

**Before M. Jeypaul &  
Dr. Bharat Bhushan Parsoon, JJ.**

**VINOD** — *Petitioner*

*versus*

**SMT. POONAM** — *Respondent*

**FAO No.3365 of 2011**

September 12, 2014

***Hindu Marriage Act, 1955 —Ss. 13(1)(ia) & 13(1)(ib) — Divorce on ground of cruelty and desertion—Marriage between parties took place and three children were born—In petition for dissolution of marriage, husband pleaded that wife had left matrimonial home leaving three minor children behind; that when husband went to her parental house to bring her back, she refused to come back and also abused him; that wife and her parents threatened husband that if he was to come again to her, they were to implicate him in dowry case and that wife lodged a false criminal case under Sections 498-A, 406 & 506 IPC against him and his family members—Wife denied these allegations and accused husband and his family members of having perpetuated cruelty on her for not bringing sufficient dowry—District Judge dismissed husband's petition of divorce—Held, that there was no material or evidence to sustain charge leveled against husband under Sections 498-A, 406 & 506 IPC and wife failed to substantiate the same —Unsubstantiated wild allegations against her father-in-law—husband, due to false criminal complaint was in jail as under trial till released on bail — highest form of cruelty by wife—Clear that wife left matrimonial home and minor children, deserted husband with no intention to join matrimonial home—Consequently, husband granted decree of divorce.***

*Held* that the trial Court had also come to a firm finding that there was no material or evidence to sustain the charge under sections 498-A, 406 and 506 IPC against the husband and the wife had failed to substantiate the same. Though the trial court had acquitted the husband mentioning that it was "on account of benefit of doubt" but, in fact, entire case of the wife has been discarded even on merits.

(Para 20)

*Further held*, that if we go through the allegations made in the FIR by the wife, it is noticeable that she had made allegations even against her father-in-law Hans Raj to the effect that he had "tried to

outrage the modesty of the complainant several times". The wife had not made available any material or evidence to support her allegations even on this count.

(Para 23)

*Further held*, that unsubstantiated wild allegations against father of the husband that he had "outraged her modesty on several occasions" were also made. The husband faced prosecution and was in jail as under trial till he was released on bail. It is the highest form of cruelty by the wife.

(Para 25)

*Further held*, that so far as ground of desertion is concerned, the wife had left the matrimonial home. Justification provided by her that she was beaten up many a times by the husband and his family members and there were demands of dowry as also pressure on her to claim right in property of deceased parents could not be substantiated by her. Even her witnesses i.e. her brother Narender Singh and her uncle Roop Chand were as sweeping as she was and could not substantiate her claim.

(Para 27)

*Further held*, that it is clear that leaving her three minor children out of whom two are school going, she continues to stay away from the matrimonial home jeopardising the educational and other interests of the minor children. It also remains a fact that despite her long stay away from the matrimonial home and her children, she has never asked for visitation rights or custody of the children.

(Para 30)

*Further held*, that viewed from any angle, claim of the husband that he has been tortured due to one sided engine of oppression let loose by the wife by making scandalous allegations in the FIR which remained unsubstantiated and further that he suffered ignominy as well as stay in prison as under trial, remains a fact to be reckoned with. It is also clear that the wife leaving the matrimonial home and the minor children, deserted the husband with no intention to join the matrimonial home. In addition to being desertion, it is also extreme cruelty on her part.

(Para 32)

S.K. Chauhan, Advocate for the appellant – husband

Adarsh Jain, Advocate for the respondent – wife

**DR. BHARAT BHUSHAN PARSOON, J.**

(1) This first appeal against order filed by appellant–husband Vinod (for short, the husband) is directed against judgment and decree dated 27.1.2011 passed by the court of District Judge, Family Court, Faridabad vide which his petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter mentioned as the Act) for dissolution of his marriage solemnised on 17.6.1998 with respondent–wife Smt. Poonam (for short, the wife) on the ground of cruelty and desertion in terms of provisions of Section 13(1)(ia) and 13(1)(ib) of the Act, was dismissed.

(2) After marriage, the parties were settled in their matrimonial home at village Chhainsa, Tehsil Ballabgarh, District Faridabad and three children were born to them. At the time of filing of the petition i.e. on 17.9.2007, all were minors between the age group of 7 to 3, elder and younger being daughter.

