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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M No.57 of 2008 (O&M)
Date of Decision: 09.05.2016

Karnail Singh

.....Appellant

Vs

Kuldeep Kaur

.....Respondent

CORAM: ***HON'BLE MR. JUSTICE M. JEYAPAUL***
HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Surinder Mohan Sharma, Advocate
for the appellant.

Mr. Ravi Kant Mehta, Advocate for
Mr. O.P. Gupta, Advocate
for the respondent.

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1. ***Whether Reporters of local papers may be allowed to see the judgment ?***
2. ***To be referred to the Reporters or not ?***
3. ***Whether the judgment should be reported in the Digest?***

RAJ MOHAN SINGH, J.

[1]. Husband-appellant remained unsuccessful before the Additional District Judge (Adhoc) Fast Track Court, Ambala in his endeavour to seek divorce under Section 13 of Hindu Marriage Act (hereinafter referred to as 'the Act') from the respondent-wife.

[2]. Appellant sought divorce on the ground of cruelty and desertion. Parties were tied in nuptial knot on 27.05.1979 as per

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the Sikh rites and ceremonies. Two sons and one daughter are alive children out of five issues took birth out of their wedlock. The last child was born on 15.11.1989.

[3]. Appellant alleged that the respondent and her family members particularly her brothers never gave due respect to the appellant and always insulted him. Respondent kept on misbehaving with the appellant and tried to implicate him and his family members by making false allegations against them. In the year 1989, when girl child was born, she left the child in the hospital and ran away by disowning her. In November 1990, respondent took cash amount and other articles from the house and left the house without telling anything to the appellant.

[4]. Earlier divorce petition filed by the appellant against the respondent-wife was withdrawn with the hope that there may be some improvement in her behaviour in future. However, respondent never improved her behaviour and the situation worsened thereafter. Appellant further alleged that the respondent is living separately for the last more than 15 years. Appellant is serving in Indian Army and he remained posted at different places. Owing to the conduct of the respondent and active support rendered by her brothers, the appellant ventured to the file the petition on the ground of cruelty and desertion. Appellant also submitted that the respondent had not given any

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matrimonial pleasure to the him for the last more than 15 years and has completely withdrawn from the society of the appellant. The eldest son of the parties is also working in Indian Army and his marriage was solemnized in February 2004, but the respondent did not attend the marriage.

[5]. It is further alleged that respondent also filed one suit for maintenance and even prior thereto, she kept on making false allegations against the appellant. About 3-4 months ago, the respondent suffered some electric shock in the house, but she exploited the situation by making false complaint against the appellant and his family members and implicated them in a false criminal case. Under the pressure of false implication, the appellant had to admit the wrong and illegal demands of the respondent and her brothers by signing writing which was referred to the Police in which the appellant was made to agree to give 25% share of his salary to the respondent and also to give land to her along with other conditions. Appellant had to execute the writing due to threat of false implication in the criminal case as pressure was mounted upon him by the respondent. Resultantly, the appellant was compelled to gift his land to the respondent under the threat of false implication in criminal case. The appellant also narrated the incidents in which respondent used derogatory words against him.

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[6]. The petition was opposed by the respondent on all counts. Allegations were made by the respondent that she was neglected by the husband. She was insulted and maltreated at the behest of *Bhabhi* of the appellant. She was forced to submit application to the Army Authorities for awarding maintenance in her favour from the pay of the appellant as she was precluded from basic necessities by the appellant. The filing of divorce petition was claimed to be an effort to exert pressure upon the respondent. The earlier petition was filed by the husband-appellant and when the respectables snubbed him, he withdrew the same and promised to provide maintenance, love and affection to the respondent. Still he backed out from his promise and again started misbehaving with the respondent. In the absence of the appellant, his *Bhabi* and mother used to maltreat the respondent. Whenever appellant came to the house in vacations, his *Bhabi* and mother used to poison his ears against the respondent and then, the appellant used to beat the respondent. She kept on tolerating these things for some time under the hope that the good sense may prevail upon the husband and his family members, but he never changed. Respondent denied all the allegations in the written statement and admitted that she had filed suit for maintenance which was pending. The extent of giving electric shock was alleged to be

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as handiwork of the appellant and other family members, who had plan to eliminate the respondent. When the respondent was putting wet clothes on the wire, some electric wire was touched by them to the said wire. Respondent sustained injuries in that incident. The said mischief was committed by the appellant and his family members on 09.10.2004. Respondent became unconscious and was not attended by the appellant and his family members. Respondent filed complaint against them. The matter was investigated and during course of investigation, the respectables and relatives intervened and it was decided that the husband would provide maintenance to the respondent-wife and will also make provision of room for her in the house and would give land also. Respondent never deserted the husband and never treated him with cruelty.

