



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-M-243-M-2006 (O&M)

Date of Decision: 31.05.2024

MAJOR YASH PAL SINGH RATHI

...Appellant

Versus

MRS. SUNITA RATHI

...Respondent

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

Present : Mr. Puran Singh Hundal, Senior Advocate
with Mr. Gursahib Singh Hundal, Advocate
and Mr. Ankush Chauhan, Advocate
for the appellant.

Mr. B.S. Rana, Senior Advocate with
Ms. Niharika Singh, Advocate
for the respondent.

HARSH BUNGER, J.

Appellant-husband (Major Yash Pal Singh Rathi) has come up in this appeal against the judgment and decree dated 06.09.2006 passed by the learned Additional District Judge, Ambala, whereby the petition filed by him under Section 13 of the Hindu Marriage Act, 1955 (in short '*the 1955 Act*') seeking dissolution of marriage by a decree of divorce, has been dismissed.

2. Succinctly, the marriage of appellant-Major Yash Pal Singh Rathi was solemnized with respondent-Sunita Rathi on 29.01.1992 at Jhajjar

as per Hindu rites and ceremonies. Out of this wedlock, one son namely, Adityaveer was born.

3. It transpires that on account of matrimonial issues, the appellant filed a petition under Section 13 of the 1955 Act, seeking divorce from the respondent. The pleaded case of the appellant-husband in the divorce petition was that right from the very inception of the marriage, the conduct of the respondent was very cruel and quarrelsome towards him. According to the appellant, the respondent used to impute allegations against the appellant and threaten to implicate him in false cases. According to the appellant-husband, the respondent used abusive language towards him and picked up quarrels in the presence of friends, relatives and colleagues. It was stated that the respondent insulted and humiliated the appellant whenever he tried to have sexual relationship with her. Appellant further averred that the respondent had the tendency to commit suicide. Firstly, in the year 1993, she tried to consume poison in the absence of the appellant-husband and when the said incident was brought to the knowledge of the brother of the respondent, then he assured that the respondent would not repeat this in future. Secondly, in the month of October, 1999, at Dehradun, the respondent-wife confined herself in a room and attempted to commit suicide, however, she was saved by the appellant-husband. It was further stated that the appellant-husband apprehended that it would be unsafe for him to live with respondent-wife and hence, in the year 2002, he served a legal notice upon the respondent. The said notice was replied to by the respondent-wife, in which, she levelled false and frivolous allegations against the respondent-husband followed by a complaint dated 15.04.2003 addressed to the General Officer Commanding, alleging that he (appellant) had extra-marital relations

with a number of women; that the respondent was neglected; that no maintenance was provided to her by the appellant-husband and she requested to occupy the family accommodation at Ambala. It was further averred by the appellant that upon the said complaint, a court of enquiry was instituted against the appellant, causing harassment and humiliation to him, which amounts to cruelty. It was stated that the image, career and reputation of the appellant was spoiled.

3.1 It was also pleaded by the appellant that he was prevented from entering his own house for more than two years immediately preceding the date of presentation of petition and that the appellant had been deserted by the respondent without any reasonable or sufficient cause. Appellant further averred that the respondent herself had a shady past and her acts of omission and commission has caused physical and mental torture, cruelty, harassment and humiliation to him.

3.2 In this backdrop, the divorce petition was filed by appellant.

4. On the other hand, the respondent contested the afore-said divorce petition, *inter alia*, on the plea that the appellant had concealed material facts and had not come to the Court with clean hands. It was contended that the divorce petition filed by the appellant-husband is not maintainable. Respondent denied all the allegations levelled by appellant in his divorce petition, especially the allegations that the respondent tried to commit suicide. Respondent averred that the false and frivolous story has been cooked up by the appellant to create grounds for the filing of the divorce petition. It was further averred by respondent that the image and career of the appellant was spoiled by appellant himself due to his conduct and his own wrong doings and not by respondent as alleged against her. It

was also denied that the appellant was prevented from entering his own house.

4.1 An additional plea was taken by respondent that the appellant by his own act and conduct was spoiling the life of respondent and her child. It was stated that the appellant was spoiling his family life and that the appellant was having illicit relations with one Capt. Rashmi Chopra and appellant had been misusing major part of his salary. It was stated that most of the time, the appellant remains in the company of Capt. Rashmi and when the respondent objected to the illegal relations of the appellant with Capt. Rashmi, then appellant got annoyed and has filed the divorce petition. In support of her stand, the respondent placed on record various photos and letters. The respondent further stated that the divorce petition is based on false and frivolous allegations and that she does not want to break the matrimonial relations for the betterment of their child.

