

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

FAO-M-243 of 2014

Reserved on : 3.8.2017

Date of Decision: August 17, 2017

Inderjit Kaur

.....Appellant

Vs.

Charanjit Singh

.....Respondent

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

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

Mr. N.P.S. Mann, Advocate for the respondent.

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M.M.S. BEDI, J.

Wife has preferred this first appeal under Section 28 of the Hindu Marriage Act challenging the judgment dated April 28, 2014 passed by the Additional District Judge, SAS Nagar, Mohali dismissing her application under Section 13 of the Hindu Marriage Act, for short 'the Act' for dissolution of her marriage with respondent Charanjit Singh.

The appellant was married to the respondent on May 26, 1998 at SAS Nagar, Mohali. Out of marriage, two children, Kiranjot Kaur (daughter) and Jaswinder Singh (son) were born on March 20, 1999 and

November 16, 2000, respectively. In her petition she claimed that her parents had given sufficient dowry but the respondent started misbehaving, insulting and taunting the appellant at the instigation of his family members and started beating her. She has pleaded that the respondent started taking liquor and stopped working. When she used to object, he would give her severe beatings. Appellant levelled allegations that he demanded a sum of Rs.10 lacs. On her refusing to oblige she was turned out of the matrimonial home in September 2010. She has been residing separately in her parents house. Allegations of using filthy and insulting language by the family members of the respondent have also been raised.

The respondent contested the petition alleging that the appellant had not disclosed her marital status being a divorcee at the time of her marriage. Respondent pleaded that it being the second marriage of the appellant it was a simple affair. Respondent claimed that he had great love and affection for the appellant. The allegations of misbehaviour were denied. Rather it was claimed that behaviour of the appellant towards the mother of the respondent was not up to the mark. He pleaded that the appellant had openly declared that she had no liking for the respondent and his relations. He pleaded that the appellant is a lady of luxurious habits. She owns a shop in Sunny Enclave, maintained a car and scooter. She earns rental income and is not ready to live with the respondent and the children. It was claimed that she used to pick up quarrel on petty matters and neglected her husband and minor children. The allegations of demand of sum of Rs.10 lacs were denied. It was also denied that she was ever shunted out of the matrimonial home. The respondent pleaded that he had

sufficient money to fulfill each and every desire of the wife but she wants to enjoy life alone by staying away from the respondent. The husband had filed an application under Section 9 of the Act for restitution of conjugal rights. It was alleged that she was herself a wrong doer as such she was not entitled to get the relief of divorce. He also averred that a joint petition under Section 13 B of the Act had been filed but later on she made a statement that she did not want to proceed with the said petition.

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

- 1) Whether the respondent treated the petitioner with cruelty? OPP.
- 2) Whether the petition is not maintainable in the present form? OPR.
- 3) Relief.”

Issue No.1 was decided against the appellant. It was held that the appellant was no doubt earlier married with one Baljit Singh, an NRI and she had obtained divorce from him but this fact having been concealed, it reflected adversely regarding the conduct of the appellant. The said fact was taken by the trial Court as a circumstance impeaching her credibility. She had also not disclosed that earlier a petition under Section 13 B of the Act had been filed by her. She was guilty of concealment of the facts. Regarding the allegations of the respondent being a drunkard man and was without work, the Court below had drawn a presumption that as the appellant had herself parted way and did not bother to take care of her minor children and abandoned her children, a presumption could be dawn that had he been a drunkard person, the minor kids would not have been staying with

him. Regarding his idleness, the Court below on appreciation of evidence held that he was not without work. The appellant had failed to produce sufficient evidence that the respondent was not doing any work and was not in a capacity to earn his livelihood. The lower Court also believed the statement of Kiranjot Kaur who had stated that she was a student of 10th class and her mother had no love for her and for her brother and that the children wanted the mother to live with them. The circumstance of husband having filed an application under Section 9 of the Act, though withdrawn the same, was also considered and the said circumstance was not treated adverse to the respondent.

Issue No.2 having not been pressed, it was decided against the husband. The application for decree of divorce filed by the appellant on the ground of cruelty was thus dismissed.

With the assistance of counsel for both the parties, we have gone through the lower Court record. The grievance of the appellant wife is that her husband is a drunkard man and is not doing any work as such he has treated her with cruelty. The case of the respondent is that the appellant herself is a high-handed lady having an attitude of not looking after the minor children who are looked after by the respondent.

