

**IN THE HIGH COURT OF PUNJAB AND HARYAN AT
CHANDIGARH**

**FAO-M-318 of 2008
Date of Decision : 22.4.2015**

Ram Pal

....Appellant

Versus

Paramjit Kaur and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MRS. JUSTICE RAJ RAHUL GARG**

Present : Mr. Vijay Lath, Advocate, for the appellant
Mr. Harpreet Singh, Advocate, for the respondents

RAJ RAHUL GARG, J.

Ram Pal/appellant filed a petition under Section 13 of the Hindu Marriage Act, 1955 (in short 'the Act'), for dissolution of his marriage, with the respondent/Paramjit Kaur, which took place in the month of December 1982. Vide judgment dated 29.7.2008, passed by the learned District Judge, Rupnagar, the aforesaid petition for divorce was dismissed with costs. As such, Ram Pal/appellant is before this Court in this appeal.

Brief facts of the case are like this, that the parties were got married in December 1982. The marriage was duly consummated. Out of this wedlock, three daughters and one son were born. Two of the daughters have become adult. Minor daughter Suman Prit Kaur and son Kanwar Pal Singh are in the custody of respondent/wife. As such, a petition seeking custody of the minors was instituted by the petitioner against the respondent which is pending in the Court at Rupnagar.

The petitioner sought divorce on the ground of cruelty and adultery. The pleas taken by the petitioner regarding cruelty are; that the

behaviour of the respondent/wife towards him and his family members was not good. She even refused to serve tea to the relatives and friends of the petitioner rather told the petitioner to engage a servant for the purpose. She had also been telling the petitioner that his status is lower than her family. The respondent/wife is a hot tempered lady. On flimsy grounds she had been picking up quarrels with the petitioner and had also been hurling filthy abuses on the petitioner and his family members. Not only this, but she had developed illicit relations with one Gurdip Singh/respondent No.2, Incharge, CIA Staff, Rupnagar. During the stay of respondent in her matrimonial house in the absence of the petitioner, aforesaid Gurdip Singh had been frequently visiting the respondent/wife. The act and conduct of Gurdip Singh was objectionable to the petitioner as well to the villagers. On 1.11.2005 i.e. on Diwali day, both the respondents were found in compromising position which was objected by the petitioner and villagers. At this, Gurdip Singh and Paramjit Kaur badly abused the petitioner and also gave beatings to him. The respondent/wife and Gurdip Singh, in connivance with other persons, had inflicted serious injuries with sharp edged weapon to the petitioner. To that effect also, news was published in the newspaper. On that very day, the respondent/wife left the matrimonial house along with her children by going away in the vehicle of aforesaid Gurdip Singh.

On 3.11.2005 a news item was also published in Daily Ajit (Punjabi) and Dainik Jagran newspapers and even in other newspapers. The petitioner also made complaint with affidavit on 2.11.2005 to the SSP, Rupnagar against respondent No.1 and Gurdip Singh. The villagers of

village Haveli Kalan made representation about the act and conduct of the respondent/wife and Gurdip Singh to SSP, Rupnagar on 6.11.2005. Enquiry was initiated by the police in this regard.

It is further case of the petitioner that on 31.8.2005, the respondent/wife got signatures of the petitioner on some blank papers on the pretext that she will lodge report in this respect with the police of the Police Station, Rupnagar but she did not do that. She played a fraud on the petitioner.

FIR No. 206 dated 3.10.2005 under Sections 406, 420 and 120B IPC was registered in Police Station Rupnagar against the respondent and another for playing fraud and cheating persons for sending them abroad. Gurdip Singh also gave serious threats to Kuldip Singh and Ranjit Singh, brothers of the petitioner, that he will get them involved in some non bailable offences since he was in police. Kuldip Singh and Ranjit Singh even filed applications in the Court seeking anticipatory bail which was disposed of vide order dated 22.11.2005. They are still giving threats for false involvement of the petitioner in non bailable offences. The petitioner also filed application for anticipatory bail in the Court in pursuance with the threats given by Gurdip Singh/respondent No.2.

The respondent/wife with others had filed a civil suit on 11.11.2005 along with application for temporary injunction against the petitioner by mis-stating the facts. That application was dismissed by the Court vide order dated 9.2.2006. With these pleas taking up the grounds of cruelty and adultery, the petitioner was seeking divorce from his wife/Paramjit Kaur.

