

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

FAO-1613-2024 (O&M)
Date of Decision: 20.04.2024

SMT. BHARTI

...Appellant

Versus

OM PARKASH

...Respondent

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

Present : Mr. Akshit Mehta, Advocate
for the appellant.

HARSH BUNGER, J.

Appellant-wife (Smt. Bharti) has come up in this appeal against the judgment and decree dated 08.02.2024 passed by the learned Family Court, Palwal, whereby the petition filed by the respondent-husband (Om Parkash) under Section 13 of the Hindu Marriage Act, 1955 (in short 'the 1955 Act') seeking dissolution of marriage by a decree of divorce, has been allowed and divorce stands granted.

2. Succinctly, the marriage of appellant-Bharti was solemnized with respondent-Om Parkash on 09.12.2009 at Village Hodal, District Palwal as per Hindu rites and ceremonies. Respondent-Om Parkash was previously married, however, his first wife had expired. From the previous wedlock, the respondent had two children. Out of the wedlock between the appellant with the respondent, one daughter namely, Vanshika was born on 26.10.2010.

3. The pleaded case of the respondent-husband in his petition under Section 13 of the 1955 Act, was that right from the very inception of

the marriage, the conduct of the appellant was very cruel towards him and she was habitual of using filthy language and used to abuse him. According to the respondent, the appellant started harassing and humiliating him and his family members within a few days of the marriage and she told him on his face that she had married him against her wishes and had she seen him before the marriage, she would have never married him. According to the respondent, the appellant insulted him in the presence of his relatives and friends. It was also stated that the appellant had dragged the respondent and his parents in false case of dowry, wherein his parents stood discharged and he was also acquitted by the Court vide judgment dated 15.09.2017. It was stated that an appeal against the afore-said judgment dated 15.09.2017 was also dismissed by the learned Additional Sessions Judge, Palwal on 17.08.2018 and therefore, the very conduct of the appellant towards him amounted to harassment and cruelty. It was also stated by the respondent that he had filed a petition under Section 9 of the 1955 Act for Restitution of Conjugal Rights but instead of joining his company, the appellant-wife insisted on maintenance and litigation charges and filed a petition under Section 125 Cr.P.C. It was further stated that the appellant-wife had also filed an application under Section 12 of the Protection of Women from Domestic Violence Act and thus, dragged him into a series of civil and criminal litigation. It was asserted that the appellant-wife had deserted his company without sufficient cause as she had no love and affection towards him and also towards his two children from his previous wife. It was stated that the appellant had treated both the children of the respondent-Om Parkash from his previous wife, with cruelty, which forced him to send the children to their maternal uncle.

Apart from the above, it was stated by the respondent that the appellant had also made allegations against him of having illicit relations with his colleague namely, Suman. It was further asserted that due to the violent nature of the appellant, it had become practically impossible for the respondent-husband to live with her. Moreover, the appellant had left the society of respondent (husband) on 26.10.2010 without any sufficient cause and she had been residing in her parental house since then. In this backdrop, the divorce petition was filed.

4. On the other hand, the appellant contested the afore-said divorce petition, *inter alia*, on the plea that the respondent-husband and his family members were not satisfied with the expenditure incurred by her parents on the marriage and also the ornaments given at the time of marriage and rather, they demanded Rs.3 lacs in cash and a car. The appellant alleged that when her parents refused to fulfil the illegal demands of dowry, she was turned out of the matrimonial home after giving her severe beatings and since then, she was residing in her parental house at Hodal. The appellant maintained that it was the respondent-husband and his parents, who were harassing and humiliating her and had further insulted her father and brother as well. It was, therefore, alleged that the appellant was subjected to physical torture and was beaten up on a number of occasions. It was still further alleged that the respondent and his family members became angry as she gave birth to a female child. The appellant categorically averred that it was the respondent, who created such an atmosphere that she had to leave the matrimonial home because he wanted to marry another woman.

5. On the basis of the pleadings of the parties, the following issues

were framed:-

- “1. Whether the petitioner is entitled to the decree of divorce on the grounds mentioned in the petition as prayed for? OPP
2. Whether the present petition is not maintainable and petitioner has no locus standi to file the present petition? OPD
3. Relief.”

