

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

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FAO No.M-187 of 2008.

DATE OF DECISION: January 30, 2015.

DR. RAM SHARAN

....APPELLANT.

VERSUS

KANCHAN MANJU

....RESPONDENT.

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE SNEH PRASHAR**

Present: Mr. Ashwani Bhardwaj, Advocate for the appellant.

Mr. G.S. Singhpuria, Advocate for the respondent.

SNEH PRASHAR, J.

1. A petition under Section 13 of the Hindu Marriage Act, 1955 (in short “the Act of 1955”) for dissolution of marriage by a decree of divorce was filed by appellant-husband Dr. Ram Sharan against his wife-respondent Kanchan Manju, which was dismissed by learned Additional District Judge (Adhoc), Patiala, vide judgment and decree dated 26.04.2008. Assailing the said judgment and decree, the instant appeal was preferred by appellant-husband.

2. In precise, the facts which need to be noticed are as under:-

The marriage between the parties was solemnized on

20.08.1982 at Mansa, District Bathinda, according to Hindu rites and ceremonies. After marriage, they cohabited as husband and wife at Shri Ganga Nagar and a daughter namely, Mitika was born on 27.04.1986 out of the wedlock and was presently in custody of mother-Kanchan Manju. The appellant pleaded that he is a doctor by profession and having qualifications M.B.B.S., D.C.H., M.R.S.H. (London) and is employed as Medical Officer in Health Department, Government of Haryana. At the time of marriage, he was posted in District Hisar from where he was transferred to Sirsa in July, 1983. He alongwith the respondent shifted to Sirsa where the daughter was born. Lateron, a son namely, Ashish was born in 1994 when they were posted at Rohtak (the son was also said to be in custody of mother-respondent). The respondent was having a degree of B.A.M.S. and she got employment in Government Ayurvedic Dispensary at Rama Mandi, Bathinda, where she joined on 25.08.1983.

The allegation of the appellant was that from the very inception of marriage the conduct and behaviour of the respondent had been unbecoming of a Hindu wife. She often left the matrimonial home and preferred to stay at her parents' place at Mansa and taunted to him that she belonged to a high standard family than him. Due to her frequent visits to her parents, she remained absent from duty and on that ground her services were terminated on 28.02.1986. She again got employment at Government Ayurvedic Dispensary at Pheruman in District Amritsar in September, 1989. Lateron, she was transferred to Government Ayurvedic Dispensary, Kot Fatta in District Bathinda from where she was again

transferred to Government Ayurvedic Dispensary, Alike, in District Bathinda, but was placed under suspension for being frequently absent from duty. After some time, she was reinstated and was transferred to Government Ayurvedic Dispensary, Ubha in District Mansa, which was near her parental home.

It was further pleaded by the petitioner that on 8th December, 1994, he alongwith the respondent and the children had gone to Mansa to attend marriage of Hans Raj, brother of respondent, fixed for 10th December, 1994. He all of a sudden received a message that his father had suffered a heart attack, on which he rushed back to his house whereas the respondent remained at her parental home alongwith the children for attending the marriage. After the marriage, at the instance of her brother, the respondent did not return to the matrimonial home despite the fact that the final exams of the children were to be held from 16.12.1994. He himself went to Mansa on 15.12.1994 to bring her and the children back, but despite repeated requests she refused to accompany him or send the children. Resultantly, one whole academic year of daughter Mitika was wasted. In that manner, the respondent deserted him without any sufficient cause and also unlawfully kept the minor children with her.

The petitioner pleaded that compelled with the circumstances he filed a petition under Section 9 of the Act of 1955 for restitution of conjugal rights in the Court at Shri Ganga Nagar and subsequently filed a petition under Section 13 of the Act of 1955 at the same place. During pendency of the petition, a compromise was effected between him and the

respondent on 22.04.2000 by virtue of which the respondent agreed to join his conjugal company. For convenience of the respondent, he got the respondent transferred to Government Ayurvedic Dispensary, Loh Simbli, District Patiala which is at a distance of just 4 Kms from Ambala as at the relevant time he was posted at PHC, Kalsana, District Kurukshetra. To have a smooth matrimonial life, he took a house on rent in Inder Nagar, Ambala City and purchased all valuable articles for daily use in the house and also got the children admitted in DAV School, Ambala City.

