

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

FAO-M-266-2017 (O&M)  
Date of Decision: 28.2.2019

Veenu Bahri

.....Appellant

Versus

Hemant Bahri

.....Respondent

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

Present: Mr. U.K. Agnihorti, Advocate, for the appellant.

Mr. Gobind Dhanda, Advocate, for the respondent.

**Harnaresh Singh Gill, J.**

The instant appeal filed by the appellant-wife is directed against the judgment and decree dated 18.9.2017, passed by the learned Additional District Judge, Panchkula, whereby petition filed by the respondent-husband under Section 13(1)(i)(ia) of the Hindu Marriage Act, 1955 (for short 'the Act'), has been allowed and the marriage between the parties stood dissolved by a decree of divorce.

The brief facts of the case are that the respondent-husband had filed a petition under Section 13(1)(i)(ia) of the Act, for grant of decree of divorce, by averring therein that the marriage between the parties was solemnized on 2.7.2007 at Kalka as per Hindu rites and ceremonies. The respondent-husband was having a Karyana shop at Rajipur and was residing in his father's house, whereas the father of the respondent-husband was doing service at Kiratpur Sahib.

Respondent-husband's mother would stay sometime with the

respondent and sometime with his father. The elder brother and sister-in-law of the respondent were living separately in Mahadev Colony at Surajpur. The respondent-husband was taunted by the appellant-wife that he was younger to her in age and was an illiterate. The appellant-wife used to go to her parental house without informing the respondent-husband. She had left the matrimonial home on 4.12.2007 and when respondent-husband's parental uncle went to bring the appellant back, she had put a condition that she would only come back, if the mother of the husband would go to his father's place at Kiratpur Sahib and that the house of the respondent-husband is transferred in her name. The appellant-wife had filed a complaint under Section 156(3) Cr.P.C. against the respondent-husband, his parents, brother and sister-in-law, as a result whereof FIR No. 4 dated 2.1.2008 under Sections 323, 504, 406, 498-A, 506, 120-B IPC was registered at Police Station Pinjore. However, on investigation, brother and sister-in-law of the respondent-husband were found innocent.

During the trial of the said case, appellant-wife filed an application stating therein that she had illicit relations with one Satya Pal Singh Chauhan (who was impleaded as respondent No.2 in the divorce petition) for the last five years. Vide order dated 20.12.2013 passed by learned Sub Divisional Judicial Magistrate, Kalka, the respondent-husband and his parents were acquitted of the charges framed against them, holding that the prosecution had failed to prove that any cruelty

had been caused to the appellant-wife, by the respondent-husband or his parents on the allegations of bringing less dowry.

The appellant-wife had filed her written statement admitting the factum of the parties being husband and wife. It was stated that the respondent-husband and his parents had started harassing and taunting the appellant for having brought less dowry. Apart from having given articles and gifts on the occasions of festivals, the appellant-wife had also brought an amount of Rs.20,000/- and gave the same to the respondent-husband. It was further alleged that the respondent-husband had raised a demand of a Maruti Car, but when the appellant refused to accede to the said demand, on 8.11.2007, her mother-in-law and her sister-in-law caught hold of her and dragged her in the house. A Panchayat was convened on 18.11.2007, but the respondent-husband and his family members did not accede to the proposal of the Panchayat. As regards Satya Pal Singh Chauhan (respondent No.2 in the divorce petition), it was stated that he had been engaged as a counsel by the appellant-wife, but later on he returned the brief and refused to represent her before the Court. There was a collusion between respondent-husband and said Satya Pal Singh Chauhan. She had, in fact, alleged molestation at the hands of Satya Pal Singh Chauhan and had submitted a complaint against him to Deputy Commissioner of Police, Panchkula.

Respondent No.2 also filed his written statement contending therein that he had no concern with the matrimonial proceedings of the parties. It was further stated that

though the appellant-wife had submitted a complaint against him to the Deputy Commissioner of Police, Panchkula, but on inquiry, the complaint was found to be false. Thereafter, she had filed a complaint before Senior Superintendent of Police, Ajitgarh, which was also found to be false and so was the fate of the complaint filed before the Area Magistrate, Dera Bassi.

