

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

**FAO-M-7 of 2014 (O&M)
Date of decision: 24.02.2015**

Anita Rani

.....Appellant

Vs.

Surinder Kumar

.....Respondent

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

Present: Mr. J.P.Dhull, Advocate for the appellant-wife.
Mr. Rajinder Goel, Advocate for the respondent-husband.

Ajay Kumar Mittal, J.

1. This appeal has been filed by the appellant-wife against the judgment and decree dated 14.10.2013 passed by the trial court whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (in short, "the Act") filed by the respondent-husband for dissolution of marriage has been allowed.

2. A few facts relevant for the decision of the controversy involved as available on the record may be noticed. Marriage between the parties was solemnized on 9.12.2001 as per Hindu rites and ceremonies in the presence of relatives and friends of both the parties at Village Budha

Khera, Tehsil and District Kaithal. Out of the wedlock, a daughter namely

Simran and two sons namely Dhruv and Prince were born. The marriage was stated to be simple and dowry-less. Younger sister of the appellant - Usha Devi was married to the younger brother of the respondent namely Devinder Kumar on the same day i.e. 9.12.2001. The said Usha Devi died on 6.6.2007 and dowry death case under section 304-B/34 IPC was registered by police against the parents of the respondent and Devinder, husband of Usha Devi. All the three were convicted by the trial court vide judgment dated 4.11.2008. However, in appeal before this court, they have been granted bail. Prior to the death of Usha Devi, the respondent alongwith the appellant was residing separately from his parents. The news of death of Usha Devi was conveyed to the parents of the appellant by the respondent. He brought them to Kaithal and managed the transportation of the dead body from Kaithal to Budha Khera as the parents of Usha Devi desired that they shall cremate the dead body at Bhudha Khera. The appellant filed petition under Section 125 Cr.P.C making allegation to the effect that the respondent had conducted second marriage with another lady without getting decree of divorce from her and thus the respondent had committed the offence of bigamy which amounts to mental cruelty to her. She also made allegation against the character of the respondent and openly said that he was a womanizer. The appellant left the matrimonial house alongwith the children on 4.6.2007 and thereafter efforts made and panchayats convened by the respondent to bring the appellant to the matrimonial home proved futile. Upon notice, the appellant appeared and filed written statement controverting the averments made in the petition. She inter alia stated that her younger sister was married to the younger brother of the

respondent. She was murdered on 6.6.2007 on account of demand of dowry by the brother and parents of the respondent. Criminal case was registered against them and they were all convicted. Thus, keeping in view the safety of her life, the respondent himself left the appellant at the house of her parents in Village Budha Khera. The respondent never came to the house of the parents of the appellant to bring her back. The respondent was annoyed with her on account of lodging of FIR against his parents and brother. The trial court taking into consideration the evidence on record allowed the petition and granted decree of divorce to the respondent vide judgment and decree dated 14.10.2013. Hence the instant appeal by the appellant wife.

3. We have heard learned counsel for the parties and perused the record.

4. The trial court on the pleadings of the parties framed the following issues:-

- i) “Whether the petitioner is entitled to a decree of divorce on the ground of desertion as alleged? OPP
- ii) Whether the petitioner has no locus standi to file the present petition? OPR
- iii) Whether the petition is not maintainable in the present form? OPR
- iv) Whether the petitioner has no cause of action? OPR
- v) Relief.”

To prove his case, the respondent appeared himself as PW1 and examined Pala Ram, his neighbour as PW2. Documents Exs. P.1 to P.9 were tendered into evidence. On the other hand, the appellant appeared herself as RW1 and examined her father as RW2. Documents Exs R.1 to R.3 were produced in evidence. The respondent in his statement deposed that after the marriage on

9.12.2001, the appellant deserted him without any sufficient cause. She in her petition under Section 125 Cr.PC levelled allegation of bigamy against him. She even raised finger against the character of the respondent. This caused mental tension to the respondent. The appellant herself admitted that she was living separately from the respondent for the last more than 6/7 years. The allegations levelled by her against the respondent regarding bigamy and against his character were not proved. In her affidavit while appearing as RW1, the appellant stated that she came to know from reliable source that the respondent had performed second marriage with another lady named Bindu and he had committed the offence of bigamy. In cross examination, she stated that she did not know Bindu and she never met her. Against the allegation that the respondent is a womanizer, the appellant could not tell the name of any lady with whom the respondent was indulging in extra marital relations. In her cross examination as RW1, the appellant stated that she wanted to live with the respondent. The trial court after examining the oral and documentary evidence on record allowed the petition filed by the respondent-husband and granted decree of divorce by dissolution of marriage.

5. False allegation of adultery/illicit relations levelled by one of the spouse against the other is another example of mental cruelty meted out to the spouse. This Court in ***Smt.Rajbala vs. Sukhbir Singh***, 2003(3) RCR (Civil) 182 while dealing with identical issue recorded thus:-

“In Manjit Kaur's case (supra) 2001 (2) RCR(Civil) 323 (P&H), it has been held by this Court that unfounded allegations of adultery consists of cruelty. The marriage is a trust between the male and female partner and if irresponsible

allegations are levelled by the spouse against each other, it will be held that the spouse when makes reckless allegations without any basis, does so, at his/her own risk and responsibility. It has been further held that levelling of false allegations by the wife to the extent that her husband was leading an adulterous life is an act of cruelty and even a single act of cruelty after marriage is a valid ground for divorce.”

In *K.Srinivas Rao vs. D.A.Deepa*, 2013(5) SCC 226, while elaborating mental cruelty on account of false allegation against the character of other spouse, the Apex Court observed in para 14 as under:-

“14. Thus, to the instances illustrative of mental cruelty noted in *Samar Ghosh*, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.”

