

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

FAO-2912-2019 (O&M)
Date of Decision: 29.05.2019

Divya Arora

. Appellant

Vs.

Jitender Arora

. Respondent

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

Present: - Mr.Sanjiv Gupta, Advocate,
for the appellant.

Mr.Ayush Gupta, Advocate,
for the respondent.

RAKESH KUMAR JAIN, J.

This appeal is directed against the judgment and decree dated 01.04.2019 passed by the Family Court, Karnal by which a petition filed by the respondent-husband for seeking a decree of divorce has been allowed.

In brief, the marriage of the parties was solemnized on 27.11.2009 as per Hindu rites and ceremonies at Indri, District Karnal. A male child, namely, Vansh Arora, was born out of the said wedlock on 23.8.2011. The respondent-husband has alleged that the behaviour of the appellant-wife was not cooperative as she never wanted to live with him and his old ailing parents. He has further alleged that the appellant had never been interested in sex with him to discharge the obligations of wife rather she used to keep on talking to her friend Navi on the mobile phone and when

she received an erotic/abusive message on her mobile which came to the knowledge of the respondent, she disclosed that she had premarital relations with the brother of Navi and had sex with him many times. She also admitted that her father had seen them in an objectionable position and also admitted that she had sexual relations with him even after the marriage and used to meet him off and on. Though she had allegedly tendered apology in this regard and assured the respondent that she would not indulge in such type of things again but according to the respondent, she did not change her behaviour and stopped discharging the obligations of the wife. She has been allegedly using very filthy language in conversation with the respondent and always tried to insult him. She had allegedly lost all interest in the household chores. The respondent has further alleged in his petition that he had found the appellant talking to one Sahil Bhutani of Kalanaur. It is alleged that the appellant had openly stated that she has relations with him since 2014. It is also alleged that in August 2017, he had found that the appellant was having illicit relations with one Abhinav Sharma of Assandh. It is further alleged that they ultimately decided to part ways by filing a petition under Section 13B of the Hindu Marriage Act, 1955 [for short 'the Act'] in which she filed an affidavit but at the time of recording of the statement at second motion stage she refused to own her commitment. As a result thereof, the respondent had to file the present petition for seeking a decree of divorce under Section 13 of the Act. In the written statement filed by the appellant to the petition filed by the respondent, the allegations made by him were denied rather counter-allegations were made by the appellant that the respondent has been asking for dowry and since she could not satisfy his greed for more dowry, the respondent has filed this petition for seeking the

decree of divorce. She has denied about her relations with various persons as alleged by the respondent but she did not deny that the petition under Section 13B of the Act was filed. She denied that the said petition was filed by her free will and therefore, refused to record her statement at the second motion stage. On the pleadings of the parties, the learned trial Court framed as many as six issues. Both the parties led their oral as well as documentary evidence.

In the evidence led by the appellant, she had tendered her affidavit as Ex.P-18 which is at page No.594 of the record. The said affidavit, which is 'in vernacular', after translation read as under: -

“Affidavit

*I, Divya Arora daughter of Virender Hurra
wife of Jitender Arora, resident of Ward
No.9, Indri, District Karnal presently
resident of Geeta Colony, Near Geeta
Mandir, Assandh, solemnly affirm and
declare as under: -*

- 1. That my marriage was solemnized on
27.11.2009 with Jitender Arora son of
Ramnath, resident of Ward No.9, Indri.
After marriage, we were blessed with a son,
whose name is Vansh Arora.*
- 2. That I have relations with other boy
(male) and because of this reason I, with the
consent of my husband, today i.e. on
4.8.2017 under Section 13B of the Hindu*

Marriage Act, filed a petition. Now I do not want to live with aforesaid Jitender.

3. *That I have affair with other boy before marriage which was within the knowledge of my parents.*

4. *That in case of any mishapening with me in future, I shall be solely responsible.*

5. *That my son Vansh Arora will stay with his father Jitender Arora.*

6. *That I will not initiate any civil or criminal proceedings against Jitender and his family members.*

7. *That the statement which I have given today in Court is without any pressure or influence but with my sweet will.*

*Sd/- Divya Arora
Deponent
4.8.2017*

Verification:

It is verified that the aforesaid statement is true and correct to my knowledge and nothing has been concealed therein.

