

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

Sr. No.253

CR-2871-2019

Date of decision: 20.05.2019

Palak Jain

....Petitioner

versus

Sanchit Gupta

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Ms. Alka Sarin, Advocate
for the petitioner.

Mr. A.K. Rana, Advocate
for the respondent.

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DEEPAK SIBAL, J. (Oral)

The present petition has been filed to challenge therein order dated 29.04.2019 passed by the Additional District Judge (Family Court), Chandigarh (for short – the Trial Court) through which an application jointly filed by the parties for waving off the statutory period of six months after the first motion statement has been rejected.

The petitioner and the respondent were married on 26.11.2015. Soon thereafter, they had differences between them as a result of which on 03.02.2016 i.e. after about three months of their marriage, the petitioner-wife left the matrimonial home and went to her parents home. Ever since the parties have lived separately. In the meanwhile, FIR bearing No.49 dated 03.06.2017 was lodged by the petitioner-wife against the respondent-husband as also his parents in pursuance of which respondent-husband's father was arrested and the respondent-husband as also his mother were

declared proclaimed offenders. The FIR contained allegations of fraud having been played by the respondent-husband and his family members with the petitioner-wife as also of cruelty on account of demand for dowry. The other proceedings which were launched by the petitioner-wife were under Section 12 of the Hindu Marriage Act, 1955 (for short – the 1955 Act) for annulment of the marriage as also a complaint under the Protection of Women from Domestic Violence Act, 2005 (for short – the 2005 Act). On the other hand, the respondent-husband filed a petition under Section 9 of the 1955 Act for restitution of conjugal rights.

With the intervention of the elders in the families efforts for reconciliation were made but when these efforts bore no fruit, both the parties decided to finally part-ways. A written compromise dated 02.03.2019 was entered into between them, the terms of which are reproduced as under:-

- “i) *That the First Party has already paid a total sum of Rs.65.00 lacs to his wife i.e. Second Party, on account of Past, Present and Future Maintenance, Alimony and all other claims of dowry etc. by way of Demand Drafts, which have already been handed over to the father of second party i.e. Anoop Kumar Jain, who has already received the same on behalf of Second Party on her instructions in the Court of Ms. Nazmeen Singh, JMJC, Chandigarh on 25.01.2019, where the regular bail application of Satish Gupta (father of the First Party) was under adjudication. Demand draft numbers are 550882 dated 21.01.2019 amounting to Rs.5.00 lacs, DD No.550883 dated 21.01.2019 amounting to Rs.36.00 lacs, DD No.550886 dated 21.01.2019 amounting to Rs.24.00 lacs all drawn on ICICI Bank. Now the second party shall not claim any further amount in future, from*

the First Party on any account, including maintenance, permanent alimony etc.

- ii) That the First Party shall file a petition in the Hon'ble High Court of Punjab and Haryana, for quashing of the above said FIR and the Second Party shall cooperate in every manner for getting the above said FIR quashed. The Second Party shall cooperate with the First Party in every manner for the said purpose.*
- iii) That both the parties i.e. Sanchit Gupta and Palak Jain shall file a petition U/s 13-B of Hindu Marriage Act for dissolution of their marriage by way of mutual consent in the appropriate court of law within on or before 31.03.2019.*
- iv) That both the parties shall withdraw all the cases filed against each other i.e. Petition U/s 12 of Hindu Marriage Act and Complaint under Domestic Violence Act, 2005 filed by Second Party; and Petition U/s 9 of Hindu Marriage Act filed by the First Party after recording of the First Motion Statement in the petition to be filed U/s 13(b) of Hindu Marriage Act for dissolution of marriage by way of mutual consent.*
- v) That in case the Second Party does not fulfill any of the terms and conditions of this compromise, she shall be liable to return the amount of Rs.65.00 lacs paid by the First Party and received by her through her father in the Court of Ms. Nazmeen Singh, JMIC Chandigarh. Similarly, if the First Party backs out from any of the terms and conditions of this compromise then the Second Party shall be well within her rights to forfeit the amount of Rs.65.00 lacs already received by her through her father and the second party shall be at liberty to pursue all her legal remedies. It is further agreed that if any of the parties to this compromise backs-out from any of the terms and conditions of the compromise deed then the said party shall be liable to be prosecuted for criminal*

contempt.

