

In the High Court of Punjab and Haryana at Chandigarh

FAO-M-265 of 2012 (O&M)

Date of decision: 31.07.2015

Narinder Singh Thiara

..... Appellant

Vs.

Paramjit Kaur

..... Respondent

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Argued by:Mr. Rajat Malhotra, Advocate
for the appellant.

Mr. Dhirender Chopra, Advocate
for the respondent.

RAJ RAHUL GARG,J.

This is husband's appeal against the impugned judgment dated 20.01.2012 rendered by Shri Manjinder Singh, the then Additional District Judge, Hoshiarpur, whereby divorce petition filed on the ground of cruelty and desertion by Narinder Singh Thiara-husband, was dismissed with costs.

Brief facts of the case are like this: that petitioner (husband) Narinder Singh Thiara, got married to Paramjit Kaur on 13.09.1999. Earlier to that he was married with one Manjit Kaur, who is permanent resident of USA. From that wedlock, he has two children. Later on, that marriage was dissolved by way of decree of divorce by USA Court on

02.09.1999. Custody of both the children was given to Manjit Kaur. Thereafter, with the efforts of Hakam Singh of village Lohgarh, Moga, the marriage of petitioner was solemnized with respondent Paramjit Kaur on 13.09.1999. As per petitioner that marriage was a dowry less and simple marriage. The marriage was registered at Dasuya on 08.10.1999 before the Registrar of Marriages. Both the parties lived together as husband and wife in village Muradpur Nariala. The petitioner left for USA on 21.10.1999. Thereafter, as per the case of the petitioner, it transpired that respondent was not living with his parents and used to slip away. On further inquiry, he came to know that she is a pop dancer and goes to stage show at the time of parties and marriages, which was to the utter disliking of the petitioner. It is also the plea taken by the petitioner that respondent got married to him only for the simple reason to get visa to USA with which Hakam Singh, bring his relatives to USA. Many times, petitioner sent huge amount to the respondent on her asking and even on asking of her parents on one pretext or the other. The petitioner through his parents and relatives had tried to forbid the respondent from indulging in the activities of stage dancing but she did not stop the same. She even went to the extent of changing her name from Paramjit Kaur to Pammi Pukhraj. With one Parminder Singh @ Bhola, she even introduced one Punjabi cassette 'Ghungru'. On 28.04.2000, the petitioner came to India and tried to persuade her but was of no use. On the other hand, she threatened him to involve him and his family in false case, in case he did not take

her to USA. She even sent some police officials and demanded Rs. 7 lacs. She also filed a false FIR No. 12 dated 29.01.2003 under Sections 498-A/420/406/494 IPC. She also filed a criminal complaint titled as Paramjit Kaur Vs. Narinder Singh and others by levelling false allegations against the parents and sister of the petitioner wherein all of them were summoned and, thereafter, the complaint was dismissed in default vide order dated 21.01.2008.

Thereafter, on inquiry, the petitioner came to know that respondent had eloped with someone to Australia. Her parents refused to disclose her whereabouts and rather threatened him that he will be killed as they were having links with the underworld and the police. Thus, as per petitioner, respondent has willfully and intentionally neglected him, treated him with cruelty and also deserted him for continuous period of more than two years.

On the other hand, it is the case of the respondent-wife that the petitioner-husband did not disclose about his earlier marriage and children. At the time of getting the marriage registered, she came to know that the petitioner is divorcee. Thus, as per respondent, the petitioner has cheated her.

It was admitted that Hakam Singh is the mediator of the marriage. As per respondent, it was told to the petitioner that she is a stage singer and she used to participate in dance and singing in marriage places. It was also alleged that the petitioner is facing trial in criminal case bearing FIR No.12 dated 29.01.2003 under Sections

498-A/420/406/494 IPC. Receipt of any amount towards maintenance was denied by her. It was denied that with the act of singing and dancing, the respect of family of petitioner has been lowered in the society. It is the plea of the respondent that she fell ill in 2007 and thus started singing and dancing. She never sent any police official nor demanded Rs. 7 lacs from the petitioner. It is also the plea of the respondent that the complaint was dismissed in default on 21.01.2008. She had gone to Australia for studying. Thus, as per respondent, it is the petitioner-husband who dealt the respondent with cruelty and concealed the true facts from her and intentionally neglected her. It was denied that she got married to petitioner only to get entry in USA. With these pleas, dismissal of petition was prayed.

