

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.M-97 of 2012

DATE OF DECISION: MAY 30, 2016

SATYAWAN

...APPELLANT

VERSUS

REKHA

...RESPONDENT

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

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. MUNISH KUMAR GARG, ADVOCATE FOR THE APPELLANT.
NONE FOR THE RESPONDENT.

M. JEYAPPAUL, J.

1. Appellant Satyawar filed a petition under Section 13 of the Hindu Marriage Act, 1955 seeking a decree of divorce by dissolution of his marriage with his wife Rekha on the ground of cruelty. The said petition was dismissed by learned District Judge, Jind. Appellant Satyawar has challenged by way of present appeal the dismissal of the petition filed by him under Section 13 of the Hindu Marriage act.

2. Learned counsel appearing for the respondent reported no instructions and therefore, the respondent was proceeded against ex-parte.

3. The marriage of the appellant with the respondent was solemnized on 2.12.2009 at Hisar according to Hindu rites and ceremonies. Both of them lived together as husband and wife and a child was born out of the wedlock on 3.11.2010.

4. It was alleged by the appellant that on 19.11.2010, the

respondent made a telephonic call to her parents. The parents of the respondent came alongwith 20 persons to his house at about 2.30 p.m. on the said day and attacked them. Having beaten them, they also broke his household articles. At the intervention of his neighbours, all of them were rescued. A compromise took place at the police station. The family members of the respondent admitted that the respondent made a bogus call regarding demand of dowry by the appellant. They assured not to repeat such incident again and took away the respondent. On 30.11.2010, the appellant went to the house of the respondent to take her back. But her parents misbehaved with him. The respondent lodged an FIR against the appellant and his family members at Police Station, City Hisar, levelling false allegations of demand of dowry and cruelty. In the guise of compromise, the appellant and his family members were called by the respondent and her family members to Hisar where they were insulted and given beatings. The father of the appellant suffered three fractures in his leg. Therefore, he lodged a criminal case as against the family of the respondent which was registered as FIR No.33 dated 10.1.2011 under Sections 323, 325, 147, 148, 149 and 506 IPC. Alleging that the respondents and her family members committed cruelty and the respondent left the matrimonial company of the appellant permanently without any reasonable cause or excuse, the appellant has sought for divorce.

5. The respondent contended in her written statement that the appellant and his family members used to harass and abuse her as a result of which, she filed a complaint under Section 498-A IPC which is pending

adjudication against him. They demanded dowry in the form of cash. They also insulted her and caused injuries to her family members on their intervention through panchayat. On 19.11.2010, the family members of the appellant gave severe beatings to her forcing her to contact her parents. The respondent is ready to join the matrimonial company of the appellant. She prayed for dismissal of the petition.

6. The trial Court having adverted to the entire evidence on record came to the conclusion that on account of the false alarm of demand of dowry made by the respondent, there was an attack launched by the family members of the respondent in which the appellant's father sustained injury which resulted in registration of a criminal case under Section 323, 325, 147, 148, 149 and 506 IPC. The trial Court also found that there was no truth in the allegation regarding demand of dowry levelled by the respondent against the appellant and his family members.

7. The trial Court having found that due to strained relationship of the parties the appellant and the respondent could not lead matrimonial life, held that both the parties had no intention to end their matrimonial relations with each other permanently. The marriage also had not broken down. With the above observations, the trial Court chose to dismiss the petition filed by the appellant.

8. Learned counsel appearing for the appellant vehemently submitted that a false case under Section 498-A IPC was lodged by the respondent against the appellant and his family members which has culminated in acquittal. The very fact that a false case had been lodged

against the appellant and family members would demonstrate that the respondent had behaved cruelly. He also placed on record the report submitted by the Station House Officer, Police Station, Jind on 24.9.2015 under Section 202 Cr.P.C. on the basis of the complaint lodged by the appellant. The Station House Officer in his report has concluded that the respondent has contracted second marriage with one Sushil @ Jala and has started living happily with him. Therefore, it is his submission that the observation made by the trial Court that both the parties are longing to join together as husband and wife and the marriage had not broken down are completely counterbalanced by the subsequent events.

