IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-77-2016
Decided on : September 09, 2019

Nirmla ..... Appellant

Versus

Govind ..... Respondent

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

Argued by : Mr. J.P.Sharma, Advocate
for the appellant.

Ms. Anu Garg, Advocate
for respondent.

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Manjari Nehru Kaul, J.

The instant appeal has been preferred by the wife – Nirmla impugning the judgment and decree dated 15.12.2015 passed by Addl. District Judge, Rewari whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the respondent-husband was allowed by the Court below.

2. Few facts necessary for adjudication of the instant appeal as pleaded in the petition filed by the appellant-wife before the learned Court below may be noticed. Marriage between the parties was solemnized on 12.07.2008 at village Kanti Tehsil Narnaul as per Hindu rites and ceremonies. After marriage, they lived together as husband and wife at Bawal. No child was born out of the said wedlock. As per the respondent-husband right from the very beginning of their marriage, the appellant-wife

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expressed her dislike for him and told him that she in fact wanted to marry another person. She misbehaved with the respondent-husband and his mother on the very next day of their marriage. So much so, when she was confronted by the respondent-husband regarding her misbehaviour with his mother, she caught hold of him by his collar. On 24.08.2008, the respondent-husband sent for the appellant's brother, with whom the appellant-wife thereafter left her matrimonial home along with all her jewellery. While leaving, the appellant-wife threatened the respondent-husband that she would obtain divorce from him after extracting a huge amount of money and would also implicate him and his family in false criminal cases. It was pleaded by the respondent-husband that the appellant got registered a case FIR No.51 dated 17.04.2010 under Sections 323, 342, 406, 498-A and 506 IPC against him and his family members for which they had to face the agony of trial for almost 5 years. The respondent-husband was convicted and sentenced under Sections 323, 342 and 498-A IPC by learned JMIC, Narnaul vide judgment dated 19.11.2015. The appellant-wife thereafter filed a divorce petition before the learned District Judge, Narnaul wherein she levelled all kinds of false allegations as a result of which the respondent-husband had to suffer acute mental agony. The appellant-wife was proceeded against ex parte and an ex parte decree dated 19.07.2010 was passed in favour of the respondent-husband by learned Addl. District Judge, Rewari. Later on, however, for setting aside the ex parte decree an application was filed by the appellant-wife leading to the restoration of the petition to its original number and subsequently, the petition was withdrawn by the appellant-wife.

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3. Per contra, the appellant-wife in her written statement filed before the Court below, refuted and denied the allegations of the respondent-husband. She alleged that in fact it was the respondent-husband, who had deserted her without any sufficient cause. She categorically denied leaving the matrimonial home along with her jewellery on 24.08.2008 or having misbehaved with her mother-in-law. She in fact stated that she had not falsely implicated the respondent-husband or his family in any false cases; the respondent and his family members would harass her and demand dowry from her and her parents. As far as petition under Section 13 of the Act filed by her was concerned, she submitted that it was mistakenly filed by her counsel and was later on withdrawn by her. She had actually intended to file a petition under Section 9 of the Act.

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

1. Whether the petitioner is entitled to a decree of divorce under Section 13(1) of the Hindu Marriage Act on the grounds as mentioned in the petition? OPP
2. Whether the petition is not maintainable? OPR
3. Relief.

5. Thereafter both the parties adduced evidence in support of their respective stands. The respondent-husband himself stepped into the witness box as PW-2. Besides him, he examined Usha, mother of the respondent as PW-1, Jai Bhagwan as PW-3, Surender Singh, father of the respondent as PW-4 and Phool Singh, record keeper as PW-5. On the other hand, appellant-wife herself stepped into the witness box as RW-1 and also

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examined her father Jagdish as RW-2 and Ram Kumar as RW-3. Both the parties also tendered relevant documents in support of their case.

6. After analyzing the evidence led by the parties, the trial Court allowed the petition filed by the respondent-husband and dissolved the marriage by way of decree of divorce.

7. We have heard learned counsel for the parties and perused the evidence as well as other material available on record. The parties have reiterated their submissions and maintained their respective stands taken before the Court below. 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.

8. Adverting to the case in hand, it is very apparent that the relations between the parties were far from normal right from the beginning of their marriage. A criminal complaint bearing FIR No.51 dated 17.04.2010 under Sections 323, 342, 406, 498-A and 506 IPC was also filed against the respondent-husband and his family members for which they faced trial and finally it resulted in the acquittal of all of them except the respondent-husband. There cannot be any set standard by which nature and degree of cruelty can be measured. Even a single act of physical violence or levelling of false accusation by itself at times can be said to be of unpardonable nature so as to satisfy the test of cruelty. The levelling of false accusations and the subsequent registration of a criminal case against the respondent-husband and his family can in the facts and circumstances of the case be said to be one such unjustifiable act of the appellant-wife, which

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would have naturally caused immense agony to not only the respondent-husband but his family as well. Further, the unbecoming behaviour of the appellant-wife of misbehaving with her mother-in-law on the very next day of her marriage but also telling her newly wed husband on the first night of their marriage itself that he was not to her liking and in fact she had wanted to marry somebody else is also indicative of the cruel behaviour of the appellant-wife towards her husband. It is also a matter of record that a petition No.22 of 2009 under Section 13(1) (ia) of the Act for dissolution of her marriage was filed by none other than the appellant-wife from which an inference can clearly be drawn that the appellant-wife was not interested to live with the respondent-husband and in fact corroborates the case of the respondent-husband that she was unhappy from the very beginning of their marriage. No doubt, the appellant-wife deposed that the said petition under Section 13 of the Act had been mistakenly filed by her counsel instead of a petition under Section 9 of the Act for restitution of conjugal rights but the same does not appeal to reason as there is nothing on record to show that after the withdrawal of the above-mentioned petition under Section 13 of the Act, she had ever filed a petition under Section 9 of the Act.

9. Taking overall perspective of the matter when the parties have admittedly not had any conjugal relationship for the past 11 years, the appellant-wife resided with the respondent-husband only for 42 days and thereafter did not return to her matrimonial home coupled with the fact that criminal cases were also instituted by the appellant-wife against the respondent-husband, it would be a futile exercise to expect the parties to continue their marital relationship.

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10. As a sequel to the aforesaid discussion, we do not find any reason to interfere with the findings recorded by the learned Court below. However, we direct the respondent-husband to remit an amount of Rs.2 lakhs as permanent alimony in the account of the appellant-wife which he shall pay within a period of two months from the date of order.

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

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

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Whether speaking/non-speaking: Yes/No
Whether reportable : Yes/No

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