



FAO-2099-2024

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

FAO-2099-2024

Date of Decision: 03.05.2024

RAHUL DAGAR

...Appellant

Versus

SANGEETA

...Respondent

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

Present:- Mr. Varun Gupta, Advocate, for the appellant.

SUDHIR SINGH, J.

1. Present appeal is directed against the judgment dated 20.02.2024 passed by the learned Family Court, Jhajjar, whereby the divorce petition filed by the appellant under Section 13 of the Hindu Marriage Act (hereinafter referred as 'the Act') on the ground of cruelty, has been dismissed.

2. The brief facts of the case are that the marriage between the appellant-husband and the respondent-wife was solemnized on 29.06.2007 as per Hindu rites and out of the said wedlock a male child, namely, Moksh Dagar was born on 27.09.2008. The appellant-husband had filed the aforesaid petition, inter alia, stating that the respondent-wife despite having received love and affection at her matrimonial home, ill-treated the appellant and her behavior was rude; that she used to misbehave with the appellant-husband and his parents and that even on 30.06.2007, she refused to consummate the marriage, stating that she had no interest in it. It was further asserted that in January 2008, the respondent-wife expressed her desire to terminate her pregnancy and that on 15.02.2008, she visited Mansa Ram Hospital at Delhi to consult Dr. Ajay Dabas for the same and



that this fact was brought to notice of the appellant-husband and his family members by Dr. Ajay Dabas himself. It was further stated that the parents of the respondent-wife had been consistently interfering in their marital life and the respondent-wife used to leave her matrimonial house frequently without informing or seeking consent of the appellant-husband or his family members. It was further averred that the respondent-wife had lodged a false complaint against the appellant and his family members at CAW Cell at Rohini, Delhi, besides filing petitions under the Protection of Women from Domestic Violence Act, 2005 and under Section 125 Cr.P.C. against the appellant. Thus it was contended that the sole objective of the respondent-wife in initiating these proceedings was to cause harassment and humiliation to the appellant-husband and his family members.

3. The respondent-wife appeared and filed her written statement denying the allegations of cruelty. It was asserted that the life of the respondent-wife had been made miserable by the appellant-husband and his family members as result of which she had been compelled to lodge FIR No.50 dated 22.01.2018 under Sections 498-A, 406 read with Section 34 IPC against them. It was further stated that on 27.09.2017, the appellant-husband along with his brother and few other accomplices, kidnapped the minor child of the parties and had also assaulted the respondent. It was further asserted that subsequently a report was lodged with the police and the respondent underwent a medical examination and that following the said incident the respondent-wife had filed an application in the Court of learned MM/Mahilla Court, Rohini, Delhi seeking restraint against the appellant-husband and his family members from taking the forcible custody of the minor child and that in the said proceedings, a restraining order was passed by the Court on 07.11.2017. It was further pointed out that the



respondent-husband had also filed an application seeking interim custody of the child to attend the wedding ceremony of his brother, but owing to the previous behavior of the appellant-husband, the Court had dismissed the said application.

4. On the basis of the pleadings of the parties the learned Family Court, Jhajjar, had framed the following issues:

“1. Whether the petitioner is entitled for dissolution of his marriage with the respondent on the grounds as alleged in the petition? OPP

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

3. Relief ”

5. In order to prove his case, the appellant-husband examined himself as PW-1, besides examining his sister as PW-2. He had further examined his father (Sh. Rajpal) as PW-3 and one Dinesh Kumar as PW-4, apart from leading documentary evidence in the form of Ex. P-1 to P-19. On the other hand the respondent-wife had examined herself as RW-1 and produced on record the documents Mark R-1 to R-3.

6. The learned Family Court after considering the rival contentions of the parties and examining the evidence on record dismissed the petition filed by the appellant-husband holding that he has failed to prove that he had been treated with cruelty by the respondent-wife.

7. Learned counsel appearing for the appellant vehemently contends that the behavior of the respondent-wife had been very rude right from the very inception of the marriage. It is further argued that she was in the habit of leaving the matrimonial house time and again without any justified cause or without the consent of the appellant-husband or his parents. He further submits that the respondent-wife had decided to get her pregnancy terminated without the consent of the appellant-husband or his family members and that ultimately she



had lodged a complaint before the CAW Cell, Rohini, Delhi, besides filing the petitions under the Domestic Violence Act and under Section 125 Cr.P.C. All these acts constituted a cruelty against the appellant-husband and his family members. It is further submitted that the respondent-wife lodged FIR No.50, dated 22.01.2018 under Sections 498-A, 406 read with Section 34 IPC against the appellant and his family members and the same amounts to an act of cruelty. However, the aforesaid vital facts have totally been brushed aside by the learned Family Court, while dismissing the petition filed by the husband.

