

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

FAO (M)-422 of 2014

Date of decision: 24.02.2016

Harjinder Singh

... Appellant

Versus

Sunita Heer

... Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Ashok Giri, Advocate,
for the appellant.

Mr. A.S.Gill, Advocate,
for the respondent.

AMOL RATTAN SINGH, J.

The appellant, Harjinder Singh, seeks by way of this appeal, setting aside of the decree of divorce, dated 03.09.2014, granted by the Additional District Judge, Jalandhar, pursuant to his judgment of even date, accepting the petition filed by the respondent herein, under Section 13 of the Hindu Marriage Act, seeking dissolution of her marriage with the appellant.

2. As per the petition filed before the learned District Judge, Jalandhar, the respondent and the appellant were married to each other as per Sikh religious rites, on 15.04.2001 at the Gupta Palace, Taajpur,

Jalandhar. The status of the respondent, Sunita Heer, as per her petition, is shown to be unmarried on the date that she is stated to have married the appellant and, suprisingly, even on the date of filing of the petition, she showed herself to be unmarried but showed the appellant to be married, (possibly due to a typographical error). However, as regards the appellant, he is also shown in the petition to be unmarried, prior to his marriage to the respondent.

3. The appellant and the respondent (hereinafter referred to collectively, when necessary, as the parties) are stated to have lived together as husband and wife and out of this wedlock, a female child was born on 14.06.2003, who at the time of filing of the petition before the learned District Judge, was living with the respondent.

It was further contended in the petition that the behaviour of the present appellant and his family members towards the present respondent became very cruel, as they were dissatisfied with the amount of dowry brought by her. It was further alleged that the appellant was a drunkard and drug addict, who did no work and upon coming home every night in a drunken condition, used to beat up the respondent.

Allegations of a demand of Rs.3,00,000/- as dowry were also made in the petition, with a further allegation that often the respondent was not even given food and had to sleep on an empty stomach.

Even when she became pregnant, allegedly she was not provided proper medical facilities or diet, with the beatings still continuing. The birth of a female child is further stated to have been a cause of cruelty to the respondent, at the hands of the appellant and his family.

4. Upon intervention of the respondents' parents and other

respectables, the matter is stated to have been resolved for some time, after which the demand for dowry and the cruelty are stated to have begun again, with an additional demand for a car also, about four years prior to the filing of the petition.

Upon the respondent not being able to fulfill the dowry demands, she was allegedly turned out of her matrimonial home and left at her parents' place, alongwith her daughter, with nothing except the clothes that they were wearing.

Thereafter, though the marriage is stated to have been “resumed off and on,” allegedly there was no let-up in the treatment of cruelty meted out to the respondent, thus compelling her to file the petition seeking a divorce from the appellant.

5. The appellant filed a reply to the petition denying all the allegations and in fact, denying the marriage itself, further stating that with no marriage having taken place, there was no question of consummation of the marriage and therefore, the question of the birth of a child from it did not arise.

Hence, the contention was and is, that the marriage never having taken place, the question of grant of a decree of divorce did not arise.

6. By way of evidence before the first court, the respondent appeared as PW1 and tendered her sworn affidavit, Ex.PW1/A, to be read in evidence on her own behalf. At that stage (17.12.2012), the appellant did not appear before the trial Court and consequently, the evidence, at that stage, was led by the respondent *ex parte*, against the appellant.

The said affidavit Ex.PW1/A is, in fact, a reiteration of the

entire contents of the petition.

Thereafter, the order proceeding against the respondent *ex parte* having been set aside, the respondent was cross-examined, during the course of which, though she initially stated that she was not married to anyone before her marriage to the appellant, subsequently, she admitted that she had, in fact, applied for immigration to Canada, stating in the application form that she was married to the appellants' brother, Kulwinder Singh. She also admitted that the copy of her passport, exhibited as Ex.R-1 by way of defence evidence of the appellant, was the correct copy and that the other documents exhibited, as Exs.R-2 to R-5, were also documents pertaining to her immigration process to Canada. It needs to be stated here that almost all the documents, Exs.R-2 to R-4, are in French and no translated copy is on record. However, a perusal of Ex.R-4 shows that Kulwinder Singh is shown to be a Canadian citizen and the respondent is shown as his spouse, seemingly seeking immigration to Canada. The date shown on this document is 05.09.2001 or 05.04.2001 (the difference between '4' & '9', i.e. the month of April or September, not being fully distinguishable). Subsequently the date 16.10.2001 also appears in the document.

