

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **FAO-57-M of 2006 (O&M)**

DATE OF DECISION: MARCH 11, 2015

JAGBIR SINGH ...APPELLANT

VERSUS

NISHA ...RESPONDENT

2. **FAO No.4960 of 2012 (O&M)**

JAGBIR SINGH ...APPELLANT

VERSUS

NISHA ...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.  
HON'BLE MR. JUSTICE DARSHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

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PRESENT: MS. RADHIKA SURI, SR.ADVOCATE  
WITH MS. RINKU DAHIYA, ADVOCATE  
FOR THE APPELLANT.

MR. RAKESH ARORA, ADVOCATE FOR THE RESPONDENT.

**M. JEYAPPAUL, J.**

**CM-26996-CII-2014**

1. Application stands allowed.

**CMM-111-2014**

2. Application stands infructuous as the main case itself has been taken up for final disposal.

**FAO-57-M of 2006**

3. The appellant who is the husband of the respondent aggrieved by the dismissal of his petition filed under Section 13 of the Hindu Marriage

Act, 1955 praying for divorce on the ground of cruelty has preferred FAO-57-M of 2006. Aggrieved by the relief of restitution of conjugal rights granted by the trial Court in the application filed under Section 9 of the Hindu Marriage Act, 1955, he has preferred FAO No.4960 of 2012.

4. In the petition for divorce, the appellant-husband has contended that he married the respondent on 2.12.1999 according to Hindu rites and ceremonies. A male child by name Sushant was born out of the wedlock on 27.5.2001. The respondent is a short tempered and quarrelsome lady. Her behaviour with the appellant and his parents was not good from the very beginning. She used to abuse and misbehave with the appellant and his parents as and when she was asked to do some household work. The father of the appellant made an arrangement for a separate house and mess for the appellant and respondent as the respondent showed arrogant and rude behaviour. The respondent also insisted the appellant to demand more property from his father. She used to throw utensils. She never prepared breakfast and lunch for the appellant as she used to sleep till late morning hours. She used to create scenes by quarreling with the appellant. She taunted the appellant about his profession as a driver. On 27.10.2002, the appellant was beaten by Ram Niwas, the uncle of the respondent. A case was registered at the instance of the appellant. The respondent registered a case under Sections 498-A and 406 IPC against the appellant and others just to counter-blast the registration of the case at the instance of the appellant. It is not possible for the appellant to live and cohabit with the respondent. Therefore, the appellant has sought divorce on the ground of cruelty.

5. The respondent filed written statement to the petition for

divorce filed by the respondent contending that she never insulted the appellant or his parents. She never exhibited any rude behaviour. Nor had she quarreled with the appellant or his parents. The respondent informed her parents regarding the demand of dowry and beatings given by the appellant for bringing dowry from her parents. On the occasion of Karva Chauth in the year 2002, the appellant did not provide food to the respondent. She was also beaten up by the appellant. The respondent was admitted to Kalawati Hospital, Manesar for treatment by her father.

6. In the petition filed by the respondent under Section 9 of the Hindu Marriage Act praying for restitution of conjugal rights, she has pleaded that the appellant and his family members were not happy with the dowry articles brought by the respondent. They subjected her to cruelty in connection with demand of more dowry. She was admitted to Kalawati Hospital, Manesar for treatment by her father as she was beaten up severely by the appellant on the occasion of Karva Chauth, in the year 2002. The appellant and his parents refused to keep the respondent in her matrimonial home. She lodged an FIR against the appellant and his family members in connection with the demand of dowry. In order to get rid of the respondent, the appellant filed a divorce petition levelling false allegations. The respondent was thrown out of the matrimonial home without any reasonable or plausible cause by the appellant. The respondent is ready and willing to join the matrimonial home. Therefore, the respondent has prayed for decree of restitution of conjugal rights.

7. The appellant filed written statement to the said petition denying cruelty caused to the respondent in connection with the demand of

dowry. It was pleaded that the appellant was ready and willing to keep the respondent in her matrimonial home.

8. The trial Court having adverted to the evidence on record held that the appellant failed to establish through cogent evidence that he was subjected to cruelty by the respondent and thus, dismissed, the petition filed by the appellant praying for divorce on the ground of cruelty.

