

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

**FAO-M-255 of 2011 (O & M)
Date of Decision : 19.5.2015**

Smt. Mukesh

....Appellant

Versus

Sandeep

.....Respondent

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

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters?
3. Whether the judgment should be reported in the Digest?

Argued by : Mr. N.S. Panwar, Advocate, for the appellant

Mr. KBS Mann, Advocate, for the respondent

Raj Rahul Garg, J.

Mukesh/wife instituted the petition for divorce on the ground of cruelty and desertion against her husband-Sandeep. The same was dismissed vide impugned judgment and decree dated 29.7.2011 rendered by Sh. Jagjit Singh, the then Additional District Judge, Fast Track Court, Rohtak. Against this judgment, the petitioner/wife has come up in this appeal before this Court.

Brief facts of the case are like this; that the parties got married in June 2003 at Village Sanghi. The marriage was duly consummated but no child was born out of this wedlock. As per the petitioner/wife, after marriage, she came to know that her husband is a man of criminal nature and cruelty against wife is part of his personality. In all respects of husband-wife relations, instead of treating wife with love and affection, he

will instil fear in her mind and demand obedience. On smallest lack of obedience on the part of the petitioner/wife, he gave threats to shoot her. As per the petitioner/wife, she never felt easy and free of tension any moment in the company of her husband. In November 2004, one day the respondent/husband came late at night. The petitioner/wife was in deep sleep. The respondent gave beatings to her on the point as to why she did not remain awake till his return. When she protested, he put country made pistol on her temple and threatened to shoot her. As per the petitioner/wife, she stayed at the house of her parents most of the time during the period of last 5 years of her marriage whereas the respondent/husband remained in jail or an absconder. As such, she has been suffering not only physical and mental cruelty at the hands of her husband but also suffered desertion. She was deprived of pleasure of her marital life. She never enjoyed pleasure of her married life with the respondent/husband rather she remained only under fear and deprivation. The respondent/husband has deserted her for the last 3 years for no fault on her part. Under these circumstances, the present appeal was instituted.

On the other hand, the respondent/husband contested the petition denying each allegation of the petitioner/wife. It was specifically denied that he is a man of criminal nature or that cruelty against wife is part of his personality. As per the case of the respondent/husband, he never treated the petitioner with cruelty. He always treated her with love and affection. He never gave any threat to her life. It was also denied that she did not enjoy his company or that she never felt easy or free of tension. The entire incident of November 2004 was also specifically denied alleging that

the aforesaid story of the petitioner/wife is false and concocted. It was also denied that the wife remained in the house of her parents most of the time during the last 5 years.

It is case of the respondent/husband that he was falsely implicated in a criminal case and was arrested on 17.6.2005. After his arrest, the petitioner left his house. Thereafter, he was convicted and sent to jail. He came on parole in the month of June 2008. At that time, he brought the petitioner from her parents house and lived together during the aforesaid period of parole of 28 days. Appeal against conviction was filed by him before the High Court which is still pending. As such, the question of deserting the petitioner/wife does not arise. With these pleas, dismissal of petition was prayed.

On pleadings of the parties, following issues were framed by the then Additional District Judge, Rohtak on 10.3.2009 :-

- “1. Whether the marriage between the parties is liable to be dissolved on the ground of cruelty and desertion as alleged?OPP
2. Whether the petition is false and frivolous and not maintainable in the present form?OPD”
3. Relief.”

After taking evidence of both the sides and hearing counsel for both the parties, the learned trial Court held that the petitioner has not been able to prove the ground of cruelty or that of desertion on the part of the respondent, as such, dismissed the petition filed by the petitioner/ wife.

We have heard Mr. N.S. Panwar, Advocate, for the appellant and Mr. KBS Mann, Advocate, for the respondent and perused the entire material coming on record.

The appellant/wife as PW1, fully corroborated her case as mentioned above. Ajit Singh-uncle of the appellant/wife as PW2, by filing affidavit Ex.PW2/A, corroborated her version on the point of criminal nature of Sandeep/husband; giving threat to the life of the petitioner/wife; giving her beatings when she was not found awake on his return in November 2004; putting of country made pistol on the temple of the petitioner/wife with a threat to shoot her. This evidence, in fact, proves the case of causing cruelty by the husband to the petitioner/wife.

On the other hand, it was contended by learned counsel for the respondent/husband that the elder sister of the appellant/wife is married to Narender PW2. Both of them are leading a happy life. Even after marriage, the petitioner/wife acquired educational qualifications after studying 10+2 and B.A. Even the respondent/husband helped her in getting job in Police Department. The parties were living happily but the respondent/husband was falsely implicated in a criminal case and was arrested on 17.6.2005. Only thereafter, the appellant/wife left her matrimonial home. As such, the entire calamity dawn on this family on account of false implication of the respondent/husband in a criminal case registered under Sections 392, 302/34 IPC. Not only this, even when after his conviction, he came on parole in the month of June 2008, he brought the petitioner to his house and lived together during the aforesaid period of 28 days. Though Narender-brother of Sandeep, as RW2, supported his case yet it is established on the file that Sandeep is a man of criminal nature. There are four more FIRs registered against him besides the FIR in question in which he has been convicted and sentenced admittedly. Of course, the petitioner/ wife did not

lead any evidence regarding registration of other FIRs against her husband yet now, in this appeal, she has filed an application under Order 41 Rule 27 read with Section 151 CPC seeking permission of this Court to lead additional evidence in the shape of information received under the Right to Information Act, 2005 alleging that the information received under the RTI Act, proves that the respondent is a habitual criminal. The details of FIR pending against him were mentioned as follows :-

1. FIR No. 69 dated 12.6.2005 u/Ss 457, 380 IPC PS Israna, Panipat.
2. FIR No. 4 dated 12.6.2005 u/S 379 IPC PS Israna, Panipat.
3. FIR No. 132 dated 10.6.2005 U/S 379 IPC PS Matlauda, Panipat.
4. FIR No. 136 dated 13.6.2005 u/Ss. 392, 394, 342 & 506 IPC PS Matlauda, Panipat.”