4.2 With the afore-said submissions, the respondent sought dismissal of the divorce petition.

5. The appellant filed replication wherein he controverted the stand of the respondent and reiterated his assertions made in the divorce petition. The additional plea(s) taken by respondent were denied by appellant and it was also stated that the appellant has all the love and affection for the child but the respondent does not allow the appellant to meet the child.

6. On the basis of the pleadings of the parties, the following issues were framed:-

“1. Whether the respondent has treated the petitioner with cruelty as alleged? OPP

2. *Whether the petition is not maintainable in the present form? OPR*
3. *Relief.*“

7. In order to prove his case, following witnesses (PW’s) were examined by the appellant-husband:

S. No.	PW	PERSON
1	PW1	Major Yashpal Singh Rathi (Appellant-husband)
2	PW2	Varinder Pahel (Nephew of appellant-husband)
3	PW3	Col. Surinder Monga

8. On the other hand, following witnesses (RW’s) were examined by the respondent-wife:

S. No.	RW	PERSON
1	RW1	Sunita Rathi (Respondent-wife)
2	RW2	Bala Kumari (Neighbour of respondent-wife)
3	RW3	Bhupinder Kaur (Neighbour of respondent-wife)
4	RW4	Dalbir Singh (Brother of respondent-wife)

9. After considering the pleadings of the parties and also the evidence available on the record, the learned Additional District Judge, Ambala, vide impugned judgment and decree dated 06.09.2006, dismissed the divorce petition.
10. A perusal of the impugned judgment would show that the Additional District Judge, Ambala recorded the following findings, while dismissing the divorce petition:-

i) The husband's primary allegation against his wife is that she insulted and humiliated him in the presence of his friends and relatives. In support of this claim, the husband

tendered his affidavit and further examined PW 2 (Varinder Pehal) who testified that the respondent-wife is habitual of picking up quarrels over petty matters and levelling allegations against her husband and has spoiled the image of her husband in the eyes of his colleagues. Appellant further examined PW 3 (Col. Surinder Monga) who stated that he visited the house of appellant on number of occasions but respondent-wife refused to serve tea and that the respondent used to impute allegations of extra-marital relationship against her husband and appellant felt harassed. PW 3 further deposed that the respondent might be suffering from a psychiatric disorder. PW3 also deposed that his wife is a medical officer in Army and after examination she found respondent as sexually inactive.

However, the trial Court held that where husband alleges cruelty against wife then the best testimony in this regard can be that of his parents, brothers, sisters, relatives and friends, who are material to prove such allegations. Trial Court observed that both PW-2 and PW-3 are not summoned witnesses and that the allegations are general in nature and no specific instances have either been provided in the pleadings or in the evidence.

ii) The appellant-husband alleged that respondent-wife submitted a false and frivolous complaint (Ex.PA) alleging that the appellant was having extra marital relations whereupon an enquiry was ordered and the appellant-husband was subjected to harassment and humiliation before his superiors and colleagues.

In this regard, the trial Court observed that when the appellant-husband was subjected to cross-examination, he admitted that in photograph (Ex.R1), he is with Capt. Rashmi and in another photograph (Ex.R2), it was also admitted to be that of Rashmi. The appellant-husband also admitted that he used to maintain diary and admitted

photocopy of the diary as Ex.R3. Trial Court found that in the photographs, the appellant was in objectionable poses with Capt. Chopra. Trial Court went on to observe that no hindu wife can tolerate another lady in the arms of her husband. Accordingly, it was held that the photographs, which were admitted by the appellant, leave no room to conclude that the appellant is not sincere towards his wife. The Court further observed that since the diary (Ex. R3) was admitted by the appellant that it belonged to him, therefore, no one can accept from one's wife that she will be so frank that she will allow him to have a life of free bird. Learned trial Court, upon going through the contents of the diary (Ex. R3) observed that the appellant was writing himself that he went to Indore and had a chance to see lot of girls and that there is admission on the part of the appellant regarding his involvement with various ladies. The stand of the appellant that the contents of his diary were only a fiction was not accepted by the trial Court. It has further been observed by the Court below that there are number of letters available on record which can safely be termed as love letters which shows that the appellant was more interested in outsiders than his own life.

(iii) As regards the complaint (Ex. PA) submitted by the respondent-wife addressed to General Officer Commanding; the trial Court observed that considering the admission of the appellant as regards the photograph (Ex. R1), the same was not without merit. While referring to Section 23 of the Hindu Marriage Act, the trial Court observed that the appellant cannot take advantage of his own wrongs.