9. Based on the admission made in the written statement filed by the appellant in the petition for restitution of conjugal rights filed by his wife to the effect that the appellant was ready to take the respondent to the matrimonial home, the trial Court allowed the petition under Section 9 of the Hindu Marriage Act filed by the respondent.

10. Learned counsel appearing for the appellant would vehemently submit that the criminal prosecution initiated by the respondent as against the appellant under Section 498-A and 406 IPC ended in acquittal as the respondent failed to prove cruelty in connection with demand of dowry. Referring to the judgement passed by the trial Court in FIR No.282 dated 11.12.2002 registered under Section 498-A and 406 IPC, learned counsel appearing for the appellant would submit that the respondent has come out with false allegations of cruelty and demand of dowry. Such an unfounded allegation levelled against the appellant would amount to cruelty, it is submitted. The respondent chose to withdraw the execution petition filed to enforce the decree for restitution of conjugal rights with a specific endorsement that she had proposed to initiate proceedings under the Protection of Women from Domestic Violence Act, 2005. The father of the appellant was booked at the instance of the respondent for an offence under

Section 354-A IPC. The appellant and the respondent have been living separately for the past 12 long years. There was no question of living together as husband and wife and therefore, the appeals preferred by the appellant may be allowed, it was submitted.

11. Learned counsel for the respondent-wife would vehemently submit that none of the allegations levelled against the respondent in the petition under Section 13 of the Hindu Marriage Act, 1955 was established by the appellant. The criminal case launched by the respondent under Section 498-A and 406 IPC was not accepted by the criminal Court as the case was not established beyond reasonable doubt. Therefore, the appellant cannot take advantage of the honourable acquittal recorded by the criminal Court. The respondent is entitled to prosecute the appellant under the Domestic Violence Act. A criminal case was launched against the father of the appellant under Section 354-A IPC, as he sexually harassed the respondent. Referring to the written statement filed in the petition under Section 9 of the Hindu Marriage Act, 1955, learned counsel appearing for the respondent submitted that there was a clear stand taken by the appellant that he was prepared to take his wife to the matrimonial home. The trial Court has rightly dismissed the petition filed by the appellant under Section 13 of the Hindu Marriage Act, 1955 and allowed the petition under Section 9 filed by the respondent, it was contended.

12. The allegations of cruelty levelled against the respondent in the petition under Section 13 of the Hindu Marriage Act, 1955 have not been established by the appellant, as rightly observed by the trial Court. But the short question that arises for consideration is whether false allegations

levelled by the wife as against the husband without any basis or proof would amount to mental cruelty.

13. The appellant produced a copy of the judgement passed by the criminal Court in FIR No.282 of 11.12.2012 under Section 498-A and 406 IPC against the appellant and his parents. The fact remains that said judgement of acquittal recorded by the criminal Court has reached finality.

14. In the above case launched by the respondent against the appellant, she had specifically alleged that she was subjected to cruelty in connection with demand of dowry. She also alleged that she was beaten badly by the appellant and therefore, she was admitted to Kalawati Hospital at Manesar for treatment.

15. The criminal Court having thoroughly scanned the evidence adduced in the criminal case, came to the conclusion that the prosecution miserably failed to produce medical evidence in support of the allegations made by the complainant that his daughter Nisha, the respondent herein, was beaten up by the appellant in connection with demand of dowry. No record was produced from Kalawati Hospital at Manesar to establish that she was admitted to the said hospital for treatment. Physical violence allegedly inflicted upon her was not at all established. Therefore, the criminal Court came to the conclusion that the charges levelled as against the appellant under Section 498-A and 406 IPC stood not established. In our considered view, the above allegations have been made only to harass the appellant.

16. It is a trite law that the events that took place subsequent to the proceedings initiated for divorce by one of the spouse can be taken note of while granting relief to the parties.

