

***Before M.M.S. Bedi & Gurvinder Singh Gill, JJ.***

**ROHTASH—Appellant**

*versus*

**ANSUIYA AND ANOTHER—Respondents**

**FAO No.7514 of 2016**

January 19, 2018

***Hindu Marriage Act, 1955—S.13—Husband’s prayer for divorce on the ground of adultery and cruelty dismissed by trial Court—High Court in appeal held that though direct evidence may not be required, but to prove adultery there has to be reasonable and cogent evidence—The minimum that was requested was at least date and time of the alleged matrimonial offence, enabling the person alleged to have committed adultery to have a reasonable opportunity of defending himself— Further held that mere lodging of a criminal complaint by the wife against her husband and his family will not by itself constitute cruelty.***

***Husband given option to compensate wife and get a decree of divorce—Appellant-husband not willing or unable to pay permanent alimony—High Court held that even if breakdown of marriage is presumed on account of continued separation of parties, decree of divorce could not be granted.***

***Held that*** counsel for the appellant had vehemently urged that respondent No.1 had indulged in the act of adultery with respondent No.2, her sister’s husband. She was found indulging in the immoral acts with respondent No.2 by PW2, the mother of the appellant. Counsel has contended that the appellant had established by his statement ExPW1/A that his mother, during their stay in the house in Village Khewra, had found respondent No.1 in objectionable position with respondent No.2 while the appellant was on duty. The mother of appellant- Premwati has also made an attempt to prove that she had heard some voice coming inside from the room of appellant and when she knocked and pushed the door she saw respondents No.1 and 2 in objectionable position. The said evidence is absolutely contrary to the pleadings wherein it has been averred that the said incident had been watched in Delhi by the mother of the appellant. On account of vague and indefinite plea of adultery, respondent No.1 cannot be held to be indulging in such act in the absence of the appellant. It is very easy to level the allegations of adultery but to substantiate the said allegations

there has to be reasonable and cogent evidence produced. Though direct evidence of a person having seen the act of adultery is not required but the minimum requirement is that the day, date and time should come on the record so that the person who is alleged to have indulged in adultery could have a reasonable opportunity to defend and explain the same. The trial Court has rightly disbelieved the story of the appellant that respondent No.1 had indulged in the acts of adultery. It appears to be a misguided suspicion of appellant and the allegations seem to be prejudiced mind of the appellant against respondent No.1 as it is averred in the application that he did not relish the visit of respondent No.2.

(Para 6)

*Further held that* since the criminal case is still pending, it will not be appropriate to express any opinion no merits of the case. In case the wife avails the legal remedy having been dealt with cruelty, she had got statutory remedies available to her by approaching the Court under the Act. The Women Cell has been constituted for preventing the crime against women or filing a complaint. Merely a wife having lodged a criminal case against husband and his family members itself would not constitute the act of cruelty. The other allegations of cruelty have not been substantiated by any evidence or corroborative evidence. The lower Court has rightly returned a finding regarding the acts of cruelty having not been established. The allegations of desertion are vague in the pleadings. In order to establish desertion, it is sine qua non that the intention to desert and factum of desertion for a period of 2 years without any reasonable cause has to be established.

(Para 8)

*Further held that* we have also considered the contention of counsel for the appellant that the marriage has broken down and there are no chances of reunion as such divorce should be granted. In this context, an option was given to the appellant if he could adequately compensate the respondent she might think of parting company but the appellant had expressed his inability to pay any lumpsum maintenance as such the decree of divorce cannot be granted even if it is presumed that the marriage has broken down on account of separation of the parties. Beside this, a perusal of the evidence produced by respondent No.1 is reflective of the attitude of the appellant as he and his family members had also lodged complaints against respondent No.1 and made an attempt to prove that she had been wrong. The appellant on account of his conduct of having filed complaints against the

respondents through his mother in an attempt to harass her is indicative of his negative approach for which he cannot be granted decree of divorce on account of his own wrongs. No attempts seem to have been made by him at any moment to require the respondent No.1 to return and live amicably with her. Ground of divorce as pleaded having not been proved, we do not find any ground to set aside the judgment of the lower Court dismissing the petition under Section 13 of the Act on the ground of cruelty and desertion.

(Para 9)

Perduman Yadav, Advocate  
*for the appellant.*

Ashwani Gaur, Advocate  
for respondent No.1.

