

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

FAO-M 175 of 2016 (O&M)

Date of Decision: September 14, 2018

Kulwinder Rani

.....Appellant

Vs.

Rajinder Parshad

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL.

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Present: Mr.Amit Kumar Saini, Advocate for the appellant.

Ms. Abha Rathore, Advocate for the respondent.

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M.M.S. BEDI, J.

The appellant -wife has filed this first appeal against the decree of divorce granted to the respondent- husband vide judgment and decree dated January 21, 2016.

Briefly stated the respondent had filed a petition for dissolution of marriage by decree of divorce under Section 13 of the Hindu Marriage Act, for short 'the Act', claiming that the marriage was solemnized on February 5, 1998 and after marriage a male child Dikshant Chawla was born on September 23, 2002. The appellant treated the respondent with mental cruelty. Two months after the marriage the respondent- husband left for Canada and in his absence the appellant started misbehaving with the parents of the respondent and she started treating them with cruelty. The behaviour

of the appellant was cruel to the mother of the respondent as such his mother committed suicide on June 15, 1998. The maternal uncle of respondent was in Germany at that time. He lodged a complaint with the authorities in India from Germany that his sister has committed suicide on account of the conduct of the appellant. The investigation was conducted in the suicide of the mother of the respondent. All the persons connected with the family held that the appellant was responsible for abetting the commission of the suicide by the mother of the respondent. In order to save the skin from criminal prosecution, the appellant sought pardon from the people of mohalla. Appellant also felt sorry for her act. The respondent and his father consoled themselves with the hope that better sense might prevail with the appellant and things might improve. The respondent had to go back to Canada for his job. The appellant expressed her desire that she should be allowed to keep her younger sister, namely, Nikka in the house at Garhshanker because her father was not in a position to give education to her due to paucity of funds. The respondent agreed to this and spent huge amount on the welfare, maintenance and education and other necessities of the family of the appellant. When the respondent reached Canada, he arranged for the immigration of the appellant to Canada. The appellant lived in Canada happily for few days but later on she started troubles for the respondent with a motive that her entire family should be called to Canada. The respondent was not in a good financial position to sponsor the entire family of the appellant. The respondent had requested the appellant that she should undertake a job but she did not care. Thereafter the appellant started pressurizing the respondent for going back to India permanently. The

respondent had to yield to the pressure and they came back to India in 2000. A male child was born on September 23, 2002. After the birth of the child, the appellant had gone to Garhshankar and resumed cohabitation but she started misbehaving and maltreating the father of the respondent. The appellant raised a categoric demand that the entire family property of the respondent should be transferred in her name and threatened that failure to do so can result into serious consequences. Thereafter the appellant got a false case registered against the respondent and his father. The father of the respondent could not bear this act of the appellant as such he suffered brain stroke in July 2004 and ultimately died on November 9, 2004. The death of the father of the respondent is attributed to the appellant on account of the mental cruelty caused by her to the respondent. A criminal case bearing FIR No. 75 dated June 5, 2004 which was got registered by the appellant was cancelled by the Court of Sh.Harjinder Pal Singh, SDJM, Garhshanker. On August 8, 2011 at about 12.40 PM, the respondent appeared before the Court of Sh.A.S. Virk, ADJ, Ludhiana, and in the Court itself the appellant insulted the respondent by using derogatory language against him and his sister Santosh. The respondent requested the Presiding officer that the conduct of the appellant in the Court had caused cruelty to the respondent. The appellant got enraged in the Court and started abusing the respondent. The appellant assaulted and slapped the respondent in presence of the Presiding Officer. The conduct of the appellant was condemnable. The respondent moved an application on the same day i.e. August 8, 2011 but no reply was filed by the appellant. The appellant filed an affidavit dated November 18, 2011. She was cross-examined on January 4, 2012. The

appellant made a false statement that the respondent was involved with a girl, namely, Jasbir Kaur @ Jassi. Appellant also made statement on oath that the respondent had illicit relations with Jasbir Kaur @ Jassi. Respondent also took up the plea that the appellant had deserted her since June 3, 2004, two years immediately preceding the presentation of the petition for divorce.

