

In the High Court of Punjab and Haryana at Chandigarh

FAO-M No. 1 of 2014 (O&M)

Date of decision: 20.5.2016

Satwant Kaur

.....Appellant

Versus

Baljinder Singh

.....Respondent

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

Present: Mr.R.S.Tacoria, Advocate,
for the appellant.

Mr.R.K.Gupta, Advocate
for the respondent.

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. Appellant-wife is in appeal against the judgment and decree dated 11.10.2013 passed by Additional District Judge, Kaithal, vide which marriage between the appellant and the respondent was dissolved by a decree of divorce subject to the condition that the respondent-husband will pay an amount of ₹ 2 lacs to the appellant-wife as permanent alimony for extending the financial assistance to her and the decree of dissolution of marriage would be operative from the date of making the

payment to the wife within a period of one month from the date of passing of the decree.

2. Marriage of the appellant was solemnized with the respondent on 18.6.1997 according to Hindu rites and ceremonies. The marriage was consummated, but no issue was born out of the wedlock.

3. The respondent-husband alleged that the appellant-wife remained in his company in the matrimonial house only up to 25.7.1997 and thereafter, she went to her parental house at Kaithal for joining her duty in Excise and Taxation Department, Kaithal. Respondent-husband further alleged that since very inception of the marriage, behaviour of the appellant-wife was not cordial towards him and his family members. She was a hot tempered lady and was not liking the respondent and his family members as she was in good financial position, whereas, respondent-husband was working as a private teacher in DAV School on adhoc basis and was getting paltry amount of ₹ 1200/- per month. The separation was alleged w.e.f. 8.7.1997. , Respondent-husband and his family felt humiliated on account of creating scenes by the appellant-wife in the family as well as in front of neighbours and friends. Respondent-husband further alleged that the appellant-wife never performed her obligation towards the family. The parents of the appellant-wife took her on 15.7.1997 on the pretext of some marriage in their family

relation and, thereafter, she never joined the company of the husband. As per respondent-husband, the association of the appellant-wife with him was only for six days. Respondent-husband and his family members went to the house of the appellant-wife to bring her back, but she flatly refused. As a result of that panchayat was convened, but they refused to send the appellant to the matrimonial house, rather they compelled the respondent-husband to get separated from his parents. Appellant-wife compelled the respondent-husband that she could join him only when he would get his job transferred as Clerk at Kaithal from DPEP Ratia up to 15.5.1998. Respondent-husband accepted the demand of the appellant-wife and both started living at Kaithal in rented accommodation after getting his job transferred from Ratia to Kaithal. The behaviour of the appellant-wife remained cruel towards the respondent even at Kaithal. She used to quarrel on petty issues and taunted the husband in terms of his status being not in consonance with her status. She did not perform matrimonial obligation and the couple could not have any issue out of the wedlock.

4. Respondent-husband further emphasized that the appellant-wife pressurized him on many occasions to get his share separated from the property left at Jind from his family or let out the property at Jind to some one on rent so as to have rental income in their favour. On refusal by the respondent-

husband, the behaviour of the appellant-wife became more cruel and harsh towards him. She used to pick up the issues and threatened the husband that she would leave him for ever and would involve him in some false criminal cases. Ultimately, she left the house on 23.10.1998 after locking the rented room. On enquiry, respondent-husband found that she had left the company along with jewellery and other valuables. In spite of convening panchayat, the appellant-wife did not agree to join the company of the husband. Ultimately, he filed petition under Section 9 of the Hindu Marriage Act (for short 'the Act') for restitution of conjugal rights at Jind, but in spite of joining the company of the respondent-husband, appellant-wife filed false complaint before the police regarding demand of dowry and harassment. No action was taken by the police on investigation. Thereafter, she also filed criminal complaint under Section 156 (3)Cr.P.C. before the competent court. On account of that, the case under Section 498-A and 406 IPC was registered against the respondent-husband and his parents. The petition under Section 9 of the Act was dismissed and the appeal preferred thereof was got dismissed as withdrawn from the High Court on 26.3.2009 on finding that the appellant-wife was not ready and willing to join the company of the respondent-husband any more. Respondent-husband also pleaded that he along with his family was acquitted in the criminal case filed by the appellant-

wife. Thereafter also many panchayats were convened, but due to rude and arrogant behaviour of the appellant-wife, the panchayat could not succeed in its endeavour to settle the matrimonial issue. The marriage was irretrievably broken down, therefore petition for divorce came to be filed.

