

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

FAO-M-233-2017

Decided on : 18.11.2019

Sharmila

..... Appellant

Versus

Krishan Kumar

..... Respondent

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

Present : Ms. Pratibha Yadav, Advocate
for the appellant.

Mr. Himanshu Sharma, Advocate
for respondent.

Manjari Nehru Kaul, J.

The instant appeal has been preferred by the wife – Sharmila against the judgment and decree dated 18.07.2017 passed by District Judge, Narnaul whereby petition filed by the husband – Krishan Kumar under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') was allowed.

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

Marriage between the parties was solemnized on 16.05.1991 at village Baghot, District Mohindergarh as per Hindu rites and ceremonies. Two children were born out of the said wedlock, who are living with the respondent-husband. It was pleaded by the respondent-husband that the

behaviour of the appellant-wife from the very beginning of their marriage was unbecoming of a spouse which would lead to frequent trivial skirmishes. She would often misbehave with the respondent-husband and his guests. He however, would turn a blind eye towards her behaviour with the hope that better sense would prevail upon her someday. So much so, she would neglect her duties as a mother and would not even feed the children at proper meal times. Whenever the respondent-husband tried to reason with her, the appellant-wife would not only embark on an abusive tirade but also threaten to commit suicide as well as implicate him and his family in false cases. The appellant-wife would often leave the matrimonial home without bothering to inform the respondent-husband and would then stay with unknown persons for days. She would not even hesitate to proclaim that she would continue with her illicit relations. In March, 2009, she left the matrimonial home and started living with her parents. In May, 2009, the appellant-wife filed a petition under Section 125 Cr.PC. The respondent-husband too filed a petition under Section 13 of the Act but the matter was compromised between the parties as a result of which he withdrew the said petition and resumed cohabitation. Soon thereafter, the appellant-wife filed a petition under the Domestic Violence Act against the respondent-husband and his family and left the matrimonial home. The respondent-husband pleaded that all the efforts made by him to settle the matter proved to be futile.

3. On the contrary, the appellant-wife in her written statement filed before the Court below, refuted and denied the allegations of the respondent-husband. She submitted that she was still residing in the

matrimonial home. She alleged that her husband was a man of many vices and had in fact been living with a woman named Deepa at Garhi Harsu, Tehsil Pataudi and out of their illicit relationship, a son too had been born on 15.01.2012 in Swastic Hospital, Luxmi Bazar. She averred that she had been left with no other option but to file a petition under Section 125 Cr.PC on account of his illicit relations and his sheer neglect towards her and their children. She submitted that she filed a petition under Domestic Violence Act, which had since been decided on 10.10.2012 by the learned JMIC, Narnaul. She had also filed a criminal complaint under Sections 494 and 506 IPC wherein a report under Section 202 Cr.PC had been sought by JMIC, Mohindergarh in which the illicit relations had been found to be true.

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

1. Whether the petitioner is entitled for a decree of divorce on the ground mentioned in the petition, if so to what effect? OPP
2. Whether the petition is not maintainable in the present form if so to what effect? OPR
3. Relief.

5. Both the parties adduced evidence in support of their respective stands. The respondent-husband himself stepped into the witness box as PW-1. Besides himself, he examined two other witnesses and tendered documents Mark PA and PB. On the other hand, appellant-wife stepped into the witness box as RW-2 and examined three other witnesses. She also tendered documents Mark RA and RB.

6. On an analysis of the evidence led, the Court below held that the respondent-husband had failed to prove the allegations of cruelty against the appellant-wife. However, it dissolved the marriage between the parties on the ground of desertion.

7. We have heard learned counsel for the parties and perused 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, it failed to yield any positive result.

9. On a reappraisal of the entire evidence on record, the allegation of desertion levelled against the appellant-wife by the respondent-husband is belied by not only his testimony but also the testimony of PW-3 Luxmi, daughter of the parties, who admitted during her deposition that the appellant-wife visits her matrimonial home at village Bhagot every fortnight or so. The respondent-husband is living in Gurgaon while his daughter PW-3 -Luxmi is residing in village Baghot. No doubt, the parties have been living separately at different places for the last about 10 years but the main ingredients to constitute 'desertion' i.e. 'animus deserendi' and 'animus revertendi' are missing. It has been specifically deposed by the appellant-wife that she is working in a private company in Neemrana and visits her matrimonial home at village Bhagot over the weekends where her daughter is residing. Had the appellant-wife deserted the respondent-husband in 2009 as alleged, then the question of her visiting the matrimonial home at village Baghot every 10-15 days would not have arisen. The appellant-wife

has a plausible explanation and reason for staying away from her matrimonial home on account of her job, which cannot be said to be deliberate. The respondent-husband too lives in Gurgaon, where he is purportedly working and visits his village Baghot once in a month. A serious doubt is thus, raised qua the veracity of the allegations levelled against the appellant-wife by the respondent-husband in the light of the evidence led. The Court below rightly disbelieved the allegations of cruelty levelled against the appellant-wife but erred in holding that the appellant-wife had deserted the respondent-husband.

11. In these circumstances, we have no hesitation in allowing the present appeal. The impugned judgment dated 18.07.2017 passed by the court below is set aside.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

18.11.2019
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Whether speaking/non-speaking:	Yes/No
Whether reportable :	Yes/No