Ex.R-3 is also another document which, if translated from French, seems to be a certificate of selection for permanent residence, issued on 16.10.2001, with a validity upto 16.10.2004. This document is also issued to the respondent, showing her name as Sunita Heer with her alternate name given as Sunita Singh (seemingly as the wife of Kulwinder Singh).

More will be discussed on this, while considering the evidence

of both sides.

7. Coming back to the other witnesses who were examined on behalf of the respondent. PW2, one Sardara Singh son of Moti Singh, swore into evidence, his affidavit dated 08.11.2012, in which it is stated that he is a neighbour of the respondent and that her marriage was solemnized with the appellant on 15.04.2001 as per Sikh Rites. He reiterated the status of the appellant and the respondent to be unmarried prior to their marriage to each other, but again, at the time of filing of the petition, the respondent is shown as unmarried whereas the appellant is shown to be married.

The rest of the affidavit reiterates all that is stated in the petition filed by the respondent, with regard to a female child being born on 14.06.2003, the cruelty meted out to the respondent at the hands of the appellant and his family, the demands for dowry etc.

PW2 also stated in his affidavit that Sunita had been deserted by the appellant for a continuous period of about four years and that the appellant was not willing to cohabit with the respondent and as such, she was entitled to a divorce.

In cross-examination, PW2, Sardara Singh, stated that he did not know the name of the husband of the respondent but often saw him maltreating her.

However, in cross-examination, he also stated that “no demand of dowry for money was ever demanded by the husband of the petitioner” (now respondent).

PW2 further stated that the appellant was a drunkard and drug addict. However, he stated that he did not know what was written in his affidavit presented in evidence. As per this witness, the affidavit was typed

by a lady Advocate whose name he did not know, but he admitted that it was read over to him.

8. PW3 was the father of the respondent, Jai Parkash Narayan, who also tendered into evidence his affidavit, Ex.PW3/A, reiterating almost exactly what was stated in the petition filed by the respondent.

In the cross-examination of PW3, he reiterated what was stated by him on affidavit and further, admitted that the passport (copy Ex.R-1) belongs to his daughter. He denied knowledge of whether his daughter applied for immigration to Canada or not. He also denied that a Panchayat was ever convened between the parties.

9. The last witness on behalf of the respondent-petitioner was Ashwani Kumar, PW4, who also tendered his affidavit, Ex.PW4/A into evidence.

As per the said affidavit, this witness was the mediator in the marriage between the parties, which took place on 15.04.2001 at Gupta Palace, Jalandhar, according to Sikh rites. Almost the same chart, with regard to the status of the parties, before and after the marriage, as was given in the petition, was given in this affidavit too, though in an abridged form.

Thereafter, the affidavit goes on to state essentially what was stated in the petition, again stating that the appellant had deserted the respondent for a continuous period of about four years and that he was not willing to cohabit with her and consequently, she was entitled to a decree of divorce.

In cross-examination, PW4 stated that he had known the appellant since 1992 and also knew the respondent because her father was

know to him. He reiterated the date of the marriage and denied that he was not a mediator between the parties.

He, however, denied knowledge of whether the respondent had applied to go abroad, though he admitted often attending functions in the family of the appellant.

As per this witness, he had never seen the parties quarrel with each other, though the respondents' father had complained with regard to some dispute between them. He also denied any demand of dowry in his presence, or that he ever attended any Panchayat between the parties, regarding any dispute.

He admitted that he came to tender his affidavit in evidence, at the request of the respondents' father but had tendered such evidence as per facts known to him. He further stated that the affidavit sworn by him in evidence was got typed by him from a typist at Jalandhar and was also attested by him before the Oath Commissioner.

Again reiterating that he did not know whether the respondent had tried to go to abroad on the basis of her marriage, he further stated that the parents of the respondents never showed him any inability with regard to any money to be 'paid or not paid'.

