

2024:PHHC:063393-DB

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

FAO-1774-2024

Reserved on: 18.04.2024

Pronounced on: 07.05.2024

Paramdeep Ghera

....Appellant

Versus

Bhawna

....Respondent

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

Present: Mr. Hakam Singh, Advocate for the appellant

SUDHIR SINGH, J.

Present appeal is directed against the judgment and decree dated 15.02.2024 passed by the Family Court, Jalandhar, whereby the divorce petition filed the appellant under Section 13 of the Hindu Marriage Act (hereinafter referred to as 'the Act') on the ground of cruelty, has been dismissed.

2. The appellant-husband filed the aforesaid petition, inter-alia, averring therein that his marriage with the respondent-wife was solemnized on 31.01.2014 according to Sikh rites, and a male child, namely, Aarav, was born out of the said wedlock. It was further averred that on the second day of the marriage, the respondent-wife informed him about her premarital relationship with some other person and had also told him that she had performed marriage with him under pressure of her parents. It was stated by the appellant that the respondent-wife had told wife of his brother-in-law regarding the

incompetency of the appellant to have physical relationship with the respondent. It was alleged by the appellant-husband that his in-laws had started tutoring the respondent-wife to have a separate residence, but he told them that as he had got the job on compassionate ground, there was no question of his living separately by leaving his family. It was further alleged by the appellant that when the respondent-wife conceived a child, she claimed it to be of someone else and not that of the appellant-husband. It was yet further averred that there was significant interference of the respondent's parents in their married life. It is the case of the appellant that in July, 2016, the respondent-wife left the matrimonial home and resided with her parents for two and a half months. However, with the intervention of the aunt of the respondent-wife, she came back to her matrimonial home, but the situation did not improve. It was further stated that the respondent-wife did not mend her ways and continued creating troubles in her matrimonial home and finally she had left the matrimonial home along with the minor child. Subsequently, the respondent-wife is stated to have had filed complaints against the appellant-husband and his family members at Police Station Division No.7 and Division No.6, Jalandhar against the appellant-husband and his family member and when they visited the said Police Stations, the respondent-wife and her family members had misbehaved with the appellant-husband and his family members.

3. Upon notice, the respondent put in appearance and filed her reply denying the allegations of cruelty and the alleged

troubles created by her. The respondent stated that the behavior of the appellant-husband had always been cold towards her. Even during her pregnancy, he did not bother to take her for medical checkup or treatment. Further, the family of the appellant-husband demanded more dowry even though sufficient dowry was given to them at the time of the marriage. The respondent-wife was given merciless beatings at her matrimonial home which not only resulted in physical cruelty but also mental cruelty. It was further averred that the brother-in-law (Jeth) of the respondent-wife had taken a 'Gun' (Donali) and pointed it towards her and even the appellant-husband had also pointed his revolver towards the respondent-wife and gave her slaps and abused, assaulted and thrashed her. It was further stated in respect of the beatings given to the respondent-wife by the appellant-husband and his family members, MLR was got conducted from Civil Hospital, Jalandhar and a complaint was filed at Police Station Division No. 7, Jalandhar and it was with the intervention of the police that the respondent-wife had been handed over the custody of her minor child. Registration of FIR No. 12 dated 09.03.2017 under Sections 406, 498-A and 323 IPC at Police Station, Women Cell, Jalandhar was admitted.

4. On the basis of the pleadings of the parties, the learned Family Court framed the following issues:-

- i) Whether respondent has treated the petitioner with cruelty? OPP
- ii) Whether petitioner is entitled to dissolution of marriage by decree of divorce? OPP

iii) Relief.

5. The learned Family Court, while dismissing the petition filed by the appellant-husband, recorded the following findings:-

i) The appellant had alleged that on the second day of marriage, the respondent-wife had conveyed to him about her pre-marital relations with someone. But the said fact was stated to have been resolved. There was, however, no mention of any name and particulars of any such person (with whom the wife allegedly had pre-marital relations). Not only this, the appellant had nowhere mentioned regarding the particulars of any family member to whom these enslavements were narrated. Furthermore, none of the witness examined by the appellant, including his real sister, deposed regarding the said fact.

ii) The appellant-husband had further contended that the respondent-wife allegedly told wife of brother-in-law of the appellant regarding his incompetency to have physical relationship with the respondent, but no family member(s) or relative(s) of the appellant-husband, to him before whom the respondent-wife had allegedly made such assertions was examined as a witness and/or had given ocular version in this regard.

iii) Further, with reference to the interference of the in-laws in their married life, the Court observed

that the averments were general in nature. When specific question was put to petitioner in cross-examination to describe the instances of interference, he did not raise any plea of demand of separate residence by the respondent-wife at the instance of her parents.

iv) Further, with reference to the respondent-wife leaving the matrimonial home and resuming cohabitation with the appellant on the intervention of aunt namely Jasvir Kaur on giving an undertaking to that effect, the court observed that there was no contention of giving of an undertaking by Jasvir Kaur or that she had intervened in bringing back the respondent-wife to her matrimonial home.