The appellant contested the claim of the respondent for divorce by filing a written statement admitting that she was taken by the respondent to Canada where she lived with him for short period. It was the respondent who brought her to Samrala to see her parents and they lived and cohabited together. They stayed together at Samrala for a period of two months. The respondent and his family members were greedy persons. They have been pressurizing the appellant and her parents to give dowry and more money as per their high status in the society. The respondent and her parents used to taunt and pass remarks against the appellant that she had not brought adequate dowry up to their expectations. They were not satisfied with the dowry articles given to them by the parents of the appellant at the time of the marriage as such the appellant was treated with cruelty. The appellant was beaten mercilessly by them on June 3, 2004 and an attempt was made to kill her on that date by the respondent and his family members. Brother of the appellant Happy Kumar and his friend Malkit Singh saved her and she was admitted in Civil Hospital, Samrala. All the jewellery and other costly articles and cash were with the respondent. The respondent and his family members were demanding Rs. 3 lacs but the appellant opposed the said demand. An FIR No. 75 dated June 5, 2004 under Sections 307, 323, 498A,

34 IPC and under Sections 25/27 of the Arms Act for attempt to murder and cruelty was registered against the respondent and his family members but police officials did not conduct fair inquiry. The mother of the respondent had committed suicide on June 15, 1998 but it was not on account of any act attributable to the appellant. The uncle of the respondent had lodged a false complaint against the appellant. Mother and father of the respondent did not have cordial relations with each other. The respondent had gone back to Canada after the last rites of his mother. He did not take the appellant along just to harass her and to get rid of her. The appellant had no doubt gone to Canada but behaviour of the respondent did not change even in Canada. Respondent treated the appellant with utmost cruelty. It was claimed in the written statement that FIR was registered against the respondent and his father but no fair inquiry was conducted.

On the basis of the pleadings of the parties, the following issues were framed:-

- “1. Whether the respondent has deserted and treated the petitioner with cruelty without any sufficient cause? OPP.
2. Whether the petitioner is entitled to decree of divorce? OPP.
3. Relief.”

Issue Nos. 1 and 2 were decided together in favour of the respondent and against the appellant. The lower Court arrived at a conclusion that the appellant treated the respondent with cruelty and that she had deserted him for a period of more than 2 years before the filing of the

petition. Aggrieved by the judgment and decree of the lower Court dated January 21, 2016, the appellant-wife has preferred this appeal.

Counsel for the appellant Mr.Amit Kumar Saini has claimed that it has been wrongly held by the lower Court that the mother of the respondent committed suicide on account of cruel attitude of the appellant. No criminal case under Section 306 IPC or complaint had been filed against the appellant after the death of the mother of the respondent. The appellant had gone to Canada as the respondent had arranged immigration as such it would tantamount to the act under Section 13 B (1) of the Act. The appellant was compelled to leave the matrimonial home after she was given merciless beatings by the respondent and her father and an attempt was made to kill her. In this context, FIR No. 75 dated June 5, 2006 was registered under Sections 307, 323, 498A, 34 IPC and under Sections 25 and 27 of the Arms Act against the respondent and his father. But the respondent being an influential person had managed the investigation as such was able to procure a cancellation report. The father of the respondent had suffered brain stroke on July 20, 2004 as such he died on November 9, 2004. At that time, the appellant was not staying in the house of the respondent as such the allegation of the respondent that the appellant is responsible for the death of his father was ill-conceived. It has been submitted by counsel for the appellant that the respondent was using his influence to get the help of the police to harass the appellant and her family members. Learned counsel for the appellant has vehemently urged that the lower Court has wrongly held the appellant guilty of levelling false allegations of respondent having illicit relations with Jasbir Kaur @ Jassi. It

was only during the course of cross-examination of the appellant before the trial Court that the counsel for the respondent had asked the question to the appellant to which she replied that the respondent was having illicit relation with Jasbir Kaur. The fact of illicit relation has been cropped up only during cross-examination in response to the question asked by counsel for the respondent. So far as the incident of August 8, 2011 relied upon by the trial Court is concerned, counsel for the appellant has submitted that the such act, if any, was on the intentional provocation of the respondent to tease and harass the appellant.

Counsel for the respondent Ms.Abha Rathore has vehemently contended that the wrong allegations throughout had been levelled by the appellant against the respondent regarding which proceedings under Section 182 IPC were also initiated against her. She submitted that the marriage between the parties has broken down beyond any repair as such the order of the lower Court deserves to be upheld.

