' of the wife had been visiting the matrimonial home on request or otherwise or the wife had been visiting her *Dharam Bhai* in Delhi and this was objected to by the husband or his family members, it hardly constitutes the offence of cruelty as alleged. It is not suggested that the relationship between the *Dharam Bhai* and the wife was objectionable.

(Para 11)

Held, that P.W. 2 Man Singh has *prima facie* perjured himself in judicial proceedings and has thereby committed the offences mentioned in Section 193, Indian Penal Code.

For the reasons stated above, the appeal fails and is dismissed with costs quantified at Rs. 2,000.

For the reasons recorded at pages 6 to 10 of the judgment, let notice to issue to Man Singh son of Shri Vijay Ram, agriculturist, resident of Shazadpur (U.P.) for April 30, 1992 to show-cause why criminal prosecution be not launched against him. The husband is directed to cause his presence in Court on that date.

(Paras 14, 15 & 16)

First Appeal from the order of the Court of Shri K. C. Gupta, Additional District Judge, Faridabad dated the 11th day of September, 1990 dismissing the petition of the petitioner husband with costs.

Claim : Petition for dissolution of marriage under section 13 of the Hindu Marriage Act, 1955.

Claim : In appeal : For reversal of order of lower court.

P. K. Palli, Sr. Advocate with R. K. Battas, Advocate, for the Appellant.

H. S. Gill, Sr. Advocate with Miss Anjali Rathi, Advocate, for the Respondent.

JUDGMENT

G. R. Majithia, J.

(1) The husband has come up in appeal against the judgment and decree of the Matrimonial Court dismissing his petition for dissolution of marriage under Section 13(1) (i) & (a) of Hindu Marriage Act, 1955.

(2) Facts as enfolded in the petition, briefly, are; The parties were married on November 24, 1979 according to Hindu rites and ceremonies at Garha, Jalandhar; that out of the wedlock, a son and a daughter were born; that soon after the marriage it was discovered that the wife-respondent No. 1 (hereinafter the wife) was obstinate, headstrong, violent tempered and abnormally aggressive; that she started misbehaving and ill-treating the husband and his family members on pretexts and tried to prevail upon the husband to leave his parents house and take up separate residence; that she insulted him in the presence of his colleagues and refused to prepare tea for them and other relations; that she used to leave the matrimonial home abruptly without the husband's permission and would go to her parent's house at Jalandhar and would stay there for months together without caring for her matrimonial obligations towards him and his family members; that during her stay in the matrimonial house, she started inviting one Inder Mani, resident of Delhi, by sending him frequent messages and when questioned about her relationship with the said person, she stated that he was her 'Dharam Bhai' that Inder Mani started paying frequent visits to the husband's house and interfering in their day-to-day affairs; that whenever she was asked by the husband and his parents to mend her ways, she did not do so and used abusive and filthy language against them even in the presence of her 'Dharam Bhai'; that her behaviour resulted in the deterioration of the husband's health and he had to be medically treated; that she threatened to commit suicide and make false charge and complaints against the husband and his family members; that in the afternoon of April 4, 1985, the wife had voluntary sexual intercourse with respondent No. 2 in the parental house of the husband when the husband was on duty; that she was caught doing the act by Man Singh, son of Roop Singh, who was working as a gardener in the park opposite to the parental house of the husband; that the husband also came to know that respondent No. 2 had been stealthily visiting his wife and was having illicit relations with her; that when confronted the wife threatened to commit suicide and leave the

matrimonial house if any action was taken against her; that the husband sent for the wife's parents and apprised them of her misdeeds, who assured that if given one chance, she would mend her ways and would not invite her *Dharam Bhai* to the matrimonial home and would also stop her adulterous relations with respondent No. 2; that in April, 1985 the marriage of the husband's sister was to take place, the wife and with the help and connivance of her *Dharam Bhai* tried her level best to stop the marriage. She tried to send a letter addressed to the would-be-in-laws of her husband's sister making false imputations about the husband's family, but she did not succeed in her evil decisions, as it was intercepted and the marriage of the husband's sister was performed as proposed; that when confronted, the wife admitted having written the letter but threatened to commit suicide rather than to live with the husband; that all of a sudden, she left the matrimonial home in the mid week of May, 1985 and started residing with her parents at Jalandhar in order to cover her misdeeds and that notice dated June 16, 1985 was served upon her to restrain her from her nefarious activities.

The respondents contested the petition and filed separate written statements.

