

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-132-2009 (O&M)

Reserved on: 31.08.2022

Date of pronouncement: 27.09.2022

....Appellant

Vs.

....Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: Appellant in person with
Mr. H.S.Dhindsa, Advocate.

Respondent No.1 in person with
Mr. Shikhar Sarin, Advocate.

Ritu Bahri, J.

The appellant, has come up in appeal against the judgment and decree dated 11.09.2008 passed by Family Court, Ambala whereby the petition filed by the respondent-husband under Section 13(1)(i) and 13(1)(i-b) of the Hindu Marriage Act, 1955 was allowed.

The brief facts of the case are that the marriage of the parties was solemnized on 08.05.1989 according to Hindu Rites and Ceremonies at Ambala City. The parties lived together as husband and wife. However, no child was born out of their wedlock. From the day one, the behaviour of appellant-wife was extremely rude and aggressive. She used to abuse, insult and humiliate the respondent-husband and his family members. She used to make taunts on account of the financial position of the respondent-husband and did not stop humiliating him in front of his friends and family members. The appellant-wife was suffering from some mental

disorder to which the respondent-husband got her treated from a Psychiatrist. Since no issue was born even after ten years of marriage, appellant-wife started calling the petitioner as *Namard* (impotent), due to which the respondent-husband became mentally sick. The appellant-wife developed intimacy with (impleaded as respondent No. 2 in the petition), who was posted as Assistant Superintendent Jail, Central Jail, Ambala and was residing in the same locality. The respondent-husband left his house on 22.05.2006 and wrote many letters to Director General of Police, Inspector General of Police etc. to which inquiry was conducted by CIA Staff, Ambala alongwith the Deputy Superintendent of Police, Ambala. During the inquiry, it came out that appellant-wife and Sanjeev Pattar-respondent No.2 used to talk to each other on mobile phones as well as on the official phone, which indicated that appellant-wife was guilty of treating the respondent-husband with cruelty and was living in adultery with -respondent No.2.

On notice of the petition, the appellant-wife appeared and filed her written statement denying the allegations of cruelty and adultery. Respondent No.2 also filed his written statement denying the allegations of adultery. Separate replications to the written statements were filed by the respondent-husband.

From the pleadings of the parties, following issues were framed:-

1. Whether the respondent No. 1 was living in adultery with respondent No.2, as alleged? OPP.
2. Whether the respondent No. 1 has treated the petitioner with cruelty, as alleged? OPP.
3. If issues No. 1 and 2 are proved, whether the petitioner is entitled to the decree of divorce, as prayed for? OPP.

4. Whether the petition is not maintainable in the present form? OPR.

5. Relief.

The respondent-husband examined seven witnesses namely

(PW1), (PW2), (PW3),

(PW4), (PW5), himself as PW6 and

(PW7). He also produced documentary evidence. The

appellant-wife stepped into the witness box as RW1 and respondent No. 2 did not step into the witness box. Both did not lead any other evidence.

With regard to adultery and cruelty, the respondent-husband examined PW4- who was his friend for the last 21 years. He had gone to the house of the respondent-husband and when he reached the bedroom of the respondent-husband, he saw -appellant and another person in the nude condition. He tried to catch that person but he fled on the motor cycle. He immediately called the respondent-husband and on his asking, PW4 disclosed that person as . PW4-

Rajbir Singh also deposed that the respondent-husband left his home and that appellant-wife used to pick up fight at the shop. Thereafter, PW4-

was called to the Municipal Committee by respondent No.2, his brother and brother-in-law and he was told that illicit relations between respondent No.1 (appellant-wife) and respondent No. 2 had been formed with the consent of respondent No.1 and that the dispute could be resolved mutually.

PW5 deposed that he was a friend of the respondent-husband for the last 20 years. He also deposed about the quarrels and rude behaviour of the appellant-wife with the respondent-husband and his family members. He had also seen respondent No. 2 in the

house of respondent-husband and thereafter, they alongwith PW4- started keeping an eye on the illicit relations of respondent No.1 (appellant-wife) and respondent No.2.

The respondent-husband appeared as PW6 and gave details of the illicit relations of his wife with respondent No.2.

PW7- servant in the house of the respondent-husband also deposed that respondent No.2 used to visit the house of the respondent-husband in his absence and used to indulge in illegal acts.

The respondent-husband placed on record inquiry report (Ex.P1) to show that a detailed enquiry was conducted by the DSP of the Haryana Police as also by the CIA Staff. After examination, the Inspector CIA Staff came to the conclusion that it was a case of adultery. He also placed on record other documents (Ex.P2 to Ex.P5) to show that appellant-wife had been making or receiving repeated calls to and from respondent No.2.

