

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

**FAO-M-317-2015
Decided on : 11.07.2019**

Darshana Kaur

... Appellant(s)

Versus

Labh Singh

... Respondent(s)

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

PRESENT: Mr. Tushant Deep Garg, Advocate
for the appellant(s).

Mr. F.S. Virk, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J.

The instant appeal has been preferred by the appellant-wife against the impugned judgment and decree dated 21.04.2015, passed by the Ld. Addl. District Judge, Patiala (hereinafter referred to as 'the Ld. Court below'), whereby, the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') was allowed and her marriage with the respondent-husband/Labh Singh was ordered to be dissolved by way of decree of divorce with immediate effect.

A few facts necessary for adjudication of the case, as narrated in the petition filed by the respondent-husband before the Ld. Court below, may be noticed. Marriage between the parties was solemnized on 19th February, 1999, at Village Banga, Distt. Sangrur as per Hindu rites and ceremonies. It was stated to be a simple marriage in which no dowry articles were given by the parents of the appellant-wife except for certain articles which could be used in the kitchen. After the marriage, the parties lived together and cohabited as husband & wife. Two children were born out of their wedlock, who are residing with the respondent-

husband. It was averred in the petition that the appellant-wife, right from the date of their marriage indulged in cruel behaviour to the extent of using abusive and foul language, not only against him but also his family. The respondent-husband silently tolerated her rude behaviour hoping that the same would change with time, but her behaviour did not improve even after the birth of their children. Many a times, the appellant-wife threatened the respondent-husband and his family of implicating them in criminal cases. The respondent-husband sought the intervention of the appellant-wife's parents and family, but in vain. It was averred in the petition that the appellant-wife severed all her conjugal relations with the respondent-husband in the year 2005 and in the month of April, 2006, she left the company of the respondent-husband without any sufficient cause, leaving behind her children with him. While going away from the matrimonial house in the year 2006, she took along all her personal belongings including the gold jewellery and clothes. Ever since then, she had been residing at her parental house. After the appellant-wife left the company of the respondent-husband, he made efforts with the help of respectables and Panchayat Members to bring the appellant-wife back to the matrimonial home, but the same proved to be unsuccessful.

On the contrary, in the written statement filed by the appellant-wife (respondent therein), she refuted and denied the averments made in the petition by the respondent-husband. She, rather, pleaded that her children had been forcibly retained by the appellant-husband, who was a drunkard and addicted to intoxicants. He would mercilessly beat her up and would not even spare their children. She denied severing conjugal relations with the respondent-husband since the year 2005 as well as leaving the company of the respondent-husband without any sufficient cause in the month of April, 2006.

On such pleadings of the parties, the following issues were framed by

- “1. *Whether the respondent has treated the petitioner with cruelty? OPP*
2. *Whether the respondent has deserted the petitioner since April 2006 without any reasonable ground? OPP*
3. *Whether the petition is not maintainable? OPR*
4. *Whether the petitioner has no cause of action to file the present petition? OPT*
5. *Relief.”*

In order to prove his case, the respondent-husband himself stepped into the witness-box as PW-1 and examined his neighbour – Lakhwinder Singh as PW-2. On the other hand, the appellant-wife stepped into the witness-box as RW-1 and examined her father – Banarsi Dass as RW-2. She closed her evidence by tendering copy of the petition under Section 125 Cr.P.C. as Ex.RW1/A and copy of the complaint under Sections 406, 498-A and 506 IPC as Ex.RW1/B.

Ld. Court below while allowing the petition under Section 13 of the Act of the respondent-husband held that it stood proved that the acts of the appellant-wife amounted to cruelty and she deserted her husband without any sufficient cause or reason. In fact, the Ld. Court below also observed that the appellant-wife had treated her two children with cruelty as well.

We have heard learned counsel for the parties, perused the evidence and other material on record.

Learned counsel for the parties during their arguments have stuck to their respective stand and reiterated the submissions made before the Ld. Court below.

On reappraisal of the testimonies of both PW-1/Labh Singh i.e. respondent-husband and PW-2/neighbour - Lakhwinder Singh, there is enough qualitative evidence to show that the respondent-husband had been treated with cruelty by the appellant-wife, who had left his company without any sufficient cause or reason in the month of April, 2006. Both of these witnesses were cross-

examined at length, but nothing worthwhile could be elicited which could be said to help the case of the appellant-wife. Rather, she has admitted during her cross-examination that she had been residing in the house of her parents since the year 2006. The allegations which had been levelled by the appellant-wife against the respondent-husband come across as being totally vague and not even supported by any shred of evidence. Admittedly, the appellant-wife never filed any petition under Section 9 of the Act nor did she file any complaint against the respondent-husband to the effect that he was a drunkard and would often quarrel with her or that he was not keeping her in the matrimonial home. The father of the appellant-wife while deposing as RW-2, supported the case of the appellant-wife. He, however, too admitted that his daughter i.e. the appellant-wife had been residing in his house for the past three-four years. Not only this, he also admitted that the respondent-husband had filed an application against his daughter at Women Cell, Patiala. It was further admitted by him during his cross-examination that the respondent-husband had visited their village to take his daughter back to the matrimonial home.

On perusal of the evidence on record, one can safely infer that there has been absence of any conjugal relations between the parties for the last almost 13 years now. All attempts to bring about a reconciliation have failed to bear any fruit and the marriage between the parties has broken beyond repair. The children born out of the wedlock have been residing with the respondent-husband as has also been admitted by the appellant-wife and her father in their cross-examination before the Ld. Court below. It sounds incredulous that if the respondent-husband had been a drunkard or been addicted to intoxicants, the children would have continued staying with him. The very fact that the appellant-wife after deserting her husband in the year 2006, left the two children behind to be brought up and

raised single handedly by the respondent-husband shows total callousness on her part as well. Not even an iota of evidence was adduced by the appellant-wife in support of her contention that she had been compelled to withdraw from the society of her husband due to the merciless beatings given by the respondent-husband to her. Rather, in the case in hand, it is the respondent-husband, who had in fact approached the Women Cell against the appellant-wife and it is also admitted by the appellant-wife and her father RW-2/Banarsi Dass that the respondent-husband had made efforts to take the appellant-wife back to her matrimonial home.

Keeping in view the facts and circumstances of the case, we feel that no interference in the judgment and decree passed by the Ld. Court below is called for. Consequently, the appeal stands dismissed. However, we direct that an amount of ₹ 2.5 lakh would be paid by the respondent-husband to the appellant-wife as permanent alimony within a period of two months from the date of receipt of certified copy of this order.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

July 11, 2019

J.Ram

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No