

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 107

Case No. : FAO No. 7205 of 2019

Date of Decision : June 29, 2020

Parveen Kumari		Appellant
vs.		
Satish Kumar and another		Respondents

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

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Present : Mr. Dheeraj Mahajan, Advocate
for the appellant.

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MEENAKSHI I. MEHTA, J. :

Feeling aggrieved by the judgment and decree dated 16.11.2019, as handed down by learned Principal Judge, Family Court at Gurdaspur, whereby the petition, as preferred by respondent no.1-husband (here-in-after referred to as 'the husband') against the appellant-wife (here-in-after referred to as 'the wife') alongwith respondent no.2, under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') for seeking dissolution of their marriage, was allowed, the wife has chosen to prefer the instant appeal.

2. Bereft of unnecessary details, the factual matrix, as canvassed by the husband (petitioner before the Court below) in the petition, is that the marriage between him and respondent no.1, i.e. the wife, was solemnized on 17.11.2012 at Dina Nagar, Tehsil and District Gurdaspur, according to Hindu rites and ceremonies and one male child namely Harsh Angurala was born out of their wedlock who was residing with the wife. Since the very beginning of their marital

life, the behaviour of his wife was not good towards him and his family members and she used to misbehave with them. She had also been compelling him to shift to Gurdaspur and on his refusal for the same, she used to create scene and to use abusive language for him and his family members in the presence of their co-villagers. Ultimately, in order to save his marital life, he shifted to Gurdaspur in October, 2013.

3. The husband, further, averred that the wife used to talk to the strangers during late hours at night and on his raising objection for the same, she told him that it was none of his business. He even purchased a plot at Mukerian Road in the name of his wife to make her feel and realize his love and affection for her. However, on 20.10.2016, respondent no.2 (impleaded as such in the petition also) disclosed to him about his having an affair with the wife since 2008 which was continuing even after the solemnization of his (husband's) marriage with the wife. Respondent no.2 further told him that the wife was also having extra-marital relations with another person who was her colleague at the school where she was working as a Senior Lab Attendant. He (the husband) also recorded the conversation between him and respondent no.2 which suggested the adulterous relations between the wife and respondent no.2. Moreover, respondent no.2 sent several pictures to him reflecting the relations between him and the wife. Screenshots of the chat between the wife and respondent no.2 were annexed with the petition.

4. The husband also averred that he approached the father of the wife and narrated the entire facts qua the extra-marital relations between the wife and respondent no.2, to him and then, her (wife's) father accompanied him to the school and asked the wife about the same. Initially, she did not answer any of his

questions but when he played the recorded conversation in her presence, she confessed her guilt and disclosed that she was having extra-marital relations with respondent no.2 since the year 2008 and also revealed about her such relations with the persons named Himmat and Happy. Thereafter, the wife, in a bid to save her skin, got respondent no.2 falsely implicated in a criminal case under Section 376 IPC, wherein the Senior Superintendent of Police concerned, conducted an inquiry and it was found out that there was no truth in her allegations and resultantly, the recommendation was made to cancel the FIR. In October 2016, the wife left her matrimonial home while taking away her minor child, the gold articles, valuable clothes and cash to the tune of Rs.30,000/-.

5. In her written-statement, the wife(as respondent no.1) contested the claim of the husband, inter-alia, on the grounds of maintainability as well as suppression of true and material facts from the Court. Though she admitted the factum of the solemnization of marriage between her and the husband as well as of one male child having born out of this wedlock but she specifically denied the allegations of her having misbehaved with the husband or his family members and of her having extra-marital relations with anyone and rather, asserted that the husband and his family members were not satisfied with the dowry, as given in the marriage and they started harassing and maltreating her and demanding one Swift DZire car and cash amount of Rs.10,00,000/-. In fact, the husband wanted to marry a girl of his choice who was serving with him in his office and therefore, he levelled false allegations assassinating her character so as to seek divorce from her. Respondent no.2 is a close friend of the husband and he had raped her after administering some substance in her tea and taken some photographs and made video recordings while she was unconscious and later-on, started black-mailing her

and she also lodged FIR against respondent no.2. Her husband, instead of helping her, started supporting respondent no.2 and ousted her from her matrimonial house on 25.10.2016 while levelling false allegations against her. She prayed that the petition be dismissed.

6. Respondent no.2, in his separate written-statement, asserted that in fact, he and the wife were known to each other since the year 2009 and were friends. The wife, without disclosing the factum of her being married and also having a child, started persuading and pressurizing him to marry her and on his refusal for the same after coming to know about her marital status, she got him falsely implicated in the above-said criminal case.

7. On the basis of the pleadings of the parties, learned Trial Court framed the following issues on 20.11.2017 :-

- “1. Whether respondent No.1 is leading adulterous life with respondent No.2 ? OPP
2. Whether respondent No.1 has treated the petitioner with cruelty ? OPP
3. If issues No.1 and 2 are proved, whether the petitioner is entitled to a decree of divorce ? OPP
4. Whether the petitioner is barred by his own act and conduct to file the present petition ? OPR
5. Relief.”

After hearing learned counsel for both the parties and perusing the evidence as led by the parties on the record in support of their respective contentions, learned Trial Court answered all the issues in favour of the husband and allowed the divorce petition vide the impugned judgment and decree.

8. We have heard learned counsel for the appellant-wife in the appeal in hand and have also perused the record thoroughly.

