

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 26.02.2020****CR No.31 of 2020 (O&M)**

Preeti Mala

...Petitioner

Vs.

Dinesh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr. Vivek Khatri, Advocate,
for the petitioner.**RAJIV NARAIN RAINA, J.**

1. The petitioner is the wife of the respondent. She has approached this Court through this petition filed under Article 227 of the Constitution challenging an order dated 17.12.2019 passed by the Additional Principal Judge, Family Court, Sonapat dismissing her application under Order VII Rule 11 CPC that the fresh petition is not barred by law.

2. The facts bring out that earlier, the respondent-husband filed a divorce petition under Section 13 of the Hindu Marriage Act seeking decree of divorce against his wife. However, the said petition was dismissed as withdrawn on 16.11.2012 in view of the statement suffered by the husband-respondent in court. Four years later in 2016, he filed a fresh petition, which is pending trial in the Family Court at Sonapat. In this petition, the petitioner-wife moved an application under Order VII Rule 11 CPC on the ground that the earlier petition was dismissed as withdrawn on the statement of the respondent-husband, but he did not take the liberty of

the court to file a fresh one and, therefore, the divorce petition on the same cause of action is barred by the principles of *res judicata*. This application stands dismissed by the order impugned in this revision petition for the reasons recorded in writing making way for the trial to proceed on merits.

3. The stand of the respondent-husband before the Family Court was that his earlier petition was not decided on merits of the disputes. Moreover, the cause of action was also different and not entirely the same. The learned Additional Principal Judge, Family Court, Sonapat considered the issue and she found that the parties were at variance and arrived at the conclusion that the husband could file a second petition for divorce on subsequent acts of cruelty by the wife. This was a matter of evidence whether or not the husband has any cause of action to file a petition, which cannot be decided summarily as it involves mixed questions of fact and law. She proceeded to dismiss the application finding no merit therein. In making this order, she applied the judgment of the Division Bench of this Court in Satwant Kaur Vs. Baljinder Singh, 2017 (3) RCR (Civil) 633: 2016 (2) LAR 680 holding that husband can file second petition for divorce based on subsequent acts of cruelty by the wife.

4. Before this court, Mr. Khatri for the petitioning wife while challenging the order submits that the Family Court has followed only the catch words and applied them without reading the full text of the judgment to cull out the ratio, which has resulted in misunderstanding the ratio *decidendi* which has led to misapplication of the law in *Satwant Kaur's* case. He submits that it is the ratio which binds the subsequent court. He says that the bald statement made in paragraph 10 while dealing with *Satwant Kaur's* case, the court has misled itself as no fresh and

independent acts of cruelty are pleaded to come within the saving. The judgment is clearly distinguishable to the trained eye of a man of law.

5. In the first petition and withdrawal of the same, there was no assertion or challenge to the sequence of events and the acts of cruelty attributed to wife, which have been pleaded by the respondent husband in the second petition. And in these circumstances, the second petition filed by the respondent being barred by the principles of res judicata which cannot be held that it has not been properly appreciated by the Family Court while passing the impugned order. This is a rather misconceived contention of Mr. Khatri as also his argument that the judgment in *Satwant Kaur's* case is inapplicable. The same broadly covers the point.

6. I have compared the pleadings in both the petitions filed by the husband-respondent. It comes forth that the petitioning wife lodged an FIR bearing No.33 dated 20.12.2010 under Sections 498A, 406, 420, 354, 506, 34 IPC with Women Police Station, Sonapat against the husband-respondent and other persons. Pursuant thereto, the husband was arrested on 09.01.2011 and detained in police custody till 11.01.2011 and thereafter he was sent to judicial custody. He was released on bail on 13.01.2011. Apparently, the first petition was filed by the husband when he was facing criminal trial. He was acquitted on 29.07.2016 by the learned Judicial Magistrate Ist Class, Sonapat finding him innocent of the charges levelled against him. It is only after the acquittal that the husband filed the second petition and I believe this is a major subsequent event, although not noticed graphically in the impugned order. But all the same it exists to assert false charge. In Para 24, he mentioned that he had filed a divorce petition, which was got dismissed as withdrawn, but there is a false

statement in the pleadings that it was with liberty to file fresh one. This statement was not truthful. It is not borne out from the judicial record. I would, however, not make any comment on this, in a petition under Article 227 of the Constitution challenging an order under Order VII Rule 7 CPC and leave it open before the Family Court at Sonapat to consider where the proceedings are presently pending. But, at the same time, this is not, nor other points are, prima facie sufficient ground or reason to throw the entire divorce petition out from the window of Order VII Rule 7 CPC without a fair trial. This aspect has also not been touched by the Family Court while it could have, therefore, I am leaving it open. The statement can at best be adding words to a judicial order the effect of which the Family Court can see whether it deserves special treatment or not.

7. It is difficult to gauge the human condition and the intangible mind of a person on the date of arrest and the impact it may leave on the date of withdrawing the first petition with hope for which there may be untold reasons, which are not visible to the eye of the Court without any oral evidence on record. I can only guess that there may have been some talks of compromise and they failed of which the parties are privy. I recognize that these remarks are beyond the papers on the file but their passing reference is not without recognizing the traits of probabilities, gained by the experience of life and human affairs of what might a criminal case in which one is declared innocent leave traces in the human heart. Matrimonial disputes are, after all, matters of the heart. No human being can be compelled to live with another human being if their hearts and minds are asunder. The Family Court and neither this Court is a mender of broken hearts.

8. Moreover, in matrimonial matters, to my mind, the rigours of the doctrine of res judicata and principles in Order II Rule 2 have to be viewed more liberally than in other civil disputes. In matrimonial matters, the Family Court has not only to deal with the facts and law, but also the conduct of both the parties, studying them as a psychologist might while acting as a marriage counselor. If nothing works, then, as a Judge bound to make a final decision.

9. In the main, I support the order of the Family Court in its conclusion that the application deserved to be dismissed to make way for trial on merits, where parties will have ample opportunity to lead their evidences to promote their causes. The Court can only wish reparation of the hearts and a reconciliation of conflict.

10 Accordingly, the prayer for interference by the wife is declined and the revision is dismissed at the threshold.

26.02.2020
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>