

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

FAO-M-47 of 2009 (O&M)

Reserved on:09.11.2016

Date of decision: 29.11.2016

Rakesh Kumar

... Appellant

Vs.

Monika

... Respondent

***CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.***

Present: Mr. Parminder Singh Advocate for the appellant.

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

...

TEJINDER SINGH DHINDSA, J.

The appellant assails the judgment and decree dated 15.01.2009 passed by the learned Additional District Judge, Kurukshetra (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-B of the Hindu Marriage Act, 1955 on the twin grounds of cruelty and desertion. It was asserted that marriage between the parties was solemnized on 22.02.2002 at Kaithal according to Hindu rites and ceremonies. The appellant/husband sought to substantiate the grounds of cruelty and desertion against the respondent/wife *inter alia* on the following basis:

(i) It was alleged that the wife was a short tempered lady and who was in the habit of picking up fights and quarrels on petty issues.

(ii) It was asserted that the wife was of a non-cooperative

nature and would never entertain the relatives as also friends of the husband. Rather, she used to misbehave in the presence of the relatives and friends and on account of which the husband felt insulted and humiliated.

(iii) The respondent/wife delivered a female child at her parental home at Kaithal on 10.12.2003 but no intimation of the same was given to the husband or his family members.

(iv) That a false case bearing FIR No.291 dated 25.05.2006 under Sections 406/498-A IPC was registered against the husband as also his parents at Police Station City Kaithal in order to harass and humiliate not only the appellant/husband but also his father and mother.

(v) As regards desertion, it was asserted that the wife left the matrimonial home on 14.05.2003 without any rhyme and reason when she was pregnant. The husband as also his parents convened Panchayats on more than one occasion so as to bring the wife back into the matrimonial fold but with no success. Further alleged that not only did the wife decline to join company of the husband but even the Panchayat members were humiliated and insulted.

The respondent/wife filed a written statement denying all the allegations. To the contrary, the wife accused the appellant/husband of harassment and cruelty. Respondent averred that she has been maltreated and tortured for bringing insufficient dowry and demands of dowry were raised. She was turned out of the matrimonial home on 14.05.2003 when she was pregnant. When a female child was delivered at the parental home

at Kaithal i.e. on 10.12.2003, due intimation had been furnished to the husband and who in spite thereof, did not visit the respondent/wife and chose not to even see the new born child. Respondent/wife asserted in the written statement that extreme circumstances had been created by the husband as also his family members and which left her with no option but to lodge a complaint and which in turn led to registration of FIR No.291 dated 25.05.2006 at Police Station City Kaithal under Sections 406/498-A IPC.

The trial Court framed the following issues:

- (i) Whether the petitioner is entitled to a decree of divorce on the ground of cruelty as alleged? OPP
- (ii) Whether the petitioner is entitled to a decree of divorce on the ground of desertion as alleged? OPP
- (iii) Whether petition is not maintainable in the present form? OPR
- (iv) Relief.

Learned trial Court permitted the parties to lead evidence in support of their respective contentions. The appellant examined one Darshan Kumar as PW2, Darshan Lal as PW3, Ramsarup Sachdeva as PW4, his father Om Parkash as PW5 and he himself stepped into the witness box as PW6. On the other hand, the respondent/wife herself appeared as RW1 and examined Tilak Raj, her uncle as RW2 and Smt. Sudesh Rani, her mother as RW3.

Learned trial Court, after considering the pleadings, the evidence adduced and rival submissions, determined issues No.1 and 2 against the appellant/husband 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.

It would be apposite to take note that on a previous date of hearing i.e. on 04.03.2015, CM-1021-CII-2015 i.e. an application under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure was allowed by this Court thereby permitting the applicant/appellant to place on record judgment dated 30.09.2011 passed by the Judicial Magistrate 1st Class, Karnal as Annexure P-1 acquitting the appellant/husband as also his parents, namely, Om Parkash and Sudesh Rani in case FIR No.291 dated 25.05.2006 that had been lodged at the instance of the respondent/wife. Permission was also granted to place on record at Annexure P-2 the judgment dated 25.05.2013 passed by the learned Sessions Judge, Kaithal, whereby the judgment of acquittal dated 30.09.2011 at Annexure P-1 was affirmed. Suffice it to observe that the judgment of acquittal in favour of the appellant/husband as also his parents came to be delivered after institution of the instant appeal bearing FAO-M-47 of 2009.