We have gone through the record with their assistance. The plea of the appellant lady is that the respondent is a drunkard man used to beat her as a result of which she was compelled to leave the matrimonial home and to stay with her mother separately. It was under those compelling circumstances that she had to leave both the children with the husband.

In order to appreciate whether there is sufficient material on the record to prove that husband is a drunkard man, we have carefully perused the pleadings of the appellant as well as gone through her statement as PW2, which has not been considered by the lower Court. The trial Court instead of appreciating the evidence regarding the respondent being a drunkard man has drawn presumption on the basis of the circumstance that the minor children are staying with the father. Appellant had in her examination-in-chief, submitted in the shape of affidavit, stated that her husband used to drink heavily and assaulted her. There are allegations of demand of dowry also. The factum of the respondent being a habitual drunkard has been established not only by the appellant but by her old mother by appearing before the Court. It is interesting to point out that there has not even been a suggestion given by the counsel for the respondent to the wife – appellant that the respondent husband does not drink or that he was not a heavy drunkard.

With the assistance of counsel for the appellant we have carefully gone through the cross-examination of the wife who has not been confronted with any suggestion of her husband not being a habitual drunken. She has also stated in her petition and her statement that she was being maltreated and assaulted by her husband and that he was a drunkard person. The plight of a female who is being tortured by her husband being a drunkard can easily be presumed from the fact that she was compelled to leave her matrimonial home. The wife will not leave her matrimonial home along with two children unless and until there is an element of mental cruelty to her. No parameters have been laid down in any judgment as to in

what circumstances, the husband could be said to be a casual drinker or a drunkard person, but the consequences of his habit of drinking would be reflected from the conduct and the mental pressure which has been created by such habit of the husband. Had respondent been a casual drinker, there was no occasion for the appellant to level allegations of beating and drinking. Mere vague allegation that she was of luxurious habits is not a good ground to be believed that for the sake of luxury a lady would leave her husband and children. Merely because she has been compelled to do work and she uses car as a vehicle for her conveyance, do not permit the Court to draw an inference that she is guilty of any matrimonial wrong warranting disbelieving her statement that she was staying separately as the husband used to drink and beat her. It is settled principle of law that when no question is put to a witness in cross-examination doubting the testimony in chief, same would be believed to be correct.

Much emphasis has been laid by the respondent that he is running the business and is capable of earning but the said fact even if it is proved will not, in any manner, permit the Court to arrive at a conclusion that his earning would condone his conduct of drinking habits and his cruel conduct of bashing/ beating the wife.

We have also taken into consideration the factors that the application filed under Section 9 of the Act by the husband has been withdrawn by him. Both the parties at one stage had arrived at a final decision to get the marriage dissolved under Section 13 B of the Act. The allegation against the appellant is that she had withdrawn her consent under Section 13 B of the Act. The circumstance of one application under Section

13 B of the Act having been filed by both the parties is an indication that on account of some fault of both the spouses or any of the spouses, they had decided to part company. We feel that any Indian lady would not leave the matrimonial home or her children unless and until, she is compelled to do so. As she is running her own shop and is capable of maintaining herself, she has given up her claim for any type of maintenance. This circumstance also is reflective of the extent of the mental cruelty and agony, the appellant had been suffering. It is an admitted fact that the parties have been residing separately for the last seven years. The marriage has broken down and is merely an empty shell as such though break down theory is not applicable but the prolonged separation with no attempt having been made by the respondent to resume cohabitation, except with a farce application under Section 9 of the Act, the appellant can be granted the divorce on account of conduct of the respondent. There has been wrong appreciation of evidence on the part of the trial Court which has not carefully perused the evidence regarding the conduct of the respondent. Cross-examination of the appellant has also not been carefully read by the trial Court.

In view of the above circumstances, we are constrained to hold that the appellant has been able to establish the allegations of cruelty which in the present case is apparently a mental cruelty besides physical cruelty.

The petition is allowed. Finding of the lower Court on issue No.1 is reversed. As the ground of judicial separation and the divorce are same and the parties have not taken a final decision regarding the minor children, considering the provisions of Section 13-A of the Act, the ground of cruelty having been established we deem it appropriate to grant the decree

of judicial separation to the parties. During the period of judicial separation, it would be open to the parties to take any decision regarding the custody of the minor children. It will entail the legal consequences with the lapse of time.

Nothing said in this order will prejudice the rights of the parties to claim the custody of the children in accordance with law.

(M.M.S. BEDI)
JUDGE

August 17, 2017
sanjay

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.