

2024.PHHC.073766-DB



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

FAO-M-317-2012 (O&M)**Reserved on 17.05.2024****Pronounced on: 23.05.2024**

KULDEEP VERMA

...Appellant

Versus

SANJANA @ SONU

...Respondent

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

Present:- Mr. Amit Jain, Senior Advocate with
Mr. Chetan Slathia, Advocate for appellant.

None for respondent.

SUDHIR SINGH, J.

The present appeal is directed against the judgment dated 25.09.2012 passed by learned District Judge, Kaithal, whereby the petition under Section 13 of the Hindu Marriage Act (hereinafter referred as 'the Act') filed by the appellant-husband was dismissed.

2. The aforesaid petition had been filed by the appellant-husband, *inter alia*, averring therein that his marriage with the respondent-wife was solemnized on 17.11.2002, according to Hindu rites and out of the said wedlock two sons namely, Pulkit and Dohan were born on 30.08.2003 and 02.06.2005, respectively. It was further stated that from the very beginning of the marriage, the parents of the respondent-wife started interfering in the matrimonial affairs of the parties and due to the said fact the respondent-wife started misbehaving with the appellant-husband and his family members. It was further stated that the appellant-husband was a poor person and was running a small business of clothes, but on the other hand

respondent-wife was demanding things of heavy cost and used to spend money on such things. It was further stated that on a number of occasions, the family members of the appellant-husband were humiliated and treated rudely by the brothers of the respondent-wife, who used to extend threats to implicate the appellant-husband and his family members in false cases. It was yet further alleged that in 2006, the respondent-wife along with her younger child left the matrimonial home while leaving the elder child at the matrimonial home. The appellant-husband and his family members had visited the parental house of the respondent-wife and requested her to return to the matrimonial home, but instead of doing so, she had humiliated and insulted them. It was further stated that it was only after 14 long months and that too with the intervention of the respectables, the respondent-wife could be brought back to the matrimonial home, but she again she started misbehaving. Ultimately, a Panchayat was convened on 23.02.2010, wherein the respondent-wife had admitted the wrongs committed by her and felt sorry for it and, accordingly, a compromise was arrived at and reduced into writing, but on the very next date, the respondent-wife separated herself from the company of the appellant-husband and his family members. Accordingly, a decree of divorce was sought.

3. Upon notice, the respondent-wife appeared and filed her written statement, denying the allegations levelled by the appellant-husband. The factum of marriage and birth of two male children was admitted, however, it was stated that the respondent-wife had been subjected to mental harassment, torture and she was beaten causing

her injuries with an intention to kill her. It was further stated that it was under the said circumstances, she had to lodge FIR No.211 dated 07.04.2010 under Sections 498-A, 323, 324, 307, 406 read with Section 34 IPC.

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

- “1. Whether the conduct of the respondent, as pleaded in the petition, tantamounts to subjecting the petitioner to cruelty, if so its effect? OPD
2. Relief.”

The parties lead their respective evidence.

5. The learned trial Court, after taking into consideration the rival contentions and the evidence on record, dismissed the petition filed by the appellant-husband. It was observed that though the marriage between the parties had irretrievably broken, yet that cannot be a ground to grant a decree of divorce.

6. Vide order dated 28.02.2014, passed by the Co-ordinate Bench of this Court, the appeal was admitted. While admitting the appeal, it was noticed by the Co-ordinate Bench that though the deliberations were carried out for amicably resolving the dispute, yet the parties were not agreeable for such settlement. Thereafter, vide order dated 04.12.2014, CMM-36-2014 filed by the respondent-wife was disposed of and an amount of Rs.2,000/- per month was awarded as maintenance to the respondent-wife during the pendency of the appeal.

7. Subsequently, CM-17016-CII-2016 was filed by the appellant-husband for bringing on record certified copies of orders Annexure A-1 and Annexure A-2. The aforesaid application was allowed vide order dated 09.11.2016, passed by a Co-ordinate Bench of this Court.

8. As the respondent-wife had not been appearing on number of previous dates of hearing, therefore, vide order dated 09.09.2022, passed by the Coordinate Bench of this Court, she was proceeded against *ex-parte*. Even today, there is no representation on behalf of the respondent-wife.

9. As the appeal pertains to the year 2012 and the respondent-wife has already been proceeded against *ex-parte*, we proceed to hear the arguments advanced by the learned Senior Counsel for the appellant-husband.

