

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

**FAO-M-95-2011 (O&M).
Date of Decision: 11.08.2016.**

Anshuman Kaler

....Appellant.

VERSUS

Garima Sumran

....Respondent.

**CORAM : HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MRS. JUSTICE SNEH PRASHAR**

Present: Mr. Rakesh Nehra, Advocate for the appellant.

Mr. S.S. Dinarpur, Advocate for the respondent.

SNEH PRASHAR, J.

This appeal is directed against the judgment and decree dated 24.12.2010 passed by learned Additional District Judge, Kurukshetra, dismissing the petition under Section 13 of the Hindu Marriage Act, 1955 (for short, “the Act of 1955”) filed by appellant-husband Anshuman Kaler against his wife-respondent Garima Sumran for dissolution of their marriage.

The facts garnered from the record are as under:-

Appellant-Anshuman Kaler was married to respondent-Garima Sumran on 20th January, 2006 as per Hindu rites and ceremonies. They cohabited together as husband and wife and a daughter was born out of the wedlock in June, 2007 who is presently in custody of the mother-respondent.

By way of the instant petition, the appellant sought dissolution of his marriage with the respondent on the grounds (i) that he had been treated with cruelty by the respondent-wife; (ii) that he had been deserted by her. The prime allegation of the appellant was that the respondent had become habitual of taking drugs and under the influence of drugs she had been insulting and abusing him by using filthy language in the presence of his relatives and friends and had been hurling threats. In March, 2007, his father's sister (Bua) and her husband came to visit them and in their presence, she misbehaved with him and when his aunt and uncle tried to make her understand, she misbehaved with them as well which caused mental harassment to him.

The appellant further pleaded that in the year 2006-2007, the respondent joined as Lecturer in Bio Science, DAV College, Muzaffar Nagar. She deposited her entire salary for the period 01.08.2006 to 31.07.2007 in her saving account No.12602 with Union Bank of India, Muzaffar Nagar. On 30.08.2007, she withdrew the entire amount i.e. Rs.62,705/- and closed her account without his knowledge. Prior to marriage, she was getting economic help of Rs.8000/- per month from U.G.C. and the whole amount for the period w.e.f. July, 2003 to June, 2006 was kept by her.

It was further the plea of the appellant that even after marriage the respondent lived for long spells with her parents and used to come to him of and on and when in his company she used to ignore and misbehave with him. After birth of the girl child, she became more cruel. On 08.07.2007, she left the matrimonial home alongwith their daughter and

with Section 34 of the Indian Penal Code (for short, "I.P.C.") registered against him, his parents and elder brother at Police Station City, Thanesar levelling false allegations and fabricating a medical report. He, his brother and parents had go to jail which caused severe mental harassment to him. The parents and other members of the family of the respondent forcibly took away many articles, jewellery, cash etc. from his house. Submitting that it is no longer possible for him to live with the respondent, he (appellant) prayed for dissolution of their marriage.

The respondent contested the petition. The preliminary objection taken by her in the written reply was that all facts mentioned by the appellant were false and that it was she who had faced atrocities at the hands of the appellant and his family members. According to her, the appellant and his family members demanded more and more dowry from her. She was a Research Scholar doing Ph.D. The appellant claimed that he had done J.R.F. and had cleared NET but after marriage she came to know that the appellant had neither passed J.R.F. nor had cleared NET. Above that, on account of demand of dowry she was harassed, humiliated and kept hungry for days together.

The respondent categorically denied that she had ever taken any intoxicant tablet or used to ignore or misbehave with the appellant and his family. She mentioned that only under dire need she used to visit Kurukshetra in connection with her Ph.D course. Her salary used to go in her saving account and she was not allowed to withdraw more than Rs.600/- per month. Appellant's mother believed in blind faith and was hoping of birth of a male child but when she gave birth to a daughter, the atrocities on her increased. In July, 2007 after visiting her parents at Kurukshetra, when

she returned to the matrimonial home alongwith her daughter, she was physically assaulted, maltreated and the expenses required for day to day necessities of life were not given to her. On 16.08.2007, she was mercilessly beaten to press the demand for additional dowry and was left at bus stand, Kurukshetra. In said peculiar circumstances, she returned to her parents' house where she was medico legally examined and on her complaint, a First Information Report No.423 dated 17.08.2007 under Sections 498-A, 406, 323 and 506 read with Section 34 I.P.C. was registered. Hence, she prayed for dismissal of the petition.

