

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

FAO No.M-56 of 2018

DATE OF DECISION : 06.12.2019

Rama Dutt

...Appellant

Versus

Arvind

...Respondent

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

Present : Mr. R.K.Girdhwal, Advocate,
for the appellant.

Mr. S.K.Yadav, Advocate,
for the respondent.

KARAMJIT SINGH, J.

The present appeal lays challenge to the judgment and decree dated 08.02.2018 passed by the learned District Judge, Jhajjar, allowing the petition filed by the respondent-Arvind, for seeking divorce under Section 13(1)(i)(ia) of the Hindu Marriage Act, 1955.

The marriage of the parties was performed on 11.03.2011 and a pre-mature baby was born out of this wedlock but he did not survive. It was a simple marriage. The appellant-wife used to treat the respondent-husband and other members of his family with cruelty. The respondent-husband was serving in the Indian Air Force and was posted in Bhuj (Gujrat) from 2007 to 25.06.2012. After the marriage, the respondent-husband wanted to take his family with him to Bhuj but his mother-in-law objected to the same. On 25.04.2011, the brother of the appellant-wife took her to Bhuj, where she started quarrelling with the respondent-husband and her behaviour was very rude.

On 07.06.2011, when the respondent-husband came to his village, he invited his friends, Rattan Kumar and Sachin, but the appellant-wife refused to serve them food. The appellant-wife insulted the respondent-husband in the presence of his friends. She also refused to celebrate Karvachauth and Diwali with the respondent-husband. On the night intervening between 21/22.08.2011, the appellant-wife tried to commit suicide by strangulating herself but she was saved by the respondent-husband. Finally, the appellant deserted the respondent on 11.09.2012. Thereafter, appellant-wife falsely implicated the respondent-husband and his parents in a criminal case having FIR No.361 dated 22.11.2012 under Sections 498A, 406 and 506 of the Indian Penal Code (hereinafter referred to as 'IPC'), Police Station Beri. The respondent-husband prayed for a decree of divorce on the ground of cruelty and desertion.

The petition was contested by the appellant-wife, who filed written statement refuting and categorically denying the allegations made by the respondent-husband. However, she admitted the factum of marriage.

From the pleadings, following issues were framed by the learned Court below:-

1. Whether the respondent-wife committed cruelty on the petitioner-husband?OPP.
2. Whether the respondent-wife deserted the petitioner?OPP.
3. Whether the petitioner is entitled to decree of divorce under Section 13(1)(ia) and (ib) of the H.M.Act?OPP.
4. Quantum of maintenance payable to respondent-wife under Section 24 of the HMA?OPR.
5. Relief.

The respondent-husband examined himself as PW1 and also examined his neighbour as PW2, Anil and his friend Rattan as PW3. The respondent-husband also produced documents Exhibit P1 to Exhibit P4 in support of his case. On the other hand, appellant-Rama Dutt appeared in the witness box as RW4 and also examined Nodal Officer of the telecom company as RW1 and also examined RW2, who produced the salary record of her husband. RW3, Ahlmad of the court concerned proved FIR, Exhibit R5, bearing No.361 dated 22.11.2012. Appellant-wife also produced copy of grounds of appeal, Exhibit R6.

After considering the pleadings and the evidence adduced, the trial Court allowed the petition.

Feeling dissatisfied by the judgment and decree dated 08.02.2018, the appellant-wife has filed this appeal.

Learned counsel for the appellant-wife has challenged the impugned decree of divorce dated 08.02.2018. It is contended that it was the cruel behaviour of the respondent-husband, which compelled the appellant-wife to leave the matrimonial home. In support of his contention, learned counsel for the appellant referred to the testimony of RW4-Rama Dutt. Reference has also been made to the testimony of RW3-Sandeep, Criminal Ahlmad, in order to establish that FIR No.361 dated 22.11.2012 under Sections 406, 498A and 506 IPC was registered against the respondent-husband and other members of his family. A copy of the said FIR is Exhibit R5.

