



FAO-2153-2024 (O&M)

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

FAO-2153-2024 (O&M)

Date of decision: 22.05.2024

Smt. SHALON @ SHALU

...Appellant

Versus

PARVEEN

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MS. JUSTICE KIRTI SINGH**

Present:- Mr. Anshumaan Dalal, Advocate for appellant.

SUDHIR SINGH, J.

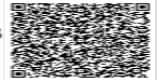
The present appeal is directed against the judgment dated 05.02.2024 passed by learned Family Court, Bhiwani, whererby the petition under Section 9 of the Hindu Marriage Act (hereinafter referred as 'the Act') filed by the appellant-wife, has been dismissed.

2. The aforesaid petition had been filed by the appellant-wife, *inter alia*, alleging therein that her marriage with the respondent-husband was solemnized on 26.06.2011, according to Hindu rites. It was further stated that the appellant-wife was earlier married to Rameshwar and out of the said wedlock, a daughter, namely, Komal @ Kartika was born and that after the death of her previous husband, she married the respondent-husband, but no child was born out of the wedlock. It was further stated that the respondent-husband started maltreating the appellant-wife and misbehaving with her and her



daughter from the previous marriage and he used to mentally torture and harass them. It was further stated that the appellant-wife was a JBT Teacher in the Haryana Government and was getting salary of Rs.36,000/- per month and she had given a sum of Rs.2,50,000/- to the respondent-husband for purchasing a Tata 407 vehicle so as to settle him, but despite that his behavior did not change. It was yet further stated that the appellant-wife came to know that the respondent-husband had performed his marriage with one Meenakshi on 20.11.2011 and in this regard the appellant-wife had got registered FIR No.11 dated 09.02.2016 for the offences under Sections 376(2), 498-A, 506 read with Section 34 IPC at Police Station-Women, Bhiwani against the respondent-husband and his family members. It was further pointed out that the respondent-husband had filed a divorce petition under Section 13(1)(ia)(ib) of the Act, for dissolution of marriage, which was pending adjudication. It was further averred that the respondent-husband had thrown the appellant-wife out of the matrimonial home without any justified cause.

3. Upon notice, the respondent-husband appeared and filed his written statement, pleading therein that it was the appellant-wife, who had herself withdrawn from the society of the respondent-husband and in this manner, she had deserted and treated him with cruelty, inasmuch as she had got the aforesaid FIR No.11 dated 09.02.2016 for various offences, including the offence of rape. It was further asserted that the appellant-wife had filed a petition under Section 125 Cr.P.C., which was dismissed. It was yet further asserted



that the appellant-wife was working as a teacher and getting salary of Rs.50,000/- per month and it is her duty to maintain herself.

5. On the basis of pleadings of the parties the following issue framed by learned Family Court:-

- “1. Whether the petitioner is entitled for a decree of restitution of conjugal rights on the grounds alleged in the petition?OPP
2. Whether the petitioner has no locus-standi or cause of action to file present petition? OPR
3. Whether the petitioner is estopped from filing the present petition by her own act and conduct? OPR
4. Whether present petition is not maintainable? OPR
5. Relief.”

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

7. Learned counsel for the appellant-wife has vehemently contended that while passing the impugned judgment, the learned Family Court, has wrongly returned a finding that the appellant-wife is guilty of committing cruelty against the respondent-husband and his family members. It is further submitted that the criminal case (FIR No.11 dated 09.02.2016), got registered by the appellant-wife against the respondent-husband and his family members, was based on the given facts and merely because they have been acquitted in the said case by the trial Court, is no ground to hold that the appellant-wife was not entitled to the decree prayed for. It is further submitted that the respondent-husband did not lead any oral evidence and rather, he



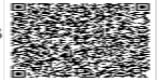
had only tendered the documents Ex.R-1, Ex.R-2 and Mark-A, but still the learned Family Court has dismissed the petition filed by the appellant-wife.

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

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

10. Though from the judgment passed by learned Family Court, it appears that no oral evidence was led by the respondent-husband, yet he had produced a copy of Ex.R-1, a copy of judgment dated 29.04.2017, passed by learned Additional Sessions Judge, (Exclusive Court), Bhiwani. The said judgment arose out of FIR No.11 dated 09.02.2016, which was got registered by the appellant-wife against the respondent-husband and his family members for the offences under Sections 376(2), 498-A, 506 read with Section 34 IPC at Police Station-Women, Bhiwani. On the basis of the aforesaid judgment, it was found by learned Family Court that as the respondent-husband had been acquitted of charges, including the charge of rape, the same amounted to cruelty to the respondent-husband and therefore, she was not entitled to any relief sought for the impugned judgment would read as under:-

“10. In the present case, for the purposes of assessing cruelty, allegedly committed by the petitioner, it is very necessary to look into the conduct of the petitioner. The



petitioner had filed a petition under Section 125 of the Code of Criminal Procedure against the respondent and had also filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against the respondent and his all-family members. The petitioner has also got a case bearing FIR No.11 dated 09.02.2016, for the commission of offence under Section 376(2), 498-A, 506,34 IPC, Police Station-Women, Bhiwani registered against the respondent and filing/launching of criminal proceedings also caused mental cruelty to the respondent. Further act and conduct of petitioner is condemnable as she had got registered false FIR bearing No.11 dated 09.02.2016, for the commission of offence under Section 376(2), 498-A, 506,34 IPC, Police Station-Women, Bhiwani, wherein respondent has already been acquitted by the Court of Ms. Raj Gupta, the then learned Additional Sessions Judge (Exclusive Court), Bhiwani vide judgment dated 29.04.2017 (Ex.R1). The abovesaid acts of the petitioner i.e. living apart from her husband, launching of criminal proceedings after levelling the allegations of rape against her husband are sufficient enough to create unnecessary tension in the mind of her respondent-husband and presently it appears to be impossible for the respondent to live with the petitioner. Thus, the entire fault lies on the petitioner-wife and she is not entitled to get the desired relief of restitution of conjugal rights with her husband.

11. From the aforesaid facts, it is safe to conclude that since the act and conduct of the petitioner amounted to cruelty to the respondent and petitioner has also deserted the respondent without any fault on his part, therefore, she is not entitled to get the desired relief. Even when the instant case was referred to Mediation and Conciliation Centre for the purposes of effecting compromise of the matter in dispute between the parties, then failure report, so placed on record, was received in that regard. Even otherwise, the parties are residing separately since 16.02.2012 and there are no chances of their living as a couple and as such, practically the marriage has broken down.”



11. It is trite law that when the wife launches criminal prosecution against the husband and his family members and if ultimately they are acquitted of the charges framed against them, the same amounts to cruelty.

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,

Hon'ble Apex Court observed as under:-

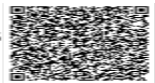
“6. Another argument which has been articulated on behalf of the learned counsel for the Respondent is that the filing of the criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filing of the husband's divorce petition, and 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...”

12. This Court, in FAO-1995-2024 – Priyanka @ Pinki Vs.

Sandeep Kumar, decided on 16.05.2024, has upheld the findings



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recorded by the Family Court that once allegations of sexual assault levelled by the respondent-wife against all male members of the family, are found false, the same amounts to cruelty and the husband is entitled to a decree of divorce on the ground of cruelty.

13. No other point has been urged.
14. In view of the above, finding no merit in the present appeal, the same is hereby dismissed.
15. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[KIRTI SINGH]
JUDGE

22.05.2024
Himanshu

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