

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

FAO-M-7 of 2015(O&M)

DATE OF DECISION: January 08, 2015.

Sarabjit Kaur

....APPELLANT

VERSUS

Harjinder Singh

...RESPONDENT

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

Present: Mr. Surjit Singh Swaich, Advocate
for the appellant.

SNEH PRASHAR, J.

1. This appeal under Section 28 of the Hindu Marriage Act, 1955 (in short, 'the Act') by Sarabjit Kaur appellant-wife, assails the judgment and decree dated 01.10.2014 passed by the learned District Judge, Fatehgarh Sahib, vide which H.M.A Case No.105RT dated 05.12.2012 filed by Harjinder Singh respondent-husband was allowed.

2. The relevant facts which need to be recaptulated are as under:

Appellant-Sarabjit Kaur was married to Harjinder Singh on 23.11.2007 at Village Kharar, District Mohali, as per Sikh rites and rituals. After marriage, the parties cohabited as husband and wife at Village Hawara Kalan, Tehsil Khamanon, District Fatehgarh Sahib. A male child, namely, Jagnoordeep Singh was born out of the wedlock on 05.10.2008.

Harjinder Singh filed the instant petition seeking dissolution of his marriage with Sarabjit Kaur on the grounds; (i) that he had been treated with cruelty by Sarabjit Kaur; (ii) that he had been deserted by Sarabjit Kaur without any reasonable cause. Elaborating his allegations, Harjinder Singh pleaded that from very beginning the behaviour of Sarabjit Kaur towards him and his family members was not normal. She proved to be a quarrelsome lady having no regard for elders and humiliated him and his mother in presence of relatives and co-villagers and refused to cook meals etc. His father had a brother Balbir Singh who did not marry and remained a bachelor throughout life. After his father Gurnam Singh expired, the responsibility of his parental uncle came on his shoulders. Sarabjit Kaur called his mother "Randi, Kulta, Badchalan" and levelled an allegation that she was living in illicit relationship with Balbir Singh.

3. It was further submitted by Harjinder Singh that in the month of March, 2008 when he was going to Chandigarh for getting his Car serviced, Sarabjit Kaur asked him to drop her at her parental home in Kharar, and he did so; however in the evening when he went to take her back to the matrimonial home she refused to accompany him despite repeated requests. On 05.10.2008, their son Jagnoordeep Singh was born. At that time, he continuously visited Sarabjit Kaur and requested her to come back to the matrimonial home, but she flatly refused. His efforts to bring back Sarabjit Kaur in August 2009 also proved futile.

In September 2009 (appears to have been wrongly typed as September, 2008 in the judgment of trial Court), he along with Kuldeep Singh Sarpanch and Charanjit Singh Panch of his village, went to the parental home of Sarabjit Kaur but she again refused to accompany him. He then filed a petition under Section 9 of the Act for restitution of conjugal rights, but in the reply, Sarabjit Kaur levelled false and baseless allegations against him and his family members. Thereafter, she started giving false complaints of harassment and demand of dowry against him and his family members, but the same were filed by the police authorities being motivated and false.

Lastly, Harjinder Singh alleged that their marriage had broken beyond any chance of reconciliation because of the cruelties he had faced at the hands of Sarabjit Kaur and also because he had been deserted by her without any reasonable cause.

4. Sarabjit Kaur-appellant contested the petition. In the written statement filed by her, she raised preliminary objections with regard to maintainability of the petition in the present form; concealment of true and material facts by Harjinder Singh etc. Replying on merits, she admitted to be the legally wedded wife of Harjinder Singh and admitted birth of a son out of their wedlock, but emphatically denied the allegations of cruelty and desertion levelled against her. She pleaded that she had not left the matrimonial home on her own, rather, was thrown out by her husband-Harjinder Singh. Her husband and his family members being greedy persons ill treated her for bringing insufficient dowry. She denied that she had been calling bad names to her mother-in-law and submitted that she gave full respect to her as well as the paternal uncle and other relatives of Harjinder Singh.

