

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 257-M of 2002

Date of Decision: 18.2.2015

Neelam Sharma

....Appellant.

Versus

Sh. Yogesh Kumar Kaushik

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE SNEH PRASHAR.**

PRESENT: Mr. Gurpreet Singh, Advocate for the appellant.

Mr. S.P. Chahar, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. Feeling aggrieved by the judgment and decree dated 17.9.2002 passed by the Additional District Judge (I), Rohtak, whereby the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (in short "the Act") for dissolution of marriage by a decree of divorce was allowed, the appellant-wife has approached this Court by way of instant appeal.

2. Briefly stated, the facts necessary for adjudication of the present appeal as narrated therein may be noticed. The marriage between the parties was solemnized on 28.4.1999 at New Basti, Samalakha, District Panipat according to Hindu rites and ceremonies. It was a simple marriage and some articles were given to the appellant by her parents as gifts but no dowry was taken by the respondent. After the

marriage, the parties lived together and cohabited as husband and wife at Rohtak and out of the said wedlock, a female child was born. According to the averments made in the divorce petition, the appellant was a lady of childish and non-cooperative nature. She had been a puppet in the hands of her mother and had not left the affection of her parents and had always been keen to live in her parental house instead of her matrimonial home. She had always been reluctant to have sexual intercourse with the respondent and this caused mental tension, agony and mental cruelty to the respondent. She even did not allow the respondent to have sex with her. After the marriage, the respondent took her to Samalakha to meet her parents but she refused to come back and the respondent left her there and asked her to come back after 2/3 days. Thereafter, the respondent brought her back with much persuasion and soon after she reached the matrimonial home, she rang up her parents and her brother came to Rohtak and took her back to Samalakha. When she made frequent visits to Samalakha, the respondent talked to her parents whereupon they told that her brother Sunil was suffering from ill soul effect (Pret Badha) and the presence of the appellant was necessary for his care. The respondent was pressurized by his in-laws for separation from the rest of his family and on his assurance, he brought her back. When he did not ask his parents for separation for 2/3 days, then the appellant asked him to talk to his father but on his refusal, she became rude and refused to do any work in the house. The respondent tried to make her understand but instead of understanding the matter, she insulted the entire family of the respondent and left the matrimonial home and flatly refused to return to her matrimonial home unless he separated himself from his family.

However, keeping in mind the peace of married life, the parents of the respondent separated him from the joint family and when they settled in a rented accommodation, the appellant and her family members were not satisfied and they started pressurizing the respondent to claim his share in the property of his father and on his refusal, the appellant refused to do the domestic duties and she even did not cook meal for him. In the first week of April, 2000, the appellant went to her parents without informing the respondent and when he came back from his school, he came to know about this fact from his landlady upon which he immediately went to Samalakha and asked her as to why she had repeated the above acts and conduct. On this, the appellant told that she could not live without her younger brother Sunil who was ill and that she would come back in 10/15 days. However, she did not come back and the respondent again visited the house of his in-laws and she returned back only on the assurance of the respondent for getting his share separate in the parental property. When the appellant complained about pain in her stomach, the respondent took her to a lady doctor who told that the pain was due to mishandling the abortion. The said fact was concealed by the appellant from the respondent and this caused mental cruelty to him. On 1.6.2000, the appellant locked herself inside the house and refused to join a religious function and threatened to commit suicide unless he got his share separate in the parental property. The respondent somehow with the help of neighbourers brought her out and called his father-in-law and told him about the entire episode who instead of asking his daughter to behave properly, pressurized the respondent to file a case against his father for his share in the property. The appellant left the matrimonial house along with her father by

