

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

**F.A.O. M NO.394 OF 2013 (O&M)**

**DATE OF DECISION: OCTOBER 31, 2017**

**Rajesh Kumar**

**.....Appellant**

**VERSUS**

**Suman**

**....Respondent**

**CORAM:- HON'BLE MR.JUSTICE M.M.S.BEDI  
HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH**

**Present: Mr. Raj Kumar Gupta, Advocate,  
for the appellant.**

**Mr. Akshay Jindal, Advocate,  
for the respondent.**

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**AUGUSTINE GEORGE MASIH, J.**

Rajesh Kumar, appellant-husband, has challenged the judgement and decree dated 10.10.2013 passed by the Additional District Judge, Panipat, whereby petition under Section 13 of the Hindu Marriage Act, 1955 (for short, “the 1955 Act”), whereby petition filed by respondent-wife for dissolution of marriage on the ground of desertion and cruelty stands allowed.

2. Briefly the facts are that the marriage between appellant, Rajesh Kumar and respondent-Suman, was solemnized as per the Hindu rites and ceremonies on 03.07.1998 at Panipat. The marriage was duly consummated and a son, namely, Tushar, was born out of the wedlock. As per the

allegations of the wife, the appellant and his family members teased her for bringing insufficient dowry. Further the appellant was a drunkard, gambler and characterless person having bad habits, indulging in torture and harassment, including physical abuse, resulting in mental and physical cruelty. A Panchayati compromise was entered into between the parties on 17.09.2004, according to which the parties started living separately. The son was living with the respondent-wife. As per the terms of the compromise, a petition for grant of decree of divorce under Section 13-B of the 1955 Act was jointly filed but the same was dismissed in default on 30.04.2005 due to non-appearance of the parties. As per the admitted facts, the parties resided together for a couple of months in the years 2006 and then 2008 but the wife asserts that the appellant did not mend his ways and continued to mal-treat her. It is also asserted by her that the husband had been staying away since the year 2004, except for a short period of time in the years 2006 and 2008. A decree of divorce was, thus, sought on the ground of desertion and cruelty.

3. On facts, the appellant-husband denied the factum of harassment, maltreatment or bad habits, which were attributed to him and rather positively asserted before the Court below that the respondent-wife, with a urge to satisfy and fulfill her sexual lust, has left the matrimonial home with ulterior motive and that she had illicit relations with unknown multiple persons and had made false allegations against the appellant just to cover up her ill deeds. He contended that all possible efforts were being made by him to save the marriage and had been trying to bring together reconciliation in the matter, for which, he asserts that despite there being a Panchayati compromise in the year 2004 and filing of petition under Section

13-B of the 1955 Act, the same was not finalized as the parties started residing together. It was reiterated and evidence brought on record to assert that they had indeed been residing together as their son, Tushar, was admitted in the school in Jind as also at Matlauda. Medical evidence has been placed on record, indicating that the respondent-wife was pregnant and was medically treated at Gupta Hospital and Maternity Hospital, Jind in the year 2008. On that basis, it was asserted that the allegations made in the petition for grant of divorce were without any basis and false as there has not been any desertion, as mandated period of two years, as required under the statute, was not complete. Since the respondent-wife had approached the Court with unclean hands, she is not entitled to the decree of divorce as claimed by her.

4. Learned Court below, after going through the evidence led by the parties and on the basis of pleading, had concluded that the respondent-petitioner (wife) has been able to prove the allegations of desertion and cruelty against the appellant-husband and further that false allegations levelled against the respondent-petitioner (wife) by the appellant with regard to her having illicit relations with unknown persons having not been established itself amounts to cruelty, which is a good ground for granting a decree of divorce. This judgement and decree dated 10.10.2013 is under challenge in the present appeal.

5. Learned counsel for the appellant has vehemently argued that the Court below has not appreciated the fact that the cruelty and harassment, if any, which was meted out to the respondent-wife by the appellant-husband, as alleged, stood condoned once they had started residing together in the year 2006 and thereafter in the year 2008 as per own admission of the

respondent-wife. The mandate of the period required for separation without any cause having not been fulfilled, the Court could not have passed the decree of divorce. That apart, he contends that requirement of desertion, as laid down under the statute, has not been fulfilled as the appellant has always been willing and ready to keep the respondent-wife as also the minor son, for which purpose he has preferred a petition for custody under Section 25 of the Guardian and Wards Act, 1890 read with Section 6 of the Hindu Minority and Guardianship Act, 1956 in the year 2013, which is still pending. He contends that the specific ingredients of cruelty and desertion have not been pleaded with specific particulars nor evidence produced on record to prove such assertions. The evidence, which has been led by the respondent-wife, is primarily oral and the same is not reliable and trustworthy and, therefore, should have been ignored by the Court below. He, on this basis, contends that the allegations made against the appellant having not been proved, the two grounds on which the decree of divorce has been granted, having not been proved, deserves to be set-aside.