- vi) *That it is further agreed that if neither party adheres to all the terms and conditions of this agreement and in case any party breaches the same, the aggrieved party shall seek appropriate legal remedy to prosecute under the appropriate provisions of law including the offence of cheating and fraud and this compromise deed shall be admitted in evidence against the said party.*
- vii) *That this compromise has been executed between the parties with their free will and without any pressure or coercion from any side.”*

In pursuance to the above settlement, the respondent-husband has paid to the petitioner-wife a sum of Rs.65 lakhs. A petition for quashing of the aforesaid FIR has also been filed by him before this Court which is pending. A petition under Section 13-B of the 1955 Act for dissolution of the marriage of the parties by way of mutual consent has also been jointly filed by the parties. The petition under Section 9 of the 1955 Act has been withdrawn by the respondent-husband and the petitioner-wife is in the process of withdrawing her petition filed by her under Section 12 of the 1955 Act as also her complaint under the 2005 Act.

In the aforesaid petition jointly filed by the parties under Section 13-B of the 1955 Act, an application was filed by them for waiving off the statutory period of six months after the first motion statement. Such application was rejected through the order under challenge in the present proceedings.

Learned counsel for the parties have been heard.

After holding the cooling off period of six months as prescribed under Section 13-B (2) of the 1955 Act to be directory, the Hon'ble Apex Court in 'Amardeep Singh VS. Harveen Kaur' (2017) 8 SCC 746 has held

that the object of Section 13-B of the 1955 Act was to enable the parties to dissolve their marriage by mutual consent if the same had irretrievably broken down; to enable them to rehabilitate again; that the cooling off period was to safeguard against a hurried decision but if there was otherwise no possibility of reconciliation the same could be waived; the object of Section 13-B of the 1955 Act was not to perpetuate a purposeless marriage or to prolong the agony of the parties and that when the Court was satisfied that there was no chance of reconciliation, the Court should not be powerless in enabling the parties to have a better option.

As per the afore-referred facts, the parties lived together as husband and wife for just about three months. They have been living separately for the last over three years. They are both young as the petitioner-wife is 30 years of age whereas respondent-husband is aged 33 years. They are highly qualified as the petitioner-wife is MBA (HR) whereas the respondent-husband is a Dentist. Incidentally, they do not have any child. There is a history of litigation between the parties in the form of lodging of FIR by the petitioner-wife against the respondent-husband and his family members in pursuance of which the respondent-husband's father was arrested and his mother and he himself were declared proclaimed offenders. A petition under Section 9 of the 1955 Act was filed by the respondent-husband whereas the petitioner-wife filed a petition under Section 12 of the 1955 Act and another petition under the 2005 Act. As revealed by the parties, the elders in the family made several efforts with regard to reconciliation between them but to no avail. Even the efforts made by this Court to get the parties together, yielded no result. Rather, after meeting the parties, this Court was convinced that the marriage

between them had irretrievably broken down.

As per the afore-quoted compromise, the respondent-husband has already paid to the petitioner-wife a sum of Rs.65 lakhs. He has also withdrawn the petition filed by him under Section 9 of the 1955 Act. On the basis of the aforesaid compromise, a petition has already been filed by the respondent-husband for quashing of the FIR lodged by the petitioner-wife against him and his family members, which is pending before this Court. The petitioner-wife undertakes to withdraw the petitions filed by her under section 12 of the 1955 Act and under the 2005 Act. The decision to finally part ways has been taken by them after having lived separately for the last over three years. Thus, it is not a hurried decision. They have decided to part ways to find for themselves a better future.

Applying the law laid down by the Hon'ble Apex Court in Amardeep Singh's case (supra) to the afore facts, the impugned order is set aside and the period of six months after recording of the first motion statement is directed to be waived. Resultantly, the matter is remitted to the Trial Court for recording the statements of the parties in the second motion on 28.05.2019.

The present petition is allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

May 20, 2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No