From the pleadings of the parties following issues were framed:

- I. Whether the respondent has treated the petitioner with cruelty ? OPP*
- II. Whether the respondent has deserted the petitioner for a continuous period of more than two years without any reasonable cause ? OPP*
- III. Relief.*

After taking oral as well as documentary evidence of both the sides, appraising the entire evidence and material coming on record and after hearing counsel for the parties, the learned trial Court dismissed the petition with costs. Regarding cruelty, it was held by the learned trial Court that singing of a lady is not mentioned as cruelty by

Hon'ble Apex Court. The natural wear and tear of marriage regarding registration of case does not amount to cruelty. When the petitioner is not maintaining his wife, she (wife) was compelled by the circumstances to earn her livelihood by singing and further that the petitioner has not taken any steps to immigrate his wife to America, where he is permanently settled. As such, he is not entitled to relief of divorce on the ground of cruelty. Further, since the petitioner neglected her to maintain by not giving a single penny towards maintenance and further as he himself living in USA, therefore, she was compelled to live in her parents house. Therefore, even ground of desertion is said to be not proved.

We have heard learned counsel for the appellant and learned counsel for the respondent besides appraising the entire material and evidence coming on record.

In order to prove that respondent has caused cruelty to the petitioner, counsel for the appellant raked up the issue to a great extent that during proposal for marriage, it was not disclosed to the petitioner that respondent is a pop singer. Even after marriage, it was found that she was not staying with the parents and used to slip away. Only, on inquiry, it was found that she was a pop dancer and goes to stage show at the time to parties and marriages. Not only this, she even changed her name from Paramjit Kaur to Pammi Pukhraj and also released cassette 'Ghungru' with one Parminder Singh @ Bhola. In this manner, she has lowered reputation of the family of the petitioner in the

estimation of relatives and friends of the petitioner. Copy of the wrapper of the cassette was proved by Balwinder Singh (PW-5) which is Ex.P2 . In fact, there is overwhelming evidence available on record in this regard. Above all, the respondent in her written statement as well as when appeared as RW3 and her mother Gurpal Kaur appeared as RW1, categorically admitted the fact that the respondent (her daughter) i.e. Paramjit Kaur is known as Pammi Pukhraj and in this name she had brought out the cassette Ex.R1. She also deposed that she has seen the audio cassette and the photograph of female pertains to her daughter and the male person Parminder Singh @ Bhola. Respondent spent about 2/3 months for the shooting of this cassette with Parminder Singh @ Bhola. Her daughter did not seek any permission from her husband i.e. petitioner before release of this cassette. She further admitted as correct that her daughter and Bhola became very popular singing couple and they used to sing and dance on functions of marriages and on other occasions.

So far as indulging of respondent in the profession of singing and dancing is concerned, the findings of learned trial Court are apt and we find no reason to disagree with the same, keeping in view the above mentioned peculiar facts and circumstances of the case. As such, the argument of learned counsel for the appellant that by adopting the aforesaid profession of singing and dancing, the respondent caused cruelty to the petitioner is devoid of any force.

However, filing of false criminal case against the petitioner,

his sister, brother-in-law and parents, which ended up in acquittal; dismissal or finding the allegations of respondent levelled against the petitioner and his family members false on the very threshold of the case; are certainly a ground which can be termed as causing cruelty to the petitioner by the respondent. Paramjit Kaur-respondent as RW3 in her affidavit Ex. RW3/A herself stated that the petitioner is facing criminal case at Moga in FIR No.12 dated 29.01.2003 under Sections 498-A/420/406/494 IPC, Police Station Sadar, Moga. She has also stated so in her written statement. Even her mother Gurpal Kaur (RW1) also deposed about the factum of registration of FIR No.12 dated 29.01.2003 against the petitioner. Ex.PY is the copy of judgment dated 13.10.2011 whereby Sh. Gurmail Singh, the then Additional Chief Judicial Magistrate, Moga, acquitted the accused Narinder Singh Thiara, petitioner of this case. Paramjit Kaur in her complaint, on the basis of which FIR No.12 was registered, asked Senior Superintendent of Police for taking legal action against Narinder Singh Thiara son of Darshan Singh, Darshan Singh, Pritam Kaur wife of Darshan Singh, Hardeep Kaur wife of Hardial Singh, Mandeep Kaur wife of Balvir Singh, residents of village Muradpur Naryal, Tehsil Dasuha, District Hoshiarpur. Challan was filed only against Narinder Singh Thiara by the police after investigation. Gurpal Kaur (RW1), mother of the respondent, during the course of her cross-examination admitted that they named the relations of the petitioner in the aforesaid FIR No.12. She further admitted that all the relatives were found innocent and

challan against Narinder Singh Thiara was presented in the Court. Not only this, she further admitted that they moved an application to summon the aforesaid relatives in the Court under Section 319 Cr.P.C. and the same was dismissed. This also shows that complainant had tried to implicate the parents and sister of the petitioner, who were found innocent by the police and were not challaned. In this manner, respondent has harassed the petitioner upto the brim. Not only this, even Gurpal Kaur (RW1), further admitted that it is correct that the Court had disbelieved their version and acquitted the accused. The petitioner-appellant Narinder Singh Thiara was acquitted in the aforesaid case. Of course, at the time of passing of the impugned judgment, the aforesaid criminal case was not finally decided but now the counsel for the appellant has placed on record copy of the judgment passed by Sh. Karamjit Singh, the then Sessions Judge, Moga, which is dated 13.12.2013. State had gone in appeal against acquittal of Narinder Singh Thiara in FIR No. 12 dated 29.01.2003 under Sections 498-A/420/406/494 IPC and that appeal of the State was dismissed vide order dated 13.12.2013.

