

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

FAO-8021-2017

Decided on : 13.09.2019

Mandeep Kaur

... Appellant(s)

Versus

Karamjit Singh

... Respondent(s)

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

Argued by: Mr. G.S. Nahel, Advocate
for the appellant(s).

None for the respondent(s).

MANJARI NEHRU KAUL, J.

The instant appeal has been preferred by the wife – Mandeep Kaur, impugning the judgment and decree dated 04th August, 2017, passed by the Ld. District Judge, Family Court, Barnala (hereinafter referred to as 'Ld. Family Court'), vide which the petition filed by the appellant-wife, under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), seeking dissolution of her marriage with the respondent-husband, was dismissed.

A few facts necessary for adjudication of the instant appeal, as pleaded in the petition filed by the appellant-wife (petitioner therein) before the Ld. Family Court, may be noticed. The marriage between the parties was solemnized on 19th November, 2006, as per Sikh rites and ceremonies. The parties lived and cohabited together and a son was born out of the wedlock. Sufficient dowry was given by the parents of the appellant at the time of her marriage, but it failed to satisfy the respondent-husband and his parents for which she would be often maltreated and physically assaulted by the husband, who was a drunkard and

his family. So much so, she was made to starve many times and even denied the basic necessities of life by the husband, who would threaten to eliminate her in case she did not bring money from her father. On 25th September, 2011, the husband at the instigation of his parents sprinkled kerosene oil on her person, but she was saved due to the intervention of the neighbours. The matter was reported to the police by way of a written complaint on 26.09.2011. However, with the intervention of the respectables, a compromise was arrived at between the parties. Ultimately, in the year 2013, she was thrown out of her matrimonial home by the husband. Thereafter, her father arranged a house for her to stay wherein she started residing along with her minor son. She alleged that the respondent had illicit relations with another woman on whom he would squander away all his income. Many a times, the husband would leave the house without the knowledge of the appellant-wife and would go missing for months together. The husband had even eloped with a woman once and his whereabouts were unknown to the wife, as a result of which, the matter was reported to the police at Police Station City Barnala by her. The appellant-wife pleaded that since the husband had willfully and without any reasonable cause withdrawn from her society, coupled with the fact that he had been neglecting and maltreating her from the very beginning of their marriage, she was left with no other choice but to seek dissolution of her marriage with the husband.

Per contra, the respondent-husband (respondent therein) categorically refuted and denied the allegations of the appellant-wife, in his written statement filed before the Ld. Family Court. He alleged that the wife was a quarrelsome lady. He submitted that the complaint filed by the wife in the Police Station City Barnala was a concocted story. The wife along with her father and brothers had in fact thrown him out from his house in the month of December, 2015, and

threatened him with dire consequences if he dared to return to the house. He alleged that in fact the house, where the appellant-wife was residing was in the name of his mother and even the gold jewellery given to the wife by his parents at the time of their marriage was still in her possession. He averred that he was jobless and due to some health issues, he was unable to earn his livelihood.

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

- “1. Whether the petitioner is entitled for the dissolution of her marriage with the respondent as prayed for ? OPP*
- 2. Whether petition filed by the petitioner, is not maintainable in the present form ? OPR*
- 3. Whether the petitioner has concealed the true and material facts from the Court ? OPR*
- 4. Relief.”*

Both the parties adduced evidence in support of their respective stands before the Ld. Family Court. The appellant-wife examined as many as four witnesses viz; PW-2 Surjan Singh, Pw-3 Tarsem Singh and PW-4 C. Inderjit Singh and herself appeared as PW-1, while the respondent-husband examined himself as RW-1.

After analyzing the evidence led by the parties and also the material on record, the Ld. Family Court dismissed the petition filed by the wife by holding that the twin grounds of 'cruelty' and 'desertion' on which the wife was seeking dissolution of her marriage with the respondent-husband were not proved.

Before we proceed further, it would be pertinent to mention that as per office report, even though the respondent-husband was duly served, he never

put in an appearance either in person or through his counsel during the pendency

of the instant appeal. The case was adjourned time and again in the preceding one year, but the respondent went un-represented. Hence, we now proceed to decide the instant appeal in the absence of the respondent and on the basis of the evidence and material on record.

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

Instances of cruelty would vary from case to case and no straight-jacket formula *qua* the same can be laid down as to what would amount to cruelty. Hence all cases have to be determined on the basis of their own particular and peculiar facts. Even a single and solitary act of physical violence may by itself, be of such unpardonable nature, so as to satisfy the test of cruelty.

On examining the evidence and the submissions made by the Ld. Counsel for the appellant, we feel that the Ld. Family Court was in grave error by ignoring the conduct and the acts of the respondent-husband which even by ordinary prudence would qualify to be nothing but blatant cruelty. The very fact that there was a written complaint made by the wife to the police of she having been sprinkled with kerosene oil by the husband goes a long-way to establish and leaves no manner of doubt that the wife was indeed being subjected to acute physical and mental torture. In the case in hand, there is enough evidence adduced by the wife, which as already noticed earlier, has not been appreciated by the Ld. Family Court in the right perspective, and unerringly points to the culpability of the husband in inflicting immense mental and physical cruelty on the wife. The conduct of the husband cannot be said to be one of those isolated acts of assault which may have been committed on the spur of the moment or on account of any provocation. Further, it is also the admitted case of the husband in his written statement filed before the Ld. Family Court that a compromise had been effected

between the parties in pursuance to the complaint lodged by the wife. This further lends credence to the case of the wife that she was being meted out immense physical and mental cruelty, which included an attempt on her life as well for which, she had been compelled to approach the police for the redressal of her grievance.

In view of the facts and circumstances of the case, we have no hesitation to hold that the impugned judgment and decree deserves to be set aside. The appellant-wife succeeds in her petition under Section 13 of the Act and a decree of divorce is granted. The marriage between the parties stands dissolved. Decree-sheet be prepared accordingly.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

September 13, 2019

J.Ram

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