

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

FAO No.M-270 of 2013 (O&M).

DATE OF DECISION: February 27, 2015.

MANPREET KAUR @ MALKIAT KAURAPPELLANT.

VERSUS

SALWINDER SINGHRESPONDENT.

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

Present: Mr. Raj Kumar Kakkar, Advocate for the appellant.

Mr. K.B. Raheja, Advocate for the respondent.

SNEH PRASHAR, J.

1. By way of this appeal, Manpreet Kaur @ Malkiat Kaur-appellant (hereinafter referred to as “the appellant”) assailed the judgment and decree dated 31.05.2013 passed by the learned Additional District Judge, Ferozepur, allowing the petition for dissolution of marriage by a decree of divorce under Section 13 of the Hindu Marriage Act, 1955 (in short “the Act of 1955”) filed by her husband Salwinder Singh, petitioner-respondent (hereinafter referred to as “the petitioner”).

2. The relevant facts extracted from the record are as under:

Marriage between the parties was solemnized on 12.12.2007 as per Sikh rites by way of Anand Karaj ceremony at village Pakkan.

After the marriage, they lived and cohabited with each other as husband and wife at village Achhewala. Twin boys were born from this wedlock who were in the custody of the petitioner. The petitioner pleaded that from the very beginning of marriage, the attitude of the appellant-wife was cruel towards him and his family members. She used to say that he is not fit for her. She would abuse and insult him and his family members in the presence of friends and relatives whenever they visited his house. Due to her ill attitude, their marital bond was dead for all emotional and practical purposes. Their marriage had broken down irretrievably and it disturbed his mental peace. The appellant neither cared for the household nor for her children and made his life a living hell.

Elaborating, the petitioner alleged that the appellant used to compel him to leave the house of his family and reside with her parents at village Pakkan. She was a hot tempered woman and was adamant on her demands. On 12.12.2008, his sister along with her husband and his cousin brother visited his house in the evening to congratulate him on his first marriage anniversary. He asked the appellant to serve them tea but instead she abused him and his parents. She started throwing empty utensils in the kitchen all the while shouting that she was not their servant. Watching the conduct of the appellant, the relatives requested her to cool down and went away in a huff. He kept tolerating the cruel behaviour of the appellant with the hope that better sense may prevail upon her and even requested her to mend her ways but to no avail.

The petitioner further pleaded that in the first week of April,

2009, the appellant left the matrimonial home in his absence and took all her valuable clothes and jewellery with her. For a few days, he waited for her to return but ultimately he convened a Panchayat in the last week of April, 2009. Thereafter, he visited the house of the appellant and requested her parents to send her back. On the intervention of the Panchayat, she accompanied him and assured him that she would be dutiful and obedient. Despite her assurance, she again started misbehaving with him and threatened that she would burn him and his family members alive. In order to give practical shape to the aforesaid threat, on 21.02.2010 at about 9:00 A.M., she set her mother-in-law's room on fire, along with the household articles lying therein. He informed the parents of the appellant on phone regarding the incident, whereupon, her father alongwith his relatives and 7-8 persons of village Pakkan came to his house. They blamed him and his family for setting the room on fire and for wrongly levelling the allegation on their daughter. A hot argument perused, whereupon Mohinder Singh took out a knife from his pocket and caused injury to his father Balvir Singh, in his abdomen. The father of the appellant, Gurcharan Singh also gave two brick bat blows on the forehead of his father.

The matter was reported to the police and First Information Report No.24 dated 22.02.2010 was registered at Police Station Mallanwala under sections 452, 426, 324, 148 and 149 Indian Penal Code (in short, "I.P.C."). Thereafter, the appellant left the matrimonial home and never came back. With the said submissions the petitioner prayed for

dissolution of his marriage with the appellant on the grounds of cruelty and desertion.

3. Appellant appeared and contested the petition. She pleaded that the petition had been filed as a counter blast to the complaint filed by her under sections 323, 406, 498-A and 506 I.P.C.; an application under section 125 Code of Criminal Procedure (in short, “Cr.P.C.”); and a petition under the provisions of the Protection of Women from Domestic Violence Act, 2005 (in short, “the Act of 2005”). It was further alleged that the behaviour of the petitioner and his family members was very cruel towards her. They were greedy persons and were not satisfied with the dowry articles given by her parents.

