

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

FAO-M-448-2015 (O&M)
Date of decision: July 15, 2019

Sukhwinder Singh

...Appellant

Versus

Kulwinder Kaur

...Respondent

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

Present: Mr. Gurbachan Singh Bhatia, Advocate for the appellant.
Mr. A.S. Sidhu, Advocate for the respondent.

Rajan Gupta, J.(oral)

Present appeal emanates from decision dated 15.09.2015, passed by Additional District Judge, Patiala, whereby petition preferred by husband Sukhwinder Singh under section 13 of the Hindu Marriage Act has been dismissed.

Marriage between the parties was solemnized on 4.10.2010 at village Bullepur, Tehsil Khanna, District Ludhiana as per Hindu rites. The couple cohabited for some time. Two female children namely, Sandeep Kaur and Gurpreet Kaur were born out of this wedlock. Petitioner/appellant alleged that soon after marriage, behaviour of the respondent towards him and his family changed. Even an FIR was lodged by appellant's father at Police Station Samana on the allegation that he had been assaulted by girl's side. Thereafter, a compromise was entered into. In April, 2007, however,

Kulwinder Kaur left the matrimonial home. According to him, she continued to harass the appellant and his family. Appellant is serving in the Army and is mostly posted outside. He also filed a petition under Section 9 of the Hindu Marriage Act, which was allowed. In view of aforesaid allegations, petitioner/appellant ultimately filed petition under Section 13 of the Hindu Marriage Act on the grounds of cruelty and desertion. Respondent wife refuted all the allegations in her written statement. In support of his case, petitioner/appellant stepped into the witness-box as PW-1 and examined six other witnesses. He tendered certain documents i.e. Ex.P-1 to P-4, Ex.PX, PY and PZ, Ex.DX, DY and DZ and Mark-X. To rebut the allegations, respondent Kulwinder Kaur appeared as RW-1 and examined another witness Jasmer Singh as RW-2. She brought on record a legal notice as Ex.R-1. The trial court considered the entire evidence and did not find any substance in the plea of the husband. It, thus, rejected the petition under Section 13 of the Act.

On reappraisal of the evidence, we find that husband Sukhwinder Singh in his deposition stated that respondent had caused mental and physical cruelty to him and his father namely, Amrik Singh. In May, 2005, Amrik Singh was assaulted by Kulwinder Kaur's family, due to which FIR No.93 dated 7.5.2005, under sections 452, 323, 324, 326 and 34 IPC was registered. Ultimately, compromise was entered into between the parties. A perusal of the cross-examination of Sukhwinder Singh shows that his testimony remained unshaken in cross-examination. The other witnesses namely, Joginder Kaur, Barinder Singh, Pritam Singh and Karam Chand Chawla fully supported the version of the husband. On the contrary,

to rebut the allegations, respondent Kulwinder Kaur merely stepped into the witness-box and denied the allegations. During the course of hearing of this appeal, various efforts were made by the court as well as the Mediation and Conciliation Centre to explore the possibility of amicable settlement. For last four years, the matter has been pending at the motion stage for this purpose. However, all exercise ended in futility.

After considering the record, we are of the considered view that appellant is entitled to divorce on the grounds agitated in the petition for divorce. However, we feel that respondent-wife is entitled to permanent alimony as she needs some monetary assistance for herself and her children. A query was put to the appellant in this regard and he had filed his affidavit on the last date of hearing. Relevant portion thereof is reproduced hereunder:-

“2. That the deponent/appellant is ready to pay the permanent alimony to the wife and for both the children. The deponent is working as Hawaldar in the Indian Army and the deponent has no other source of income except the salary. That some amount is lying in G.P. Fund accounts of the deponent. The deponent is ready to part with that amount as a permanent alimony to the wife and to both the children.

3. That the deponent is ready to pay a sum of Rs.4 lacs each to the wife and both the children (i.e. total amount Rs.12 lacs) as a permanent alimony in lieu of divorce being given by the respondent/wife.”

In view of above, we hereby direct appellant Sukhwinder Singh to pay Rs.4.00 lacs each to the respondent-wife and children namely, Sandeep Kaur and Gurpreet Kaur. The amount remitted to the children

would be kept in a fixed deposit in some nationalized bank till they attain majority, where after they shall be at liberty to withdraw the same. This amount be taken as permanent alimony in full and final settlement of all claims between the parties. Needless to observe, if any litigation is pending, same would also be withdrawn within one month. This amount be remitted within six weeks.

Under the circumstances, marriage between the parties is dissolved by a decree of divorce, subject to the appellant's to act in terms of the aforesaid undertaking. Decree-sheet be prepared accordingly.

Allowed in the above terms.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

July 15, 2019
'Rajpal'

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