

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

FAO-M-136 of 2017 (O&M)

Decided on : December 16, 2019

Harmanjit Kaur

..... Appellant (s)

Versus

Gagandeep Singh Gill

..... Respondent (s)

**CORAM : HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present : Ms. Raina S. Thakur, Advocate
for the appellant.

Mr. N.K. Manchanda, Advocate
for the respondent.

KARAMJIT SINGH, J.

The instant appeal has been preferred by the appellant-wife impugning the judgment and decree dated 12.04.2017, passed by Learned District Judge (Family Court), Moga (hereinafter referred to as the 'Ld. Court below') whereby, the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') for granting decree of divorce, was allowed in favour of the husband.

A few facts necessary for adjudication of the case, as narrated in the petition filed by the respondent-husband before the Ld. Court below, may be noticed. Marriage between the parties was solemnized on 28.04.2012 at Baghapurana, District Moga as per Sikh rites and rituals. After the marriage, the parties resided and cohabited together as husband and wife and out of the wedlock one male child was born, who is presently residing with the

appellant-wife. According to the husband, the appellant-wife used to misbehave with him and other members of his family in the presence of their relatives and neighbours. She was of very quarrelsome nature and she used to quarrel with the respondent-husband on petty issues. In January, 2014, she threatened to commit suicide by jumping from the roof of her matrimonial home but she was pacified and brought down with the intervention of neighbours and the matter was settled. However, just after one week of the said incident, she again threatened to commit suicide by consuming poison, by leaving behind suicide note to falsely implicate her in-laws in a police case. The appellant, who had passed 10+2 examination, intended to do some private job to which her husband objected as there was no one in the family to look-after the minor child or to cook food. Finally, in the month of March, 2014 she left the matrimonial house in the absence of the respondent-husband and she also took away all the gold ornaments alongwith her. Thereafter, all the efforts made by the respondent-husband to bring her back, failed.

Per contra, the case was contested by the appellant-wife, who filed written statement, in which it was pleaded that the respondent-husband had not come to the Court with clean hands. However, the fact of marriage between the parties was admitted. Appellant-wife denied that she caused any cruelty to her husband and other members of his family, rather she contended that her in-laws were not happy with the dowry, which was brought by her and they started demanding new car and cash worth Rs.10 lakh, so that the respondent-husband could be able to go abroad. When she refused to fulfil the aforesaid demand of more dowry, the appellant-wife was

thrown out of the matrimonial home alongwith her minor child in the month of August, 2014. The efforts made by her for her rehabilitation also failed. Other allegations were denied and a prayer to dismiss the divorce petition was made.

The respondent-husband filed re-joinder controverting the averments made in the written statement of appellant-wife and on such pleadings of the parties, the following issues were framed by the Ld. Court below:-

- “ 1. *Whether the petitioner is entitled for decree of divorce on the ground of cruelty ? OPP*
2. *Whether the respondent has deserted petitioner without any reasonable cause and excuse?OPP*
3. *Whether the petitioner is entitled for decree of divorce, as prayed for?OPP*
4. *Whether the petitioner is not maintainable? OPR*
5. *Relief. ”*

The respondent-husband himself appeared in the witness-box as PW-1 and also examined his father-Sh. Surjit Singh as PW-2 in support of his case. PW-3, Jarnail Singh, who was the mediator of the marriage between the parties, also corroborated the statement of PW-1. Harbans Singh, who was owner of the hotel where some of the marriage ceremonies were performed, appeared in the witness box as PW-4 and the cateror, who was engaged by the respondent-husband, appeared in the witness box as PW-5 and he proved the Bill (Ex.P-1).

On the other hand, appellant-wife appeared in the witness box as RW-2. She also examined Diya Singh as RW-1 and Kuldeep Singh as RW-3 in support of her case.

After hearing counsel for the parties, the Ld. Court below passed the decree of Divorce in favour of the respondent-husband on the ground of cruelty and aggrieved by the impugned judgement and decree, the present appeal has been filed by the appellant-wife.

