

FAO-1982-2024 (O&M)

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

FAO-1982-2024 (O&M)

Date of Decision: 02.05.2024

XI (The name of the appellant is kept concealed)

...Appellant

Versus

X (The name of the respondent No. 1 is kept concealed) and Anr.

...Respondent

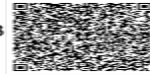
**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present:- Mr. Vishal Mehra, Advocate for appellant.

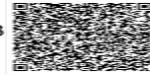
SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 21.01.2024 passed by learned Principal Judge, Family Court, Hoshiarpur, whereby the divorce petition under Section 13 of Hindu Marriage Act, 1955 (hereinafter referred as 'the Act') filed by the respondent-husband was decreed on the grounds of cruelty and adultery and the marriage between the parties has been dissolved by way of decree of divorce.

2. Respondent No.1-husband had filed the aforesaid petition, alleging therein that the marriage between him and the appellant-wife was solemnized on 20.01.2005 as per Sikh rites and out of the said wedlock, two male children were born. It was further asserted that the appellant-wife had engaged herself in inappropriate



chatting with other persons; that the respondent-husband asked her to mend her ways, but to no avail; that in June 2017, the respondent-husband asked the appellant-wife to give him her mobile phone for transferring the photographs of the children and while transferring the data from the said mobile in a pendrive, the respondent-husband was shocked to find that the appellant-wife was having illicit relations with one Deepak Vashisht. It was further the stand of the respondent-husband that the appellant-wife used to send her nude photographs to the above said person, apart from doing vulgar chatting with him on WhatsApp. It was further stated that when the respondent-husband confronted the appellant-wife with the aforesaid facts, she denied her relations with the said person, but when the respondent-husband told her that he was having their photographs and WhatsApp chatting, the appellant-wife admitted it. It was further stated that when the matter was reported to the respectables in the family, the respondent-husband was asked to give another chance to the appellant-wife just for the sake of the welfare of the children and that the appellant-wife had assured that she would not be indulging herself into any kind of such act. It was further pointed out that after some time, the respondent-husband came to know that the respondent-wife was having illicit relations with another person, who was employed in Sandhu Gas Service Agency and in the absence of the respondent-husband, the aforesaid two persons used to visit the house of the respondent-husband. It was further stated that in 2019, brother of the petitioner (Sandeep Pal Singh), came from Canada and he disclosed that the appellant-wife was having extra-marital relations with aforesaid

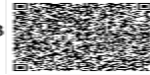


Deepak Vashisht and he had recorded a video of theirs in an objectionable position. It was further submitted that the appellant-wife did not mend her ways and ultimately left for her parental home and that subsequently she had moved a false application against the appellant at Police Station Garhdiwala.

3. Upon notice, the appellant-wife appeared and filed her written statement denying the allegations of cruelty and her living an adulterous life. It was stated by her that the respondent-husband was partner in Sandhu Gas Service Agency at Garhdiwala and used to spend his income for purchasing intoxicant substances. It was further asserted that the respondent-husband had been maltreating the appellant-wife and he was having illicit relations with one Rajvir Kaur, who was working as a clerk in Sandhu Gas Service Agency. It was further stated that in 2013, when the respondent-husband was out of home, his father (Mohinder Singh Sandhu) grappled her and tried to commit rape upon her and when the appellant-wife had moved a complaint against the said act of Mohinder Singh Sandhu, he had apologized for his conduct, but later on the respondent-husband and his father threw the appellant-wife out of the matrimonial home after giving her beatings. The allegations of illicit relations had been denied.

4. The respondent No.2 was served through publication but neither he appeared nor any counsel had put in appearance on his behalf.