6. While dealing with the concept of 'desertion', the Apex Court in *Dr. (Mrs.) Malathi Ravi, M.D. vs. Dr. B.V.Ravi, M.D, (2014(7) SCC 640*, observed as under:-

“15.....The plea that was raised for grant of divorce was under Section 13(1)(ib) of the Act. It provides for grant of divorce on the ground of desertion for a continuous period of not less than two year immediately preceding the presentation of the petition. The aforesaid provision stipulates that a husband or wife would be entitled to a dissolution of marriage by decree of divorce if the other party has deserted the party seeking the divorce for a continuous period of not less than two years immediately

preceding the presentation of the petition. Desertion, as a ground for divorce, was inserted to Section 13 by Act 68/1976. Prior to the amendment it was only a ground for judicial separation. Dealing with the concept of 16 desertion, this Court in *Savitri Pandey v. Prem Chandra Pandey, (2002) 2 SCC 73* has ruled thus:-

“Desertion”, for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other’s consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations i.e. not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. After referring to a host of authorities and the views of various authors, this Court in *Bipinchandra Jaisinghbai Shah v. Prabhavati*¹ held that if a spouse abandons the other in a state of temporary passion, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion.”

16. In the said case, reference was also made to *Lachman Utamchand Kirpalani’s* case wherein it has been held that desertion in its essence means the intentional permanent forsaking and abandonment of one spouse by the other

without that other's consent, and without reasonable cause. For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation."

7. In the present case, from the evidence on record, the allegation of bigamy against the respondent has not been proved. The appellant levelled allegation against his character in petition under Section 125 Cr.P.C which was not proved. Further, it is clear that the appellant herself admitted that she was living separately from the respondent for the last more than 6-7 years. The appellant herself was not ready to live with the respondent. Efforts were made by the respondent to bring her back but the appellant did not agree. Thus, the appellant had deserted the respondent-husband for more than the statutory period of two years as required under Section 13(1)(ib) of the Act. The relevant finding recorded by the trial court reads thus:-

"18. During the arguments, the fact that the respondent is living separately from 4.6.2007 is not rebutted. However, it is alleged that the petitioner never tried to call back the

respondent and he pressurized the respondent and his family members to compromise in the matter under section 304-B/34 of Indian Penal Code due to which the respondent could not go back. It is alleged that the respondent is ready and willing to go back. It is further alleged that the allegations in the petition under Section 125 Code of Criminal Procedure 1973 were levelled against the respondent on the ground that he was living separately and somebody told to respondent that the petitioner was having a keep which was believed by the petitioner (respondent in this petition). Now it is to be decided that whether the above mentioned facts by the respondents are true and correct and she has a reasonable cause to stay away from the petitioner or she was staying away without any sufficient cause. In this regard, this court is of the view that the facts raised at the time of arguments by the respondent are contrary to the facts deposed by the respondent in the evidence. At the time of arguments, it is argued that the respondent is ready and willing to go with the petitioner but in the cross examination otherwise is stated by the respondent. In her affidavit while appearing as RW1, the respondent has vehemently stated that she came to know from reliable sources that the petitioner has performed second marriage with another lady named Bindu and he has committed the offence of bigamy. In the cross examination, she stated that she do not know who is Bindu and she never met Bindu. It is further stated that Bindu is not married wife of petitioner but is living as mistress/keep in a house which the petitioner has taken on rent. It shows that the allegations are levelled by the respondent in a casual manner without confirming the facts. The respondent further deposed that the petitioner is a womanizer and is living an immoral life. However, she stated that she cannot tell the name of any lady with whom the petitioner is indulging in extra marital relation. Again it is made out that the allegations are levelled

in a casual manner without confirming the same. She admitted that she is living separately from the petitioner for the last about 7 years. At another place in the cross examination she stated that she do not want to reside with the petitioner. Then she volunteered that she tried her level best to live with the petitioner but the petitioner has kept a keep, therefore, she do not want to reside with him. She further denied that the petitioner is leading very pious and oral life and is a man of good character. She denied that she levelled the allegations about the character of the petitioner knowing the same to be false. It seems that she is levelling the allegations and she is not ready and willing to go with the petitioner. The arguments advanced on behalf of respondents are against the pleadings and the evidence. Still if the respondent was ready to go with the petitioner she could have filed an application to amend the written statement or to reexamine herself or for reconciliation but no such application was moved. It appears that without any serious intention to go with the petitioner, arguments are advanced against facts, pleadings and evidence. As far as the allegation of pressurizing the respondent and his family members in the case under section 304-B of Indian Penal Code is concerned, the respondent admitted in her cross examination that the petitioner was with them in that case and helped them to get justice. She further admitted that she has gone to her parents house with the consent of petitioner for 3-4 days only. However, after that she never came back to Kaithal. The petitioner while appearing as PW1 deposed that he made sufficient efforts to bring the respondent but she did not become ready to come. His version is supported by PW2 Pala Ram. In such circumstances, from the evidence adduced by the parties, it is made out that the respondent has levelled false allegations against the petitioner and she has deserted the petitioner for the last 6-7 years i.e. more than 2 years immediately

preceding the institution of the present petition, therefore the ground of desertion is well established”.

8. The trial court has considered the entire evidence and recorded the findings keeping in view the overall facts and circumstances of the case. Learned counsel for the appellant has not been able to show any illegality or perversity in the said findings which may warrant interference by this Court. Consequently, finding no merit in the appeal, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

February 24, 2015
gs'

(Sneh Prashar)
Judge