

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

**FAO-M No.63 of 2019 (O&M)
Date of decision: 05.01.2023**

Sonia

.....Appellant

Versus

Manish Kumar

.....Respondent

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

Present: Mr. Yogesh Jangra, Advocate,
for Mr. Sherry K. Singla, Advocate,
for the appellant.

Mr. K.B. Raheja, Advocate,
for the respondent.

Ritu Bahri, J.

Appellant-wife (Sonia) has come up in appeal against the judgment dated 24.01.2019 passed by the Additional District Judge, Sangrur, whereby petition filed by respondent-husband under Section 13 of the Hindu Marriage Act, 1955, for dissolution of marriage, has been allowed.

Marriage of the parties was solemnized on 07.11.2004 as per Hindu rites and ceremonies. Out of this wedlock, one female child namely Harshita was born on 29.09.2005, who is residing with the husband. Petition for divorce was filed by the husband-respondent taking the plea that the wife-appellant was hot tempered lady and was habitual not to perform her matrimonial duties. Atmosphere in his house became tense. The act of the

wife caused mental cruelty to the husband-respondent and he started remaining under depression. Thereafter, the wife refused to cohabit with the husband and she remained adamant on her demand to shift Malaut and to transfer property of the husband in her favour. It was further stated that the wife-appellant was M.A., B.Ed. and wanted to run an academy with her brother at Malaut. When the husband refused to accept her proposal, she left the matrimonial home and started living with her parents. Her mother and brother threatened the husband-respondent time and again. In this regard, he moved an application to the SHO, Police Station, City, Sunam . Before the police, the wife stated that she wanted to stay with her parents. On 12.06.2007, she left the matrimonial house. On 14.06.2007, she moved an application to the police by levelling allegations against the husband and his family members. The appellant made an application under Section 438 Cr.P.C. and vide order dated 05.07.2007 passed by this Court, the husband was directed to appear before the police and narrate his grievance. At the instance of police, a Panchayat was convened on 25.06.2007. At that time, both the Panchayats gave in writing to the SHO that they would try to settle the matter. The husband made an application under Section 9 of the Hindu Marriage Act and the wife-appellant also filed an application under Section 125 Cr.P.C. For better future of the minor daughter, a compromise was effected between the parties on 29.02.2008, as per which, the wife agreed to reside with respondent-husband. However, she again started misbehaving with her husband and his parents. As per husband, he had arranged a job for the wife in Rotary Public School, Sunam, where she joined on 09.01.2009. Despite that, she did not attend the marriage of petitioner-husband's younger brother, which was solemnized on 16.05.2010. On 01.08.2010, she told that

the house at Kacha Pahar was required to be transferred in her name, otherwise, she would involve the whole of the family in false criminal case. The husband did not accept the proposal. In the evening, when he came back to his house, it was found to be locked from outside. When he went to his parental house to know the whereabouts of his wife, the minor daughter was found to be present there. His parents told him that the minor daughter was found sitting outside the gate of their house in the noon time and they took her inside the house. The minor child told that her mother had left her at the door. A Panchayat was convened, but no decision could be taken. The wife had stated that until and unless the house is transferred in her name, she would not join the matrimonial home. In this backdrop, the petition was filed.

Upon notice, respondent-wife (appellant herein) filed reply stating that her parents had spent Rs.5 lacs on the marriage and had given sufficient dowry articles, including gold ornaments along with the other household articles as per the demand of the husband and his parents. All other allegations made in the petition were denied and a prayer for dismissal of the petition was made.

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

1. Whether petitioner is entitled to decree of divorce on the grounds mentioned in the petition? OPP
2. Whether petition is not maintainable in the present form? OPR
3. Relief.

In order to prove his case, husband had appeared as PW-1 and examined his father namely Satpal Goyal (PW-2), maternal uncle Rajinder

Goyal (PW-3), Madan Lal (PW-4) and thereafter, closed the evidence. On the other hand, respondent-wife also appeared as RW-1 and examined Dr. Hari Om Aggarwal (RW-2).

