

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

FAO-M-108-2018(O&M)

Date of decision: 07.02.2022

Harpinder Kaur

....Appellant

V/s.

Gurpreet Singh

.....Respondent

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

Present: Dr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Shiv Kumar Sharma, Advocate for the appellant.

Ms. Munisha Gandhi, Senior Advocate with
Ms. Vedika Gandhi, Advocate for the respondent.

Ritu Bahri, J.

The appellant-Harpinder Kaur has come up in appeal against the judgment and decree dated 12.03.2018 passed by the Additional District Judge, SAS Nagar (Mohali) whereby Gurpreet Singh-respondent has been given a divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955 on the ground of cruelty.

The brief facts of the case are that the marriage of the appellant was solemnized with the respondent on 16.11.2012, at Zirakpur as per Sikh Rites and no child was born out of this wedlock.

The divorce petition was filed on the grounds that after 2/3 days of the marriage, appellant-wife had started saying that she will not reside in House No. 221, Sector 51, Chandigarh. In the said house, the husband-respondent was staying with his brother, his wife (bhabhi) and a child. After 5/6 days of the marriage, the parties were invited by the maternal uncle of the respondent-husband for dinner and the appellant-wife

flatly refused to go to the house of his maternal uncle, despite repeated requests were made by the respondent-husband. Finally, the dinner was cancelled and it created a lot of bickering between the family of the respondent-husband and the maternal uncle. The appellant-wife refused to call the mother of the respondent-husband as Mataji or Mummy and would only address her as 'Auntiji'. The respondent-husband decided to leave his mother at their native place but the appellant-wife refused to accompany the respondent-husband while going with his mother to their native place. She took the stand that she was least interested and concerned with his mother.

On the night of 13.12.2012, the appellant-wife repeated that she did not want to reside in House No. 221, Sector 51, Chandigarh as no separate house had been arranged by the respondent-husband and started abusing him and his other family members. She started collecting her clothes, other articles, gold ornaments and wore some clothes and jewellery and put the other in boxes and left the house with her friend. The respondent-husband had informed the local police about that incident on 14.12.2012. The appellant-wife started living in House No. 771-A, Phase-9, Ajitgarh alone. The respondent-husband tried to persuade the appellant-wife to come back to House No. 221, Sector-51, Chandigarh to resume married life but she did not agree. She misbehaved on 06.07.2013 after coming to House No. 221, Sector 51, Chandigarh. The neighbour Paramjit Kaur tried to persuade the appellant-wife not to create such a scene in front of the house of the husband and come back to the house but she would not agree to it and threatened that she would commit suicide by consuming some poisonous substance. After persuasion, she went back to House No. 771-A, Phase-9, Ajitgarh. On 28.07.2013, she again came to the house of

the respondent-husband and threatened to consume sulphose tablets for committing suicide. In order to avoid any unfortunate incident, the respondent-husband called the police and she was sent back to House No. 771-A, Phase-9, Ajitgarh. On 05.08.2013, efforts were made in the presence of some relatives that they should start living together and finally, the respondent-husband started living with the appellant-wife in House No. 771-A, Phase-9, SAS Nagar, Mohali. She used to send messages in objectionable language from her mobile to the respondent-husband.

After filing the divorce petition, a complaint was made by the appellant-wife against the respondent-husband and his relatives for registration of case under Sections 366, 376, 406, 420, 498-A, 120-B IPC read with Sections 3 and 4 of Dowry Prohibition Act. Thereafter, she filed a petition under Section 156(3) Cr.P.C. seeking directions for registration of the case, and when no direction was given by the learned Magistrate, the said complaint was treated as private complaint and vide order dated 25.11.2014, only respondent-husband was summoned under Sections 406, 498-A IPC.

Upon notice, the appellant-wife filed a written statement taking a plea that she knew the respondent-husband prior to their marriage and since 2004 till October, 2013, they lived together as husband and wife. She alleged that the family members of the respondent-husband were cruel towards her. It was stated in the written statement that before her marriage, an FIR No. 247 of 1996 under Sections 406, 498-A IPC had been registered against the respondent-husband and his family members at Police Station Sadar Tohana, District Hisar (Haryana). She denied all the allegations in her para-wise reply to the divorce petition.

