

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

**FAO-M-304-2017 (O&M)
Decided on : 20.09.2019**

Jyoti Sehgal @ Barkha

... Appellant(s)

Versus

Jaswinder Kumar and another

... Respondent(s)

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

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

Mr. Kuldeep V. Singh, Advocate
for respondent(s) No.1.

MANJARI NEHRU KAUL, J.

The instant appeal has been preferred by the wife – Jyoti Sehgal @ Barkha, whereby, she has impugned the judgment and decree dated 26th October, 2017, passed by the Ld. Additional District Judge, Jalandhar (hereinafter referred to as 'Ld. Court below'), vide which the petition filed by the respondent-husband/Jaswinder Kumar, under Section 13 and 13(1)(i) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), seeking dissolution of his marriage with the appellant-wife on the ground of adultery and cruelty, was allowed.

A few facts necessary for adjudication of the instant appeal, as pleaded in the petition filed by respondent No.1-husband (petitioner therein) before the Ld. Court below, may be noticed. The marriage between the parties was solemnized on 22nd November, 2010 at Jalandhar as per Hindu rites and customs. A son was born out of the said wedlock on 01st October, 2011, who is presently residing with the husband. It was a love marriage and hence no dowry

was given at the time of marriage. After marriage, the wife refused to live with

her parents-in-law and pressurized the husband to move into a separate accommodation. The parties thus started residing in a separate accommodation. The husband showered her with all the love and affection so much so he even let the wife's younger brother reside with them in their house. As the wife would neglect their son, the husband had to leave the child to the care of his parents. The mother of the wife would revile the husband, as he belonged to the 'Chamar' community and would dissuade her daughter from residing with him. So much so, the wife even refused to have any conjugal relations with the husband. The wife developed illicit relations with an Auto Driver namely 'Preet @ Pritpal Singh' (respondent No.2 therein), who would drive her to her workplace daily. When the husband came to know about it, he questioned her about the same and asked her to mend her ways but he was threatened by the wife not to interfere in her relationship with Preet @ Pritpal Singh or else she would circulate material that would sully his reputation in the society. All his pleadings with her fell on deaf ears. The husband managed to procure video clips from the mobile phone in which she and Preet @ Pritpal Singh were found in a compromising position, which were converted into a CD by him. On 02.04.2014, the mother of the wife as well as the councillor of the area were called and in the presence of the Councillor, the mother of the wife, took her away from the matrimonial home. On 09.04.2014, the wife and Preet @ Pritpal Singh came to the laboratory of the husband and demanded ₹ 10.00 lakhs from him in order to reconcile the matter, to which the husband flatly refused. The husband filed a petition under Section 13 of the Act, seeking decree of divorce on the grounds of adultery and cruelty, but subsequently, a compromise was effected on 21st May, 2014, whereby, it was agreed that the parties would file a joint petition under Section 13-B of the Act.

The wife made her statement at the first motion in Court and received a sum of

₹ 25,000/-, out of the agreed amount of ₹ 50,000/-. However, at the time of second motion, she withdrew her consent for mutual divorce. The wife even tried to kidnap their minor son. The husband moved a complaint against the wife before the Police. To avoid criminal prosecution, the wife instead lodged an FIR No. 37, dated 05.03.2015, under Sections 497 of IPC and 66E/57A of the Information & Technology Act against said Preet @ Pritpal Singh, wherein, she admitted to living in adultery with him, but twisted the facts in such a way to avoid any liability.

Per contra, upon notice of motion having been issued, the appellant-wife (respondent No.1 therein) refuted and denied the allegations of respondent No.1 - husband, in her written statement filed before the Ld. Court below. She admitted the factum of their marriage as well as the birth of their son. She alleged that the husband had concocted a story with an ulterior motive to malign her. She submitted that neither were there any illicit relations between her and Preet @ Pritpal Singh nor was there any CD of her and Preet @ Pritpal Singh, much less in a compromising position.