5.. Appellant-wife contested the petition and refuted the allegations of the respondent-husband. She submitted that on 25.6.1997, she had gone to the parental house along with her brother with the consent of the husband as well as his parents and, thereafter, husband and his father took her back at Jind on 7.7.1997, but on the very next day, she was shunted out from her matrimonial house by them after giving severe beatings for not bringing articles like colour T.V., motorcycle, gold ring and gold chain from her parents. Appellant-wife further alleged that the husband and his family members were not happy with the dowry articles and they kept on harassing her on this account. She admitted that she was employed in Excise and Taxation Department, but denied the allegations raised by the husband. After denying the averments of the husband, she submitted that when she was given beatings on 15.3.1998, the matter was reported to the police and ultimately a compromise was effected on 26.3.1998 in the panchayat. Respondent-husband and his family members gave affidavits that they will keep the appellant-wife nicely in future. Thereafter, on 23.10.1998, respondent-

husband dragged her from her hairs to the kitchen room and bolted the door from inside and tried to open the LPG cylinder, but he could not succeed in his attempt. On hearing hue and cry of the appellant-wife, landlord of the house was attracted and he saved her. Appellant-wife further submitted that she never compelled the husband to get separated from his family members, rather he himself was responsible for the act of cruelty and desertion qua her. The petition under Section 9 of the Act was decided against the respondent-husband and the appeal preferred by him in the High Court was got dismissed as withdrawn as the same was to be dismissed on merits. Appellant-wife denied all the allegations of the respondent-husband and prayed for dismissal of appeal.

6. After completion of pleadings in terms of replication, parties went to trial on following issues:-

“1. Whether the petitioner is entitled to decree of divorce on the grounds mentioned in the petition ?

OPP

2. Relief.”

7. Both the parties led their respective evidence to prove their case.

8. Respondent-husband got examined himself as PW-1 and his uncle Sukhvinder Singh was examined as PW-2, besides Sant Lal Chugh as PW-3. He also tendered documents

Ex.P1 to Ex.P5 and Mark PA to Mark PC. The evidence of the respondent-husband was closed on 21.3.2013.

9. On the other hand, appellant-wife got herself examined as RW-1, besides examining her brother Inderjit Singh as RW-2. She also tendered documents Ex.R-7 to Ex.R-10 as well as Mark X and Mark Y and ultimately closed her evidence on 26.9.2013.

10. Trial Court, vide judgment and decree dated 11.10.2013 decreed the petition on cumulative discussion under issue No.1, thereby granting a decree of divorce subject to the condition as mentioned in preceding para of the order.

11. Feeling aggrieved against the judgment and decree of the trial Court, appellant-wife has ventured to file the present appeal.

12. We have heard learned counsel for either sides and have carefully perused the evidence on record.

13. Learned counsel for the appellant vehemently argued with reference to admitted documents Annexures A1 to A5, which have already been exhibited on record. Annexure A1 attached with the appeal is the compromise executed between the parties on 26.3.1998, showing that certain terms and conditions were agreed between the parties while arriving at amicable settlement. In this compromise, it was recited that Baljinder Singh and Satwant Kaur both will live in the rented house

as husband and wife at Kaithal and parents of both the parties will not interfere in the matrimonial house. Further it was recited that Baljinder Singh would get himself transferred on the post of clerk from DPEP, Ratia to Kaithal and would live in Kaithal till 19.4.1998. In the event of any hardship in getting the transfer effected, the parties would think over the situation again. The husband side also undertook not to torture the appellant-wife in any manner.

14. Learned counsel further relied upon the affidavit of respondent-husband dated 26.3.1998 (Annexure A-2) endorsing the aforesaid conditions that the respondent-husband will live at Kaithal and will not torture the wife and will not make any demand and will follow principles of *Sikhism* by keeping beard. Parents and uncle of the respondent-husband also executed affidavits on 26.3.1998 (Annexures A-3 to A-5) on the same lines. Learned counsel by referring to these documents i.e. Annexures A1 to A5, contended that the entire family of the respondent-husband admitted their fault and undertook not to harass the appellant-wife in future. Learned counsel for the appellant also relied upon Annexure A-6. It was a panchayat proceedings dated 2.11.1998, wherein father of the appellant-wife alleged that he received telephonic call from Gulshan Kumar Sharma, the landlord of the couple, informing him that the respondent-husband had assaulted the appellant and he

confined her in kitchen room and bolted the door from inside and tried to kill her. The landlord heard the cries and went to the roof. The appellant was taken out from the kitchen and accordingly information was given to the father of the appellant. It was recorded that the father of the appellant went to Kaithal and took the appellant with them. The panchayat members, in whose presence compromise was effected, were accordingly informed. The panchayat was proposed to be held on 1.11.1998 at 1 PM in Geeta Bhawan, Kaithal, where respondent-husband and his family members were asked to arrive, but they did not come. Decision was taken that one more opportunity be given to them. Telephonic message was given to the father of the respondent-husband on 1.11.1998, requiring them to be present on 2.11.1998. Respondent-husband and his family members came to Kaithal on 2.11.1998, but no compromise was effected and respondent-husband informed the panchayat that he cannot live with the appellant-wife and he wanted to get rid of her. Writing was executed in respect of panchayat proceedings dated 2.11.1998, which was relied upon by the appellant-wife as Annexure A-6 in the present appeal.