(3) The wife, in her written statement filed on May 20, 1986, admitted the factum of marriage but denied the other allegations made in the petition. She pleaded that the husband was living in his parents' house jointly with his mother, unmarried sister and three unmarried brothers; that the mother-in-law is quarrelsome and of dominating nature; that she used to dominate the husband and other family members; that the husband used to dance at her tune; **that she was maltreated and harrassed by the mother-in-law, the brothers-in-law and the sister-in-law for not bringing sufficient dowry and the husband never came to her rescue and denied having even insulted the husband either without or in the presence of his friends and members of his family and she had been tolerating it hoping that with the passage of time, he would mend his ways, but in vain.** She denied having indulged in voluntary sexual intercourse with respondent No. 2 in the husband's parental house or that she was caught in the act by Man Singh. She further averred that **in fact there was no park opposite to the husband's parental house and no gardener ever worked there; that on April 4, 1985, right from the morning till night, her mother-in-law, sister-in-law and cousin sister-in-law were present in the house along with her.** She denied having written any letter to the would-in-laws of her husband's sister or having tried to disrupt her marriage with the help of her *Dharam*

Bhai. She alleged that she was mercilessly given beating by him in the middle of May, 1985. She was asked to bring Rs. 50,000 in cash from her parents and was threatened with dire consequences if she entered the matrimonial home without bringing the amount demanded from her parents.

(4) Respondent No. 2. in his written statement filed on August 20, 1986, denied the allegations made against him. He stated that he did not know respondent No. 1 nor did he had sexual intercourse with her as alleged or she was living in adultery with him.

(5) The husband filed rejoinder to the written statements reiterating the plea taken in the petition for divorce.

The dispute between the parties was narrowed down in the following issues :—

“1. Whether the petitioner is entitled to a decree of divorce on the grounds mentioned in the present divorce petition ?
OPP

2. Relief.”

(6) The matrimonial Court, on consideration of the entire evidence, came to the conclusion that the husband had miserably failed to prove that the wife had committed any of the matrimonial offences alleged against her and dismissed the petition for dissolution of marriage by judgment dated September 11, 1990.

Before me, learned counsel for the appellant, raised two submissions :—

- (1) The wife, after solemnisation of the marriage, had voluntary sexual intercourse with respondent No. 2.
- (2) The wife had treated the husband with cruelty inasmuch as she tried to disrupt the engagement of husband's sister by maligning his family members and levelling false imputations against his sister. The conduct of the wife in inviting her alleged Dharam Bhai to the matrimonial home frequently or visiting his house in Delhi even when objected to by the husband or his parents was unbecoming of a wife.

(7) Clause (i) of sub-section (1) of Section 13 of the Hindu Marriage Act, 1955 (for short, the Act) lays down as a ground for divorce the respondent's voluntary sexual intercourse with another after the solemnisation of marriage. The onus of proof is on the person alleging adultery. It must be proved by a preponderance of probability. Normally adultery is expected to be established by circumstantial evidence. It is not possible to lay down a rule of thumb as to what circumstances would be sufficient to establish adultery. The only general rule is that the circumstances must be such as would lead to a guarded judgment of a reasonable and just man to that conclusion.

(8) The ground of adultery was not pleaded as a cause of action in the petition for divorce as is evident from para 21 of the petition. However, in para 10 of the petition, the husband stated that the wife was caught while having voluntary sexual intercourse with respondent No. 2 in the after-noon of April 4, 1985 in his parental house while he was away on duty and the act was witnessed by P.W. 2 Man Singh, gardener. In para 11 of the petition, it is averred that parents of the wife were called and apprised of her mis-deeds and they assured that if given a chance, she would mend her ways and would stop her illicit relations with respondent No. 2. The husband took a complete Somnier Sault in his deposition on oath in Court. He stated that the gardener told him in the middle of May, 1985 that he was an eye-witness to the alleged act of sexual intercourse by the wife with respondent No. 2. Thus, the only witness to prove the charge of adultery is P.W. 2 Man Singh son of Roop Singh. He is resident of Shahzadpur (U.P.). He came to Faridabad to work as a labourer. He started working as a gardener in the part contiguous to the husband's house on a monthly wage of Rs. 75. He used to work in the after-noon. One day, when he was working in the park, he saw respondent No. 2 entering the house of the husband. The mother of the husband had gone out and the wife was allegedly alone in the house. Neelam, an employee of Madaan Property Dealer, Faridabad, had earlier told him that respondent No. 2 had illicit relations with the wife. He became suspicious. He saw through the window in the bed room of the parties that respondent No. 2 was committing sexual intercourse with her. He retreated from there and after 20 or 25 minutes, respondent No. 2 came out of the house and enquired from him how long he was present there and he replied that he had come there just then. Thereafter, he went inside the house of the husband. The wife enquired from him the purpose for entering the house. He told her that he had come to collect a spade. He worked in the husband's house for two months after the marriage of his sister and thereafter returned to his native place. The version

