

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

FAO-M-224 of 2014 (O&M)

Date of Decision: January 19, 2018

Satinderpal Kaur

.....Appellant

Vs.

Gurpreet Singh

.....Respondent

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

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Present: Mr. Amandeep Singh Manaise, Advocate for the appellant.
Mr. Simranjit Singh, Advocate for the respondent.

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M.M.S. BEDI, J.

Wife has preferred this appeal against the judgment and decree dated 05.04.2014 passed by Sh. K.K. Bansal, Additional District Judge (Adhoc) Gurdaspur, granting decree of divorce under Section 13 B of the Hindu Marriage Act, for short 'the Act', on the basis of the averments in the petition and the statements made before the Court.

A petition under Section 13 B of the Act was filed by the appellant and respondent averring therein that marriage between the parties had been solemnized on July 13, 2012 at Village Chackanwali, Tehsil Dera Baba Nanak, District Gurdaspur and that parties lived together as husband and wife at Talwandi Goraya, Tehsil Dera Baba Nanak, District Gurdaspur. No child was born out of the wedlock. Parties lived together only for seven days and that it was not possible for them to live together under one roof as

husband and wife as they could not adjust with each other on account of differences in their temperaments and opinions. The parties had been living separately since July 20, 2012 for more than one year prior to the filing of the petition. It was further averred that both the parties had mutually agreed to appear before the Court for divorce by mutual consent. The appellant had allegedly agreed not to claim any maintenance from the husband and had mutually agreed not to file any civil or criminal case against each other. The statements of the parties were recorded on September 6, 2013 and March 15, 2014 as such the Court had granted the decree of divorce by mutual consent on April 5, 2014 considering that the marriage had taken place on July 13, 2012 and they had been living separately since July 20, 2012 and the application having been filed on September 6, 2013.

The appellant claims that a fraud has been played on the Court and a misrepresentation of facts and law has been made warranting setting aside of the decree of divorce dated April 5, 2014. The sequence of events mentioned in the memorandum of appeal is that families/ parents of both the parties were known to each other and the appellant used to get tuition from Manpreet Kaur, sister of respondent. The respondent party offered for matrimonial alliance of Gurpreet Singh and Satinder Pal Kaur upon which appellant told them to talk to her parents. Respondent Gurpreet Singh committed rape upon the appellant at his house, upon which appellant moved a complaint dated August 8, 2013 to SHO, PS Dera Baba Nanak for lodging an FIR against Gurpreet Singh, however, respectables of the area and local Cabinet Minister intervened and matter was compromised between the parties on August 12, 2013. In compromise it was agreed that

respondent shall marry the appellant as such their marriage was performed on August 18, 2013 in the presence of both the families at Baba Sri Chand Ji Gurudwara, Dera Baba Nanak, District Gurdaspur. The marriage card has been placed on record as Annexure A-5. The marriage certificate is attached as Annexure A-6. The photographs of the marriage are also attached as Annexure A-7 and the Bill of photographer who clicked the photographs and made Video film of the marriage ceremony is Annexure A-8. It has been alleged that the intention of the respondent was bad from the very inception. He had told the appellant that both will go to Italy and settle there and for this purpose marriage was required to be registered in the Court. Since the appellant was a simple lady and could not see the malafide of Gurpreet Singh, she was made to sign on blank papers by respondent and was produced before the Court. The appellant get recorded her statement in the Court on the advice of her husband's counsel. She did not even engage a separate counsel in this regard. Respondent misstated facts before the Court and played a fraud in order to obtain the aforesaid divorce decree. In the petition, the date of marriage has been stated to be July 13, 2012, whereas in the first motion statements, the date of marriage is stated to be February 13, 2012. Copy of the said statement has been appended as Annexure A-2. The actual date of marriage is August 18, 2013 which is prima facie established from the marriage card Annexure A-5, marriage certificate annexure A-6 and photographer's bill Annexure A-8. A wrong date of marriage has been shown in order to bring the case within the ambit of its maintainability and statue to establish that the period of one year for filing of the divorce petition stood elapsed. As per Section 14 of the Act, no petition can be presented

within a period of one year under Section 13 B of the Act, but the present petition has been filed within 18 days of the marriage. In order to escape the prosecution for rape charge the respondent promised to marry the appellant and just after 18 days of the marriage he filed a wrong petition by stating wrong facts. The appellant came to know about this fact of divorce when respondent started behaving badly with the appellant and one day said that she is no more his wife as the Court has granted divorce on April 5, 2014. Being shocked, the appellant intimated her parents who enquired and found that this entire fraud has been committed by the respondent. As the judgment and decree dated April 5, 2014 is passed upon the fraud and misrepresentation of facts as such the decree of divorce is a nullity and deserves to be set aside.

