

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-8 of 2015 (O&M)

Date of Decision: 8.1.2015

Veerpal Kaur

....Appellant.

Versus

Balvinder Pal and another

...Respondents.

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

PRESENT: Ms. Shamrila Sharma, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the wife against the judgment and decree dated 29.11.2014 passed by the Additional District Judge (Fast Track Court), Bathinda whereby the petition filed by the husband under Section 13 of the Hindu Marriage Act, 1955 (in short "the Act") for dissolution of marriage by a decree of divorce, was allowed.

2. Put shortly, the facts of the case as narrated therein may be noticed. Respondent No.1 filed a divorce petition under Section 13 of the Act, *inter alia*, pleading that the marriage between him and the appellant was solemnized on 29.6.1997 by way of Anand Karaj ceremonies at village Malee Kan, District Sirsa. The parties lived together as husband and wife and cohabited as such at village Rai Ke Khurd, District Bathinda. Out of the said wedlock, a son, namely, Harinder Pal was born on 10.12.1998. The appellant was a quarrelsome

lady and from the beginning of the marriage, she used to pick quarrel with respondent No.1 and his family members. She also used to treat respondent No.1 and his family members with utter dis-respect and disregard. She used to leave the matrimonial house time and again without the knowledge and consent of respondent No.1 and all the times, respondent No.1 used to bring her back to his house with a request to mend her ways. The appellant developed illicit relations with respondent No.2 and started living in adultery with him. The appellant used to visit the house of respondent No.2 and used to spend time with him for hours together and respondent No.2 also used to visit the house of respondent No.1 in his absence. Upon coming to know the said fact in the year 2009, respondent No.1 asked the appellant to mend her ways but she said that she had no concern with respondent No.2 and continued to meet him in a secret manner. Respondent No.1 caught the appellant with respondent No.2 in compromising position and upon this, he convened a panchayat. In the said panchayat, the appellant assured respondent No.1 to mend her ways but she continued her illicit relations with respondent No.2. On 12.5.2012, respondent No.1 again convened a Panchayat and in the presence of the Panchayat, the appellant stated that she could not live without respondent No.2 upon which, it was decided that the marriage between the appellant and respondent No.1 be got dissolved by mutual consent. However, the appellant did not file joint petition under Section 13-B of the Act rather she moved an application before the Women Cell, Sirsa levelling false allegations regarding demand of motor cycle by respondent No.1. According to respondent No.1, the above said acts of the appellant amounted to cruelty and there was no chance of the appellant to live with him as she

was living in adultery with respondent No.2. Upon notice, the appellant as well as respondent No.2 filed their separate written statements. The appellant besides raising various preliminary objections in the written statement pleaded that respondent No.1 and his family members were greedy persons and from the very beginning of the marriage, they were not satisfied with the dowry given by her parents. It was further pleaded that respondent No.1 and his family members in order to fulfil their lust for more dowry, used to give merciless beatings to her and used to throw her out of the matrimonial house. It was denied that the appellant had illicit relations with respondent No.2 or that she used to spend time with respondent No.2. It was pleaded that respondent No.2 used to save her from the clutches of respondent No.1 and due to that reason, respondent No.1 had also started keeping a grudge against respondent No.2. The other averments made in the petition were denied. Respondent No.2 also raised various preliminary objections. It was pleaded that the allegations levelled against him were totally false, baseless, concocted and defamatory in nature. According to respondent No.2, his house was situated near the house of respondent No.1 and respondent No.1 used to pick up quarrel with the appellant time and again without any reasonable cause and excuse and used to give her merciless beatings. The other averments made in the petition were denied and a prayer for dismissal of the same was made. From the pleadings of the parties, the trial court framed the following issues:-

1. Whether the petitioner is entitled for decree of divorce from the respondent on the grounds, mentioned in the petition? OPP
2. Whether the petition is not maintainable in the

present form? OPR

3. Whether the petitioner has no locus standi or cause of action to file the petition.

4. Relief.

3. The appellant in support of her case examined Harbhajan Singh as RW1, Parminder Singh as RW2, herself as RW3 and Palwinder Singh-respondent No.2 as RW4 whereas respondent No.1 besides examining himself as PW1 also examined Kehar Singh as PW2, Ram Kishan as PW3, Harinder Pal as PW4 and Gurmeet Singh as PW5. He also tendered enquiry report Ex.PX in evidence.

4. The trial court on appreciation of the evidence led by the parties decided issue No.1 in favour of respondent No.1 holding that the appellant treated respondent No.1 with mental cruelty and she herself left his company and was living in adultery with respondent No.2. Issues No.2 and 3 were decided against the appellant and respondent No.2 for want of evidence. Accordingly, the trial court vide judgment and decree dated 29.11.2014 allowed the petition filed by respondent No.1 under Section 13(1) (i) and (i-a) of the Act by dissolving the marriage between the appellant and respondent No.1 by passing a decree of divorce. Hence, the present appeal.

