

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

FAO No.M- 410 of 2013(O&M)

Date of Decision: February 26 , 2016.

Sonia APPELLANT (s)

Versus

Harmesh RESPONDENT (s)

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

Present: Mr. J.K.Goel, Advocate
for the appellant.

Respondent ex parte.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reports or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

The appellant, Sonia is aggrieved by judgment and decree dated 25.10.2013 passed by the Additional District Judge, Karnal whereby her petition under Section 13 of the Hindu Marriage Act, (hereinafter referred to as the 'Act') for dissolution of her marriage with respondent – Harmesh, has been dismissed.

Brief facts of the case are that, marriage between the parties was solemnized on 20.04.2008 according to Hindu rites and ceremonies at

village Kunjpura. A child out of this wedlock born at Civil Hospital, Karnal, unfortunately passed away soon after his birth. In the petition under Section 13 of the Act, it is averred that marriage between the parties was solemnized with pomp and show with ₹3,50,000/- being spent thereon by the appellant's parents. Prior to the marriage, a ring ceremony was performed at village Kunjpura on 22.04.2007. A cash amount equivalent to price of a motorcycle was given by the appellant's parents to the respondent alongwith jewellery valuing ₹1,00,000/- as well as other dowry articles. It was pleaded that the appellant was subjected to harassment by the respondent and his family members for bringing insufficient dowry. The appellant's mother-in-law instigated the respondent to illtreat and beat the appellant. The appellant was asked by the respondent to bring a sum of ₹30,000/- or an air conditioner. When this demand was not fulfilled, the appellant's mother-in-law and sister-in-law physically abused her and removed the jewellery worn by her. The appellant was threatened to either fulfill their demand or else she would be subjected to such treatment regularly. A sum of ₹20,000/- was given to the respondent and his family members by the appellant's father at village Kunjpura after borrowing it from one of his relatives. However, the attitude of the respondent and his family did not change. The appellant was subjected to physical abuse by a Tantrik called by the respondent and his family members. It is alleged that the appellant was dragged by the respondent on 08.08.2008 in the presence of his mother and sister and was

afflicted fist and leg blows. She was thereafter turned out of the matrimonial home. A Panchayat was convened on 28.09.2008 at the behest of the appellant and her father, where the respondent admitted his guilt and promised not to repeat the same behaviour and further undertook to take back the appellant to her matrimonial home. The proceedings were reduced into writing and duly signed by the respondent as well as the other members of the Panchayat. The petition under Section 9 of the Act filed by the respondent for restitution of conjugal rights was withdrawn by him. However, the appellant was not taken back to their matrimonial home. Thereafter a complaint under Sections 323/406/498A/342/506/120B IPC was preferred by the appellant against the respondent and his family members and FIR No.152 dated 26.03.2009 was registered. The appellant, thus, prayed for a decree of divorce on the ground of cruelty meted out to her.

The petition was resisted by the respondent. While admitting the factum of marriage between the parties, all averments of cruelty were denied. It was averred that the appellant left the matrimonial home on her own under a strong influence of her parents. The appellant had taken away all the valuable items, clothes and cash when she left the matrimonial home alongwith the minor child. In fact, it is the appellant who treated the respondent with cruelty, who is still ready to resume matrimony with her. It was denied that any Panchayat was convened at the behest of appellant while it was the respondent and his family

members who convened various meetings to resolve the issue. He, thus, prayed for dismissal of the petition.

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

1. Whether the petitioner is entitled to a decree of divorce against the respondent, on the grounds, as mentioned in the petition?
OPP
2. Whether the petitioner has concealed and suppressed the true and material facts from the court? OPR
3. Whether the petition is not maintainable? OPR
4. Relief.

Evidence was adduced by the parties. Chunni Lal PW1, the appellant Sonia PW2 and Pritam Dass PW3 were examined in support of the petition. On behalf of the respondent, Amar Nath RW2 and Surender Kumar RW3 were examined. Respondent Harmesh himself deposed as RW1. At this stage, it is pertinent to note that the respondent was proceeded against ex parte at the stage of rebuttal evidence. He did not put in appearance despite various opportunities afforded by the trial court.

