

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

**FAO-M-141-2004
Decided on : 03.02.2016**

Inderjit Singh

.... Appellant

VERSUS

Kulwinder Kaur

..... Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MS. JUSTICE LISA GILL**

Present: Mr.B.R.Gupta, Advocate, for the appellant.

Mr.Arinder Singh, Advocate, for the respondent.

RAJIVE BHALLA, J. (ORAL)

The appellant-husband challenges judgment and decree dated 12.05.2004, passed by the Additional District Judge, Kapurthala, dismissing his petition filed under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act') for grant of a decree of divorce.

The parties were married on 09.02.1991 according to Sikh rites and after the marriage, they cohabited at Village Narur, Tehsil Phagwara, District Kapurthala. The parties were blessed with two children Aminder Jeet Singh and Sarabjit Singh, on 11.05.1992 and 26.12.1995, respectively. The appellant was employed in GREF and at the time of filing of the petition, was posted at Leh. The respondent began residing in Village Ghurial, District Jalandhar as she was appointed as a teacher in Village Kalra, District Jalandhar.

The appellant filed a petition for grant of a decree of divorce by alleging that respondent resided in the matrimonial home for only three days and whenever the appellant came on leave she did not join him as she continued to reside at Village Ghurial. The respondent did not care for the welfare of her in-laws though she was aware that her father-in-law was blind and mother-in-law was suffering from Asthama. The respondent continued to reside in Village Ghurial with her sister Paramjit Kaur on the pretext of her service. The respondent refused to accompany the appellant to his place of posting at the instigation of Randhir Singh, husband of her sister Paramjit Kaur. The respondent made false complaints against the appellant to his officers and sought maintenance by concealing that she is in service. The appellant started paying monthly maintenance Rs.500/- per month and got air travel tickets for the respondent but she still refused to accompany the appellant to his place of posting. The respondent withdrew money from FDRs belonging to the appellant. The appellant convened meetings of panchayats from 07.03.2002 to 21.04.2002 and in one such panchayat, held at the parental house of the respondent, she levelled allegations that as the appellant is impotent, she does not want to live with him and wants a divorce. However, on the intervention of relatives and respectables, a compromise was effected and the respondent agreed to live with the appellant in village Narur but stayed upto 20.03.2002 whereafter she left for her parental house on

the pretext that she has to join service and would return on holidays.

The respondent visited the appellants' house on 23.03.2002 with their children but left on the next day. A meeting was convened in the house of the respondent where a request was made in the presence of the members of the panchayat and respectables of villages Ghural and Narur that the respondent should be requested to live with the appellant, the respondent once again demanded a divorce and levelled the same allegations. The appellant prayed that as the respondent has treated him with cruelty and has deserted him for a continuous period of two years immediately preceding the filing of the petition for grant of a decree of divorce, the marriage may be dissolved.

The respondent put in appearance, filed a reply, controverted averments in the petition, denied that she has leveled any allegations against the appellant regarding impotency etc., or treated the appellant or his parents with cruelty but admitted that she is a teacher in village Kalra, District Jalandhar. The respondent also denied the convening of panchayats or the fact that she had deserted the appellant.

After considering the pleadings, the trial court framed the following issues: -

- “1. Whether the behavior of the respondent is cruel towards the petitioner?
2. Whether the respondent has deserted the petitioner without any reasonable cause?

3. Whether the petition is not maintainable?
4. Relief.”

The parties were thereafter directed to lead their respective evidence. The appellant examined himself as PW-1, Mehar Singh, a member of the panchayat as PW-2, Bagicha Singh, another member of the panchayat PW-3, Capt. Sohan Singh as PW-4, Pritam Singh as PW-5 and closed his evidence. The respondent examined herself as RW-1, Ms. Parveen as RW-2, Chanan Singh as RW-3 and Hardial Singh as RW-4.

After considering the pleadings and the evidence, the trial court held that the appellant has failed to prove his pleas of cruelty or desertion and consequently, dismissed the petition.

Counsel for the appellant submits that the pleadings and the evidence on record, prove without a degree of doubt that the respondent has treated the appellant with cruelty. The respondent levelled an allegation before a panchayat that the appellant is impotent and asked for a divorce. The respondent is admittedly living separately thereby depriving the appellant of his matrimonial rights and despite various panchayats convened by the appellant, the respondent returned for a few days and thereafter never returned to her matrimonial home. The respondent refused to accompany the appellant to his place of posting, refused to live with the appellant in his matrimonial home, ignored and neglected the appellant's aged

parents, one of whom was blind and other was suffering from asthma, thereby proving the allegations leveled in the petition and rendering findings recorded by the trial court contrary to the pleadings and the evidence.

