

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 262-M of 2006 (O&M)

Date of Decision: 26.2.2015

Dr. Anita Rani

....Appellant.

Versus

Dr. Suresh Kumar

...Respondent.

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

PRESENT: Mr. Ashwani Talwar, Advocate for the appellant.

Mr. A.K. Chopra, Senior Advocate with
Mr. Gursher Singh, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. Feeling aggrieved by the judgment and decree dated 2.11.2006 passed by the Additional District Judge, 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. Put shortly, the facts relevant for adjudication of the present appeal as narrated therein may be noticed. The parties are Dental Surgeons and got married on 4.2.1999 at Bahadurgarh according to Hindu rites. After the marriage, the appellant used to provoke the respondent all the times and pressurized him to live separately from the matrimonial home. She left the house on 1.9.1999 and then on 30.10.1999 to her parental house. She was brought back. They were

employed at PHC Bhainswal Kalan and Banwasa, situated on two sides of Gohana town. They used to go upto Gohana jointly and part company to go to their respective PHCs. However, the appellant had no talk with the respondent while going upto Gohana. The respondent had met with an accident in February, 2000 and was to take rest for 4-5 days as he was unable to walk but the appellant had left to her parental house. Further, in March and April, 2000, the mother of the respondent had to undergo an eye operation and was admitted in Jiwan Eye Nursing Home, Rohtak but the appellant did not attend him. Thereafter, the appellant left the matrimonial home on 15.6.2000 without the consent of the respondent and returned back on 30.7.2000. To maintain peace in the family, the respondent separated kitchen. Thereafter, the appellant asked the respondent to break all relations with his parents and other family members. On 1.9.2000, the appellant left the matrimonial home in the absence of the respondent. The respondent along with his father went to the parental house of the appellant and on his repeated requests, she returned back. The appellant filed a petition under Section 9 of the Act for restitution of conjugal rights. A compromise was arrived at between the parties on 2.12.2000 and the said petition was dismissed. She agreed to live peacefully with the respondent but outside the court told that she would come in the matrimonial house after 10-12 days. However, she did not turn up despite repeated requests and ultimately she told that she had no interest to live with the respondent. Thereafter, the respondent convened panchayats on 24.12.2000 and 28.1.2001 and went to her parental house and after persuading took her back to the matrimonial home. She also agreed in writing that the respondent and his family members never offended her and she gave affidavit. On

13.4.2001, when the respondent went to purchase the newspaper from the market and to get his hair cutting from the barber and when he returned back, he found the room locked and she did not turn up and went to her parents house and said that she would go directly from Bahadurgarh to PHC Banwasa and the lock had to be broken. She picked up quarrel with the respondent whenever he expressed his sexual desires. On 3.7.2001 and 10.8.2001, the respondent waited for her on the bus stand of Gohana but she did not turn up. When the appellant did not bring the salary continuously for two months, he inquired about the same in November, 2001. She told that she had been giving major part of her salary to her parents who had brought her up. She also started levelling false allegations against the respondent terming him as womanizer and that he had physical relations with the lady staff of the hospital. She was having a grudge from the very beginning qua the meeting of the respondent with his family members. After the marriage on 4.7.2002, on the asking of his father, the respondent asked the appellant to help his father with cash of ₹ 20,000/- to make the balance payment of various shopkeepers who supplied articles in the marriage, she got furious and started hurling abuses to him and his family members. She also said that his father had been committing theft of railway goods throughout his service career and what was the necessity to take ₹ 20,000/- from them. The respondent tried to convince the appellant but she continued levelling such type of false allegations and she snatched her Mangal Sutra and broke the same and asked the respondent to sell it in the market and get ₹ 20,000/-. Then she left the matrimonial house along with her ornaments. Accordingly, the respondent filed a petition under Section 13 of the Act for dissolution

of marriage by a decree of divorce. The said petition was resisted by the appellant by filing a written statement. Besides raising various preliminary objections, it was pleaded that she was harassed for want of dowry and a case was registered against the respondent and his family members under Sections 498-A/406 of the Indian Penal Code on 4.9.2003. On 13.9.2003, a compromise was arrived at between the parties and they lived separately at Rohtak. The other averments made in the petition were denied and a prayer for dismissal of the same was made. Replication was filed controverting the averments made in the written statement. From the pleadings of the parties, the trial court framed the following issues:-

