

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

FAO No.120-M-2003

Date of Decision:26th February, 2016

Surinder Pal Singh

..Appellant

versus

Mandeep Kaur @ Bimla Rani

..Respondent

CORAM: HON'BLE MR JUSTICE RAJIVE BHALLA
HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Gopal Singh Nahel, Advocate,
for the appellant.

Mr. Tribhuwan Singla, Advocate,
for the respondent.

RAJIVE BHALLA, J. (ORAL)

The appellant-husband has filed this appeal to challenge judgment and decree dated 26.3.2003, passed by Additional District Judge, Sangrur, dismissing his petition for grant of a decree of divorce.

The appellant prayed for grant of a decree of divorce on the grounds of desertion and cruelty. The trial court dismissed the petition for want of any cogent evidence to prove the allegations of cruelty or desertion.

Counsel for the appellant contends that findings recorded by court below are illegal and arbitrary as material evidence adduced by the appellant has been rejected on the singular deposition of the respondent. The respondent was previously married to Gurchain Singh, the elder brother of the appellant. After the latter's unfortunate demise, the appellant and the respondent got married as both

families decided that interest of the three minor children of his brother would be protected if the appellant and respondent got married. The behaviour of the respondent was, however, insensitive towards the appellant and even towards her first husband. The respondent did not change her behaviour and treated the appellant as if he was still the younger brother of her late husband. The respondent did not care for the appellant and his old parents and did not look after them. On the occasion of the Bhog ceremony of his father, the respondent demanded the share of her first husband's property and raised hue and cry. The conduct of the respondent was cruel but the appellant still agreed to give her the share demanded vide, writing dated 27.7.1997. After getting her share, the respondent sold of the land thereby deceiving the appellant. The respondent filed an application, on 31.1.1996, at Police Station Sherpur and at Mahila Cell, Barnala, where a compromise was effected with parties' agreeing to part ways and get remarried. The respondent also registered a false FIR No.127 dated 8.5.2001 under Sections 406/498-A of the Indian Penal Code at Police Station Kotwali, Barnala. The appellant was convicted by the trial court but has been acquitted by the Additional Sessions Judge, Barnala on 29.11.2008 by holding that allegations levelled by the respondent are false. The Additional Sessions Judge has held that articles recovered during investigation are mere household articles and were not identified as having been given at the time of marriage as dowry. The Additional Sessions Judge, Barnala, has also relied upon a compromise, Ex.D1, recording the share demanded and given to Mandeep Kaur @

Bimla Rani. Counsel for the appellant has placed on record the copy of judgment, dated 29.11.2008, passed by Additional Sessions Judge, Barnala, acquitting the appellant of charges under sections 406/498-A of the Indian Penal Code and urges that the acquittal of the appellant entitles the appellant to grant a decree of divorce on the ground of levelling false allegations that amount to cruelty. In support of his arguments, counsel for the appellant relies upon the following judgments:- Pushpinder Kaur versus Thakur Dass, 2015(7) R.C.R. (Civil) 893, Imlesh versus Amit, 2014 AIR (Punjab) 89; Sushma Taya versus Arvind, 2015(2) R.C.R.,(Civil) 888; K.Srinivas versus K.Sunita, Civil Appeal No.1213 of 2006 decided on 19.11.2014; K.Srinivas Rao versus D.A.Deepa, 2013 (2)R.C.R. (Civil) 232; Harjit Kaur versus Pawan Verma, 2011(8) R.C.R.(Criminal) 83; Bhupinder Kumar son of Shri Desh Raj versus Smt. Versha Rani wife of Bhupinder Kumar, 2005 (2) PLR, 199, Durga Prasanna Tripathy versus Arundhati Tripathy, Civil Appeal No.5184 of 2005, decided on 23.8.2005 and Naveen Kohli versus Neelu Kohli, 2006(2) R.C.R. (Civil) 290.

Counsel for the respondent, on the other hand, submits that the appellant has not proved cruelty or desertion. A perusal of findings recorded by court below reveal that the appellant has not proved any specific instance of cruelty, whether mental or physical. The mere lodging of an FIR or the acquittal of the appellant cannot be construed to be an act of cruelty, particularly when the allegations are neither scandalous nor levelled against the character of the appellant or his family members. A judicial process may lead to an

acquittal or a conviction and, therefore, cannot, by itself, be considered as cruelty. Counsel for the respondent further submits that the onus of proof in a criminal trial and a civil case are different. The same set of allegations may lead to acquittal in a criminal case but may be accepted by a civil court. The appellant has neither referred to any particular incident of cruelty nor proved the allegations, much less by reference to any cogent evidence. As regards an allegation of desertion, counsel for the respondent submits that the respondent is still residing in the matrimonial home, thereby proving that the pleadings and the evidence adduced, are entirely false.