The lower Court while appreciating the evidence produced by both the parties arrived at a conclusion that the appellant has treated the respondent- husband with cruelty besides deserting him. The lower Court has drawn support from various judgments of the Supreme Court and High Court to form an opinion that physical violence is not only the criteria to constitute cruelty but a constant course of conduct inflicting immense mental agony and torture may constitute cruelty within the meaning of definition of cruelty under the Act. The trial Court held that the following acts of appellant constitute cruelty:-

- i) The appellant registered a false case against the respondent and his father which had created pressure as a result of which the father of respondent suffered brain stroke on July 20, 2004 which resulted in his death. The said action had left severe depression and mental tension on the mind of the respondent- husband. FIR No.75 dated June 5, 2004 under Sections 307, 323, 498A, 34 IPC and under Sections 25/27 of the Arms Act registered against the respondent and his father at Police Station Garhshankar in which the application Ex.P7/1 was filed by the respondent on December 28, 2004 which was inquired into and a report Ex.PAL dated February 7, 2005 was given on the basis of which SSP presented cancellation report before the SDJM. The appellant was summoned in the Court but she did not agree with the cancellation report, therefore, on February 9, 2006, SDJM, Garhshankar ordered re-investigation of the matter by the police. The allegations of appellant were found false ultimately as such cancellation report was accepted vide Ex.PW9/1 on April 27, 2007;
- ii) After acceptance of the cancellation report the State had lodged proceedings under Section 182

IPC against the appellant copy of which is proved on the record as Ex.P2. The appellant had got prepared agreement of sale Ex.P15 and receipts Ex.P-15 to P-17 fraudulently to establish that her brother Happy Kumar had sold a truck and tempo to pay a sum of Rs.8 lacs to the respondent. FIR No. 89 dated August 7, 2012 under Sections 465, 468, 471 IPC was registered against the appellant and her brother Happy Kumar for forging the agreements of sale for producing before the concerned authorities in order to take undue advantage and falsely implicating the respondent;

- iii) The appellant had given a false statement on oath in the Court that the respondent is involved with the girl, namely, Jassi who was tenant of the respondent. This act of cruelty on the part of the appellant was incorporated in the petition for divorce by amendment which was allowed by the High Court and the High Court had observed that if it is not proved by the appellant that the respondent was having an illicit relation with Jasbir Kaur @ Jassi then it would be treated as an allegation which would tantamount to cruelty with the husband. The appellant having failed to

substantiate the allegations, the same would constitute cruelty; and

- iv) The District Judge, Ludhiana had dismissed the transfer petition of the appellant on October 25, 2013 by making an observation that she was speaking in a loud and derogatory voice and had stated that the Court was favouring her husband.

Learned counsel for the appellant has vehemently urged that the above said reasons given by the lower Court for granting divorce to the respondent- husband are not sustainable. He has vehemently urged that the allegations levelled by the respondent that his mother committed suicide on June 5, 1998 on account of conduct of the appellant cannot be made a ground for constituting cruelty as the respondent had taken the appellant to Canada after the death of his mother and they remained there for a period of one year and came to India for good in March 2000. Even a male child was born on September 23, 2000 thereafter. So far as FIR No.75 dated June 5, 2004 under Sections 307, 323, 498A, 34 IPC and under Sections 25/27 of the Arms Act in which cancellation report was submitted is concerned, counsel for the appellant has submitted that the respondent- husband had given an application to SSP, Hoshiarpur by using his influence and got proceedings under Section 182 IPC initiated against the appellant- wife. In the said proceedings vide order dated July 21, 2011, Ex.R7, the appellant has been acquitted. The respondent- husband had filed an appeal against the said order of acquittal which was again dismissed vide order dated September 24, 2012 as such no benefit can be derived by the respondent for

the proceedings launched under Section 182 IPC against the appellant- wife. So far as FIR No. 89 dated August 7, 2012 which was got registered against the appellant wife and his brother is concerned, the appellant and his brother stand acquitted on April 24, 2018. A certified copy of the said judgment has been placed on record as Annexure WS-1. The case got registered by the respondent having resulted in acquittal of the appellant will establish that it is the respondent who had been registering criminal cases against the appellant-wife causing mental harassment. So far as the death of father of the respondent is concerned, counsel for the appellant has submitted that the said death has got no connection with the appellant as he had died a natural death.

