

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : FAO-M No.213 of 2018

Date of Decision : January 22, 2020

Gurdarshan Singh Appellant

vs.

Urmila Devi Respondent

**CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY.
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA.**

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Present : Mr. H.P.S. Ghuman, Advocate
for the appellant.

Mr. Gaurav Singla, Advocate
for the respondent.

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MEENAKSHI I. MEHTA, J. :

Feeling aggrieved by the judgment and decree handed down by the learned Additional District Judge, Patiala (for short – 'the Trial Court') on 12.12.2017 whereby the petition as filed by the appellant-husband (hereinafter referred to as 'the appellant') against the respondent-wife (hereinafter referred to as 'the respondent') under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') for seeking dissolution of their marriage was dismissed, the appellant has chosen to prefer the present appeal.

2. As per the brief factual matrix, as set forth by the appellant in

his petition, the marriage between the parties was solemnized on 05.10.1997

according to the Sikh rites, without any dowry and two children were born out of this wedlock who are presently residing with him. From the very beginning, the behaviour of the respondent has been cruel towards him, his parents and family members as she used to use filthy language and to insult them and also to break the expensive household articles after quarrelling with them. She also compelled him to live separately from his family members and threatened to commit suicide so as to get him and his family members falsely implicated in a criminal case. She was having illicit relations with another person and did not mend her ways despite his having asked her to stop doing so. In the second week of December 2014, she left her matrimonial home without any sufficient reason, while taking away all her ornaments and clothes including the ornaments belonging to his family. When he went to her parental home to bring her back, she refused to accompany him. Thus, she had caused mental agony to him which amounts to cruelty on her part towards him and has also deserted him without any cogent reason.

3. The respondent, in her written reply, controverted the averments of the appellant, inter-alia, on the grounds of maintainability, cause of action, locus standi and estoppel. On merits, she admitted the factum of the relationship between the parties and two children having born out of their wedlock but she asserted that the appellant was a shrewd person. On 01.11.2014, he took her to State Bank of India, Nabha for operating the joint FDRs and got the same transferred to his own account. Thereafter, he

left her at her parental house while assuring that he would take her back after 2-3 days. It is the appellant who has been subjecting her to cruelty from the very beginning of their marital life as he levelled false allegations against her and had been quarrelling with her parents. He himself was having illicit relations with another lady and did not even allow their children to meet her. She was not ready to break the nuptial bond between them for the sake of the welfare of their children.

4. The appellant filed rejoinder to the written reply. On the basis of the pleadings of the parties, learned Trial Court framed the following issues on 31.03.2015 :-

“1. Whether the respondent has treated the petitioner with cruelty? OPP

2. Whether the respondent has deserted the petitioner without any reasonable ground? OPP

3. Whether the petition is not maintainable? OPR

4. Whether the petitioner has no cause of action or locus standi to file the present petition? OPR

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

6. *Relief."*

5. After evaluating and appraising the evidence, oral as well as documentary, as led by both the parties on the file in support of their respective contentions, learned Trial Court answered issues no.1 and 2 against the appellant and issues no.3 to 5 against the respondent and dismissed the petition.

6. We have heard learned counsel for both the parties in the present appeal and have also gone through the record thoroughly.

7. Learned counsel for the appellant has contended that the respondent was having extra-marital relations with two persons namely Lakhwinder Singh and Kuldeep Singh and despite repeated requests by the appellant, she did not mend her ways and this fact had resulted in the mental agony to the appellant which unambiguously amounted to cruelty. He has also contended that in his petition, the appellant has levelled specific allegations against the respondent regarding her illicit relations with another person but the respondent, in her written reply, has not denied the same, meaning thereby that she has admitted the above said fact. He has further contended that the respondent herself left her matrimonial home without any reasonable cause or excuse and has been residing at her parental house and has, thus, deserted the appellant and therefore, he is entitled to the dissolution of his marriage with the respondent but learned Trial Court has wrongly dismissed his petition and hence, the impugned judgment and decree are liable to be set aside.

8. However, learned counsel for the respondent has argued that the appellant has levelled blatantly false allegations against the respondent and has assassinated her character and the respondent, in her written reply, has denied all the allegations as levelled by him in this regard. Moreover, the appellant had left the respondent at her parental house with the assurance that he would take her back to her matrimonial home after 2-3 days and thus, the respondent has not deserted him as alleged by him and rather, she is still ready and willing to stay with him in her matrimonial house.

9. The appellant has sought the dissolution of his marriage with the respondent on two grounds, i.e. the cruelty as well as desertion. So far as the ground of desertion is concerned, it is pertinent to point it out here that as per the version of the appellant himself, as mentioned in his petition, the respondent had left her matrimonial home in the second week of December 2014, whereas he filed the divorce petition against her on 19.01.2015, i.e. just one month after his alleged desertion by her. It being so, this petition, on the afore-mentioned ground, is premature because to claim the divorce on this ground, the desertion should not be of less than two years immediately preceding the date of the institution of the petition, as envisaged under Section 13(1)(ib) of the Act. In these circumstances, it would be of no consequence to delve deep into the facts for ascertaining as to whether the respondent herself had left her matrimonial home or the appellant had left her at her parental house.

