

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

**FAO No.2082 of 2019
Date of decision: 23.11.2022**

Satish Kumar

.....Appellant

Versus

Kavita Devi

.....Respondent

**CORAM:HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: Mr. Rajesh Lamba, Advocate,
for the appellant.

Mr. Prashant Singh Chauhan, Advocate,
for the respondent.

Ritu Bahri, J.

Appellant-husband (Satish Kumar) has come up in appeal against the judgment and decree dated 03.12.2018 passed by the Additional Principal Judge, Family Court, Gurugram, whereby petition filed by him under Section 13 (1) (ia) of the Hindu Marriage Act, 1955, for dissolution of marriage, has been partly allowed under Section 13-A of the Act and a decree of judicial separation has only been passed.

Marriage of the parties was solemnized on 16.02.2004 as per Hindu rites and ceremonies at village Sulkha, Tehsil and District Rewari. Out of this wedlock, two male children namely, Jatin and Mukul were born. As per appellant-husband, after marriage, respondent-wife did not pay any heed to the needs of his family and often, she used to torture and abuse the mother of appellant. She used to leave her matrimonial house without even telling her husband or his mother. It was alleged that she was having illicit relations with one Rajesh Kumar son of Umed Singh, resident of village

Sulkha. This fact was even admitted by the respondent in the presence of her real brother Sunder Pal. On 13.07.2015, mother of appellant was assaulted by the respondent. Complaint, in this regard, was pending in the Court of Judicial Magistrate Ist Class, Gurugram. When there was no chance of residing the parties together, both of them decided to live separately. A parental home situated in village Rathiwas Jat, District Gurugram, built in an area of 200 Sq. yards, was given to the respondent by the appellant, wherein she was living. Apart from this one acre agricultural land along with a buffalo was also given by the appellant to the respondent. She was also given a sum of Rs.50,000/-. It was agreed between the parties that unless divorce is granted, none would be entitled to contract re-marriage and affidavits in this regard were executed by the parties. On 05.08.2015, respondent lodged a false FIR No.302/2015, under Section 376B/323 IPC against the appellant at Police Station, Bilaspur. She also filed a petition under Section 12 of DV Act, which was later on, withdrawn by her. A petition under Section 125 Cr.P.C., was also filed by the respondent, which also later on, compromised on 30.04.2015. Hence, the petition.

Upon notice, respondent-wife filed reply taking preliminary objections with regard to maintainability, concealment of true and material facts, cause of action, locus standi etc. All the allegations made in the petition were denied and a prayer for dismissal of the petition was made.

From the pleadings of the parties, following issues were framed by the Family Court:-

1. Whether the petitioner is entitled for a decree of divorce on the grounds mentioned in the petition? OPP

2. Relief.

In order to prove his case, husband-appellant had appeared as PW-1 and placed on record documents Ex.P1 to Ex.P11. On the other hand, respondent-wife appeared as RW-1 and tendered into evidence documents Ex.RX, Ex.Ry and Ex.RZ.

Trial Court, after going through the evidence led by the parties, observed that the allegation levelled by the husband that his wife-respondent was having illicit relations with one Rajesh Kumar, could not be proved on record. On the other hand, respondent-wife also failed to prove her allegation that the appellant is having illicit relation with his sister-in-law and had done sexual intercourse with her in the presence of the respondent. There was no substance in the allegations levelled by both the parties against each other. The Family Court has further observed that the parties cannot live together any longer, yet there might be some remote chance for prevailing a better sense and to bury their differences. With these observations, a decree of judicial separation under Section 13-A of the Act has only been passed by the Family Court keeping in view that better sense would prevail upon the parties.

Heard, learned counsel for the parties.

On 05.04.2019, when notice of motion was issued in this case, learned counsel for the appellant had stated that there was no chance of compromise between the parties. By way of CM-6406-CII-2019, the appellant had placed on record copy of judgment dated 05.10.2016 passed by the Additional Sessions Judge, Gurugram, whereby he (appellant) has been acquitted of the charges framed against him under Sections 452/323/376-B IPC.

Learned counsel for the respondent-wife is not disputing the above said judgment. The appellant, in the present case, has faced a trial under Section 376-B IPC, as FIR in that case, was got lodged by respondent-wife alleging that on the intervening night of 3/4.08.2015, the appellant-husband had entered the house forcibly and raped her. While acquitting the appellant, the trial Court had observed that the matter had been compromised between the couple on 13.04.2015 and they were staying together. It was observed that the conduct of the prosecutrix was that she was unable to explain, as to why she did not report the matter to the police when the first incident of rape took place on 3/4.08.2015. The FIR was got registered with respect to the second incident, which took place on 05.08.2015 when he again entered her house and thrashed her.

After going through the judgment of acquittal dated 05.10.2016, it transpires that the appellant-husband had suffered mental cruelty by facing this criminal trial. Apart from this, appeal against the judgment of acquittal filed by respondent-wife had also been dismissed vide order dated 07.11.2017 passed by this Court in CRM-A-2294-MA-2016 (**Kavita vs. State of Haryana and another**). The judgment of acquittal in a criminal case would amount to mental cruelty and prayer of the appellant cannot be denied on this ground itself. Moreover, in the present case, mediation was conducted at Mediation and Conciliation Centre, Gurugram, however, no compromise could not effected between the parties. This fact is evident from the letter dated 03.10.2019 written by the Chief Judicial Magistrate-cum-Secretary, District Legal Services Authority, Gurugram to the District & Sessions Judge, Gurugram.

