

2024.PHHC.125232-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1223-2024 (O&M)
Date of Decision: 20.09.2024

KAJAL ...Appellant

Versus

DINESH KUMAR ...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. Raghav Bali, Advocate for
Mr. Pankaj Bali, Advocate for appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 22.01.2024, passed by the learned Principal Judge, Family Court, Yamuna Nagar at Jagadhri (for short the 'Family Court'), whereby the petition Section 13 of the Hindu Marriage Act (for short '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 adultery.

2. The aforesaid petition had been filed by the respondent-husband, inter alia, contending therein that his marriage with appellant-wife was solemnized on 04.12.2013 as per Hindu rites and out of the said wedlock, a male child was born on 30.09.2014. It was further asserted that at the very first night of the marriage, the appellant-wife had disclosed that her marriage with the respondent-

husband was solemnized against her wishes and on that pretext, she had avoided physical relations with him. It was further the case of the respondent-husband that he tried his level best to make the appellant-wife understand, but her behavior remained cruel towards the respondent-husband and his family members. The appellant-wife used to remain busy on the mobile and always created ugly scenes in the house. She neglected the minor son and insulted the respondent-husband in front of his parents. It was further asserted that on 13.03.2018, the appellant-wife left the matrimonial house leaving behind the minor son with him on the pretext that she was going to the house of her *Bua*, near Aggarsain Colony Mandkheri Road, Jagadhri, but when the respondent-husband made call on her mobile, it was found switched off. It was further asserted that when the brother of the respondent-husband went to the house of *Bua* of the appellant-wife, he was told that she did not come to their house, which led to the filing of missing complaint at Police Station Chhachhrauli and based thereon, FIR No.47 dated 13.03.2018 under Section 365 IPC was registered. It was further the case of the respondent-husband that during investigation of the aforesaid FIR, the police had found that the appellant-wife was residing in the company of Sunny (respondent No.2 in the divorce petition) at New Delhi. The appellant-wife had disclosed that she was having sexual relations with said Sunny and had been residing with him as his wife and did not want to live in the company of the respondent-husband. Thereafter, her statement under Section 164 Cr.P.C. was recorded before the Judicial Magistrate, wherein she had stated that she had left the matrimonial house out of

her own will and she did not want to live in the company of the respondent-husband. It was further asserted that after recording the aforesaid statement, the appellant-wife went to the aforesaid Sunny (respondent No.2 in the divorce petition) and started living with him. Terming the aforesaid acts of the appellant-wife as cruelty and adultery, a decree of divorce was prayed for.

3. Upon notice, the appellant-wife entered appearance and had filed her written statement, pleading therein that from the beginning of the marriage, the respondent-husband and his family members had started harassing, humiliating and maltreating the appellant-wife on the ground of bringing less dowry. It was further pleaded that the respondent-husband under the instigation of his mother and brother and further under the influence of liquor used to mercilessly beat her in connection with the demand of dowry. It was further asserted that after the birth of the male child, the appellant-wife had been left at her parental house by the respondent-husband himself, but he did not come to take her back to the matrimonial home. However, after great persuasions and requests, the respondent-husband took her to the matrimonial home on the occasion of Lohri. In September 2015, the respondent-husband was transferred to Ambala and he started living in a rented accommodation there and all the expenses were borne by her parents. It was further asserted that the respondent-husband and his family members tried to kill the appellant-wife and on 13.03.2018, she was given beatings and was turned out of the matrimonial home. It was further alleged that in order to hide the atrocities committed by the respondent-husband and

his family members, a false FIR had been got registered by them against the appellant-wife under Section 365 IPC. It was denied that the appellant-wife was leading an adulterous life.

4. On the basis of pleadings of the parties the following issues were framed by learned Family Court:-

“1. Whether the petitioner is entitled for a decree of dissolution of marriage of petitioner and respondent No.1 under Section 13 of the Hindu Marriage Act, 1955 on the grounds mentioned in the petition? OPP

2. Whether the present petition is not maintainable in its present form? OPR

3. Relief.”

5. In evidence, the respondent-husband examined himself as PW-1, besides tendering into evidence as Ex.P-1 to Ex.P-5. The appellant-wife examined herself as RW-1.

6. The learned Family Court, after taking into consideration the rival contentions of the parties and evidence on record, allowed the petition filed by the respondent-husband, as noticed above.

7. Learned counsel appearing for the appellant-wife has vehemently contended that there was no evidence on record to establish that the appellant-wife was leading an adulterous life. It is further contended that so far as the factum of her living in the company of Sunny (respondent No.2 in the divorce petition) is concerned, he was a friend of the appellant-wife, who had given her a shelter. It is further contended that the registration of FIR No.47 dated

13.03.2018 under Section 365 IPC was a planned tactics of the respondent-husband and his family members and the same was got registered with a mala fide intention so as to create evidence against the appellant-wife. It is further contended that the statement of the appellant-wife under Section 164 Cr.P.C. was recorded before Judicial Magistrate under the Police pressure and she had given such statement out of fear.

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

9. The issue that requires consideration by this Court is whether the impugned judgment and decree passed by learned Family Court requires any interference.