We have heard counsel for the parties, perused the pleadings, the evidence as well as findings recorded by the court below.

The appellant prayed for grant of a decree of divorce on the grounds of cruelty and desertion but both these grounds have been rejected by the trial court. Apart from the facts pleaded before the trial court, the appellant relies upon a judgment by the Additional District Judge, Barnala, acquitting him of charges under sections 406/498-A of the Indian Penal Code and asserts that the falsity of the allegations are sufficient to prove cruelty.

The parties were married on 14.10.1993, at Barnala, as per Sikh rites. Mandeep Kaur the respondent was earlier married to Gurchain Singh, the elder brother of the appellant. Gurchain Singh passed away in 1993. At the Bhog ceremony of Gurchain Singh, the biradari decided, for the sake of the three minor children of Gurchain

Singh that the respondent and the appellant should get married. The appellant agreed and got married to Mandeep Kaur on 14.10.1993 at Barnala. A son Gurwinder Singh was born to them.

The appellant alleges that since May, 1996, the respondent has withdrawn from his society and has not returned. The appellant also alleges that the respondent treated him and his parents with cruelty and insisted on living separately but as his parents did not agree, the respondent became furious and refused to live and cohabit with the appellant. The appellant also alleges that the respondent quarrelled with his parents on petty matters and did not show respect to them. The tension created by the respondent, led to the untimely demise of the appellant's parents. The appellant also pleaded that the respondent obtained her share in their house by way of a writing dated 27.7.1997 after she had filed an application at Police Station Sherpur on 31.1.1996, which was followed by an application before the Women Cell, Barnala, levelling false allegations of mental and physical cruelty.

The respondent filed a reply denying these allegations but admitted her marriage and the birth of a child as well as the fact that she was married to the elder brother of the appellant. The respondent averred that they were living happily but alleged that the appellant began neglecting her and the children as he did not want to look after the children of his elder brother. The appellant started misbehaving with the respondent and began demanding dowry and began taunting her that she is not good looking. She was given the share of her first husband's property which she was legally

entitled to and then she filed an application to the Women, Cell, a petition under section 125 of the Code of Criminal Procedure and a complaint before the police for which the appellant is being tried. After examining the pleadings, the trial court framed the following issues:-

“1 Whether the respondent has deserted the petitioner without sufficient cause? OPA

2. Relief.

Before the arguments were heard, the Additional Sessions Judge, Sangrur, framed an additional issue, which reads as follows:-

“1-A Whether the respondent has treated the petitioner with cruelty? OPA.”

The appellant, in order to prove his charge of cruelty, produced PW1 Narinder Kaur, Additional SHO, Women Cell, Barnala who proved an application filed by the respondent before the Women Cell but as the original was destroyed, was led into evidence mark A and a copy of the compromise, dated 28.4.1995. PW2 Gurmail Singh appeared on behalf of the appellant and deposed that the respondent did not behave properly with the appellant, refused to serve the parents of the appellant and wanted the appellant to live with her at Barnala and that when she left the house, she took away a television set, a tape recorder and other household articles. PW3 is ASI Baldev Singh who deposed that after the respondent filed an application, a compromise was effected on 31.1.1996, whereby Mandeep Kaur was given a portion of the house, being the share of

her first husband Gurchain Singh. This witness proved copy of the compromise Ex.P1. AW4 is Surinder Pal Singh, the appellant himself, who, apart from his deposition in support of allegations levelled in the petition, produced the following documents:- copy of order dated 23.6.1999, Ex.P4, certified copy of order dated 21.4.1999, Ex.P5, certified copy of order dated 11.6.1999 Ex.P6, certified copy of charge sheet dated Ex.P7, certified copy of order dated 25.11.2002 Ex.P8, certified copy of order dated 25.11.2002 Ex.P9, certified copy of order dated 28.11.2002 Ex.P-10, copy of application Mark PA, certified copy of plaint Mark PB, certified copy of FIR Mark PC, certified copy of recovery memo Ex.PD, certified copy of charge sheet Mark PE and accompanying documents Mark PF to Mark PX and certified copy of FIR Mark PY.

