

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. M-48 of 2004 (O&M)

Date of Decision: January 27,2016

Gurmeet Singh Appellant

Versus

Mrs. Bhupinder Kaur Respondent

Coram: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. M.S.Bedi, Sr. Advocate with
Ms. Manpreet Kaur, Advocate
for the appellant.

None for the respondent.

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LISA GILL, J.

The appellant Gurmeet Singh has preferred this appeal challenging the judgment and decree dated 12.2.2004 passed by the Addl. Civil Judge, Gurdaspur whereby the petition filed by the appellant under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act') has been dismissed.

The case set up by the appellant is that his marriage was solemnized with the respondent-Bhupinder Kaur on 25.2.1998 at Gurdaspur in accordance with Sikh

rites. They lived together as husband and wife at village Gurdas Nangal, Tehsil & District Gurdaspur and were blessed with one daughter on 14.4.2000. The respondent was working as an Assistant with United India Insurance Company Ltd. at Ludhiana at the time of their marriage. It is averred that about six months subsequent to their marriage, the respondent was transferred to Gurdaspur which is at a distance of 4-5 kms. from the village Gurdaspur Nangal. The appellant was working as a Steno with the Block Development and Panchayat Officer at Dhariwal. He is the only son of his parents having three married sisters. His father is a Subedar, retired from the Indian Army and his mother a home-maker. The appellant's father owns 18 acres of land in village Gurdas Nangal and possesses a tractor. They have a big house in the village. The respondent-wife's father is a retired Headmaster and her mother was serving as a Child Development and Project Officer at Dhariwal. They are having two other daughters apart from the respondent. When the respondent was transferred from Ludhiana to Gurdaspur, her parents started instigating her and pressurized the appellant to shift to Gurdaspur and live with them (Ghar Jawai). When the appellant did not agree, being the only son, unrest was created in the family. The

respondent misbehaved with him as well as his parents in front of their relatives and friends and refused to serve the appellant or prepare tea or food for him and his relatives. Parents of the respondent-wife called the appellant to their house in December 1999 where five or six other persons were present. They pressurized him again to settle at Gurdaspur with them. On his refusal, he was threatened, physically abused and his motor-cycle was also smashed. The appellant had to flee from the respondent's parental home to save his life. Thereafter, the appellant's parents along with Randhir Singh, Ex-sarpanch Dalbir Singh, Sarpanch of village Pairuwal and other relatives approached the respondent-wife's parents but the appellant as well as his parents were again threatened. The respondent did not return to her matrimonial home despite requests. After the birth of the daughter of the parties, the appellant again requested the respondent to resume cohabitation at her matrimonial home but was met with refusal. It is averred that all the jewellery given by the appellant's parents as well as the jewellery of the appellant's mother was taken away by the respondent on the pretext that she would keep it in a locker held jointly by the parties in the Punjab & Sind Bank at Gurdaspur. The appellant maintained a joint account with

the respondent at Punjab & Sind Bank, Gurdaspur where he used to deposit the sale proceeds of the crops. The respondent operated this account without the knowledge of the petitioner and withdrew money deposited by the appellant. She also operated the locker in their joint name without his knowledge. The respondent is alleged to have deserted the appellant in December 1999 without any reasonable cause. Thus the appellant prayed for divorce on the ground of desertion and cruelty meted out by the respondent.

The respondent-wife while admitting the factum of marriage as well as birth of their daughter denied all allegations levelled against her. It was specifically denied that the appellant was ever pressurized to live at her parental home or that she ever misbehaved, insulted or abused her in-laws or that the appellant was ever threatened or beaten by her parents or family members. On the contrary, the respondent has alleged that the appellant and his family members were not satisfied with the dowry articles given at the time of marriage. Her parents gave a sum of ₹30,000/- to purchase a Sony TV as her husband and in-laws were not satisfied with the television given to them. Demand of a refrigerator of bigger size was raised in April

1999 which was duly met by the respondent's parents. The appellant and his parents were not happy when the respondent conceived a child. She was beaten by her husband and in-laws and thrown out of the matrimonial home when she refused to abort the child. Their daughter was born in April 2000 but neither the appellant nor his family members bothered to inquire about the well being and welfare of the respondent or their child. The respondent was taken to her matrimonial home on 10.8.2000 by her father along with Gurmukh Singh and Kewal Kishore Sharma to rehabilitate her. Though she stayed back along with her daughter, behavior of her husband and in-laws remained the same and now a demand for a car was raised by them. The respondent was yet again turned out of the matrimonial home in April 2001, thus constrained to reside with her parents since then. The respondent therefore prayed for dismissal of the said petition filed by the husband seeking divorce.

