

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-262 of 2007

Date of Decision: 21.1.2015

Sushil Sharma

....Appellant.

Versus

Seema Sharma

...Respondent.

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

PRESENT: Mr. Arun Walia, Senior Advocate with
Mr. Seredaman Rathore, Advocate for the appellant.

Ms. Alka Sarin, 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 24.8.2007 passed by the Additional District Judge, Chandigarh before this Court by way of instant appeal.

2. Put shortly, the facts necessary for adjudication of the present appeal as narrated therein may be noticed. The marriage between the parties was solemnized on 11.12.1991 at Chandigarh as per Hindu rites and ceremonies. Out of the said wedlock, a daughter was born on 23.12.1998. At the time of marriage, the appellant was

serving as Captain in Indian Army and was posted at Jalandhar and the respondent was studying in Panjab University, Chandigarh. On account of her study, she lived at her matrimonial home at village Fatehpur, District Kaithal initially for six months and continued studies at the expenses of the appellant. In May, 1992, she came back to Jalandhar for final exams. From the very beginning, the behaviour of the respondent was unpredictable as she used to do things in her own fashion. In July, 1992 while she was carrying pregnancy of six months, she insisted to drive the motor cycle inspite of the fact that she had never driven motorcycle earlier. As a result, she had met with an accident and her pregnancy was also terminated. Her life was saved with great difficulty. The respondent in April 1993 got her pregnancy terminated without informing the appellant or any of his family members when she took treatment from PGI, Chandigarh for some ailment. The appellant was transferred from Bikaner to Noida in August, 1993. His mother came there for stay but the respondent fought with her very badly and left the matrimonial home for the house of her married sister at Faridabad without informing the appellant. In order to save the family's pride, he used to bow down to the irrational wishes and demands of the respondent but to no use. She again left the matrimonial home in 1994. The appellant was selected in PCS in September 1994 and he joined as such in 1995. He underwent training at Nainital and thereafter he was posted at Mathura and stayed there for almost 7 to 8 months. The respondent visited him there. He got the respondent treated from a renowned Gynecologist at Agra but she failed to appreciate the efforts and did not improve. At one occasion, she went to his office and started abusing him publicly in front of his superior officers due to which the

appellant suffered humiliation and embarrassment. Thereafter, she left the matrimonial home and came with her mother at Chandigarh. When the appellant was posted as Deputy Collector, Pauri Gharwal, the respondent called the local police to their official residence saying that somebody had entered their residence and had tried to cause bodily injury to her. The SSP and the District Magistrate came to the house of the appellant. However, on enquiry, the complaint of the respondent was found to be false. Thereafter, the family members of the respondent took her to Chandigarh. In spite of the request of the appellant, the respondent did not agree to return to the matrimonial home. A panchayat was convened at the parental home of the respondent in which she admitted her fault and gave an affidavit that the appellant and his parents never made any demand of dowry nor they gave any beatings to her and she came back to her matrimonial home at village Fatehpur, District Kaithal. Again the behaviour of the respondent did not improve and she kept on picking up quarrel with the appellant and his family members. In November, 1998, the appellant was transferred to Gaziabad. On 23.12.1998, the respondent gave birth to a female child. When the parents of the appellant came to see the newly born child at Gaziabad, she publicly humiliated and abused them in front of his neighbours and domestic servants. The respondent also deserted the appellant and left his company without any sufficient cause in September, 2000 by taking valuable articles, jewellery etc. with her and since then she had been living separately from the appellant. However, in December, 2000, in the absence of the appellant, she forcibly entered the residential house/Govt. accommodation allotted to him and started living in his room separately without the consent of the appellant. She

did not allow the appellant to see his child. According to the appellant, in April, 2001, she came to him and picked up a fight. She started shouting and the neighbours also reached there and intervened. When the neighbourers left the house and the appellant had gone to the bed, she along with the daughter after locking the door of the appellant from outside left the house from back door. In the morning of the next day, the servants opened the door of the appellant and at that time he came to know that the respondent had left for Chandigarh. Thereafter, she made a written complaint to the Commissioner, District Magistrate Gaziabad and District Magistrate Noida making false and baseless allegations against the appellant. The said complaint was duly replied by the appellant on 17.9.2002. The appellant personally met the mother and brother of the respondent but they humiliated him and told him to leave their house. 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. Besides raising various preliminary objections, it was pleaded that the appellant joined Army services on short service commission and after retirement from the Army he joined PCS. After leaving the Army, the behaviour of the appellant became cruel. His parents were greedy persons. The appellant asked her to get him provided Government accommodation at Chandigarh at the cost of her father and on her failure to do so, she was beaten mercilessly. Many times, the appellant had tried to throw her out of the matrimonial house and the respondent kept on tolerating all these with the future hope. The parents of the appellant abused her and asked her to leave the house. She was

