

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

**FAO No.1017 of 2019 (O&M)
DATE OF DECISION : 20.12.2019**

Punita Soni

.....Appellant

Versus

Brijesh Kumar Verma

.....Respondent

**CORAM : HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present : Mr. Kartar Singh, Advocate,
for the appellant.

Mr. Surinder Gandhi, Advocate,
for the respondent.

KARAMJIT SINGH, J.

The instant appeal has been filed by the appellant-wife, against the judgment and decree dated 04.01.2019 passed by the learned Principal Judge (Family Court), Faridabad, vide which the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the HMA'), seeking dissolution of their marriage, was allowed.

The brief facts of the case are that marriage between the parties was solemnized on 04.02.2014 according to Hindu rites and ceremonies at Faridabad. No child was born out of this wedlock. After the marriage, the act and conduct of the appellant-wife was very rude and abnormal towards the respondent-husband and his family members. Appellant-wife used to talk to someone late in the night hours and when respondent-husband asked about the same, she never gave satisfactory reply. Appellant-wife insisted

the respondent-husband to live separately at Gurgaon in a rented accommodation. Appellant-wife also threatened the respondent-husband and his family members that she would commit suicide or implicate them in a false dowry case, if they interfered in her lifestyle. The marriage between the parties was solemnized under pressure of filing of a false complaint against the respondent-husband by the appellant-wife on the allegations of rape. Even after marriage, appellant-wife had extra marital relationship with her ex-boy friends. On 11.05.2014, appellant-wife along with her brother left the house of the respondent-husband. On 22.12.2014, appellant-wife lodged false FIR No.742 under Sections 498-A, 406, 506 and 34 IPC. On 24.12.2014, she lodged another false FIR No.782 under Sections 376, 323, 342, 324 and 506 IPC against the respondent-husband, in which he was acquitted of the charges and the appeal filed by the appellant-wife was also dismissed. During trial, appellant-wife and her father brutally assaulted and beaten the respondent-husband in the parking area of the court complex for which a case under Sections 107 and 151 Cr.P.C was registered against each other. All the efforts for reconciliation had failed. Hence, the respondent-husband filed the petition under Section 13 of the HMA, seeking decree of divorce on the grounds of cruelty and desertion.

The petition was contested by the appellant-wife, who filed written statement in which, it was admitted that the marriage between the parties was solemnized on 04.02.2014 and no child was born out of this wedlock. However, appellant-wife while denying all other allegations levelled against her and praying for dismissal of the petition, submitted that she is ready to join the conjugal company of the respondent, in case

respondent-husband assures to keep her nicely. She also pleaded that after her engagement, the respondent-husband forcibly developed physical relations with her, prior to their marriage. She also lodged complaint against him with the police on 04.11.2013 but thereafter, the matter was compromised and they performed marriage on 04.02.2014. However, in the matrimonial home her husband maltreated her and finally, she was thrown out of the matrimonial home on 11.05.2014. All the efforts for settlement of the dispute failed. Then, she lodged FIR No.742 dated 22.12.2014 under Sections 498-A, 406, 506 and 34 IPC against her in-laws. FIR No.782 dated 24.12.2014 was also got registered by her against her husband under Sections 376, 323, 342, 324 and 506 IPC. It was further pleaded that the divorce petition deserves to be dismissed.

From the pleadings of the parties, following issues were framed by the learned trial Court:-

- “1 Whether the petitioner is entitled to a decree of divorce on the grounds mentioned in the petition? OPP.
2. Whether petition is not maintainable? OPR.
3. Whether petitioner has not come to the court with clean hands? OPR
4. Whether petitioner has no locus standi and cause of action to file the present petition? OPR
5. Relief.

Respondent-husband himself appeared in the witness-box as PW1 and also examined Ram Avtar Verma as PW2. He also produced documentary evidence, i.e., Exhibit P1 to Exhibit P14 and Mark-A and

Mark-B.

On the other hand, appellant-wife appeared in the witness-box as RW1 and she also examined RW2-Deepak, who proved documents, Mark-RA, Mark-RB, Mark-RC and Mark-RD. During cross-examination of RW1, documents, Exhibits PX, PY and PZ and Mark-AX, Mark-PA/1, Mark-PA/2, were put to her by the opposite counsel.

After hearing learned counsel for the parties, the court of learned Principal Judge (Family Court), Faridabad, allowed the divorce petition.

Aggrieved by the said judgment dated 04.01.2019, the present appeal has been filed by the appellant-wife.