6. On the other hand, learned counsel for the respondent-wife has, with reference to the statements of the parties and the evidence, asserts that even if it is accepted and assumed that the respondent-wife joined the company of the appellant-husband for a few months in the year 2008 but thereafter, the husband moved out of the house, deserting the wife and the minor child in 2008 itself and the petition has been filed in the month of June 2011, the period of two years stood completed. He contends that the allegations with regard to infidelity of the respondent-wife and that too with various unknown persons having not been established, the ground of cruelty itself stands proved as these allegations in itself amounts to cruelty,

which would entitle the respondent-wife to a decree of divorce. The factum of desertion has been proved not only based upon the statement of the respondent-wife but further corroborated by the statements of the witnesses, who have been produced by the respondent-wife. The appellant-husband, in his evidence, which has been produced in his cross-examination, has failed to state anywhere as to when both of them had resided together. Even the year could not be pointed out by the witnesses i.e. RW2 Shish Pal and RW3 Harphool Singh, who are close relatives of the appellant-husband. That apart, filing of a petition for custody of the minor child is an after thought as the said petition has been filed only in the year 2013 and all through no petition has been preferred by the husband for the said purpose, when the minor son was being taken care of by the respondent-wife alone while living separately. He, therefore, prays that the appeal, being devoid of merit, deserves to be dismissed.

7. We have considered the submissions made by counsel for the parties and with their able assistance have gone through the pleadings and the evidence, which has been brought on record.

8. The facts, which are no more in dispute in the light of the pleadings and the evidence, are that the marriage was solemnized on 03.07.1998 at Panipat as per the Hindu rites and ceremonies. The marriage was duly consummated with a son Tushar born out of the said wedlock, who is residing with respondent-wife (his mother). There were disputes between the parties, which led to a Panchayati compromise on 17.09.2004, where the parties decided to separate and to file a joint petition under Section 13-B of the 1955 Act for divorce by mutual consent, which was dismissed in default on 30.04.2005 due to non-appearance of the parties. The parties started

living together as husband and wife and in the year 2008, the respondent-wife became pregnant, which is established from the medical evidence, which has been brought on record by the respondent-husband. Unfortunately, they could not live together and thereafter they separated in the same year i.e. 2008 as per the allegations established on record on the basis of statement of respondent-wife who appeared as PW1, Shakuntla wife of Prem (PW2), mother of the respondent and Vikas son of Sewa Singh as PW3. As they were living separately since 2008 and the petition for grant of decree of divorce has been filed on 04.06.2011, the mandated period of two years for seeking a decree of divorce on the ground of desertion stands fulfilled. As regards the ground of desertion, the same is further proved in the light of the serious allegations of unchastity and infidelity levelled by the appellant-husband against the respondent-wife and that too with unknown persons, which have not been established. The pleadings and the oral assertions of the petitioner (wife) with regard to her desertion by the appellant-husband stands established with such conduct having been attributed by the husband to the respondent-wife. It is difficult to believe the bonafide of the appellant, when he asserts that he is still ready and willing to live with the respondent-wife after levelling such serious allegations against her. These pleas have been taken by the appellant-husband for the sake of it and to harass the respondent-wife, especially when the same have not been established, rather there is not an iota of evidence to that effect.

9. It has come on record, as per the evidence led by the respondent-wife and corroborated by the other witnesses, that there has been differences between the parties. The statements of the witnesses clearly indicate and establish that the respondent-wife had suffered at the hands of

the appellant-husband not only physically but mentally as well as she had to face charges of having illicit relations with unknown persons. What more could be termed as cruelty at the hands of husband, who is supposed and required to protect and secure the wife from the evil eyes of others and the vagaries of the society. Nothing has come in evidence, which would indicate that there was anything which would even indicate a semblance of infidelity or unchastity on the part of the respondent-wife. Such allegations in itself, which have not been proved, is cruelty to the party against whom the same have been made and in itself is a good ground for grant of decree of divorce.

10.           Thus, we do not find any ground to interfere in the present appeal and uphold the judgement and decree dated 10.10.2013 passed by the Additional District Judge, Panipat.

11.           The present appeal, being devoid of merit, stands dismissed.

**( M.M.S.BEDI )**  
**JUDGE**  
**October 31, 2017**  
**khurmi**

**( AUGUSTINE GEORGE MASIH )**  
**JUDGE**

|                            |        |
|----------------------------|--------|
| Whether speaking/reasoned: | Yes/No |
| Whether Reportable:        | Yes/No |