

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

FAO-M-12 of 2017(O&M)

Date of decision: October 29,2022.

Joginder Singh

.....Appellant

Vs.

Rajwinder Kaur

.....Respondent

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

**Present:- Mr. Sandeep Sharma, Advocate for the appellant
 None for the respondent.**

Nidhi Gupta,J.

This appeal has been filed by the appellant-husband against the order dated 1.10.2016 passed by learned Additional District Judge, Tarn Taran whereby the appellant's petition under section 13-A of the Hindu Marriage Act,1955 for dissolution of marriage by a decree of divorce has been dismissed.

Briefly stated the facts of the case are that the marriage between the parties was solemnized in the year 2009-2010. It is stated to be a simple marriage with no exchange of gifts or dowry articles. No child was born out of their wedlock. It is the appellant's case that since the very beginning the respondent did not want to live in the matrimonial house along with his parents and wished to live separately.

The respondent also did not perform her matrimonial duties and would

pick up quarrels on trifle matters and would insult the parents of the appellant. It is further alleged that the respondent has a “venom-oozing tongue”. She even threatened to involve the appellant and his family members in false dowry case. It is stated that on 13.10.2013 the father of the respondent took her away and the respondent took all her belongings and gold ornaments with her and never came back thereafter. The appellant even convened a Panchayat; and on 10.11.2013, he along with his parents and other respectables went to the house of the parents of the respondent for reconciliation, but to no avail.

On the other hand, the respondent before the Family Court, has stated that the appellant’s petition under Section 13 was a counter blast to her petition under Section 125 Cr.PC; and the FIR No. 33 dated 25.3.2014 under Sections 406, 498-A, 120-B IPC, PS Patti, that she had got registered against the appellant and his family. She stated that all the demands of the appellant and his family members were met and generous items of jewelry and other dowry articles were gifted to them, however, the appellant and his family members mis-appropriated the same and ill-treated her and beat her and their greed for more dowry articles was endless, whereupon she was left with no alternative but to register the abovesaid FIR against them. She further stated that she was thrown out of the matrimonial home on 13.10.2013 with nothing except the clothes she was wearing. Respondent also stated that her parents and other relatives and other respectables had approached the appellant and his parents for rehabilitation of the respondent in her matrimonial house, however, the appellant had refused to take her back.

The following issues were framed by the learned Family Court:

- (i) Whether the respondent has treated the petitioner with cruelty after solemnization of their marriage? OPP
- (ii) Whether the respondent has deserted the petitioner for a continuous period of more than two years preceding the filing of the present petition? OPP
- (iii) Whether the petitioner has suppressed any material facts from the court, if so, its effect? OPR
- (iv) Whether the petitioner is entitled to the dissolution of the marriage as prayed for? OPP
- (v) Relief.

The appellant led evidence and produced attested copy of order dated 8.9.2014 passed in police challan case as Ex. PX ; attested copy of complaint filed by Baldev Singh (father of the appellant) against Manjit Singh and others as Ex. PY; copy of agreement dated 31.10.2013 Mark-A; and copy of application of Baldev Singh given to SHO PS Valtoha as Mark-B.

The respondent appeared in the witness box as RW-1 and further examined her father Darshan Singh as RW-2 and resident of her village Darshan Singh son of Prem Singh as RW-3. The respondent further produced attested copy of order dated 21.5.2016 passed in complaint case titled as “Baldev Singh v Manjit Singh and others” as Ex. R-1; attested copy of complaint dated 27.3.2016 titled as “Rajwinder Kaur v Joginder Singh and others” as Ex. R-2; attested copy of order dated 17.5.2016 as Ex. R-3; attested copy of application filed under Order 33 CPC as Ex. R-4; attested copy of the Execution application of maintenance as Ex. R-5; and attested copy of order dated 4.5.2016 passed in the same as Ex. R-6.

On the basis of the above pleadings and evidence led by the parties, the learned trial Court vide impugned order dated 1.10.2016 dismissed the appellant's petition primarily on the ground that the appellant had failed to prove that the respondent had treated him with cruelty or deserted him, and had failed to cite any specific instance of cruelty meted out by the respondent to the appellant. Hence, the present appeal.

Learned counsel for the appellant has vehemently stated before us that the impugned order is erroneous *inter alia* on the ground that the appellant had cited specific instances of cruelty by the respondent and also proved the same by examining himself as PW-1 and examined respectable resident of the village Surjit Singh as PW-2; and his father Baldev Singh as PW-4, however, the learned Court below has not appreciated the evidence in the correct light/ right perspective. Learned counsel has further urged that the learned trial Court has failed to properly appreciate the fact that the respondent had deserted the matrimonial home without any sufficient cause on 13.10.2013. Learned counsel has further stated that the appellant and his father were beaten by the father of the respondent and his companions, regarding which a complaint was also given to Police Station, Valtaha on 31.10.2013 as Mark-B. It was accordingly prayed that the appeal be allowed.

Heard counsel for the appellant and perused the records in great detail. Though matter was passed over, yet no one has appeared for the respondent even in the second round. Even on last date of hearing no one had appeared for the respondent.