The appellant-wife while appearing as RW1 denied all the allegations and reiterated the averments made in the written statement.

The respondent-husband had undergone acute mental cruelty as the behaviour of the appellant-wife was rude and aggressive towards him and his family members. She kept on saying respondent-husband as *Namard* (impotent) and had illicit relations with respondent No.2. On account of extreme mental cruelty, he left his own home on 22.05.2006.

In this backdrop, issues No. 1 and 2 were answered in favour of the respondent-husband and he was granted decree of divorce under Sections 13(1)(i) and 13(1)(i-b) of the Hindu Marriage Act, 1955.

In the present appeal, notice of motion was issued on 08.05.2009 and the matter was referred for mediation. As per the report of the Mediator dated 27.10.2009, the parties could not reach to an amicable settlement. Thereafter, on 05.07.2019, the appeal was dismissed for want of prosecution. After allowing CM-16365-CII-2019 on 10.01.2020, the appeal was restored to its original number and position.

Learned counsel for the appellant has not been able to lead any evidence which could reverse the finding of extra-marital affairs of appellant-wife and respondent No.2. The enquiry report (Ex.P1) coupled with the evidence given by PW4- [REDACTED], PW5- [REDACTED] and PW7 [REDACTED], servant of the respondent-husband's house consistently proved that appellant-wife was living in adultery.

The only question for consideration now is whether the appellant-wife is entitled for permanent alimony.

Learned counsel for the appellant has referred to a judgment passed by the Division Bench of this Court in **Anil Kumar Sharma vs. Asha Sharma, 2014(36) R.C.R. (Civil) 812** which cannot be applicable in the present case for grant of permanent alimony as that was the case where divorce was granted on the ground of mental cruelty as the wife made a complaint against her husband and his family members under Sections 406 and 498A IPC. That was not the case of adultery. He has further referred to a judgment passed by Delhi High Court in **Crl.Rev.P. No. 417 of 2021** titled as **Pradeep Kumar Sharma vs. Deepika Sharma**. Even that case would not be applicable in the present case as in that case, maintenance was granted to the respondent-wife under Section 125 Cr.P.C. vide order dated 31.07.2020, which was being challenged by the petitioner-husband on the ground that

the respondent-wife was living in adultery. The relevant paras of the judgment are as under:-

“27. Hence, it is found that the law, as interpreted by the High Courts of the Country, evinces that only continuous and repeated acts of adultery and/or cohabitation in adultery would attract the rigours of the provision under Section 125(4) of the Cr.P.C. In the instant matter, the petitioner before the learned Additional Principal Judge sought the non-payment of maintenance on the ground of adultery under Section 125 (4) of the Cr.P.C., however, the grounds taken by him did not establish even prima facie that the respondent was living in adultery. Even the statement by the son of the parties was made by after considerable amount of time of the trial had passed and the respondent had already been cross-examined. Therefore, the second ground of the petitioner also could not be established to contend that the respondent was not entitled to any maintenance.

28. The petitioner has also stated that the respondent had deserted him and had left his company without any reason. It is also a fact that the petitioner filed for divorce on the ground of cruelty, therefore, the learned Additional Principal Judge has rightly observed that since the petitioner had sought divorce on the ground of cruelty, he could not have simultaneously urged that he was aggrieved by the alleged desertion of the respondent.”

The ground of adultery was taken on the statement of son of the

parties, Master Pushkar. However, in the divorce petition, the ground for seeking divorce was cruelty and not adultery.

Learned counsel for the appellant has again referred judgment passed by Kerala High Court in *Valsarajan vs. Saraswathy, 2003(3) R.C.R.(Criminal) 665*. The said judgment is also not applicable to the present case, as in that case, the wife was living in adultery after divorce and she was entitled for maintenance. He had further referred judgment passed by Hon'ble Supreme Court of India in *Subhransu Sarkar vs. Indrani Sarkar (Nee Das) 2021 AIR (Supreme Court) 4301*. In the said case, the appellant was seeking divorce on the ground of cruelty and desertion. The divorce was granted by invoking jurisdiction under Article 142 of the Constitution of India keeping in view that the marriage between the parties was emotionally dead and there was no point in persuading them to live together any more. The wife was granted permanent alimony of Rs.25 lacs towards full and final settlement. Even the said judgment would not be of any help to the appellant.

Keeping in view the observations made above, the appellant is not entitled for permanent alimony. Appeal is dismissed. Pending application, if any, also stands dismissed.

(RITU BAHRI)
JUDGE

27.09.2022
Divyanshi

(NIDHI GUPTA)
JUDGE

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