

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

237

**FAO-M-168-2018 (O&M)
Date of Decision : 07.02.2019**

Rajni

... Appellant

Versus

Ravi Sharma

...Respondent

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

Present: Mr. Aman Vashisth, Advocate for the appellant.

Mr. M.K.Singla, Advocate for the respondent.

RAKESH KUMAR JAIN, J.(ORAL)

This appeal has arisen from the judgment and decree dated 19.03.2018 vide which the petition filed under Section 9 of Hindu Marriage Act, 1955 (for short "the Act") for restitution of conjugal rights by the respondent-husband has been allowed.

In brief, marriage of the parties was solemnized as per Hindu rites on 28.01.2012 at Jagadhari. They were blessed with two children. The appellant-wife left the company of her husband in the month of September, 2014 without any excuse. Therefore, the respondent-husband filed a petition on 06.05.2015 under Section 9 of the Act seeking restitution of conjugal rights. The appellant-wife had got registered an FIR No. 32 dated

14.11.2015 under Sections 498 and 406 of IPC and tried to set up a case for her refusal to join the company of the husband on the ground of cruelty caused to her for demand of dowry.

On the pleadings of the parties, as many as three issues were framed on 28.11.2017. The parties were allowed to lead their oral as well documentary evidence. Issue No.1 being the main issue was decided after considering the evidence lead by the parties, in favour of the respondent-husband and against appellant-wife.

Learned counsel for the appellant raised only one issue for the purpose of deserting the husband-respondent and that is the pendency of the criminal case filed under Sections 406 and 498 IPC. In this regard, learned counsel for the respondent has submitted that the case was registered as a counterblast to the petition which was filed under Section 9 of the Act filed on 06.05.2015 and the FIR was registered on 14.11.2015. This fact has not been denied by learned counsel for the appellant-wife.

In view thereof, we are of the opinion that the registration of the FIR is not denied by the appellant-wife on 14.11.2015 i.e. after filing of petition under Section 9 of the Act by the respondent-husband. Thus, in view thereof, we are of the considered opinion that it is not a case that the appellant-wife had left the company of the husband and registered the case under Section 406, 498 of IPC. It is only for the purpose of setting up an excuse for not joining his company and performing the duties of the wife. It could have been a different issue if the FIR had been registered prior in time to the petition filed under Section 9 of HMA.

Learned counsel for the respondent-husband, while reiterating the aforesaid arguments, has supported the findings recorded by the trial court

and has prayed for dismissal of the appeal. In view thereof, we do not find any infirmity in judgment and decree dated 19.03.2018.

Consequently, this appeal stands dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

07.02.2019
pooja saini

<i>Whether speaking/reasoned?</i>	<i>Yes/No</i>
<i>Whether reportable?</i>	<i>Yes/No</i>