



FAO-1034-2024

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

FAO-1034-2024

Date of Decision: 06.05.2024

RAJESH KUMARI

...Appellant

Versus

JOGINDER SINGH

...Respondent

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

Present:- Mr. Baljeet Beniwal, Advocate
for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 16.01.2024 passed by the learned Family Court, Palwal (Camp Court, Hodal), whereby the petition under Section 13 of Hindu Marriage Act 1955 (for short 'the Act') filed by the respondent-husband has been allowed on the grounds of cruelty & desertion and marriage between the parties has been dissolved by decree of divorce.

2. The brief facts of the case are that the respondent-husband had filed the aforesaid petition against the appellant-wife, inter alia, pleading therein that the marriage between the parties was solemnized on 08.03.2007 according to Hindu rites and ceremonies. A female child was born out of the said wedlock. It was further averred that from the very inception of the marriage the behavior of the appellant-wife was very cruel towards the respondent; that she used to pick up the quarrels on trivial matters, harass and humiliate the respondent-husband and his family members. It was further pleaded that in July, 2007 the appellant-wife left her matrimonial home without any reason and upon a Panchayat being



convened, she had agreed to reside with the respondent-husband in a rented accommodation, but despite that she did not change her attitude. In 2009, when the respondent-husband was away to his duties, the appellant-wife had left the matrimonial home and since then she had been living at her parental house. It was further the case of the respondent-husband that earlier, he had filed a petition for divorce, but the same was dismissed on 22.10.2011. It was further stated that the appellant-wife got lodged FIR No.90/2010, under Sections 498-A, 406, 323, 506 of IPC against the respondent-husband and his parents, but they were acquitted in the said proceedings and even an appeal filed against the said judgment was also dismissed on 24.10.2017. It was further stated that the appellant-wife had also filed a petition under Section 125 Cr.P.C. and a complaint under Section 12 of the Protection of Women from Domestic Violence Act 2005, besides a petition under Section 9 of the Act and three civil suits against the respondent-husband. The factum of an order dated 09.11.2016 having been passed in the petition under Section 9 of the Act filed by the appellant-wife was admitted, but it was pointed out that there had been no cohabitation between the parties.

3. The appellant-wife entered appearance and filed her written statement, she pleaded that she was thrown out of matrimonial home after having been given merciless beatings and that she was still ready and willing to join the company of the husband. All the other allegations were denied. It was further pleaded that the respondent-husband had refused to accommodate her in the matrimonial home.

4. On the basis of the pleadings of the parties, the learned Family Court had framed the following issues:



1. *Whether the respondent has treated the petitioner with cruelty on the grounds mentioned in this petition? OPP*
2. *If issue no.1 is proved, whether the petitioner is entitled for a decree of divorce on the ground of cruelty as prescribed under Section 13-1(ia) of the Hindu Marriage Act? OPP*
3. *Whether the present petition is not maintainable in the present form? OPR*
4. *Relief.*

5. The learned Family Court decided issues No.1 and 2 together and came to the conclusion that the parties had been living separately since 2009 and there had been a series of litigation between the parties. It was further concluded that though the appellant-wife had obtained a decree under Section 9 of the Act in 2016, yet the parties had never cohabitated. It was thus, observed that the marriage between the parties had irretrievably failed. While referring to the criminal case filed by the appellant-wife against the respondent-husband and his family members, it was found by the learned Family Court that this conduct of the appellant-wife amounted to cruelty.

6. Learned counsel appearing for the appellant-wife has vehemently contended that the conduct of the appellant-wife right from beginning of their alleged separation in 2009 shows that she had been willing to join the company of the respondent-husband, but it was respondent-husband, who had never wanted to settle her in her matrimonial home. In this regard, learned counsel for the appellant refers to the decree passed under Section 9 of the Act on 09.11.2016. It is further contended that had there been any intention on the part of the appellant-wife to break her ties with the respondent-husband, she would not have filed for a decree for the Restitution of Conjugal Rights. It has been further submitted that it is the duty on the part of the party, against whom such



decree is passed to come and join the company of the party, who has sought and obtained such decree from the Court. In the instant case, it was the respondent-husband, who was to comply with the decree of conjugal rights and having not done so, he could not have been allowed to take the benefit of his own wrongs.

7. It is further submitted that if the wife is subjected to mental cruelty and harassment and/or beatings at the hands of her in-laws and if she is subjected to domestic violence, she has every right to approach the competent authorities/Court for redressal of her grievances. Merely because she had initiated proceedings against the respondent-husband and his family members, cannot be taken a ground to hold that she had treated the respondent-husband and his family members with cruelty. As regards the acquittal of the respondent-husband and his family members in the criminal case lodged by the appellant-wife, it is contended that the acquittal in the criminal case is based upon various facts & circumstances and the evidence led and merely because the respondent-husband and his family members were acquitted, is no ground to presume that they had been subjected to cruelty.

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

9. The only question that requires consideration by this Court is whether the judgment and decree passed by the Family Court requires any interference by this Court in the present appeal.

9-A. In the instant case, it is an admitted fact that the parties have been living separately since 2009. There was no cohabitation between the parties despite the fact that the appellant-wife had obtained a decree for Restitution of Conjugal Rights under Section 9 of the Act, in the year 2016. The factum of criminal proceedings having been initiated by the appellant-wife against



respondent-husband and his family members and their acquittal in the said proceedings, is not disputed. Apart from that, there has been a series of litigation between the parties in the form of two civil suits; proceedings under Section 125 of Cr.P.C. and also under the Domestic Violence Act. The Family Court has found that the marriage between the parties has irretrievably failed and there are no chances of them living together again. Based on all these facts and circumstances coupled with the evidence led, the Family Court has granted the decree of divorce and at the same time has also awarded an amount of Rs. 10 lacs as permanent alimony to the appellant-wife.

10. In *Rani Narasimha Sastry vs. Rani Suneela Rani, 2019 (Suppl.) Civil Court Cases 201*, it has been held by the Hon'ble Supreme Court that if the wife initiates criminal proceedings against the husband and his family members and if ultimately they are acquitted of the charges framed against them, the same amounts to cruelty and divorce can very well be granted on the said ground. The instant case is squarely covered by the said judgment of the Hon'ble Supreme Court. The plea of the appellant-wife that she is still willing and ready to join the company of the respondent-husband, cannot be acceded to in view of the fact that it is the appellant-wife herself who has committed cruelty towards the husband and family members. Therefore, it cannot be expected of the respondent-husband and family members to live with the appellant-wife with this kind of animosity, generated on account of the conduct of appellant-wife.

11. In *Mangayakarasi vs. M. Yuvara (2020) 3 SCC 786*, it has been held that if baseless allegations like dowry demands are made, leading to criminal litigation against the husband and his family, and if the husband claims mental cruelty as a result, such evidence should be considered for granting dissolution of marriage on those grounds.



12. It could not be pointed out by the learned counsel for the appellant that any evidence has been misread or not taken into consideration by the learned trial Court.
13. No other point has been urged.
14. In view of the above, we do not find any patent illegality or perversity in the impugned judgment and decree passed by the learned Family Court.
15. Resultantly, the present appeal is dismissed.

[SUDHIR SINGH]
JUDGE

[HARSH BUNGER]
JUDGE

06.05.2024
Himanshu

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