

In the High Court of Punjab and Haryana at Chandigarh

FAO-M-3 of 2013
Reserved on : 6.4.2018
Date of decision: 18.4.2018

Karamveer Singh*Appellant*

Versus

Jaswinder Kaur*Respondent*

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

Present : Mr. V.K.Sandhir, Advocate for the appellant.

Mr. Deepak Gupta, Advocate for the respondent.

Gurvinder Singh Gill J.

1. The appellant-husband has filed this appeal challenging judgment and decree dated 9.11.2012 passed by the Court of learned Additional District Judge, Amritsar, whereby a petition filed by him under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as "*the Act*"), for dissolution of his marriage with respondent-wife, has been dismissed.
2. As per case set up by the appellant-husband, the marriage of the parties was solemnized in accordance with Sikh rites on 1.3.1998 at Amritsar and they started residing together as husband and wife at Amritsar but no child was born out of the wedlock. It is averred that the behaviour of respondent was

rude right from inception of marriage and she used to pick up quarrels on trifle matters and often used to leave home. She pressurised the petitioner to live at Chandigarh. She even hurled filthy abuses. Whenever she was asked to prepare tea etc. for guests, she used to flatly refuse stating that she was not a servant. It is averred that on one occasion when the petitioner pointed out that there was excess salt in the food prepared by her, she not only hurled abuses but also threw the cooker on the floor and upon being requested not to do so she slapped the petitioner and created a scene in the street. It is asserted that the respondent ultimately left her matrimonial home on 30.6.2005 and did not return back. Subsequently, with the intervention of respectables, the parties resolved to part ways and on 5.10.2006, a Divorce Deed was executed in Panchayat. The petitioner has asserted that the respondent had left the society of petitioner and had not returned back since the last more than 2 years and had thus deserted him. The appellant, thus, prayed for dissolution of his marriage.

3. The respondent-wife contested the petition and denied all the material averments made in the petition. She has taken a stand that in fact the conduct of the petitioner was cruel towards her and she had been subjected to physical as well as mental cruelty right from the day of marriage and that the petitioner and other members of his family were not satisfied with dowry. She has stated that since she was herself working as a teacher in Amritsar, there was no question of her leaving Amritsar and that she never compelled the petitioner to live at Chandigarh. She has taken a stand that she was given beatings in the month of October 2006 and was turned out of her matrimonial home. She has asserted that while throwing her out of matrimonial home, her signatures were

taken on blank papers which have been fabricated into the alleged Divorce Deed. The respondent thus prayed for dismissal of the petition.

4. The petitioner filed replication to the written statement filed by respondent denying therein the stand taken by respondent while reiterating the averments made in petition. The parties were put to proof on the following issues:

- “1. Whether respondent has treated the petitioner with cruelty as alleged in the petition? OPP

2. Whether the application is not maintainable? OPR

3. Relief.”

5. The appellant-husband himself stepped into witness box as PW-1 and examined PW-2 Satish Kumar Anand, PW-3 Rajesh Kalia, PW-4 Arvinderpal Singh, PW-5 Iqbal Singh Luthra and PW-6 Sarabjit Kaur. The respondent-wife, on the other hand herself stepped into witness box as RW-1.
6. The learned lower Court upon considering the evidence on record returned its finding on issue No.1 against the appellant-husband holding therein that the appellant has been unable to establish cruelty on part of the respondent. Issue no.2 was not pressed and thus decided against the respondent. Consequently, the petition for grant of divorce was dismissed vide judgment and decree dated 9.11.2012, which has been challenged by the appellant-husband by way of filing the present appeal.
7. The learned counsel for appellant submitted that the learned lower Court did not appreciate the evidence in the correct perspective though the evidence on record clearly established that the respondent wife had been treating the petitioner with cruelty. It has been submitted that in fact even the 'panchayat'

being convinced with irretrievable breakdown of marriage, apparently due to conduct of the respondent, had chosen to mediate and had facilitated execution of Divorce Deed. The learned counsel also submitted that the appellant-husband is entitled for divorce even on ground of desertion, as admittedly, the respondent wife had herself left the matrimonial home without any justifiable cause. It has thus been prayed that the impugned judgement be set-aside and petition for grant of divorce be decreed.

