

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

FAO-M-154 of 2016

Date of Decision: August 13, 2018

Monika

.....Appellant

Vs.

Manoj

.....Respondent

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

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Present: Mr.S.S. Duhan, Advocate for the appellant.

None for the respondent.

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M.M.S. BEDI, J.

This is wife's appeal against the judgment and decree dated March 14, 2016 dismissing her petition under Section 13 of the Hindu Marriage Act, for short 'the Act', for dissolution of marriage by a decree of divorce.

The appellant had sought decree of divorce on the ground of cruelty and desertion claiming that she was married to the respondent on March 18, 2009. The respondent and his family members used to taunt, humiliate and maltreat the appellant for not bringing sufficient dowry as per their wishes. The appellant was forced to bring Rs.50000/- in cash from her parents but on her refusal to fulfill the demand, she was beaten mercilessly

and turned out of the matrimonial home. The respondent was forced to take the appellant to the matrimonial home on payment of Rs.20000/- to him and his family members but later on again the respondent started maltreating the appellant. In the year 2010, mother of the appellant again gave Rs.20000/- to the respondent. The respondent was having illicit relation with one girl regarding which the appellant raised objection but she was threatened and beaten by the respondent. The appellant was taunted and addressed as belonging to family of paupers. The appellant was called by name 'Nangdi'. In July 2010, the appellant was beaten up and turned out of the matrimonial home by the respondent and his family members by raising a demand of Rs.1 lac. Another attempt was made in July 2010 by Panchayat and appellant was taken back to her matrimonial home but the behaviour of the respondent was cruel. He used to consume liquor and other intoxicants like ganja and under the influence of intoxicant he mercilessly beat her. Even the younger brother of respondent, namely, Sonu had made an attempt to outrage the modesty of the appellant and to put pressure upon her to make illicit relation with her. When the matter was disclosed to the mother-in-law and father-in-law of the appellant, they gave merciless beatings to her and turned her out of the matrimonial home. Again a panchayat was convened and the respondent and his family members assured that in future it will not be repeated but despite that the appellant was turned out of the matrimonial home in October 2010 retaining her stridhan with them. No attempt was made by the respondent to bring the appellant to the matrimonial home. Appellant also claimed that the respondent had deserted the appellant without any legal reason.

It was pleaded in the written statement by respondent husband that the marriage of the respondent was tigated marriage. The respondent had a sister Geeta who was married to Satish and marriage of nanad of Geeta was solemnized with brother of Monika, appellant at Village Habatpur, Tehsil and District Hisar and marriage of the appellant was solemnized with respondent. The marriage was simple. No dowry articles were given. The appellant left the matrimonial home with her brother without telling anybody and took all her ornaments and stole a sum of Rs.60000/-. The appellant has levelled false allegations against Sonu. The appellant was never beaten. It was also averred that the appellant was kept with love and affection. The appellant solemnized marriage with Rakesh son of Ram Kumar resident of Barsola District Jind without getting divorce regarding which a complaint under Sections 494/ 420 IPC was filed by the respondent in the Court.

On the pleadings of the parties, the lower Court framed the following issues:-

- “1. Whether the petitioner is entitled to a decree of divorce on the grounds mentioned in the petition?
OPP.
2. Relief.”

The appellant examined herself as PW1 and her mother Birmati @ Biro as PW2 whereas the respondent appeared himself as RW1. On the appreciation of evidence, the lower Court dismissed the petition holding that despite the fact that no effective cross-examination was conducted on PW1 and PW2 the evidence produced by her was not clinching, reliable and trustworthy. The ground of desertion was also not accepted by the trial

Court holding that the respondent was ready and willing to resume cohabitation as such the ground of desertion was not available as the appellant was not able to establish that respondent had left her company without any cause.

It is pertinent to observe here that when this appeal was filed, respondent was directed to pay a sum of Rs.20000/- towards litigation expenses to the appellant wife.

Mr. Ashok Sharma, Advocate had put in appearance on behalf of respondent and sought time to pay the litigation expenses but despite having been given a number of opportunities the sum of Rs.20000/- was not paid towards the litigation expenses. Vide order dated February 16, 2017 the defence of the respondent was struck off. Neither respondent nor his counsel appeared on September 12, 2017 and December 5, 2017 as such the appeal was finally heard ex-parte against the respondent considering the evidence produced by the appellant on the record.

The appellant wife deposed on oath by furnishing her affidavit Ex.PW1/A reiterating her allegations in the petition. Appellant was suggested that she had solemnized second marriage with Rakesh, however, no document was produced to establish her relationship with said Rakesh. The allegation of constant nagging insult and mental torture was mentioned in the affidavit but the appellant was not suggested even in cross-examination pertaining to the said maltreatment. Similarly PW2 Birmati, mother of the appellant furnished her affidavit Ex.PW2/A in her evidence establishing the demand of dowry and payment of money on different occasions. She was not cross-examined regarding the said averments.

After going through the statements of appellant and her mother, we are of the opinion that the allegations of cruelty stand established. The demand of dowry, allegations of beating and using derogatory words against the appellant which made her to leave the matrimonial home are sufficient enough to arrive this Court even at a conclusion that the appellant had been maltreated and the act of the respondent would fall under the term cruelty. We also draw a presumption from the fact that a husband who does not come forward to pay even a sum of Rs.20000/- towards litigation expenses would be least bothered about the welfare of his wife. The judgment of the lower Court is thus apparently wrong and not sustainable and, therefore, deserves to be set aside.

The appeal is accordingly allowed. The findings recorded by the lower Court on issue No.2 are reversed.

The appellant is granted decree of divorce on the ground of cruelty. Marriage of the appellant with respondent is dissolved. Let decree sheet be prepared.

(M.M.S. BEDI)
JUDGE

August 13, 2018
sanjay

(ANUPINDER SINGH GREWAL)
JUDGE

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