

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-M-94-2016
Date of Decision: 11.04.2019

Amandeep Kaur

.....Appellant

Versus

Pargat Singh

.....Respondent

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. P.K.S. Phoolka, Advocate, for the appellant.

Mr. J.S. Grewal, Advocate, for the respondent.

Harnaresh Singh Gill, J.

Challenge in the present appeal is to the judgment and decree dated 4.11.2015 passed by the learned Additional District Judge, Fazilka, whereby petition filed by the respondent-husband has been allowed and the marriage has been dissolved on the ground of cruelty.

Before this Court, efforts were made to find out an amicable settlement of the matrimonial dispute between the parties and for that purpose, the matter was referred to the Mediation and Conciliation Centre of this Court. However, the conduct of the parties remained adamant and they did not even appear before the Mediator with the result that the matter was referred back for decision on merit.

The factum of marriage between the parties and the birth of two children, namely, Lovepreet Kaur (daughter) and

Harmanpreet Singh (son) is undisputed. The respondent-husband filed the petition for divorce on the ground that the appellant-wife is living in adultery with one Parveen Kumar and Darshan Singh, for the last five years. It was alleged that in the last week of December, 2013, when the respondent-husband, returned to his house before usual time, then he found the appellant-wife in an objectionable condition with the said persons. On 15.01.2014, there was a quarrel in the family due to the behavior of the appellant-wife and when the respondent-husband took her mobile, he had found her certain snaps with said Parveen Kumar in objectionable conditions. The appellant-wife could not controvert the said fact and left the matrimonial home without informing the respondent-husband.

The appellant-wife denied the allegations of her living in adultery. She rather stated that she had been turned out of the matrimonial home on account of bringing insufficient dowry.

On the pleadings, various issues were framed. Parties led their respective evidence.

After taking into consideration the evidence on record and further considering the rival contentions of the parties, the learned trial Court found that through no proof regarding the adultery committed by the appellant-wife with Darshan Singh had been placed on record, yet the respondent-husband was able to prove the adultery on the part of the appellant-wife with Parveen Kumar. This finding has been returned on the basis of the photographs Exhibits P.3 to P.8. When these photographs

had been put to the appellant-wife during her cross-examination, she had admitted that the same were of her and that of Parveen Kumar. She, though, had alleged that the said photographs had been prepared by her husband by cutting his photograph, but no evidence to this effect was led nor any expert witness had been examined or summoned at the instance of the appellant-wife to prove any manipulation on the part of the respondent-husband. Thus, in the absence of any rebuttal, it was proved that the appellant-wife was living an adulterous life.

Yet further, it was also found by the learned trial Court that during the pendency of the divorce petition, the appellant-wife had lodged an FIR under Section 366/376 IPC against said Parveen Kumar on 29.4.2014. It was, thus, noticed that the divorce petition having been filed on 27.1.2014 on the specific allegations of adultery, any subsequent event in the form of a criminal case being registered by the appellant-wife against said Parveen Kumar would make no difference. It was further found that after seeing the photographs of the appellant-wife (Exhibits P.3 to P.8), the respondent-husband could not be expected to live in the company of the appellant-wife.

We have heard learned counsel for the parties and have also gone through the record of the trial Court with their able assistance.

Learned counsel appearing for the appellant submits that the trial Court, while passing the impugned judgment and decree has got swayed with the photographs Exhibits P.3 to P.8,

whereas it was specifically pleaded by the appellant-wife that said photographs were the result of manipulation on the part of the respondent-husband, inasmuch as in place of the photographs of the respondent-husband, the photographs of said Parveen Kumar had been pasted, by using the photographic techniques. Still further, he argues that had the appellant-wife been living an adulterous life with said Parveen Kumar, she would not have lodged an FIR against him that too for the offence under Section 366/376 IPC. These facts clearly show that the impugned judgment and decree passed by the learned trial Court are based on conjectures and surmises and without there being any proof regarding the adultery on the part of the appellant-wife.

On the other hand, learned counsel for the respondent contents that once the respondent-husband had proved on record that appellant-wife was living an adulterous life by way of Exhibits P.3 to P.8, onus was upon the appellant-wife to either disprove the same or rebut it by leading any cogent and convincing evidence. It being not done and rather registration of a criminal case at a subsequent point of time than the filing of the divorce petition by the respondent-husband, clearly proves that the appellant-wife wanted to cover up her guilt which went against her. It is, thus, contended that the impugned judgment and decree being legal and valid, no interference is warranted.

After taking into consideration the rival contentions of the parties, we have ourselves seen the photographs Exhibits

P.3 to P.8 available on the trial Court's record. The said photographs are really objectionable as far as the respondent-husband is concerned. In our opinion, such an act of misadventure on the part of a spouse outside her matrimonial alliance, cannot be ignored, especially when the other spouse has utterly complained of it. Undeniably, the appellant-wife did neither lead any rebuttal to the said photographs nor did prove on record that the same were the result of any manipulation. In the absence thereof, we find that the learned trial Court was perfectly justified in returning a finding that after seeing these photographs, the respondent-husband could not be expected to live in the company of the appellant-wife.

No other point has been urged.

In view of the above, we do not find any illegality or perversity in the judgment and decree passed by the learned trial Court. Consequently, finding no merit in the present appeal, the same is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

11.04.2019

ds

(HARNARESH SINGH GILL)
JUDGE

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No