

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-347-2009

DATE OF DECISION: JULY 1, 2015

DR.VIKAS KUMAR GOYAL

...APPELLANT

VERSUS

DR.NIDHI GARG

...RESPONDENT

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

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. J.K.GOEL, ADVOCATE FOR THE APPELLANT.
MS. PRIYANKA SUD, ADVOCATE FOR THE RESPONDENT.

M. JEYAPPAUL, J.

1. The appeal is preferred by the petitioner Dr.Vikas Kumar Goyal, aggrieved by the dismissal of the petition filed by him under Section 13 of the Hindu Marriage Act, 1955 praying for grant of a decree of divorce on the ground of cruelty and desertion.

2. The petitioner has alleged that he married the respondent on 1.11.2003. A son was born on 21.9.2004 out of the wedlock. It is alleged that during the last week of January 2004, when the respondent became pregnant, the petitioner as well as the respondent discussed about the continuance of pregnancy. The respondent had an excessive nausea problem. The respondent used abusive language to the petitioner and his family members, when some advice was given by the mother of the petitioner to take precautions at the initial stage of pregnancy. On 23.8.2004, the respondent left the matrimonial house without the consent of

the petitioner. The petitioner's parents proposed celebration of Karva Chauth festival and the wedding anniversary of the couple which fell on 31.10.2004 and 1.11.2004 respectively. The mother of the respondent asserted that her family did not believe in any of those rituals, customs and functions. The respondent unauthorizedly and without any rhyme or reason extended her stay at her parental house w.e.f. 23.8.2004. She had no inclination to join the petitioner at the matrimonial house. The petitioner was interested to save the marriage at all costs. The father of the respondent put a pre-condition that the petitioner should come and stay at H.No.3715, Sector 32-D, Chandigarh and the respondent would not come to the matrimonial house under any circumstances. The respondent's father Dr.K.L.Garg used highly derogatory words over phone as against the petitioner's mother on 6.5.2006. The respondent is a career oriented lady and has no liking for matrimonial life. Alleging that the petitioner was subjected to mental cruelty and the respondent has deserted him without any intention to come back to the matrimonial home w.e.f. 23.8.2004, the petitioner sought for divorce.

3. The respondent alleged in the written statement that the petitioner demanded dowry. The petitioner is guilty of cruelty and matrimonial wrongs. The petitioner and his family members treated the respondent with cruelty. The petitioner and his family members did not want a child from the respondent and they asked her to get it aborted. The petitioner was very much annoyed and pressurized her not to continue with the pregnancy. The petitioner and his family members were not happy due to the pregnancy of the respondent. The respondent prayed for dismissal of

the petition filed by the petitioner.

4. The trial Court having adverted to the evidence on record came to the conclusion that the ground of desertion does not survive as the petitioner has pleaded in the divorce petition filed by him on 10.5.2006 that his wife deserted him only on 23.8.2004. The trial Court also held that it was only the petitioner who insisted for termination of pregnancy and created strained relationship. The trial Court ultimately held that neither cruelty nor desertion was established by the petitioner.

5. It is the admitted position that the marriage of the appellant and the respondent was solemnized on 1.11.2003 as per Hindu rites and ceremonies at Zirakpur (Chandigarh). It has been specifically alleged by the appellant in the divorce petition filed on 10.5.2006 that the respondent left the matrimonial house on 23.8.2004. In other words, desertion for a period of less than 2 years has been pleaded in the petition by the appellant. As per Section 13(1)(i)(b) of the Hindu Marriage Act 1955, a ground of divorce on the plea of desertion can be sustained only if the respondent has deserted the petitioner for a continuous period of not less than 2 years immediately preceding the presentation of the petition. In the face of the admitted pleadings, the respondent has allegedly deserted the appellant only for a period less than 2 years immediately before the presentation of the petition for divorce on 10.5.2006. Therefore, the plea for divorce on the ground of desertion is not maintainable in law.

6. Let us now take up the ground of cruelty urged by the appellant. It has been alleged that the mother of the appellant conveyed the necessity to celebrate Karva Chauth festival and the marriage anniversary of

the couple, but the mother of the respondent was assertive that her family did not have any faith in those celebrations. She also used objectionable language. It is further submitted by the appellant that the father of the respondent used provocative language over phone to the mother of the appellant. It is also alleged that the respondent insisted for matrimonial residence of her choice.

7. Learned counsel appearing for the appellant would strenuously submit that the appellant and the respondent lived only for 19 days as husband and wife. A false criminal case was launched as against the appellant and his family members by the respondent aggrieved by the divorce petition filed by the appellant. Though the criminal case launched by the respondent ended in conviction, the appellant has preferred a revision as against the verdict of appellate Court confirming the conviction by the trial Court. He would further submit that marriage stood broken for the past about 11 long years. Therefore, it is his submission that the appellant is entitled to a decree of divorce.