The trial Court, after considering entire evidence, gave finding on issue No.1 in favour of the husband on the following grounds:-

1. Both the parties had resided together along with their minor daughter till 01/02.08.2010. Plea of the husband that the wife had dropped the minor girl at the gate of the house of his parents, has not been denied by the wife in her examination-in-chief. She took a plea that she used to drop the minor daughter at the house of the parents of her husband in routine manner. Since the wife was living separately from the parents of respondent-husband, her plea that she used to drop the child occasionally on the gate before going to school was not acceptable. Since they were staying separately, there was no occasion for the family members of the husband to beat her and throw her out of the matrimonial house on 02.08.2010. As per MLR Ex.RW2/A, x-ray was advised by the doctor, but she never got her x-ray done. As per Dr. Hari Om Aggarwal (RW-2), the simple injury could be due to fall on hard surface. In this backdrop, the wife miserably failed to prove that her in-laws had thrown her out of the matrimonial house on 02.08.2010 by inflicting injury. None of the family members of the wife had stepped into the witness box to support her case that she was beaten up and thrown out of the matrimonial home on that date.

2. As per Panchayati compromise dated 29.02.2008, the husband had specifically stated that there was no demand of dowry and he had never beaten his wife. Since this document was duly signed by the wife, her plea that she was beaten up for want of dowry and thrown out of the matrimonial house, was found to be false.
3. The minor child is still living with the father and this fact proved that the wife had left her minor daughter at the outer gate of the parental house of petitioner-respondent before leaving her matrimonial home.
4. The wife took a plea that the husband was living an adulterous life and was having extra marital relations. It was further stated that he was a drug addicts. All these were only oral allegations and no evidence was led to show that the husband was having any extra marital relations.

With these observations, petition filed by the husband was allowed and a decree of divorce was passed.

Heard, learned counsel for the parties.

In the present case, while filing misc. application (CMM-23-2020) under Section 24 of the Hindu Marriage Act, 1955, the appellant-wife had stated that she was granted interim maintenance of Rs.3000/- per month vide order dated 06.02.2017 passed by the JMIC, Malout. In reply to the said application, learned counsel for respondent-husband has placed on record salary slip (Annexure R-1) to show that the appellant-wife (Sonia) is getting a salary of Rs.22,000/- per month. The respondent-husband is residing in a rented accommodation in Ludhiana and paying rent thereof at

the rate of Rs.4000/- per month.

In the present case, learned counsel for the appellant-wife is not able to show any evidence, where cruelty could be attributed to the respondent-husband. Rather, it is the appellant, who has not been able to lead any evidence to prove that she was beaten up by the husband or his family members, before she left the matrimonial house on 02.08.2010. In the Panchayati compromise, which was duly signed by the wife, it is nowhere stated that the husband used to beat her. Moreover, the minor daughter is being brought up by the respondent-husband since 2010.

The respondent-husband has not levelled any frivolous allegation against his wife-appellant. A perusal of the impugned judgment shows that consistently, he was making efforts to save his marriage for future of the minor daughter. Earlier, he was staying with his parents, but later on, he shifted out. The appellant-wife used to drop the minor child at the gate of the house of respondent's parents before going to school. None of the family members of the appellant had stepped into the witness box to corroborate her version of cruelty against the husband. The baseless allegations that the respondent-husband was having an extra marital affair and he was a drug addict, further go to show that her behaviour towards the husband was cruel.

In the facts of the present case, the husband-respondent has been granted divorce on the ground of cruelty. If, the present appeal, filed by the wife, is accepted, it will not create an atmosphere of patch up for both the parties. The husband-respondent has been bringing up the minor child alone. In this backdrop, 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 husband-respondent as well as

the respondent.

Keeping in view the above discussion, the present appeal is dismissed.

(RITU BAHRI)
JUDGE

(DEEPAK GUPTA)
JUDGE

05.01.2023
ajp

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