Counsel for the appellant has raised a solitary submission in support of ground of cruelty by adverting to the judgment of acquittal dated 30.09.2011 (Annexure P-1) and urges that acquittal of the appellant/husband as also his parents entitles him to grant of decree of divorce on the ground of levelling false allegations and which in turn amounts to cruelty. Heavy reliance in support of such contention has been placed upon judgment of the Hon'ble Supreme Court in ***K. Srinivas Rao Versus D.A. Deepa, 2013 (2) RCR (Civil) 232***. It has been vehemently argued that conduct of the respondent/wife in lodging a false FIR and in pursuing the criminal proceedings with an intent to ensure that the

appellant/husband as also his father and mother are put in jail amounts to mental cruelty sufficient to form the basis for a decree of divorce.

Per contra, Mr. C.B. Goel, learned counsel representing the respondent/wife submits that the appellant has not proved cruelty or desertion. A perusal of the findings recorded by the trial Court would reveal that the appellant has not proved any specific instances of cruelty, whether mental or physical. It is argued that mere lodging of an FIR or acquittal of the appellant cannot be construed to be an act by cruelty, particularly when the allegations are neither scandalous nor levelled against the character of the husband or his parents. Mr. Goel, Advocate has placed reliance upon two Division Bench judgments rendered by this Court in ***Padam Kumar Jain Versus Ashi Jain @ Babita Jain, 2016 (3) RCR (Civil) 396*** and ***Amit Kaushik Versus Monika Gaur, 2016 (3) RCR (Civil) 79***. Counsel would also contend that the appellant/husband is not to be given any mileage on the basis of a judgment of acquittal recorded by giving '***benefit of doubt***'.

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

The allegations raised by the appellant/husband and as discernible from the petition as well as the deposition of the appellant and his witnesses is devoid of any material particulars, much less reference to any specific acts of cruelty, whether physical or mental. The issue, however, that arises for consideration is whether the admitted acquittal of the appellant/husband as also his parents in a trial under Sections 406/498-A IPC can serve the foundation for grant of a decree of divorce.

The issue that has been formulated hereinabove has been considered by the Hon'ble Supreme Court as also by this Court on a number of previous occasions. In ***K. Srinivas Versus K. Sunita, 2015 (1) RCR***

(Civil) 38, Hon'ble Supreme Court of India 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) (ia) of the Hindu Marriage Act.”

A Division Bench of this Court in ***Sushma Taya Versus Arvind, 2015 (2) RCR (Civil) 888*** while holding that acquittal of the husband in prosecution initiated at the hands of the wife raises an inference of cruelty observed 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.”

In ***FAO-120-M of 2003 titled as Surinder Pal Singh Versus Mandeep Kaur @ Bimla Rani*** decided on 26.02.2016, a Division Bench of this Court had observed that an allegation may itself not constitute cruelty but if the allegation is fake, grave, defamatory, assassinates the character and is initiated to traumatize the other spouse, then depending upon the nature of the allegation, it may raise an inference of cruelty. It was further observed that 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.

It is in the light of such observations that the facts of the case in hand need close scrutiny.

