

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.

FAO M-10 of 2013(O&M)

DATE OF DECISION: January 12, 2015.

Satbir Singh

....APPELLANT

VERSUS

Kamlesh

....RESPONDENT

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

Present: Mr. Rakesh Gupta, Advocate
for the appellant.

Mr. Anil Malik, Advocate
for the respondent.

SNEH PRASHAR, J.

1. Assailing the judgment and decree dated 22.08.2012 passed by the learned District Judge, Kaithal dismissing H.M.A Case RBT No.16 dated 27.01.2011/03.01.2012 filed by Satbir Singh-appellant for dissolution of his marriage with respondent Kamlesh-wife, the instant appeal was filed.

2. The facts which need elaboration are as under:

Appellant-Satbir Singh was married to Kamlesh-respondent on 15.03.1998 according to Hindu rites and ceremonies at village

Songla, Tehsil and District Kaithal. After marriage, they lived together as husband and wife and a son namely Abhishek was born out of their wedlock. The appellant averred that from the very beginning, the respondent being a lady of loose temper used to quarrel with him and his family on petty matters. She never cooperated with him and forced him to live separate from his family. He acceded to her demand and took a separate accommodation, yet she was not satisfied and there was also no improvement in her behaviour. She gave no respect to him and misbehaved with him in the presence of his relatives and neighbours. Many a times, she left the matrimonial home without informing him. In order to harass and defame him, she gave an application against him to Superintendent of Police, Kaithal, which was sent to Mahila Cell, Kaithal. A Panchayat was convened and the matter was compromised and on her demand one acre of agriculture land was transferred by him in the name of his son Abhishek. Despite that, the respondent was not satisfied and in the month of June, 2004 she alongwith the son left the matrimonial home taking away with her all ornaments and other valuable articles.

It was further the allegation of the appellant that on a complaint filed by the respondent on 23.07.2004 in the Court of

learned Additional Chief Judicial Magistrate, Kaithal, FIR No.81 dated 05.08.2004 under Section 406/498-A and 506 of the Indian Penal Code was registered against him and his parents. After trial of the case, they all were acquitted vide judgment dated 08.01.2010 passed by learned Judicial Magistrate First Class, Kaithal. The respondent preferred an appeal which was dismissed vide judgment dated 12.01.2011 by learned Additional Sessions Judge, Kaithal.

All household articles were taken away by the respondent in the garb of the FIR registered on her complaint. She also filed a petition under Section 125 of the Code of criminal procedure which was decided on 27.10.2007 by the learned Additional Chief Judicial Magistrate, Kaithal and he (appellant) was directed to pay maintenance allowance @ Rs.800/- per month to her and Rs. 700/- to minor son Abhishek. Submitting that he had been neglected and deserted by the respondent since June 2004 without any reasonable cause and all efforts made by him to bring her to the matrimonial home had failed and that their marriage had irretrievably broken down as they had lost confidence in each other and there was no possibility that they can live together as husband and wife, the appellant prayed for a decree of divorce dissolving their marriage. He mentioned that

the previous petition for divorce filed by him was dismissed on 03.12.2009 i.e. much prior to the decision of the criminal case.

3. The respondent contested the petition, and filed a written reply taking preliminary objections with regard to maintainability of the petition, cause of action and estoppel etc.

Replying on merits, she denied all allegations of the appellant and submitted that she had been performing all matrimonial duties towards him and his family members as a devoted Hindu wife but they being greedy persons were not satisfied with the dowry given at the time of marriage and demanded Rs.1,00,000/- in cash as an additional dowry. On one occasion, her father gave Rs. 80,000/- and second time he paid Rs.60,000/- to the appellant in the presence of Harikesh of Patti Afgan, Kaithal. Despite that, the lust of the appellant could not be satisfied. He often gave her beatings on his own as well as on the instigation of his family members. She tried her best to settle in the matrimonial home but due to the cruelties she was facing, her life became miserable. Ultimately, after being given severe beatings she was turned out of the matrimonial home without any fault on her part.

It was admitted by the respondent that she had given an application before Mahila Cell, Kaithal where the matter was compromised in the presence of the Panchayat and in compliance of the settlement her husband (appellant) had transferred land measuring one acre in the name of their minor son Abhishek, but she pleaded that she returned to her matrimonial home on the assurance of the appellant that he will maintain her properly and will not demand dowry, however, just after three months, the appellant again started maltreating her. He demanded cash amount from her and when she showed inability of her parents to pay the same, she was thrown out of the house in three wearing clothes and since then, she was residing at her parental home.

