

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

235

FAO-8710-2015

Date of Decision: 20.07.2018

MAMTA

....Appellant.

Versus

NARESH KUMAR DHINGRA

...Respondent.

CORAM:- HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. R.A. Sheoran, Advocate
for the appellant.

Mr. Ajit Sihag, Advocate
for the respondent.

ANUPINDER SINGH GREWAL, J.

The appellant/wife has challenged the judgment and decree passed by District Judge, Family Court, Bhiwani on 20.11.2015 whereby her petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), seeking dissolution of her marriage with respondent/husband by decree of divorce on the ground of cruelty, has been dismissed.

2. The appellant/wife and the respondent/husband were married on 23.02.2011 at Bhiwani. A female child was born out of the wedlock. It is the case of the appellant/wife that her family members had spent ₹ 3 lakh in the marriage, which was beyond their capacity and had given household articles to meet demands of the respondent/husband and

his family members. However, they were not satisfied and kept on taunting the appellant/wife for more dowry. They had demanded motorcycle or ₹ 50,000/- in cash. Panchayats were convened at the behest of the mother of the appellant/wife but they were not satisfied and she was physically and mentally tortured by them. In November 2012, she was beaten up by respondent/husband and his family members and was also pressurized to bring ₹ 50,000/- or motorcycle. Family members of the appellant/ wife had arranged a sum of ₹ 20,000/- which was handed over to the respondent/husband by her mother. The respondent/husband is also alleged to be addicted to liquor and gambling and had sold the belongings of the appellant/wife to finance these habits. On 11.02.2013, the appellant/wife along with minor daughter was thrown out of the matrimonial home after she was severely beaten up by the respondent/ husband and his family members. They had also threatened to kill her, in case, their demand of ₹50,000/-or a motorcycle was not fulfilled. Thereafter, a biradari panchayat was also convened but the respondent refused to accept the appellant/wife and, therefore, the appellant/wife continued to reside at her parental home.

3. The respondent/husband, in his written statement, had denied these allegations and stated that the marriage between the parties was performed in a simple manner and no dowry was taken and all the expenses of the marriage were incurred by the respondent/husband and his parents. He also alleged that the appellant/wife was of quarrelsome nature and had been picking up quarrels with the respondent/husband and his family members on trivial issues and had started living at her parental home without any reason. The allegations for having accepted

₹ 20,000/- or the demand of ₹ 50,000/- have been denied. He also stated that the Panchayat was convened to bring her back to the matrimonial home but she had refused to pay any heed.

4. On the basis of pleadings, following issues were framed:-

1. Whether the petitioner is entitled to a decree of divorce against the respondent on the grounds of cruelty as alleged? OPP.
2. Whether the petition is not maintainable in the present form? OPR.
3. Whether the petitioner has no cause of action or locus standi to file the present petition? OPR
4. Whether the petitioner is stopped by her own act and conduct from filing the present petition? OPR.
5. Relief.

5. Appellant/wife had examined herself as PW-1 and her mother Madhu Bala as PW-2. She had produced on record copy of the complaint given to S.P., Bhiwani as Ex. P-1. The respondent/husband had examined himself as RW-1 and his mother Smt. Sheela as RW-2. She had produced copy of the petition under Section 9 of the Act titled as Naresh Kumar Vs. Mamta as Ex.R-1 and tendered copies of judgment and decree dated 28.05.2015 as Ex.R-2 and Ex.R-3 respectively.

6. The lower court, on appreciation of evidence dismissed the petition holding on issue No.1 that the allegations were vague.

7. Learned counsel for the appellant/wife has contended that the appellant/wife had been beaten up on several occasions as her parents could not satisfy the demand of dowry raised by the respondent/husband and his family members. He has also urged that

when their daughter was born at the parental house of the appellant/wife, respondent/husband did not visit to see the child and had continued to harass her and demand dowry. She had been thrown out of her matrimonial home on 11.02.2013 and had no option but to reside with her parents. It is also submitted that the allegations of mental cruelty stands established from the evidence produced by the appellant/wife and, therefore, she should have been granted the decree of divorce on the ground of cruelty.

