

In the High Court of Punjab and Haryana at Chandigarh

FAO No. 5284 of 2019 (O&M)

Reserved on: 15.5.2023

Date of Decision: 26.5.2023

Dheeraj Soni

.....Appellant

Versus

Nitu @ Nitika

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. S.K.Yadav, Advocate
for the appellant.

Mr. Arun Sharma, Advocate
for the respondent.

SURESHWAR THAKUR, J.

1. Dheeraj Soni-the appellant herein, petitioner thus in a petition cast under Section 27 of the Special Marriage Act, 1954, bearing No. 08 dated 15.9.2015, becoming aggrieved from the non-decreeing, on 2.4.2019, of the above petition, by the learned Principal Judge (Family Court), Ambala, claiming relief therein for annulment of his marital ties with the respondent therein, thus is led to institute thereagainst the instant appeal, before this Court.

Factual Background

2. The appellant-petitioner entered into a matrimonial alliance with the respondent without the consent of his parents and got the same registered under Section 13 of Special Marriage Act, before the Marriage Officer-cum-Deputy Commissioner, Ambala on 19.8.2014. However, he persuaded his parents, who accepted his marriage, as such the parties to

the lis started living together as husband and wife at village Bara, Tehsil and District Ambala. However on the bad act and conduct and insistence of the respondent, he shifted to a rented accommodation near Manav Chowk, Ambala City. Both shifted to the rented accommodation in the first week of September 2014. The appellant petitioner further pleaded that he is entitled to seek divorce for the reasons and grounds that;

i) From the very beginning of the marriage the behaviour of the respondent was not kind one as expects from a newly married bride. She was insolent and discourteous and ill-behaved with all his family members and created embarrassing situation by terrorizing them. The behaviour of respondent towards the petitioner and his family members was harsh. She disrespected and humiliated them all the time, using insulting language and as such his parents felt humiliated and disowned him by giving a public notice.

ii) The appellant-petitioner further pleaded that the respondent treated him with cruelty and had affairs with other three boys;

iii) That the respondent refused to perform her obligations of matrimonial life by refusing to do household work by alleging that she was not interesting in marrying the petitioner and made allegations that the respondent has got the marriage performed by playing fraud with him;

iv) That respondent cheated the petitioner by telling her age at 22 years at the time of the marriage, whereas it was discovered to be 33 years and as such respondent was 12 years elder to the petitioner,

v) That in the month of October 2014, the respondent attempted to commit suicide by taking sleeping pills and locking herself inside the room, however, with timely medical aid provided by the petitioner she

was saved;

vi) That respondent used to taunt the appellant-petitioner that she was not interested in the matrimonial relationship, and, earlier also her parents had forcibly got her engaged to one Nitin and she made a complaint in Women Cell against that boy. The appellant-petitioner further pleaded, that later on, he discovered that the respondent after extracting money from that boy left him;

vii) That appellant-petitioner pleaded, that respondent taking advantage of his absence entered into immoral relationship with other boys namely Chander Mohan of Prem Nagar, with mobile phone number 9355091351. Gaurav resident of Moga, mobile phone number 9988410759 and one Saurav resident of Jandli, mobile phone number is 9996005749 and he prepared the CD of the conversation (attached with file). The appellant-petitioner further pleaded, that the respondent is living in adultery, and, when he confronted the respondent with the conversations, she not only abused him, but left the matrimonial home on 28th of June 2015, and, made a false and baseless complaint to the police by concocting a false and a baseless story against him, his parents and aunt(Bua) that led to the arrival of the police at his residence and he was humiliated before the public, which compelled him to abandon the rented accommodation and shifted to another rented accommodation at Kuldeep Nagar. The appellant-petitioner and his family members were harassed, however, the complaint was found false. The appellant-petitioner pleaded that respondent made another complaint to the Women Cell, making false allegations which was also found as false.

3. The appellant-petitioner further submitted, that despite his persuasion the respondent has caused mental and physical cruelty, upon him, as she has refused to keep matrimonial harmony, cohabitation and

discharge of marital obligation. The cumulative effect of the circumstances and the conduct of the respondent has given an impression of animus descending. The mental attitude of the respondent is such so as to bring to end relationship permanently. Thus, the respondent is guilty of having treated the petitioner with mental and physical cruelty and has indulged in adultery which has further caused mental cruelty and deserted him on 28.06.2015 by leaving the matrimonial home without any sufficient cause. He is, thus, entitled for a decree of divorce on the ground of desertion and cruelty. There is no collusion or inordinate delay in filing the petition nor the petitioner in any manner has condoned the acts of cruelty, meted out to him by the respondent.

4. Upon notice, the respondent put up in appearance and filed the written statement taking preliminary objections regarding the maintainability of the petition and concealment of true and material facts from the court. It was pleaded, that the petition(supra) was a counter blast to FIR No. 359, under Sections 323, 406, 498-A, 506 IPC, already registered against the petitioner in police station Baldev Nagar and a complaint under DV Act. The answering respondent denied that she has any illicit relations with Chander Mohan of Prem Nagar, Ambala City, Saurab of village Jandli and the above named persons have not been impleaded as parties and on this ground the petition is liable to be dismissed. The respondent pleaded that she is always ready and willing to reside with the petitioner, as his wife.

