

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

Reserved on: 29.11.2023

Pronounced on : 07.12.2023

(i) FAO-M-12-2022 (O&M)

Mickey Prem Singh

.....Appellant

Versus

Dr. Kiran Bhagat

.....Respondent

(ii) FAO-M-225-2018 (O&M)

Mickey Prem Singh

.....Appellant

Versus

Dr. Kiran Bhagat

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE SUMEET GOEL**

Present: Ms. Ekta Thakur, Advocate, for the appellant.

Mr. Robin Dutt, Advocate, for the respondent.

SUDHIR SINGH, J.

This order shall dispose of the above mentioned two appeals as common questions of law and facts are involved therein.

2. FAO-M-12-2022 has been preferred by the appellant-husband against the judgment dated 13.12.2021, whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by him, was dismissed by the learned Additional District Judge, Chandigarh, whereas in FAO-M-225-2018, challenge is to the judgment and decree for restitution of

conjugal rights passed by the learned Civil Judge (Senior Division), SAS Nagar (Mohali) on 14.05.2018.

FAO-M-12-2022

3. Undisputed facts are that the marriage between the parties was solemnized on 27.04.2013, as per Hindu rites and ceremonies at Mohali. There is no issue born out of the wedlock. At the time of the marriage, the respondent-wife was serving as a Rural Medical Officer in Punjab, whereas the appellant-husband was serving as Manager Administration (HR) in Bharat Petroleum Corporation Limited at Chennai.

4. The divorce petition filed by the appellant contained the allegations of faulty behavior on the part of the respondent-wife and her having pressurized the appellant-husband to leave his job at Chennai and start a factory and open a hospital for her at Chandigarh. It was further averred in the petition that the respondent-wife used to pick up quarrels with the appellant on trivial issues; that though the appellant took the respondent-wife to his place of posting at Chennai and also planned a trip to the backwaters of Kerala, Kanya Kumari and Trivandrum, yet her behavior did not change; that when the appellant came to Chandigarh on 26.07.2013 to attend a family function, he found that the whereabouts of the appellant-wife were not known, but she came back to her matrimonial home only when the appellant reached there; that when the appellant asked her about this, she started abusing and using a foul language and that on 04.08.2013, the appellant took the respondent to Chennai, but

she did neither show any love and affection towards the appellant, nor did she show any interest in the household work.

5. It was yet further averred in the petition that the appellant had planned a trip to Europe and had deposited an amount of Rs.5 lakh with the travel agent and both the parties had been called by the Swiss Embassy at Mumbai for a VISA meeting in September, 2013, but the respondent-wife did not turn up, leading to the loss of Rs.50,000/- for cancellation of tickets. Thereafter, on 11.10.2013, a meeting was convened by the parents of the appellant with the parents and family members of the respondent-wife and the respondent-wife had assured that she would improve her behavior. The parties resided together at the matrimonial home till 16.10.2013. On 17.10.2013, they both left for Chennai and on 02.11.2013 and came back to Chandigarh to celebrate Diwali. Again on 10.11.2013, they left for Chennai. The appellant-husband further averred that he could not join two years' Postgraduate Executing MBA Programme at the prestigious SP Jain Institute of Management and Research Mumbai, due to mental stress and agony suffered at the hands of the respondent-wife. On 05.01.2014, the respondent-wife came to Chandigarh and till her return to Chennai on 20.02.2014, she remained at her matrimonial home only for two days. It was further averred that grandmother of the appellant expired on 29.03.2014, but she did not offer any condolence to the appellant and his family members. The respondent-wife even refused to join their marriage anniversary celebrations. Apart from that the

respondent-wife accompanied her mother and brother to the cousin brother of the husband at Chandigarh on 23.09.2014 and her mother said that there was no point in the wife going to her husband as he was incapable of consummating the marriage. The respondent-wife had filed a false complaint dated 27.11.2015 before the Punjab State Women Commission, Chandigarh, leveling unfounded allegations against the husband and his family members and she had alleged that the appellant had been living in the company of a lady for eight months. She finally left her matrimonial home at Chandigarh on 22.02.2014. She had also initiated the proceedings against the appellant under the provisions of the Protection of the Women from the Domestic Violence Act. Thus, in the petition, it was averred that such behavior, conduct and acts of the wife, had caused mental cruelty to the appellant and that she had left the company of the appellant without any justifiable ground.