We have heard learned counsel for the parties, perused the evidence and other material on record meticulously.

Learned counsel for the appellant-wife has challenged the findings of the Family Court regarding the ground of cruelty. It was contended that no such acts of cruelty were committed by the appellant-wife against her husband, as has been alleged in the divorce petition. It is further contended that the respondent-husband failed to examine any independent witness to corroborate his case against the appellant-wife. No complaint was lodged by the husband with the police or any other authority regarding alleged attempts made by the appellant-wife to commit suicide. It is further argued that actually her in-laws raised demand of more dowry and when it was not fulfilled, the appellant-wife was turned out of the matrimonial home by the respondent-husband. The counsel for the appellant-wife further argued that the judgement under challenge deserves to be set aside.

On the other hand, learned counsel for the respondent husband submits that the Family Court has rightly passed the judgement and decree in question. It is contended that ample and reliable evidence is available on

record, which clearly establishes ground of cruelty against the appellant-wife. As per the testimony of PW-1, PW-2 and PW-3, the appellant-wife was having suicidal tendency and she threatened to commit suicide on 2/3 occasions and while giving such threats she made it clear that she would falsely implicate them in some criminal case. It is further contended that the appellant-wife used to misbehave with the respondent-husband and other members of his family. She was not taking care of her minor child and refused to cook food for the husband, leaving him to fend for himself, thus, causing great mental cruelty to him. Learned counsel for the respondent-husband further argued that the appeal filed by the appellant-wife deserves to be dismissed having no merit.

We have considered the rival contentions of the counsel for the parties.

The respondent-husband has sought divorce on the ground of cruelty and desertion. Marriage between the parties was performed on 28.04.2012 and they parted ways in the year, 2014. No petition was filed by the husband, seeking Restitution of Conjugal Rights between the parties, prior to this divorce petition, which was filed on 14.10.2014.

The respondent-husband had taken the plea that in the month of January, 2014, the appellant-wife went upstairs and attempted to commit suicide by jumping from the top of the matrimonial home but she was brought down with the intervention of the neighbours. However, no such neighbour was examined by the respondent-husband to prove the fact of said incident. The exact date of the said incident and the subsequent incident, whereby the appellant-wife allegedly tried to commit suicide by consuming

some poison, were not given in the divorce petition. Even otherwise, on the basis of said two alleged incidents, it cannot be inferred that the appellant-wife was having suicidal tendency, as the same requires corroboration by way of medical evidence, but no such medical evidence is there on the record.

There are also allegations that the appellant-wife intended to do some private job, however, the respondent-husband objected to the same. She had passed the 12th class examination, so there was nothing wrong, if she intended to do the private job in the town, where she was residing with her husband. It was also alleged in the divorce petition that the appellant-wife was in habit of fighting with her husband and other members of his family, just on petty issues. No specific instance of any such rude behaviour of the appellant-wife was cited by the respondent-husband in the divorce petition. There were general allegations that she used to misbehave with her husband and his parents in the presence of relatives and neighbours. Such like general allegations are not covered under the definition of 'Cruelty' as provided under Section 13 of the Act. As per the husband, the appellant-wife has left the matrimonial home in the month of March, 2014 and while going away she also took all the jewelry and valuable articles alongwith her. No complaint in this regard was lodged by the respondent-husband with the police or any other authority. Thus, the evidence led by the respondent-husband is not sufficient to prove the ground of cruelty against the appellant-wife.

As a sequel to our aforesaid discussion, this appeal succeeds and is allowed. Accordingly, the Judgement and Decree dated 12.04.2017, passed by the Ld. Court below, is set aside and the divorce petition stands dismissed, with no orders as to costs. The Decree-sheet be prepared, accordingly.

(RAJAN GUPTA)
JUDGE

December 16, 2019
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(KARAMJIT SINGH)
JUDGE

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