

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

115

**FAO-M-126-2019 (O&M)
Date of Decision : 17.05.2019**

Ravinder Yadav

... Appellant

Versus

Padmani @ Payal

...Respondent

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

Present: Mr. I.P.S. Kohli, Advocate for the appellant.

HARNARESH SINGH GILL, J.

By way of present appeal, appellant-Ravinder Yadav has assailed the judgment and decree dated 03.04.2019 passed by the District Judge, Narnaul, vide which his petition filed under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') against respondent-Padmani @ Payal, was dismissed.

The facts which need to be elaborated are that the marriage of the appellant and the respondent was solemnized on 09.03.2015 as per Hindu rites and ceremonies. The marriage was consummated but no child was born out of the said wedlock. As per the allegations in the petition, the respondent-wife always imbibed with independent and modern thoughts posing herself to be a broad minded lady. Right from the next day of marriage, respondent started quarrelling with the appellant and his parents and threatened them to do everything under her command. The respondent flatly refused to perform household work and alleged that if she was compelled to do so, she would commit suicide and create problems for appellant and his family members. It was also alleged that the respondent

used to consume liquor and take drugs and had illicit relations with one Kuldeep Shekhawat. She was in the habit of leaving matrimonial home without informing the appellant and his family members and on asking, she used to say that nobody was allowed to interfere in her personal life. The respondent often used to make phone calls on mobile No. 9521677437 (at some places the mobile number is mentioned as 9621677437) and whenever the appellant called her she would remain busy on whatsapp and facebook with strangers and friends. The respondent even refused to share bed with the appellant which had caused mental cruelty to him. As per the appellant, the respondent left her matrimonial home on 17.04.2015 without informing him and his family members. On 06.05.2015, her father along with other respectables came to the appellant's place and used bad words against him and his family members. The respondent also broke the Mangalsutra (Necklace) in the presence of the Panchayat members and flatly refused to live with the appellant as his wife and left her matrimonial home on 13.05.2015.

On the other hand, the respondent-wife, though admitted the factum of marriage yet specifically denied that she had ever raised her voice, rather asserted that she had followed all the social and religious customs in her matrimonial home. She alleged that the appellant is M.Sc., M.Ed. qualified and was doing a job in a private school. It is also alleged that the appellant used to pressurize the respondent to bring more money from her parents and asked her parents to sell their land, but the respondent and her father did not accede to such demand of the appellant. It was the appellant and his parents, who harassed the respondent physically and mentally and used to call a *Tantrik* for doing black magic upon her. She had denied the factum of attempting to commit a suicide. She used to prepare the food for the appellant and his family members at proper time and used to

serve the guests as well. It was also denied by the respondent that she was a wanderer or used to consume liquor or drugs. The incident dated 06.05.2015 was admitted by the respondent as her family members came to drop her back to her matrimonial home. However, she was never accepted by the appellant and his family. They tortured her and ultimately she was turned out of her matrimonial home.

In the present case, issues were framed on 09.05.2017 and the appellant had examined as many as five witnesses along with his mother, namely, Bhateri Devi as PW-2.

On the other hand, respondent had appeared into the witness box as RW-1 along with his father and other witnesses. After taking into consideration the evidence on record, the petition under Section 13 of the Act was dismissed on the ground that marriage was solemnized on 09.03.2015 and the respondent-wife had been residing with her parents since 13.05.2015 and the present petition was filed by the appellant-husband on 25.02.2016. It was, thus, held that the allegations of cruelty remained unsubstantiated.

We have heard learned counsel for the parties and are of the view that there is no infirmity and illegality in the impugned judgment and decree passed by the trial Court.

PW-3, namely, Vartika, in her cross examination had testified that the respondent was having illicit relations with one Kuldeep Shekhawat and his name was told to her by her friend Raveena. This witness further stated that she had come in contact with the respondent while studying and staying as a Paying Guest and had made a complaint to the owner of the P.G. regarding the behaviour and conduct of the respondent-wife. Neither

the owner of the P.G. stepped into the witness box to throw light on the said aspect nor any link evidence in this regard was led. Thus, the oral evidence of Vartika, PW-3 will not advance the cause of the appellant/petitioner.

Though it is an admitted fact, as it had come through oral testimony, that the respondent-wife has been residing separately since 13.05.2015, but to our mind, it is the appellant, who alone is instrumental in ensuring that the respondent-wife stays away from her matrimonial home and there is no intentional cessation of cohabitation on the part of the respondent-wife nor there is any intention to desert the appellant-husband.

The statutory period of two years of desertion, as envisaged under the Act, immediately preceding the presentation of the petition, had not expired, before the filing of the divorce petition by the appellant. At this stage, it would be relevant to consider Section 13(ia) and (ib) of the Act which reads as under:-

13.Divorce

(1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party.

¹⁶ *(i) xxx xxx xxx*

[(ia) has after the solemnization of the marriage, treated the petitioner with cruelty; or

[(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

In Section 13(1)(ib) of the Act, it has been specifically laid down that desertion is to be considered for the continuous period of not less than two years, immediately preceding the presentation of the petition.

In the case in hand, the respondent-wife has allegedly left her matrimonial home on 13.05.2015 and the present petition was filed on 25.02.2016, thus, on the date of filing of the divorce petition, the statutory period of two years had not expired. Thus, the present divorce petition had rightly been rejected on this count by the Court below.

Thus, the relief of divorce was denied because the legislation in its wisdom had framed the Act on the basis of "*fault theory*" and "*break down theory*" which was not proved in the present case.

In ***Rajni Goyal versus Amit Kumar 2015 (2) R.C.R. (Civil) 871***, the Hon'ble Court has held 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*".

To our mind, in the present case there is ordinary wear and tear of the married life of the parties, which happens in day to day life. Mere aggressive behaviour and sadness of mood of wife does not mean that the wife is spoiling the atmosphere of her matrimonial home.

It has been held by the Apex court in ***Samar Ghosh versus Jaya Ghosh***, 2007 (2) R.C.R. (Criminal) 515 that the concept of cruelty differs from person to person, depending upon his or her upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system. Therefore, it is essential for the party claiming the relief to prove that a particular conduct or behaviour has resulted into cruelty to him or her. The aggrieved party has to make specific case that the conduct of the spouse had caused cruelty to him/her. It is for the Court to weigh the gravity

of alleged cruelty. It has to be seen whether the conduct was such that no reasonable person would tolerate it.

In the present case, no cogent evidence has been placed on record that the behaviour of respondent is uncalled for. Regarding relationship of respondent-wife with Kuldeep Shekhawat the same had not been proved and above all Kuldeep Shekhawat had not been arrayed as party in the divorce petition so that he could join the proceedings and some light could have been thrown on the allegation. As a matter of fact adultery cannot be considered without impeding the alleged adulterer as per Rule 10 of Hindu Marriage (Punjab) Rules, 1956. Rather unsubstantiated and uncorroborated testimony associating the respondent with adulterer has caused mental cruelty to the respondent.

Thus nuptial knots cannot be allowed to be broken on these types of unfounded allegations of cruelty, physical or mental.

In view of the above, we do not find any illegality or infirmity in the order passed by the learned trial Court, which may warrant interference by this Court in the present appeal.

Hence, the present appeal is dismissed.

No order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

17.05.2019

pooja saini

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No