

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

FAO-M-284-M of 2008(O&M)

Date of Decision: 11.02.2015

Veena

....Appellant

Versus

Ravi Rattan

....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE SNEH PRASHAR**

Present: Mr. Dinesh Trehan, Advocate, for the appellant.

Mr. Suman Jain, Advocate, for the respondent.

SNEH PRASHAR, J.

1. Feeling aggrieved by the judgment and decree dated 08.11.2008 passed by the District Judge (Fast Track Court), Hisar, whereby the petition filed by respondent-husband under Section 13(1) of the Hindu Marriage Act, 1955 (for short 'the Act of 1955') for dissolution of marriage by a decree of divorce was allowed, the appellant-wife had approached this Court by way of instant appeal.

2. The facts relevant for disposal of the appeal are as under:

The marriage between the parties was solemnized on 20.11.1992 at Jalandhar as per Hindu rites and ceremonies. After marriage, they lived together as husband and wife and two children were born out of their wedlock namely, Vivek and Suraj. Elder was aged 12 years and younger 9 years at the time of institution of the petition.

The respondent averred that the appellant is a hot tempered lady and on the very first night she told him that she was not interested

in living with him and had preformed the marriage only because of greed of property. She did not allow him to make sexual relations with her that night. The very next morning, she insulted his mother and misbehaved with her in the presence of the relatives who had come to attend the marriage. After four months of the marriage they alongwith his mother went to Amritsar to attend the ring ceremony of son of his maternal uncle where the apellant again insulted him and his mother in the presence of relatives and left the house without informing anyone.

In the month of July, 1993 the mother of the appellant came to Balsamand and on the next day the appellant accompanied her and left the matrimonial home in his absence. At that time she was pregnant. He waited for two months but when she did not send any information, he went to Jalandhar to enquire about her and the new born child but found that she was not at her parental home at Jalandhar and remained untraceable for one year. After one year she came to the matrimonial home alongwith her uncle and felt sorry for her absence but there was no change in her behaviour towards him. In the year, 1996 at the time of birth of second son, she threatened to commit suicide and to implicate his family in false criminal case. In the year, 1998 she left the matrimonial home for an unknown destination without informing him and was later on found in the house of her uncle Tilak Raj at Ludhiana. In May, 2000 she again left the matrimonial home alongwith her mother and took away with her all jewellery and cash from the house in his absence. His mother asked her to stay till he returned home but she told her that she was leaving the home permanently and was going to Jalandhar. He followed her to Jalandhar but she told him that she was no longer interested in living with him and threatened him of dire consequences.

The respondent pleaded that the appellant gave an application to the police at Jalandhar levelling allegations against him and his family members, upon which the police inquired into the matter and found the

allegations to be false. He convened a Panchayat before whom she gave assurance that she would not be repeating such acts and would live peacefully and returned to the matrimonial home. Again in the year, 2001 she left the matrimonial home in his absence. She came in contact with his maternal uncle Rattan Lal and his son Mohit who had a bad eye on his petrol pump and had filed several cases against him in the Court at Hisar, which were pending. She threatened to eliminate him as she was having full support of Rattan Lal. On instigation of Rattan Lal she again gave an application to the police against him and his family members in the year 2002 levelling false allegations. She stated that she wanted divorce and was not interested in living with him. That application was also found to be fake and false.

It was further pleaded by the husband that the appellant then started living with Rattan Lal in his house No.13-A, Housing Board Rewari. She filed an application under Section 125 Cr.P.C, at Rewari and knowingly mentioned wrong name of his father as Manohar Lal instead of Desh Raj. A plot was allotted to the appellant by HUDA in Hisar which was transferred in his name. In the year, 2003 she gave an application to Estate Officer, HUDA, Hisar alleging that the transfer had been wrongly made but her allegation was found to be false. With the help of Rattan Lal she got registered a false FIR under Sections 420, 467, 468, 120-B of the Indian Penal Code against him at police station Civil Lines, Hisar. He was arrested and he remained in jail. She then gave an application in the Court of City Magistrate, Rewari alleging that he had wrongly confined both her sons in his house and got issued a search warrant. On 13.11.2005, the police came at the house of the respondent and asked to produced the children before City Magistrate, Rewari. On 14.11.2005, he alongwith his sons appeared before City Magistrate, Rewari. Both the sons refused to meet the appellant and stated that they wanted to stay with their father. Thus, submitting that he had been treated with utmost

mental and physical cruelty by the appellant and had also been deserted by her since October, 2001 without any reasonable cause, the husband prayed for a decree of divorce.