8. On the other hand, the learned counsel for respondent has submitted that the appellant has miserably failed to establish any cruel conduct on part of respondent and that in fact it is appellant himself who threw the respondent out of her matrimonial home and that in these circumstances he can not be allowed to take benefit of his own wrongs.
9. We have considered rival submissions addressed before this court and have also perused record of the case. Out of the six witnesses examined by the appellant, three pertain to document of divorce executed before panchayat. While PW-2 Satish Kumar Anand is the Notary who attested the Divorce Deed, PW-5 Iqbal Singh Luthra and PW-6 Sarabjit Kaur affixed their signatures upon the said document in the capacity of witnesses. However, even if it is held that the aforesaid document in question was duly executed, still in view of the settled position of law such like document pertaining to divorce executed before 'panchayat' carries no value in the eyes of law and would not have the effect of dissolving marriage amongst the parties. Hon'ble the Supreme Court in (2010) 9 SCC 484, Mahendra Nath Yadav v. Sheela Devi, upheld the judgement of High Court which had set aside the judgement of Family Court granting divorce on the ground that the marriage

stood dissolved through 'Panchayat'. The relevant extract reads as follows:

“7. The High Court has rightly held that dissolution of marriage through Panchayat as per custom prevailing in that area and in that community permitted cannot be a ground for granting divorce under Section 13 of the 1955 Act. We fully agree with the said decision for the reason that in case the appellant wanted a decree on the basis of customary dissolution of marriage through Panchayat held on 7-6-1997, he would not have filed a petition under Section 13 of the 1955 Act. Filing this petition itself means that none of the parties was of the view that the divorce granted by the Panchayat was legal. In view of the above, we do not see any reason to interfere with the well-reasoned judgment of the High Court.”

10. Other than the aforesaid three witnesses, the appellant examined PW-3 Rajesh Kalia, Regional Manager, S.N.R. Electronics Limited, Chandigarh, who produced attendance register showing attendance of various employees including that of the appellant. The witnesses regarding the alleged cruelty are the appellant himself i.e. PW-1 Karamveer Singh, his cousin PW-4 Arvinderpal Singh, his nephew PW-5 Iqbal Singh Luthra and his mother PW-6 Sarbjit Kaur. The appellant, while in the witness box as PW-1, has stated that the respondent used to pick up quarrels with him and with his mother on trifling issues and used to leave the house and live with her parents for days together and that it was with great efforts that he used to bring her back. He has further stated that he was harassed and humiliated at the hands of the respondent and her attitude towards him was cruel and she did not improve despite efforts having been made to make her understand and mend her ways. He stated that she used to deposit her salary in the bank and never handed over the salary either to him or to his mother. He has further stated that panchayats had also

been convened and Gurcharan Singh son of Ratan Singh, Harpal Singh son of Deedar Singh and Iqbal Singh Luthra son of Deedar Singh brought back his wife with great efforts.

11. A perusal of the aforesaid statements shows that vague allegations of cruelty have been levelled and no date or time of any specific instance has been mentioned therein. Though the appellant has stated and named three persons who had visited the parental house of the respondent and had brought her back but only one of these three persons has been examined i.e PW-5 Iqbal Singh Luthra but he is absolutely silent as regards his visit to parental house of respondent to bring her back. PW-5 could have proved to be a material witness for the appellant in case he had stated regarding his visit to parental house of respondent as alleged by the appellant in his statement but his silence in this regard leaves the statement of PW-1 bereft of corroboration. Rest of the statement of PW-5 is a general statement regarding conduct of respondent without mention of any specific instance allegedly witnessed by him.
12. The statements of the other witnesses i.e. of PW-4 Arvinderpal Singh and PW-6 Sarabjit Kaur, like that of appellant, are also on general terms inasmuch as they have stated that the respondent had no control over her language and used to insult her husband and other members of the family and used to leave the house and resided with her parents for days together and that it was with great efforts that she used to be brought back. They have also stated that the respondent used to pressurise her husband to live at Chandigarh.
13. Interestingly, even the said witnesses have not mentioned any specific date or period when they had observed the aforesaid conduct of the respondent. Such

like general statements are certainly not worthy of credence.

14. During the course of arguments, the learned counsel for appellant, while referring to the 'panchayat divorce', Ex. PW-2/1 submitted that even if the same is not taken to be a valid Divorce Deed, still the same is indicative of the fact that there had been a complete irretrievable breakdown of marriage and that in terms of ratio of Naveen Kohli vs. Neelu Kohli (2006)4 SCC 558 and Jyachandra vs. Aneel Kaur (2005)2 SCC 22, the marriage of the parties deserves to be dissolved.