She pleaded that in March 2008, Harjinder Singh left her at her parental home and thereafter never came to take her back. In April

2008, she suffered a paralytic attack due to the mental and physical cruelties she was facing at the hands of her husband and in-laws.

Thereafter, her son was born on 05.10.2008. The behaviour of her husband and mother-in-law was so abusive towards her that her matrimonial life became a nightmare. She admitted that Harjinder Singh filed a petition under Section 9 of the Act, but alleged that the petition was later on withdrawn by him when she was ready to join his company. She denied that the complaints filed by her against Harjinder Singh were inquired into by the police Authorities and were rejected, being false and prayed for dismissal of the petition.

5. On the pleadings of the parties, the learned trial Court framed the following issues:

(i) Whether the respondent has treated the petitioner with cruelty and has deserted the petitioner without any reasonable cause or excuse?OPP

(ii) Whether the petitioner is entitled to decree of divorce as prayed for?OPP.

(iii) Whether the petition is not maintainable?OPR

(iv) Whether the applicant has no locus standi to file the present application?OPR

(v) Relief.

Both the parties adduced evidence in support of their respective contentions.

6. Finding that Harjinder Singh had succeeded in proving that he had been treated with cruelty by his wife-Sarabjit Kaur and also that he had been deserted by her without any reasonable cause, learned trial Court held that on both the said grounds Harjinder Singh was entitled to dissolution of his marriage with Sarabjit Kaur and accordingly issues No. (i) and (ii) were decided in his favour; issues number(iii) and (iv) were settled against Sarabjit Kaur for having not been pressed during arguments. Resultantly, a decree of divorce dissolving the marriage of the parties was passed by the trial Court.

7. Feeling aggrieved by the impugned judgment and decree dated 01.10.2014 passed by learned trial Court, the appellant-wife preferred the instant appeal.

8. Submissions made by learned counsel representing appellant-Sarabjit Kaur have been heard and the evidence led by the parties, photostat copies of which were furnished by learned counsel for the appellant during the course of arguments, have been perused and considered.

9. As indicated above, Harjinder Singh was held entitled to dissolution of his marriage with Sarabjit Kaur firstly on the ground that he had been treated with cruelty by her and secondly that he had been deserted by her without any reasonable cause. Assailing the findings of the learned trial Court, learned counsel for appellant Sarabjit Kaur argued with vehemence that not even a single specific allegation/averment was raised by Harjinder Singh in his pleadings or during his deposition which could be considered sufficient for making out a case of 'cruelty' or 'desertion' against Sarabjit Kaur. His allegations were vague and completely general in nature. Rather, it is apparent from his deposition and the deposition of his witnesses that the behaviour and conduct of Sarabjit Kaur at her matrimonial home was cordial in every manner. Further, all his witnesses namely PW-3 Balbir Singh PW-4 Ajmer Kaur and PW-5 Jaspal Kaur consistently testified that whenever they visited the house of Harjinder Singh, they were given due respect by Sarabjit Kaur. According to PW-2 Kamaljit Kaur, mother of Harjinder Singh, the only cause of quarrel between Harjinder Singh and Sarabjit Kaur was visit of an unmarried friend of Sarabjit Kaur to their house. It shows that quarrel between the parties was simple wear and tear of married life.

10. Learned counsel asserted that it was also proved that Harjinder Singh had levelled false allegation that Sarabjit Kaur used abusive language against her mother-in-law. PW-4 Ajmer Kaur witness of Harjinder Singh, admitted that Sarabjit Kaur had never called any bad name to her mother-in-law in her presence. Harjinder Singh as well as his mother admitted that Sarabjit Kaur had suffered a paralytic attack in April 2008 when she was at her parental home and the entire expenses of her treatment and subsequent to that at the time of birth of the son to her, were borne by her parents. The instant petition was filed by Harjinder Singh only to get rid of Sarabjit Kaur because she had suffered a paralytic attack.

