

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-M-125-2019

Date of Decision:08.05.2019

Gursant Singh

. Appellant

Vs.

Manjit Kaur

. Respondent

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

Present: - Mr.B.S. Rana, Sr. Advocate, with
Ms.Divya Bajaj, Advocate,
for the appellant.

RAKESH KUMAR JAIN, J.

The present appeal is filed by the husband against the judgment and decree dated 20.3.2019 by which a petition filed by him under Section 13/11(5) of the Hindu Marriage Act, 1955 [for short 'the Act'] for dissolution of marriage by a decree of divorce has been dismissed.

In brief, the marriage of the appellant with the respondent was solemnized on 07.03.2002 as per Sikh rights by way of Anand Karaj at Village Jalur, District Sangrur. The brother of the appellant was also married to the sister of the respondent. It is alleged that the appellant was 15 years of age at the time of his marriage, therefore, muklawa did not take place at that time. It is further averred that about 11 years ago, the appellant had convened a Panchayat and went to the house of his in-laws requesting them to send the respondent with him but at that time he was told that the respondent is suffering from TB in an advance stage, suffering from mental pathic disorder and is not fit to give birth to a child and is also hard of hearing. It is averred that the respondent did not join the society of the

appellant and had not accompanied him to his village Bhutal Kalan since 7.3.2002. The respondent had allegedly made a false complaint against the appellant in the Women Cell which was dismissed. The respondent never wanted to live with the appellant. She had filed a petition under Section 125 of the Code of Criminal Procedure, 1973 [for short 'the Cr.P.C.'] which was allowed on 13.4.2011 and the appellant was directed to pay the maintenance of ₹1500/- per month. The appellant filed a revision petition against the said order which was dismissed on 03.01.2014. During this period, the appellant filed divorce petition against the respondent which was dismissed on 14.1.2013 on the ground that the appellant had not paid the amount of maintenance to the respondent and was not entitled to decree of divorce. The appellant filed FAO-M-78-2013 before this Court which was dismissed on 11.7.2013 on the ground that the appellant is not paying maintenance regularly. In the month of February 2016, he convened the Panchayat and requested the respondent and her family members for divorce and at that time the family members of the respondent demanded ₹8/10 lakhs from him but when the appellant showed his inability to fulfill the illegal demand of the respondent's family then he was threatened to be implicated in a false case. It is alleged that because of that the appellant had suffered mental cruelty and his life has become difficult on account of desertion.

On the other hand, the respondent has admitted the factum of marriage but it is denied that it was a simple one. It was also denied that the appellant was 15 years of age at time of marriage rather it is alleged that she was 18 years of age. The theory of muklawa was also denied rather it is alleged that she was sent to her matrimonial home along with appellant at the time of her marriage where she continued to reside for 5-6 months and during this period the marriage was consummated also. It is further alleged

that the appellant and his family members were not satisfied with the dowry articles and started maltreating, torturing, beaten her and threw her out of the matrimonial home after six months of the marriage. It is also denied that any Panchayat is convened and he went to village Jallur. It is denied that she is suffering to from TB or mental disorder or is not fit to give birth to a child and is hard of hearing. It is also denied that she has deserted the appellant from 7.3.2002 rather it is alleged that the appellant is not paying maintenance from the last two years. It is averred that the appeal is barred by the principle of *res judicata*.

On the pleadings of the parties, as many as 4 issues were framed. Both the parties led their oral as well as documentary evidence but no evidence was led by the appellant in rebuttal. The trial Court has recorded in para No.12 of the impugned judgement that as per Ex.R4, the earlier petition filed by the appellant for seeking a decree of divorce was not dismissed on technical ground but on the ground of non-payment of maintenance as well as on merits also. It was thus observed that the said judgment having been challenged before this Court in appeal unsuccessfully is sufficient to hold that the second petition is definitely hit by the principle of *res judicata*.

Learned court below has also found that the breakdown theory is not applicable for the purpose of dissolution of this marriage and the allegations of cruelty are totally vague and uncertain and do not satisfy the provisions of the ground of cruelty. It is also observed that by merely examining certain witnesses to depose that the Panchayat was convened in order to rehabilitate the respondent would not give a new lease for the appellant to have filed a petition for decree of divorce. Hence, the petition filed by the appellant was dismissed by the Court below.

Learned counsel for the appellant has though vehemently argued that the impugned judgment and decree is patently illegal and erroneous but he could not deny that earlier also the appellant had filed a similar petition which was dismissed (Ex.R-4) and thereafter, the said decision was upheld by this Court in appeal as well. The only additional plea sought to be taken for the purpose of maintaining a fresh petition is that the appellant had convened Panchayat for the purpose of dissolving the marriage and in that Panchayat the respondent had asked for money, which in our considered opinion, is not a ground for the purpose of seeking a decree of divorce on the same set of facts on which the appellant has already lost upto this Court specially alleging cruelty and desertion.

No other point has been raised.

In view of the aforesaid facts and circumstances, we do not find any merit in the present appeal and the same is hereby dismissed though without any order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

08.05.2019

Vivek

Whether speaking /reasoned : *Yes/No*

Whether Reportable : *Yes/No*