

2025.PHHC.049916-DB



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

FAO-1379-2023 (O&M)

Reserved on: 17.03.2025

Pronounced on:-09.04.2025

MAHABIR SINGH

.....Appellant

Versus

ANITA

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present:- Mr. Balraj Gujjar, Advocate for the appellant.

Mr. R.K. Dhankar, Advocate for the respondent.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 01.02.2023 passed by learned Principal Judge, Family Court, Bhiwani Camp at Loharu (for short the 'Family Court'), whereby the petition under Section 13 (1) (ib) of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the appellant-husband, was 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 07.06.2011, according to Hindu rites and out of the said wedlock one child was born. It was further

alleged that during her six year's stay in the matrimonial home, the respondent-wife treated the appellant-husband and his family members with utmost cruelty. In 2010, the real brothers and the cousin of the respondent-wife came to Chandigarh and had stayed at the house of the appellant-husband for preparation of the competitive exams. The respondent-wife used to level the allegations of the illicit relations of the appellant-husband which had caused dent in the marital relations of the parties. She used to send the messages on the mobile phone of the colleagues of the appellant-husband apart from calling them. She had also pressurized him to get his share in the property of his father with the sole objective to compel him to live separately. On 01.03.2018, the respondent-wife left the company of the appellant-husband and started residing at her parental house. On 02.03.2018, she along with her father and some goons visited her matrimonial house and had unlashd threats to the father of the appellant-husband that he should transfer the land in the name of the respondent-wife failing which they would kill the appellant and they had also manhandled his father. During the period 01.03.2008 to 07.04.2018, the appellant-husband did not stay at his house at Panchkula as he had been apprehension that the respondent-wife and her relatives could harm him. On 07.04.2018, when the appellant-husband came to know that the respondent-wife and her relatives were loading his goods in a truck, he went there but the brother and cousin of the respondent-wife had manhandled him in the presence of Jagbir Malik, F.C. Gupta and Ritu Devi and they had threatened that the life of the appellant-husband would be ruined. It was further alleged that

the respondent-wife had been residing at her parental home since 01.03.2018 without any reasonable and justified cause. Terming the aforesaid acts and conduct of the respondent-wife as cruelty, a decree of divorce had been sought for.

3. Upon notice, the respondent-wife entered appearance and filed his written statement, admitting the factum of marriage and birth of the child. It was however pleaded that sufficient dowry was given at the time of the marriage. On 05.10.2012, she gave birth to the child at Gupta Nursing Home, Panchkula, her parents came to meet her and at that time the parents of the appellant-husband had raised the demand Fortuner Car, valuable clothes and gold jewellery along with cash of Rs.1 Lakh. In 2018, the respondent-wife saw the appellant-husband in the company of the lady in a park at Panchkula and when she enquired about the said lady, he told her that she was serving in his company and he would solemnized his second marriage with that lady after giving divorce to the respondent-wife. In April, 2018, he returned to his home in a drunkard condition and gave beatings to her. On 30.06.2018, when the respondent-wife went to Panchkula in order to meet the appellant-husband to bring back her Istridhan Jewellery and other household articles he had misbehaved with her and left the house. The respondent-wife followed him and saw that he entered an office and after sometime came out of that accompanied by one lady and went away in a vehicle. In the evening, he was confronted with the said fact and he told that he would be marrying that lady and when objected to he gave her merciless beatings. She lodged a criminal case bearing FIR No.109 dated 28.12.2018, under Sections 323, 406, 498-

A and 506 read with Section 34 IPC at Women Police Station, Bhiwani, in respect of the atrocious acts of threats. It was further alleged that she had also filed a petition under Section 9 of the Act. Accordingly, a prayer had been made for dismissal of the divorce petition.

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

- “1. Whether the petitioner is entitled for decree of divorce on the grounds alleged in the petition? OPP
2. Whether the petitioner has no locus standi or cause of action to file present petition? OPR
3. Whether the petitioner is stopped from filing the present petition by her own act and conduct. OPR
4. Whether the present petition is not maintainable? OPR
5. Relief”

5. In evidence, the appellant-husband appeared himself as PW1 and had also examined PW2-Ran Singh (his father); PW3-Kulbir Singh and PW4-Ram Kumar. On the other hand, the respondent-wife examined herself as RW1 and had also examined RW2-Mahabir Singh (her father).

