



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-M-197-2018 (O&M)

Reserved on 03.07.2024

Pronounced on: July 26, 2024

Amandeep Singh

.....Appellant

Vs.

Sobhanjit Kaur

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. G.S. Punia, Sr. Advocate with
Ms. Harveen Kaur, Advocate for the appellant.

Mr. Sarabjit Singh, Advocate for the respondent.

SUDEEPTI SHARMA J.

1. The present appeal is preferred by the appellant-Amandeep Singh, against the judgment and decree dated 31.03.2018 passed by Learned Additional District Judge, Chandigarh, whereby the petition filed under Section 13(1) (ia) & (1b) of Hindu Marriage Act, 1955 (hereinafter referred as 'Act') for dissolution of their marriage on the ground of cruelty and desertion, is dismissed.

BRIEF FACTS OF THE CASE

2. The petitioner was married to respondent on 28.03.2004 at Chandigarh in accordance with Sikh Rites and Ceremonies. Out of this wedlock, a female child was born on 23.09.2005. Dissolution of marriage was sought by the appellant-husband on the ground of cruelty and desertion. Various instances of cruelty and desertion are mentioned in the petition which includes insult to him and his family members. FIR No.555 dated 29.11.2007 under Section 406, 498 A IPC read with Section 3 and 4 of Dowry Prohibition Act, was got registered by respondent/wife against the appellant/husband. There is an allegation of desertion



on the part of the respondent-wife, who left the matrimonial home and deserted the appellant/husband. Therefore, the petition for dissolution of marriage on the ground of cruelty and desertion was filed by the appellant-husband.

3. Upon notice, respondent appeared and filed detailed reply and denied the instances of cruelty and desertion. She alleged in the reply that the appellant/husband was never interested in continuing matrimonial ties with her, though he filed a petition for Restitution of Conjugal Rights, under Section 9 of the Act at Amritsar but never pursued, as a result of which, the same was dismissed in default. She denied all the allegations levelled by the appellant/petitioner and finally prayed for dismissal of the petition.

4. From the pleadings, the following issues were framed:-

- i) Whether the petitioner is entitled to decree of divorce on the grounds mentioned in the petition? OPP*
- ii) Relief*

5. After hearing the parties and considering the evidence on record, learned Court below dismissed the divorce petition. Hence the present appeal.

SUBMISSIONS OF THE COUNSELS

6. Learned counsel for the appellant submits that till date the parties are living separately. He further contends that FIR was got registered by the respondent/wife under Section 406, 498-A IPC and Section 3 and 4 of the Dowry Prohibition Act, against the appellant as well as his parents. Though the parents of the appellant were acquitted but the appellant has been convicted and sentenced under Section 498-A IPC vide judgment of conviction and order of sentence dated 07.06.2007 passed by the learned Judicial Magistrate Ist Class, Chandigarh. Therefore, now it will not be possible for the appellant-husband to stay with the respondent-wife.



7. *Per contra*, learned counsel for the respondent submits that the respondent is still ready and willing to stay with the appellant/petitioner.

8. We have heard learned counsel for the parties and perused the whole record with their able assistance.

9. The respondent left the matrimonial house prior to two months of birth of the female child i.e. on 23.07.2005. A perusal of the record shows that FIR No.555 dated 29.11.2007 was got registered by the respondent/wife against the appellant/husband and his parents and thereafter, the divorce petition was filed by the appellant/petitioner in the year 2009 i.e. after lodging of the FIR. If the respondent wanted to stay with the appellant/petitioner then she could always file a petition of Restitution of Conjugal Rights instead of lodging the FIR against the appellant/petitioner.

10. Learned Court below has dismissed the divorce petition on the ground that since the appellant instituted a petition for Restitution of Conjugal Rights in the year 2007, therefore, the acts of cruelty of respondent wife were condoned by the appellant/petitioner. Further that allegations of cruelty levelled by the appellant/petitioner against the wife remained unproved, whereas the Court did not observe that in fact it would amount to cruelty on the part of the respondent/wife.

11. Section 23(2) of the Hindu Marriage Act, 1955 imposes a mandatory duty on the Court to make every endeavour to effect conciliation between the parties in all cases. Section 23(2) is reproduced as under:-

“23 (2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring



about reconciliation between the parties.”

12. In the present case, when the petition under Sections 13(1) (ia) & (1b) was filed by the appellant/petitioner, learned Court below failed to comply with Section 23(2) of the Act, which is a mandatory provision.

13. In matrimonial matters, the Legislative intend behind enacting Section 23(2) of the Act was to ensure that an effort should be made by the Court to reconcile the dispute between the parties. The reason behind this is that sometimes because of small instances, the dispute between the parties arises which can be resolved by the intervention of the Court. The duty is cast on the original jurisdiction because it is at this initial stage the parties can be made aware of the potential consequences of continued litigation. The Court below overlooked this critical aspect by failing to inform the parties that acts of cruelty of either party can spoil their relationship and worsen their differences.

14. This Court in compliance of Section 23(2) of the Act made an endeavour to resolve the issues between the parties. For that the parties were called by this Court to appear in person, we have seen the conduct of the parties as well. Since the appellant/petitioner was convicted, though the parents were acquitted but still the harassment faced by the family amounts to cruelty on the part of the respondent-wife. The record shows that the parties are living separately since 2005 and no efforts have been made by either party to stay together. During the Court proceedings, the wife expressed her readiness and willingness to resume cohabitation with the appellant/petitioner. However, when she was asked about the lodging of FIR against the husband and his parents, she stated that FIR against the appellant/petitioner and his parents was lodged due to harassment she had faced in her matrimonial home. In response to query about their reunion, the husband stated that it would be difficult for him to stay with the respondent-wife



because of whom he was convicted and undergone the sentence imposed upon him.