Learned trial court on considering the entire facts and circumstances as well as the evidence on record, dismissed the petition filed by the appellant – wife under Section 13 of the Act. It has been held that the allegations levelled by the appellant are general in nature and there is no specific instance of misbehaviour etc. on behalf of the respondent and his family and as the appellant had left the matrimonial

home out of her own free will, therefore, she is not entitled for grant of a decree of divorce on the ground of cruelty or desertion.

At this stage it is pertinent to note that the present appeal preferred by the appellant-wife was dismissed as withdrawn on 21.04.2014 in view of a compromise dated 19.03.2014 arrived at between the parties before the Mediation and Conciliation Centre of this Court. As per the terms and conditions of the settlement, both parties agreed to part ways amicably and obtain divorce by way of mutual consent by filing a petition under Section 13B of the Act. The appellant, Sonia agreed not to claim any amount on account of compensation or alimony neither would she raise any kind of claim regarding the property of the respondent. It was agreed that a petition for quashing of FIR No.152 dated 26.03.2009 would be moved and the appellant would assist in the same. This appeal was dismissed as withdrawn without prejudice to the rights of the appellant in any manner and liberty was afforded to her to seek revival of this appeal, in case, the decree of divorce by mutual consent did not materialize. The parties filed a joint petition under Section 13B of the Act before the learned District Judge, Karnal. Their statements at first motion were recorded on 01.05.2014 and the matter was adjourned to 03.11.2014 for statements at second motion. However, the respondent – husband failed to appear on 03.11.2014 as well as on various subsequent occasions, to which the matter was adjourned. Ultimately, the petition under Section 13B of the Act was dismissed on 22.12.2014 as the respondent's counsel

suffered a statement that he had no instructions to appear on behalf of the respondent. Consequently an application, CM No.1238-CII of 2015, was preferred by the appellant for revival of this appeal. Notice of this application was issued to the respondent but none appeared on behalf of the respondent. The order dated 21.04.2014 was recalled and the appeal was restored to its original number vide order dated 31.07.2015.

The counsel who had appeared on behalf of the respondent before withdrawal of the appeal on 21.04.2014, pleaded lack of instructions on 10.09.2015. Consequently, notice of the appeal was issued to the respondent. While forming a prima facie opinion that the respondent was evading service, he was permitted to be served through publication in two newspapers. Service upon the respondent was effected through publication in Hindustan Times (English) and Aaj Samaj (Hindi). When none appeared on behalf of the respondent despite publication of notice, he was proceeded against ex parte on 11.01.2016.

Learned counsel for the appellant vehemently argues that there is sufficient evidence on record to show cruelty meted out to the appellant by the respondent. The appellant was forced to leave her matrimonial home due to the act and conduct of the respondent and his family members. She was subjected to physical abuse and mental torture at the hands of the respondent and his family. The learned trial court has grossly erred in declining a decree of divorce to her on the ground that she has been unable to prove cruelty. The instances set forth by the appellant cannot be termed as 'wear and tear of normal married life'. They are not

'trifle tit-bits of a married life' as observed by the learned trial court. The appellant has proved the specific instances of cruelty meted out to her. The trial court has been wrongly swayed by initiation of criminal proceedings by the appellant against the respondent. The complaint under Sections 323/406/498A/342/506/120B IPC was filed after the respondent refused to resume matrimony with the appellant pursuant to the settlement arrived at on 28.09.2008. Availing of a remedy by the appellant cannot be held against her and neither can dismissal of the complaint impinge upon the veracity of the averments made by the appellant. The conduct of the respondent in itself shows and constitutes cruelty on his part. The respondent chose not to appear before the trial court and was proceeded against ex parte on 13.08.2013 with a view to avoid payment of maintenance. Before this Court, a settlement was arrived at between the parties but the respondent chose not to show up for recording his statement at second motion in the petition filed by the parties under Section 13B of the Act. The appellant was, thus, constrained to approach this Court for revival of the appeal. It is submitted that Crl. Misc. No.M-10380 of 2014 filed for quashing of FIR No.152 dated 26.03.2009, which was duly being pursued by the respondent was withdrawn on 24.08.2015 whereas, the respondent chose not to appear in the present proceedings. Learned counsel thus prays that this appeal be allowed and the impugned judgment and decree be set aside.

