

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

-.-

FAO M 272 of 2008 (O&M)
Date of decision: 17th Feb, 2016

Padam Kumar Jain

..... Appellant

Versus

Ashi Jain alias Babita Jain

.....Respondent

**Coram: Hon'ble Mr. Justice Rajive Bhalla
Hon'ble Mrs. Justice Rekha Mittal**

-.-

Present: Mr. V M Gupta, Advocate
for the petitioner

Mr. Piyush Kant Jain, Advocate
for the respondent

-.-

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

Rekha Mittal, J.

CM No. 14661-CII of 2015

Prayer in this application filed under Order 41 Rule 27 of the Code of Civil Procedure read with Section 21 of the Hindu Marriage Act, 1955 is for permission to lead additional evidence by producing and proving Annexures A-1 to A-3.

Counsel for the applicant submits that A1 to A3 being judgments and decrees are documents of unimpeachable credibility, came into existence during pendency of appeal and are necessary for just decision of the case.

Counsel for the respondent has not raised any serious objection to the application.

We have heard counsel for the parties and perused Annexures A1 to A3, which are the judgments and decrees passed during pendency of appeal when otherwise the same are necessary for just decision of the appeal, accordingly, the application for additional evidence is allowed and Annexures A-1 to A-3 are admitted into evidence.

FAO M 272 of 2008

The appellant, challenges judgment and decree dated 17.09.2008 passed by the Additional District Judge, Ludhiana (in short, the trial Court) dismissing his petition for dissolution of marriage by way of a decree of divorce.

The appellant-husband filed a petition under section 13 of the Hindu Marriage Act, 1955 on the twin grounds of cruelty and desertion. The parties were married on 23.09.1990 at Ludhiana. Two children *namely* Rupali and Gaurav were born out of the wedlock. The appellant alleged that the respondent-wife treated the appellant with cruelty, *inter alia*, in the following manner:-

- i) she used to leave the matrimonial home without information and come back after fifteen days or a month;
- ii) she used to abuse and quarrel with the appellant and his family members;
- iii) she is a careless lady and as such did not bother to take care of the children and/or cook food for the

family;

- iv) On 12.08.1998, she left the matrimonial home proclaiming that she did not like the appellant and shall break the marital ties;
- v) She refused to join the company of the appellant despite his best efforts.

The respondent filed the written statement, denying the allegations and in turn accusing the appellant being guilty of cruelty and desertion. The respondent averred that she was maltreated and tortured for bringing insufficient dowry and demands of dowry were raised. She was turned out of the matrimonial home and deprived of custody of her minor children. The appellant began pressurizing her to accede to his demand for divorce, but she refused and was beaten, tortured by the appellant at the instigation of his family members. The father of the appellant passed away in February, 2000. The respondent was called '*Manhoos*' and held responsible for his death. As the appellant and his family members committed various acts of cruelty, demanded dowry and refused to return the articles of *istridhan*, she was compelled to file a complaint which led to registration of FIR No. 80 dated 10.04.2001 at Police Station Haibowal Kalan, Ludhiana for offence punishable under Sections 406, 498 and 120-B of the Indian Penal Code (in short, IPC), against the appellant, his mother, brother and *Bhabhi* (brother's wife).

The appellant filed the replication, reiterating his stand taken in the petition while controverting averments made in the written statement.

The trial Court framed the following issues:-

1. *Whether the respondent has treated the petitioner with cruelty, entitling him to get marriage dissolved?OPP*
2. *Whether the respondent has deserted the petitioner without any sufficient cause?OPP*
3. *Relief.*

The learned trial Court permitted the parties to lead evidence in support of their respective contentions. The appellant appeared in the witness box as PW1, examined Parshotam Lal Jain, his brother (PW2) and Baldev Krishan (PW3). On the other hand, the respondent appeared as her own witness and examined Darshan Lal Jain, her father (RW2).

The learned trial Court, after considering the pleadings, the evidence adduced and rival submissions determined both the issues against the appellant and as a consequence, dismissed the petition for divorce.

Feeling dissatisfied with the judgment passed by the trial Court, the instant appeal has been preferred by the appellant-husband.

To challenge the findings of the learned trial Court on issue No. 1 in regard to the respondent - wife being guilty of treating the appellant with cruelty, the sole submission made by counsel for the appellant is that the respondent initiated criminal proceedings against the appellant and his family members on false allegations which she has failed to prove. The criminal trial has culminated in a judgment of acquittal, dated 11.06.2011 passed by the Judicial Magistrate Ist Class, Ludhiana. The respondent with an intent to cause more misery to the appellant and his family members did not accept the judgment of

acquittal and preferred an appeal which was also dismissed by the Additional Sessions Judge, Ludhiana on 23.01.2015. She also initiated civil proceedings and filed a suit for separate possession by way of partition, claiming 1/4th share in a shop owned by the mother and *Bhabhi* (brother's wife) of the appellant which was dismissed vide judgment and decree dated 12.03.2013 passed by the Civil Judge (Junior Division), Ludhiana.

