

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 166-M of 2005

Date of Decision: 28.1.2015

Baljinder Singh

....Appellant.

Versus

Surinder Kaur

...Respondent.

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

PRESENT: Mr. HNS Gill, Advocate for the appellant.

Mr. Amarjit Markan, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. By way of instant appeal, the appellant-husband has challenged the judgment and decree dated 4.5.2005 passed by the Additional District Judge (Adhoc), Patiala, whereby the petition filed by him under Section 13 of the Hindu Marriage Act, 1955 (in short "the Act") for dissolution of marriage by a decree of divorce was dismissed.

2. The facts, in brief, necessary for adjudication of the present appeal as narrated therein may be noticed. The marriage of the parties was solemnized on 16.4.1994. The parties lived together as husband and wife and cohabited as such. Out of the said wedlock, two children, namely, Jaspreet Singh (son) was born on 19.6.1995 and Harpreet Kaur (daughter) was born on 4.7.1996. The respondent did not have any brother and they are three sisters. The respondent was at number two.

The parents of the respondent wanted to keep the appellant as *Ghar Jawai* and this fact was disclosed to him by the respondent before the marriage. After 5/6 months of the marriage, the respondent changed her behaviour to be hostile towards the appellant and quarrelsome in the house towards everybody. The appellant lived with the respondent for about 1½ years in a separate house due to the pressure exerted by her to live separately. Thereafter, the respondent started pressurizing the appellant to shift to her parental house at Rajpura. Accordingly, the appellant shifted to the parental house of the respondent. He stayed there till 6.12.1999. During this time, she was working as a teacher but she never disclosed her salary to the appellant whereas the whole salary of the appellant was being taken by the respondent. After a long time when the appellant enquired he found that whatever the respondent had disclosed about her salary, it was less by ₹ 1500/- per month. The differences between the parties increased and became worse. On 17.11.1999, the appellant asked the respondent to live with him in a separate house in Sham Nagar, Rajpura. However, she never joined the appellant in the house at Sham Nagar, Rajpura where he lived from 11/1999 to 1/2000. The appellant was not even allowed to go to his parents to meet them. He was threatened that in case he would go to meet his parents or other family members, then he would be involved in a false criminal case of dowry and a case of maintenance on behalf of the children. In January, 2000, the appellant shifted to his parental house. The respondent, on behalf of the children, filed a petition under Section 125 of the Code of Criminal Procedure against the appellant. The behaviour of the respondent was so cruel towards the appellant that even he was not allowed to join the marriage of his real brother Lakhbir

Singh which was solemnized at village Roorki. During the stay of the appellant with the respondent in her parental house, she started to press him for effecting a partition in the house of his parents and to get his share and only thereafter she would live as a normal spouse. In pursuance thereto, the appellant got effected partition by executing a document which was signed by him, his brother Lakhbir Singh, Lambardar Pal Singh, Sarpanch Gurnam Singh and some other relatives. The appellant also sent a complaint to Police Women Cell, Patiala against the respondent for her cruel acts which was enquired into on several dates. The panchayats from both the parties were convened and the respondent stated that she would accept the decision of the court and not that of any person and expressed her decision not to join the appellant. Thereafter, the appellant filed a petition under Section 9 of the Act for restitution of Conjugal Rights which was later on withdrawn as the respondent was adamant to take divorce from the appellant. The petition filed under Section 125 of the Code of Criminal Procedure was allowed by the Judicial Magistrate 1st Class against which the appellant filed revision. The said revision came up before the Lok Adalat wherein it was decided that the appellant would be allowed to meet the children every month with the assistance of his lawyer. All the above said acts amounted to cruelty towards the appellant. Accordingly, the appellant filed a petition under Section 13 of the Act for divorce.

3. The respondent resisted the divorce petition by filing a written statement. Various preliminary objections were raised therein. It was pleaded that the respondent and her parents were not interested to keep the appellant as *Ghar Jawai* rather the appellant himself was interested to live there which was not liked by them. She is living with

her children and had never raised any quarrel. The appellant had been taking all the salary from the respondent every month forcibly and used to deposit the entire amount in the saving bank account and also purchased seven Kisan Vikas Patra. He invested his salary amount in LIC by giving his own address of village Bhankharpur. He opened the account with Punjab National Bank on 15.7.1998 and also opened the account in Punjab and Sind Bank. The entire amount of the salary of the respondent had been deposited by the appellant in his accounts at Rajpura and at village Bhankharpur. The appellant compelled the respondent that her parents should transfer the house in his name but they did not agree and he himself left and deserted her on this account. In a petition filed under Section 125 of the Code of Criminal Procedure, the appellant agreed to pay ₹ 800/- per month but later on refused to pay the said amount. The other averments made in the petition were denied and a prayer for dismissal of the same was made.

