

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

FAO-M-264 of 2008 (O&M)

DATE OF DECISION : 18.12.2019

Jatinder Singh

...Appellant

Versus

Suman Devi

...Respondent

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

Present : Mr. Yadvinder Singh Turka, Advocate,
for the appellant.

Mr. Virender Kumar, Advocate,
for the respondent.

KARAMJIT SINGH, J.

The present appeal has arisen from the judgment and decree dated 28.07.2008 passed by the Additional District Judge, Karnal, vide which the petition filed by appellant-husband under Section 13(i)(ia)(ib) of the Hindu Marriage Act, 1955 (hereinafter referred as 'the HMA'), for dissolution of his marriage with the respondent-wife by a decree of divorce, has been dismissed.

In brief, the facts are that the marriage between the parties was solemnized on 22.05.1994, as per Hindu customs, rites and religious ceremonies, in village Phoosgarh, Tehsil and District Karnal, and out of this wedlock two children were born, who are presently living under the care and custody of the appellant-husband. The respondent-wife treated her husband and other members of his family with cruelty. She insisted her husband to shift to urban area. On this, the appellant-husband shifted to Karnal, where his father was having official accommodation in the local sugar mill. However, despite this, there was no change in the behaviour of the respondent-wife. She

levelled false allegations against her father-in-law that she made attempt to outrage her modesty. Then, again both the husband and wife started living in his parental house situated in the village but respondent-wife refused to discharge her marital obligations. In March 2002, the respondent-wife left the matrimonial home of her own while leaving behind her two minor children. All efforts made by the appellant-husband for her rehabilitation in the matrimonial home, failed. Hence, petition under Section 13 of the HMA was filed by the appellant-husband.

The divorce petition was challenged by the respondent-wife, in which the fact regarding marriage between the parties was admitted. The birth of two children out of their wedlock was also admitted. At the same time, it was pleaded that the appellant-husband raised demand of more dowry from her parents and also ill-treated her. On 03.05.2003, when both the parties were residing with her father-in-law in the colony of Sugar Mill, Karnal, her father-in-law tried to outrage her modesty but she managed to save herself. After the said incident, her husband used to beat her and demanded Rs.2,00,000/- and Hero Handa Motorcycle from her parents. On this, her father gave Rs.85,000/- to her husband. However, her husband was not satisfied and he again raised demand of balance amount and motorcycle and he also tried to kill her by adding poison in her milk. Thereafter, her father took her to his house and provided medical aid to her. All the efforts made by her and other members of her family for reconciliation, failed. It was denied that she treated her husband and in-laws with cruelty. It was prayed that divorce petition deserves to be dismissed.

The appellant-husband filed replication, whereby he controverted the assertions made by the respondent-wife in her written statement.

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

- (1) Whether the petitioner is entitled to decree of divorce on the grounds of cruelty and desertion?OPP
- (2) Relief.

The appellant-husband himself appeared in the witness box as PW1 and also examined his father-Ram Singh as PW3 and one Hari Singh as PW2.

On the other hand, respondent examined RW2-Yashpal Singh, RW3-Mahavir Singh, RW4-Mangat Ram and she herself appeared in the witness box as RW1.

After hearing learned counsel for the parties, the court of learned Additional District Judge, Karnal, dismissed the divorce petition.

Aggrieved by the aforesaid judgment and decree dated 28.07.2008, the present appeal has been filed by the appellant-husband.

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

Learned counsel for the appellant-husband submits that the respondent-wife used to treat her husband with cruelty. The various instances of the said cruelty were cited in the divorce petition. Even while appearing in the witness box, the appellant-husband narrated the said incidents of the cruelty. His father-Ram Singh and PW2-Hari Singh also corroborated the statement of the appellant.

Learned counsel for the appellant-husband further contended that false criminal case under Section 406, 498A, 354 and 506 of the Indian Penal Code (for short, 'IPC') was registered against the appellant at the instance of the

respondent. After trial, the appellant was acquitted in the said criminal case on 12.07.2011. Even, complaint filed by the respondent under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'Act of 2005'), against her husband was dismissed on 27.01.2015. The appeal filed against the said order was also dismissed by the appellate court on 03.10.2015. Learned counsel for the appellant-husband contended that the acquittal of the appellant in the aforesaid criminal case having FIR No.138 dated 26.05.2004 amounts to mental cruelty on the part of the respondent. Learned counsel for the appellant-husband while concluding his arguments contended that the divorce petition deserves to be allowed, accordingly.