From the pleadings of the parties, following issues were framed on 17.10.2015:-

1. Whether the petitioner is entitled to the decree of divorce the ground of cruelty? OPP
2. Whether the instant petition is not maintainable in the present form? OPR
3. Whether the petitioner has concealed the material facts from the Court? OPR
4. Relief.

The respondent-husband examined HC Bikram Singh as PW1 who proved copy of complaint dated 14.12.2012 Ex.PW1/A and copy of enquiry report Ex.PW1/B. He himself stepped into the witness box as his own witness as PW2 and reiterated the contents of the petition and proved on record documents i.e. detail of messages as Ex.P1, list of documents as Ex.P2, complaint given to SSP, UT as Ex.P3, bill of Kamal Tent House as Ex.P4, detail of message dated 28.07.2013 as Ex.P5, photographs as Ex.P6 to Ex.P13, bills as Ex.P14 and Ex.P15 and copy of complaint filed by respondent as Ex.P16. He examined Nafees as PW3, Raj Kumar as PW4 who proved copy of bill as Ex.PW4/1. Gurwinder Singh, Sr. Assistant was examined as PW5 who proved copy of notice as Ex.PW5/A and copy of letter dated 19.03.2014 as Ex.PW5/B. Prem Parkash Arora was examined as PW6 who proved copy of notice as Ex.PW6/1 and copy of reply to the said notice as Ex.PW6/B. Nirmal Singh as PW7, Jaspal Singh as PW8 who supported and corroborated the testimony of respondent-husband. Thereafter, he closed his evidence.

Appellant-wife examined Record Clerk Devender Singh Patwal as RW1 who proved on record copy of order dated 22.08.2014 as Ex.RW1/A, copy of final order vide which petition filed at Chandigarh

Court was decided as Ex.RW1/B, medical record exhibited in that file as Ex.RW1/2, Ex.RW1/C, Ex.RW1/3, Ex.RW1/D. She herself stepped into the witness box to depose as her own witness as RW2 and reiterated the contents of her written statement. She proved on record copy of complaint as Ex.RW2/1, list of dowry articles as Ex.RW2/2, copy of summoning order as Ex.RW2/3. She also examined her uncle Pal Singh as RW3 who proved on record bills for purchase of jewellery and ornaments, as Ex.RW3/1 to Ex.RW3/5. Daler Singh was examined as RW4, Shinder Singh was also mentioned as RW4 and both of them supported and corroborated the respondent-wife and, thereafter, she closed her evidence.

After going through the evidence led by both the parties, finding on issue No. 1 was given in favour of respondent-husband.

During cross-examination, the respondent-husband admitted that compromise was effected on 05.08.2013 before the *panchayat* having members including Nirmal Singh, Jaspal Singh and Mr. Hundal, who deposed on the lines of the respondent-husband. The respondent-husband also admitted that he and appellant-wife had cohabited till 17.10.2013 and as per the compromise, all the acts of cruelty stood condoned by him. The messages (Ex.P-1) alleged by the respondent-husband were not taken into consideration as no certificate of their authenticity under Section 65-B of Indian Evidence Act had been proved. Further from the testimonies of PW2 Gurpreet Singh (respondent-husband), PW5 Gurwinder Singh, Senior Assistant and PW6 Prem Parkash Arora, it was clarified that after 17.10.2013 i.e. on 10.01.2014, the appellant-wife, through her counsel, had made a complaint against the respondent-husband before the Bank and Director Technical Education having subject "Act of cheating,

impersonation, forgery committed by Gurpreet Singh son of Gian Singh, permanent resident of village Aherwan, Tehsil Ratian, District Fatehabad, Haryana by mortgaging, creating charge over HIG 771-A, Phase IX, Ajitgarh (Mohali), in the name and ownership of Miss Harpinder Kaur, d/o Sardool Singh.

