

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

FAO-M-322-2015

Decided on : August 29, 2019

Rajesh Kumar

..... Appellant

Versus

Usha

..... Respondent

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

Argued by : Mr. Raman Mahajan, Advocate
for the appellant.

Mr. Davinder Lubana, Advocate
for respondent.

Manjari Nehru Kaul, J.

The instant appeal has been preferred by the husband – Rajesh Kumar impugning the judgment and decree dated 20.04.2015 passed by Addl. District Judge, Chandigarh whereby the petition filed by the appellant-husband under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') was dismissed.

2. Few facts necessary for adjudication of the instant appeal as pleaded in the petition filed by the appellant-husband before the learned Court below may be noticed. Marriage between the parties was solemnized on 11.05.2004 at village Matha Rampur, District Sultanpur (UP) as per Hindu rites and ceremonies. After marriage, they lived together as husband and wife at Chandigarh. The marriage was consummated and a daughter was born out of the said wedlock on 05.09.2008 at Chandigarh. As per the

appellant-husband, right from the beginning of their marriage the behaviour of the respondent-wife was extremely cruel and rude towards him and his family; she did not even know basic cooking and many a times, the appellant-husband had to leave for his work without even taking his breakfast. It was also alleged that the respondent-wife was very attached to her parents and did not like anybody coming to their house except for her own parents. From a diary maintained by the respondent-wife, he learnt that she was in an adulterous relationship with one Kushal. The respondent-wife made numerous false complaints against him and his family before the Women's Cell, wherein on one occasion on 23.06.2008 a compromise too had been effected between them. However, the respondent-wife failed to abide by the compromise; in March 2009 another false complaint was made in the Women's Cell and yet again a compromise was arrived at between the parties in pursuance to which the respondent-wife joined the company of the appellant-husband on 10.04.2009. He made earnest efforts to adjust with the respondent-wife and keep her happy but in vain. However, the respondent-wife left the house of the appellant-husband soon thereafter on 21.04.2009 without even informing him for which the appellant-husband lodged a complaint with the Inspector General of Police, UT, Chandigarh. The appellant-husband thus, sought dissolution of his marriage with the respondent-wife as he had been subjected to both mental and physical cruelty, making it impossible for him to live with her.

3. Per contra, the respondent-wife while filing her written statement before the Court below, refuted and categorically denied the allegations of the appellant-husband. She submitted that in fact, it was the

appellant-husband himself, who had not stood by the commitments made before the Court as well as other authorities and had not even turned up to take her back to the matrimonial home from her parental house after the compromise was arrived at, between them. The respondent-wife submitted that the appellant-husband was unhappy with the dowry which had been given to her at the time of their marriage for which she would be frequently harassed and pressurized by the appellant-husband and his family to bring more dowry. She further alleged that she was not only physically assaulted by the appellant-husband and his family but was also made to starve many a times. So much so, ever since the birth of their daughter the behaviour of the appellant-husband and his family had worsened towards her; the appellant-husband did not even come to see the baby girl after her birth and had chosen to leave the child and the respondent-wife with her parents. The father of the respondent-wife made efforts to persuade the appellant-husband to keep the respondent-wife but it met with no success as he himself turned her out along with their daughter, out of the matrimonial home. It was in this factual background that the parents of the respondent-wife were left with no other option but to bring her back to her parental home where she has been residing ever since then with her daughter. She categorically denied the allegations of the appellant-husband that she was leading an adulterous life. She submitted that she was still ready and willing to reside with the appellant-husband.

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

1. Whether the petitioner is entitled to divorce on the

ground of desertion and cruelty? OPP

2. Whether the petitioner is entitled to divorce on the ground of adultery? OPP

3. Whether the petition is not maintainable? OPR

4. Relief.

5. In order to prove the case, the appellant-husband himself stepped into the witness box as PW-1 and also examined Man Singh as PW-2. On the other hand, respondent-wife herself stepped into the witness box as RW-1.