10. With the closing of the evidence on behalf of the respondent-petitioner, the appellant appeared as RW1 himself and tendered his affidavit Ex.DW1/A to the trial Court.

In the said affidavit, he again reiterated that no marriage ever took place between him and the respondent and that the respondent herself was estopped by her acts and conduct, from filing the petition.

The affidavit further states that during the course of cross-

examination, the respondent has admitted that she had married with “one Kulwinder Singh”. He also referred to the document of divorce (from Montreal) and the documents relating to her marriage (with Kulwinder Singh), though the specifics of the documents have not been given in the affidavit.

Again denying any charges of cruelty and desertion, the affidavit states that when no marriage took place, the question of any cruelty did not arise.

11. In cross-examination, the appellant admitted that “At present, I am doing nothing. I am unmarried.”

Thereafter, he stated that no marriage was solemnized between him and the respondent, though she was married to his younger brother. He further stated that he had produced documents in support of that, which were on record, though he did not know whether, on the birth certificate of the child of the respondent, he was mentioned as the father or not.

The appellant, in his cross-examination, further stated that the marriage between his brother and the respondent was solemnized on 31.03.2001 and that he had attended the said marriage. However, his brother and the respondent were stated by him to be living separately due to the fact that they had been divorced. He gave the reasons for divorce as difference of temperaments and again reiterated that he had never been married to Sunita Heer daughter of Jai Parkash Narayan. The appellant further denied as incorrect that he was concealing the factum of marriage between him and the respondent.

With the above, the respondent closed his evidence before the trial Court.

12. Thereafter, the statement of the respondent before the trial Court is recorded on 30.08.2014, to the following effect:-

“Stated that respondent has denied marriage with me. I pray that DNA test of my daughter namely Nancy Bhatoï may kindly be got conducted at our instance.”

The statement of the appellant also, recorded on the same date, is to the following effect:-

“Stated that I denied marriage with the petitioner. I have no objection if my DNA test with Nancy Bhatoï is conducted at the costs of the petitioner.”

Despite the above, no report of any DNA testing of either party, is on record.

13. Mr. Ashok Giri, learned counsel appearing for the appellant, submitted that the entire divorce proceedings between the respondent and the appellant are completely misplaced and misconceived, inasmuch as, the respondent was already married to the younger brother of the appellant, even on the date that she claims to have married to the appellant, i.e. on 15.04.2001. He further submitted that this stands proved not only from the testimony of the appellant before the trial Court, but also from the documents Exs. R-1 to R-4, which amply prove that the respondent had applied for immigration to Canada as the wife of Kulwinder Singh, brother of the appellant and thereafter, by a judgment dated 10.11.2003, the marriage of Kulwinder Singh, with the respondent, was dissolved, effective from the 31st day after the date of the said judgment. He pointed to the judgment (Annexure R-5) of the Superior Court (Family Division), District of Montreal, Province of Quebec, Canada, wherein while pronouncing the divorce, it is stated in the judgment (dated 10.11.2003), that the marriage of

Kulwinder Singh and the respondent (Sunita Heer) was solemnized on March 31st, 2001, in Jalandhar (India). Thereafter, a decree of divorce is annexed with the said judgment, which is in French, but from which the date of effect of the decree can be discerned to be December 11, 2003. Again, in the said document, the date of marriage between Kulwinder Singh and Sunita Heer is shown to be 31.03.2001, at Jalandhar.

14. Thus, Mr.Giri submitted, that it was very obvious that the respondent was actually married to the brother of the appellant and that no marriage was solemnized between the parties before this Court and she obviously not having been kept by the brother of the appellant in Canada, is trying to wreak vengeance on the appellant and his family, by showing that she was married actually to the appellant and that the female child born to her was the child of the appellant. Consequently, by applying for a divorce from the appellant, she is trying to establish rights on his property, whether by way of maintenance, or qua inheritance rights of her daughter.

Alternatively, Mr. Giri submitted that, even if, for the sake of argument, it is accepted that there was some marriage ceremony performed between the appellant and the respondent on 15.04.2001, which is a date after 31.03.2001, then too, with an existing marriage between the respondent and Kulwinder Singh, any marriage with the appellant was a nullity, *ab initio*.