The appellant filed replication controverting the objections raised by the respondent. On the basis of the pleadings of the parties, issues were settled. Both the parties adduced evidence in support of their respective contentions. Considering the evidence and the arguments addressed, learned trial Court, dismissed the petition on 24.12.2010.

Feeling aggrieved by the judgment and decree dated 24.12.2010, the appellant preferred the instant appeal.

We have heard the submissions made by Mr. Rakesh Nehra, learned counsel for the appellant and Mr. S.S. Dinarpur, learned counsel for the respondent.

At the very outset, learned counsel for the appellant argued that the respondent had got registered a criminal case on the allegations of demand of dowry and her harassment on account of the same by the appellant and his family members as is her counter allegation in the instant petition also. However, the criminal case registered vide F.I.R. No.423 dated 17.08.2007 under Sections 498-A, 406, 323 and 506 read with Section

In other words, the allegation of the respondent, on which the appellant and his family members were subjected to trial, had been proved to be false. Lodging of such false complaint exposed the very conduct of the respondent-wife. The criminal litigation initiated by her caused extreme mental cruelty to the appellant-husband as he and his parents etc. were arrested and put behind the bars. Relying on the ratio of law laid down in **K. Srinivas Rao vs. D.A. Deepa, 2013(2) R.C.R. (Civil) 232**, learned counsel contended that when it is evident that the respondent-wife manifested such harsh feeling towards the appellant-husband and his family members that she went to the extent of lodging a complaint against them levelling false allegations, it was sufficient to cause reasonable apprehension in the mind of the appellant that it will be harmful and injurious for him to live with her under the same roof. The feeling of deep anguish and frustration of the respondent led to causing mental cruelty to the appellant-husband and, therefore, the appellant is entitled to a decree of divorce from the respondent.

Learned counsel further argued that the documents placed on record by him during instant appeal proceedings would show that the respondent was not contended with initiation of criminal proceedings against the appellant with false allegation that her husband etc. demanded dowry, that she went on to drag the appellant into multiple litigation with an intention to harass him and his family members. She filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, “the Act of 2005”) before Judicial Magistrate Ist Class, Kurukshetra; a suit for damages to the tune of Rs.5 lacs before Civil Judge

Maintenance Act; a complaint to S.S.P., Muzaffar Nagar (UP) dated 20.02.2013; and a petition under Section 125 of the Code of Criminal Procedure (for short, “Cr.P.C.”). Learned counsel pointed out that the case for damages filed by the respondent and her father has since been dismissed by learned Civil Judge and that also indicates that her sole motive is to harass the appellant.

Arguing emphatically that besides the fact that it stood established from the deposition of the appellant PW1 and his father PW2 that the respondent was habitual of taking intoxicant drugs and also used to misbehave and use abusive language against the appellant and his family members, relatives, friends etc., learned counsel contended that it is established that the marriage between the appellant and the respondent has irretrievably broken down because after so much litigation, all initiated at the instance of the respondent except for the present petition under Section 13 of the Act of 1955, it is no longer possible for them to live together and lead a peaceful life and on that count the marriage deserves to be dissolved. To support his contention, learned counsel relied upon *K. Srinivas vs. K. Sunita, 2015(1) R.C.R. (Civil) 38* and judgment dated 07.08.2014 passed by Division Bench of this Court in *FAO No.M-33 of 2010* in case titled “*Geeta Sharma vs. Anil Kumar Sharma*”.

Having considered the arguments of learned counsel for the appellant, we do not find the same to be convincing and meritorious. A very serious allegation was levelled by the appellant against the respondent to plead that her behaviour was rude and harsh towards him and his family members. He alleged that the respondent was habitual of taking intoxicant drugs and under the influence of such drugs, she had insulted and abused

him time and again. Except for his bald deposition, not an iota of evidence could be produced by the appellant to prove that the respondent was a drug addict or that she used to consume sedative or intoxicated medicine etc. Rather, the respondent tendered in evidence her urine examination reports Ex.R7 and Ex.R8 dated 12.06.2007 and 14.11.2006 respectively of the period when she was pregnant and was residing with the appellant. In none of the reports, there is any indication that she was habitual or had consumed any drug, sedative or intoxicant medicine. When the appellant had no evidence worth in its name to prove such serious allegation, it is his conduct which comes out to be harsh and cruel towards the respondent. If having been hurt by such unfounded allegation, the respondent and her father filed 'a suit for damages' against the appellant, that could not be used by the appellant to say that the litigation had caused mental cruelty to him. Similarly, when the appellant had refused to maintain the respondent and his minor daughter, the respondent was well within her legal right to file a petition claiming maintenance under Section 125 Cr.P.C. Since she found that the amount ordered to be paid under Section 125 Cr.P.C. was not sufficient, the law provided her the remedy to file a suit under Adoption and Maintenance Act for her daughter. The litigation she had been forced to initiate was a matter of harassment to her and not to the appellant.

