

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-198-2018

Date of decision: 05.05.2022

Shobha Kalra

....Appellant

Vs.

Kamal Kalra

....Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Appellant Shobha Kalra, with
Mr. Jai Vir Yadav, Senior Advocate with
Ms. Pooja, Advocate.

Respondent Kamal Kalra, with
Mr. Krishan M. Vohra, Advocate.

Ritu Bahri, J.

The appellant, Shobha Kalra has come up in this appeal against the judgment and decree dated 24.01.2018 passed by learned Additional District Judge, Rewari whereby her petition for divorce under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act, 1955) has been dismissed.

The brief facts of the case are that the marriage of the petitioner-appellant was solemnized with the respondent on 26.04.2009 at Derawal Bhawan, Gurgaon, in accordance with Hindu rites and ceremonies. Out of this wedlock, a daughter namely Ridhima was born on 31.03.2010.

The petitioner-appellant was working in Orion Hundai Work Shop, Gurgaon. On 13.05.2013, the respondent reached at the office of the petitioner and in the presence of staff members, hurled abuses, threatened with dire consequences and the matter was reported to the Police Civil Line,

Gurgaon.

On 04.01.2015, again the respondent quarreled with the petitioner-appellant and her family members and the matter was reported to the police vide rapat dated 04.01.2015.

Thereafter, on 22.01.2015 on complaint of respondent, the Women Cell, Gurgaon, called her and her family members, where the respondent hurled abuses and slapped her. Due to cruel behaviour of the respondent, the parties have been residing separately since 10.06.2010 and no co-habitation had taken place between them.

One petition under Section 13-B of the Act, 1955 was filed and due to harassment of the respondent, the petitioner-appellant had withdrawn her consent. In this backdrop, divorce petition was filed.

On notice of the divorce petition, written statement was filed by the respondent denying all the allegations and it was asserted that on 03.12.2011, a petition under Section 13-B of the Act, 1955 was filed before the Family Court, Gurgaon, after recording joint statement of first motion, the petitioner-appellant never turned to the house of the respondent to see her child; rather she pressurized him in connivance with unknown person including father and Jija to pay Rs.3,50,000/- to her and the same were paid. The petitioner intentionally did not give her consent in the second motion statement just to harass him and his family members.

Following issues were framed:-

1. Whether the petitioner has been treated with cruelty at the hands of the respondent, if so, its effect? OPP
2. Whether the petitioner is entitled to decree of divorce on the ground of desertion as alleged? OPP

3. Whether the petition is not maintainable in the present form? OPR
4. Whether the petitioner is estopped from filing the present petition by her own act and conduct? OPR
5. Whether the petitioner has not come with clean hands and concealed true and material facts from the court? OPR
6. Whether the petitioner has no cause of action to file the present petition? OPR
7. Relief.

The petitioner besides examining herself as PW4, also examined Head Constable Naresh Kumar as PW1, Head Constable Ajit as PW2, Darshan Grover, her father as PW3 and thereafter evidence on behalf of the petitioner was closed vide statement dated 26.04.2016.

The respondent besides examining himself as RW1, also examined Subhash Sardana as RW2 and thereafter evidence of the respondent was closed vide court order dated 13.10.2017.

On issue No. 1, the Family Court observed that the petitioner while appearing as PW4 had deposed during her cross-examination that she never went to the house of the respondent after 22.06.2010 to see her child namely Ridhima. She did not file any petition to seek custody of the child. She was not willing to keep her daughter with her. She further deposed that her husband had taken her for outing once or twice during her stay at in-laws house, she lived in Orissa with her husband for about two months.

The Family Court had also examined rapat (Ex.PW1/A) which

was made on the basis of report made on 04.01.2015. As per the said rapat, no cognizable offence was found to have been committed and the petitioner had refused to undergo medico-legal examination. As per the rapat dated 22.01.2015 (Ex.PW2/B), Mamta Upadhayai, the neighbourer of the respondent had come to police station, where relatives of the petitioner maltreated her and it was also mentioned in the said rapat that from the application, the said incident appeared to be suspicious. In rapat as Ex.PW2/C also, no quarrel was found to have been taken place and parties to the petition had levelled allegations against each other.

The Family Court, after going through the evidence, held that mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, will not amount to cruelty.

On issue No. 1-A, the Family Court observed that the respondent-husband while appearing as RW1 deposed that he went to the house of the petitioner-appellant on several occasions with his parents to bring her back, but she refused. The petitioner-appellant while appearing as PW4 deposed that she was not willing to keep her daughter with her and had never gone to the house of the respondent after 22.06.2010 to see her child. The petitioner-appellant did not file any petition under Section 9 of the Act, 1955. The respondent-husband needed the company of the appellant-wife for upbringing the child. Finally, the Family Court has given a finding that the petitioner-appellant deserted the respondent-husband.

The important point to be noted in the present case is that all the above said complaints (Ex.PW1/A, Ex.PW2/B and Ex.PW2/C), were made by the respondent against the appellant-Shobha Kalra and her family members. Registering of three complaints in itself which were not found to

be correct, would amount to cruelty against the petitioner-wife and making false complaints to the Police Station cannot be taken as routine matter and would not amount to normal conduct in the matrimonial life.

At this juncture, it is important to make reference to the judgment passed by this Court in 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 held 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.”

Even making one false complaint against the other spouse would amount to cruelty. In the present case, there were three complaints filed by the respondent-husband which were not found to be correct. Hence, finding on issue No. 1 is liable to be reversed.

On issue No. 1-A, the appellant-wife left the matrimonial house on account of cruelty inflicted upon her by the respondent-husband by making three complaints in the police station, as she was not expected to live and face cruelty in her matrimonial life. Further, the respondent-husband had also not made attempts to get the appellant-wife back by making positive environment in her matrimonial house and had not filed petition under Section 9 of the Act, 1955. After making false complaints against the appellant-wife, she left the matrimonial house on 22.06.2010 and the petition for divorce was filed on 17.03.2015 i.e. after a gap of almost 5 years. The appellant-wife is also entitled for divorce on the ground of desertion. Non-filing of the petition under Section 9 of the Act, 1955 by the appellant-wife cannot be made a ground to give finding that respondent-husband had not deserted the appellant-wife. The Family Court has given a finding on issue No. 1-A that the respondent-husband needed the company of the appellant-wife for upbringing the child. If the respondent-husband was keen to keep his wife in the matrimonial house, he should not have filed false complaints against her.

Keeping in view of above observations, it is clear that appellant-wife had suffered desertion and cruelty at the hands of the respondent-husband in the matrimonial house. Hence, the appeal is allowed and the judgment and decree dated 24.01.2018 passed by learned Additional

District Judge, Rewari is set aside. The appellant-Shobha Kalra is granted divorce on the ground of cruelty and desertion under Section 13(1)(i-a) and (i-b) of the Act, 1955.

(RITU BAHRI)
JUDGE

05.05.2022
Divyanshi

(MEENAKSHI I. MEHTA)
JUDGE

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