

In the High Court of Punjab and Haryana at Chandigarh

FAO-M-132-2016 (O&M)

Date of decision: March 13, 2018

Manbeena Kaur

.....Appellant

Versus

Karminder Singh

....Respondent

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

Present : Ms. Promila Nain, Advocate for the appellant.

Mr. Rajesh Gupta, Advocate for the respondent.

GURVINDER SINGH GILL, J.

1. The appellant-wife has filed this appeal challenging judgment and decree dated 18.12.2015, whereby a petition filed by her under Section 13 of the Hindu Marriage Act, (hereinafter referred to as "*the Act*") seeking dissolution of her marriage with respondent-husband has been dismissed.
2. The case set up by the appellant-wife, as per her petition under Section 13 of the Act, is that she was married to respondent-husband on 25.4.2002 at Kisan Bhawan, Sector-35, Chandigarh. It is averred that though a 'barat' comprising 100 persons was expected but the respondent-husband instead brought 400 persons and after reaching they ordered for drinks and non-vegetarian food

and the appellant's brother had to make arrangements immediately by spending double the amount. The marriage ceremony took place at Gurudwara Guru Nanak Darbar, Defence Colony, Sector 35-B, Chandigarh. It is alleged that the respondent-husband demanded huge dowry in the shape of jewellery and cash amounting to ₹ 10 lacs. Despite the said demand having been met with by mother of the appellant, the respondent-husband, on the very first night after the marriage, taunted her for not serving the 'barat' as per expectations and for not giving dowry as demanded by them. The appellant-wife was also given beatings as a routine and was not even allowed to go anywhere to share her agony. Two children were born out of the wedlock but the respondent-husband did not bother to see the newly borns for months together. She was also given beatings for the reason that the mother of the appellant-wife had not given sufficient gifts on birth of the first son. It is also alleged that the respondent-husband even attempted to strangle her in order to compel her mother to give more gifts and cash. Ultimately, the appellant-wife left her matrimonial home alongwith her two children on 1.9.2012 on the pretext that her brother had come from Sydney. She had requested the respondent-husband to give her gold ornaments and stridhan for use but he flatly refused to give the same. It is averred that the respondent-husband used to send SMS threatening the appellant-wife to kidnap her children and to kill her and consequently the appellant-wife had to send telegram to the police apprehending danger to her life and also to the life of her children.

3. The respondent-husband in his reply, while denying all the material

averments made in the petition, asserted that the appellant-wife had left the matrimonial home without assigning any justifiable reason and as such she cannot be allowed to take benefit of her own wrongs. The respondent-husband asserted that a simple marriage had taken place and no demand had ever been raised by the respondent-husband or members of his family and that the mini truck received by father of the respondent-husband contained a sofa-set, double bed and empty almirahs, which the appellant-wife's mother insisted on giving despite the fact that the respondent-husband and his family had requested that the same were not required.

4. The parties were put to proof on the following issues:-

- “1. Whether the petitioner is entitled to decree of divorce on the ground of cruelty? OPP.
2. Relief.”

5. The appellant-wife herself steeped into witness box as PW-1 and also examined PW-2-Subhash Chander Malik, PW-3-Ashwinder Singh, PW-4-Gagandeep Singh and PW-5-Gurmukh Bir Singh. On the other hand, the respondent-husband apart from himself appearing as RW-1 examined RW-2 -Urminder Singh, RW-3-Balbir Singh and also led documentary evidence.
6. The learned lower Court upon considering the evidence on record returned its finding on issue No.1 against the appellant-wife and consequently dismissed the petition vide impugned judgment and decree. Aggrieved with the same, the appellant-wife has filed the present appeal.

