

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

FAO No.M-124 of 2011 (O&M)
DATE OF DECISION : 10.12.2019

Sarbjit Kaur

...Appellant

Versus

Lakhvir Singh

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present : Mr. V.K.Sandhir, Advocate,
for the appellant.

Ms. Sushma Sharma, Advocate,
for Mr. Amandeep Soni, Advocate.
for the respondent.

KARAMJIT SINGH, J.

Sarbjit Kaur, the appellant-wife, is before this Court, by way of instant appeal under Section 13 of the Hindu Marriage Act, 1955 (for short 'the HMA') to assail correctness of judgment and decree dated 25.02.2011, whereby learned Additional District Judge, Jalandhar, has allowed the petition (No.H.M.A. Case MP./85 of 2006), which was brought by the respondent-husband for dissolution of his marriage with the appellant-wife on the ground of cruelty and desertion citing various instances of cruelty attributable to the appellant-wife.

In brief, the facts are that the respondent-husband was initially married with one Baljinder Kaur @ Kulkiran Kaur and out of the said wedlock, three children, namely, Davinder Kaur (daughter) and Ranjit Singh and Onkar Singh (sons) were born. The said marriage of respondent-husband and Baljinder Kaur was dissolved with mutual consent under Section 13-B of the

HMA vide judgment and decree dated 25.02.1997. It is alleged that after dissolution of first marriage, the respondent-husband got married with appellant-wife on 13.10.2000, after apprising her about dissolution of his first marriage. After the marriage, both the parties started living together as husband and wife, however, no child was born out of this wedlock. Appellant-wife failed to conceive despite getting proper medical treatment. When she came to know that she was unable to bear a child, she started behaving in a strange manner. She started quarreling with the respondent and other members of his family on a trivial issues and she started creating scene in her matrimonial home over petty issues. She refused to cook food. Devinder Kaur, daughter of the respondent-husband from his first marriage was studying in BDS in the State of Karnataka. The appellant-wife tried to obstruct her studies. She also started ill-treating Ranjit Singh son of the respondent-husband from his first wife and on this he was shifted to boarding school at Dehradun. The appellant-wife also started ill-treating her mother-in-law and even assaulted her. Once, she also tried to strangle the youngest son of the respondent-husband from his first wife. When the parents of the appellant-wife came to know about the said incident, they visited her matrimonial home and took her along with them to Amritsar and while leaving the matrimonial home, she took away gold jewellery weighing six tolas and cash worth Rs.8,000/- along with her. Thereafter, she never came back. All the efforts made by the respondent-husband for reconciliation had failed. Hence, the divorce petition was filed.

The divorce petition was contested by the appellant-wife, who filed written statement. The marriage between the parties was admitted, however, it was pleaded in the written statement that the respondent-husband

had suppressed the material facts while approaching the Court. At the time of the marriage, the respondent-husband did not disclose about the dissolution of his first marriage with Baljinder Kaur. So, the respondent-husband played fraud with her. It was denied that she maltreated her husband and his children from the first marriage. Rather, she properly looked after the children of her husband, from the first marriage, with love and affection. It was also pleaded that her husband did not allow her to conceive the child and he and his parents treated her with cruelty. The other averments of the divorce petition were denied being wrong. It was pleaded that the divorce petition be dismissed.

The respondent-husband filed replication, whereby he controverted the assertions made by the respondent-wife in her written statement.

The respondent-husband while appearing in the witness-box as PW1 reiterated the averments of the divorce petition. His mother Sukhwinder Kaur appeared in the witness-box as PW2, while Joginder Singh was examined as PW3 and Ram Murti was examined as PW4. All three of them corroborated the statement of the respondent-husband. In order to rebut the said evidence, appellant-wife stepped into the witness-box as RW1 and reiterated the assertions of the written statement, RW3 Jaswant Singh, her father and RW2 Avtar Singh corroborated the testimony of the appellant-wife. She also proved on record a copy of FIR (Exhibit R1). During her cross-examination, one photograph (Exhibit D1) was put to her and she admitted the same.

After hearing learned counsel for the parties, the court of learned Additional District Judge, Jalandhar, allowed the petition vide judgment and decree dated 25.02.2011. Aggrieved by the same, the present appeal has been

filed by the appellant-wife.

We have heard learned counsel for the parties and have perused the record carefully.

