



FAO-1870-2024

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

FAO-1870-2024

Date of Decision: 07.05.2024

RAJWANT KAUR

...Appellant

Versus

BALWINDER SINGH & ANR

...Respondents

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

Present:- Mr. Yashasvi Kapila, Advocate, for the appellant.

SUDHIR SINGH, J.

Present appeal is directed against the judgment and decree dated 20.02.2024 passed by the learned Family Court, Kapurthala, whereby the divorce petition under Section 13 of the Hindu Marriage Act (hereinafter referred as 'the Act') filed by the respondent-husband seeking decree of divorce on the ground of cruelty, has been allowed.

2. The brief facts of the case are that the respondent-husband had filed the aforesaid petition, *inter-alia*, averring that the marriage between the parties was solemnized on 20.12.2010 and that two children i.e. a daughter (Jasleen Kaur aged 07 years) and a son (Manbir Singh aged 04 years) were born out of the said wedlock. It was further stated that the minor son of the parties, had been murdered by the respondent-wife in connivance with Gautam (respondent No.2 in the divorce petition). It was further averred that from the very inception of the marriage, the behavior of the appellant-wife had been cruel and she used to raise the demand for a separate residence from the family members of the respondent-husband; that she used to leave matrimonial home occasionally leaving behind



the minor children and that she had developed illicit relations with aforesaid Gautam, who used to visit the house of the respondent-husband in his absence and would stay with the appellant-wife during the night time as well. It was further stated that the children having noticed the said fact, did object to it, but the appellant-wife did not mend her ways. It was further the case of the respondent-husband that in December 2017, his brother had caught the appellant-wife and said Gautam red-handed and informed the respondent-husband about the same, whereupon in a Panchayat convened, the appellant-wife had admitted her guilt, but despite the said fact, she continued her relations with said Gautam. It was further the case of the respondent-husband that on 28.02.2018, the appellant-wife in connivance with said Gautam, committed the murder of Manvir Singh (minor son of the parties) and in that regard a criminal case under Section 302 read with Section 34 IPC was registered against the appellant-wife and said Gautam. Terming the aforesaid acts as cruelty, the respondent-husband had sought a decree of divorce.

3. The appellant-wife appeared and filed her written statement denying the allegations of committing murder of her minor son. The allegations of living an adulterous life with aforesaid Gautam were also denied, but the factum of registration of aforesaid FIR for the murder of her minor son was admitted.

4. On the basis of the pleading of the parties the learned Family Court framed the following issues:-

- “1. Whether the respondent has treated the petitioner with cruelty? OPP.
2. Relief.”

5. In evidence, the respondent-husband examined himself as PW-1 besides examining his brother Sukhwinder Singh as PW-2 and led the



documentary evidence in the form of Ex.P-1 to Ex.P-4. On the other hand the appellant-wife had examined herself as RW-1, Swaran Singh as RW-2 and had also tendered documentary evidence as RW-1/A, RW-1/B, Ex. RA and Ex. RB.

6. The learned Family Court, after considering the rival contentions of the parties and taking into account the evidence on record, allowed the petition filed by the respondent-husband and passed a decree of divorce dissolving the marriage between the parties.

7. Learned counsel appearing for the appellant-wife has vehemently contended that there was no cruelty committed by the appellant-wife towards the respondent-husband. It is further contended that a false FIR has been registered against the appellant-wife for committing the murder of her son as no mother can be expected to murder her own son. It is further submitted that merely because the appellant-wife has been convicted in the aforesaid FIR is no ground to presume that it was her who had committed the murder of her son, especially when an appeal against the judgment of conviction and order of sentence Ex.P.4, is pending adjudication before the Appellate Court. It is further submitted that it was aforesaid Gautam (respondent No.2 in the divorce petition), who had murdered the minor son of the parties and the implication of the appellant-wife was only for the reason that she had been alleged to be having illicit relations with him.

