

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

FAO-1361-2024 (O&M)
Date of decision: 21.03.2024

Jyoti

.....Appellant

Versus

Shankhbeer

.....Respondent

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

Present: Mr. Ajay Kadyan, Advocate, for the appellant.

SUDHIR SINGH, J.

Present appeal is directed against the judgment dated 27.02.2024 passed by the Family Court, Panipat, whereby the petition under Section 13-1 (i-a) of the Hindu Marriage Act, 1955, filed by the respondent-husband was allowed and the marriage between the parties was dissolved by a decree of divorce on the ground of cruelty.

2. The brief facts of the case are that the marriage between the parties was solemnized on 04.03.2017 according to Hindu rites. No child was born out of said wedlock. Due to temperamental differences between the parties, they started living separately from July 2018. The respondent-husband filed a petition under Section 13-1(i-a) of the Hindu Marriage Act, 1955 seeking dissolution of marriage by a decree of divorce on the ground of cruelty. It was stated that the appellant-wife was having an affair with a boy prior to her marriage and she wanted to reside with him even after the marriage. It was further averred

that on 13.07.2018, brother of appellant-wife, namely Manjeet came to the house of respondent-husband along with some persons namely Rajesh, Raju, Sanjeev etc. and caused injuries to the respondent-husband as well as his mother. After the incident, mother of the respondent-husband was taken to Civil Hospital, Panipat, where she was medico legally examined vide MLR dated 13.07.2018. In this regard, the respondent-husband had moved a complaint dated 13.07.2018 to the Police Station, Model Town, Panipat. It was further pleaded that the appellant-wife had got registered a false case i.e. FIR No. 41 of 2018 under Sections 323/406/498-A/354/377/342/506 IPC at Police Station Assandh, District Karnal, against the respondent-husband and his family members, wherein the parents and the family members of the respondent-husband were found innocent during investigation and Sections 342/354/377 IPC were deleted. Besides, the appellant-wife had also initiated proceedings against the respondent-husband under the Protection of Women from Domestic Violence Act and also filed a petition under Section 125 Cr.P.C.

3. Upon notice, the appellant-wife appeared and filed her written statement before the Family Court, stating therein that the petition was filed with an ulterior motive in order to harm and harass the appellant-wife. It was further stated that the respondent-husband and his family members used to harass and humiliate her physically and mentally on account of bringing insufficient dowry. It was also alleged that Reena, sister of respondent-husband, used to treat the appellant-wife as a

maid and compelled her for prostitution. All other allegations leveled in the petition were denied and a prayer for dismissal of the same was made.

4. On the basis of the pleadings of the parties, the trial Court framed the following issues:-

- “1. Whether the petitioner is entitled for a decree of divorce on the ground of cruelty? OPP
2. Whether the present petition is not maintainable? OPR
3. Whether the petitioner had no cause of action to file the present petition? OPR
4. Relief.

5. In evidence, the respondent-husband, examined himself as PW1 and examined Dr. Rajeev Maan as PW2 and Dr. Sumit Aggarwal as PW3, besides producing documentary evidence Ex.PW1/A and Exh.P1 to Exh.P.10. On the other hand, the appellant-wife examined her mother Saroj Bala as RW1, Rajesh as RW2, herself as RW3 and produced documentary evidence as Ex.R1 to Ex.R.5.

6. After hearing the rival contentions of the parties and considering the evidence on record, the trial Court allowed the petition, as noticed above.

7. Learned counsel appearing for the appellant-wife submits that while granting the decree of divorce, the learned trial Court has erred in law in holding that the appellant-wife had treated the respondent-husband with cruelty, inasmuch as such finding has been based on the fact that the respondent-husband has been acquitted in the FIR proceedings initiated by the appellant-wife. It is further submitted that against the

judgment of acquittal dated 06.03.2023, the appellant has preferred an appeal before the Sessions Court and the same is still pending. Unless, the findings recorded by the trial Court are affirmed or altered or modified by the higher Court in an appeal or revision, the same cannot be said to have attained finality. It is further submitted that in matrimonial cases, the pendency of multiple litigation is a question of fact and merely because the appellant-wife had initiated multiple proceedings against the respondent-husband and his family members, it could not be a ground to hold that the appellant-wife had treated the respondent-husband and his family members with cruelty. It is yet further submitted that it had come on record that on account of scuffle between both the parties, proceedings under Section 107/151 Cr.P.C. were initiated against both the of them and thus, it cannot be said that it was the appellant-wife only, who had entered in any kind of scuffle and/or fight with the respondent-husband and his family members.

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

9. The sole question for consideration before this Court, is as to whether the respondent-husband had been able to prove the cruelty committed by the appellant-wife against him.

10. Learned trial Court, on the basis of the evidence, has found that the appellant-wife had lodged FIR No.41 dated 09.10.2018, under Sections 323/406/498-A/354/377/342/506 IPC at Police Station, Assandh, District Karnal, against the

respondent-husband and his family members. In the said FIR, during investigation, all the family members, including the parents of the respondent-husband had been found innocent and challan was presented against the respondent-husband only and he was charged for the commission of offences under Sections 323/406/498-A/506 IPC. However, vide judgment dated 06.03.2023, the respondent-husband was acquitted of the charges framed against him. It was also established on record that the appellant-wife had leveled allegations against the sister-in-law of respondent-husband that she had compelled the appellant-wife for prostitution and further alleged that the respondent-husband and the son of his maternal aunt, namely, Arvind had tried to outrage her modesty. She had also leveled the allegation of offence under Section 377 IPC against the respondent-husband. All these allegations had been found to be baseless and ultimately, the only accused in the FIR i.e. the respondent-husband had been acquitted of the charges framed against him. Not only this, even an application under Section 319 Cr.P.C. moved by the appellant against the family members of the respondent-husband did not find any favour with the Court and the same was dismissed.

11. Though there is no bar to the right of a wife to initiate multiple proceedings as regards her right of maintenance and other ancillary reliefs, yet in the facts of the present case, it has been proved on record that the FIR registered by her culminated into the acquittal of the respondent-husband and the allegations levelled therein were

found baseless against the family members of the respondent-husband during investigation in the said FIR.

12. The appellant-wife had levelled serious allegations against the parents of respondent-husband and dragged all his family members into criminal prosecution. However, as noticed above, they all were found innocent during investigation itself and even the application under Section 319 Cr.P.C. filed by the appellant-wife, was also dismissed by the Court. Such a false prosecution must have left all the family members, including the parents of the respondent-husband, traumatized and they had to face harassment, humiliation and mental agony on account of such conduct of the appellant-wife. 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."

13. Thus, we find that the findings recorded by the learned trial Court do not suffer from any patent illegality or perversity. It could not be shown that any evidence has been misread or not taken into consideration by the trial Court.

14. In view of the above, we do not find any merits in the present appeal and the same is hereby, dismissed.

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

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

21.03.2024
Ajay Prasher

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