

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO- 3658 of 2018 (O&M)

Date of Decision:- October 12 ,2022.

Nitin Kumar

.....Appellant

Versus

Madhu Sharma

.....Respondent

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

Present:- Mr. AP Bhandari, Advocate for the appellant
Mr. Abhilaksh Grover, Advocate for the respondent.

NIDHI GUPTA, J.

This appeal has been filed by the appellant-husband against the order dated 7.4.2018 passed by District Judge, Family Court-I, Faridabad whereby his petition under Section 13 (i-a) and (iii) of the Hindu Marriage Act, 1955 (hereinafter 'the Act'), seeking divorce from the respondent-wife on the grounds of cruelty and desertion has been dismissed.

Brief facts of the case as set out before the Id. Family Court are that marriage of the parties was solemnised on 25.4.2012 at Faridabad according to Hindu rites and ceremonies. Out of this wedlock

no child was born. It is the appellant's case that since the beginning, behaviour of the respondent was very cruel towards the appellant and she used filthy and abusive language towards him in the presence of his friends. He provided best livelihood to her but despite that she did not take care of him as she was instigated by her parents. She was very temperamental and used to quarrel with him on petty matters. His repeated requests to change her behaviour had no effect on her. Appellant further alleged that finally, on 3.3.2013 the respondent left her matrimonial home after taking gold and silver ornaments, cash and her entire belongings. It is stated that she threatened the appellant that if he tried to bring her back from her parental home she would involve him in false cases. It was further stated that Respondent-wife had filed various criminal cases against the appellant including a complaint under Domestic Violence Act, as also under Section 195-A, 341, 506 IPC, which were pending in the Court of Id. JMIC, Faridabad. Accordingly, the appellant stated that respondent had made his life an agonising hell. Several Panchayats were convened, the last one on 2.4.2015 in which she flatly refused to live with the appellant and his family members. On the basis of aforesaid facts, appellant prayed for divorce on the ground of cruelty and desertion.

The respondent in response submitted that her parents had spent handsome amount of Rs.10 lacs in the marriage and had given sufficient dowry to appellant, his family and his sister. After marriage, she had to live in the joint family alongwith appellant, his parents and an unmarried sister all of whom ill treated her, insulted her and found faults with everything she did as also pressurised her to bring more dowry articles. She was unable to accede to their demand as her

parents had already spent Rs. 10 lacs in the marriage and had also given an Alto Car as gift. However, to save her marriage, it is alleged that the respondent's parents gave cash on several occasions to the appellant and his family. It is also alleged that one Lekh Raj, who is family friend of appellant's father was a regular visitor to the matrimonial home and he was having an evil eye on the respondent. It is alleged that said Lekh Raj wanted to have illicit relations with her but she used to avoid him. It is also stated that appellant used filthy and objectionable language towards her and in fact on the intervening night of 2/3-3-2013 while she was sleeping in her matrimonial home, late at night, the appellant tried to press her neck with an intention to kill her and when she cried and wanted to save herself, her mother-in-law and sister-in-law helped the appellant by holding her hands and legs, and pressing her mouth. It is alleged that after that they beat her up because of which she sustained severe injuries. Ultimately, she informed her parents and her brother Davinder came to her matrimonial home and took her to hospital where she was medico legally examined and she remained hospitalized from 4.3.2013 to 10.3.2013. Accordingly, she lodged FIR No. 117 dated 7.3.2013 under Sections 323, 498-A, 406 and 506 IPC against the appellant and his family. Respondent claimed that she is dowry victim and was harassed by the appellant and his family with utmost cruelty.

On the basis of above said pleadings the learned Family Court framed the following issues vide order dated 1.12.2016:

- “1. Whether the petitioner is entitled to decree of divorce on the grounds mentioned in the petition? OPP
2. whether petition is not maintainable? OPR
3. Whether petitioner has no cause of action and locus-

standi to file the present petition? OPR

4. Whether the petitioner has not come to the Court with clean hands: OPR

5. Relief.

On the basis of the pleadings and evidence led by the parties in support of their respective stand, the learned court held that “(i) *it is hereby observed that the ground of desertion has not been proved by the petitioner and he is not entitled to decree of divorce on this ground; and (ii) since no specific instance of cruelty has been mentioned by the petitioner against the respondent, it is hereby observed that he is not entitled to decree of divorce on the ground of cruelty also*”.

Accordingly, the Family Court dismissed the appellant's petition u/s 13 of the Act, vide the impugned order dated 7.4.2018. Hence, the present appeal.

Upon issuance of notice, respondent appeared and reiterated the allegations and other averments that she had made before the Court below.