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

It is not in dispute that the parties were married on 28.04.2008 at Kunjpura. The birth as well as death of their child is not disputed by the parties though it is the case of the respondent that the child died due to the negligence of the appellant. However, there is no evidence on record to substantiate such a plea. The appellant has raised clear allegations of cruelty, physical abuse and mental torture meted out to her by the respondent as well as her in-laws, specifically her mother-in-law and sister-in-law. The specific amount demanded by the respondent and his family is mentioned. It is clearly mentioned that the appellant was subjected to physical abuse inasmuch as she was given fist and leg blows on 08.08.2008. Reference by the trial court to the testimony of PW3 Pritam Dass to the effect that no complaint was made to the police in regard to the incident on 08.08.2008 or that the appellant was not suffering from any injuries on 09.08.2008, is clearly erroneous. This is so especially in view of the Panchayat which was admittedly held on 28.09.2008. Non-filing of a complaint with the police immediately, by the appellant or her parents is indicative of an effort on their part for resumption of matrimony between the parties. Ex.P1, the statement of the respondent, duly admitted by him and reduced into writing on 28.09.2008 in the presence of various respectables, reveals that he has admitted making false allegations against the appellant as well as her father before the court at Ambala on 12.09.2008, to the effect that the appellant left the matrimonial home alongwith 7 Tolas (70 gms.) of gold as well as

₹20,000/-. The respondent has further stated that averments in his complaint to the effect that he as well as his family members were threatened by the appellant and her father are also incorrect. He admitted that he levelled false allegations due to a mistake for which he tendered his apology before the Panchayat. Thus the stand taken by the respondent is bereft of credibility. Furthermore, the respondent in the written statement submits that no Panchayat was convened at the behest of the appellant or her father, however in his testimony before the trial court, admits the Panchayat on 28.09.2008 to have been convened by the appellant and her father. It is further admitted by respondent Harmesh, RW1, that no efforts were made by him for resuming matrimony with the appellant thereafter. He made no effort to bring back the appellant from her parental house. A petition under Section 9 of the Act filed by the respondent was withdrawn by him on 03.10.2008. The withdrawal is sought to be explained on the ground that it was done on the asking of the Panchayat held on 28.09.2008. In the petition under Section 9 of the Act, it is mentioned that the respondent alongwith his mother had gone to village Kunjpura on 01.05.2008 to bring back the appellant but he denied the factum of going to village Kunjpura alongwith his mother on 01.05.2008 in his testimony before the trial court, while admitting the averments in the petition under Section 9 of the Act. He further deposed that he signed the petition under Section 9 of the Act after having read and admitting the contents of the petition. Though an effort has been made to

suggest that a Panchayat was convened at the respondent's behest on 12.07.2008, but no such evidence has been brought on record. In fact, there is no such averment to this effect. A perusal of the record indicates a complete lack of bona fide on the part of the respondent.

Subsequent conduct of the respondent before this Court inasmuch as first entering into a settlement and thereafter, not honouring the same and then not appearing before this Court despite service further cements the irresistible conclusion of cruelty and desertion at the hands of the respondent – husband. The appellant has successfully proved that it is not a case of the appellant having withdrawn from the matrimonial house without reasonable and sufficient cause. The appellant is entitled to a decree of divorce on the ground of cruelty and desertion. It is not a case of the appellant trying to gain any benefit out of her own wrong.

Consequently, this appeal is allowed and judgment and decree dated 25.10.2013 passed by the Additional District Judge, Karnal is set aside. The petition filed by the appellant under Section 13 of the Act is allowed and marriage between the parties is dissolved.

Decree sheet be drawn up accordingly.

(RAJIVE BHALLA)
JUDGE

(LISA GILL)
JUDGE

February 26 , 2016.
'om'