ANALYSIS

15. In the present case, the parties have been living separately for approximately 19 years, with neither party making any attempt to reconcile or cohabit together. In matrimonial matters, the parties are expected to maintain harmony, and make certain adjustments/settlements/sacrifices if they genuinely wish to live together. Teething problems after marriage, wear and tear are there in every matrimonial home. The parties should try to adjust and overlook certain faults of each other. However, husband and wife are not mere properties that Courts can mandate them to live together. It is undoubtedly the responsibility of the Court and the parties involved to save the marriage as far as possible. But when there is no scope and it appears that there is no benefit in trying to keep the parties bound to it indefinitely, it is for the benefit of both the parties and the children that they should part their ways. In the present case, the emotional foundation of the marriage has completely vanished. The course which has been adopted by the Family Court below would encourage continuous bickering, perpetual bitterness and may lead to immorality. If the Courts find that there is practically no possibility of their staying together and the marriage has been irretrievably broken as seen in the present case, then a decree of divorce should be granted.

16. The Court below observed that the husband (appellant/petitioner) was convicted in aforesaid FIR which proves the allegations made by the respondent/wife that her husband never treated her with dignity and therefore, the divorce petition filed by the appellant/petitioner was dismissed on the ground that allegations of cruelty levelled by the appellant/husband against the wife remained



unproved. The Court below failed to consider the fact that the matrimonial matters are inherently sensitive and the Courts while deciding the cases, must carefully consider the practical aspect and consequences of the parties living together. And once the Courts have observed that the marriage has been irretrievably broken as in the present case then no fruitful purpose would be served in directing them to live together and this would not amount to doing justice to both the parties. A perusal of the present case shows that respondent-wife lodged an FIR against the appellant/husband, resulting in the appellant's conviction. This action of respondent/wife constitutes cruelty, as it is practically impossible for the party against whom FIR is lodged or case is registered to live together under one roof. Consequently, this situation amounts to mental cruelty inflicted on the appellant/husband by the respondent/wife. Furthermore, the records show that parties have been living apart for approximately 19 years, with no attempt of reconciliation or cohabitation by either party. This conclusively establishes that the marriage has irrevocably broken down.

17. Hon'ble the Apex Court in the judgment passed in **Naveen Kohli Vs. Neelu Kohli, (2006) 4 SCC 558** held as under:-

72. Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.

18. Further judgment passed by Hon'ble the Apex Court **Samar Ghosh Vs. Jaya Ghosh, 2007 (6) BCR 834** is held as under:-



86. *When we take into consideration aforementioned factors along with an important circumstance that the parties are admittedly living separately for more than sixteen and half years (since 27.8.1990) the irresistible conclusion would be that matrimonial bond has been ruptured beyond repair because of the mental cruelty caused by the respondent.*

87. *The High Court in the impugned judgment seriously erred in reversing the judgment of the learned Additional Sessions Judge. The High Court in the impugned judgment ought to have considered the most important and vital circumstance of the case in proper perspective that the parties have been living separately since 27th August, 1990 and thereafter, the parties did not have any interaction with each other. When the appellant was seriously ill and the surgical intervention of bye-pass surgery had to be restored to, even on that occasion, neither the respondent nor her father or any member of her family bothered to enquire about the health of the appellant even on telephone. This instance is clearly illustrative of the fact that now the parties have no emotions, sentiments or feelings for each other at least since 27.8.1990. This is a clear case of irretrievable breakdown of marriage. In our considered view, it is impossible to preserve or save the marriage. Any further effort to keep it alive would prove to be totally counter- productive.*

CONCLUSION

19. In view of above referred to judgments and facts of the present case in ultimate analysis, in our view, wisdom lies in accepting the practical realities of life and make a decision that ultimately serves the best interest of both the parties and the children. Accordingly, we set aside the impugned judgment and decree dated 31.03.2018 passed by Learned Additional District Judge, Chandigarh and dissolve the marriage between the parties.

PARENTAL OBLIGATION QUA WELFARE OF CHILD

20. A perusal of the record further shows that parties have a daughter born from this wedlock, on 23.09.2005, who is currently approximately 19 years



old. Both the parents are duty bound to equally share the amount of expenses incurred by the daughter in her upbringing. Since the daughter is throughout residing with the respondent/wife and is brought up by her only and she throughout has borne all expenses for her upbringing and is still doing so, therefore, the appellant/husband is directed to deposit a sum of Rs.10,000/- per month in the account of her daughter by the 10th of every month. If the account in the name of daughter is not opened then the parties are directed to open the same. Neither party shall impose any condition or exert pressure on daughter regarding her visit to the other party. The appellant/husband is directed not to dis-inherit the daughter. Furthermore, he would bear the expenses in performing her marriage. After marriage of the daughter, both the parents shall be duty bound to look into the needs of the daughter and to give love and affection to her.

FINDINGS REGARDING GRANT OF ALIMONY

21. As per record and overall conduct of the respondent/wife, this Court observes that she does not deserve any permanent alimony. The harm which is caused by her to the appellant/husband by lodging the FIR which led to his conviction leaves a stigma of being convicted on the appellant/husband which amounts to mental cruelty.
22. In view of above, the present appeal is allowed.
23. All the pending applications also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

July 26, 2024
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Whether speaking/reasoned: Yes
Whether reportable: Yes