The appellant alleged that while he was meeting all the household expenses, there was no contribution ever made by the respondent inspite of her being in service. Brother of the respondent, who had been unsuccessful in business of plastic furniture, in order to extract money from her, started interfering in their day to day matrimonial life. He would visit the respondent every month at her working place and would take away her complete salary. He even manipulated her transfer at Government Ayurvedic Dispensary, Ubha (Mansa) with an intention to break their matrimonial tie. On 19.07.2001, when he (appellant) was away to his office at PHC, Kalsana, the brother of the respondent alongwith his relations came to his residence in Ambala City in his absence and took away the respondent and their children and also the valuable household articles including ornaments, cash ₹2 lacs etc., which he had withdrawn from the bank for purchasing a house. When he returned home and came to know that the respondent and his children had left home alongwith brother and other relatives of the respondent in a vehicle, instead of

reporting the matter to the police in view of the relationship with the respondent, he thought it proper to talk to his father-in-law. He made various calls to him and also gave a telegram on which his father-in-law assured that the respondent will return with the children very soon. When despite assurance given the respondent did not come back and also did not send the children, he filed a petition on 16.08.2001 under Section 7 read with Section 25 of the Guardian and Wards Act for the custody of the minor children. The respondent contested that petition and also filed a petition under Section 24 of the Code of Civil Procedure for transfer of the petition from Ambala to Mansa. However, the said petition was dismissed by the High Court. Despite efforts made by him, the respondent did not come back. Rather, her family members misbehaved with him and his relations and friends who visited them.

Alleging that the respondent had left the matrimonial home without any sufficient cause earlier and again in July, 2001 and had deserted him and also that he had been treated with cruelty by the respondent as she had been insisting on him to turn out his father, aged 95 years from their house, the petitioner prayed for a decree of divorce dissolving their marriage.

3. The petition was contested by the respondent. The preliminary objection raised by her was that the petition was based on wrong and fabricated facts. She alleged that it was the appellant who had maltreated her and had turned her out of the matrimonial home alongwith the minor children after giving them severe beatings. Though he had been

bearing expenses of the children, but he had never been bothered about them and she had been bringing them up single handedly. She mentioned that the daughter was studying in M.B.B.S. in Government College, Amritsar and the son was studying in a reputed school at Mansa.

Replying parawise, the facts relating to marriage, birth of children and employment of the parties etc. were admitted by the respondent. She admitted that she was placed under suspension and was lateron reinstated and transferred to village Uba, District Mansa. According to her, it was her parents and not the petitioner, who got her transferred to Government Ayurvedic Dispensary, Loh Simbli for her convenience. There she was running the house with her salary and was fulfilling all daily requirements of the children whereas the appellant contributed not a single penny in daily expenses. She further pleaded that after she was given severe beatings and was turned out of the matrimonial home alongwith the children in wearing clothes. The appellant filed a complaint in the court of Judicial Magistrate, Ambala, alleging that she had taken away all the household articles and ornaments as well as cash of ₹2 lacs. The police held an inquiry into the allegations and finding the same to be false, submitted a cancellation report to the Magistrate. Denying all other allegations of the appellant, the respondent, pleading that it is she who had been harassed and maltreated by the appellant, prayed for dismissal of the petition.

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

(1) Whether the petitioner is entitled to decree of divorce on the grounds of cruelty and desertion? OPP.

(2) Relief.

5. Both the parties adduced evidence in support of their respective contentions.

6. Considering the evidence adduced by the parties and the submissions made on their behalf, learned trial court came to the conclusion that the allegations of the appellant-husband of 'cruelty' and 'desertion' against respondent-wife were unbelievable and decided Issue No.1 against the appellant and for the same reason dismissed the petition.

7. Feeling aggrieved by the judgment and decree dated 26.04.2008, appellant Dr. Ram Sharan preferred the instant appeal.

8. The submissions made by Mr. Ashwani Bhardwaj, learned counsel representing the appellant and Mr. G.S. Singhpuria, learned counsel representing the respondent have been heard and record has been perused.

9. At the very outset, learned counsel for the appellant argued that besides himself appearing in the witness box as PW1, the appellant examined PW2 Amarjit Singh and PW3 Dr. Gian Inder Singh, who both corroborated his version and testified that the appellant had been harassed and ill treated by the respondent which caused him severe mental cruelty affecting his mental health. Their marital life had remained disturbed because she had hardly been living in his conjugal company. She lived more at her parental home than with the appellant and this was admitted

by her in her cross-examination. She admitted that after she was reinstated, she got herself posted at Ubha, District Mansa, which was near to her parents' home. She also admitted that she was thrice called for interview by Ayurvedic Medical Board of Haryana, but she intentionally did not appear for the interview as she was not interested to join employment in Haryana. She further admitted that on 08.12.1994, she alongwith the appellant and children had gone to attend the marriage of her brother Hans Raj and that while the appellant returned on 09.12.1994, she did not come back after the marriage. She alleged that the appellant had left after having quarrelled with her, but she failed to assign any reason for the quarrel. It was further in her statement that the appellant had filed a petition under Section 9 of the Act of 1955 for restitution of conjugal rights, but she refused to join him after which the appellant filed a petition under Section 13 of the Act of 1955 for divorce.

