

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

**CR No.482 of 2019
Date of Decision: 04.02.2019**

JAGDEEP SINGH

...PETITIONER

Versus

SARABJIT KAUR

....RESPONDENT

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Rahul Rampal, Advocate for the petitioner.

Mr. Dinesh Kumar Prajapati, Advocate for the respondent.

B.S.Walia, J (Oral),.

[1] Challenge in the revision petition under Article 227 of the Constitution of India is to Order dated 05.01.2019, passed by the learned Additional Principal Judge (Family Court), Ludhiana, dismissing the application filed by the petitioner under Order 6 Rule 17 CPC for amendment of the divorce petition filed under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act').

[2] Brief facts of the case leading to the filing of the revision petition are that the petitioner filed a divorce petition under Section 13 of the Act for dissolution of marriage and grant of decree of divorce.

[3] During the pendency of the divorce petition, amendment of the petition was allowed. Thereafter, another application was filed for amendment of the divorce petition on account of subsequent events, which had come to the knowledge of the petitioner during the pendency of the divorce petition. The application for amendment was moved on two

grounds. One was for making amendment with regard to solemnization of the respondent's marriage with the petitioner on 27.03.2014 by concealing her earlier two marriages and secondly on account of the respondent having lodged FIR No.162 dated 11.09.2015 under Sections 354-A, 506, 294 IPC (and producing the same in her evidence as Exhibit R-2), levelling false and defamatory allegations of the petitioner having illicit relations with other women. Amendment was sought on the ground that the said allegations were totally false and that the respondent had intentionally levelled false allegations against the character of the petitioner in the divorce petition, by lodging FIR No.162 dated 11.09.2015 under Sections 354-A, 506, 294 IPC, which had been tendered by the respondent in her evidence as Exhibit R-2, as also by submitting an application to the Commissioner of Police vide UID No.800982 dated 15.08.2015, against the petitioner during the pendency of the divorce petition. Plea was that levelling of such false allegations had caused cruelty to the petitioner.

[4] Learned counsel for the petitioner has referred to the cross-examination of the respondent conducted on 06.12.2018, in which it was admitted that in FIR (Ex.R-2) it had been alleged that the petitioner was having illicit relations with other women but that she could not tell the names and/or addresses of the women referred to in the FIR with whom the petitioner was having illicit relationship. Relevant extract of the same is reproduced as under:-

“I have mentioned in my FIR Ex.R2 that petitioner have illicit relation with other women. I can not tell the name of those women and address of those women regarding whom I

mentioned in my FIR that petitioner has illicit relation with other women.”

[5] During the course of hearing, learned counsel for the petitioner stated that he confined his prayer for amendment only qua the allegations of cruelty on account of the respondent having registered the aforementioned FIR, as also on account of having moved an application before the Commissioner, raising false allegations of the petitioner having illicit relationship with a number of ladies but admitting in her cross-examination on 06.12.2018 that she was not aware of the name of any lady with whom the petitioner was having illicit relationship.

[6] *Per contra*, learned counsel for the respondent contends that the petitioner was aware of FIR dated 11.09.2015, as also the complaint to the Commissioner dated 15.08.2015 and the application for amendment was not based on any subsequent events, that evidence had already been led in the case therefore permitting the petitioner to raise allegations of cruelty at this stage should not be allowed.

[7] I have considered the submissions of learned counsel for the parties.

[8] The amendment prayed for was denied on account of the same having been sought belatedly besides the petitioner having failed to amend the petition despite earlier having sought amendment in January, 2016. In denying the amendment prayed for, the learned trial Court *inter alia* took into account that the respondent had never levelled allegations against the character of the petitioner in the written statement, that FIR No.162 was registered in the year 2015 alleging the petitioner having illicit relations with other ladies, therefore, the petitioner was fully aware of aforesaid

allegations, besides witnesses of the petitioner as well as of the respondent had already been examined and the case was at the stage of final arguments.