The appellant-wife had filed a criminal complaint (Ex.RW2/1) against the respondent-husband and his relatives for registration of case under Sections 366, 376, 406, 420, 498-A, 120-B IPC read with Sections 3 and 4 of Dowry Prohibition Act. Thereafter, she filed a petition under Section 156(3) Cr.P.C. for seeking directions for registration of the case and, when no direction was given by the learned Magistrate, the said complaint was treated as private complaint and vide order dated 25.11.2014 (Ex.R1), only respondent-husband was summoned under Sections 406, 498-A IPC (Ex.RW2/3). The respondent-husband was charge-sheeted by the Criminal Court through Ex.DX and Ex.DY and the matter was subjudiced before the Criminal Court, Chandigarh. Vide order dated 25.11.2014 (Ex.R1), the respondent-husband alongwith his family members was exonerated of allegations of kidnapping, raping and cheating. The said order had attained finality as no revision was filed by the appellant-wife. The complaint made by the appellant-wife to the Director Technical Education with ulterior motive came within the meaning of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

The Family Court, while referring to judgments passed in ***Pooja Sharma Vs. Vikrant Sharma, 2015(3) RCR (Civil) 174*** endorsed view of Hon'ble Apex Court in ***K. Srinivas Rao Vs. D.A.Deepa, 2013(2) RCR (Criminal), 2017*** had held that the appellant-wife had levelled false

allegations of kidnapping, raping and cheating not only against the respondent-husband but also against his family members which amounted to cruelty by the appellant-wife. In this backdrop, divorce has been granted to the respondent-husband.

Learned counsel for the appellant has vehemently argued that in the criminal complaint (Ex.RW2/1) filed by the appellant-wife, there were no allegations of Sections 366 and 376 against any of the family members of the respondent-husband and only the husband-respondent was summoned under Sections 406 and 498-A IPC and hence finding that complaint was false with respect to allegations under Sections 366 and 376 is not made out. He has further argued that complaint was made to the Bank only to secure property rights of House No. 771-A, Phase IX, Ajitgarh, Mohali which was in the ownership of appellant-wife. The said house had been mortgaged for Rs.5 Crores to finance "Group of Universal Colleges" which was started by respondent-husband and he was also its Chairman. Hence, both the complaints could not be made basis to grant divorce to the respondent-husband on the ground of cruelty.

Learned counsel for the respondent has referred to criminal complaint (Ex.RW2/1) and order dated 25.11.2014 (Ex.R1). A perusal of para 10 of order dated 25.11.2014 (Ex.R1), which is at page 382 of lower Court record, shows that offences under Sections 366, 376, 420 IPC and Sections 3 and 4 of Dowry Prohibition Act were not made out against all the accused and complaint against accused Nos.1, 3 to 8 was dismissed and only accused No. 2 (respondent-husband) was summoned to face trial under Sections 406 and 498-A IPC. It is observed clearly in the said order that apart from offences under Sections 366, 376, 420 IPC and Sections 3 and 4

of Dowry Prohibition Act, offences under Sections 406 and 498-A IPC were also not made out against the family members of the respondent-husband and the complaint qua them had been dismissed. Hence, the finding that no offences were made out against them, would amount to a case with false allegations of kidnapping, raping and cheating.

With respect to complaint/notice (Ex.PW5/A) sent through counsel on 10.01.2014 to the Chief Manager, Bank of Baroda, Zirakpur Branch, District Mohali (at page 264 of the lower Court record), it was alleged by the appellant-wife that some blank papers with respect to property i.e. flat No. 771-A, Phase-IX, Mohali had been got signed by the respondent-husband before marriage and it was further mentioned therein that various criminal complaints were pending against her husband and his family members and they had a lust of getting money. They had cheated the Bank and may go abroad and the Bank cannot recover loan amount/C.C. limit which are based on false and frivolous documentation. Hence, the allegations of impersonation, forgery committed by Gurpreet Singh son of Gian Singh were made out as deposed by PW2 Gurpreet Singh (respondent-husband), PW5 Gurwinder Singh, Senior Assistant and PW6 Prem Parkash Arora.

