

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

FAO No.M-193 of 2013.

Date of Order: 18th September, 2015

Ranjit Kaur wife of Balbir Singh

..Appellant

Versus

Balbir Singh son of Gurdial Singh

..Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MS. JUSTICE NAVITA SINGH**

**Present: Mr. Parminder Singh, Advocate,
for the appellant.**

**Mr. Pankaj Jain, Advocate,
for the respondent.**

RAJIVE BHALLA, J.

The appellant, challenges judgment and decree dated 11.04.2013, recorded by the Additional District Judge, SAS Nagar, Mohali, allowing the petition for divorce filed by the respondent and dissolving the marriage of the parties, on the ground of cruelty.

Counsel for the appellant submits that the impugned judgment and decree are not sustainable in fact or in law. The finding of cruelty is primary based upon the facts that the appellant is facing a trial for the murder of the respondent's father (her father-in-law), an alleged extra marital affair with Harvinder Sharma, refusal to cook meals for the appellant and his family members and failure to

appear at the stage of second motion in proceedings, under Section 13-B of the Hindu Marriage Act (hereinafter referred to as 'the Act').

Counsel for the appellant submits that it is true that the appellant was tried for the murder of her father-in-law but the Additional Sessions Judge, SAS Nagar, Mohali, has acquitted her and Harvinder Sharma in Sessions Case No.07, dated 12.02.2013, decided on 23.05.2014. The finding of cruelty based on the fact that the appellant is facing a criminal trial is, therefore, no longer sustainable. Counsel for the appellant further submits that an FIR was lodged by Harvinder Singh son of the respondent against some unknown persons, alleging the murder of the respondent's father. The respondent, however, in league with the police manipulated the investigation and got the appellant arrested but the appellant was released as no case was made out against her. The respondent, thereafter, filed a private complaint in which the appellant and Harwinder Sharma were summoned and arraigned as accused. A perusal of judgment dated 23.05.2014, acquitting the appellant, reveals that witnesses produced by the prosecution to prove a conspiracy to murder and the illicit relationship between the appellant and Harwinder Sharma, have been disbelieved. The Additional Sessions Judge has also noticed that even the Investigating Officer found the appellant and her co-accused were innocent and in an enquiry conducted by DSP Pritpal Singh, no evidence was found against them. Sarwan Singh who has been examined as PW4 in the present case, deposed as PW2 in the criminal Trial but was disbelieved. Even otherwise, the statement by

PW4 Sarwan Singh, a neighbour, is devoid of any particulars or relevant facts that could prove the alleged extra marital relationship between the appellant and Harvinder Sharma. The statements made by the respondent and his witnesses, namely, PW2 Kehar Singh and PW3 Satinderjit Singh are general in nature, self serving in content and do not prove, the allegation of an illicit relationship with Harvinder Sharma. The judgment in **Jhabar Mal v. Guddi @ Kamla, 2002(2) All India Hindu Law Reporter, 325 (Rajasthan)**, relied by the trial court to hold that even if the appellant is acquitted, cruelty is proved as the respondent cannot be expected to live with the appellant, is perverse as in the aforesaid case the the daughter-in-law had been convicted for the murder of her mother-in-law and was undergoing a sentence. The acquittal of the appellant for these false charges proves that the respondent and not the appellant was cruel. The appellant cannot be punished for standing trial for a murder of which she has been acquitted.

Counsel for the appellant also submits that a perusal of the petition filed under Section 13 of the Act reveals that Harvinder Sharma was not impleaded as a party, thereby ruling out the allegation of an extra marital relationship from consideration in the present proceedings.

Counsel for the appellant further submits that the inference of cruelty based upon the fact that the appellant did not appear before the court at the stage of second motion, in a petition, filed under Section 13-B of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') disregards the fact that the

appellant was facing a criminal trial and even otherwise the entire amount was never paid to the appellant. The appellant was, therefore, well within her right to refuse to proceed with the petition filed under Section 13-B of the Act. The finding that the appellant treated the respondent with cruelty by refusing to cook food for the respondent and his family members is based upon a vague self serving statement made by the respondent without any particulars of this incident and even if a wife refuses to cook food for a husband, such an act cannot by itself be construed as cruelty, sufficient to dissolve the marriage.

