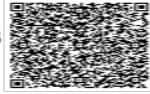


2024:PHHC:116162-DB



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

FAO-4186-2024 (O&M)

Date of decision: 04.09.2024

GURJANT SINGH

...Appellant

Versus

POOJA KASHYAP

...Respondent

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

Present:- Mr. Rajat Verma, Advocate for appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to judgment and decree dated 10.07.2024, passed by the learned Principal Judge, Family Court, Sirsa (hereinafter referred as to Family Court), whereby the petition under Section 13 of the Hindu Marriage Act, 1956 (hereinafter referred as 'the Act') filed by the appellant-husband was dismissed.

2. The appellant-husband had filed the aforesaid petition, *inter alia*, contending that his marriage with the respondent-wife was solemnized on 11.11.2017. It was further averred that before marriage, the family of the appellant-husband had brought to the notice of the respondent's family that the appellant-husband was not matriculate. However, at the time of performance of the rites and

ceremonies of the marriage, the appellant-husband had realized that the respondent-wife was not comfortable. After marriage, on the very first night, she started shouting and stated that she was not happy with the marriage and the same was performed against her wishes. She did not perform her matrimonial obligations properly. The respondent-wife had pressurized the appellant-husband to take a separate accommodation stating that she could not live with the other relatives. She had further pressurized the appellant-husband to leave his business and shift to Hanumangarh. After four months of the marriage, respondent-wife became pregnant, but she got the abortion done without the consent of the appellant-husband. After about three months, she again became pregnant, but this time as well she told that she did not want to give to a child and later on she went to her parental house. After some time, the appellant-husband was informed that the respondent-wife was not keeping a good health and her second pregnancy was also got aborted on medical advice. It was further averred that the respondent-wife told the appellant-husband that unless he met her demand of living with her at Hanumangarh, she would not give birth to a child. Finally, the respondent-wife left her matrimonial home on 26.10.2018, and while leaving, she also took away the gold ornaments and Rs.40,000/-. It was further averred that a number of Panchayats were convened to resolve the matter, but to no avail. Terming the acts of the respondent-wife as cruelty, a decree of divorce was sought for.

3. Upon notice, the respondent-wife entered appearance and filed her written statement. While admitting the factum of marriage,

she denied all the allegations and rather alleged that she was harassed by the appellant-husband and his family members by raising demands of dowry. It was further averred that she had been turned out of the matrimonial home a number of times, but after convening the Panchayats, she was rehabilitated, but finally on 26.10.2018, she was thrown out of the matrimonial home by the appellant-husband and his family members. Filing of a criminal complaint at Hanumangarh under Sections 498-A, 406, 323 IPC; petition under the provisions of Protection of Women from Domestic Violence Act, 2005 and another petition under Section 9 of the Act, was admitted. The allegations of unwillingness to give birth to a child were denied.

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

- “1. Whether petitioner is entitled for a decree of divorce on the ground of cruelty? OPP
2. Whether petition is not maintainable in the present form? OPR
3. Whether petitioner has no cause of action or locus standi to file present suit? OPR
4. Whether the petitioner has concealed true and material facts from this Court, if so to what effect? OPR
5. Relief.”

5. In evidence, the appellant examined himself as PW-1, and tendered into evidence the documents Ex.P1 to P12 and Mark-A to Mark-E. On the other hand respondent-wife appeared as RW-1 and tendered into photographs Ex.R2 to R5. In rebuttal evidence, the appellant had tendered Ex.P13 (blood examination report).

6. The learned Family Court, after taking into consideration the rival contentions of the parties and the evidence on record, dismissed the petition holding that the appellant-husband, has failed to prove the allegations of cruelty levelled by him against the respondent-wife.

7. Learned counsel appearing for the appellant has vehemently argued that while passing the impugned judgment and decree, the learned Family Court did not take into consideration the evidence led by the appellant-husband in respect of the cruelty committed by the respondent-wife. It is further submitted that the respondent-wife got her pregnancy terminated twice and both the times, the consent of the appellant-husband was not obtained. It is further submitted that besides that there had been various circumstances detailed in the pleadings of the appellant-husband, which too amounted to cruelty, but the learned Family Court, has totally ignored the same and the said approach is not tenable in the eyes of law.

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

9. The question that arises for consideration by this Court is whether the impugned judgment and decree, passed by learned Family Court, requires any interference.

10. The learned Family Court has found that the allegations regarding unilateral termination of the pregnancy by the respondent-wife, were not proved by the appellant-husband, by bringing on record

cogent and convincing evidence. It was further found that though Ex.P13 (blood examination report) was produced in rebuttal evidence at the fag end of the trial, yet the same was not proved by calling the records from the concerned laboratory and summoning any witness to prove the said report. Thus, the said document held to be of no evidentiary value. The remaining allegations were found to be general in nature. It was further found that the respondent-wife had initiated the proceedings for restitution of conjugal rights and if she had left the matrimonial home of her own, there would have been no reason for her to file the petition for restitution of conjugal rights. Consequently, it was found that the appellant-husband was not able to prove the allegations of cruelty against the respondent-wife.

11. It is well settled that in order to constitute a cruelty, the party alleging the same must prove on record that the behavior of the party complained against is or has been as such that it has made it impossible for the said party to live in the company of the party complained against. The acts of cruelty must be such from which it can be reasonably and logically concluded that there cannot be any re-union between the parties due to the said acts. The cruelty can either be physical or mental or both. Though there is no mathematical formula to devise the extent of cruelty alleged against, yet the facts and circumstances of each case must be examined in the light of the gravity contained in them.

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. The appellant-husband was required to prove the allegations levelled by him in the petition, by way of cogent and convincing evidence, but he failed to do so. We find that the findings recorded by the learned Family Court are plausible findings and no fault can be found with the same. We are further of the opinion that the allegations levelled by the appellant-husband regarding the conduct of behavior of the respondent-wife were only general and vague allegations which are normal wear and tear of a matrimonial life and the same cannot be made basis for granting a divorce.

13. No other point has been urged.

14. In view of the above, we do not find any merits in the present appeal and the same is hereby, dismissed.

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

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

04.09.2024
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No