In the facts of the present case, the appellant-wife was in relationship with respondent-husband before they solemnized marriage on 16.11.2012 as it is evident from the amended written statement on behalf of the respondent (at page 51 of the lower Court record) and from the petition under Section 156(3) Cr.P.C filed by her (at page 426 of lower Court record). The appellant-wife was conscious of the fact that she was mortgaging the property for setting up of “Group of Universal Colleges”

and she personally appeared in the Bank to create mortgages and also to sign personal guarantee papers/loan documents and there was no concealment from her in this matter. This fact is evident from the reply dated 02.05.2016 (Ex.PW6/B) given by the Bank to the legal notice sent on behalf of the appellant-wife (at page 274 of lower Court record), which is reproduced as under:-

“We submit that the immovable property of Ms. Harpinder Kaur d/o Mr. Sardool Singh situated at - HIG 771-A, Phase-IX, Mohali was held under Equitable mortgage to secure various credit facilities sanctioned to M/s. Universal Educational Society, Vill. Ballopur, Nr. Lalru.

We also submit that since creation of first Equitable Mortgage and subsequent extensions on various dates Ms. Harpinder Kaur personally appeared in the Bank to create mortgages and also to sign personal guarantee papers/loan documents. We submit that nothing was hidden or concealed from her in the matter.

However, we have also sought reply in the matter from Mr. Gurpreet Singh (Chairman, Universal Educational Society) in the matter a copy of which is attached.

Moreover, the Society has given its request to release the property and to substitute with another property of their own/society, which is under consideration.”

Learned counsel for the respondent has further informed that property of Ms. Harpinder Kaur d/o Mr. Sardool Singh situated at - HIG 771-A, Phase-IX, Mohali, had already been released from the mortgage by the Bank. From the reply dated 02.05.2016 (Ex.PW6/B) as well as from the testimonies of PW2 Gurpreet Singh (respondent-husband), PW5 Gurwinder Singh, Senior Assistant and PW6 Prem Parkash Arora, it is abundantly clear that notice was given by the appellant-wife through her counsel to the Bank

Gurpreet Singh son of Gian Singh. However, reply dated 02.05.2016 (Ex.PW6/B) given by the Bank clarified that there was no cheating, impersonation and forgery committed by the respondent-husband. Hence, the Family Court had rightly given a finding that after compromise was effected between the parties on 05.08.2013, two complaints (one is criminal complaint Ex.RW2/1 and another is complaint/notice dated 10.01.2014 Ex.PW5/A) were filed by the appellant-wife which amount to cruelty as per the judgment of Supreme Court passed in ***K.Srinivas Rao vs. D.A.Deepa (2013) 5 Supreme Court Cases 226***, in which the respondent-wife made a complaint against the appellant-husband and his family members under Section 498-A IPC by alleging that mother of appellant-husband had asked respondent-wife to sleep with her father-in-law, was found to be false which amounts to extreme mental cruelty towards the appellant-husband.

With respect to the arrears of maintenance, learned counsel for the respondent-husband has informed that respondent has paid an amount of Rs.12 lacs by way of demand draft No. 35592 dated 02.02.2022 to the appellant-wife towards arrears of maintenance, in the proceedings under Section 125 Cr.P.C. A photocopy of the said demand draft is also taken on record as Annexure 'X'.

In the present case, after the marriage solemnized on 16.11.2012, the appellant-wife had left her matrimonial home on 13.12.2012 and the parties have been staying separately for the last 9 years and the allegation of cruelty has been duly proved. Apart from cruelty, the marriage has become dead and irretrievable. Hence, the instant appeal is dismissed.

Pending applications also stand dismissed.

(RITU BAHRI)
JUDGE

07.02.2022

Divyanshi

(ASHOK KUMAR VERMA)
JUDGE

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