penalty proceedings have been directed against the firm that could not make the slightest difference, as we have understood the concept of the firm (see in this connection *Dulichand Laxminarayan* v. *Commissioner of Income-tax, Nagpur,* (12). It is equally noteworthy that penalty proceedings are quasi criminal in nature and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances (see in this connection *Hindustan Steel Ltd.* v. *State of Orissa* (13), *Commissioner of Income-tax, West Bengal-I and another,* v. *Anwar Ali.* (14). The aforementioned principles have come to be enunciated in the jurisprudential realm of the income-tax law. No sustenance can be drawn by the petitioner for the view canvassed by them that there was lack of *mens rea* on their part and somebody else committed the breach of the rules without their knowledge. Fictionally, as Rule 225 of the Rules provides the firm and, for that matter, the partners had committed the breach of the rules, attracting penalty.

15. For the foregoing reasons, we find no merit in the petition, which is hereby dismissed, with no order as to costs.

S.C.K.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain and B. S. Dhillon, JJ.

ATMA RAM,—*Appellant.*

versus

KALA WATI,—*Respondent.*

Letters Patent Appeal No. 135 *of* 1979.

September 11, 1981.

Hindu Marriage Act (XXV of 1955)—Sections 13(1-*A*) (*i*) *and* 23—*Decree for restitution of conjugal rights remaining unsatisfied for more than the statutory period—Husband making no effort to*

(12) (1956) 29 I.T.R. 535.

(13) (1972) 83 I.T.R. 26.

(14) (1970) 76 I.T.R. 696.

obtain satisfaction of the decree—Divorce sought by the husband on the ground of non satisfaction of the decree—Husband—Whether could be said to be taking advantage of his own wrong—Section 13 (1-A) (i)—Whether controlled by section 23.

Held, that once the condition that there is no restitution of conjugal rights as between the parties to the marriage within the statutory period or upwards after the passing of the decree for restitution of conjugal rights is proved, the court will not look into as to which was the party at fault for not resuming cohabitation. It does not, however, mean that in no case the provisions of section 23 of the Hindu Marriage Act, 1955 will not be attracted. The grounds for granting relief under section 13 including sub-section (1-A) continue to be subject to the provisions of section 23 of the Act and that it is mere non compliance with the decree of restitution of conjugal rights that does not by itself constitute a wrong within the meaning of section 23(1) (a) of the Act. Human ingenuity being what it is, it cannot be disputed that cases may arise where notwithstanding that a ground for divorce exists, there may be something in the conduct of the spouse seeking divorce which is so reprehensible that the court would deny to such a spouse relief by way of divorce on the consideration that such a spouse was taking advantage of his or her own wrong. (Paras 15, 18 and 19).

Letters Patent appeal under clause X of the Letter Patent from the decree of the Court of the Hon'ble Mr. Justice Harbans Lal. dated the 9th day of August, 1979 reversing that of the Additional District Judge, Ferozepore, dated the 4th May, 1978 and dismissing the petition of divorce with costs.

H. L. Sarin, Advocate with M. L. Sarin, Advocate, *for the Petitioner.*

Suresh Amba, Advocate, *for the Respondent.*

B. S. Dhillon, J.—

(1) Atma Ram appellant was married to Kalawati respondent in the year 1964. They lived together as husband and wife for a few years and a daughter was born out of this wedlock on 11th February, 1966. Thereafter, Atma Ram allegedly deserted Kala Wati without any reasonable cause. Reconciliation proceedings between the parties could not take place. Atma Ram filed a petition under section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act) for restitution of conjugal rights which was decreed by

the trial Court on 8th July, 1971. Appeal against the same was dismissed by this Court on 4th January, 1973. Letters Patent Appeal filed by the wife was dismissed,—*vide* order dated 10th April, 1973, Atma Ram then filed a petition for a decree of divorce on 11th May, 1977. Divorce was sought on the ground that the decree for restitution of conjugal rights obtained by the husband had remained unsatisfied due to non-compliance by the wife for more than two years.

(2) In the written statement filed by the wife it was admitted that a final decree for restitution of conjugal rights exists. However, it was alleged that the appellant entered into another marriage with one Malagri alias Muglalri daughter of Sahi Ram of village Harkawala, Tehsil Padampur, District Ganganagar (Rajasthan) on 17th June, 1974, and, therefore, the decree for restitution for conjugal rights could not be complied with. It was asserted that the husband could not take advantage of his own wrong in view of the provisions of section 23 of the Act and thus the petition for divorce was liable to be dismissed.

(3) On the pleadings of the parties, the following issues were framed by the trial Court :—

(1) Whether the petitioner has contracted second marriage with Malagri alias Muglalri, daughter of Shahi Ram on 17th June, 1974, and if so, what is its effect ?