It was further an admission of the respondent that in the criminal case got registered by her against the appellant and his family members, all dowry articles were recovered. She mentioned that a revision petition regarding that case was pending before the High Court of Punjab and Haryana at Chandigarh. Levelling counter allegation that she had been neglected and deserted by the appellant which had caused physical and mental cruelty to her and that during the reconciliation proceedings held before the Court the appellant had

bluntly refused to keep her, the respondent prayed for dismissal of the petition.

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

1. Whether the respondent is guilty of deserting the petitioner for a continuous period of more than two years immediately preceding the presentation of petition with an intention of not joining the company of the petitioner?OPP
2. Whether the respondent is guilty of treating the petitioner with cruelty after solemnization of marriage?OPP
3. Whether the petition is not maintainable?OPR
4. Relief.

5. Both the parties adduced evidence in support of their respective contentions.

6. Considering the evidence of the parties and the submissions made on their behalf, learned trial Court held that it could not be shown by the appellant that any attempt was made by him to reconcile the dispute and as such, the need for dissolution of marriage by a decree of divorce could not be established. Further holding that launching of criminal prosecution by the wife against the

petitioner husband cannot be termed to be “cruelty” as the criminal prosecution had not been finally decided, issues no.1 and 2 were decided against the appellant-husband. Issue No.3 was decided against the respondent as not having been pressed during arguments and in the light of decision of the issues, the petition for divorce presented by the appellant was dismissed.

7. Feeling aggrieved by the impugned judgment and decree dated 22.08.2012, passed by learned District Judge, Kaithal, the appellant preferred the instant appeal.

8. We have heard Mr. Rakesh Gupta, Advocate representing the appellant and Mr. Anil Malik, Advocate representing the respondent and have gone through the material available on record.

9. At the very outset, learned counsel for the appellant pointed out that a complaint was filed by respondent-wife containing allegations that the appellant and his family members had been demanding additional dowry in the shape of cash amount and on one occasion her father paid Rs.80,000/- and on another he gave Rs.60,000/- to the appellant, yet his lust could not be satisfied and further that she was harassed and ill treated during her stay at the matrimonial home and was ultimately thrown out in three wearing

clothes. The complaint resulted into registration of FIR No.81 dated 05.08.2004 under Sections 406/498-A and 506 of the Indian Penal Code at Police Station Rajound, District Kaithal against the appellant and his parents, who were arrested, challaned and sent to the Court for trial. However, the charges could not be proved and the appellant and his parents were acquitted vide judgment dated 08.01.2010 passed by the learned Judicial Magistrate First Class, Kaithal. The respondent then preferred an appeal which too was dismissed vide judgment dated 12.01.2011 by the then learned Additional Sessions Judge, Kaithal.

10. To support his arguments that institution of a criminal complaint containing false allegations by the respondent-wife was a cause for severe mental harassment to the appellant-husband, learned counsel relied upon the authoritative pronouncement of the Apex Court in **K.Srinivas Rao Vs. D.A. Deepa, 2013(5) SCC 226** wherein it has been held 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'. Same is the proposition of law laid down by the Apex Court in its latest pronouncement in **K.Srinivas Vs. K.Sunita**

2015(1) RCR (Civil)38.

11. Indeed, it was recited by the appellant in his pleadings itself that the respondent-wife had filed a criminal complaint which led to registration of a case under Section 406/498-A and 506 of the Indian Penal Code against him and his parents but after trial, he was acquitted of the charges levelled against him and the appeal filed by the respondent against the judgment of acquittal was also dismissed. The appellant tendered in evidence certified copy of the judgment of acquittal Ex.P1 dated 08.01.2010 passed by the learned Magistrate as well as judgment Ex. P2 dated 12.01.2011 passed by learned Additional Sessions Judge, dismissing the appeal preferred by the respondent. The Criminal Revision No.1662 of 2011 affirming the aforesaid acquittal has been dismissed by the High Court on May 20,2013. The copy of the order has been allowed as additional evidence vide order of even date passed in CM No.22876-CII of 2014.

Learned trial Court taking note of the copy of the order dated 9.11.2011 , Ex. R3 of this Court and copy of the petition Ex.R4 observed that a revision petition was still pending before the High Court and as such, the findings of acquittal had not attained finality.

Accordingly, the learned trial Court took a view that until and unless the revision petition is decided by the High Court neither it can be said that the allegations which were subject matter of the criminal prosecution were false nor that the allegations were true and mere launching of criminal prosecution by the wife against the husband could not be termed to be "cruelty". It may be noticed that the Criminal Revision No.1662 of 2011 has since been dismissed by the High Court and therefore, the reasoning of the trial Court dismissing the divorce petition filed by the husband cannot be legally sustained.

