

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

**FAO-M-230 of 2013  
Date of Decision: 13.05.2015**

**Shatrughan Kushwaha**

**...Appellant**

**vs.**

**Geeta Devi**

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

**Argued by: Mr. Nipun Vashisth, Advocate for the appellant.  
Mr. Rakesh Dhiman, Advocate for the respondent.**

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**Raj Rahul Garg, J.**

Shatrughan Kushwaha-petitioner instituted divorce petition under Section 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act against his wife Geeta Devi for dissolution of his marriage by way of decree of divorce on the grounds of cruelty and desertion. Vide Judgment and Decree dated 03.05.2013, the aforesaid petition was dismissed with cost by Sh. Vijay Singh, Additional District Judge, Rewari. Against the impugned judgment, petitioner-husband has come up with this appeal before this court.

Brief facts of the case are like this; that parties got married on 19.06.1994. The marriage was duly consummated. Two issues namely Nikita and Kartik were born out of this wedlock. Petitioner-husband brought this

petition alleging that after the marriage respondent-wife started quarreling with him without any reason. She used to taunt and insult him in the presence of his friends and relatives. He tried to persuade her to behave in a proper manner but to no avail. She never cooked up the food nor cooperated with him. She is a greedy type of lady and has no love and affection for petitioner-husband. As per petitioner-husband, respondent-wife has taken a sum of Rs. 4,00,000/- as maintenance amount from the petitioner vide cheque of City Bank with a compromise that she will not come in his way in future after the receipt of the this amount. However, after receiving the aforesaid amount on 30.06.2005, respondent-wife never turned up to her matrimonial home till date as such she has completely deserted which led to the filing of the present petition.

On the other hand, it is the case of the respondent-wife that petitioner is a clever type of person and wants to get rid off the respondent by filing such type of false, frivolous and baseless petitions. Earlier, he filed a petition under Section 9 of the Hindu Marriage Act, which was dismissed in default on 03.12.2006 by the court of Sh. Inderjeet Mehta, the then Additional District Judge, Rewari. In that case, Rs. 5000/- per month were awarded as maintenance *pendente lite* to the respondent and an amount of Rs. 1000/- each to her children from the date of institution of the application i.e. 21.07.2006, vide order dated 03.01.2007, along with litigation expenses of Rs. 2100/-. Revision filed against this order was dismissed. Total amount of maintenance comes to Rs. 2,03,233.33/- w.e.f. 21.07.2006. However, petitioner paid only Rs. 93,000/- to respondent. On 12.12.2008, he got dismissed this petition under Section 13 of the Hindu Marriage Act in default for his non-appearance so as to avoid payment of maintenance. As

per respondent, petitioner is in arrears of Rs. 1,12,733.33/- in that petition.

Furthermore, respondent filed petition under Section 125 Cr.P.C. for maintenance. At that time petition under Section 13 of the Hindu Marriage Act was pending at Rewari. When on 12.12.2008, petition under Section 13 of the Hindu Marriage Act was dismissed, she perused interim maintenance application under Section 125 Cr.P.C. She also filed execution petition for recovery of aforesaid *pendente lite* maintenance of Rs. 1,12,333.33/- by way of attachment and sale of the moveable and immovable property of the petitioner and his civil imprisonment. When he received summons, then with ulterior motive by fraud and misrepresentation, he made false promise that if she withdraws all the proceedings immediately against him including the execution petition, he would provide all the amenities to her and her children and would also not harass and humiliate her. Keeping in view the future of children she agreed to that offer and withdrew execution petition and petition under Section 125 Cr.P.C. Petitioner took a rented house in Krishna Colony, Gurgaon so that respondent could not disbelieve him. But when she withdrew the petition under Section 125 Cr.P.C., petitioner fled away from the rented house leaving respondent and her children alone there and did not turn up despite repeated requests of the respondent and told her that he was not interested to keep her at all. It was pleaded that petitioner has concealed these material facts from the court. She along with her children has been, thus, living in her parents house since May, 2005. Her parents and respondent visited her matrimonial home to resolve the matter but petitioner and his family members have refused to bring her back.

She was tortured mentally and physically by the petitioner and

his family members for bringing more dowry and cash from her parents. Respondent's father gave gold chain, ring, utensils, clothes, almirah etc. and Rs. 50,000/- in cash in her marriage. Petitioner and his family members harassed her by saying that her father had not given vehicle, fridge, cooler, color TV etc. to her in her marriage. She narrated all this to her parents. Subsequently, on demand respondent's father paid a sum of Rs. 72,000/- to the petitioner by borrowing the same. But petitioner again started causing mental harassment to her and demanded money and also started selling the house No. 968-P at Dharuhera which was purchased by him. Then respondent's father gave a sum of Rs. 50,000/- to the petitioner so that he may not alienate the house. It was further pleaded that she was given beatings by the petitioner on many occasions. She used to bear all these harassment and quarrelsome attitude and behaviour of the petitioner and his family members to save her matrimonial relations for the sake of prestige and dignity of her parents. But the intolerable attitude and behaviour of the petitioner towards her never changed. He used to abuse her in filthy language in the presence of neighbours and caused mental harassment to her on one pretext or other.