6. In order to prove his case, the respondent-husband (Om Parkash), appeared in witness box as PW-1 and has also adduced following documentary evidence :-

Sr. No.	Exhibit/s	Document
1	P1	Certified copy of judgment dated 15.09.2017
2	P2	Certified copy of judgment dated 17.08.2018
3	Mark PA	Copy of judgment dated 14.01.2016
4	Mark PB	Copy of order dated 03.03.2016

7. On the other hand, the appellant-Smt. Bharti appeared as RW1 but she did not lead any documentary evidence.

8. After considering the pleadings of the parties and also the evidence available on the record, the learned Family Court, Palwal, vide impugned judgment and decree dated 08.02.2024, allowed the divorce petition. The divorce has been granted on the grounds of cruelty and desertion. A perusal of the impugned judgment would show that the following acts of cruelty and desertion were considered by the Family Court, as proved:-

- (i) There is a suggestion that the respondent-husband was into an illegitimate relationship with his colleague namely, Suman and therefore, he did not want to stay with the appellant; however, no evidence had been led

by the appellant to substantiate the plea of adultery. No one either from the locality or from their department was examined to lend credence to the version of the appellant. Nobody from her family had come to support her cause. Accordingly, it was held that in the absence of any cogent evidence, the ground of adultery must fail.

*(ii) The appellant had filed a criminal case bearing case FIR No.453 dated 20.11.2013, under Sections 498-A, 323, 406 and 506 IPC at Police Station Hodal, wherein, the respondent-husband was acquitted of the said charges vide judgment dated 15.09.2017 (Ex. P1). By placing reliance upon a judgment rendered by the Hon'ble Supreme Court in case titled as **Rani Narasimha Sastry vs Rani Suneela Rani, 2019 (Suppl.) Civil Court Cases-201 (SC)**, it was held that the appellant-wife was guilty of lodging a criminal complaint against respondent-husband and his family on totally trumped-up charges, which amounts to cruelty.*

(iii) Respondent-husband waited for the appellant-wife for seven long years and thereafter, he preferred the divorce petition in the month of December, 2018. Earlier, he filed a petition under Section 9 of the 1955 Act, in the year-2013, but the appellant-wife had preferred a petition under Section 12 of the Domestic Violence Act and also instituted a criminal case under Section 498-A of IPC. Since, the criminal allegations/charges against the respondent-husband and his family members were trumped-up, it established that the respondent-husband and his parents were subjected to cruelty by the appellant-wife.

(iv) It had come in evidence that till the year 2010, when the appellant left the matrimonial house, no complaint was ever made to anyone regarding the alleged torture at the hands of the respondent-husband and his parents for demand of dowry. It was held that there was

still nothing on record that the husband had declared to bring the marriage to an end or refused to cohabit with the appellant. It was further observed that the respondent-husband had filed a petition under Section 9 of the 1955 Act, offering her to join his society and cohabit with him, but it is the appellant, who refused to perform her matrimonial obligations and rather, she filed various litigations against the husband within two years of her returning to the parental home, therefore, the factum of desertion was established in this case.

(v) The appellant had testified that she was forced to take ultimate step of returning to her parental home because of the harassment and torture meted out to her by her parents'-in-law, who were constantly demanding Rs.3 lacs and a car, however, no evidence in support thereof was available on record, either in the form of any complaint to the police or the statement of any respectable neighbours/relatives and neither any medical report was placed on record. The Family Court considered that the couple had lived together only for a year after the marriage and had been living separately for almost 14 years and the matrimonial bond had completely broken and was beyond repair.

9. Learned counsel for the appellant submits that the learned Family Court has erred in law and facts in allowing the divorce petition filed by the respondent-husband. It is submitted that the findings returned by the Family Court were beyond the pleadings and the reliance placed by the Family Court upon the factum of filing of petition under Section 9 of the 1955 Act, was totally misplaced as according to the appellant, the said petition under Section 9 of the 1955 Act, was withdrawn by the respondent-husband on 25.05.2015. Learned counsel has further submitted that the divorce petition has wrongly been allowed on the ground of cruelty, rather it

is the respondent-husband, who had treated the appellant with cruelty. It is submitted that the appellant had only availed of her legal remedies by filing cases as regards the cruelty meted out to her and also as regards the demand of dowry by the respondent-husband and his family members, however the same have been wrongly taken against the appellant. It was further submitted that the Family Court has wrongly concluded that the appellant had deserted the respondent-husband, whereas it is the respondent, who created such an atmosphere that she had to leave the matrimonial home because he wanted to marry another woman. It is therefore contended that the findings returned by the Family Court are un-sustainable in the eyes of law.