12. In the case in hand, the earlier divorce petition filed by the husband was dismissed vide judgment dated 03.12.2009 Ex.R2. It is subsequent to the dismissal of the said petition that the criminal case registered on the complaint of the respondent vide FIR No.81 dated 05.08.2004 under Section 406/498-A and 506 of the Indian Penal Code ended in acquittal of the appellant and his parents on 08.01.2010. Even the appeal against the said judgment was dismissed vide judgment dated 12.01.2011 Ex.P2 which order has since been affirmed by the High Court on May 20, 2013 while dismissing the Criminal Revision No.1662 of 2011 filed by the respondent-wife. Being a subsequent event, the appellant had a

fresh cause of action to file the instant divorce petition. The dismissal of the earlier divorce petition filed by the husband on similar grounds lost significance as acquittal of the appellant in the criminal case launched by the respondent wife was subsequent to the same.

13 In **K. Srinivas Vs. K.Sunita's case (supra)** the Apex Court held as under:

“The Respondent-wife has admitted in her cross-examination that she did not mention all the incidents on which her complaint is predicated, in her statement under Section 161 of the Cr.P.C. It is not her case that she had actually narrated all these facts to the Investigating Officer, but that he had neglected to mention them. This, it seems to us, is clearly indicative of the fact that the criminal complaint was a contrived afterthought. We affirm the view of the High Court that the criminal complaint was “ill advised”. Adding thereto is the factor that the High Court had been informed of the acquittal of the Appellant-Husband and members of his family. In these circumstances, the High Court ought to have concluded that the Respondent-Wife

knowingly and intentionally filed a false complaint, calculated to embarrass and incarcerate the Appellant and seven members of his family and that such conduct unquestionably constitutes cruelty as postulated in Section 13(1) (i a) of the Hindu Marriage Act.”

14. It was further held by the Apex Court in **K.Srinivas Vs. K.Sunita's case(supra)** that when it is proved that the wife had filed a false criminal complaint, even one such complaint is sufficient to constitute matrimonial cruelty.

15. In the case in hand, undisputably the respondent-wife got registered a complaint against the appellant and his parents that they were maltreating her on account of their demand for additional dowry in shape of cash of Rs.1,00,000/-. She also stated that to satisfy their demand her father once paid Rs.80,000/- and second time Rs. 60,000/- to the appellant. The said specific allegations were held to be false by learned Magistrate as well as in appeal by learned Sessions Judge. The concurrent findings of both the courts indicate that the respondent knowingly manufactured false allegations to incarcerate the appellant and his parents.

16. In addition to the aforesaid factum it was also the allegation of the appellant that respondent being a lady of loose temper had been quarreling with him and his family members on trivial matter. She demanded separate accommodation from the family and under compulsion he acceded to the demand, yet she did not mend her ways and misbehaved with him in the presence of his relatives and neighbours. To harass and defame him, she gave a complaint to Superintendent of Police, Kaithal which was sent to Mahila Cell. A Panchayat was then convened and as demanded by her for compromise, he transferred one acre of agricultural land in the name of their son Abhishek. Despite that she was not satisfied and in the month of June, 2004 she left the matrimonial home.

17. The respondent gave a different version on other facts but she could not deny that a compromise had taken place between the parties in the presence of Panchayat in compliance of which the appellant transferred one acre of agricultural land in the name of their son. She also could not controvert the plea of the appellant that on her asking he had taken separate accommodation from his family. It shows that all attempts were being made by the appellant to save their marriage. Yet the respondent left him and could not narrate any

specific incident which forced her to leave the conjugal company of the appellant.

According to the appellant the respondent left the matrimonial home in June, 2004. The respondent did not deny that she was living away from the appellant since June, 2004. When reason stated by her had been found to be false, it can be said without hesitation that she had intentionally deserted the appellant.

18. Thus, apart from the fact that the allegations of the respondent that the appellant was demanding dowry in the shape of cash amount have been found to be false after trial by the Magistrate and also in appeal by the learned Additional Sessions Judge, which has since been affirmed in Criminal Revision No,1662 of 2011 decided on 20.05.2013, the act and conduct of the respondent, seen from other angles also constituted matrimonial cruelty towards the appellant husband. Otherwise also it does not appeal to a prudent mind that a person who separated from his family and also transferred land in the name of his son on the asking of the respondent-wife had been demanding money/dowry from her.

19. In the above premises, holding that the respondent had caused matrimonial cruelty to the husband and she had deserted him

without any rhyme or reason, the findings of the trial Court on issues No.1 and 2 are reversed and the appellant is held entitled to dissolution of his marriage on the ground of “cruelty” and “desertion”.

Accordingly, the appeal is allowed, the judgment dated 22.08.2012 of learned trial Court is set aside. The petition of the appellant is allowed and the marriage of the parties is dissolved by a decree of divorce leaving the parties to be their own costs.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

12.01.2015
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