17. In **Naveen Kohli vs. Neelu Kohli, AIR 2006 SC 1675**, the Hon'ble Supreme Court has held as follows:-

*“91. In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair and marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.”*

18. In the instant case also, the appellant had been dragged to the criminal Court by the respondent by launching prosecution under Section 498-A and 406 IPC. He was also facing prosecution under the Protection of Women from Domestic Violence Act, 2005. The father of the appellant at the ripe old age is facing a charge under Section 354-A IPC. The respondent is living separately for the past 12 long years. Unsubstantiated and unfounded allegations made by a spouse as against the other spouse would amount to cruelty.

19. In a latest decision of this Court in **FAO-M-347 of 2013, Pratham Singh vs. Rajesh, decided on 3.12.2014**, a co-ordinate Bench of

this Court has held, referring to the decision of the Hon'ble Supreme Court in *K.Srinivas Rao vs. D.A.Deepa, (2013) 5 SCC 226* and the decision of this Court in *Imlesh vs. Amit, AIR 2014 Punjab & Haryana 89*, that where the wife files a false criminal complaint against husband and his family members under Sections 406 and 498-A IPC which ultimately resulted in acquittal, the act of the wife would amount to mental cruelty caused to her husband and based thereupon, a decree of divorce under Section 13(1)(ia) of the Act can be granted. The above decision of this Court applies to the facts and circumstance of this case.

20. The criminal prosecution launched as against the appellant under Section 498-A and 406 IPC had been published in leading newspapers. The appellant has felt completely humiliated. The acquittal recorded by the criminal Court cannot wash away the disrepute brought to the matrimonial life of the appellant.

21. It was very feebly submitted by learned counsel appearing for the respondent that the stand of the appellant that he was prepared to take his wife to the matrimonial home in the proceedings initiated by the respondent for restitution of conjugal rights subsequent to the acquittal recorded by the criminal Court for the offence under Section 498-A and 406 IPC would amount to condonation of the alleged cruelty committed by the respondent by lodging a false case.

22. In our considered view, the appellant had set up a standard plea in the written statement to wriggle out of the specific prayer made by the respondent for restitution of conjugal rights. But unfortunately, the trial Court in the said petition without elaborately dealing with the deposition of

the appellant simply granted the relief of restitution of conjugal rights, just based on the above standard plea set up by the appellant. On a careful perusal of the testimony of the appellant, it is found that he has categorically stated *“I do not want to keep her as my wife due to her cruel behaviour as well as for lodging false case regarding demand of dowry... I am not ready to take the petitioner along to her matrimonial home. I am not willing to take the petitioner along on any condition”*.

23. Referring to the above testimony of the appellant, learned counsel appearing for the respondent would submit that the trial Court while recording the evidence had made a mistake in putting the full-stop in-between two sentences. In other words, it should be read that it was a suggestion made by counsel for the respondent to the appellant and the same was denied as incorrect.

24. Firstly, we find that there was no application made to the trial Court to correct such an error in the deposition within a reasonable time. Secondly, there was no such argument submitted on the side of the respondent during the course of disposal of the petition under Section 9 of the Hindu Marriage, 1955. Therefore, in our view, the above submission made by learned counsel appearing for the respondent is totally baseless. The trial Court should have adverted to the testimony of the appellant as well before passing the order under Section 9 of the Hindu Marriage Act.

25. Totally unfounded and baseless allegations have been made in the criminal proceedings under Section 498-A and 406 IPC by the respondent as against the appellant which has caused an enormous mental cruelty. The publication in the newspaper as regards the alleged cruelty

committed in connection with the alleged demand of dowry has brought disrepute to the family of the appellant. They have been living separately for the past 12 long years. Further, it was rightly brought to the notice of this Court by the learned counsel appearing for the appellant that it would be impossible for the appellant to live with the respondent who had sent him to jail in connection with the false prosecution launched by her as against the appellant. For all these reasons, we find that the appellant is entitled to divorce on the ground of mental cruelty.

26. Under such circumstances, the prayer for restitution of conjugal rights made by the respondent becomes redundant. Therefore, setting aside the impugned orders passed by the trial Court, the appellant is granted a decree for divorce and the respondent's plea for restitution of conjugal rights is rejected.

27. Consequently, both the appeals are allowed.

March 11, 2015  
Gulati

**(M. JEYAPPAUL)**  
**JUDGE**

**(DARSHAN SINGH)**  
**JUDGE**