

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO-M-109 of 2016 with
CMM-95-2016

Date of Decision:- 7.2.2018

Ruchi Chaudhary

... Appellant

Versus

Arvind

... Respondent

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

Present:- Mr. Abhimanyu Singh, Advocate, for the appellant.

Respondent ex parte.

M.M.S. BEDI, J.

Aggrieved with judgment and decree dated 5.12.2015 passed by Additional District Judge, Rewari, dismissing her petition for divorce appellant-wife has preferred this appeal.

The appellant has leveled allegations against the respondent that he indulged in over-drinking and used to beat the appellant in a cruel manner and treating her like an animal. She was not permitted to take food peacefully and there was demand of dowry, pressurising the appellant to bring money from her parents whereas her parents were not in a position to fulfill the demand. With the allegations of demand of dowry an FIR under Section 498-A, 406 read with Section 34 of IPC was registered against the respondent and his father. The respondent had filed an application under Section 9 of the Hindu Marriage Act to create a defence.

The respondent contested the petition claiming that the marriage was without dowry and it was a simple marriage. It was love marriage between the parties but arranged by the parents. The respondent claimed that the appellant was interested in higher studies, as such, he provided her liberty to take admission in M.Ed. She wanted to do a job, as such, she started working in a school. So far as criminal case is concerned, it is averred in the written statement that the criminal case has been registered at the instance of the parents of the appellant. He claimed that as a matter of fact the appellant-wife had disrupted him and left matrimonial home on 19.3.2012. Despite a Panchayat having been conveyed on 2/3.4.2012, she refused to join the company of the respondent and rather demanded a sum of Rs.2,00,000/- from the respondent. His application under Section 9 of the Hindu Marriage Act was allowed on 13.6.2013 on the basis of compromise but again she left the company of the respondent after he had got injury having been hurt by a cow.

The lower Court had framed the following issues:

1. Whether the petitioner is entitled to a decree of divorce on the ground of cruelty and desertion as alleged? OPP
2. Whether the petitioner has not come to the court with clean hands? OPR
3. Relief.

Issues No.1 and 2 were decided simultaneously. The trial Court declined the petition for divorce assuring that the appellant herself committed wrong having not adjusted with the respondent. She had done Masters in education. There was an affair between the parties vide which the family members were apparently not happy as a result of which she had

filed a divorce petition.

The respondent was issued notice. Despite he having been served through his brother, he opted not to appear before this Court. He was represented on 6.10.2016 by Mr. Neeraj Yadav, Advocate who sought time to file reply to the application under Section 24 of the Hindu Marriage Act. Thereafter neither he appeared nor any reply has been filed on behalf of the respondent. Vide order dated 13.12.2017 the respondent was proceeded against ex parte. The respondent having been proceeded against ex parte, appeal has been taken up for consideration on merits.

We have gone through the record with the assistance of learned counsel for the appellant. We have considered the allegations of the appellant established by her by appearing herself as PW-1, her father Balwan as PW-2, Sunderpal as PW-3 and Ashish Chaudhary PW-4. It is apparent from the admission of PW-1 in her cross-examination that the marriage was a love marriage-cum-arranged marriage and the parties lived in the same locality. The trial Court failed to appreciate that the appellant who had love marriage with the respondent would not come forward for a divorce unless and until she has been treated physically and mentally with cruelty. She was physically tortured to the extent that she was compelled to file a criminal case against the respondent and his family members. The petition under Section 9 of the Hindu Marriage Act filed by the respondent was merely to create defence to deviate from the rights of the appellant. Besides this, the respondent has shown no interest in contesting the appeal before this Court as he has opted not to appear and contest the appeal so as to avoid the maintenance which was likely to be awarded in application under Section 24 of the Hindu Marriage Act. The injuries received by the

appellant were brought to the notice of the Court by producing the medical record but the lower Court failed to appreciate that the appellant had been treated with cruelty and was compelled to go to the extent of lodging an FIR.

In the above said circumstances, the instant appeal is allowed. The judgment and decree of lower Court dated 5.12.2015 are set aside. The petition of appellant-wife for a decree of divorce on the ground of cruelty is allowed. Marriage between the parties is dissolved. Decree sheet be prepared.

Application under Section 24 of the Hindu Marriage Act is disposed of as infructuous.

(M.M.S. BEDI)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

February 7, 2018
mohan

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No