

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

FAO-922-2013 (O&M)

Date of decision: 11.7.2016

Major Ashish Poonia

...Appellant

Versus

Mrs.Nilima Poonia

...Respondent

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

Present: Mr.Sandeep Bansal, Advocate with
Mr.Sugreev Kapoor, Advocate for the appellant

Mr.Ishwar Singh, Advocate for the respondent

SNEH PRASHAR, J.

Assailing the judgment and decree dated 10.09.2012 passed by learned District Judge, Family Court, Hisar dismissing H.M.A. Case No.331 of 2008 filed under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act of 1955') by Major Ashish Poonia -appellant for dissolution of his marriage with respondent Nilima Poonia- wife, the instant appeal was filed.

The facts which need elaboration are as under:-

Appellant Major Ashish Poonia was married to respondent Nilima Poonia on 12.11.2005 at Hisar according to Hindu rites and ceremonies. They cohabited as husband and wife but no issue was

born out of the wedlock. A petition under Section 13 of the Act of 1955 for dissolution of their marriage by way of decree of divorce was filed by the appellant on 29.4.2008 on two grounds (i) he had been treated with cruelty by the respondent-wife and (ii) that he had been deserted by the respondent without any fault on his part.

The allegations in specific of the appellant were noticed by learned trial Court in para No.9 of the impugned judgment as under:-

“i) That since the time of the marriage he discovered that respondent was a hot tampered and spend thrift lady and not prepared herself to adjust in the humble set up of his family and from the very beginning she refused to do the domestic work and used to take up quarrels of petty matters which adversely affected his health.

ii) That at the time of marriage, the respondent insisted to give a costly gift in the shape of gold necklace to her younger sister namely Preeti when he came to take her from her house, but in lieu thereof a cash amount of Rs.10,000/- was given by him to Preeti on 13.11.2005. When she was to leave her house alongwith the petitioner her mother told her to take care of her valuables kept in her bag and be careful whereupon she shouted at her mother in front of all present saying that she was in the habit of criticising her all the times on which the petitioner was shocked.

iii) That on reaching the house of the petitioner,

she refused to climb stairs upto fourth floor saying that she was tired and after waiting the car for about 30 minutes she finally climbed up the stairs with a frown on her face and on reaching the house she refused to take the blessing of the elders.

iv) That on reaching Delhi on 13.11.2005, the petitioner suggested the respondent to freshen up and take her clothes for the night and the next day change as they have to stay in a guest room in an Army mess. She also refused to keep her jewellery and cash gifts for safety reason with his mother and after two days when both had to leave for the place of posting of the petitioner, she asked his mother in front of the other relatives, whether the jewellery and the cash were the same which were given to her for keeping in safe custody and then the mother of the petitioner insisted that she should count the cash and check the jewellery which the respondent did with a made up face in presence of the relatives which had lowered down the prestige of the petitioner and his mother. The petitioner after getting ready, asked the petitioner to prepare tea for him which she reluctantly prepared and she remarked that she was not supposed to be doing all this for him in future.

v) That the petitioner constrained to take cash from his parents for such unplanned expenses.

vi) That on reaching Panchkula in the evening of 17.11.2005, the respondent told the relatives of the petitioner that she hoped that they do not get an accommodation in Madhopur so that their in-laws

could not visit there.

vii) That during their stay in the guest room of the Officer's mess at Madhopur in the last week of November 2005, the respondent fought on petty matters and she started shouting at the petitioner and she became so violent that in a fit of rage she started slapping the petitioner.

viii) That the respondent refused to pack the household goods at Delhi on allotment of the official accommodation No.P-53/2 in Madhopur and to set up the household goods in Madhopur when they shifted from Delhi on 1.12.2005 by saying that she was not meant for that purpose.

ix) That the efforts of the petitioner to teach the respondent to learn to operate washing machine, microwave, oven, Computer were a failure till she left for her house in the first week of January, 2006.

x) That in the month of December, 2005, the respondent suggested to the petitioner to sell the house of his father in Noida and transfer the money in her name.

xi) That on several occasions, the petitioner saw the respondent speaking in an arrogant manner to other ladies of his unit much elder to her in age.

xii) That on arrival of his mother on 17.12.2005, he saw a distinctive aggressiveness in respondent's behaviour and the respondent started quarrelling with the petitioner as to why his mother has come to Madhopur. During her stay at Madhopur, the respondent never attended to her household duties and on many occasions he had to prepare his own

food without any help from her and on several occasions she had gone to their neighbours and spoken against him and his family.

