

Sarabjit Singh versus Mandeep Kaur and another

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

FAO-M No. 164 of 2014 (O&M)

Date of decision: 18.08.2015.

Sarabjit Singh

.....Appellant.

Versus

Mandeep Kaur and another

.....Respondents.

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MS. JUSTICE NAVITA SINGH**

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?

Present: Mr. Anil Chawla, Advocate, for the appellant.

Mr. Sandeep Wadhawan, Advocate, for respondent No. 1.

NAVITA SINGH, J.

The challenge in this appeal is made to the judgment and decree dated 12.12.2013 whereby the Additional District Judge, Fast Track Court, Amritsar, dismissed the petition for divorce filed by the present appellant.

2. The allegations in the petition were that the marriage between the appellant and respondent No. 1 was solemnised in December, 2000, at Jhabal, Tehsil and District Tarn Taran, according to Sikh rites and ceremonies. Two children, one male and one female, were born out of the wedlock. Since the very inception of marriage the wife, i.e. respondent No. 1, treated the appellant, i.e. husband, with physical and mental cruelty. It had become impossible for the appellant to live with respondent No. 1

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under the same roof.

3. Respondent No. 1 used to tell the appellant that the marriage was performed against her wishes and she had wanted to marry someone else, but her parents did not agree. The appellant tried to prevail upon respondent No. 1 that since they were married, she should try and respect the relationship. Despite parties to the marriage being blessed with two children, respondent No. 1 did not come out of her web and kept cursing her parents for having made her marry the appellant.

4. Respondent No. 1 used to leave the matrimonial home without information and would threaten to commit suicide if any questions were asked and also to involve the appellant and his family members in criminal cases. She was disrespectful towards the members of the family of the appellant and neglected the children and the house.

5. Since respondent No. 1 would leave the matrimonial home frequently without disclosing anything, the appellant become suspicious and made inquiries in the village and found that she was in relationship with respondent No. 2. The said respondent was a lessee on the land of the appellant's father and for that reason used to visit the house of the appellant. During that time, the respondents grew fond of each other and respondent No. 1 got into an extramarital affair. The appellant was mocked at on account of relations between the respondents *inter se*. More often than not, respondent No. 1 would sedate the appellant and would slip out of the house. Despite persuasion, respondent No. 1 continued to be in relationship with respondent No. 2. She said that respondent No. 2 was an influential

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person and in case the appellant raised a voice, she would get him murdered. Ultimately, respondent No. 1 left the matrimonial home about four months prior to filing of the petition. She filed a complaint before the police on false allegations regarding demand of dowry which added to the miseries of the appellant.

6. The petition was heard *ex parte* against respondent No. 2 while respondent No. 1 put up strong contest. She pleaded that the appellant had concealed material facts and was not entitled to the relief claimed as he himself was leading an adulterous life and was having an affair with a neighbour, namely, Harpreet Kaur and had intended to marry her. He felt that respondent No. 1 was a hurdle and, therefore, he attempted to kill her by poisoning and then electrocuting her. She remained admitted in Guru Nanak Dev Hospital, Amritsar, but the matter was later on compromised for the welfare of the children.

7. Many a time, the appellant would beat the answering respondent and she suffered a fracture on her nose and finger. Her vision in the left eye was also impaired on account of a blow given by the appellant on her face. Respondent No. 1 found letters written by the appellant to Harpreet Kaur and the letters written by her in response thereto. The relationship between the appellant and Harpreet Kaur was amorous and respondent No. 1 also found them in a compromising position at one point of time in the house of the appellant. He would leave the house and go out with Harpreet Kaur not giving any right to respondent No. 1 to put any question. Rather her life in the matrimonial home was a virtual hell though

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she lived there for ten years for the sake of the children and in the vain hope of a better life with the appellant. The allegations in the petition were vehemently denied regarding her affair with respondent No. 2, including the allegation about neglecting the children and the house and extending any cruelty to the appellant.

8. The appellant appeared as his own witness as PW1 and examined Jasbir Singh, Ranjit Singh as PW2 and PW3, respectively. Respondent No. 1 examined Mukhtiar Singh, Darshan Singh, Kulwinder Singh and Dr. Sudesh Kumar as RW1, RW2, RW4 and RW5, respectively, while she made her own statement as RW3. The trial Court was not convinced from the evidence led by the appellant that he was able to prove that respondent No. 1 had any extramarital relationship and that she had in any way meted out cruelty to the appellant. The plea of desertion was also held to be not proved.

9. The allegations in the petition regarding cruelty and desertion, on the face of it, show that those were levelled in a generalised manner, which is done in most of the cases by the spouse seeking divorce. The appellant wanted to hinge his case on the ground of adultery, but for that he was required to lead cogent evidence. It appears that since respondent No. 2 was a lessee on the land of his father, the appellant found it very convenient to allege that he was paramour of his wife because of the fact that the gentleman had access to the house of the appellant. He did not lead any evidence to prove that he had himself, at any time, seen the respondents behaving in a manner as would show that they were emotionally involved,

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nor he produced any person from the neighbourhood, who would vouch for that.