5. On the basis of the pleadings of the parties the following issues were framed by learned Family Court:-



“1. Whether the respondent has committed utmost cruelty upon the petitioner, as such he is entitled to a decree of divorce on the ground of cruelty? OPP

2. Whether the respondent is leading adulterous life with respondent No.2 X2 as the petitioner is also entitled to a decree of divorce on the ground of adultery? OPP

3. Whether the present petition is not maintainable in its present form? OPR

4. Whether the petitioner is stopped from filing the present petition by his own act and conduct? OPR

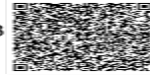
5. Whether the petitioner has not come to the Court with clean hands and suppressed the material facts from this Court? OPP

6. Relief.”

5. In evidence, the respondent-husband examined Dilbag Singh as PW-1; his cousin brother Ravinder Singh Bhatti as PW-2 and he himself had appeared as PW-3, besides producing documentary evidence in the form of Ex.P-3/1 to Ex. P-3/73. On the other hand, the appellant-wife examined herself as DW-1 and had produced documentary evidence Ex. R-1 to R-3.

6. The learned Family Court after taking into consideration the rival contentions of the parties and the evidence on record, decreed the petition filed by the respondent-husband.

7. Learned counsel appearing for the appellant-wife submits that though the entire case of the respondent-husband was based on the allegations that the appellant-wife was having illicit relations with said Deepak Vashisht, yet he did not appear before the Court and, therefore, in his absence, the allegations of adultery cannot be said to have been proved. It is further submitted that the videos and the WhatsApp chats produced before the Court, lacked authentication and

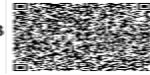


the same were not proved in terms of the provisions of the Evidence Act. It is further submitted that though the respondent-husband had alleged adultery on the part of the appellant-wife, yet no specific instances had been indicated or mentioned in the petition seeking divorce and rather the divorce petition was filed by the respondent-husband in order to take benefit of his own wrongs in doing atrocities upon the appellant-wife.

8. We have heard the learned counsel for the appellant and have also gone through the impugned judgment and decree passed by learned Family Court.

9. The issue that arises for consideration before this Court is whether the impugned judgment and decree passed by learned Family Court requires any interference.

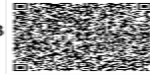
10. It was found by learned Family Court that the respondent-husband was able to prove photographs Ex. PW3/49 to Ex. PW3/66 and WhatsApp chatting Ex. PW3/8 to Ex. PW3/48 on record and that he had produced a certificate under Section 65-B of the Indian Evidence Act as Ex. RW3/67. It was, thus, found that the vulgar chats and the objectionable photographs had duly been proved on record and the WhatsApp chats Ex. PW3/8 to Ex. PW3/48 had not been controverted by the appellant-wife. It was further found that the appellant-wife was not able to controvert the respondent-husband, as regards the original source of WhatsApp chats and there was only simple denial on her part. From a reading of the impugned order, it is reflected that the divorce petition was filed by the husband on 03.07.2019 and the written statement was filed by the appellant-wife



on 02.11.2022 i.e. after more than three years. Still further an FIR was registered by the appellant-wife on 23.01.2020. Thus, the learned Family Court has rightly found that this indicated that the litigation was started by the appellant-wife after the filing of the divorce petition by the respondent-husband. It was concluded by the learned Family Court that having found the nude photographs of his wife being sent to said Deepak Vashisht, the respondent-husband had undergone a tumultuous emotional journey and, thus, it had caused him mental cruelty.

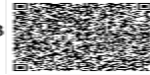
11. It was further found by the learned Family Court that merely because respondent No.2 did not appear in the proceedings, cannot be a ground that his identity was not ascertained particularly when there was no contradiction about his having illicit relations with the appellant-wife. It was further found that when the photographs and the WhatsApp chats had been proved on record and there was no effort on the part of the appellant-wife to ask for sending the same to the forensic lab for ascertaining their authenticity, the stand taken by the appellant-wife that the identity of said Deepak Vashisht was not established, lacked merit. The relevant extracts in this regard from the learned Family Court order would read as under:-

