

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

FAO-M-257 of 2015 with
CMM 111 of 2015

Date of Decision: May 4, 2018

Radha

.....Appellant

Vs.

Kamal Singh

.....Respondent

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

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Present: Mr. J.P. Sharma, Advocate for the appellant.
None for the respondent.

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M.M.S. BEDI, J.

Appellant-wife, has preferred this appeal against the judgment and decree dated March 16, 2015 dismissing a petition for divorce filed on the basis of allegations of cruelty.

Briefly stated the case pleaded by the appellant- wife is that behaviour of the respondent/ husband was not good from the very beginning. Appellant was insulted by calling her "Kali Kaluti" and was being taunted for not preparing the food. In November 2012, the respondent and his family members had started demanding dowry as a result of which appellant had to return to her parents' house. The father of the appellant had asked the respondent and his family members to reconcile the matter but they threatened to get the second marriage of the respondent solemnized. The

appellant was pressurized to maintain the house of the elder brother of the respondent and to take care of the children as no child had been born to her.

Respondent claimed that the appellant was living in her parents house at her own. Allegations of demand of dowry were denied.

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

- “1) Whether the petitioner is entitled for decree of divorce under Section 13 of the HM Act, on the ground as alleged in the petition? OPP
- 2) Whether the petition is not maintainable? OPD.
- 3) Relief.”

In support of the allegations and to prove issue No.1 , the appellant had examined herself as PW1, her father as PW2 in order to corroborate the allegations of cruelty, her mother Bimla was examined as PW3. Issue No.1 was decided against the appellant whereas issue No.2 was decided against the respondent and in favour of the appellant. The lower Court dismissed the case of the appellant on the following grounds:-

1. She has admitted in her cross-examination that she did not file any complaint to any higher authorities regarding the behaviour of the respondent.
2. The appellant has filed the petition for divorce and had thereafter come to her house as per her admission in the cross-examination.
3. She was not able to tell the exact dates on which the quarrel had taken place.
4. She has admitted that she did not want to join the company of her husband and her husband was living

with wife of his brother namely Lavisha which evidence is contrary to the pleadings.

5. Allegations that she was called 'Kali Kaluti' was not established on the record.
6. No efforts had been made by the appellant or her parents to bring about restitution of the matrimonial relations.

With the assistance of counsel for the appellant we have carefully gone through the judgment passed by the Lower Court and the statements of the witnesses. We are of the firm opinion that the approach of the lower Court is absolutely improper. The appellant wife admittedly is not residing in her matrimonial home and is living with her parents. The Court did not appreciate that she has been compelled to stay away from the house of her husband. The acts of cruelty have been proved on the record by producing her affidavit. When a female has been compelled to leave her matrimonial home to stay with her parents, a legal obligation/ appreciation of evidence arises to find out the circumstances under which she is compelled to leave the matrimonial home. In the present case, the acts of cruelty have been established by PW2 and PW3 who are father and mother, respectively, of the appellant. The evidence has not been appreciated in true perspective to see the physical and mental cruelty which has been asserted by the appellant in her petition. No genuine attempt appears to have been made by the respondent to bring about re-union. The respondent has treated the appellant in a casual manner. At one stage, during the pendency of the appeal, the parties had decided to get the marriage dissolved by a decree of divorce by mutual consent by filing a petition under Section 13-B of the Act.

A perusal of the order dated July 26, 2017 indicates that the respondent husband had though agreed before the Mediation and Conciliation Centre of Punjab and Haryana High Court to take steps to file a petition under Section 13-B of the Act but he opted to stay away on said date and also on subsequent date i.e. August 24, 2017.

In view of the above circumstances, we are of the opinion that the appellant wife has been able to establish that she was maltreated and treated shabbily as a result of which she was compelled to stay away from the matrimonial home. The stand of the appellant stands corroborated by her parents who appeared as PW2 and PW3. The evidence produced on the record is held to be good enough to arrive at a conclusion that the appellant was treated with mental and physical cruelty. The judgment of the lower Court dated March 16, 2015 is hereby set aside. The finding on issue No.1 is reversed. The marriage of the appellant – applicant wife with respondent is dissolved by a decree of divorce.

Appeal stands allowed in the aforesaid terms. Decree sheet be drawn accordingly.

The application under Section 24 of the Act is disposed of as having been rendered infructuous.

(M.M.S. BEDI)
JUDGE

May 4, 2018
sanjay

(GURVINDER SINGH GILL)
JUDGE

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