(10) In the circumstances, the finding of the Courts below is correct, that shop No. 748 not being evacuee property, did not 'purport to have vested' as such in the Custodian. Sub-section (2-A) of section 8 of the Act is thus of no avail to the appellant. The result is that the appeal fails and is hereby dismissed. In view of the law point involved, I would leave the parties to bear their own costs.

K. S. K.

APPELLATE CIVIL

Before Gurdev Singh, J.

JAGJIT SINGH,—*Appellant.*

versus

MOHINDER KAUR,—*Respondent.*

Regular Second Appeal No. 763 of 1967

April 17, 1968.

Hindu Marriage Act (XXV of 1955)—Ss. 13 and 29(2)—Right of divorce of a person governed by the Act—Whether confined to the grounds specified in section 13—Such right recognised by Custom or conferred by special enactment on other ground—Whether saved—Divorce on such other grounds—Whether can be obtained without the intervention of the Court—Custom (Punjab)—Husband—Whether can dissolve marriage by repudiation—Riwaj-i-am *(Ludhiana District)—Husband's right of divorce under—Grounds of—Stated.*

Held, that though the provisions of the Hindu Marriage Act have overriding effect and they must prevail irrespectively of any text or rule of Hindu Law or any custom or usage in force immediately before the commencement of the Act so far as it is inconsistent with any of the provisions of the Act. Section 29(2) of the Act keeps in tact the right of a Hindu to obtain dissolution of marriage, whether such right is recognised by custom or conferred by any special enactment, even after the passing of the Act. In other words, if under custom or any special enactment, a Hindu has a right to obtain dissolution of marriage on grounds other than those enumerated in section 13 of the Act, 1955, he is entitled to avail of the same.

[Paras 8 and 9].

Held, that even for obtaining dissolution of marriage or divorce on such grounds which were recognised by custom or any special enactment prior to the enforcement of the Act, the party concerned has to approach the Court and he cannot exercise any such right of divorce unilaterally or without the intervention of the Court. The use of expression "to obtain" in section 29(2) excludes the idea of unilateral action on the part of a person who seeks dissolution of marriage (obiter).

[Para 9].

Held, that there is no general custom in Punjab under which a Hindu Jat can dissolve his marriage merely by repudiating his wife at his will for no cause or even for disobedience or cruelty, especially when there is no allegation of immorality or apostasy against her. The husband has no such wide power under custom to divorce his wife by mere word of mouth and at his sweet will.

[Paras 29 and 30].

Held, that according to the *Riwaj-i-am* of Ludhiana District, the husband is entitled to divorce his wife only on the grounds of unchastity or apostasy and though in some cases, the husband has a right to abandon his wife but that right does not entitle him to dissolve the marriage or to claim divorce.

[Para 24].

Second Appeal from the decree of the Court of Shri Gurbachan Singh, District and Sessions Judge, Ludhiana, dated the 1st day of April, 1967, reversing that of Shri Mohinder Singh Lobana, Sub-Judge, II Class, Ludhiana, dated the 22nd October, 1966 and dismissing the plaintiff's suit with costs throughout.

AJIT SINGH SARHADI AND SHEELA DIDI, ADVOCATES, *for the Appellants.*

Y. P. GANDHI AND A. L. BAHRI, ADVOCATES, for the Respondent.

JUDGMENT

GURDEV SINGH, J.—This second appeal is directed against the judgment and decree of the learned District Judge, Ludhiana, dated 1st April, 1967, whereby reversing the decree of the trial Court, he has dismissed the suit of the appellant Jagjit Singh for declaration that his marriage with the respondent Shrimati Mohinder Kaur, stood dissolved and the relationship of husband and wife no longer existed between them.

(2) The appellant Jagjit Singh is a lecturer in a College at Ludhiana, while the respondent Mohinder Kaur is a teacher in a

Government Co-educational Middle School at that very place. They were married according to Anand Marriage rites on the 14th December, 1961, at village Chaminda in the district of Ludhiana. They lived together for some time and the only issue of their marriage is a daughter, who was hardly 2½ years of age, when the suit out of which this appeal has arisen was instituted by the appellant claiming declaration that the marriage between him and the respondent stood dissolved by way of divorce and there was no longer any relationship of husband and wife between them.

