

2024:PHHC:064747-DB



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

FAO-1623-2024 (O&M)

Date of decision: 08.05.2024

Sunanda @ Shalu

....Appellant

Versus

Dharamvir Singh @ Veer

....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present: Mr. Rahul Sangwan, Advocate for the appellant.

SUDHIR SINGH, J.

CM-6098-CII-2024

For the reasons stated in the application, same is allowed and delay of 15 days in re-filing of the appeal is condoned.

FAO-1623-2024 (O&M)

The present appeal has been filed against the judgment and decree dated 08.01.2024 passed by the learned Principal Judge, Family Court, Kurukshetra, whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for brevity 'the Act') filed by the respondent-husband has been allowed and the marriage between the parties has been dissolved by a decree of divorce on the grounds of cruelty and desertion.

2. The brief facts of the case are that the marriage between the parties was solemnized on 18.11.2012, according to Hindu rites and one child was born out of the said wedlock. It

was averred by the respondent-husband that the behavior of the appellant-wife had been aggressive, rude and improper and she had insulted the respondent-husband many times and in this way, had caused mental cruelty to the respondent-husband. It was further stated that the appellant-wife had been living separately since October, 2013 and there had been no cohabitation between the parties. It was further the case of the respondent-husband that the appellant-wife had filed a petition under Section 13-B of the Act before the Family Court, Kaithal and the matter was compromised for a sum of Rs.13,30,000/-, out of which, a sum of Rs.6,65,000/- was paid by the respondent-husband to the appellant-wife on the first motion, but the appellant-wife did not appear for the second motion and accordingly, the said petition was dismissed on 13.03.2018. It was further stated that the appellant-wife had got registered FIR No.137 dated 18.10.2014 against the respondent-husband and his family members for the matrimonial offences and in the said case, the respondent-husband and his family members were acquitted and even the appeal filed against the said verdict, was also dismissed.

3. Upon notice, the appellant-wife appeared and filed her written statement denying the allegations of harassment, cruelty and desertion. Rather, it was pleaded that she had suffered harassment, taunting, teasing and mental cruelty at the hands of the respondent-husband and his family members for having brought insufficient dowry. It was further averred that the father of the respondent-husband used keep an evil eye upon

her and when a Panchayat was convened in this regard, the family members of the respondent-husband had apologized for it. The appellant-wife had also alleged that the respondent-husband and his family members had given beatings to her when she was pregnant. It was further stated that parents of the appellant-wife had given an amount of Rs.1,00,000/- to the respondent-husband and his family members with the hope that they would keep the appellant-wife well at the matrimonial home, but she had been thrown out of the matrimonial home on 24.10.2013. The factum of filing of petition under Section 125 Cr.P.C. was admitted and so was the factum of petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005. It was, however, pleaded that later on, the said petitions were dismissed as withdrawn. Accordingly, a prayer for dismissal of the petition was made.

4. From the pleadings of the parties, the Family Court framed the following issues:-

1. Whether the petitioner is entitled to a decree of divorce from the respondent under the provisions of Section 13 of the Hindu Marriage Act on the grounds of cruelty and desertion? OPP.
2. Whether the petition is not maintainable in the present form? OPR.
3. Relief.

5. In evidence, the respondent-husband himself appeared in the witness box as PW-1 and examined Pataso Devi as PW-2, besides tendering documentary evidence Ex.P1 to Ex.P5. On the other hand, the appellant-wife herself appeared as RW-1 and examined her sister as RW-2. She also tendered into evidence

some documents as Mark-D1 to Mark-D8 and Mark-D11. No rebuttal evidence was adduced on behalf of the respondent-husband.

6. After hearing the contentions of both the parties and considering the evidence brought on record, the learned Family court allowed the petition, granting a decree of divorce.