of this witness is unbelievable, *inter alia*, for the following reasons :—

- (i) The husband's plea as enfolded in paragraph 10 of the petition is that the witness was working as a gardener in the park opposite to his parents' house. The witness states that he was working as a gardener in the park attached to the husband's house. The husband is living in a house built on a plot measuring 125 sq. yards and no garden is attached to this house.
- (ii) The witness worked as a gardener in the husband's house for two months. He did not work with any other person except the husband, and prior thereto he had been working with a newspaper vendor.
- (iii) The witness did not immediately disclose about this incident either to the husband or his mother or brothers and only disclosed it 12/13 days after the marriage of the husband's sister.
- (iv) The witness did not know how many rooms were in the husband's house, where the wife lived. He also did not know the situation of the bed rooms in the husband's house. He also did not know how many members of husband's family lived in the house in the year 1985. He had not seen the husband's father in the house and did not know where he lived.
- (v) The witness's version is that he worked in the husband's house for two months after the marriage of the husband's sister, but the husband as P.W. 1 stated that the witness left the job after May 13, 1985 and he used to visit his house casually till the end of the year 1985.
- (vi) The witness had a shady past. He was involved in a criminal case in which he was assaulted by Ramesh and Mohar Pal. He was treated at Agra and thereafter at Safdarjung Hospital, New Delhi.
- (vii) The version of the witness and that of the husband are irreconcilable. The witness did not see the children of the parties in the house on the day when respondent No. 2 is stated to have indulged in sexual intercourse with the wife. The witness did not mention the day or the date of

the month of April, 1985 when respondent No. 2 allegedly came to the husband's house for sexual intercourse with the wife. The husband in his petition stated that in the afternoon of April 4, 1985, P.W. 2 Man Singh saw respondent No. 2 entering the husband's house and peeping through the window of the bed room he gathered that respondent No. 2 was indulging in sexual intercourse with the wife. The two versions are inconsistent and poles apart. The husband allegedly got the information of the alleged act of adultery from P.W. 2 Man Singh and enfolded in the petition. The witness did not own it while appearing in the witness-box.

(9) These circumstances are suggestive of the fact that P.W. 2 Man Singh is a hired and convenient witness. He made himself available to concoct the story as enfolded in the petition for divorce and sought to be proved through him. The witness stated that he was working as a gardner in the garden attached to the husband's house, while the husband stated in the petition that he was working as a gardener in the park opposite to his parents' house. It is unbelievable that a reasonable man will employ a gardner for working in a park opposite to his parents' house and that too on a monthly wage of Rs. 75. It has come in evidence that the husband, his mother, brothers and sister were residing together in the family house, but they did not have any helper to assist the ladies in performing the daily chores. The husband, who could not afford even a part-time helper to assist the ladies in their routine chores, would never engage a gardner to work in a park opposite to his parents' house on remuneration. The labour put by the gardener in the park opposite to the husband's parents' house was not to yield any benefit to the family. It passes human comprehension that a person will employ a gardener to work in a public park when he is not to get any particular advantage. This fact coupled with the circumstances stated above established that P.W. 2 is a procured witness. He had told lies with impunity to prove the husband's version. He thereby perjured himself in judicial proceedings.

(10) Admittedly, the wife had left for her parents' house on May 13, 1985, as is apparent from the contents of her letter dated May 14, 1985 (Ex. P. 1) written to her husband. The husband came to know from P.W. 2 Man Singh in the second week of May, 1985 that he had witnessed the wife having sexual intercourse with respondent No. 2. P.W. 2 Man Singh left the job of the gardener in the middle of May, 1985, the husband left her parents' house around the same time and took up separate residence, and the wife left for her parents' house

around the same period. The sequence in which these events took place leads to the conclusion that after the wife had left for her parents' house on May 15, 1985, the material for the plea of adultery was cooked up. The husband has failed to establish the alleged matrimonial offence against the wife that she had voluntary sexual intercourse with respondent No. 2 after the solemnisation of marriage. Even otherwise, the alleged matrimonial offence of adultery against the wife stands condoned by the husband on the pleadings in the petition. As observed earlier, the plea of adultery did not furnish a cause of action for the petition for divorce. However, in para 10 of the petition, the allegation of adultery is made and the husband says that the wife was caught while having sexual intercourse with respondent No. 2 in the afternoon of April 4, 1985 in his parents' house while he was away on duty and that the act was witnessed by Man Singh, gardner. In para 11 of the petition, it is averred by the husband that parents of the wife were called and apprised of the alleged mis-deeds of the wife and they assured that if given a chance, she would mend her ways and would stop her illicit relations with respondent No. 2. The parties lived happily till the middle of May, 1985 when the wife left for her parents' house. The fact that the parties lived together gives rise to a strong presumption of condonation by the husband.

