

2024.PHHC.115313 DB



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

FAO-2301-2024 (O&M)

Date of decision: 02.09.2024

PUNEET MISHRA @ PUNEET

...Appellant

Versus

RINKI

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. Savreet Singh Brar, Advocate for appellant.

SUDHIR SINGH, J.

The present appeal is directed against the judgment and decree dated 16.01.2024 passed by learned Additional Principal Judge, Family Court, Faridabad, whereby the petition under Section 13 (1)(ia)(ib) of the Hindu Marriage Act, 1956 (hereinafter referred as 'the Act') filed by the appellant-husband has been dismissed.

2. The facts of the case, in brief, are that the marriage between the appellant and the respondent-wife was solemnized on 12.05.2017 as per Hindu rites, at New Delhi. After marriage, the parties started residing together as husband and wife at Faridabad. It is the case of the appellant-husband that after a week of the marriage, one Vijay Kumar started coming to their house and had introduced

himself as brother of the respondent-wife. Some time thereafter, the respondent-wife had requested the appellant to allow her to go with said Vijay Kumar to his house at Faridabad and assured to come back after a few days. Believing her words, the appellant-husband allowed her to go with said Vijay Kumar, but when after few days, the appellant requested her to come back, she had requested to allow her to stay at the house of said Vijay Kumar for some more days. The respondent-wife and said Vijay Kumar were in contact with the appellant via telephonic communication and they had started pressurizing him to reside with his parents at Faridabad, but the appellant had clearly told them that as he had solemnized his marriage with the respondent-wife against the wishes of his parents, they had disinherited him and broken all the ties with him and, therefore, he could not live with his parents. It was further averred that in December, 2018, the respondent-wife and aforesaid Vijay Kumar demanded a sum of Rs.5 lakh from the appellant for the divorce, failing which they had threatened to implicate him some false cases like rape, dowry demands etc. When the appellant-husband had raised objections, the respondent-wife disclosed that she was residing with said Vijay Kumar in a live-in-relationship at a separate rented room located at SGM Nagar, Faridabad. The appellant, thus, came to learn that the respondent-wife had obtained the marriage certificate in conspiracy with aforesaid Vijay Kumar. The respondent-wife was living an adulterous life with said Vijay Kumar and had deserted the appellant-husband. The appellant-husband had requested the

respondent-wife to join his company, but she had avoided his requests.

3. Upon notice, the respondent-wife appeared and filed her written statement. The factum of marriage and the parties residing at Faridabad, was admitted. It was averred that in 2018, she underwent a miscarriage. It was further stated that aforesaid Vijay Kumar, was Supervisor in the Company, where the respondent-wife was working and he had helped her at crucial times and also provided her legal assistance. It was further stated that said Vijay Kumar was having three sisters and he respects every female employee as his sister. The appellant-husband had told her that he had filed the divorce petition only to please his parents and that the respondent-wife did not want a single penny from the appellant-husband till she is working and that she was ready and willing to join the company of the appellant-husband.

4. On the basis of pleadings of the parties the following issue framed by learned Family Court:-

“1. Whether the petitioner is entitled for a decree of divorce on the grounds pleaded in the petition? OPP

2. Whether petition is not maintainable? OPR

3. Whether the petitioner is taking advantage of his own wrongs? OPR

4. Relief.”

5. In evidence, the appellant-husband examined himself as PW-1; PW-2-Amarjeet and PW-3-Ravinder Sarpanch, besides leading

documentary evidence Ex.P-1 to -4. The respondent-wife examined herself as RW-1, but did not lead any documentary evidence.

6. The learned Family Court, after taking into consideration the rival contentions of the parties and evidence on record, dismissed the petition filed by the appellant-husband holding that mere long separation between the parties after filing the petition for divorce would not be a ground to seek divorce from the wife and that the appellant-husband, has failed to prove the grounds of cruelty.

7. Learned counsel appearing for the appellant-husband has vehemently argued that while passing the impugned judgment, the learned trial Court has failed to take into consideration that the respondent-wife was living an adulterous life, which had caused mental torture and cruelty to the appellant-husband. It is further submitted that the learned trial Court has also failed to take into consideration that the respondent-wife had deserted him without any justified cause and when he requested the respondent-wife to join his company, she along with said Vijay Kumar demanded a sum of Rs. 5 lakh. It is further argued that the case set up by the appellant-husband was proved on record on the basis of the testimony of the appellant-husband and his witnesses i.e. PW-1 Puneet Mishra and PW-2 Amarjeet. However, the same was totally ignored by the learned Family Court, while passing the impugned judgment.

