

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 237-M of 2004

Date of Decision: 27.1.2015

Gurdeep Singh @ Mann Singh

....Appellant.

Versus

Pavneet Kaur

...Respondent.

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

PRESENT: Mr. G.S. Jaswal, Advocate for the appellant.

Ms. Narender Kaur, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. Having remained unsuccessful in a petition filed under Section 13 of the Hindu Marriage Act, 1955 (In short "the Act") for dissolution of marriage by a decree of divorce, the appellant-husband has challenged the judgment and decree dated 11.8.2004 passed by the Additional District Judge, Ludhiana before this Court by way of instant appeal.

2. A few facts necessary for adjudication of the present appeal as narrated therein may be noticed. The marriage between the parties was solemnized on 17.9.1991 at Amritsar by way of Anand Karaj, i.e. Sikh religious rites and ceremonies. After the marriage, the parties lived together as husband and wife but no child was born out of the said wedlock. The marriage between the parties was a simple marriage as

the appellant and his family members were against the social evil of dowry. After the solemnization of the marriage, the respondent was brought to her matrimonial home where she was welcomed with great enthusiasm and respect by the appellant, his parents and other guests and the marriage was consummated. After few days of the marriage, the appellant noticed some change in the behaviour and attitude of the respondent which with the passage of time became more and more indifferent, callous, teasing, insulting and cruel towards the appellant and his parents. She always treated the appellant with utmost cruelty and kept the atmosphere of the matrimonial home so disturbed and tanned and the appellant always suffered physical and mental trauma. She started pressurizing the appellant to live separate from his parents and also to help her parents to which he did not agree upon which she left the matrimonial house. After about one year, the appellant tried his best to bring her back but she was adamant on her demand of separation. The appellant brought her back at the matrimonial home after convening a panchayat. After some time, she again started pressurizing the appellant to live separate and to keep peace in the family, the appellant started residing separately on rent in the year 1993 but there too she used to quarrel with him and she left the matrimonial home. However, Shri Satpal Gosain, Deputy Speaker intervened and she was brought to her matrimonial home and again she left the house in 1997. She was again brought back to the matrimonial home. Thereafter she put pressure upon the appellant to ask his father to transfer the property in her name. She used to insult the appellant in the presence of his relations and friends. She many times refused to perform matrimonial duties and used to leave the house without informing anybody in the

house and while leaving the house she used to steal ornaments given to the appellant for polish and other purposes by the customers as he was doing the business of jewellery. On 1.11.2000, the respondent asked the appellant to pressurize his father to transfer the property in her name and on his refusal, she threatened to commit suicide and to involve all the family members in some false cases. The appellant telephonically informed the parents of the respondent to make her understand upon which his mother-in-law along with 2-3 persons came to the house of the appellant and in panchayat she went to her parents house and while going she took one gold set, two gold bangles, one gold top, other costly articles and ₹ 2500/- in cash. While leaving the matrimonial home, the respondent threatened that in case the property was not transferred in her name, she would not come to her matrimonial house and would involve the appellant and his family members in some false case by committing suicide. Thereafter, the appellant lodged a complaint with Police Post Kochar Market, Ludhiana vide DDR No. 16 dated 4.11.2000. The appellant, his parents and panchayat members tried their level best to persuade the respondent to join her matrimonial home and not to break the pious relation of husband and wife but they always maltreated, manhandled, abused and insulted them and refused to join her matrimonial house. The conduct of the respondent had resulted in mental tortures to the appellant and his family members. Since, the appellant had not condoned the act of cruelty committed by the respondent, he filed a petition under Section 13 of the Act for dissolution of marriage by a divorce of divorce. The said petition was resisted by the respondent by filing a written statement. Various preliminary objections were raised therein. It was pleaded that the main reason for

seeking divorce after such a long time was that the respondent could not give birth to a child and also the appellant was at fault because of defect he was incapable to produce a child. The respondent also produced a copy of the certificate issued by Dr. D.L. Kapoor Memorial Hospital, Ludhiana and non-fertility on the part of the appellant wherein no body was at fault muchless the respondent's fault whereas her diagnosis did not show any infirmity. The non-fulfilment of the demand by the appellant and his parents was not cruelty as he had insisted the respondent to bring ₹ 1 lac from her mother who sold her house in the month of December, 2000. The other averments made in the petition were denied and a prayer for dismissal of the same was made. The appellant filed rejoinder controverting the averments made in the written statement and reiterating that made in the petition. From the pleadings of the parties, the trial court framed the following issues:-

1. Whether the respondent treated the petitioner with cruelty? OPP
2. Relief.
3. The trial court on appreciation of the evidence led by the parties, decided issue No.1 against the appellant holding that he was not entitled to a decree of divorce on the grounds of desertion and cruelty. Accordingly, the trial court vide judgment and decree dated 11.8.2004 dismissed the divorce petition. Hence, the present appeal.
4. Learned counsel for the appellant submitted that the behaviour of the respondent towards the appellant and his family members was not good. It was urged that the respondent used to leave the matrimonial house without the consent of the appellant and used to quarrel on petty matters. It was also contended that the acts of cruelty

perpetuated by the respondent upon the appellant were grave in nature and continued association with her was unsafe for his mental and physical health. With these contentions, learned counsel prayed for dissolution of marriage by a decree of divorce.