10. It may be noticed that the learned Family Court had examined whether the appellant-wife was leading an adulterous life. It was found that in her cross-examination, the appellant-wife stated that she had developed acquaintance with Sunny (respondent No.2 in the divorce petition) before 13.03.2018 and that 13.03.2018 was the relevant date as on the said date she left her matrimonial house. It was further stated by her that she came into contact with the aforesaid Sunny through Facebook. In further cross-examination she stated that though she had been mercilessly beaten on 08.03.2018, yet she did not get herself medically examined and that on 19.01.2018, she had transferred an amount of Rs.8000/- from her bank account to the account of aforesaid Sunny. It was further found that when she was asked a question as to why she had trusted Sunny so much, she had

replied that she had nothing to say in that regard. It was yet further found that when she was asked about the status of said Sunny being married or not, she stated that she did not want to answer the said question. It was further found by the learned Family Court that in her cross-examination she stated that she had stayed with aforesaid Sunny for more than 8 months and during that period, she had neither contacted her parents nor bothered to know the well being of the minor son. The relevant extract from the judgment of the learned Family Court would read as under:-

“21. From these extracts (from her cross-examination), it can be positively made out that after leaving her matrimonial house on 13.03.2018, she lived with respondent No.2-Sunny till the time she was recovered by the police from Uttam Nagar, New Delhi i.e. she stayed with Sunny for around eight and a half months, and during that time neither she contacted her parents nor she bothered to ask about the well being of her minor son. This scenario leaves not even an iota of doubt that respondent No.1 after solemnization of her marriage with petitioner had voluntary sexual intercourse with another person, who is not her spouse.

22. It is very difficult to procure direct evidence of sexual intercourse and it is only from the circumstances that inference can be drawn that the spouse against whom complaint is made out was leading an adulterous life. As already stated, the circumstances here leave no shadow of doubt that respondent No.1 led an adulterous life with respondent No.2. Petitioner has thus, remained successful in proving that respondent No.1 i.e. his wife after

solemnization of the marriage has voluntary sexual intercourse with a third person”.

Thus, it was held that the appellant-wife was leading an adulterous life. As regards the cruelty, the learned Family Court after having referred to various judgments of the Hon'ble Supreme Court, has come to the conclusion that the conduct of the appellant-wife in leading an adulterous life had caused mental pain and agony to the respondent-husband and the appellant-wife had treated the respondent-husband with cruelty.

11. In **K. Srinivas Rao v. D.A. Deepa**, 2013(2) RCR (Civil) 232; Hon'ble Apex Court observed as under:-

“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 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 **K. Srinivas v. K. Sunita**, 2015(1) RCR (Civil) 38,

Hon'ble Apex Court observed as under:-

“6. Another argument which has been articulated on behalf of the learned counsel for the Respondent is that the filing of the criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filing of the husband's divorce petition, and being subsequent events could have been

looked into by the Court. In any event, both the parties were fully aware of this facet of cruelty which was allegedly suffered by the husband. When evidence was led, as also when arguments were addressed, objection had not been raised on behalf of the Respondent-Wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf.

7. In these circumstances, we find that the Appeal is well founded and deserves to be allowed. We unequivocally find that the Respondent-Wife had filed a false criminal complaint, and even one such complaint is sufficient to constitute matrimonial cruelty.

8. We, accordingly, dissolve the marriage of the parties under Section 13(1)(ia) of the Hindu Marriage Act...”

In **Ramchander v. Ananta**, (2015) 11 SCC 539, it was held that cruelty has not been defined in the Act and the same is to be taken as the behavior by one spouse towards the other. The cruelty can be physical or mental, but such cruelty must be proved. It was held as under:-

“10. The expression “cruelty” has not been defined in the Hindu Marriage Act. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behavior by one spouse towards the other, which causes a reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Cruelty can be physical or mental. In the present case there is no allegation of physical cruelty alleged by the plaintiff. What is alleged is mental cruelty and it is necessarily a

matter of inference to be drawn from the facts and circumstances of the case. It is settled law that the instances of cruelty are not to be taken in isolation but to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the plaintiff has been subjected to mental cruelty due to conduct of the other spouse. In the decision in Samar Ghosh case (Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511) this Court set out illustrative cases where inference of “mental cruelty” can be drawn and they are only illustrative and not exhaustive”.

12. In **Joseph Shine v. Union of India**, (2019) 3 SCC 39, it has been held by the Hon’ble Supreme Court that adultery can be a ground for any kind of civil wrong, including dissolution of marriage.

The relevant extract from the said judgment would read as under:-

“50. There can be no shadow of doubt that adultery can be a ground for any kind of civil wrong including dissolution of marriage. But the pivotal question is whether it should be treated as a criminal offence. When we say so, it is not to be understood that there can be any kind of social licence that destroys the matrimonial home. It is an ideal condition when the wife and husband maintain their loyalty. We are not commenting on any kind of ideal situation but, in fact, focussing on whether the act of adultery should be treated as a criminal offence. In this context, we are reminded of what Edmund Burke, a famous thinker, had said, “a good legislation should be fit and equitable so that it can have a right to command obedience”. Burke would like to put it in two compartments, namely, “equity” and “utility”. If the

principle of Burke is properly understood, it conveys that laws and legislations are necessary to serve and promote a good life.”

13. In our view, once it was proved on record that the appellant-wife had been living an adulterous life with said Sunny (respondent No.2 in the divorce petition), we find no reason to interfere with the well reasoned judgment passed by the learned Family Court.

14. In view of the above, we do not find any illegality or perversity in the impugned judgment and decree passed by the learned Family Court. Consequently, finding no merit in the present appeal, the same is hereby dismissed.

15. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

20.09.2024
Himanshu

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