xiii) That the respondent refused to go for dinner on 28.05.2006 when they were invited by Col.M.S.Yarnal whereupon the petitioner told the father of the respondent on telephone about the latest misbehaviour of the respondent. On reaching the respondent's father at Bhatinda in the evening of 29.05.2006, the respondent told that she did not want to stay with the petitioner and would leave next day and went inside the house and packed her bags. Thereafter, on 30.05.2006 the petitioner left both the respondent and her father at Bus Stand, Bhatinda early in the morning and since then she has not turned up.

xiv) That on several occasions the petitioner told the father of the respondent about her unpredictable behaviour and disrespectful conduct, but the father of the respondent warned the petitioner of dire consequences of losing his job and being put behind bars.

xv) That a false case bearing FIR No.53 dated 01.02.2007 u/s 498-A/406 IPC and Sections 5,6, 7 of the Dowry Prohibited Act was registered against him and his mother at P.S.Civil Lines, Hisar in order to harass and humiliate them.”

The respondent contested the petition. She denied all the allegations, which according to the appellant constituted cruelty or desertion. According to her, the appellant never had any complaint

regarding her behaviour during the period they stayed together. She remained busy doing household work most of the time and was also highly conscious of keeping good personal hygiene and always held the appellant in high esteem as husband. When the appellant was posted at Madhopur, she started working as a teacher in the Army school and they were living happily. But, from the very first day, her mother-in-law Sushila Poonia arrived at Madhopur, she started fouling up her relationship with the appellant by taunting her for bringing less dowry. She even abused and gave beatings to her. She and the appellant demanded that she should go to her parental home and bring Rs. Ten lacs as dowry from her father.

To provide her (respondent) some relief, her father took her to Hisar on 5.1.2006 with the permission of her husband and mother-in-law. She returned on 27.1.2006 and noticed no change in the cruel behaviour of the appellant though he had been given Rs.1.7 lacs by her parents when they had come from Hisar. He insisted on his demand of Rs.10,00,000/-. Frustrated and angry on non-fulfillment of his demand the appellant called her father on 30.5.2006 and mocked and laughed at her. On 31.5.2006 keeping all her jewellery, dresses and cash with them, the appellant pushed her and her father out of the marital home.

As regards registration of criminal case against the appellant and his mother, she submitted that the case was registered on

the direction of the Court and the charge sheet has been presented against them.

The submissions made by Mr. Sandeep Bansal, Advocate representing the appellant and Mr. Ishwar Singh, Advocate for the respondent have been heard and record perused.

At the very outset, learned counsel for the appellant -husband argued that certain specific instances were quoted by the appellant to substantiate his allegation that the respondent-wife had treated him and his family members in a most harsh and disrespectful manner. The misbehaviour of the respondent caused mental cruelty to the appellant and also adversely effected his health. After she left the matrimonial home on her own accord, she gave false applications to the police alleging that she was being maltreated by the appellant and his mother on account of demand of dowry. The police held an enquiry into her allegations and finding the same false rejected her application. She then filed a complaint before the Court, levelling same false allegations, on the basis of which, First Information Report No.53 dated 1.2.2007 was registered against the appellant and his mother under Sections 406/498-A of the Indian Penal Code and Sections 5 & 6 of the Dowry Prohibition Act. The anticipatory bail application of the appellant was dismissed by learned Additional Sessions Judge, Hisar and it was in CRM-M-17445-2007 filed before this Court that the appellant was released on anticipatory bail vide

order dated 20.3.2007. Thereafter, the appellant had to undergo the agony of facing criminal trial but ultimately fortunate for him when the allegations of the respondent were found to be unfounded and false, he was acquitted of the charges levelled against him by learned trial Court vide judgment dated 26.10.2013. The respondent preferred an appeal against the judgment of acquittal but that too was dismissed by learned Additional Sessions Judge, Hisar vide judgment dated 3.9.2014. Relying on the pronouncement of Hon'ble Apex Court in **K.Srinivas Rao vs. D.A.Deepa, 2013 (5) SCC 226** learned counsel contended that besides all other instances of cruelty, filing false criminal complaints against the appellant by itself constituted matrimonial cruelty by the respondent.

Controverting the arguments of learned counsel for the appellant, learned counsel for the respondent submitted that as far as initiation of criminal proceedings is concerned the appellant had been no exception. He had also filed a criminal complaint against the respondent alleging that she had filed a false affidavit before the Army authorities for seeking maintenance out of the salary of the appellant, but his complaint was dismissed. His plea that he had been subjected to mental cruelty because of the criminal case got registered by the respondent loses significance when he himself was causing same mental cruelty to the respondent by filing false criminal complaints against her. Relying emphatically on the findings of learned trial

Court, learned counsel for the respondent urged that it was rightly held by learned trial Court that the appellant could not establish his allegations of cruelty and desertion against the respondent.

