

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-288 of 2009

Date of Decision: 25.2.2015

Sukhwinder Kaur @ Sarabjit Kaur

....Appellant.

Versus

Mewa Singh

...Respondent.

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

PRESENT: Mr. H.S. Tuli, Advocate for
Mr. S.S. Ranghi, Advocate for the appellant.

Mr. Arun Jindal, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. Learned counsel for the respondent has tendered a demand draft No. 926565 dated 21.2.2015 in the sum of ₹ 34,600/- drawn in favour of the appellant on account of arrears of maintenance in terms of order dated 18.2.2015. The demand draft in original has been handed over to the learned counsel for the appellant and the photo copy thereof is taken on record.

2. This appeal has been filed by the wife against the judgment and decree dated 3.8.2009 passed by the Additional District Judge, Fast Track Court, Patiala, whereby the petition filed by the husband under Section 13(1A)(i) of the Hindu Marriage Act, 1955 (in short "the Act") for dissolution of marriage by a decree of divorce, was allowed.

3. The facts, in brief, necessary for adjudication of the present

appeal as narrated therein may be noticed. The instant petition has been filed with the averments that the marriage of the parties was solemnized on 29.9.2000 in village Reona Bhola, Tehsil Sirhind, District Fatehgarh Sahib according to Sikh rites. After the marriage, the parties resided together as husband and wife and out of the said wedlock, a child was born in the month of December, 2002 who is residing with the appellant. The respondent filed a divorce petition against the appellant on the grounds of cruelty and desertion which was dismissed on 19.1.2005. However, the trial court passed a decree for judicial separation which had become final as the appellant or the respondent had not filed any appeal. The present petition had been filed under Section 13(1A)(i) of the Act, *inter alia*, on the ground that after the decree of judicial separation dated 19.1.2005, there has been no cohabitation and restitution of conjugal rights for more than one year thereafter. It was claimed that the parties are living separately after the passing of the decree dated 19.1.2005. The criminal case filed under Sections 406, 498-A of the Indian Penal Code was pending adjudication. On these grounds, the respondent prayed for a decree of divorce. The appellant contested the said petition by filing a written statement. Besides raising various preliminary objections, it was pleaded that after the decree dated 19.1.2005 was passed by the trial court, the parties were living together and had cohabited as husband and wife. After the passing of the decree dated 19.1.2005, a panchayat was convened at village Reona Bhola to resolve the matrimonial dispute between the parties. With the intervention of the panchayat, the respondent took the appellant to the matrimonial home where they lived for a period of 20-25 days and had resumed cohabitation. Thereafter, the respondent again started

maltreating the appellant had thrown her out of the matrimonial home. The other averments made in the petition were denied and a prayer for dismissal of the same was made. From the pleadings of the parties, the trial court framed the following issues:-

1. Whether the petitioner is entitled for decree of divorce as alleged? OPP
2. Whether the petition is not maintainable as alleged? OPR
3. Whether the parties cohabited together after passing a decree dated 19.1.2005 and respondent was turned out of the matrimonial home as alleged, so its effect? OPR
4. Relief.

4. The respondent in support of his case himself appeared as PW1 and tendered his affidavit Ex.PW1/A. On the other hand, the appellant tendered her affidavit as Ex.RW1/A and affidavits of Mohinder Singh, Randhir Singh and Harmohinder Singh were tendered as Ex.RW2/A, Ex.RW3/A and Ex.RW4/A, respectively.

5. The trial court took issues No.1 and 3 together being interrelated and on appreciation of evidence led by the parties, decided the same in favour of the respondent and against the appellant holding that the parties had not cohabited together after the passing of the decree dated 19.1.2005 and, therefore, the respondent was entitled to a decree of divorce. Issue No.2 was decided against the appellant by observing that the petition was maintainable. Accordingly, the trial court vide judgment and decree dated 3.8.2009 allowed the petition and dissolved the marriage between the parties by passing a decree of

divorce in favour of the respondent. Hence, the present appeal by the wife.

6. Learned counsel for the appellant submitted that after the passing of the decree dated 19.1.2005, the appellant lived with the respondent in the matrimonial home and resumed cohabitation. According to the learned counsel, the appellant was being harassed and treated with cruelty on account of demand of dowry and a criminal case under Sections 406/498-A of the Indian Penal Code was lodged against the respondent. It was urged that the trial court had erroneously passed a decree of divorce in favour of the respondent.

7. On the other hand, learned counsel for the respondent besides supporting the judgment and decree passed by the trial court, additionally submitted that the husband and other relations were acquitted on 2.6.2010 by the trial court in an FIR lodged by the appellant under Sections 406, 498-A of the Indian Penal Code.

8. After hearing learned counsel for the parties and perusing the record, we do not find any merit in the contentions of learned counsel for the appellant.

9. Section 13(1A)(i) of the Act which is relevant for the decision of the present appeal, reads thus:-

“13 Divorce.- XX XX XX

(1A) Either party to a marriage, whether solemnised before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground-

(i) that there has been no resumption of cohabitation as between the parties to the

marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii)	XX	XX	XX
(2)	XX	XX	XX”

According to clause (i) of sub-section (1A) of Section 13 of the Act, either party to a marriage solemnized at any time may present a petition for the dissolution of the marriage by a decree of divorce claiming that there has been no resumption or cohabitation for a period of one year or more between the parties after the passing of decree for judicial separation between them.