extending threat to the respondent to face dire consequences of some criminal case of dowry demand. The respondent again approached the appellant and her father and requested her to come back but she refused to accept his request. Thereafter the respondent filed a petition under Section 9 of the Act for restitution of conjugal rights which was exparte decreed vide judgment dated 9.9.2000. Despite a decree for restitution of conjugal rights, the appellant did not join her matrimonial life with the respondent and threatened him for purchasing a house in her name otherwise she would involve the entire family in a dowry case. She even did not inform about the birth of a female child. She made a complaint to the SHO, Police Station, Samalakha on 18.2.2001 with the allegations of demand of dowry. On investigation, it was found that it was not a matter of demand of dowry but was a matter of family partition. The respondent and his family members brought back the appellant on 4.3.2001. The appellant started giving some mixture and bhabhuts in the food to the respondent and the respondent came to know this fact on 19.3.2001 when he attended a phone of his sister-in-law who was asking the appellant that she was using all the trick to grab the entire property of the respondent, upon which he tried to talk to the appellant but she started quarrelling and abusing him and his family members. Thereafter, the father of the respondent disinherited him from his property and due to all this, the respondent was depressed. The respondent again tried to save his home and went to Samalakha to persuade the appellant and when she came to know about his disinheritance, she flatly refused to come back on 31.3.2001. Accordingly, the respondent filed the petition under Section 13 of the Act for dissolution of marriage by a decree of divorce. The said petition was contested by the appellant by filing a

written statement. Besides raising various preliminary objections, it was pleaded that her parents spent more than ₹ 2 lacs in the marriage but the respondent and his family members made more demands, harassed and tortured her for dowry and, therefore, she lodged a complaint under Sections 406/498-A of the Indian Penal Code. She also filed a petition under Section 125 of the Code of Criminal Procedure for maintenance. The respondent filed a petition under Section 9 of the Act for restitution of conjugal rights on 27.7.2000. However, during the pendency of the said petition, with the intervention of the relatives of both the families, it was decided that the parties would live together and the respondent would withdraw the said petition but instead of withdrawing the petition, the respondent obtained an exparte decree dated 9.9.2002. The matter was compromised with the intervention of the biradari and the appellant started living with the respondent but after a week, she was turned out of her matrimonial home in three clothes. The other averments made in the petition were denied and a prayer for dismissal of the same was made. The respondent filed replication controverting the averments made in the written statement. From the pleadings of the parties, the trial court framed the following issues:-

1. Whether the respondent treated the petitioner with cruelty? OPP
2. Whether the respondent left her matrimonial home on 2.6.2000 and deserted the petitioner without any rhyme or reasons as is alleged?OPP
3. Whether the petition is not maintainable in the present form? OPR

4. Relief.

3. In support of his case, the respondent besides examining himself as PW4, examined ASI Pawan Kumar as PW1, Ved Parkash as PW2, Balwan Singh as PW3 and Ramesh as PW5. On the other hand, to rebut the evidence of the respondent, the appellant examined herself as RW1, her father Om Parkash as RW2 and Ram Kumar Sharma as RW3.

4. The trial court on appreciation of evidence led by the parties, decided issue No.1 in favour of the respondent and issue No.2 was decided against him holding that the husband had not been able to prove that there had been desertion for two years by the wife without reasonable and sufficient cause. Issue No.3 was decided against the appellant being not pressed. Accordingly, the trial court vide judgment and decree dated 17.9.2002 allowed the petition and dissolved the marriage between the parties by a decree of divorce. Hence, the present appeal.

5. Learned counsel for the appellant submitted that the finding of the trial court in paragraph 23 of the judgment that PW5 Ramesh had substantially supported the petitioner/respondent on almost all material points was factually incorrect as the same was being stated on the basis of statement (Annexure A-1) of RW5. It was further contended that from the evidence on record, no ground of cruelty was made out. It was urged that the alleged cruelty on the part of the appellant stood condoned by the respondent at the time of compromise dated 4.3.2001 pursuant to which she had resumed cohabitation with him. According to the learned counsel, the respondent made a false story to get a decree of divorce whereas the respondent and his family members treated the

appellant with cruelty. It was next contended that the allegations levelled by the respondent were general in nature and without any specific instances.