[7]. Initially the parties went on trial on the issue of desertion. Later on additional issue was also framed with regard to the cruelty.

[8]. Both the parties led their respective evidence to prove their case. Besides examining himself as PW-2, appellant examined Harbans Kaur as PW-1. Appellant also adduced documentary evidence viz. Ex.P-1 to Ex.P-8 and mark PA, PB and PC. On the other hand respondent got herself examined as RW-2 besides examining Sulekh Chand as RW-1.

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[9]. Trial Court after appreciation of evidence dismissed the petition for grant of divorce vide judgment and decree dated 09.02.2008. Hence this appeal.

[10]. We have heard the submissions made on either side and have also perused the material on record.

[11]. At one point of time, learned counsel for the respondent on instructions from her client submitted before this Court on 30.01.2014 that the respondent would be satisfied, if lump sum maintenance to the tune of Rs.6 lacs is paid to her. However, the said claim of the respondent was not accepted by the appellant. During proceedings, it was noticed that appellant was in arrears of maintenance and learned counsel for the respondent submitted before this Court that his client was ready to part ways, if permanent alimony of Rs.6 lacs in full quit is paid by the appellant to her. On instructions, learned counsel for the appellant submitted that the appellant was prepared to pay Rs.3 lacs in full quit. The said understanding between the parties was noted by this Court on 05.05.2015. However on 29.07.2015, the appellant reported that the respondent has sold away the property given to her at the time of settlement in the Police Station, therefore, appellant was not prepared to pay even Rs.3 lacs as permanent alimony. Both the parties reported no settlement, therefore, this Court proceeded to hear

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this appeal on merits.

[12]. The earlier divorce petition was filed by the appellant against the respondent on 17.11.1990 on the ground of cruelty and desertion. The allegations were more or less similar in pith and substance. The said petition (Ex.P-1) was contested by the respondent by way of written statement (Ex.P-2) filed on 20.08.1991. Thereafter vide settlement dated 25.01.1993 (Ex.P-3) the appellant made statement before the Court that he had reconciled with the respondent and decided to take her back to the matrimonial house and was ready to keep and maintain her. Accordingly the said petition was dismissed as withdrawn on the statement of appellant on 03.02.1993 (Ex.P-4). Respondent filed a suit for mandatory injunction against the Union of India and appellant for directing them to make payment of 1/5th share of entire retiral benefits of the appellant on the basis of written understanding and compromise dated 01.03.2006. It was pleaded that on coming to know the date of retirement of the appellant in July 2006, she approached the Authorities and in due course on 01.03.2006, the appellant agreed to deposit 1/5th share of the retiral benefits and to give undertaking in writing to the Authorities. The aforesaid suit was got dismissed as withdrawn on 30.11.2006 (Ex.P-7) on the statement of the respondent that she did not want to pursue her

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case further and withdrew the same. Thereafter appellant refused to oblige the respondent and did not maintain her. Thereafter on account of episode leading to electric shock, a criminal complaint was filed by the respondent against the appellant.

[13]. On 02.03.2004, the respondent also filed a suit for maintenance against the respondent in terms of Section 18 of Hindu Adoption and Maintenance Act, 1956 (Ex.P-7). The suit was contested by the appellant. Even the appellant also filed a suit for declaration challenging the sale deed dated 30.11.2004 (Ex.P-8) executed and registered in favour of the respondent being null and void. The said suit was contested by the respondent by filing written statement on 02.06.2006. Vide mark PA and PB, there was some settlement between the parties in the context of paying 25% of the monthly salary on permanent basis and in respect of house where she was living and the land will also be transferred in her name. The said compromise was made before the SHO, Police Station Sehzadpur (Ambala) which was signed by the parties and witnesses. Mark PA is in the context of DDR dated 12.11.1990. The said DDR was lodged by the husband-appellant relating to the understanding which was arrived at after a dispute which occurred between the respondent and mother of the appellant. Mark PC relates to

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the sale deed executed by the appellant in favour of the respondent in respect of land.

