

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

CRR(F) No.227 of 2015
Date of Decision:21.03.2017

Paramjit Kaur

.....PETITIONER

Vs.

Lakhwinder Singh

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr.Hem Raj Kapil, Advocate for the petitioner.

Mr.P.S. Dhaliwal, Advocate for the respondent.

RITU BAHRI J. (ORAL)

The petitioner has come in revision against the order dated 10.07.2015 whereby application under Section 125 Cr.P.C. seeking maintenance has been dismissed.

Briefly stated that marriage of the petitioner was solemnized on 16.12.2007 at Gumti, Distt. Barnala by way of Anand Karj Ceremony and after the marriage they resided and cohabited as husband and wife. At the time of marriage, the parents of the petitioner-Paramjit Kaur gave dowry articles to her, but the respondent and their family members were not happy with the said dowry articles and used to maltreat the petitioner and they used to harass and beat her on account of their demand of more dowry and the respondent also gave beatings to her in front of his family members. Thereafter, when father of the petitioner came to her matrimonial house to meet her, she has disclosed the entire occurrence to her father and, thereafter, her father bring the Panchayat to her matrimonial house 2-3 times and requested the respondent and her family members not to harass her, but instead of amending their ways and attitude, they thrown out the petitioner-Paramjit Kaur from her matrimonial home. Thereafter,

on 11.05.2008, respondent-Lakhwinder Singh has brought the petitioner to Chandigarh, there also on 06.06.2008, respondent gave severe beatings to her and thrown out the petitioner from her matrimonial house and she all alone reached to her parents house and thereafter on 02.10.2008, her father consisting the Panchayat members namely Amar Singh son of Sadhu Singh, Malkiat Singh son of Gurdev Singh, Gurcharan Singh son of Santa Singh, visited the matrimonial house of the petitioner, at that time, the respondent was in his home as he was on leave from his job in army and the Panchayat requested the respondent and his family members not to maltreat the petitioner on account of demand of car, but they openly stated in the Panchayat that until and unless Maruti Car were given to them, they will not rehabilitate the petitioner in their house and they insulted the Panchayat and the Panchayat returned back to their village alongwith the petitioner. Thereafter, on 11.11.2008, an application was made before the SSP, Barnala, but police did not take any action. Thereafter, on 01.12.2008, with the help of Panchayat, one compromise with regard to divorce of the petitioner with the respondent was effected according to which, the petitioner has received Rs.4 lacs from the respondent on account of her *Istridhan* and maintenance, out of which Rs.2 lacs were paid to the petitioner on 01.12.2008 and balance of Rs.2 lacs is to be paid to the petitioner in Court on the last date of hearing in the divorce petition. According to the said compromise, one petition under Section 13-B of the Hindu Marriage Act, 1955, (for short 'the Act') was filed on 02.01.2009 and on which, the date was fixed for 16.07.2009, but the respondent refused to pay the balance amount of Rs.2 lacs to the petitioner. Therefore, the petitioner withdrew her consent in the divorce petition which was dismissed by the Court.

Upon notice, a reply was filed by the respondent by raising objections that the petitioner on 01.12.2008 has already taken a divorce in the Panchayat from the respondent and according to the compromise, he has paid Rs. 2 lacs to her out of total amount of Rs.4 lacs to the petitioner and has filed a divorce petition by way of mutual consent in the Court, but at the time of recording the statement of second motion, the petitioner withdrew her consent and, thereafter, the respondent has already filed the application in divorce against the petitioner. Moreover, in his divorce case, the Addl. District Judge, Barnala, has already dismissed her petition filed under Section 24 of Hindu Marriage Act, 1955, for interim maintenance. He denied the allegation of cruelty and demand of more dowry articles.

