

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-42-2016 (O&M)

Reserved on:02.09.2022

Date of pronouncement: 09.09.2022

Parkash Singh

....Appellant

Vs.

Jatinder Kaur

....Respondent

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

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

Mr. Sandeep Godara, Advocate for
Mr. Ajay Pal Singh, Advocate
for the respondent.

Ritu Bahri, J.

The appellant, Parkash Singh has come up in appeal against the judgment and decree dated 04.11.2015 passed by Family Court, Gurdaspur whereby his petition under Section 13 of the Hindu Marriage Act, 1955 was dismissed.

The brief facts of the case are that the marriage of the parties was solemnized on 04.05.2007 according to Sikh rites and ceremonies at village Naushehra Majja Singh, Tehsil and District Gurdaspur. The parties lived together as husband and wife at Village Chhina Retwala and one daughter namely Sukhmanpreet Kaur was born out of their marriage. After the marriage, the behaviour of the respondent was not normal and after having some tablets, she used to behave properly. The respondent used to get violent without any reason and started shouting on the appellant-petitioner and his family members. After the birth of child, she used to throw away her baby. Ultimately, the appellant-petitioner got the

respondent medically checked up from a hospital in Amritsar, who disclosed that she was a patient of depression and was under treatment since her childhood. Many times, she tried to commit suicide.

On 24.05.2011, a meeting was arranged between respectable and father of the respondent at Naushehra Majja Singh. At that time, respectable opined to dissolve the marriage. Since 24.05.2011, the respondent is living in her parental home under the supervision of her parents. The appellant-petitioner is looking after his minor child with the help of his mother. The respondent had treated the appellant-petitioner with cruelty and had deserted him after 24.05.2011.

On notice of the petition, the respondent appeared and filed her written statement to which the the appellant-petitioner did not file replication.

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

1. Whether the respondent has treated the petitioner with cruelty? OPP
2. Whether the respondent deserted the petitioner without any reasonable cause? OPP
3. Whether the petitioner is entitled to decree of divorce? OPP
4. Relief.

The parties led their respective evidence. However, the appellant-petitioner did not lead evidence on issues No. 1 to 3 as the onus was on him.

The Family Court observed that an FIR No. 144 dated 12.11.2013 was registered at Police Station Ghuman Kalan and the trial is still pending. It was further alleged that respondent had made many

attempts to commit suicide but no complaint was made by the appellant-petitioner or his family members against the respondent to the Police or the Panchayat or higher officers.

With respect to desertion, the Family Court observed that the respondent had left the matrimonial home on 24.05.2011. However, as per the OPD cards (Mark-A and Mark-B), it transpired that the respondent had got treatment from Dr. Viday Sagar Institute of Mental Health, Amritsar, which continued from 22.06.2011 to 12.12.2012. If the respondent had left the appellant-petitioner on 24.05.2011, then how it was possible for the appellant-petitioner to get her treated upto 12.12.2012.

Keeping in view of the above facts, the Family Court dismissed the petition as no case for mental cruelty or desertion was made out.

During the pendency of the present appeal, the appellant made an application (CM-1461-CII-2022) for placing on record judgment dated 12.06.2017 (Annexure A-1) whereby the appellant and his mother Gurmeet Kaur have been acquitted after facing trial under Sections 406, 323 and 498-A IPC, by granting them benefit of doubt. Apart from the said judgment, the matter was referred before the Mediation Centre but the parties could not arrive at any conclusion as per the report dated 20.07.2016 of Vikas Chatrath, Mediator.

Learned counsel for the appellant informed the Court that the girl child born out of the wedlock of the parties, is staying with the appellant. Vide order dated 22.03.2022, it is observed that appellant was ready to pay Rs.5 lacs as permanent alimony to the respondent-wife in view of the fact that the daughter is staying with the him. However, on 07.04.2022 when the case was taken up, learned counsel for the respondent

informed that respondent was not ready to accept Rs.5 lacs towards permanent alimony. The case was taken up on merits.

