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

FAO-1995-2024 (O&M)

Reserved on 30.04.2024

Pronounced on: 16.05.2024

PRIYANKA @ PINKI

...Appellant

Versus

SANDEEP KUMAR

...Respondent

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

Present:- Mr. Sandeep Singh Sangwan, Advocate,
for the appellant.

SUDHIR SINGH, J.

1. The challenge in the present appeal is to the judgment and decree dated 19.03.2024 passed by learned Principal Judge, Family Court (Camp Court at Gohana), Sonipat whereby the divorce petition under Section 13 of the Hindu Marriage Act (hereinafter referred as 'the Act') filed by the respondent-husband on the ground of cruelty, has been allowed.

2. 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 27.11.2009 as per Hindu rites; that out of the said wedlock one male child, namely, Dhruv was born; that from the very beginning of the marriage the appellant-wife started mistreating and neglecting the respondent-husband and his family



members that she had never discharged household responsibilities and that she used to pick up quarrels on trivial matters and physically abuse the respondent-husband. It was further the case of the respondent-husband that the appellant-wife had engaged herself in an extramarital affair by frequently conversing with another individual and the situation got escalated when the wife of the said individual had confronted the respondent-husband regarding the said fact at his shop. It was further stated by the respondent-husband that when he confronted the appellant-wife with the aforesaid extramarital affairs, she had expressed her remorse, but there had been no change in her behavior and she continued doing so. It was further stated by the respondent-husband that in October 2018, while he had been away to Rajasthan with his family, the appellant-wife and her family members had entered his house and the said fact was captured in the CCTV footage. It was further averred that the appellant's brother along with his accomplices, had entered the house of the respondent-husband and in this regard the respondent-husband had filed a complaint with the Superintendent of Police, Sonipat. It was further stated that instead of mending her ways, the appellant-wife lodged FIR No. 53 dated 07.02.2019 alleging dowry demands and other matrimonial offences and that thereafter she filed petition under Section 125 Cr.P.C and another petition under Section 12 of Protection of Women from Domestic Violence Act, 2005 despite the fact that she herself had been working as an Art and Craft teacher in Haryana and earning Rs. 50,000/- per month. It was further alleged that in order to cause mental harassment and torture to the respondent-husband, the



appellant-wife had lodged FIR No. 644 dated 22.10.2018 under Sections 354-D and 509 IPC at Police Station City, Gohana against one Lokesh (petitioner's brother's friend). However, in the said case, said Lokesh was acquitted vide judgment dated 01.11.2021 and even the appeal against the said acquittal had also been dismissed on 06.06.2022. The respondent-husband further stated that the appellant-wife had deserted him in April 2018 and since then she had shown no intention to join the company of the respondent-husband.

3. The appellant-wife entered appearance and filed her written statement denying the allegations of cruelty. It was further stated that the respondent-husband and his family members started harassing and torturing the appellant-wife on the ground of bringing less dowry. It was further stated that the respondent-husband had concocted a fabricated story regarding the chastity of the appellant-wife, which amounted to cruelty upon her. It was further stated that the respondent-husband had deserted her without any justified cause and that no effort had been made by the respondent-husband to bring her back to the matrimonial home.

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

“1. Whether the petitioner is entitled to a decree of divorce on the grounds mentioned in the petition? OPP

2. Relief.”

5. In evidence, the respondent-husband had examined himself as PW-1 besides producing documentary evidence including



CD, Ex. P-29 and P-30. On the other hand, the appellant-wife had examined herself as RW-1.

6. Learned family Court after taking into consideration the rival submissions of the parties and the evidence on record, allowed the petition filed by the respondent-husband on the ground of cruelty and dissolved the marriage of the parties by a decree of divorce.

7. Learned counsel appearing for the appellant-wife has vehemently argued that the divorce petition filed by the respondent-husband was a counter-blast to FIR No.53 dated 07.02.2019 got registered by the appellant-wife. It is further argued that it was the respondent-husband who had treated the appellant-wife with cruelty and committed various offences including the one under Section 498-A IPC and which was why the aforesaid FIR had been registered. It is further argued that the appellant-wife had been constrained to initiate various proceedings against the respondent-husband on account of harassment and mental torture caused to her by the respondent-husband and his family members and ultimately she was thrown out of the matrimonial house. It is further submitted that merely because the aforesaid proceedings had been initiated by the appellant-wife is no ground to hold that she had committed a cruelty against the respondent-husband and his family members. Learned counsel, thus, contends that the Family Court has failed to appreciate the aforesaid aspects of the matter which has resulted into the passing of the impugned judgment and decree.