10. We have heard learned counsel for the appellant and perused the paper-book as well as the impugned judgment.

11. The following question arises for consideration before this Court:

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

12. The learned Family Court on the basis of the evidence available on the record, came to the finding that the conduct of the appellant-wife amounted to cruelty against the respondent-husband. It was found that the allegations of adultery by the appellant against the respondent-husband were not established and, therefore, such un-substantiated plea amounted to cruelty, which was a valid ground for divorce. Further, the Family Court found that the appellant-wife had got lodged a case bearing FIR No.453 dated 20.11.2013 against the respondent-husband and his parents, wherein, the parents of the respondent were discharged and the respondent-husband

was subsequently, acquitted by the Court. Accordingly, it was observed that the appellant was guilty of lodging a criminal complaint against the respondent-husband and his family on totally trumped-up charges, which amounted to cruelty. The Family Court had further observed that the appellant had abandoned the respondent in the year-2010 and the factum of desertion was established in this case.

13. In ***Ravi Kumar v. Julmidevi, 2010(2) RCR (Civil) 178***, Hon'ble Supreme of India 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."*

14. There is sufficient case law on the issue that if the wife files frivolous and un-true complaints against her husband of which he is ultimately acquitted, it amounts to cruelty. In this regard reference may be made to one such judgment passed by Hon'ble the Supreme Court in **Rani Narsimha Sastry vs Rani Suneela Rani (2020) 18 SCC 247** wherein, Hon'ble Supreme Court held as follows: -

"13. In the present case the prosecution is launched by the respondent against the appellant under Section 498A of IPC making serious allegations in which the appellant had to undergo trial which ultimately resulted in his acquittal. In the prosecution under Section 498A of IPC not only acquittal has been recorded but observations have been made that the 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....."

14.....But when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498A of IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has meted on the husband. As per pleadings before us, after parties having been married on 14.8.2005, they lived together only 18 months and thereafter they are separately living for more than a decade now.

15. In view of forgoing discussion, we conclude that appellant has made a ground for grant of decree of dissolution of marriage on the ground as mentioned in Section 13(1)(i-a) of the Hindu Marriage Act, 1955."

15. Further, Hon'ble Supreme 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(2) RCR (Civil)

595 : 2007(2) RCR (Criminal) 515 : 2007(2) Recent Apex Judgments (R.A.J.) 177 : 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."

16. A reference can also be made to a judgment passed by the Division Bench of this Court in ***Kusum @ Sunaina v. Arun Kumar, 2022(1) RCR (Civil) 746*** in which a number of judgments passed by the Supreme Court on the issue of cruelty by filing false complaint against the husband and his family members were referred to. In the *case* of ***Sushma Taya v. 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.

17. When the case in hand is considered in the light of the judicial pronouncements referred to above, especially the fact that the appellant-wife had failed to establish the allegations of adultery levelled by her against respondent-husband and also the fact that the respondent-husband was acquitted in the FIR lodged by appellant-wife, a case for cruelty by appellant-wife against the respondent-husband is clearly made out. Because of such acts, the respondent-husband had to face embarrassment in the society as well as great agony and suffering in his personal and professional life.

18. Learned counsel for the appellant is unable to point out any

illegality or infirmity in the impugned judgment and decree, which may call for any interference by this Court.

19. That apart, it is very much clear that the parties have been living separately for a period of almost 14 years. During this span, the appellant has never gone to live with the husband, as such there is no possibility of their re-union. Even though learned counsel for the appellant insisted that the appellant is ready to join the company of respondent-husband, yet in our opinion, there is total disappearance of emotional substratum in the marriage between the parties.

20. No doubt, it is obligation of the Court that marital status should as far as possible be maintained but when the marriage is totally dead, in that event, nothing is gained from keeping the parties tied to a marriage, which in fact has ceased to exist. In our considered view, there is no possibility of resumption of normal marital life by the parties.

21. Learned Family Court while considering all these aspects, therefore, has rightly passed a decree of dissolution of marriage between the parties and in view of the discussion as made above, we see no reason as to why, the findings as given by the learned trial Court should not be upheld. The point of determination is answered accordingly. Resultantly, finding no merit in the appeal, the same is dismissed.

22. All pending applications (if any) shall also stand closed.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

April 20th, 2024
gurpreet

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