11. To us, there appears to be no force in the arguments of learned counsel for the appellant. As regards the allegation of Harjinder Singh that he had been treated with cruelty by the appellant, it cannot be said that his allegations were general in nature and nothing specific was alleged by him. He pleaded and then substantiated his allegation with his own deposition made through an affidavit and by examining his mother PW2- Kamaljit Kaur that the appellant had a foul tongue and she used to call bad names to her mother-in-law i.e., 'Randi', 'Kulta', 'Badchalan'. She also used to level allegation of

chastity on his mother by alleging that she was having illicit relations with her brother-in-law, namely, Balbir Singh who was unmarried.

Though, a person may be able to digest bad names called to him/her by the spouse, but it appears almost improbable that a spouse would accept insult and humiliation of his/her mother that too such abusive words.

12. In addition to his own statement as PW1 and the testimony of his mother Kamaljit Kaur PW2, Harjinder Singh examined his neighbours PW3- Balbir Singh, PW4- Ajmer Kaur and PW5-Jaspal Kaur who all corroborated his allegations regarding the behaviour and conduct of Sarabjit Kaur towards him and his mother. They unequivocally deposed that Sarabjit Kaur used to pick up quarrels with her husband and mother-in-law almost daily and would come out of the house in the street abusing them loudly and would call her mother-in-law 'Randi', 'Kulta', 'Badchalan' and speak out that she was having illicit relations with her brother-in-law.

13. Indeed, as pointed out by learned counsel for appellant Sarabjit Kaur, PW3-Balbir Singh admitted in his cross-examination that Sarabjit Kaur had never called bad names to her mother-in-law in his presence, but it was not so stated either by PW4-Ajmer Kaur or PW5-

Jaspal Kaur. Infact it was suggested to PW4-Ajmer Kaur by Sarabjit Kaur herself that she used to abuse her mother-in-law and often used to have quarrels with her husband. Also, the statement of PW4-Ajmer Kaur and PW5-Jaspal Kaur to the effect that Sarabjit Kaur used abusive language towards her mother-in-law which embarrassed her husband, was not challenged by Sarabjit Kaur during cross-examination of the said witnesses.

14. As far as the evidence of Sarabjit Kaur is concerned, learned trial Court analysing her deposition and the testimony of her sister RW2-Jaswinder Kaur recorded the findings as under:

“The respondent while appearing in the witness box as RW1 has tendered her affidavit Ex. RW1/A, wherein she denied having committed any cruelty towards the petitioner by the claiming that the behaviour of the petitioner was in fact cruel towards her and that she was maltreated on account of bringing less dowry and similar is the testimony of RW2-Jaswinder Kaur sister of the respondent. Interestingly, none of these material witnesses including the respondent have denied the allegations against the respondent of using abusive

language against the mother of the petitioner or proclaiming her to 'Randi', 'Kulta', 'Badchalan' and also there is no rebuttal by these witnesses qua the allegations by the petitioner that the respondent often proclaimed that the mother of petitioner was having illicit relations with his uncle. RW1, respondent, Sarabjit Kaur, even admitted in her cross-examination that she had filed a complaint against the petitioner and his family with SSP, Mohali, wherein the allegations were also levelled against Balbir Singh uncle of the petitioner, but no action was taken by the Police on such complaint. She also admitted having filed criminal complaints under Sections 498A, Domestic Violence Act and also petition under Section 128 Cr.P.C. against the petitioner. The respondent also admitted that the matter was sent for reconciliation in the mediation center, wherein she has suffered a statement that there was no chance of reconciliation between the parties. Infact, the respondent as well as her sister in their testimonies have repeatedly claimed that the uncle of

the petitioner Balbir Singh is in fact residing in the house of the petitioner itself.”