Paramjit Kaur/respondent No.1 contested the petition whereas respondent No.2/Gurdip Singh remained ex-parte as he did not choose to contest the petition. By way of preliminary objections, it was pleaded that the petitioner cannot be allowed to take advantage of his own wrongs. He is estopped by his own acts and conduct to file this petition. On merits, it is the case of the respondent/wife that the petitioner demanded and received huge dowry articles in her marriage. The factum of marriage as well having four children out of this wedlock was admitted. The allegations of cruelty levelled against her was specifically denied. It was averred that actually the behaviour of the petitioner towards the respondent, children and relatives, was not good. He treated them with cruelty and demanded more and more money from the parents of the respondent. The petitioner had been taunting the respondent for bringing less dowry. The petitioner is a drunkard and after taking drinks, he mis-behaved with the respondent/wife and children and used to beat them, as such, he cannot be allowed to take benefit of his own wrongs. It was further denied that the respondent/wife is having illicit relations with respondent No.2. As per the respondent/wife, the aforesaid allegations have been levelled against her with malafide intention and in order to cover his own wrongs. The petitioner is a greedy man. He always compelled her to bring money from her parents as he was to give installments of loan taken for construction of the house. As per the respondent, she had brought ₹ 2 lakhs from her parents. When her parents could not fulfilled his regular demands then the petitioner used to give beatings to her as well to children. In November 2005, she was turned out of her matrimonial home and since then she has been living with her

children at her parents house. It is further the case of the respondent/wife that the news published in the newspapers, is false and manipulated affair with an intention to defame and malign the respondent. The petitioner filed false complaint with the SSP, Rupnagar regarding which enquiry was conducted. Allegations were found false and the complaint was filed having no substance. Allegations of getting signatures of the petitioner on blank papers were also found false. A case under Section 420 IPC was also got registered at the instance of the petitioner. The petitioner has been treating her with cruelty at the instance of his brother, Kuldip Singh, who was having an evil eye on her. When she could not oblige him, he instigated the petitioner to file this false case. With these pleas, dismissal of the petition with costs was prayed.

The petitioner/appellant filed rejoinder denying each and every plea taken by the respondent/wife but re-asserting the pleas taken by him in the petition.

From the pleadings of the parties, the learned trial Court framed the following issues :-

- “1. Whether the respondent has treated the petitioner with cruelty? OPP
2. Whether respondent No.1 is living in adultery with respondent No. 2? OPP
3. Whether the petitioner is estopped from filing the petition by his act and conduct? OPP
4. Relief.”

After taking oral as well as documentary evidence of both the parties and hearing both counsel for the parties, the learned trial Court, Rupnagar, dismissed the petition with costs by recording finding that the

petitioner has miserably failed to prove the issues of adultery and cruelty against the respondent/wife.

We have heard Mr. Vijay Lath, Advocate, for the appellant and Mr. Harpreet Singh, Advocate, for the respondents and perused the entire evidence and incriminating material coming on record.

The appellant sought divorce on the ground that his wife Paramjit Kaur/respondent No.1 is living in adultery with Gurdip Singh/respondent No.2 and further that respondent No.1 has treated him with cruelty. The main ground in this case appears to be available to the appellant is adultery and since the appellant is able to prove the same, therefore, it is also a big cause of mental cruelty as well to the appellant.

About adultery, it is settled preposition of law that there cannot be direct evidence of adultery but the same can be seen from the circumstantial evidence.

Learned counsel for the appellant contended that the impugned judgment of the trial Court is patently erroneous. It is based on conjectures and surmises. The learned trial Court has presumed certain facts which were not the case of anybody. Learned trial Court observed that none of the witnesses has specifically stated that respondents No.1 and 2 were found in a room bolted from inside or that they were inside the house. In fact, it is not the case of the appellant that when he had gone to his house, he found respondents No.1 and 2 inside the room or that the room was bolted from inside. It was further contended that respondent No.1 had become so wild that she was having no fear or shame while committing such objectionable acts. Respondent No.1 as RW1, admitted during the course of her cross

examination that about 6 months prior to 1.11.2005, the appellant had purchased the sewing machine for her and got opened a shop to her for stitching the clothes. She further stated that she was having shop in Rupnagar. It is also the case of respondent No.1 that after 6 months of opening of shop, the same was closed down and thereafter, she started stitching the clothes at her house only. As per the appellant, this situation had occurred as bad elements started visiting her at her shop. The villagers as well the Municipal Commissioner of the area also objected to the aforesaid conduct of respondent No.1. Though, respondent No.1 has denied this fact yet from the further discussion, in the light of the complaints made by the appellant as well by the villagers and further the news items published in various newspapers, would go to show that the conduct of respondent No.1 was like that as stated by the appellant.