Counsel for the appellant has also argued that the appellant-wife had not levelled any allegation of illicit relations of the respondent/husband with the alleged girl Jassi in her written statement. No such averment was made in the examination-in-chief by the appellant. The respondent- husband had also not taken up the plea of cruelty on the ground of any false allegation. He got the said plea incorporated by way of amendment. It was urged that as a matter of fact the question of illicit relation was put to the appellant- wife specifically in the form of questions to which she had replied on the basis of her knowledge. In said circumstances, the appellant- wife was not required to prove the alleged fact of illicit relation by producing witnesses as it was neither a part of her pleadings in the written statement nor she had stated such thing in examination-in-chief as such the respondent cannot claim that he had suffered cruelty on the basis of any false allegations of adultery against the respondent. The respondent-

husband had filed a criminal Complaint No. 23/ 09.04.2005 under Sections 306, 379, 193, 194, 506, 120-B IPC against the appellant - wife and her family members which ultimately resulted in the acquittal of the appellant on August 19, 2009. On account of respondent- husband having filed a complaint in the year 2004 which remained pending till 2007, the wife was prevented to join the company of the appellant. She cannot be said to have deserted the respondent as she never had any intention to desert him.

Counsel for the respondent Ms.Abha Rathore has vehemently urged that registration of false FIR Ex.P1 and the cancellation report Ex.PAL which ultimately resulted in initiation of proceedings under Section 182 IPC against the appellant are indicative of the harassment caused by the appellant- wife as a result of which his father suffered a stroke and died. Counsel stated that the mother of the respondent had committed suicide on account of conduct of the appellant regarding which a case of suicide had been registered. She also urged that the appellant had levelled false allegations against the respondent by giving a false statement in the Court that the respondent was involved with a girl, namely, Jassi. In view of serious conduct of the appellant established on the record, the lower Court had rightly granted divorce to the respondent- husband.

We have heard learned counsel for the appellant as well as counsel for the respondent and considered their written briefs and re-appreciated the evidence produced on the record. In order to establish the acts of cruelty of the appellant, the respondent had produced evidence on the record by examining PW1 Kashmir Singh, PW2 Bakshish Singh, PW3 HC Rakesh Kumar, PW4 Amrik Singh, an employee of the Court, PW5

Ashwani Kalia, from Forensic Science Laboratory, Chandigarh, PW6 Constable Dalbir Singh, PW7 Mandar Singh Sandhu, SP, PW8 HC Pavinderjit, PW9 HC Harbhajan Singh, PW10 Dr. Vijay Pal Soni, PW 11 Harbhajan Singh, SP, HQ, Barnala, PW12 Kishan Chand, respondent himself appeared as PW13, PW14 Kulwinder Kaur, Junior Assistant, office of DTO, Ropar, PW14 (wrongly numbered) Talwinder Kumar, PW15 Rakesh Kumar, PW16 Paramjit Kaur, Clerk, DTO Office, Luhdiana.

On the other hand, the appellant has examined herself as RW1 and tendered her evidence in the shape of affidavit Ex. RA.

The respondent has made an attempt to establish the allegations of cruelty by deposing on oath in the shape of affidavit by stating that he was married to the appellant on February 5, 1998. A child was born on September 23, 2002. The appellant did not give any respect to his family members. The appellant did not do any house-hold work and used to remain out of the house for the whole day. The respondent had left for Canada, two months after the marriage as he was already working there but the behaviour of the appellant to mother of the respondent was not good as a result of which she committed suicide on June 15, 1998. The brother of the deceased had lodged a complaint that appellant was responsible for abetment of suicide. The respondent came from Canada and later on again left for Canada but in his absence the appellant used to manhandle his father. The respondent had come back to India permanently. The appellant had raised a demand for transfer of property of the respondent in her name and on account of respondent having failed to do so, the appellant got a frivolous case registered against the respondent and his father. Father of the

respondent could not bear the shock and suffered a brain stroke in July 2004 and died on November 9, 2004 on account of cruel behaviour of the appellant. The respondent stated that FIR No. 75 dated June 5, 2004 under Sections 307, 323, 498A, 34 IPC and under Sections 25/27 of the Arms Act was got registered by the appellant but was cancelled by the Court. The appellant used derogatory language against the respondent in the Court of Sh.A.S. Virk, Additional District Judge, Ludhiana at the time of hearing of the case. The appellant even assaulted the respondent in presence of the Court staff members and lawyers. The appellant made statement on oath that the husband was having illicit relations with Jasbir Kaur @ Jassi.