(2) Relief.

(4) The learned trial Judge held that the factum of marriage between Atma Ram and Malagri was not proved. The petition was accepted and a decree for divorce was passed.

(5) Kala Wati challenged the order of the trial Court in appeal. The learned Single Judge,—*vide* his judgment dated 9th August, 1979, reversed the findings of the trial Court on issue No. 1 and consequently dismissed the petition for divorce.

(6) This Letters Patent Appeal was listed for hearing before a Division Bench consisting of S. S. Sandhawalia, C.J., and S. S. Kang, J. An argument having been raised by the learned counsel for Atma Ram that since there was no resumption of cohabitation between the parties for a period of more than two years of the passing

of the decree for restitution of conjugal rights, the cause of action for divorce having arisen, the decree for divorce could not be refused on any ground whatsoever. The learned Judges constituting the Bench having felt that the question of law of general importance is likely to arise in many cases, referred the case to a larger Bench. This is how this Letters Patent Appeal has been listed for hearing before us.

(7) Shri Sarin, the learned counsel for the appellant, has challenged the findings of the learned Single Judge on issue No. 1 and has vehemently contended on the basis of the averments made in the pleadings and keeping in view the evidence led by the parties on the record of this case, that the reversal of finding of fact recorded by the trial Court by the learned Single Judge, is not sustainable in the eyes of law. We find merit in this contention. We have very carefully gone through the pleadings and the evidence on the record and find that it is difficult to sustain the findings of the learned Single Judge that Atma Ram had contracted second marriage with Smt. Malagri as averred in the written statement filed on behalf of the wife. There is no averment in the written statement that Smt. Malagri was ever seen residing with Atma Ram appellant as his wife. The only plea taken is that he contracted a second marriage with Smt. Malagri on 17th June, 1974. It has further been pleaded in the written statement that the respondent filed a complaint under section 494 of the Indian Penal Code against Atma Ram and Smt. Malagri in pursuance of which Atma Ram and his second wife were being tried.

(8) The evidence led by Kala Wati in support of the plea taken by her consisted of her own statement as R.W. 1 and that of Ram Kishan (R.W. 2) and Bir Bal (R.W. 3). It is clear from her statement that she did not herself witness the second marriage. She was informed by Bir Bal (R.W. 3), who is the maternal uncle of Kalawati, about the second marriage on the basis of which she filed a criminal complaint under section 494 of the Indian Penal Code. She further deposed that she had seen Malagri with Atma Ram on 3 or 4 occasions during the hearing of the criminal case. According to her Smt. Malagri had a male child of 3 or 4 months age. She further deposed that she was not prepared to live with Atma Ram because of the second marriage. However, if he turns out Malagri, she was prepared to live with him. Ram Kishan (R.W. 2) deposed that

3-years ago at about sunset time when he had gone to his field, he saw marriage party at the house of Shri Sahi Ram. Atma Ram was the bridegroom and Malagri daughter of Sahi Ram was married to Atma Ram in his presence. According to him four rounds around the fire were taken by the couple instead of seven rounds, according to the prevalent custom. He saw Malagri and Atma Ram on three or four occasions after the marriage. This witness also did not state that he had seen Atma Ram and Malagri living together. Bir Bal (R. W. 3) is the maternal uncle of Kala Wati. According to his statement, he belongs to village Churi Wala Phanna in district Ferozepore. He happened to go to the house of Lachhman in village Harkewala where he saw the marriage at the house of Sahi Ram being performed in which Malagri was married to Atma Ram.

(9) Atma Ram appeared as A.W. 1 and deposed that he did not marry any other woman except Kala Wati. He denied that he had married Malagri as suggested. Surje Ram (A.W. 2) also corroborated the statement of Atma Ram and deposed that no other woman was living in the house of Atma Ram and that he had not performed second marriage with Smt. Malagri.

(10) Section 7 of the Act provides that a Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto. It has further been provided that where such rites and ceremonies include the Saptapadi, that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire, the marriage becomes complete and binding when the seventh step is taken. Thus it is to be seen that with a view to prove the second marriage, it is necessary to plead as to the form of the marriage between the parties. In the present case, no averment was made with regard to the form of marriage. Until and unless the customary rites and ceremonies applicable to the parties are proved, the finding regarding the second marriage cannot be returned. Reference in this connection may be made to the decision of their Lordships of the Supreme Court in *Smt. Priya Bala Ghosh* v. *Suresh Chandra Ghosh* (1). In the present case, the pleadings and the evidence regarding the second marriage are wholly insufficient to warrant a finding of second marriage. As already observed, there is no pleading as regards the form of marriage. The statement