The appellant has assailed the impugned order *inter alia* on the ground that the respondent had filed numerous false cases against him and his family which had caused tremendous mental harassment and agony to him and his family. Appellant has further stated that parties lived together only for a short period, even less than one year. The marriage was solemnised on 25th April 2012 and the respondent had left the matrimonial home ultimately on 3.3.2013. Even there is no child from this wedlock. And though several Panchayats were convened to try to resolve the matter and bring the respondent back home, yet the

respondent had flatly refused to return and was unwilling to find a solution. Counsel for the appellant further stated that respondent had misused due process of law by filing false and frivolous complaints against the appellant with a view to harass him and had caused grave mental cruelty to him.

As regards the alleged incident of assault on the respondent by the appellant and his family on the intervening night of 2/3-3-2013, counsel for the appellant vehemently stated that the whole incident is utterly false and exaggerated. To substantiate, counsel for the appellant made reference to the deposition of PW3 Dr. Abhishek Gautam, Medical Officer, General Hospital, Ballabgarh, examined in case FIR No.117/2013, who in his chief as well as in cross-examination stated as under:

“State vs Shri Om

PW-3 Dr. Abhishek Gautam, Medical Officer, PHC, Panherakhurd, District Faridabad. (On S.A.).

That on 3.3.2013 while I was posted as M.O. G.H. Ballabgarh, I medico-legally examined Madhu Sharma wife of Nitin Klumar Sharma age 25 years female R/o Trikha Colony, Faridabad with alleged history of assault at 11:00 PM on 2.3.2013 and found five injuries on the person which is fully mentioned in my MLR Ex.PW3/A (objected to) bears my signatures.

It is correct that all the injuries were simple in nature. Patient was brought conscious. The possibilities of injuries can be sustained by fall on hard surface. I examined the patient Madhu on 3.3.2013 At

12:05 PM and duration of injuries is approximately 12 hours. I have not brought the original record of MLR Ex.PW3/A (objected to). It is wrong to suggest that I deposed falsely.”

Accordingly, counsel for the appellant pleaded that the respondent had totally misstated the facts.

During the pendency of the present appeal, the appellant filed CM No.2512-CII/2019 under Order 41 Rule 27 read with Section 151 CPC dated 9.1.2019, whereby the appellant placed on record two judgments as Annexure A-1 and A-2. Vide judgment dated 16.9.2017 (Annexure A-1), Id. Civil Judge (Junior Division) Faridabad had dismissed the respondent's application under Section 12 and 20 of the Domestic Violence Act; and vide judgment dated 7.8.2018 (Annexure A-2) Id. JMIC, Faridabad had acquitted the appellant and his parents of the charges framed against them for the offence punishable under Section 323, 406, 498-A, 506 IPC in case FIR No.117 dated 7.3.2013.

Reply to the said application was filed.

After going through the said application and reply filed thereto, the application is allowed and judgments at Annexure A-1 and A-2 are taken on record.

We have heard learned counsel for the parties, and perused the Lower Court Record in minute detail.

The appellant had sought divorce on the ground of cruelty and desertion. As noticed above, the Id. Court below has held that *“(i) it is hereby observed that the ground of desertion has not been proved by the petitioner and he is not entitled to decree of divorce on this ground; and (ii) since no specific instance of cruelty has been mentioned by the*

petitioner against the respondent, it is hereby observed that he is not entitled to decree of divorce on the ground of cruelty also”.

However, a perusal of the record reveals that the respondent’s petition under Sections 12 and 20 of the Domestic Violence Act, 2005 has been dismissed by learned Civil Judge (Junior Division) Faridabad vide judgment dated 16.9.2017 (Annexure A-1). Id. Civil Judge, in said order dated 16.9.2017 has categorically held that *“hence keeping in mind the evidence brought on record by the petitioner, her entire evidence with regard to the maltreatment and torture given by the respondent are not believable to the satisfaction of this Court……. In view of the above findings, present petition is hereby dismissed……”*.

Similarly, in FIR No.117 dated 7.3.2013 registered by the respondent under Sections 323, 498-A, 406 and 506 IPC, the sister of the appellant namely Ms. Ruby Sharma was not charge-sheeted; whereupon the respondent filed an application u/s 319 Cr. PC before the Id. JMIC, Faridabad seeking summoning of the aforementioned Ruby Sharma. This application too was dismissed by the Id. JMIC, Faridabad vide order dated 14.8.2017 (which is Ex. PC at page 161 of the LCR), with the observation that there was a trend to implicate all family members by levelling general allegations, and that *“the allegations leveller by the complainant against the proposed accused are general allegations just to implicate all family members of the husband. She has failed to attribute any specific role of proposed accused.”* Thereafter, the appellant and his parents have also been acquitted by Id. JMIC, Faridabad vide judgment dated 7.8.2018 (Annexure A-2). We are informed by the counsel for the respondent that appeal is pending against abovesaid acquittal of the appellant and his family.