3. The appellant contested the petition. In the written statement filed by her she denied all allegations of the husband and submitted that her elder son was born on 09.09.1993 i.e., within 9 months and 19 days of marriage. She also mentioned that Smt. Krishna Devi is not real mother of the respondent but is his paternal aunt (Bhuwa). When she was pregnant, one day before delivery, Krishna Devi abused her and in connivance with the husband turned her out of the house. She also pleaded that the respondent is a character less person having illicit relations with other ladies. Though she admitted that she had left the house on 17.04.2000 but denied that she had taken jewellery or cash with her. She also pleaded that she was an unemployed lady and for that reason she had filed a petition under Section 125 Cr.P.C. before Chief Judicial Magistrate, Rewari and an execution petition for recovery of maintenance amount was pending. She admitted having moved an application to the police of Jalandhar but stated that while she was ready to live with her husband it was the husband who refused to take her. Stating that Rattan Lal and Smt. Krishna are partners in the petrol pump situated at Balsmandh and the respondent has no concern with the same, the appellant added that she has no connection whatsoever with Rattan Lal and his son. According to her, the plot transferred by her in the name of her husband was sold by him to two persons and a case stands registered against him in that regard. Denying that he had caused any cruelty to the respondent or had deserted him, the appellant prayed for dismissal of the petition.

4. On the pleadings of the parties following issues were settled by the learned trial Court:

1. Whether the petitioner is entitled to a decree of

divorce on the grounds of cruelty and desertion as alleged? OPP

2. Relief.

Both the parties adduced evidence in support of their rival contentions.

5. To substantiate his allegations the husband stepped into the witness box as PW1 and examined Rattan Lal-PW2, Ravinder-PW3, Nirmal-PW4 and Rajbir-PW5, who all corroborated his version.

On the other hand the appellant stepped into the witness box as RW-5 and examined Vinod Kumar-RW1, Raghbir Singh-RW2, Khazan Chand-RW3 and Rajinder Kumar-RW-4.

6. Considering the evidence available and the arguments addressed on behalf of the parties, learned trial Court allowed the petition and accordingly passed a decree of divorce on 08.11.2008 dissolving the marriage between the parties.

7. Feeling aggrieved by the judgment and decree dated 08.11.2008, the wife preferred the instant appeal.

8. We have heard the submissions made by Mr. Dinesh Trehan, Advocate for the appellant and Mr. Suman Jain, Advocate for the respondent and perused the record.

9. To begin with, learned counsel for the appellant argued that the husband had sought dissolution of his marriage with the appellant on grounds of cruelty and desertion but all his allegations were general and unbelievable. Not a single specific incident was narrated or proved by him which expose any such act or conduct of the appellant falling within the ambit of "cruelty" a ground for dissolution of marriage under Section 13(1) (ia) of the Act of 1955. The parties had two children born out of the wedlock and the elder among them was born on 09.09.1993 i.e. within 10 months of marriage, yet the husband alleged that the appellant had told him on the very first night after marriage that she was not interested to

live with him and that she had performed the marriage only for the sake of property. The respondent also alleged that on next morning after marriage the appellant insulted his mother and misbehaved with her in presence of relatives who had come to attend marriage but he failed to mention the detailed particulars of the incident.

10. Elaborating his arguments learned counsel urged that from the very beginning of marriage the husband had been illtreating the appellant. RW1- Vinod Kumar an acquaintance of the parties deposed through his affidavit Ex.RW1/A that the appellant was an obedient and social lady whereas the respondent had been misbehaving with her without any fault on her part. He also stated that the mother of the respondent had never resided with him and the appellant. To the same effect is the statement of RW2-Raghubir Singh who was also an independent witness. The said witnesses also stated that after marriage the respondent and the appellant had started residing in the residential portion constructed at the petrol pump owned by Rattan Lal as the husband was employed as a sales man at the petrol pump. RW-3 Khazan Chand and RW-4 Rajinder Kumar testified that the respondent was in the habit of throwing out the appellant from the matrimonial home without any justifiable reason. After last turned out, they requested the husband to bring back the appellant to the matrimonial home but he never paid any heed to their requests. In such state of facts if the appellant was not residing with the husband it could not be said that she had deserted him. It is under compelled circumstances that she is living separately. Also for the same reason it is proved that the behaviour of the husband himself had been cruel towards the appellant and therefore he cannot take advantage of his own wrongs.

