

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

IOIN-FAO-M-360-2013 in/&
FAO-M-360-2013
Decided on : July 31, 2019

Kamalpreet Kaur

..... Appellant

Versus

Iqbal Singh

..... Respondent

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

Argued by : Mr. Jagjit Singh, Advocate
for the appellant.

None for respondent.

Manjari Nehru Kaul, J.

The instant appeal has been preferred by the appellant-wife – Kamalpreet Kaur against the judgment and decree dated 14.08.2013 vide which the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') seeking dissolution of marriage was allowed by the trial Court.

2. As per the averments made in the petition filed before the trial Court, the marriage between the parties was solemnized on 12.02.2010 at Amritsar as per Sikh rites and ceremonies. The parties resided and cohabited together as husband and wife at Amritsar where the marriage was consummated. A female child was born out of the said wedlock. The appellant-wife from the very beginning of their marriage, would behave in a very cruel and harsh manner. It was alleged that the appellant-wife was a

short tempered lady and was in the habit of levelling false and frivolous allegations against the respondent-husband of having illicit relations with some other woman. It was also alleged that there was a lot of interference in their matrimonial life by the mother and relatives of the appellant-wife. Many a times, the appellant-wife was requested to mend her ways but the same fell on deaf ears. The appellant-wife's behaviour worsened with the passage of time and she did not even hesitate to humiliate the respondent-husband in the presence of one and all. The appellant-wife on one occasion had left the matrimonial home for no rhyme or reason and was brought back after a compromise was effected between the parties. It was further alleged that on 21.05.2010 the mother of the appellant-wife came to the matrimonial home of the parties at Amritsar while the respondent-husband, who is a doctor, was at his Mohali clinic and misbehaved with his parents in the presence of neighbours and threatened them that they would be falsely implicated in criminal cases. In fact the appellant-wife did not even hesitate to say that she was not interested in living in the house of the respondent-husband with his parents. When the respondent-husband offered to move to Mohali and set up their matrimonial home there, she out-rightly refused the offer as she was not willing to do any household work. She left the matrimonial home on 23.05.2010 and thereafter came back on 29.01.2011 to take away with her all her jewellery. She allegedly left the minor child of the parties with the parents of the respondent-husband while he was in Mohali, after threatening the respondent-husband and his family of implicating them in false criminal cases. On account of the aforementioned conduct of the appellant-wife, the respondent-husband

sought dissolution of marriage as her behaviour had caused him acute mental tension, agony and cruelty.

3. Per contra the appellant-wife refuted and emphatically denied the averments and allegations levelled against her by the respondent-husband inter alia pleading that in fact it was the respondent-husband, who had been maltreating her and had turned her out from the matrimonial home. She claimed that the minor child was residing with her and had not been abandoned by her at any time and left with the respondent-husband as alleged. She also alleged that though her parents had spent more than Rs.21 lakhs on the marriage and had given sufficient dowry/istridhan at the time of the marriage, yet the respondent-husband and his family were dissatisfied with the same and all those dowry articles were still in the custody of the respondent-husband and his parents. She further alleged that soon after her marriage, she learnt that the respondent-husband had illicit relations with a nurse in his hospital. On questioning him about the same, the respondent-husband and his parents physically assaulted her and turned her out of the matrimonial home even though she was pregnant at that time. In the first week of September 2010, with the intervention of her relatives, the appellant-wife was allowed to return to her matrimonial home at Amritsar. Thereafter again, she was turned out of her matrimonial home on 29.01.2011 and since then she was residing along with her minor daughter at her parental home at Kapurthala. She had moved an application to SSP, Kapurthala for taking action against the respondent-husband and other members of his family.

4. On the basis of the pleadings, trial Court framed the following

issues:

- i) Whether the respondent has treated the petitioner with cruelty, as alleged in the petition? OPP
- ii) Whether the petition is not maintainable? OPR
- iii) Relief.

5. In order to prove his case, the respondent-husband appeared as PW-1 and submitted his affidavit Ex.PW-1/A while examining his father Balwinder Singh as PW-2, Surinder Singh, Clerk, Sant Prem Singh Karamsar Khalsa College, Begowal as PW-3, Balbir Singh as PW-3 (wrongly numbered as PW-3) and Kulwinder Kaur as PW-4. All the Pws corroborated the version of the respondent-husband. On the other hand, the appellant-wife appeared as RW-1 and submitted her affidavit as RW-1/A. Besides herself, she examined her father Hardev Singh as RW-2 and paternal uncle Kuljit Singh as RW-3, who supported the case of the appellant-wife on all material aspects.