Further, perusal of the LCR reveals that respondent had also lodged FIR No.150 dated 3.4.2013 under Sections 195-A, 341, 506 IPC, PS Sector 7, Faridabad against the appellant and his friends wherein she had alleged that on 28.3.2013 when she came from the school bus then the appellant and his friends chased her and when she alighted from the school bus and boarded Haryana Roadways bus, the appellant and his friends shouted at her and chased the said bus on their motorcycle. It was further alleged by her that the appellant and his friends were armed with sharp edged weapons and acid bottle and had threatened the present respondent/ complainant therein to sprinkle acid on her face. However, the appellant has been acquitted even in this case vide judgment dated 17.9.2016 passed by Id. JMFC Faridabad (which is Ex.PB at page 147 of the LCR).

Accordingly, the record of this case shows that the respondent has embroiled the appellant and his family in a number of false cases, in all of which they have been acquitted. This Court, as well as the Hon'ble Supreme Court have held in numerous decisions that false allegations made by a party against the spouse or his/her family, is tantamount to cruelty and constitutes sufficient ground for divorce.

There is sufficient case law on the issue that if the wife files frivolous and un-true complaints against her husband of which he is ultimately acquitted, it amounts to cruelty. In this regard reference may be made to one such judgment passed by Hon'ble the Supreme Court in the case of '**Rani Narsimha Sastry v Rani Suneela Rani**' in **SLP(Civil) 1981 of 2019, decided on 19.11.2019** wherein, Hon'ble Supreme Court held as follows:-

“13. In the present case the prosecution is launched

by the respondent against the appellant under Section 498A of IPC making serious allegations in which the appellant had to undergo trial which ultimately resulted in his acquittal. In the prosecution under Section 498A of IPC not only acquittal has been recorded but observations have been made that the allegations of serious nature are levelled against each other. The case set up by the appellant seeking decree of divorce on the ground of cruelty has been established.....

14.....But when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498A of IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has meted on the husband. As per pleadings before us, after parties having been married on 14.8.2005, they lived together only 18 months and thereafter they are separately living for more than a decade now.

15. In view of forgoing discussion, we conclude that appellant has made a ground for grant of decree of dissolution of marriage on the ground as mentioned in Section 13(1)(i-a) of the Hindu Marriage Act, 1955.”

Even this Court in the case of **Sushma Taya v Arvind 2015(2) RCR 888 (P&H)** held that filing of false criminal complaint by a spouse invariably and inevitably amounts to matrimonial cruelty and entitles the other to claim divorce.

Hon’ble Supreme Court in the case of **A. Jayachandra v Aneel Kaur 2005 (2) SCC 22** has held that allegation of cruelty is of such nature that resumption of marriage is not possible.

In ‘**Raj Talreja v. Kavita Talreja**’, (2017) 14 SCC 194, the

Hon'ble Supreme Court held as follows:

“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.”

Moreover, there is no denying the fact that the parties are residing separately since 3.3.2013. Even mediation attempts between the parties have remained unsuccessful. In our view, the conduct of the parties in the present case evidences that there are irreconcilable differences between the parties, rendering the marriage, as of today, a mere legal fiction. Though irretrievable breakdown of marriage is not available as a ground under the statute, yet, the reality of it has been recognised by the Supreme Court in a catena of decisions. Reference in this regard may be made to some:

Hon'ble Supreme Court in ‘**N. Rajendran v. S. Valli**’, (2022) SCC

OnLine SC 157 has observed as follows:

“In this regard, learned counsel for respondent pointed out that this is not a case for exercising power under Article 142. He addressed this submission, reminding us of the conduct of the appellant throughout. He would submit that the respondent is completely without blame. She was always ready and willing. The findings as found by the High Court being confirmed, no occasion arises for this Court to exercise power under Article 142. We record this submission for as a prefatory remark to indicate that this is not a case where both parties are agreeable for a dissolution by way of irretrievable breakdown of marriage. But that then leads us to the question as to whether the consent of the parties is necessary to order dissolution of marriage on the ground of irretrievable breakdown. This again, is not *res integra*. We may notice that this Court has in a catena of decisions discussed this very aspect. The judgment reported in **R. Srinivas Kumar v. R. Shametha** reads as under:

“7. Now so far as submission on behalf of the respondent wife that unless there is a consent by both the parties, even in exercise of powers under Article 142 of the Constitution of India the marriage cannot be dissolved on the ground of irretrievable breakdown of marriage is concerned, the aforesaid has no substance. If both the parties to the marriage agree for separation permanently and/or consent for divorce, in that case, certainly both the parties can move the competent court for a decree of divorce by mutual consent. Only in a case where one of the parties do not agree and give consent, only then the powers under Article 142 of the Constitution of India are required to be invoked to do substantial justice between the parties, considering the facts and circumstances of the case. However, at the same time, the interest of the wife is also required to be protected financially so that she may not have to suffer financially in future and she may not have to depend upon others.”