7. Learned counsel for the appellant-wife contends that the impugned judgment and decree passed by the learned Family Court suffers from patent illegality, inasmuch as the cruelty part was not proved by the respondent-husband and merely because the criminal trial in FIR No.137 dated 18.10.2014, which was got lodged by the appellant wife, ended into the acquittal of the respondent-husband and his family members, is no ground to hold that the respondent-husband and his family members had been treated with cruelty. It is further contended that earlier, the respondent-husband had filed a divorce petition in the year 2014 and the same was dismissed on 23.03.2015 for the reasons that the respondent-husband had not paid maintenance to the appellant-wife. It is further argued that the parties had been litigating for past sometime and even a petition under Section 13-B of the Hindu Marriage Act was filed, wherein half of the payment, as settled between the parties, had been paid to the appellant-wife. It is, thus, contended that it is, otherwise that the said petition was later on, dismissed, but the fact remains that at one point of time, the parties had tried to settle their disputes by way of mutual consent. Learned counsel for the appellant-wife further

contends that once this was the position on record, there was no occasion for the learned Family Court to hold that the appellant-wife had treated the respondent-husband and his family members with cruelty. He further contends that the appellant-wife had not deserted the respondent-husband. Rather, it is the respondent-husband, who had thrown her out of the matrimonial home.

8. We have heard the learned counsel for the parties and have also gone through the impugned judgment and decree passed by the learned Family Court.

9. The question that arises for consideration before this Court is as follows:-

“Whether the decree for divorce granted on the grounds of cruelty and desertion by the Family Court, requires interference?”

10. A perusal of the impugned judgment would show that the learned Family Court has found that the appellant-wife had been living separately from the respondent-husband since 2013. The appellant-wife had stepped into the witness box as RW-1 and during her cross-examination, she stated that her son was born on 13.12.2013 and she came to her parental home for delivery. She had further stated that after the birth of child, she went to her parental home; that she came to her in-laws' house in the month of May, 2018 and stayed there for a week. Thus, as per her own admission, the appellant-wife never resided and cohabited with the respondent-husband from 2013 to May, 2018. In this backdrop, the learned Family Court has given a

finding that the ground of desertion was convincingly proved by the respondent-husband.

11. Furthermore, it was found that the appellant-wife had got registered a criminal case for the matrimonial offences against the respondent-husband and his family members and the said FIR had culminated into the acquittal of the respondent-husband and his family members. Even the appeal filed against the said judgment has also been dismissed.

12. It is settled law that if, the wife initiates criminal proceedings for the matrimonial offences against the husband and his family members and ultimately, they are acquitted of the charges framed against them, the same amounts to cruelty. With the registration of FIR against the husband and his family members, not only their life and liberty, which comes at stand still, though for the time being, but the same leads to mental pain, agony and sufferings.

13. In Narsimha Sastry Vs. Suneela Rani, (2020)18 SCC 247, the Hon'ble Supreme Court has held that once the husband is acquitted in the criminal prosecution initiated by the wife, the same amounts to cruelty and a divorce can be granted by the Court on the said ground itself. It was held as under:-

“13. In the present case, the prosecution is launched by the respondent against the appellant under Section 498-A of IPC making serious allegations in which the appellant had to undergo trial which ultimately resulted in his acquittal. In the prosecution under Section 498-A of IPC not only acquittal has been recorded but observations have been made that allegations of serious nature are levelled against each other. The case set up by the appellant seeking decree of divorce on the ground of cruelty has been established. With regard to

proceeding initiated by respondent under Section 498-A of IPC, the High Court made following observation in paragraph 15:

“15.....Merely because the respondent has sought for maintenance or has filed a complaint against the petitioner for the offence punishable under Section 498-A of IPC, they cannot be said to be valid grounds for holding that such a recourse adopted by the respondent amounts to cruelty.”

The above observation of the High Court cannot be approved. It is true that it is open for anyone to file complaint or lodge prosecution for redressal for his or her grievances and lodge a first information report for an offence also and mere lodging of complaint or FIR cannot ipso facto be treated as cruelty. But when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498-A of IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has meted out on the husband. As per pleadings before us, after parties having been married on 14.08.2005, they lived together only 18 months and thereafter they are separately living for more than a decade now.”