The Court below after going through the evidence, came to the conclusion that the respondent at present is Lance Nayak in the Indian Army and drawing salary of Rs.25,000/- to 30,000/- and reference has been made to the *Panchayati Talaknama* Annexure R-7, where a compromise was effected of Rs.4 lacs to be paid to the petitioner. However, it is categorical case of the petitioner that she has withdrawn her consent because respondent did not fulfill the terms of the compromise and respondent has refused to pay remaining amount of Rs. 2 lacs to the petitioner, as part payment of her permanent alimony at the time of recording the statement of second motion. However, the said version of the petitioner has been totally controverted by her father Surjit Singh (AW2), who during his cross-examination admitted that it is correct that on the date of recording the statement of second motion in divorce petition, petitioner-Paramjit Kaur has denied to receive Rs.2 lacs from the respondent. Thus, the version of the petitioner is not found to be proved that she has withdrawn her consent because respondent has refused to pay Rs.2 lacs to her, as agreed at the

time of recording the statement of second motion.

The another version of the petitioner-Paramjit Kaur during cross-examination of the petitioner Paramjit Kaur as well as her father that Panchayati compromise was got recorded and effected from them under pressure and threat of the respondent-Lakhwinder Singh and his family members, but the said version of the petitioner-Paramjit Kaur as well as her father, has also found to be their improved version in her petition filed by the petitioner, as she has specifically recorded that the compromise was effected between the petitioner and the respondent with the help of the Panchayat and respectables vide which they got divorced from each other on 01.12.2008. Similar version has come in the deposition i.e. during the chief-examination of the petitioner on 19.10.2012. In this regard, it is also necessary to mention here that the Panchayati Talaknama Ex.R-2, which has been admitted by the applicant-Paramjit Kaur as well as her father Surjit Singh (AW-2), it has been mentioned there that the Panchayats of both the parties got compromised the matter between the parties and accordingly, they got divorce in the Panchayat. Thus, the applicant has failed to substantiate her version by leading cogent and convincing evidence that said Panchayati compromise was got executed from her under pressure and the same is not the voluntarily one. Moreover, the said Panchayati Talaknama and compromise which was allegedly got executed from the petitioner Paramjit Kaur under pressure, was never challenged by the petitioner. No compliant has ever been made to any authority against the respondent or anyone else or anyone of the family members or the witness of the said agreement.

No doubt there cannot be any written agreement between the husband and wife for divorce contrary to the provisions contained in the Hindu Marriage Act, but it has been proved on record that the documents Ex.R-7 is

executed by mutual consent and was executed voluntarily. The applicant herself suffered the statement before the Court in her petition filed under Section 13-B that her marriage was solemnized with respondent on 16.12.2007 and she resides with the respondent only for four days and since 20.12.2007, she is residing separately and it was with the help of the respectables and the relatives, they compromised the matter and thereafter, they decided to get dissolve their marriage by mutual consent.

Petitioner-Paramjit Kaur in her entire testimony before the Court, nowhere recorded that she had withdrawn her consent in the petition filed under Section 13-B of the Hindu Marriage Act, as she wanted to live alongwith her husband and do not want to get divorce. On the other hand, only version she put that the respondent has refused to pay Rs.2 lac to her at the time of recording the statement on second motion and because of the said reason she has withdrawn her consent in the said petition, which version of the petitioner Paramjit Kaur was not proved on record. No doubt, the petitioner Paramjit Kaur had withdrawn her consent in her petition filed under Section 13-B, but it cannot be presumed that petitioner Paramjit Kaur had withdrawn her consent, as she wanted to live with the respondent. Moreover, from the Panchayati Talaknama Ex.R7 as well as her statement before the Court under Section 13-B of the Hindu Marriage Act, it has been proved on record that since, it was not possible for the parties to live together as husband and wife, due to their differences, they have mutually decided to live separately from each other.

In view of the above facts and circumstances of the case, it is proved on the record that the petitioner-Paramjit Kaur is living separately from the respondent-Lakhwinder Singh with mutual consent. Therefore, she is not entitled for grant of maintenance under Section 125 Cr.P.C.

Consequently, the judgment of the family Court do not require any interference by this Court.

Dismissed.

Furthermore, learned counsel for the petitioner informed the Court that FAO No.M-41 of 2011 (O&M) titled as “Paramjit Kaur Vs. Lakhwinder Singh against the decree of divorce is pending. After having final decision of the case, the petitioner will have the liberty to file an application under Section 125 Cr.P.C. if necessity arises.

(RITU BAHRI)
JUDGE

21.03.2017
Anjal

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No