Once, the appellant is acquitted vide judgment dated 12.06.2017 (Annexure A-1), cruelty is made out by the respondent-wife. In the present case, the judgment dated 12.06.2017 (Annexure A-1) is sufficient to draw the conclusion that the appellant has suffered cruelty at the hands of the respondent-wife.

At this juncture, it is important to make reference to the judgment passed by the Hon'ble Supreme Court in ***Raj Talreja vs. Kavita Talreja, Civil Appeal No.10719 of 2013***, decided on 24.04.2017, wherein, it was observed that a false complaint was registered against the husband by the wife, after wife herself inflicted injuries on her body. In criminal proceedings, the husband had been acquitted and thereafter, proceedings against the wife were launched. On this account, the husband was held entitled to decree of divorce, on the ground of cruelty. It was further observed as herein given:-

“9. This Court in Para 16 of ***K. Srinivas Rao v. D.A. Deepa, 2013 (2) RCR (Civil) 232*** has held as follows:

“16. Thus, to the instances illustrative of mental cruelty noted in ***Samar Ghosh v. Jaya Ghosh, 2007 (4) SCC 511***, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.”

In ***Ravi Kumar v. Julmidevi, 2010 (2) RCR (Civil) 178***, this Court while dealing with the definition of cruelty held as follows:

“19. It may be true that there is no definition of cruelty under the said Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, sometime it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty.

20. Therefore, cruelty in matrimonial behaviour defies any definition and its categories can never be closed. Whether the husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any predetermined rigid formula. Cruelty in matrimonial cases can be of infinite variety-it may be subtle or even brutal and may be by gestures and words. That possibly explains why Lord Denning in *Sheldon v. Sheldon*, (1966) 2 WLR 993 held that categories of cruelty in matrimonial cases are never closed.

10. Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act 1955 (for short ‘the Act’). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an

act of cruelty. In the present case, all the allegations were found to be false. Later, she filed another complaint alleging that her husband along with some other persons had trespassed into her house and assaulted her. The police found, on investigation, that not only was the complaint false but also the injuries were self inflicted by the wife. Thereafter, proceedings were launched against the wife under Section 182 of IPC.”

Even making one false complaint against the other spouse would amount to cruelty. In the present case, an FIR No. 144 dated 12.11.2013 under Sections 498-A, 406 and 323 IPC was registered at Police Station Ghuman Kalan by the respondent-wife against the appellant and his mother which was not found to be correct as they were acquitted vide judgment dated 12.06.2017 (Annexure A-1).

This Court in *FAO-M-208-2013* titled as *Devesh Yadav vs. Meenal*, pronounced on 08.04.2022, has held that once the parties have separated and separation has continued for a sufficient length of time and anyone of them presented a petition for divorce, it can well be presumed that the marriage has broken down.

In the present case, the parties have been living separately since 24.05.2011 and efforts were made to resolve the matrimonial dispute through the process of mediation, but in vain as is evident from report dated 20.07.2016 of Vikas Chatrath, Mediator.

Keeping in view of above observations, it is clear that appellant had suffered desertion and cruelty at the hands of the respondent. Hence, the appeal is allowed and the judgment and decree dated 04.11.2015 passed by Family Court, Gurdaspur is set aside. The appellant-Parkash Singh is granted divorce on the ground of cruelty and desertion under Section 13(1)(i-a) and (i-b) of the Act, 1955. Keeping in view that the respondent-

wife is suffering from depression and she is being looked after by her father.

Permanent alimony of Rs.5 lacs is being awarded to her. The said amount will be paid by the appellant to the respondent-wife within eight weeks from the date of receipt of the certified copy of this order and, thereafter, this Court be informed. Decree sheet be drawn accordingly.

Pending applications stand disposed of.

(RITU BAHRI)
JUDGE

09.09.2022
Divyanshi

(NIDHI GUPTA)
JUDGE

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