

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

**FAO-M-276-2018 (O&M)
Date of decision: 19.07.2022**

Pinki Rani Saini

....Appellant

V/s.

Parveen Kumar Saini and another

.....Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: None for the appellant.

Mr. Rajiv Kumar Saini, Advocate
for the respondents.

Ritu Bahri, J.

The appellant Pinki Rani Saini has come up in appeal against the judgment and decree dated 12.09.2018 passed by the learned Additional District Judge, Kurukshetra whereby the petition filed by the respondent-Parveen Kumar Saini was allowed and he was granted divorce under Section 13 of the Hindu Marriage Act, 1955.

In the present case, the appellant did not appear since 24.05.2019. On 30.05.2019, Mr. Nagar Singh, Advocate appeared for Mr. A.S.Shera, Advocate for the appellant and the matter was referred to the Mediation and Conciliation Centre for mediation. However, the mediation could not take place in the absence of the parties. Thereafter, on 16.01.2020 and 05.04.2022, none appeared for the appellant. Today when the case was taken up on 19.07.2022, none appeared for the appellant even in second round and, thereafter, appeal has been taken up for final disposal.

The brief facts of the case are that the marriage between the

parties was solemnized on 23.05.2004 at Bahri Mohalla Thanesar, Kurukshetra, according to Hindu rites and ceremonies. After marriage, both the parties lived together as husband and wife at village Gangauri, Tehsil Ladwa, District Kurukshetra and two children were born on 26.06.2007 and 21.11.2009. The petitioner-respondent went abroad for earning his livelihood in October, 2011 to January, 2013 and again on October 2014, he went to Singapore and came back from there in November, 2014. When he came to his house, he came to know that his wife was pregnant of about two months seven days. He got her ultrasound test done and found that she was pregnant. In his absence, the appellant-wife developed illicit relations with respondent No.2-Vinod son of Jiya Lal, resident of Hiranchhapar, Tehsil Radaur, District Yamuna Nagar. The respondent-wife had finally deserted the respondent-husband since October, 2014.

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

1. Whether the respondent No.1 treated the petitioner with cruelty if so its effect? OPP
2. Whether the respondent No.1 is living in adultery with respondent No.2 if so its effect?OPP
3. Whether the respondent No. 1 has deserted the petitioner if so its effect? OPP
4. Whether the petition is not maintainable? OPR
5. Whether the petition is estopped from filing the present petition by his own act and conduct? OPR
6. Relief.

The respondent-husband examined Dr. Usha Sethi as PW2 who

stated that on 09.12.2014, she examined Pinky wife of Parveen Kumar, resident of village Gangori and conducted her ultrasound. She was pregnant of nine weeks and (+-) 4 days. She proved the report as Ex.P5 and ultrasound film as Ex.P6. The patient got was examined by her husband Parveen Kumar who signed in the register. The respondent-husband further examined Dr. Neeraj Mittal as PW3, who tendered his affidavit Ex.PW3/A and stated that on 08.12.2014 Parveen, aged 30 years, male, came to his lab for semen analysis test for himself and the urine pregnancy test of his wife Pinki aged 28 years female. His semen analysis test was concluded as azoospermia which means that his sperm count was zero. Urine pregnancy test result of Pinki was positive. He also stated that both the tests were done on the same day and reports Ex.P2 of Pinki and Ex.P4 of Parveen were given to Parveen. The respondent-husband also examined PW5 Dharamvir, his brother, who tendered his affidavit Ex.PW5/A and corroborated the version of the respondent-husband.

The appellant-wife examined herself as RW2 and tendered her affidavit Ex.RW2/A. She examined RW1 Narata Ram, her father who tendered his affidavit Ex.RW1/A, compromise Ex.R1 and Ex.R2 and he also corroborated her version.

The Family Court, after going through the evidence, decided issues No. 1 and 2 in favour of the respondent-husband. In para No. 25 of the judgment dated 12.09.2018, it had been observed that the appellant-wife appeared on few dates. However, her father appeared on each and every date. The appellant-wife did not appear in the Court although she was staying in the same house where the respondent-husband resided. The petitioner had gone to Singapore for one month and had already undergone

vasectomy and as per the test conducted for semen analysis on 08.12.2014 Ex.P4, the semen count was zero. As such, he could not impregnate the appellant-wife due to the said reason but the appellant-wife was found pregnant as per report Ex.P5 which was conducted on 09.12.2014. This fact was proved by Dr. Usha Sethi PW2 who had conducted the ultrasound and found the foetus to be of nine weeks. The act and conduct of the appellant-wife was sufficient to prove that the respondent-husband was treated with mental and physical cruelty. With respect to issue No. 3, the appellant-wife left her matrimonial home in October, 2014. The petition for divorce was filed on 17.12.2014/26.09.2016 i.e. before the expiry of two years from the date of desertion. This issue was decided against the respondent-husband.

On the basis of findings given on issues No. 1 and 2, the respondent-husband was granted decree of divorce on the grounds of cruelty and adultery.

After going through the said judgment, it was observed that the appellant-wife neither led any evidence to prove that the respondent-husband had not gone to abroad nor with respect to the test conducted on 08.12.2014 (Ex.P4). The said test was made basis to give a finding that the respondent-husband could not impregnate the appellant-wife. However, the appellant-wife was found pregnant as per report dated 09.12.2014 (Ex.P5). The ground of cruelty has been correctly proved as the appellant-wife was having illicit relations with respondent No.2- Vinod son of Jiya Lal, resident of Hiranchhappar, Tehsil Radaur, District Yamuna Nagar. He was also made party in the divorce petition. However, he was proceeded ex-parte vide order dated 29.07.2016.

Keeping in view the above observation made, no ground to

interfere in the judgment and decree dated 12.09.2018 is made out.

Appeal is hereby dismissed.

Pending application, if any, also stands dismissed.

(RITU BAHRI)
JUDGE

19.07.2022

Divyanshi

(ARCHANA PURI)
JUDGE

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