Perusal of the judgment of acquittal dated 30.09.2011 by the competent criminal Court at Annexure P-1 as also the judgment dated 25.05.2013 passed by the Appellate Court at Annexure P-2 affirming the decision of acquittal would make it apparent that assertion had been made by the respondent/wife as regards sufficient dowry having been given at the time of *Shagan* ceremony on 21.02.2002, on the date of marriage i.e. 22.02.2002 as also cash having been entrusted on subsequent dates to fulfill the repeated demands raised by the husband as also his parents. There were allegations made by wife of having been given merciless beatings, having been kept hungry and then being turn out of the matrimonial home on the

threat that she would be permitted entry back into the matrimonial house only upon bringing more money as also a Zen car. Based on the complaint, FIR had been registered on 25.05.2006 at Police Station City Kaithal under Sections 406/498-A IPC. As regards proving of offence under Section 406 IPC, even presuming that there had been entrustment of dowry articles/*stridhan*, it had to be established that in spite of demand having been raised, the same had not been returned and which in turn would be construed as criminal breach of trust. The competent criminal Court has recorded a finding based upon the deposition of the complainant herself as PW2, wherein she admitted in her cross-examination that no demand at any point of time had been raised for return of dowry articles/*stridhan*. Even the deposition of PW3, Sunil Kumar and who had claimed to have attended various Panchayat proceedings to amicably resolve the matter had not stated as regards any demand having been raised for return of *stridhan*. Even father of the complainant Ashok Kumar, PW4 even though had deposed that his daughter had been thrown out of the matrimonial house did not even utter a single word as regards the dowry articles/*stridhan* having been demanded back and the accused i.e. the husband and his parents having refused to return the same. It is in the light of such cogent and valid reasoning based upon due appreciation of evidence that the criminal Court has come to the conclusion that no offence under Section 406 IPC was made out.

As regards the offence punishable under Section 498-A IPC is concerned, the allegations raised by the complainant/wife of having been teased, taunted and tortured against demand of dowry has been disbelieved.

In the complaint, Ex.PG, the respondent/wife had alleged that she had been

kept hungry and without water for hours by the accused i.e. the husband and his parents only to pressurize the complainant and her family members to get their demands fulfilled. The competent criminal Court has taken a view that if such allegation was correct then the complainant i.e. the wife would have certainly disclosed such behaviour to her own parents. PW4, Ashok Kumar i.e. father of the complainant has not corroborated the version of the complainant in such regard. Furthermore, mother of the complainant, who would normally be seen as the best companion of a married daughter was not even examined by the prosecution and in fact was given up as not necessary. On the charge levelled by the respondent/wife of having been allegedly beaten up, there was no specific attribution to any of the accused and even the manner and time of such beating was not disclosed. Furthermore, the Appellate Court while disbelieving the version of the complainant and affirming the order of acquittal has noticed that as regards recovery of dowry articles/*stridhan* reflected in memo Ex.PD, a recovery of a scooter bearing registration No.HR-05-L-4137 was shown but as per testimony of DW2, Rajbir Singh, Registration Clerk, such scooter stood registered in the name of the appellant/husband as on 22.10.2001, whereas the entrustment of the scooter was alleged to be on the date of marriage i.e. on 22.02.2002. This has also cast a serious doubt on the veracity of the allegation raised by the wife.

We find that in the written statement filed by the respondent/wife to the petition instituted by the husband under Section 13 of the Hindu Marriage Act, the same very allegations were reiterated. Such allegations have been found to be false by the competent criminal Court.

It has gone uncontroverted that in pursuance to the registration

of FIR on account of a complaint having been lodged by the respondent/wife, the appellant/husband as also his father were arrested and sent to jail. Mother of the appellant/husband was constrained to file a petition seeking concession of pre-arrest bail and the same was granted subject to her joining investigation. The appellant/husband as also his parents have suffered the ignominy of a protracted trial on the basis of false and reckless allegations levelled by the respondent/wife.

We are of the view that in such matters, it is not only the acquittal in criminal proceedings of a spouse but also the conduct of the complainant party that would be material. We have even perused the statement recorded of the respondent/wife before the trial Court and who had appeared as RW1. In the cross-examination, the respondent/wife has admitted that she along with her mother had accompanied the police party to Karnal to facilitate the recovery of dowry articles. It has already been noticed by us that during the course of criminal prosecution, recovery had been got effected of articles that had not even been entrusted at the time of marriage or thereafter. A clear instance is the recovery of a scooter bearing registration No.HR-05-L-4137 as per recovery memo Ex.PD and which already stood registered in the name of appellant/husband on 22.10.2001 as opposed to the date of marriage which was subsequent in point of time i.e. on 22.02.2002.

