

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

FAO-M-196-2016

Decided on : October 29, 2019

Pardeep Singh

..... Appellant

Versus

Sarabjit Kaur & anr.

..... Respondents

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

Argued by : Mr. Sandeep Wadhawan, Advocate
for the appellant.

Mr. Manish Prabhakar, Advocate
for respondent No.1.

Manjari Nehru Kaul, J.

The instant appeal has been preferred by the husband – Pardeep Singh impugning the judgment and decree dated 04.03.2016 passed by Addl. District Judge, Amritsar whereby the petition under Section 13 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-husband, who is serving in the Army, came to his native village on leave for 1½ months to solemnize his marriage with the respondent-wife on 08.02.2012. The marriage was a simple one as per sikh rites and ceremonies. No child was born out of the said wedlock. The

behaviour of respondent No.1-wife was extremely cruel and harsh towards him and his family from the very beginning of their marriage as she would blatantly declare that the appellant-husband was not the partner of her choice and she had in fact been compelled by her parents to marry him. He and his family showered all their love and affection on her but she continued with her uncalled for behaviour. On one occasion, the appellant-husband was deeply anguished when he found his wife talking to one Harinder Singh @ Happy over the mobile phone for which she apologized to him. After the appellant-husband returned to his place of posting, his mother again caught respondent No.1-wife talking to an unknown person on the mobile phone, who subsequently turned out to be respondent No.2 - Harinder Singh. On overhearing her telephonic conversation with respondent No.2 – Harinder Singh, it left no manner of doubt that she was having an affair with him. The parents of the respondent-wife were called and apprised about her telephonic conversation and conduct by the appellant-husband's father. On the intervention of her parents, respondent No.1-wife apologized and assured that she would not repeat such things and handed over her mobile phone to her parents. On 23.05.2012 to wreck vengeance on her husband's family, respondent No.1-wife attempted to kill them by putting a lizard in the milk container at night. However, mother of the appellant-husband chanced to see the lizard and stopped the family from drinking the milk served by respondent No.1-wife. The following day, respondent No.1-wife was again caught with a mobile phone and a charger when she was overheard talking on the mobile phone after locking herself up in the washroom. Upon being questioned by the appellant's mother,

respondent No.1-wife created an ugly scene. A panchayat was convened soon thereafter wherein she admitted to her fault by way of a written apology. A resolution was passed by the panchayat to report the matter to the police. A Major Nama was given by the respectables of the panchayat of the village. On 24.05.2012 itself, parents of respondent No.1-wife took her away to their house. While leaving her matrimonial home, she took along with her all the valuables including the jewellery etc. given to her by the appellant-husband's family. It was pleaded that she had been living in adultery with respondent No.2 – Harinder Singh and had blatantly declared that she was at liberty to lead her life in whatsoever manner she wished with respondent No.2-Harinder Singh. Respondent No.1 – wife also filed frivolous complaints against the appellant-husband to the Army authorities where he was serving. Hence, in this background, it was pleaded by the appellant-husband that it had become impossible to continue with the marriage as he apprehended danger to his life and his family at the hands of the wife. Hence, he prayed for dissolution of marriage by way of decree of divorce.

3. On the contrary, respondent No.1-wife in her written statement filed before the Court below, refuted and denied the allegations of the respondent-husband. She submitted that the marriage was solemnized with great pomp and show in which sufficient dowry had been given by her parents. She submitted that the appellant-husband's attitude towards her changed within a few days of the marriage as she would be taunted by her mother-in-law as well as her husband that their marriage had been solemnized only with the purpose of getting a handsome dowry. At the

