

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

**FAO-M No. 119 of 2019
Date of Decision: 8.5.2019**

Gagandeep Singh

.....Appellant

Vs.

Rani Kaur

.....Respondent

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

Present: - Mr. Ashok Bhardwaj, Advocate
for the appellant.

HARNARESH SINGH GILL, J.

Challenge in the present appeal is to the judgment and decree dated 14.3.2019 passed by the Additional District Judge, Sangrur, vide which petition filed by the appellant-husband under Section 13 of the Hindu Marriage Act, 1955 ('Act' for short) for dissolution of his marriage, has been dismissed.

The brief facts of the case are that the marriage between the parties was solemnized in February 2007. One son was born out of the said wedlock. The appellant-husband has alleged that there was neither any demand of dowry nor any dowry was given at the time of marriage but the attitude of the respondent-wife remained cruel throughout. It has been pleaded that the respondent used filthy and abusive language towards the appellant and his family members. At times, the respondent refused to prepare tea and meals for the friends and relatives of the appellant. The

appellant went to the extent of saying that the respondent is characterless as she used to call other persons in his absence. Even on advice, she did not mend her ways. It was further alleged that the respondent-wife had left the matrimonial home without any reasonable cause and without the consent of the appellant.

Upon notice, the respondent-wife appeared and filed her written statement wherein she denied the allegations of adultery and cruelty levelled against her. Rather she specifically stated that her parents had spent ₹ 10 lakhs on her marriage and sufficient dowry articles were given besides an Alto car and gold ornaments. Since the appellant and his family members used to taunt the respondent for bringing less dowry, she was thrown out of the matrimonial home and, thus, she started residing at her parental home along with her minor son, who is studying in a public school. It is further alleged that the appellant was addicted to intoxication and used to give beatings to her. The factum of adultery has been denied. Rather, after taking divorce from the respondent, the appellant-husband wanted to remarry.

On the pleadings of the parties, issues were framed on which they led their respective evidence.

After taking into consideration the evidence and the rival contentions of the parties, the learned trial Court dismissed the petition preferred by the appellant-husband while holding that there was no act of cruelty on the part of the respondent-wife and the allegations levelled against her were not proved. In order to prove the allegations of leaving the matrimonial home by the respondent-wife, no specific date was given by the appellant-husband. Rather no dispute has been proved which could have

brought in the mind of the appellant-husband to prefer the present divorce petition. Even PW-2 Ramesh Kumar deposed that he had made various efforts to reconcile the dispute between the parties but the respondent-wife had used filthy language towards him and insulted the appellant and his mother. After taking into consideration the evidence led, the lower Court has drawn a conclusion that no act of cruelty is made out in the present case.

We have heard learned counsel for the appellant but do not find any merit in the present appeal.

The allegations of cruelty and characterlessness of the respondent-wife, raised in the divorce petition are not supported by any evidence. Any negative act of the wife at her matrimonial home was also not proved. Even the mother of the appellant did not step into the witness box to support the version of the appellant-husband.

Thus, the lower Court has rightly dismissed the petition filed by the appellant as the alleged adulterator was neither named nor impleaded as respondent in the petition. To our mind, the allegation of accusations and character assassination of the wife by the appellant-husband in the petition for divorce constitutes a mental cruelty. The allegation of unchastity and indecent language used against the respondent-wife is a grave assault and thus, is an act of mental cruelty as far as the respondent-wife is concerned. The appellant did not examine any witness to prove that respondent was a characterless lady and in the absence of the appellant, she used to call an unknown person. The appellant had not seen any unknown person with the respondent-wife at any stage, either.

Moreover from the facts and circumstances, it is clear that the appellant has come out with general allegations which are bound to occur in

day-to-day family life. No specific instance which had tormented the appellant and made him suffer the pain and agony, had been pleaded and established by the appellant. The weak moral fibre of the appellant would have forced the respondent to live separately. Even otherwise, the respondent-wife was prepared to join the appellant forgetting his past conduct. Therefore, the allegation of desertion attributed to the respondent also does not survive for consideration.

The Court below has rightly drawn a conclusion that in the petition filed by the husband on the ground of adultery, it is necessary to implead the alleged adulterator as a co-respondent. It has been further rightly concluded by the Court below that to prove the charge of adultery in a matrimonial case, the standard of proof would definitely be higher and a strict measure of proof is required, though it may not be beyond the shadow of reasonable doubt as is required in a criminal case. The decree of divorce cannot be granted merely on the basis of oral assertions but the allegations of cruelty are to be proved by leading cogent evidence.

Therefore, the judgment and decree dated 14.3.2019 passed by Additional District Judge, Sangrur does not require any interference by this Court.

The appeal is dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

May 08, 2019
Gurpreet

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