

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-240 of 2011

DATE OF DECISION: JULY 29, 2015

GURLABH SINGH

...APPELLANT

VERSUS

SUKHWINDER KAUR

...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

PRESENT: MR. ASHISH GUPTA, ADVOCATE FOR THE APPELLANT.

M. JEYAPPAUL, J.

1. The appellant who is the husband of the respondent has challenged the dismissal of his petition under Section 13 of the Hindu Marriage Act, 1955 seeking dissolution of marriage by a decree of divorce.

2. The appellant has contended in the petition that marriage between him and the respondent was solemnized on 7.4.2003. They were blessed with a son and a daughter. The respondent was suffering from mental illness at the time of her marriage which was completely concealed by the respondent. The mental illness aggravated within one year of the marriage. The respondent insulted the appellant. She had not discharged his obligation as a married woman. Her temper would flare-up and she would beat the children on flimsy grounds. The life of the appellant has become miserable. It is further submitted by the appellant that the respondent filed a false criminal case as against him.

3. The respondent-wife contended in the written statement that it was only the appellant who ill-treated the respondent by beating her and throwing her out of the matrimonial home. The appellant and her family members had been harassing and humiliating the respondent by demanding dowry. She also contended that she had never treated the appellant cruelly.

4. There was no representation for the respondent. Service was effected on the respondent by publication in a newspaper. But before hearing the main appeal, we issued notice to the father of the respondent to explain as to what happened to the respondent who did not choose to appear before the Court. Mr.Vivek Goel, Advocate appeared for the father of the respondent on receipt of the notice from this Court and submitted that the respondent left his house about 4 years ago. He did not know the whereabouts of his daughter. He was also not interested to agitate the matter before the Court on behalf of his daughter.

5. Counsel appearing for the appellant submitted that the medical evidence adduced through PW1 and PW2 establishes that the respondent was afflicted with some mental illness.

6. The appellant has examined PW1 Dr.Ramesh Chander Garg. He deposed that he detected Bipolar disorder on examination of the respondent. But during the course of examination, he admitted that such like mental illness is completely curable. That apart, it is found that he was only a general practitioner who has not acquired any special knowledge to treat Bipolar disorder.

7. The appellant examined PW2 Dr. Krishan Chand Jindal. He

had treated the respondent from 18.2.2007 to 13.3.2007. He deposed that he treated the respondent who had a *mania with second episode*. It is noted that he did not verify from the treatment taken by the respondent earlier whether the respondent was afflicted with such an ailment earlier. It is important to notice that he had admitted that there were chances of curing such illness of the respondent on giving proper treatment.

8. In view of the above, we are of the considered view that the trial Court has rightly concluded that the respondent was not afflicted with irrecoverable mental illness.

9. The counsel appearing for the appellant referring to the judgement Annexure A-1 passed by learned Judicial Magistrate Ist Class, Faridkot on 25.2.2014 submitted that the appellant and his family members who were charged with Section 498-A and 323 read with Section 34 IPC were acquitted of those charges. Such a false case launched by the respondent against the appellant and his family members would amount to cruelty, it was further submitted.

10. It is a well settled proposition of law that if a spouse has launched a false case as against the other spouse, the other spouse is entitled to seek a relief for divorce on the ground of cruelty. Filing a false case as against the appellant and his family members by the respondent would definitely amount to cruelty. Such a development that took place after filing of the petition cannot be lost sight of by the Court. The appellant and his family members were acquitted of the charges under Section 498-A and 323 read with Section 34 IPC on 25.2.2014. No appeal has been preferred as

against the above judgemnt of acquittal recorded in favour of the appellant.

Therefore, in our considered view, the appellant is entitled to a decree of divorce on the ground of cruelty caused by the respondent by filing a false case.

11. For the foregoing reasons, a decree of divorce is granted on the ground of cruelty in favour of the appellant and against the respondent. Accordingly, the appeal is allowed. Decree sheet be prepared accordingly.

(M. JEYAPPAUL)
JUDGE

July 29, 2015
Gulati

(RAJ RAHUL GARG)
JUDGE