

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

FAO-6995-2018

Decided on : October 22, 2019

Mohan Singh

..... Appellant

Versus

Reena

..... Respondent

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

Argued by : Mr. Sumit Sangwan, Advocate
for the appellant.

Mr. Jagjit Beniwal, Advocate
for respondent.

Manjari Nehru Kaul, J.

The instant appeal has been preferred by the husband – Mohan Singh to impugn the judgment and decree dated 28.08.2018 passed by District Judge, Family Court, Bhiwani whereby his petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') was dismissed.

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

Marriage between the parties was solemnized on 13.07.2013 at village Prem Nagar District Bhiwani as per Hindu rites and ceremonies. No child was born out of the said wedlock. It was a simple marriage sans any dowry. The behaviour of the respondent-wife was highly unbecoming of a spouse both towards the appellant-husband and his family right from the

very beginning of their marriage. There was a lot of interference by the wife's family in their matrimonial affairs. She would shirk her matrimonial obligations and duties and would pressurize the appellant-husband to move into a separate accommodation. On 18.04.2014, the respondent-wife's brother took her away from the matrimonial home on the pretext of their mother being unwell and with an assurance that the respondent-wife would be sent back after about 10-12 days. When the respondent-wife did not return even after a fortnight, the appellant-husband went to her parental house to bring her back but was threatened with dire consequences, if he dared to visit their house ever again. In the first week of July, 2014 a panchayat was convened by the appellant-husband to make peace with the wife but the same proved futile. Thereafter, the respondent-wife moved an application in the Women's Cell, Bhiwani upon which the appellant-husband and his family were summoned. When the matter was inquired into, by the police, the allegations levelled against the appellant-husband and his family regarding demand of dowry, were found to be false. The respondent-wife then filed a petition under Section 125 Cr.PC and also moved an application before the State Commission for Women at Panchkula in order to harass and heap humiliation on the appellant-husband. It was thus, averred that the respondent-wife had withdrawn from his society since 18.04.2014 willfully and deliberately.

3. On the contrary, the respondent-wife in her written statement filed before the Court below, refuted and denied the allegations of the appellant-husband. She submitted that even though her parents had spent approximately Rs.15 lakhs on their marriage and had given her sufficient

dowry, the appellant-husband and his family were dissatisfied and would subject her to continuous taunts. Not only this, she would be compelled to get a car, money etc. by the appellant-husband and his family. Since she was unable to satisfy their demands, she would be subjected to merciless beatings. On 18.04.2014, the appellant-husband and his family conspired and after physically assaulting her, threw her out of the matrimonial home but not before retaining all her istridhan. On 28.07.2014, her parents convened a panchayat to settle the matter but it bore no fruit. It was also submitted by her that the husband would frequently harass and humiliate her and failed to fulfill his duties as a husband. Hence, she had been compelled to live at her parental home against her wishes even though she was still willing to cohabit with the appellant-husband and continue to perform her duties as a wife.

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

1. Whether the petitioner is entitled for dissolution of his marriage with the respondent by way of decree of divorce, on the grounds as mentioned in the petition?
OPP
2. Whether the petition is not maintainable in its present form? OPR
3. Whether the petitioner has no locus standi and no cause of action to file the petition? OPR
4. Whether the petitioner has not come to the Court with clean hands and has suppressed material facts from the

Court? OPR

5. Whether the petitioner is estopped by his own act and conduct from filing the present petition? OPR

6. Relief.

5. Both the parties adduced evidence in support of their respective stands. The appellant-husband examined three witnesses including himself as PW-1. On the other hand, respondent-wife stepped into the witness box as RW-1 and examined two other witnesses.

6. On an analysis of the evidence led, the trial Court dismissed the petition filed by the appellant-husband by holding that the appellant was unable to prove cruelty and desertion against the respondent-wife.

7. We have heard learned counsel for the parties and perused the evidence as well as other material available on record.

8. In the instant case, the appellant-husband is seeking dissolution of his marriage with the respondent-wife on grounds of cruelty and desertion. Since mental cruelty has not been defined in the Act, it would have to be inferred from the factual matrix of each individual case to arrive at a conclusion whether the same is made out or not. Admittedly, the parties have been living separately since 18.04.2014. Both the parties have come up with their own respective versions as to the reasons for residing separately. The case of the respondent-wife is that she had been subjected to acute harassment and humiliation as a result of which she was left with no other option but to get criminal cases registered against the appellant-husband including FIR No.19 dated 24.09.2015 registered under Sections 323, 498-A and 506 IPC. The case of the appellant-husband on the other

hand, is that in fact it was the respondent-wife, whose behaviour was highly unbecoming towards him and his family right from the very beginning of their marriage and all his efforts to bring about a reconciliation with her had failed. So much so, he had also been threatened by the respondent-wife and her family that he would have to face dire consequences some day.

9. It is an admitted fact that in the criminal cases instituted by the respondent-wife against the appellant-husband and his family, the appellant-husband was arrested and remained in custody. It is also a matter of record that the parents and the brother of the appellant-husband, who too had been arrayed as an accused, were exonerated by the investigating agency during the investigation itself and an application moved under Section 319 Cr.PC during the trial for summoning them was dismissed by the trial Court. Not only this, it is a matter of record that the appellant-husband was acquitted by the trial court after the institution of the petition under Section 13 of the Act.

10. Hence, all these developments and circumstances lend credence to the case of the appellant-husband that the marriage between the parties was mired in acrimony and misery from the very beginning. Further, the threats of dire consequences extended to him by the respondent-wife and her family were in fact real and not unfounded. The conduct of the respondent-wife in lodging such complaints against the appellant-husband would have naturally caused not only frustration but also deep anguish to the appellant-husband. No doubt, it has been urged by the learned counsel for the respondent-wife that she is still willing to live with the appellant-husband but her conduct speaks otherwise. All this has to be seen in the

background of an appeal having been preferred by the respondent-wife against the appellant-husband's acquittal in the criminal case. Had her intention been actually to reconcile and return to the matrimonial home, she would have refrained from instituting criminal cases against the appellant-husband and after he had earned an acquittal in those cases, she would have desisted from impugning the acquittal in an appeal.

11. 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. An affidavit dated 21.09.2019 was also filed by the appellant-husband wherein he undertook to pay an amount of ₹ 7 lakhs to the respondent-wife towards permanent alimony in case the instant appeal seeking dissolution of marriage was allowed.

12. In these circumstances, we have no hesitation in concluding that on account of the institution of cases and a period of long separation of 5½ years between the parties during which they have admittedly had no conjugal relations, the matrimonial bond between them is beyond repair. The parties seemingly have scant regard for each other's feelings and emotions. In the ultimate analysis, we are of the view that the respondent-wife has caused by her conduct acute mental agony and cruelty to the appellant-husband which has left no scope whatsoever for salvaging their marriage. The possibility of both of them leading a happy married life together is inconceivable on account of the bitterness which continues to exist between them.

Consequently, the present appeal stands allowed and the

impugned judgment dated 28.08.2018 passed by the court below is set aside.

The marriage between the parties is dissolved by way of decree of divorce.

Decree sheet be prepared accordingly. The appellant-husband shall however, remain bound by the affidavit dated 21.09.2019, which already stands taken on record and pay an amount of Rs.7 lakhs to the respondent-wife as full and final payment towards permanent alimony within a period of four weeks from the date of this order.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

October 22, 2019
sonia

Whether speaking/non-speaking: Yes

Whether reportable : No