10. Another thing which may be noticed is that the appellant alleged in his petition that when he questioned his wife about her affair with Jagdeep Singh, she told him that Jagdeep Singh was a very influential person and she would have the appellant killed if he interfered in her way of life. It is not understood as to what influence respondent No. 2 had and how he was in a position to get away with the murder of the appellant in connivance with respondent No. 1. He had simply taken the land of the appellant's father on lease and it was nowhere shown that he was a rich man or had some such connections as would encourage the wife to say something like that. Had he been a rich and influential man, he would have owned land and would not have taken other people's land on lease.

11. It is also interesting to note that in the affidavit of Jasbir Singh PW2 and Ranjit Singh PW3, by way of their examination-in-chief, the relevant part of the petition was produced. They deposed that respondent No. 1 treated the appellant with utmost mental and physical cruelty since beginning of the matrimonial life and that she had disclosed to the appellant about her relationship with some person whom she had wanted to marry. How the facts mentioned in the petition, which could not be in the knowledge of outsiders, found place in the examination-in-chief of the witnesses remain unexplained and this rather shakes creditworthiness of the witnesses. Neither of the two witnesses stated anything about they having seen the respondents together so as to raise a suspicion about their

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relationship and they also deposed that the wife used to sedate the husband for meeting her paramour. It is also absolutely unbelievable that those facts were in the personal knowledge of the witnesses.

12. It also did not come in the evidence of the said two witnesses that they were close friends or were so related to the appellant that they would have first hand knowledge about what transpired between the appellant and respondent No. 1 in the house of the appellant. Rather Jasbir Singh PW2 admitted in his cross-examination that he did not even know where the marriage of the appellant had taken place as he was not in the marriage party, nor he had ever witnessed any hot exchanges and/or scuffle between the appellant and respondent No. 1. He stated in his cross-examination that the appellant, his wife, i.e. respondent No. 1, and the parents of the appellant used to visit his family and that Mandeep Kaur (respondent No. 1) used to look after the children and also used to cook for the appellant. Ranjit Singh PW3 had tendered his affidavit as Ex. PW3/A to be read as a part of his statement and his cross-examination was deferred on that date, i.e. 27.04.2012. However, after that he did not step into the witness box and was not subjected to cross-examination. Since despite availing numerous opportunities, the appellant had not concluded the evidence, the Court proceeded further and posted the matter for evidence of the contesting respondent. Since Ranjit Singh son of Jagtar Singh was not cross-examined, his statement cannot be read in evidence.

13. There was nothing in the cross-examination of respondent No. 1 by way of any admission or otherwise to show that any part of the

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averments of the appellant was admitted. She rather stuck to her stand that she had nothing to do with respondent No. 2 and that the appellant had attempted to kill her and further that he was having an affair with Harpreet Kaur. Lengthy cross-examination was conducted with surely a large part consisting of irrelevant questions, but the veracity of the witnesses could not be shaken. Though it may be said that the testimony of the witnesses examined by respondent No. 1, namely, her father Mukhtiar Singh and one Darshan Singh are no better than that of the witnesses of the appellant, yet it was the appellant who was required to prove his case and stand on his own legs. He could have taken advantage of the evidence of respondent No. 1 only if there was an admission in his favour by the said respondent or any of her witnesses.

14. Kulwinder Singh RW4 proved Ex. RW4/A, which was signed by the appellant and respondent No. 1 in the panchayat of the village in which it was incorporated that Mandeep Kaur had filed an application against Sarabjit Singh and it was assured that Sarabjit Singh (appellant) would not make any mistake in future and he also apologised for his conduct in the presence of the panchayat. It was further undertaken by the appellant that if in future he beat his wife and did not behave properly, any action could be taken against him. In the cross-examination of Kulwinder Singh, who happens to be the brother of respondent No. 1, no question was put to him regarding Ex. RW4/A. The said document was signed by Kulwinder Singh himself as well. Therefore, it could not be said that the execution of the document was not proved. Though the appellant denied

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his signatures on document Ex. RW4/A in his cross-examination, a comparison of his signatures on the petition, the affidavit and on the statement made in Court, with those on document Ex. RW4/A would show that the formation of the letters is quite similar and possibility also cannot be ruled out that the appellant tried to camouflage his signatures because even the word 'Singh' signed by him on the affidavit Ex. PW1/A after the deposition and in the verification are not the same. The formation of letter 'h' in the word 'Singh' in the statement of the appellant recorded on 27.04.2012, when he tendered the affidavit Ex. PW1/A in evidence, is the same as in the document Ex. RW4/A.

15. From the evidence, thus, it came to fore that the appellant concealed the actual facts and put up a cock and bull story for seeking divorce. His own conduct was not up to the mark and rather he treated his wife with cruelty. The tables got turned on him and the trial Court made no mistake in arriving at the conclusion that the appellant was not entitled to the relief sought. It may be said that the appellant was not just trying to stand on shaky legs, but rather he did not have any legs to stand on.

16. For the reasons given in detail above, the appeal must fail and is accordingly dismissed.

(RAJIVE BHALLA)
JUDGE

(NAVITA SINGH)
JUDGE

18.08.2015
Ramesh