insulted in the presence of domestic servants. Even the appellant dragged the respondent from her hair on the road at Gaziabad. He started keeping her under lock and key. In October, 1997, she was thrown out of her matrimonial home and she went to her parents. However, with the intervention of her relatives she came to her matrimonial house as the matter was compromised. At that time, she agreed to all the conditions of the appellant. Even the appellant obtained an affidavit from her to the effect that he and his parents neither demanded any dowry nor harassed her on that account. Her signatures were also obtained on blank papers. To save her matrimonial house, she signed the blank stamp papers. When she stayed at Fatehpur, the behaviour of the parents of the appellant remained very rude and she was asked to bring money from her mother, brother and maternal uncle. In July, 1993, when she was in a family way, the appellant compelled her to learn to drive motorcycle and scooter saying that the wives of other officers in the Army drive motorcycle and scooter. At the time of accident, the respondent was sitting on the front of the motorcycle whereas the appellant was on the pillion. The handle was controlled by the appellant and the motorcycle dashed against the wall. In this way, her first abortion had taken place. Even the petitioner expressed the desire not to have any child from her. She had always been treated with cruelty by the appellant but his behaviour did not improve. When she was ill, she was sent to Fatehpur where she was treated with cruelty and rude behaviour by the parents of the appellant. She was not even provided medical aid and was forced to go to her parent house at Chandigarh. Due to her illness, she was admitted to PGI, Chandigarh where she suffered abortion. At that time, the appellant refused to take

her but she herself went to the matrimonial house at Fatehpur as she wanted to remain with her husband. In November, 1993, when the appellant was in a private service, her mother-in-law came there and she was being beaten up in the presence of her mother and was asked to leave the house but she did not leave the house. At Mathura, the respondent was being beaten up by her mother-in-law and father-in-law and they also pressurized her to take divorce from the appellant. Even in the presence of senior officers, she was being slapped by her mother-in-law. When the behaviour of the appellant became intolerable, she complained to the superior officers but to no effect. She had been continuously living in the Government accommodation with the appellant and as such the question of her forcible entrance did not arise. According to the respondent, the appellant wanted to take divorce from her as he intended to marry for the second time. The other averments were denied and a prayer for dismissal of the divorce petition 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 petitioner is entitled to a decree of divorce on the ground of cruelty? OPP
2. Whether the respondent has deserted the petitioner continuously for a period of two years without any reasonable cause immediately presentation of the petition? OPP
3. Whether the divorce petition is not maintainable as alleged in preliminary objection No.1? OPR
4. Whether the civil courts at Kaithal has no

jurisdiction to try this petition? OPR

5. Relief.

3. In support of his case, the appellant himself appeared as PW1 and examined Ikram as PW2, Rajesh Kumar neighbourer as PW3, his cousin Suresh Kumar as PW4 and S.K. Sharma as PW5 who attested the affidavit of the respondent as Ex.P1 being Notary Public. Besides this, he also tendered into evidence the certified copy of voter list as Ex.P2, attested copy of ration card as Mark A, copy of complaint as Mark B, copies of cheques as Marks C and D. On the other hand, to controvert the claim of the appellant, the respondent herself appeared as RW1 and also examined her brother Brij Bhushan Sharma as RW2 and Sunita Sharma as RW3. During the cross-examination of the respondent, the appellant put certain documents, i.e. affidavit Ex.P1, copies of the complaints given by the respondent Ex.P4 to Ex.P6, Ex.P7, copy of the statement of the respondent recorded in the proceedings taken up on her complaint and Ex.P8, the letter asking the appellant to attend the office of SP (Traffic) on 5.10.2002 at 11.00 AM.

4. The trial court on appreciation of the evidence led by the parties, decided issue No.1 against the appellant holding that the respondent had not treated the appellant with cruelty. Issue No.2 was decided against the appellant by observing that there was not even an iota of evidence on the file to show that the respondent ever deserted the appellant or she ever desired to bring to an end her relationship with the appellant. Issue No.3 was decided against the respondent being not pressed. Issue No.4 was decided against the respondent holding that on account of jurisdiction, the divorce petition did not suffer from any infirmity. Accordingly, the trial court vide judgment and decree dated

24.8.2007 dismissed the divorce petition. Hence, the present appeal.

5. Learned counsel for the appellant submitted that the respondent had twice got her pregnancy terminated. The first incident took place in the year 1992 when he was posted at Jalandhar. When the respondent was having six months pregnancy, she insisted on riding a motorcycle and while doing so, she met with an accident which has resulted in termination of her pregnancy. It was further submitted that the second incident was in the year 1993 when she took treatment from PGI, Chandigarh for some ailment and got her pregnancy terminated without informing the appellant or his family members. It was argued that the appellant and his family members had been treated cruelly by the respondent. Placing reliance upon the testimony of PW2 Ikram, who was posted as driver with the appellant to show that on one occasion, the respondent had allegedly locked him in a room and had left the house. Support was also gathered from the testimony of other witnesses produced by him. It was urged that on numerous occasions, the respondent had treated him and his family members with cruelty. According to the learned counsel, the respondent had deserted the appellant without there being any reasonable and sufficient cause. In support of his contentions, learned counsel for the appellant has placed reliance on the judgments in **Samar Ghosh v. Jaya Ghosh, 2007(2) RCR (Civil) 595, Suman Kapur v. Sudhir Kapur, AIR 2009 SC 589, Manisha Tyagi v. Capt. Deepak Kumar 2007(1) RCR (Civil) 547 and Suman Singh v. Sanjay Singh 2013 (5) RCR (Civil) 844.**