We have considered the statement of the respondent as well as the statement of PW1 Kashmir Singh and PW2 Bakshish Singh who have made an attempt to corroborate the allegations of the respondent- husband.

So far as the allegations of having caused mental cruelty by filing false criminal case against the respondent and his father vide FIR No.75 dated June 5, 2004 under Sections 307, 323, 498A, 34 IPC and under Sections 25/27/54/59 of the Arms Act is concerned, it is pertinent to observe here that the respondent has also not left any stone unturned in taking help of the police to harass the appellant. The respondent had filed an application for registration of Kalandra under Section 182 IPC and also got an FIR registered against the appellant and his brother bearing FIR No. 89 dated August 7, 2012 under Sections 465, 468, 471 IPC of forging agreements of sale and producing before the concerned authorities. In the said case also acquittal order has been passed against the appellant.

Since both the parties have been using the machinery of the police to harass each other and have been unsuccessful in seeking final order of conviction against each other, the respondent, in said circumstances cannot be permitted to take the benefit of his own wrong. In case the appellant is to be held wrong for lodging a case which could not result in conviction in the same manner the respondent is to be treated at par who had also lodged a criminal case which could not be proved beyond shadow of doubt against the appellant. Besides this the respondent had also used his influence to get proceedings under Section 182 IPC initiated against the appellant which also culminated in the acquittal of the appellant.

We have gone through the acquittal order of the appellant dated August 19, 2009 Ex.P-6 as well as the order Ex.R-7, dated July 21, 2011 which indicates the acquittal in proceedings for offence under Section 182 IPC. The appeal against Ex.R-7 filed by the respondent- husband was also dismissed vide order dated September 24, 2012. The revision petition was also dismissed by the High Court on May 18, 2016. The acquittal order passed in FIR No. 89 of 2012 has also been passed on April 24, 2018.

In view of the above circumstances, the grant of divorce to the respondent for lodging false FIR is not sustainable and deserves to be set aside.

It is pertinent to mention here that the wife- appellant cannot be held guilty of levelling a false allegation of adultery against the husband. The appellant had neither taken up the plea of involvement of the respondent-husband with Jassi in the written statement nor she had made any such allegation in her examination-in-chief. It was only with an objective to

extract the said allegation, the appellant was asked questions pertaining to Jassi. In said circumstances, it cannot be said that any prejudice has been caused to the respondent by the alleged allegation of the appellant. It is admitted fact that after suicide having been committed by the mother of the respondent, the appellant was actually taken to Canada which would tantamount to condonation of cruelty, if any, as per provisions of Section 23 (1) B of the Hindu Marriage Act.

Both the parties have been staying separately since long. There differences seem to have kept them apart, giving indication that the marriage has broken down but a broken marriage is no ground for grant of divorce as the legislation in its wisdom has not provided for granting divorce in case of a broken relationship. In the present case, the parties have been blessed with a child who presently is being maintained by the appellant. She cannot be attributed desertion warranting grant of divorce as the respondent has not been able to establish that the appellant ever had any intention to desert him or she had actually deserted the respondent. It was only on account of the allegation of each other that the parties indulged in criminal prosecution against each other which ultimately culminated into acquittal of both the sides.

In view of the above circumstances, the judgment and decree of the lower Court deserves to be set aside as the lower Court has formed wrong opinion on the basis of the appreciation of evidence regarding the cruelty and desertion by misconstruing the definition of cruelty.

The appeal is allowed. The judgment and decree of the lower Court granting divorce to the respondent is hereby set aside and the petition of respondent-husband for divorce is dismissed.

Decree sheet be drawn.

(M.M.S. BEDI)
JUDGE

September 14, 2018
sanjay

(ANUPINDER SINGH GREWAL)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.