As postulated under Sections 13(1)(ia) of the Act of 1955, a matrimonial tie between the parties can be dissolved by a decree of divorce on the ground that the complaining spouse had been treated with cruelty by the other spouse. The word “cruelty” used in the said provision has not been defined in the Act of 1955, however, it has been used in relation to human conduct, human behaviour and in respect of matrimonial duties and obligations.

Elaborately analysing the expression “cruelty” as a ground of divorce under the Act of 1955, the Hon'ble Apex Court held in **Vidhya Vishwanathan vs. Kartik Balakrishnan, 2014 (4) RCR 563** as under:

“13. In **Vinita Saxena vs. Pankaj Pandit (2006) 3 SCC 778** regarding legal proposition on aspect of cruelty has made the following observations:

“31. It is settled by a catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the section. It is to be determined on whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such wilful treatment of the

party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case.

32. The word “cruelty” has not been defined and it has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.”

In the case in hand, it was recited by the appellant in his pleadings that the respondent had filed a criminal complaint on the basis of which, First Information Report No.53 dated 1.2.2007 was registered under Sections 406/498-A of IPC and Sections 5 & 6 of the Dowry Prohibition Act against him and his mother. The allegation of the respondent was that the appellant demanded huge amount as dowry and as she was unable to fulfill the demand he treated tortured

and maltreated her. Admittedly, the trial in the said criminal case resulted in acquittal of the appellant by learned trial Court by virtue of judgment dated 26.10.2013 as the prosecution failed to prove the aforesaid allegation. The respondent preferred an appeal assailing the judgment of acquittal but her appeal was dismissed by learned Additional Sessions Judge, Hisar vide judgment dated 3.9.2014. She did not prefer a revision petition against the judgment of learned Additional Sessions Judge, Hisar and the same has since attained finality.

In K.Srinivas vs. K.Sunita 2015(1) RCR (Civil) 38

Hon'ble Supreme Court 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.”

Undisputably, the respondent filed a complaint against the appellant and his mother levelling allegation that they were maltreating her on account of their demand for additional dowry in the shape of Rs.10 lacs. The appellant faced trial and the said specific allegation was held to be false by learned trial Magistrate as well as in appeal by learned Additional Sessions Judge. The concurrent findings of both the courts, which have become final between the parties, indicate that the respondent knowingly manufactured false allegations to embarrass and incarcerate the appellant and his family members. Even one such complaint which is found to be false is sufficient to constitute matrimonial cruelty.

For the reason that the appellant also filed a criminal complaint against the respondent alleging that she had filed a false affidavit before the Army authorities seeking maintenance and that complaint was dismissed, would not nullify/ condone the mental cruelty faced by the appellant on account of registration of a false criminal case under Sections 406/ 498A of IPC and Sections 5 & 6 of the Dowry Prohibition Act against him and his mother on the complaint of the respondent. At the most that would give a reason to

the respondent as well to plead that she too had faced mental cruelty at the hands of the appellant. In addition to the above, the appellant in his deposition had also mentioned specific instances where because of the behaviour of the respondent, he felt harassed and humiliated. It was a consistent stand of the respondent that the primary cause of her separation from her husband- appellant was her mother-in-law and her husband's unacceptable greed for dowry, for which she had been subjected to physical and mental cruelty. However, as already observed above the said allegation has been found to be false by the court of law. It being so, there remains no reason to disbelieve the plea of the appellant that because of the harsh behaviour of the respondent, it was no longer possible for him to live with her under the same roof.

It has been authoritatively held by the Hon'ble Apex Court in **K.Srinivas Rao's case (supra)** and a Division Bench of this Court in **Imlesh vs. Amit AIR 2014 (P&H) 89** that where the wife files a false criminal complaint against the husband and his family members under Sections 406, 498-A of IPC, which results in their acquittal, this act of the wife would tantamount to mental cruelty and the husband would be entitled to a decree of divorce under Section 13(1)(ia) of the Act of 1955.

Considering the overall facts and circumstances of the case, there appears no ground to uphold the findings of learned trial Court. As a result, the appeal is allowed and the judgment and decree

dated 10.9.2012 passed by learned trial Court is set aside holding that the respondent had caused matrimonial cruelty to the appellant-husband and on that ground the marriage between the appellant and the respondent is dissolved by a decree of divorce leaving the parties to bear their own costs.

(M.JEYAPPAUL)
JUDGE

(SNEH PRASHAR)
JUDGE

11.7.2016
gsv

Note: Whether to be referred to the Reporter? Yes/No