(3) The appellant's case was that both the parties being Jat Sikh agriculturists of Ludhiana District were governed by the Punjab Customary Law in matters of marriage and divorce and even after the enactment of the Hindu Marriage Act, 1955 the appellant had the right to divorce his wife in accordance with the custom which is expressly saved by the provisions of sub-section (2) of section 29 of the Hindu Marriage Act. According to the averments in the plaint, after having lived together for some time, during which the respondent gave birth to a daughter, their relations became strained because of cruel treatment meted out to the appellant by the wife. Since the appellant did not accede to the respondent's demands and submit to her pressure, she deserted and started living separately. Ultimately, on 10th of May, 1965, the respondent Shrimati Mohinder Kaur, filed a complaint under section 107, Criminal Procedure Code, against the appellant making wild allegations against him and his mother, as a result of which they were challaned but were subsequently discharged by the Magistrate. As this further embittered their relations, on the 18th July, 1965, the appellant approached the respondent and requested her either to return to his home and discharge her marital obligations or agree to the dissolution of their marriage by mutual consent. The respondent did not promptly make up her mind and promised to take a decision within a day or two. Ultimately, on 23rd July, 1965, the appellant received the letter (Exhibit P.W. 10/1) from the respondent informing him that she had dissolved the marriage, but requested that she be permitted to retain the custody of the child with the assurance that she would be properly looked after and educated. Thereupon, on the 25th July, 1965, the appellant publically repudiated the respondent, who was then present, as his wife and declared that he had divorced her ending their relationship as husband and wife. In confirmation of this declaration of divorce, the appellant sent a letter under postal certificate to the respondent on the following day, i.e.,

26th of July, 1965. Despite this public repudiation, which was not objected to by the respondent, she started representing to the public that she was still the appelant's wife. Because of this prejudicial conduct of her, the appellant found it necessary to approach the Court for declaration that his marriage with the respondent stood dissolved by divorce in the manner stated above and the relationship of husband and wife no longer existed between them.

(4) In resisting the suit Shrimati Mohinder Kaur not only vehemently denied that her marriage with the appellant was ever dissolved but also pleaded that the suit was not maintainable in view of the provisions of the Hindu Marriage Act (25 of 1955); that the parties were not governed by the Punjab Customary Law in the matter of marriage and divorce and it was only in accordance with the provisions of section 13 of the Hindu Marriage Act, 1955 that the marriage between them could be dissolved. On the pleading of the parties, the trial of the suit proceeded on the following issues:—

(1) Whether the parties are governed by agricultural custom in matters of marriage and divorce, if so, what is the custom?

(2) Whether the marriage between the parties has been dissolved by divorce, as alleged?

(3) Relief.

(5) The learned trial Judge found both the issues in favour of the appellant and decreed his suit, holding that the parties were governed by custom, according to which marriage could be dissolved by the appellant turning out the wife or repudiating her publicly and such dissolution had taken place on 25th of July, 1965. The findings on all the issues have been reversed by the learned District Judge in appeal, who, besides holding that the parties were not governed by custom in the matter of marriage and divorce and that no such custom entitling the appellant to dissolve the marriage by public repudiation had been made out, held that the appellant's allegation that he had repudiated the marriage publically on 25th July, 1965, was not substantiated. He further found that even if there was any such custom as was pleaded by the appellant, he could not dissolve the marriage by mere oral public repudiation and it was necessary for him to obtain such dissolution of marriage from a

court of competent jurisdiction. As a result of these findings, the appeal of Shrimati Mohinder Kaur was accepted and the suit against her dismissed with costs throughout. It is against this judgment and decree, dated 1st April, 1967, that Jagjit Singh has come up in second appeal.

(6) In assailing the decree under appeal, Mr. Ajit Singh Sarhadi, who has argued the case for the appellant at length, has attacked all the findings of the learned District Judge and urged that there was ample material on the record to prove that the parties were governed by the Punjab Customary Law in the matter of marriage and divorce; that on 25th July, 1965, the appellant has dissolved the marriage between him and the respondent by public repudiation; and that such dissolution by the appellant's word of mouth was valid and binding on the husband and wife without their seeking any relief from a Court of Law. Mr. Y. P. Gandhi, appearing for the respondent, has defended the decree of the learned District Judge as perfectly correct and complains that the suit filed by the appellant was clever attempt on his part to get over the difficulty created by the fact that no ground for divorce under section 13 of the Hindu Marriage Act, 1955, was available to the appellant.