On merits, the appellant admitted her marriage with the petitioner and birth of twins but she asserted that the infants had been snatched by the petitioner and his family members. All allegations of cruelty and desertion were specifically denied by her and a prayer for dismissal of the divorce petition was made.

4. The petitioner filed replication controverting the pleas taken in the written statement and reiterated the averments made his petition. On the pleadings of the parties, following issues were framed:-

- (1) Whether the respondent treated the petitioner with cruelty, as alleged? OPP
- (2) If issue no.1 is proved whether the petitioner is entitled to decree of divorce? OPP.
- (3) Relief.

5. During evidence, petitioner Salwinder Singh stepped into the

witness box as PW1 and reiterated his allegations on oath. To corroborate his version, he examined his father PW2 Balvir Singh, PW3 Balkar Singh, PW4 Manohar Singh and PW5 Kashmir Singh.

On the other hand, the appellant appeared as RW2 reiterating the defence set up by her and examined RW1 Gurcharan Singh, RW3 Gurnam Singh, RW4 Mohinder Singh and tendered documents Ex.R1 to Ex.R5.

6. Scrutinizing the evidence adduced by the parties and considering the submissions made on their behalf, learned trial Court finding that the petitioner had successfully proved that the appellant had treated him with cruelty and therefore, he is entitled to a decree of divorce, decided Issue No.1 in his favour and allowed the petition. A decree for divorce dissolving the marriage between the parties was passed.

7. Feeling aggrieved by the impugned judgment and decree dated 13.05.2013 passed by learned Additional District Judge, Ferozepur, appellant Manpreet Kaur @ Malkiat Kaur preferred the instant appeal.

8. The submissions made by Mr. Raj Kumar Kakkar, learned counsel representing the appellant-wife and Mr. K.B. Raheja, learned counsel representing the husband have been heard and record has been perused.

9. The allegation of the petitioner was that from the very inception of marriage the behaviour of the appellant towards him was rude and harsh because she did not find him suitable for her. She was also cruel

towards his parents and used to bluntly refuse to serve them. She abused and insulted them in the presence of relatives and friends. In this context, he narrated an incident dated 12.12.2008 when the appellant on being asked to serve tea etc. to his sister and brother in law and a cousin, who had come to congratulate them on the marriage anniversary, humiliated and embarrassed him, watching which the relatives left in a huff.

Another incident narrated by the petitioner was that on 21.02.2010 at 9:00 P.M., the appellant set on fire the room of her mother-in-law and burnt the household articles. He informed the parents of the appellant about her offensive act whereupon her father alongwith his relatives and 7-8 other persons of village Pakkan came to his house at village Achhewala and started alleging that he and his family members had themselves set the room on fire and had wrongly blamed his daughter. An exchange of hot words between the parties led to an altercation and Mohinder Singh, brother of the appellant, took out a knife from his pocket and gave two knife blows hitting his father Balvir Singh in the abdomen. Gurcharan Singh, father of the appellant gave two brick bat blows hitting on the forehead of his father. The matter was reported to the police and a case bearing First Information Report No.24 dated 22.02.2010 under sections 452, 426, 324, 148 and 149 of I.P.C. was registered against the appellant, her father and brother at Police Station Mallanwala.

10. It has come in evidence that the appellant, her father and brother were convicted by the Court of Sessions for the occurrence dated 21.02.2010. Learned counsel for the appellant argued that an appeal

preferred by the appellant against the judgment of conviction and order of sentence is pending before this Court in which the sentence has since been suspended and therefore the version of the petitioner could not be accepted as true.

Learned counsel further argued that the petitioner himself was guilty of treating the appellant with cruelty. He and his parents were not satisfied with the dowry given by the parents of the appellant at the time of marriage. To press their demand for additional dowry they maltreated the appellant, so much so that her minor children were snatched from her and she was turned out of the matrimonial home. This petition for divorce was filed by the petitioner only as a counter blast to the various complaints/petitions given by the appellant.

