

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

FAO-M No.65-M of 2006 (O&M)  
Date of Decision: 31.05.2016

Smt. Mukesh

.....Appellant

Vs

Naveen Kumar

.....Respondent

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL**  
**HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Ashok Aggarwal, Advocate  
for the appellant.

Mr. C.B. Goel, Advocate  
for the respondent.

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1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

**RAJ MOHAN SINGH, J.**

[1]. Appellant-wife being respondent in the original petition filed before the Additional District Judge, Sonapat suffered the contested decree under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), dissolving the marriage amongst the parties by decree of divorce on the ground of cruelty and desertion. She has ventured to file the present appeal against the said judgment and decree dated 01.03.2006.

[2]. Brief facts as gathered from the record are that the respondent-husband filed petition under Section 13 of the Act against the appellant-wife on the averment that the marriage among the parties was solemnized on 07.11.2000 according to Hindu rites and ceremonies. The wife started living with the husband as his legally wedded wife. Marriage was consummated and one female child took birth out of this wedlock on 30.08.2001, who was living with the appellant-wife. The marriage was simple and dowry-less. Respondent-husband attributed allegations of arrogance and hostile behavior of the appellant-wife towards him and his family members. Husband also alleged that the wife was short tempered and used to pick quarrels on trivial issues. She remained ill from the very first day of the marriage and was provided medical attention till the date of delivery. She was treated in Kuldeep Nursing and Maternity Home, Gohana on 14.12.2000 and her treatment continued till 30.06.2001. Ultimately child took birth on 30.08.2001 in PGIMS, Rohtak. The entire expenses were borne by the husband. She was again checked up in the Hospital and CT scan was also got conducted.

[3]. It was further alleged by the respondent-husband that he treated the appellant-wife with all love and affection, but inspite of that her behaviour never changed towards him and his

family members. After the birth of the child, the wife started leaving the matrimonial house without prior consent of the husband and his family members. The persuasion of the husband became futile. Husband was unemployed and was having no source of income. The wife was in the habit of extending taunts and also pressurised respondent-husband to settle at her parental house at Julana with her brother, who was employed in Health department.

[4]. Respondent-Husband further alleged that on 10.02.2002, the wife along with minor daughter left the matrimonial house. The respondent-husband and his family members kept on searching her and they went to the parental house where both of them were present. She was reluctant to come to the matrimonial house and gave threat to the husband and his family members for implicating them in false criminal case. Ultimately she got registered FIR No.163 of 2002 under Sections 498-A/406 IPC against the husband and his family members. She also filed petition under Section 125 Cr.P.C against the husband. Wife was an educated lady whereas the husband was unemployed, who was in search of job. Husband was fully dependent upon the income of his parents.

[5]. Respondent-Husband further alleged that the attitude of the wife was so cruel that she also made life of her Bhabi

namely Gayatri Devi wife of Devender Singh a hell in her house and thereafter the wife along with her family members turned out Gayatri Devi from her matrimonial house in village Julana. Gayatri Devi also moved an application against the appellant-wife in Mahila Police Station. The wife along with her family members harassed and humiliated the second wife of Devender namely Kavita, who also left the house and lodged the complaint under Sections 406/498-A IPC against the appellant-wife and her family members. Appellant-wife played active role in the occurrence where Kavita was victimized. With these allegations the original petition came to be filed.

[6]. Appellant-wife being respondent in the original petition contested the case by filing written statement. All the allegations were denied. Filing of criminal case was admitted. Source of income available with the husband was asserted. Filing of petition under Section 125 Cr.P.C., was also admitted. The story viz-a-viz. wives of Devender Singh namely Gayatri Devi and Kavita was denied and appellant-wife claimed that she never participated in those episodes. No Panchayat was ever convened. She showed her willingness to join the matrimonial house with the respondent-husband, provided that he changes his rude behaviour. The filing of the petition was claimed to be a devise to avoid payment of maintenance.

[7]. Both the parties went to the trial on the following issues:-

“1. *Whether the petitioner is entitled for a decree of divorce on the grounds mentioned in the petition, as alleged? OPP*

2. *Relief.”*

[8]. Both the parties led their respective evidence to prove their case.

[9]. After leading evidence, trial Court appreciated the material on record and accepted the petition vide judgment and decree dated 01.03.2006. That is how the present appeal came to be filed by the appellant-wife.

[10]. We have heard learned counsel for both the sides.

[11]. During pendency of the appeal civil misc. No.7308-CII of 2014 was filed by the respondent-husband seeking to adduce additional evidence in the form of Annexures P-1 to P-4, which are nothing but the orders passed by the concerned Courts from time to time. In order to properly appreciate the controversy, the said application is allowed and the accompanying documents are taken on record as additional evidence for deciding controversy effectively and appropriately between the parties.