(7) Both the parties admittedly profess Sikh faith and it is beyond dispute, as was conceded by the appellant Jagjit Singh himself in the course of his statement as P.W. 10, that their marriage was solemnised in accordance with Sikh rites being *Anand Karaj*. It is beyond dispute that the Hindu Marriage Act (25 of 1955) applies to Sikhs as well, as is expressly laid down in section 2(1)(b) of the Hindu Marriage Act. A person governed by this Act can obtain divorce only on the grounds specified in section 13 of the Act. Divorce by mutual consent or public repudiation by the husband or the wife is not recognised under the Act nor on the ground of mere desertion or cruelty. The appellant claims that he has the right to divorce his wife by public repudiation under the Punjab Customary Law and he had exercised that right by oral declaration in presence of the respondent and others on the 25th of July, 1965, and by such public repudiation the marriage stood dissolved. The appellant's learned counsel, Mr. Ajit Singh Sarhadi, contends that the right of divorce under custom is expressly saved by sub-section (2) of section 29 of the Act and the learned District Judge was wrong in holding that the appellant could not divorce his wife after coming into force of the Hindu Marriage Act (25 of 1955) and, in any case, it was

necessary for him to obtain a decree from a Court. To appreciate this argument, it is to advert to some of the provisions of the Act. Section 4 thereof provides:—

> "Save as otherwise expressly provided in this Act,—
>
> (a) any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;
>
> (b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.

(8) From this it is evident that the provisions of this Act have over-riding effect and they must prevail irrespective of any text or rule of Hindu Law or any custom or usage in force immediately before the commencement of the Act so far as it is inconsistent with any of the provisions of the Act. The saving provision in the Act is Section 29. Sub-section (2) thereof, on which reliance is placed by Mr. Sarhadi is in these words:—

> "Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act."

(9) The clear effect of this provision is to keep in tact the right of a Hindu to obtain dissolution of marriage, whether such right is recognised by custom or conferred by any special enactment, even after the passing of the Hindu Marriage Act (25 of 1955). In other words, it means that if under custom or any special enactment, a Hindu has a right to obtain dissolution of marriage on grounds other than those enumerated in Section 13 of the Hindu Marriage Act, 1955, he is entitled to avail of the same. What the learned District Judge has held is that even for obtaining dissolution of marriage or divorce on such grounds which were recognised by custom or any special enactment prior to the enforcement of the Hindu Marriage

Act, 1955, the party concerned has to approach the Court and he cannot exercise any such right of divorce unilaterally or without the intervention of the Court. Mr. Sarhadi has not cited any authority against this view of the learned District Judge, but has merely contended that if under custom the appellant had a right to dissolve his marriage by public repudiation and the custom did not enjoin upon him to obtain the seal of a Court on his act, Section 29(2) cannot be so interpreted as to make it incumbent upon the appellant to go to the Court and to establish to its satisfaction that he had in fact dissolved his marriage in accordance with custom. In the alternative he argues that having exercised his right of repudiation under custom as the appellant in this case had gone to the Court to obtain the declaration that the marriage between him and the respondent stood dissolved, nothing further was needed to make effective the dissolution of marriage effected by him by public repudiation effective.

(10) Reading sub-section (2) of Section 29, as has been observed earlier, there can be no doubt that if a Hindu enjoyed any right under custom or special enactment to divorce his wife immediately before the enactment of the Hindu Marriage Act, 1955, that right is not affected. But the view taken by the learned District Judge that even in such cases it is necessary for the party seeking dissolution of marriage, or dissolving the marriage to obtain an order of the Court, seems to be borne out by the language of this sub-section, which has been reproduced above. What has been kept in tact or saved under this provision is "any right recognised by custom or conferred by any special enactment to obtain the dissolution of the Hindu marriage". The expression "to obtain" is significant and in ordinary parlance it means 'to secure' or 'to get' and it excludes the idea of unilateral action on the part of a person, who seeks dissolution of marriage. If the argument of Mr. Sarhadi that the appellant could under custom dissolve the marriage simply by public repudiation without doing anything more in the matter is accepted, the expression 'to obtain' occurring in sub-section (2) of section 29 would become redundant. Had the object of the legislature been to simply recognise the dissolution of marriage effected in accordance with custom, then the expression ' to obtain' would not have occurred there and the purpose would have been served by omitting these words. In that case, sub-section (2) of section 29 would have been in these words:—

> "Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special

enactment, to dissolve a Hindu marriage, whether solemnized before or after the commencement of this Act."