4. From the pleadings of the parties, the trial court framed the following issues:-

1. Whether the petitioner has been treated with cruelty by the respondent? OPP
2. Whether the petitioner is entitled to the dissolution of the marriage? OPP
3. Relief.

5. In support of his case, the appellant examined himself as PW1, Constable Gurtej Singh as PW2, Gurnam Singh as PW3, Dharam Singh as PW4 and Gurdial Singh as PW5. On the other hand, the respondent examined Darshan Singh as RW1, herself as RW2, Jarnail Singh as RW3 and Shahsmar Singh as RW4.

6. The trial court took issues No.1 and 2 together being interconnected and on appreciation of evidence led by the parties, decided the same against the appellant holding that the appellant was unable to stand on its own legs to prove cruelty against the respondent. Accordingly, the trial court vide judgment and decree dated 4.5.2005 dismissed the divorce petition. Hence, the present appeal by the husband.

7. Learned counsel for the appellant submitted that the respondent did not want to live with the appellant and had refused to join him. It was further submitted that the respondent along with the appellant shifted to her parental house. It was urged that the appellant had proved on record by leading cogent evidence that he was treated with cruelty but the trial court had erroneously dismissed the divorce petition. Support was drawn from the judgment of this Court in **Krishan v. Tripta 2014(13) RCR (Civil) 1623**.

8. On the other hand, learned counsel for the respondent besides supporting the judgment and decree passed by the trial court submitted that there was no allegation against the respondent in the complaint Ex.PW2/A submitted by the appellant to Police Women Cell, Civil Lines, Patiala. It was contended that false allegations were levelled by the appellant against the respondent.

9. After hearing learned counsel for the parties and perusing the record, we do not find any merit in the contentions of learned counsel for the appellant.

10. 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.

11. 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 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.”

12. 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.”

13. Examining the factual matrix involved herein, it may be noticed that the appellant has not been able to establish that he was treated with cruelty by the respondent-wife. The marriage between the parties was solemnized on 16.4.1994 and in the petition, the appellant claimed that he stayed in his in-laws house upto 6.12.1999. The appellant in his testimony as PW1 admitted that he shifted to the house of his in-laws in 1996. Thus, there was contradiction in the statement of the appellant and in the pleadings. His testimony was again falsified when he admitted that he lived as tenant in the house of Krishan Kumar Ahuja at village Damoli Road, Rajpura in the year 1997 and had given the address of Bhankharpur in the account opening form of Punjab and Sind Bank. This evidence shows clearly that the appellant had given self-contradictory version and was not a reliable witness. The appellant also filed a petition under Section 9 of the Act which was later on withdrawn. Further, PW4 Dharam Singh was an interested and procured witness. From his testimony, it was clear that the divorce petition was a counter blast to the petition filed under Section 125 of the Code of Criminal Procedure as divorce petition was filed thereafter. As per the testimony of Shamsher Singh (RW4), the appellant was found procuring wrong documentary evidence and was also facing a criminal case under the Excise Act. The respondent while appearing as RW2 in her affidavit Ex.R2 stated that the appellant used to harass her and became cruel towards her and the children. Both the children were

studying at Holly Angle Public School, Rajpura and the appellant never contributed towards the study of the children and rather he took away all the articles brought by the respondent from her parental house or relatives. Thus, the irresistible conclusion on appreciation of the evidence is that the appellant-husband failed to prove the ground of cruelty against the respondent-wife.

14. Examining the applicability of the judgment in **Krishan's case (supra)** relied upon by the learned counsel for the appellant is concerned, it may be noticed that in matrimonial disputes, it depends upon the facts and circumstances of each case whether the cumulative effect would lead to a conclusion that there has been cruelty or not. It was in the light of the findings recorded in that case that this Court came to the conclusion that the husband was entitled to a decree of divorce. Factual matrix being different herein, no advantage could be derived by the appellant from the said judgment.

15. In view of the above, no illegality or perversity could be found in the findings recorded by the trial court being based on misappreciation or misreading of evidence on record which may warrant interference by this Court. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

January 28, 2015
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(SNEH PRASHAR)
JUDGE