6. After analyzing the evidence led by the parties, the trial Court dismissed the petition by holding that the allegations of cruelty, desertion and adultery could not be proved.

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

8. 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.

9. Learned counsel for the parties reiterated and maintained their respective stands taken before the Court below. Learned counsel for the appellant-husband submitted that he would not press qua the allegation of adultery against the respondent-wife. The appellant-husband is thus, now seeking dissolution of his marriage under Section 13(1)(ia) & (ib) of the Act by alleging mental cruelty and desertion on the part of the respondent-wife.

10. Coming to the allegation of the appellant-husband that the

respondent-wife had deserted him and left the matrimonial home without his permission and without any rhyme or reason, the same is bereft of any merit. It is a matter of record that various complaints had been filed before the authorities concerned including the Women's Cell by the respondent-wife and repeated compromises too had been effected between the parties, from which an inference can be clearly drawn that she in fact wanted to reconcile with the appellant-husband and save her marriage. This factum has been admitted by the appellant-husband too when he stepped into the witness box as PW-1 during his cross-examination. In the instant case, on perusal and appreciation of the evidence, it appears that the appellant-husband himself failed to adhere to the various compromises arrived at between them and created a situation, which forced the respondent-wife to stay away from her matrimonial home. It also appears that the appellant-husband had been looking for excuses to end his marriage with the respondent-wife on one pretext or the other and had thus, created adverse conditions as a result of which she was compelled to stay in her parental home along with her child. Hence, we have no hesitation in holding that the respondent-wife cannot be held guilty of desertion but it is the appellant-husband, who is guilty of 'constructive desertion'.

11. The term “cruelty” used in Section 13(1)(ia) of the Act has not been defined under the Act. “Cruelty” in a matrimonial relationship defies any precise definition and there cannot be any straight jacket formula laid down as to what would constitute “cruelty”. Cruelty in fact would depend upon the facts and circumstances of each case.

12. In the case in hand, the acts and instances of cruelty alleged by

the appellant-husband do not by any stretch of imagination reveal any unwarranted and unjustifiable conduct on the part of the respondent-wife so as to constitute cruelty of such magnitude which would have made it impossible for the appellant-husband to continue living with her. The acts of abusive behaviour and cruelty attributed to the respondent-wife are general and vague in nature and there are no particular or specific instances alleged nor is there any shred of evidence in support thereof. The allegations of the appellant-husband of the respondent-wife being overly attached to her parents or not knowing basic cooking or being rude to him cannot be said to constitute cruelty. At best, they can be said to be trivial issues, which may and do arise between spouses in any marriage. No doubt, learned counsel for the appellant-husband during the course of arguments submitted that he would not press the allegations against the respondent-wife of being in an adulterous relationship, however, the conduct of the appellant-husband in leveling scandalous and malicious allegations of adultery against the respondent-wife in fact amounts to cruelty. It would not be out of place to say that such like allegations by the appellant-husband against her would have caused her immense mental agony and pain more so when they were not even substantiated by any evidence. It just goes to reveal the desperation and depravity of the appellant-husband, who by any means wants the respondent-wife out of his life. Another fact, which cannot be lost sight of is that repeated complaints were filed by the respondent-wife before the authorities concerned to seek their assistance as the appellant-husband had not been treating her well. The intention of the respondent-wife thus, was very evident that she wanted to return to her matrimonial

home and it is precisely for this reason that she had time and again been knocking at the doors of the authorities concerned so that her marriage with the appellant-husband could survive and be saved. Had her intention been otherwise there was nothing which prevented her from taking recourse to criminal proceedings against the appellant-husband and his family, which admittedly is not the case.

13. Having heard learned counsel for the parties and on reappraisal of the evidence on record, we do not find any infirmity or illegality in the impugned judgment and decree passed by the learned Court below.

14. Accordingly, the instant appeal being devoid of merit, is dismissed.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

August 29, 2019
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Whether speaking/non-speaking:	Yes/No
Whether reportable :	Yes/No