

FAO-M-272 of 2017

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

FAO-M-272 of 2017
Date of Decision: 06.05.2022

Harbans Kaur

...Appellant

Versus

Joginder Pal

....Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present:- Mr. Avtar Singh Sandhu, Advocate,
for Mr. A.S. Rai, Advocate,
for the appellant-wife.

Mr. R.S. Budhwar, Advocate,
for the respondent-husband.

RITU BAHRI, J. (ORAL)

Heard learned counsel for the parties at length.

Appellant-wife has come up in this appeal against the judgment and decree dated 21.10.2016 of the Family Court whereby petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (for short 'the HMA') seeking dissolution of marriage by a decree of divorce has been allowed and he has been granted divorce.

The marriage of appellant-Harbans Kaur was solemnised with respondent-Joginder Pal on 13.12.1992 at Banur, District Patiala, as per Hindu rites. Four children were born out of this wedlock. As per husband, when he filed petition under Section 13 of the HMA, behaviour

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of the respondent was very cruel, barbaric, rude and crude towards the respondent from the very beginning. Appellant had earlier filed a divorce petition and compromise was effected between the parties. Appellant-wife thereafter filed a petition under Section 12 of the Protection of Women from Domestic Violence Act on 03.05.2011 and the same was dismissed vide order dated 26.02.2014. Appeal against the said order was also dismissed vide order dated 30.08.2014. Appellant also got registered FIR No.233 dated 07.05.2011 under Sections 323, 325, 506 and 34 IPC at Police Station Nissing against the respondent but in that case he was acquitted. It is further stated that the wife had tried to take forcible possession of the agricultural land owned and possessed by the respondent situated at village Bholi Khalsa, District Karnal and civil suit against the appellant is pending in District Courts, Karnal. It is further alleged that appellant was living in adultery with some person in the year 2012 and she forcibly turned out the respondent along with his four children from the house. Since then husband is residing in village Samaspur, District Kurukshetra in a rented house and no cohabitation has taken place between them since then. When the marriage of their daughter was fixed by the respondent, he had requested the appellant to join the marriage but she taunted that she had no concern with the respondent and his children. In this backdrop, the divorce petition was filed.

A perusal of the impugned judgment shows that marriage between the parties was solemnised on 13.12.1992 at Banur, District Patiala, and there are four children from this wedlock. Learned counsel

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for the respondent has informed that all the children are staying with the respondent-husband. The divorce has been granted on the grounds of cruelty and desertion. Cruelty has been proved as under: -

- (i) Appellant-wife got registered FIR No.233 dated 07.05.2011 under Sections 323, 325, 506, 34 IPC against the respondent-husband in which he has been acquitted vide judgment dated 12.02.2015.
- (ii) Appellant-wife filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, which was dismissed vide order dated 26.02.2014.
- (iii) It has further been mentioned in paragraph 12 of the judgment that respondent-husband has been acquitted in another criminal case on 17.10.2015. Learned counsel for the respondent has clarified that this acquittal was in FIR No.516 dated 15.12.2011. Many proceedings under Section 107/151 Cr.P.C. were registered against the respondent-husband.

The above-said facts are sufficient to return a finding that respondent-husband has been met with cruelty by the appellant-wife. The Hon'ble Supreme Court has held that even one complaint lodged by the wife found to be false against the husband and his family members amounts to cruelty.

Hon'ble Supreme Court in *K. Srinivas Rao vs. D.A. Deepa, (2013) 5 Supreme Court Cases 226* held that making false criminal complaints or registration of FIR against the husband or his family members under Section 498-A IPC would amount to mental cruelty. In paragraph 13 and 14 the Hon'ble Supreme Court held as under: -

“13. In Naveen Kohli the wife had filed several complaints and cases against the husband. This Court viewed her conduct as a conduct causing mental cruelty and observed that the finding of the High Court that these proceedings could not be taken to be such which may warrant annulment of marriage is wholly unsustainable.

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 of 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.”

Even if husband and wife are staying together and husband does not speak to the wife, it would cause mental cruelty and a spouse staying away by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings can make the life of other spouse miserable.

In the facts of the present case, as per details given above, after the acquittal in the FIR and dismissal of the domestic violence complaint as reflected above, enough mental cruelty has been caused to the husband.

Learned counsel for the appellant is unable to point out any illegality or infirmity in the impugned judgment and decree which calls

