



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-2289-2024 (O&M)

Date of Decision: 20.05.2024

SHARMILA ...Appellant
Versus
RAM NIWAS ...Respondent

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

Present:- Mr. Bhuwnesh Lakhera, Advocate for appellant.

SUDHIR SINGH, J.

CM-8553-CII-2024

For the reasons given in the application, the same is allowed and the delay of 36 days in filing the appeal is condoned, subject to all just exceptions.

FAO-2289-2024

The present appeal is directed against the judgment and decree dated 20.12.2023 passed by learned Family Court, Hisar, whererby the petition under Section 13 of the Hindu Marriage Act (hereinafter referred as 'the Act') filed by the respondent-husband, has been allowed and the marriage between the parties has been dissolved.

2. The aforesaid petition had been filed by the respondent-husband, *inter-alia*, averring therein that his marriage with the respondent-wife was solemnized on 27.03.2009, according to Hindu rites and out of the said wedlock one male child namely, Jatin, was born on 27.12.2009, who was residing with the respondent-husband. It was further averred that the appellant-wife was an arrogant, egoist,



short tempered, wicked and clever lady and she was also involved in a theft of valuable articles from her matrimonial house in which, she along with co-accused Kuldeep was convicted under Sections 454, 380 read with Section 120-B IPC vide judgment and order dated 23/28.05.2018 passed by the learned Additional Chief Judicial Magistrate, Fatehabad, in FIR No.351 dated 17.09.2013 registered at Police Station Bhuna, District Fatehabad. It was further stated that since the incident of theft committed by the appellant-wife in her matrimonial home, she had been residing at her parental home. It was further stated that the appellant-wife had got registered a false criminal case bearing FIR No. 1052 dated 21.10.2015 under Sections 498-A and 406 IPC at Police Station Hisar, against the respondent-husband, besides filing a complaint under the Protection of Women from Domestic Violence Act 2005 and a petition under Section 125 Cr.P.C. It was further stated that prior to the conviction of the appellant-wife in the aforesaid criminal case, she had been granted maintenance of Rs.4,000/- per month, besides a sum of Rs.3,000/- per month for the minor son, vide order dated 16.05.2018 passed by the learned Family Court, but in revision against the said order, operation of the said order was stayed by this Court. It was further stated that having left the company of the respondent-husband in September, 2013, the appellant-wife had deserted respondent-husband for more than two years preceding the filing of the petition without any reason. It was, thus, stated that all the aforesaid acts on the part of appellant-wife, amounted to cruelty and desertion.



3. Upon notice, the respondent-wife appeared and filed her written statement, denying the allegations of cruelty and desertion levelled by the respondent-husband. It was stated that the respondent-husband was estopped from filing the divorce petition by his own act and conduct. It was further stated that the respondent-husband and his family members used to abuse, taunt and quarrel with her and also used to raise demand of dowry. It was further stated that after having been thrown out of the matrimonial home, the appellant-wife was compelled to file the petitions under the Domestic Violence Act and under Section 125 Cr.P.C.

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

“1. Whether the petitioner Ram Niwas son of Shri Ramphal, resident of Village Dehman, Tehsil Bhuna, District Fatehabad whose marriage was solemnized on 27.03.2009, according to Hindu rites and ceremonies, at Village Kuleri, Tehsil and District Hisar with respondent-Sharmila, daughter of Jaibir resident of village Rawalwas Kalan, Tehsil and District Hisar is entitled to decree of divorce on the grounds, as alleged in the petition under Section 13 of the Hindu Marriage Act, 1955? OPP

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

3. Whether the petitioner has no cause of action and locus-standi to file the present petition? OPR

4. Whether the present petition is filed, only to harass and humiliate the respondent and his family members?OPR

5. Whether the petitioner is stopped by his own act and conduct from filing the present petition against the respondent? OPR

6. Relief.”

5. In evidence, the respondent-husband examined himself as PW-1 whereas, the appellant-wife appeared as RW-1.



6. The learned Family Court after taking into consideration the rival contentions and the evidence on record, allowed the petition filed by the respondent-husband and dissolved the marriage between the parties by decree of divorce on the grounds of cruelty and desertion.

7. Learned counsel appearing for the appellant-wife vehemently submits that as a matter of fact, it was the respondent-husband, who had treated her with cruelty and ultimately deserted her. He further argues that it was for said reason that the appellant-wife had to lodge FIR No.1052 dated 21.10.2015 at Police Station Hisar, under Sections 323, 498-A and 406 IPC aforesaid besides the filing petitions under the Domestic Violence Act and under Section 125 Cr.P.C. It is further argued that while passing the impugned judgment and decree, the learned Family Court, did not take into consideration the said aspect of the matter and proceeded to hold that the respondent-husband was entitled to the grant of divorce on the ground of cruelty and desertion.

