

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-4782-2017 (O&M)
Date of Decision : 22.11.2019

Amit Bhardwaj..... Appellant

VERSUS

Sushila Bhardwaj Respondent

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

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Present: Mr. Abhimanyu Kalsy, Advocate
for the appellant.

None for the respondent.

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MANJARI NEHRU KAUL, J.

The instant appeal has been preferred by Amit Bhardwaj impugning the judgment and decree dated 06.02.2017 passed by the District Judge, Family Court, Bhiwani, whereby the petition filed by him under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') was dismissed.

Few facts necessary for adjudication of the present appeal as pleaded in the petition filed before the Court below may be noticed.

The marriage between the parties was solemnized on 29.10.2009 at Bhiwani as per Hindu rites and ceremonies. No child was born out of the said wedlock. At the time of engagement of the parties, the appellant-husband was working as a DSNG engineer. Two days after the marriage of the parties i.e. on 01.11.2009 the respondent-wife got a job at FIITJEE, New Delhi, where she joined as an Associate Professor. The

relations between the parties started turning sour soon after the marriage as the respondent would engage in petty squabbles as a result of which the atmosphere of the house was embittered. She would often embark on a tirade of verbal abuse against parents of the appellant. In April 2010, the respondent threw the appellant and his parents out of the house and demanded money from them as a result of which they started residing separately at Meerut. Thereafter, the appellant-husband had to go and live at different places and hunt for jobs as he had no permanent job in Delhi. In January 2011 the family of the respondent visited the house of the appellant in Meerut and indulged in nasty and abusive behaviour which led to the appellant's mother suffering a nervous breakdown and spinal disorder. In 2012, the respondent purchased a car and would not allow the appellant to use the same which caused him great humiliation and harassment. The respondent insisted on living separately with the appellant which however was not possible as the appellant was the only son of his old and ailing parents. In May 2012, the respondent filed false cases for dowry and domestic violence against the appellant at the Women's Cell, Bhiwani, in order to harass him and his parents. Thereafter, in the month of July 2012, a Panchayat was convened in order to iron out their differences resulting in their residing together but the behaviour of the wife remained the same as before. Consequently, with effect from January 2013 the parties started residing separately again. The parties did not have any conjugal relationship for a year preceding the filing of the petition under Section 13 of the Act. It was further alleged that the mother of the respondent demanded Rs.02 crores from the appellant-husband. Not only this, the brothers and father of the respondent-wife physically assaulted the appellant with lathis and

threatened him with dire consequences in the presence of two persons, namely, Mahesh Chand Sharma and Rohit Sharma in case their demand was not met. In October, November and December 2013 various Panchayats were convened to resolve the issue between the parties which failed as the family of the respondent misbehaved with the members of the Panchayat and insisted on their demand of Rs.02 crores as a price to free the appellant from the false domestic violence case which had been foisted upon him. Ever since then the respondent-wife had been residing with her parents.

Per contra, the respondent-wife in her written statement refuted and denied the allegations of the appellant. It was submitted by her that her parents had spent more than Rs.07 lakhs on her marriage and had given valuable dowry articles. She averred that the appellant and his family were unhappy with her job as they did not want her to neglect the household chores. She would often be taunted by her sister-in-law regarding the scanty dowry she had brought at the time of her marriage. Even though she repeatedly told the family of the appellant that it was not possible to fulfil their demands, yet she was subjected to continuous harassment. Further all her 'istri dhan' and dowry had been taken away by her in-laws while she was away at work. When her parents requested them to return her belongings, the appellant and his family remained adamant for their demand of a car and declared that she could only enter her matrimonial home if they were given a car or else she would be killed. It was in this background that she moved a complaint on 18.06.2012 to the police regarding the demand of dowry and the atrocities committed upon her by the appellant and his family. The matter ended in a compromise on an assurance given by the appellant's family that they would not raise any such demand in future and

the appellant would mend his ways but it was not to be as she was again shunted out of the matrimonial house. The Panchayat convened to settle the matter proved to be unsuccessful. Parents of the respondent arranged money for a car and purchased one in her name and gave the same to the appellant. The appellant and his family's cruel behaviour continued as a result of which she was left with no other option but to file a complaint on 19.11.2013 on the basis of which FIR No. 849 under Sections 323, 406, 498-A, 506 IPC read with Section 34 IPC was registered against him and his family. The respondent submitted that she tried to make all adjustments but the appellant and his family were in greed of more dowry. The respondent-wife accused the appellant of deserting her against her wishes and submitted that she would often be told by him that he did not like her and after killing her he would get married to a girl of his choice.

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

1. Whether the petitioner is entitled to a decree of divorce from the respondent on the ground alleged in the petition? OPP
2. Whether the petitioner has no cause of action to file the present petition? OPR
3. Whether the petitioner has not come to the Court with clean hands and has suppressed the material facts? OPR
4. Relief.

In support of his case, the appellant stepped into the witness box as PW1 besides examining two other witnesses including his father-Rajinder Sharma as PW2.

The respondent on the other hand appeared as RW1 and also examined her brother-Dinesh Kumar as RW2 in support of her case.

After analyzing the evidence, the Court below dismissed the petition filed by the appellant holding him not entitled to divorce as he had failed to make out any case of cruelty and desertion against the respondent. Aggrieved therefrom, the present appeal has been preferred by the appellant-husband.

During the pendency of the instant appeal, the matter was referred to the Mediation & Conciliation Centre of this Court to explore the possibility of an amicable settlement between the parties. However, the same proved to be a futile exercise.

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

Since no precise definition of 'cruelty' has been given in the Act, it shall have to be inferred after taking into account the cumulative effect of the facts and circumstances of each individual case so as to arrive at a conclusion whether the wronged party had been subjected to any kind of cruelty making it unsafe and injurious for him or her to live with the other.

On a perusal of the evidence led as well as other material on record, the version of the appellant-husband does not inspire confidence. It is apparent that the husband has just made sweeping allegations against the wife and her family which are not even substantiated much less supported by any shred of evidence. The allegation of the husband of having been physically assaulted by the family of the wife and a demand of Rs.02 crores by her family comes across as totally unbelievable inasmuch as no evidence

much less reliable was led by the husband in support of the same. The least the appellant could have done was to examine Mahesh Chand Sharma and Rohit Sharma in whose presence he was allegedly assaulted and threatened by the respondent's family. In fact, the version of the respondent-wife comes across as more believable and convincing inasmuch as she had been compelled to lodge an FIR under Sections 323, 406, 498-A, 506 IPC read with Section 34 IPC against the appellant-husband and his family on account of the continuous harassment meted out to her. Had the intention of the wife or her family been to extract money from the husband as alleged, they would not have been visiting the house of the appellant-husband to settle the dispute as admitted by the father of the husband in his testimony as PW2.

In view of the above, we do not find any merit in the instant appeal and the same is accordingly dismissed.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

22.11.2019

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Note: Whether speaking/reasoned :
Whether Reportable:

Yes / No
Yes / No