8. Learned counsel appearing for the respondent/husband has, however, contended that the allegations, which had been leveled by the appellant/wife, were vague and could not be substantiated and hence, the petition has been rightly dismissed. He has also contended that the mother of the appellant/wife while deposing as witness had herself stated that the respondent/husband had not taken alcohol or indulged in gambling in her presence.

9. We have heard counsel for the parties and carefully gone through the entire evidence available on the lower court record and are of the considered opinion that the Family Court has erroneously recorded that the allegations leveled by the appellant/wife in her petition were vague and evasive. The appellant/wife had stated in her petition as well as in her statement made before the trial Court that the respondent/husband had demanded a motorcycle or a cash of ₹50,000/-. It was also stated that a sum of ₹20,000/- was paid by the mother of the appellant/wife to the respondent/husband.

10. It needs to be borne in mind that the appellant/wife belongs to the underprivileged section of society. Her father had expired and one

of her brothers is stated to be working as a labourer while the other brother is a street vendor. The respondent/husband had been demanding dowry and had beaten up the appellant/wife on several occasions. He had turned her out of the house along with her infant daughter. In such circumstances, the respondent/husband could not derive any benefit or plead that appellant/wife had left his company. We cannot wholly rely upon the order passed by the Family Court in the petition filed by the respondent/husband under Section 9 of the Act for restitution of conjugal rights as the appellant/wife had been beaten up and turned out of the house. The respondent/husband is alleged to be indulging in excessive drinking and gambling. Therefore, he cannot derive any benefit or advantage after having driven his wife out of the matrimonial home.

11. Further, the trial Court has erred in placing undue reliance upon that part of the cross-examination of PW-2, wherein she has stated that she had not seen the respondent drinking or gambling. PW-2, who is mother of the appellant/wife, has categorically stated that the respondent/husband indulged in drinking and gambling but he had not done so in front of her. This appears to be truthful narration and it cannot, in any manner, be said that he never drank and indulged in gambling.

12. It has also been established from the testimony of PW-1 and PW-2 that the respondent had demanded dowry after their marriage and he had been paid a sum of ₹20,000/-. PW-1 and PW-2 have stated that the respondent had demanded dowry after one and a half month of their marriage. Panchayats were also convened by them several times but

despite the insistence of the members of the panchayats, the respondent/husband had refused to take the appellant-wife back to the matrimonial home.

13. It is noteworthy that the Family Court has laid considerable emphasis on the cross-examination of PW-2 wherein she has stated that no dowry was taken at the time of Tikka ceremony and marriage. This would not be of much significance as it has been established on record that the respondent/husband had demanded dowry after one and half month of the marriage and the appellant/wife had paid a sum of ₹ 20,000/-.

14. We are, therefore, of the considered view that the appellant/wife has been able to make out a case for mental and physical cruelty, which would entitle her to a decree of divorce in terms of Section 13 of the Act.

15. It is, thus, patent that the appellant/wife had been thrown out of the matrimonial home on 11.02.2013 after she was beaten up and dowry was demanded from her. Even otherwise, we cannot countenance under the aforementioned facts and circumstances that the appellant/wife would have left the matrimonial home on her own accord. The appellant/wife had been mentally and physically tortured on petty issues. The allegations of physical and mental cruelty had been established by the evidence lead by the appellant/wife which would entitle her to the grant of decree of divorce. The finding of trial Court on issue no.1 is, thus, not sustainable.

16. Resultantly, the appeal is allowed and finding of lower court on issue No.1 is reversed. The judgment and decree dated 20.11.2015 passed by the District Judge, Family Court, Bhiwani are set aside and the appellant/wife is granted decree of divorce on the ground of cruelty under Section 13 of the Act. Decree sheet be drawn accordingly.

(M.M.S. BEDI)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

20.07.2018

SwarnjitS

Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO