

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

**FAO-M No. 133 of 2019
Date of Decision: 14.5.2019**

Maya Devi alias Dimple Kaur

.....Appellant

Vs.

Pargat Singh and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: - Mr. Jai Bhagwan, Advocate
for the appellant.

HARNARESH SINGH GILL, J.

By way of present appeal, appellant Maya Devi has assailed the judgment and decree dated 12.3.2019 passed by Additional District Judge, Sangrur, vide which the petition filed by respondent No. 1-husband under Section 13 of the Hindu Marriage Act, 1955 ('Act' for short), has been allowed.

The facts which need elaboration are as under:-

The marriage between the parties was solemnized on 24.2.2002 as per Sikh rites and Anand Karaj ceremony. After the marriage, both of them resided together. Three children, namely, Prabhjot Singh, Simran Kaur and Akashdeep Singh were born out of the said wedlock.

It is a case in which respondent No. 1-husband was a labourer and went to Dubai on 10.9.2006, on labourer visa and came back to India on

19.1.2016. From there, he used to send his income to the father of the appellant. During the period 2006 to 2008, the appellant resided at her parental house on the instructions of respondent No. 1 as no one was at the house of respondent No. 1 to look after the appellant-wife and their children. It is the pleaded case of respondent No. 1 that in the month of December 2008, the appellant came back to her matrimonial home as her parents had assured that they would regularly visit her in the absence of her husband/respondent No. 1. Respondent No. 2-Chanda Singh, who was known to respondent No. 1, was a co-villager and was also known to the parents of the appellant as they were instrumental in arranging a match for respondent No. 2 started visiting the house of respondent No. 1, where appellant was residing. When the parents of the appellant were unable to stay at the matrimonial home of the appellant, then the mother of respondent No. 2 started staying with the appellant during night time. Thereafter respondent No. 2 started visiting the house of respondent No. 1 during odd hours and at that time in the absence of respondent No. 1, the appellant and respondent No. 2 had developed illicit relations.

It is further alleged that respondent No. 2 was visiting the matrimonial house of the appellant regularly in the absence of respondent No. 1/husband. On 16.1.2015, cousin of respondent No. 1, namely, Ranjit Singh suddenly came to the house of respondent No. 1 and saw the appellant and respondent No. 2 in a compromising position. This incident was brought to the notice of respondent No. 1 by Ranjit Singh and accordingly, panchayat was convened and the parents of the appellant were informed. Having been informed, respondent No. 1 came back to India on 19.1.2016 and asked the appellant about the said incident, but she flatly

denied her involvement in any such incident.

Having doubt in his mind, respondent No. 1 had installed a hidden camera to watch the movements/actions of the appellant and was shocked to see the video clips dated 2.2.2016, 4.2.2016 and 12.2.2016. As per these video clips, the appellant and respondent No. 2 had made illicit physical relations in the absence of respondent No. 1. On asking, the appellant threatened that if anybody stopped her, then she would implicate respondent No. 1 and his family in a false dowry case. Thereafter on 16.2.2016, the appellant left the matrimonial home and had also taken all the gold jewellery and cash along with her. The appellant had also made a false complaint before the police at Malerkotla and respondent No. 1 appeared before the police on 26.6.2016 but the complaint was ultimately dropped. Since respondent No. 1 was having mental pain and agony, therefore, he preferred the petition for divorce.

Upon notice, the appellant-wife appeared and filed her written statement wherein she had denied all the allegations levelled against her. It was also denied by the appellant that respondent No. 1 ever sent his income to her father. It was alleged by the appellant-wife that she was turned out of the matrimonial home after having been given beatings and since then she had been residing in her parental home with her children. It is further averred that the alleged story made by respondent No. 1 is a cooked up story by a legal mind just to get divorce from her.

Respondent No. 2-Chanda Singh also filed his written statement and had denied having any kind of relationship with the appellant. It was averred that dowry articles were given by the parents of the appellant to respondent No. 1 at the time of marriage. It was admitted that parents of

the appellant had arranged a match for him. It was specifically denied that he had ever visited the in-laws' house of the appellant. The allegations of illicit relations between him and the appellant were also denied. It was further averred that he had been suffering from mental pain and agony due to false allegations levelled by respondent No. 1 against him.

After the issues were framed, respondent No. 1-Pargat Singh stepped into the witness box as PW-4 and his father as PW-3.

To rebut the case of respondent No. 1, the appellant herself stepped into the witness box as RW-1 and also examined Harbans Singh as RW-2.

After taking into consideration the evidence on record especially regarding Closed Circuit Television ('CCTV' for short) footages and the certificate under Section 65-B of the Indian Evidence Act, 1872 as Ex. PW-3/2, the Court below had allowed the divorce petition preferred by respondent No. 1-husband.

We have heard learned counsel for the appellant that evidence against the appellant had been created by respondent No. 1-husband in connivance with respondent No. 2 with a motive to obtain a decree of divorce and everything had been done in a pre-planned manner as the marriage between the parties was solemnized in the year 2002 whereas the divorce petition had been filed by respondent No. 1 in January 2017. It has further been argued that the appellant was living in the matrimonial home along with the children, but no such incident was ever raised by respondent No. 1 against the appellant and suddenly, now at this stage, after 15 years, the divorce petition was filed by creating false evidence on the ground of cruelty and adultery. It has been further argued that the Court below has

ignored the fact that the marriage of respondent No. 2 was solemnized on 14.2.2006 and respondent No. 1 attended all the functions of his marriage. Learned counsel has further argued that the witness of respondent No. 1, PW-1 Kulwant Singh had specifically deposed in his cross-examination that respondent No. 1 had no relations with respondent No. 2-Chanda Singh except being a co-villager and he had shown his ignorance to the video clips.

The present petition for divorce was filed on the ground of cruelty. The cruelty has not been defined under the Act. There is no straightjacket formula to define cruelty which depends upon the education, standard of living, status of the parties in society and their mental make-up.

Regarding cruelty, the Hon'ble Supreme Court in ***A. Jayachandra versus Aneel Kaur, 2005 (1) R.C.R. (Civil) 309*** has carved out the following points:-

“(1) Cruelty can be physical or mental, intentional or unintentional - Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party - It may be words, gestures or by mere silence, violent or non-violent

(2) Cruelty should be wilful unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger.

(3) Proof beyond doubt, as in criminal trials is not required to prove cruelty.

(4) In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence - For proof of mental cruelty Court has to find out nature of cruel treatment, impact of such

treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other.

(5) There may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal - Then the impact or injurious effect on the other spouse need not be enquired into or considered. AIR 1988 Supreme Court 121 relied.

(6) Whether the conduct of a spouse amounted to cruelty has to be considered in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions.

(7) Mere trivial irritations, quarrels between spouses, which happen in day- to-day married life, may also not amount to cruelty.

(8) The Courts do not have to deal with ideal husbands and ideal wives - It has to deal with particular man and woman before it - The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court. AIR 1975 Supreme Court 1534 relied.”

If one spouse persists with default and creates such circumstances which not only spoil the atmosphere at home but also result in the humiliation in the society, the other spouse cannot be expected to ignore the aforementioned misconduct. A balance has to be struck. The matrimonial harmony is the responsibility of both the husband and wife.

In the present case, it seems that respondent No. 1-husband, who used to stay away from his home for his earnings and for the betterment of the family, had an intuition and information from his cousin Ranjit Singh regarding the activities of the appellant and respondent No. 2. After coming back from overseas/Dubai and having doubt in his mind, respondent No. 1 installed a CCTV camera in his house and through this, he saw the physical

relations of the appellant with respondent No. 2, in his absence. The CCTV footages dated 2.2.2016, 4.2.2016 and 12.2.2016 were produced and proved before the Court below in evidence. Not only this, the certificate under Section 65-B of the Indian Evidence Act, 1872 was also tendered as Ex. PW3/2 along with the bills with regard to purchase of CCTV camera i.e. Ex. P6 to Ex. P33.

Furthermore, the appellant did not deny her relationship with respondent No. 2. This fact was admitted by the appellant in her cross-examination when she stated that she had not mentioned in the written statement as well as in the evidence that allegations of adultery levelled by respondent No. 1-husband, were false. Further RW-2 Harbans Singh, father of the appellant, admitted in his cross-examination that he had not denied the relationship of the appellant with respondent No. 2. No evidence in rebuttal was adduced by the appellant in order to prove that there was some altercation in CCTV footages that had been placed on record in the shape of a pen drive Ex. PW3/1.

In ***Rajni Goyal versus Amit Kumar 2015 (2) R.C.R. (Civil)***

871, this Court has held as under:-

“There are no two thoughts over the proposition of law laid down in Smt. Dassi's case (supra) that adultery is a serious charge and has to be proved beyond reasonable doubt. But at the same time it is difficult to procure direct evidence for proving such a charge. It is only from the circumstances that an inference can be drawn that the spouse against whom complaint has been made was leading an adulterous life.

At the same time, it is also a settled proposition of law that admission of a fact by a party is the best evidence that can be used by the other party. It is not the case of Amit Kumar that Rajni Goyal was having illicit relations with Manpreet Singh

(respondent no.2) prior to her marriage with him. He very specifically deposed that Rajni Goyal was living in adultery with Manpreet Singh and during her stay with him she used to receive calls from her paramour who also used to call him and threaten him of dire consequences. He mentioned that he gave a complaint to the police which was inquired into by Deputy Superintendent of Police, City Bathinda. During the inquiry proceedings Rajni Goyal as well as her father Manohar Lal admitted that she was having illicit relationship with Manpreet Singh.

Similar view was taken by a Co-ordinate Bench of this Court in the case of ***Pooja Sharma versus Vikrant Sharma 2015 (3) R.C.R. (Civil) 174***, wherein it has been held as under:-

“Thus, there being enough evidence to establish that the appellant and her family members had subjected the respondent to mental and physical cruelty and also that the appellant was leading an adulterous life which was worse kind of mental cruelty caused to the respondent, the conclusion irresistible is that the marriage between the parties had reached a dead end from where there is no chance of retrieval. Accordingly, the judgment passed by learned trial Court, dissolving the marriage between the parties by a decree of divorce, calls for no intervention and the appeal being devoid of merit is hereby dismissed.”

In the present case, there is no specific denial on the part of the appellant regarding her having illicit relationship with respondent No. 2. Moreover, father of the appellant, namely, Harbans Singh, who stepped into the witness box as RW-2, had also not denied such relationship. Thus, in the present case, charge of adultery has been proved beyond the shadow of reasonable doubt.

Thus, keeping in view the above facts and circumstances, we

do not find any illegality and infirmity in the judgment and decree dated 12.3.2019 passed by Additional District Judge, Sangrur which may require any interference by this Court.

The appeal is dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

May 14, 2019
Gurpreet

Whether speaking /reasoned : Yes
Whether Reportable : Yes