

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-60 of 2013

DATE OF DECISION: JULY 9, 2015

KULWINDER KAUR

...APPELLANT

VERSUS

SUKHCHAIN SINGH

...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. DIVJYOT SINGH SANDHU, ADVOCATE
FOR THE APPELLANT.

MR. VISHAL AGGARWAL, ADVOCATE
FOR THE RESPONDENT.

M. JEYAPPAUL, J.

1. Appellant Kulwinder Kaur has challenged the dismissal of her petition under Section 13 of the Hindu Marriage Act, 1955 praying for dissolution of marriage on the grounds of cruelty and desertion.

2. It is alleged by the appellant that the marriage of the appellant was solemnized with the respondent on 4.9.2007 according to Hindu rites and ceremonies. After the marriage, the parties resided and cohabited together as husband and wife till 13.3.2009. No child was born out of the wedlock. The respondent is incapable of performing sexual intercourse. Medical treatment was given to him, but the response was not positive. The respondent and his family members were greedy. They raised demand of ₹2 lacs from the appellant which was paid to them. They also demanded

dowry, but the parents of the appellant failed to fulfill their demand. The father of the respondent used to keep a bad eye on the appellant and tried to outrage her modesty. The appellant was ultimately turned out of the matrimonial home with three wearing clothes on 13.3.2009. The respondent treated the appellant with cruelty after marriage and deserted her for the last more than 2 years, immediately preceding the filing of the petition without sufficient cause.

3. Respondent Sukhchain Singh resisted the above petition filed by his wife alleging that the appellant did not want to have a child. She did not even allow the respondent to fulfill his matrimonial relations. He denied the allegations that after the marriage he and his family members raised a demand of ₹2 lacs and the same was paid by parents of the appellant. It is submitted that there was no demand of dowry by the respondent or his family members. The respondent also denied the serious allegation that father of the respondent used to keep a bad eye on the appellant and tried to outrage her modesty. It was denied that the respondent treated the appellant with cruelty or deserted her for the last more than 2 years immediately preceding the filing of the petition.

4. On the side of the appellant 3 witnesses were examined and on the side of the respondent 2 witnesses were examined.

5. The trial Court having adverted to the evidence on record arrived at a conclusion that the appellant failed to establish the allegations made by her in the petition that the respondent committed cruelty and deserted her.

6. The appellant has alleged that the respondent raised a demand of ₹2 lacs from her and the same was paid to him. The appellant could not indicate even the year when such a demand was made. Even assuming for the sake of arguments that there was a demand of ₹2 lacs by the respondent and the same was paid by the appellant, such a demand would not amount to demand of dowry. The demand should have been made in connection with the marriage. There is no pleading and there is virtually no evidence to establish that a sum of ₹2 lacs was demanded by way of dowry. Even otherwise, a bald allegation of demand of dowry without any reliable evidence cannot be projected as a ground for divorce.

7. Learned counsel appearing for the appellant would submit that the appellant has categorically deposed supporting her allegation in the petition that there was an attempt made by the father of the respondent to outrage her modesty. Very surprisingly, she admitted that such an incident being in bad taste was not disclosed to anyone except her husband. The conduct of the appellant would go to show that there was no such occurrence. If at all there was any such occurrence, she would have raised a hue and cry and brought the same to the notice of her parents.

8. In our considered view, such an allegation has been made only for the purpose of making out a case for divorce.

9. A wild allegation has been made by the appellant that the respondent was impotent. Counsel for the appellant would submit that evidence of PW1 will have to be relied upon to conclude that respondent was impotent.

10. It is the case of the appellant that the respondent took medical treatment for his impotency. The appellant has not chosen to examine any Doctor to establish that the respondent took treatment on the basis of medical advice.

11. As far as the allegation of impotency is concerned, it is only medical evidence which would conclusively establish the allegation of impotency. The appellant has not taken any efforts to subject the respondent to medical examination to prove his impotency. In the absence of any medical evidence, we conclude that the appellant has failed to establish that there was no cohabitation on account of impotency of the respondent.

12. In view of the above, we are of the considered view that allegation of cruelty cited as one of the grounds for divorce was not at all established by the appellant.

13. Now let us take up the ground of desertion set up by the appellant for grant of divorce. The appellant has categorically stated in the petition that after the marriage the appellant and the respondent resided and cohabited together as husband and wife till 13.3.2009. The petition for divorce was filed on 6.10.2010 before the trial Court. As per Section 13(1) (i)(b), the respondent should have deserted the appellant for a continuous period of not less than 2 years immediately preceding the presentation of the petition for divorce. The above admitted factual details would go to establish that the petition for divorce on the ground of desertion as well was filed well within 2 years from the date of alleged desertion. Inasmuch as 2 years' period of desertion as contemplated under Section 13 of the Hindu

Marriage Act, 1955 has not been completed prior to the presentation of the petition, the appellant cannot legally canvass for dissolution of marriage on the ground of desertion.

14. In view of the above, we find that there is no merit in the appeal. Therefore, the appeal stands dismissed.

(M. JEYAPPAUL)
JUDGE

July 9, 2015
Gulati

(RAJ RAHUL GARG)
JUDGE