10. Learned Senior counsel appearing for the appellant-husband contends that on the basis of the evidence adduced, the learned Trial court came to the conclusion that the marriage between the parties had broken irretrievably but despite that, the petition filed by the appellant-husband was dismissed. It is further argued that during the pendency of the present appeal, a complaint filed by the respondent-wife under Sections 323, 332, 351 and 353 IPC against the appellant-husband and his parents was dismissed and they were acquitted of the charges framed against them vide order dated 28.01.2016, passed by the Judicial Magistrate 1st Class, Kaithal. It is further submitted that even in the proceedings emanating from FIR No.211 dated 07.04.2010 under Sections 406, 498-A, 323, 324, 325

read with Section 34 IPC registered against the appellant-husband; his father and Inder Singh (maternal uncle of the appellant-husband), they were acquitted of the charges vide order dated 21.11.2013 passed by the learned Judicial Magistrate 1st Class, Kaithal and that the appeal against the said order, has also been dismissed by the Additional Sessions Judge, Kaithal vide order dated 28.04.2016. It is, thus, vehemently argued that levelling of false allegations against the appellant-husband and his family members in the aforesaid FIR and the criminal complaint, clearly establishes that the respondent-wife had caused cruelty not only to the appellant-husband, but also to his family members. Learned Senior Counsel while referring to an order dated 08.04.2019 passed in FAO-2700-2015, argues that custody of both the children is with the appellant-husband and the respondent-wife's claim for custody was rejected by the trial Court and FAO-2700-2015 filed against the said order was dismissed by a Co-ordinate Bench of this Court.

11. We have heard the learned Senior Counsel for the appellant-husband and have also gone through the records of the case.

12. The issue that arises for consideration by this Court is 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 as a ground to return a finding that the respondent-wife has caused cruelty to the appellant-husband and, therefore, he is entitled to a decree of divorce on the said ground.

13. As would emerge from the record, the marriage between the parties was solemnized on 17.11.2002. It is the case of the

appellant-husband that the respondent-wife left his company in the year 2010. The divorce petition filed by the appellant-husband in 2010, was dismissed by the learned trial Court on 25.09.2012. As noticed above, the appeal was admitted by a Co-ordinate Bench of this Court on 28.02.2014. Thus, it appears that the parties have been living separately for the last more than 14 years. Apparently, the custody of both the children is with the appellant-husband, except for the fact that the respondent-wife has been granted visitation rights.

14. It would be relevant to notice here that the respondent-wife had lodged FIR No.211 aforesaid against the appellant-husband; his father Rajpal and Inder Singh under Sections 406, 498-A, 323, 324, 325 read with Section 34 IPC. In the said FIR, they were acquitted of the charges framed against them vide order dated 21.11.2013 passed by the learned Judicial Magistrate 1st Class, Kaithal. Even, the appeal against the said order was dismissed by the learned Additional Sessions Judge, Kaithal vide order dated 28.04.2016. The relevant extract from the said order passed by the learned Additional Sessions Judge, Kaithal, would read as under:-

“16. Case of prosecution is that complainant moved a complaint Ex.PW4/A. In that complaint she alleged that her marriage with Kuldeep had taken place as per Hindu rites and custom. After marriage it is alleged that she was subjected to torture for demand of dowry. To find out truth certain facts are relevant. Let us examine them. Her marriage had taken place on 17.11.2002. This complaint was made on 07.04.2010. Prior to that there was no such complaint. It is admitted proposition of law that if there is no demand before marriage, at time of marriage, immediately after marriage then there cannot be any demand almost after eight years of marriage.

So this allegation is not true.

Investigating officer appeared as PW-8. He stated that on 07.04.2010 he alongwith Rajpal HC had reached at house of accused. His mother was there. His father was lying on a bed. He was ill. He also came to know that parents of Kuldeep had disinherited Kuldeep. It is not out of place to mention here that during investigation mother in law and sister in law were found innocent. An application under Section 319 Cr.P.C. was moved but that was dismissed. It was not persuaded thereafter. It is to be kept in mind that maximum allegations are against mother-in-law and sister-in-law. In absence thereof case of prosecution becomes unbelievable.

