

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-96-2013 (O&M)

Date of decision: 06.07.2022

Surmail Singh

....Appellant

Vs.

Baljit Kaur

....respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr.Vipin Mahajan, Advocate
for the appellant.

Mr. Amardeep Singh Manaise, Advocate
for the respondent-wife.

Ritu Bahri, J.

The present appeal has been filed by the appellant, Surmail Singh against the judgment and decree dated 08.01.2013 passed by the Family Court, Gurdaspur whereby his petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act, 1955), seeking dissolution of his marriage by a decree of divorce had been dismissed.

The brief facts of the case are that the marriage of the petitioner-appellant was solemnized with the respondent-wife on 09.12.2002 according to Sikh rites and out of their wedlock, one daughter namely Parnit Kaur was born. As per the petitioner-appellant, after 3 months of the marriage, there was unnecessary intervention by the father, mother and brother of the respondent-wife in the matrimonial relations of the parties. The respondent-wife even tried to commit suicide twice by hanging herself, but she was saved by breaking doors. In the month of June,

2004, the respondent-wife went to her parental home without informing anybody in the house of the appellant and she was brought back after three months with the intervention of the respectable. Then again on 22.10.2004, the respondent-wife left the house of the petitioner-appellant alongwith valuable clothes, ornaments and cash amounting to Rs.15,000/- and went to her paternal house. She was again brought back with the intervention of the respectable. Again on 17.04.2005, she left the house of the petitioner-appellant without informing anybody to her parental home and since then she has been living there. The petitioner-appellant and other relatives went to the house of the parents of the respondent-wife to persuade her to come back, but she refused. After leaving matrimonial house on 22.10.2004, the respondent-wife filed many criminal cases as well as civil cases against the appellant, his father, mother and brother.

On notice of the divorce petition, respondent-wife appeared and filed written statement taking a plea that after the marriage, the appellant and his family were not happy with her as she brought scanty dowry whereas her parents had given sufficient dowry at the time of her marriage including motorcycle, colour TV, and gold jewellery etc. She was given beatings many times and was not provided food. She was expelled from her matrimonial home many times. Her parents gave Rs.12,000/-, Rs.10,000/- and Rs.15,000/- on different occasions. After the birth of the female child, the petitioner-appellant and his family members were not happy as her parents could not give gold Kara and Chain to him and his mother. Then on 27.04.2005, the petitioner-appellant and his family members turned her out from her matrimonial home after giving severe beatings alongwith minor child and threatened to kill her if she entered

matrimonial home without Maruti Car and Rs. 2 lacs. Two panchayats had been convened to keep the respondent-wife and the minor child but all in vain.

Following issues were framed:-

1. Whether the respondent-wife treated the appellant with cruelty? OPP
2. Whether the petition is not maintainable in the present form? OPR
- 2-A Whether the respondent-wife deserted the petitioner for the continuous period not less 2 years immediately preceding the institution of the petition?OPP
3. Relief.

After going through the evidence, the Family Court dismissed the petition by observing that it was the husband's own conduct towards the respondent-wife to compel her to leave her matrimonial home on different occasions and there was no just cause for the respondent-wife to desert him. The Family Court, while referring one judgment passed by Rajasthan High Court in *Prakash vs. Smt. Kavita 2009(2) Civil Court Cases 521 (Rajasthan) (DB)* and another judgment passed by this Court in *Rakha Tomar Vs. Sanjeev Kumar 2010(Suppl) Civil Court Cases 701*, held that mere registration of criminal case against the husband and his family members would not amount to cruelty against them.

During the pendency of the present appeal, the appellant, vide CM-26463-CII-2015 placed on record copy of the judgment dated 17.09.2015 passed by the learned Additional Sessions Judge, Gurdaspur (Annexure A-1) whereby the appeal filed by the appellant was allowed

and he and his family members were acquitted of the charges levelled against them under Section 406/498-A IPC, by giving them benefit of doubt and the revision filed by the respondent-wife was dismissed. Vide CM-7729-CII-2018, the appellant placed on record judgment dated 24.10.2019 (Annexure C-1) whereby criminal appeal filed by the respondent-wife-Baljit Kaur against the judgment dated 17.09.2015 (Annexure A-1) has been dismissed by this Court.

Learned counsel for the appellant argued that the appellant and his family members have been acquitted and the judgment dated 17.09.2015 (Annexure A-1) has attained finality upto the High Court. Filing of false complaint by the spouse would amount to matrimonial cruelty and divorce can be granted to the appellant on this ground. He has referred to a judgment passed by the Division Bench of this Court in ***Kusum @ Sunaina Vs. Arun Kumar, 2022(1) R.C.R. (Civil) 746*** in which reference of number of judgments passed by the Supreme Court has been made on the issue of cruelty by filing false complaint against the husband and his family members. In the case of ***Sushma Taya Vs. Arvind, 2015(2) RCR (Civil) 888 (P&H)***, it has been held that filing of false criminal complaint by a spouse constitutes matrimonial cruelty and entitles the other spouse to claim divorce.

The appellant is present in Court today and an offer has been given to him to give Rs. 12 lacs as permanent alimony to the respondent-wife and Rs. 6 lacs to the daughter to which he did not oppose.

In the present case, the parties have been staying separately since 17.04.2005 i.e. for the last 17 years and apart from cruelty, their marriage has become dead and irretrievable. Same was in ***Kusum @***

Sunaina's case (supra) as the parties therein had been living separately for the last 10 years and in the criminal complaint, the husband was acquitted of the charges framed against him.

Cruelty coupled with the fact that the marriage has become dead and irretrievable, in such circumstances, no direction can be given to the appellant to stay together as per the judgments passed by the Supreme Court in *Samar Ghosh Vs. Jaya Ghosh, 2007(4) SCC 511*, *K. Srinivas Rao Vs. D.A.Deepa, 2013 (5) SCC 226* and *Sivasankaran Vs. Santhimeenal*, passed in *SLP(C) Nos. 17505-17506 of 2019, decided on 13.09.2021*.

Hence, the appeal is allowed. A direction is given to the appellant to give Rs. 12 lacs as permanent alimony to the respondent-wife and Rs. 6 lacs to the daughter within a period of one month from the date of receipt of certified copy of this order.

Decree sheet be drawn accordingly.

Pending application, if any, stands disposed of.

(RITU BAHRI)
JUDGE

06.07.2022

Divyanshi

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No