*Sd/- Divya Arora
Deponent
4.8.2017*

*Identified by Advocate
Sohan Singh Rana
04.08.2017”*

The aforesaid affidavit was filed on a Stamp paper which was purchased on 04.08.2017 vide entry No.20804 from Surender Kumar, Stamp Vendor, Distt. Courts Karnal and is exhibited as Ex.P-10.

The learned Court below has elaborately dealt with the evidence on record and has put much reliance upon the aforesaid affidavit dated 04.08.2017 (Ex. P18) in which the appellant herself had admitted that she was living the life of adultery at present and also had affairs/relations with many other persons before her marriage which was within the knowledge of her parents also.

At the time of preliminary hearing, learned counsel appearing on behalf of the appellant had produced the affidavit dated 4.8.2017 and contended that the said affidavit (Ex.P18) has been wrongly relied upon by the learned Court below because it is not attested.

On the other hand, learned counsel for the respondent has submitted that the affidavit has been duly attested and both the parties requested for summoning the original record in order to find out the truth about the statement made by counsel for the appellant about the affidavit dated 4.8.2017 (Ex.P18).

In view of the aforesaid development in the Court, an order was passed on 6.5.2019, which read as under: -

“Learned counsel for the appellant has produced an affidavit dated 04.08.2017 purported to have been prepared on a signed blank paper of the appellant and submitted that it was not attested by the Oath Commissioner. Whereas, Mr. Ayush

Gupta who has appeared on his own and filed his power of attorney on behalf of the respondent has produced the same affidavit duly attested by the Oath Commissioner, Karnal. Therefore, in order to appreciate the rival contentions, it would be just and expedient to summon the original record of learned Court below. In view thereof, Registry is directed to summon the lower Court record through a special messenger for 27.05.2019.

Learned counsel for the respondent has submitted at the bar that respondent would not get remarried in the meantime.”

On the next date of hearing i.e. 22.5.2019, the record was received and it was found that the statement made by the appellant through her counsel that the affidavit dated 4.8.2017 (Ex.P18) has been wrongly relied upon by the Court below being unattested was totally incorrect and false. We have ourselves seen the record and found that the affidavit dated 4.8.2017 (Ex.P18), which is available at page 594 & 595 of the record, is signed by the appellant, identified by Sonan Singh Rana, Advocate before the Oath Commissioner and thus the affidavit has been duly identified and attested by Manoj Pant, Advocate on the same day. It is really strange as to why the appellant has taken such a stand during the course of hearing that the affidavit dated 4.8.2017 (Ex.P18) has not been attested by the Oath

Commissioner and produced before us the affidavit on which there was not identification or attestation by the advocates?

It appears that the appellant has no respect for law otherwise she would not have taken such a drastic step in order to wriggle out of the affidavit filed by her which has been brought on record by the respondent as Ex.P18 because in the said affidavit, the appellant had accepted her affairs/relations even after marriage with others boys besides admitting that she had been having the relations with other boys before her marriage as well. Not only this, the affidavit dated 4.8.2017 (Ex.P18), available on record, is having the photograph of the appellant which has been duly attested by the Oath Commissioner by putting his seal and signature on it which means that once she has been identified by an Advocate, namely Sohan Singh Rana on 4.8.2017 and she had not denied her signatures on the said affidavit which has been duly attested by the Oath Commissioner, it does not lie in her mouth to turn around and deny the execution of the affidavit on the ground that it has not been attested by the Oath Commissioner, by producing some unattested copy of the affidavit alleging that the said affidavit was given to her by the respondent. Thus the act on the part of the appellant is sufficient to hold that she had been living the life of adultery because nothing is required to be proved if the affidavit is admitted by the party and the fact that an attempt has been made by the appellant to over-reach this Court by alleging that the affidavit dated 4.8.2017 (Ex.P18), available on record, is neither attested not identified is rather contrary to the record and therefore, the appellant is proved to be a rank liar.

In view of the aforesaid facts and circumstances, there is hardly any reason for this Court to interfere in this appeal for the purpose of reversal of the judgment and decree of the Court below which is based upon appreciation of evidence in detail before recording the finding against the appellant not only on cruelty but also on adultery.

No other point has been raised.

In view thereof, the present appeal is hereby dismissed though without any order as to cost.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

29.05.2019

Vivek

Whether speaking /reasoned : *Yes/No*

Whether Reportable : *Yes/No*