15. Learned counsel for the appellant further relied upon the decision rendered by the District Judge, Jind in the petition under Section 9 of the Act and contended that the said petition was found to be not bonafide and was a counter blast to the

criminal case pending against the respondent-husband and his family members under Sections 406 and 498-A IPC. Against the decision rendered in the petition filed under Section 9 of the Act, respondent-husband filed FAO No. 168 of 2001, which was ultimately got dismissed as withdrawn by moving the application under Order 23 Rule 1 CPC read with Section 151 CPC.

16. At last, learned counsel for the appellant strenuously argued by referring to para 17 of the replication that the respondent-husband filed the present petition on the basis of subsequent events occurred after pronouncement of judgment in the petition filed under Section 9 of the Act and the petition under Section 13 of the Act was claimed to be independent and was not relatable to any other issue decided inter se between the parties before the decision of the petition under Section 9 of the Act.

17. For ready reference para 17 of the petition under Section 13 of the Act, of the written statement filed by the appellant-wife and of the replication filed by the respondent-husband are reproduced for the sake of clarity:-

Para 17 of the petition:

“That the respondent is living separately from petitioner and had deserted for the last more than 12 years and continuance of long separation of the wife also caused great mental cruelty towards the

petitioner and the marriage between the parties has been wrecked beyond the hope of salvage and has been irretrievably broken down completely. There has been total disappearance of emotional sub spectrum in the marriage. The petitioner is filing the present petition after loosing all his hope because of non-joining the respondent to the company of the petitioner.”

Para 17 of the written statement:

“That para No.17 of the petition is wrong and denied. The petitioner himself is responsible for separation and desertion and he has caused mental and physical cruelty to the respondent as the petitioner and his family members were not satisfied from the dowry already entrusted them for the use of respondent and they always demanded more and more dowry but the father of the respondent being poor person and unable to full fill the illegal demands of petitioner and so the petitioner and his family members has been causing cruelty to the respondent. On dated 27.3.2001, a judgement delivered by the court of Sh.B.L.Singhal, the then Ld.District Judge Jind. In the petition *u/s* 9 of the H.M.Act, In this judgement, the order was passed in favour of the respondent. In the

judgement in para No.10 , Hon'ble District Judge gave finding that "---- Thus, when such is conduct of the petitioner, the respondent is justified in withdrawing from the society of the petitioner. There is reasonable cause for her residing away from the petitioner. It is not safe for her to live in the company of the petitioner. This case is decided against the petitioner i. e. Baljinder Singh and in favour of the respondent. The petitioner preferred an appeal against the above said judgement before the Hon'ble court -of Punjab and Haryana High court Chandigarh which was got dismissed as withdrawn on 26.3.2009."

Para 17 of the replication:

That para no.17 of the written statement is wrong and denied and that of petition is correct and re-affirmed. It is further submitted that as far as the allegations of demand of dowry is concerned a false criminal case was registered against the petitioner and his family members and they were acquitted in that case, the evidence led by the respondent to prove then allegations leveled against the petitioner were disbelieved by Sh. Ajay prashar the then Chief Judicial Magistrate Kaithal. It is further submitted that the finding given in case u/s 9 the Hindu Marriage Act

by the court is not binding in the present petition. The present petition will be decided by leading cogent evidence. The present petition has been filed on the basis of subsequent events occurred after the delivery of the judgment passed in case u/s 9 of Hindu Marriage Act. The proceedings u/s 9 of Hindu marriage Act and u/s 13 of Hindu Marriage Act are quite independent and can not be related to each other. Para No.17 of the petition is re-affirmed.”

18. Petition under Section 9 of the Act was decided on 27.3.2001 and finally got dismissed as withdrawn from the High Court on 26.3.2009. The argument as raised by learned counsel for the appellant was to the effect that when there were no such instances after decision of petition under Section 9 of the Act as admitted by the respondent-husband in para No. 17 of the replication, the filing of present petition on 17.3.2011 was nothing, but an exercise in futility as no cause of action accrued to the respondent-husband for filing such petition in the absence of any cause of action after decision of petition under Section 9 of the Act. The argument seems to be attractive at the first instance, but on deeper consideration, if the entire pros and cons of the matrimonial issues are taken into consideration, the plea falls through.