6. On the other hand, learned counsel for the respondent besides supporting the judgment passed by the trial court submitted that a false case was instituted by the appellant against the respondent and his family members under Sections 406, 498-A of the Indian Penal Code on 28.3.2001 by the appellant which had resulted in their acquittal by the trial court vide judgment dated 26.3.2010. On these premises, it was submitted that mental cruelty had been caused to the respondent and divorce had been rightly granted by the trial court.

7. After hearing learned counsel for the parties, we do not find any merit in the contentions of learned counsel for the appellant.

8. The primary question that arises for consideration in this appeal is whether the appellant had treated the respondent with cruelty as held by the trial court and further the acquittal of the husband and his family members of matrimonial offences under Sections 406, 498-A of the Indian Penal Code, it has caused mental cruelty to the husband so as to entitle him to a decree of divorce under Section 13(1)(ia) of the Act.

9. Section 13(1)(ia) of the Act empowers the Court to dissolve the matrimonial ties between the parties by a decree of divorce on a petition by either spouse where the said spouse has been treated with cruelty after the solemnization of the marriage. Cruelty has not been defined in the Act but various pronouncements of the Apex Court and other High Courts have outlined the scope of the term 'cruelty'. Cruelty is evident where one spouse treats the other and manifests such feelings towards him or her as to cause reasonable apprehension that it

will be harmful or injurious to live with the other spouse. Cruelty may be physical or mental. Whether a spouse is inflicted with physical cruelty or not, it can be judged on the basis of direct evidence whereas mental cruelty is to be inferred on analyzing the factual matrix of each case and drawing conclusion thereon.

10. The Apex Court in **Parveen Mehta v. Inderjit Mehta 2002 (3) RCR (Civil) 529** had very elaborately analyzed the expression 'cruelty' as a ground of divorce under the Act. The relevant portion thereof reads thus:-

“Under the statutory provision cruelty includes both physical and mental cruelty. The legal conception of cruelty and the kind of degree of cruelty necessary to amount to a matrimonial offence has not been defined under the Act. Probably, the Legislature has advisedly refrained from making any attempt at giving a comprehensive definition of the expression that may cover all cases, realising the danger in making such attempt. The accepted legal meaning in England as also in India of this expression, which is rather difficult to define, had been 'conduct of such character as to have caused danger to life, limb or health (bodily or mental), or as to give rise to a reasonable apprehension of such danger.

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21. Cruelty for the purpose of Section 13(1)(ia) is to be taken as a behavior by one spouse towards the

other which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty the mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.”

11. Further, setting out illustrative cases of mental cruelty, the Supreme Court in **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511** had

held as under:-

“No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating

treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the

wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

12. In addition to the aforesaid, certain other illustrations were

added by the Apex Court in **K. Srinivas Rao v. D.A. Deepa (2013) 5**

SCC 226 as under:-

“Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing 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.”

13. Elucidating 'mental cruelty' the Apex Court in **K. Srinivas Rao's case (supra)** concluded that if a false criminal complaint is filed against the spouse and his/her relatives regarding matrimonial offences, it would be a case of mental cruelty. Following the aforesaid pronouncement, the Division Bench of this Court in **Imlesh v. Amit, AIR 2014 Punjab and Haryana 89**, observed as under:-

“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 it 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 SCC 226: AIR 2013 SC 2176**, 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.”