Learned counsel for the appellant-wife contended that the respondent-husband has miserably failed to prove that he was meted with cruelty by the wife. No medical record was produced in order to establish that the appellant-wife was unable to conceive due to some medical problem. None of the children from his first marriage was examined by the respondent-husband in order to establish that the appellant-wife used to maltreat them. No reliable evidence was led to prove that the appellant-wife tried to obstruct the studies of Devinder Kaur, daughter of the respondent-husband from his first marriage. It is further submitted that no specific instance of cruelty was pleaded by the respondent-husband in the petition. On the contrary, it stands proved that the respondent-husband ill-treated the wife and compelled her to leave the matrimonial home and resultantly, a criminal case under Section 406 and 498-A of the Indian Penal Code was registered against the respondent-husband. He also neglected the appellant-wife on which she filed an application under Section 125 of the Code of Criminal Procedure. Learned counsel for the appellant-wife further contended that the findings given by the court of learned Additional District Judge, Jalandhar, are not sustainable and requires to be overturned.

On the other hand, learned counsel for the respondent-husband contended that there is no illegality or perversity in the judgment and decree under challenge. The respondent-husband while appearing in the witness-box deposed with regard to different acts of cruelty committed by his wife against

him and his children from his first marriage. Even the real sister and mother-in-law of the respondent-wife corroborated the statement of the respondent-husband in that regard. It is further contended that false FIR was got registered by the respondent-wife against the appellant-husband under Section 406 and 498-A IPC, just to harass her husband and his children from his first marriage. The appellant-wife tried to obstruct the studies of the children of the respondent-husband and she also treated them badly, on which they were shifted to boarding school. The wife left the matrimonial home without any reason and while leaving, she also took away all her gold jewellery and cash worth Rs.8,000/-. So, the court of the learned Additional District Judge, Jalandhar, rightly observed that the ground of cruelty stands proved against the appellant-wife.

We have considered the submissions made by the learned counsel for the parties and have perused the record carefully.

It was second marriage of the respondent-husband, who earlier got divorce from his first wife, Baljinder Kaur, under Section 13B of the HMA, vide decree dated 25.02.1997. He was having one daughter, Devinder Kaur, and two sons, Ranjit Singh and Onkar Singh, from his first marriage, who were also residing with the respondent-husband, at the time of his second marriage with the appellant-Sarbjit Kaur on 13.10.2000.

The respondent-husband has alleged that he was meted with cruelty by the appellant-wife. As per the respondent-husband, his daughter, Devinder Kaur, was studying in BDS and the appellant-wife tried to obstruct her studies. Said Devinder Kaur was mature enough to depose in the Court but she was not produced in the witness-box by the respondent-husband to prove

the aforesaid allegations of cruelty. The date, month and year, when the appellant-wife attempted to strangle the youngest son of the respondent-husband was not disclosed in the divorce petition or during the testimony by him. The same is position regarding the alleged act of assault committed by the appellant-wife against her mother-in-law. No medical record was produced by the respondent-husband in order to establish that the appellant-wife was unable to conceive despite being provided proper medical treatment. There are also allegations that the appellant-wife started behaving in odd manner, when she came to know that she was unable to conceive due to medical problem. She started misbehaving with her husband and other members of his family. Mere trivial irritation, quarrels and normal wear and tear of the marriage life, which happen in day to day life, would not be adequate for grant of divorce on the ground of mental cruelty. A few isolated instances over a period of years will not amount to cruelty. The ill-conduct of the wife must be persistent for a fairly long period. Such instances of cruelty should be near proximity with the filing of the divorce petition. In the case in hand, no date, month and year of the alleged incidents of cruelty were disclosed. The respondent-husband, while appearing in the witness-box, admitted that a criminal case under Sections 406 and 498-A IPC was registered against him by the appellant-wife and she had also filed an application for grant of maintenance against him. The respondent-husband failed to produce any document to show that in both the above-said cases, he was found innocent by the Court. So, the evidence led by the respondent-husband to establish the ground of cruelty was deficient and thus, deserves to be ignored.

As a sequel to the above, the present appeal stands allowed and the

impugned judgment and decree dated 25.02.2011 passed by the court below are set aside and the divorce petition of the respondent-husband stands dismissed.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

10.12.2019

adhikari

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No