(11) The second matrimonial offence alleged against the wife is that she had treated the husband with cruelty. Section 13 (1) (ia) of the Act uses the words, "treated the petitioner with cruelty". The language is laconic; there are no limiting words. All that can be said is that there must be harsh or painful conduct of certain intensity and persistence. It must be determined as a cumulative effect of the circumstances. Assuming that the 'Dharam Bhai' of the wife had been visiting the matrimonial home on request or otherwise or the wife had been visiting her *Dharam Bhai* in Delhi and this was objected to by the husband or his family members, it hardly constitutes the offence of cruelty as alleged. It is not suggested that the relationship between the *Dharam Bhai* and the wife was objectionable. What is attributed to the *Dharam Bhai* is that his interference in the affairs of the husband was objected to. This fact has been denied by the wife and there is no material on record to substantiate the plea.

(12) The second limb of the argument is that the wife had tried to break the engagement of the husband's sister by writing a letter to her would-be-in-laws in which she made allegations against her and her family members. The alleged letter is not on record, Chit,

Ex. P-6, was produced. The English rendering of the same is as follows :

“Don't handover the letter to Manoj personally. Bring the chamber number of Manoj in the Courts. Hand over the letter to a person known to him with a word that he may handover the same to Manoj. You should not handover the same personally. Don't bring the home address. If the letter is delivered in Court, it will reach him and this will be appropriate.”

Chit, Ex. P-6, only says that the letter be delivered to Manoj at his Court address after ascertaining his chamber number. What are the contents of the letter have not seen that the light of the day. A huge capital is being made out of this chit. Even if we ignore the wife's version that it was obtained under force, does it lead to the conclusion sought to be drawn that the wife tried to break the engagement of the husband's sister by making false allegations ? The person through whom the letter is alleged to have been sent is none else but P.W. 2 Man Singh, who worked as a gardener. As observed earlier, P.W. 2 Man Singh was a convenient witness to the husband to depose in Court as desired, whose testimony has been disbelieved in the earlier part of the judgment. This writing hardly proves the version of the husband.

(13) To put it briefly, the entire fabric of the husband's version revolves round the fact that in the month of March, 1985, the wife allegedly wrote a letter to the would-be bridegroom of the husband's sister, in which false allegations about the husband's family and his sister were made and further that she had voluntary sexual intercourse with respondent No. 2 in the month of April, 1985. The husband is alleged to have come to know about it round about April 18/19, 1985. The wife had gone to her parents' house after the marriage of her husband's sister. She wrote letter dated May 14, 1985, Exhibit P-1, to her husband and the receipt of this letter is not denied by the letter. The English rendering of this letter is as under :--

14th May, 1985.

OH MY ALL,

It is to inform you that we reached home at about 8.15 P.M. yesterday. We did not face any difficulty on the way. A passenger from Ranjit Nagar, Jullundur, also boarded

from Delhi, who accompanied us to this place. The children are happy uptill now. Let us see how they would feel after a day or two. We feel loneliness in the absence of Dicky. He will be coming on 8th June and the happiness would return on that day. Today, Manju has gone to appear in the practical examination. We would go to see a girl tomorrow. God knows the matter materialises or not.

I hope everybody at the house would be happy. Good wishes to all and respect to Aru and Ashu.

Please take care of your health and don't worry about anything.
Reply soon.

In remembrance,
Yours Anila."

The language of this letter improbably rather belies the incidents alleged by the husband in the petition. The contents speak a volume of love not only for the husband but for the younger members of his family. She writes to the husband not only for her/their children but also the members of her parent's family.

(14) P.W. 2 Man Singh has *prima facie* perjured himself in judicial proceedings and has thereby committed the offences mentioned in Section 193, Indian Penal Code.

(15) For the reasons stated above, the appeal fails and is dismissed with costs quantified at Rs. 2,000.

(16) For the reasons recorded at pages 6 to 10 of the judgment, let notice to issue to Man Singh, son of Shri Vijay Ram, agriculturist resident of Shezadpur (U.P.) for April 30, 1992 to show cause why criminal prosecution be not launched against him. The husband is directed to cause his presence in Court on that date.

R.N.R.

Before Hon'ble J. S. Sekhon, J.

JOGINDER SINGH,—Petitioner.

versus

STATE OF PUNJAB,—Respondent.

Criminal Appeal No. 274-SB of 1986.

Auguts 20, 1992.

Inter Zonal Wheat and Wheat Products (Movement Control) Order, 1964—Clause 3(1)—Tractor trolly apprehended about 20 paces