### **M.M.S. BEDI, J.**

(1) Husband has preferred this appeal against the judgment and decree dated October 27, 2016 passed by District Judge, Family Court, Sonipat dismissing his petition under Section 13 of the Hindu Marriage Act, for short 'the Act', for dissolution of marriage by decree of divorce on the ground that his wife respondent No.1 has treated him with cruelty and has also deserted him. Besides this, he had levelled allegations that respondent No.1 had illicit relations with her brother-in-law (jija) and leveled allegations of adultery. The appellant in his petition for divorce had averred that marriage between the parties had taken place on 28.06.1999. No child was born out of the wedlock. The conduct of respondent No.1 was normal for 3/4 days after marriage but thereafter she indulged in quarreling with the appellant and his family members on the pretext that she did not want to stay in the joint family and refused to adjust with the family members. Respondent No.2 Jija of respondent no.1 had started coming to the house of the appellant. She made allegations against the appellant that his character was not good and he had illicit relations with his Bhabhi, namely, Kamla. She consistently insulted and humiliated the appellant. The appellant had requested respondent No.2 to restrain himself from coming to his house but he did not agree. It is alleged in the petition that respondent No.1 had left the matrimonial home without the consent and knowledge of the appellant. In this context, a panchayat was convened. It was settled that the appellant will stay with respondent No.1 in Delhi as such he took a rental house in Delhi and started living there with respondent No.1. Respondent No.2 started visiting the rented house at his back and she indulged in frequent quarrels with the appellant on the instigation of

respondent No.2. The mother of the appellant along with his brother had visited the house of the appellant in Delhi and his mother had observed respondent No.1 and 2 in objectionable position when the appellant was on his duty. Respondent No.1 was also seen by the mother of the appellant mending their wearing clothes in the house. There was exchange of hot words between the appellant and respondent No.1 as such respondent No.1 had left the house and lodged a case in the Women Cell, Delhi. The appellant was threatened by the brother of respondent No.1 who had also given beatings to the appellant at the gate of Women Cell. The appellant had left the rented house and started living at his place of service and respondent No.1 had also left the rented house without permission of the appellant. On September 19, 2013, respondent No.1 along with her brother had come to the matrimonial home at Village Khewra and gave beatings to the appellant without any cause. The appellant had registered a cross case at Police Station, Rai. Respondent No.1 also got registered a case under Sections 406, 498A, 323 read with Section 34 IPC at Police Station Sultanpuri, Delhi against the appellant and his family members and also filed proceedings under the Protection of Women from Domestic Violence Act, 2005, in the Court at Rohini, Delhi. The appellant lost his reputation and dignity in the society and respondent No.1 had withdrawn herself from the society of the appellant without any sufficient cause.

(2) Respondent No.1 contested the claim of the appellant and averred that the appellant himself is responsible for causing mental and physical cruelty to her regarding which she had filed a criminal complaint against the appellant and his family members. The divorce petition was allegedly the counter-blast to the criminal case. She denied all the allegations regarding her behaviour and has averred that since the inception of the marriage the appellant and his family members used to harass her for bringing less dowry. She denied the allegation of respondent No.2 having ever visited the house. She averred that she was driven out of the matrimonial home by the appellant and was compelled to live with her parents. The mother of the appellant had lodged a false case against her in which she has been acquitted from the Court of Ms. Natasha Sharma, the then JMJC, Sonapat. The mother of the appellant had also filed a private complaint which was also dismissed. Respondent No.1 had filed a criminal case against the appellant and his family members regarding demand of dowry in the Courts at Delhi. Respondent No.1 has urged in the written statement that her dowry articles stands misappropriated by the appellant and his

family members and that she was thrown out of the matrimonial home by the appellant. It is the appellant who has withdrawn himself from the society of respondent No.1 and that she is still willing and ready to join the company of the appellant. The allegations of adultery with respondent No.2 were contested.

(3) On the pleadings of the parties, the following issues were framed:-

1. Whether respondent No.1 has treated the petitioner with cruelty, if so to what effect? OPP.
2. Whether respondent No.1 has deserted the petitioner, if so to what effect? OPP
3. Whether respondent No.1 is living in adultery with respondent No.2, if so to what effect? OPP.
4. Relief.