15 We have considered the aforesaid submission. The law as regards the dissolution of marriage on grounds of irretrievable breakdown of marriage now stands fairly well settled. Hon'ble the Supreme Court in Darshan Gupta v. Radhika Gupta, (2013) 9 SCC 1, held that no such ground of irretrievable breakdown of the marriage is provided by the legislature for granting a decree of divorce. The relevant extract from the aforesaid judgement reads as under:

49. Towards the same end, the learned counsel for the appellant advanced yet another submission. The learned counsel representing the appellant sought dissolution of marriage on the ground that the matrimonial ties between the parties had irretrievably broken down. It was, therefore, the contention of the learned counsel for the appellant that this Court would be justified in annulling the marriage between the parties, especially when the parties have lived apart for more than 12 years.

50. At the present juncture, it is questionable as to whether the relief sought by the learned counsel for the appellant on the ground of irretrievable breakdown of marriage is available to him. The reason for us to say so is based on a judgment rendered by this Court in Vishnu Dutt Sharma v. Manju Sharma (2009)6 SCC 379, wherein this Court has held as under:

“10. On a bare reading of Section 13 of the Act, reproduced above, it is crystal clear that no such ground of irretrievable breakdown of the marriage is provided by the legislature for

granting a decree of divorce. This Court cannot add such a ground to Section 13 of the Act as that would be amending the Act, which is a function of the legislature.

11. Learned counsel for the appellant has stated that this Court in some cases has dissolved a marriage on the ground of irretrievable breakdown. In our opinion, those cases have not taken into consideration the legal position which we have mentioned above, and hence they are not precedents. A mere direction of the Court without considering the legal position is not a precedent.
12. If we grant divorce on the ground of irretrievable breakdown, then we shall by judicial verdict be adding a clause to Section 13 of the Act to the effect that irretrievable breakdown of the marriage is also a ground for divorce. In our opinion, this can only be done by the legislature and not by the Court. It is for Parliament to enact or amend the law and not for the courts. Hence, we do not find force in the submission of the learned counsel for the appellant.
13. Had both the parties been willing we could, of course, have granted a divorce by mutual consent as contemplated by Section 13-B of the Act, but in this case the respondent is not willing to agree to a divorce.”

51. In this behalf, it would also be relevant to refer to another judgment rendered by this Court in *Gurbux Singh v. Harmander Kaur* (2010)14 SCC 301. Para 20 of the cited judgment is relevant to the issue, and is accordingly being extracted hereunder:

- “20. Finally, a feeble argument was made that both the appellant and respondent were living separately from 2002 and it would be impossible for their reunion, hence this Court exercising its jurisdiction under Article 142 of the Constitution, their marriage may be dissolved in the interest of both parties. Though, on a rare occasion, this Court has granted the extraordinary relief dehors the grounds mentioned in Section 13 in view of the fact that the issue has been referred to a larger Bench about permissibility of such course at present, we are not inclined to accede to the request of the appellant. If there is any change of law or additional ground included in Section 13 by the Act of Parliament, the appellant is free to avail the same at the appropriate time.”

16. In view of the aforesaid settled position of law, the factum of irretrievable break-down of marriage *ipso-facto* can not be a ground for dissolving

marriage of the parties.

17. During the course of arguments, the counsel for appellant also pressed upon the ground of desertion for grant of divorce. Though towards the end of his petition under section 13 of the Act, it has been stated therein that the respondent has deserted him without any reasonable cause for a period of more than 2 years but somehow no specific issue in this regard was framed. In the absence of framing of a specific issue in this regard, the respondent cannot be taken by surprise as she would not have led any evidence to rebut the said assertions regarding desertion. It will not be out of place to mention that the appellant Karamveer Singh, in his affidavit Ex.PW-1/A tendered towards his examination-in-chief, has specifically stated that since October 2006 his wife has been residing separately. The petition having been filed on 1.8.2007, his aforesaid statement is rather in conflict with his averments regarding desertion for two years. As such the aforesaid submission regarding grant of divorce on ground of desertion cannot be accepted.
18. No other point has been urged before this Court.
19. In view of the discussion made above, we do not find any reason to differ with the findings of the learned lower Court to the effect that the appellant has been unable to make out a case for dissolution of his marriage on ground of cruelty. Consequently, the findings as recorded by the learned lower Court to this effect are hereby affirmed. There is no merit in this appeal and the same is hereby dismissed with costs.

20. Decree sheet be drawn accordingly.

(M.M.S.Bedi)
Judge

(Gurvinder Singh Gill)
Judge

18.4.2018
pankaj

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No