

In the High Court of Punjab and Haryana at Chandigarh

FAO-M No. 253 of 2014 (O&M)

Date of decision: 27.4.2016

Mangal Singh

.....Appellant

Versus

Saroj Bala

.....Respondent

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

Present: Mr.Bharat Julka, Advocate,
for Mr.C.M.Munjal, Advocate,
for the appellant.

Mr.P.K.Ganga, 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-husband is in appeal against the judgment and decree dated 24.3.2014 passed by District Judge, Sirsa, whereby, petition under Section 13 of the Hindu Marriage Act (hereinafter referred to as 'the Act') filed by the appellant-husband was dismissed.

2. Appellant-husband filed the petition with the allegations that his marriage was solemnized with the

respondent on 28.5.2005 according to Hindu rites and ceremonies. The marriage was consummated and male child, namely, Ravinder took birth out of this wedlock. Presently, the son is residing with the respondent. The appellant alleged that from the very inception of the marriage, behavior of the respondent was cruel and was having mental disorder. This fact was concealed by the parents of the respondent at the time of marriage. It was alleged against the wife that she used to beat the husband and also break the articles. She also used to run away from the matrimonial house. On one occasion she had an psychiatric attack and went away from the house. One Rameshwar, son of Ranjeet Singh, saw her in an unconscious condition and he brought her back to the house.

3. Appellant further alleged that his father-in-law used to demand huge amount from him from time to time. He has already paid ₹ 9 lacs to his father-in-law i.e. ₹ 5 lacs on 25.5.2010 and ₹ 4 lacs on 20.3.2011 after borrowing the same from one Rameshwar on interest. Appellant also alleged that the respondent left the matrimonial house in June 2009 without any reasonable excuse and without consent of the appellant-husband and also took away valuable ornaments and cash worth ₹ 10,000/-. The efforts of the appellant to bring her back remained futile. Several panchayats were convened but in vein. In August, 2011, respondent moved complaint to the police

against the appellant-husband and his family members. With these allegations, the divorce petition came to be filed at the instance of the appellant-husband.

4. Respondent-wife contested the allegations on all counts, thereby denying the allegations of the husband. Respondent admitted that sufficient dowry was given to the appellant-husband in the marriage. Her parents spent more than ₹ 6 lacs on the marriage. Allegations of mental disorder and hot temperament were denied. In fact, she was harassed on account of demand of dowry and was shunted out from the matrimonial house by giving beatings. Many panchayats were convened by her parents to settle the issue, but of no consequence. In April, 2011, the appellant-husband and his family members gave merciless beatings to the respondent and threw her out of the matrimonial house after snatching her ornaments. She was threatened and compelled to bring motorcycle and buffalo, otherwise she would not be allowed in the house and rather would be done to death. In the panchayat, the appellant and his family members refused to keep the respondent and were adamant on their demands. FIR No. 204 dated 27.11.2011 under Sections 498-A, 406, 506 read with Section 34 IPC at Police Station Ding was got registered by the respondent against the appellant-

husband and his family members which is pending. Petition under the Domestic Violence Act was also filed against the husband and his family members.

5. On the basis of pleadings of the parties, following issues were framed:-

“1. Whether the petitioner is entitled for dissolution of marriage by granting a decree of divorce under Section 13 of the Hindu marriage Act, as alleged ?

OPP

2. Whether the petition is not maintainable in the present form ? OPR

3. Relief.”

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

7. Appellant-husband got examined himself as PW-1 and Rameshwar was examined as PW-2, besides Mahi Pal as PW-3.

8. On the other hand, respondent-wife got herself examined as RW-1, her father Om Parkash appeared as RW-2. Advocate Ved Parkash Sharan was examined as RW-3 and she also tendered copy of the sale deed as Ex.R-1. There was no rebuttal evidence led on behalf of the appellant-husband.

9. Trial Court, vide judgment and decree dated 24.3.2014 dismissed the petition with costs. Hence, the present

petition.

10. We have heard learned counsel for the parties.

11. Though, the appellant-husband alleged mental disorder of the respondent-wife and PW-2 Rameshwar found her in an unconscious condition at one point of time and he brought her back to the matrimonial house but, the appellant-husband never adduced any medical evidence to show that the respondent-wife was suffering from any psychiatric disorder. The ground of mental disorder since the very inception of the marriage could have been agitated by the appellant-husband in seeking declaration of his marriage to be void within one year of date of knowledge of such disease, but the appellant never resorted to such action for the reasons best known to him.