She denied the allegations of not cooking the food for petitioner and never cooperated with him but alleged that she did all the domestic jobs as and when she lived in the matrimonial company of the petitioner. It was also denied that she is a greedy type of lady. She further alleged that petitioner has no love and affection for her and towards her minor children being greedy type of person.

It was specifically denied that respondent after receipt of Rs. 4,00,000/- never turned up to her matrimonial home till date and has

completely deserted him; rather, petitioner has thrown out the respondent and her children after snatching all her belongings. It was further pleaded that she is still ready and willing to join the matrimonial company of the petitioner if he keeps them well and prayed for dismissal of the petition.

On the pleadings of parties, following issues were framed;

- 1. Whether the respondent has treated appellant with cruelty, if so to what effect? OPP*
- 2. Whether the respondent has deserted the appellant, if so to what effect? OPP*
- 3. Whether the petition is not maintainable in the present form? OPR*
- 4. Whether the appellant is estopped to file the present petition by his own act and conduct? OPR*
- 5. Whether the appellant has not come to the Court with clean hands, if so, its effect? OPR*
- 6. Relief.*

After taking oral as well as documentary evidence of both the parties and after hearing learned counsel for both the parties, learned trial court dismissed the divorce petition filed by the petitioner-husband holding that on baseless and flimsy grounds the petitioner has tried to get the marriage dissolved by getting divorce, whereas, real sufferer is respondent and the children.

On the ground of cruelty and desertion, the petition for divorce has been instituted by the husband. It is a settled proposition of law that cruelty for the purpose of Section 13 (1)(ia) is to be taken as a behaviour of one spouse towards the other which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with other. Mental cruelty is a state of mind and feeling of one of the spouses due to the behaviour or behavioural pattern by

the other. It is difficult to establish mental cruelty by direct evidence. In case of mental cruelty it will not be correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other. In the case in hand, there is not even a single instance which could be termed as cruelty allegedly caused by respondent-wife to the petitioner-husband. Petitioner as PW-4 by way of his affidavit, Ex. PW-4/A, reiterated his case. As per petitioner, after the marriage respondent started quarreling with the petitioner without any reason. However, no instance was mentioned by the petitioner as to when and on what occasions she started quarreling with the petitioner without any reason. Likewise; it was stated by petitioner as PW-4 that respondent used to treat him with cruelty by taunting and insulting him in the presence of his friends and relatives. Again the very wording of taunt and manner of insult have not been mentioned by the petitioner for the reasons best known to him. Even no circumstance and situation is given which led to the insulting behaviour of respondent towards petitioner. The allegations are vague and baseless. As such they cannot be termed as a case of cruelty.

The next allegation of the petitioner alleged in his statement, Ex.PW-4/A, is this that she never cooked food for the petitioner during her stay in her matrimonial home and never cooperated with the petitioner. Again, the petitioner has not mentioned as to how and under what manner she did not cooperated with him. It is also not believable that a wife, living

in her matrimonial home, would not cook food for her husband. This allegation has been specifically denied by the wife when she appeared as witness in the court as RW-1. It is a case where petitioner has failed to prove on record even a single instance where the wife had failed; which could be termed as mental cruelty on the part of the wife. On the other hand, from the pleadings of respondent, as contained in his statement as well her statement as RW-1, it is evident that the petitioner has a crafty mind. He has concealed material facts from the court. Petitioner, when appeared as PW-4 during the course of cross-examination, admitted that he filed petition under Section 9 of the Hindu Marriage Act and the same was dismissed as withdrawn due to compromise. The writ petition filed by him in the Hon'ble High Court against the order, under Section 24 of the Hindu Marriage Act, was dismissed. In application under Section 125 Cr.P.C. filed by the wife against him, he agreed to maintain her and to keep her in his house. Though, petitioner deposed that wife did not live with him, yet, respondent-wife deposed as RW-1 that his only purpose was to get the litigation withdrawn by her so that he may not have to pay the maintenance amount. He, ofcourse, took a house on rent in Krishna Colony, Gurgaon but left that house and fled away from that rented house leaving her and children alone there and did not turn up despite repeated requests and told her that he was not interested in keeping her at all.