(iv) As regards the allegation of appellant-husband that the respondent-wife was not permitting the appellant to have sexual intercourse; the appellant relied upon the testimony of PW3 (Col. Monga) who deposed that his wife

being a medical officer has examined the respondent-wife and found her to be sexually inactive.

However, the trial Court observed that in the absence of any medical expert, the testimony of PW3 cannot be relied upon. It was observed that had the wife of PW3 (Col. Monga) appeared in the witness box, something could have been said but testimony of PW-3 is a hearsay evidence.

Accordingly, the trial Court held that the appellant had failed to establish that the respondent is guilty of treating him with cruelty.

(v) *As regards the allegation of the appellant-husband that respondent has deserted him for a continuous period of more than two years immediately preceding the presentation of divorce petition, it was observed by the trial Court that desertion cannot be equated with separate living and can only be considered when factum of deserendi and animus deserendi are proved. Trial Court observed that no specific date has been mentioned in this regard and it has not been established that the respondent was or is having intention to desert the appellant.*

Trial Court further observed that the respondent-wife was maintaining distance from the appellant-husband for the welfare of child and she does not want to break the relationship with the appellant and her bona fide cannot be doubted. Keeping in view the conduct of the appellant, it was observed that the appellant seems to be supporter of western culture and wants to lead a freelance life. It was held that the petition is otherwise barred under Section 23 of the Hindu Marriage Act.

11. Learned counsel for the appellant submits that the learned trial Court has erred in law and facts in dismissing the divorce petition filed by the appellant. It is submitted that the findings returned by the trial Court are based upon conjectures and surmises and the same have been rendered by

ignoring the oral and documentary evidence and also the facts available on the record. Learned counsel for the appellant submits that the respondent was in the habit of picking up quarrels over petty matters. It is contended that the trial Court has failed to consider the acts of cruelty of respondent-wife, inasmuch as the respondent-wife did not serve tea to the relatives and friends of the appellant-husband and she always insulted the appellant in front of his friends and relatives. It is submitted that the trial Court has wrongly brushed aside the testimony of friends available on the record and has erred in dismissing the divorce petition. Learned counsel for the appellant further submitted that the respondent-wife had made false and frivolous allegations against the appellant-husband that he was having extra-marital relations with number of ladies and in that regard, she submitted a complaint dated 15.04.2003 against the appellant to General Officer Commanding, whereupon the court of enquiry was instituted against the appellant and he was subjected to humiliation and harassment in the presence of officers and colleagues, therefore, the image and career of the appellant was spoiled, which amounted to cruelty. It is submitted that the trial Court failed to consider that the respondent-wife was suffering from a psychic disorder and she tried to commit suicide twice. It is contended that the afore-said facts were stated in the diary (Ex.R3) of the appellant-husband; however, the same have been ignored by the Court below. It is argued that the afore-said diary (Ex.R3) has been accepted by the trial Court for holding that the appellant seems to be supporter of western culture and wants to lead a freelance life, therefore, the said diary (Ex.R3) should also have been accepted as regards proof of fact that the respondent tried to commit suicide twice. Learned counsel further contended that the

respondent-wife is sexually inactive and the same was duly proved on record by Col. Surinder Monga (PW3), who stated that his wife had examined the respondent and she found respondent as sexually inactive. It is contended that the appellant had led sufficient evidence to prove his case; however the same has been ignored. Therefore, it is submitted that the findings returned by the trial Court are un-sustainable in the eyes of law.

12. Per contra, learned counsel for the respondent has opposed the contentions/submissions made on behalf of the appellant by submitting that the trial Court has duly considered and appreciated the facts, pleadings as well as the evidence available on the record, in its right perspective. It is submitted that the trial Court has considered the relevant facts/events touching the entire matrimonial life of the parties and has rightly concluded that the appellant seems to be supporter of western culture and wants to lead a freelance life. Learned counsel for the respondent submitted that the respondent wants to save her marriage, especially for the sake of their child. It is submitted that it is the appellant, who had been ignoring the respondent and indulging him in unethical relations, however, when the respondent objected to the acts of the appellant, he got annoyed and filed the divorce petition on frivolous grounds, therefore, it is contended that the trial Court has rightly held that the appellant-husband cannot be allowed to take benefit of his own wrongs. It is stated that the trial Court has rightly dismissed the divorce petition filed by the appellant-husband. It is also submitted that there is no illegality or perversity in the impugned judgment, which may call for any interference by this Court.