Counsel for the respondent submits that the finding of cruelty recorded by the trial Court, is based upon a clear and cogent appraisal of the evidence. The allegation of an extra marital affair with Harvinder Sharma has been proved by the deposition of the respondent as PW1 and depositions by PW2 Kehar Singh, PW3 Satinderjit Singh and PW4 Sarwan Singh. Even, if the appellant has been acquitted, the appellant cannot possibly be expected to resume matrimonial relations with a person who has been tried for the murder of his father and, therefore, sufficient to infer cruelty. Counsel for the respondent relies upon **Jhabar Mal v. Guddi @ Kamla (supra)**.

Counsel for the respondent further submits that as the appellant entered into a compromise with the respondent, they filed a joint petition, under Section 13-B of the Act, but after receiving rupees One lac, she resiled from the compromise. This apart the evidence on record reveals that the appellant did not prepare meals

for the respondent or his family members, created a tense atmosphere in the house and though in August, 2008, she changed her behaviour and parties went to Patiala, but when they returned, on 20.09.2008, they found that the respondent's father had been murdered. The fact that the appellant has been tried for the murder of respondent's father is sufficient to infer cruelty and dismiss the appeal.

We have heard counsel for the parties, perused the impugned judgment and appraised the entire record, including the pleadings and the evidence adduced by the parties.

The appellant and the respondent were both married earlier and from their earlier marriages had two children each. The father of the respondent was residing with them at Zirakpur, Tehsil Dera Bassi, District Mohali. The respondent filed a petition for dissolution of the marriage by alleging that about a month after their marriage, one Harvinder Singh (Harvinder Sharma) of village Sarangpur (Chandigarh) and some other anti social elements began visiting his house, in his absence. The respondent's father objected to their visits and when the appellant was questioned and the respondent tried to reason with the appellant she threatened him and told him not to interfere in her affairs, otherwise he would be taught a lesson. The appellant did not cook food for the respondent's father or the respondent, compelling them to take meals at a Dhaba. On 20.09.2008, the appellant persuaded the respondent to visit Patiala. The respondent, the appellant and their children went to Patiala, leaving his old father at home. On their

return, on the next day, they found the house locked from outside and after they opened the door, found that his father had been murdered. The matter was reported to the police, who after investigation, arrested the appellant and Harvinder Singh (Harvinder Sharma). The appellant and Harvinder Singh (Harvinder Sharma) were interrogated but let off by the police. The respondent, thereafter, came to know from the in-laws of the appellant's first husband that her first husband had been murdered and they suspected her involvement in the murder. The respondent also alleged that on 23.09.2008, the appellant's brother and parents entered the house and took away valuable articles. The respondent also pleaded that the appellant refused to perform her marital duties and treated the respondent with physical and mental cruelty.

The appellant filed a reply denying averments in the petition and pleaded that Harvinder Singh (Harvinder Sharma) was like a brother to her and whenever he visited his house, he talked to the respondent also. The appellant is not responsible for the murder of the respondent's father, as she was with the respondent at Patiala on the relevant date and time. The appellant and Harwinder Singh (Harvinder Sharma) were tortured and kept in illegal confinement by the police but eventually released but on manipulation by the respondent, they were arraigned as accused, in a private complaint.

The parties, thereafter, adduced their respective evidence. PW1 Balbir Singh, the respondent, has deposed as per averments in the petition and stated that as the appellant did not cook meals for him and his father they had to take meals at a dhaba.