6. On the other hand, learned counsel for the respondent submitted that the trial court has passed a well reasoned judgment after taking into consideration the facts of the case as also the settled position

of law. It was further submitted that the appellant had taken a false plea regarding the termination of pregnancy as the incidents narrated by him were not on account of volition of the respondent. According to the learned counsel, the first incident was a result of an accident which happened on account of insistence of the appellant that the respondent should learn to drive a motorcycle. The second incident as pleaded was also not a result of the respondent's volition as she was unwell and was being treated by the doctors at PGI, Chandigarh. It was contended that the appellant had miserably failed to substantiate his case and, thus, the appeal deserves to be dismissed.

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

8. 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.

9. 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.”

10. 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.”

11. Examining the factual matrix, it may be noticed that to support the allegations of cruelty, the appellant alleged that the respondent had on two occasions got her pregnancy terminated. The first incident was in the year 1992 and as per the admitted facts, it was a result of accident. The appellant had stated that the respondent had insisted on driving a motorcycle and on the other hand, the respondent had pleaded that it was the appellant who forced her to learn to drive a motorcycle. It is note worthy that at that time respondent was carrying six month's old fetus in her womb. It is incomprehensible that a woman would cause an accident to get her fetus aborted at an advance stage of pregnancy. Such an accident would put life of the pregnant lady at risk. The pleadings of the appellant to this effect, thus, appeared to be false and concocted. In so far as second incident is concerned, as per the admitted position, the abortion/medical termination of pregnancy took place at PGI, Chandigarh which is a premier institute in the field of

medicine. The respondent has categorically pleaded and had also led evidence to the effect that she was not being given proper medical treatment at her in-laws' place and, therefore, she had to come to Chandigarh, the place where her parents were residing. She was being provided with best medical facilities available at Chandigarh and the doctors of Government hospital would not indulge in such kind of malpractices. Thus, the second incident as alleged by the appellant is also false. Even the respondent was not responsible for abortions as alleged by the appellant.

12. Further, to prove cruelty, the appellant stepped into the witness box as PW1. As had been noticed by the trial court, he did not depose relating to number of things which were pleaded by him in his petition. The appellant failed to prove that the respondent insulted him in his office at Mathura. Reference in this regard may be made to para 18 of the judgment of the trial court wherein it has been specifically noticed that in para 11 of the petition the husband had pleaded that on one occasion while the appellant was in his office at Mathura, the respondent came there and abused him publicly in front of his superiors. However, while appearing as PW1, the appellant did not utter a single word in that regard. The pleadings of the appellant that the respondent insulted his parents at Mathura and that she used to argue and abuse him in front of his servant was also not proved by him while appearing as his own witness. Still further, the allegation of the appellant that on one occasion, the respondent locked him in his room in September, 2000 at Ghaziabad and left the house is not substantiated from the testimony of PW2 Ikram son of Shaukat Ali as during cross-examination he admitted that Sushil Kumar was the driver on the Government vehicle at Hapur

who was attached with the appellant-husband whereas at Ghaziabad, Vijay Kumar was working as driver with the appellant. In such circumstances, he had not explained under what circumstances, he had visited the house of the appellant. He was not able to explain his presence at the residence of the appellant at that time as there was no occasion for the said witness to have visited the house in the morning. Moreover, as per his own admission in the cross-examination, a servant was residing in the same house and used to serve bed tea in the morning. The said servant would have been the best witness of any such alleged incident. To prove the allegations of cruelty, the appellant has not examined any of the officers in front of whom the respondent insulted him or his parents. Rather, it has come in evidence of PW3 Rajesh Kumar Lambardar that the respondent resided with the parents of the appellant for eight years at village Fatehpur. This fact goes to show that there was no fault on the part of the respondent and in fact it was the appellant who as per the respondent did not find her suitable as per his status and stature in the society. The appellant had not proved any specific instances of cruelty. The allegations levelled by him are vague which cannot be made the basis for a decree of dissolution of marriage. His evidence also suffered from a number of contradictions and it cannot be relied upon for dissolving the marriage as he has not been able to establish that there was any cruel treatment meted out to him by the respondent within the parameters of Section 13(1)(ia) of the Act.

13. The principles of law enunciated in the judgments reported in **Samar Ghosh, Suman Kapur, Manisha Tyagi and Suman Singh's cases (supra)** relied upon by the learned counsel for the appellant are

well recognized. The factum of cruelty and desertion depends upon cumulative effect of all the facts taken together and in view of the findings noticed hereinabove, these pronouncements do not advance the case of the appellant.

14. 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 21, 2015
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(SNEH PRASHAR)
JUDGE