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

**FAO No.4241 of 2013 (O&M)
Date of decision: March 28, 2019**

Narender Kumar ...Appellant

Versus

Smt. Neelam ...Respondent

**Coram: Hon'ble Mr. Justice Rakesh Kumar Jain
Hon'ble Mr. Justice Harnaresh Singh Gill**

Present: Mr. Suman Jain, Advocate,
for the appellant.

Mr. Manoj Sharma, Advocate,
for the respondent.

Rakesh Kumar Jain, J.

This appeal is directed against the judgment and decree dated 01.05.2013 passed by the Family Court, Sonipat, by which petition filed by the appellant under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as the "Act") for dissolution of his marriage by a decree of divorce on the ground of cruelty has been dismissed.

In brief, the marriage of the appellant was solemnized with the respondent on 16.02.1997 at Sonipat as per Hindu Rites and Ceremonies. They were blessed with a male child, namely, Anant, who was born on 05.08.2000 at village Bilaspur. The appellant has alleged that the respondent started treating him with cruelty as she refused to cook meals and forced him to live separately from his parents. As per him, the respondent used to call him

“Ghar Walo Ka Pithu” and “Nikkamma” etc. She had never given respect to the appellant nor to his family members as a result of which, his elder brother started living at Samalkha. So much so, his father also divided the properties between the brothers but even thereafter, behaviour of the respondent did not change as she refused to serve food and welcome his relatives and friends. The appellant got a job in USA but when he returned from there, he found that behaviour of the respondent is altogether changed as she started levelling allegation of demand of dowry against him and his family members. She made false complaint on 11.06.2004 to SDM, Samalkhan regarding demand of dowry, which was otherwise withdrawn on 01.10.2007. She had also created a drama of committing suicide, which was published in the newspaper “Dainik Jagran” on 13.11.2007. It is also alleged that the respondent made all possible efforts to cause mental and physical agony to the appellant and in this sequence, she lodged a false FIR No.349 dated 15.10.2008, under Sections 498A, 323 read with Section 34 IPC at Police Station Samalkha in which she levelled the allegation of demand of dowry against the appellant and his family members but the said FIR was cancelled by the police after investigation. It is further alleged that before the appellant could have left India for USA, the respondent had joined as a Teacher in the Government Senior Secondary School and used to live at her paternal home. The respondent also filed a complaint under Section 12 of the Protection of Woman from Domestic Violence Act, 2005 (hereinafter referred to as the “Act of 2005”), which was dismissed on 17.06.2010. It is also alleged that the appellant had filed a petition before the Circuit Court, Florida (USA) for seeking dissolution of his marriage but the said petition was filed. With these pleadings, the appellant

prayed for dissolution of his marriage on the ground of cruelty.

However, in the reply filed by the respondent, the aforesaid allegations were denied but it is admitted that at the time of filing of the petition, she was residing in the Housing Board Colony with her brother and mother. The appellant had completed his B. Tech. and the respondent was in possession of MA and B.Ed. degrees at the time of their marriage. The appellant had allegedly went to Banaras to complete his M.Tech. from the Banaras Hindu University and during this period, the respondent had allegedly supported the appellant. She has allegedly been thrown out from the matrimonial home by the father of the appellant when he was away for his studies. The appellant, without consulting or informing the respondent, had applied for job in USA and left her behind along with her minor son. The respondent has not denied that she had lodged FIR No.349 dated 15.10.2008 but it is alleged that the police, in collusion with the appellant, cancelled the FIR without even recording the statement of the respondent. It is also alleged that the petition filed by her under Section 12 of the Act of 2005 was dismissed by the JMJC, Panipat without even summoning the appellant.

The appellant had filed replication to the written statement filed by the respondent in which not only he reiterated the averments made by him in the petition but also denied the allegations made by the respondent in her reply.

On the pleadings of the parties, the Family Court framed two issues on 09.08.2011, in which issue no.1 was an omnibus issue, which was to be proved by the appellant qua seeking the decree of divorce. Both the parties led their oral as well as documentary evidence as the appellant and the

respondent had entered the witness box as PW1 and RW1 respectively and tendered various documents in support of their case. The main plank of the appellant for seeking the decree of divorce was the registration of false FIR case against him and his family members. The learned Family Court, while discussing the effect of the registration of the FIR, had observed that though the cancellation report was filed but at the time when investigation was conducted, the statements under Section 161 Cr.P.C. were recorded by the police of the family members of the appellant and not of the family members of the respondent, who was the complainant. The Court had also found that the cancellation report was not brought to the notice of the respondent-wife who had sought the information under Right to Information Act, 2005 (hereinafter referred to as the "Act") and lodged a protest petition, which has ultimately been treated as a private complaint and is still pending. It was observed by the learned Family Court that since the protest petition is still pending for adjudication and has been treated as private complaint, therefore, it would be premature to opine that the allegations levelled in the FIR by the respondent were false. Insofar as the allegations of the appellant that the respondent had resorted to his character assassination by sending objectionable SMS on his phone through her son that he was living with another woman in USA and also has a child. In this regard, the Family Court has held that the SMS were outburst of a son though at the instance or at the instigation of the respondent who have been left by the appellant for no fault on their part. Insofar as the allegation of desertion is concerned, the learned trial Court did not agree with the appellant and ultimately the petition filed by him was dismissed vide the impugned judgment, against which the present appeal has been filed.

The present appeal was admitted on 09.12.2014 and vide order dated 17.05.2018, it was ordered to be heard on merits along with an application filed under Section 24 of the Act. The Court had also tried to settle the dispute amicably between the parties and directed them to appear before the Mediation and Conciliation Centre of this Court but as per the orders recorded on the file, it is clear that the mediation had failed and, thus, the Court had passed an order that there appears to be no chances of compromise and posted the case for hearing on merits after clearance of the maintenance *pendente lite*.