8. *Per contra*, learned counsel appearing for the respondent would submit that the appellant had chosen to file a petition under Section 9 of the Hindu Marriage Act praying for restitution of conjugal rights at the first instance. Even during the pendency of the said petition, the appellant chose to file the present divorce petition invoking the provision under Section 13 of the Act. Even assuming for the sake for arguments that some cruelty had been committed by the respondent, the same had been condoned by the act of the appellant who had chosen to file a petition for restitution of conjugal rights. It is her further submission that the admission on the part of the

appellant would go to show that it was only the appellant who cruelly treated the respondent who was ever willing to join the appellant.

9. It has been urged by the respondent that the appellant insisted for termination of pregnancy and as a result of which the relationship between the appellant and the respondent got strained.

10. In connection with the above plea of the respondent, it is better to incorporate verbatim the relevant testimony of the appellant which reads as follows:-

“It is also correct that at that time the respondent was in family way. It was the second month of pregnancy and I wanted that the respondent should not carry the pregnancy and abort but the respondent was not agreeable. It is correct that there were strained relations for 15 days between me and respondent on this ground.”

11. The above admission unambiguously made by the appellant would go to establish that the relationship between the appellant and the respondent was strained on account of insistence of the appellant for termination of pregnancy.

12. It is alleged that the respondent left the matrimonial house on 23.8.2004 without any rhyme or reason. But the fact remains that the respondent was blessed with a male baby on 21.9.2004. Within about one month from the departure of the respondent from the matrimonial home, a child was born to the respondent. It is established by the respondent that the appellant was not happy with the continuance of pregnancy. Further, every woman would like to have the comfort of her parents at the time of delivery

of first child. No wonder, she has left the matrimonial home. Therefore, it is not as if the respondent left the matrimonial home without any rhyme or reason.

13. The appellant has set up a plea that he made all out efforts to save the marriage and it was only the respondent who willfully stayed away from the matrimonial home. Such a stand of the appellant is completely belied by his own admission during the course of cross-examination which reads as follows:-

“It is correct that the respondent showed her willingness to join the matrimonial life immediately. I was not ready to take the respondent back to the matrimonial house.”

14. It is also pertinent to refer to the fact that the petition filed by the appellant under Section 9 of the Hindu Marriage Act for restitution of conjugal rights was in fact pending even after the petition for divorce under Section 13 of the Hindu Marriage Act was filed by the appellant. On the one hand, the appellant wanted to take his wife to the matrimonial home and on the other hand, he wanted a divorce on the ground of desertion and cruelty. In other words, the appellant having condoned all the acts of the respondent, expressed his desire to live with the wife in order to save the marriage. But at the same time, the appellant came out with the damaging allegations of cruelty, harassment and desertion to support his plea for divorce under Section 13 of the Act. In the above context, we take note of their reconcilable and incongruous stand taken by the appellant.

15. Even assuming for the sake of arguments that the family members of the respondent resisted for celebration of Karva Chauth and the

marriage anniversary of the couple, in our considered view, such a reaction emanated from the family of the respondent would amount to normal bickering expected in a matrimonial relationship. On such a flimsy ground, the Court cannot grant divorce snapping the sacred relationship of husband and wife.

16. The appellant has admitted during the course of cross-examination that a lady normally does not leave the house for 40 days after birth of a child. In the face of the above admission, we find that there is no justification for the appellant or his family members to expect the respondent to participate in Karva Chauth and marriage anniversary that fell before the expiry of 40 days from the date of birth of the child.

17. Coming to the other allegations attributed to the parents of the respondent, we find that there is no reliable and trustworthy evidence adduced by the appellant. In fact, PW2 who was examined by the appellant to support his version, betrayed him by disclosing the fact during the course of cross-examination that he had not witnessed any incident of cruelty committed by the respondent in the family, as he had no occasion to stay in the house of the appellant.

18. Yet another fact needs special mention at this stage. The respondent has launched criminal prosecution as against the appellant and his family members for the offence under Section 498-A IPC. They were convicted by the trial Court and the said verdict also was confirmed by the appellate Court. Of course, a revision petition has been preferred of-late by the appellant aggrieved by the verdict of trial Court as well as the appellate Court. In our considered view, the criminal prosecution launched by the

respondent as against the appellant and his family members has almost reached finality. Even assuming for the sake for arguments that the respondent has walked out to the matrimonial house, in our considered view, it was not without any reason. The fact remains that despite all the above development, she is prepared to join the husband.

19. For all these reasons, we find that the trial Court has rightly evaluated the evidence on record and dismissed the petition praying for a decree of divorce.

20. The appeal is accordingly dismissed.

(M. JEYAPPAUL)
JUDGE

July 1, 2015
Gulati

(RAJ RAHUL GARG)
JUDGE