Counsel for the appellant has vehemently contended that an application annexure A-9 dated April 25, 2014 was filed before the trial Court for setting aside the impugned judgment and decree and for withdrawing the statement of the appellant on the ground of fraud and misrepresentation but this application was not entertained by the learned Additional District Judge, Gurdaspur on the ground that the Court cannot review its judgment as such she had no remedy except to approach this Court in appeal for setting aside the impugned judgment and the decree dated April 5, 2014.

Initially it appeared that both the parties had played fraud on the Court for which they were required to be proceeded against.

Counsel for the respondent has put in appearance and stated that the appellant is a highly educated girl and would not put her signatures on

any document without reading it and that the wrong story has been put-forth before this Court to harass the respondent for extraneous reasons.

Disputed questions of fact have been raised before this Court. We refrain from giving any finding of fact permitting the parties to lead evidence before this Court. It is settled principle of law that fraud vitiates all proceedings. When a fraud is played on the Court, the appropriate remedy is to approach the same Court to apprise the Court the manner in which the fraud has been played. We have gone through the documents placed on the record and prima facie believe that the date of marriage in the present case, as per the invitation card and the marriage certificate is August 18, 2013 whereas the divorce petition was admittedly filed under Section 13 B of the Act on September 6, 2013 i.e. within 18 days of the marriage. The circumstances in which the marriage had been performed i.e. under pressure of a rape case to be registered against the respondent on the basis of a complaint annexure A-4 also are indicative of the circumstance that a fraud has prima facie been committed on the appellant for extraneous consideration. She claims herself not only to be a victim of rape but also a victim of fraud which requires to be looked into by the same Court.

So far as the filing of application for recalling the order dated April 5, 2014 is concerned, we are of the considered opinion that as per judgment of this Court in **Amita Joshi Vs. Sandeep Kumar**, FAO-M-213 of 2007, decided on August 21, 2017, the application for recalling the order date April 5, 2014 on the basis of fraud committed on the Court has to be considered and decided by the same Court. In the above said judgment reliance has been placed on the judgment of the Supreme Court in **Indian**

Bank Vs. M/s Satyam Fibers (India) Pvt. Ltd., AIR 1996 SC 2592, wherein it was held as follows :-

“Since fraud effects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practiced upon that court. Similarly, where the court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order. The Court has also the inherent power to set aside a sale brought about by fraud practiced upon the Court or to set aside the order recording compromise obtained by fraud.”

The above said principle has been followed in **Sarabjit Singh Vs. Gurpal Kaur**, 2013 (3) RCR (C) 125, as we have arrived at a conclusion that prima facie fraud has been played upon the appellant wife.

After hearing counsel for both the parties, we are of the opinion that the application for recalling the order dated April 5, 2014 has been wrongly not entertained by the then Additional District Judge, Gurdaspur.

The appeal is allowed. The appellant wife is directed to approach the successor Court/ District Judge, Gurdaspur within a period of one month to seek the setting aside of order dated April 5, 2014. Parties are directed to appear before the lower Court on February 17, 2018 for considering the plea of fraud and for setting aside the decree after hearing

both the parties and giving them fair opportunity to file reply and produce evidence. The lower Court/ successor Court shall pass fresh speaking order. The operation of judgment and decree dated 05.04.2014 will remain stayed for all intents and purposes without prejudice to the rights of the appellant to avail any other legal remedy in the capacity as wife of Gurpreet Singh.

It is not out of place to observe that as the order has been passed in presence of counsel for the parties, so it is deemed that both the parties have notice for appearance before the Court on February 17, 2018.

Copy of the order be put-forth dispatched to the Court concerned.

(M.M.S. BEDI)
JUDGE

January 19, 2018
sanjay

(GURVINDER SINGH GILL)
JUDGE

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