

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7215-2018 (O&M)

Date of decision: 31.05.2022

Manju

....Appellant

Vs.

Narinder Kumar

....Respondent

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

Present: Mr. P.K.Ganga, Advocate
for the appellant.

Mr. Surinder Mohan Sharma, Advocate
for the respondent.

Ritu Bahri, J.

CM-26362-CII-2018

For the reasons mentioned in the application, the same is allowed and the delay of 19 days in filing the appeal is condoned.

FAO-7215-2018 (O&M)

The appellant, Manju has come up in the appeal against the judgment and decree dated 04.10.2018 passed by the Family Court, Ambala whereby a petition filed by respondent-Narinder Kumar under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act, 1955) was allowed and the respondent was granted divorce on the grounds of cruelty under Section 13(1)(i-a) and desertion under Section 13(1)(i-b) of the Act, 1955.

The brief facts of the case are that the marriage of the appellant was solemnized with the respondent on 24.04.2012 at Delhi according to Hindu rites and ceremonies. However, no child was born out of their

wedlock.

The reasons for recording the finding of cruelty are as under:-

1. A large number of complaints were lodged by the parties against each other which are evident from the documents Mark A to Mark M. The appellant-Manju while appearing as RW1 admitted regarding settlement Mark 'C' (Ex.R2) arrived at between the parties in Police Station Ambala Cantt.
2. A complaint dated 06.09.2015 Mark 'F' (Ex.R3) at Police Station Ambala Cantt in which compromise Mark 'G' (Ex.R4) was arrived.
3. The appellant-Manju also admitted Kalandara under Section 107/150 Cr.P.C. Mark 'H' (Ex.R1) was registered against her at Police Station Ambala Cantt on the complaint made by her husband.
4. A complaint dated 03.06.2016 Mark 'M' before the Assistant Commissioner of Police, Dwarka (New Delhi) was registered against the husband and his family members.
5. A petition under the Domestic Violence Act and
6. A complaint under Section 498-A IPC in the Court at Delhi against the husband and his family members.
7. She raised allegations against father-in-law with regard to molestation. During her cross-examination, she admitted that no complaint was lodged by her against her father-in-law regarding molestation. She also did not get herself medically examined. She levelled allegations against the husband that

she got her raped from his friend Bablu. She admitted that she neither get herself medically examined nor lodged any complaint against her husband or his friend Bablu.

All the above said facts have been made ground to grant divorce on the ground of cruelty.

Ground of desertion

With the above said allegations made against the husband and his family members, she had left matrimonial home on 29.11.2015 regarding which DDR entry No. 16 dated 29.11.2015 was recorded at Police Station, Ambala Cantt. Since the wife had herself left the matrimonial home, which amounted to desertion. She never made any attempt to seek restitution of conjugal rights. The marriage was beyond repair because of the bitterness between husband and wife. The marriage was dead for all purpose.

On the above said grounds, the divorce was granted.

During pendency of the appeal, the matter was referred for mediation. However, the medication also failed as it is evident from order dated 13.08.2019. Thereafter, vide order dated 08.02.2022 (Annexure A-1) copy of the judgment dated 21.09.2021 passed by the Additional Sessions Judge (SFTC) Dwarka, New Delhi was placed on record. This was the judgment whereby respondent-husband, his family members and his friend Bablu after facing trial, have been acquitted. In the present case, an FIR No. 767 was registered in the year 2016 and they were acquitted on 21.09.2021 after facing trial for the period of 5 years. The parties do not have any child and in this backdrop, the only intention of the appellant-Manju is to drag the respondent-husband and his family members in litigation.

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."

Even making one false complaint against the other spouse

would amount to cruelty. In the present case, an FIR No. 767 was registered by the appellant in the year 2016 against the respondent, his family members and his friend Bablu which was not found to be correct and they were acquitted on 21.09.2021.

Keeping in view of above observation, no ground to interfere in judgment and decree dated 04.10.2018 passed by the Family Court, Ambala is made out.

The present appeal alongwith the pending application (CM-26363-CII-2018) is hereby dismissed.

(RITU BAHRI)
JUDGE

31.05.2022

Divyanshi

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No