36. 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 a reasonable relationship as the tie between the parties has broken beyond repair and having regard to the facts of this case, we would 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.

37. 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.”
(Emphasis supplied)

In our view, the above said pronouncement of the Hon’ble Supreme Court squarely covers the issue at hand.

Also, as stated above, in the present matter the parties have been living separately for more than 9 years, since 2013. Reference at this stage can be made to the case of '**Naveen Kohli v. Neelu Kohli**', (2006) 4 SCC 558 which was also a case of cruelty (mental and physical) where the Hon'ble Supreme Court again considered the concept of irretrievable breakdown of marriage. In that case too the parties had been living separately since ten years and the wife was not ready to grant divorce to her husband. However, notwithstanding this factual position, Hon'ble Supreme Court was pleased to grant divorce in said matter and has further noticed as follows:

“32. In '**Sandhya Rani v. Kalyanram Narayanan**', (1994) Supp. 2 SCC 588, this Court reiterated and took the view that since the parties are living separately for the last more than three years, we have no doubt in our mind that the marriage between the parties has irretrievably broken down. There is no chance whatsoever of their coming together. Therefore, the Court granted the decree of divorce.

33. In the case of '**Chandrakala Menon v. Vipin Menon**', (1993)2 SCC 6, the parties had been living separately for so many years. This Court came to the conclusion that there is no scope of settlement between them because, according to the observation of this Court, the marriage has irretrievably broken down and there is no chance of their coming together. This Court granted decree of divorce.

34. In the case of **Kanchan Devi v. Promod Kumar Mittal**, 1996(2) RCR (Criminal) 614 : (1996)8 SCC 90, the parties were living separately for more than 10 years and the Court came to the conclusion that the marriage between the parties had to be irretrievably broken down and there was no possibility of reconciliation and therefore the Court directed that the marriage between the parties stands dissolved by a decree of divorce.”

Thus, in the conspectus of the peculiar facts and circumstances of the present case, and in consonance with the aforesaid pronouncements of the Hon'ble Supreme Court, with a view to do complete justice, and put an end to the agony of the parties, this Court deems it appropriate to allow the present appeal.

Before parting, we may refer to judgment at Annexure A-1 dated 16.9.2017, a perusal of which reveals that Id. Civil Judge (Junior Division) Faridabad while dealing with the respondent's petition under Sections 12 and 20 of the Protection of the Women from Domestic Violence Act, 2005 has held that the respondent is not entitled to any maintenance *inter alia* on the ground that she is M.Sc. and has cleared JRF and therefore, it is clear that she is more qualified than the appellant. Learned Court has also referred to Ex.R2 wherein respondent admitted that she was earning Rs.12,000/- per month on 1.1.2013. In this regard, reference may also be made to judgment dated 31.3.2017 passed by the District & Sessions Judge, Faridabad (at Ex. P 'A' at page 107 of the LCR), whereby the respondent's petition u/s 125 Cr. PC for grant of maintenance has been dismissed as the respondent had admitted vide Ex. R1/A that she is teaching and had admitted in her cross-examination that she is M.Sc Bio Chemistry and was entitled to scholarship of Rs. 25,000/- per month as she had qualified CSR-UGC-NET. Consequentially it was held that the respondent had failed to prove that she is unable to maintain herself. Keeping in view the observations, and in view of the fact that respondent-wife is better qualified than the appellant and is having good earning capacity, as also the abovesaid peculiar facts and circumstances

of the case, it is held that the respondent is not entitled to any permanent alimony.

For the reasons stated above, this appeal is allowed; impugned order dated 7.4.2018 passed by the learned Family Court-I, Faridabad is set aside; the petition for divorce filed by the appellant-husband under Sections 13(ia) and (iii) of the Act is decreed and the marriage solemnized between the parties on 25.04.2012 is dissolved by a decree of divorce. Any pending applications stand disposed of.

(Nidhi Gupta)
Judge

(Ritu Bahri)
Judge

October 12,2022
Joshi

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