(1) A.I.R. 1971 S.C. 1153.

of Kala Wati (R.W. 1) is of no consequence as she did not witness the marriage and she only received information from Bir Bal (R.W. 3). Ram Kishan (R.W. 2) did not disclose as to in what circumstances he happened to be present in the house of Sahi Ram. According to his testimony he had gone to his fields where he happened to see the marriage party. His statement that according to the custom, only four rounds and not seven rounds around the fire were necessary, is again of no help. He did not state that either of the parties was governed by such a custom. His statement that he had seen Atma Ram and Malagri on 3 or 4 occasions after the marriage is again a vague statement as he did not mention the time place and date where they were seen together. He was suggested in cross-examination that he was having enmity with the father-in-law of Atma Ram's brother who is married in village Harkawala, that is, the village of this witness, though he denied the suggestion. This witness did not depose about the presence of Bir Bal (R.W. 3) at the time of the marriage.

(11) As regards Bir Bal (R.W. 3) he is the real maternal uncle of Kala Wati. He did not state that he saw Ram Kishan (R.W. 2) at the time of the marriage. This witness admittedly lives in a village in district Ferozepore in Punjab State and he did not give any reason as to how he happened to be present in village Harkawala at the psychological moment, i.e., at the time of the marriage of Atma Ram with Smt. Malagri. He did not raise any protest at the time of the marriage. In fact his presence at the time and place of the marriage is highly unnatural and it was on the information given by this witness that Kala Wati lodged a criminal complaint under section 494 of the Indian Penal Code against Atma Ram and his alleged second wife, Smt. Malagri.

(12) The learned Single Judge was also influenced by the fact that Kala Wati filed a complaint under section 494 of the Indian Penal Code immediately after having received the information. It has been brought to our notice by the learned counsel for Atma Ram that Atma Ram and Smt. Malagri have been acquitted of the charges under section 494 of the Indian Penal Code and a finding has been returned that the alleged second marriage performed by Atma Ram with Smt. Malagri was not proved.

(13) The observation of the learned Single Judge that Ram Kishan was not cross-examined in detail, in our considered opinion

is of not much help to the learned counsel for the respondent. Ram Kishan R.W. was suggested in cross-examination that he was inimical to the father-in-law of Devi Lal, brother of the appellant, Atma Ram, who is married in the village of this witness and, therefore, he was deposing falsely. This suggestion would be good enough to negative the argument that this witness was not cross-examined in detail. Normally, the Letters Patent Bench is reluctant to interfere with the finding of fact arrived at by the learned Single Judge but since we find that the pleadings and the evidence adduced by the respondent is wholly insufficient to warrant a finding of second marriage, therefore. we are inclined to set aside the findings of the learned Single Judge in this regard.

(14) The learned counsel for the respondent contended that even if the second marriage is not proved, since the learned Single Judge also recorded a finding that at least Atma Ram and Smt. Malagri were living as husband and wife, therefore, the appellant has disentitled himself from getting a decree of divorce in view of the provisions of section 23 of the Act. We are unable to agree with this contention. The learned Single Judge recorded a categorical finding that second marriage has been proved which finding is being reversed by us. The observations that Atma Ram and Smt. Malagri were living together as husband and wife, was merely a passing observation made. As already observed, there is nothing on the record either in the pleadings or in the evidence of any of the R.Ws. that any one of the witnesses saw Atma Ram and Smt. Malagri living together as husband and wife at any stage. Therefore, on the basis of the evidence on the record, it cannot be held that Atma Ram and Smt. Malagri were living together as husband and wife. This contention is, therefore, without any merit. We, therefore, reverse the findings of the learned Single Judge on issue No. 1.

(15) It may not be out of place to mention that the learned counsel for the appellant had also contended that even if Atma Ram had contracted a second marriage, still he would be entitled to a decree of divorce under section 13-1A(i) of the Act as the cohabitation between the two spouses did not take place within a period specified therein. The learned counsel contends that in such a situation, the provisions of section 23 of the Act would not be attracted. It may be observed that a full Bench of this Court in *Smt.*

Bimla Devi v. *Singh Raj* (2), to which I was party, categorically held as follows:—

> "It may, however, be observed that it may not be understood to have been held that the provisions of section 13(1A) are not subject to the provisions of section 23(1)(a). But, in fact, what we have held is that a defaulting spouse, who has suffered a decree for restitution of conjugal rights, cannot be held to be taking advantage of his or her own wrong merely because he or she has failed to comply with the decree of restitution of conjugal rights. Human ingenuity being what it is, it cannot be disputed that many cases may arise, where notwithstanding that a ground for divorce exists, there may be something in the conduct of the petitioner which would be so reprehensible that the Court would deny to such a petitioner relief by way of divorce on the consideration that the petitioner was taking advantage of his or her own wrong."