Both the counsel for the parties admitted during the course of arguments that the order of acquittal regarding FIR No.12 dated 29.01.2003 has attained finality. As no appeal is pending at present against this judgment, acquittal of Narinder Singh Thiara, in the aforesaid case, further goes to show that by filing of false case against him, the respondent has caused cruelty to the petitioner.

Besides above, respondent herself pleaded in the written statement and also stated as RW3 that she filed a complaint against Narinder Singh Thiara, petitioner, which was dismissed in default on 21.01.2008. During the course of her cross-examination she admitted that besides the State case, she filed a criminal case against her husband and against his relatives and the same was dismissed.

Narinder Singh Thiara as PW1 by way of his affidavit Ex.PW1/A categorically stated that respondent filed a false criminal case titled as Paramjit Kaur Vs. Narinder Singh and others by levelling false allegations against him and his sister wherein all of them were summoned and the said complaint was ultimately dismissed in default vide order dated 21.01.2008. The aforesaid criminal case was bearing FIR No.244 dated 22.09.2003. Ex. P3 is the copy of the judgment dated 21.01.2008 passed in the aforesaid complaint which proves that the aforesaid complaint filed by Paramjit Kaur was dismissed in default and the accused were ordered to be discharged. The respondent did not stop here. Narinder Singh Thiara (PW1) deposed that she was in the habit of moving false application against him and his family members. Even during the pendency of the divorce petitioner, she moved an application before the SSP, Moga, against him and his other family members to falsely rope them in another false case. Due inquiry was conducted by DSP, Moga, on the application No. 113-PC4/10 dated 06.04.2010, moved by the respondent and he found, the allegation levelled by the respondent in the aforesaid complaint as false and

baseless vide his report dated 30.04.2010. Though, respondent stated about the lodging FIR No. 12 dated 29.01.2003 under Sections 498-A/420/406/494 IPC and then filing of criminal complaint bearing FIR No.244 dated 22.09.2003, they did not state about the complaint made by the respondent to SSP, Moga, for registration of FIR under Sections 452/323/148/149/506 etc.IPC against Narinder Singh Thiara (appellant), Pritam Kaur, sister Hardeep Kaur and brother-in-law Hardial Singh. Copy of which is Ex.PX. However, during the course of their cross-examination, they had to admit the same. Gurpal Kaur (RW1) admitted that she along with her daughter moved an application that Narinder Singh Thiara alongwith others had come to their village Salina and caused injuries to them. That application was investigated by SHO, Police Station, Moga. She further admitted that the said SHO gave report that a false occurrence had been created by them and Narinder Singh Thiara etc. never came to their village and caused injuries to them and the same was proved by DSP of the area.

Paramjit Kaur (RW3) admitted during the course of her cross-examination that she moved a complaint to SSP, Moga, levelling allegations that the petitioner Narinder Singh Thiara alongwith Pritam Kaur his mother, Hardeep kaur and Hardial Singh his relatives, came to their village Salina and caused injuries to her and her mother Gurpal Kaur. She identified her signatures on the certified copy of application which is Ex. PX. She further admitted that the said complaint had been filed by SHO, Police Station Sadar, Moga, which was duly approved

by DSP and SSP, Moga.

This fact further goes to show that the respondent has been leaving no stone unturned to harass the petitioner and his family members. As such, by filing of false criminal case against the petitioner and his family members, respondent has caused cruelty to the appellant-husband for which appellant-husband is entitled to a decree of divorce on this ground.

Counsel for the appellant-husband did not press the ground of desertion. Even otherwise, there is no evidence on record to show that respondent has deserted the appellant-husband with an intention to bring the relationship of husband and wife permanently to an end.

For the reasons recorded above, since respondent treated the husband with cruelty, therefore, the impugned judgment and decree dated 20.01.2012 are set aside. Petition for divorce, instituted by the appellant-husband on the ground of cruelty, is accepted. The marriage of the appellant with respondent, is ordered to be dissolved under Section 13(1) (ia) of the Hindu Marriage Act.

Decree sheet be prepared accordingly.

(M. JEYAPPAUL)
JUDGE

(RAJ RAHUL GARG)
JUDGE

31.07.2015
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