Regarding adultery, there is specific evidence on the file i.e. the incident of 1.11.2005 which was a day of Diwali Festival. The contention of learned counsel for respondent No.1, that this case revolves around one incident i.e. of 1.11.2005, is devoid of any merit. This is the incident which was reported in various newspapers, copies of which are Ex.P2 to P6 and copies of complaints are Ex.P7, postal receipts are Ex.P8. Ram Pal made complaint on 2.11.2005 to SSP, Rupnagar, copy of which is Ex.P38. Copy of complaint made by villagers that very day i.e. 2.11.2005 is Ex.P39. Complaint dated 17.1.2006 made to the Chairman, Punjab State Commission for SCs, Chandigarh, Ex.P31, is the complaint made by Ram Pal to DGP, Punjab Police, Chandigarh with copy to CM and SP etc. dated 14.11.2005 and postal receipts are Ex.P32 to P34. Even otherwise, the

incident dated 1.11.2005 is not denied by respondent No.1. Of course, she has put this incident in a different manner. Even from appraisal of the statements of respondent No.1 and her witnesses and from the written statement of respondent No.1, the presence of Gurdip Singh/respondent No.2 at the house of respondent No.1 on 1.11.2005, stands proved. It is also established on the file that police was also called at the house of the appellant. It is also established on the file that on that very day, respondent No.1 along with her children had left the house of the appellant, and went with Gurdip Singh in his car and since then she did not return to the house of the appellant.

The appellant as PW5 and his witnesses Bhagat Singh son of Ishar Singh as PW1, Balwinder Singh as PW2, Malkiat Singh as PW6, who is son in law of respondent No.1, Harnek Singh as PW9, fully supported the case of the appellant regarding incident dated 1.11.2005. They categorically stated that on 1.11.2005 i.e. on Diwali day when Ram Pal appellant came back home, he found Paramjit Kaur and Gurdip Singh, respondents No. 1 and 2, in a compromising position. The appellant objected to it and the villagers as well whereupon both the respondents abused the appellant and gave him beatings. Not only this, even respondent No.1 took out knife from the kitchen and gave injury on the nose of the appellant. Police was called at the spot and thereafter, the police party including Manvir Singh, police inspector took Gurdip Singh along, with an assurance to take action against him but they did not take any action rather after some time he came again at the place of the appellant by car and took away respondent No.1 along with her children.

At this juncture, it was contended by learned counsel for respondent No.1 that the witnesses are interested witnesses, therefore, their statements cannot be made the basis to hold that respondent No.1 was living in adultery with respondent No.2, unless there is some cogent evidence available on record in this regard. Simple presence of Gurdip Singh at the house of the appellant would not prove that respondent No.1 was living in adultery.

Had the allegation of adultery been levelled only for the sake of levelling of allegations, in that eventuality, the arguments advanced by learned counsel for respondent No.1 would have certainly carried weight but it is a case in which there is overwhelming evidence available on the file so as to come to the conclusion that respondent No.1 was having illicit relations with respondent No.2 and was living in adultery. The appellant's witnesses are most natural witnesses. They are neighbours of the appellant living in the same vicinity. Besides that Malkiat Singh, son in law of respondent No.1, as PW 6, supported the case of the appellant. What prohibited him to depose in favour of the appellant is well understandable. Harpreet Kaur, daughter of respondent No.1, is living with him. The contention of learned counsel for respondent No.1 that since he was demanding dowry and his demands for dowry were not fulfilled, therefore, he deposed against her, is not sustainable. There is, in fact, nothing on record to show the same. This allegation is simple allegation for the sake of allegation only as Harpreet Kaur is still living with him, it cannot be said that he was committing cruelty against his wife on account of non fulfilment of his demands for dowry. This witness has even gone to the extent of

stating that Paramjit Kaur has been living with Gurdip Singh as his wife in House No. 1161/62, Sector 56, Chandigarh, with the consent of her parents. Even when he told Gurdip Singh/respondent No.2 that he was having illicit relations with respondent No.1, he even gave threat to his life.