(11) According to the interpretation for which Mr. Sarhadi has canvassed, the expression 'to obtain' would be a surplusage. It is a well-settled rule of interpretation that redundancy or surplusage is not to be attributed to the legislature and every word used in a provision has to be given effect to and considered as having a meaning or purpose behind it. It is, however, not necessary to express any final opinion on this matter as after hearing the parties on merits, I am of the view that the appeal must fail, because no such custom has been proved by the appellant nor is it established that the parties are governed by any rule of custom in the matter of marriage or divorce. *Prima-facie* the view taken by the learned District Judge on the interpretation of section 29(2) of the Act, appears to be correct.

(12) The petitioners case, as noticed earlier, has been that under custom he is entitled to dissolve his marriage with the respondent by repudiating her and he claims to have done so by such repudiation to the knowledge of the respondent on the 25th July, 1965. In order to succeed on this contention the appellant has to prove:—

(1) That the parties are governed by custom in the matter of marriage and divorce;

(2) That according to the custom by which they are governed in such matters, he was entitled to dissolve the marriage by public repudiation of the respondent as his wife; and

(3) That he in fact exercised that right and publically repudiated the marriage on the 25th July, 1965, as alleged by him.

(13) The learned District Judge has found that none of these three essential facts, on proof of which alone the appellant could succeed, has been made out. The question whether the parties were governed by custom in the matter of marriage and divorce and whether the appellant had exercised any such right to divorce his wife under custom by public repudiation are questions of fact and as is well settled, the findings of the lower appellate Court on these matters cannot be interfered with in second appeal, being binding on

this Court, especially when there is no complaint that any evidence has been ignored or misread. It is true that in arriving at his conclusions on both these questions, the learned District Judge has not accepted the evidence of some of the witnesses, but this does not justify the reopening of the findings of fact as the District Judge as a Court of fact was entitled to believe or disbelieve a particular witness and even misappreciation of evidence does not constitute a ground for ignoring a finding of fact. Again, the learned District Judge has found that no such custom of divorce by public repudiation by the husband has been proved. This finding is also justified and fully supported by the material on the record as will be seen hereafter.

(14) Notwithstanding all this Mr. Sarhadi has attempted to argue this case as if it was a first appeal but even on considering the case from that point of view, I find that the conclusions reached by the learned District Judge are unexceptional. The first point on which the appellant had to satisfy the Court was that the parties were governed by custom in the matter of marriage and divorce. Except for his bare assertion on that point, which is a self-serving assertion, there is nothing to prove that the parties were governed by custom in the matter of marriage and divorce. As has been observed earlier, the appellant is a lecturer in a College at Ludhiana, while the respondent-wife is also a teacher in a school at that place. Both are educated persons. There is no allegation, muchless proof, that the appellant depends upon agriculture as a source of his livelihood. It is true that he is a Jat Sikh, being Grewal by caste, and there may be a general presumption that Sikhs belonging to that tribe are governed by custom in the matters of succession and alienation, but there is no such presumption that even Jat Sikhs are governed by custom in all matters including those relating to marriage and divorce. The appellant's learned counsel Mr. Sarhadi could not cite a single authority to support his contention that the appellant being a member of the predominantly agricultural tribe and being a Jat Sikh of Ludhiana coming from a rural area should be presumed to follow customary law in all matters including marriage and divorce. In fact the appellant himself when he was in the witness box did not make any such tall claim. He merely confined his statement to the assertion that he was governed by the Punjab Customary law in the matter of marriage and divorce. At the same time he conceded that he was married to the respondent in accordance with Sikh rites and under the Anand Marriage Act.

