

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

FAO-1691-2016 (O&M)
Date of decision: 24.08.2022

Smt. Neeru

...Appellant

Vs.

Sh. Yogesh Bali

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Sukhsharan Sra, Advocate,
for Mr. Abhilaksh Grover, Advocate,
for the appellant.

Mr. R.S. Sailani, Advocate,
for the respondent.

Ritu Bahri, J. (oral)

The present appeal has been filed against the judgment and decree dated 07.01.2016 passed by the District Judge, Family Court, Faridabad, whereby petition filed by Smt. Neeru-petitioner (appellant herein) under Section 13 of the Hindu Marriage Act, 1955, seeking decree of divorce on the ground of cruelty, has been dismissed.

Marriage of the parties was solemnized on 23.04.2000 according to Hindu rites and ceremonies. Out of this wedlock, two children namely Mohit Bali (son) and Lovisha Bali (daughter) were born on 26.06.2001 and 08.03.2003 respectively. As per petitioner-appellant, respondent-husband and his mother used to harass and humiliate her on the account of bringing insufficient dowry. She was also given beatings many a times. On 09.08.2011, after giving beatings, she was turned out of the matrimonial house by her husband and mother-in-law. Finally, appellant-

wife filed a petition under Section 13 of the Hindu Marriage Act for dissolution of their marriage on the ground of cruelty and harassment meted out to her.

Upon notice, respondent-husband filed written statement taking preliminary objections with regard to maintainability, locus-standi, cause of action etc. It was stated that the appellant-wife had left the matrimonial home leaving the children at his house. On merits, all the allegations levelled by the petitioner-wife were denied and prayer for dismissal of the petition was made.

From the pleadings of the parties, following issues were framed:

1. Whether the petitioner was subjected to cruelty by the respondent on the grounds as mentioned in the petition? OPP
2. Whether the petitioner is guilty of her own wrongs on the grounds mentioned in the written statement? OPR
3. Relief.

In order to prove her case, petitioner-wife herself stepped into the witness box as PW-1 and examined Vibhu Sharma (PW-2).

On the other hand, respondent-husband appeared into the witness box as RW-1 and tendered his affidavit Ex.RW1/A.

Family Court, after going through the evidence led by the parties, observed that the appellant-wife had taken no steps to get the custody of the children and she never tried to meet the children after 2011. It was further observed that parents of the appellant-wife had given an affidavit in favour of respondent-husband and this fact was admitted by the appellant-wife as well as her witness. Affidavit of the parents of the

appellant nullified her stand that she had been harassed for demand of dowry. No evidence was led by the wife to show that the respondent-husband had levelled false allegation against her in his bail application in a case of dowry harassment, as no such bail application was placed on record before the Family Court. Due to lack of evidence of mental or physical cruelty, her petition was dismissed by the Family Court.

Heard, learned counsel for the parties.

In the present case, one thing is very clear that it is not the husband, who has harassed the wife. Rather, parents of the wife had submitted an affidavit before the Family Court supporting the version of the husband. The only fact requires to be examined in this case is that after being separated in the year 2011, the husband and wife did not reside together. It is a dead marriage. The appellant is not in touch with her children, who are being brought up by their father (husband of appellant).

In the present case, the appellant-wife has not filed any application for interim maintenance as well. No useful purpose will be served in case, the parties are compelled to reside together as husband and wife. As per salary certificate Ex.PW1/X, the appellant was getting monthly salary of Rs.18,000/-. Affidavit of the parents of appellant is part of the record, in which, it is specifically stated by her father that his daughter (appellant) was never troubled for demand of dowry by her husband and that she had filed a false case against him. After separation from her husband, the appellant had stayed with her parents for three months. Thereafter, she stayed as a paying guest in a house. It was further stated in the affidavit that the allegations levelled by his daughter (appellant) against her husband (respondent) were all false. To the same effect are the affidavits

given by Smt. Veena Sharma, mother, Smt. Anju Sharma, sister and Gaurav Kaushik, brother of the appellant. The affidavits given by the family members of the appellant make out a case of cruelty against the husband (respondent) by the wife (appellant).

This Court in **Amandeep Goyal vs. Yogesh Rani**, FAO-M-101-2019 (decided on 07.10.2021) had an occasion to consider a case, wherein the couple had two children. The elder son, who was suffering from blood cancer was in the custody of the husband and the younger son was staying with his mother. They both were working as teachers with Punjab Government. The wife, in that case, was not ready to give divorce to her husband, even though the husband had offered one time permanent alimony in the name of minor son, who was staying with the mother. Reference was made to the judgment passed by Hon'ble the Supreme Court in **Naveen Kohli vs. Neetu Kohli**, 2006 (4) SCC 558. That was a case of irretrievable breakdown of marriage, wherein the wife was not ready to give divorce to the husband by way of mutual consent. Hon'ble the Supreme Court held that it was a cruel treatment as the marriage had broken irretrievably. They were granted divorce as there was no chance of coming together or living together again. Non grant of decree of divorce would be disastrous to the parties. Further, in **K. Srinivas Rao vs. D.A. Deepa**, 2013 (5) SCC 266, Hon'ble the Supreme Court has observed that once the marriage is dead for all purposes, it cannot be revived by Court's verdict, if parties are not willing, since marriage involves human sentiments and emotions and if, they have dried up, there is hardly any chance of their springing back to life on account of artificial reunion created by Court decree.

In the facts of the present case, even though, the husband has faced cruelty at the hands of wife, as is evident from the affidavits given by appellant's father, mother, sister and brother, he has not been granted divorce. If, this appeal is dismissed, it will not create an atmosphere of patch up for both the parties. The husband-respondent has brought up two children alone. The appellant-wife is financially independent and has consciously left her matrimonial house. Neither she filed any petition for the custody of the children nor she made any attempt to meet them. In this backdrop, we are of the view that no useful purpose will be served by asking the parties to reside together as husband and wife. Rather, non grant of divorce would amount to mental cruelty towards the appellant as well as the respondent.

Keeping in view the above discussion and the ratio of the aforesaid judgments, the present appeal is allowed and the impugned judgment and decree dated 07.01.2016 passed by the District Judge, Family Court, Faridabad, are set aside. Decree of divorce is granted to the parties. Decree sheet be drawn accordingly.

(RITU BAHRI)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

24.08.2022
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No