

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

**FAO-M No. 456 of 2015 (O&M)
Date of Decision: 17.5.2019**

Sonia

.....Appellant

Versus

Ramesh

.....Respondent

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present:- Mr. Nonish Kumar, Advocate, for the appellant.

None for the respondent.

HARNARESH SINGH GILL, J.

Appellant-Sonia has preferred this appeal, challenging the judgment and decree dated 23.10.2015 passed by Additional District Judge, Kaithal vide which the petition filed by her under Section 13(1) (ia) of Hindu Marriage Act, 1955 ('Act' for short) was dismissed.

As per the case of the appellant-wife, she was married to respondent Ramesh on 19.3.2008. The parents of the appellant had spent Rs. 5 lakh in the marriage and had given sufficient dowry as per their custom and rites in the society. The marriage was consummated and out of the said wedlock, one son, namely, Himanshu was born, but unfortunately he died on 10.12.2011. As per the appellant-wife, the respondent and his family members were greedy persons. They used to tease and taunt her for bringing insufficient dowry. They also demanded Rs.1 lakh and a motorcycle but the appellant had expressed her

inability to fulfill their illegal demand. The respondent and his family members had given severe beatings to the appellant but she continued tolerating their cruelties with the hope that the things would become normal with the passage of time. However, the situation became bad to worse and ultimately, the appellant was turned out of the matrimonial home by the respondent and his family members on 10.12.2011.

It was further averred by the appellant-wife that the Panchayats were convened but the respondent and his family members were adamant on their illegal demand. Ultimately, an FIR under Sections 406, 498-A, 323, 506 read with Section 34 IPC was got registered by the appellant-wife in which the respondent and his family members are facing trial. All efforts made by the appellant and her parents to rehabilitate her went in vain.

The respondent in his written statement, while admitting the factum of marriage stated that the marriage was an Atta-Satta (exchange) marriage and thus, there was no question of raising the demand of dowry. It was further submitted that their marriage was solemnized in lieu of the marriage of the real sister of the respondent with Ramesh-cousin of the appellant-wife. It was further asserted that the mother of the appellant was having illicit relations with her uncle (Fufa) Gulab Singh, who had got sold all the properties of the father of the appellant and brought the parents of the appellant at village Kaul. Even the appellant had neglected the respondent and started ignoring him and also called him impotent. The appellant

failed to look after their son when he was ill and the respondent got him admitted in PGI, Chandigarh but because of the attitude of the appellant, the child died. Thereafter the appellant started living in adultery with Rakesh and became pregnant from his loins.

The lower Court after taking into consideration the oral and documentary evidence on record, has drawn the conclusion that the illicit relations as well as the subsequent marriage of the appellant had not been proved by the respondent. It was further found that the respondent-husband had failed to place on record any evidence to that effect. It was also found that none of the witnesses examined by the respondent-husband was the witness either to the second marriage or alleged delivery of the child. Even the allegations regarding the character of the mother of the appellant could not be established by the respondent.

The learned trial Court negated the plea of cruelty on the ground that the allegations levelled in this regard are of the period after 10.12.2011 i.e. the day on which the appellant-wife was allegedly turned out of the matrimonial home. It was thus, held that the subsequent events cannot be taken into consideration for granting a decree of divorce on the ground of cruelty.

Regarding cruelty, the Hon'ble Supreme Court in **A. Jayachandra versus Aneel Kaur, 2005 (1) R.C.R. (Civil) 309** has carved out the following points:-

“(1) Cruelty can be physical or mental, intentional or unintentional - Mental cruelty may consist of verbal

abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party - It may be words, gestures or by mere silence, violent or non-violent

(2) Cruelty should be wilful unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger.

(3) Proof beyond doubt, as in criminal trials is not required to prove cruelty.

(4) In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence - For proof of mental cruelty Court has to find out nature of cruel treatment, impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other.

(5) There may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal - Then the impact or injurious effect on the other spouse need not be enquired into or considered. AIR 1988 Supreme Court 121 relied.

(6) Whether the conduct of a spouse amounted to cruelty has to be considered in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions.