(16) O. Chinnappa Reddy, J. (as he then was) while agreeing with the conclusions arrived at by me, made further observations in a separate judgment. His Lordship held that it is not permissible to apply the provisions of section 23(1)(a) on the concept of wrong-disability to proceedings in which relief is claimed under section 13(1A) of section 13B, based as they are on the concept of a broken down marriage. It may be made clear that the observation referred to above made by his Lordship is a minority view and, therefore, has no binding force.

(17) Our attention has been drawn to a Single Bench decision of mine in *Smt. Ranjit Kaur* v. *Gurbax Singh* (3), wherein I made the following observations:—

> "Without going into the merits and demerits of the arguments advanced by the learned counsel for the parties on this aspect of the case, it appears to me that the appeal is liable to be dismissed in view of the Full Bench decision of this Court in (*Smt. Bimla Devi* v. *Singh Raj*) (2 supra). It has been held in the Full Bench decision that

(2) 1977 Cur. L. J. (Civil) 154.

(3) 1977 H.L.R. 395.

the provisions of section 23(1) (e) of the Act cannot be invoked to refuse the relief under section 13(1A)(i) of the Act, where cohabitation has not been resumed as between the parties to the marriage for a statutory period after the passing of a decree for restitution of conjugal rights in proceedings in which they were parties. It was held that in a case covered under section 13(1A) (ii) of the Act, either of the parties can apply for dissolution of marriage by a decree of divorce if it is able to show that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in proceedings in which they were parties. Once this condition is satisfied, the Court will not look into as to which was the party at fault for not resuming cohabitation."

(18) These observations of mine are in the context of the facts of the case decided. In that case the plea taken by the appellant was that the husband had failed to make himself available even though the appellant was ready to resume cohabitation. It was in the context of this plea that the above mentioned observations were made that once the condition that there is no restitution of conjugal rights as between the parties to the marriage within a period of one year or upwards after the passing of the decree for restitution of conjugal rights, was proved, the Court will not look into as to which was the party at fault for not resuming cohabitation. This judgment of mine nowhere lays down that the provisions of section 23 of the Act will not be attracted in no case in proceedings for divorce. In the Full Bench decision in *Smt. Bimla Devi's case* (supra), it was categorically held that the provisions of section 13(1A) are subject to the provisions of section 23 of the Act.

(19) It may not be out of place to mention that the view taken by the Full Bench in *Smt. Bimla Devi's case* (supra) finds affirmance by their Lordships of the Supreme Court in *Dharmendra Kumar* v. *Mrs. Usha Kumari* (4). It was held therein that the grounds for granting relief under section 13, including sub-section (1A), continue to be subject to the provisions of section 23 of the Act. However,

(4) 1977 Curr. L.J. 493.

it was held that mere non-compliance with the decree of restitution of conjugal rights does not constitute a wrong within the meaning of section 23(1)(a) of the Act. It would thus be seen that the view of the Full Bench in *Smt. Bimla Devi's case* (supra), has been fully affirmed by their Lordships of the Supreme Court in *Dharmendra Kumar's case* (supra).

(20) It was contended by the learned counsel for the appellant that in case a spouse obtains a decree for restitution of conjugal rights and if the cohabitation between the two spouses does not take place within one year thereafter, then even though the said spouse remarries before filing the petition for divorce, the provisions of section 23 of the Act would not be attracted. This contention need not be gone into in this case as we have come to the conclusion that Atma Ram, appellant did not contract a second marriage and thus he is entitled to a decree for divorce. This question, therefore, will be merely of academic discussion. While sitting in Full Bench it would be laying a wrong precedent to decide a question of law which does not arise in the case. The decision on a point, which does not arise in a case, will be merely in the form of *obiter dicta* and not a binding precedent. This question may, therefore, be gone into in some appropriate case.

(21) For the reasons recorded above, this Letters Patent Appeal is accepted, the order of the learned Single Judge is set aside and the petition for divorce is allowed with costs.

S. S. Sandhawalia, C.J.—I agree.

Prem Chand Jain, J.—I also agree.

N.K.S.

FULL BENCH

Before P. C. Jain, S. C. Mital and Surinder Singh, JJ.

PUNJAB NATIONAL BANK,—*Appellant.*

versus

M/S. LAXMI CHAND SUNDER DASS & others,—*Respondents.*

Civil Misc. No. 510-CI of 1981 in

Regular First Appeal No. 558 of 1978

September 15, 1981.

Punjab Courts Act (VI of 1918)—Section 39—Punjab Courts (Amendment) Act (V of 1980)—Sections 2 and 3(3)—Amending