10. Examining the factual matrix involved herein, it may be noticed that the respondent filed a divorce petition before the District Judge, Patiala against the respondent on the ground of cruelty and the said petition was contested by the appellant. However, the District Judge, Patiala vide judgment and decree dated 19.1.2005 dismissed the said petition but passed a decree for judicial separation in favour of the respondent and against the appellant. Since then the parties were living separately. The appellant had failed to show that after passing of the decree dated 19.1.2005, she had cohabited with the respondent. As she had filed petition for maintenance against the respondent and criminal litigation was pending between the parties, there was no reason to believe that she had cohabited with the respondent.

11. The trial court on appreciation of evidence on record had rightly held that the respondent was entitled to a decree of divorce under Section 13(1A)(i) of the Act as the appellant had not cohabited with the

respondent after the passing of the decree dated 19.1.2005. The relevant findings recorded by the trial court read thus:-

“9. After going into this oral evidence, the judgment passed by the Ld. Addl. District Judge, Patiala Sh. G.K. Dhir in H.M.A. No. 46- decided on 19.1.2005 is Ex.P1 on the record. Decree Sheet is Ex.P2, Ex.P3 is the copy of order passed by the court of Sh. K.S. Sullar Ld. J.M.I.C. Patiala wherein respondent was allowed maintenance at the hands of the present petitioner. Mewa Singh had preferred revision. Grounds of Revision are Ex.P4, Ex.P5 is judgment passed by the Court of Sh. Paramjit Singh, Addl. Sessions Judge, Fatehgarh Sahib in revision filed by Mewa Singh against the respondents Ex.P6 to Ex.P10 shows that criminal proceedings are pending against the present petitioner and his family. The complainant in the police case is the respondent. If the documents or law referred by the Ld. counsel for the petitioner are seen except that the claim of the respondent and her witnesses there is nothing on record to show that after the judgment and decree Ex.P1 & Ex.P2, the respondent had resumed cohabitation with the petitioner. The respondent had filed petition for maintenance against the present petitioner and criminal litigation is pending between the parties, so the question of resumption of cohabitation by the parties does not arise. Thus, it is proved on record

that the parties never cohabited together after passing of the decree dt. 19.1.2005, as such the petitioner is entitled to a decree of divorce u/s 13(1A)(i) of H.M.A. for dissolution of marriage as one year has expired and the parties have not resumed cohabitation.”

12. Additionally, learned counsel for the respondent claimed that the divorce petition was decided by the trial court on 3.8.2009 whereas subsequently on 2.6.2010, the husband and his family members were acquitted of matrimonial offences under Sections 406, 498-A of the Indian Penal Code. It was urged that though the petition was not filed on the ground of cruelty under Section 13(1)(ia) of the Act as the said ground was not available at that time, but in view of the subsequent development after the decision by the trial court, it could be concluded that the respondent was treated with cruelty which is a ground of divorce under Section 13(1)(ia) of the Act.

13. Admittedly, the petition seeking divorce was not filed before the trial court on the ground of cruelty as earlier petition filed on that ground was not accepted on 19.1.2005 when decree of judicial separation alone was passed. Subsequent to the judgment and decree dated 3.8.2009, the criminal proceedings for matrimonial offences under Sections 406, 498-A of the Indian Penal Code had resulted in the acquittal of the respondent-husband and his family members on 2.6.2010.

14. Elucidating 'mental cruelty' the Apex Court in **K. Srinivas Rao's case (supra)** concluded that if a false criminal complaint is filed against the spouse and his/her relatives regarding matrimonial offences, it would be a case of mental cruelty. Following the aforesaid

pronouncement, the Division Bench of this Court in **Imlesh v. Amit, AIR 2014 Punjab and Haryana 89**, observed as under:-

“So far as the finding of the trial Court regarding cruelty on the basis of involvement in a false criminal case is concerned, it may be said that it in itself constitutes sufficient ground for granting divorce as it amounted to cruelty. Reference in this regard may be made to the case in **K. Srinivas Rao v. D.A. Deepa (2013) 5 SCC 226: AIR 2013 SC 2176**, where it was held by Hon'ble the Supreme Court that where indecent/ defamatory statements are made in the complaint/ criminal proceedings, the same singly and cumulatively amounted to mental cruelty warranting grant of divorce. If a false complaint is filed against the spouse or his/her relatives, it amounted to mental cruelty. In the said case also, wife had filed a case under Section 498-A IPC and the husband and his family members were acquitted and decree of divorce was granted to the husband on that ground, as it amounted to mental cruelty.”

15. Similar view was reiterated by the Supreme Court in **K. Srinivas v. K. Sunita Civil Appeal No. 1213 of 2006** decided on 19.11.2014.

16. It was not controverted by learned counsel for the appellant that the judgment in criminal proceedings in the FIR lodged against the respondent and his family members under Sections 406, 498-A of the Indian Penal Code had resulted in the acquittal of the respondent and

his family members by the trial court vide judgment dated 2.6.2010, which is subsequent event to the filing of the present petition for divorce. In view of the authoritative pronouncement of the Apex Court noticed hereinbefore, this act of the appellant certainly amounts to cruelty to the respondent within the meaning of Section 13(1)(ia) of the Act.

17. Thus, viewed from any angle, the decree of divorce passed by the trial court cannot be faulted and is accordingly upheld. Consequently, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

February 25, 2015
gbs

(SNEH PRASHAR)
JUDGE