

(1997) 05 P&H CK 0022

High Court Of Punjab And Haryana At Chandigarh**Case No:** First Appeal Form Order No. 7-M of 1997 and Civil Miscellaneous No. 5518-C II of 1997

Shiv Kumar

APPELLANT

Vs

Geeta

RESPONDENT

Date of Decision: May 19, 1997**Acts Referred:**

- Hindu Marriage Act, 1955 - Section 13B(2)
- Penal Code, 1860 (IPC) - Section 406, 408A

Citation: (1998) 1 CivCC 533 : (1998) 118 PLR 708**Hon'ble Judges:** R.S. Mongia, J; M.L. Kaul, J**Bench:** Division Bench**Advocate:** Vandana Malhotra, for the Appellant; O.P. Goyal Parmodh Goyal and Amol Rattan, A.A.G., for the Respondent**Final Decision:** Allowed

Judgement

R.S. Mongia, J.

Shiv Kumar, appellant, was married to respondent Geeta daughter of Sewa Ram on May 9, 1993, at Ambala Cantt in accordance with Hindu rites. There has been no issue out of the wed-lock. For various reasons, the parties have not been able to pull on together as husband and wife and are staying separately from each other since October, 1994. In fact almost from day one of marriage, there have been bickerings between them and they found that they were not temperamentally compatible to each other to live as husband and wife. A petition for grant of divorce was filed by the appellant against his wife u/s 13 of the Hindu Marriage Act before the matrimonial Court at Ambala City on April 24, 1995. That petition was, however, dismissed on November 18, 1996. Against that judgment, F.A.O. No. 7-M of 1997 had been filed. During the course of the proceedings in the said appeal, the appellant and respondent Geeta decided to get a decree of divorce by mutual consent. For that matter, an application was moved to convert the proceedings u/s 13 of the

Hindu Marriage Act to one u/s 13-B of the Act alongwith a joint application for the grant of decree of divorce u/s 13-B of the Act. That application has been granted by us by an order of even date and the application u/s 13-B of the Act has been taken on record. We have recorded the statements of the parties. It has been stated by the appellant-husband that a stage had reached where there is no possibility of reconciliation. The parties have been living separately since October, 1994, and there has been no cohabitation between them since then. A sum of Rs. 1,50,000/- has been given to the respondent Geeta towards permanent alimony/maintenance and she has stated that she will have no claim of any kind against the appellant or his property. She further agreed to withdraw the case filed against her husband u/s 125 Cr.P.C. in the Court of Judicial Magistrate, 1st Class, Ambala, and she would have no objection if the proceedings in the case arising out of F.I.R. No. 3 of 1995, Police Station, Mahesh Nagar, Ambala Cantt., Under Sections 406/498-A I.P.C. against the appellant are quashed under the inherent powers of this Court.

2. After hearing the learned counsel for the parties and going through their statements, we are satisfied that this case is of a broken marriage and reconciliation is not possible. The parties have been living separately from each other since October, 1994. The prayer of the parties that the compulsory waiting period u/s 13-B(2) of the Hindu Marriage Act be reckoned from the date of the filing of the petition u/s 13 of the Act is accepted as otherwise it would unnecessarily prolong the agony and the litigation as we are satisfied that the parties cannot reconcile. There is no issue out of the wed-lock. They have settled all the claims against each other regarding permanent alimony/maintenance with the payment of Rs. 1,50,060/- by the appellant to the respondent. We have heard learned counsel for the State also regarding the quashing of the proceedings arising out of F.L.R. No. 3 of 1995, Police Station Mahesh Nagar, Ambala Cantt, Under Sections 406/498-A IPC. He also submitted that in view of the fact that the parties have mutually agreed to grant of divorce by mutual consent, it will be in the interest of both the parties if the proceedings arising out of the aforesaid F.I.R. are quashed.

3. For the foregoing reasons we allow this appeal petition u/s 13-B of the Hindu Marriage Act and grant the decree of divorce to the parties by mutual consent. The respondent, Geeta, will have - no claim against the appellant on his property on any count. The proceedings launched by the respondent, Geeta, against the husband, Shiv Kumar, u/s 125 of the code Criminal Procedure in the Court of Judicial Magistrate, 1st Class, Ambala, would stand withdrawn Since the parties have reached an amicable settlement as aforesaid, we consider it to be in the interest of justice that the proceedings out of F.I.R. No. 3 of 1995, Police Station, Mahesh Nagar, Ambala Cantt u/s 406/498-A of the Indian Penal Code be quashed. We order accordingly.

Let a decree-sheet be prepared accordingly.