[9] I am afraid I am unable to agree with the reasoning of the learned trial Court. The cause for amendment arose on the basis of cross-examination of the respondent on 06.12.2018 and the respondent admitting of not being aware of either the names or addresses of the women with whom the petitioner was alleged in the FIR and in the complaint of 2015 to be having illicit relationship. Consequently, the application moved within few days after cross-examination of the respondent cannot be said to be delayed.

[10] No doubt, mere allegations of infidelity cannot be treated as mental cruelty. However, when the allegations of infidelity are proved to be false and vexatious they can be taken up as a ground for mental cruelty. Reference in this connection can be made to the decision of a Division Bench of this Court in 'Geeta Sharma versus Anil Kumar Sharma', 2015 AIR (Punjab) 16. Relevant extract of the same is reproduced as under:-

18. *The appellant did not bother to examine any of the persons who participated in the enquiry before the Women Cell and therefore there is nothing on record either to show that any independent person was associated at the time of enquiry or that he/she had witnessed any such thing alleged by the appellant regarding relation of the respondent with girl students. None of them was even called upon to be a witness on behalf of the appellant. This would give rise to the presumption that there was no one who could come forward to substantiate the allegations of the appellant. Making such*

serious allegation just for the sake of it and then not being able to prove it certainly subjected the appellant to mental cruelty. The respondent pleaded and also stated in his evidence that when he received the summons along with copy of application filed by the appellant under [Section 125](#) of the Code of Criminal Procedure, his students including one Ujjwal and Upinder Joshi were present who had read the same and the esteem of the respondent was lowered in the eyes of his students. Ujjwal, one of the students, was examined as PW3. He was subjected to cross examination wherein he stated that he was aware that two criminal cases were pending against the respondent, who was his teacher, one regarding demand of dowry and the other for maintenance allowance. He also maintained his stand that allegations levelled in the case of maintenance were that the present respondent was having illicit relations with female students and he was a vagabond. He stated that he had read the petition because he was present with the respondent when the latter had received the summons and copy. Thus, the respondent was able to prove that false allegation was levelled against him and he had to cut a sorry figure before his students. It is understandable that the respondent must have undergone tremendous agony on that count.”

[11] Admittedly, the FIR is dated 11.09.2015, while complaint to the Commissioner of Police by the respondent levelling allegations of infidelity against the petitioner is dated 15.08.2015 whereas the cross-examination of the respondent took place on 06.12.2018, in which as has been noted above, the respondent admitted that she could not tell the names and addresses of the women whom she had alleged her husband of having illicit relationships. The admission of being unaware of the names and

addresses of the women with whom the respondent had alleged her husband to be having illicit relations was made on 06.12.2018. In other words, it is on 06.12.2018 it can be said that the allegations of infidelity alleged by the respondent against her husband can be said to be without any basis. The petitioner immediately moved an application for amendment of the divorce petition, so as to incorporate plea of cruelty on the aforesaid basis. The amendment sought for are based on events, which are subsequent in time to the institution of the divorce petition besides are essential for determining the real question in controversy. Moreover, the amendment does not cause injustice to the respondent as the same is in line with her stand in the cross-examination, which is contrary to FIR dated 11.09.2015 and complaint to the Commissioner of Police dated 15.08.2015. Besides the respondent would have a right to file a reply to the amended divorce petition and take up all pleas as are available to her in accordance with law. Therefore, the amendment of the divorce petition to the extent as noted above ought not to have been denied by the learned trial Court in view of the decision of Hon'ble the Supreme Court in '**L.C. Hanumanthappa (Since Dead) Represented by his LRs** versus **H.B. Shiva Kumar**', 2016(1) SCC 332.

[12] In view of the position as noted above, the impugned order is modified and prayer for amendment of the divorce petition is allowed to the extent as noted above namely to add the plea with regard to cruelty in the light of allegations of infidelity subject to payment of costs of Rs.15,000/- by the petitioner to the respondent in order to adequately compensate the respondent for the delay likely to be caused in conclusion

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of the trial because of the amendment being allowed. However, nothing said in this order shall be taken as an expression on merits of the case. Accordingly, the revision petition is disposed of as above.

(B.S.WALIA)
JUDGE

February 04, 2019
‘Rajneesh’

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