8. We have heard the learned counsel for the appellant and have also gone through the impugned judgment.

9. The only question that arises for consideration before this Court is whether the respondent-husband was able to prove cruelty on the part of the respondent-wife.

10. It is well settled that in order to constitute cruelty, the party alleging the same must prove on record that the behavior of the party complained against is or has been such that it has made it impossible for the said party to live in the company of the party complained against. The acts of cruelty must be such from which it can be reasonably and logically concluded that there cannot be any re-union between the parties due to the said acts. The cruelty can be in the physical as also in the mental form. Though there is no mathematical formula to devise the extent of cruelty alleged against, yet the facts and circumstances of each and every case must be examined in the light of the gravity contained in them.

11. In the instant case, the appellant-husband has alleged that the respondent-wife had been leaving the matrimonial home time and again and had also persisted upon terminating her pregnancy. It is further the case of the appellant-husband that initiating the proceedings under the Domestic Violence



Act and under Section 125 Cr.P.C. is also an act of cruelty. Registration of FIR No.50 dated 22.01.2018 against the appellant and his family members is also sought to be termed as an act of cruelty.

12. A perusal of the impugned judgment would show that on the basis of the evidence led by the appellant-husband, it was found by the learned Family Court that the allegations of the appellant-husband that the respondent-wife had maltreated him, were not proved on record. The testimony of PW-2 and PW-3, sister and father respectively, of the appellant-husband, was found to be lacking credibility. It was further found that no instances of the respondent-wife creating scenes in front of the neighbors, were proved on record and one of the neighbors, namely Dinesh Kumar PW-4 did not depose anything regarding such disputes.

13. It was further found that though the appellant-husband had pleaded that the respondent-wife had gone to Dr. Ajay Dabas for termination of her pregnancy, yet the fact remains that the said Doctor had not been examined by the appellant-husband. Rather, on the other hand, it was found that appellant and his father during their testimony before the trial Court, had admitted that the respondent-wife used to undergo regular check-ups for the pregnancy, which fact indicated that she was willing to carry the pregnancy. It was further found that the registration of the FIR *ipso-facto* by the respondent-wife, did not amount to any cruelty as the trial in the said FIR was still going on.

14. Admittedly various proceedings, including the aforesaid FIR and the custody case of the minor child, are pending between the parties. There is no conclusion of the trial in the aforesaid FIR and unless the final outcome thereof, no finding can be returned on the said basis. We find from the record that the appellant-husband had admitted in his cross-examination that the relations



between the parties were cordial and the same turned sour only when the mood of the respondent-wife used to remain off. The learned Family Court has rightly found that the said fact cannot be treated as an act of cruelty. Though the parties have been living separately for past seven years, yet the said ground alone cannot be treated a ground to dissolve the marriage between the parties especially when, the appellant-husband could not prove on record the cruelty. The relevant extract from the finding of the trial Court in this regard would read as under:-

“80. It can be fairly concluded that general allegations of cruelty made by the petitioner are not sufficient enough to establish that the respondent-wife has treated the petitioner to such any extent of cruelty which would amount to a matrimonial offence. Law is fairly settled on the point that mere tit-bits of matrimonial life cannot be treated as a cruelty so as to sever the matrimonial tie.

81. There is one most important aspect in the matter. Under Hindu Law, marriage is an institution, a meeting of two hearts and minds and is something that can not be taken lightly. It is said that marriages are made in heaven. Therefore, a very high value is placed on the marriage.

82. Reverting back to the facts of the instant case, though on account of some misunderstanding couple has been living separately for a long time but mere long separation in absence of any other proof of cruelty as claimed by the petitioner is not sufficient enough to sever the matrimonial bond. For the mere fact that petitioner husband is not interested in living with his wife, he cannot be granted decree of divorce. It is quite unfortunate to see that after several years of separation, the wife is still ready to reconcile the dispute but the husband is showing lack of care and concern for her as well as her child as is evident from his testimony, as discussed above. They itself goes to show that it was the



petitioner husband, who had a very callous approach towards the most sacrosanct relationship of husband and wife as well as towards his child.

*83. It has been settled time and again that cruelty must be grave and not ordinary act of wear and tear of married life. The conduct should be grave so as to make cohabitation virtually unendurable. It must be more serious than the ordinary wear and tear of the marriage. It has been so held in case **Maya Vs. Brij Nath 1982(1) DMC 31 (Delhi).**”*

15. Learned counsel for the appellant-husband could not point out any illegality or perversity in the findings recorded by the learned Family Court. It could not be shown that any evidence has been mislead or not taken into consideration by the learned Family Court. Rather, when confronted with the evidence noticed by the learned Family Court, while recording the findings, nothing contrary could be pointed out by the learned counsel for the appellant-husband.

16. No other point has been urged.

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

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

[SUDHIR SINGH]
JUDGE

[HARSH BUNGER]
JUDGE

03.05.2024
Himanshu

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