6. Learned counsel for the appellant submitted that the trial court had failed to consider the evidence produced by the appellant that respondent No.1 had treated her with cruelty and she was being harassed and humiliated on account of bringing less dowry. Learned counsel further submitted that the trial court has not appreciated the evidence in correct manner and wrongly allowed the divorce petition.

The finding of adultery recorded by the trial court was also assailed.

7. After hearing learned counsel for the appellant, we do not find any merit in the instant appeal.

8. The trial court after appreciating the evidence on record held that the allegations levelled by respondent No.1 had not been contradicted by the appellant by leading cogent evidence. The evidence led by respondent No.1 remained unchallenged and unrebutted. Further, it was held that the marriage of the appellant with respondent No.1 was solemnized in the year 1997 and during the 15 years of their marriage, the appellant did not make any allegation of demand of dowry or harassment at the hands of respondent No.1. PW4 Harinder Pal, son of the appellant and respondent No.1 who is aged 16 years, had also deposed against the appellant. He had caught red handed the appellant with respondent No.2 while in objectionable position. It was observed by the trial court that the appellant had treated respondent No.1 with mental cruelty and she herself left the company of respondent No.1 as she was living in adultery with respondent No.2. The relevant findings recorded by the trial court in para 9 of the judgment read thus:-

“9. The allegations levelled in the petition have not been contradicted by respondent No.1 by leading cogent evidence. The respondent no.1 has come forward to deny the allegations that the petitioner did not suffer any cruelty at her hands. But, the evidence led in this regard by the petitioner has remained unchallenged and unrebutted. RW1 Harbhajan Singh, alleged himself to have accompanied the panchayat, convened by the respondent no.1, but he failed to disclose the date or month of the marriage of the

parties. He also failed to narrate the fact as to when the petitioner had demanded any cash from the respondent Veerpal Kaur. It is pertinent to mention here that the marriage of the parties was solemnized in the year 1997 and during the 15 years of their marriage, the respondent no.1 did not make any allegations of demand of dowry or harassment at the hands of the petitioner. From the evidence on record, it is quite evident that when the illicit relations of respondent no.1 with respondent no.2 came to the knowledge of petition, only thereafter, the respondent no.1 while residing in her parental house, levelled allegations of demand of dowry against the petitioner, which does not seem to be proper. The respondent no.1 has admitted that she did not move any application to the police regarding the alleged maltreatment, suffered by her at the hands of petitioner. She has also admitted that after the marriage, Palwinder Singh started visiting their house. She has specifically denied that in their quarrel, Palwinder Singh respondent no.2 did not come forward to help her. She also deposed in her cross-examination that she did not file any petition to claim the custody of their son. Respondent no.2, Palvinder Pal while appearing as RW4, in his cross examination contradicted the plea/claim of the respondent no.1 by stating that panchayat was convened by the parties,

but he did not join any such panchayat. He also stated that he did not know as to when and at what place, the panchayat was convened. So this statement of respondent no.2, itself falsifies the claim of the respondent no.1 that he used to accompany the panchayat members, to help her and on such occasions, the respondent no.2 tried to make understand the petitioner, to mend his ways and not to harass and humiliate the respondent no.1. Though the respondent no.2 has alleged that due to the allegations levelled by the petitioner regarding his illicit relations with the respondent no.1, his image has been lowered in the general public at large. But in his cross examination, he duly admitted that he has not moved any application to the police authorities, regarding the allegations, so levelled by the petitioner. Further, this witness has also deposed that he is an agriculturist and used to remain at home and he also admitted that petitioner Balwinder Pal is a serviceman, so he used to remain away from home. Thus, the respondent no.2 and respondent no.1 could have got an opportunity to contact each other, in the absence of the petitioner. In this case, the statement of PW4 Harinder Pal, who is son of the petitioner and respondent no.1 is very much important, who caught red handed respondent no.1 with respondent no.2 while in compromising position. Harinder Pal is aged

16 years, and he can understand each and every thing and it is not possible that he was taught by the petitioner to depose falsely against his own mother i.e. respondent no.1. Thus, evidence on record substantiate that respondent no.1 has treated the petitioner with mental cruelty and she herself left the company of the petitioner and she is living in adultery with respondent no.2.”

9. No illegality or perversity could be demonstrated in the findings recorded by the trial court which may warrant interference by this Court. Consequently, finding no merit in the instant appeal, the same is hereby dismissed.

10. An application bearing CMM No. 4 of 2015 has been filed under Section 24 of the Act for grant of maintenance pendente-lite and litigation expenses during the pendency of the appeal. Since the trial court held that the appellant was living in adultery with respondent No.2 and the said finding has been affirmed by this Court, therefore, in view of the judgment of this Court in **FAO-M-239 of 2013 (Chhinder Kaur v. Binder Singh and another)** decided on 8.12.2014, CMM No.4 of 2015 is also dismissed.

(AJAY KUMAR MITTAL)
JUDGE

January 8, 2015
gbs

(SNEH PRASHAR)
JUDGE