6. Upon notice, the respondent-wife appeared and filed her written statement denying the averments of cruelty and desertion. It was pleaded that the divorce petition filed by the appellant-husband was a counter-blast to the petition filed by the respondent-wife under Section 9 of the Act, for restitution of the conjugal rights. It was further averred that the respondent-wife was ready to go back to her matrimonial home, but the respondent-husband and his family members were not ready to take the respondent-wife back to the matrimonial home. It was further averred by the respondent that it was the appellant-husband, who told her that he would leave his job at Chennai

and come back so as to permanently reside with the respondent. She had admitted the planning of the Trip to Europe by the parties and that she had also contributed her share of Rs.2,00,000/- for the said purpose, but despite that the tour was cancelled and further averred that the appellant-husband be put to strict proof regarding the loss of Rs.50,000/- as cancellation charges. It was further stated that the respondent-wife was ready and willing to join the company of the appellant-husband and she, her mother and brother, had requested the appellant-husband to take her back to the matrimonial home, but the appellant-husband, had flatly refused to do so.

7. On the basis of the pleadings of the parties, the trial Court framed the following issues:-

- “1. Whether the petitioner is entitled to decree of divorce on the ground of cruelty?OPP
2. Whether the petitioner is entitled to decree of divorce on the ground of desertion ?OPP
3. Whether the present petition is not maintainable in view of preliminary objection No. 1? OPR
4. Whether the petitioner is guilty of suppressing true and material facts from the Court?OPR
5. Whether the petitioner is stopped from filing the present petition? OPR
6. Relief.”

8. In evidence, the appellant appeared as PW-1 and had also examined PW2-Gurdeep Singh and PW3-Dr. Subhash Chander Khatana, besides tendering documentary evidence Exhibits P.1 to P.5. On the other hand, the respondent wife appeared as RW1

and had also tendered documentary evidence Exhibits R.1 to R.3 and RW/A.

9. The trial Court, after considering the evidence led by the parties has held that the appellant-husband failed to prove that the respondent-wife had ever treated him with cruelty or she had deserted him without any reasonable cause. Accordingly, the petition filed by the appellant was dismissed.

10. Aggrieved against the judgment of the trial Court, the appellant has preferred the present appeal.

11. Learned counsel appearing for the appellant has vehemently argued that in the divorce petition, the appellant had specifically raised the pleas regarding the cruelty and desertion caused by the respondent-wife and the latter did not deny the same specifically and rather the denial was only evasive. She, thus, submits that in view of the provisions of Order 8 Rule 3 of the Code of Civil Procedure, such evasive denial ought to have been considered admission on the part of the respondent-wife. Reliance is placed upon the judgment of the Hon'ble Supreme Court in **Jahuri Sah and others Vs. Dwarika Prasad Jhunjhunwala and others, AIR 1967 (SC) 109.**

11-A. Learned counsel for the appellant would further submit that right from the beginning the nature of the respondent-wife was irritating and she used to pick up quarrels on petty issues. During her stay with the appellant-husband till her leaving the matrimonial home, she had never shown any love and affection towards the appellant and rather treated him with mental as well as physical cruelty. The respondent-wife had

stayed in her matrimonial home and/or at Chennai i.e. the place of the working of the appellant, only for 188 days. The appellant had put in his earnest and sincere efforts to save his matrimonial cord, but it was the respondent-wife, who never had any desire intention to discharge her obligations as a wife and rather she had deserted the appellant and after having left the matrimonial home without any justifiable cause, she had never tried to come back. This fact, according to the learned counsel for the appellant, speaks volumes of the conduct of the respondent-wife.

12. It is further contended that the appellant-husband, while appearing as PW1, reiterated the entire version contained in the divorce petition and that during his cross-examination, his testimony could not be impeached by the respondent-wife. Thus, the version contained in the examination-in-chief, ought to have been considered as proved, by the trial Court. However, learned trial Court, has brushed aside the said aspects of the matter and proceeded on to pass the impugned judgment and decree.

