

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-160 of 2013

Date of Decision: 5.2.2015

Mehal Singh

....Appellant.

Versus

Simarjit Kaur

...Respondent.

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

PRESENT: Mr. B.S. Bhalla, Advocate for the appellant.

None for the respondent.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the husband against the judgment and decree dated 15.4.2013 passed by the Additional District Judge, Moga, whereby the petition filed by wife under Section 13 of the Hindu Marriage Act, 1955 (in short "the Act") for dissolution of marriage by a decree divorce, was allowed.

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The marriage between the parties was solemnized on 26.9.2008 at Brar Palace Mudki by way of Anand Karaj ceremony. At the time of marriage, sufficient dowry articles were given but the appellant and his parents were not satisfied with the dowry articles given in the marriage. They used to beat and harass the respondent. The appellant made demand of money for

going abroad upon which the parents of the respondent had given the amount of ₹ 65,000/- and ₹ 58,000/- which they spent on touring Thailand and Singapore. The appellant and his family members again made a demand of ₹ 10 lacs for sending him abroad but the respondent showed her inability to fulfill the said demand. The appellant was a police informer and used to take intoxicants. The police officials used to come to his house and many times, the appellant forced her to serve drinks to them to which she refused upon which she was given merciless beatings. Even the appellant told her that he had illicit relations with other girls and threatened her to sell her in UP for the sake of money. The appellant and his family members put the bed on fire on which she was sleeping and second time the appellant strangled her throat but she was saved. On account of non-fulfilment of demand of dowry, the respondent was turned out of the matrimonial home. She got registered FIR No. 38 dated 26.3.2010 at Police Station Baghapurana. Thus, the appellant treated the respondent with cruelty and had deserted her without any sufficient cause. Accordingly, she filed a petition under Section 13 of the Act for dissolution of marriage by a decree of divorce. The said petition was resisted by the appellant by filing a written statement. It was pleaded by the appellant that the marriage between the parties was a love marriage and no dowry articles were demanded or given. From the very beginning, the respondent insisted him to live separate from his parents to which he denied being the elder son in the family. She conceived a child but her mother got aborted the said child without permission of the appellant. The behaviour of the respondent towards the appellant and his family members was cruel since the marriage. On 18.10.2009, she had gone to her parental house but she

did not return back. Efforts made by the appellant to take her back to her matrimonial home remained futile. The appellant also filed a petition under Section 9 of the Act which was pending adjudication. The other averments made in the petition were denied and a prayer for dismissal of the same was made. From the pleadings of the parties, the court below framed the following issues:-

1. Whether the respondent has treated the appellant with cruelty and has deserted her without any sufficient cause? OPP
2. Relief.
3. In support of her case, the respondent has examined her father Gurbachan Singh as PW1, Surinder Singh as PW3, Bhupinder Singh as PW4, Kuldeep Singh as PW3 and herself appeared as PW2. On the other hand, the appellant examined himself as RW1, Karam Singh as RW2 and Jaswant Singh as RW3.
4. The trial court on appreciation of evidence led by the parties, decided issue No.1 in favour of the respondent holding that sufficient evidence was led on record by her to prove the factum of cruelty meted out to her at the hands of the appellant and also desertion. Accordingly, the trial court vide judgment and decree dated 15.4.2013 allowed the divorce petition filed under Section 13 of the Act by passing a decree of divorce. Hence, the present appeal.
5. Learned counsel for the appellant submitted that the marriage was solemnized on 26.9.2008 whereas the petition was filed on 26.5.2010. It was urged that in such circumstances, it could not be said that the appellant had deserted the respondent for more than two years before the filing of the petition. It was contended that the ground of

desertion under Section 13(1)(ib) of the Act had wrongly been decided in favour of the respondent.

6. We have heard learned counsel for the appellant and have perused the record.

7. Section 13(1)(ib) of the Act empowers the Court to dissolve the matrimonial ties between the parties by a decree of divorce on a petition by either spouse where the other party has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition.

8. In so far as ground of desertion is concerned, undisputedly the marriage between the parties was solemnized on 26.9.2008 and the present petition for divorce on the ground of cruelty and desertion had been filed on 26.5.2010. Admittedly, the petition had been presented in less than the statutory period of two years required under Section 13(1)(ib) of the Act. Accordingly, the decree on the ground of desertion is not sustainable and is set aside.

9. Adverting to the issue of cruelty, it may be noticed that Section 13(1)(ia) of the Act empowers the Court to dissolve the matrimonial ties between the parties by a decree of divorce on a petition by either spouse where the said spouse has been treated with cruelty after the solemnization of the marriage. Cruelty has not been defined in the Act but various pronouncements of the Apex Court and other High Courts have outlined the scope of the term 'cruelty'. Cruelty is evident where one spouse treats the other and manifests such feelings towards him or her as to cause reasonable apprehension that it will be harmful or injurious to live with the other spouse. Cruelty may be physical or mental. Whether a spouse is inflicted with physical cruelty or not, it can

be judged on the basis of direct evidence whereas mental cruelty is to be inferred on analyzing the factual matrix of each case and drawing conclusion thereon.

10. Examining the factual matrix involved herein, the respondent proved the allegations of cruelty by leading cogent and convincing evidence and as such was entitled to divorce on that ground. She in her testimony as PW2 deposed in detail regarding demanding of money. She also deposed that the appellant compelled her to serve liquor to the police officials who used to come to their house. The said version of the respondent stood corroborated by the testimony of PW3 Surinder Singh who categorically stated that on 25.4.2009 when he went to meet the respondent at her house, some police officials were present there and the appellant was compelling her to serve liquor to them. Further, the respondent had deposed that the appellant had made attempts two times to finish her life. She specifically stated that the appellant used to beat her mercilessly and also caused mental cruelty to her by telling that he was having illicit relations with other women. She also got lodged FIR under Sections 498A, 406, 506 of the Indian Penal Code. All this evidence of respondent remained unrebutted as the appellant had failed to produce any cogent evidence. So far as the evidence led by the appellant was concerned, all the affidavits were almost in the same language. RW3 deposed that he was brought in the court by the appellant. He further deposed that he had not seen the respondent after the day of wedding. Further, the appellant was disinherited by his parents as no one had appeared from his family members to depose in his favour. Even no documentary evidence was led by the appellant to prove that the respondent had ever got aborted the child. No serious

argument was raised to controvert the findings of the trial court on the issue of cruelty by the learned counsel for the appellant. Thus, the irresistible conclusion is that the respondent had proved by leading cogent and convincing evidence that the appellant had treated her with cruelty.

11. Thus, the judgment and decree dated 15.4.2013 passed by the trial court is upheld on the ground of cruelty whereas the ground of desertion stands set aside. The appeal is dismissed accordingly.

(AJAY KUMAR MITTAL)
JUDGE

February 5, 2015
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(SNEH PRASHAR)
JUDGE