

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

**FAO-M-133-2017
Decided on : 20.09.2019**

Kavita Agwani

... Appellant(s)

Versus

Davinder Kumar

... Respondent(s)

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

Argued by: Mr. Arnav Sood, Advocate
for the appellant(s).

Mr. Deepak Verma, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J.

Instant appeal has been preferred by the wife – Kavita Agwani, against the judgment and decree dated 01st April, 2017, passed by the Ld. Addl. District Judge, Hoshiarpur, (in short 'Ld. Court below'), vide which the petition filed by the respondent-husband/Davinder Kumar, under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), seeking dissolution of his marriage with the respondent-wife, was allowed.

A few facts necessary for adjudication of the case, as pleaded in the petition filed by the respondent-husband (petitioner therein) before the Ld. Court below, may be noticed. The marriage between the parties was solemnized on 27th November, 2004. The behaviour of the wife remained cordial for just about eight months after the wedding and thereafter, she would often quarrel with the husband and his family on trivial issues. She would pressurize the husband to take up a separate residence and when the husband refused to succumb to her pressure, she

started maltreating and insulting him and his parents in front of one and all. The birth of their daughter in the year 2005 also did not help matters, as she continued to insist upon, for a separate accommodation. She would use derogatory and unparliamentary language against his parents including character assassination of the husband's mother. The wife got a job in the Education Department in the year 2007. She without even informing the husband took up a rented accommodation at her place of posting i.e. Rajpur Gujra. In 2008, the husband got himself transferred to Chabbewal, so that the couple could live together in their matrimonial home. The husband managed to prevail upon the wife to return to the matrimonial home in the year 2009, but her behaviour continued to be the same as before. There were no conjugal relations between the parties from 2010 onwards. In March, 2013, the wife left her matrimonial home and started residing at Garshankar, refusing to return to her matrimonial home despite earnest efforts by the husband. She took along with her, their daughter, who was then left by her at her parental home at Ferozepur. At Garshankar, she started residing in the house of one Kulwinder @ Kinda for which even Panchayat was got convened, but the wife refused to mend her ways and join the society of the husband. It was in these circumstances, the husband sought dissolution of his marriage with the wife on the grounds of 'desertion' and 'cruelty'.

Per contra, in the written statement filed before the Ld. Court below, the wife categorically refuted and denied all the allegations made by the husband in his petition. She submitted that her husband and his family had been maltreating and subjecting her to both mental and physical torture in the matrimonial home. Even though, she exercised a lot of patience and tolerance, hoping that better sense would prevail upon the husband and his family, their

behaviour, however, worsened by the day. In March, 2013, the husband and his parents after picking up a quarrel, turned her out from the matrimonial home along with their minor daughter. All efforts by the appellant-wife and her family to bring about a reconciliation proved futile. In September, 2013, a Panchayat was convened, pursuant to which the appellant-wife was rehabilitated in her matrimonial home. However, on the same day, she was physically assaulted by the husband and his family and thrown out of her matrimonial home with their minor daughter. It was only thereafter, she started residing at Garshankar with her daughter, as it was close to her place of posting. After a few months, the husband took away the minor daughter, for which, she filed a separate case under the Guardian and Wards Act before the Court below. Thus, in the given facts and circumstances, it was submitted that the husband was not entitled to decree of divorce and she accordingly prayed for dismissal of the his petition.

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

- “1. *Whether respondent treated the petitioner with cruelty ? OPP*
2. *Whether respondent has deserted the petitioner since March, 2013 ? OPR*
3. *Whether petitioner is entitled to decree of divorce on the grounds of desertion and cruelty ? OPP*
4. *Whether the petition is not maintainable in the present form ? OPR*
5. *Relief.”*

In order to prove their case, both the parties adduced evidence in support of their respective stands. The respondent-husband examined as many as

five witnesses i.e. PW-1 Amarjit Singh, PW-2 Atma Singh, PW-3 Devi Dass and PW-4 Tulsi Dass. He himself stepped into witnesses-box as PW-5. On the other hand, appellant-wife appeared as RW-1 and closed her evidence.

After analyzing the evidence led by the parties, the Ld. Court below allowed the petition under Section 13 of the Act filed by the respondent-husband.

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

During the pendency of the instant appeal, the parties were referred to the Mediation and Conciliation Centre of this Court to explore the possibility of an amicable settlement, but the same proved to be a futile exercise. It may also be noticed that the parties during the arguments reiterated their earlier versions and maintained their respective stands, as taken before the Ld. Court below.

Learned counsel for the appellant-wife urged that the Ld. Court below while passing the impugned judgment erred in not appreciating that the allegations of cruelty levelled against the appellant-wife were totally vague and on the face of it were at best trivial differences between any married couple.

Adverting to the case in hand, the moot question which would require our consideration is whether the conduct of the wife could be said to be so cruel making it intolerable for the husband to suffer the same any longer. The answer to the same shall have to be gathered after taking into account all the relevant circumstances brought on record.

A perusal of the testimonies of the witnesses produced by the husband corroborates the case of the husband that the appellant-wife had indeed been indulging in totally unbecoming and uncalled for behaviour not only towards his parents but also towards him. The least which can be expected from the spouses is

that they would at least behave in a civilized manner towards each others parents. Asking a spouse to live separately may not amount to cruelty but using unparliamentary and derogatory language including character assassination of the husband's mother and that too in front of outsiders would certainly fall within the parameters of mental cruelty.

Further the deposition *qua* the misbehaviour of the appellant-wife by the witnesses, who appeared on behalf of the husband have gone unchallenged. In the instant case, a perusal of the evidence led, serious and glaring contradictions are discernible of the written submissions and deposition of the appellant herself. Strangely, on the one hand, she deposed that she had been subjected to beatings by the husband and his family; in September, 2013, when she returned to her matrimonial home in pursuance to the Panchayat convened to bring about a reconciliation between the parties, but in the same breath she submitted that after she was turned out from the matrimonial home, she went to Ferozepur in her father's car. Not only this, as per her, when she was allegedly beaten up by the husband and his family, her father, uncle and cousin brother were present, who rescued her from the wrath of the husband and his family. This is, at variance, with her averments made in the written submissions. The least that the appellant-wife could have done was to examine her father, uncle or cousin brother in whose presence, she was allegedly assaulted by the respondent-husband and his family. It was not done for the reasons best known to her. A serious question mark is thus raised *qua* the veracity of the allegations levelled by the appellant-wife against the respondent-husband. The conduct of the appellant-wife to say the least, falls within the parameters of what would constitute mental cruelty. It is very apparent that to cover up for her own wrongs, she has been levelling false allegations of

physical and mental harassment against the husband and his family. It is clearly, discernible that there was a deliberate withdrawal by the appellant-wife without any reasonable cause from the society of the husband, which would also amount to infliction of mental cruelty on the husband.

As a sequel to the above, we find that no interference in the judgment passed by the Ld. Court below is called for. Consequently, the present appeal stands dismissed and the judgment and decree dated 01st April, 2017 of the Ld. Court below, is upheld.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

September 20, 2019

J.Ram

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