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 question that arises for consideration before this Court is whether the decree of divorce granted by the Family Court in favour of the respondent-husband on the ground of cruelty, can be interfered with by this Court.



10. The stand of respondent-husband in his petition before the learned Family Court was that the appellant-wife was having illicit relations with aforesaid Gautam (respondent No.2 in the divorce petition). Concededly the minor son of the parties was murdered and also admitted is the position that criminal case under Section 302 read with Section 34 IPC was registered against the appellant-wife and said Gautam. The factum of the conclusion of the trial in the aforesaid FIR is not denied and the judgment of conviction and order of sentence was proved on record as Ex. P-4. It was found by learned Family Court that though the judgment of Criminal Court is not binding on the Civil Court, yet the same is a relevant fact in terms of Section 43 of the Evidence Act. It was further found that the conviction is not a conclusive proof of evidence in civil cases, but the fact remains that the appellant-wife was an accused of murdering her own son and the said fact was taken as one of the grounds for seeking divorce by the respondent-husband. It was, thus, found that the conviction of the appellant-wife and aforesaid Gautam, for the murder of the minor son of the parties, was a relevant fact, which could be taken into consideration by the Court. The learned Family Court has also considered the fact that the appeal filed by the appellant-wife against the judgment of conviction and order of sentence is pending, but the factum of her conviction for the murder of the minor son of the parties has clearly proved the mental cruelty caused to the respondent-husband and their minor daughter and, hence, they cannot be expected to live together.

11. Reference may be made to the judgment of the Delhi High Court in Swati vs Arvind Mudgal, MAT. APP. 5/2013 decided on 29.01.2015, wherein the issue raised was whether conviction of a respondent for the offence of murder and sentence of life imprisonment amounts to cruelty as against the other



spouse. In the said case, the appellant-wife challenged the dismissal of her divorce petition on grounds of cruelty by the Additional District Judge. In the said case, the respondent-husband had been prosecuted for the murder of a child and subsequently, convicted and sentenced by the Court. The Delhi High Court, while relying upon its earlier judgment in Sunita Devi v. Om Prakash (2010) DLT 471, has held that the conviction of the husband amount to cruelty.

12. It is a case where the appellant-wife has been convicted and sentenced for the murder of the minor son of the parties. The involvement and ultimate conviction and sentence of the appellant in such a gruesome crime along with her accomplice i.e. said Gautam (respondent No.2 in the divorce petition) is sufficient to hold that the respondent-husband has been treated with cruelty by her. The respondent-husband in his pleadings before the learned Family Court had given specific instances of the appellant-wife being in illicit relations with said Gautam and the fact was not countered by the appellant-wife by leading a cogent and convincing evidence. The Hon'ble Apex Court in Joseph shine Vs. Union of India, (2019)3 SCC 39, has held that adultery can be treated to be a ground for civil wrong, including dissolution of marriage. The connivance of the said persons in the murder of the minor son of the parties is sufficient to hold that the relations between the appellant-wife and the respondent-husband had reached the point of no return.

13. In V. Bhagat vs. D. Bhagat reported in (1994) 1 SCC 337, the Apex Court examined the concept of 'mental cruelty.' The observation made by the court is as follows:-

"The concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of social change, modernization, and industrialization. Mental cruelty cannot be established by direct evidence and it is a matter of

inference to be drawn from facts and circumstances of the case. A feeling of anguish, disappointment, and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two of them have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty, the conduct complained of should be 'grave and weighty' so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse."

14. We find that the findings recorded by the learned Family Court, do not suffer from any patent illegality or perversity. Even in the grounds of appeal, nothing has been pleaded to this effect. The conduct of the appellant-wife speaks volumes as regards the cruelty committed to the respondent-husband. It could not be pointed out by the learned counsel for the appellant that any evidence has been misread or not taking into consideration by learned Family Court, while passing the impugned judgment and decree.
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

[HARSH BUNGER]
JUDGE

07.05.2024
Himanshu

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