The appellant allowed Harvinder Sharma to visit her despite his advise but eventually she improved her behaviour. The parties went to Patiala but when they returned from Patiala, they found that the respondent's father had been murdered. The respondent's son Harvinder Singh filed a complaint before the police against unnamed persons. The appellant and Harvinder Sharma were arrested but were released by the police. The appellant continued to pursue the matter and eventually in a private complaint, the appellant and Harvinder Sharma were summoned, arrayed as accused and are being tried for the murder of his father. PW2 is Kehar Singh son of Sham Singh, who has deposed that he had seen Harwinder Singh sitting with the appellant in the house of the respondent. PW3 is Satinderjit Singh, son of Hardial Singh, who supported the deposition by PW2 regarding the visits of Harwinder Singh and PW4 is Sarwan Singh son of Bhagat Singh, who had deposed along similar lines regarding the presence of Harwinder Singh (Harvinder Sharma) in the house of the respondent but has also deposed that on 20.09.2008 (the date of the murder), he had seen Harvinder Sharma, moving near the house of the respondent. At this stage, it would be appropriate to point out that PW4 Sarwan Singh, appeared as a prosecution witness in the criminal trial but was disbelieved and the allegations of an illicit relationship etc. were rejected. The respondent also produced in evidence the complaint, other documents and orders relating to the criminal trial. The respondent also produced a petition, filed under Section 13-B of the

Act, and the statement made by the appellant.

In support of her plea that she had not treated the respondent with cruelty, the appellant stepped into the witness box as RW1, denied allegations of an extra marital affair with Harvinder Sharma, denied the allegation of cruelty, denied that she had any links with any anti social elements, denied that she had not prepared food for the respondent's father or his relatives, denied that she had refused to perform her marital duties or treated the respondent with cruelty, denied that she was in any manner involved in the murder of father-in-law etc.. RW2 is Raghubir Singh, resident of village Barotiwala (father of the appellant), who has supported the deposition by the appellant.

The trial court after considering the pleadings and the evidence adduced, decreed the petition for dissolution of marriage by holding that the appellant is guilty of cruelty on the following grounds: (a) that the appellant is facing a trial for the murder of his father-in-law and even if acquitted, the respondent cannot be expected to live with her; (b) the appellant had an extra marital affair with Harvinder Sharma; (c) the appellant refused to make a statement at the stage of second motion, in a petition filed under Section 13-B of the Act and (d) did not cook food for the respondent and his family members. The court below while inferring cruelty on the ground that the respondent cannot be expected to live with the appellant as she is facing trial for the murder of her father-in-law has **relied upon a judgment of the Rajasthan High Court in Jhabar Mal**

v. Guddi @ Kamla (supra).

A relevant extract from the judgment of the trial court reads as follows:-

“13. From perusaal of record it is evident that version of PW1 Balbir Singh petitioner to the effect that the respondent had been treating him with cruelty by refusing to cook food for him and his family members; by keeping illicit relations with above said Harwinder Singh despite objections raised by him and his father and further as accused she is facing trial on the allegations of commission of murder of his father Gurdial Singh, finds corroboration from the testimony of PW2 Kehar Singh, PW3 Satinderjit Singh, who are relatives of the petitioner as well as from the testimony of PW4 Sarwan Singh, who is neighbour of the petitioner. This above discussed evidence brought on record by the petitioner duly prove that the respondent treated the petitioner with cruelty. Although, RW1 Ranjit Kaur respondent has denied all these allegations leveled by the petitioner and has further examined her father Raghubir Singh as RW2, who orally supported her plea, but this version of respondent does not finds corroboration from the testimony of any other independent witness.

14. *Learned counsel for the petitioner referred to the law laid in case Jhabar Mal Versus Guddi alias Kamla- 2002(2) All India Hindu Law Reporter 325 (Rajasthan), wherein it was held that conviction of respondent for murdering her mother in law does amount to cruelty on husband. Even, if the respondent is ultimately acquitted it shall not be humanly possible for the husband to stay or cohabit once again with the respondent and to accept her as his wife. The past of alleged killing of his mother by the respondent shall always haunt him even if the respondent is ultimately acquitted. Under such circumstances, the appeal was accepted and divorce under Section 13 of the HM Act was granted.*
15. *Law laid in Jhabar Mal's case (supra) is applicable to the facts in hand. In the instant case also, beside other allegations, it is also evident that the respondent-wife is facing trial in the Court of Sessions on the allegations of commission of murder of father of the petitioner-husband. So, even if the respondent-wife is ultimately acquitted, it shall not be humanly possible for the petitioner-husband to stay or cohabit once again with the respondent and accept her as his wife. This*

