

2024:PHHC:124934-DB



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

FAO-M-97-M-2005 (O&M)

Date of decision: 13.09.2024

ANIL KUMAR

...Appellant

Versus

Smt. SUDESH RANI & ANR.

...Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. Anil Rathee, Advocate for appellant.

Mr. Anil Jain, Advocate for respondent No.1.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 28.01.2005 passed by learned Additional District Judge, Sonapat (for short 'the trial Court'), whereby the petition filed by the appellant-husband under Section 13 of the Hindu Marriage Act (hereinafter referred as 'the Act') was dismissed.

2. The aforesaid petition had been filed by the appellant-husband, *inter alia*, pleading therein that his marriage with the respondent-wife was solemnized on 08.02.1998, but no child was born out of the said wedlock. It was further pleaded that the respondent-wife had slapped her mother-in-law and sister-in-law, that she used to

feign illness and would leave the matrimonial home without informing the family and that she got the child aborted on 31.07.1998 without the consent of the appellant-husband or his family members. It was further pleaded that the respondent-wife had stolen golden pendant, two shawls and a sum of Rs.9000/- and that she had admitted the said fact in the presence of maternal uncle of the appellant and the entire family and told that she had kept the said articles at her house. It was further pleaded that the Panchayats were convened on 24.01.1999, 11.02.1999 and 11.04.1999 in which the father of the respondent-wife had admitted about her misbehavior. However, in the Panchayat held on 18.04.1999, the respondent-wife had refused to hand over the stolen articles and thereafter FIR No.331 was registered on 18.09.1999. It was further pleaded that respondent-wife was having illicit relations with other persons and she went to the house of respondent No.2 in car No. HR-10-5400. It was further averred that they had been chased and seen together on several occasions. It was thus, pleaded that respondent-wife had committed cruelty towards the appellant.

3. Upon notice, the respondent-wife appeared and filed her written statement, contending therein that the filing of the divorce petition was a counterblast to the criminal proceedings initiated by her under Sections 498-A and 406 IPC. The allegations of misbehavior and adultery were denied. Still further, it was denied that she had committed any theft as alleged by the appellant-husband. Respondent No.2 had also appeared and filed his written statement denying the allegations levelled against him.

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

- “1. Whether the petitioner entitled to the decree of divorce on the grounds of adultery and cruelty as alleged? OPP
2. Relief.”

5. In evidence, the appellant appeared as PW-1 and had also examined 11 other witnesses. He had also led documentary evidence in the form of Ex.P1 and P2. On the other hand, the respondent-wife had examined herself as RW-2, besides examining 6 other witnesses. She had also led documentary evidence as Ex.R1 and Ex.R2.

6. The learned trial Court, after taking into consideration the rival contentions and the evidence on record, dismissed the petition filed by the appellant-husband.

7. During the pendency of the present appeal, the appellant-husband had filed CM-17962-CII-2019 under Order 41 Rule 27 read with Section 151 for placing on record the copy of the judgment dated 02.08.2008 passed by the learned SDJM, Gannaur; copy of judgment dated 07.07.2009 passed by learned Sessions Judge, Sonipat; copy of the order dated 18.07.2011 passed by this Court besides copy of the judgment dated 28.08.2012 passed by learned Chief Judicial Magistrate, Sonapat; copy of judgment dated 01.11.2012 passed by learned Judicial Magistrate 1st Class, Sonipat and copy of judgment dated 03.04.2013 passed by learned District Judge (Family Court), Sonipat (Annexure A1 to A-6).

8. Vide order dated 20.01.2020, passed by a Co-ordinate Bench of this Court, notice of the said application was issued to the respondent-wife and the same was ordered to be heard with the main case. The learned counsel appearing for the respondent-wife does not dispute the factum of the passing of the aforesaid judgments/orders and as a matter of fact he has no objection, if the aforesaid documents are allowed to be taken on record. In view of the above, the said application is allowed and the documents Annexure A-1 to A-6 annexed with the said application are taken on record.

9. Learned counsel for the appellant has vehemently argued that though the learned trial Court has held that the appellant-husband had failed to prove the ground of cruelty against the respondent-wife yet the fact remains that during the pendency of the present appeal, that in the proceedings arising of FIR No.355 dated 14.12.2000 under Sections 406, 498-A registered at Police Station Gannaur, by the respondent-wife and his parents, had been acquitted vide judgment dated 02.08.2008 passed by the learned Sub-Division Judicial Magistrate, Gannaur. Still further, it is submitted that the appeal against the said judgment filed by the State of Haryana, was also dismissed by the learned Sessions Judge, Sonapat on 07.07.2009 and that even criminal revision filed against the said judgment and order was dismissed by the learned Single Judge of this Court on 18.07.2011. Still further, it is argued that the respondent-wife had also filed a criminal complaint under Sections 500, 120-B, 109 read with Section 34 IPC against the appellant-husband and his parents and even in the said complaint, the appellant and his parents were acquitted vide

judgment dated 28.08.2012 passed by the learned Chief Judicial Magistrate, Sonapat. Still further, in another criminal complaint filed by the respondent-wife under Sections 109 and 494 IPC against the appellant-husband, his parents, sisters and others, they were acquitted of the charges framed against them vide judgment dated 01.11.2012 passed by the learned Judicial Magistrate 1st Class, Sonipat. It is further submitted that even a petition under Section 9 of the Act filed by the respondent-wife was also dismissed by the learned District Judge (Family Court), Sonipat on 03.04.2013. It is, thus, argued that in the proceedings initiated by the respondent-wife, the appellant, his parents and family members have been acquitted and that once they have been acquitted by the Courts concerned, the same would amount to cruelty and, therefore, the appellant-husband is entitled to a decree of divorce on the ground of cruelty.

