

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

(220)

FAO-M-257-2016

Date of Decision: May 29, 2018.

Heena Rani

.... Appellant

Versus

Krishan Kumar

..... Respondent

**CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI
HON'BLE MR. JUSTICE HARI PAL VERMA**

Present: Mr. Kamal Chaudhary, Advocate, for the appellant.

Mr. G.L. Bajaj, Advocate, for the respondent.

M.M.S. BEDI, J (ORAL)

Record has been received.

Defence of the respondent is already struck off.

The appellant-wife has preferred this appeal against judgment dated 15.03.2016 passed by the District Judge, Chandigarh, dismissing her petition for dissolution of marriage by a decree of divorce with the respondent-husband.

Briefly stated the case of the appellant is that she was married to the respondent, who is 10-12 years older than her, under the compelling circumstances as she was having an affair with a boy belonging to Maur Mandi and had conveyed her affair to her parents. Instead of permitting her to marry with said person, she was married to the respondent without taking into consideration the age difference. It is further averred in the petition that the respondent and his family members started maltreating and torturing the appellant from the very beginning and was given merciless beatings a number of times as she had disclosed about her earlier affair to the respondent and his family members. She was not allowed to go out of her matrimonial house or to meet any one even in the neighbourhood and was kept locked in the house. She

used to remain alone in the house and did not have communication with any one including her husband. Besides the said cruelty, she was given merciless beatings with a sole purpose to humiliate her. She tolerated the said physical and mental torture expecting that the respondent would start treating her properly. It is further averred that the parents of the respondent created such circumstances that she was left with no alternative except to leave the house of respondent on 10.12.2012. She went to Patiala and thereafter came to Chandigarh and started residing at Chandigarh. She filed a petition under Section 125 Cr.P.C on 30.04.2013 which is still pending in the Court of Judicial Magistrate Ist Class, Chandigarh.

The respondent contested the petition challenging the jurisdiction of the Courts at Chandigarh attributing wrong to the appellant that she had withdrawn from the society of the respondent on 10.12.2012 whereas the marriage had been solemnized on 24.11.2012. He has admitted the fact that the appellant had an affair with a boy named Rahul Kumar prior to the marriage. The appellant had approached the High Court for protection by concealing her residential address after marriage to the respondent. The appellant is not ready to live with the respondent. He has levelled allegations that she has committed theft of gold ornaments about 12 tolas as well as Rs.65,000/- from the matrimonial home in connivance with Rahul Kumar and FIR No.319 dated 28.12.2012 was got registered at Police Station City Ferozepur under Section 366 IPC. The respondent claims that he has gone in depression on account of the conduct of the appellant. It is claimed that the proceedings under Section 125 Cr.P.C have been initiated merely to pressurise the respondent to agree to the divorce.

On the basis of the pleading of the parties, the lower Court had

framed the following issues:

- “1. *Whether the petitioner is entitled to seek divorce on the ground of cruelty? OPP.*
2. *Relief.*”

On appreciation of evidence produced, the learned District Judge, Chandigarh dismissed the petition observing that the allegations levelled by the appellant do not sound to be reasonable and that she was required to stand on her own legs and she cannot be permitted to take benefit of the fact that the respondent has not led any evidence in rebuttal.

The respondent in this case has led any oral evidence to justify his conduct. Legal presumption under Section 114 of the Indian Evidence Act would arise against the respondent as neither respondent nor any of his family members dared to appear before the trial Court to deny the allegations of cruelty to the appellant and to face cross-examination.

With the assistance of learned counsel for the appellant, we have gone through the evidence produced by the appellant to appreciate whether in the circumstances pleaded and on the basis of the evidence produced on the record, the respondent can be said to have maltreated the appellant warranting dissolution of marriage on the ground of cruelty.

The appellant herself had appeared as PW-1 and furnished her affidavit Ex.PW-1/A. In her affidavit, she has stated that she was maltreated and tortured by the respondent. She has pleaded that she had an affair with a boy belonging to Maur Mandi and had conveyed her affair to her parents. The said factual circumstance was being used by the respondent and his family members to maltreat her. The lower Court has arrived at a conclusion that material on the record is not sufficient enough to establish that she was maltreated or that there was any cruelty on the part of the respondent.

We have gone through Ex.PW1/A indicating that after her marriage she had filed a petition under Section 482 Cr.P.C for protection of her life and liberty claiming that she was forcibly married to the respondent which was not by her free consent but taking advantage of the same, her in-laws were maltreating her. The manner in which she was married to the respondent, is mentioned in her petition in detail. She has also appended with her petition her representation before the Senior Superintendent of Police, Bathinda, Ferozepur disclosing her story of maltreatment. The judgment of the High Court Ex.PX-2 indicates that Single Bench of this Court, had, disposed of the petition after an assurance was given by the State that her life and liberty shall be protected.

The lower Court has not considered the above said circumstances and dismissed the petition on conjectures and surmises.

The act of cruelty of the respondent is also indicative from the circumstances mentioned by the appellant in her petition under Section 125 Cr.P.C, copy of which is Ex.PX-4 on the lower Court record.

From the above said circumstances, it is established that the appellant was neither maintained properly nor she was fairly treated. She was given beatings as deposed by her. The cumulative effect of the circumstances established beyond any doubt that the treatment given to the appellant by the respondent is unbecoming of a prudent man. The act of the respondent had been an act of punishment to the appellant merely because she had disclosed truth having an affair with one Rahul Kumar. Written statement filed by the respondent is clearly indicative of the grievance of the respondent that the appellant had an affair with Rahul Kumar.

We have considered the contention of learned counsel for the respondent that the respondent is under mental depression on account of the appellant having left his company.

It is opt to notice here that on account of non-payment of interim litigation expenses ordered vide order dated 14.09.2016, the defence of the respondent had been struck off on 05.04.2018.

After considering all the facts and circumstances of the case, we are of the opinion that the respondent and his family members are responsible for not permitting the appellant to live peacefully in the matrimonial home as a result of which she was compelled to leave the matrimonial home on 10.12.2012.

The judgment of the lower Court, on issue No.1, in view of above circumstances, deserves to be set aside. It is held that the appellant has been treated with cruelty by the respondent and his family members and she was compelled to leave the matrimonial home by their conduct.

In view of above circumstances, finding of issue No.1 is reversed. The judgment and decree of the lower Court is set aside. The marriage of the appellant with the respondent is dissolved by a decree of divorce.

Appeal is allowed in above terms. Decree sheet be drawn.

(M.M.S. BEDI)
JUDGE

May 29, 2018.
harsha

(HARI PAL VERMA)
JUDGE

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