(4) All the issues were decided against the appellant on appreciation of evidence produced by both the parties. The lower Court has considered the statement of the appellant as PW1 who has reiterated the averments in the petition in the shape of affidavit Ex.PW1/A. He produced his mother as PW2 who tendered her evidence in the shape of affidavit Ex.PW2/A in an attempt to establish the allegations of cruelty and adultery. Respondent No.1 examined Raj Kumar as RW1, her brother Shiv Kumar as RW2 and she appeared herself as RW3 and produced documents Ex.R1 and R-2.

(5) It is not out of place to observe here that an attempt was made for bringing about reconciliation by sending the parties to the mediation. Another attempt was made by the Court by calling the parties in the Court in order to persuade them to either stay together or part company on some terms for their peaceful living but the appellant insisted for a decree of divorce claiming that it was impossible for him to stay with respondent No.1.

(6) Counsel for the appellant had vehemently urged that respondent No.1 had indulged in the act of adultery with respondent No.2, her sister's husband. She was found indulging in the immoral acts with respondent No.2 by PW2, the mother of the appellant. Counsel has contended that the appellant had established by his statement ExPW1/A that his mother, during their stay in the house in Village Khewra, had found respondent No.1 in objectionable position with respondent No.2 while the appellant was on duty. The mother of appellant- Premwati has

also made an attempt to prove that she had heard some voice coming inside from the room of appellant and when she knocked and pushed the door she saw respondents No.1 and 2 in objectionable position. The said evidence is absolutely contrary to the pleadings wherein it has been averred that the said incident had been watched in Delhi by the mother of the appellant. On account of vague and indefinite plea of adultery, respondent No.1 cannot be held to be indulging in such act in the absence of the appellant. It is very easy to level the allegations of adultery but to substantiate the said allegations there has to be reasonable and cogent evidence produced. Though direct evidence of a person having seen the act of adultery is not required but the minimum requirement is that the day, date and time should come on the record so that the person who is alleged to have indulged in adultery could have a reasonable opportunity to defend and explain the same. The trial Court has rightly disbelieved the story of the appellant that respondent No.1 had indulged in the acts of adultery. It appears to be a misguided suspicion of appellant and the allegations seem to be prejudiced mind of the appellant against respondent No.1 as it is averred in the application that he did not relish the visit of respondent No.2.

(7) Counsel for the appellant has contended that the registration of FIR of cruelty against him and his family members is an act which has mentally disturbed the appellant and the false allegations of demand of dowry would constitute a mental cruelty.

(8) Since the criminal case is still pending, it will not be appropriate to express any opinion on merits of the case. In case the wife avails the legal remedy having been dealt with cruelty, she had got statutory remedies available to her by approaching the Court under the Act. The Women Cell has been constituted for preventing the crime against women or filing a complaint. Merely a wife having lodged a criminal case against husband and his family members itself would not constitute the act of cruelty. The other allegations of cruelty have not been substantiated by any evidence or corroborative evidence. The lower Court has rightly returned a finding regarding the acts of cruelty having not been established. The allegations of desertion are vague in the pleadings. In order to establish desertion, it is sine qua non that the intention to desert and factum of desertion for a period of 2 years without any reasonable cause has to be established.

(9) We have also considered the contention of counsel for the appellant that the marriage has broken down and there are no chances of reunion as such divorce should be granted. In this context, an option

was given to the appellant if he could adequately compensate the respondent she might think of parting company but the appellant had expressed his inability to pay any lumpsum maintenance as such the decree of divorce cannot be granted even if it is presumed that the marriage has broken down on account of separation of the parties. Beside this, a perusal of the evidence produced by respondent No.1 is reflective of the attitude of the appellant as he and his family members had also lodged complaints against respondent No.1 and made an attempt to prove that she had been wrong. The appellant on account of his conduct of having filed complaints against the respondents through his mother in an attempt to harass her is indicative of his negative approach for which he cannot be granted decree of divorce on account of his own wrongs. No attempts seem to have been made by him at any moment to require the respondent No.1 to return and live amicably with her. Ground of divorce as pleaded having not been proved, we do not find any ground to set aside the judgment of the lower Court dismissing the petition under Section 13 of the Act on the ground of cruelty and desertion.

(10) Dismissed.

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*P.S. Bajwa*