15. Based on the evidence of Harjinder Singh, coupled with the evidence of Sarabjit Kaur, as scrutinized above, and relying on a decision Akhilesh Kumar Bisht Vs. Sunita Kumari 2011(1) Civil Court Cases 220 (Uttarakhand) (DB), learned trial Court rightly held that utterance of such abusive words by the wife towards her mother-in-law were sufficient to cause mental cruelty to the husband. Accordingly, it was held that Harjinder Singh succeeded in proving that he had been treated with cruelty by Sarabjit Kaur.

16. Coming to the second allegation of Harjinder Singh that he had been deserted by Sarabjit Kaur, admittedly the parties were residing separate since March, 2008. According to Harjinder Singh, in March 2008 when he was going to Chandigarh for service of his car, Sarabjit Kaur accompanied him with the understanding that she be dropped on the way at her parental house at Kharar and she would return with him on his way back. She was left at her parental home but in the evening when he went to pick her up, she refused to accompany him and since then, despite all efforts made by him to bring her back, she had refused to return to the matrimonial home.

On the other hand, the version of Sarabjit Kaur was that she was beaten and turned out of the matrimonial home in March 2008.

17. The version of either of the parties may be true but the fact remains that since March 2008, Sarabjit Kaur was residing at her parental home and had not joined the conjugal company of Harjinder Singh. PW2- Kamaljit Kaur, mother of Harjinder Singh and their three neighbours PW3-Balbir Singh, PW4-Ajmer Kaur and PW5-Jaspal Kaur, all unequivocally deposed that number of times Harjinder Singh had taken Panchayat from his village Hawara Kalan to the village of Sarabjit Kaur for bringing her back to the matrimonial home, but she had bluntly refused to accompany him. That apart, Harjinder Singh filed a petition under Section 9 of the Act for restitution of conjugal rights. No doubt, he withdrew the said petition before filing the present petition for divorce, but the reason for withdrawal of the petition was admitted by Sarabjit Kaur herself. She conceded that the said petition was referred by the Court to the Mediation and Conciliation Centre for settlement between the parties and during the mediation process, she had suffered a statement that there was no chance of reconciliation. When Sarabjit Kaur had firmly denied reconciliation with Harjinder Singh, the withdrawal of the petition

cannot be used as an adverse circumstance against Harjinder Singh.

There was no reason to pull on the marital relationship when Sarabjit Kaur was disinterested in joining the conjugal company of her husband.

18. Importantly, it was the version of Sarabjit Kaur that she had filed a complaint under Section 498A of the Indian Penal Code and also invoked the provisions of Domestic Violence Act, apart from filing a petition under Section 125 of the Code of Criminal Procedure claiming maintenance from her husband. She did not spell out a word to depose that she or her family had made any effort at any point of time to reconcile the dispute so that she could return to her matrimonial home. As observed by learned trial Court her sister RW2-Jaswinder Kaur testified that efforts were made for reconciliation, but a perusal of her statement reveals that the efforts, if any, were made only in 2012 i.e., during the pendency of the present petition filed on 12.10.2011. No evidence could be led by Sarabjit Kaur to prove that there had been any effort on her part to return to her matrimonial home prior to filing of the present petition.

19. It is also the finding of learned trial Court that from the fact that the police had not registered any FIR on the complaint given by

Sarabjit Kaur that she was being maltreated by her husband and his family on account of their demand for more dowry, it can be easily inferred that the allegations levelled in her complaint by Sarabjit Kaur could not be substantiated by her. From that, it follows that Sarabjit Kaur miserably failed to prove any reasonable cause for living separate from her husband since March 2008 and therefore, it stood established that Sarabjit Kaur had deserted Harjinder Singh without any sufficient cause for a period of more than 2 years before filing the instant petition.

20. Consequent to the above discussion, there being no perversity, or error of law in the findings of learned trial Court which could warrant intervention, the decree of divorce dissolving the marriage of the parties on the grounds that (i) Harjinder Singh had been treated with cruelty; (ii) that he had been deserted by Sarabjit Kaur; is upheld and the appeal being devoid of merit is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

January 08, 2015.

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