

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-126 of 2009

DATE OF DECISION: APRIL 1, 2015

ROHIN KUMAR

...APPELLANT

VERSUS

SILVIA

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.**

1. Whether the judgement should be reported in the digest? Yes/No

PRESENT: MR. AMIT AGGARWAL, ADVOCATE FOR THE APPELLANT.
MR. K.D.S. HOODA, ADVOCATE FOR THE RESPONDENT.

M. JEYAPPAUL, J.

1. Appellant Rohin Kumar who is the husband of respondent Silvia, aggrieved by the dismissal of the petition filed by him under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') praying for dissolution of marriage by a decree of divorce, has preferred the present appeal.

2. We find that the appellant has sought a decree of divorce under Section 13 of the Act on the grounds of cruelty and desertion. The fact remains that the appellant and the respondent solemnized marriage on 22.1.2004, according to Hindu rites and ceremonies. A male child also was born to them out of their wedlock on 12.8.2005. The child is presently staying with the appellant/husband.

3. The trial Court having adverted to the evidence on record came to the conclusion that the appellant has not established that there was cruelty

committed by the respondent and that she deserted him willfully. Resultantly, the appellant was non-suited by the trial Court.

4. Adverting to the judgements passed by the trial Court as well as the appellate Court in the criminal prosecution launched by the respondent-wife against the appellant-husband under Section 498-A and 406 IPC, it was submitted by learned counsel appearing for the appellant that both the Courts have not accepted the allegation made by respondent-wife that the appellant-husband, his parents and his sisters committed offences punishable under Sections 498-A and 406 IPC. The unfounded allegations which culminated in criminal prosecution faced by the appellant, his parents and his sisters would amount to cruelty and therefore, the appellant is entitled to divorce, it was submitted. Learned counsel for the appellant also submitted that the parties have amicably settled the dispute and they have also entered into a compromise. The Compromise Deed also was produced before this Court.

5. Learned counsel appearing for the respondent-wife would submit that the prosecution launched by the respondent-wife as against the appellant-husband under Section 498-A and 406 IPC was, of course, rejected by the trial Court as well as by the appellate Court. However, the respondent has compromised the matrimonial dispute in terms of the Compromise Deed produced before the Court. It is submitted that the respondent also has no objection in allowing the appeal on the ground of cruelty, following the subsequent events which culminated in acquittal of the appellant, his parents and his sisters.

6. It is a well settled proposition of law that a false criminal complaint preferred by the wife as against the husband that ended in acquittal would invariably constitute a matrimonial cruelty. Refer, **K.Srinivas Rao vs. D.A. Deepa, 2013(2) RCR (Civil) 232 and K.Srinivas vs. K.Sunita, 2015(1) RCR (Civil) 38**), wherein the above proposition has been categorically held by the Hon'ble Supreme Court.

7. Coming to the facts of this case, it is not in dispute that the case in FIR No.120 dated 22.3.2006, registered under Sections 498-A and 406 IPC at Police Station Sector 5, Panchkula as against the appellant, his parents and his sisters ended in acquittal before the trial Court. The judgement of acquittal was put to test before the appellate Court by the respondent herein. The same was rejected by the appellate Court and consequently the judgement of acquittal was confirmed. It is a matter of fact that the judgement of acquittal has reached finality.

8. In our considered view, the fact that the criminal case launched as against the appellant and his family members had been thrown out by the trial Court as well as by the appellate Court would go to show that the respondent has come out with false allegations to launch prosecution under Section 498-A and 406 IPC. This itself is a solid ground, in our considered view, to grant the relief of divorce sought for by the appellant. That apart, we find that both the parties had arrived at a compromise to part ways from the matrimonial relationship. The Compromise Deed entered into between the parties has been placed on record. In terms of the compromise, a sum of ₹9 lacs in the shape of a bank draft towards permanent alimony to the

respondent-wife was handed over in open Court by the counsel for the appellant to the respondent, who was present alongwith her counsel and the same was accepted by her. Both the parties have agreed to abide by the terms and conditions of the Compromise Deed.

9. Both the parties have submitted before the Court that they have agreed that appellant, who is having the custody of the son born out of their wedlock, shall produce the son on every Saturday and Sunday at Municipal Park, Ambala City to facilitate the respondent-wife to exercise her right of visitation from 11.00 a.m. upto 1.00 p.m. on those days. Both the parties have also undertaken to abide by the above terms and conditions as well.

10. In view of the above, granting a decree of divorce under Section 13 of the Hindu Marriage Act, 1955 on the ground of cruelty, the appeal is allowed and the marriage between the parties stands dissolved. The Compromise Deed also shall form part of the judgement. Decree sheet be drawn accordingly.

(M. JEYAPPAUL)
JUDGE

April 1, 2015
Gulati

(RAJ RAHUL GARG)
JUDGE