12.1 With the afore-said submissions, learned counsel for the respondent prayed for dismissal of the appeal.

13. We have heard learned counsel for the parties and perused the paper-book as well as the impugned judgment, with their able assistance.

14. The seminal question that has to be addressed is “*whether under the aforementioned circumstances, the dismissal of the divorce petition requires any interference.*”

15. Before we consider the merits of the case, it is apposite to refer to observations made by Hon'ble Supreme Court in ***Jagdish Singh v. Madhuri Devi, 2008(10) SCC 497***, which read as under:-

“24. It is no doubt true that the High Court was exercising power as first appellate court and hence it was open to the Court to enter into not only questions of law but questions of fact as well. It is settled law that an appeal is a continuation of suit. An appeal thus is a re-hearing of the main matter and the appellate court can re-appraise, re-appreciate and review the entire evidence "oral as well as documentary" and can come to its own conclusion.

25. At the same time, however, the appellate court is expected, nay bound, to bear in mind a finding recorded by the trial court on oral evidence. It should not forget that the trial court had an advantage and opportunity of seeing the demeanour of witnesses and, hence, the trial court's conclusions should not normally be disturbed. No doubt, the appellate court possesses the same powers as that of the original court, but they have to be exercised with proper care, caution and circumspection. When a finding of fact has been recorded by the trial court mainly on appreciation of oral evidence, it should not be lightly disturbed unless the approach of the trial court in appraisal of evidence is erroneous, contrary to well-established principles of law or unreasonable.”

16. Keeping in view the aforesaid observations made by Hon'ble Apex Court in case of *Jagdish Singh (supra)*, let us examine the case in hand.

17. In the instant case, the marriage between the appellant and the respondent was solemnized on 29.01.1992 and out of the said wedlock, one son was born on 03.05.1996. In January-2004, appellant filed a petition under Section 13 of the 1955 Act, seeking divorce on grounds of cruelty and desertion; which was dismissed by the learned Additional District Judge, Ambala vide its judgment and decree dated 06.09.2006, as noticed above. Feeling aggrieved, the appellant has filed the present appeal before this Court.

18. The first contention on behalf of the appellant is that the respondent was in the habit of picking up quarrels over petty matters and she did not serve tea to the relatives and friends of the appellant-husband and she always insulted the appellant in front of his friends and relatives. In order to substantiate the said plea, the appellant examined himself as PW1 and besides him, one Varinder Pehal (nephew of appellant) was examined as PW2 and Col. Surinder Monga was examined as PW3. Trial Court has noticed that the aforesaid witnesses i.e. PW2 and PW3 were not summoned witnesses and apart from sole testimony of appellant, there was no corroboration of the aforesaid allegations of the appellant. The trial Court further observed that the aforesaid allegations levelled by appellant are general in nature and no specific instances have either been provided in the pleadings or in the evidence.

18.1 Upon considering the depositions of the aforesaid witnesses PW1 to PW3, we are also of the view that only general and vague

allegations have been made by them. Merely because the respondent did not serve tea to the relatives and friends of appellant-husband or that the respondent-wife used to quarrel with the appellant on petty matters, it cannot be concluded that on such allegations marriage between the parties should be dissolved on the ground of cruelty. Infact, no importance is required to be attached to such general and vague allegations. The allegations raised by the appellant, at the most, constitute normal wear and tear of married life.

19. The next contention of the appellant is that the respondent-wife had made false and frivolous allegations against the appellant-husband that he was having extra-marital relations with number of ladies and in that regard, she submitted a complaint dated 15.04.2003 (Ex. PA) against the appellant to General Officer Commanding, whereupon the court of enquiry was instituted against the appellant and he was subjected to humiliation and harassment in the presence of officers and colleagues, therefore, the image and career of the appellant was spoiled, which amounted to cruelty.

19.1 The trial Court upon consideration of the evidence on record, observed that the appellant-husband admitted in his cross-examination that in photograph (Ex.R1) he is with Capt. Rashmi Chopra, wherein the appellant was in objectionable poses with her. Trial Court observed that no Hindu wife can tolerate another lady in the arms of her husband. Learned trial Court held that the appellant is not sincere towards his wife. Learned trial Court, upon going through the contents of the diary (Ex. R3), further observed that the appellant was writing himself that he went to Indore and had a chance to see lot of girls and that there is admission on the part of the appellant regarding his involvement with various ladies. It was further observed by the Court below that there are number of letters available on

record which can safely be termed as love letters which shows that the appellant was more interested in outsiders than his own life.