We have heard learned counsel for the parties and have perused the record carefully.

Learned counsel for the appellant-wife has assailed the impugned judgment on the ground that it was the respondent-husband, who was ill-treating the appellant-wife since beginning. It is contended that the parties got engagement on 03.12.2012 whereas, the marriage was performed on 04.02.2014 and even before the marriage the respondent-husband forcibly developed physical relations with the appellant-wife regarding which a complaint was lodged with the police by her. Thereafter, compromise was effected and finally the marriage between the parties was solemnized on 04.02.2014. Even after the marriage, respondent-husband kept on maltreating his wife and finally, she was turned out of the matrimonial home on 11.05.2014. All the efforts for reconciliation failed.

Only thereafter, FIR No.742 was lodged under Sections 498-A, 406, 506

and 34 IPC against the respondent-husband on 22.12.2014 and FIR No.782 was got registered under Sections 376, 323, 342, 324 and 506 IPC against the respondent-husband regarding the incident of sexual assault, which was committed on her by the respondent-husband after their engagement.

Learned counsel for the appellant-wife further contended that there is nothing on the record to prove that the appellant-wife ever committed any act of cruelty. While summing up his arguments, learned counsel for the appellant-wife submitted that the divorce petition filed by the respondent-husband deserves to be dismissed.

On the other hand, learned counsel for the respondent-husband submitted that false allegations of rape were levelled by the wife against the husband in FIR No.782 dated 24.12.2014. The respondent-husband was acquitted in the said criminal case on 10.11.2015. The appeal filed by the appellant-wife against the said acquittal was also dismissed by this Court on 30.03.2016. It is further argued that the appellant-wife also lodged false FIR No.742 dated 22.12.2014 under Sections 406 and 498-A IPC against the respondent. It is further contended that in the above-said criminal case under Section 376 IPC, the respondent-husband remained in custody for a period of more than one month. While concluding his arguments, learned counsel for the respondent-husband submitted that in the totality of above-said circumstances it stands proved that the appellant treated the respondent-husband with cruelty. It was urged that the appeal be dismissed.

We have considered the submissions made by learned counsel for the parties and perused the record carefully.

The parties got engaged on 03.12.2012. It is not disputed that

the marriage between the parties was solemnized on 04.02.2014, however, no child was born out of this wedlock. The parties are living separately since 11.05.2014.

It is admitted fact that FIR No.782 dated 24.12.2014 was registered by the appellant-wife against the respondent-husband under Sections 376 and 498-A IPC and the copy of the said FIR is Exhibit P4. In the said FIR, there were allegations that the respondent-husband forcibly developed physical relations with the appellant-wife prior to their marriage and the date, month and year of said physical sexual assault was given in the FIR. The respondent-husband was arrested in the said criminal case and lateron, he was released on bail. In the said criminal case, respondent-husband was acquitted on 10.11.2015 by the Court of Additional Sessions Judge, Gurgaon. The certified copy of the said judgment is Exhibit P9. The appeal filed by appellant-wife against the judgment was dismissed by this Court vide order dated 30.03.2016 (Exhibit P10). It appears that during the pendency of the said criminal case, the appellant-wife effected compromise with the respondent-husband and to that effect she gave an affidavit and on the basis of the said compromise, the respondent was granted regular bail on 12.02.2015.

It is admitted fact that the appellant-wife also lodged FIR under Sections 406 and 498-A IPC against the respondent-husband and the said criminal case is still pending.

There is no dispute regarding the proposition that legal course adopted by a wife to protect her rights cannot be considered as inflicting cruelty on the husband as has been held by the Hon'ble Apex Court in

Ravinder Kaur Vs. Manjeet Singh, 2019(4) R.C.R. (Civil) 174. The law with regard to lodging of criminal case and acquittal of the husband amounting to cruelty is also well settled. In this context, reference be made to **Satwant Kaur Vs. Baljinder Singh, 2017(3) R.C.R (Civil) 633,** wherein, the co-ordinate Bench of this Court held that it is settled principle of law that acquittal of the husband in a criminal case itself is a ground to presume cruelty at the instance of the appellant-wife. So, in the case in hand, the filing of the above-said rape case by the appellant-wife against her husband, in which he was finally acquitted amounts to mental cruelty.

So, in the present case, we have no hesitation in holding that the ground of cruelty stands fully proved against the appellant-wife.

Sequel of the above, the present appeal fails and is hereby dismissed. However, the parties are left to bear their own costs.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

20.12.2019
adhikari

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No