The respondent, on the other hand, stepped into the witness box as RW 1, tendered her affidavit Ex.R1 denied allegations in the petition as well as allegations leveled by the appellant and his witnesses, pleaded lodging of FIR under sections 406 and 498-A of the Indian Penal Code, Police Station Kotwali, Barnala, admitted the filing of an application before the Women Cell, the compromise Ex.P1 and in support of her allegations that she had not treated the appellant with cruelty or deserted him, asserted that she was beaten by the appellant, in 1999 and turned out of the matrimonial home. She also produced Darshan Singh RW2 who tendered his affidavit Ex.R2 and deposed against the appellant and in favour of the respondent.

A perusal of the pleadings and the evidence reveals that

the allegation of desertion remains unsubstantiated for want of material evidence to raise an inference that the respondent was living apart, even though in the same house, with an intention to put an end to the matrimonial relationship. The allegation of cruelty, as referred to in the pleadings and the evidence adduced by the appellant are that the respondent is a quarrelsome lady who caused immense cruelty to the appellant and his parents by her indifferent attitude and disrespect to his parents. The allegation, as discernible from the petition as well as the deposition by the appellant and his witnesses, is devoid of any material particulars, much less reference to any specific acts of cruelty, whether physical or mental and has, therefore, been rightly rejected by the court below but the question that remains is whether the admitted acquittal of the appellant in a trial under sections 406, 498-A of the Indian Penal Code amounts to cruelty.

Admittedly, the respondent lodged an FIR levelling allegations of cruelty, demand of dowry and misappropriation of dowry articles by alleging that at the time of the marriage, her parents entrusted a large number of articles, including a watch, one gold ring, one gold karra, Rs.20,000/- for a scooter and Rs.25,000/- as dowry to the appellant and his relatives. The appellant thereafter started maltreating the respondent and raised more demands for dowry and cash. The respondent was subjected to beating, maltreatment, harassment and, therefore, returned to her parental house, but her parents could not meet the demands for dowry. The appellant, however, continued to subject her to beatings and

maltreatment and ultimately, in June, 1998, turned her out of the matrimonial house. The respondent's parents convened a panchayat, whereafter the appellant took her to the matrimonial home but she was again maltreated and harassed. The respondent filed an application before the Women Cell, Barnala, when the appellant stated that he would not mal-treat or harass the respondent, but on 17.3.1999, she was turned out of her matrimonial house after giving beatings and raising a demand for Rs.50,000/-. The matter was eventually taken up by certain well-wishers who visited the house of the appellant and demanded the return of dowry articles. The appellant abused and threatened them and refused to return the dowry articles. The complaint led to registration of an FIR against the appellant and the filing of a challan. After the prosecution adduced its evidence, the appellant examined DW1 Avtar Singh, his cousin, who deposed about the marriage and ASI Baldev Singh, DW2, who proved the compromise dated 31.1.1996, Ex.D1.

After conclusion of evidence, the Judicial Magistrate I Class, Barnala, convicted and sentenced the appellant under sections 406/498-A of the Indian Penal Code. The appellant filed an appeal. The Additional Sessions Judge, Barnala, has, after considering the evidence and the defence, acquitted the appellant by holding as follows:-

“Furthermore, it should also be noted that while facing cross-examination, the complainant herself had stated that at the time of her marriage with Sukhchain Singh, her previous husband, various articles, were given,

but she does not know the details of the same and further she stated that at the time of her marriage with Sukhchain Singh, her parents had given her petti, Almirah, table chairs, fan sewing machine press 7 beddings, 51 utensils, 11 suits and one gold karra and gold ring was given to Sukhchain Singh. Even though further, she had stated that at the time of her marriage with Surinder Pal Singh, separate articles were given, but however, it is pertinent to note that the articles mentioned to be given at the time of marriage of the complainant with Sukhchain Singh, are the same articles which are allegedly, given at the time of marriage of the complainant with Surinder Pal Singh. It is highly improbable that same extent of dowry articles, shall be given by any parents, at the time of her second marriage, when her first husband had died. Moreover, the whereabouts of the articles given at the time of her first marriage, are not known. In such circumstances, further it should be noted that even though, the complainant had stated in the cross-examination, that the articles were purchased by her father, but she has not produced the receipts etc. regarding the purchase of the same. Rather, she had stated that the receipts were handed over to Surinder Pal Singh, but she is unable to give the date, month and year, as to when the said receipt were handed over to Surinder Pal Singh. Further, she had also stated that the said articles were given in the presence of