10. On the other hand, the learned counsel appearing for the respondent-wife submits that the respondent-wife still wants to reside with the appellant-husband. He further submits that there is no illegality in the findings recorded by the learned trial Court, whereby it was found that the allegations levelled by the appellant-husband as regard the cruelty and adultery were baseless.

11. After hearing the learned counsel for the parties, we find that the following issue arises for consideration and determination by this Court:-

“Whether the subsequent circumstances i.e. acquittal of the appellant-husband and his parents in the criminal cases got registered by the respondent-wife, can be

considered to return a finding that the respondent-wife has caused cruelty to the appellant-husband?

12. As would emerge from the facts between the parties was solemnized on 08.02.1998. The divorce petition was filed on 27.07.2001. The parties have been living separately since the year 2001. Therefore, it is almost 24 years since parties have separated from each other. In view of the subsequent circumstances whereby the respondent-husband and his family members have been acquitted in the criminal cases initiated/filed by the respondent-wife, we are to examine whether the said acts of the respondent-wife amount to cruelty. It may be noticed that in the proceedings under Section 498-A and 406 IPC initiated by the respondent-wife, the appellant-husband and his parents have been acquitted by the learned Sub-Division Judicial Magistrate, Sonipat. The relevant extract from the said order would read as under:-

“28. Admittedly, this present complaint was lodged by the complainant before SHO, Police Station Ganaur on 14.12.2000 after the daughter of the complainant left the matrimonial home on 01.01.1999. No such delay has been explained why this complaint was lodged after such a delay. Further a complaint was also lodged with regard to the theft of ornaments on behalf of the accused against the daughter of the complainant and it is not explained why this complaint was lodged only after lodging the complaint under Section 380/306 IPC against the daughter of the complainant as a counter-blast or as to put pressure on the accused.

29. Therefore, considering the entire statements of the witnesses above and the given circumstances, there are no

credible evidence on the record to convict the accused for the offences punishable under Sections 498-A/406 IPC. The prosecution has miserably failed to prove the charge against the accused beyond a reasonable shadow of doubt. Resultantly, benefit of doubt is given to the accused and, accordingly, the accused named above are hereby acquitted of the charges framed against them in this case. Their bail bonds and surety bonds stand discharged. File be consigned to the record room after due compliance.”

13. Criminal Appeal against the said judgment was dismissed by the learned Sessions Judge, Sonipat on 07.07.2009, observing as under:-

“7. After perusing the entire evidence brought on record by the prosecution, this Court is of the considered opinion that the judgment of the trial Court is based upon evidence and the view taken is most reasonable and plausible. There are absolutely no grounds to reverse the decision of the trial Court. An appellate Court has always to bear in mind that there is a presumption of innocence in favour of the accused who is indeed entitled to be extended with the benefit of the doubt. There are no valid reasons for this Court to differ in opinion with the learned trial Magistrate who very rightly rejected the evidence of the prosecutrix, her father and her brothers in the light of the very general allegations made by them against the respondents. The inordinate delay of two years in filing the first information report and the unexplained delay of 15 months in filing the first information report after a criminal case was registered against prosecutrix Sudesh on the statement of her own mother in law regarding theft of jewellery and cash by her have completely demolished whatever little effect the general allegations made by the prosecution witnesses may have on the mind of the Court. The last nail as put by Sh. Hukam Chand (PW-5) whose statement need to be reproduced here. The appellant has no cause at all.

8. Sh. C.S. Rathee, Advocate, the learned counsel for the complainant, has placed reliance upon State of Punjab Versus Navjot Singh Sidhu and another, 2007 (1) Recent Criminal Reports 374 (P&H), Narendera Nath Khaware Versus Parasnath Khaware and Others, 200(3) Recent Criminal Reports 354 (SC)

and Sanapareddy Maheedhar and another Versus State of Andhra Pradesh and another, 2008(1) Recent Criminal Reports 293 (SC) in support of his contention but there is absolutely no relevance of three authorities in respect of the evidence available on record in our case”.

14. As noticed above, the criminal revision against the said judgment and order was also dismissed by a learned Single Judge of this Court on 18.07.2011. Still further, as noticed above in the complaint under Sections 500, 120-B, 109 read with Section 34 of the Indian Penal Code filed by the respondent-wife against the appellant and his parents, they were acquitted vide judgment dated 28.08.2012 passed by learned Chief Judicial Magistrate, Sonapat holding that no cause of action had accrued to the complainant to initiate the said proceedings.