(7) Mere trivial irritations, quarrels between spouses, which happen in day- to-day married life, may also not amount to cruelty.

(8) The Courts do not have to deal with ideal husbands and ideal wives - It has to deal with particular man and woman before it - The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court. AIR 1975 Supreme Court 1534 relied.”

Thus, keeping in view the aforesaid settled law, the Court was required to take into consideration the entire facts including the factum of the allegations regarding the character of the appellant's mother, which could not be proved by way of leading any cogent and convincing evidence. Even the

allegations of second marriage and birth of the child from that marriage, levelled by the respondent-husband, against the appellant-wife remained un-established. This clearly shows that the respondent-husband is in the habit of raising totally false and frivolous allegations, including the allegations of character assassination.

Irrespective of the merits, it is pertinent to mention that during the pendency of the present appeal, vide order dated 20.9.2017, the respondent-husband was directed to pay to the appellant-wife maintenance *pendente lite* @ Rs.2,000/- per month and Rs.25,000/- as litigation expenses. However, as the maintenance under Section 24 of the Act was not paid, this Court on 2.11.2018 passed the following order on 2.11.2018:-

“Maintenance under Section 24 of the Hindu Marriage Act, 1955 was fixed by this Court vide order dated 20.9.2017. Thereafter, the respondent has been taking dates for the purpose of payment of maintenance and today also a request for adjournment has been made for the payment of maintenance. On the request of counsel for the respondent, last opportunity is granted to pay arrears of maintenance otherwise the appeal is decided accordingly.

Adjourned to 19.11.2018.

To be shown in the urgent list.”

On 19.11.2018, the respondent-husband did not appear and the case was adjourned for 11.12.2018.

When the respondent-husband failed to appear himself or even through his counsel and did not pay the maintenance pendent-lite and/or the litigation expenses, vide order dated 9.4.2019, his defence was struck off and the appeal was adjourned for 1.5.2019. Even on the said date, neither there

was any representation on his behalf, nor did he pay the amount of maintenance pendente-lite and/or the litigations expenses, as noticed above.

Thus, taking into consideration the above facts and circumstances, we are satisfied that the respondent-husband is evading appearance and abusing the process of law. No endeavour, whatsoever, has been made by or on behalf of the respondent-husband to pay the maintenance *pendente lite* and litigation expenses despite numerous opportunities were granted to him. Even after the defence of the respondent was struck off vide order dated 9.4.2019, the situation remained the same. The claim of the appellant-wife seeking dissolution of marriage by way of decree of divorce has been considered on the basis of records. Thus, the claim of the appellant is liable to be allowed for non-payment of arrears of maintenance and litigation expenses in view of the judgment of this Court in **Nirmal Kaur versus Kirpal Singh, FAO-M-371 of 2014, decided on 2.12.2017**, wherein it has been held as under:-

“24. In view of the above, it is held that non-payment of maintenance pendente-lite and/or litigation expenses by the spouse, as ordered or directed by the Court, despite opportunity having been given, would amount to wrong within the meaning of Section 23 of the H.M. Act leading to the conclusion that the said spouse is taking advantage of his/her own wrong disentitling the said spouse the relief claimed under the H.M. Act.”

Similar view was taken by this Court in **Naresh Kumari versus Ajay, 2018(4) R.C.R. (Civil) 731**.

Once, the respondent-husband has willfully failed to pay the maintenance pendente-lite and the litigation expenses leading to the striking off his defence, he does not have any right to be heard. The respondent-husband's conduct in evading the process of the Court and the orders passed, apart from being contemptuous, disentitles him to claim any relief.

Accordingly, the appeal is allowed. The judgment and decree dated 23.10.2015 passed by Additional District Judge, Kaithal, is set aside; the petition filed by the appellant-wife under Section 13(1) (ia) of the Act is allowed and the marriage between the parties is dissolved by a decree of divorce.

Decree sheet be prepared accordingly.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

May 17, 2019

Gurpreet/DS

Whether speaking /reasoned : Yes
Whether Reportable : Yes