Mohinder Singh, Jaggar Singh, Darshan Singh and Ajit Singh, but, however, none of the said persons had been examined. Further, Darshan Singh, brother of the complainant has been examined. He has stepped into witness box as PW2 and has deposed on the similar lines regarding the dowry articles having been entrusted to Surinder Pal Singh at the time of marriage. Further more to prove the receipts/bills, the prosecution has also examined Raju P.W.4, who has proved the receipt regarding the purchase and making of gold ornaments at the time of the marriage of the complainant. He has proved the receipt dated 11.9.1993, which is Ex.P.1. This is the receipt issued under the signatures of this witness Raju but perusal of this receipt reveals that it has been prepared on a loose paper. It does not form part of any account book maintained in the due course. Also while facing cross-examination, this witness had stated that he has no licence for preparing the ornaments and he is working at the shop of Gurmail Singh at the salary of Rs.2500/- per month. He further stated that he does not maintain the record regarding the preparation of ornaments. He also stated that he does not work in the purchase and sale of gold. He further stated that he had purchased the gold and prepared the gold ornaments, but however, no record regarding the purchase of gold has been produced. Since this receipt Ex.P1 is loose one and

no account book regarding the same, maintained in due course, has been produced, it cannot be assumed that this receipt was prepared for the gold articles given at the time of marriage of the complainant with Surinder Pal Singh. Likewise, PW5 Kewal Singh has been examined by the prosecution, who proved the receipt regarding the sale of the petti in the name of Jit Singh, who is father of the complainant. This receipt is Ex.P.2. Qua the same also, it is significant to note that only receipt prepared on the letter pad, has come on record. No account book regarding the same has come on record. It is an isolated document prepared on the letter pad. Further, it is also necessary to note that while facing cross-examination, this witness has specifically admitted to be correct that he had prepared the petti at the time of marriage of the daughter of Jit Singh with Sukhchain Singh. Since the other account books etc. of sale of petti has not come on record, sole reliance cannot be placed on this isolate document Ex.P2. In the light of the same, receipts/bills etc. regarding the purchase of articles, do not stand connected. Even the entrustment of dowry articles, as claimed do not stand established.”

A perusal of these findings reveals that the Additional Sessions Judge, Barnala, has held that allegations levelled by the respondent have not been proved and are false. It has been held that articles referred to as dowry are of general use and it is improbable

that dowry would be given at the time of the second marriage, particularly in view of the close relationship between the parties. The Additional Sessions Judge has disbelieved PW4 Raju, produced to prove the purchase of gold ornaments and Ex.P1, a receipt dated 11.9.1993, has been disbelieved as PW4 Raju has admitted that he does not possess a licence for preparing ornaments, is working at a shop at a salary of Rs.2500/- per month, does not maintain a record for preparation of gold ornaments and does not work for purchase and sale of gold ornaments. The purchase and entrustment of other articles was also rejected by holding that these articles are of general use and the appellant has been unable to link herself to these articles. The Additional Sessions Judge, Barnala, has also referred to the compromise, Ex.D1, which records a settlement of the dispute between the parties wherein land demanded by Mandeep Kaur was given to her along with all the articles demanded by her. The respondent has not filed any appeal/revision against this judgment, thereby attaining finality to the acquittal of the appellant.

An allegation may itself not constitute cruelty but if the allegation is fake, grave, defamatory, assassinates the character and is intended to traumatise the other spouse then depending upon the nature of the allegations, it may raise an inference of cruelty. The trauma suffered by a spouse, who is arrested, charge-sheeted, has faced a full fledged criminal trial and is then acquitted by holding that charges levelled are false can but be imagined. A Division Bench of this Court in Pushpinder Kaur versus Thakur Dass, 2015 (7) R.C.R.

