

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

FAO-M-67-2008

Decided on : September 24th, 2019

Manjeet Kaur

..... Appellant

Versus

Lakhwinder Singh

..... Respondent

**CORAM : HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Argued by : Mr. Pritam Saini, Advocate
for the appellant.

Mr. Ranjit Saini, Advocate
for the respondent.

Manjari Nehru Kaul, J.

The instant appeal has been preferred by the wife– Manjeet Kaur impugning the judgment and decree dated 03.03.2008 passed by Addl. District Judge, Kurukshetra whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the husband- Lakhwinder Singh was allowed.

2. Few facts necessary for adjudication of the instant appeal as pleaded in the petition filed by the respondent-husband before the learned Court below may be noticed.

Parties were married on 06.04.2003 at village Fardalpur, District Kurukshetra as per Hindu rites and ceremonies. Parties cohabited together as husband and wife and a son was born out of the said wedlock on 16.11.2004. The behaviour of the appellant-wife from the very beginning

of their marriage was very cruel towards the husband and his family. She would pressurize the husband to live separately from his parents despite the fact that his parents were 60 years of age. Since the appellant-husband, who was serving in the Army and was posted in Jammu & Kashmir, refused to buckle under the pressure of his wife, she left the matrimonial home and went to her parents' house in the month of July, 2005. As all efforts by the respondent-husband to bring the wife back to the matrimonial home failed, a panchayat was convened on 02.12.2005 wherein the appellant-wife gave an undertaking that she would behave herself and stay with the respondent-husband at his home. However, the same was short lived as the appellant-wife did not mend her ways. The appellant-wife would not hesitate to use unparliamentary language and create ugly scenes in the presence of one and all. She also threatened to commit suicide and implicate the respondent-husband and his family in false criminal cases. When the respondent-husband came home on leave from his place of posting, she did not even bother to cook food for him. She rather threatened her husband that once he returned to his place of posting after his leave, she would murder his parents. After the respondent-husband returned to his place of posting, the behaviour of the appellant-wife worsened and on 25.12.2005 she left the matrimonial home along with their son. The parents of the respondent-husband requested her to return but in vain. When the respondent-husband came back on leave to his village on 12.04.2006, another effort was made by him to bring back the appellant-wife to the matrimonial home but he was insulted and abused by her. He thus, prayed for dissolution of their marriage by a decree of divorce.

3. Per contra, the appellant-wife by way of her written statement filed before the Court below refuted and categorically denied the allegations of the respondent-husband. She alleged that in fact it was the respondent-husband, who had been cruel to her. He and his family members would subject her to beatings and demand a car from her parents. On 02.12.2005, she had moved an application to the Superintendent of Police also qua the harassment meted out to her in pursuance to which a compromise was arrived at between the parties wherein the respondent-husband and his family had assured that the appellant-wife would be kept properly. On 06.12.2005 the respondent-husband and his family physically assaulted her and an attempt was made to put her on fire. She alleged that she never left her matrimonial home on 25.12.2005 rather it was her father, who took her away on 01.01.2006. When the respondent-husband came home on leave on 12.04.2006, he did not even come to take the appellant-wife back to her matrimonial home. Her father pleaded with the respondent-husband to keep the appellant-wife with him but he was adamant that he would not keep her unless and until his demands of dowry were acceded to.

4. From the pleadings of the parties, following issues were framed by the learned trial Court:

1. Whether the respondent has caused mental and physical cruelty to the petitioner, as alleged? OPP
2. If issue No.1 is proved, whether the petitioner is entitled to a decree of divorce against the respondent? OPP
3. Whether the petitioner has no locus standi to file and maintain the present petition? OPR

4. Whether the petitioner is estopped by his own act and conduct from filing the present petition? OPR
5. Whether the petitioner has no cause of action to file the present petition? OPR
6. Relief.

5. Both the parties adduced evidence in support of their respective stands. The respondent-husband himself stepped into the witness box as PW-1. Besides him, he examined Dalmer Singh as PW-2 and tendered all the relevant documents. On the other hand, appellant-wife herself stepped into the witness box as RW-1 and also examined her father Som Nath as RW-2.

6. After analyzing the evidence led by the parties, the trial Court allowed the petition filed by the respondent-husband and dissolved the marriage by a decree of divorce.

7. We have heard learned counsel for the parties and perused the evidence as well as other material available on record.

8. On reappraisal of the evidence on record and the impugned judgment as well as after our interaction with the parties, it is very apparent that the parties who have been living separately since 2006 are not willing to relent. Despite compromise having been arrived at between the parties with the intervention of panchayat way back in December, 2005, the parties could not even live together for more than a few days and they were back to levelling allegations and counter-allegations against each other. So much so, an FIR under Sections 323, 406 and 498-A and 506 IPC was also registered against the respondent-husband, his family and his married sister.

No doubt, the allegations and counter-allegations levelled by the parties against each other are in fact trivial in nature but due to their temperamental incompatibility and the fact that for the past so many years there has been no conjugal relationship between the parties, it would not be wrong to presume that the marriage of the parties has indeed broken down beyond repair.

9. During the pendency of the instant appeal, the parties were referred to Mediation and Conciliation Centre of this Court to explore the possibility of an amicable settlement, however, it failed to yield any positive result. An affidavit dated 12.09.2019 was also filed by the respondent-husband wherein he undertook to pay an amount of ₹ 5 lakhs to the appellant-wife towards permanent alimony and ₹ 5 lakhs towards maintenance of his son namely Harman Singh.

10. All efforts made by this Court as well as the lower Court to bring about a reconciliation between the parties failed on account of the adamant behaviour of the appellant-wife as she neither wanted to accompany the respondent-husband nor was she willing to divorce him by way of mutual consent.

11. In these circumstances, it would be unrealistic to expect the parties to reconcile and live together as husband and wife. We do not thus, find any reason to interfere in the impugned judgment dated 03.03.2008 passed by the Court below. Consequently, the present appeal stands dismissed. The respondent-husband shall however, remain bound by the affidavit dated 12.09.2019, which already stands taken on record and pay an

amount of ₹ 5 lakhs to the appellant-wife towards permanent alimony.
Another amount of ₹ 5 lakhs shall be deposited in the Bank in the form of FDR in the name of son namely Harman Singh within a period of four months from the date of this order.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

September 24, 2019
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Whether speaking/non-speaking:	Yes/No
Whether reportable :	Yes/No