19.2 It is well established that the allegation of one spouse against the other regarding illicit sexual relationship with a third party should be 'unfounded' in order to become a 'matrimonial offence of cruelty' to warrant divorce. It stands to reason also. However, if one of the spouses has justification for allegations, it is his or her duty to point it to the other spouse or ask him to mend his or her ways, in the interest of matrimonial amity. The aggrieved spouse will be justified in seeking help of those who have their goodwill in mind or who are in Authority.

19.3 In the present case, there is sufficient material on record, especially the photographs (Ex. R1 and R2) and also the contents of the diary (Ex. R3), which is admitted by appellant to be in his handwriting, that appellant was leading an unethical life. To quote an instance, one entry in the diary (Ex. R3) reads as under:-

January' 92	10	Fri
<i>Had prize distribution by Gen Rod – our regiment got no prize. AKA Banner Dogra, II – Rajput, III Jak Rif</i> <i>I skipped Bada khana</i> <i>Went with Kuldeep (Assam) to Indore on scooter and then on bus to Ujjain. There we fucked pros. Near fire brigade. I paid Rs. 122/-.</i> <i>The female was good</i>		

19.4 Considering the above, we are of the view that the wife was justified in submitting a complaint dated 15.04.2003 (Ex. PA) to General Officer Commanding against the misdemeanor of the husband regarding his

immoral leanings towards another woman and resultant conduct of the husband in ignoring his wife. It has been found as a fact that the appellant's conduct was not up to the mark. Therefore, granting him a decree of divorce in this situation would be allowing the appellant to take advantage of his own wrongs, which would be contrary to the basic principle as embodied in Section 23(1)(a) of the Hindu Marriage Act, 1955.

20. As regards the allegation of the appellant that the respondent-wife was suffering from a psychic disorder and she tried to commit suicide twice; suffice it to say that apart from the bald statement of the appellant-husband there is no material on record, either by way of any medical record or any deposition of any medical expert who may have examined the respondent. There is also nothing to suggest that the respondent tried to commit suicide twice.

20.1 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 spouse seeking divorce, has to stand on its own legs. The assertions made by the spouse seeking divorce, are to be proved by way of compelling evidences.

20.2 From the material on record, we find that the appellant has failed to prove the allegations levelled by him against respondent-wife and the same were rightly discarded by the trial Court being unsubstantiated.

21. Now, we take up the allegation by the appellant-husband regarding mental cruelty caused to him by denial of sexual relationship to him by respondent-wife as she was sexually inactive. On perusal of the evidence, we find that these allegations by the appellant-husband have not

been established, even on *prima facie* basis. Neither any document / medical record has been produced on record nor any medical expert has been examined by appellant to substantiate his plea that respondent-wife is sexually inactive and in the absence of material evidence, these allegations against the respondent-wife remain not proved.

22. That takes us to the grounds of 'desertion' pleaded by the appellant. 'Desertion' means intentional permanent abandonment of one spouse by other without the other's consent and without reasonable cause. A deserting spouse has *locus paenitentiae* and can purge the consequences of such desertion by offering to live with the spouse who has been deserted. In the instant matter, in order to establish that the respondent had deserted the appellant, it was essential for the appellant to establish two conditions; (i) factum of separation and (ii) intention of respondent to bring cohabitation permanently to an end.

22.1 In the instant case, we notice that it was the appellant, who by way of his conduct, which is proved on record, wanted to live a life of free bird. Appellant admitted during his cross-examination that in the photographs (Ex. P-1 and P-2) he was with some other lady in an objectionable pose. Learned counsel for the appellant could not refute the finding returned by the trial Court that there are number of love letters available on record, which showed that the appellant was more interested in outsiders than his own life. There is no reason to disbelieve the evidence adduced by the respondent.

22.2 Learned trial Court has further observed that as regards desertion, no specific date has been mentioned in the divorce petition and neither it has been established that the respondent had an intention to desert

the appellant. In the attending circumstances, the trial Court has rightly held that desertion cannot be equated with separate living. Therefore, we are of the view that the appellant could not establish that it was the respondent who deserted him.

23. No other point has been raised.

24. Thus, on a thorough scanning and analysis of the evidence produced by the parties, we find that the learned trial Court was right in its finding that the husband has failed to prove the ground of 'Cruelty' and 'Desertion' against the respondent-wife.

25. In view of the above, there is no merit in this appeal. It is, consequently, dismissed.

26. All pending applications (if any) shall also stand closed.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

May 31, 2024
gurpreet

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