

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

FAO-M-16-2017

Decided on : 16.11.2019

Anita

... Appellant(s)

Versus

Shakti

... Respondent(s)

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

Argued by: Mr. Sandeep Lather, Advocate
for the appellant(s).

Mr. S.S. Patter, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J.

Instant appeal has been preferred by the wife – Anita, against the judgment and decree dated 25th October, 2016, passed by the Ld. Addl. District Judge, Jhajjar, (in short 'the Court below'), vide which the petition filed by the respondent-husband/Shakti, 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 Court below, may be noticed.

The marriage between the parties was solemnized on 09th November, 2008 as per Hindu rites and ceremonies at District Jhajjar. Two children were born out of this wedlock. The respondent-husband alleged that the behaviour of the wife from the very beginning of the marriage was extremely rude and cruel towards him and his family. She would misbehave with his friends and relatives

and would also use abusive language. The wife was working as a lecturer in a college, whereas, the husband was employed as a constable in the Haryana Police. The wife would object to the odd duty hours of the husband as she wanted him around all the time. It was further alleged that in fact, soon after the marriage of the parties during their honeymoon itself, the wife declared that her marriage had been solemnized with the respondent-husband against her wishes and she wanted to get married in a rich family. On 29th January, 2009, when the wife was operated upon at PGIMS, Rohtak, instead of handing over her valuables to the husband, she gave everything to her brother-in-law. On her discharge from the hospital, she refused to live with the husband until and unless he moved out from the joint family house, where, the parties had been residing. The wife would often leave the matrimonial home without informing the husband. Many panchayats were convened to resolve the matter, but the wife refused to accompany the husband back to the matrimonial home. The wife and her parents would continuously threaten the husband that they would kidnap their minor daughter, who was in his custody and implicate him in false dowry cases, if he failed to bow down to their terms and conditions. The appellant-wife along with their minor son had been living with her sister and brother-in-law at Bahadurgarh ever since 06.07.2013. The husband thus prayed for dissolution of the marriage on grounds of cruelty and desertion.

Per contra, in the written statement filed before the Court below, the wife categorically refuted and denied all the allegations levelled by the husband in his petition. She submitted that it was the husband, who had shut the doors of his house on her at Bahadurgarh and she had ever since then been residing in a rented accommodation along with her minor son. She further submitted that it was the

husband who had been intentionally subjecting her to harassment and cruelty. In fact, it was the husband who had deserted her with the aim of contracting a second marriage.

In response to this, the husband filed a replication wherein, he controverted the submissions of the respondent-wife and reiterated his stand as taken in the petition.

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

- “1. *Whether the petitioner is entitled to the dissolution of marriage on the grounds of cruelty ? OPP*
2. *Whether the petition is not maintainable ? OPR*
3. *Relief.”*

In order to prove their case, both the parties adduced evidence in support of their respective stands. The husband himself stepped into the witness-box as PW-1 and examined three other witnesses. On the other hand, wife examined herself as RW-1 besides examining three more witnesses in support of her case. The Court below examined two court witnesses i.e. Chand Ram and Usha Devi as CW-1 & CW-2, respectively.

After analyzing the evidence led by the parties, the Court below allowed the petition under Section 13 of the Act filed by the respondent-husband on the grounds of cruelty and desertion.

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

All efforts made by this Court as well as the Lok Adalat to bring about a reconciliation between the parties failed to yield any positive result and

proved futile. The parties during the course of hearing before us reiterated their earlier versions and maintained their respective stands, as taken before the Court below.

As already noticed above, the marriage between the parties was dissolved on grounds of cruelty and desertion. On a perusal of the evidence led and other material on record, we feel that the Court below fell in grave error and misdirected itself in failing to appreciate that the allegations of cruelty levelled against the appellant-wife came across as being totally vague, ill-founded and trivial in nature and definitely not so grave as to entitle him to a decree of divorce.

Cruelty cannot be defined in precise terms and hence it is not easy to conceptualise what would constitute cruelty, but the conduct of the erring spouse would definitely have to be such that it gives the wronged party a reasonable apprehension that it would be unsafe and injurious to his/her mental and physical health to continue to live together.

