

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-7265-2017 (O&M)
Date of Decision : 16.10.2019

Garima Datta Bindra Appellant

VERSUS

Pawan Bindra Respondent

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

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Present: Mr. N.S.Shekhawat, Advocate
for the appellant.

Mr. Rajesh Sethi, Advocate
for the respondent.

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MANJARI NEHRU KAUL, J.

The instant appeal has been preferred by the wife-Garima Datta Bindra against the impugned judgment dated 06.10.2017 passed by the learned Family Court, Ambala, whereby the petition of the appellant-wife under Section 13 of the Hindu Marriage Act, 1955 (for short the 'Act') seeking dissolution of marriage with the respondent on grounds of cruelty 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 26.01.2004 at Haridwar. The parties thereafter cohabited together as husband and wife at Ambala. Out of the said wedlock, a daughter and a son

husband was of a suspicious nature. He was in the habit of extracting money from the parents of the appellant-wife on one pretext or the other. Despite the fact that all his demands were satisfied, his behaviour towards his wife and children continued to be extremely cruel and abusive. The appellant-wife continued to tolerate the abusive behaviour and ill treatment meted out to her with the hope that with the passage of time better sense would prevail upon the respondent but it was not to be. Despite the fact that the husband had a flourishing business and his income was in excess of ₹01 lakh per month, still he would not provide money to his wife for the education of their children and for the routine household expenses as a result of which she was compelled to start a boutique in the year 2011 to raise finances for her and their children's basic needs. In August 2012, the husband subjected her and the children to merciless beating and threats whereupon the local police was duly informed. However, on a written apology tendered by the husband before the police, the matter was reconciled. On 19.10.2013 the respondent-husband yet again physically assaulted and abused the wife for which she got herself medico-legally examined in the Civil Hospital, Ambala Cantt. The police too was informed about the assault. With the intervention of respectables from both sides, the matter was once again reconciled and compromised. However, the husband refused to reform himself and would continuously and frequently subject the appellant to mental and physical cruelty to the extent of threatening to throw acid on her. Finally, as the behaviour of the husband worsened, the appellant filed a complaint under the Domestic Violence Act, 2005 before the Court of JMIC, Ambala. Due to the cruel treatment and acts of her husband the appellant-wife shifted along with the children to Zirakpur. The husband

continued with his cruel and apathetic behaviour and went to the extent of trying to forcibly take away the children from his wife's custody. Resultantly, the appellant had to seek police intervention and lodge a complaint. It was in this factual background that the appellant-wife sought dissolution of marriage with the respondent-husband.

Per contra in the written statement filed by the respondent-husband, he categorically denied and refuted all the allegations of the appellant-wife. He submitted that their's was a love marriage and hence no dowry was either demanded or given. He claimed that it was he who had helped his wife to start the boutique from which she was earning ₹05 lakhs per annum. Not only this, he had got a sale deed executed of a house in her name on 12.11.2008 for which the finances too had been arranged by him. It was further averred that the wife had shifted to Zirakpur in 2014 without his consent and knowledge and despite that he continued to maintain her and their children. He claimed that the wife's parents did not support her qua the allegations levelled by her against him. He further claimed that in fact the petition filed by the appellant-wife under Section 13 of the Act was a counter-blast to the petition under Section 9 of the Act filed by him.

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

1. Whether the petitioner is entitled for decree of divorce on the grounds taken in the petition? OPR
2. Whether petition is not maintainable? OPR
3. Relief.

In support of her case the appellant stepped into the witness

box as PW1.

On the other hand, the respondent examined himself as RW1.

After analyzing the evidence led by the parties, the learned Family Court dismissed the petition filed by the wife, concluding that the grounds of cruelty and desertion on which the marriage was being sought to be dissolved were not made out. Aggrieved therefrom, the present appeal has been preferred by the appellant-wife.

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

It would be pertinent to mention that during the pendency of the instant appeal, the parties were referred to the Mediation & Conciliation Centre of this Court to explore the possibility of an amicable settlement between them. However, as per the Report received from the Mediator, it proved to be a futile exercise.

We also interacted with the parties at considerable length. However, the parties continued to maintain their respective stands and reiterated their allegations against each other.

On reappraisal of the evidence and other material on record including our interaction with the parties, it is apparent that the marriage between the parties was mired in acrimony as there were frequent quarrels between them. It is also a matter of record that the appellant-wife reported against her husband's behaviour to the police as well as filed a complaint under the Domestic Violence Act, 2005 before the Court of JMIC, Ambala which, as per the learned counsel for the appellant, is still pending. No doubt it was admitted by the wife that many a times compromise was arrived at between her and the respondent-husband on account of the alleged abusive behaviour of the husband but the fact remains that in 2014

she along with her children moved to Zirakpur. As 'cruelty' has not been defined in the Act, the same would have to be thus inferred from the cumulative effect of all the circumstances and allegations during the course of the entire married life of the parties and particularly so after 2014, when the wife moved to Zirakpur. Marital discord would not be dependent upon the number of incidents of misconduct by the erring spouse but would have to be judged from the impact and gravity of the conduct complained of by the opposite party.

In the instant case, no doubt a compromise had been effected between the parties in 2013 but it is apparent that even after the compromise the relations between the parties were far from normal as soon thereafter the wife moved to Zirakpur in 2014 which clearly reflects that bitterness and acrimony still existed between the spouses and there had been fresh episodes of disharmony between them, else there would have been no occasion for the wife to move out with her children to Zirakpur. Every spouse needs to be given due respect and treated with care. The wife cannot be permitted to be treated like a chattel who can be played around with and trashed away at the whims and fancies of the husband. The least that is expected from a husband in any marriage is to treat his wife with kindness and not undermine her dignity.

The Family Court has incorrectly concluded that since the appellant-wife had impliedly condoned the acts of cruelty prior to 2013, they cannot be taken into account now to prove cruelty. The watershed sought to be created by the trial Court is artificial for there is a symbiotic nexus between the events prior to 2013 and those after 2013, which eventually led the appellant-wife to reside separately from the respondent-

husband.

After taking into account the sequence of events prior to 2013 and post 2013 it is very evident that the relations between the parties were far from cordial. Even if post 2013 there were trivial quarrels between the spouses it can be clearly inferred that they were indicative of what the relations between the spouses had come to. It is evident that it was because of the continuous misconduct on the part of the husband that the wife was compelled to stay away from him in Zirakpur. It would be unfair and injurious to the interest of the parties not to sever the legal tie between them.

As a sequel to the above, the instant appeal is allowed. Accordingly, the judgment dated 06.10.2017 passed by the learned Family Court, Ambala, is set aside. The marriage solemnized between the appellant and the respondent on 26.01.2004 stands dissolved by a decree of divorce. Decree Sheet be prepared accordingly.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

16.10.2019

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Note: Whether speaking/reasoned :
Whether Reportable:

Yes / No
Yes / No