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

9. The issue that requires consideration by this Court is whether the judgment and decree passed by the Family Court requires any interference by this Court.

10. It is conceded position on record that the proceedings arising out of FIR No.1052 dated 21.10.2015 registered under Sections 498-A and 406 IPC at Police Station Hisar, have since



culminated into acquittal of the respondent-husband vide judgment dated 22.02.2022. It was proved on record that in FIR No.351 dated 17.09.2013, the appellant-wife along with co-accused Kuldeep was convicted and sentenced vide judgment and order dated 23/28.05.2018. The marriage between the parties was solemnized on 27.03.2009 and a male child namely, Jatin, was born on 27.12.2009. It is the case of the respondent-husband that the appellant-wife left matrimonial home in 2013, i.e. after registration of the criminal case against her for having committed theft at her matrimonial home. It was found by learned trial Court that the appellant-wife was not able to controvert or disprove the evidence led by the respondent-husband in respect of the acquittal earned by him in the criminal case got registered by the appellant-wife and also her conviction in an FIR lodged for having committed theft at her matrimonial home. It was under these circumstances that the learned Family Court, has observed as under:-

“15. It would not be out of place to mention here that since the year 2009 of solemnization of marriage, till the registration of FIR No.351 dated 17.09.2013, at Police Station Bhuna, District Fatehabad, she-respondent has never made complaint against Ramniwas-petitioner and an FIR No.1052, at Police Station Sadar, Hisar under Sections 323, 498-A 406, etc. of IPC was lodged in October 2015, in which, he has secured acquittal, vide judgment dated 22.02.2022 Ex.P2, passed by the Court of Ms. Sonia, learned Judicial Magistrate 1st Class, Hisar.

16. It is true that every aggrieved person/life has the absolute right to initiate appropriate legal action and has every right to approach the state machinery. However, it was for her to establish that she was subjected to cruelty by placing forth cogent evidence in support of her allegations. Though filing of a criminal complaint per-se cannot amount to cruelty, however, such grave and indecent allegations of cruelty should be substantiated during the divorce proceedings and in the present



case, the respondent has neither substantiated her allegations nor justified her conduct.”

11. In the instant case, the cruelty committed by the appellant-wife upon the respondent-husband is writ large from the very fact that in the criminal case got registered by her, the respondent-husband has been acquitted. Besides, the appellant-wife stands convicted in FIR No. 351 dated 17.09.2013 for the offence of theft.

12. 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. The instant case is squarely covered by the said judgment of the Hon’ble Supreme Court.

In K. Srinivas Rao v. D.A. Deepa, 2013(2) RCR (Civil)

232, Hon'ble Apex Court observed as under:-

“14. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse...”

In K. Srinivas v. K. Sunita, 2015(1) RCR (Civil) 38, the Hon'ble

Apex Court observed as under:-



“6. Another argument which has been articulated on behalf of the learned counsel for the Respondent is that the filing of the criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filing of the husband's divorce petition, and being subsequent events could have been looked into by the Court. In any event, both the parties were fully aware of this facet of cruelty which was allegedly suffered by the husband. When evidence was led, as also when arguments were addressed, objection had not been raised on behalf of the Respondent-Wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf.

7. In these circumstances, we find that the Appeal is well founded and deserves to be allowed. We unequivocally find that the Respondent-Wife had filed a false criminal complaint, and even one such complaint is sufficient to constitute matrimonial cruelty.

8. We, accordingly, dissolve the marriage of the parties under Section 13(1)(ia) of the Hindu Marriage Act...”

13. The matter does not rest here. The appellant-wife has been convicted and sentenced for various offences i.e. theft etc. in a criminal case got registered in respect of committing theft at her matrimonial home. It has been found by the Court time and again that where a spouse is convicted of an offence, the same is sufficient ground to constitute cruelty upon the others spouse.

14. It could not be pointed out by the learned counsel for the appellant that any evidence has been misread or not taken into consideration by the learned trial Court.

15. No other point has been urged.

16. In view of the above, we do not find any patent illegality or perversity in the impugned judgment and decree passed by the learned Family Court. Accordingly, the present appeal is dismissed.



17. However, the appellant-wife is granted liberty to make an application under Section 25 of the Hindu Marriage Act, 1955 before the Family Court, seeking permanent alimony. In case, such an application is filed, the same shall be considered and decided by the Family Court, in accordance with law.

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

[SUDHIR SINGH]
JUDGE

[HARSH BUNGER]
JUDGE

20.05.2024
Himanshu

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