In the instant case, we are appalled and to our horror the Court below, has concluded from a rather sketchy evidence that a case of cruelty was made out against the wife.

From the pleadings and evidence, it is evident that the respondent-husband has a very parochial mind-set, and further for the Court below to rely upon some photographs Mark-1 to Mark-8 in which the appellant wife is seen with her college colleagues during a college trip, to Indo-Pak Border, to come to a conclusion of mental cruelty is facetious. The unwarranted emphasis placed by the Court below with regard to the photographs, wherein, the appellant-wife is not seen in the company of her husband and family, but her colleagues/friends is indicative of the medieval mind of the Court below.

It may further be emphasized that at the time of marriage, the husband was aware of the fact that the wife was employed as a lecturer in a college. Hence, it is strange that he would now have objection to her travelling for a college trip outside the State and that too along with her female colleagues. There is no occasion now for the husband to take exception to her travelling without him with her colleagues from the college. Where the husband marries a working woman, he must also try to make adjustments in the same manner as he would expect from his wife. If there is some lack of trust and confidence on the part of the husband, it cannot be termed as cruelty.

From the record, it appears that the Court below had taken over the role of the petitioner before it. The perusal of the evidence of the Court Witnesses (for brevity 'CWs') reveals many gaping holes, from which in fact, if at all an inference has to be drawn, the same would have to be drawn against the respondent-husband. From the statement of CW-1/Chand Ram, it appears that PW-4/Phool Singh i.e. father of the husband was in cahoots with the person who allegedly got posted anonymous letters threatening the witnesses. It has come in the evidence of CW-1/Chand Ram that PW-4/Phool Singh disclosed to him that some important letters were to be received by the residents of the locality. Further, PW-4/Phool Singh went around the locality collecting anonymous letters received by the residents. In view of the above, the entire process of reasoning adopted by the Court below in castigating the appellant-wife for issuing threats through letters is not only perverse, but bereft of any logic. The Court below has conveniently ignored and failed to appreciate that how could PW-4/Phool Singh know before hand about the delivery of certain letters to the residents of the locality. Further, it is un-understandable as to how the Court below concluded

that a 'Chit' EX.CW1/B, which was found in the retiring room of the Presiding Officer of the Court below could be traced to the appellant-wife. It is quite clear that without any cogent evidence, the Court below has thrown the blame with respect to the anonymous 'Chit' EX.CW1/B on to the appellant-wife. The Court below need not be reminded that cases in Courts have to be decided on the basis of legal evidence and not on the basis of the assumptions and presumptions of the Presiding Officer.

Cruelty cannot be decided on the basis of the sensitivity of a spouse and also that of a Court but that is precisely what has been erroneously done in the instant case by the Court below. By no stretch of imagination, the acts of the wife reflect any unwarranted conduct, which would make it intolerable for the husband to suffer any longer. For instance, the allegations of the wife handing over her valuables to her brother-in-law cannot be termed to be an act of cruelty. Though this allegation is not supported by any evidence, however, assuming the same to be correct, it cannot be termed to be such an act which would have caused the husband such mental agony and pain compelling him to seek dissolution of his marriage with the appellant-wife. Further, the allegations of the husband that the appellant-wife would frequently threaten him and his family of false implication in criminal cases deserves to be rejected outrightly. Admittedly, not even a single criminal case/complaint was ever filed by the wife against the husband. On the contrary, a case FIR under Section 447/506 IPC, dated 06.10.2015 was registered by the husband against the wife. Further, even if the allegations of the appellant-wife lying on the street with the child and punching on her stomach are to be believed, they only reflect the state of mind, she was driven to, by the conduct of her husband.

The Court below has picked up bits and pieces of evidence from here & there and proceeded to cobble together a line of reasoning seemingly with a premeditated mind to dissolve the marriage between the parties on grounds of cruelty and desertion.

As a sequel to the above, the instant appeal is allowed and the impugned judgment & decree dated 25th October, 2016, passed by the Court below is set-aside.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

November 16, 2019

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*