6. Learned District Judge held the respondent-husband entitled to a decree of divorce on the grounds of cruelty.

7. We have heard learned counsel for the appellant-wife and gone through the evidence and other material available on record.

8. Despite repeated efforts and resorting to all modes of effecting service on the respondent-husband, he did not put in an appearance either in person or through a counsel and as such, vide order dated 17.09.2015 of this Court, he was ordered to be proceeded against ex parte.

9. Learned counsel for the appellant-wife vehemently argued that the learned Court below gravely erred in not appreciating the evidence led

during the trial in the right perspective. It was urged that the minor daughter had been all along living with the appellant-wife and the respondent-husband had made a false averment about the fact that the appellant-wife had abandoned their minor daughter and left her in the house of the respondent-husband. Learned counsel while drawing the attention of this Court to the averments made in the written statement filed by the appellant-wife strenuously argued that not only the averment qua the minor daughter being left behind in the house of the respondent-husband had been refuted and categorically denied by the appellant-wife but the Court below strangely overlooked this fact and while granting divorce to the respondent-husband did not even grant any permanent alimony to the appellant-wife nor anything to the minor daughter, who was being single handedly raised by the appellant-wife.

10. We have given our anxious consideration to the arguments advanced by the learned counsel for the appellant-wife. On reappraisal of the evidence and other material available on record, we feel that the impugned judgment and decree granting divorce to the respondent-husband deserves to be set aside.

11. A perusal of the averments as well as evidence led by the respondent-husband on the face of it reflects that the allegations levelled against the appellant-wife are totally frivolous, ill founded and vague in nature. Had it been a case where the appellant-wife actually had been threatening to implicate the respondent-husband and his family in a false criminal case there was nothing which prevented the appellant-wife from doing so but admittedly that is not the case. No doubt, she did move an

application in the Women's Cell, Kapurthala against the respondent-husband but the same was qua the alleged ill-treatment being meted out to her by the respondent-husband and his family.

12. The term “cruelty” though not defined in the Act would imply and mean conduct of such intensity and persistence, which would make it impossible for the parties to live together. Cruelty would imply such treatment, which could give rise to a reasonable apprehension to a spouse that it would be harmful or injurious for the wronged party to live with the other. Adverting to the case in hand, can it be said after considering the relevant circumstances and material on record, the pain and tolerance level of the respondent-husband had been tested enough and the alleged conduct of the appellant-wife constituted cruelty?

In our considered opinion, the answer is a definite “No”. In the opinion of this Court, the trial Court totally misdirected itself holding that the respondent-husband had been treated with cruelty of such magnitude that the parties could not be expected to live together. The act of cruelty as alleged by the respondent-husband cannot be said to be so grave and serious from which the only inference that could be drawn is that the life and health of the respondent-husband was in a peril. By no stretch of imagination her occasional outbursts and alleged intemperate behaviour would amount to cruelty.

13. Further, the trial Court fell into error by observing that her act of abandoning her infant daughter with the respondent-husband was an act of cruelty. Undoubtedly, a mother abandoning her child and walking away would be considered as cruelty but in the instant case, the respondent-

husband had made a false averment which had been categorically refuted and denied by the appellant-wife by urging that the child was never abandoned and had been with her all throughout. The averments made by the appellant-wife in her written statement were not even challenged or denied by the respondent-husband by way of any replication but strangely the trial Court without even taking note of this aspect and without ascertaining the facts, chose to buy the sob story put up by the respondent-husband by observing that this act of the appellant-wife reflected her cruel nature. Further the observations and the conclusion arrived at, by the trial Court that the appellant-wife wanted to join a job and pursue her career rather than ensure cordial and congenial atmosphere in the matrimonial home comes across as being totally perverse as the same is not supported by any pleadings nor evidence.

14. In view of the above discussion, the instant appeal succeeds and the judgment and decree dated 14.08.2013 passed by the trial Court is set aside. Decree-sheet be prepared accordingly.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

July 31,2019
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Whether speaking/non-speaking:	Yes/No
Whether reportable :	Yes/No