(3) Elaborating the ground of cruelty, it was pleaded by the husband as under:

- (i) The wife did not like him and she wanted to marry someone else but under pressure of her parents had entered into wedlock with him;
- (ii) She used to abuse the husband, his parents and his family members;
- (iii) She had refused to discharge her domestic duties like washing of clothes, preparing of food, sweeping of the house and cleaning of the utensils;
- (iv) She used to leave the matrimonial home to go to her parental house where she used to stay for considerable periods and such visits had become frequent;
- (v) She was not taking care of the minor children and even when she was going to her parental home, she was leaving the children behind refusing to maintain them and to take responsibility of their rearing up. Two elder children were school going but she was not supporting them; and,
- (vi) She used to hold out threats that the husband and his family members would falsely be implicated by her in a case of dowry and other non–bailable offences.

(4) So far as ground of desertion is concerned, it was averred by the husband that the wife had left the matrimonial home on 10.6.2006 taking away her jewellery and other valuables without any reasonable and justifiable cause leaving three minor children behind. On 15.7.2007, when the husband had gone to her parental house to bring her back, not only she had refused to come back but had also abused him. The wife and even her parents had threatened the husband that if he was to come again to her, they were to implicate him in dowry case.

(5) It is claimed that efforts to bring her back even with the intervention of Panchayats of respectable members had failed. Last attempt on this score was made on 31.7.2007 wherein the husband, his father, his brother and other respectables of the society had gone to bring her back but the wife had refused to come back to the matrimonial home.

(6) The wife denying all these allegations of cruelty rather accused the husband and his family members of having perpetuated cruelty on her by their alleged rude and cruel behaviour towards her and her children. It is claimed that “she was beaten up by the husband and his family members and was thrown out alongwith her children from the matrimonial house”. It was explained further that after the death of her mother in 2000 and of her father in 2001, eyes of the husband and his family members were upon property of her parents. She was asked by them to claim her share in the property of her parents and when she refused to fulfil this desire of the husband and his family members, she was thrown out of the matrimonial house.

(7) It has been elaborated further by her that her efforts in association with some respectable persons to settle the matter, when they had gone to her matrimonial home on 16.9.2007 proved futile because the husband and his family members had left the village and were not available. It is claimed by her that when such attempt was made again on 18.9.2007, she was beaten up when she had tried to meet the children. It was threatened by the husband that she would not be allowed in the matrimonial home till she was to bring a Hero Honda motorcycle and Rs.1,00,000/- in cash. A threat was held out that if the wife was to come again “then she will be killed alongwith her brother and members of the Panchayat”. Dismissal of the petition was sought.

(8) To adjudicate the matter, following issues were settled by the District Judge, Family Court, Faridabad on 11.9.2008:

1. Whether the respondent has treated the petitioner with cruelty, as alleged? OPP

2. Whether the petition is not maintainable, if so to what effect?  
OPR

3. Relief.

(9) After receiving oral as well as documentary evidence by the parties and providing a hearing to their counsel, deciding issue No.1 against the husband and issue No.2 as having not been pressed by the wife, petition of divorce was dismissed on 27.1.2011.

(10) Impugning this judgment and decree, it is claimed by the husband that the evidence has been misread, misconstrued and misapplied to the facts of the case resulting in great prejudice to him. Alleging approach of the trial court to be conjectural, it is claimed that important aspects having bearing on the case, were ignored.

(11) It is then pleaded that there is overwhelming evidence to the effect that the wife had treated the appellant/husband with cruelty and was guilty of desertion. It is averred further that the wife had lodged a false criminal case against him and his family members and that itself was sufficient to prove cruelty on the part of the wife. It is pleaded further that children of the parties are living with him and the respondent/wife had not been taking care of them and had not fulfilled her obligation towards their bringing up.

(12) It is still further averred that after so many years of marriage and three children having been born out of this wedlock, demand of Rs.1,00,000/- and Hero Honda motorcycle by him, as has been alleged by the wife, is unbelievable. It is urged that despite there being corroboration to the version of the husband from the statement of Hans Raj (PW2) and Babu Lal (PW3), the lower court had preferred to believe evidence of the wife which was not only shaky but was full of discrepancies. Acceptance of the appeal has been sought.