On the basis of the pleadings of the parties, the learned trial Court framed as many as four issues.

In order to prove his case, the respondent-husband (petitioner before the trial Court) stepped into witness box as PW1, besides tendering into evidence various documents in the form of Exhibits P.1 to P.6 and Ex.PA.

On the other hand, appellant-wife appeared as RW1 besides documentary evidence in the shape of certified copy of the criminal appeal filed by her against the respondent-husband and his parents.

While adjudicating upon Issue No.1 – “Whether petitioner is entitled for divorce on the grounds of cruelty and adultery?, the learned trial Court on the basis of the evidence on record and after hearing the counsel for the parties, had held that though there was no scientific formula or gadget or any specific yardstick nor the Court is supposed to penetrate into the minds of the husband and wife to hold whether the appellant-wife had treated the respondent-husband with cruelty, yet the two instances, which were held to be amounting to cruelty noticed by the learned trial Court, were registration of a criminal case by the appellant-wife against the respondent-

husband and his parents, their subsequent acquittal by the trial Court and further the appeal against the said judgment of acquittal having been dismissed by the learned Additional Sessions Judge, Panchkula and the appellant-wife leading an adulterous life. The learned trial Court has, thus, held as under:-

“26. Furthermore, respondent No.1 had filed a criminal case bearing FIR No. 4 dated 2.1.2008 under Sections 323, 504, 406, 498-A, 506 and 120-B IPC against the petitioner and his parents and vide judgment dated 20.12.2013 Ex. P.1, they were acquitted by the learned trial Court giving reference of admission of respondent No.1 regarding her illicit relations with respondent No.2. Hence, filing of false complaint against the husband and his family members which ended in their acquittal, is itself a solid ground to grant relief of divorce as it is extreme mental cruelty to the husband. The case law cited by learned counsel for the petitioner are fully applicable to the facts of the present case.

27. No doubt mental cruelty has not been defined anywhere in the Act, but through catena judicial decisions, mental cruelty means that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for the injured party to live with the other. In the present case, by living adulterous life and by launching false criminal proceedings against the petitioner and his family members, respondent No.1 has committed mental cruelty upon the petitioner which undoubtedly caused immense pain and anguish to the husband and it is not expected that after that the husband would forget everything and would start living with his wife. It is settled by catena of decisions that mental cruelty can cause more serious injury than the physical one. It cannot be accepted that in order to hold that a party is entitled to divorce on the ground of cruelty there should be danger to life, limb or health or which could cause reasonable apprehension of

such danger as contended. Mental cruelty also comes with the definition of cruelty under Section 13 of the Act. Thus, there being enough evidence to establish that the petitioner and his family members had been subjected to mental cruelty by respondent No.1 and also that respondent No.1 was leading an adulterous life which was worse kind of mental cruelty caused to the petitioner.....”

Learned counsel appearing for the appellant-wife has contended that the learned trial Court, while passing the impugned judgment and decree had wrongly recorded a finding that the appellant-wife has caused cruelty to the respondent-husband and that she had been living an adulterous life. It is further argued that the impugned judgment is a result of misreading of facts and evidence on record inasmuch as the appellant-wife herself having filed a criminal complaint against Satya Pal Singh Chauhan, she cannot be held to be leading an adulterous life.

On the other hand, learned counsel for the respondent-husband, while supporting the judgment and decree passed by the learned trial Court, has submitted that the findings recorded by the learned trial Court on all counts are perfectly valid and legally justified. It is further submitted that the learned trial Court has rightly held that the facts and circumstances coupled with the evidence on record, if seen in consonance, would bring a mind of ordinary prudence to the conclusion that once the appellant-wife herself had filed an application in the criminal proceedings admitting her relationship with Satya Pal Singh Chauhan, nothing further was

required to prove the same, especially when it is the rule of evidence that admitted facts need not be proved. As regards the cruelty, it has been contended that the registration of an FIR against the respondent-husband and his parents and their subsequent acquittal and further dismissal of the appeal by the learned Additional Sessions Judge there-against, is sufficient enough to reach an irresistible conclusion that the appellant-wife had treated the respondent-husband with cruelty.