[12]. With the pleadings and evidence on record, whether the instances of cruelty and desertion as alleged are made out or not became inconsequential in view of the development which took place later on for which this Court is always competent to take judicial notice. More particularly, as per information submitted by the respondent by moving application under Order 41 Rule 27 read with Section 151 CPC, it is a settled principle of law that the Court is always competent to take notice of subsequent events for effective adjudication of the controversy between the parties.

[13]. Annexure P-1 as adduced along with the said application for additional evidence is the decision rendered by the competent criminal Court in the trial arising out of FIR No.163 dated 08.09.2002, registered under Sections 406/198-A/323/34 IPC, at Police Station Julana. Accused Chattar Singh, Dhanno and Naveen were acquitted by the criminal Court vide judgment dated 14.07.2009. Chattar Singh and Dhanno are the parents of Naveen (husband). The criminal Court while acquitting the accused in the aforesaid case recorded the findings that admittedly there was no medical evidence to support the version of the prosecution witnesses regarding beatings and unconscious breathlessness of the victim for 3-4 days. The complainant herself admitted that she came to the

parental house along with her daughter of her own and in these circumstances, no fault could be attributed to the accused persons. The criminal Court also found that the accused had faced the allegations twice and it was doubted whether family of the complainant was using the method of filing complaint for grabbing the money from the accused persons and that is why the complainant already tried to involve as much relatives of the husband as they wanted. As regards offence under Section 406 IPC, the prosecution relied upon the version of complainant Mukesh and her mother whereas both the versions were found to be different. Entrustment of the dowry articles to any of the accused was not proved.

[14]. The submission of the learned counsel for the appellant-wife that the articles were lying in the police station from where the same were not claimed by the complainant was a misnomer only in view of the positive findings recorded by the criminal Court that entrustment of the dowry articles was not proved with the accused. The criminal Court while disbelieving the prosecution story ultimately held that the offence whatsoever against the accused was not proved by the prosecution and the court felt no doubt to acquit the accused persons by extending benefit of doubt in their favour. The words used as 'benefit of doubt' by the criminal Court were the standard observations of

the court and was a misnomer, otherwise the evidence on record before the criminal Court was sufficient to discard the prosecution story to the hilt.

[15]. Counsel for the respondent-husband also relied upon Annexure P-2 the orders passed under Section 12 of the Protection of Women from Domestic Violence Act, 2005, wherein the complaint filed under Section 12 of the aforesaid Act was held not maintainable though that order is of not much significance so far as the controversy involved in the present case is concerned.

[16]. Annexure P-3 is also an order passed by the competent Court under Section 125 Cr.P.C. for grant of maintenance in favour of wife. The petition was disposed of on the basis of consensus arrived at between the parties and, therefore, this order is also of no significance in the present context.

[17]. Annexure P-4 is the judgment rendered by the Court of Additional Sessions Judge, Jind in appeal, against the judgment of acquittal dated 14.07.2009 recorded by the Judicial Magistrate, Jind, which was challenged by the State and the same was dismissed vide judgment dated 06.04.2011.

[18]. The parties were living separately from 10.02.2002. The decree was granted on 01.03.2006 during pendency of the

criminal case. The acquittal recorded during pendency of the appeal can be taken into consideration by way of judicial notice.

[19]. In the light of aforesaid facts the judgments cited by the learned counsel for the appellant **Radha Rani vs. Har Bhagwan, 2005 (1) RCR (Civil) 508** and **(Smt). Asha Gupta alias Anju Gupta vs. Rajiv Kumar Gupta, 2005 (1) RCR (Civil) 663** do not advance the case of the appellant in any manner. Case laws cited by the learned counsel for the appellant are on different premise and are of no help to the appellant-wife. After acquittal of the husband in criminal case, ground of cruelty came to the fold of the respondent-husband, who can effectively put up this ground to allege cruelty and to seek divorce.

[20]. The words 'benefit of doubt' cannot be appreciated in the manner as sought to be projected by the learned counsel for the appellant. The acquittal was on merits as there was no incriminating evidence available on record, therefore, use of words like 'benefit of doubt' was the result of standard practice in the trial courts and was simply a misnomer. The entrustment of dowry was not proved. Guilt of the accused could not be brought to the hilt. The order of acquittal recorded by the criminal Court was upheld by the First Appellate Court in appeal

as well.

[21]. In view of aforesaid, this Court does not find any worth in the appeal filed by the wife and the same is accordingly dismissed.

**(RAJ MOHAN SINGH)**  
**JUDGE**

May 31, 2016

*Atik*

**(M. JEYAPPAUL)**  
**JUDGE**