Counsel for the respondent, on the other hand, submits that a perusal of the pleadings and the evidence on record reveals that apart from general allegations, the appellant has not referred to any specific incident of cruelty. Admittedly, the respondent is working as a teacher in another village and, therefore, cannot be expected to live in the appellant's village. The appellant had never asked the respondent to leave her job but kept on insisting, apparently as a ploy to create a ground for divorce, that the respondent should come and live in the matrimonial home though he was fully aware that the respondent is employed in another village and it is difficult for her to attend school if she resides in the appellant's village. The allegations of the panchayats convened are false to the knowledge of the appellant. In fact it is the appellant who was posted at various places and refused to take the respondent to his place of posting. The appellant's plea that the respondent neglected matrimony, is disproved by the fact that two children were born to the parties in 1992 and 1995 and it is admitted by the appellant that after a compromise in panchayat, the respondent came and resided in his village on two separate occasions. The findings recorded by the court below are, thus, legal and valid and do not call for interference.

We have heard counsel for the parties, perused the pleadings, the evidence on record as well as findings recorded by the Additional District Judge, Kapurthala, while dismissing the petition for grant of a decree of divorce.

As referred to in the opening part of the judgment, the appellant sought dissolution of marriage on the grounds of cruelty and desertion, alleging disrespect to the appellant and his parents, filing of false complaints, seeking maintenance by concealing that she is in service, withdrawing money from the FDRs belonging to the appellant and an allegation that the respondent alleged that the appellant was impotent and, therefore, she wanted a divorce. As regards the plea of desertion, the appellant alleged that the respondent has refused to join him at the matrimonial home and continues to reside in village Ghurial on the pretext that she is in government service and her place of posting is close to the village Ghurial.

The allegations of cruelty including the allegation that respondent alleged that the appellant is impotent, have been rejected by the trial court after disbelieving the appellant and his witnesses and holding that the fact that pursuant to a compromise, the respondent came to reside with the appellant on 17.03.2002, returned to her matrimonial home on 23.03.2002 and stayed upto 24.03.2002, proves that if she had levelled an allegation of impotency against the appellant, she would not have returned to her matrimonial home,

thereby proving the falsity of the appellant's stand. We find no reason to doubt the correctness of the aforesaid findings particularly in view of the fact that if the respondent-wife had levelled an allegation of impotency against the appellant, she would not have returned to her matrimonial home nor would the appellant have insisted on resumption of matrimony. This apart, there was also a compromise between the parties Ex.RW4/P.7, dated 21.04.2004, thereby proving that the respondent did not level any allegation of impotency against the appellant.

The allegations regarding disrespect to the appellant and his parents, are general in nature without reference to any specific incident of the alleged disregard and misbehaviour.

As regards the finding that the appellant has not been able to prove his plea of desertion, a perusal of the findings recorded by the trial court reveals that it has been held that in order to establish a plea of desertion, it must be proved that the respondent intended to bring cohabitation permanently to an end and as the appellant has failed to prove any such intention, desertion is not made out. The respondent is, admittedly, a teacher, working in village Kalra and resides in village Ghurial, at a distance of 3 kms from village Kalra. The matrimonial home of the respondent is 14-15 kms from village Kalra. At the relevant time, the appellant-husband was posted at Leh in GREF and was not available at home. The respondent was not only working but was also looking after the two minor children of

the parties and, therefore, resided in a village close to her place of employment. The respondent's residence in a village close to her place of employment does not raise an inference that she intended to sever the relationship and is, therefore, guilty of desertion. A husband does not have a right to insist that his wife who is working and looking after their children, give up her job and reside at a particular place. The respondent had got this job on compassionate grounds as her father had passed away. A perusal of the record reveals that even after the initial falling out, the respondent came to live with the appellant on 2-3 occasions, thereby proving that she had no intention of severing the relationship but it appears that it was the appellant who was insisting that she should reside at his matrimonial home even though he was posted at Leh and was not available at home. The pleading that the husband convened various panchayats to affect a compromise, has been duly considered by the trial court and rejected by holding that the respondent had no intention to sever matrimonial ties as she was merely residing near the place of work and was looking after their two minor children.

Consequently, finding no merit, the appeal is dismissed but with no order as to costs.

[RAJIVE BHALLA]
JUDGE

03.02.2016
mamta/shamsher

[LISA GILL]
JUDGE