

2024.PHHC.125220-DB



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

FAO-1381-2024 (O&M)

Date of decision: 19.09.2024

KARAMJIT KAUR

...Appellant

Versus

DAVENDER SINGH

...Respondent

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

Present:- Mr. Jagjit Singh Gill, Advocate for appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 09.02.2024, passed by the learned Additional Principal Judge, Family Court, Sirsa (for short the 'Family Court'), whereby an application under 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 desertion.

2. The aforesaid petition had been filed by the respondent-husband, *inter alia*, pleading therein that his marriage with appellant-wife was solemnized on 15.03.2009, according to Sikh rites, but no child was born out of the said wedlock. It was further asserted that

from the very beginning of the marriage, the appellant-wife started treating the respondent-husband inhumanly and harassed him and his family members by using abusive and disrespectful language and that she had also deprived the respondent-husband of the marital pleasure. It was further stated that the appellant-wife had slapped the respondent in front of his guests and she used to extend threats to kill all the family members by mixing pesticides in the food. It was further alleged that the appellant-wife had slapped the respondent-husband in the market in the presence of one Atinder Pal Singh and other persons. The brother of the appellant-wife had threatened the respondent-husband and his family members by bringing anti social persons along with him and had further told that he had links with the bad elements. The appellant-wife left the respondent-husband and had moved an application to the Women Cell, but to save the marital relationship, a compromise was effected in which the appellant-wife had undertaken that she would not keep the mobile phone secretly; behave properly and give respect and attention to all the family members. It was also agreed that elder brother and father of the appellant-wife would not interfere in the family affairs of the parties. After 10 days of the said compromise, the appellant-wife again went to her parental house and remained there for 2-1/2 months claiming herself to be ill and that when she came back, she had started repeating the old behavior. On 09.11.2010, some inhabitants of the parental village of the appellant-wife came to the house of the respondent-husband and took the appellant-wife with them. It was further asserted that the respondent-husband and his parents were falsely implicated by the appellant-wife

in FIR no.13 dated 21.02.2011 under Sections 498-A/406 IPC in which the respondent-husband and his family were acquitted of the charge under Section 498-A IPC, but were convicted of the offence under Section 406 IPC and that appeal against the said conviction was pending before the Appellate Court. Terming the aforesaid acts as cruelty, the respondent-husband had sought for a decree of divorce.

3. Upon notice, the appellant-wife entered appearance and had filed her written statement alleging that the respondent-husband had concealed the material facts from the Court. It was further pleaded that the respondent-husband had earlier filed a similar petition at Sirsa which was dismissed as withdrawn on 09.09.2013, without any permission to file a fresh petition on the same cause of action and, therefore, the second petition was barred under law. The factum of marriage between the parties was admitted, but it was alleged that sufficient dowry was given in the marriage and that on 09.11.2010, the respondent-husband along with his parents tried to administer poison to the appellant-wife in order to kill her. She somehow saved herself and got registered the aforesaid FIR against the respondent-husband and his family members. The other allegations of cruelty were denied. It was further pointed out that she was given beatings by the parents of the respondent-husband and the respondent-husband had even obtained a gun with a motive to kill the appellant-wife.

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 decree of divorce on the grounds as mentioned in the petition? OPP
2. Whether the present petition is not maintainable? OPR
3. Whether the petitioner has concealed the true and material facts from the Court? OPR
4. Whether the petitioner has no cause of action to file the present petition? OPR
5. Relief.”

5. In evidence, the respondent-husband examined himself as PW-1 and PW-2-Kulbir Singh, besides tendering into evidence as Ex. P1 and Ex. P2 and Mark-C. On the other hand the appellant-wife examined herself as RW-1 and had also examined RW-2 Swarn Singh, besides leading documentary evidence Ex. R1 to Ex.R-12.

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 once the earlier similar petition had been dismissed as withdrawn by the respondent-husband, the second petition on the same cause of action was not maintainable as in view of the provisions of Order 23 Rule 1 CPC the said petition was barred. It is further argued that merely because in the criminal proceedings initiated by the appellant-wife, the respondent-husband and his family members had been acquitted, is no ground to hold that the appellant-wife had treated the respondent-husband and his family members with cruelty. It is further argued that while passing the impugned judgment and decree, the learned Family Court has failed to award any permanent alimony to the appellant-wife.

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

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. The present case hinges around to points. The first one is whether the second petition filed by the respondent-husband on the same cause of action was barred under law and the second is whether acquittal of the respondent-husband and his family members in the criminal proceedings initiated by the appellant-wife, amounts to cruelty.

11. So far as the first point is concerned, it is an admitted position that earlier the respondent-husband had filed similar petition before the Court at Sirsa, but the same was dismissed as withdrawn on 09.09.2013. However, the learned Family Court has found that after the dismissal of the earlier petition as withdrawn, the subsequent events i.e. acquittal of the respondent-husband and his family members in the criminal proceedings initiated by the appellant-wife, came into existence. Therefore, it was held that the second petition could not be termed to have been filed on the same cause of action. There was no rebuttal to the aforesaid factual aspect of the matter. Though this Court is of the opinion that second petition on the same cause of action would not be maintainable, once the earlier one is dismissed as withdrawn without any liberty or permission to file a second one on the same cause of action, yet we find that in the second

petition filed by the respondent-husband, subsequent events were also incorporated. Hence, we find that the petition filed by the respondent-husband was very much maintainable and cannot be said to be barred under law.

12. Now coming to the question as to whether the acquittal of the husband and his family members in the criminal/matrimonial proceedings initiated by the wife would amount to cruelty. It may be noticed that the appellant-wife had lodged FIR No. 13 dated 21.02.2011 under Sections 498-A/406/506/323 read with Section 34 IPC at Police Station Baragudha against the respondent-husband and his family members. In the said proceedings, the respondent-husband and his family members were acquitted of the offence under Section 498-A IPC, but were convicted of the offence Under Section 506 IPC vide judgment and order dated 22/23.09.2016 passed by the learned Family Court. However, in appeal filed against the said judgment and order, the respondent-husband and his family members were also acquitted of the offence under Section 506 IPC vide judgment dated 17.04.2018, passed by the learned Appellate Court.

13. In **Ramchander v. Ananta**, (2015) 11 SCC 539, it has been 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”.

14. It is settled law that where the wife launches criminal prosecution against the appellant-husband and his family members for the various offences, including the matrimonial offences, and ultimately, the husband and his family members are acquitted by the Court finding that the allegations levelled were false and baseless, the same amounts to cruelty.

15. 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.”

16. 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.

17. We, thus, find that the findings recorded by the learned Family Court do not suffer from any illegality or perversity so as to warrant interference by this Court in the present appeal.

18. So far as the argument of the learned counsel for the appellant as regards the permanent alimony is concerned, the appellant is granted liberty to move an appropriate application before the learned Family Court for grant of permanent alimony. If any such application is filed, the same shall be decided by the learned Family Court, in accordance with law.

19. No other point has been urged.

20. In view of the above, finding no merit in the present appeal, the same is hereby dismissed.

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

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

19.09.2024
Himanshu

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