

FAO-M-118 of 2017

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

FAO-M-118 of 2017
Date of Decision: 06.05.2022

Fakir Chand

...Appellant

Versus

Meetu

....Respondent

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

Present:- Mr. Deepak Aggarwal, Advocate,
for the appellant-husband.
None for the respondent-wife.

RITU BAHRI, J. (ORAL)

None has put in appearance on behalf of the respondent-wife since 22.11.2019. Even today none has put in appearance on her behalf despite the case having been called twice.

Appellant-husband has come up in appeal against the judgment and decree dated 24.03.2017 of the Family Court whereby petition filed by him under Section 13 of the Hindu Marriage Act (for short 'the HMA') for dissolution of marriage has been dismissed.

The marriage of appellant-Fakir Chand was solemnised with respondent-Meetu on 13.12.2006 at Abohar in accordance with Hindu rites and rituals. Out of this wedlock a son namely Harshit was born on 08.09.2007. As per husband, from the very beginning of the marriage, the act, conduct and behaviour of the respondent was not good towards the appellant and his family members. After a few days of the marriage, parents of the husband along with his brother Vijay Kumar and sister

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Sunita started living separately from the parties to the appeal. The respondent levelled false, baseless and filthy allegations against the appellant and his family members. She failed to perform her matrimonial duties. On 26.02.2007 respondent left the matrimonial home in the absence of the appellant and without informing him. Appellant immediately visited the respondent's parental house and requested to respondent to accompany him but she did not accede to his request and abused him and his family members. Respondent filed application under Section 125 Cr.P.C., which was decided on 03.10.2011 by JMIC, Abohar. Thereafter, respondent filed revision against the said order, which was dismissed on 07.02.2013. Respondent also filed a criminal complaint under Sections 406, 498-A and 109 IPC against the appellant and his family members in which appellant and his family members were acquitted of the charges on 08.05.2013. It is further stated that respondent is a teacher, therefore, appellant filed application under Section 127 Cr.P.C. for cancellation of order dated 03.10.2011. Appellant is paying maintenance as per order dated 03.10.2011. In this backdrop, the divorce petition was filed.

Learned counsel for the appellant states that appellant has faced trial in criminal complaint (Ex.P1) under Sections 406, 498-A read with Section 109 IPC. In the above-said complaint the appellant was acquitted vide judgment dated 08.05.2013 (Ex.P4) and subsequently the appeal was dismissed vide order dated 22.05.2014 by the Additional Sessions Judge, Fazilka (Ex.P5). He further states that during the pendency of CRR-808 of 2015 before this Court a compromise was effected and a petition under

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Section 13-B of the HMA was filed. However, those proceedings could not be finalised as the appellant-wife refused to take the entire amount settled between the parties. However, during the proceedings under Section 13-B of the HMA respondent had withdrawn the revision petition vide order dated 08.08.2018. Appellant along with his family members also had to sought anticipatory bail and the bail applications have been placed on record as Ex.P10 to Ex.P12. The Family Court has not taken into account the acquittal in criminal complaint as a ground for cruelty. The judgment was passed on 24.03.2017 and the criminal revision was withdrawn by the appellant-wife on 08.08.2018. As of today the proceedings in the criminal complaint have attained finality and the appellant along with his family members stands acquitted.

The marriage between the parties was solemnised on 13.12.2016 at Abohar. Out of the said wedlock one son namely Harshit was born on 08.09.2007. The child is staying with the appellant-wife and is being brought up by her. Appellant is working as a Government Teacher and was giving maintenance of ₹8,000/- per month to the respondent-wife.

The above-said facts are sufficient to return a finding that appellant-husband has been met with cruelty by the respondent-wife. The Hon'ble Supreme Court has held that even one complaint lodged by the wife found to be false against the husband and his family members amounts to cruelty.

Hon'ble Supreme Court in ***K. Srinivas Rao vs. D.A. Deepa, (2013) 5 Supreme Court Cases 226*** held that making false criminal complaints or registration of FIR against the husband or his family

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members under Section 498-A IPC would amount to mental cruelty. In paragraph 13 and 14 the Hon'ble Supreme Court held as under: -

“13. In Naveen Kohli the wife had filed several complaints and cases against the husband. This Court viewed her conduct as a conduct causing mental cruelty and observed that the finding of the High Court that these proceedings could not be taken to be such which may warrant annulment of marriage is wholly unsustainable.

14. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh, 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 of 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.”

Even if husband and wife are staying together and husband does not speak to the wife, it would cause mental cruelty and a spouse staying away by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings can make the life of other spouse miserable.

In the facts of the present case, as per details given above, after the acquittal in the criminal complaint, enough mental cruelty has been caused to the husband.

In view of the above, the appeal is allowed, judgment dated

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24.03.2017 passed by the Additional District Judge, Fazilka, is set aside and decree of divorce is granted accordingly in favour of the appellant-husband. Decree-sheet be prepared accordingly. However, appellant-husband is directed to give ₹20 lakhs as permanent alimony to the respondent-wife out of which ₹10 lakhs will be deposited by her into fixed deposit in favour of the minor child Harshit.

(Ritu Bahri)
Judge

May 06, 2022
R.S.

(Ashok Kumar Verma)
Judge

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No