(15) The respondent Shrimati Mohinder Kaur, on the other hand, vehemently denied that any rule of customary law applied to her or that they were governed by custom in the matter of marriage and divorce. It is significant that not a single instance was cited by the appellant to prove that since the passing of the Hindu Marriage Act, 1955, any member of his tribe or agricultural community in Ludhiana District has availed of the rules of customary law in the matter of marriage or divorce. In this state of affairs the learned District Judge was perfectly correct in holding that the appellant had failed to prove that he was governed by any rule of custom in the matter of marriage and divorce. In view of this finding, it is hardly necessary to go into other questions, but since they have been adjudicated upon by the Courts below and they have been argued at length, I would like to deal with them as well.

(16) Assuming that the appellant was governed by custom in the matter of marriage and divorce, we have to see what that custom is under which he claims to have dissolved his marriage with the respondent. The statement of custom as set out in the plaint is to be found in its paragraph 2 and is in these words:—

> "The parties are Jat Sikhs agriculturists of Ludhiana district and are governed by the Punjab Customary Law in relation to marriage and divorce. Before the passing of the Hindu Marriage Act, the plaintiff had and he still has a right of divorce under the customary law. Hindu Marriage Act does not bar divorce under the customary law."

(17) From this it is apparent that except for the bald assertion that under the customary law he has the right to divorce nothing is said about the grounds on which such a right could be exercised by him and the manner in which the marriage is to be dissolved under custom. It is only in the course of his statement at the trial that sense dawned on him and he came out with the assertion that according to the custom he was entitled to divorce his wife by publically repudiating her. To prove this custom the appellant relied upon the oral testimony of Gulzara Singh, P. W. 3, Nahar Singh, P. W. 6, Narain Singh P. W. 7, and Bachan Singh P. W. 8. Their evidence has been thoroughly discussed and considered by the learned District Judge and has summed up the same in these words:—

> "The oral evidence consists of the statements of Gulzara Singh PW3, Nahar Singh PW6, Narain Singh PW7, Bachan Singh

PW8 and Jagjit Singh plaintiff as PW 10. Gulzara Singh PW 3 has stated that among the Jats there is a custom that if the wife is not liked then she can be given up and the marriage is cancelled. No instance has been cited in regard to this alleged custom. Nahar Singh PW 6 has also stated that among the Jats the parties can give up the other spouse and the marriage is cancelled. He has also not cited any instance of this custom. Narain Singh, PW 7 stated that marriage can be dissolved but without citing any instance. Bachan Singh PW 8 stated that among the Jats if the husband and wife do not pull on nicely then they can give up each other. The plaintiff as PW 10 stated that among the Jats if the husband does not like the wife then he can publically repudiate his marriage and dissolve it. No instance was cited."

(18) After having gone through the relevant evidence myself I find that this is a fair and correct summary of the evidence on which the appellant relies to prove the custom alleged by him. From this it is evident that the evidence is not consistent as to what the custom is. Whereas some of the witnesses produced by the appellant state that where the husband and wife do not pull on together they can give up each other, there are others, who merely say that the husband has a right to dissolve the marriage if he does not like his wife or that they cannot pull on together. Such like evidence can hardly be accepted. Custom must be certain and the duty of the appellant before he can succeed is to prove what that custom is. The evidence led by him is conflicting. Whereas the appellant claims that he being the husband has the right to dissolve the marriage by publically repudiating his wife, his witnesses mostly tell us that each spouse has the right to give up the other, if they cannot pull on together. From this it is abundantly clear that there is no definable or well-settled custom and the witnesses produced by the appellant are merely got up witnesses. For the reasons best known to them they came forward to support his case. It is, however, significant that none of these witnesses go to the extent of saying that by mere public repudiation, marriage can be dissolved by the husband or the wife. In these circumstances, I agree with the learned District Judge that no such custom, as is alleged by the appellant, has been made out by the oral evidence led by the appellant.

(19) If the custom for the acceptance of which Mr. Sarhadi has vehemently canvassed is so well-recognised and the right of dissolution of marriage is widely exercised on the basis of such custom,

surely there would be no dearth of instances judicial or otherwise. Not a single instance was, however, cited either by the appellant himself or by any of his witnesses and not a single judgment relating to the Sikh-Grewals of Ludhiana has been placed on record to prove that dissolution of marriage by public repudiation of the wife by the husband is valid.