allegation of murder of her father in law against the respondent amounted to cruelty to the petitioner. Moreover, it is also evidence that the respondent by refusing to cook food for the petitioner and his other family members and keeping illicit relations with Harwinder Singh despite objections raised by the petitioner and his father, subjected the petitioner to cruelty. So, I have no hesitation to hold that the petitioner has succeeded in proving that the respondent treated him with cruelty. Hence, this issue is decided in favour of the petitioner and against the respondent.”

The first question that calls for an answer is whether the admitted acquittal of the appellant, by the Additional Sessions Judge, SAS Nagar (Mohali), vide judgment dated 23.05.2014, of the charge of conspiracy based upon an allegation of an extra marital affair with Harwinder Sharma and the charge of murdering her father-in-law, negates the findings of cruelty recorded by the trial court and whether the fact that the appellant has faced a trial for the murder of her father-in-law is sufficient to raise an inference of cruelty against her?

Before answering these questions, it would be appropriate to record that findings recorded in criminal proceeding, are not binding on a civil court, but as the court below has while recording a finding of cruelty primarily relied upon the fact that the appellant is facing a trial for the murder of her father-in-law, the

findings recorded in the criminal trial would be relevant, though not binding.

A perusal of the certified copy of judgment, dated 23.05.2014, recorded by the Additional Sessions Judge, SAS Nagar (Mohali), while acquitting the appellant and her co-accused Harwinder Sharma, reveals that the prosecution failed to prove the alleged illicit relationship between Harwinder Sharma and the appellant, as the prosecution could not adduce any evidence to prove this relation or evidence that they had murdered or conspired to murder Gurdial Singh. The Additional Sessions Judge has also noticed that the Investigating Officer and the Deputy Superintendent of Police had found the appellant innocent but eventually the matter was brought to trial pursuant to a private complaint. A relevant extract from the judgment reads as follows:-

“There is no doubt about the fact that mother of Harwinder Sharma and accused Ranjit Kaur were known to each other as her parental house was at village Baurotiwala, Pounta Sahib, District Sirmor (H.P.) which was the maternal village of mother of Harwinder Sharma. Now, after being married at Zirakpur and Indira Sharma (mother of the accused Harwinder Sharma) living in village Sarangpur in Union Territory of Chandigarh, the families had developed intimacy with each other. But these very circumstance are not sufficient to doubt that Ranjit Kaur was having extra marital relations with

Harvinder Sharma. Although, the complainant/prosecution has examined PW5 Harvinder Singh Nodal Officer, Vodafone to prove that there had been mobile phone calls between Harvinder Sharma and Ranjit Kaur but the mobile phone No. 9988787088 was issued in the name of one Parveen Kumar Pandey son of Ram Kirpal Pandey son of Ram Kirpal Pandey resident of village Jamru Harea P.S. Nasik, District Riva, Maharashtra, as per the application form Ex.PW6/G. But this person had later on given his address to be that of Panchkula (Haryana). It was the job of the prosecution/complainant to show that the accused persons used to talk on their mobile phones but the prosecution has miserably failed to prove that the accused Harvinder Sharma was having a mobile phone in his own name or that the accused Ranjit Kaur was having any mobile phone in her name. So, this circumstance of intimacy or extra marital proximity has not been proved by the complainant/prosecution in any manner.

24. Although, PW2 Sarwan Singh has stated that he had seen the accused Harvinder Sharma coming out of the house of Gurdial Singh/Balbir Singh on 20.9.2008, but the complainant Balbir Singh in his complaint in para No. 6 of his complaint has stated

that Sarwan Singh had seen accused Harvinder Sharma near the house of the complainant. Even in the course of preliminary evidence, this witness Sarwan Singh while appearing as CW4 had stated that he had seen the accused No.1 Harvinder Sharma moving near the house of Gurdial Singh. Sarwan Singh had not stated in his preliminary evidence that he had seen the accused Harvinder Sharma coming out of the house of Gurdial Singh. So, this witness has made improvement with a view to strengthen the circumstance of connecting Harvinder Sharma with the murder of Gurdial Singh. Although, this witness in his cross-examination has stated that when he had seen Harvinder Sharma, then his clothes were blood stained but at the same time he has stated that he was not having any weapon with him.

