

FAO Nos. M-66 of 2008 (O&M) and M-361 of 2013 [1]

IN THE HIGH COURT OF PUNJAB & HARYANA,
CHANDIGARH

FAO No. M- 66 of 2008 (O&M)
Date of Decision: Feb. 26,2016

Kavita Appellant

Versus

Krishan Kumar Respondent

AND

FAO No. M-361 of 2013

Krishan Kumar Appellant

Versus

Kavita Respondent

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

Present: Mr. G.C.Shahpuri, Advocate
for the appellant (in FAO No. M-66 of 2008)
for the respondent (in FAO No. M-361 of 2013)

Mr. D.K.Singla, Advocate
for the respondent (in FAO No. M-66 of 2008)
for the appellant (in FAO No.M-361 of 2013)

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LISA GILL, J.

This judgment shall dispose of FAO No.M-66
of 2008 (Kavita v. Krishan Kumar) and FAO No.M-361 of

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2013 (Krishan Kumar v. Kavita), which arise out of a matrimonial dispute between the parties.

FAO No.M-66 of 2008 has been preferred by Kavita being aggrieved of the judgment and decree dated 17.12.2007 passed by the learned Additional District Judge, Panchkula, whereby the petition filed by the respondent-husband Krishan Kumar under Section 13-A of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') has been allowed thereby dissolving the marriage between the parties.

FAO No.M-361 of 2013 has been preferred by Krishan Kumar challenging the order dated 18.9.2013 passed by the learned Additional District Judge, Panchkula, whereby maintenance under Section 25 of the Act has been enhanced from ₹3,000/- per month to ₹10,000/- per month.

The facts as revealed in the petition filed by Krishan Kumar under Section 13-A of the Act for dissolution of marriage are that marriage between the parties was solemnized on 13.9.1984 at Yamuna Nagar according to Hindu rites and ceremonies. Two children were born out of this wedlock. It was averred in the

petition that his wife Kavita started taunting and harassing him some time after their marriage on account of his perceived poverty while asserting that she belongs to a rich family. She did not treat his old parents with due respect, refused to cook food and at times would serve half baked food or deliberately put extra chillies in it. It was further alleged that Kavita deserted the matrimonial home on 31.7.2002 without informing him or any other family member. She did not return home despite repeated requests and on the contrary made false allegations that Krishan was having extra marital relations. The appellant Kavita allegedly lodged false and frivolous complaints against Krishan Kumar. In this situation, a petition for divorce on the ground of cruelty and desertion was preferred by Krishan Kumar.

The appellant-wife, Kavita, while admitting the factum of marriage between the parties and birth of two sons denied all allegations of cruelty and desertion. It was asserted that the petition for divorce was filed by the husband as a counter-blast to an application filed by the appellant under Section 125 Cr.P.C. for maintenance, which was allowed. The husband was

stated to be a haughty policeman who was cruel and indifferent towards her because of his illegitimate relations with other women. While denying that she left the matrimonial home on 31.7.2002 it is averred that it was the husband who deserted her as well as their two minor sons to fend for themselves without any rhyme or reason. Therefore, the husband should not be permitted to derive any benefit on account of his own wrong and the petition seeking divorce should be dismissed.

The following issues were framed by the trial Court on the basis of pleadings of the parties:-

1. Whether the petitioner is entitled to dissolution of marriage and decree of divorce on the ground that he has been treated with cruelty as alleged? OPP
2. Whether the petitioner is entitled to a decree of divorce on the ground that he had been deserted by the respondent? OPR
3. Whether the petitioner has no cause of action to file the present petition and is not maintainable in the present form? OPP
4. Whether the petitioner is estopped from filing the present petition by his own act and conduct? OPP
5. Relief.

Evidence was adduced by the parties. The respondent-husband deposed as PW1 and examined Deepak Kumar PW2, his son, and Brahm Pal, his brother, and produced documentary evidence. The appellant appeared as RW1 and adduced her evidence. Learned trial Court on the basis of evidence on record directed dissolution of marriage between the parties on the ground of cruelty and desertion on the part of the wife.

Learned counsel for the appellant vehemently argued that the learned trial Court has grossly erred while passing the impugned judgment and decree, especially keeping in view the fact that since the marriage of the parties in the year 1984 there was no trouble upto the year 2002. It is submitted that it is opposed to all probability that the couple would have continued living together without any evidence of discord during all these years and suddenly parted ways in the year 2002 on the ground of cruelty meted out by the appellant since the inception of their marriage. It is urged that the appellant was forced to leave her matrimonial home because of illicit relations developed by the respondent-husband with one Sarabjit

Kaur. It is, thus, apparent that the appellant was forced to leave her matrimonial home on account of the acts of the respondent-husband. There is nothing on record to prove cruelty or desertion on the part of the appellant, therefore, the impugned judgment and decree should be set aside.

Per contra learned counsel for the respondent with reference to the evidence on record supports the impugned judgment and decree and prays for upholding the same. It is submitted that desertion on the part of the appellant is apparent on record. She has categorically stated that she does not want to live with her husband who is working as an Assistant Sub Inspector with the Haryana Police. The appellant had withdrawn from her husband's society without any reasonable or sufficient cause. She had been giving frivolous and false complaints to the police authorities against the respondent. The appellant wife miserably failed to prove adulterous relations of the husband as alleged. therefore, cruelty and desertion is clearly proved on the appellant's part. He, thus, prays for upholding the impugned judgment and decree.

We have heard learned counsel for the

parties and have gone through the pleadings and evidence on record.

It is admitted that marriage between the parties was solemnized on 13.9.1984 and two children were born out of this wedlock. One of the sons of the parties i.e. Deepak Kumar PW2 is residing with the respondent-husband.

