

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-265-2018 (O&M)
Decided on:29.09.2022

Neha Bhardwaj

....Appellant

Vs.

Ajay Bhardwaj

....Respondent

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

Present: Mr. G.S.Nagpal, Advocate
for the appellant.

Mr. Gurcharan Dass, Advocate
for the respondent.

Ritu Bahri, J.

The appellant, Neha Bhardwaj has come up in the appeal against the judgment and decree dated 29.08.2018 passed by the Family Court, Ludhiana 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 06.05.2011 as per Hindu rites at Ludhiana. The parties lived and cohabited together as husband and wife and one son, Agrim Bhardwaj was born on 29.03.2012. After the marriage, the appellant-wife used to remain alone in the bedroom and not to communicate to any person. She was not involved in the matrimonial pleasures and would always make lame excuses when the respondent-husband made advances. On 12.06.2011, parties went for honeymoon and during that time, the respondent-husband tried to talk to her but she remained quiet and was not interested in performing the matrimonial

obligations. The respondent-husband realized that appellant-wife was not responding and found lying unconscious. After administering water in her mouth, she regained consciousness. One day, the appellant-wife took long time in the bathroom, the respondent-husband broke the door and found her lying unconscious. She regained her consciousness after 5 to 10 minutes. She never cooked or served breakfast to the respondent-husband and used to get up late or was not interested in working. When the family members of the appellant-wife was apprised of her conduct, they used to say that they would advise her and teach her.

On 29.03.2012, on the birth of child, she kept on sleeping by the side of the child when the child used to cry for milk. The respondent-husband used to wake her up. She even did not respond to the call of the child for the milk. She would not change the nappy of the child and when the child used to play in a wet state, she used to sit emotionless and unconcerned. She had no feelings of joy, happiness, jealousy etc. She could not disclose her age/education correctly. When parties had gone for their honeymoon at Nainital, she disclosed that she feels like jumping down from mountain into a valley. She revealed her inner urge to jump from high building to end her life. Once on the visit of the the appellant-wife to her parents house, respondent-husband recovered numerous suicide notes. There were more than 1000 such incidents to show her abnormal behaviour. The respondent-husband and his family insisted that appellant-wife should be got treated and finally an appointment was taken from Dr. Rajiv Gupta, who noted down the case history on 14.09.2013 and her parents were asked to come up with the entire academic record. After memorandum of understanding executed on 21.11.2013 between parents of family of the

respondent-husband and appellant-wife, the parents of the appellant-wife admitted about her suicidal tendency. Attempts were made to get her treated from Medanta Global Health Pvt. Ltd, but it did not yield any positive results. Finally, she was taken to Dr. Dwarka Prasad, who noted down her observations and gave his opinion that it was a case of Schizophrenic disorder. The parents of the appellant-wife did not cooperate to get her treated rather on 08.11.2015, they took her back. Such acts of the appellant-wife caused cruelty to the respondent-husband and hence divorce petition was filed.

On notice of the divorce petition, the appellant-wife filed written statement and denied all the averments made in the petition.

From the pleadings of the parties, following issues were framed on 09.12.2016:-

1. Whether petitioner is entitled to decree of divorce on the ground of cruelty? OPP
2. Whether petitioner has concealed material facts from the Court, if so, its effect? OPR
3. Relief.

The respondent-husband examined himself as PW-1 and deposed through his affidavit Ex.PA. He tendered into evidence copies of the medical treatment of the appellant-wife at Medanta Hospital Global Health Pvt. Ltd. as Ex.P1 to Ex.P12. He also examined his maternal uncle Mangal Dass as PW2 and his father as PW3 Devinder Kumar.

The appellant-wife examined herself as RW-1 and, deposed through her affidavit Ex.RA reiterating the version of written reply.

After going through the evidence led by the parties, the Family Court observed that the appellant-wife was not consistent in her statement,