12. The plea of advancing huge amount to the tune of ₹ 9 lacs to his father-in-law without any surety or proof is an act which cannot be digested in these days, particularly when everything was not going well between the couple. It is highly improbable to entertain such an allegation that the husband would pay such a huge amount to his father-in-law that too after borrowing on interest. Minor son aged more than six years is living with the respondent-wife, who is taking care of the minor from the time of separation from the husband. If the respondent was suffering from mental disorder it was not reasonably expected from her to bring up the child for so long. Rather the

husband would not have allowed the wife with such disability to take care of his minor child. The silence of the husband on this aspect speaks volumes about his mindset.

13. In order to constitute cruelty or mental cruelty, the requirement is such that suffering on account of the disease should be such nature and degree that it was impossible for the spouse to lead normal marital life with the ailing spouse. The oral version of the appellant-husband in respect of mental disorder of the respondent-wife cannot be accepted as a gospel truth in the absence of any medical record and, therefore, the ground of cruelty pales into insignificance on that score alone. There is no other evidence of cruelty, much less mental cruelty, except the solitary statement of one Rameshwar (PW-2), who allegedly saw the respondent in an unconscious condition and he brought her to the matrimonial house. This very Rameshwar subsequently advanced such a huge amount to the appellant-husband for its onward payment as loan to his father-in-law. No particulars of loan have been brought on record, nor any evidence has been brought on record as to the mode vide which this amount was advanced to the appellant by said Rameshwar. He has not disclosed the source of his acquiring such a huge amount.

14. Cruelty has not been defined anywhere. The cruelty may be physical and mental as well. The Hon'ble Apex Court in

Samar Ghosh vs. Jaya Ghosh, 2007 (2) RCR (Crl.) 515 has summed up the concept of mental cruelty by laying down some guidelines.

15. In **V.Bhagat vs. D.Bhagat, AIR 1994 Supreme Court 710**, the Hon'ble Apex Court throw light on the aspect of mental cruelty and highlighted underlying principles thereof. It has to be proved that it is not possible for one of the spouse to live together and the same cannot be reasonably expected also.

The allegations of cruelty have no place where trivial issues were involved between the spouses. The allegations should have the origin in the context of time, place and manner of occurrence. General allegations cannot constitute cruelty by any stretch of imagination.

16. In **A Jayachandra vs. Aneel Kaur, 2005 (1) RCR (Civil) 309**, the Hon'ble Apex Court held that mere irritation or annoyance may not amount to cruelty. It has to be gathered from the attending circumstances of each case.

17. Case of the appellant-husband has failed on the touch stone of concept of cruelty. Mere pendency of FIR and proceedings under Domestic and Violence Act cannot be taken to mean that the respondent-wife has acted with cruel attitude. Filing of such proceedings is the legal domain of the respondent-wife and mere filing of such cases cannot constitute cruelty unless and until the case is found to be false.

18. The second ground of desertion has to meet with the same fate. There is no evidence of wilful desertion by the respondent-wife, constituting animus deserendi. The respondent-wife was treated with cruelty on account of demand of dowry. The application moved to the Deputy Commissioner by the respondent, which was later marked to Protection Officer as well as to Senior Superintendent of Police proved that she was maltreated and ousted from matrimonial house after giving severe beatings. The evidence on record rather shows that it was the husband, who deserted the wife and not otherwise. The allegations of demand of motorcycle as well as buffalo have not been specifically countered by the appellant-husband. The ground of desertion also remained not proved at the instance of the appellant-husband.

19. A perusal of the record also reveals that at the time of issuance of notice of motion on 8.7.2014, learned counsel for the appellant made a stress that in order to effect a compromise between the parties, respondent may be summoned. The endeavour was made by learned counsel for the parties to seek summoning of the respondent on the premise that a compromise was likely to be effected. Having failed to effect compromise despite the case having been sent to Mediation and Conciliation Centre, the appellant-husband cannot re-agitate the grounds of cruelty and desertion. Even otherwise we

are of the view that the evidence on record does not suggest anything to be interpreted in favour of the appellant-husband.

20. Having considered the material on record, we do not feel like to interfere in the matter and, therefore, the appeal is dismissed.

(RAJ MOHAN SINGH)
JUDGE

(M.JEYAPPAUL)
JUDGE

April 27, 2016
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