6. The question that arises for consideration before this Court is whether the impugned judgment and decree of the trial Court, requires interference by this Court.

7. Learned counsel appearing on behalf of the appellant submits that on various occasions the respondent-wife had treated him and his family members with cruelty. One of the main contentions raised was that the respondent-wife had registered a complaint against the appellant and his family under Sections 406, 498-A and 323 IPC which amount to mental cruelty. Further, it is submitted that on account of continuous interference of the parents of respondent, the relation between the appellant and the respondent could not bloom and remained estranged. Furthermore, it is contended that the respondent-wife

deserted the appellant without any sufficient cause irrespective of the fact that he had been making persistent efforts to get her back in the matrimonial home but all of his efforts were in vain. Lastly, it is argued that even though the respondent-wife had alleged that because of the incompetency of the appellant to establish physical relations with her, the appellant tried to remain cordial with her for their smooth marriage but despite that the respondent-wife remained adamant and stubborn which amounts to nothing but cruelty.

8. After hearing the arguments of the counsel for the appellant and having gone through the impugned judgment, we find no merit in the present appeal for the reasons mentioned hereinafter.

9. Onus to prove issue Nos. 1 and 2, was on the appellant-husband. It was the appellant-husband, who had alleged cruelty against the respondent-wife and had sought a decree of divorce on the said ground. Upon a careful perusal of the findings recorded by the Court below, this Court finds that the main grounds pleaded by the appellant-husband for divorce i.e. the respondent-wife's pre-marital relations and her terming the appellant-husband as incapable of establishing physical relations with her, did not find any favour with the trial Court. Rather, it was found that the appellant-husband was not able to prove the same. The appellant-husband did not examine the wife of his brother-in-law as a witness, to whom the respondent-wife had allegedly told about the appellant-husband being incapable of performing physical relations. Still further, though the

appellant-husband, had pleaded that his wife had told him about her pre-marital relations, but no particulars of any such person or date(s) and time period, were given. The alleged interference of the parents of the respondent-wife was found to be general in nature. In his deposition as a witness before the learned Family Court, the appellant-husband, was not able to describe the specific instances of interference and even did not depose anything about the demand of a separate residence by the respondent-wife.

10. The stand of the appellant-husband was that despite having made efforts of rehabilitation, there was no response from the respondent's side and her aunt left her at the matrimonial home and gave an undertaking to Officer In-charge, Police Station Division no. 6, Model Town, Jalandhar wherein he mentioned that on 11.09.2016 he visited the house of the respondent and from there he brought her back. There was clearly no plea of giving any undertaking by her aunt, Jasvir Kaur or that she had brought back the respondent to her matrimonial home. As per the stance of the respondent-wife too, it was only after the compromise of the Panchayat, the appellant brought her back. Therefore, there is no room left to believe the allegation of the appellant that it was because of the intervention of Jasvir Kaur that the respondent returned back to her matrimonial home.

11. Further, sufficient evidence was produced on record by the respondent-wife to prove that she had not voluntarily left the matrimonial home and it was only when she was ill-treated

and threatened that her life will be finished then having no choice, she had to leave her matrimonial home. RW-2 Diksha, Alhmad attached to the Court of Shri R. S. Rana, JMJC deposed that the respondent was medico legally examined vide MLR Ex. RW2/1. Multiple linear abrasions were found on the anterior aspect of chest. This clearly established that the respondent-wife had been subjected to beatings.

12. The respondent-wife had lodged a criminal case against the appellant-husband and the matter is sub-judice. As the criminal proceedings are pending between the appellant and the respondent, it cannot be said that the respondent-wife has been living separately without any justified cause.

13. In Savitri Pandey Vs. Prem Chandra Pandey, (2002) 2 SCC 73, the Hon'ble Apex Court has 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 of family life and should be objectively harmful.

14. In V. Bhagat Vs. D. Bhagat, 1994 AIR 710, the Hon'ble Apex Court has 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.

15. In Narayan Ganesh Dastane Vs. Sucheta Narayan Dastane, 1975 AIR 1534, the Hon'ble Apex Court has held that it is upon the spouse seeking divorce to prove that the other spouse has treated him/her with cruelty. The stance of the petitioner has to stand on its own legs. The assertions made by the petitioner are to be proved by him by way of compelling evidences. The burden to prove a fact lies on the party who affirms it and not on the party who denies it.

16. Thus, we find that the findings recorded by the learned trial Court do not suffer from any patent illegality or perversity. It could not be shown that any evidence has been misread or not taken into consideration by the trial Court.

17. No other point has been urged.

18. In view of the above, we do not find any merits in the present appeal and the same is hereby, dismissed.

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

(Sudhir Singh)
Judge

(Harsh Bunker)
Judge

07.05.2024
ds/mahavir

-	<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
-	<i>Whether reportable:</i>	<i>Yes/No</i>