(13) During pendency of this appeal, CM No.22450-CII of 2013 was moved by the husband and no objection having been made by the wife, judgment dated 18.7.2013 passed by Judicial Magistrate 1<sup>st</sup> Class, Faridabad whereby the husband had been acquitted of the charge under Sections 498-A, 406 and 506 IPC, was taken on record.

(14) Addressing arguments, counsel for the appellant/husband has urged that cruelty was let loose by the wife and there are proved instances of cruelty from the wife to the husband. It is claimed that even lodging of false complaint against the husband by the wife which ultimately resulted in his acquittal in itself, is sufficient proof of cruelty from her. It is further urged that the wife had left the matrimonial home

on 10.6.2006 leaving three minor children behind and never returned thereafter. It is, thus, claimed that the ground of desertion is also proved against the wife.

(15) Counsel for the respondent/wife, on the other hand, has contended that she was being harassed and tortured and had been pressed hard by the husband to claim share in the property of her parents and was also asked to bring cash of Rs.1,00,000/- and Hero Honda motorcycle and thus was justified to stay away from the matrimonial home. It is urged that though repeated efforts were made to resolve the impasse by visits of the Panchayat of respectable persons but no solution could be found as the husband was adamant not to keep the wife with him. Validity and legality of the impugned judgment and decree has been asserted.

(16) Hearing has been provided to the counsel for the parties while going through the paper book.

(17) Marriage between the parties took place on 17.6.1998. Three children were born to the parties. At the time of filing of the petition, the eldest child being daughter was 7 years, second being son was 5 years and third being again a daughter, was 3 years of age. The wife had left the matrimonial home on 10.6.2006.

(18) Claim of the wife that there was cruelty on the part of the husband as he and his relatives were not satisfied with the dowry articles brought by her and that they had been demanding one Hero Honda motorcycle and Rs.1,00,000/- in cash etc., was made part of the complaint made by her to the police on 27.12.2007, when the petition had already been preferred on 17.9.2007 by the husband for seeking dissolution of the marriage wherein he had made specific allegation that the wife used to threaten to falsely implicate him and his family members in false case of demand of dowry. After three children having been born out of the wedlock and after 8 years of marriage, such demand of dowry is even otherwise neither believable nor legally tenable.

(19) On FIR No.164 dated 27.12.2007 under Sections 498-A, 406 and 506 IPC lodged by the wife in Police Station, Chhainsa, the husband was arrested and was released on bail only later. Even her father-in-law, sister-in-law and two brothers-in-law had been implicated by the wife but during investigations, they were found to be innocent and sequently, no charge-sheet was filed against them. Undaunted, during trial of the husband, the wife had even preferred an application under Section 319 Cr.PC to summon these relatives of the

husband as additional accused. Disagreeing with her, such application was dismissed by the court.

(20) The trial court had also come to a firm finding that there was no material or evidence to sustain the charge under Sections 498–A, 406 and 506 IPC against the husband and the wife had failed to substantiate the same. Though the trial court had acquitted the husband mentioning that it was “on account of benefit of doubt” but, in fact, entire case of the wife has been discarded even on merits. With regard to charge under Section 498–A IPC, the trial court had concluded as under:

“Merely because complainant stated in her examination–in–chief that the accused demanded one motorcycle and Rs.1 lac in cash from her at some random point does not prove her case. It appears that the present case is merely a case of marital discord where the complainant and her husband are not in harmony with each other but that does not mean that the complainant has been tortured in connection with demand of dowry. Merely because the complainant is residing at her parental house does not prove an offence under Section 498–A of IPC.”

(21) With regard to charge under Section 406 IPC, conclusion of the trial court is as below

“Further, Section 406 IPC also does not stand proved as no evidence has been led by the prosecution qua the factum of entrustment of dowry articles to accused and thus this charge also fails against the accused.”

(22) Finding no material to substantiate her claim under Section 506 IPC, this charge was also held as not proved against the husband.

(23) If we go through the allegations made in the FIR by the wife, it is noticeable that she had made allegations even against her father–in–law Hans Raj to the effect that he had “tried to outrage the modesty of the complainant several times”. The wife had not made available any material or evidence to support her allegations even on this count.

