

2024.PHHC:122348-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-4399-2024 (O&M)
Date of decision: 16.09.2024

SANJEEV MAHAJAN

...Appellant

Versus

SHASHI KANTA

...Respondent

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

Present:- Mr. Chetan Bansal, Advocate for appellant.

SUDHIR SINGH, J.

CM-16182-CII-2024

For the reasons given in the application, the same is allowed and the delay of 03 days in filing the appeal is condoned, subject to all just exceptions.

FAO-4399-2024

Challenge in the present appeal is to judgment and decree dated 27.05.2024, passed by the learned Principal Judge, Family Court, Pathankot (hereinafter referred as to Family Court), whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred as 'the Act') filed by the appellant-husband, has been dismissed.

2. The appellant-husband had filed the aforesaid petition, *inter alia*, pleading therein that his marriage with the respondent-wife was solemnized on 25.07.1996, according to Hindu rites and out of the said wedlock two children were born. It was further asserted that after marriage, the appellant came to know that the respondent-wife was a divorcee and was in a live-in relationship with someone, before the marriage. However, the appellant-husband kept quiet and compromised with the situation. It was further asserted that the appellant-husband was shocked to learn that the respondent-wife was a short tempered and quarrelsome lady. She used to abuse the appellant-husband on petty matters in front of the relatives and neighbors and would further provoke the appellant-husband against the family members and had been insisting to live separately from his parents. In order to save his matrimonial life, the appellant-husband had started living with the respondent-wife, separately from his parents but, still the behavior of the respondent-wife did not change. The appellant-husband had purchased a plot measure 11 Marlas in the name of the respondent-wife and also constructed a house thereon by taking loan from various resources, but the respondent-wife was not satisfied and there was no change in her behavior and the appellant-husband was subjected to cruelty. It was further asserted that the respondent-wife had started saying that she was also having physical relations with someone and that the appellant-husband had no right to touch her. It was further pointed out that the respondent-wife had also started staying out of the house without the consent and knowledge of the appellant. She had invested the entire earnings of the appellant-

husband in her name. It was further pointed out that in May 2018, the appellant-husband was forced to leave the house and since then he had started living at Gurdaspur and, thereafter, he started living with his old parents at Pathankot. Still further, the respondent-wife had levelled allegations of character assassination against the appellant by saying that he had illicit relations with many women. Terming the aforesaid acts of the respondent-wife as cruelty, the appellant-husband had sought for a decree of divorce.

3. Upon notice, the respondent-wife entered appearance and filed her written statement. The factum of marriage and birth of children was admitted, but the allegations regarding cruelty were denied. It was further averred that the parties had been married for the last 23 years and their children were aged 22 years and 18 years respectively. It was further averred that the plot measuring 11 Marlas was purchased by the respondent-wife out of her own resources, vide sale deed dated 21.10.2003 for a sale consideration of Rs.3,80,000/- from one Inder Mohan son of Kishan Lal. It was further pointed out that the respondent had taken a loan of Rs.10,00,000/- from Union Bank of India, Pathankot in the year 2004, which was under the process of repayment. It was further pointed out that the appellant-husband filed a similar petition under Section 13 of the Act at Gurdaspur, which was withdrawn by him and that there was no allegation in the said petition regarding cruelty etc. It was further pointed out that the arrears of the salary of the appellant-husband, were received in the joint account of the parties, which showed that the relations between the parties were normal. It was further pointed

out that in March, 2019, the parties purchased a car by arranging the funds jointly. On the basis of the aforesaid facts, the respondent-wife had claimed that the relations between the parties were normal and, therefore, the appellant-husband was not entitled to any decree of divorce.

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

- “1. Whether the petitioner is entitled to decree of divorce? OPP
2. Whether the petitioner has not approached the Court with clean hands? OPR
3. Relief.”

5. In evidence, the appellant-husband examined himself as PW-1 and led documentary evidence in the form of Ex.P1 to Ex.P2 and Mark-A. On the other hand respondent-wife appeared as RW-1 and produced documentary evidence Exs.R1 to R22, by way of documentary evidence.

6. The learned Family Court, after taking into consideration the rival contentions of the parties and the evidence on record, dismissed the petition filed by the appellant-husband, as noticed above.

7. Learned counsel appearing for the appellant has vehemently contended that the findings recorded by the learned Family Court are based on conjectures and surmises. It is further submitted that the appellant-husband had pleaded and proved before the learned Family Court that the respondent-wife had treated him

with cruelty. It is further argued that the respondent-wife had alleged that the appellant-husband was having illicit relations with many women, but she had failed to examine any witness in this regard or produce any other cogent evidence to establish the said allegations. It is further argued that levelling false allegation of character assassination amounted to cruelty and, therefore, the learned Family Court ought to have granted the decree of divorce in favour of the appellant-husband

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

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

10. A perusal of the findings recorded by the learned family Court would show that the allegations levelled by the appellant-husband were found to be vague and general in nature. It was found that the appellant in his cross-examination himself had admitted that in the 2015, when the appellant-husband fell ill, he was got admitted by the respondent-wife in Dhaliwal Hospital, Batala Road, Amritsar, where he was operated and remained hospitalized from 24.09.2015 to 26.09.2015. It was further found that the appellant-husband could not prove on record the allegations as regards beatings given by the respondent-wife and publication of the said incident in the newspapers. Still further, it was found that the appellant-husband had failed to mention any specific dates or timing or instances regarding

the alleged acts of cruelty committed by the respondent-wife. It was further found from the evidence it was proved on record that the appellant was found to be roaming with a female friend in the local market during the night time and when he was confronted by his wife and daughter, he had filed the petition for divorce. It was, thus, found that the appellant cannot be allowed to take benefit of his own wrongs. It was further found that the appellant-husband has failed to substantiate the allegations of cruelty or desertion.

12. We find that in order to prove cruelty and desertion, sufficient cogent and convincing evidence is required to be brought on record. However, in the instant case, the appellant-husband appeared as PW-1 and on the basis of his own testimony coupled with the documentary evidence produced by him, it was found by learned Family Court that he had failed to prove the allegations of cruelty or desertions. We find that there is no counter to the allegations to the averments by respondent-wife in her written statement that she had purchased the plot upon which the house was constructed out of her own income and by raising a loan from the bank. Still further there is no counter to the averments that the arrears of the salary were received in the joint account of the parties and even the car was purchased by the parties from their joint funds.

13. The parties were married in the year 1996. The divorce petition was filed in the year 2019 i.e. after a period of nearly 23 years. The children of the parties are major i.e. aged 22 and 18 years respectively. These facts and circumstances show that the relations between the parties had been normal and the divorce petition had been

filed by the appellant-husband on the vague and general allegations. Thus, we do not find any illegality or perversity in the findings recorded by the learned Family Court.

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

16.09.2024
Himanshu

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