“33. The petitioner has produced on file sufficient material i.e. pen drive and the photographs Ex.PW3/69 to Ex.PW6/72. The petitioner has also proved the identity of respondent No. 1 from the Ex.PW3/70 and it is clarified that it is side pose of respondent No. 1. The respondent No. 1 was controverted with photographs Ex.PW3/69 to Ex. PW3/70 but the respondent No. 1 has denied her involvement in the said photographs. The respondent No. 1 has not moved any application for



sending the photographs as well as CD in any lab for challenging its genuineness. The petitioner has come forward with sufficient and reliable evidence and the onus was upon the respondent No. 1 to rebut the evidence produced by the petitioner. The respondent has admitted about her mobile phone and respondent could have produced that mobile phone in the Court for sending it to the laboratory for its examination. The respondent No. 1 has taken the plea that the petitioner is involved with one Rajvir Kaur who is the employee of the agency. The petitioner has come forward with clear cut stand and has not denied about her as his employee in the agency and has categorically replied Rajvir Kaur has left the agency. The allegations made by the respondent No. 1 are bald allegations and no evidence has been brought by the respondent No. 1 for proving this fact and it has also caused mental cruelty to petitioner. The respondent No. 1 has not taken a specific stand that she was not visiting the gas agency and was not aware about the location of the gas agency. The petitioner has proved the relationship of respondent No. 1 with respondent No. 2 by producing the video and photographs Ex.PW3/68 to Ex.PW74 which is secondary evidence supported by Section 65-B certificate showing the adulterous act of respondent No. 1 with respondent No. 2. Even otherwise as per the judgments, Karan Puri (supra) and Ritu Saigal (supra) Section 14 has given wider powers to the Family Court on the issues of relevance and admissibility of evidence which are led in a dispute between husband and wife.”

12. We find that the findings recorded by the learned Family Court cannot be said to be suffering from any patent illegality. In the face of the evidence proved on record by the respondent-husband, the arguments raised by learned counsel for the appellant-wife are liable to be rejected. The appellant-wife did have enough opportunity before the learned Family Court to disprove the evidence led by the



respondent-husband as has been found by the learned Family Court no endeavor was made on her part to lead any evidence which would contradict or create a doubt on the authenticity of the photographs and WhatsApp chats.

13. In V. Bhagat Vs. D. Bhagat, 1994 AIR 710, the Hon'ble Apex Court held that mental cruelty under Section 13(1)(i-a) refers to behavior that causes such severe emotional pain that it becomes impossible for one party to live with other. This means the affected party cannot reasonably be expected to tolerate the behavior and continue the relationship.

In Savitri Pandey Vs. Prem Chandra Pandey, (2002)2 SCC 73, the Hon'ble Apex Court held that the law allows for divorce if one spouse treats the other with cruelty as outlined in Section 13(1)(i-a) of the Act. Cruelty in matrimonial matters refers to conduct that threatens the well being of one spouse by endangering their life, limb or health. It can be physical or mental, causing suffering or fear in other spouse. However, it must be more than the normal conflicts or family life and should be objectively harmful.

In Joseph Shine Vs. Union of India, AIR 2018 SC 4898, the Hon'ble Apex Court held that adultery will no longer be considered as a criminal offence as it is a matter that primarily concerns individuals rather than the society as a whole. However, it remains a valid reason for divorce and may be considered a civil wrong.

14. There is no merit in the argument raised by the learned counsel for the appellant-wife that non-appearance of said Deepak

Vashisht, was a sufficient ground to discard the allegations of adultery on the part of the respondent-husband. In the instant case, it was found by learned Family Court that the authenticity of the mobile number/WhatsApp number being that of Deepak Vashisht, has not been countered or disproved by way of any evidence by the appellant-wife. Therefore, the evidence on record clearly proved that the appellant-wife had committed a misadventure while walking beyond the matrimonial alliance. Thus, we find that the impugned judgment and decree passed by learned Family Court does not require any interference by this Court. The said findings recorded by learned Family Court are the plausible findings given on the basis of the evidence on record. It could not be pointed out that any evidence has been misread or not taken into consideration.

15. No other point has been urged.
16. In view of the above, we do not find any merit in the present appeal and the same is hereby, dismissed.
17. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]

JUDGE

[HARSH BUNGER]

JUDGE

02.05.2024

Himanshu

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