Respondent has placed on record copy of order dated 03.12.2005, Ex. R-1, passed in petition under Section 9 of the Hindu Marriage Act. Vide this order, the aforesaid petition was dismissed in default for not mentioning this fact in his petition for divorce. The petitioner has concealed material facts from the court likewise he did not mention filing of

Civil Revision No. 931 of 2007, decided on 26.09.2008, against the order dated 03.01.2007 passed by the court of Additional District Judge, Rewari granting maintenance to respondent @ Rs. 7000/- per month i.e. Rs. 5000/- for the wife and Rs. 2000/- for children. Copy of this order is Ex. R-2. That revision petition of the petitioner was dismissed. Ex. R-3 is the copy of the order passed in divorce petition filed under Section 13 of the Hindu Marriage Act by the petitioner against his wife. At that time petitioner did not put his appearance on that day and the petition was dismissed under Order 9 Rule 8 CPC. It is worth mentioning here that filing of the aforesaid petition and its dismissal has been concealed by the petitioner. In these circumstances, the argument raised by counsel for the respondent that since she had filed petition for recovery of maintenance allowance given under Section 24 of the Hindu Marriage Act and further as she also started pursuing her application under Section 125 Cr.P.C. for interim maintenance, petitioner devised the way to get rid off all the litigation took up by the wife and to avoid payment of maintenance to her, he misrepresented and promised to keep her in his house with an intention to fled away later on leaving his wife and children in lurch; carries weight and is tenable.

Not only above, even it was pleaded by the petitioner that respondent has received the maintenance amount of Rs. 4,00,000/- from the petitioner with a promise that she will not come in his way in future after the receipt of this amount. After receipt of the aforesaid amount of Rs. 4,00,000/- from the petitioner on 30.06.2005, she never turned up to her matrimonial home till date which constitute complete desertion on her part. Petitioner as PW-4 also stated so. Even on this point he examined his colleagues who were working in Hero Honda company and also his

neighbours i.e. PW-1 Chanderbhan, PW-2 Surender, PW-3 Mahavir Prasad. Ofcourse all these three witnesses mentioned the very fact thoroughly yet the statement of petitioner itself is material on this point. During the course of cross-examination, petitioner admitted that the cheque of Rs. 4,00,000/- given by him to his wife was dishonoured. Petitioner did not stop here but went to the extent of again pleading his case by stating that the same was transferred from his account to the account of his wife on 31.05.2005. There is clear cut refusal in this regard by the respondent-wife. There is not even a single evidence available on record to show that the aforesaid amount of Rs. 4,00,000/- was ever taken by respondent towards maintenance from the petitioner. At the time of filing of civil revision, copy of Ex. R-2, petitioner also raised up the issue of Rs. 4,00,000/- before the Hon'ble High Court but the same did not find favour at that time as well and the order of maintenance passed by the learned trial court was upheld and his civil revision was dismissed. Even otherwise, if we see from another angle, the very statement of petitioner that wife had taken the amount of Rs. 4,00,000/- towards maintenance with a promise that she will not come in his way in future after receipt of this amount. This very pleading compels this court to think that there must be something wrong with the petitioner. Counsel for the petitioner had put question to respondent-wife regarding illicit relations to which she replied in affirmative that she had doubt upon her husband regarding illicit relations with Archana. This fact goes to show that the real cord of dispute between the parties was something else and not the one stated by the petitioner in this petition. Regarding concealment of material facts before court, it is settled proposition of law that if a person does not come to the court with clean hands; he has no right to approach the court and

his case can be summarily thrown out at any stage of litigation. There is judgment from the Hon'ble Supreme Court of India, in this regard, in the case of **S. P. Chengalvaraya Naidu vs. Jagannath AIR 1994 SC 853.**

The statement of the petitioner as PW-4 that the respondent is a greedy type of lady is of no avail. This is a vague statement which does not lead us anywhere. Petitioner and his witnesses has failed to show as to how she could be termed as a greedy lady.

The arguments of learned counsel for the petitioner that after taking the amount of Rs. 4,00,000/- on 30.06.2005, respondent-wife did not turn up to her matrimonial home and thus she completely deserted the petitioner, again, does not prove the ground of desertion. For proving desertion petitioner has to prove the factum of separation and secondly the intention to bring cohabitation to an end permanently (*animus desserendi*). It is settled proposition of law that howsoever long may be the separation but, unless intention to bring cohabitation to an end permanently is proved, the ground of desertion is not available to the spouse setting up the same. In the case in hand, in the written statement as well when respondent appeared as RW-1, she categorically stated that she is still ready and willing to live with the petitioner. Besides this, respondent also stated as RW-1 that when petitioner opted to live with her may be on the condition that she would withdraw the entire litigation, she did not think even once but had gone with the petitioner to stay with him and had withdrawn all the pending litigation. On the other hand, the petitioner has failed to prove that he paid a sum of Rs. 4,00,000/- to respondent as such the question of her taking away the aforesaid amount on 30.06.2005 and then not returning to her matrimonial home does not arise and atleast not proved. As a result, the findings of the

learned trial court that the petitioner has failed to prove the ground of desertion do not suffer from any illegality. As such, the judgment and decree are affirmed.

No other point was raised before us.

For the reasons recorded above, finding no merit in the appeal, the same is dismissed with costs.

Decree sheet be prepared accordingly.

**(M. Jeyapaul)**  
**Judge**

**(Raj Rahul Garg)**  
**Judge**

13.05.2015  
*Waseem*