25. However, despite the above testimony of PW2 Sarwan Singh, it has to be said that the complainant had introduced the name of Sarwan Singh as witness only at the time of filing of his complaint on 13.6.2009, which seems to have been introduced on legal advice. Otherwise, prior to it, the complainant Balbir Singh had not named Sarwan Singh as a witness in his prior complaints to the police or to the higher echelons of police and

other relevant quarters. Even in the course of inquiry conducted by DSP Pritipal Singh, report of which is Ex.DW3/A, this witness has not been examined by the complainant by way of stating that he had seen Harvinder Sharma coming out or near the house of Gurdial Singh at the relevant time.

26. In the above circumstances, first of all, the illicit relations between Ranjit Kaur and Harvinder Singh have not been established on record. Secondly, there is no evidence on record to show that Ranjit kaur had entered into any conspiracy with Harvinder Sharma to eliminate her father-in-law Gurdial Singh. Although, usually, no direct evidence of conspiracy, but the same is to be inferred from the circumstance on record, but in this case, no such circumstance has been brought on record from where it could have been inferred that Ranjit Kaur and Harvinder Sharma worked in tandem with each other for the purpose of elimination of Gurdial Singh.
27. There is no circumstance on record to show that even if Harvinder Sharma was seen outside the house of Gurdial Singh, then it was he, and he only, who had caused fatal injuries on the head of Gurdial Singh. Just seeing him outside the house of Gurdial Singh does not show that murder was

committed by Harvinder Sharma. This fact or circumstance should have been established by the prosecution beyond the shadow of reasonable doubt by way of completing the chain of events. But nothing of this sort has been done by the prosecution. Moreover, even the presence of PW2 Sarwan Singh outside the house of Gurdial Singh on the relevant day is highly doubtful, as it seems, has been introduced as a witness later on. Had he really seen Harvinder Sharma outside the house of Gurdial Singh on the fateful day, with blood smeared clothes, then he would have certainly caught hold of him at that very time. There is another circumstance. Although Sarwan Singh has stated in his examination-in-chief that Gurdial Singh was his friend and his house was 150 yards from his house but in his cross-examination he has stated that he had come to know of the death of Gurdial Singh after 4-5 days. This shows that Sarwan Singh, despite residing too near to the house of Gurdial Singh had remained unconcerned about the death of Gurdial Singh but later on in the year 2009 at the time of filing of the complaint, the complainant had maneuvered him as a witness.”

As already recorded, findings recorded by a criminal

court are not binding on a civil court but as the court below has recorded a finding of cruelty on the ground that the appellant is facing a criminal trial for the murder of her father-in-law, we have thought it fit to reproduce the findings of the criminal court so as to demonstrate the traversity of justice that pervades this finding and to emphasise that the respondent and his witnesses were disbelieved by the criminal court.

The criminal trial having ended in acquittal, alters the contours of the present case. The finding of cruelty based upon the fact that the appellant is facing a criminal trial, no longer survives. The question that now arises is whether finding recorded by the trial court by relying upon a judgment of the Rajasthan High Court in **Jhabar Mal's case (supra)** that even if the wife is acquitted, it shall not be humanly possible for the respondent to stay or co-habit with the wife, thereby proving cruelty on the part of the wife, is sustainable? The answer to this question in our opinion must be in the negative. A perusal of the judgment in **Jhabar Mal v. Guddi @ Kamla (supra)** reveals that the wife had been convicted for the murder of her mother-in-law and was serving a sentence of life imprisonment. The contextual observations recorded by the Rajasthan High Court while holding that even if the wife is acquitted the husband cannot be expected to co-habit with the wife, proves cruelty, in our considered opinion cannot be read as laying down an absolute rule of law that even if the wife is acquitted, her acquittal would amount to cruelty, on her part. While accepting that the respondent may