(Civil) 893, while dealing with this question, has held on the basis of a judgment of the Apex Court in case K.Srinivas Rao v. D.A.Deepa (2013) 5 SCC 226, a judgment of a co-ordinate Bench of this Court in Imlesh versus Amit, AIR 2014 Punjab and Haryana 89 and another judgment of the Supreme Court in K.Srinivas versus K.Sunita Civil Appeal No.1213 of 2006 decided on 19.11.2014, that acquittal of the husband raises an inference of cruelty. A relevant extract from the judgment reads as follows:-

“ 15. Examining the factual matrix in the present case, the respondent and his family members were acquitted vide judgment dated 16.4.2010, Ex.P1 in the dowry case got registered vide FIR No.230 dated 14.9.2003, under sections 323,342, 406, 498-A, 506 read with Section 34 of the Indian Penal Code at Police Station Pinjore. Against the judgment of acquittal, the appellant did not prefer any revision or appeal and, thus, it has attained finality. A criminal case was lodged against the husband and his family members wherein they were arrested but the final outcome resulted in their acquittal. In such circumstances, it would cause a reasonable apprehension in the mind of the husband that it was not safe for him to live with the wife. Besides, refusing to attend household chores and showing disrespect to the respondent and his family members amounted to cruelty towards the respondent. The allegation of adultery levelled by the appellant in the written statement has also not been proved. Thus, the irresistible conclusion would be that the appellant-wife had treated the husband-respondent with

cruelty.”

A similar judgment by a Division Bench, in Sushma Taya versus Arvind in 2015 (2) R.C.R.(Civil) 888 holding as above reads as follows:-

“14 Needless to say that there appears no illegality or perversity in the judgment of learned trial Court. It has been held by Hon'ble Apex Court in a recent judgment in K. Srinivas Rao v. D.A. Deepa, 2013 (2) R.C.R. (Civil) 232; 2013 (2) Recent Apex Judgments (R.A.J.) 102: 2013 (5) SCC 226 that it is now beyond cavil 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.”

“15 Not only from the judgment Ex.PB but also from the report of the Women Cell Ex.PA and testimony of PW2 Ram Kumar, it is established that the allegations of the appellant against her husband respondent-Arvind and his family members that they demanded dowry from her or ill treated her, were false. Certainly, levelling wild allegations and thrusting the agony of undergoing proceedings/trial in a criminal case on the husband and his family, which ultimately proved to be false, amounted to utmost cruelty towards the husband.

As a consequence to the above discussion, there being no ground for intervention in the findings of the learned trial Court, the appeal has no merit and is dismissed.”

Applying the aforesaid principles to the facts of the present case, particularly the allegations levelled and the finding by the Additional Sessions Judge, Barnala, that these allegations are false, we have no hesitation in holding that the appellant was visited with a degree of cruelty sufficient to accept the plea of cruelty.

Admittedly, the appellant's elder brother was married to the respondent but unfortunately passed away, leaving behind three minor children. The parties and their parents decided for the sake of the children that the appellant and the respondent should get married. The relationship may have started on a positive note as parties were blessed with a child but appears to have deteriorated into mutual recrimination, with the respondent initiating complaints to the police, to her parents and then lodging an FIR levelling allegations of demand of dowry and cruelty. After investigating a criminal trial in which the appellant was arraigned as an accused commenced. The appellant was convicted by the Judicial Magistrate 1st Class but was acquitted by the Additional Sessions Judge, Barnala, by holding that the allegations of demand and misappropriation of dowry, are false and entirely unfounded. The fact that the appellant was arrested, convicted after undergoing a long drawn out trial, before being honourably acquitted, does in our considered opinion, indicate a conduct on the part of the complainant, i.e., the respondent, sufficient to traumatise the husband and raise an inference of mental cruelty. A perusal of the matrimonial life of the parties reveals that there is a complete break down of the relationship, as is apparent from the compromise and deposition by PW1, which records that the respondent has obtained

the share of her first husband's property and parties had decided to live separately. The respondent, despite this compromise and despite having been given her property and a room to live in the house, levelled false allegations and initiated proceedings under sections 406/498-A of the Indian Penal Code, got the appellant arrested, sent up for trial, secured his conviction but the allegations were found to be false, in appeal.

Thus, taking into consideration the totality of the circumstances, but at the same time, recording a note of caution that the mere acquittal of a husband, does not raise an inference of mental cruelty, we hold that in the facts and circumstances of the present case, the false allegations of demand of dowry etc. levelled by the respondent, the long drawn out trial, that ended in acquittal of the appellant by recording a finding that the allegations of demand of dowry and the allegations of cruelty are false, are sufficient to prove that the respondent is guilty of a conduct that falls within the ambit of the expression "mental cruelty".

The appeal is, therefore, allowed, the judgment and decree passed by the trial court is set aside and the marriage between the parties is dissolved by granting a decree of divorce. No order as to costs. A decree sheet be drawn up accordingly.

(RAJIVE BHALLA)
JUDGE

(LISA GILL)
JUDGE

26th February, 2016

VK