Now coming to the statement of respondent No.1/Paramjit Kaur who appeared as RW1. It is evident that she deposed that her husband/appellant is a drunkard. He used to spend his entire salary on drinking. He was not giving him household expenses, as such, he had to resort to the work of stitching the clothes of others. As and when she used to deny him money, the appellant used to give beatings to her. This case of respondent No.1 is not sustainable as she herself stated during the course of cross examination that 6 months prior to the incident in question, the appellant had got purchased sewing machine for her and got her opened a shop for stitching the clothes. Had the appellant been of such a character as respondent No.1 wanted to depict, he would not have got purchased sewing machine to respondent No.1. On the other hand, the case of the appellant that since bad elements had been visiting her at the shop which was not liked by the villagers as well Municipal Commissioner of the area, therefore, she has to close down the shop and start working from her house, is sustainable. She has also stated that the appellant had suggested her for building a house and that suggestion was accepted by her. Had the appellant been not taking care of respondent No.1, he would not have thought of building a house or even built a house. At this juncture as well, respondent No.1 wanted to malign him by stating that he demanded a sum of ₹ 2 lakhs from her father as he had retired that time. But there is nothing

on record to prove the same that she, in fact, brought money from her father and gave the same to the appellant.

It is not a case where respondent No.1 had denied the incident in question i.e. incident dated 1.11.2005 in toto. Respondent No.1 has given this incident differently. As per respondent No.1 as she stated as RW1, that on the day of Diwali at about 3.30 P.M. the appellant had picked up a quarrel with her. It is the appellant who himself called Gurdip Singh by giving him a telephonic call and told him that that day was a Diwali day and further invited him to come and meet and also to take stitched suit for his wife. Respondent No.1 further stated as RW 1 that before Gurdip Singh reached her house, the appellant started giving beatings to her. Her children came to her rescue. He also attacked with knife which hit her left leg. At that time the appellant came out of the house and started shouting “mar ditta mar ditta”. She further stated that Gurdip Singh called SHO City by giving him call from his mobile phone and thereafter, he left with him. She further stated that the appellant had given her beatings only on the instigation of her Jeth (husband's elder brother).

Thus, from the above statement of RW1, it is evident that she admitted the presence of Gurdip Singh at the time of incident dated 1.11.2005. She deposed that Gurdip Singh had called SHO City by giving him a call and thereafter, he left with him. This very statement goes to show that Gurdip Singh was at fault, as otherwise, there was no point for Gurdip Singh to go with the police when the police was called at the spot on account of taking place of incident dated 1.11.2005. Respondent No.1 did not state that the police took along the appellant as he was giving beatings

to her. Had that been the position, the police would have certainly taken action against the appellant particularly when the police officer was at the back of respondent No.1 and was himself involved in the incident. It is very much believable that since a police officer was involved in the incident, therefore, only in order to save the situation, the police had taken Gurdip Singh alongwith, with an assurance to the villagers as well the appellant to take action against him but ultimately they did not take any action against him. Respondent No.1 admitted during the course of her cross examination that 250 people of the village had collected there at the time of incident dated 1.11.2005. When there was such a serious incident, may be as per the case of respondent No.1 that of beating her, it is not that police would not take the appellant alongwith or not take any action against him.

Now coming to the news items. Even respondent No.1 herself admitted as correct that news were published in different newspapers about her and Gurdip Singh. She further deposed that she did not rebut the aforesaid news in the newspapers. She further admitted that Ram Pal/appellant moved an application before the SSP, Rupnagar, against her and Gurdip Singh. Further, she pleaded her ignorance about the moving of application before SSP, Rupnagar by 150-200 villagers against her and Gurdip Singh. Ex.P38, complaint, dated 2.11.2005 was made by Ram Pal to SSP, Rupnagar, in which incident dated 1.11.2005 was categorically mentioned. Mohallawalas had called police at the spot and handed over Gurdip Singh, who was caught red handed with respondent No.1 in objectionable position. It is also mentioned in this very complaint that Gurdip Singh had taken away his wife and children by making them sit in

his car and as that day was a Diwali day, therefore, the police did not take any action and only assure him as well the villagers for taking action against Gurdip Singh. Ex.P7, complaint, was made by villagers on 6.11.2005 against the respondents to SSP, Rupnagar. In this complaint there are clear cut allegations regarding character of respondent No.1. It was mentioned in this very complaint that bad elements had been visiting her day and night. It is further mentioned that on 1.11.2005 Gurdip Singh had come to respondent No.1 who had been visiting her very often, both of them gave beatings to the appellant. The appellant raised alarm in order to save himself from the respondents. He also suffered a cut on his nose as a knife blow was given to him. If one reads the contents of this complaint, the only conclusion which one can draw is that respondent No.1 was having illicit relations with respondent No.2 and is living in adultery with him. Had that not been the position, certainly the father of respondent No.1 would have supported her. No one from the family of respondent No.1 came forward to support her. Only her daughter Pawan Preet Kaur appeared as RW 3 but she being under the influence of her mother, was supposed to support her. For the reasons recorded above, her testimony is also of no help to the case of respondent No.1. Though Ram Saran RW 2, supported the case of respondent No.1, yet his testimony is not believable. During the course of his cross examination, he deposed that father of respondent No.1 did not tell him as to how much money was demanded by the appellant. He further deposed that he cannot tell the date or month when the appellant used to come to the house of Dharam Singh to bring Paramjit Kaur. He met Paramjit Kaur on 1.11.2005. Paramjit Kaur did not tell him that Inspector