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

7. Learned counsel for the appellant-husband has vehemently argued that the learned Family Court has erred in law in assuming that the appellant-husband was having intimacy with one Manju Verma, whereas the fact remains that the respondent-wife had failed to adduce any evidence in support of the said fact. It is further argued that it is settled law that the mark document cannot be read into evidence, but in the instant case, the learned Family Court has wrongly relied upon photographs Mark-DA. The leaned counsel further argues that by way of Ex.P1 to P15, the appellant-husband had proved on record that the respondent-wife had move various false complaint against the appellant-husband and his family member and all the said complaints had been found false by the Competent Authority. It is further argued that the approach of the learned Family Court was totally illegally in believing the uncorroborated photographs. It is further argued that the learned Family Court has wrongly held that the appellant-husband had admitted in his cross-examination that he had visited Goa many times in the company of one Manju Verma. It is also argued that an application for seeking permission to adduce evidence was dismissed by the learned Family Court on 26.10.2022 and the said order attained finality. Additionally, it is argued that the parties have been living separately since March 2018 and since then there has been no resumption of the matrimonial ties between the parties. It is also argued that no effort whatsoever was made by the respondent-wife to join the company of the appellant-husband and rather it was the appellant-husband who had moved an application under Section 9 of the Act. It is, thus, argued

that owing to the long separation between the parties, the marriage of the parties has become unworkable.

8. On the other hand, learned counsel for the respondent-wife while defending the impugned judgment and decree passed by the learned Family Court has argued that the findings recorded are based on the evidence on record. It is further argued that in matrimonial cases, which are purely based on the mutual trust of the parties, if any of the spouses, travels or adverse beyond the matrimonial alliance, the same is good enough to cast a doubt about the fidelity of the said spouse. It is further argued that in the instant case, even if, the relationship between the appellant-husband and aforesaid lady had been established through a mark document, the same would be sufficient to hold that the appellant-husband has committed cruelty towards the respondent-wife. It is further argued that it is settled law that no party can be allowed to take benefit of his or her own wrongs. In the instant case, any indulgence granted to the appellant-husband would amount to allowing him to take benefit of his own wrongs. It is further argued that merely because the party have been living separately since 2018, is no ground to dissolve the marriage. So far as the filing of the petition under Section 9 of the Act by the appellant-husband is concerned. It is argued that the said petition was dismissed due to the obvious conduct of the appellant in not resulting the respondent-wife. Accordingly, a prayer has been made for dismissal of the said appeal.

9. We have heard learned counsel for the parties and have also gone through the records of the case including the impugned judgment and decree passed by the learned Family Court.

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

11. Learned Family Court has found that the appellant-husband could be seen with a lady coming out of a flat in the compact disk (CD). It was further found that the appellant-husband had got registered a company in his name and in the name of said Manju Verma. Subsequently, he got substituted his name with that of his father. It was further found that the whole problem in the matrimonial life of the parties started when the respondent-wife had noticed something unusual and unethical between the appellant-husband and aforesaid Manju Verma. The factum of registration of a criminal case under Sections 323, 406, 498-A and 506 read with Section 34 IPC by the respondent-wife against the appellant-husband stands admitted. It was further found that the appellant had travelled to Goa along with aforesaid Manju Verma which was established on the basis of air ticket(s) and the only defence taken by the appellant-husband was that they had gone on a trip to attend a get together.

12. A perusal of the testimony of the appellant-husband while appearing as PW-1 before the learned Family Court would show that he had admitted his acquaintance with aforesaid Manju Verma and had also admitted that he had travelled with her several times by

air and train. He had also deposed that he was not interested to take his wife back.

13. Though, the stand of the appellant-husband is that he had no illicit relations with said Manju Verma, yet we find that maintaining relations with a lady outside the matrimonial alliance that too without any justified explanation, certainly amounts to cruelty and rather, the said fact is sufficient to cause ruptures in the matrimonial alliance of the parties. Though, the learned counsel for the appellant-husband has argued that the respondent-wife had produced on record only document Mark-DA and the said document could not be read into evidence, yet we find that the said document can be read for the ancillary purposes. In the said photograph, the appellant-husband and aforesaid lady Manju Verma could be seen together. It has been admitted by the appellant that he had acquaintance with said Manju Verma for a long time and that he had been travelling with her by air and train several times and he had even visited Goa with her. In our opinion, the admission of the appellant-husband regarding his relations with said Manju Verma coupled with the position indicated in Ex.DA clearly shows that it was the appellant-husband, who had been the cause of disturbance in the matrimonial alliance of the parties. It is settled law that no party can be allowed to take benefit of his/her own wrongs. In the instant case, the conduct of the appellant-husband does not entitle him to any relief. We are conscious of the fact that parties have been residing separately since 2018, but it must be borne in mind that the instant case is not a fit case, where any indulgence can be granted to the appellant-husband, due to long

separation, in view of the acts and conduct of the appellant-husband. Thus, we find that the findings recorded by the learned Family Court are based on evidence. It could not be pointed out that any evidence has been misread or not taken into consideration.

14. No other point has been urged.

15. 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

[SUKHVINDER KAUR]
JUDGE

09.04.2025

himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No