

(2014) 07 P&amp;H CK 0573

**High Court Of Punjab And Haryana At Chandigarh****Case No:** F.A.O. No. M-258 of 2014 (O&M)

Gurmail Singh

APPELLANT

Vs

Charanjit Kaur

RESPONDENT

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**Date of Decision:** July 21, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 125
- Hindu Marriage Act, 1955 - Section 24, 9

**Hon'ble Judges:** S.S. Saron, J; Navita Singh, J**Bench:** Division Bench**Advocate:** Vivek Rattan, Advocate for the Appellant

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**Judgement**

S.S. Saron, J.

The appeal has been filed by Gurmail Singh, the husband of the respondent Charanjit Kaur alias Pamo against the judgment and decree dated 24.10.2011 passed by the learned Civil Judge (Junior Division), Dhuri (Exercising the Powers of District Judge under the Hindu Marriage Act, 1955) ("Act"-for short) whereby the petition of the appellant u/s 9 of the Act seeking restitution of conjugal rights has been dismissed.

2. Along with the appeal, CM No. 14122-CII of 2014 has been filed seeking condonation of 904 days delay in refiling the appeal. In the application seeking condonation of delay in refiling the appeal, it is submitted by the appellant that he could not contact his counsel as his mother was bed ridden due to arthritis. There was no one to look after her. Besides, the appellant had to take care of his minor son. There was no one to cook meals in the family as the respondent had deserted him. Due to the said compelling circumstances, the appellant could neither come to Chandigarh nor contact his counsel. About ten days earlier to the filing of the application, the appellant met his counsel with respect to the divorce case at Ludhiana. Then, he learnt that the F.A.O. was returned by the Registry and a delay of

904 days has occurred in refiling the appeal. The said delay, it is submitted, is unintentional and due to circumstances beyond control of the appellant. It is stated to be bona fide.

3. The marriage between the parties was solemnised according to Sikh rites by way of Anand Karaj at Village Jhaloor, Tehsil Barnala in the year 2001. At the time of marriage, it is alleged that the father of the respondent-wife was in jail and the marriage was solemnised by Shri Surjit Singh of Village Jhaloor. After marriage, the parties cohabited as husband and wife at Village Dohla. They had a son, namely, Jatinder Singh. It is alleged that Rani, the mother of the respondent and Sinder Kaur, father's sister (Bhua) of the respondent came to Village Dohla on 04.09.2005 and they took the respondent in his absence. The respondent also took her ear rings, gold ring, weighing about one tola with her. The appellant went to Village Mallah to bring her back on the next day, i.e. on 05.09.2005. However, the mother of the respondent refused to send her with the appellant. A panchayat was also convened on 04.10.2005 which comprised of Nachhattar Singh Sarpanch, Gurmail Singh Ex Sarpanch, Niranjana Singh Ex. Panch, Bhola Singh, Jasbir Singh, Ranjeet Singh etc. but the mother of the respondent flatly refused to send the respondent with the appellant. The appellant then filed a petition u/s 9 of the Act on 09.01.2007 (Annexure A.1).

4. It is submitted by learned counsel for the appellant that the appellant earlier also filed a petition u/s 9 of the Act on 26.10.2005, in which the matter was referred to the Lok Adalat. A compromise was reached at in the Lok Adalat on 22.04.2006 (Annexure A.2). In terms thereof, the earlier petition seeking restitution of conjugal rights was dismissed as withdrawn being compromised. Thereafter, the second petition (Annexure A.1) out of which the present appeal arises was filed.

5. The respondent on appearance before the learned Court below filed her reply objecting to the maintainability of the petition. It was submitted that in the earlier petition filed by the appellant on 26.10.2005, the Court had fixed interim maintenance payable to the respondent-wife u/s 24 of the Act. The appellant in order to save himself from payment of maintenance amount, made a statement on 13.06.2006 that he did not want to carry on with the said case. Accordingly, the case was taken up in the Lok Adalat where the petition was dismissed in the absence of the respondent. The fact of marriage was admitted. However, the other allegations that nothing was given in dowry were denied. It was submitted that the mother of the respondent gave sufficient dowry by way of gold and silver ornaments, besides, furniture etc. The appellant and his family members were, however, not happy with the dowry that was given. They usually taunted the respondent one way or the other; besides, they gave her a beating and turned her out of the matrimonial home. They also held out threats that they would marry the appellant elsewhere. They forcibly kept the minor child with them. After that the respondent came to her parental house at Village Mallah, the appellant never came to Village Mallah to take

back the respondent as alleged. No compromise had taken place between the parties in the previous petition u/s 9 of the Act. The respondent also never gave any assurance in the Court that she would join the society of the appellant. The appellant never made any effort to bring the respondent back with him.