On the other hand, learned counsel for the respondent-wife submitted that the learned court of Additional District Judge, Karnal, examined the entire evidence led by both the parties and rightly dismissed the divorce petition. It is further contended that evidence led by the parties shows that it was the husband, who treated the respondent with cruelty. On which, the respondent lodged FIR No.138 dated 26.05.2004 against him and complaint was also lodged by her against her husband under Section 12 of the Act of 2005. The learned trial Court correctly observed that the appellant cannot take the benefit of his own wrongs. While concluding his arguments, learned counsel for the respondent-wife contended that the appeal deserves to be dismissed.

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

There is no dispute regarding the fact that the appellant got married with the respondent on 22.05.1994 and out of this wedlock, two children were born, who are presently living under the care and custody of the

appellant-husband. Divorce petition has been filed by the appellant-husband on the ground of cruelty and desertion. The normal wear and tear of married life and minor quarrels between husband and wife cannot be termed as cruelty. It is clear that respondent-wife had not filed any divorce petition or petition for restitution of conjugal rights against her husband. She also never claimed the custody of her children, who are residing with the appellant-husband since their birth.

The respondent-wife has taken plea that she was subjected to cruelty by the appellant-husband, on which, she lodged FIR No.138 dated 26.05.2004, under Sections 406, 498A, 354 and 506 IPC at Police Station Sadar, Karnal. At the time of the arguments in the present appeal, learned counsel for the appellant produced certified copy of the judgment dated 12.07.2011 passed by the court of learned Judicial Magistrate Ist Class, Karnal, whereby, the appellant-husband was acquitted in the aforesaid criminal case, after the conclusion of trial. The certified copy of the order dated 27.01.2015 passed by the court of learned Chief Judicial Magistrate, Ambala, was also produced during the arguments. As per which, the complaint moved by the respondent-wife under Section 12 of the Act of 2005, was dismissed on merits. Even the appeal filed against the said order was dismissed by the Appellate Court on 03.10.2015 and the certified copy of the said order was also produced by the learned counsel for the appellant during arguments. There is no denial on the part of the opposite counsel regarding the passing of the aforesaid judgments. There is no bar to take judicial notice of the above-said judicial pronouncements, which have not been set aside till date.

In the criminal case having FIR No.138 dated 26.05.2004, which resulted in acquittal of the appellant-husband, his wife had levelled serious

allegations of physical torture and demand of dowry against him. In the said criminal case, respondent-wife also alleged that her father-in-law tried to commit rape upon her.

As per the law laid down by the Hon'ble Apex Court in **Civil Appeal No.8871 of 2019** titled as '**Rani Narasimha Sastry Vs. Rani Suneela Rani**' decided on 19.11.2019, it is open for the wife to file complaint or lodge prosecution for redressal of her grievance and mere lodging of complaint or FIR cannot be *ipso facto* treated as cruelty. However, when a husband undergoes a trial in which he was acquitted of the allegations of offence under Section 498A IPC, levelled by the wife against him, the same amounts to mental cruelty meted on the husband by his wife. So, in this case the ground of cruelty stands proved, as the aforesaid act of respondent-wife in filing the afore-mentioned criminal case against her husband amounted to mental cruelty.

In this case, marriage was performed on 22.05.1994 and the parties got separated more than 15 years back. The divorce petition was filed by the husband on 07.09.2005 and prior to that no petition for restitution of conjugal rights was moved by the respondent-wife. In the criminal case with regard to offence under Section 498A IPC, the respondent-wife failed to prove allegations of cruelty against her husband meaning thereby that she abandoned the appellant with an intention to bring cohabitation permanently to an end. She also did not bother about her children, who are residing with the appellant-husband since their birth. So, in this case, it also stands fully proved that the respondent-wife deserted the husband without any reasonable and probable cause.

Consequently, this appeal is allowed and the judgment and decree

passed by the learned trial Court are set aside and the divorce petition of the husband stands allowed. However, the parties shall bear their own costs and decree-sheet be drawn.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

18.12.2019
adhikari

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