14. Similar view was reiterated by the Supreme Court in **K. Srinivas v. K. Sunita Civil Appeal No. 1213 of 2006** decided on 19.11.2014 with the following observations:-

“4. In the case in hand, learned counsel for the Respondent-Wife has vehemently contended that it is not possible to label the wife’s criminal complaint detailed above as a false or a vindictive action. In other words, the acquittal of the Appellant and his family members in the criminal complaint does not by itself, automatically and justifiably, lead to the conclusion that the complaint was false; that only one complaint was preferred by the Respondent-Wife, whereas, in contradistinction, in **K.Srinivas Rao** a series of complaints by the wife had been preferred. The argument was premised on the averment that the investigation may have been faulty or the prosecution may have been so careless as to lead to the acquittal, but the acquittal would not always indicate that the Complainant had intentionally filed a false case. What

should be kept in perspective, it is reasonably argued, that the Complainant is not the controlling conductor in this Orchestra, but only one of the musicians who must deliver her rendition as and when and how she is called upon to do. Secondly, according to the learned counsel, the position would have been appreciably different if a specific finding regarding the falsity of the criminal complaint was returned, or if the Complainant or a witness on her behalf had committed perjury or had recorded a contradictory or incredible testimony. Learned counsel for the Respondent-Wife states that neither possibility has manifested itself here and, therefore, it would be unfair to the Respondent-Wife to conclude that she had exhibited such cruelty towards the Appellant and her in-laws that would justify the dissolution of her marriage.

5. The Respondent-Wife has admitted in her cross-examination that she did not mention all the incidents on which her Complaint is predicated, in her statement under Section 161 of the Cr.P.C. It is not her case that she had actually narrated all these facts to the Investigating Officer, but that he had neglected to mention them. This, it seems to us, is clearly indicative of the fact that the criminal complaint was a contrived afterthought. We affirm the view of the High Court that the criminal complaint was "ill advised".

Adding thereto is the factor that the High Court had been informed of the acquittal of the Appellant-Husband and members of his family. In these circumstances, the High Court ought to have concluded that the Respondent-Wife knowingly and intentionally filed a false complaint, calculated to embarrass and incarcerate the Appellant and seven members of his family and that such conduct unquestionably constitutes cruelty as postulated in Section 13(1)(ia) of the Hindu Marriage Act.

6. Another argument which has been articulated on behalf of the learned counsel for the Respondent is that the filing of the criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filing of the husband's divorce petition, and being subsequent events could have been looked into by the Court. In any event, both the parties were fully aware of this facet of cruelty which was allegedly suffered by the husband. When evidence was lead, as also when arguments were addressed, objection had not been raised on behalf of the Respondent-Wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf.

7. In these circumstances, we find that the Appeal is well founded and deserves to be allowed. We

unequivocally find that the Respondent-Wife had filed a false criminal complaint, and even one such complaint is sufficient to constitute matrimonial cruelty.”

15. Examining the factual matrix in the present case, it may be noticed that a criminal complaint was filed against the respondent and his family members regarding demand of dowry. The said complaint was investigated by PW1 ASI Pawan Kumar who vide enquiry report, Ex.PA concluded that the allegations regarding demand of dowry were false and the marriage between the parties was a simple marriage and no dowry was given and that two brothers of the respondent were married and their marriages were also performed in simple manner without any dowry and the women were living happily in their matrimonial home. The trial court on appreciation of evidence on record had concluded under issue No.1 that the appellant had treated the respondent with cruelty. It could not be demonstrated that there was any misreading or misappreciation of evidence on record to hold that the finding of cruelty arrived at by the trial court was erroneous. Further, it was not controverted by the learned counsel for the appellant that the respondent and his family members were acquitted vide judgment dated 26.3.2010 in the dowry case under Sections 498-A, 406 of the Indian Penal Code. In such circumstances, it would cause a reasonable apprehension in the mind of the husband that it was not safe for him to live with the wife. Besides, refusing to attend household chores and showing disrespect to the respondent and his family members amounted to cruelty towards the respondent. Thus, the irresistible conclusion would be that the appellant-wife had treated the husband-respondent with cruelty.

16. In view of the above, learned counsel for the appellant was unable to demonstrate that there was any error or perversity in the judgment of the trial court in granting decree of divorce on the ground of cruelty which may warrant interference by this Court. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

February 18, 2015
gbs

(SNEH PRASHAR)
JUDGE