1. Whether the marriage of the parties to the petition is liable to be dissolved on the grounds of cruelties pleaded in the petition and replication? OPP
2. Relief.
3. In support of his case, the respondent besides examining himself as PW1, examined his father Hukam Chand as PW2, Satender Kumar as PW3, his sister Santosh as PW4 and Vinod Kumar PW5. On the other hand, the appellant examined Vinod Sharma as RW1, Satender Kumar as RW2, Vinod Kumar as RW3, Vijay Kumar as RW4, her father Laxman Singh as RW5, Hari Ram as RW7 and herself appeared as RW6. Various documents were also tendered in evidence by both the parties.
4. The trial court on appreciation of evidence led by the parties, decided issue No.1 in favour of the respondent holding that the acts of the appellant in insisting upon the department to initiate action

against the respondent and also to prosecute him for demand of dowry show that the marriage had irretrievably been broken and such acts of the appellant amount to cruelty and were sufficient to dissolve marriage between the parties. Accordingly, the trial court vide judgment and decree dated 2.11.2006 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 from the evidence on record, no ground of cruelty was made out. It was further submitted that the respondent made a false story to get a decree of divorce whereas the respondent and his family members treated the appellant with cruelty. She was turned out of the matrimonial home many a times. According to the learned counsel, the allegations levelled by the respondent were general in nature and the respondent could not be allowed to take benefit of his own wrong.

6. On the other hand, learned counsel for the respondent besides supporting the judgment passed by the trial court submitted that the appellant got him suspended and was also pressing hard to the department to initiate criminal proceedings against the respondent. It was contended that in the criminal case bearing FIR No. 220 dated 4.9.2003, registered under Sections 498-A, 406 of the Indian Penal Code, Police Station City Bahadurgarh got registered by the appellant, the respondent and his parents were acquitted by the trial court vide judgment dated 23.2.2013. The said judgment has been taken on record as Annexure A-1 by way of additional evidence by this Court vide order of even date passed in CM No. 4164-CII of 2015.

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 acquittal of the husband and his family members of matrimonial offences under Sections 406, 498-A of the Indian Penal Code would be sufficient to hold that 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, discomode 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 the the parties were employed as Dental Surgeon in two separate Primary Health Centres and they were not having good relations. The respondent had signed on the register and had withdrawn her salary but she kept mum and thereafter started issuing letters to the department for taking action against him. The appellant also got registered a criminal case against the respondent and his family members. During investigation, some of the family members were found innocent and their names were kept in column No.2 of the report filed

under Section 173 of the Code of Criminal Procedure but the appellant had moved an application under Section 319 of the Code of Criminal Procedure in which they were summoned. In the said case, the respondent was arrested and he had not informed his department for his absence and obtained casual leave for that period, the appellant got her suspended from the department by sending a letter. PW5 Vinod Kumar who is neighbourer of the respondent had stated that he along with the respondent brought the appellant from her parents house and she had levelled allegations against him that he used to take liquor with Dr.Suresh and once he tried to outrage her modesty who forcibly turned him out of the house. PW4 Santosh, sister of the respondent also stated that the appellant had ignored the family and also humiliated the family. The allegation of demand of dowry was not justified as the appellant was getting salary of ₹ 15,000/- per month and there was no question to harass her on account of demand of dowry. The respondent had withdrawn the salary of the appellant for the month of September, 2003 for which she kept mum and thereafter she had given an affidavit to the effect that she had no complaint or grudge against her husband or his family members nor they harassed her. Additionally, a criminal case was lodged against the husband and his family members vide FIR No. 220 dated 4.9.2003 under Sections 498-A, 406 of the Indian Penal Code wherein the respondent was arrested but the final outcome resulted in their acquittal by the trial court vide judgment dated 23.2.2013, Annexure A-1, taken on record as additional evidence vide order of even date passed in CM No. 4164-CII of 2015. 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. Learned counsel for the appellant was unable to demonstrate that there was any error or perversity in the findings recorded by the trial court which may warrant interference by this Court. Accordingly, finding no merit in the appeal, the same is hereby dismissed. No costs.

(AJAY KUMAR MITTAL)
JUDGE

February 26, 2015
gbs

(SNEH PRASHAR)
JUDGE