

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-174-2018 (O&M)

Date of decision: 29.09.2022

Narinderjit Singh

....Appellant

Vs.

Saroj Rani

....Respondent

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

Present: Mr. Pritam Singh Saini, Advocate
for the appellant.

Mr. K.S.Mamrat, Advocate
for the respondent.

Ritu Bahri, J.

The appellant, Narinderjit Singh has come up in the appeal against the judgment and decree dated 22.03.2018 passed by the Family Court, SAS Nagar, Mohali whereby his petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act, 1955) was dismissed.

The facts not in dispute between the parties are that the marriage of the appellant-petitioner was solemnized with the respondent on 06.10.2013 at Morinda as per Sikh Rites and ceremonies. As per the appellant-petitioner, the respondent-wife started maltreating him and used to insult him in the presence of other relatives and friends by saying 'haramjada' and many other abusive words. The marriage was not consummated due to the behaviour of the respondent-wife. She not only allowed the appellant-petitioner to have sexual relations with him but also threatened him for committing suicide if he tried to make relations with her.

Even after separating from the parents of the appellant-petitioner and his brother, she did not change her cruel behaviour towards him and his family members. She used to leave the house of the appellant-petitioner in his absence and tried to commit suicide twice by hanging herself with ceiling fan but she was saved timely by the neighbours. The appellant filed petition for judicial separation in the Court of Additional District Judge, Mohali on 03.03.2014 but since then the respondent never returned to his house to accompany him. Thereafter, she started filing false police complaint under Domestic Violence Act against him and his family members. The respondent had left the house of the appellant in the month of February, 2014 and since then they have been residing separately due to wilful default of the respondent.

On notice of the divorce petition, respondent appeared and filed written statement denying all the allegations made in the divorce petition. She stated that the behaviour of the appellant-petitioner was not cordial towards her as he and his family members were not satisfied with the dowry/istri dhan given by her parents and used to taunt her for bringing insufficient dowry. She filed a complaint for harassment and maltreatment suffered by her. Upon the enquiry of SSP, the appellant and his parents felt sorry and she got ready to go to her matrimonial house. One FIR No. 83 dated 26.06.2015 under Sections 498-A and 406 IPC was also got registered against him. Before filing petition under Section 13 of the Act, 1955, he withdrew petition under Section 10 of the Act, 1955 which was filed on 03.03.2014.

Rejoinder was filed. From the pleadings of the parties following issues were framed:-

1. Whether respondent treated the petitioner with cruelty without any reasonable cause? OPP
2. Whether petitioner is entitled to decree of divorce by dissolution of his marriage with the respondent? OPR
3. Whether this petition is not maintainable as alleged? OPR
4. Whether petitioner has not come to the court with clean hands and has suppressed the material facts from the court? OPR
5. Relief

The appellant-petitioner deposed as PW1. He also examined his neighbourer Labh Singh as PW2, Kuldeep Singh, Ex-panch of village Jhanjheri as PW3, his mother Kuldeep Kaur as PW4. He tendered into evidence documents i.e. copy of judgment dated 28.09.2017 as Ex.PA, copy of enquiry report as Ex.PB, copy of complaint as Ex.PC, copies of statements as Ex.PD to Ex.PG.

The respondent appeared herself into witness box as RW1 and thereafter she closed her evidence after tendering into evidence documents i.e. copy of order dated 18.05.2015 as Ex.D1, copy of petition u/s 10 of the Hindu Marriage Act as Ex.D2, copy of statement of petitioner-husband dated 02.01.2015 as Ex.D3, copy of order dated 21.08.2004 as Ex.D4.

After going through the evidence led by the parties, the Family Court dismissed the divorce petition on the following grounds:-

1. As per the testimonies of witnesses, there was no date, time and year was mentioned when the respondent-wife had called him 'Haramjada'.
2. As per the evidence of PW2-Labh Singh and PW3-Kuldeep Singh and during cross-examination of the respondent-wife as RW-1, it came out that two *panchayats* were convened but all the witnesses of the appellant-husband did not tell the date and month of the year 2014 when attempts of the suicide were

allegedly made. However, the respondent-wife admitted that it was resolved in the two *panchayats* that she will not commit suicide. In the absence of direct evidence of date and time, when she had threatened to commit suicide, the Family Court held that this would not amount to mental cruelty.

3. The appellant-husband was acquitted of all the charges vide judgment dated 28.09.2017 in criminal case i.e. FIR No. 83 of 2015 under Sections 498-A, 406 IPC at Police Station Morinda, registered against him by the respondent-wife. However, the judgment of acquittal was not taken to be a ground of cruelty as in the divorce petition, no such plea was taken by the appellant-husband.

Today, when the case was taken up for arguments, it was observed that attempts were made for an out of Court settlement, but the mediation has failed as it is evident from the order dated 31.05.2019. In the present case, the couple does not have any child as the marriage was not consummated. The appellant-husband was acquitted of all the charges vide judgment dated 28.09.2017 in criminal case i.e. FIR No. 83 of 2015 under Sections 498-A, 406 IPC at Police Station Morinda, registered against him by the respondent-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 since February, 2014 i.e. for the last 8 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 appellant to stay together as per the above-referred judgments.

Hence, the appeal is allowed and the appellant is granted divorce under Section 13(1)(ia) of the Act, 1955. A direction is given to the appellant to give Rs. 8 lacs as permanent alimony to the respondent-wife within a period of one month from the date of receipt of certified copy of this order.

Decree sheet be drawn accordingly.

Pending application, if any, stands disposed of.

(RITU BAHRI)
JUDGE

29.09.2022
Divyanshi

(NIDHI GUPTA)
JUDGE

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