As such, learned counsel further submitted that even if this Court comes to a finding that some marriage ceremony actually took place on 15.04.2001, the effect would still be that such subsequent marriage would be void *ab initio* and as such, there was no question of granting any decree of divorce between the parties.

He, therefore, prayed that the appeal be allowed and the impugned judgment and decree be set aside.

15. *Per contra*, Mr. A.S.Gill, learned counsel appearing for the respondent, submitted that the evidence led by the respondent before the trial Court, both by way of testimonies of four witnesses including herself, as also by way of documents exhibited before that Court, amply prove that the appellant and the respondent were married to each other on 15.04.2001, and that during the subsistence of that marriage, a female child was born on 14.06.2003.

Mr. Gill also submitted that the respondent, though had applied for immigration to Canada, as admitted by her in evidence, wrongly showed herself to be the wife of Kulwinder Singh only to immigrate to Canada, but there was no proof of any actual marriage between Kulwinder Singh and the respondent, by way of any photographs, witnesses to the said marriage, or even a marriage card showing that any such marriage actually took place.

He further submitted that simply because Kulwinder Singh, in the divorce papers before the Superior Court, in Montreal, Canada, showed the date of marriage between him and respondent Sunita Heer to be 31.03.2001, there was no proof of any such marriage actually having taken place.

Learned counsel therefore submitted, that despite the documents seeking immigration, showing the respondent to be the wife of Kulwinder Singh, for which separate proceedings could be initiated by a competent person/authority, against the respondent and Kulwinder Singh, the factum of any actual marriage between her and Kulwinder Singh having taken place, was not proved by any substantive evidence at all.

On the other hand, he further submitted, that the marriage of the appellant with the respondent had been duly proved, by way of, firstly, the marriage card (Ex.P4/E), thereafter, the photographs of the marriage (Ex.PW4/A to Ex.PW4/D), as also the birth certificate of the daughter of the parties, Nancy Bhatoï (Ex.PW4/G), issued by the Registrar of Births and Deaths, Nagar Panchayat, Dhilwan, and by the testimonies of the witnesses who appeared for the respondent-petitioner.

Learned counsel further pointed to the Voter Identity Card issued to the respondent by the Election Commission of India (Ex.P/F) on 24.01.2004, in which the name of the appellant is given as the husband of the respondent. Similarly, he also pointed to an unexhibited document, which is an Identity Card issued to the child, Nancy Bhatoï, by one Double Victory School, Beas, again showing the name of the father of Nancy Bhatoï to be the appellant.

Learned counsel for the respondent, therefore, submitted that the learned trial Court having come to a positive conclusion on the basis of the evidence led, that the appellant and the respondent were actually married to each other, granted divorce to the respondent from the appellant, which judgment and decree require no interference with.

He, hence, prayed that the appeal be dismissed.

16. Having considered the pleadings, the evidence led before the trial Court and the arguments addressed before us, it is obvious to us that the respondent actually applied for immigration to Canada, showing herself to be the wife of Kulwinder Singh, who is admittedly the younger brother of the appellant. However, other than these documents, we are in agreement with the learned counsel for the respondent that no proof of actual marriage,

to Kulwinder Singh, whether by way of any wedding card, any photographs or any witness to the marriage, was produced in evidence before the trial Court by the appellant.

On the other hand, it is equally obvious that some marriage ceremony actually did take place on 15.04.2001 between the appellant and the respondent, as can be discerned from an appraisal of the documents exhibited on behalf of the respondent-petitioner, i.e. the marriage card (Ex.P4/E), the marriage photographs (Ex.PW4/A to Ex.PW4/D) and the birth certificate of Nancy Bhatoi, Ex.PW/G.

Even if the Voter Identity Card (Ex.P/F) is to be ignored, having been issued on 21.01.2004, i.e. after the alleged divorce decree between Kulwinder Singh and the respondent was issued by the Court in Montreal, the fact remains that the birth certificate of the female child, Nancy Bhatoi (Ex.PW/G) has been issued by the Local Registrar, Births and Deaths, Nagar Panchayat, Dhilwan, District Kapurthala. In fact, that is the address of the appellant, admittedly given by him even in the present appeal. Thus, obviously, the child was not born in the parental town of the respondent (Jalandhar) but in the town where the appellant resides. In the said birth certificate also, the name of the appellant is given as the father of Nancy Bhatoi, further giving the name of the father of the appellant as Pakhar Singh, i.e. the same name as is shown as the father of the appellant in the memo of parties, before this Court.

