

2024:PHHC:147564-DB



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

FAO-4994-2024 (O&M)
Date of decision: 25.10.2024

Anil Kumar

....Appellant

Versus

Rekha

....Respondent

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

Present: Mr. Shivansh Malik, Advocate,
for the appellant.

SUDHIR SINGH, J.

CM-18990-CII-2024

For the reasons mentioned in the application, the same is allowed and delay of 06 days in filing of the present appeal is condoned.

FAO-4994-2024

Challenge in the present appeal is to the judgment and decree dated 13.09.2024 passed by the learned Additional Principal Judge, Family Court at Maham, Rohtak (for brevity 'the Family Court'), whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for brevity 'the Act') filed by the appellant-husband for dissolution of marriage by way of decree of divorce, has been dismissed.

2. The aforesaid petition had been filed by the appellant-husband, *inter alia*, pleading therein that his marriage

with the respondent-wife was solemnized on 06.03.2017, according to Hindu rites and that no child was born out of the said wedlock. It was further pleaded that the appellant-husband kept the respondent-wife with due love and affection and provided her all the facilities as per his status, but after a few days of the marriage, the respondent-wife started harassing and humiliating him and his family members. It was further pleaded that the respondent-wife used to leave the matrimonial home without informing the appellant-husband and his family members and that she started pressurizing the appellant to live separately from his family members. The appellant showed his inability in this regard, but the respondent-wife was adamant on her demand. It was yet further pleaded that appellant-husband was having six sisters, out of whom, four were married and two unmarried. The respondent-wife would pick up quarrel with the sisters of the appellant-husband. On 19.02.2018, the appellant-husband met the brother of the respondent-wife at village Bahu Akbarpur, where he also started pressurizing the appellant to shift to some city and when the appellant had shown his inability, then the brother of the respondent-wife gave beatings to him and also issued him threats. The appellant-husband moved a complaint before the police at Rohtak in this regard. It was further pleaded that the appellant repeatedly persuaded the respondent-wife to give respect to his parents and did his best to provide her best possible comfort and luxuries in life, but the respondent-wife never bothered to take the said things seriously. On 07.05.2017, the respondent-wife left the company of the

appellant-husband while taking along the entire *istridhan* and ornaments without his consent and knowledge. A *Panchayat* was also convened, but to no avail. Still further, the appellant-husband had filed a petition under Section 9 of the Act, but later on, the same was withdrawn. Terming the aforesaid acts of the respondent-wife as cruelty and desertion, the appellant-husband had sought a decree of divorce.

3. Upon notice, the respondent-wife entered appearance and filed her written statement denying the allegations of cruelty and desertion. The factum of marriage was admitted. It was asserted by the respondent-wife that the appellant-husband had suppressed and concealed the factum of birth of a male child on 24.12.2017, which clearly showed that the appellant-husband did not approach the Court with the clean hands. It was further alleged that respondent-wife never wanted her minor child to lead a life of fatherless child and she never wanted her child to be deprived of the love and affection of the father, but the appellant-husband always wanted his son to lead a fatherless life. It was further asserted that the respondent-wife bore all the humiliation meted out to her at the matrimonial home with the hope that with the passage of time, everything would be all right, but all in vain. It was further asserted that the appellant-husband and his parents always used to talk in filthy and humiliating language. It was yet further alleged that the appellant and his family members used to misbehave with the respondent-wife. The allegations regarding putting pressure upon the appellant-husband to live separately were denied. It

was further pointed out that the brother of the respondent-wife made complaint to SHO, Police Station, Meham and also handed over all recordings to the police. It was further pleaded that in the month of July, 2017, the appellant-husband and his family members forcefully pressurized the respondent-wife to undergo a pre-natal test and on the refusal of the respondent-wife to do so, the appellant-husband and his family members snatched all the ornaments worn by the respondent-wife, including *Mangal Sutra* and gave severe beatings to the respondent-wife and thrown her out of the matrimonial home. It was yet further pleaded that the respondent-wife was not having even a single penny with her, but she managed to go to her parental home and inform the said incidents to her parents. It was denied that the respondent-wife was not ready to join the company of the appellant and the factum of convening the *Panchayat* was also denied. It was pleaded that the petition under Section 9 of the Act was only filed by the appellant-husband as a consequence of his misdeeds, so as to avoid the proceedings under Section 498-A IPC. Accordingly, prayer for dismissal of the petition was made.

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

1. Whether the petitioner is entitled to a decree of dissolution of his marriage on the ground mentioned in the petition? OPP
2. Whether the petition is not maintainable in the present form? OPR.
3. Relief.

5. In evidence, the appellant-husband himself appeared in the witness box as PW-1 and examined his father Raj Kumar as

PW-2 and Rajpal as PW-3. Apart from this, the appellant-husband tendered into evidence documentary evidence Ex.P1 to Ex.P30. On the other hand, the respondent-wife herself appeared as RW-1.

6. After hearing the contentions of both the parties and considering the evidence brought on record, the learned Family Court dismissed the petition filed by the appellant-husband, as noticed above.