5. On merits, the answering respondent admitted her marriage with the appellant-petitioner, and, pleaded that after the marriage the parents of both the sides were agreed and sufficient dowry articles were given to the appellant-petitioner by her parents and also a huge amount

was spent for the said dowry articles.

6. From the pleadings of the parties, the following issues were framed for adjudication vide order dated 29.3.2016:-

“1. Whether the petitioner is entitled to a decree of divorce under Section 27 of the Special Marriage Act, as alleged in the petition ? OPP

2. Relief.”

7. In support of their respective pleadings, the contesting litigants adduced their respective evidence.

8. As above stated, the learned Principal Judge (Family Court), Ambala, through a decision made on the petition (supra), declined to dissolve the marital ties inter se the petitioner and the respondent, through a decree of divorce being granted in favour of the petitioner-appellant.

Reasons for setting aside the impugned verdict

9. Admittedly, both the martial partners, prior to theirs getting their marriage registered under the Special Marriage Act, on 19.8.2014, were in a relationship, and, though the appellant herein had purportedly subjected the respondent to sexual intercourse(s) but on promise of marriage, but since he breached the said promise, therefore, the respondent instituted a complaint under Section 376 of the IPC against the appellant herein. However, admittedly the said case was withdrawn by the complainant, given the appellant herein, agreeing to solemnize marriage with the respondent, and, which in fact he did solemnize.

10. Furthermore, the marriage lasted from 19.8.2014 upto June 2015. There is also evidence on record suggestive, that the respondent had got the appellant arrested, on a complaint filed by her against him, under Section 107/151 of the Cr.P.C. Furthermore, the respondent evidently, had got a case registered under Sections 323, 406, 498-A, 506 of the IPC, against

the appellant-petitioner and his parents, and, which led the appellant, to

obtain anticipatory bail. In addition, the respondent herein has also filed a petition under the Domestic Violence Act against the appellant herein.

11. Be that as it may, apart from the above complaints, being filed against the petitioner-appellant herein by the respondent, and, which are contended to beset the psyche of the appellant with an entrenched trauma, thus tantamounting to his becoming subjected to mental cruelty. The other grounds of divorce, agitated in the petition (*supra*) against the respondent are; (a) the respondent being in an adulterous relationship(s); (b) in proof of the above fact, the appellant tendering into evidence the CDs thus purportedly containing the undesirable conversations, which the respondent was having with her purported paramours.

12. Insofar as the ground of adultery, as set-forth by the appellant for his seeking annulment of his marital ties, with the respondent, is concerned, the said ground, as aptly concluded by the learned trial Judge concerned, was not amenable for acceptance, as the appellant-petitioner has not impleaded in the array of respondents, in the petition (*supra*), rather the purported adulterers. Furthermore, the CDs purportedly containing the voices of the respondent, and, the voices of the purported paramours of the respondent, were aptly concluded to be inadmissible in evidence, as the CDs did not, in terms of Section 66 of the Indian Evidence Act, rather hold the requisite statutory certification.

13. Nonetheless, the admitted filing of complaints by the respondent against the appellant, which led to his becoming arrested, and, also led to his obtaining anticipatory bail, did beset his mindset, with an entrenched mental trauma, resultantly also there was perpetration of mental cruelty, upon the appellant.

14. In the face of the above, it appears, that the learned trial Judge concerned, did not assign the appropriate reverence to the above *factum*

probanudm. The said occurred but merely on the ground, that criminal prosecution, as embarked upon by the respondent, against her husband-the appellant herein, if otherwise is true, thus cannot become a sound reason for thereby, the marital ties *inter se* the marital partners thus becoming annulled through a decree of divorce being granted. The above assigned reason by the learned trial Judge concerned, to decline the decree of divorce to the appellant, through hers ordering for annulment of the marital ties, is but a flimsy ground. The reason being that, irrespective of the truth or falsity of the criminal prosecution, becoming launched by the respondent against the appellant, the mere launching of such criminal prosecution, did per se heap mental cruelty, upon her husband-the appellant herein. If so, the said disturbance caused to the mental psyche of the husband by his spouse, rather through hers taking to prosecute him for penal offences, but obviously did beget mental cruelty becoming heaped, upon him. The apt sequitur therefrom, is that, thereby the ground of cruelty planked upon the above admitted fact, when thus became aptly proven, thereby the appellant became entitled to seek annulment of his marital ties with his spouse-the respondent herein, through a decree of divorce being granted in his favour. Contrarily, in the learned trial Judge concerned, rather not making the said decree, thus the declining of decree of divorce to the appellant, by the learned trial Judge concerned, requires interference.

Final order

15. The outcome of the above discussion, is that, the instant appeal deserves to be allowed. Accordingly, the instant appeal is allowed. The impugned verdict, denying to the appellant, the relief of annulment of his marital ties with the respondent, is quashed and set aside. The marriage *inter se* the appellant and the respondent is dissolved through a decree of divorce

upon the appellant.

- 16. Decree sheet be prepared accordingly.
- 17. No order as to costs.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

May 26, 2023
Gurpreet

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