11. "Cruelty" is a ground for divorce under Section 13(1) (ia) of the Act of 1955. The word "cruelty" denotes mental as well as physical cruelty, intentional or unintentional. If the cruelty is physical, the Court

has no problem in determining the same as there can be tangible and direct evidence for the same. But in the case of 'mental cruelty', there may not be direct evidence and in such a case the Court is required to probe into the mental process and mental effects of the incidents that are brought out in evidence. "Cruelty" for the purpose of Section 13(1)(ia) is to be taken as a behaviour by one spouse towards the other which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other.

12. Reverting to the instant case, it is evident from the testimony of the husband and the witnesses examined by him that not one but 5-6 instances were narrated by him which were sufficient to prove that the act and conduct of the appellant tantamounted to cruelty towards him and scrutinizing the evidence led by the parties certain such acts of the appellant noticed by learned trial Court were as under:

12. As per petitioner, respondent came in contact with his maternal uncle Rattan Lal with whom he has several litigations regarding petrol pump and on the asking of said Rattan Lal, respondent moved an application in the year 2002 with family counselling Jalandhar levelling false allegations against the petitioner and his family. It is also the case of the petitioner that the respondent has joined hands with said Rattan Lal and is living with him at Rewari and at his instance she has written to the IOC for cancelling of dealership of petrol pump. To my mind the said acts of the respondent amount to cruelty. Admittedly, the petitioner is having litigation with his maternal uncle Rattan Lal with regard to the petrol pump at Balsmand as is evident from Ex.P1. Not only this, she has written complaints Mark A and Mark B to the Indian Oil Corporation for taking action against the

petitioner. Thus, she has attempted to deprive the petitioner from his source of income. The act of the respondent joining hands with Rattan Lal and her living with said Rattan Lal at Rewari certainly amounts to mental cruelty to the petitioner.

13. Further, the respondent in her written statement as well as in the affidavit Ex.RW5/A has levelled allegations casting aspersion on the character of the petitioner and he is a character less person having illicit relations with several ladies. As per learned counsel for the respondent, since no cross-examination on this point has been conducted by learned counsel for the petitioner, this fact stands admitted by the petitioner. The said contention of learned counsel is wholly misconceived. In replication to the written statement, the petitioner has vehemently denied these allegations. Apart, from levelling these allegations the respondent has not led any evidence which could prove her version. She had not disclosed even the names of those women with whom the petitioner is having illicit relations. She has not mentioned any instance in support of her case. In fact except bald averments of the respondent, there is no iota of the evidence on record which could support her case. Thus, she has miserably failed to prove that the petitioner is a characterless person having illicit relations with several women. Simply, because no cross-examination on the point was conducted by learned counsel for the petitioner, it cannot be concluded that this fact has been proved against the petitioner. From the gamut of the evidence it can be

safely concluded that respondent has failed to prove that petitioner is a characterless person having illicit relations with several women. By now it has been settled through various judgments that levelling false allegations by wife against husband for having illicit relations with another women, amounts to cruelty. Thus this act of the respondent certainly amounts to cruelty. Reliance in this regard has been made on authorities Surender Mohan Chopra, Dharampal and Neena Malhotra cited (supra).

13. Adding to the aforesaid instances of cruelty learned counsel for the husband submitted that admittedly a criminal case bearing FIR No.397/2004 under Sections 420, 467, 468, 120-B of the Indian Penal Code was got registered by the appellant against the respondent which at the time of decision of the present petition was pending trial. The case has since been decided by the learned Judicial Magistrate First Class, Hisar and the respondent-husband has been acquitted in the said case. Copy of the judgment was produced by the husband by way of additional evidence in the present proceedings.

14. It has been held by Hon'ble Apex Court in **K. Srinivas Rao vs. D.A. Deepa, 2013(5) SCC 226** that it is now beyond cavil that if a false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce.

15. Levelling false allegations and getting a criminal case registered against the husband was indeed a gravest kind of cruelty caused by the appellant which amounted to mental and physical cruelty to the husband.

16. Learned counsel for the appellant failed to point out any kind of error of law or perversity in the findings of learned trial Court emerging from misreading or misappreciation of evidence of the parties.

Thus finding no ground for intervention in the findings of the learned trial Court, the appeal having no merit is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

11.02.2015
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