

In the High Court of Punjab and Haryana at Chandigarh.

FAO-M-87-M of 2007 (O&M)
Decided on 20.03.2018

Bhupinder Singh Cheema*Appellant*

Versus

Lovely*Respondent*

**CORAM: HON'BLE MR. JUSTICE M.M.S.BEDI
HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present : Mr. Atul Goyal, Advocate for the appellant.

Mr. A.A.Pathak, Advocate for the respondent.

GURVINDER SINGH GILL, J.

1. Aggrieved with dismissal of petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), seeking dissolution of his marriage with respondent, the appellant has filed the present appeal challenging judgment and decree dated 17.2.2007 passed by learned Additional District Judge, Ludhiana.
2. The appellant, in his petition under Section 13 of the Act averred that he was married to respondent on 9.10.1994 according to Sikh rites at Ludhiana and a son namely Harmohit Singh was born out of the wedlock on 3.8.1995. It is averred that the parties knew each other before marriage and a simple marriage was performed. However, since 1995, the behaviour of respondent changed considerably and she was insulting, indifferent and cruel towards the

appellant, though the appellant always tried his best to keep her happy. It is averred that under pressure from respondent, he separated his mess from his parents and shifted to first floor of the house despite the fact that he is the only son of his parents as his brother had already expired. The appellant asserted that respondent used to raise allegations regarding his character and ultimately in the month of February, 1997, respondent declared that she was feeling suffocated in the family and wanted to live in a separate house near her parents. She told the appellant not to touch her as she is no longer his wife and refused to have sexual intercourse with him. It is averred that in December 1999, she left company of the appellant and started residing with her parents. Though the appellant requested and tried to persuade her to join his society but she and other members of her family manhandled, abused and insulted him. The appellant asserted that on 23.1.2000, he received a telephonic call to the effect that respondent along with her sister and mother had been arrested in a case registered under Section 380 and 420 of IPC at Police Station Kotwali, Patiala and thereupon the appellant got them released on bail though the said act on part of the respondent defamed the appellant and his family. Despite the said fact, the appellant brought the respondent to his house and they resided together for a short while but respondent again went back to her parents' house. The appellant alleged that the respondent even gave false applications to the police against the appellant and his parents but ultimately effected a compromise. The appellant, thus, asserted that the conduct and behaviour of the respondent resulted in mental torture and cruelty to the appellant and thus prayed for dissolution of his marriage with respondent.

3. The respondent filed written statement denying all the material averments of the petition. The respondent, rather, took a stand that immediately after the marriage, the appellant and his parents started maltreating the respondent for having brought insufficient dowry and used derogatory language towards her and ultimately turned her out of her matrimonial home on 10.9.1995. The respondent asserted that a complaint was made to SSP, Ludhiana, who summoned the parties and the matter was reconciled. The respondent asserted that in February, 1996, the parties resided in Jodhpur as appellant had joined some pharmaceutical company there but returned back to Ludhiana in September, 1997 and he continued maltreating and harassing the respondent. The respondent asserted that on 10.5.2002, the appellant and his parents abused her and gave beatings and compelled her to sign some blank documents and threatened to kill her. A report was made to the police at Police Station, Ludhiana and she was medico-legally examined but later on, in the presence of Panchayat and relatives on 1.7.2002, the appellant gave an undertaking in writing that he would not maltreat the respondent. However, the appellant did not take her to matrimonial home. The respondent asserted that a false FIR had been registered against the family of the respondent when the respondent was driving a car and had been held up at a 'Naka' as she was not possessing driving licence or even Registration Certificate and an altercation had taken place with the police as a result of which she and others were implicated in a false case but subsequently discharged on account of false implication.

4. The parties were put to proof on the following issues :-
1. Whether the respondent has treated the petitioner with cruelty? OPP.
 2. Relief.
5. The appellant Bhupinder Singh himself stepped into the witness box as PW-1 and also examined PW-2 Amrik Singh and PW-3 Avtar Singh. To controvert the said evidence, the respondent Lovely herself stepped into the witness box as RW-1 and examined RW-2 Ajit Singh.
6. The learned lower Court upon considering the evidence led by the parties returned its findings on issue no.1 against the appellant holding therein that he had been unable to establish that he had been treated with cruelty by the respondent. Consequently, the petition was dismissed vide impugned judgment and decree dated 17.2.2007, which has been challenged by the appellant by way of filing the present appeal.
7. Today, when the matter was taken up for arguments, Shri A.A.Pathak, Advocate, appearing on behalf of the respondent-wife submitted that in fact it is a case of irretrievable break-down of marriage and that the parties have been residing separately since the year 2002 with no chances of any reunion amongst them. He has stated that in case the respondent is paid an amount of ₹ 10 lacs towards permanent alimony, she would have no objection to the grant of decree of divorce in favour of the appellant.
8. We have considered the aforesaid offer made by the respondent. The fact that the parties have been residing separately since the last about 16 years indicates a complete break-down of marriage. Despite best efforts made by

mediators at 'Mediation and Conciliation Centre' of this Court, the differences amongst the parties could not be resolved. There has been a bout of criminal litigation also amongst the parties pursuant to lodging of FIR by the wife against her husband for offences under sections 406, 323, 506 and 498-A of IPC. However the trial Court (JMIC, Ludhiana) acquitted the appellant vide judgement dated 12.4.2013. The appeal filed by the wife challenging aforesaid acquittal was also dismissed by the learned Additional Sessions Judge Ludhiana on 4.7.2015. It will not be out of place to mention here that after the matter had been heard and reserved on 9.5.2016 by a co-ordinate Bench of this Court, the respondent-wife moved an application under Section 25 of the Act on 10.5.2016 seeking permanent alimony and the matter was ordered to be listed again for re-hearing along with the application. The said facts collectively indicate that there are no chances of any re-union amongst the parties and there has been irretrievable break-down of marriage. The parties have now been residing separately and litigating since the last 16 years.

9. Bearing the aforesaid circumstances in mind, we are of the opinion that the offer made on behalf of the respondent is a fair offer and is in interest of the parties. Accordingly, in view of the offer made by learned counsel for the respondent, the appeal is accepted and the impugned judgment and decree dated 17.2.2007 are hereby set aside. Consequently, the petition filed by the appellant-husband under Section 13 of the Act stands decreed and marriage of the parties is hereby dissolved by passing a decree of divorce subject to the condition that the appellant will pay an amount of ₹ 10 lacs to the respondent towards permanent alimony out of which an amount of ₹ 8 lacs shall be paid

within one month and the remaining ₹ 2 lacs may be paid within the next six months. In case of failure on part of the appellant to pay the aforesaid amount towards permanent alimony, the appeal shall be deemed to have been dismissed and it will be open to the respondent to approach this Court for any appropriate order. The application under Section 25 of the Act (CMM-79 of 2016) is disposed of in the above manner.

10. Decree sheet be prepared. Parties to bear their own costs.

(M.M.S.Bedi)
Judge

(Gurvinder Singh Gill)
Judge

March 20, 2018
kamal

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No