continue to harbour suspicion as to her role in the murder of his father, the appellant cannot be stigmatized for allegations of which she has been acquitted. The respondent's apprehension, even if well founded cannot translate into cruelty on the part of the appellant-wife as not only has the respondent failed to prove his allegation of an extra marital relationship but also the charge of conspiracy and murder. To hold otherwise would in essence punish the appellant for the murder of her father-in-law of which she has been acquitted and brand her as a women of loose character. We are unable to comprehend as to how the trial of the appellant for the murder of her father-in-law would translate into cruelty on her part. The cruelty, in our considered opinion, lies at door step of the respondent who accused the appellant of the murder of his father, even though, the police had after due investigation found her innocent. The finding of cruelty based upon the appellant's trial for the murder of her father-in-law in-effect rewards the husband for levelling false allegations of an illicit relationship, a conspiracy and a murder. The finding recorded by the trial court that as the appellant is facing trial for the murder of her father-in-law it raises an inference of cruelty cannot be sustained and is set aside.

Reverting to the evidence adduced in the present case, the allegation of an extra marital affair could not have been considered for the reason that Harwinder Sharma was not impleaded as a party, thereby negating the pleadings and the evidence based upon an extra marital affair, with Harwinder Sharma.

As regards the evidence, PW4 Sarwan Singh, a witness produced in the present proceedings, to prove the allegations of an extra marital affair, also appeared as witnesses before the criminal court but was disbelieved. His deposition is even otherwise general in nature. The depositions by other witnesses including the respondent himself are also general in nature, namely, Harwinder Sharma, meeting the appellant at her home. This apart, there is no allegation that anyone of these witnesses including the respondent ever saw the appellant and Harwinder Sharma in a compromising position or sitting together in such a manner as would suggest an illicit relationship. The appellant has admitted that she knows Harwinder Sharma but offered an explanation, which has been ignored by the trial court, namely, that their mothers were close friends.

The next limb of the finding of cruelty is the allegation that the appellant did not prepare food, for the respondent, his father, his children or his relatives. A perusal of the pleadings and the evidence reveals that the allegations are devoid of any particulars as to when the appellant refused to cook food. A bald assertion in the petition for divorce supported by the bare deposition of respondent, bereft of any particulars, in our considered opinion, are insufficient to infer cruelty. It would be appropriate to point out that in his petition and in his deposition, the respondent has himself averred and deposed that after some time, the appellant improved her conduct and began to behave herself, thereby, condoning the alleged act of failure to cook

food etc., if at all such an incident took place. Even otherwise mere failure to cook food in the absence of any other relevant fact, cannot by itself raise an inference of cruelty.

The findings that failure to make a statement under Section 13-B of the Act, at the stage of second motion amounts to cruelty must also be reversed. The appellant was facing a trial for the murder of her father-in-law and appears to have been pressurised into filing a joint petition for divorce, under Section 13-B of the Act and, though, she may have accepted an initial payment of Rs.1 lac, was well within her rights, conferred by Section 13-B to refuse to make a statement, at the stage of second motion. Section 13-B of the Act allows for dissolution of marriage by mutual consent based upon the free will of parties and confers an absolute right upon either party, to withdraw from proceedings. The refusal of the appellant to proceed further with the petition, filed under Section 13-B of the Act, in view of the peculiar facts of this case, cannot be construed as a conduct, sufficient to infer cruelty.

In view of what has been recorded hereinabove, we have no hesitation in holding that the findings of cruelty recorded by the trial court cannot be sustained and therefore, must necessarily be set aside. The judgment and decree dated 11.04.2013, is accordingly set aside and the appeal is allowed. The petition filed by the

respondent for grant of a decree of divorce is dismissed.

No order as to costs.

(RAJIVE BHALLA)
JUDGE

18th September, 2015
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(NAVITA SINGH)
JUDGE