10. As regards the ground of cruelty, it is worthwhile to mention here that the appellant himself stepped into the witness-box as PW-1 and made depositions in his affidavit Exhibit PW-1/A in consonance with his averments as set-forth in his petition. PW-2 Labh Singh, PW-3 Pal Singh, PW-4 Surjit Singh, PW-5 Bhajan Singh, the co-villagers of the appellant and PW-6 Randeep Singh, i.e. the son of the parties, have also made depositions in their respective affidavits to corroborate the version of the appellant. However, the above-named PW-3 and PW-4 were not cross-examined and rather, on 29.11.2016, the appellant made a statement in the Trial Court that they had been won over by the respondent. In this eventuality, the depositions, as made by them in their respective affidavits, cannot be read in the evidence of the appellant.

11. Further, PW-2 Labh Singh has stated during his cross-examination that in his presence, the respondent never threatened to commit suicide. PW-5 Bhajan Singh has also deposed during his cross-examination that the respondent had never insulted the appellant or any of his relatives nor had ever broken any household articles, in his presence. Again, in paras no.13 of their respective affidavits, Exhibits PW-2/A and PW-5/A, these witnesses have deposed that the appellant had filed a complaint in the office of Senior Superintendent of Police, Patiala regarding the illicit relations of the respondent but during their cross-examination, they have shown their ignorance regarding the afore-said fact. Though in his affidavit, PW-6 has made depositions regarding the respondent having illicit relations with the

above-said persons but however, throughout in his affidavit, he has not uttered even a single word regarding any incident or occurrence leading him to doubt the character of the respondent, i.e. his mother.

12. So far as the testimony of the appellant himself as PW-1 is concerned, it is apposite to mention here that during his cross-examination, he has stated that his own parents had filed a complaint against him to DSP Nabha and this fact shows that he was having strained relations even with his own parents and in these circumstances, his depositions regarding the alleged rude behaviour towards his parents and their humiliation at the hands of the respondent lose its evidentiary value. Even otherwise, his allegations regarding the respondent having subjected him and his relatives to cruelty are too vague as he has not come forward with the time, date and manner of any specific instance in this regard in his petition as well as the depositions.

13. Though the appellant has assailed the character of the respondent by levelling allegations regarding her extra marital relations with the above said two persons but during his cross-examination as PW-1, he has stated that Lakhwinder Singh was the driver of the school bus in which his children used to go. PW-6, the son of the parties, has also stated during his cross-examination that the respondent used to get the school fees deposited through said Lakhwinder Singh and during her cross-examination as RW-1, even the respondent has deposed that she used to make calls to Lakhwinder Singh for depositing the fees of her children and to enquire

about the timings of the bus etc. She has further stated that Kuldeep Singh used to visit her house as he was known to the appellant and used to come to him to take medicines from him. PW-6 has also admitted the factum of the appellant running his so-called clinic at their home. The mere facts, that the respondent used to make calls to Lakhwinder Singh or Kuldeep Singh visited their house, in themselves, can, by no stretch of imagination, be taken to be sufficient at all to lead to the inference regarding her having extra marital relations with both of them.

14. To add to it, Exhibit P-1 is the report as submitted to SSP, Patiala after inquiring into the complaints as moved by the appellant wherein it was mentioned that the CD, as submitted by the appellant, was not found to be containing any objectionable material and the allegations regarding the respondent having illicit relations with the said two persons were also found to be baseless. In these circumstances, it is crystal clear that learned Trial Court has rightly observed that the appellant has not been able to prove that the respondent had subjected him to cruelty.

15. As regards the contention of learned counsel for the appellant qua the implied admission on the part of the respondent regarding the said allegations of her extra-marital relations, it is germane to point it out here that in her written reply, the respondent has categorically denied the allegations, as levelled by the appellant in this regard in para nos.9, 10 and 11 in his petition. Moreover, in his petition as well as in his aforesaid affidavit, the appellant has not even disclosed the names of the persons,

with whom the respondent was allegedly having extra marital relations. Rather, in para no.11 of his petition, he has stated that the names of the said persons were mentioned in the complaint as made by him to the police and in the corresponding para in her written-reply, the respondent had categorically denied the correctness of these allegations and asserted that the appellant had levelled false allegations against her without any reasonable cause or excuse. In these circumstances, there is no occasion for drawing any inference of implied admission on the part of the respondent in respect of the allegations as levelled in the above said part of the petition.

16. As a sequel to the foregoing discussion, it follows that the impugned judgment and decree do not suffer from any infirmity, illegality or perversity and hence, the same do not warrant any interference by this Court. Resultantly, this appeal, being sans any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

January 22, 2020
monika

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.