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



9. Learned Family Court has granted the decree of divorce on the ground of cruelty. The question that arises for consideration before this Court is whether the findings recorded by learned Family Court, as regards the cruelty, require any interference by this Court.

10. It has been found by the learned Family Court that the respondent-husband though had alleged that the appellant-wife had been living an adulterous life, yet he could not prove the same. It was further found that he had produced a CD of the alleged conversation between the appellant-wife and one Neeraj, but mere producing the same was not sufficient as its transcript did not establish that the said conversation was between the appellant-wife and the said Neeraj.

11. Learned Family Court has, however, found that Ex.P1, which was the final investigation report in FIR No. 53 dated 07.02.2019 under Sections 323, 377, 406, 498-A and 506 IPC, indicated that the appellant-wife filed a complaint to the police on 26.10.2018 alleging cruelty and demand of dowry against the respondent-husband and his family members. It was further found that she again moved a complaint on 30.11.2018 containing the allegations of cruelty on account of demand of dowry and sexual assault on the part of her father-in-law; brother-in-law and unnatural sex by her husband and that finally she had moved a complaint dated 07.02.2019 on the basis of which FIR No. 53 aforesaid was registered. It was found that after due investigation, challan was presented against the respondent-husband and his mother only and no substance was found in the allegations against the father-in-law; brother-in-law and sister-in-law. The learned Family Court has, thus, concluded that the



baseless allegations of sexual assault against all the male family members of the respondent-husband had amounted to cruelty. It was further found that the appellant-wife in her cross-examination admitted that she had never levelled the allegations of sexual assault against her father-in-law. It was thus concluded by learned Family Court as under:

“47. From cross-examination of respondent, it has also come on record that she had never reported the matter to the police, when her father-in-law had allegedly sexually abused her. Such like allegations against all the male members of the family and allegations of cruelty on account of demand of dowry after about ten years of the marriage, seems to be quite improbable.

48. Further more, when she has stepped into witness box in the instant case, though, she has tried to improve her version as several such instances has been mentioned for the first time in her examination in chief, which are not part of her pleadings, yet, she has not been able to establish this fact that she was treated with so much cruelty that all the family members had been torturing her and all male members had been sexually abusing her. If that was the state of affairs, how she could have claimed in her written-statement that she is still ready and willing to live with petitioner. Rather, in the backdrop of given facts wherein it has come on record that all these litigation came only after filing of this divorce petition, possibility of same being a counter blast to the instant petition, cannot be ruled out.”



12. We find that the allegations levelled by the appellant-wife regarding the sexual assault by her father-in-law and brother-in-law, cannot be treated to be general and omnibus in nature. It is found that FIR No. 53 dated 07.02.2019 was lodged for the offences under Sections 323, 377, 406, 498-A and 506 IPC, and that prior to that in one of the complaints, submitted by the appellant-wife to the police, she had levelled allegations of sexual offences against her father-in-law and brother-in-law, which were found to be incorrect during the investigation. Thus, one can safely conclude as to what traumatic situation the family members, especially the elderly father-in-law of the appellant-wife had been put in, when the appellant-wife had levelled the allegations of sexual assault against him. Levelling the allegations of sexual assault against all the male members of the family and the factum of them having been found innocent during the investigation, clearly amounts to cruelty. Still further, the conduct of the appellant-wife, can be taken into consideration especially when she during her cross-examination stated that she had never levelled any allegation of sexual assault against her father-in-law. However, the fact remains that from Ex.P.1, it was proved on record that the wife had levelled the said allegations.

13. The aforesaid false allegations of sexual assault as against the family members, including the elderly father of the respondent-husband, amounts to mental cruelty and thus, the same provides a legal ground to the respondent-husband to seek divorce.

14. During the course of arguments, learned counsel for the appellant could not point out any illegality or perversity in the impugned judgment and decree passed by the Court below.
15. No other point has been urged.
16. In view of the above, we do not find any merit in the present appeal and the same is hereby, dismissed.
17. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[HARSH BUNGER]
JUDGE

16.05.2024
Himanshu

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