(20) Admittedly, there is no such statement of custom in the Rattigan's Digest of Customary Law, which, as held by the Supreme Court, is a book of considerable authority. On the other hand in paragraph 71 of the Rattigan's Digest of Customary Law, 1966, Fourteenth Edition, it is stated:—

> "A marriage once legally performed between adults cannot be repudiated except by the exercise of the power of divorce, *where such exists.*"

(21) In paragraph 76, apostasy, whether of the husband or of the wife, amongst Muhammadans, is stated to result in cancellation of the marriage, but according to paragraph 77 of the same book not so in the case of Hindus. It is nowhere recognised by Rattigan that a Hindu husband can dissolve his marriage merely because he cannot pull on well with his wife and that too by mere word of mouth or public repudiation.

(22) Coming to the *Rawaj-i-am* of the Ludhiana District, we find that the matter is dealt with in Question No. 19 which is in these words:—

> Q. No. 19. "Upon what ground may a woman be divorced ? Is change of religion a sufficient reason ? May a husband divorce his wife without assigning any cause ?

The Answer to this question is in these words:—

> "Among Hindus, marriage, being a sacrament, is nominally indissoluble, and there is, therefore, no recognised form of divorce, but it is said by all tribes that a man can turn out his wife for immorality or apostasy, and, if he does so, she ceases to become (sic) his wife. Instances are numerous and the custom is well-established. There are also many cases of abandonment or sale where the abandoned wife

married again. Public opinion regards such cases as disreputable, but the women's children by the second marriage are allowed to succeed without their legitimacy being questioned. The Courts will refuse to recognize a custom whereby a man can sell his wife to another, but there is a good deal of evidence to show that dissolution of marriage by the husband, for almost any cause whatever, will be recognized by the brotherhood, provided the woman has been married to another man. Dissolution for unchastity or apostasy is regarded as a divorce whether the woman remarry or no, the other cases are mere abandonment, until the rights of a second husband or his children arise."

(23) This statement in the customary law of the Ludhiana District, to which the parties belong, again does not support the appellant's plea that he has a right to dissolve his marriage by public repudiation and declaring by word of mouth that the respondent was no longer his wife. All that has been recognized in this statement of custom in reply to Question No. 19 is that in cases of apostasy or immorality, the husband has a right to turn out his wife. It does not say that by thus abandoning his wife the marriage between the parties stands dissolved. It is true that in this statement of custom there is a reference to some cases of abandonment or sale where the abandoned wife had married again, but at the same time it is stated therein—

"Public opinion regards such cases as disreputable, but the women's children by the second marriage are allowed to succeed without their legitimacy being questioned. The Courts will refuse to recognize a custom whereby a man can sell his wife to another, but there is a good deal of evidence to show that dissolution of marriage by the husband, for almost any cause whatever, will be recognized by the brotherhood, provided the woman has been married to another man. Dissolution for unchastity or apostasy is regarded as a divorce."

(24) From the above it is abundantly clear that according to the *Rawaj-i-am* of Ludhiana District, the husband is entitled to divorce his wife only on the grounds of unchastity or apostasy and though in some other cases, the husband has a right to abandon his wife but that right does not entitle him to dissolve the marriage or to claim divorce. Mr. Sarhadi attempted to get rid of this statement

of custom contained in the *Rawaj-i-am* of Ludhiana District by relying on certain observations of Harbans Singh J. in *Mst. Angrez Kaur* v. *Gurdit Singh and others* (1). According to his submission this judgement is an authority for the proposition, that there is a general custom in Punjab, especially in the central districts, that a husband can divorce his wife by mere repudiation.

(25) The dispute in that case related to succession to the property of one Sunder Singh, a Jat of Jullundur district, who had left a Will in favour of Mst. Angrez Kaur with whom he had entered into marriage by *chadar-andazi*. This Angrez Kaur was originally married to Tarlok Singh who, however, repudiated and divorced her by executing a document on the ground that she used to go away from his house without his consent and whenever he questioned her about her conduct, she would become furious with him, and that she had gone away to live with Sunder Singh. The issue requiring the decision of Harbans Singh J. was:—

> "Is there any custom among the tribes of the parties, under which the divorce given by Tarlok Singh to Mst. Angrez Kaur is recognized enabling her to enter into a valid marriage by *Chadar-andazi* with Sunder Singh ?"

