

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-177-2017 (O&M)

Reserved on: 28.09.2022

Pronounced on:21.10.2022

Savita

....Appellant

Vs.

Vikash Goyal

....Respondent

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

Present: Mr. Virender Singh Punia, Advocate
for the appellant.

Mr. Sumeet Goel, Sr. Advocate with
Mr. Aarush Neeraj Vaid, Advocate
for the respondent.

Ritu Bahri, J.

The appellant, Savita has come up in the appeal against the judgment and decree dated 20.04.2017 passed by the Family Court, Jind whereby petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act, 1955) was allowed.

The brief facts of the case are that the marriage of the appellant-wife was solemnized with the respondent-husband on 05.12.2005 as per Hindu rites and ceremonies. After the marriage, the appellant-wife and respondent-husband resided together at Kaithal and the marriage was duly consummated. However, no child was born out from this wedlock. The appellant-wife used to pick up quarrels on one pretext and others and maltreated the respondent-husband and his family members. She did not even perform her matrimonial duties and left her matrimonial home. A

criminal case was got registered against the respondent-husband bearing FIR No. 52 dated 14.02.2009 under Sections 498-A, 46, 34 IPC in Police Station Narwana City at the instance of the appellant-wife, which was disposed of by the then learned SDJM, Narwana vide order dated 07.12.2013 and the accused were found innocent and acquitted of the charges levelled against them. After acquittal, when the respondent-husband went to bring her back, she refused to return and put a condition that she could join him if he would shift her from Kaithal to Panipat. The appellant-wife caused mental cruelty and torture to the respondent-husband as her conduct and behaviour was very harsh, rude and intolerable and she deserted the respondent-husband with an intention of not joining him. Hence, the divorce petition was filed.

On notice of the divorce petition, appellant-wife appeared and filed written statement admitting the factum of marriage. It was further submitted that the respondent-husband and his family members were greedy persons and taunted her as she belongs to a very poor family. After five days of the marriage, the respondent-husband and his family members started beatings her for bringing more dowry. Thereafter, the respondent-husband left her at the mercy of his parents and he left the home without giving any information for six months and started residing at Panipat. The father of the appellant-wife took panchayat at the house of the respondent-husband twice but the respondent-husband and his family members were adamant on the demand of Rs.15 lacs. Earlier also, the father of the respondent-husband and his sister took Rs.2 lacs from her father as dowry. She moved an application before Incharge, Nodal Cell, Jind and tried to get the matter settled but the respondent-husband refused to take her to his

house and to accept her as his wife. She was ready and willing to live with the respondent-husband and to perform all obligations of a wife, but her parents could not fulfill his illegal demand of dowry. She did not leave her matrimonial home at her free will but she was turned out from her matrimonial home without any reasonable cause and she was treated with cruelty.

No rejoinder was filed. From the pleadings of the parties, following issues were framed on 18.08.2015:-

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

The respondent-husband examined himself as PW-1 and his father Tara Chand as PW-2 and tendered into evidence certified copy of judgment dated 05.01.2015 passed by learned the then District Sessions Judge, Jind as Ex.P-1 and closed his evidence vide statement dated 22.03.2016.

The respondent examined herself as RW-1 and, thereafter, closed her evidence vide statement dated 16.08.2016 after tendering into evidence documents i.e. photocopy of statement of Vikash dated 10.02.2009 as Ex.R1, copy of order dated 04.12.2015 passed by High Court as Ex.R-1 (wrongly marked) and copy of status report as Ex.R-2.

After going through the evidence led by the parties, the Family Court allowed the divorce petition on the following grounds after considering judgments passed in ***Vijayakumar Ramchandra Bhate vs. Neela Vijayakumar Bhate AIR 2003 SC 2462, Rohin Kumar vs. Silvia 2015(4) R.C.R.(Civil) 175, Sushma Taya vs. Arvind 2015(2) R.C.R.(Civil)***

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1. As far as desertion is concerned, it is an admitted fact between the parties that their marriage was solemnized on 05.12.2005 and the divorce petition was filed on 09.12.2014. The appellant-wife did not deny in her written statement that she remained with the respondent-husband only for about 5 months. In other words, desertion for a period of more than 2 years was admitted by the appellant-wife.
2. As far as cruelty is concerned, the respondent-husband was found innocent and acquitted of all the charges in criminal case i.e. FIR No. 52 dated 14.02.2009 under Sections 498-A, 46, 34 IPC in Police Station Narwana City which was registered by the appellant-wife.

Learned counsel for the respondent-husband has placed on record judgment dated 21.07.2015 (Annexure R-1) passed by the District Judge, Jind whereby in an application under Section 24 of the Act, 1955, the respondent-husband was directed to make payment of Rs.3,000/- p.m. and Rs.5,500/- as one time litigation expenses to the appellant-wife with further direction that she would be entitled to maintenance only in petition under Section 125 Cr.P.C. He has also placed on record judgment dated 21.07.2015 (Annexure R-2) challenging judgment dated 12.11.2014 wherein the petition of the appellant-wife under Section 125 Cr.P.C. was dismissed. As per judgment dated 21.07.2015 (Annexure R-2), judgment dated 12.11.2014 was set aside and the respondent-husband was directed to make payment of Rs.3,000/- p.m. and Rs.5,500/- as one time litigation expenses to the appellant-wife.

During the pendency of the instant appeal, the parties were

relegated for mediation which failed. In the present case, the couple does not have any child. The appellant-husband was acquitted of all the charges vide judgment dated 07.12.2013 in criminal case i.e. FIR No. 52 dated 14.02.2009 under Sections 498-A, 46, 34 IPC in Police Station Narwana City registered against him by the appellant-wife. Filing of false complaint by the spouse would amount to matrimonial cruelty and divorce can be granted to the appellant on this ground.

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.”

Further reference can be made 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.

In the present case, the parties have been staying separately after five months of their marriage (date of marriage is 05.12.2002) as admitted by the appellant-wife in her written statement i.e. for the last 16 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 respondent-husband to stay together as per the above-referred judgments.

Keeping in view of the above observations, present appeal is dismissed. However, a direction is given to the respondent-husband to give

Rs.5 lacs as permanent alimony to the appellant-wife within a period of one month from the date of receipt of certified copy of this order.

Pending application, if any, stands disposed of.

(RITU BAHRI)
JUDGE

21.10.2022
Divyanshi

(NIDHI GUPTA)
JUDGE

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