Learned counsel for the appellant has also filed an application bearing CM No.24494-CII of 2017 to place on record the order dated 16.07.2015 passed by the SDJM, Samalkha, by which the protest petition filed by the respondent was dismissed. The said application was ordered to be considered with the main case vide order dated 20.11.2017 by this Court and has been considered during the course of arguments in the appeal and found that the additional evidence, which is sought to be brought on record through this application goes to the root of the case and is an order of the Court. Therefore, the application bearing CM No.24494-CII of 2017 is hereby allowed and the order of the SDJM, Samalkha dated 16.07.2015 is taken on record as Annexure A-1.

Learned counsel for the appellant has submitted that the very fact that the respondent had registered a false FIR against the appellant and his family members bearing FIR No.349 dated 15.10.2008, under Sections 498A, 323, 506/34 IPC at Police Station Samalkha, which was cancelled by the police and about which the learned trial Court had opined that since the protest

petition, converted into a private complaint, is still pending against the said cancellation report, it cannot draw a final conclusion as to whether the allegations made in the FIR were false or true, is now apparent from the fact that the said allegations were motivated as the protest petition has already been dismissed on 16.07.2015 vide Annexure A-1. It is further submitted by him that the said order dated 16.07.2015 has attained finality as it has not been challenged by the respondent. Further more, it is submitted that the SMS sent to the appellant from the mobile of his son at the instance of the respondent is an act of character assassination on the part of the respondent which has caused immense mental agony to the appellant, which tantamount to cruelty for the purpose of seeking a decree of divorce. It is further submitted that the petition filed by the respondent under Section 12 of the Act of 2005 was dismissed and even the respondent had tried to commit suicide which has come in the newspapers though it has not been accepted by the Family Court but all these facts cumulatively show that the respondent has caused so much of mental agony, embarrassment and harassment to the appellant which tantamount to cruelty. In this regard, learned counsel for the appellant has relied upon a Division Bench judgment of this Court rendered in the case of **Pushpinder Kaur vs. Thakur Dass**, FAO-M-406 of 2013(O&M), decided on 05.02.2015.

However, on the other hand, counsel for the respondent has submitted that the Family Court has taken into consideration the entire evidence led by the parties threadbare and found that investigation by the police in case FIR No.349 was totally casual as it had not even recorded the statements of the complainant and her family members; the petition under Section 12 of the Act of 2005 was dismissed on technical grounds; the

appellant himself was responsible for deserting the respondent as he had gone to USA leaving her behind along with her minor son; the allegation that the respondent had tried to commit suicide is not proved from the newspaper as there is no reference in it about the respondent; SMS were sent by her son due to frustration for which the respondent is not responsible and the plea of desertion raised by the appellant has failed. However, counsel for the respondent could not deny that the protest petition/private complaint filed by the respondent against the cancellation of the FIR has been dismissed by the SDJM, Samalkha vide order dated 16.07.2015, which has been brought on record as Annexure A-1.

We have heard learned counsel for the parties and perused the available record with their able assistance.

Section 13 of the Act lays down the grounds on which the marriage can be dissolved by a decree of divorce on a petition presented either by the husband or the wife. Section 13(1)(ia) providing the ground of cruelty and Section 13(1)(ib) is about desertion which should not be less than of a continuous period of two years immediately preceding the presentation of the petition. The word “cruelty” is not defined in the Act but it has been defined by the Courts by various pronouncements and it includes both “physical” and “mental” cruelty. In the present case, the appellant had prayed for the dissolution of his marriage alleging mental cruelty. In this regard, he has specifically referred to the FIR (Ex.P8), got registered by the respondent, not only against the appellant but also against his family members aiming of their punishment on account of demand of dowry and simple hurt etc. The FIR was investigated by the police but it did not find any substance therein and

accordingly submitted the cancellation report to the concerned Illaqua Magistrate. The respondent had filed a protest petition in respect of the investigation conducted by the police and the said protest petition was treated as a private complaint by the Court, which was to be proved by the respondent by leading evidence. The Family Court had though refereed to the FIR but refrained from making any opinion simply because of the reason that the protest petition was not decided. However, during the pendency of the present appeal, the protest petition was dismissed vide order dated 16.07.2015, which has been brought on record by the appellant by miscellaneous application as Annexure A-1. It is also not in dispute that the respondent did not challenge the order dated 16.07.2015 passed in the protest petition before any Court of law and as such, the said order had become final. Thus, once it has been held by the Court that the FIR was falsely registered, the Court has to assess the impact of the registration of false FIR for the purpose of deciding as to whether it constitutes the ground of "cruelty" for the purpose of grant of decree of divorce. In this regard, it would be relevant to refer to the fact that the marriage took place on 16.02.1997 and the demand of dowry was alleged with the registration of FIR on 15.10.2008. The allegation of demand of dowry has been made after expiry of a period of more than 11 years of the marriage. Not only this, the Family Court has also observed that the SMS sent to the appellant was an outburst of the emotions of her son though at the instance or at the instigation of the respondent who have been left by the appellant for no fault on their part. This kind of SMS which had attacked the character of the appellant also constitutes the ingredient of mental cruelty for which the appellant deserves a decree of divorce.

Thus, looking from any angle, it is a fit case in which interference by this Court is required for the purpose of setting aside the judgment and decree of the Family Court for grant of decree of divorce to the appellant. Accordingly, this appeal is hereby allowed, the impugned judgment and decree of the Family Court is set aside, though without any order as to costs, and a decree of divorce is granted in favour of the appellant.

(Rakesh Kumar Jain)
Judge

March 28, 2019
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(Harnaresh Singh Gill)
Judge

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No