while cross-examination. She was not able to tell the year when she did her

matriculation, 10+2 and graduation and she did not know from where she did her matriculation and her graduation and so on. She was asked to bring her education certificates on 14.08.2018. When questioned if she had brought her certificates, she answered positively but when she was asked to show, she said that same were lying at home. She acknowledged having remain ill for a period of five years. She admitted memorandum of understanding Ex.PW3/A. The parents of the appellant-wife disclosed that she had met with an accident which affected her brain and also created a gap in her studies. Her parents did not come forward to deny the execution of the memorandum of understanding or to corroborate the version of the appellant-wife. The respondent-husband had sought divorce on the ground of cruelty, which was committed upon him due to the acts of the appellant-wife, which were the result of under-developed brain. She admitted having got treated herself from Medanta Global Health Pvt. Ltd. with her medical record being Ex.P1 to Ex.P12, which shows that she was treated as a case of mental retardation. The Family Court came to a conclusion that her brain is under-developed and she was not capable of understanding things after detailed cross-examination. The testimony of the father of the respondent-husband and uncle Mangal Dass also showed the acts of the appellant-wife, who had under-developed brain as of a child and had suicidal tendency which caused apprehension in the mind of the respondent-husband that it would not be safe for him to reside with the appellant-wife. The testimony of the father and uncle of the respondent-husband, answers given by the appellant-wife during cross-examination, the above said memorandum of understanding Ex.PW3/A and medical record Ex.P1 to Ex.P12 were sufficient to return a finding that the respondent-husband had suffered

mental cruelty at the instance of the appellant-wife and he was granted divorce on the ground of cruelty.

Reference was made to the judgment passed by this Court in ***Smt. Poonam Kaur vs. Jagjit Singh 2005(3) RCR (Civil) 281*** in which it was held that the cruelty has to be of such a kind that spouse, who complains of it, finds himself unsafe and insecure to live with such spouse. Mere residing and accommodating a spouse for sometime after the acts of cruelty in itself will not amount to condonation. The conduct of the spouse must be of such forgiveness that it did not reflect upon any of the matrimonial obligations in any manner. An attempt of the spouse to adjust and bring the relations to the normal, ignoring the acts of cruelty, cannot be taken to be condonation on her part.

Further reference was made to the judgment passed by the ***Delhi High Court in Seema vs. Alkesh Chaudhary, 2011(3) Civil Court Cases 785*** in which it was held that there cannot be condonation if the offending spouse continued to indulge in the commission of further acts of cruelty either physical or mental. The earlier acts would stand revived by the subsequent acts.

Reference can also be made to the judgment passed by Hon'ble Supreme Court in ***Praveen Mehta vs. Inderjit Mehta 2002(3) R.C.R.(Civil) 529***. In that case, the behaviour of the wife was abnormal and refused to take treatment. She lodged false case in the police and misbehaved in the presence of elders and relations. The Supreme Court held that the conduct which may cause reasonable apprehension in the mind of other spouse that it will be harmful or injurious to live with the other must be of such a character as to cause danger to his life, limb or health or as to give rise to

such reasonable apprehension. Cruelty contemplated is conduct of such type that the petitioner cannot reasonably be expected to live with the respondent.

During the pendency of the appeal, the matter was referred for mediation to have an out of Court settlement. However, as per the report of the Mediator dated 18.04.2022, the parties could not arrive at any settlement. Thereafter, the appeal was taken up for final arguments. Today, learned counsel for the respondent has produced copy of order dated 22.02.2021 passed by the Judicial Magistrate 1st Class, Ludhiana where respondent-husband and his family members were discharged in case bearing FIR No. 365 dated 08.12.2018 under Sections 420/494/120-B IPC registered at Police Station, Division No. 7, Ludhiana. A copy of the said order is taken on record as Annexure R-1. A perusal of the said order shows that earlier an FIR No. 98 dated 29.11.2017 was registered at Police Station Women Cell Ludhiana on the same allegations against the respondent-husband and his family members. A challan under Sections 460/498A IPC was also presented. The allegation under Section 494 IPC was not levelled in the FIR No. 98 dated 29.11.2017. The offence under Sections 494 and 505 IPC were non-cognizable, Section 120-B IPC is also a non-cognizable offence. Since all the aforesaid offences are non-cognizable, the investigating agency was not competent to register FIR No. 365 dated 08.12.2018. Consequently all the proceedings arising out of the said FIR would amount to abuse of process of law and the respondent-husband and other members were discharged. In the present case, the appellant-wife was suffering from schizophrenic disorder as per the opinion of Dr. Dwarka Prasad. The parents of the appellant-wife knew about her mental condition

before marriage but they did not inform about the illness of the appellant-wife to the respondent-husband which would amount of cruelty. Moreover, the parents of the appellant-wife refused to cooperate in her treatment. Further, a perusal of copy of order dated 22.02.2021 passed by the Judicial Magistrate 1st Class, Ludhiana shows that appellant-wife got false FIRs registered against respondent-husband and his family members and they were discharged (Annexure R-1). 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.

Keeping in view of the above observations, present appeal is dismissed. However, a direction is given to the respondent-husband to give Rs.12 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 and CMM-228-2018 also stand disposed of.

(RITU BAHRI)
JUDGE

29.09.2022
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No