Learned counsel contended that it is apparent from the statement of the respondent that she had been intentionally living away from the appellant and had also been keeping the children away from him which amounted to mental cruelty towards the appellant.

10. To us, there appears to be no merit in the arguments of learned counsel for the petitioner. Analyzing the evidence led by the parties on their counter versions, the findings of learned trial court are as under:-

“The conduct of the husband of this case is that he did not produce any relative or the members of his family as a witness and his only witness Amarjit Singh PW2 his friend

who had been meeting him while sharing meal in a Hotel/Dhaba and eating and drinking together but he did not produce any family member as a witness in support of his divorce petition as his brothers are stated to be still alive such a divorce petition is not believed when cruelty can be proved by the members of the family.

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The conduct of the petitioner-husband is such that he is a hardened person towards his matrimonial house against his wife who is bringing up her both the children including one daughter studying MBBS. Callous attitude of the petitioner is clear when he admitted that he got a criminal case registered against his wife about theft of Rs.2 lac and complaint was filed which was dismissed and he clearly admitted that he did not make any payment of the maintenance to his children and he does not know as to in which class his daughter is studying but came to know from the people that she was studying MBBS. This admission alone is sufficient to hold guilty of such a erring husband and erring father as his own son Ashish Vijay Singh is found to be good positioned student as is clear from academic documents shown during the course of argument and posting order of the respondent at Ubha and faced with this situation Sh. T.M.S. Liberhan also produced the original telegram showing alleged theft but all these documents which are being returned to the parties could not support the divorce petition. At oral as well as documentary evidence of the respondent is weighty(?).”

11. As compared to the evidence of the appellant, learned trial Court held that the evidence of respondent Kanchan Manju RW1 and her

brother Hans Raj RW2 was consistent and believable. Indeed, the First Information Report Ex.R1 lodged by the appellant against his wife alleging commission of theft by her in her own house proved that he was bent upon to harass and torture her. The respondent was bringing up the children single handedly and their good performance in the studies proved that despite all odds the respondent was sincerely taking care of them by giving them her best. The appellant was not even aware of the fact that his daughter was studying in M.B.B.S. and son having good academic record was also studying in a good school. Needless to say that it is the appellant who by his own option was keeping himself away from his wife and children.

12. No doubt, the respondent admitted that the appellant had left on 09.12.1994 when the marriage of her brother was fixed for 10.12.1994 but she denied that the appellant had left because his father had suffered heart attack. According to her, the appellant had left after having quarrel with them. She did not state the reason for quarrel but she deposed that the appellant was in the habit of picking up quarrels without any reason. Explaining the reason for not returning to the appellant, the respondent stated that she did not come back because the appellant used to abuse her in the presence of relations and friends and there was no atmosphere for her to live in his company. No document was produced by the appellant to prove that his father suffered heart-attack on 09.12.1994. His having left the house of the respondent a day prior to marriage of her brother showed the extent of his rude and harsh behaviour towards the respondent.

13. In any case, it is an admitted fact that in a petition under Section 13 of the Act of 1955 for a decree of divorce filed by the appellant, he and the respondent compromised, by virtue of which the respondent returned to the matrimonial home. They lived together in a rented house in Ambala City as the appellant was posted at Kurukshetra and the respondent at Loh Simbli. The children were also admitted in DAV Public School in Ambala. The respondent volunteered to depose that she was given severe beatings on 19.07.2001 and was turned out of the house. From Ambala she went to her Dispensary at Loh Simbli and from there she came to Mansa. There she received a telegram from the appellant on 20.07.2001 levelling false allegation of theft against her. The appellant could not deny that the report of theft lodged by him against his wife was found to be false by the police after investigations. From this incident also the cruel attitude of the appellant towards his wife and children can be inferred.

14. Allegations of 'cruelty' if any, prior to the date of compromise i.e. 22.04.2000 stood condoned by the parties when they joined the conjugal company of each other. Not a single incident could be narrated by the appellant which could be termed as 'cruelty' on the part of respondent. Rather, as noticed above, it was the behaviour and conduct of the appellant which was harsh and torturous towards the respondent because of which they were residing separately since July, 2001.

15. Thus, learned counsel for the appellant could demonstrate no illegality or error in the findings of learned trial Court.

In the above premises, there being no merit in the appeal, it is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

January 30, 2015.
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Note: Whether to be referred to the Reporter or not? Yes/No.