In the totality of circumstances, we are of the considered view that the dictum in the judgments in *K. Srinivas* and *Sushma Taya's case (supra)* applies squarely to the facts of the present case as well. The appellant/husband as also his parents have faced the pain, anguish and agony of a criminal trial on the basis of allegations which was false and

manufactured by the respondent/wife. Appellant/husband and his father were even sent to jail. We would have no hesitation in observing that the appellant/husband as also his parents would have also suffered loss of image as a consequence thereof. Under such circumstances, there is a clear inference of cruelty inflicted at the hands of respondent/wife upon the appellant/husband as also his parents.

The attempt made by Mr. C.B. Goel, learned counsel appearing for the respondent/wife to draw a distinction between an **'honourable acquittal'** as opposed to an acquittal in favour of an accused by granting **'benefit of doubt'** is not well founded. Acquittal in a criminal case for want of evidence is an acquittal on merit. There is no provision for **'honourable acquittal'** in criminal trial as per criminal jurisprudence. A Division Bench of this Court in ***Bhag Singh Versus Punjab and Sind Bank, 2006 (1) SCT 175*** interpreted the term **'benefit of doubt'** in criminal proceedings. It was noticed that where the acquittal is for want of any evidence to prove the criminal charge, mere mention of **'benefit of doubt'** by the criminal Court is superfluous and baseless. The Court as such termed such acquittal as an **'honourable acquittal'**. In ***Shashi Kumar Versus Uttar Haryana Bijli Vitran Nigam and another, 2005 (1) RSJ 718***, a Division Bench of this Court was again dealing with the term **'honourable acquittal'**. It was observed that the moment a criminal charge fails in a Court of law, the person would be deemed to be acquitted of the blame. Under such settled position of law, the husband cannot be denied his right of raising the ground of cruelty seeking dissolution of marriage on account of having been acquitted by the competent criminal Court and such decision of acquittal having been affirmed even by the Appellate Court.

Furthermore, the reliance placed by learned counsel appearing for the respondent/wife in ***Amit Kaushik and Amit Kumar Jain's case (supra)*** is misplaced. In both the aforementioned judgments, no complaint had been filed by the wife till the filing of divorce petition at the hands of the husband. The distinguishing feature in the present case is that the complaint had been lodged by the respondent/wife and the FIR had been registered in the month of May, 2006, whereas the petition under Section 13 of the Hindu Marriage Act seeking dissolution of marriage on the ground of cruelty and desertion was instituted by the appellant/husband only on 18.07.2006 i.e. later in point of time and in which a specific ground had been raised as regards registration of a false FIR by the respondent/wife and the same amounting to cruelty. The judgments rendered by this Court in ***Amit Kaushik and Padam Kumar Jain's case (Supra)***, as such, would have no applicability.

There is another aspect of the matter. The parties in the present case have lived separately concededly since the year 2005. In other words, the period of separation has been more than a decade. Such a separation is bound to create an unbridgeable distance between husband and wife. It may also be said that the marriage has irretrievably broken down. We are conscious that irretrievable break down of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. Be that as it may, such a long separation between the appellant/husband and respondent/wife can certainly be taken as a weighty circumstance while considering severance of the marital tie. In ***Samar Ghosh Versus Jaya Ghosh, 2007 (2) RCR (Criminal) 515***, the Hon'ble Supreme Court had culled out illustrative cases where inference of '***mental cruelty***' can be drawn. One of the illustrations drawn

out was in the following words:

“Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

In view of the discussion above and considering the overall facts and circumstances of the case, we are of the considered view that the present appeal merits acceptance. As a result, the appeal is allowed and the judgment and decree dated 15.01.2009 passed by the learned trial Court is set aside holding that the respondent has caused mental cruelty to the appellant/husband and on that ground, the marriage between appellant and the respondent is dissolved by decree of divorce leaving the parties to bear their own costs.

Appeal stands allowed.

(M. JEYAPPAUL)
JUDGE

29.11.2016

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |