

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

-.-

FAO M 309 of 2014 (O&M)
Date of decision: 16.11.2015

Surat Singh

..... Appellant

Versus

Harvinder Kaur

.....Respondent

**Coram: Hon'ble Mr. Justice Rajive Bhalla
Hon'ble Mrs. Justice Rekha Mittal**

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Present: Mr. Naveen Sheokand, Advocate
for the appellant

Mr. S S Sodhi, Advocate
for the respondent

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present appeal lays challenge to the judgment and decree dated 10.07.2013 passed by the Additional Sessions Judge, Kaithal (in short, 'the trial Court'), dismissing the petition filed by the appellant for a decree of divorce under section 13 of the Hindu Marriage Act, 1955.

The facts relevant for disposal of the present appeal are that marriage of the parties was performed on 16.11.2007 and a child was born out of the wedlock. The appellant husband has prayed for a decree of divorce on the ground of cruelty by raising allegations viz; (i) the respondent had been coaxing the appellant to resign from army service and

start a Karyana shop at Nissing; (ii) she withdrew Rs.2.50 lacs from the joint account of the appellant and the respondent and misused the money (iii) the respondent misbehaved with the appellant and had beaten his old aged parents; (iv) she left the company of the appellant without any sufficient cause; and (v) the respondent has lodged an FIR for offence punishable under Section 498-A of the Indian Penal Code (in short, 'IPC') against the appellant and initiated proceedings under The Protection of Women from *Domestic Violence Act* 2005 causing mental cruelty.

The respondent-wife filed the written statement and in turn denied all the allegations accusing her of treating the appellant and his family members with cruelty or deserting the appellant. It is pleaded that she was harassed and maltreated on account of demand of a Car that was raised at the time of performance of marriage ceremony. She was thrown out of the matrimonial home on 14.12.2010 in the presence of Panchayat consisting of Sahab Singh son of Balkar Singh, Mukhtiar Singh son of Balkar Singh, Subeg Singh son of Chain Singh, residents of Nissing and Charanjit Singh son of Sucha Singh of village Bakal. The appellant in collusion with his family members with an intent to eliminate the respondent and got the house vacated from her poured hot kerosene oil upon the respondent and an FIR for offence punishable under Sections 323, 324, 498-A read with Section 34 IPC was registered against the appellant and his family members. She was compelled to initiate criminal proceedings and to file an application under Section 12 of The Protection of Women from *Domestic Violence Act* 2005 after the incident dated 15.03.2011. She has denied all other material averments set out in the petition with a prayer for dismissal of the petition with costs.

The controversy between the parties led to framing of following issues by the learned trial Court:-

1. Whether the conduct of the respondent as pleaded in the petition tantamount to subjecting the petitioner to cruelty, if so its effect?OPP
2. Relief.

The parties were permitted to lead evidence in support of their respective contentions.

The appellant appeared in the witness box and examined Charanjit alias Buta (PW2), Sukha Singh son of Amar Singh (PW3), Suresh Kumar, Manager, PNB, Kheri Sharaf Ali, Tehsil Assandh, District Karnal (PW4) and Constable Gulab Singh (PW5).

To rebut evidence of the appellant, the respondent examined herself and Manpreet Singh son of Kartar Singh (RW2) and Subeg Singh son of Chain Singh (RW3).

The learned trial Court, on consideration of the pleadings of the parties, evidence adduced and rival submissions made by their respective counsel, answered issue No. 1 against the appellant and as a consequence, the petition was dismissed with no order as to costs.

Feeling aggrieved by the verdict of the learned trial Court, the present appeal has been preferred by the appellant husband.

Counsel for the appellant has contended that the learned trial Court failed to appreciate the averments raised in the petition and the evidence adduced during trial resulting in committing a grave error by non-suiting his claim for divorce. It is vehemently argued that the appellant raised specific allegations of misconduct on the part of the respondent and adduced sufficient evidence to substantiate his allegations. The judgment

passed by the learned trial Court is the result of non-application of mind and misinterpretation of evidence and thus liable to be set aside. It is prayed that as marriage between the parties has no future, a decree of divorce may be allowed.

