

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-5943-2017 (O&M)
Date of decision: 27.10.2022

Mandeep Kaur

...Appellant

Vs.

Kamaljit Singh

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: Mr. Ankush Singla, Advocate,
for the appellant.

Mr. A.S. Barnala, Advocate,
for the respondent.

Ritu Bahri, J.

The present appeal has been filed against the judgment and decree dated 11.07.2017 passed by the District Judge, Family Court, Barnala, whereby petition filed by Mandeep Kaur-petitioner (appellant herein) under Section 13 of the Hindu Marriage Act, 1955, seeking decree of divorce, has been dismissed.

Marriage of the parties was solemnized on 15.10.2003 in the area of Barnala by way of *Anand Karaj* ceremony. Out of this wedlock, one male child namely Harmanpreet Singh was born on 23.07.2004. As per petitioner-appellant, after few months of the marriage, respondent-husband and his family members started demanding Rs.50,000/- from her, however she refused to do so as her father was not in a position to pay such amount.

Her in-laws often used to harass and humiliate her on the account of bringing insufficient dowry. She was also given beatings many a times. On

25.12.2009, they conspired to kill the petitioner-appellant by setting her ablaze, but somehow, she managed to escape from there and started residing with her parents. On 25.05.2010, the respondent-husband came at her parental house and started abusing her. He also caused injuries to her. In this regard, FIR No.141 dated 27.05.2010, under Sections 452/323 IPC was registered against the respondent-husband. Many a times, Panchayats were convened, but to no avail. 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 faced by her.

Upon notice, respondent-husband filed written statement taking preliminary objections with regard to concealment of facts, locus standi, estoppel, maintainability etc. It was stated that the appellant-wife had herself left the matrimonial home. While leaving the house, she took all the valuable articles, cash, jewellery etc. without the consent of the respondent-husband. Rather, respondent-husband was always willing to reside in the company of the wife. He has got his minor son admitted in Jawahar Navodia Vidyalya, Dhillwan, Tehsil Tapa, who is studying in 7th standard. He was bearing all the education expenses of his son. It was further stated that respondent-husband was acquitted in the criminal case bearing FIR No.141 dated 27.05.2010, which got registered by the petitioner-wife. All other 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 is entitled for dissolution of her marriage with the respondent as prayed for? OPP

2. Whether petition filed by the petitioner, is not maintainable in the present form against the respondent? OPR

3. Relief.

In order to prove her case, petitioner-wife herself stepped into the witness box as PW-1 and examined Bikkar Singh (PW-2), Rama Sharma (PW-3) and thereafter, closed her evidence.

On the other hand, respondent-husband appeared into the witness box as RW-1 and closed his evidence.

Family Court, after going through the evidence led by the parties, observed that upon registration of FIR No.141 dated 27.05.2010, under Sections 452/323 IPC, Ex.P1, against respondent-husband at Police Station, City Barnala, with regard to the fact that her husband used to beat and maltreat her, a report under Section 173 Cr.P.C., was filed. However, vide judgment dated 03.01.2013, Ex.R1, he was acquitted in that case. She also filed another complaint bearing No.21 dated 05.05.2015, Ex.P6, by referring the allegation of previous FIR against the respondent, his father-Surjit Singh and mother-Gaganpal Kaur, under Sections 498-A/406/323/506/34 IPC. In that case, they were summoned vide order dated 11.06.2015, Ex.P5. In the month of March, 2011, the appellant-wife against rehabilitated in the matrimonial house after effecting a compromise with the respondent-husband. Eventually, relationship between the parties became so harsh that they could not stand against each other under one roof. The respondent-husband had paid maintenance to the wife before the Family Court and even non payment of maintenance was not a ground to grant divorce to the wife. It was further observed that it was the petitioner-wife, who was not co-operative with the husband in his day to day life and could

not take any benefit of her own wrong. With these observations, petition filed by the appellant-wife was dismissed by the Family Court.

Heard, learned counsel for the parties.

In the present case, notice of motion was issued on 12.09.2017 and parties were relegated for mediation. As per report dated 15.03.2018 of the Mediator, the respondent had handed over a demand draft dated 17.02.2018 for a sum of Rs.25,125/-, drawn at State Bank of India, to the appellant-wife. However, the mediation was unsuccessful. Thereafter, on 14.03.2022, the appellant had stated that no maintenance had been paid to her for the last more than five years. The matter was posted to 31.05.2022 and both the parties were directed to be present in Court. On the next date i.e. 31.05.2022, parties along with minor son appeared before Court. Dr. Emanpreet Walia, Counsellor, was appointed as Amicus for counselling the parties and their son. After interacting with the parties, she gave her report (Annexure R-1), a perusal of which shows that the son was residing with the mother. He was academically bright. The husband was unwilling for divorce, but he was ready to pay Rs.10,00,000/- for the higher studies of his son in four installments of Rs.2,50,000/- each. Thereafter, the matter was adjourned to 26.07.2022 to enable the respondent-husband to bring an FDR of Rs.2,50,000/- in the name of his son-Harman, as first installment. On 26.07.2022, learned counsel for the respondent stated that he (respondent) could not arrange the money and finally, the case was adjourned to 22.08.2022. On the next date of hearing, an order was passed that Harman, son of the parties, had attained majority on 23.07.2022. His maintenance was enhanced to Rs.3500/- per month till 23.07.2022. Further, the maintenance of appellant-wife was enhanced to Rs.5000/- per month from

the date of filing of misc. application (CMM-129-2017) i.e. 28.08.2017 and the respondent-husband was directed to clear entire arrears within six weeks.

Today, when the case was taken up for hearing, learned counsel for the respondent-husband, on instructions, stated that the respondent was unable to pay any amount to the appellant and to clear the arrears of maintenance. Learned counsel for the appellant-wife stated that the appellant is not insisting for any maintenance or arrears thereof from the respondent.

In this case, the respondent-husband had not paid any maintenance to the appellant-wife since 28.08.2017 i.e. for the last more than five years. Reference, at this stage, can be made to the judgments passed by this Court in **Sudesh vs. Roshan Lal**, 2019 (2) HLR 127 and **Harmeet Singh vs. Rupinder Kaur**, 2019 (4) PLR 53, whereby it has been held that non payment of maintenance pendente lite would construe cruelty against the wife and this was a sufficient ground to grant divorce to the wife.

In the present case, the only fact requires to be examined in this case is that after being separated, the husband and wife did not reside together. It is a dead marriage. 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 11.07.2017 passed by the District Judge, Family

Court, Barnala, are set aside. Decree of divorce is granted to the parties.
Decree sheet be drawn accordingly.

(RITU BAHRI)
JUDGE

(NIDHI GUPTA)
JUDGE

27.10.2022
ajp

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