15. It is settled law that where the wife launches criminal prosecution against the appellant-husband and his family members for the various offences, including the matrimonial offences, and ultimately, the husband and his family members are acquitted by the Court finding that the allegations levelled were false and baseless, the same amounts to cruelty.

16. In **Narsimha Sastry Vs. Suneela Rani**, (2020)18 SCC 247, the Hon’ble Supreme Court has held that once the husband is acquitted in the criminal prosecution initiated by the wife, the same amounts to cruelty and a divorce can be granted by the Court on the said ground itself. It was held as under:-

“13. In the present case, the prosecution is launched by the respondent against the appellant under Section 498-A of IPC making serious allegations in which the appellant had to undergo trial which ultimately resulted in his acquittal. In the prosecution under Section 498-A of IPC not only acquittal has been recorded

but observations have been made that allegations of serious nature are levelled against each other. The case set up by the appellant seeking decree of divorce on the ground of cruelty has been established. With regard to proceeding initiated by respondent under Section 498-A of IPC, the High Court made following observation in paragraph 15:

“15.....Merely because the respondent has sought for maintenance or has filed a complaint against the petitioner for the offence punishable under Section 498-A of IPC, they cannot be said to be valid grounds for holding that such a recourse adopted by the respondent amounts to cruelty.”

The above observation of the High Court cannot be approved. It is true that it is open for anyone to file complaint or lodge prosecution for redressal for his or her grievances and lodge a first information report for an offence also and mere lodging of complaint or FIR cannot ipso facto be treated as cruelty. But when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498-A of IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has meted out on the husband. As per pleadings before us, after parties having been married on 14.08.2005, they lived together only 18 months and thereafter they are separately living for more than a decade now.”

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...”

17. The issue as to whether the subsequent events can be taken into consideration by a Court while considering a plea of divorce between the litigating spouses, is no more res-integra.

In Dr. (Mrs.) Malathi Ravi, M.D. v. Dr. B.V. Ravi, M.D.,

2014(3) RCR (Civil) 621 the Hon'ble Apex Court held as under:-

“20. The seminal question that has to be addressed is whether under these circumstances the decree for divorce granted by the High Court should be interfered with. We must immediately state that the High Court has referred to certain grounds stated in the memorandum of appeal and taken note of certain subsequent facts. We accept the submission of the learned counsel for the appellant that the grounds stated in the memorandum of appeal which were not established by way of evidence could not have been pressed into service or taken aid of. But, it needs no special emphasis to state that the subsequent conduct of the wife can be taken into consideration. It settled in law that subsequent facts under certain circumstances can be taken into consideration.

21. In A. Jayachandra v. Aneel Kaur, (2005) 2 SCC 22, it has been held thus: -

"If acts subsequent to the filing of the divorce petition can be looked into to infer condonation of the aberrations, acts subsequent to the filing of the petition can be taken note of to show a pattern in the behaviour and conduct."

22. In Suman Kapur v. Sudhir Kapur, (2009) 1 SCC 422, this Court had accepted what the High Court had taken note of despite the fact that it was a subsequent event. It is necessary to reproduce the necessary paragraphs from the said decision to perceive the approach of this Court: -

"46. The High Court further noted that the appellant wife sent a notice through her advocate to the respondent husband during the pendency of mediation proceedings in the High Court wherein she alleged that the respondent was having another wife in USA whose identity was concealed. This was based on the fact that in his income tax return, the husband mentioned the social security number of his wife as 476-15-6010, a number which did not belong to the appellant wife, but to some American lady (Sarah Awegtalewis).

47. The High Court, however, recorded a finding of fact accepting the explanation of the husband that there was merely a typographical error in giving social security number allotted to the appellant which was 476-15-6030. According to the High Court, taking undue advantage of the error in social security number, the appellant wife had gone to the extent of making serious allegation that the respondent had married an American woman whose social security number was wrongly typed in the income tax return of the respondent husband."

23. From the acceptance of the reasons of the High Court by this Court, it is quite clear that subsequent events which are established on the basis of non-disputed material brought on record can be taken into consideration..."

18. Keeping in view the aforesaid legal position, we find that the subsequent events i.e. acquittal of the appellant-husband and his family members in the various criminal cases as noticed above, are sufficient to hold that the respondent-wife has treated the appellant-husband with cruelty. Still further keeping in view the long separation between the parties spanning over 24 years, we find that the marriage has reached a complete dead end. The issue under consideration by this Court is, accordingly, answered in affirmative.

19. In view of the above, we set aside the impugned judgment and decree passed by the learned Trial Court. As a sequel to it, the petition under Section 13 of the Act, filed by the appellant-husband is allowed and the marriage between the parties is dissolved by a decree of divorce on the ground of cruelty.

- 20. Decree sheet be prepared accordingly.
- 21. Appeal stands allowed in the above terms.
- 22. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

13.09.2024
Himanshu

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