On the basis of the pleadings of the parties, learned trial Court framed the following issues:-

1. Whether the respondent has treated the petitioner with mental and physical cruelty? OPP
2. Relief.

The learned trial Court on consideration of the facts and circumstances of the case as well as the evidence on record concluded that the appellant had failed to prove the allegations of cruelty and desertion levelled against the respondent thereby dismissing the petition under Section 13 of the Act preferred by the appellant. Hence aggrieved, this appeal has been filed by the appellant-husband.

Learned counsel for the appellant vehemently argues that there is sufficient evidence on record to prove the allegations of cruelty and desertion by the respondent. Evidence of the appellant (PW3) as well as other witnesses examined by him prove that the respondent is a quarrelsome lady and did not take care of the appellant or his parents. The respondent and her parents wanted the appellant to leave his parents and live with them at Gurdaspur. When he did not accede to their demands, false criminal proceedings were initiated by the respondent. During the pendency of the divorce petition, a false FIR No.27 dated 11.3.2002 under Sections 498-A/406/506/323/120-B IPC was registered at Police Station Gurdas Nangal against the appellant, his parents and married sisters. His sisters have been acquitted of the charges against them. The appellant was earlier beaten by

the respondent's parents in December 1999. The appellant's father Jasbir Singh, PW2 has deposed on the same lines as the appellant. To prove the incident of December 1999, reliance is placed on the statement of the appellant, his father-Jasbir Singh PW2 as well as Dalbir Singh PW4. It is, thus, argued that in these circumstances learned trial Court has grossly erred in denying the decree of divorce to the appellant.

All allegations levelled against the respondent have been denied to be false, incorrect and unsubstantiated in the written statement. The appellant as well as his parents have been convicted by the learned Chief Judicial Magistrate, Gurdaspur, for the offence punishable under Sections 498-A and 406 IPC vide judgment dated 2.3.2007. An appeal was preferred by the appellant and his parents against the said judgment wherein their conviction has been upheld though they have been ordered to be released on probation vide judgment dated 31.7.2010.

We have heard learned counsel for the appellant and have gone through the pleadings and the evidence.

It is a matter of record that the respondent was working as an Assistant at Ludhiana with the United India Insurance Co. Ltd. at the time of her marriage and she was

transferred to Gurdaspur after six months of her marriage on request, obviously, to be near her matrimonial home. The appellant and the respondent lived at their matrimonial home at Gurdas Nangal and the respondent used to commute to her work place from there. A perusal of the record reveals that vague and general allegations have been levelled by the appellant which cannot be termed as act/acts of cruelty meted out by the respondent in any manner. The appellant has relied on the testimony of his father-Jasbir Singh PW2 and Dalbir Singh PW4 to prove the incident of December 1999. It is relevant to note that Dalbir Singh, PW4, in his cross-examination, has specifically deposed that he has no personal knowledge about any dispute between the parties and his knowledge is limited to what has been narrated to him by the appellant's father. Dalbir Singh's younger brother is married to Jasbir Singh's daughter i.e. the appellant's sister. Therefore, much credence cannot be placed on his testimony. No specific details of other purported acts of cruelty on the part of the respondent are mentioned by the appellant. General allegations about the temperament of the respondent also remain unsubstantiated. It is not denied that the respondent has two younger unmarried sisters. Therefore, it has rightly been

held by the learned trial Court that in such circumstances no parents would prefer to have their son-in-law live with them. There is not an iota of evidence on record to prove the averments of the appellant asserting cruelty and desertion on the part of the respondent which would entitle the appellant to a decree of divorce.

Furthermore, reluctance on the part of the appellant to reside with the respondent is apparent from the record. Criminal proceedings were initiated by the respondent subsequent to the filing of the divorce petition. Admittedly, no complaint etc. had been submitted or filed by the respondent-wife prior thereto. The appellant and his parents have been convicted for the commission of offences punishable under Sections 498-A and 406 IPC. Acquittal of the married sisters of the appellant does not per se prove the averments of the respondent to be false or in any manner dilute the allegations raised by the respondent in her defence. Availing of a remedy available to her, cannot amount to an act of cruelty on the part of the respondent-wife. The appellant has specifically deposed that he would not reside with the respondent under any circumstances. It is obvious that the appellant cannot be granted the benefit of his own wrong.

In the factual matrix of this case, the learned Additional District Judge, Gurdaspur, has rightly denied the decree of divorce to the appellant. We find no illegality, infirmity or perversity in the impugned judgment and decree dated 12.2.2004.

This appeal is, accordingly, dismissed.

(RAJIVE BHALLA)
JUDGE

(LISA GILL)
JUDGE

27.1.2016
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