

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

FAO No. M- 201 of 2011

Date of Decision: January 20,2016

Joginder Singh Appellant

Versus

Smt. Jagwanti Devi Respondent

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

Present: Mr. Ashwani Gaur, Advocate
for the appellant.

Mr. Nishant Raj, Advocate
for the respondent.

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LISA GILL, J.

This appeal has been preferred by appellant-Joginder Singh S/o Hardeva Singh being aggrieved of the judgment and decree dated 21.3.2011 passed by the Additional District Judge, Sonipat, whereby appellant's petition for divorce under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as the 'Act') has been dismissed.

Brief facts of the case as delineated in the petition under Section 13 of the Act preferred by the appellant are that marriage between the appellant and respondent-Smt.

Jagwanti Devi was solemnized on 25.2.1995 in accordance with Hindu rites and ceremonies at village Kami, Tehsil and District Sonipat. The parties resided at village Kami after their marriage. No child was born out of this wedlock. It is averred that respondent-wife's behavior towards the appellant and his family members became intolerable, unbearable, unjustified and rude from the month of May 1995 onwards. She called the appellant's family barbarians (junglee). The respondent-wife used to leave her matrimonial home without informing the appellant or his family members. She used abusive and foul language towards the petitioner in the presence of his friends, relatives and other family members. She is alleged to have brought cohabitation to an end and even threatened to commit suicide and involve the appellant in a false case. The appellant complained to the respondent's father, brother and other relatives about her behavior who tried to persuade her but in vain. She, ultimately, left the appellant's company on 13.7.2001 without any reasonable cause or excuse on the pretext that she would come back after about a week. However, despite efforts made by the appellant, she did not return from her paternal home. On a previous occasion, a petition under Section 13 of the Act had

been filed by the appellant which was dismissed in default as the petitioner was on duty in Madhya Pradesh and his counsel could not put in appearance due to a strike call by the lawyers. Thereafter the present petition was preferred by the appellant seeking divorce from the respondent on the ground of cruelty and desertion.

The respondent-wife, while admitting the factum of marriage, denied all allegations of cruelty and desertion. She specifically denied the use of abusive, foul or injurious language towards the appellant or his family members. It is averred that the appellant and his family members had concealed the factum of Joginder Singh, appellant being a Police Constable at Jabalpur (Madhya Pradesh). It was in fact the respondent who was subjected to physical abuse at his hands whenever she asked him to allow her to accompany him to Jabalpur. She resided at the matrimonial home when the appellant was on duty at Jabalpur. The respondent never left the matrimonial home without prior consent of the appellant. In fact, it is the appellant himself who left the respondent at her paternal home on 13.7.2001 when she insisted on accompanying him to Jabalpur. It is further alleged that the earlier petition seeking divorce was deliberately got dismissed in default on 2.4.2003 by the

appellant in order to avoid payment of interim maintenance etc. The respondent always was and is ready and willing to cohabit with the appellant in their matrimonial home.

Learned trial Court on the basis of the pleadings framed the following issues:-

1. Whether the petitioner is entitled to a decree of divorce on the grounds mentioned in the petition, as alleged? OPP

2. Relief.

Taking into consideration the facts and circumstances of the case and the evidence on record, learned Additional District Judge, Sonipat, dismissed the petition filed by the appellant under Section 13 of the Act on 21.3.2011. Aggrieved therefrom, present appeal has been preferred by the appellant.

Learned counsel for the appellant vehemently argues that evidence on record is sufficient to prove cruelty and desertion on the part of the respondent, therefore, learned trial Court has grossly erred in declining the decree of divorce. It is proved on record that the respondent meted out cruelty towards the appellant by her act and conduct towards him as well as his family members. She withdrew from the appellant's society on 13.7.2001 without any

reasonable cause and is, thus, guilty of desertion. Therefore, the appellant is entitled to a decree of divorce.

Per contra, learned counsel for the respondent prays for dismissal of this appeal and upholding the impugned judgment and decree as cruelty and desertion on the part of the respondent are conspicuous by their absence. The respondent has discharged her matrimonial duties with all sincerity and the appellant has raised false averments in his petition. She did all the household work in the matrimonial home and never left on her own accord. It is on her insistence to accompany her husband to Jabalpur that he left her at her parental home. Thus, the appellant should not be permitted to take advantage of his own wrong.

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

A perusal of the petition under Section 13 of the Act reveals that there is no specific detail or instance in respect of the alleged acts of cruelty by the respondent. Vague and general allegations have been raised without detailing any particular incidence which can be termed to be an act of cruelty by the respondent which entitles the appellant to a decree of divorce.

The stand of the appellant is falsified by his own statement as PW2 when it is admitted by him that the respondent used to do all the household work and she performed her duties as a wife. It is revealed in the appellant's testimony that his elder brother's wife was living with her husband at Jabalpur and the respondent was managing the household work at the matrimonial home. PW1 Raj Kumar, a cousin brother of the appellant, has also admitted that the respondent was doing all the household work at her matrimonial home. She was serving meals and tea etc. to the guests at their home. The averment that respondent threatened to commit suicide is not substantiated by any evidence on record. In fact, there is a vague averment bereft of any detail in respect to even the approximate date and time of such a threat. There is, admittedly, no complaint or FIR lodged by the respondent against the appellant or his family members, therefore, the averment that she used to threaten him with criminal proceedings is not borne out from the record. On the other hand, a perusal of the record reveals that the appellant, though posted at Jabalpur, never took his wife to Jabalpur. In view of his specific admission, the argument that he never restrained her from accompanying him to Jabalpur, is

not believable. Allegations of cruelty leveled by the appellant fall flat, as apart from the fact that no specific instance or detail has been set forth in the petition, there is no such evidence on record to substantiate such vague and baseless allegations.

The appellant is unable to prove desertion on the part of the respondent. It is a matter of record that joint Panchayat of the villages of the appellant as well as the respondent i.e. village Kheri Damkan and village Kami respectively were convened on 22.5.2001 and a settlement was arrived at between the parties which was reduced into writing i.e. Ex.R3. They resided together thereafter but appellant is unable to prove that respondent left the matrimonial home on her own on 13.7.2001. The respondent-Smt. Jagwanti Devi RW1, has specifically deposed that she was left at her paternal home when she insisted on accompanying the appellant to Jabalpur. There is nothing on record to show that any effort whatsoever was made by the appellant to effect any reconciliation with the respondent or bring her back to the matrimonial home thereafter. In these circumstances it cannot be held that the respondent is guilty of desertion.

Keeping in view the facts and circumstances of

the case as well as the evidence on record, it is clear that the appellant has not been able to prove cruelty and desertion on the part of the respondent thereby entitling him to a decree of divorce. The counsel for the appellant is unable to point out any illegality or infirmity in the impugned judgment and decree dated 21.3.2011 which calls for any interference by this Court. Consequently, this appeal is dismissed.

(RAJIVE BHALLA)
JUDGE

(LISA GILL)
JUDGE

20.1.2016
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