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

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

10. Under Issue No.1 i.e. whether the appellant-husband is entitled for a decree of divorce on the grounds pleaded in the petition, it was found by the learned Family Court that the allegations levelled in the petition filed by the appellant-husband were general and vague in nature and that he had failed to prove even a single instance, when the respondent-wife had misbehaved with him during the period, she had resided with him. It was further found that though the appellant-husband had averred that the respondent-wife was living an adulterous life with aforesaid Vijay Kumar, yet neither such relationship between the respondent-wife and said Vijay Kumar could be proved on record by the oral and/or documentary evidence nor said Vijay Kumar was made a party to the lis. In his testimony PW-1, the appellant himself, admitted that said Vijay Kumar used to treat the respondent-wife as his sister, whereas PW-2 and PW-3 stated that they had not known the said Vijay Kumar. As regards demand of sum of Rs. 5 lakh, it was found that in his testimony, the appellant had admitted that his wife had never demanded any money from him. Still further, it was found that the appellant himself had admitted that he was living at Gwalior, whereas the respondent-wife was living at Faridabad and that there was no evidence on record to indicate that the respondent-wife had left the house of the appellant-husband, without any reason.

11. Under the head of desertion, it was found that the appellant himself had pleaded that the respondent-wife had not been

residing with him since December, 2018. The petition was filed by the appellant on 15.12.2018. It was, thus, found that the appellant was required to prove that the respondent-wife had deserted him two years prior to the filing of the petition, which he had failed to do so. Accordingly, the learned Family Court held that the appellant-husband had failed to prove the grounds of cruelty or desertion.

12. In **Ramchander v. Ananta**, (2015) 11 SCC 539, it has been held that cruelty has not been defined in the Act and the same is to be taken as the behavior by one spouse towards the other. The cruelty can be physical or mental, but such cruelty must be proved. It was held as under:-

“ 10. The expression “cruelty” has not been defined in the Hindu Marriage Act. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behavior by one spouse towards the other, which causes a reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Cruelty can be physical or mental. In the present case there is no allegation of physical cruelty alleged by the plaintiff. What is alleged is mental cruelty and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. It is settled law that the instances of cruelty are not to be taken in isolation but to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the plaintiff has been subjected to mental cruelty due to conduct of the other spouse. In the decision in Samar Ghosh case (Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511) this Court set out

illustrative cases where inference of “mental cruelty” can be drawn and they are only illustrative and not exhaustive”.

Still further in **Malathi Ravi v. B.V. Ravi**, (2014) 7 SCC 640, it has been held by the Hon’ble Supreme Court that desertion in its essence means the intentional permanent forsaking and abandonment of one spouse by the other without the consent of the other spouse. It was held as under:-

“ 20. In the said Savitri Pandey’s case (2002) 2 SCC 73, reference was also made to Lachman Utamchand Kirpalani case (AIR 1964 SC 40) wherein it has been held that desertion in its essence means the intentional permanent forsaking and abandonment of one spouse by the other without that other’s consent and without reasonable cause. For the offence of desertion so far as separation, and (2) the intention to bring cohabitation permanently to an end (animus deserandi). Similarly two elements are essential so far as the deserted spouse is concerned.: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation.”

13. In the instant case, no evidence was led by the appellant-husband to prove the ground of cruelty or desertion. Even the adulterous relationship could not be proved and more so the person against whom the charges of adultery were levelled, he had not been impleaded as a party and there was no explanation to that effect. As per the facts on record, the parties last resided together till December, 2018 and the petition for divorce was filed in 2018 itself. Therefore, as per the mandate of law, the two years' separation before the filing of the divorce petition, was also not meted out. The respondent-wife in her written statement, had specifically pleaded that she was ready and willing to reside with the appellant-husband and that she would not demand even a single penny from the appellant-husband till she is working.

14. No other point has been urged.

15. In view of the above, finding no merit in the present appeal, the same is hereby dismissed.

16. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

02.09.2024
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No