9. Learned counsel for the wife contended that the photographs placed on the file as Annexures A-1 to A-8, do not stand duly proved on the record as required under Section 65-B of the Indian Evidence Act, 1872 (for short 'the Act of 1872') and in support of this contention, he relied upon Anvar P.V. vs. P.K. Basheer and others, 2015(1) SCC (Civil) 27, wherein the Hon'ble Apex Court observed that *“in case of CD, VCD, chip, etc., the same would be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, was inadmissible.”*

10. However, we do not find this contention to be tenable because PW-4 Sunil Kumar, the photographer, tendered the original certificate under Section 65B of the Act of 1872 on the record as Ex.PW-4/A and he also specifically deposed that he had taken the print out of the photographs, i.e. Annexures A-1 to A-8, from the internal memory of the mobile phone brought to his shop by the husband. Moreover, in a subsequent verdict, as rendered by the Hon'ble Supreme Court in the case titled as State by Karnataka Lokayukta Police Station, Bengaluru vs M. R Hiremath, 2019 (3) SCC (Cri) 109, it has been held while referring to the above-discussed observations, as made in Anvar P.V.'s case (supra), that :-

“14. The provisions of Section 65B came up for interpretation before a three judge Bench of this Court in Anvar P.V. v. P.K. Basheer 2014(4) R.C.R.(Civil)504 : (2014)10 SCC473. Interpreting the provision, this Court

'Any documentary evidence by way of an electronic record under the [Evidence Act](#), in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer.'

*[Section 65B\(4\)](#) is attracted in any proceedings “where it is desired to give a statement in evidence by virtue of this section”. Emphasising this facet of sub-section (4), the decision in *Anvar* holds that the requirement of producing a certificate arises when the electronic record is sought to be used as evidence. This is clarified in the following extract from the judgment :*

“Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc., without such safeguards, the whole trial based on proof of electronic records can lead to travesty of

justice.' (emphasis supplied)."

In view of the afore-discussed observations, it becomes clear that the photographs produced in the evidence as Annexures A-1 to A-8 (32 photographs including snap-shots of chat) deserve to be read in evidence. It being so, it is explicit that the observations, as made by the Hon'ble Supreme Court in Anvar P.V.'s case (supra), do not further the cause of the wife.

11. Though learned counsel for the wife further contended that the aforementioned photographs were manipulated and falsely prepared but, again, this contention also does not hold much water in view of the above-discussed testimony of PW-4 which stands duly supported by the contents of his certificate Ex.PW-4/A. Even otherwise, in normal course of events, if anybody intends to malign the reputation of a person by allegedly manipulating and falsely preparing the photographs reflecting that person to be having objectionable character, then one or two photographs would serve the same purpose and that person would not go on to falsely prepare as much as 32 photographs.

12. Learned counsel for the wife also contended that the wife never visited any hotels with respondent no.2, as alleged by the husband and the testimony of PW-3 Ajay Kumar, the Manager of Hotel Mao Fort, Raja Ka Bagh, did not inspire any confidence.

13. However, we do not find any merit in this contention because the above-named PW-3, who had brought the summoned record, i.e. Guest/Tourist Visit Register of the Hotel, specifically deposed that this record was duly attested by the Inspector (Hotels), District Tourism Development Office, Kangra and as per their record, respondent no.2, along-with the wife, visited their hotel on 11.01.2016, 05.02.2016 and 02.03.2016 and stayed there for several hours during

the day time. Moreover, RW-1 Naresh Kumar, Clerk of the School at Chhina Bet, where the wife was posted during the afore-mentioned period, also categorically stated that on 11.01.2016, the wife had remained on medical leave and on 02.03.2016, she was on examination duty in some other school and during his cross-examination, he further stated that the wife remained on leave on 05.02.2016 also. Thus, the above-referred testimony of PW-3 stands sufficiently corroborated on the record in view of the afore-discussed depositions of RW-1. In these circumstances, it was entirely for the wife or respondent no.2 to produce some cogent and plausible evidence on the file to rebut the above-discussed testimony of afore-named PW-3 but they have not been able to do so. It being so, there are no cogent reasons to discard or disbelieve the testimony of PW-3.

14. Lastly, learned counsel for the wife contended that the testimonies of the husband himself as PW-1 and his maternal uncle Mukhtiar Chand as PW-2 do not suffice at all to prove that the wife was having adulterous relationship with respondent no.2 as no one from the neighbourhood of the couple has been examined by the husband to substantiate the said allegation. He placed reliance upon a judgment of Hon'ble Apex Court in Chetan Dass vs. Kamla Devi, 2001 AIR (SC) 1709 and the judgments rendered by this Court in Kailash Devi vs. Jai Kishan(Lance Naik) and another, 2004(4) RCR (Civil) 111, Usha Rani vs. Pardeep Kumar, 1997(1) RCR (Civil) 476 and Gurbalwinder Singh vs. Baljit Kaur and others, 2005(1) RCR (Civil) 551 in support of his contention.

15. However, the observations, as made by the Hon'ble Apex Court in Chetan Dass (supra) and by this Court in Kailash Devi (supra), Usha Rani (supra) and Gurbalwinder Singh (supra) do not come to the aid of the wife at all

relations between the erring spouse and the paramour were produced in the evidence whereas in the case in hand, as many as 32 photographs, i.e. Annexures A-1 to A-8 have been produced and proved on the file, which sufficiently corroborate the allegations of the husband regarding the extra-marital relations between both the respondents.

14. As a sequel to the foregoing discussion, it follows that the impugned judgment and decree do not suffer from any illegality, irregularity, infirmity or perversity and hence, this appeal being, sans any merit, deserves dismissal. Accordingly, the same is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

June 29, 2020
monika

Whether speaking/reasoned ?

Yes/No.

Whether reportable ?

Yes/No.