14. Learned counsel for the appellant-wife could not dispute the fact that the criminal case had concluded in the acquittal of the respondent-husband and his family members and even the appeal filed against that order has been dismissed. The only argument raised by learned counsel for the appellant-wife is that the finding of the Criminal Court is not binding on the Civil Court. However, we are of the considered opinion that in the matrimonial disputes, once the complaints/criminal trial(s) culminate into acquittal of the accused therein, the accused have every right to plead cruelty against the person, who had put the criminal proceedings in motion.

15. In Samar Ghosh Vs. Jaya Ghosh (2007) 4 SCC 511, the Hon’ble Supreme Court has laid down the factors wherefrom inference of mental cruelty can be drawn. It was held as under:-

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of ‘mental cruelty’. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of the complete matrimonial life of the parties, acute mental pain, agony, and suffering as would not make it possible for the parties to live with each other could come within the broad parameters of mental cruelty.

xx xx xx

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

xx xx xx

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

xx xx xx

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with

the other party any longer, may amount to mental cruelty.”

The acts and conduct of the appellant-wife in her failure to perform her matrimonial obligation; levelling false allegations against her husband and further getting registered a criminal case and specially when the learned Family Court did not find any substance in such allegations, amounts to mental cruelty.

16. It is settled law that in order to prove the desertion, factum of separation and the intention to bring cohabitation permanently to an end, must be proved. Hon’ble Supreme Court in Debananda Tamuli Vs. Kakamoni Katakya, (2022)5 SCC 459, has held as under:-

“7. We have given careful consideration to her submissions. Firstly, we deal with the issue of desertion. The learned counsel appearing for the appellant relied upon the decision of this Court in the case of Lachman Utamchand Kirpalani (supra) which has been consistently followed in several decisions of this Court. The law consistently laid down by this Court is that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be animus deserendi on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home.

xx xx xx

12. Thus, in our considered view, the ground of desertion under clause (ib) of sub-section (1) of Section 13 of HM Act has been made out as the desertion for a continuous period of more than two years before the institution of the petition was established in the facts of the case. But, after having carefully perused the evidence on record, we find that no case is made out to disturb the findings recorded by the Courts on the issue of cruelty.”

In the instant case, the learned Family Court has also found that the appellant-wife had been living separately from the respondent-husband since 2013. No evidence was led to prove that the appellant was having sufficient reasons/grounds to stay away from the company of the respondent-husband. The respondent-husband, while appearing as PW1, deposed that the appellant-wife had left his house in May 2013 and thereafter, never joined the matrimonial life. The divorce petition was filed on 31.05.2019. As per Section 13(1)(ib) of the Act, the ground of desertion is made out if, the parties have been separated for a continuous period of more than two years before the institution of a divorce petition, which has been held to be so in the case in hand. The learned Family Court found that the ground of desertion has also been duly proved on record by the respondent-husband by leading cogent and convincing evidence. The appellant-wife has failed to prove on record that either the respondent-husband or any of his family members had thrown her out of the matrimonial home. The learned Family Court found no reason to accept the bare testimony of the appellant-wife.

17. Thus, after careful perusal of the impugned judgment of the learned Family Court, we find that no case is made out to interfere with the findings recorded by it. It could not be shown that any evidence has been misread or not taken into consideration by the learned Family Court while passing the impugned judgment.

18. No other point has been urged.

19. In view of the above, we do not find any illegality or perversity in the findings recorded by the learned Family Court. Accordingly, finding no merit in the present appeal, the same is hereby dismissed.

20. All pending applications(s), if any, shall also stand disposed of.

(Sudhir Singh)
Judge

(Harsh Bunger)
Judge

08.05.2024
Ajay Prasher

-	<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
-	<i>Whether reportable:</i>	<i>Yes/No</i>