Said Preet @ Pritpal Singh, who was arrayed as respondent No.2 (respondent No.2 therein) in the petition filed before the Ld. Court below, also filed his separate written statement by taking preliminary objection *qua* the maintainability of the petition and categorically denied all the allegations against him. He admitted that the respondent No.1-Jyoti Sehgal @ Barkha, used to commute to her workplace in his Auto Rickshaw. He stated that there was a marital dispute between the husband and wife and in order to save their skin, they had got registered a false FIR against him. He submitted that the appellant-wife/respondent No.1 had in fact wanted to marry him, but since he had refused, it was only then she had married respondent No.1 - Jaswinder Kumar. She was

unhappy with her marriage with respondent No.1 – husband and had been pressurizing him (Preet @ Pritpal Singh) to marry her. Since he turned down her repeated proposals, she herself made those explicit videos with an unknown person and thereafter, moved a false application against him leading to the registration of FIR No. 37, dated 05.03.2015, under Sections 497 of IPC and 66E/57A of the Information & Technology Act.

The respondent No.1-husband filed the rejoinders to the written statements of both respondents No.1 & 2. He controverted the preliminary objections of the respondents and reiterated the averments made in the petition filed by him before the Ld. Court below.

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

- “1. Whether the petitioner is entitled to decree of divorce on the grounds of cruelty and adultery ? OPP*
- 2. Whether the petition is not maintainable ? OPR*
- 3. Whether the petitioner is estopped by her act and conduct from filing the present petition ? OPR*
- 4. Whether the petitioner has neither locus standi nor cause of action to file the present petition ? OPR*
- 5. Relief.”*

The parties adduced evidence in support of their respective stands before the Ld. Court below. The respondent No.1-husband himself stepped into the witness-box as PW1 and examined as many as four witnesses viz; PW-2/Arjan Dass, PW-3/HC Sardari Lal, PW-4/ASI Rakesh Kumar and PW-5/Ram Saran Bhatti. On the other hand, the appellant-wife stepped into witness-box as RW-1 and examined RW-2/Tripta and RW-3/Aarti Sehgal and closed her evidence.

After analyzing the evidence led by the parties and also the material on record, the Ld. Court below allowed the petition filed by the husband and dissolved the marriage between the parties under Sections 13 and 13(1)(i) of the Act on the grounds of adultery and cruelty.

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

It may be noticed that during the course of arguments the parties reiterated their earlier versions and maintained their respective stands as taken before the Ld. Court below. Thus, the possibility of the parties arriving at any amicable settlement seems impossible.

The allegations levelled against the husband that he had concocted a story to malign his wife cannot be digested. No husband will fabricate a story to bring his wife to any kind of disrepute. The husband, in fact, comes across as being very magnanimous inasmuch as he not only let his wife's brother to stay with them in their matrimonial home but also provided financial assistance to PW-3/Aarti i.e. the sister of the wife, who testified that he had provided for her medical expenses. Further, the testimony of the sister of the wife i.e. RW-3/Aarti demolishes the case of the appellant-wife *qua* her not being in any adulterous relationship with Preet @ Pritpal Singh. RW-3/Aarti admitted that Ex.PM, was her statement recorded in 'State Vs. Preet @ Pritpal Singh', wherein, she had categorically stated that her sister had developed intimacy with said Preet @ Pritpal Singh. So much so, RW-3/Aarti also admitted that a MMS had been prepared by the said Preet @ Pritpal Singh pertaining to his relationship with her sister i.e. appellant-wife (Jyoti Sehgal @ Barkha). In her testimony the appellant-wife has come up with a version that she had been administered some intoxicating substance and thereafter sexually violated by respondent No.2 i.e. Preet @ Pritpal

Singh for which he had been continuously extending threats to her deserves to be discarded and is clearly an after thought. It, thus, leaves no manner of doubt that the wife was indeed in an adulterous relationship with Preet @ Pritpal Singh, which led to the respondent-husband seeking dissolution of his marriage with the appellant-wife. In the case in hand, it is not that the husband merely had a suspicion that the wife may have been in an adulterous relationship with Preet @ Pritpal Singh. The allegation of the appellant-wife being in an adulterous relationship with Preet @ Pritpal Singh is supported by enough evidence on record.

The evidence led, unerringly points to the wife being in an adulterous relationship with respondent No.2 - Preet @ Pritpal Singh and to cover up her own wrongs, she has levelled false allegations against the husband. It stands proved that the act and conduct of the wife was such which would entitle the husband to dissolution of his marriage.

As a sequel to the above discussion, we do not find any ground to interfere in the impugned judgment and decree dated 26th October, 2017, of the Ld. Court below and the same is upheld. The instant appeal is thus, dismissed.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

September 20, 2019

J.Ram

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