13. Learned counsel for the appellant would further submit that the respondent-wife had done character assassination of the appellant, inasmuch, she had levelled the allegations of him being incapable of consummating the marriage and this itself amounts to mental cruelty. She further submits that not only the husband's testimony in this regard remained un-impeached, but even PW3-Dr. Subhash Chander Khatana, in his testimony specifically deposed that the

respondent-wife had felt sorry for her allegations regarding the character of the appellant-husband. It is thus, submitted that where the allegations of character assassination are proved, the aggrieved spouse is entitled to a decree of divorce on this ground itself. Reliance is placed upon a Single Bench judgment of this Court in **Smt. Narinder Kaur Vs. Lt. Col. Ravinder Pal Singh Dhillon**, 2011(6) RCR (Civil) 79.

14. Learned counsel for the appellant would further submit that despite the decree of conjugal rights having been obtained by the respondent-wife, she had not joined the company of the appellant-husband and the said fact shows that the restitution proceedings, were merely an eye-wash and a mechanism to defeat the right of the appellant in the divorce petition. Still further, it is contended that merely because the spouse against whom the decree of restitution of conjugal rights has been granted, refuses to resume cohabitation, does not disentitle him from filing a divorce petition. Reliance is placed upon a Single Bench judgment of this Court in **Santosh Kumari Vs. Mohan Lal**, 1980 AIR (P&H) 325.

15. Learned counsel for the appellant would further argue that filing of multiple complaints before the various authorities by the respondent-wife amounts to cruelty, inasmuch as in the said complaints, the parents and sister of the appellant were summoned and they were harassed and humiliated.

16. On the other hand, learned counsel for the respondent-wife, while controverting the submissions made by

the learned counsel for the appellant, submits that the respondent-wife has always been and is still ready and willing to join the company of the appellant-husband and it is the appellant-husband, who has no desire to rehabilitate her in her matrimonial house.

17. Learned counsel for the respondent would further submit that the learned trial Court has rightly held that the appellant-husband has failed to prove the allegations regarding the hurling of abusive and filthy language by the respondent-wife, inasmuch as he did not examine the persons, especially his parents or any other family members, before whom such abuses had allegedly been hurled.

18. It is further contended that the divorce petition was filed by the appellant-husband on 22.11.2016, whereas the petition for restitution of conjugal rights was filed by the respondent-wife on 30.09.2016. This clearly shows that the petition under Section 13 of the Act filed by the appellant-husband at a later point of time, was a counterblast to the petition for restitution of conjugal rights.

19. Learned counsel for the respondent-wife would further contend that the testimony of PW2-Gurdeep Singh and PW3-Dr. Subhash Chand Khatana, nowhere supports and/or proves the allegations of cruelty and desertion leveled by the appellant-husband. He further argues that rather the said witnesses, being family friends of the parents of the appellant-husband, had been interfering in the matrimonial life of the parties and merely because PW3-Dr. Subhash Chander

Khatana, stated that the respondent-wife had felt sorry for her allegations regarding the character of the appellant-husband before him, is no ground to hold that the respondent-wife had ever assassinated the character of the appellant-husband. Learned counsel for the respondent-wife further contends that the respondent still maintains cordial relations with her husband and that she is ready and willing to go and join the company of her husband.

20. We have heard the learned counsel for the parties and with their assistance, have also gone through the records of the case.

21. As noticed above, the trial Court had framed issues No. 1 and 2 regarding desertion and cruelty. Onus to prove both the said issues, was upon the appellant-husband. It is an admitted fact on record that the appellant-husband had his job at Chennai, whereas the respondent-wife was/is a Government Doctor in Punjab. The factual position on record clearly indicates that the parties resided together at Chandigarh and Chennai, from time to time. Leaving the company of one of the spouses by the other, owing to temperamental differences and then again joining each other's company, cannot be a ground to sustain allegations of desertion. There are plethora of judgments on the issue of desertion holding that desertion is when one of the partners has left the company of the other without any justified cause, thereby making the matrimonial cord a complete unworkable affair. Desertion for the purpose of matrimonial affair is an intentional abandonment of the company of the

spouse without other's consent and without any justifiable cause. There may be cases, when the parties might be living under one roof, yet the attending circumstances would indicate that they have deserted each other.