6. Rejoinder was filed to the written statement of the appellant in which the allegations made in the written statement were denied and the averments made in the petition were reiterated.

7. The learned trial Court framed the following issues:-

1. Whether the petitioner (now appellant) is entitled to the relief of restitution of conjugal rights?

2. Relief.

8. The appellant in order to prove his case examined Pritam Singh AW1 and examined himself as AW2. The respondent did not lead any oral or documentary evidence.

9. Pritam Singh Lambardar AW1 tendered in evidence his affidavit Ex. AW1/A. He inter alia stated that the marriage between the parties was solemnised about 8 years earlier to his deposition. The respondent, it is stated, had left the company of the appellant without any sufficient cause. He was cross-examined and he accepted that he was not a summoned witness and had been produced in Court by the appellant himself. He also accepted that the appellant was his relative and his house was about one kilometer away from the house of the appellant. He also accepted that he never went to the house of the appellant during night and nor was he called by him.

10. The appellant appeared as AW2 and tendered in evidence his affidavit Ex. AW2/A. The contents of the affidavit were the same as in the petition. However, the said affidavit, it was observed by the learned trial Court had not been signed by the appellant and yet it had been attested by the Oath Commissioner. The affidavit was not in consonance with the provisions of the CPC nor was it an affidavit as defined under the Oaths Act. The affidavit was held to be inadmissible in evidence. Besides, in cross-examination, the appellant submitted that earlier he had filed a petition u/s 9 of the Act but no maintenance amount was ordered to be paid by the Court. He also submitted that he had got the said case dismissed as withdrawn from the Court. He further submitted that Charanjit Kaur respondent had filed a petition u/s 125 of the Code of Criminal Procedure (Cr.P.C.-for short) where the Court had ordered to pay the maintenance to her but he was not paying the maintenance amount.

11. From the evidence on record, the learned trial Court held that the appellant had not come to the Court with clean hands and was not entitled to relief of restitution of conjugal rights. His earlier petition u/s 9 of the Act had been got dismissed as

withdrawn. Besides, it had come on record that the respondent had filed a petition u/s 125 Cr.P.C. and the appellant had not paid a single penny to the respondent towards arrears of maintenance. Moreover, the Court in the present case had fixed maintenance pendente lite payable to the respondent at Rs. 1,000/- per month vide order dated 07.10.2007. The appellant was directed to pay the maintenance amount along with litigation expenses of Rs. 2,000/- to the respondent. The said order was never complied with by the appellant. In the circumstances, it was held that the appellant was not entitled to a decree for restitution of conjugal rights.

12. Learned counsel for the appellant has not been able to raise any convincing or cogent ground to dislodge the findings and conclusion reached at by the learned trial Court. His only contention is that for the sake of the minor child, it would be just and expedient that the respondent lives with the appellant and, therefore, he had filed the petition seeking restitution of conjugal rights.

13. It may, however be noticed that the petition for restitution of conjugal rights was dismissed vide impugned order dated 24.10.2011. Thereafter, for a period of 904 days i.e., more than two and a half years, the appellant had not been able to get in touch with his counsel to refile the appeal. Therefore, it is quite apparent that the appellant has been disinterested in pursuing the appeal. It has also been submitted by the learned counsel for the appellant that the respondent has filed a petition seeking dissolution of the marriage between the parties by a decree of divorce in the District Court at Ludhiana. It appears that it is for the said reason that the present appeal is sought to be got revived to create a defence in that case. In the facts and circumstances, we are satisfied that there is no merit in the appeal and also no merit in the application seeking condonation of delay in refiling the appeal.

14. Consequently, the appeal as also the application seeking condonation of delay in refiling the appeal are dismissed.