

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

FAO-M-134-2017

Decided on : November 07, 2019

Prem Chand

..... Appellant

Versus

Kamlesh

..... Respondent

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

Argued by : Mr. Adarsh Jain, Advocate
for the appellant.

Mr. Ashok Kaushik, Advocate
for respondent.

Manjari Nehru Kaul, J.

The instant appeal has been preferred by the husband – Prem Chand to impugn the judgment and decree dated 18.03.2017 passed by Addl. District Judge, Palwal whereby his petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') was dismissed.

2. Few facts necessary for adjudication of the instant appeal as pleaded in the petition filed by the appellant-husband before the learned Court below may be noticed.

Marriage between the parties was solemnized on 16.02.1997 as per Hindu rites and ceremonies at village Mohala Tehsil Ballabgarh, Faridabad. One son was born out of the said wedlock on 08.12.1997. Since the very beginning of their marriage, the respondent-wife would misbehave and under the influence of her parents frequent her parental home. After the birth of their son, respondent-wife went to her parental home and did not

come back despite repeated requests by the appellant-husband. She lodged a false FIR No.280 dated 10.07.1999 under Sections 498-A, 406 and 34 IPC at Police Station, Sadar Ballabgarh. The matter was however resolved and a compromise effected between the parties on 10.08.2004. The parties thereafter started residing together at Hodal. However, in January, 2006 the respondent-wife left the matrimonial home along with their son and started residing separately. She filed a petition under Section 13 of the Act and a complaint before the Women's Cell, Faridabad in 2007, which she however, subsequently withdrew as the matter was compromised between the parties. After the withdrawal of the petition under Section 13 of the Act, she expressed her desire to go and stay with her parents for a short while to which the appellant-husband agreed. However, she again refused to return to the matrimonial home thereafter despite his repeated requests. Instead she filed another complaint under Section 12 of the Domestic Violence Act, 2005. Hence, the appellant-husband prayed for dissolution of marriage with the respondent-wife as he had been treated with cruelty and deserted by her.

3. Per contra, the respondent-wife in her written statement filed before the Court below, refuted and denied the allegations of the appellant-husband. She admitted to the factum of her residing at the parental home. She alleged that in fact it was the appellant-husband and his family, who had meted out cruelty to her since the very inception of their marriage as they were dissatisfied with the dowry which she had received at the time of their marriage. A number of panchayats were convened and it was due to the efforts of her father, a compromise was effected. She claimed that even though she had made earnest efforts to adjust with the appellant-husband

and his family, yet she was ill-treated by them. She thus, prayed for dismissal of the petition.

4. From the pleadings of the parties, following issues were framed by the learned trial Court:

1. Whether the petitioner is entitled to a decree of divorce on the grounds, as alleged in the petition? OPP
2. Whether the petition is not maintainable? OPR
3. Relief.

5. Both the parties adduced evidence in support of their respective stands. The appellant-husband himself stepped into the witness box as PW-1 and examined three other witnesses. On the other hand, respondent-wife stepped into the witness box as RW-1 and examined two other witness. She also tendered certain documents Ex.R-1 to R-14 in support of her case.

6. On an analysis of the evidence led, the trial Court dismissed the petition filed by the appellant-husband by holding that the appellant-husband was unable to prove desertion and cruelty by way of any cogent and convincing evidence against the respondent-wife.

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

8. It would be pertinent to mention that during the pendency of the instant appeal, the parties were referred to Mediation and Conciliation Centre of this Court to explore the possibility of an amicable settlement, however, all efforts failed miserably. This court also interacted with the parties, but they maintained their respective stands as taken before the court below. The appellant-husband reiterated his allegations against the

respondent-wife.

9. Adverting to the case in hand, the allegations of cruelty levelled by the appellant-husband against the respondent-wife are definitely not made out. On the face of it, it is very evident that the allegations are not only ill founded and vague in nature but cannot be said to be so grave so as to label the behaviour and conduct of the respondent-wife as cruel. Rather a copy of the judgment dated 09.01.2004 Ex.R1 reveals that it was in fact the appellant-husband and his family members, who were convicted for the offence under Sections 498-A and 406 IPC. An appeal was thereafter preferred by the appellant-husband to impugn his conviction, which ended in an acquittal on the basis of compromise arrived at between the appellant-husband and the respondent-wife. Hence, it is apparent that it was the respondent-wife, who was being maltreated by the appellant-husband and not vice versa. It is also a matter of record that the respondent-wife had filed a petition under Section 13 of the Act but the same was withdrawn after the appellant-husband gave an assurance that he would live with her. Not only this, it is the admitted case of the appellant-husband himself that he has since married one Renu Bala. So much so, the appellant-husband vide relinquishment deed dated 21.08.2015 transferred his interest in the ancestral land in favour of the said Renu Bala.

It is not hard to discern from the perusal of the evidence and other material on record that as and when the appellant-husband was caught on the wrong foot, he very conveniently entered into a compromise with the respondent-wife by giving her false assurances leading to withdrawal of the complaints against him under the Domestic Violence Act, FIR No.280 dated

10.07.1999 under Section 498-A, 406 and 34 IPC including the petition under Section 13 of the Act. To say the least, it is the appellant-husband, who is guilty of matrimonial misconduct and willful desertion. He clearly comes across as the erring party and this Court cannot permit him to take advantage of his own wrong by seeking relief under Section 13 of the Act.

10. As a sequel to the above discussion, we do not find any ground to interfere in the impugned judgment dated 18.03.2017 passed by the court below, which is well reasoned one.

Consequently, the present appeal being devoid of any merit stands dismissed.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

November 07, 2019

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Whether speaking/non-speaking:
Whether reportable :

Yes/No
Yes/No