22. 'Desertion' means the intentional, permanent forsaking and abandonment of one spouse by the other without the other's consent and without reasonable cause. In order to prove the desertion, the twin-condition of (i) the factum of separation, and (ii) the intention to bring cohabitation permanently to an end (animus deserendi), must be established. Hon'ble Supreme Court in **Darshan Gupta Vs. Radhika Gupta**, (2013) 9 SCC 1, has held that merely because husband and wife are staying separately, cannot be an inference that the wife has withdrawn from the company of the husband. It is settled law that the deserted spouse must prove that there is a factum of separation and there is an intention on the part of the deserting spouse to bring cohabitation to permanent end.

23. However, in the case in hand, the facts and circumstances coupled with the pleadings raised by the appellant-husband that were duly rebutted by the respondent-wife, clearly establish the absence of the element of desertion. Though learned counsel for the appellant-husband has argued that once the respondent-wife had left her matrimonial home, the parties had been meeting through Panchayats only, yet the restitution proceedings pending simultaneously to the divorce proceedings, would indicate that the respondent-wife was having

every intention to join the company of the husband and/or go to her matrimonial home.

24. Hence, we find that the trial Court has rightly found that the appellant-husband had failed to prove that the respondent-wife had deserted him.

25. Coming to the issue of cruelty., it is also settled law that the cruelty has not been defined in the Act and the same can be found on the basis of the conduct of the parties; endangering the living of either of them and the surrounding circumstances. Where one spouse treats the other or manifests such feelings towards other so as to inflict bodily injury or cause reasonable apprehension of bodily injury or any mental or physical injury, the factum of cruelty can be said to be present.

26. However, in the case in hand, the pleadings raised by the husband in the divorce petition which were reiterated in his evidence while appearing as PW1 are as regards the irritating behavior of the wife; her not showing love and affection towards him and leaving his company at Chennai abruptly and also pressurizing him to quit his job at Chennai and settle at Chandigarh. These circumstances do not amount to cruelty and are in the nature of normal wear and tear of the matrimonial life. The temperamental differences between the parties cannot be termed to be cruelty. The learned trial Court, after having discussed various judgments of the Hon'ble Supreme Court on the issue, has rightly negated such plea of the appellant-husband.

27. However, this Court is conscious of the fact that when one of the spouses, causes character assassination of the other, the same amounts to cruelty.

28. In the instant case, the appellant-husband in his divorce petition, pleaded that the respondent-wife had, in front of his cousin, raised the allegations regarding his being incapable of fathering a child and consummating the marriage. While appearing as PW1, in his examination-in-chief, he had deposed that one Liyakat was witness to all this. However, the appellant-husband has failed to examine said Liyakat as a witness. Thus, the pleadings raised by the appellant-husband, not supported by evidence, cannot be said to have been proved. It may be noticed that in the proceedings for restitution of conjugal rights before the Court at Mohali, the appellant-husband had examined Liyakat Rai as DW1, but failed to do so in the instant case. In his deposition in the said proceedings, Liyakat Rai did not depose anything as regards the character assassination of the appellant by the respondent-wife.

29. Still further, the stand of the appellant-husband that the respondent-wife had been taking contraceptive pills without his knowledge and information, was not proved by way of evidence and the same is nothing more than the bald allegations.

30. The appellant-husband in his examination-in-chief deposed that the respondent-wife had spread rumours of the appellant having affairs with many ladies. However, again no witness, before whom such rumours had been spread, was

examined by the appellant. The same is the situation with regard to the averments that the respondent had used abusive language towards the appellant in front of one Suresh Kumar. Said Suresh Kumar was never examined to prove the said fact.

31. Much emphasis, though, has been laid by the learned counsel for the appellant-husband on the deposition of PW3- Dr. Subhash Chander Khatana, in his examination-in-chief, to the effect that the respondent-wife had felt sorry for the allegations leveled by her against the character of the appellant-husband. However, the said witness had never stated that the respondent-wife had ever leveled the allegations of the appellant-husband being incapable of consummating the marriage or regarding his character or morality. Rather, in his cross-examination, the said witness deposed that the respondent had never misbehaved with the appellant in his presence. Yet further, there is not even an iota of averment in the petition regarding the fact that the respondent-wife had ever uttered anything in this regard before said PW3-Dr. Subhash Chander Khatana or had ever felt sorry. Thus, this evidence appears to be beyond pleadings.