7. Learned counsel for the appellant-husband has vehemently argued that while passing the impugned judgment and decree, the learned Family Court has failed to take into consideration that the appellant-husband had pleaded specific events and instances of cruelty committed by the respondent-wife. It is further argued that the ready and willingness of the appellant-husband was clear from the very factum of filing of the petition under Section 9 of the Act for restitution of the conjugal rights, which of course, was withdrawn later on, as the respondent-wife expressed her desire not to live in the company of the appellant-husband. It is further argued that the respondent-wife had also initiated various proceedings, including lodging of the FIR against the appellant and his family members. In the said proceedings, totally baseless and false allegations have been made. It is, thus, contended that initiating criminal proceedings itself amounts to the mental cruelty to the appellant-husband and his family members. Yet further, it is argued that in her written statement, the respondent-wife had pleaded that she had been subjected to the beatings and the

cruelty by the appellant-husband and his family members, but the said allegations are totally baseless and there is no substance in the same. However, the learned Family Court, has totally brushed aside the said aspect of the matter. It is yet further argued that while passing the impugned judgment and decree, the learned Family Court has erred in law inasmuch as the cogent and convincing evidence led by the appellant-husband has totally been ignored and the acts of cruelty and desertion on the part of the respondent-wife have wrongly been brushed aside by the learned Family Court.

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

9. A perusal of the impugned judgment and decree passed by the learned Family Court would show that after appreciating the evidence on record, it was found by the learned Family Court that in para no.3 of the petition, the appellant had clearly mentioned that they lived as husband and wife and the marriage was duly consummated and no child was born out of the said wedlock. But, in the sharp contradiction of his plea, the respondent-wife had pleaded in her written statement the factum of the birth of a child. Still further, when the appellant stepped into witness box, he stated that no child was born out of the wedlock at the time of filing of the petition, but later on, a male child was born, who was then residing with the respondent-wife. It was, thus, found that the testimony of the appellant was also false to the extent of the birth of the child.

Still further, it was found that the appellant-husband deposed that he had filed the petition for the custody of the child, but a perusal of the said petition i.e. Ex.P1 revealed that the same had been dated 07.01.2022 and nothing on record had been placed to show the date of filing of the said petition. It was further found that the appellant had also neglected to maintain the respondent-wife and their minor child as was evident from the order of grant of maintenance allowance under Section 125 Cr.P.C. passed against the appellant-husband on 15.07.2022. Still further, the learned Family Court has also found that the petition under Section 9 of the Act filed by the appellant was withdrawn by him without any reasonable cause. Still further, it was found that a perusal of the copy of the petition and *zimni* orders passed in the said petition i.e. Ex.P4 to Ex.P12, revealed that when the respondent-wife was served in the said petition and a power of attorney on her behalf was filed, the said petition was fixed for 18.04.2018 for filing reply and for the appearance of the parties. But, on 05.04.2018, the appellant-husband withdrew the said petition before the date fixed. Thus, it was found by the learned Family Court that the petition under Section 9 of the Act filed by the appellant-husband was prior to the registration of the FIR under Section 498-A IPC by the respondent-wife against him on 10.05.2018. From all these facts and circumstances, it was concluded that the appellant had thrown the respondent-wife out of the matrimonial home and did not allow her to come back. Still further, it was found that the appellant-husband was living with one Nidhi in a live-in

relationship and out of that relationship, a female child was born. The said fact had been admitted by the appellant-husband during his cross-examination and the said fact was also admitted by his father Raj Kumar, while appearing as PW-2 during his cross-examination. The appellant-husband had also admitted the factum of birth certificate Ex.DA, which further proved birth of a female child out of his relationship with aforesaid Nidhi. On the basis of the aforesaid facts and circumstances and evidence on record, the learned Family Court dismissed the petition filed by the appellant-husband.

10. We find that the findings recorded by the learned Family Court are just and proper, based on the evidence on record. It is settled law that no party can take benefit of his or her own wrongs. In the instant case, even if the arguments raised by the learned counsel for the appellant that the pleadings raised by the appellant-husband regarding cruelty committed by the respondent-wife were not taken into consideration, then also we find that it was proved on record that on the one hand, the appellant-husband was pleading cruelty on the part of the respondent-wife, but on the other, he had been living in a live-in relationship with one Nidhi and out of the said relationship, a female child had also taken birth. Thus, the appellant-husband cannot be heard pleading cruelty, when he himself is guilty of committing such cruelty against the respondent-wife. There is no justification on the part of the appellant-husband, as to why he was maintaining live-in relationship with aforesaid Nidhi when he himself was pleading

that when he had already been married and out of that wedlock with the respondent-wife, he was already having a male child. It is also to be noticed that the petition under Section 9 of the Act was though filed by the appellant-husband, yet he withdrew the same without any justified cause. It has been the consistent approach of the respondent-wife that she was ready and willing to live in the company of the appellant-husband and, thus, it cannot be said that the respondent-wife had deserted the appellant-husband. Being himself guilty of committing the acts of cruelty against the respondent-wife, the appellant-husband cannot be heard saying that the respondent-wife had committed any cruelty to him. We find that the pleadings raised by the appellant-husband were not proved by way of cogent and convincing evidence. On the other hand, on the basis of the evidence of the appellant-husband and his witnesses, it stands proved on record that the appellant-husband had been living in live-in relationship with another women and out of the said relationship, a female child was born. Thus, the learned Family Court has rightly dismissed the petition filed by the appellant-husband.

11. No other point has been urged.

12. In view of the above, we do not find any illegality or perversity in the impugned judgment and decree passed by the learned Family Court. It could not be pointed out that any evidence has been misread or not taken into consideration.

13. In view of the above, finding not merit in the present appeal, the same is hereby dismissed

14. All pending applications(s), if any, shall also stand disposed of.

**(SUDHIR SINGH)
JUDGE**

**(JASJIT SINGH BEDI)
JUDGE**

25.10.2024
Ajay Prasher

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