(24) Even if all other aspects of the case of the husband regarding non–fulfilment of obligations as his wife such as doing of domestic chores etc. as listed in para 3(i) to (v) in earlier part of this judgment are ignored as normal wear and tear of matrimonial life, regarding ground of cruelty allegations of the husband that the wife used to threaten time and again to launch false criminal prosecution

against the husband and his family members, when the FIR was lodged by her on 27.12.2007 (which ultimately resulted in arrest of the husband though he was later released on bail and was ultimately acquitted as well) came true. It is conceded by the counsel for the wife that no appeal has been preferred against this verdict.

(25) Unsubstantiated wild allegations against father of the husband that he had “outraged her modesty on several occasions” were also made. The husband faced prosecution and was in jail as undertrial till he was released on bail. It is the highest form of cruelty by the wife.

(26) Hon'ble Supreme Court of India in *K. Srinivas Rao versus D.A. Deepa*<sup>1</sup> had held that if a wife files FIR against husband, inter alia, under Section 498-A IPC making false allegations, it is extreme mental cruelty to husband. It was further held by Division Bench of this Court in *Surinder Mohan Chopra versus Smt. Nirmala Chopra*<sup>2</sup> that even if no criminal prosecution has been launched by the wife, but false allegations have been levelled by her against the husband, that amounts to cruelty providing a justifiable ground to the husband to seek dissolution of marriage. Similar view has been expressed in *Bhavana N. Shah versus Nitin Chimanlal Shah*<sup>3</sup>; *Bhawna Sakhare versus Vijaykumar Sakhare*<sup>4</sup> and *Ramesh Laxman Sonawane. versus Meenaxi Ramesh Sonawane*<sup>5</sup>.

(27) So far as ground of desertion is concerned, the wife had left the matrimonial home on 10.6.2006. Justification provided by her that she was beaten up many a times by the husband and his family members and there were demands of dowry as also pressure on her to claim right in property of deceased parents could not be substantiated by her appearing as RW1. Even her witnesses i.e. her brother Narender Singh (RW2) and her uncle Roop Chand (RW3) were as sweeping as she was and could not substantiate her claim.

(28) Believing her version by the lower court that she was given injuries when she had gone to meet her children taking respectables alongwith her in a Panchayat on 16.9.2007 while relying on a non-existent medico-legal report, was not proper. There is allegation of the husband that, in fact, his mother was given injuries by her and her

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<sup>1</sup> 2013(2) RCR(Civil) 232

<sup>2</sup> 2006 (143) PLR 820

<sup>3</sup> AIR 2012 Bombay 148

<sup>4</sup> 2012 AIR CC 2776 (Bombay)

<sup>5</sup> 2012(1) ALLMR 267 (Bombay)



brother Narender Singh when she alongwith her brother and other members of the group had forcibly entered his house and had created ruckuss to brow beat and overawe the appellat/husband.

(29) In any case, this alleged incident is of a date later than the date when she had left the matrimonial home and by no means supports her claim that she was beaten up several times in the matrimonial home making her to leave the same.

(30) It is clear that leaving her three minor children out of whom two are school going, she continues to stay away from the matrimonial home jeopardising the educational and other interests of the minor children. It also remains a fact that despite her long stay away from the matrimonial home and her children, she has never asked for visitation rights or custody of the children.

(31) Refusal of the husband to take her back after such conduct of her which landed him in jail is not unjustified when he has been proved right by the criminal court.

(32) Viewed from any angle, claim of the husband that he has been tortured due to one sided engine of opression let loose by the wife by making scandalous allegations in the FIR which remained unsubstantiated and further that he suffered ignominy as well as stay in prison as undertrial, remains a fact to be reckoned with. It is also clear that the wife leaving the matrimonial home and the minor children, deserted the husband with no intention to join the matrimonial home. In addition to being desertion, it is also extreme cruelty on her part.

(33) Keeping in view the totality of facts and circumstances as discussed earlier, findings of the lower court on issue No.1 are neither sustainable on facts nor in law. As a result, reversing the said findings, this issue is decided in favour of the husband and against the wife.

(34) Sequelly, the impugned judgment and decree passed by the lower court are set aside and the appeal is allowed. Consequently, the husband is granted a decree of divorce by dissolution of his marriage with the wife. Decree sheet be drawn accordingly.

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*A. Jain*