Be that as it may there are plethora of judgments of Hon'ble Supreme Court as well as by this Court wherein it has been held that filing of false cases by wife against husband and his family members amounts to cruelty. Perusal of the record reveals that appellant had filed CM 25981-CII of 2018 dated 27.11.2018 seeking to place on record the judgment dated 30.8.2018 whereby the appellant and his family members, namely Baldev Singh (father of the appellant), Lakhwinder Kaur and Ramandeep Kaur (sisters of the appellant) and Ninder Kaur wife of Kashmir Singh, had been acquitted in the aforementioned FIR no. 33 dated 25.3.2014 registered under Sections 406, 498-A and 120-B IPC. Copy of the judgment dated 30.8.2018 has been appended with the application as Annexure A-1. Said CM 25981-CII of 2018 dated 27.11.2018 is allowed and judgment of acquittal dated 30.8.2018 Annexure A-1 is taken on record.

During the pendency of this appeal, this Court had attempted to reconcile the differences between the parties through mediation, however, parties could not resolve their dispute amicably and the mediation attempts had failed.

In our view, once criminal litigation is initiated between the parties it leads to a point of no return. And if it is a false case filed by the wife merely to harass and humiliate the husband and his family, then the resultant bitterness rarely leaves any room or reason for reconciliation. A perusal of the judgment at Annexure A-1 whereby the appellant and his family members have been acquitted of the charges under Section 406, 498-A 120-B IPC shows that Id. Trial Court has returned very categoric findings holding that the prosecution

entirely failed to prove its case. DW-1 Baljinder Singh has stated on oath that he had participated in the marriage between the parties as mediator and nothing was demanded by the appellant or his family from the respondent or her parents. The learned SDJM, Patti in his judgment of acquittal has returned the finding that no medico-legal examination was led by the respondent wife to prove the alleged beatings that she had received at the hands of the appellant and his father.

This Court as well as the Hon'ble Supreme Court have repeatedly held that if the wife files false complaint against her spouse, it amounts to cruelty and is sufficient ground for divorce. In this regard reference may be made to one such judgment passed by Hon'ble the Supreme Court in the case '**Rani Narsimha Sastry v Rani Suneela Rani**' in SLP(Civil) 1981 of 2019, decided on 19.11.2019 wherein, in para 13 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.”

In yet another case of ‘**Kahkashan Kausar @ Sonam v. State of Bihar (SC): Law Finder Doc Id # 1941423**,’ the Hon’ble Supreme Court held as follows:

“Further, it is submitted that the FIR in question has been made with a revengeful intent, merely to harass the Appellant in-laws herein, and should be dealt with accordingly. Reliance is placed on *Social Action Forum for Manav Adhikar & Anr. v. Union of India, Ministry of Law And Justice & Ors., (2018) 10 SCC 443*, wherein it was observed:-

"4. Regarding the constitutionality of Section 498A IPC, in *Sushil Kumar Sharma v. Union of India and others*, it was held by the Supreme Court: -

"Provision of S. 498A of Penal Code is not unconstitutional and ultra vires. Mere possibility of abuse of a provision of law does not per se invalidate a legislation. Hence plea that S. 498A has no legal or constitutional foundation is not tenable. The object of the provisions is prevention of the dowry menace. But many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame-work.""

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.”

Even otherwise a perusal of the LCR as well as the present appeal, reveals that there are great differences between both parties and they are determined to live separately and to not reconcile the issues between them. As stated above, mediation attempts between the parties have failed. It is not in dispute that the parties have been living separately since October 2013. In our view, this conduct of the parties evidences that there are irreconcilable differences between them, 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.

In these circumstances the following observations of the Hon'ble Supreme Court in case of '**K. Srinivas Rao vs. D.A. Deepa**' (2013) 5 SCC 226, cover the current controversy:

“25. It is also to be noted that the appellant-husband and the respondent-wife are staying apart from 27/4/1999. Thus, they are living separately for more than ten years. This separation has created an unbridgeable distance between the two. As held in Samar Ghosh, if we refuse to sever the tie, it may lead to mental cruelty.

26. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree. ...

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 has 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.”

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, though we have held that the acts of the respondent-wife amount to cruelty against the appellant-husband, we are,

however, not oblivious to her requirements. It has come on record that the appellant has been paying interim maintenance under section 125 CRPC at Rs.2500/- per month, and Rs.3000 per month was granted by the trial court under section 24 of the HMA. In these circumstances, we consider it just to direct that the husband shall pay to the wife a sum of INR 10,00,000/- (Rupees Ten Lakhs only) as one-time permanent alimony as full and final settlement of all disputes between the parties.

Accordingly, for the reasons stated above, this appeal is allowed; impugned order dated 1.10.2016 passed by the learned Additional District Judge, Tarn Taran is set aside; the petition for divorce filed by the appellant- husband under Sections 13-A of the Act is decreed and the marriage solemnized between the parties is dissolved by a decree of divorce in the abovesaid terms. All pending applications, if any, stand disposed of.

(Nidhi Gupta)
Judge

(Ritu Bahri)
Judge

October 29,2022.
Joshi

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No