It is further contended that there is no doubt that in the aforesaid criminal case, the respondent-husband was acquitted but an appeal had also been filed against the order of acquittal, as is evident from Exhibit R6. It is further contended that normal wear and tear of life and casual bickering

between the husband and wife cannot termed as cruelty in real sense. Actually the respondent-husband compelled the appellant-wife to leave the matrimonial home. While concluding the arguments, learned counsel for the appellant also submitted that the respondent-husband has miserably failed to prove the ground of cruelty and desertion against the appellant-wife.

On the other hand, learned counsel for the respondent submitted that there is no illegality or perversity in the impugned judgment and decree dated 08.02.2018. He submitted that there is ample evidence on the record to prove the grounds of cruelty and desertion against the appellant-wife. Learned counsel for the respondent referred to the testimony of PW1 to PW3, in support of his arguments.

Learned counsel for the respondent while referring to the latest judgment of the Hon'ble Apex Court passed in **Civil Appeal No.8871 of 2019** titled as '**Rani Narasimha Sastry Vs. Rani Suneela Rani**' decided on 19.11.2019, submitted that acquittal of the husband under Section 498A IPC, after conclusion of trial, itself amounts to act of cruelty meted on the husband by his wife. Learned counsel for the respondent further contended that in the case in hand, respondent-husband was acquitted of the charges under Sections 406 and 498A IPC by the Court of Additional Chief Judicial Magistrate, Jhajjar, as is evident from the judgment dated 03.02.2017 (Exhibit P-4). So, even the said order of acquittal, in a criminal case under Sections 406 and 498A IPC, amounts to act of cruelty by the wife.

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

The matter was referred to the Mediation and Conciliation Centre

of this Court for mediation between the parties but it failed.

There is no dispute regarding the fact that the appellant got married with the respondent on 11.03.2011 and a pre-mature baby was born out of this wedlock and also they are living separately since 11.09.2012. Respondent-husband has filed divorce petition on the ground of cruelty and desertion. It is settled proposition that normal wear and tear of married life and mere trivial irritation and quarrels cannot be termed as cruelty. However, in the present case, it stands proved that respondent lodged FIR No.361 dated 22.11.2012 under Sections 406, 498A and 506 IPC against the appellant and other members of his family. After investigation, the police presented charge-sheet against them and after the conclusion of the trial, the appellant and his parents were acquitted by the court of learned Additional Chief Judicial Magistrate, Jhajjar, vide judgment dated 03.02.2017 (Exhibit P4). There is no dispute that appeal against the said order of acquittal has been filed by the respondent and the copy of the grounds of appeal is Exhibit R6. However, till date the aforesaid order of acquittal is subsisting. In the aforesaid criminal case, the appellant-wife levelled serious allegations that respondent-husband was having illicit relations with several females. As per the law laid down by the Hon'ble Apex Court in *Rani Narasimha Sastry's* case (supra), it is true that it is open for anyone to file complaint or lodge prosecution for redressal of his or her grievance and lodge a First Information Report for an offence and mere lodging complaint or FIR cannot be *ipso facto* treated as cruelty. But when a husband undergoes a trial in which he has acquitted of the allegations of offence under Section 498A IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty is meted on the husband. So in this case, the ground of cruelty stands proved as the act of wife in filing aforesaid false

criminal case against the appellant-husband amounted to mental cruelty.

In this case, marriage was performed on 11.03.2011 and parties got separated on 11.09.2012. The divorce petition was filed on 31.10.2014 by the husband and prior to that no application for restitution of conjugal rights was moved by the appellant-wife. In the criminal case relating to offence under Section 498A IPC, the appellant-wife failed to prove the allegations of cruelty against the husband meaning thereby that she abandoned the respondent with an intention to bring cohabitation permanently to an end. So, the ground of desertion is also established in this case against the appellant.

Therefore, there is hardly any merit in this appeal for the purpose of taking a different view from the view taken by the learned District Judge, Jhajjar, by interfering in this appeal. Hence, the present appeal is hereby dismissed, though without any order as to costs.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

06.12.2019

adhikari

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