

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

**FAO-M-422-2016
Decided on : 04.10.2019**

Avtar Singh

... Appellant(s)

Versus

Jasbir Kaur

... Respondent(s)

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

Argued by: Mr. PKS Phoolka, Advocate
for the appellant(s).

Mr. Deepak Kaushal, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J.

The instant appeal has been preferred by the husband – Avtar Singh, against the judgment and decree dated 31st August, 2016, passed by the Ld. Addl. District Judge, Sirsa, (in short 'Ld. Court below'), vide which the petition filed by him, under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), seeking dissolution of his marriage with the respondent-wife, was dismissed.

A few facts necessary for adjudication of the case, as pleaded in the petition filed by the appellant-husband (petitioner therein) before the Ld. Court below, may be noticed.

The marriage between the parties was solemnized on 23rd February, 2008, according to Hindu rites and ceremonies as well as by way of Anand Karaj. It was a simple marriage sans any dowry. No child was born out of the said wedlock. The husband alleged that the wife was of a quarrelsome nature and hence, there remained continuous acrimony between them. The wife shirked her matrimonial duties and obligations. She would not cook food for him and was

disrespectful not only to his parents but also him. She would pressurize the husband to move into a separate accommodation and when he would try to reason out with her, she would threaten to commit suicide. On 09th October, 2008, the wife left her matrimonial home. Thereafter, a petition under Section 9 was filed by the husband. All efforts made by the husband to bring about a reconciliation with the wife failed due to her obstinate behaviour. Further, he had to face false cases filed by the wife under the Domestic Violence Act. Hence, he prayed for dissolution of their marriage by way of decree of divorce.

Per contra, in the written statement filed before the Ld. Court below, the wife categorically refuted and denied all the allegations made by the husband in his petition. She submitted that their marriage was a lavish affair and her family had spent about ₹ 10.00 lakhs. Her parents in-laws were unhappy with the dowry given at the time of marriage and made demands of Rs. 2.00 lakhs and an Electric Generator set. Since she was unable to satisfy their demands, she was subjected to both mental and physical cruelty. She further submitted that the husband got her injected with a substance on the pretext that it was a vaccination. She later learnt that it was for aborting her pregnancy. The husband would repeatedly tell her that he would marry a girl from an affluent family so that he could get more dowry. She denied that she had ever left the matrimonial home on 09.10.2008 on her own. She alleged that she had been severely beaten up and thrown out from her matrimonial home after being told that she would not be allowed to set foot in the house unless and until she brought ₹ 2.00 lakhs and an Electric Generator set from her parents. She, thereafter, filed a petition under Section 9 of the Act, as she wanted to live with her husband. All efforts to reconcile the matter proved futile due to her inability to meet their unjust demands. In the given facts and circumstances, she prayed for dismissal of the petition filed by the husband before

From the pleadings of the parties, the following issues were framed by the Ld. Court below:-

- “1. *Whether the petitioner is entitled to a decree of divorce on the grounds mentioned in the petition ? OPP*
2. *Whether the petition is liable to be dismissed on the grounds mentioned in the written statement ? OPR*
3. *Relief.”*

In order to prove their case, both the parties adduced evidence in support of their respective stands. The appellant-husband examined as many as three witnesses i.e. PW-1 Gurpal Singh, PW-2 Tarsem Singh and PW-3 Jagtar Singh. He himself stepped into witnesses-box as PW-4. On the other hand, appellant-wife examined herself as RW-1, besides, examining two other witnesses i.e. her brother Sukhpreet as RW-2 and Hargobind as RW-3 and closed her evidence.

After analyzing the evidence led by the parties, the Ld. Court below dismissed the petition under Section 13 of the Act filed by the appellant-husband by holding that the husband had failed to prove cruelty and desertion and therefore, he was not entitled for a decree of divorce on the said grounds.

We have heard learned counsel for the parties and have also gone through the evidence and other material on record.

During the pendency of the instant appeal, the parties were referred to the Mediation and Conciliation Centre of this Court to explore the possibility of an amicable settlement, but the same proved to be a futile exercise. It may also be noticed that the parties during their arguments reiterated their earlier versions and maintained their respective stands, as taken before the Ld. Court below.

It need not be overemphasized that to constitute mental cruelty, the

could not be expected to continue living with him/her. However, in the instant case, the allegations levelled by the husband against the wife on the face of it are totally vague and trivial in nature. An occasional outburst by a spouse or use of offensive language once in a while cannot be termed as cruelty. The allegations of the husband that the wife had filed false complaints and made defamatory allegations against him is not substantiated by any shred of evidence. The husband has not even placed on record any documentary evidence on the basis of which it could be inferred that the wife had indeed been filing false and defamatory complaints against him. No doubt, a petition under the Domestic Violence Act was filed by the wife but the same would not constitute cruelty. The very fact that the wife filed a petition under Section 9 of the Act goes a long way to show that she had, in fact, been wanting to return to her matrimonial home and to the society of her husband. It is very apparent that the husband himself is responsible for creating adverse circumstances and it is due to his misdeeds alone the wife was forced to stay away from her matrimonial home. He cannot be thus permitted to take advantage of his own wrongs and plead desertion.

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 present appeal stands dismissed and the judgment and decree dated 31st August, 2016 of the Ld. Court below is upheld.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

October 04, 2019

J.Ram

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