17. It has been admitted by complainant herself that on that day her sister in law Dinesh was seven months pregnant. At such advanced stage of pregnancy, it is very difficult for a female to undertake rigorous physical activities so her claim that she had kicked her and beaten her up cannot be accepted. Third person is maternal uncle of husband. He has nothing to do with their matrimonial discord. He was not likely to be benefited if any dowry was demanded or given after eight years of marriage.

18. Admittedly, she has described injuries. However, her statement shows that she is a tutored witness. Children have refused to live with her. Other litigation too have ended against her. So, there is no illegality or infirmity in impugned judgment dated 21.11.2013 passed by learned trial Court.”

15. Still further, it may be noticed, that the respondent-wife had also filed a criminal complaint against the appellant-husband and his parents under Sections 323, 332, 351 and 353 IPC. The said complaint was filed in respect of the alleged beatings given to the respondent-wife by the appellant-husband and his parents, in the proceedings relating to the custody of the children. The said complaint was dismissed by the learned Judicial Magistrate 1st Class,

Kaithal on 28.01.2016, thereby acquitting the appellant-husband and his father of the charges framed against them. The relevant part from the said order would read as under:-

“10. I have considered the arguments as well as the evidence on record. In the present case complainant has levelled allegation that the accused slapped and punched her in front of protection officer on 04.02.2011 when she wanted to meet her children. Even the protection officer made a complaint upon which the accused were challan under section 107/151 of Cr.PC. In order to corroborate the case of complainant, complainant has examined herself as CWI and protection officer Sunita has been examined as CW2. The testimony of complainant is not corroborated by testimony of eye witness CW2 Sunita Protection Officer who is taking contradictory stand. CW2 Sunita. In pre charge evidence CWI Sunita has categorically stated that she made efforts that children meet their mother on 04.02.2011 however in after charge evidence she stated that she never interfered in the meeting further when she was cross-examined as who gave slap to whom she has pleaded innocence by stating she did not remember that in quarrel of who gave beatings to whom. There is an history of litigation between the parties as reflected from Ex.DA to Ex.DG. There is unexplained delay in filing the present complainant she has stated that when she was hit by accused she fell down received injuries on her arm however regarding this fact she has been totally silent in her complaint and even in her evidence in preliminary stage which shows that the allegations are exaggerated. The case of complainant totally loses ground when CW1 Sunita in her cross- examination in after charge evidence has stated that there was tiff between husband of wife and both husband and wife were having a scuffle which has been totally suppressed by the complainant. CW Sunita also stated that she do not remember that who gave slap and punches to whom and thus shakes the veracity of prosecution case. Thus evidence of Cws, file do not prove guilt of accused beyond the shadow of reasonable doubt.

11. In view of the above discussion the accused is hereby acquitted of all charges. Thus personal bonds and surety bonds stand discharged. File be consigned to record room after due compliance. Announced in open Court.”

16. It is relevant to notice here that even FAO-2700-2015, filed by the respondent-wife for the custody of the children, was dismissed by a Co-ordinate Bench of this Court on 8.4.2019. The relevant extracts from the said order would read as under:-

“As referred to above, the efforts for reconciliation between the parties yielded no result. That was the only course, which could have paved the way for ending the rival claims. However, that being not done, the issue remains as to whether the trial Court is justified in dismissing the petition filed by the appellant-wife.

Instant is not a case, where the claim of the appellant-wife being mother of the children has been completely negated, qua the children. She has been given the visiting rights and that too at her liberty and choice i.e. if, as and when she desires. The only fact which weighed in the mind of the trial Court is the overall welfare of the children. The trial Court has taken into consideration the evidence led by the parties and the situation that had emerged after personal interaction with the children. Nothing has been pointed out which could even, prima-facie, establish that the children are not being taken care of by the respondent-husband properly and/or not being provided proper education and the other necessities of life.

In view of the above, we do not find any infirmity or illegality in the impugned order, which may warrant interference by this Court in the present appeal. Hence, the appeal is dismissed.”

17. 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.

18. 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...”

19. 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..."

20. 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 two 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 14 years, we find that the marriage has reached a complete dead end. The issue under consideration by this Court is, accordingly, answered in affirmative.

21. In view of the above, we set aside the impugned judgment 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; the marriage between the parties is dissolved by a decree of divorce on the ground of cruelty.

Decree sheet be prepared accordingly.

22. Appeal stands allowed in the above terms.
23. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[HARSH BUNGER]
JUDGE

23.05.2024
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No