

102

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
(through video conferencing)**

CM-2213-CII-2021 in/&
RA-CR-26-2021 in
FAO-4782-2017
Decided on : 12.03.2021

Amit Bhardwaj

..... Applicant

Versus

Sushila Bhardwaj

..... Respondent

**CORAM : HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. Abhimanyu Kalsy, Advocate
for the applicant.

Manjari Nehru Kaul, J.

CM-2213-CII-2021

This is an application under Section 14 of the Limitation Act, 1908 read with Section 5 of the Act for condonation of delay of 84 days in filing the review petition against the order dated 22.11.2019 (Annexure R-1).

For the reasons mentioned in the application, which is supported by an affidavit of the applicant, same is allowed and the delay of 84 days in filing the review application is condoned.

RA-CR-26-2021

This is an application under Order XLVII read with Section 151 of Civil Procedure Code for review of the order dated 22.11.2019 vide which the first appeal bearing FAO No.4782 of 2017 was dismissed.

It has been contended by learned counsel that this Court had failed to decide the application bearing CM No.4097-CII of 2019, which was moved under Order 41 Rule 27 read with Section 151 Cr.PC for leading additional evidence as during the pendency of the appeal, the applicant had been acquitted in FIR No.849 dated 19.11.2013 under Sections 498-A, 406, 323, 506 read with Section 34 IPC by Judicial Magistrate, Ist Class, Bhiwani. He has further submitted that had the application for additional evidence been allowed, it would have been proved that it was not the applicant but the respondent-wife, who had subjected the applicant and his family to harassment and cruelty by lodging a false FIR, which entitled him to a decree of divorce.

We have heard learned counsel for the applicant. Notice in the application for leading judgment and order dated 24.11.2017 of trial Court as additional evidence was issued on 28.02.2019. It is pertinent to note that this order of trial Court acquitting the applicant in FIR No.849 dated 19.11.2013 was delivered subsequent to filing of the first appeal in this Court. We have gone through the judgment and order of acquittal passed by the trial Court on which the learned counsel for the applicant has placed heavy reliance in support of his case of being subjected to cruelty at the hands of respondent-wife.

No doubt, as an exception, Order 41 Rule 27 of Code of Civil Procedure enables the Appellate Court to take additional evidence in exceptional circumstances. The Appellate Court may permit additional evidence only and only if the conditions laid down in this Rule are found to exist. Parties are not, as a matter of right, entitled to the admission of

additional evidence and it is purely a matter of discretion which has to be exercised judiciously and sparingly. The true test to be applied in dealing with such application is whether the Appellate Court is able to pronounce judgment on the material before it without taking into consideration the additional evidence sought to be adduced. The sufficiency of the evidence has to be understood in the context of the difficulty in reaching a decision on the basis of the existing evidence satisfactorily to the mind of the Court. In the matter in hand, we have no hesitation in holding that initiation of criminal proceedings by the respondent-wife would not amount to cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act. Still further, the acquittal of the applicant by the learned trial Court in the aforementioned FIR would also not be sufficient enough to prove that he had been at the receiving end of mental torture inflicted on him by the respondent-wife. No doubt, the applicant stands acquitted in the criminal case after trial, however, it cannot be construed to imply that the same was initiated on the basis of a false and fabricated complaint. It may be emphasised that the standard of proof in criminal and matrimonial proceedings are distinct and different inasmuch as in a criminal proceeding charges have to be established beyond all reasonable doubts. A perusal of the judgment and order of acquittal of the applicant clearly reveals that the trial Court has acquitted the applicant by extending the benefit of doubt to him. Hence, the acquittal of the applicant on account of the allegations not having been proved beyond a shadow of doubt would not adversely affect much less create any dent in the evidence led by the respondent-wife in support of her case before the Family Court, Bhiwani, in the petition under

Section 13 of Hindu Marriage Act filed by the petitioner. As already concluded by us with regard to insufficient evidence to make out a case of cruelty in the main petition and on subsequent date non-applicant/respondent had prayed for time to file reply to the application, acquittal of applicant on the basis of granting him benefit of doubt, would not be a determinative factor; and therefore, the prayer of the applicant/husband to lead additional evidence, cannot be accepted.

Accordingly, no ground is made out to review the order dated 22.11.2019 and the present application stands dismissed.

(RAJAN GUPTA)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

12.03.2021
sonia

Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No