11. Section 13(1) (ia) of the Act of 1955 postulates that a matrimonial tie between the parties can be dissolved by a decree of divorce on the ground that the complaining spouse had been treated with cruelty by the other spouse. The word “cruelty” used in the said provision has not been defined in the Act, but it has been used in relation to human conduct, human behaviour and in respect of matrimonial duties and obligations. Indeed, every matrimonial conduct which may cause annoyance to the other may not amount to cruelty, but the kind of degree of cruelty necessarily to amount to a matrimonial offence has also not been defined anywhere.

12. Considering the facts and circumstances of the instant case and the evidence led by the parties, the findings of learned trial Court

were as under:-

“Coming to the facts of the present case, the petitioner has alleged on 21.02.2010 at about 9 a.m. the respondent has set the room of her mother-in-law on fire and burnt household articles lying therein. He informed about the fire incident to the father of the respondent on phone; whereupon, her father alongwith some other persons came there and stated that they (petitioner's side) themselves set the room on fire and they are wrongly blaming their daughter. There started exchange of hot words' whereupon Mohinder Singh took out a knife from his pocket and gave two knife blows hitting Balvir Singh father of the petitioner in his abdomen. Gurcharan Singh father of the respondent gave two brick bat blows hitting Balvir Singh on his forehead. Matter was reported to the police and a case FIR No.24, dated 22.02.2010 was registered at police station Mallanwala under Sections 452/436/324/323/148/149 IPC, PW2 Balvir Singh, who was injured in that incident, PW3 Balkar Singh, PW4 Manohar Singh and PW5 Kashmir Singh have corroborated the version of the petitioner and have stated that the respondent has set the room of her mother-in-law on fire and burnt the household articles lying in that room. The petitioner has also produced on record copy of judgment dated 19.10.2011, perusal of which indicate that the respondent Mandeep Kaur alias Malkiat Kaur was convicted and sentenced under Section 436 IPC for causing fire incident.

Keeping in view the conduct of the respondent, it is observed that after such as incident, the petitioner is supposed to be having an apprehension of danger at the hands of his wife always and forever. Such an act on the part of his wife for setting a room on fire creates an apprehension

of bodily danger as well as creates a doubt in the mind of the husband about his safety and the safety of those who are living with him. Act of the respondent coupled with other act proved on record is a clear cut case of cruelty on the part of his wife. Conduct of the party is to be seen according to the circumstances of the party. The petitioner was living in joint family. His mother was living with him. Mother of the petitioner was put to danger of her life and in the evening when father of the petitioner came another act was repeated. Collectively taking into consideration the entire facts, it is clear that the respondent is found guilty of treating her husband with cruelty. Hence, the petitioner is entitled to decree of divorce on the ground of cruelty.”

13. There appears to be no adversity or perversity in the findings of learned trial court. The appellant may have preferred an appeal against her and her family members' conviction and sentence in the criminal case registered for causing injuries to father of the petitioner but the said incident coupled with other specific incidents of cruelty proved by the petitioner and his witnesses during their deposition go a long way to prove that the conduct and behaviour of the appellant was very rude and harsh towards the petitioner and his parents which certainly amounted to physical and mental cruelty.

14. As far as the argument of learned counsel for the appellant that the present petition was a counter blast to the complaints given by the appellant is concerned, that apparently is a wrong conception because all complaints/petitions were filed by the appellant subsequent to the fire incident that took place on 21.02.2010 as well as subsequent to the

present petition. This petition was filed on 19.04.2010 whereas the criminal case under Sections 323, 406, 498-A and 506 of I.P.C. was got registered by the appellant on 28.05.2010; the petition under Section 125 Cr.P.C. was filed on 05.05.2010; and the petition under the Act of 2005 was filed on 05.05.2010 as is proved from the copies of the complaint and petitions Ex.R2, Ex.R3 and Ex.R4 respectively.

15. The above discussed facts and circumstances prove that the marriage between the parties has irretrievably broken down and it is no longer possible for the petitioner to live with the appellant under the same roof.

Thus, the findings of learned trial court do not warrant intervention and there being no merit in the appeal, it is hereby dismissed.

CMM No.137 of 2013

Since the appeal of the appellant Manpreet Kaur @ Malkiat Kaur has been dismissed on merits in limine, we do not find any justification to accept the application for maintenance allowance and accordingly the CMM is also dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

February 27, 2015.

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Note: Whether to be referred to the Reporter or not? Yes/No.