In the facts of the present case, the wife has got registered an FIR

against the appellant-husband under Sections 376-B IPC with the allegation that he had raped her. After facing a long trial, vide judgment dated 05.10.2016 passed by the trial Court, the husband-appellant has been acquitted in that case. She also filed a complaint under Section 12 of the D.V. Act and further initiated proceedings under Section 125 Cr.P.C. However, later on, the matter was compromised and the complaint was withdrawn by the respondent-wife. The parties are staying separately since long. For all intents and purposes, it is a dead marriage.

Reference, at this stage, can be made to the judgment passed by Hon'ble the Supreme Court in **Naveen Kohli vs. Neelu Kohli**, 2006 (4) SCC 558. That was a case of irretrievable breakdown of marriage, wherein the wife was not ready to give divorce to the husband by way of mutual consent. Hon'ble the Supreme Court held that it was a cruel treatment as the marriage had broken irretrievably. They were granted divorce as there was no chance of coming together or living together again. Non grant of decree of divorce would be disastrous to the parties. Further, in **K. Srinivas Rao vs. D.A. Deepa**, 2013 (5) SCC 266, Hon'ble the Supreme Court has observed that once the marriage is dead for all purposes, it cannot be revived by Court's verdict, if parties are not willing, since marriage involves human sentiments and emotions and if, they have dried up, there is hardly any chance of their springing back to life on account of artificial reunion created by Court decree. Ultimately, divorce was granted to the husband. It was further observed as under:-

“28. In the ultimate analysis, we hold that the respondent-wife has caused, by her conduct, mental cruelty to the appellant-husband and the marriage has irretrievably broken down. Dissolution of marriage will relieve both sides of pain and anguish. In this Court, the respondent-wife expressed that she wants to go back to the appellant-husband, but, that is

not possible now. The appellant-husband is not willing to take her back. Even if, we refuse decree of divorce to the appellant-husband, there are hardly any chances of the respondent-wife leading a happy life with the appellant-husband because a lot of bitterness is created by the conduct of the respondent-wife.”

A three Judge Bench of Hon'ble the Supreme Court in **Samar Ghosh vs. Jaya Ghosh**, 2007 (4) SCC 511 passed the decree of divorce on the ground of mental cruelty, but the concept of irretrievable breakdown of marriage has been discussed in detail referring the 71st report of the Law Commission of India. In a recent judgment passed in **N. Rajendran Vs. S. Valli**, 2022 (1) RCR (Civil) 847, Hon'ble the Supreme Court held that consent of parties is not necessary to declare a marriage dissolved. In that case, there was no possibility of husband and wife stitching together any kind of reasonable relationship as tie between them had broken beyond repair. While exercising powers under Article 142 of the Constitution of India, marriage was declared as dissolved. In that case, it was further observed as under:-

“32. Having found that consent of the parties is not necessary to declare a marriage dissolved, we cannot be unmindful of the facts as they exist in reality. There has been a marriage which took place on 31.10.2004. There is a child born in the said marriage. No doubt being in contravention of Section 15, it becomes a *fait accompli* but at the same time, we do not reasonably perceive any possibility of the appellant and the respondent cohabiting as husband and wife. Whatever life was there in the marriage has been snuffed out by the passage of time, the appearance of new parties and vanishing of any bond between the parties. Not even the slightest possibility of rapprochement between the appellant and the respondent exists for reasons, though which are entirely due to the actions of the appellant and for which the respondent cannot be blamed. The marriage between the appellant and the respondent has become dead. It can be described as a point of no return. There is no possibility of the appellant and the respondent stitching together any kind of reasonable relationship as the tie between the parties has broken beyond repair and having regard to the facts of this case, we should

think that it would be in the interest of justice and to do complete justice to the parties that we should pass an order dissolving the marriage between the appellant and the respondent.

33. We make it clear that this decision of ours is not based on our approval of the conduct of the appellant nor is it based on sitting in judgment over the conduct of the respondent. In other words, we find that respondent is blameless in the matter but the facts as they have unfolded and the developments which have taken place, render it unavoidable for us to consider dissolution of marriage as the best course open in the interest of justice.”

In the facts of the present case, the husband has only been granted decree of judicial separation only. If, the present appeal, filed by the appellant-husband, is not accepted, it will not create an atmosphere of patch up for both the parties. The husband-appellant. In this backdrop, we are of the view that no useful purpose will be served by asking the parties to reside together as husband and wife. Rather, non grant of divorce would amount to mental cruelty towards the husband as well as the wife.

Keeping in view the above discussion and the ratio of the aforesaid judgments, the impugned judgment and decree dated 03.12.2018 passed by the Additional Principal Judge, Family Court, Gurugram, are set aside and decree of divorce is granted to the appellant on the ground of cruelty. Decree sheet be drawn.

Appeal stands allowed accordingly.

(RITU BAHRI)
JUDGE

(NIDHI GUPTA)
JUDGE

23.11.2022
ajp

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