

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

FAO-M-40-2015

Decided on : September 20, 2019

Baljit Singh

..... Appellant

Versus

Prabhjit Kaur & anr.

..... Respondents

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

Argued by : Mr. R.S.Sidhu, Advocate  
for the appellant.

None for respondent No.1.

Respondent No.2 ex parte.

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**Manjari Nehru Kaul, J.**

The instant appeal has been preferred by the husband– Baljit Singh impugning the judgment and decree dated 10.12.2014 passed by Addl. District Judge, Sri Muktsar Sahib whereby the petition under Sections 11 and 12 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by him 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.

The appellant was previously married to one Harwinder Kaur with whom his marriage was dissolved under Section 13-B of the Act by the District Judge, Sri Muktsar Sahib. Thereafter, respondent No.1 – Prabhjit Kaur along with her family approached him for marriage through a mediator

namely Mukhtiar Singh. The appellant-husband was told by the parents of the respondent-wife that she was unmarried. The marriage between the parties was solemnized on 26.08.2012 as per Sikh rites and ceremonies. After sometime of the marriage of the parties, respondent No.2 – Tarsem Singh started visiting their marital house. When the appellant questioned respondent No.1 about the frequent visits of respondent No.2 – Tarsem Singh, he was told that he was her distant relative. However, in the first week of February, 2013, respondent No.1 – Prabhjit Kaur and respondent No.2 – Tarsem Singh were caught by the appellant in an undressed state and in a compromising position. The appellant-husband did not lodge any complaint on being implored by respondent No.1-wife. On 05.03.2013, respondent No.1- wife was yet again caught in a compromising position with an unknown person, who on seeing the appellant-husband fled away. When confronted, respondent No.1-wife admitted to having been married to respondent No.2 – Tarsem Singh and also having a child from him. On 06.03.2013, respondent No.1-wife on her own left the house of the appellant-husband. The appellant alleged that not only had there been concealment of earlier marriage by the wife but subsequent to her marriage with him, respondent No.1-wife had continued to maintain illicit relations with respondent No.2 – Tarsem Singh and this behaviour of respondent No.1- wife amounted to infliction of cruelty upon him. He pleaded that his marriage with respondent no.1-wife be declared as null and void in the facts and circumstances of the case.

3. On the contrary, respondent No.1-wife by way of her written statement filed before the Court below refuted and categorically denied the

allegations of the appellant-husband. She submitted that her marriage with respondent No.2 – Tarsem Singh was dissolved through a customary divorce, which was well within the knowledge of the appellant-husband. She submitted that after her divorce with respondent No.2 – Tarsem Singh, the appellant along with her cousin Gurmit Singh would often visit her house since the said Gurmit Singh and the appellant were close friends. She alleged that on 30.03.2012 the appellant came to her house and on finding her alone, he sexually assaulted her. When she tried to call up her father, the appellant-husband told her that he was ready to marry her. On the same day, her parents went to the house of the appellant where they too disclosed the factum of her earlier marriage and divorce to the appellant. Not only this, she submitted that in April 2012, the appellant and his parents came to her house where they were again informed about her previous marriage with respondent No.2 – Tarsem Singh. The appellant-husband and his parents never raised any objection and performed a shagun ceremony by handing over some shagun to her and fixed the date of their marriage. She alleged that the appellant had seemingly contracted marriage with her to escape criminal liability for sexually assaulting her.

4. In reply to her written statement, a rejoinder was filed by the appellant-husband wherein he reiterated the averments made in his petition. He denied and refuted the allegations made by respondent No.1 -wife in her written statement.

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

1. Whether marriage of Baljit Singh petitioner with

Prabhjit Kaur during the subsistence of first marriage of Prabhjit Kaur with respondent No.2 is null and void?

OPP

2. If issue No.1 is proved, whether petitioner is entitled to decree under Sections 11 and 12 of the Hindu Marriage Act for declaring his marriage with respondent No.1 as null and void? OPP
3. Whether this petition is not maintainable? OPR
4. Whether petitioner already knew that respondent No.1 has dissolved her marriage with respondent No.2 in a customary manner prevalent in her society, if so, its effect? OPR
5. Relief.
6. Both the parties adduced evidence in support of their respective stands. The appellant-husband himself stepped into the witness box as PW-1. Besides him, he examined Mohinder Singh as PW-2, Parvinder Singh as PW-3 and HC Satpal as PW-4. On the other hand, respondent No.1-wife herself stepped into the witness box as RW-1 and also examined Gurmej Singh as RW-2 and Dalbir Singh as RW-3.
7. After analyzing the evidence led by the parties, the trial Court dismissed the petition filed by the appellant by holding that his marriage with respondent No.1 was legal and valid and thus, could not be declared as null and void.
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. We have heard learned counsel for the parties and perused the evidence as well as other material available on record.

