

2024 PHHC 119090-DB



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

FAO-2224-2024 (O&M)

Date of decision: 05.09.2024

RAJWINDER KAUR

...Appellant

Versus

KARAMJIT SINGH

....Respondent

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

Present:- Mr. Sandeep Jain, Advocate for appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 29.02.2024 passed by the learned Principal Judge, Family Court, Shaheed Bhagat Singh Nagar, whereby the suit filed by appellant-wife, under Section 18 of the Hindu Adoption and Maintenance Act, 1956 (For short 'the Act') has been dismissed.

2. The appellant-wife had filed the aforesaid suit seeking recovery of arrears of maintenance amounting to Rs.25,000/- per month w.e.f. 02.04.2015 to 01.02.2018 totaling Rs.8,50,000/-; fixation of future maintenance at the said rate and creation of a charge over the properties of the respondent-husband, as detailed in the head note of the suit. It was averred by the appellant-wife that the marriage between her and the respondent-husband was solemnized on 15.12.2013, but no child was born out of the said wedlock. It was further asserted that at the time of the marriage, sufficient dowry

articles, besides a sum of Rs.3,00,000/- in cash, were given to the respondent-husband and his close relatives. The respondent-husband had stayed with the appellant-wife upto 29.12.2013 and thereafter, he left for his place of posting at Raebareli and he returned to matrimonial home on 06.01.2014 and stayed there upto 02.06.2014. During the said period, it came to the notice of the appellant-wife that the respondent-husband used to remain under the influence of liquor and would spend the entire earnings to satiate his lust for liquor and whenever she had tried to persuade him to give up the said habit she was subjected to cruelty and maltreatment at the hands of the respondent-husband and his family members. It was further averred that the respondent-husband left the appellant-wife at her parental home at Village Chhagran on 02.06.2014, with an assurance to take her back after one month, but he did never turn up. Thereafter, her father sent her to her matrimonial home, where the respondent-husband also lived with her upto 15.02.2015. It was further the case of the appellant-wife that the respondent-husband had left her company without disclosing his whereabouts and in his absence, his step parents had demanded more money from her parents in order to repay the loan amounting of Rs.9 lakh, which they had taken from the Punjab National Bank, Adda Kot Fatuhi Branch, by mortgaging their property in order to send Baljinder Singh (brother of the respondent-husband) abroad in 2014. It was further averred that when the appellant-wife expressed her inability to fulfill the said demand, she was subjected to beatings and ultimately, thrown out of the matrimonial home on 02.04.2015. It was further asserted by the

appellant-wife that she had no source of income to maintain herself whereas on the other hand, the respondent-husband was well possessed of adequate movable and immovable properties and was earning Rs.80,000/- per month. It was further averred that the respondent being her husband was legally bound to maintain her and, thus, she had filed the aforesaid suit for recovery of the arrears of maintenance, besides claiming other reliefs, as noticed above.

3. Upon notice, the respondent-husband entered appearance and filed his written statement admitting the factum of marriage, but the allegations qua harassment, maltreatment and demand of money were denied. It was further admitted that the parties had lived together for a very short period. It was further asserted that at the time of marriage, the son of the respondent (from the previous marriage) was 03 years old and the appellant-wife did not provide him any love and affection and rather, she had pressurized the respondent-husband to reside with her at her parental house at District Hoshiarpur; that the brother of the appellant-wife took her to her parental house at Hoshiarpur and that she was brought back only after a compromise dated 22.04.2014, was arrived at between the parties. However, at the instance of the appellant-wife's mother that she wanted to live with her daughter for a few days, the respondent-husband took her to her parental home on 02.06.2014, but thereafter, the appellant-wife did not come back. It was further asserted that the appellant-wife was M.A., M.Phil and might be earning Rs.25,000/- per month by running tuition classes, whereas the respondent-husband was earlier working in Shree Bhawani Paper Mill at Raebareli earning Rs.16,000/- per

month and later since February 2015, he had started working as Shift Incharge in Silvertoan Papers at Muzaffar Nagar, drawing a monthly salary of Rs.16,000/- per month. It was further asserted that the appellant-wife had filed a petition under Section 125 Cr.P.C. before the Court at Hoshiarpur in which the respondent-husband was directed to pay her a sum of Rs.8,000/- per month as maintenance. Apart from that, she had also filed a civil suit at Hoshiarpur against the respondent-husband, but no interim injunction was granted and later on, the appellant-wife withdrew the said suit.