17. Undoubtedly, this is not an appeal in a suit to determine paternity. It is with regard to whether a valid marriage between the appellant and the respondent was performed, in respect of which a decree of divorce has been awarded by the trial Court.

As already noticed, the respondent produced a marriage card and marriage photographs before the trial Court to prove that she was actually married to the appellant on 15.04.2001. She also produced witnesses, including PW4, Ashwani Kumar, who testified to being the mediator of the marriage between the parties which took place on 15.04.2001 at Gupta Palace, Jalandhar, according to Sikh rites. Even in cross-examination, the appellant could not dislodge or break that evidence led on behalf of the respondent. Thus, the sole defence of the appellant, which is creditworthy of any consideration, is the documents produced by him to show that the respondent applied as the wife of his brother Kulwinder Singh, for immigration to Canada and that his brother had actually obtained a decree of divorce from a Family Court in Canada, against the respondent.

18. Other than that, the respondent herself, during her cross-examination, when she stood as her own witness before the trial Court, admitted that she had applied for immigration to Canada as the wife of Kulwinder Singh, i.e. the brother of the appellant and that she had married the said Kulwinder Singh for the purpose of such immigration.

That admission obviously is to be accepted. However, we are not in dis-agreement with the argument raised by learned counsel for the respondent, seen with her own testimony, that the marriage (if any) was actually performed only for the purpose of obtaining immigration. Obviously, if any legal action lies on that ground, against the respondent and Kulwinder Singh, it would be open to any competent authority/person to initiate such action.

That still also does not prove that the marriage with Kulwinder

Singh took place, if at all it actually did, before 15.04.2001, i.e. the date on which she and the appellant were married to each other.

We say “if at all” because it is uncertain whether the respondent admitted to the said marriage in the trial Court, only because she could not refute that she had shown herself as Kulwinder Singhs' wife in the passport and immigration documents, or because she actually married him. Further, that admission still does not show that the marriage took place on the date that the appellant claims that it did, i.e. the 31.03.2001. Undoubtedly, that is the date given by Kulwinder Singh, in the divorce petition that was filed by him in the Superior Court (Family), District Montreal, Quebec, Canada, as is obvious from the decree of divorce granted on the 10th of November 2003 by that Court. However, simply because Kulwinder Singh filled in a particular date of marriage in his divorce petition, does not prove that such a marriage actually took place on that date. The appellant (of this appeal) led no evidence whatsoever, other than the immigration and divorce papers before Canadian authorities, to prove that any marriage actually took place on 31.03.2001, between his brother Kulwinder Singh and the respondent, Sunita Heer.

The respondent also, while admitting her marriage with Kulwinder Singh, in cross-examination, did not give any date of the marriage, nor was she cross-examined on the same. In fact, the presumption would, therefore be, that any marriage between Kulwinder Singh and Sunita Heer, had taken place after the date of marriage between the appellant and the respondent, i.e. after 15.04.2001, only in order to obtain immigration for the respondent to Canada. If that were not so, then the child born to her, i.e. Nancy Bhatoi, would have been shown to be the daughter of Kulwinder

Singh and not of his brother, i.e. the appellant Harjinder Singh, in the birth certificate.

As we have already noticed, the child was born in Dhilwan, District Kapurthala, i.e. the place where the appellant and his family reside and not at the parental home of the respondent, which is at Jalandhar. Therefore, the appellant had at no time refuted that the daughter born to the respondent was his and not his brothers' until the time of filing of the divorce petition by the respondent.