had come to his house. She did not tell him that people had collected there. He does not know if Paramjit Kaur has gone to Chandigarh with Gurdip Singh in his Indica car. If respondent No.1 and her father had been reposing faith in RW 2 and had been telling him each and everything regarding demand of dowry by the appellant or his conduct of taking drinks, they would have also made mention about the incident dated 1.11.2005 to him but this witness pleaded total ignorance about this incident during the course of his cross examination. As such, the statement of RW 2 on the point that under the influence of liquor the appellant gave beatings to respondent No.1 and her children, is not believable. Even otherwise, Dharam Singh-father of respondent No.1, is the best witness who did not choose to support the case of respondent No.1 and that is why he did not appear as a witness in the Court.

Short of repetition, the aforementioned news items give in detail the illicit relations of respondents No.1 and 2 and further the conduct and character of respondent No.1. Ranjit Vashisth PW7, and Vijay Sharma PW8, proved the aforesaid news reports. It was contended by learned counsel for respondent No.1 that no authenticity is attached to these news reports as the same were not verified before their publication in the news paper. PW7 deposed that he did not verify the correctness of facts from Paramjit Kaur before reporting the matter for publication. This statement of PW7 would not make the aforesaid news items as false. Vijay Sharma PW 8 categorically stated that he is working as a reporter with newspapers Jagbani published from Jalandhar. He had gone to the spot and took the photographs and even reported the matter which was published in the

newspaper. After seeing the publication of Jagbani dated 3.11.2005, which is marked as Mark D (Ex.P6) Ram pal disclosed about the incident to him and on that basis he had reported the matter which was published in the newspaper. He further deposed that he had himself taken the photographs which have been published in the newspaper. He also deposed that even the version of Paramjit Kaur has been given in publication after making enquiry from her. Respondent No.1 herself admitted during the course of cross examination that news were published in different newspapers about her and Gurdip Singh regarding incident dated 1.11.2005. Thus, from the above discussed evidence on the file, it is established that respondent No.1 is having illicit relations with respondent No.2 and she is living in adultery with him.

Above discussed evidence on the point of adultery itself is sufficient to hold that respondent No.1 has caused mental cruelty to the appellant. It is also imperative to mention that even at earlier occasion as well she in connivance with Gurdip Singh and other bad elements got inflicted serious injuries with sharp edged weapon on the person of the appellant. In this regard news item Ex.PW9/A was also published along with photograph. At that time, respondent No.1 acted very smartly and obtained the signatures of the appellant under the pretext that she would herself lodge the complaint regarding that incident but she did not. The appellant as PW5 categorically stated about this incident and deposed that his signatures on blank papers are also with the respondents and she had cheated him. Besides that, FIR No.206 dated 3.10.2005 under Sections 406, 420 and 120B IPC was registered against respondent No.1 and others, copy

of which is Ex.P11. This case is regarding fraud committed by respondent No.1 in sending people abroad. Not only this even Gurdip Singh gave serious threats to the appellant as well his brothers Kuldip Singh and Ranjit Singh to involve them in some false case as he is Incharge of CIA Staff, Rupnagar. This fact stands proved on the file as Kuldip Singh and Ranjit Singh have filed application seeking anticipatory bail from the Court of learned Sessions Judge, Rupnagar. Likewise, the appellant also filed application for anticipatory bail. Copies of the orders are Ex.P12 and Ex.P19 respectively. Since no case was registered against them, therefore, it was directed by the learned Sessions Judge as well Additional Sessions Judge that in case of registration of case against them, 5 days/3 days prior notice be given to them by the police before effecting their arrest. Thus, from this evidence on the file, it is established that respondent No.1 has caused mental cruelty to the appellant as well.

No other point was argued before us.

For the reasons recorded above, this appeal is allowed. Impugned judgment dated 29.7.2008 is hereby set aside. Decree of divorce is granted in favour of the appellant thereby dissolving his marriage with respondent No.1 which took place in the month of December 1982; under Section 13 (1)(i) and 13(1)(ia) of the Act, leaving the parties to bear their own costs.

(M. JEYAPPAUL)
JUDGE

(RAJ RAHUL GARG)
JUDGE

22.4.2015
Ashwani