

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

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FAO-3008-2017 (O&M)

Date of Decision: 14.09.2018

PINKY DEVI

....Appellant

Vs.

KASHMIRI LAL @ MEERA

...Respondent

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

Present: Mr. Deepak Kaushal, Advocate for
Mr. Arvinder Arora, Advocate
for the appellant.

Mr. Vikram Bali, Advocate
for the respondent.

M.M.S. BEDI, J. (ORAL)

This is an appeal filed by the appellant-wife against the impugned judgment and decree dated 12.07.2016 passed by the District Judge (Family Court), Ambala, whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') has been dismissed on the ground that she herself is guilty of matrimonial wrong.

As per the allegations in her petition under Section 13 of the Act, the appellant had pleaded that she had entered into Karewa marriage with respondent on 13.06.2013 at Village Samleheri, District Panchkula. Both of them cohabited together in the house of her previous husband Ram Avtar in the same village but no child was born out of the said wedlock. Previously, marriage of the appellant was solemnized with

Ram Avtar on 22.06.2002. Out of the said wedlock, two sons were born in the year 2004 and 2007, respectively, who are presently living in forcible and illegal custody of the respondent, who is the step father having no love and affection for them. It is pleaded that Ram Avtar, the previous husband of the appellant died in a road side accident in the year 2011. Thereafter, the appellant was forcibly made to enter into Karewa marriage with the respondent on 13.06.2013 by her mother-in-law being her nephew, i.e. son of brother of mother-in-law of the appellant. Dowry articles were given to please the respondent as the Karewa marriage was performed with the consent of the parents of both sides. The respondent had caused mental and physical harassment to the appellant and used to ask her to perform unnatural sex with him but on her refusal, he used to beat her mercilessly. She complained about this act of the respondent to her mother-in-law, but she did not respond. On 28.07.2013, she was given merciless beatings at night and was thrown out of the matrimonial house forcibly by the respondent, detaining the minor children with him. She was left at her parents' house by Anil Kumar, a neighbour. Respondent, in a clever manner, got an FIR under Section 366 IPC registered in Police Station Raipur Rani, wherein she made a statement under Section 164 Cr.P.C. Thereafter, the appellant, through her relatives, tried to bring both the minor children from the respondent but he did not allow to take the children rather he threatened her with dire consequences. Ultimately, the appellant reported the matter to the Deputy Commissioner of Police (Rural), Ambala on 3.9.2013 regarding atrocities caused to her by the respondent and her mother-in-law. In view of the respondent having made the life of the appellant hell, she sought decree of divorce on the ground of cruelty.

The respondent filed written statement, denying all the allegations and pleading that the appellant has got no love and affection for the minor children and that she has filed a petition under Section 25 of the Guardians and Wards Act for obtaining the custody of the minor children, which is pending in the Court. Allegations have been leveled against her that she did not help the family of the respondent in doing the household work. She abandoned all her matrimonial obligations since inception of the marriage and used to pick up quarrels. The allegations of theft of jewellery and cash were leveled against the appellant. Allegations were leveled against her that she had run away with Anil Kumar and filed a false case of custody of the minor children just to grab the share of the amount awarded to the mother-in-law and minor children in MACT case.

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

- (1) Whether the petitioner is entitled for decree of divorce on the grounds taken in the petition? OPP.
- (2) Whether the petition is not maintainable? OPR.
- (3) Relief.

The lower Court, on appreciation of evidence, dismissed the petition for divorce, holding that the appellant having left the matrimonial home and the minor children, was guilty of having committed wrong, as such, was not entitled to the relief under the Act. The Court observed that she had gone with her paramour without the consent of the respondent on 28.07.2013 and remained with him for a period of 2 months. She did not take care of her children nor her husband, as such, she being guilty of causing mental agony to the

respondent, which tantamount to cruelty, she would not be entitled to the relief of divorce as having not come to the Court with clean hands.

With the assistance of counsel for both the parties, we have gone through the evidence on record and find that the appellant has been residing away from her matrimonial home w.e.f. 2013. A period of more than 5 years has elapsed till date. There is nothing available on the record indicating that any actual steps have been taken by the respondent to require the appellant to join the matrimonial home, rather allegations have been leveled against her that she had abandoned her children and staying with another person.

In the present case, the circumstances in which the appellant had married the respondent warranted that she should have been kept with extraordinary care having lost her husband in a road accident. The respondent, instead of performing his matrimonial obligations with requisite care, is proved to have treated her so shabbily so as to compel her to leave the matrimonial home. The allegation of she having abandoned her minor children, stands rebutted by the fact that she has been taking steps to get the custody of the minor children, in accordance with procedure of law, by filing a petition under the Guardians and Wards Act, as has been admitted by the respondent. The entire approach of the lower Court in determining the controversy involved between the parties, is based on wrong appreciation of the evidence. No lady would leave the matrimonial home and her children unless and until, she is compelled to do so. Being fed up with the conduct of the respondent, she opted to seek divorce from the respondent, simultaneously, exercising her right to take the custody of the children, in accordance with law.

The finding of the lower court, in view of the above circumstances, on issue No.1 deserves to be reversed.

Ordered accordingly.

Consequently, the appeal is allowed. The judgment and decree under challenge is set aside. A decree of divorce is granted to the appellant-wife on the ground of cruelty by the respondent, without prejudice to her other legal rights to seek the custody of minor children.

The civil miscellaneous application filed by respondent-husband is disposed of as not maintainable.

(M.M.S. BEDI)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

14.09.2018.
SwarnjitS

Whether speaking/reasoned :	YES/NO
Whether reportable :	YES/NO