Counsel for the appellant has vehemently argued that the conduct of the respondent in lodging a false FIR and pursuing criminal proceedings upto the Court of appeal with an intent to ensure that the appellant, his mother, brother and brother's wife are put in Jail, it amounts to mental cruelty sufficient to form the basis for a decree of divorce. For this purpose, reliance has been placed upon judgment of the Hon'ble Supreme Court of India *K. Srinivas Rao v. D. A. Deepa, 2013(2) Recent Apex Judgments 102.*

Counsel for the respondent, on the contrary, has supported the judgment passed by the learned trial Court with the submission that it is very easy to level allegations but it is difficult to substantiate the allegations to the satisfaction of a Court. The appellant levelled vague, general and unfounded allegations. He failed to adduce any tangible evidence on record to substantiate his plea that the respondent is a guilty spouse either for subjecting him to cruelty or withdrawing from his society without any reasonable cause. It is further contended that there is no challenge to the findings of the learned trial Court on the ground of desertion. The appellant has sought to rely upon the judgments passed in

criminal proceedings which came into existence subsequent to the decision in the matrimonial proceedings when otherwise the same are not sufficient to uphold the plea that the respondent wife is guilty of causing mental cruelty of the kind justifying to grant a decree of divorce. The last submission made by counsel is that the judgment in *K. Srinivas Rao's* case (supra) was rendered in view of its peculiar facts and circumstances and has got no bearing on the facts of the case in hand.

We have heard counsel for the parties and perused the records.

The sole issue that requires consideration is '*whether acquittal of the appellant and his family members in criminal proceedings and affirmation of the judgment in appeal would suffice to hold that the respondent wife is guilty of mental cruelty, sufficient to form the foundation for a decree of divorce*'.

Concededly, the petition for divorce on the ground of cruelty was filed by the appellant in January 2001, prior to filing of complaint by the respondent, leading to registration of FIR No. 80 dated 10.04.2001. The appellant, as held by the trial court, failed to prove his allegation of cruelty or desertion. The respondent alleging that she was maltreated, tortured physically on account of demand of dowry and the accused refused to return articles of her *istridhan* filed a complaint which led to the appellant and his family members facing a criminal trial. The appellant and his family members have admittedly been acquitted. A spouse, who levels allegations is absolutely required to explain the allegations, but the allegation must be of such a nature as would, if

proved to be false, raise an inference of mental cruelty. The respondent has not levelled any allegation assassinating the character of the appellant or his family members much less any allegation which pricks conscience of the society.

In *K Srinivas Rao's* case (supra), the wife leveled allegations against her mother-in-law that she asked her to sleep with father of her husband which she failed to substantiate during criminal trial. Not only this, the respondent-wife made a complaint to the employer of her husband that he be removed from his job in the registry of the High Court concerned. The Court also took into consideration that the parties were staying apart for more than ten years and the separation had created an unbridgeable distance between the two. The Court was also satisfied that the marriage had irretrievably broken down and is beyond repair on account of bitterness created by the acts of the husband or the wife or of both. In view of the afore-discussed peculiar facts and circumstances in *K Srinivas Rao's* case (supra), the Hon'ble Apex Court accepted the appeal filed by the husband and set aside the judgment passed by the High Court.

On a careful analysis of the facts and circumstances obtaining in the present case, when examined in the light of observations in *K Srinivas Rao's case* (supra), in our considered opinion, the mere fact that the criminal proceedings initiated by the respondent-wife ended in a judgment of acquittal itself would not lead to a finding against the respondent that she is guilty of causing extreme mental cruelty to the husband as to become the basis for a decree of divorce. The allegations

of cruelty and desertion levelled by the husband, before filing of the criminal complaint, have been found to be incorrect on the basis of the defence set up by the wife. The defence set up by the wife is the foundation of allegations levelled in criminal proceedings. The onus and standard of proof in criminal proceedings is different. A civil and criminal Court may arrive at different conclusions on the same set of facts as has happened in the present case. The civil Court has held on facts alleged in the written statement that the appellant is guilty of cruelty and, therefore, not entitled to divorce. The criminal Court has on the same facts held that offences under Sections 406 and 498-A are not made out. Thus, we are not inclined to hold that mere acquittal of the appellant in criminal proceedings must be inferred as cruelty in civil proceedings, particularly where the allegations are neither scandalous nor sacrilegious

No other point has been raised.

In view of what has been discussed here-in-above, finding no merit, the appeal is dismissed leaving the parties to bear their own costs.

(Rajive Bhalla)
Judge

17th Feb 2016

Mohan Bimbura

(Rekha Mittal)
Judge