[14]. The present divorce petition was filed before the trial Court on 16.03.2005 when the respondent was living in the matrimonial house. Husband-appellant was also living in the same house after the retirement. Same address of both the parties was given in the petition, but contents of the petition alleged that the respondent was living separately from the appellant and her children for the last 15 years. As per deposition of Sulekh Chand RW-1 respondent-wife was living separately for the last 2½ years. Appellant also admitted in his cross-examination that presently the respondent was living with her mother from June 2005.

[15]. As per pleading of Ex.P-1 i.e. the earlier divorce petition dated 17.11.1990, recital was made viz-a-viz. date of birth of issues, death of female child born in 1983, male child born in 1984 and female child born in 1986. The second male child namely Ruldu took birth on 11.03.1988 and female child namely Mandeep took birth on 15.11.1989. The last female child was pre-mature and was kept in baby care unit. It was alleged by the appellant that he opted for family planning, but the respondent without informing anyone left the hospital on 21.11.1999 and

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came to the rented accommodation in Manimajra. New born baby was discharged from the hospital on 09.01.1990 and was handed over to the appellant. Appellant asserted that he brought up the baby and the respondent never tried to see her.

[16]. We found from the perusal of the earlier petition that all these facts were recorded and said petition was dismissed as withdrawn on 03.02.1993. Thereafter parties reconciled with each other and all previous acts were condoned. The present petition was filed before the trial Court on 16.03.2005/17.03.2005. Earlier allegations cannot be made subject matter of the present petition. Even as per settlement arrived at between the parties, portion of pension was agreed to be paid to the respondent and the land was also to be transferred in her name. In view of all these attending circumstances, the appellant cannot be permitted to re-agitate the instances which were made subject matter of earlier petition and the understanding reached between the parties in the Police Station that ultimately culminated in execution of registered sale deed in favour of the respondent. The sale deed was executed as per terms of the compromise. The respondent during course of arguments pleaded that possession of land remained with the appellant and never give any *batai* to her nor paid maintenance as a result of that she had to alienate the

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land.

[17]. Learned counsel for the appellant by referring to the cross-examination of the respondent in a petition under Section 125 Cr.P.C., decided on 14.05.2015 tried to project that the respondent never attended the cremation and last rites of her son and also did not visit her second son when his leg was amputated. We are afraid that no such cognizance can be taken in the present set of things because these allegations were prior in point of time than the decision dated 14.05.2015. The appellant filed the present petition on the allegation which were the subject matter of earlier petition. Earlier petition was got dismissed as withdrawn. Other instances were compromised and as a result of which sale deed was executed and apportioning of pension took place. The alleged acts of the respondent were condoned and thereafter no such allegation were alleged which would have prompted the appellant to file petition for divorce in March 2005.

[18]. The alleged desertion of the respondent cannot be appreciated inasmuch as that the statement of Harbans Kaur PW-1 was categoric in the context that respondent was not getting maintenance and she asked her to help her in getting maintenance from the appellant. She had not maintained the money order slips, nor she obtained any receipts from the

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respondent in respect of maintenance. Statement of Sulekh Chand RW-1 was categoric that the respondent came to her parents' house only for the last 2½ years and prior to that she was living with her husband. The said statement was made only on 10.01.2008. The statement of respondent herself was in the context that the incident of electrocution took place when she was tying the clothes on a wire and suffered shock at about 3.00 p.m. Karnail Singh was claimed to be present in house. Other family members were also present in the house. She fell down and the appellant ran away from the house. The respondent moved to the Police after 2-3 days of the occurrence. Respondent was medically examined. Appellant was hiding for 3-4 days. Nothing incriminating could come out in the cross-examination of the respondent wherein she has specifically deposed that her entire married life had gone in dispute. She denied that she did not perform any matrimonial duties for the last more than 15 years towards her husband and children. She admitted that the couple was not having any physical relation for the last 15 years. That statement cannot be read in isolation, attributing fault with the respondent alone. There may be numerous reasons for not making any physical relation by the couple. The use of word 'we' in the statement made everything clear that the respondent never admitted that she was at fault in

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not making physical relation for the last 15 years. The statement cannot be stretched to mean admission of any incriminating allegation against the respondent.

[19]. Taking entire stock of the facts on record, we are unable to agree with the contention of the appellant. Consequently, this appeal is totally bereft of merits and the same is accordingly dismissed.

[20]. Since the main appeal has been dismissed, therefore, CM No.17273-II of 2015 also stands dismissed.

(RAJ MOHAN SINGH)
JUDGE

(M. JEYAPAUL)
JUDGE

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