(26) Evidence in support of this custom was produced, and a number of instances were cited though the Customary Law of Jullundur district did not support such a custom. The learned Judge rejected the statement of custom in the *Riwaj-a-Am* of Jullunder district as in several decision it had been held to be unreliable, and on the basis of the evidence adduced in the case, and relying upon the various instances cited by the witnesses, held that such a custom existed, observing as under:—

> "From the above it is clear that not only according to the general custom recognised by Hindu Jats in all districts surrounding Jullundur a marriage tie can be severed by the husband repudiating the wife, but this custom has also been proved to exist among the tribe of the parties, which is clear from the number of instances cited."

(27) The learned Judge did not specify the circumstances or the grounds which gave the husband the right to repudiate his

(1) 1962 Current Law Journal 533.

wife; and these observations, though widely worded, cannot be taken as an authority for the proposition that a Jat even in Ludhiana district, as the appellant is, has a right to repudiate his wife merely because of her alleged cruel treatment and refusal to live with him.

(28) The observations of Harbans Singh J. that in the districts surrounding Jullundur there was a custom entitling the husband to repudiate his wife are in the nature of *obiter dicta*, and, speaking with respect, I find they are not borne out either by the Rattigan's Digest on Customary Law, a book of undoubted authority on Punjab Custom, or by the *Riwaj-e-Am* of those districts. In any case, it is the statement contained in the ***Riwaj-e-Am*** of Ludhiana district, that must prevail over the unrecorded general custom to which his Lordship has referred. As has been noticed earlier, the statement of custom contained in answer to question 19 of the ***Riwaj-e-Am*** of Ludhiana district merely empowers a Hindu Jat to "turn out his wife for immorality or apostasy, and this is regarded as a divorce. It is, however, important to note the concluding part of this statement of custom contained in the *Riwaj-e-am* of Ludhiana district wherein it is stated:—

> "Dissolution for unchastity or apostasy is regarded as a divorce whether the woman remarries or not; the other cases are mere abandonment, untill the rights of a second husband or his children arise."

(29) In *Mst. Angrez Kaur's case* (supra), Harbans Singh J. was dealing with the case of a woman who after repudiation had remarried. The Customary Law of Ludhiana district, and other districts as well, make a clear distinction between such cases and the case like the one with which we are dealing in which the woman has not remarried but, on the other hand, claims that her marriage has not been dissolved and there is no allegation of unchastity or apostasy against her. Even in the neighbouring districts the husband has no such wide power under custom to divorce his wife by mere word of mouth and at his sweet will. In the ***Riwaj-e-Am*** of Gurdaspur district, in reply to question 3((b) it is stated:—

> "Among the Hindus the custom of divorce does not generally exist; but the following tribes state that the wife

can be repudiated by the execution of a deed of release:—

(1) ————————

(2) Hindu Jats of the Batala and Gurdaspur tahsils.

(3) ....."

In reply to question No. 19 of Hoshiarpur district Customary Law, it is stated:—

"There is no divorce among Hindus, but Jats and Sainis say a man may abandon his wife by executing a deed to that effect. In such cases there must have been good cause such as immorality on the part of the woman."

The answer to question No. 30 in the District Customary Law of Ferozepur is in these words:—

"Among the Jats and other Hindus divorce is nominally impossible, but the custom of a man turning his wife out is recognized and she is at liberty to remarry."

(30) Thus, we find that there is no such general custom, which the appellant has attempted to make out, nor does it find support from the Customary Law of Ludhiana district. The decision in *Mst. Angrez Kaur's* case (supra) cannot be availed of by the appellant as that was based upon specific instances of the custom prevailing in Jullundur district, while in this case the appellant has not cited a single instance to support his case. No doubt, the judgement of the High Court in Mst. Angrez Kaur's case was affirmed by the Supreme Court in *Gurdit Singh* v. *Mst. Angrez Kaur and others* (2) but it has not been ruled by their Lordships of the Supreme Court that there is a general custom in Punjab under which a Hindu Jat can dissolve his marriage merely by repudiating his wife at his will for no cause or even for disobedience or cruelty, especially when there is no allegation of immorality or apostasy against her. What their Lordships held in that case was that a custom existed in Jullundur district among the Hindu Jats which permitted a valid divorce.

(31) For the foregoing reasons, I affirm the findings of the learned District Judge, and upholding his decree dismiss the appeal with costs.

R. N. M.

(2) C.A. 852 of 1964 decided on 25th April, 1967.