As far as the acquittal of the appellant and his family members in the criminal case registered under Sections 498-A, 406, 323 and 506 read with Section 34 I.P.C. is concerned, it is an admitted fact that an appeal assailing the said judgment is still pending and the matter has not so far reached finality between the parties. Moreso, it is not the allegation of the

allegation assassinating his character or of any of his family members which could have adverse impact on the avocation he was engaged in. In K. Srinivas Rao's case (supra), the wife levelled allegation against her mother-in-law that she had asked her to sleep with father of her husband which she failed to substantiate during the criminal trial. Not only this, the respondent made a complaint to the employer of her husband to remove him from service. The Hon'ble Supreme Court also took into consideration that the parties had separated just after two days of marriage and were living apart for more than past ten years and the separation had created an unbridgeable distance between the two. Such being the facts and circumstances, observing that the marriage was beyond repair on account of bitterness created by the act of the husband or the wife or of both, Hon'ble Apex Court found it a fit case necessitating severance of marital tie.

The facts in hand when tested in the light of ratio of K.Srinivas Rao's case (supra), in our considered opinion, do not call for grant of decree for divorce on the asking of the appellant-husband. For the mere fact that the criminal proceedings initiated by the respondent-wife ended in a judgment of acquittal, by itself would not lead to a finding against the respondent that she is guilty of causing extreme 'mental cruelty' to the appellant which could become basis for dissolution of their marriage. In a series of judgment, the Hon'ble Apex Court has repeatedly stated the meaning and outlined the scope of the term 'cruelty'. It has been said that cruelty is evidence where one spouse has so treated the other and manifested such feelings towards her or him as to cause in her or his mind reasonable apprehension that it will be harmful or injurious to live with the other

mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of the other for a long time may lead to mental cruelty.

It is pertinent to note that in the case in hand, not one specific incident could be narrated or disclosed by the appellant which could fall within the four corners of the term 'cruelty' as observed above. The allegation levelled by him that the respondent used to take intoxicant drugs was proved to be false. His other allegation that the respondent insulted or abused him in the presence of his paternal aunt and uncle, who visited them in March, 2007, is also proved to be false as in his cross-examination the appellant admitted that in March, 2007 the respondent was having six months pregnancy and during those days he was not at home. From the deposition of PW2 Mehakar Singh also, the said allegation is proved to be wrong as at the first instance he stated that his sister and her husband had visited them in March, 2006 but later stated that his sister and her husband never visited them. As regards the allegation of the appellant that after the respondent started working in DAV College, Muzaffar Nagar, she deposited her entire salary in her saving account maintained with Union Bank of India at Muzaffar Nagar and on 30.08.2007 she withdrew the entire amount from that account and closed the same, by no stretch of imagination the said conduct of the respondent could be addressed as cruel towards the appellant. The salary had to be deposited in some saving account and it was the prerogative of the respondent to close the account withdrawing the money in the same when it was in her name. There is no allegation of the appellant that the respondent mis-utilized the money or used the same for a purpose

appellant has been acquitted by giving benefit of doubt by learned trial Court have not reached finality. In that manner, not a single such allegation could be raised by the appellant which could justify any ground on which he had sought dissolution of his marriage with the respondent.

From the very initial stage when litigation between the parties started, the stand of the respondent had been that she is ready and willing to join the conjugal company of the appellant-husband. Her only desire was that she should be treated with love and respect by him. It appears, the unreasonable and adamant stand on part of the appellant not to resume cohabitation with the respondent had led to all differences and the litigation the appellant has referred to. Coming to the argument of learned counsel for the appellant that the marriage has irretrievably broken down, it has been held by Hon'ble Apex Court in K. Srinivas case (supra) as under:-

“Irretrievable breakdown of marriage as a ground for divorce has not found statutory acceptance till date. Under Article 142 of the Constitution, the Supreme Court has plenary powers “to pass such decree or make such order as is necessary for doing complete justice in any case or order pending before it”. This power, however, has not been bestowed by our Constitution on any other Court.”

In the above premise, finding no merit in the appeal filed by the appellant-husband, the same is hereby dismissed.

(M. Jeyapaul)
Judge

(Sneh Prashar)
Judge

11.08.2016
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Whether speaking/ reasoned	:	Yes
Whether Reportable	:	Yes