instigation of his mother, the appellant-husband would beat her up. After the appellant-husband left for his duty, her mother-in-law and other members of the family subjected her to torture and ill treatment. She bore the cruel behaviour meted out to her with the hope that better sense would prevail upon them. On 23.05.2012, the mother-in-law in connivance with the family compelled her to get a sum of Rs.2 lakhs from her parents for the renovation of their house. Since she expressed her inability, her mother-in-law caught hold of her by her hair and pushed her on the ground while her father-in-law and the other members of the family gave her kicks on her abdomen. Thereafter, she was thrown out of her matrimonial home with a threat that she would have to face dire consequences if she ever dared to enter the house again. She claimed that her istridhan was still in the illegal custody of the appellant-husband and his mother. Since 23.05.2012 she had been compelled to reside with her parents and all her repeated efforts to reconcile the matter had failed. She also submitted that since she had been thrown out of her matrimonial home on 23.05.2012, hence, the question of alleged incident of 24.05.2012 did not arise. Qua the allegations of having extramarital affair with respondent No.2 and her telephonic conversation with him, she submitted that it was a concocted story with malafide intention by the appellant-husband and his family; the question of tendering any apology relating to the said matter did not even arise as she did not know any Harinder Singh. She submitted that the alleged Major Nama and the panchayat resolution were false and fabricated with a malacious intent. She denied ever trying to kill the family by putting a lizard in the milk as alleged. Therefore, she prayed for dismissal of the appeal.

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

1. Whether the respondent after solemnization of the marriage had voluntary sexual intercourse with respondent No.2? OPP
2. Whether respondent has treated the petitioner with cruelty? OPP
3. Whether the petition is properly signed and verified? OPP
4. Whether the petition is premature? OPR
5. Relief.

5. Both the parties adduced evidence in support of their respective stands. The appellant-husband himself stepped into the witness box as PW-1 and examined six other witnesses. On the other hand, respondent-wife herself stepped into the witness box as RW-2 and examined three other witnesses.

6. The trial Court dismissed the petition filed by the appellant-husband by holding that the same was premature.

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

8. Since mental cruelty has not been defined in the Act, the same shall have to be inferred from the facts and circumstances of each individual case. A set of facts stigmatized as cruelty in one case may not necessarily be so in another case. In fact, it would be largely dependent on the social strata of society to which the parties belong. Learned Court below

seemingly fell in error while ignoring the fact that the document Ex.PW-2/1, which was an apology tendered by respondent No.1-wife before the panchayat on 24.05.2012 and proved by one witness, was written by respondent No.1-wife in her own hand. Though respondent No.1-wife denied it, however, there were photographs exhibited as Ex.PW-6/1 to PW-6/7, which were duly admitted by respondent No.1 in which she was seen holding a paper and pen in her hand. Her version qua these photographs is that these photographs were taken when the appellant-husband and his family were asking her to sign documents Ex.PW-2/1. It is not the case of respondent No.1-wife that she had been forcibly made to tender a written apology. If that be the case, then the natural inference that would flow is that the apology had actually been tendered pursuant to her having been caught talking to respondent No.2 – Harinder Singh. We cannot lose sight of the fact that both the parties belong to a rural background. No doubt, it is very common nowadays for men and women to freely interact with each other but looking to the social status and the rural background of the parties, it would have created a certain degree of anguish and discomfort for the husband and his family.

9. Moreover during the pendency of this appeal, parties were referred to Mediation and Conciliation Centre of this Court to explore the possibility of an amicable settlement. As per the report of the mediator, it proved to be unsuccessful. Our interaction with the parties too has left us with no manner of doubt that the marriage between them exists only on papers. An affidavit dated 23.09.2019 was filed by the appellant-husband wherein he undertook to pay an amount of Rs.7 lakhs to the respondent-wife

as permanent alimony towards full and final payment in case the instant appeal seeking dissolution of his marriage with the respondent-wife was allowed.

10. It is undisputed that the parties have been living separately for more than 7 years and in fact lived together for only 1½ months after their marriage. Admittedly, no child was born out of the said wedlock. It is therefore abundantly evident that any hope for reconciliation between the parties to continue their marital life is unthinkable.

11. In these circumstances, the present appeal stands allowed and the impugned judgment dated 04.03.2016 passed by the court below is set aside. The marriage between the parties is dissolved by way of decree of divorce. Decree sheet be prepared accordingly. The appellant-husband shall however, remain bound by the affidavit dated 23.09.2019, which already stands taken on record and pay an amount of Rs.7 lakhs to the respondent-wife as permanent alimony towards full and final payment within a period of two weeks from the date of this order.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

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