19. As a matter of fact, the appellant-wife has shown her

willingness to go to the matrimonial house. Apparently, FIR came to be registered on 19.11.1998 i.e. only after filing of complaint under Section 156 (3) Cr.P.C, therefore, date of filing of complaint before the Magistrate and date of filing of petition under Section 9 of the Act (5.11.1998) have overlapping mechanism, but one fact is apparent that lodging of FIR No.620 dated 19.11.1998 under Section 406, 498-A IPC was certainly prior to the date of filing of application, wherein the respondent-husband staked his entitlement for divorce only on the basis of subsequent events occurred after pronouncement of judgment in the petition filed under Section 9 of the Act.

20. If things are co-related with each other, it comes on record that acquittal of the respondent-husband was recorded by the criminal Court of competent jurisdiction vide judgment dated 12.12.2008, i.e. prior to the filing of replication. Even if the act of the appellant-wife is presumed to be condoned on that front, the continued efforts of the wife in the form of filing appeal before the Sessions Judge, Kaithal, against acquittal of the respondent-husband and after dismissal thereof on 13.8.2012, filing of criminal revision No.396 of 2013 in this High Court and even filing of SLP in the Hon'ble Apex Court against the judgment of the High Court dated 6.10.2015 would certainly go in a long way to show that cruelty persisted even after acquittal of the respondent-husband by the trial Court on 12.12.2008,

and also after filing of replication on 5.12.2011.

21. Filing of criminal appeal before the Court of Sessions, (which was dismissed on 13.8.2012), Criminal Revision No.396 of 2013 (decided by the High Court on 6.10.2015) and SLP No.3823 of 2016 (decided by the Hon'ble Apex Court on 8.3.2016) are the necessary instances, which highlight the continued cruelty on the part of the appellant-wife to proceed against the husband, even, if the original order of acquittal was prior to filing of replication by the respondent-husband. Even though there are no instances of any incriminating act of cruelty after filing of replication in terms of para 17 thereof, but these subsequent events of filing of appeal, revision and SLP against the judgment of acquittal would certainly amount to continued cruelty and these subsequent facts can be taken into notice by this Court, while assessing matrimonial lis between the parties.

22. It has been brought on record that the parties are living separately for the last 18 years. Appellant-wife remained with the husband only for a short period. Appellant-wife was initially serving in Excise and Taxation Department at Kaithal. Now it was brought to the notice of the Court that she is serving in the office of District and Sessions Judge, Jind. Dismissal of petition under Section 9 of the Act and the admitted documents, which have been placed on record as Annexures A-1 to A-6 even, if, considered in the light of cruelty, the said facts cannot

over weigh the subsequent acts of the appellant-wife, which admittedly started after filing of replication and decision rendered by the matrimonial Court under Section 9 of the Act.

23. It is a settled principle of law that acquittal of the respondent-husband in a criminal case itself is a ground to presume cruelty at the instance of the appellant-wife. The petition under Section 13 of the Act was filed on 17.3.2011. The earlier instances already stood condoned prior to 26.3.2009 i.e. the decision rendered by the matrimonial court under Section 9 of the Act. In the cross-examination, the respondent-husband has deposed that he is not ready to keep the appellant-wife. At that time, period of more than 14 years had already gone by, therefore, the respondent-husband was reluctant to re-concile the matrimonial ties with the appellant-wife. Even in the statement recorded under Section 313 Cr.P.C. during trial, the stand of the respondent-husband was to re-concile, but since that judgment was passed prior to decision of the petition under Section 9 of the Act, therefore, even if the said act was construed to be an act of willingness on the part of the husband, thereafter, the respondent-husband based his entitlement for divorce on the subsequent facts after decision of the petition under Section 9 of the Act.

24. Looked from any angle, it is found that the appellant-wife persisted with an act of cruelty even after acquittal of the

respondent-husband on 12.12.2008 by the trial Court. Subsequent act of the appellant-wife squarely falls under the ambit of para 17 of the replication filed by the respondent-husband, wherein, he based his entitlement for divorce on the basis of subsequent acts.

25. Having considered the submissions in detail, this Court is not in agreement with the submissions made by learned counsel for the appellant. Resultantly, this appeal is found to be totally bereft of merits and the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

(M.JEYAPPAUL)
JUDGE

May 20, 2016
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