Counsel for the respondent, on the contrary, has supported the judgment passed by the learned trial Court with the submissions that the appellant is a guilty spouse and cannot be allowed to take advantage of his own wrong. He has failed to raise any specific allegation much less to substantiate those allegations by adducing cogent and convincing evidence. The appellant for the reasons best known does not want to live with the respondent and has initiated proceedings with an intent to put pressure upon the respondent to leave the matrimonial home wherein she is residing in a separate portion. The FIR got registered by the appellant in regard to withdrawal of amount Rs.2.50 lacs from joint account of the parties has been filed by the police. The appellant and his parents are guilty of treating the respondent with cruelty against whom criminal proceedings were initiated by lodging FIR with the police after the occurrence dated 15.03.2011. The respondent was constrained to file an application under Section 12 of the The Protection of Women from *Domestic Violence Act* 2005 as she was illegally being thrown out of the matrimonial house.

We have heard counsel for the parties and perused the records.

The appellant-husband has sought a decree of divorce primarily on the ground that the respondent wife is guilty of treating him with cruelty.

Before proceedings to deal with the pleadings and evidence on record, it is pertinent to mention that to constitute cruelty, the conduct complained of should be 'grave and weighty' so as to come to the conclusion

that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than ordinary wear and tear of married life. Equally true is that the conduct has to be considered in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions etc. Cruelty must be of the type as to satisfy the conscience of the Court that the relationship between the parties has deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce.

In the case at hand, the appellant-husband has accused the respondent for committing cruelty in view of the facts and circumstances detailed hereinbefore. The learned trial Court has adverted to each of these facts and circumstances in paras 27 to 31 of the judgment and negated the plea of the appellant. The appellant has alleged that the respondent wife forced him to resign from army service and start a Karyana shop at Nissing. No particulars much less the date, time, year and person in whose presence such a demand was raised by the respondent has been elicited. The respondent in the written statement as well as in her statement on oath has emphatically denied if any such demand was ever raised by her. The learned trial Court has rightly refused to accept the plea of the appellant that the respondent committed cruelty by coaxing the petitioner to leave the job in army.

Another allegation raised by the appellant is that the respondent withdrew an amount of Rs.2.50 lacs from the joint account of the appellant and the respondent in which the money was being deposited by him for

household expenses. The respondent wife has not denied withdrawal of amount but has raised the plea that the said amount was withdrawn by her for meeting household expenses. Admittedly, an FIR was got registered by the appellant against his wife for offence punishable under Sections 406 and 420 IPC in regard to misappropriation of the amount has been cancelled. This apart, when the appellant and the respondent opened a joint account, the respondent had an authority to operate the said account and make withdrawal from it. Secondly, the appellant has failed to adduce any tangible evidence that the respondent is guilty of mis-utilizing that amount. The conduct of the appellant in getting an FIR registered against his wife in the circumstances of the present case amounts to cruelty on his part.

The appellant has also failed to establish his plea in regard to misbehaviour of the respondent with his old aged parents. No specific date, month and year of any such misconduct on the part of the respondent has been incorporated in the petition in compliance with the provisions of Rule 4 of Punjab and Haryana Rules and Orders Volume II, Chapter-I Part-E. Not only this, the appellant has failed to lead evidence to establish his plea in this regard.

The appellant has also accused his wife of leaving his company without any sufficient cause though the said withdrawal is stated to be immediately before institution of the present petition in December, 2010. Admittedly, the respondent wife is residing in a part of the matrimonial house. She has instituted proceedings under The Protection of Women from *Domestic Violence Act* 2005 so that she may not be ousted from the matrimonial house. She has also lodged criminal proceedings against the appellant and his family members in regard to an occurrence

dated 15.03.2011 wherein she allegedly sustained injuries during her stay in the matrimonial home. As the respondent is persistent in her demand to stay in the matrimonial home, it is beyond imagination as to how the plea of the appellant can be accepted that the respondent wife is either guilty of desertion or depriving him of conjugal bliss. Taken from any angle, we do not find any reason to differ with the findings recorded by the learned trial Court holding that the appellant has failed to prove that the respondent wife is a guilty spouse or has subjected the appellant to cruelty of 'grave and weighty' nature so as to form the basis of a decree of divorce.

For the reasons aforesaid, finding no merit, the petition is dismissed, leaving the parties to bear their own costs.

(Rajive Bhalla)
Judge

(Rekha Mittal)
Judge

16.11.2015
Mohan Bimbira