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

- “1. Whether plaintiff is entitled for maintenance from the defendant, if so, to what extent? OPP
2. If Issue No.1 is proved, whether maintenance amount as charge is liable to be created on the property as mentioned in the head note of the suit? OPR
3. Relief.”

5. In evidence, the appellant-wife examined herself as PW-1, whereas the respondent-husband examined himself as DW-1 besides leading documentary evidence Ex.D1; Ex.D2 and Mark-A .

6. The learned Family Court, after taking into consideration the rival contentions of the parties and evidence on record, dismissed the suit filed by the appellant-wife, as noticed above.

7. Learned counsel for the appellant-wife has vehemently contended that once the factum of marriage between the parties was admitted by the respondent-husband and it was also admitted by him that he was earning Rs.16,000/- per month and the appellant-wife was

found to be not possessing any source of income to maintain herself, the learned Family Court ought to have decreed the suit filed by the appellant-wife. It is further argued that the respondent-husband and his family members had turned out the appellant-wife from the matrimonial home and had there been any intention on their part to rehabilitate her, the respondent-husband ought to have filed a petition for restitution of conjugal rights. Thus, the learned counsel for the appellant-wife argues that the very approach of the learned Family Court in dismissing the suit filed by the appellant-wife, is not tenable in the eyes of law.

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

10. It has come on the record that earlier the appellant-wife had filed a petition under Section 125 Cr.P.C. against the respondent-husband in the Court at Hoshiarpur. In the said proceedings, the respondent-husband was paying the appellant-wife a sum of Rs.8,000/- per month as maintenance, during the pendency of the said petition. However, subsequently the said petition was dismissed by the learned Family Court, Shaheed Bhagat Singh Nagar vide order dated 29.02.2020 (Ex.D1). Still further she had also filed a complaint under Sections 406, 498-A IPC against the respondent-husband and his parents, but they were acquitted of the charges framed against

them vide judgment dated 02.11.2019 (Ex.D2). The learned Family Court, after referring to the provisions of Section 18 of the Act, has found that the appellant-wife had failed to prove that she was treated with any cruelty by the respondent-husband or that she had been deserted by him and, therefore, she was found not entitled to claim any maintenance under the provisions of the Act.

11. On a query to the learned counsel for the appellant-wife, he is unable to explain as to why the appellant-wife did not make any effort to take further recourse to law, after the dismissal of her petition under Section 125 Cr.P.C by the learned Family Court, Shaheed Bhagat Singh Nagar vide order dated 29.02.2020 (Ex.D1). It does not appeal to the common prudence as to why the appellant-wife was not interested in the maintenance granted under Section 125 Cr.P.C., being already granted to her.

12. Though it is the case of the appellant-wife that she had been treated with cruelty by the appellant-husband, yet we find that there is no material or evidence on record to hold that the appellant-wife had been caused any harassment or ill-treatment and/or given any beatings at the hands of the respondent-husband or his family members. Rather, on the other hand, it has been proved on record that the criminal proceedings initiated by the appellant-wife had culminated into the acquittal of the respondent-husband and his family members vide judgment dated 02.11.2019 (Ex.D2).

13. 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.

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.

14. Thus, we find that it is rather the appellant-wife, who had treated the respondent-husband and his family members with cruelty and once we have held so, we find that no case is made out to interfere with the impugned judgment and decree passed by the learned Family Court. The findings recorded by the learned Family Court do not suffer from any illegality or perversity, which may warrant interference by this Court in the present appeal.

15. No other point has been urged.

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

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

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

05.09.2024
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No