7. We have heard the learned counsel for the parties and have also perused the record of the case.
8. The learned counsel for the appellant-wife while assailing the impugned judgment has submitted that the learned lower Court did not appreciate the evidence on record in the correct perspective and reached at an erroneous conclusion on issue No.1. The learned counsel apart from referring to the testimony of PW-1, who has stated in tune with the averments made in the petition, has drawn the attention of this Court to the statement of PW-2-Subhash Chander Malik, PW-3-Ashwinder Singh, PW-4-Gagandeep Singh and PW-5-Gurmukh Bir Singh. PW-2 Subhash Chander Malik stated that he is a family friend of father of the petitioner and that the respondent had demanded huge dowry in the shape of gold, jewellery and cash and that an amount of ₹ 10 lacs was handed over to the respondent at the time of marriage. He further stated that the petitioner had been given beatings and had to leave her matrimonial home on 1.9.2012. PW-3 Ashwinder Singh and PW-4 Gagandeep Singh, both stated that they are family friends of the petitioner and that the respondent demanded huge dowry in the shape of jewellery and cash and had been ill-treating the petitioner who kept on tolerating the same and that ultimately she left her matrimonial home on 1.9.2012 along with her two sons. PW-5-Gurmukh Bir Singh, who is brother of the petitioner, has stated in detail in support of the case of the petitioner in respect of ill-treatment met out to his sister by the respondent. He has narrated the incident which had taken place on the day of marriage itself when he was forced to make arrangement for 400 guests at the last

moment. He has further stated in respect of demand of dowry and harassment met out to his sister.

9. Though the witnesses examined by the appellant-wife may not have witnessed the actual act of cruelty i.e. of the beatings given to her or the taunts given to her and her harassment but PW-5- Gurmukh Bir Singh, brother of the appellant-wife, would be the best person, more particularly when the father of appellant-wife had died even before the marriage of appellant/wife, who would be able to state about the mental state of his sister. PW-5-Gurmukh Bir Singh has categorically stated that after the marriage he started receiving phone calls from his sister that her husband had been taunting and beating her and that in fact on the very first night, after marriage, he had taunted her for not having served the 'barat' up to the expectations and for not having brought sufficient dowry. He has further stated that whenever he used to call his sister, she used to cry and sought financial help from him. He has also specifically stated that the appellant's husband did not bother to see the newly born sons for months together after their birth. On appreciation of testimonies of PW-2 Subhash Chander Malik, PW-3 Ashwinder Singh, PW-4 Gagandeep Singh and PW-5- Gurmukh Bir Singh, we arrive at a conclusion that the appellant-wife treated with cruelty at the hands of respondent-husband.
10. The learned lower Court has, however, adopted a hyper technical approach by stating that the said evidence was in the nature of hearsay evidence and that no time and date was specified. The observations of brother of the appellant-wife, based on his interaction with the appellant-wife, cannot be

discarded merely by saying that the same is hearsay evidence. Similarly, when it has been broadly stated that immediately on the first night after the marriage, the respondent-husband had started taunting the appellant-wife for not having served the 'barat' properly and for not having brought sufficient dowry, the same amounts to pin pointing the day when the alleged taunts were issued. Similarly, the appellant-wife and her brother having specifically stated that after the birth of the children, the respondent-husband did not bother to see them for months together, cannot be said to be a vague averment so as to discard their statements absolutely. In our society, a wife would not think of leaving her matrimonial home as the same is rather considered stigmatic. It is only under compelling circumstances that she would think of taking such a step. In other words, it would be either hostile atmosphere in the nature of taunts, beatings and harassment, which could drive a wife to leave her matrimonial home. In the present case, the testimony of the appellant-wife, which finds ample corroboration from the other witnesses examined by her especially her brother, clearly established that she had been dealt with cruelty by the respondent-husband.

11. The findings to the contrary as recorded by the learned lower Court are not based on sufficient reasoning and cannot sustain and the same are hereby reversed. Issue No.1 is decided in favour of the appellant-wife to the effect that the respondent-husband had dealt with cruelty.
12. In view of reversal of the aforesaid finding, a valid ground is made out for dissolution of marriage of the parties. The appeal accordingly merits acceptance and is hereby accepted. The impugned judgment is set aside and

the petition under Section 13 of the Act is hereby accepted and the marriage of the parties is hereby dissolved by passing a decree of divorce on ground of cruelty. However, the respondent-husband will be at liberty to move a petition seeking custody of minor child or to seek visitation rights in accordance with law.

13. Decree sheet be prepared. Parties are left to bear their own costs.

(M.M.S. Bedi)
Judge

(Gurvinder Singh Gill)
Judge

March 13, 2018
pankaj

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No