

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

**FAO-6462-2018
Decided on : 26.07.2019**

Geeta Rani

... Appellant(s)

Versus

Sunil Kumar

... Respondent(s)

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

Argued by: Mr. J.P. Sharma, Advocate
for the appellant(s).

Mr. Minkal Rawal, Advocate
for the respondent(s).

MANJARI NEHRU KAUL, J.

The instant appeal has been filed against the impugned judgment and decree dated 06.09.2018, passed by the Ld. District Judge (Addl. Family Court), Karnal (hereinafter referred to as 'the Ld. Family Court'), whereby, the petition filed by the respondent-husband under Section 9 of the Hindu Marriage Act, 1955 (for brevity 'the Act'), seeking restitution of conjugal rights, was allowed.

A few facts necessary for adjudication of the case, as narrated in the petition filed by the respondent-husband (appellant therein) before the Ld. Family Court, may be noticed. The marriage between the parties was solemnized on 25.11.2007 as per the Hindu rites and ceremonies at Village Ramba, Distt. Karnal. Out of the said wedlock, a male child was born in the year 2009. The marriage was simple in nature sans any dowry and only customary gifts were exchanged between the parties. The respondent-husband cared for his appellant-wife and showered her with love and affection but the same was not reciprocated by the appellant-wife who would often quarrel and insult the respondent-husband and his family on some pretext or the other. The appellant-wife would many a times leave

the house in the morning and not return till late in the evening. When questioned, she would threaten the respondent-husband and his family to falsely implicate them in a case of dowry. It was also averred that the appellant-wife was an educated lady wanting to lead a life of luxury, who had gone to the extent of even telling the respondent-husband that she felt suffocated in their house and was unable to live with him and his family. Several Panchayats were convened by by the respondent-husband and his family to bring about a reconciliation between them, but in vain. Finally, in January, 2011, the appellant-wife went to her parental house along with the minor child on the pretext of attending her cousin's marriage. While going, she took along all her jewellery, clothes and costly articles. When the respondent-husband went to bring her back from her parental home, she refused to accompany him, and rather threatened that he would be falsely implicated in criminal cases. Soon thereafter, the appellant-wife lodged an FIR bearing No. 800, dated 12.11.2013, under Sections 406, 498A IPC, against the respondent-husband. She also filed a complaint under the Protection of Women From Domestic Violence Act (in short 'the DV Act') against the respondent-husband and his family. A petition under the Guardian and Wards Act for the custody of their minor son was also filed by the respondent-husband.

Per contra, the appellant-wife (respondent therein) in her written statement filed before the Ld. Family Court, refuted and categorically denied the averments made in the petition filed by the respondent-husband by submitting that in fact, it was the respondent-husband, who had himself thrown her out from the matrimonial home after subjecting her to harsh treatment including severe beatings. She submitted that the respondent-husband and his family were dissatisfied with the dowry articles given to her at the time of the marriage, even though her parents had spent about ₹ 10.00 lakh on her marriage. She further submitted that the entire

gifts were given. She was mercilessly beaten up by the respondent-husband at the behest and instigation of his parents when her father expressed his inability to accede to their demand of a car. Besides this, the appellant-wife levelled serious allegations against the respondent-husband and his family running a prostitution den in a portion of their house and on her objecting to the same, she was subjected to merciless beatings. As per her submissions, the respondent-husband behaved well for sometime after the birth of their child, but the same was short-lived and finally in January, 2011, she was thrown out of her matrimonial home after being assaulted with a 'danda'. Her minor son too was not spared who also suffered an injury on his head as a result of 'danda' blow and for which he had to be hospitalized. A Panchayat was convened by the father of the appellant-wife in April, 2011, but the same failed to yield any positive result, as the respondent-husband and his family stuck to their demand of more dowry including a car. When all efforts to bring about an amicable settlement between the parties failed, the father of the appellant-wife asked the respondent-husband and his family to return all the dowry articles, but they misbehaved with her father and threatened him with dire consequences, if such demands were raised ever again. It was submitted that it was in this factual background that an FIR was lodged against the respondent-husband and his family and a petition under Section 125 Cr.P.C. was filed by the appellant-wife. She further submitted that the petition under Section 9 of the Act filed by husband was in retaliation to the FIR and complaint under Section 12 of the DV Act as well as petition under Section 125 Cr.P.C. filed by her.

On the pleadings of the parties, the following issues were framed by the Ld. Family Court:-

- “1. *Whether the petitioner is entitled to a decree of restitution of conjugal rights, as prayed for? OPP*

2. *Whether the petition is not maintainable? OPR.*
3. *Relief.”*

In order to prove his case, the respondent-husband himself stepped into the witness-box as PW-1 and examined his brother Yashpal as PW-2 and closed his evidence. On the other hand, the appellant-wife stepped into witness box as RW-1 and examined his father Sumer Chand as RW-2.

After going through the pleadings of the parties and the evidence on record, Ld. Family Court allowed the petition under Section 9 of the Act of the respondent-husband.

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

Learned counsel for the appellant not only stuck to her stand and reiterated the averments made before the Ld. Family Court, but also vehemently urged that the Ld. Family Court, while allowing the petition failed to appreciate that not even a single person, who would have attended the Panchayats convened by the respondent-husband to bring about rapprochement between the parties had been examined by him. It was further argued that Ld. Family Court failed to appreciate that admittedly there were several criminal and civil litigations pending between the parties and hence the question of allowing the petition under Section 9 of the Act did not arise.

On re-appraisal of the evidence and other material on record, there is no manner of doubt that the appellant-wife made it amply clear and evident that she does not wish to live with the respondent-husband under any circumstances. Both the respondent-husband, who stepped into the witness-box as PW-1 and his brother PW-2/Yash Pal corroborated each other on all material aspects of the case.

In fact, it would be pertinent to mention that the FIR under Sections 406, 498-A

and his family ended in their acquittal. The judgment of acquittal of Ld. Trial Court exhibited as Ex.P1 creates a serious dent and raises big question mark *qua* the veracity of the allegations levelled against the respondent-husband of not only the dowry demand but also allegations against him and his family of running a prostitution den. The respondent husband also proved copy of his statement, Mark 'C', along with statement of the appellant-wife, Mark 'B', which was recorded in her complaint under the D.V. Act, wherein, she specifically stated that she did not want to live with the respondent-husband under any circumstances, even though, the respondent-husband had expressed a desire to continue live with her. It would also be relevant to notice that the complaint under the D.V. Act was dismissed vide order, Mark 'A', duly proved by the respondent-husband.

As a sequel to the above discussion, it stands proved that the appellant-wife has withdrawn from the society of the respondent-husband without any just or reasonable excuse. Once it stands established that her allegations *qua* domestic violence and demand of dowry were not believed by the trial Court, the onus of proving reasonable excuse to withdraw from the society of the respondent-husband lay on her, which she has miserably failed to prove.

Keeping in view the facts and circumstances of the case, we feel that no interference in the judgment and decree passed by the Ld. Family Court is called for. Consequently, the present appeal stands dismissed and the judgment and decree dated 06.09.2018 of the Ld. Family Court is upheld.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

July 26, 2019

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No