5. On the other hand, learned counsel for the respondent supported the judgment and decree passed by the trial court. It was submitted that no ground of desertion was made out as the divorce petition was filed on 7.11.2000 and the respondent left the matrimonial home on 1.11.2000 meaning thereby the statutory period of two years which was mandatory in nature had not elapsed. It was further contended that false allegations were levelled against the respondent.

6. After hearing learned counsel for the parties, we do not find any merit in the appeal.

7. Cruelty has not been defined under 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.

8. 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 behaviour 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 behavior 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.”

9. 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.”

10. In the present case, the ground of desertion was not available to the appellant as for taking the said ground, two years mandatory period is required to have elapsed and during the said period the parties must reside separately. Admittedly, the divorce petition was filed on 7.11.2000 and the respondent left the matrimonial home on 1.11.2000 as alleged by the appellant in para 7 of the petition, i.e. within a period of six days. The statutory period prescribed under Section 13 (1)(ib) of the Act is of two years. Equally, the allegations of cruelty does not stand established. The case of the appellant does not fall in any of the categories of mental cruelty as enunciated by the Apex Court in the pronouncements noticed hereinbefore. Nothing material had been produced to substantiate the allegations made in paras 5 and 6 of the petition wherein it has been stated that the behaviour of the respondent towards him and his parents was callous, teasing and insulting. The

testimonies of the witnesses produced by the appellant were not in consonance with the pleadings and would not establish cruelty. Further, no instance has been narrated to demonstrate that the respondent was a short tempered lady and was constantly misbehaving with the appellant and his family members. The instances of the appellant were merely the result of wear and tear of the married life and could not be treated as cruelty of such a degree that the parties could not live together or their marriage needs to be dissolved. There are no concrete instances and evidence to show the conduct of the respondent-wife to be cruel. In such circumstances, the appellant had failed to prove that he was treated with cruelty by the respondent. The relevant findings recorded by the trial court read thus:-

“13. After hearing Id. counsel for the parties at length and after scrutinizing of oral and documentary evidence on record as well as pleadings of parties, to my mind the petitioner has miserably failed to discharge the onus of issue No.1, which heavily lies upon him because it is a settled principle of law that it is the petitioner who has to stand upon his own legs and not the weak defence of respondent. As earlier discussed, it is a matter of record that the ground of desertion taken by the petitioner in his pleadings has not been waived off and as such for the purpose of discussion, to my mind, this ground to seek divorce is not available to the present petitioner as the present petition as per record appears to have been filed on 7.11.2000 and as per pleadings of the petitioner

himself in para No.7, it is alleged that the respondent left the matrimonial home on 1.11.2000 meaning thereby the present petition has been filed within the period of six days, which is against the statutory and mandatory requirement of provisions of law, according to which for taking desertion as a ground for divorce, two years mandatory period is required to have elapsed and the parties must reside separately for the mandatory period of two years. In the present case, it is not so and as such I find merit and substance in the arguments of Id. counsel for respondent on this score and I am of the considered view that the petitioner is not entitled for the grant of divorce on the ground of desertion as pleaded in the petition.

14. So far as second ground for grant of divorce on the basis of allegations of cruelty on the part of respondent, is concerned, to my mind the petitioner has miserably failed to make out a good ground on the strength of allegations of cruelty on the part of respondent which may warrant the grant of divorce to the present petitioner against the respondent. In paras 5 and 6 of the petition, it has been categorically alleged that the behaviour of the respondent had been callous, teasing and insulting not only towards the petitioner, but qua his parents, but all these allegations have not been substantiated by way of leading cogent evidence on record, rather the

allegations are vague allegations of cruelty. As discussed above, no doubt there is evidence on record as per the statements of AWs, who in their statements have stated that as per choice and desire of respondent, she wanted clean shaven husband and the petitioner is a turban man, therefore, she did not like him but this fact which has come in the statements of AWs, does not stand reflected in the pleadings, meaning thereby the evidence led on behalf of the petitioner on this score is beyond pleadings and the same cannot be taken into consideration as act of cruelty. There is extraordinary, unnecessary and explained delay in filing the present petition on the part of petitioner. In para No.12 of the petition, it is categorical stand of the petitioner that behaviour of respondent towards him and his parents had been callous, insulting and teasing etc. If it was so, then no explanation has come forward on behalf of the petitioner as to why the petitioner waited for 10 years for filing the petition for divorce. The only inference which can be drawn, is that the alleged acts of respondent, which have not otherwise been proved, stood condoned qua the respondent.”

11. Learned counsel for the appellant was unable to demonstrate that there was any error or perversity in the findings recorded by the trial court being based on misappreciation or misreading of evidence which may warrant interference by this Court. Accordingly,

finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

January 27, 2015
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(SNEH PRASHAR)
JUDGE