A perusal of the record reveals that leaving of the matrimonial home on 31.7.2002 is admitted by the appellant though it is sought to be explained on the ground that it is due to the conduct of the respondent, namely, his illicit relations with one Sarabjit Kaur, that the appellant was forced to leave the matrimonial home. The name, parentage or address of said Sarabjit Kaur was not mentioned in the written statement though her name is mentioned in the cross-examination of the appellant RW1. The appellant has failed to lead any evidence to prove illicit relations of the respondent with the said Sarabjit Kaur or any other woman. All allegations of illicit relations made by the respondent remained unsubstantiated.

PW2 Deepak Kumar, the elder son of the parties, has deposed in favour of his father. Prior to the

year 2004 he was living with his mother and younger brother. He has denied allegations of ill-treatment or physical abuse of the appellant at the hands of his father. Deepak Kumar affirms that the parties had separated in the year 2002. He denied that his parents were having normal relations. Averment of the appellant that her elder son Deepak Kumar had left her and joined his father due to greed of a motor-bike or mobile or that he was involved in a theft case in which the respondent helped Deepak Kumar is not substantiated by any evidence on record. Deepak Kumar PW2 has specifically denied that he was involved in a theft case. There is no evidence to show his involvement in such a case.

It is categorically asserted by the respondent-husband that the appellant had left the matrimonial house along with his two sons on 31.7.2002 and they could be located after about a period of one and a half month thereto. The appellant had reported his wife and children to be missing as is apparent from Ex.P2. Various complaints were submitted by the appellant against him. Filing of such complaints is admitted by the appellant. The appellant has admitted that she filed

various complaints against the respondent before his superior officers also. The allegations of demand of dowry by the respondent or his family members are not supported by an iota of evidence on record. The appellant's own testimony to the effect that there was no one in her parental family, thus the demand for dowry raised by her husband and in-laws could not be fulfilled, falsifies her stand for the simple reason that the question of demand of dowry does not arise in such a situation. Furthermore, the appellant categorically states that she was never beaten by the respondent on account of non fulfillment of demand of dowry. The argument on behalf of the appellant that no effort was made by the husband to resettle her along with the children or that there was a reasonable and sufficient cause for withdrawing from the matrimonial home is not borne out from the record. Appellant-Kavita RW1 in her cross-examination has specifically deposed that she does not want to live with her husband. This statement coupled with the admitted fact that the appellant had left her matrimonial home on 31.7.2002, clearly proves the animus of desertion on her part. There is nothing on record to prove that she was turned out of her

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matrimonial home. The parties have been living separately since the year 2002. The appellant has failed to prove any reason or cause much less sufficient or a reasonable cause to have withdrawn from the company of the respondent husband. Thus, the respondent-husband is entitled to a decree of divorce and we find no illegality or infirmity in the impugned judgment dated 17.12.2007 passed by the learned Additional District Judge, Panchkula.

Krishan Kumar-appellant in FAO No.M-361 of 2013 is aggrieved by the enhancement of maintenance from ₹3,000/- to ₹10,000/- awarded to the respondent-wife vide order dated 18.9.2013 passed by the Additional District Judge, Panchkula. Maintenance at the rate of ₹3,000/- per month was awarded to Smt. Kavita under Section 25 of the Act vide order dated 15.4.2008 after marriage between the parties was dissolved on 17.12.2007. An application was moved by Kavita for enhancement of this amount to ₹15,000/- as Krishan Kumar's salary had increased to ₹24,782/- per month from ₹13,668/- per month. Furthermore, expenses incurred by her had also increased. Learned Additional District Judge, Panchkula, while taking into account the

fact that the gross salary of the husband was ₹36,475/- per month as per the salary slip placed on record, awarded a sum of ₹10,000/- per month from the date of filing of the application.

Learned counsel for the appellant-Krishan Kumar submits that the maintenance pendente-lite under Section 24 of the Act was fixed at ₹4,000/- per month in FAO No. M-66 of 2008. There is no justification for enhancement of the maintenance/alimony to ₹10,000/- per month. The appellant has to maintain himself, his aged mother and an unmarried son. He also has to provide financial support to his younger sister, who is a widow, along with her three minor children. Such an enhancement could not have been made once permanent alimony and maintenance was fixed vide order dated 15.4.2008.

Learned counsel for the respondent-wife, on the other hand, submits that keeping in view the salary drawn by the appellant and the expenses which are incurred by the respondent-wife, the amount of ₹10,000/- is not a princely amount which calls for any reduction in the facts and circumstances of the case.

Having heard learned counsel for the parties and going through the file, we do not find any infirmity in the grant of ₹10,000/- per month to the respondent-wife under Section 25 of the Act. Section 25(2) of the Act specifically provides that, "If the Court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under subsection (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just." Therefore, the argument in respect to maintainability of the petition is rejected being untenable. It is apparent that the husband was getting a salary of ₹13,668/- per month when maintenance at the rate of Rs.3000/- per month was fixed. Admittedly the gross salary of the husband was ₹36,475/- in August 2013 and cost of living has increased as well, thus the learned trial Court has committed no error in increasing the amount to be paid to the wife to ₹10,000/-. Learned counsel for the appellant-husband is unable to point out any illegality, infirmity or perversity in the impugned judgment and decree calling for a reduction in the amount awarded.

In view of the aforesaid discussion, both the

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appeals i.e. FAO No. M-66 of 2008 and FAO No. M-361
of 2013 are dismissed with no order as to costs.

(RAJIVE BHALLA)
JUDGE

(LISA GILL)
JUDGE

Feb. 26, 2016
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