10. On reappraisal of the evidence on record and the impugned judgment, we are of the considered opinion that no interference is warranted in the same.

11. A perusal of the cross-examination of the appellant reveals that he admitted about being aware of the earlier marriage of respondent No.1- Prabhjit Kaur with respondent No.2 Tarsem Singh, which purportedly had been told to him by none other than Gurmit Singh, cousin of his wife, who was also his close friend. He has not disputed that the marriage between him and respondent No.1 was solemnized on 26.08.2012 and a son was born out of their wedlock on 26.06.2013. It is not even the case of the appellant-husband that he had ever reported to any authority much less the police qua the adulterous relationship of respondent No.1 with someone.

The witnesses, who stepped into the witness box in support of the appellant-husband, particularly PW-2 Mohinder Singh deposed qua the illicit relations of the respondent-wife with Tarsem Singh, cannot be relied upon as he admitted in his cross-examination that he had never seen the respondent-wife with Tarsem Singh but had only been told by the appellant-husband about the illicit relations between the respondent-wife and Tarsem Singh. His statement was based on the information provided by the appellant-husband and was at best one of hearsay. Such like statements are inadmissible being liable to be fallacious.

12. As per the appellant-husband, he had moved a complaint Ex.PW-3/A and in support thereof he examined Parvinder Singh as PW-3. A perusal of the aforesaid complaint reveals that it is nothing but a missing report dated 16.05.2013 qua the wife being untraceable. However, in the inquiry conducted pursuant to the aforesaid complaint, it was found that the respondent-wife had gone to her parental house. The appellant-husband had stated in the report that his wife was pregnant; On a visit to the house of his parents-in-law in March, 2013 he had been pressurised by them to take with him the son of his wife from her previous marriage. In this background, the allegations of the appellant-husband that he was unaware about the wife's previous marriage deserves to be rejected outrightly. It is evident that he was not only aware about her earlier marriage but was also aware that she had a son from her previous marriage. In fact, from the evidence led it emerges that he was conscious of the fact that divorce proceedings between respondent No.1 and her first husband i.e. respondent No.2 were pending in the Court.

13. Respondent No.1 – wife was subjected to a lengthy cross-examination but nothing worthwhile could be elicited by the appellant in his favour. On a question put to respondent No.1-wife during her cross-examination about the petition under Section 13-B of the Act for divorce with respondent No.2 – Tarsem Singh, she admitted qua the same and stated that the petition was dismissed on account of the customary divorce, which had taken place between them. Further, it has also come in the evidence of the wife that she had moved an application under Section 125 Cr.PC against her first husband i.e. respondent No.2 Tarsem Singh vide which

maintenance had been granted to her and her child. In fact, respondent No.1-wife comes across as a most truthful witness and it is very evident that there is no concealment on behalf of respondent No.1-wife qua her previous marriage with Tarsem Singh. It cannot thus be said that any kind of fraud was played upon the appellant-husband by respondent No.1-wife as it stands established from the record that he was aware of her first marriage with respondent No.2 – Tarsem Singh, on the date of their marriage i.e. 26.08.2012.

14. We are in agreement with the learned District Judge that the petition filed by the appellant-husband for annulment of the marriage with respondent No.1-wife was filed after a gap of one year from the alleged date of fraud and hence, in view of limitation provided under Section 12(2) of the Act, also the same was not maintainable.

15. Moreover, the appellant has prayed for annulment of his marriage under Sections 11 and 12 of the Act and not for dissolution of marriage under Section 13 of the Act. Adultery cannot be a ground for annulment of marriage under Sections 11 and 12 of the Act. It is also a matter of record that petition for divorce for dissolution of marriage between respondent No.1 – Prabhjit Kaur and respondent No.2 – Tarsem Singh was accepted vide order Ex.R1 and decree Ex.R2 and hence, the customary divorce taken by respondent No.1-wife had been given a legal stamp by the Court of law as well.

16. In the facts and circumstances, it stands established and proved that the appellant was well aware about the previous marriage of respondent No.1-wife with respondent No.2-Tarsem Singh and was within his

knowledge that a customary divorce had taken place between them at the time of his marriage with the respondent-wife. Hence, he cannot now seek annulment of his marriage under Sections 11 and 12 of the Act.

17. Accordingly, the present appeal stands dismissed.

**(RAJAN GUPTA)**  
**JUDGE**

**(MANJARI NEHRU KAUL)**  
**JUDGE**

September 20, 2019  
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|--------------------------------|--------|
| Whether speaking/non-speaking: | Yes/No |
| Whether reportable :           | Yes/No |