After hearing the learned counsel for the parties, we do not find any merit in the present appeal and the same is liable to be dismissed.

It may be noticed that admittedly, the appellant-wife had got registered FIR No.4 dated 2.1.2008 under Sections 323, 504, 406, 498-A, 506, 120-B IPC at Police Station Pinjore, against the respondent-husband and his parents. The said proceedings ended into acquittal of the respondent-husband and his parents vide judgment dated 20.12.2013 passed by the learned Sub Divisional Judicial Magistrate, Kalka. The State filed an appeal against the said judgment of acquittal before the learned Sessions Judge, Panchkula. However, vide order dated 4.8.2017 passed by the learned Additional Sessions Judge, Panchkula, the appeal filed by the State had been dismissed, thereby upholding the findings recorded by the learned Sub Divisional Judicial Magistrate. Both the Courts held that the prosecution had failed to bring home the guilt of the accused and no convincing evidence had been placed on record to prove that the accused therein (the respondent-husband and his

parents) had treated the appellant-wife with cruelty in order to get fulfilled their unlawful demands of dowry and that they had misappropriated and unlawfully retained the dowry articles allegedly given to them by the parents of the complainant (appellant-wife).

In the present appeal, the respondent-husband has placed on record a document in the form of Annexure R.2, which is the English translated version of complaint submitted by the appellant-wife herself before the learned Civil Judge, Panchkula against Satya Pal Singh Chauhan, Advocate (who was impleaded as respondent No.2 in the divorce proceedings). The relevant extracts on translation into English from the Vernacular of Annexure R.2, by this Court, would read as under:-

“.....During this period, he established illicit relations with me (the applicant) and in the year 2008, aforesaid Satya Pal Singh Chauhan, Advocate in the aforesaid house at Harmilap Nagar, performed the ritual of putting a vermin on my forehead (Maang Bharai) lonely and told me that from that date we are husband and wife and that I am of his only. The aforesaid Satya Pal Singh Chauhan, Advocate, had been using me from the year 2008 to 2010. During this period, he did not take any serious interest in prosecuting my case. In the year 2010, after having done my LL.B., I started my practice in District Courts, Panchkula, with aforesaid Satya Pal Singh Chauhan. I had requested him time and again to leave me, but he did not pay any heed to it. Rather, he started issuing me the threats that he would destroy my case and would not allow the decision of my case for 15-20 years and that if I did not remain with him, then he would destroy my life and I would of no worth. I, on 21.5.2012, went to the house of aforesaid Satya Pal Singh Chahan to talk with his family about him (Satya Pal Singh Chauhan) and myself. Thereupon his family members, one Chander

Mohan Atttri and one another relative, abused me and gave me the beatings besides issuing threats that I am at liberty to do anything that I desire and I can cause them no harm as they have links with the high ups. They in turn would bring me a bad name, which would render me of nowhere.....”

From a perusal of the aforesaid averments made by the appellant-wife herself, there remains nothing for deliberations as to what led to the grant of decree of divorce. Still further, the learned counsel for the appellant-wife, could not controvert the factual position recorded in the said document, which may warrant this Court, to interfere with the impugned judgment and decree passed by the learned trial Court. It may be noticed that while passing the impugned judgment and decree, the learned trial Court has relied upon various judgments of the Hon’ble Supreme Court and this Court, in support of its finding recorded under Issue No.1. Thus, no illegality can be found with the impugned judgment and decree passed by the learned trial Court.

No other point has been urged.

In view of the above, the instant appeal being devoid of merit is dismissed.

**(RAKESH KUMAR JAIN)**  
**JUDGE**

28.02.2019  
ds

**(HARNARESH SINGH GILL)**  
**JUDGE**

Whether Speaking/ Reasoned:  
Whether Reportable:

Yes/ No  
Yes/ No