Annexure P3 is the information supplied by the Public Information Officer of the office of Inspector General of Police, Rohtak Range, Rohtak. The information supplied by the State Public Information Officer-cum-SSP, Sonapat, is per se admissible. No evidence is required to be taken in the eventuality of allowing of application for additional evidence.

At this stage, learned counsel for the respondent/husband contested the allowing of application for additional evidence, tooth and nail.

He also cited two authorities on this point as under :-

1. Mehnga Singh v. Lal Chand and others
1999(2) SimLJ 1640 Punjab & Haryana High Court;
2. Seth Mehta Pvt. Ltd. v. Standard Chjartered Bank
2005(3) ICC 193 Calcutta High Court.”

So far as preposition explained in the aforesaid judgments is concerned, it is not disputed . It is also the settled preposition of law that if the Court is satisfied that the documents adduced by way of additional evidence would enable the Court in pronouncing the judgment, additional evidence can well be allowed. The additional evidence which the appellant now intends to lead as such, is a documentary evidence and cannot be created at a subsequent stage. Even otherwise, the respondent/ husband has admitted the existence of aforesaid FIRs against him. In his reply to the application for additional evidence in Para 3 on merits, he submitted that there were four cases registered against him. In two cases, the sentence which was awarded to him, he has already undergone and in the remaining two cases, he is undergoing the sentence. This shows that in all the above four cases, he was convicted. The facts which is admitted need not be proved. Even otherwise, information received through RTI is genuine information. As such, finding merit in the application for additional evidence, it is allowed.

The information received by invoking right to information Act clearly shows that the respondent/husband is involved in theft cases as mentioned in the above FIRs. The case in which he was convicted bears FIR No. 127 dated 14.4.2005 under Sections 392, 302/34 IPC pertaining to Police Station Chandni Bagh, Panipat. After commission of this offence, he did not stop. He again committed the offence of robbery, as is evident from FIR No. 136 dated 13.6.2005 under Sections 392, 394, 342 and 506 IPC pertaining to Police Station Matlauda, Panipat. Admittedly, he has been convicted in all the aforesaid cases. It is also admitted case of the

respondent/husband that when he was convicted, the petitioner/wife had gone to her parents house. Under these circumstances, it is quite natural for her to stay with her parents. Though the respondent/husband claimed that when he came on parole in June 2008, his wife stayed with him for all the 28 days but there is nothing on record to prove the same. When this question was put to the wife during the course of her cross examination, she admitted that when Sandeep had come on parole, she had met him and had gone with him to Rohtak Courts. Thus, nowhere she admitted that during that period she stayed with him at his house or lived as husband and wife. Involvement of the respondent/wife in so many criminal cases and then remaining in jail or absconding from the police authorities and further instilling fear in the mind of his wife during his stay with her and putting country made pistol on her temple; giving threat to her life and also giving beatings to her when she was not found awake during late in the night, on his return, are the instances which can be termed that the respondent/husband has caused cruelty to the appellant/wife.

Simply because sister of the appellant/wife married to Narender and has been living happily, would not mean that the respondent/husband has not caused cruelty to the appellant/wife. Further, even if the appellant/wife got education as well job after marriage, would not mean that the respondent/husband did not treat her with cruelty. As such, there is overwhelming evidence available on record which shows that the respondent/husband has treated the petitioner/wife with cruelty.

Of course, the ground of desertion is not proved in this case. It is settled proposition of law that, howsoever long, may be the separation but

unless intention to bring cohabitation to an end permanently, is proved, the ground of desertion is not available to the spouse setting up the same.

In this case, the respondent/husband is in jail on account of his conviction in criminal case. As such, it cannot be said that the respondent/husband has in any way, intended to bring cohabitation permanently to an end or that he wanted to bring to an end permanently his relationship as husband and wife with the appellant/wife. As such, the findings of the learned trial Court on the point of desertion do not suffer from any illegality and are maintained.

No other point was argued before us.

For the reasons recorded above, finding merit in this appeal, it is partly allowed i.e. the appeal is allowed only on the ground that the respondent/husband has treated the appellant/wife with cruelty, therefore, the petition filed by the appellant/wife is decreed, thereby dissolving marriage of appellant Mukesh with respondent Sandeep, under Section 13 (1)(ia) of the Hindu Marriage Act, 1955.

As ground of desertion could not be proved by the appellant/wife, therefore, the findings of the learned trial Court on this aspect are affirmed. As such, as indicated above, the impugned judgment and decree dated 29.7.2011 is modified accordingly. Decree sheet be prepared accordingly.

(M. JEYAPPAUL)
JUDGE

(RAJ RAHUL GARG)
JUDGE

19.5.2015
Ashwani