# Usha Rani Vs Pawan Kumar

## F.A.O. No. 1-M of 1990

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Dec. 21, 1990

**Acts Referred:**
Hindu Marriage Act, 1955 â€" Section 13, 13B, 13B(1)

**Citation:** (1992) 1 DMC 21

**Hon'ble Judges:** A.L. Bahri, J

**Bench:** Single Bench

**Advocate:** V.K. Bali and Anil Kheterpal, for the Appellant; C.B. Goyal, Rajinder Goyal and R.C. Chauhan, for the Respondent

## Judgement

A.L. Bahri, J.
Judge, Ambala, on November 24, 1989 which is under challenge in this appeal filed by Usha Rani-the wife.

2. Initially Usha Rani filed a petition u/s 13 of the Act for getting divorce against her husband Pa wan Kumar on October 31, 1989. When notice

of this petition was served upon the respondent, he put in appearance and the case was adjourned, after efforts were made for reconciliation and

had failed. In the written statement filed, the allegations of cruelty alleged by the wife were denied. Subsequently both the parties filed a joint

petition u/s 13B of the Act for dissolution of marriage by mutual consent. Joint statements of the parties were recorded and thereafter judgment

and decree under appeal were passed.

3. As held by the Division Bench in Krishna Khetarpal Vs. Satish Lal, , appeal is maintainable against the judgment and decree passed u/s 13B of

the Act granting divorce on mutual consent.

4. Counsel for both the parties have relied upon the decision of Krishna Khetarpal"s case (supra), in support of their allegations. The contention of

the Counsel for the appellant is that necessary provisions of the Act were not complied with and decree of divorce could not be granted. On the

other hand learned Counsel for the respondent has argued that necessary grounds for grant of decree by mutual consent were established i.e. the

parties had lived separately for a period of more than one year prior to the filing of the petition and they had mutually agreed to get the divorce.

One fact which is not disputed is that after a petition u/s 13B of the Act was filed the same was not adjourned for six months as required under the

Act and the trial Court immediately proceeded to record the statement of the parties and passed the judgment and decree impugned. The

contention of the Counsel for the appellant is that this irregularity has affected the rights of the appellant. There was no previous long litigation

between the parties and if opportunity had been given to the appellant to think about dessolving the marriage finally even after presentation of the

petition for divorce on the ground of mutual consent, better sence might have prevailed not to break the marriage. In the facts of the case in hand, I

find force in the contention of the Counsel for the appellant. Section 13B(1) of the Act requires the proof of three facts for granting decree on the

basis of the mutual consent; firstly that the parties had been living separately for a period of one year or more; secondly they have not been able to

live together and thirdly that they have mutually agreed that the marriage should be dissolved. Apart from the proof of these three facts as required

by Section 13B of the Act, the petition could not be disposed of before expiry of six months of the presentation of the petition and not later than

18 months after the said date. During this period the petition could be withdrawn in the meantime. Even thereafter a duty was cast upon the Court

to make enquiry with regard to the factum of performance of the marriage and about the truthfulness of the averments made in the petition before

granting decree for divorce. In Smt. Krishna Khetarpal"s case (supra) this aspect was discussed thoroughly. When a petition is filed by both the

spouses u/s 13B of the Act mentioning three grounds, as stated above, the Court is not required to take any notice of it expect for receiving and

registering the petition. The said petition is required to be adjourned for a period of six months and if after the expiry of six months the parties still

want divorce they can approach the Court for taking action on the petition. It is at this subsequent stage that the Court starts functioning in that

direction. An enquiry is called for satisfaction of the Court on the following points :-

(a) Was the marriage solemnized between the parties ?

(b) Were the parties living separately for more than one year before the presentation of the petition ?

(c) Were they not able to live together at the time of the presentation of the petition and continue to live apart ?

(d) Was there mutual agreement of the dissolution of marriage arrived at before or at the time of the presentation of the petition ? and

(e) that the averments made in the petition are true and conditions u/s 23 of the Act are fullfiled.

The Division Bench held that the Court will exclude the possibility of the consent of either party being obtained by force, fraud or undue influence

and see through if there is any collusion. It was further observed in para 16 of the judgment that the Court is put at the stage of Section 13B(2) of

the Act and can look back to the conduct and relationship of the parties, to the litigious course they have travelled and other surrounding

circumstances to mould the relief. With regard to the cases dealt and mentioned therein it was observed that those cases arose only between the

parties where their living together was not possible and there was no collusion when divorce by mutual consent was asked for by waiving the six

months bybernating period. It was further observed that divorce by mutual consent could also be granted even without strictly following the

provisions prescribed u/s 13B(2) but on satisfying itself about the requirement of Section 23(1)(c) and Section 23(1)(bb) of the Act.

5. Reverting to the facts of the case it may be noticed that the marriage between the parties took place on December 3, 1978. First petition u/s 13

of the Hindu Marriage Act was filed on October 13. 1989 at the instance of the husband which was disposed of as withdrawn in October 1989.

Thereafter the parties lived together for few days. When the present petition was filed, as per allegations mentioned therein, both the parties were

living separately since October 28, 1987. In the joint statement made, broadly the assertions made in the petition were established and the parties

in the joint statement also mentioned that they had been living separately since October 1987. The contention of the learned Counsel for the

appellant is that there is no assertion that there was no collusion between the parties and further there is no assertion that the consent of the

petitioner has not been obtained by force, fraud or undue influence which was the requirement of Section 23(1)(bb) of the Act. On this point, there

was no evidence produced by the parties and obviously the Court could not arrive at the decision in the absence of any evidence.

6. The purpose of adjourning the case of grant of divorce on the mutual consent of the parties is not to dispose of the case in a haste hue the case

is to be adjourned at least for six months to enable the parties to rethink about the breaking of the matrimonial relationship. Even in the impugned

judgment there is no mention of establishment of these facts. The judgment, therefore, cannot be sustained. The fact cannot be lost sight of that the

impugned judgment was challenged within few months of its passing.

7. It has been argued on behalf of the appellant that sufficient opportunity was not afforded to the appellant to produce evidence. There is force in

this submission also. Apart from joint statement of the parties no evidence was led. The parties or their Counsel did not close evidence. Everything

was done under orders of the Court. A finding was also required to be recorded by the Court that presentation of the petition was not on account

of the collusion between the parties and more than one year had passed before presentation of the petition and the parties had not lived together.

Counsel for the appellant wanted to rely upon certain letters written by the appellant admitting that within a period of one year prior to the filing of

the petition, both the parties had lived together after October 1987. Thus period of one year''s separation prior to the filing of the petition was not

established. The enquiry conducted in the case was not thus fair and the finding, if any, recorded on such enquiry cannot be relied upon.

8. For the reasons recorded above, this appeal is accepted, the judgment and decree of the trial Court are set aside and the case is remanded to

the trial Court for fresh decision according to law. The amount of arrears of maintenance and litigation expenses which stand deposited in this

Court are ordered to be paid to this appellant. The parties through their Counsel are directed to appear in the trial Court on 28.1.1991.