Hence, the factum of the daughter born to the respondent, being a child of the appellant, is presumed to be correct. In fact, the Voter Identity Card issued by the Election Commission of India, to the respondent, on 21.01.2004 (Ex.P/F before the trial Court), has also been issued from Kapurthala and not from Jalandhar, by the Electoral Registration Officer, Bholath, showing her address to be H.No.8/3, Dhilwan, Tehsil and District Kapurthala. Obviously, the said certificate was issued well after the divorce decree granted by the Canadian Court in 2003 to Kulwinder Singh and therefore, a safe presumption can be drawn that the Voter Identity Card was issued after due cross-checking of the respondents' address, i.e. the address of the appellant, in the year 2004 also.

19. We now have to consider the effect of what has been shown to us as a Marriage Registration Certificate produced before us. The said certificate is shown to be issued by the Registrar of Marriages, Dhilwan, on an application made by Kulwinder Singh, showing the date of marriage to be 31.03.2001, but registered on 20.04.2001. Though, obviously, a presumption would go in favour of the contents of the said certificate, however, whether or not that certificate was issued from production of any

photographs and other proof of any marriage that took place on 31.03.2001 between Kulwinder Singh and the respondent, is not on record anywhere. Neither was any official from the office of the Registrar of Marriages examined by the appellant, as a witness before the trial Court, nor was the Marriage Certificate Register produced.

Hence, *per se*, the said certificate is not admissible in evidence, in any case, not even having been duly exhibited in any proceedings.

20. It needs to be further noticed that neither the correction of the respondents' passport showing her husband to be Kulwinder Singh, nor the other dates on her passport, or even on any of the documents submitted for the purpose of immigration, show a date between 31.03.2001 and 15.04.2001. Hence, the only document which was duly exhibited, which shows the date of the marriage between Kulwinder Singh and the respondent to be 31.03.2001, is the decree of divorce issued by the Court in Canada, which in any case was only on a petition filed by Kulwinder Singh, with no admission thereto by the respondent.

Even if we are to accept the copy of the marriage registration certificate to be at least *prima facie* correct, it still does not alter the fact that other than from the date filled in on two forms, there is no substantive proof of an actual marriage having taken place between Kulwinder Singh and the respondent on 31.03.2001. To repeat, even in her cross-examination, the actual date of the such marriage was never put to the respondent.

21. We could, of course, remand the matter to the trial Court to come to a more substantive conclusion by way of evidence led, as to whether any actual marriage took place between the respondent and Kulwinder Singh or not.

However, we are not remanding the matter for determination of the truth or falsity of the alleged marriage of Kulwinder Singh with the respondent on 31.03.2001, for three reasons: (i) that it was for the appellant to prove the correctness of the marriage certificate, only a copy of which has been produced before us. Not having discharged that onus, we, obviously, will not fill in the lacuna for him; (ii) the marriage of the appellant to the respondent having been duly proved on 15.04.2001, as already noticed, the presumption of truth is to be attached to that marriage rather than any sham marriage which took place between Kulwinder Singh and the respondent and (iii) the respondent has obviously been given a raw deal of neither having been settled abroad, nor even in the marriage which stands substantively proved with the appellant, and hence to remand the matter yet again, for another round of litigation, only to fill in the *lacunae* in evidence not brought by the appellant, would be highly unjust to the respondent and her daughter, in our considered opinion.

22. It is also to be specifically noticed that in view of the divorce papers stated to have been issued by the Court in Canada, in favour of Kulwinder Singh, granting him a divorce from the respondent, she (respondent- Sunita Heer) could easily have taken advantage and claimed paternity of her child to be that of Kulwinder Singh, thus laying claim of the child, to rights of inheritance and maintenance from Kulwinder Singh, who is obviously in a better financial position than the appellant, who is admittedly doing nothing even as per his own statement. Yet, the respondent even while seeking divorce from the appellant, asserted his paternity in respect of her child, Nancy Bhatoj, obviously in view of the fact that she was actually married to the appellant and the child was born out of that

wedlock. Hence, she, whether for herself or for her child, is not trying to seek extra gains by seeking maintenance etc. from Kulwinder Singh, but is simply establishing such rights qua the appellant.

Therefore, in view of what has been discussed above, we find no merit in this appeal, which is dismissed with costs of Rs.5000/-.

24.02.2016
nitin/dinesh

(RAJIVE BHALLA)
JUDGE

(AMOL RATTAN SINGH)
JUDGE