9. There is no dispute to the fact that father of the appellant has lodged FIR No.33 dated 10.1.2011 at Police Station, City Hisar against the family members of the respondent under Section 323, 325, 147, 148, 149 and 506 IPC . Though the said case is pending disposal, the occurrence was unambiguously admitted by the father of the respondent during the course of evidence. The MLR(Ex.P2) demonstrates that the father of the appellant had sustained injuries and therefore, he had to take treatment in the hospital.

10. The trial Court has, in fact, found that there was no demand of dowry as alleged by the respondent and his family members. The above observation is strengthened and fortified by the acquittal of the appellant and his family members in the criminal case launched by the respondent as against the appellant and his family members under Section 498-A, 406, 319, 323 and 506/34 IPC. The copy of the judgement placed on record by the appellant demonstrates that the appellant and his family members were

acquitted of the above charges. In fact, the trial Court in the above criminal case found that there was no material to establish the charges framed as against the appellant and his family members.

11. It is a well settled proposition of law that launching of false criminal case by a spouse against the other spouse would definitely amount to cruelty. In K.Srinivas Rao vs. D.A.Deepa, 2013(2) RCR(Civil) 232, the Hon'ble Supreme Court has held as follows:-

“23. Pursuant to this complaint, the police registered a case under Section 498-A of the Indian Penal Code. The appellant-husband and his parents had to apply for anticipatory bail, which was granted to them. Later, the respondent-wife withdrew the complaint. Pursuant to the withdrawal, the police filed a closure report. Thereafter, the respondent-wife filed a protest petition. The trial court took cognizance of the case against the appellant-husband and his parents (CC No. 62/2002). What is pertinent to note is that the respondent-wife filed criminal appeal in the High Court challenging the acquittal of the appellant-husband and his parents of the offences under the Dowry Prohibition Act and also the acquittal of his parents of the offence punishable under Section 498-A of the Indian Penal Code. She filed criminal revision seeking enhancement of the punishment awarded to the appellant-husband for the offence under Section 498-A of the Indian Penal Code in the High Court which is still pending.

When the criminal appeal filed by the appellant-husband challenging his conviction for the offence under Section 498-A of the Indian Penal Code was allowed and he was acquitted, the respondent-wife filed criminal appeal in the High Court challenging the said acquittal. During this period respondent-wife and members of her family have also filed complaints in the High Court complaining about the appellant-husband so that he would be removed from the job. The conduct of the respondent-wife in filing a complaint making unfounded, indecent and defamatory allegation against her mother-in-law, in filing revision seeking enhancement of the sentence awarded to the appellant-husband, in filing appeal questioning the acquittal of the appellant-husband and acquittal of his parents indicates that she made all attempts to ensure that he and his parents are put in jail and he is removed from his job. We have no manner of doubt that this conduct has caused mental cruelty to the appellant- husband.”

12. The appellant also placed on record the report submitted by the Station House Officer, Jind on 24.9.2005 under Section 202 Cr.P.C. based on the complaint lodged by the appellant that the respondent has married one Sushil @ Jala son of Laxman Dass and has started living happily with him. In the absence of any rebuttal to such a material produced by the appellant, the Court has no other option except relying upon such a material produced before it. In the face of the report submitted by the Station House

Officer, Jind, it could be safely concluded that the respondent has married one Sushil and started living happily with him. Contracting second marriage during the subsistence of first marriage would also amount to cruelty.

13. In the above facts and circumstances, we are of the considered view that the appellant has established that the respondent is guilty of cruelty and as a result of which the appellant is entitled to get a decree of divorce. Therefore, setting aside the impugned judgement passed by the trial Court, the marriage between the appellant and the respondent stands dissolved by granting a decree of divorce.

14. Consequently, the appeal is allowed. Decree sheet be prepared, accordingly.

(M. JEYAPPAUL)
JUDGE

May 30, 2016
Gulati

(RAJ MOHAN SINGH)
JUDGE