32. A perusal of the judgment and decree dated 14.05.2018 passed by the Civil Judge (Senior Division), SAS Nagar (Mohali) in the proceedings under Section 9 of the Act, would show that while appearing as DW1 in the said proceedings, the appellant in his cross-examination deposed that he had never mentioned any episode, which was the matter of dispute between the appellant and the respondent and still

further in para No. 11 of the said judgment, the communication between husband and wife (appellant and respondent) has been noticed by the said Court as under:-

“11. There is an incident regarding the in-laws not allowing the daughter-in-law/petitioner to enter the house for getting her passport from their home, but it is to be noted that copy of e-mail has been placed on case file sent by petitioner to her husband asking her husband, if her passport is lying at Chennai, and in case he did not receive the same within one month, she will lodge FIR. The said e-mail is dated 2.8.2016 just a month prior to filing of petition and an e-mail has been sent by respondent/husband to his wife on November 17, 2016 i.e. two months after filing of petition, wherein an abbreviation ‘PFA as required’ has been used. This only leads to the conclusion that even after filing of petition, husband and wife are no talking terms and husband had emailed his wife regarding passport which leads to conclusion that that whatever friction has been there between the parties, is on account of normal wear and tear of marriage and not of any situation which would lead to inference that parties cannot cohabit together.....”

33. Still further, we find that both the witnesses PW2 and PW3, examined by the appellant-husband, only deposed regarding convening of a Panchayat so as to resolve the disputes between the parties and further said that they had no problems, if the parties had resided together. Their testimony further

proves the temperamental differences between the parties. Nowhere, did the said witnesses depose that they had witnessed the alleged cruelty caused to the husband and/or his family members or that the respondent-wife had left the company of the appellant-husband without any justified cause.

34. Thus, we find that the appellant-husband has failed to prove the ground of cruelty enabling him to obtain a decree of divorce. The manner in which the appellant-husband had faced cruelty is not proved. Mere annoyance or irritation or normal wear and tear does not constitute cruelty. The cruelty should be such in which it is not reasonably accepted to live together.

35. The argument of the learned counsel for the appellant that the respondent-wife in her written statement did not emphatically deny the allegations contained in the petition and only made an evasive denial, is bereft of merit. A perusal of the written statement would show that the respondent-wife had denied the contents of the petition being wrong and further contended that the appellant-husband be put to strict proof regarding the said allegations. Thus, the judgment in Jahuri Sah's case (supra), is of no help to the appellant.

36. In Narinder Kaur's case (supra), the wife had sent communications to the Chief of the Army Staff, against the husband, who was a Senior Army Officer, leveling allegations regarding his character and morality. It was held by the Court that such communications had adversely affected the career of the husband, who was having substantial number of troops to command under his control. In the said case, the conduct of the

wife in writing such letters was made basis for holding that she had assassinated the character of her husband. However, in the instant case, there is nothing on record, except the bald allegations of the appellant-husband and no evidence in this regard was brought on record. Therefore, the said judgment is also not applicable to the facts of the present case.

37. Still further, the judgment in Santosh Kumari's case (supra) rules that pursuant to the restitution of conjugal rights decree, if the spouse, against whom such decree is passed, refuses to resume cohabitation, the same cannot be a bar to file a divorce petition. In the instant case, as noticed above, both the proceedings were pending simultaneously, except the fact that the decree for restitution of conjugal rights was granted at a prior point of time.

38. In view of the above, we do not find any merit in the present appeal and the same being devoid of any merit, is hereby dismissed with no costs.

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39. The appellant-husband has taken almost similar grounds as taken in FAO-M-12-2022, challenging the decree for restitution of conjugal rights. Once, the very appeal against the dismissal of the divorce petition stands dismissed, there is no merit in the appellant's challenge to the decree for restitution of conjugal rights. The findings recorded by the trial Court, do not warrant any interference.

40. In view of the dismissal of FAO-M-12-2022, we do not find any merit in the present appeal as well. Hence, the present appeal is also dismissed.

(SUDHIR SINGH)
JUDGE

(SUMEET GOEL)
JUDGE

December 07, 2023
ds

Whether Speaking/ Reasoned:	Yes/ No
Whether Reportable:	Yes/ No