

Imlesh v. Amit , 2014 PLRonline 0212

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HIGH COURT OF PUNJAB AND HARYANA

Before: JUSTICE S.S. SARON, . JUSTICE NAVITA SINGH, JJ.

IMLESH - Appellant,

Versus

AMIT - Respondent.

F.A.O. No.6146 of 2013 (O&M)

04.02.2014

Hindu marriage Act, 1955, Sections 13 (1) (ia) - Where the wife files a false criminal complaint against the husband and his family members under Sections 406/498-A of IPC, which results in their acquittal, this act of the wife tantamount to mental cruelty and the husband would be entitled to a decree of divorce under Sections 13 (1) (ia) of the Act of 1955.

Mr. Mohan Singh Rana, Advocate for the appellant.

Navita Singh, J.

C.M. No.25249-CII of 2013

There is an application for condonation of delay in filing the appeal. The delay is of 38 days.

For the reasons mentioned in the application, the delay of 38 days in filing the appeal is condoned.

F.A.O. No.6146 of 2013 The present respondent had filed a petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act) against the appellant whereas the latter filed a petition under Section 9 of the Act against the former. The petition under Section 13 of the Act was allowed while that of the appellant filed under Section 9 of the Act was dismissed.

Aggrieved by the order in both the cases, the wife came up in appeal.

The facts of both the cases were inter-linked because the respondent alleged that the appellant had deserted him and her behaviour was far away from good. She extended threats to the appellant and his family members and was also cruel towards the child born

to the parties insofar as that she refused to breast feed the baby. On 21.10.2009, the appellant poured kerosene oil and tried to set herself on fire for framing the respondent and his family members in a criminal case. She lodged an FIR on the next day. Later on, the case was found to be false. However, the respondent remained in jail for seven months and his father remained inside for about six months.

The appellant, admitting that the marriage took place on 7.2.2007 and that one female child was born to the parties, alleged that on 21.10.2009, her parents-in-law and sister-in-law had tried to burn her alive. She ran down and called her brothers on telephone who took her to Safdarjung Hospital where she remained admitted with 30% burns. She lodged an FIR No.322 dated 22.10.2009 under Sections 307, 406, 498-A IPC read with Section 34 of Indian Penal Code (IPC for short). The facts pleaded by her in the reply to the petition of the respondent were averred in the petition filed by her under Section 9 of the Act. The respondent- husband in his reply to the petition of the wife stated all the facts which he had mentioned in his petition under Section 13 of the Act.

The following consolidated issues were framed in respect of both the petitions by the trial Court:-

1. Whether the petitioner Amit was subjected to cruelty by her wife Smt. Imlesh on the grounds mentioned in her petition? OPP
2. Whether the respondent Amit has left the company of petitioner Imlesh without any sufficient reason as in her petition? OPP
3. Whether the petitioner is guilty of his or her own misconduct? OPR
4. Relief.

Learned counsel for the appellant argued that ignoring the evidence led by the appellant in both the petitions qua the cruelty to which she was subjected in the matrimonial home, the trial Court simply held on to one point that the criminal case filed by the appellant against the respondent and his family members was found to be false. Learned counsel admitted that charge-sheet had been filed by the police only against the husband and in an application moved by the appellant, four other persons, i.e., parents and two sisters of the respondent were also summoned to face trial. However, all the accused were acquitted. Learned counsel for the appellant contended that mere acquittal in the criminal case should not have been made the basis for deciding both the petitions against the appellant and the trial Court gravely erred in doing so. He also referred to the statement of Dharambir, who was a retired Sub Inspector and had appeared as a witness on the asking of Rajju, father of the respondent. He stated that the said Sub Inspector, after he retired, deposed in favour of the respondent for obvious considerations. However, record shows that argued that no finger can be pointed towards the veracity of the said witness and simply because he appeared on a message having been received from the father of the respondent, it would not mean that the witness was tutored or bought.

It is not denied by learned counsel for the appellant that the above said witness, namely,

Dharambir categorically stated that when the appellant had gone to him for getting a case registered under Section 307 IPC, she had no burn injuries and she was accompanied by her brother and was also carrying her child in the lap. Later on, the case was registered because a ruqa has been received from Safdarjung Hospital. The trial Court rightly observed that if the incident of attempt to burn the appellant alive had actually happened, she would not have been in a position to run out and call her brothers on telephone and also to take her child along to the police station instead of going to the hospital first. There was no reason to disbelieve the statement of the Investigating Officer that when she went to the police station, there were no burn injuries on her body.

So far as the finding of the trial Court regarding cruelty on the basis of involvement in a false criminal case is concerned, it may be said that that in itself constitutes sufficient ground for granting divorce as it amounted to cruelty. Reference in this regard may be made to the case in *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 Supreme Court Cases 226, where it was held by Hon'ble the Supreme Court that where indecent/ defamatory statements are made in the complaint/ criminal proceedings, the same singly and cumulatively amounted to mental cruelty warranting grant of divorce. If a false complaint is filed against the spouse or his/her relatives, it amounted to mental cruelty. In the said case also, wife had filed a case under Section 498-A IPC and the husband and his family members were acquitted and decree of divorce was granted to the husband on that ground, as it amounted to mental cruelty.

Going a step further, the appellant sought leave to file appeal against the judgment vide which the respondent and his family members were acquitted but her application in that regard was dismissed by a Division Bench of this Court on 20.2.2013. The appellant pursued remedy against acquittal in the higher forums and was, therefore, hellbent on getting the respondent and his family members punished. The facts of *K. Srinivas Rao* (supra), are applicable here on all fours.

It may not be out of place to mention here that it had come on record before the trial Court that the appellant even went on to the extent of saying that her father-in-law had sold his two sisters and she was apprehensive that he would do the same to her daughter. Levelling such indecent allegations against the father of the respondent and also involving the husband and his family in false case on the criminal side, was sufficient to treat the respondent with cruelty though it may be mental alone.

The trial Court rightly arrived at the conclusion that the husband was entitled to a decree of divorce and the wife was not entitled to any relief.

The appeal is dismissed.