

**IN THE HIGH COURT OF PUNJAB & HARYANA AT  
CHANDIGARH.**

**FAO-M-285-M of 2006**

**DATE OF DECISION: February 25, 2015.**

**Kamlesh Devi**

**....Appellant**

**VERSUS**

**Rajesh Dua**

**....Respondent**

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

**Present:** Mr. Parminder Singh, Advocate  
for the appellant.

Mr. Gurinder Pal Singh, Advocate  
for the respondent.

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**SNEH PRASHAR, J.**

1. Feeling aggrieved by the judgment and decree dated 06.11.2006 passed by Additional District Judge, Narnaul, whereby the petition filed by the respondent husband under Section 13 (1) (i-a) of the Hindu Marriage Act, 1955 (for short 'the Act of 1955') for dissolution of marriage by a decree of divorce was allowed, the appellant-wife had approached this Court by way of instant appeal.

2. A matrix of the facts necessary for adjudication of the present appeal are as under:

The marriage between the parties was solemnized on 11.12.1994 at Rewari as per Hindu rites and ceremonies. After marriage, they cohabited as husband and wife at Narnaul and out of their wedlock, a male child was born. The respondent-husband averred

that since he belonged to an educated family he considered it proper to get his wife well educated. He made her to do additional B.A. and Post Graduation in English after marriage. In order to treat her with equality and to give her good status, he used to deposit Rs. 500/- per month in the post office R.D. Account held in her name.

The allegations of the husband were that from the very beginning, the appellant proved to be a stubborn and a quarrelsome lady. She persistently treated him and his old ailing parents and other family members with cruelty so as to cause a reasonable apprehension in his mind that it will be harmful and injurious for him to live with her. She wanted to shy away from the responsibility of serving the parents and also did not allow him to do so. She refused to cook food for the parents and demanded to live separate from them at some distant place so that he could be compelled not to attend to his parents. On the occasion of retirement of his father, she did not dress up nicely despite several requests. After retirement, the health of his father started deteriorating and he remained hospitalized in Bajaj Nursing Home, Gurgaon for about three months continuously. His mother was also an asthmatic patient. The appellant-wife levelled fake and frivolous charges of demand of dowry against him and also threatened to lodge a false FIR under Section 498-A Indian Penal Code against them. She

also threatened to commit suicide and put him and his family members behind the bars.

It was further alleged by the husband that in order to mentally torture him, the appellant gave several false complaints to different authorities. A complaint given by her to the District Education Officer, Narnaul was sent to the Principal, Government Senior Secondary School, Narnaul where he was working, for holding an enquiry about him. In all these complaints, she requested the authorities to transfer him away from Narnaul. This act of the appellant defamed him at his working place and tarnished his good image in the eyes of his seniors, all staff members and students. This caused him severe mental pain and agony. As and when she appeared before the authorities during the enquiries, she pressurized them to compel him to hand over his complete salary to her and to live separate from his parents. On 04.04.1999, after the birth of their child, the appellant went to her parents' house to meet them and did not come back to the matrimonial home till 28.03.2000 despite all efforts made by him through Panchayat and friends to bring her back. She again left the matrimonial home on 03.09.2000 and did not come back. He repeatedly visited her parental home to bring her back but he was always insulted by her and her parents. He was not even allowed to see his infant son even once. He

was abused and manhandled by brothers of the appellant. So many times he was called by the appellant, her brothers and father for a meeting but then they would just not hold the meeting on one pretext or the other and he was forced to return empty handed which caused him mental and physical harassment. Submitting that the appellant had no love and affection for him or his son and had been insulting and abusing him in the presence of his family members, friends and relatives and she had not proved to be a faithful wife and therefore it is no longer safe for him to live with her and lead a smooth married life, the husband prayed for dissolution of their marriage by a decree of divorce.

3. The petition was contested by the appellant. In the written statement filed by her she admitted the relationship between her and the respondent and also that he was posted as English lecturer in Government Senior Secondary School, Narnaul and his parents were retired Government servants. All allegations levelled by the respondent were denied by her and she submitted that the parents of the respondent were greedy persons and in order to collect more money, they pressurized her to study further whereas she was already B.A., B.Ed, M.Ed. She worked in Saraswati Senior Secondary School, Narnaul from July, 1996 till January, 1999. In order to make savings,

she opened an account in the post office in the shape of R.D. She denied all the allegations of the respondent including the allegation that she insisted upon him to live away from his parents. She mentioned that the father of the respondent retired in April, 2000 i.e., 5 years after their marriage and that she had lived with them for the said period. She also mentioned that on 06.09.2000 the respondent did not bring her to the matrimonial home intentionally. He quarreled with her and left her at her parental home. Since then he had not turned up to take her and she had no knowledge about his family.

The appellant added that it was because of the cruel behavior of the respondent that she had given applications to various authorities against him. She always wanted to live with him but was turned out of the matrimonial home with her 27 days old child. Her parents and brother persuaded the respondent to keep her and her son at the matrimonial home but to no effect. With the intervention of her sister's father-in-law, Shri A.D. Munjal of Gurgaon, a meeting of both sides was convened during which the respondent agreed to keep her on the condition that she will remain at Narnaul for 6 months. Accepting the condition she came to Narnaul alongwith her son on 28.03.2000 and stayed there till 03.09.2000.

During the period of her stay at Narnaul she was maltreated

and beaten up on petty matters. Before completion of six months, on account of sudden illness of her parents she came to Rewari on 03.09.2000. On 06.09.2000 the respondent visited Rewari and instead of enquiring about the well being of her parents, he started quarrelling with her. Although she was ready to come with him to Narnaul but he intentionally left her and their son at Rewari without any rhyme or reason. When the respondent did not agree to keep her and her son with him, despite efforts of her parents, she filed a petition under Section 9 of the Act of 1955 and also filed a petition under Section 125 of the Cr. P.C., for maintenance. Denying all other allegations and pleading that the respondent and submitting that he was himself was guilty of cruelty and desertion, the respondent prayed for dismissal of the petition.

4. The petitioner filed replication controverting the submissions of the respondent and reiterating the pleas raised by him.

5. On the pleadings of the parties following issues were settled by the trial Court are as under:

1. Whether the marriage between the parties is liable to be dissolved by a decree of divorce on the grounds mentioned in the petition as alleged? OPP.

2. Relief.

6. Both the parties adduced evidence in support of their respective contentions.

7. Finding that Rajesh Dua, respondent-husband had successfully proved that Kamlesh Devi, appellant-wife had caused mental cruelty to him and it was also established that she had deserted him without any reasonable cause, the learned trial Court held the respondent entitled to a decree of divorce, and allowed his petition.

8. We have heard Mr. Parminder Singh, Advocate for the appellant and Mr. Gurinder Pal Singh, Advocate for the respondent and have gone through the material on record.

9. To prove his allegation that he had been treated with cruelty by the appellant, the respondent had himself appeared in the witness box as PW-8 and had testified that the behavior of the appellant was not only disrespectful towards him and his parents who were old and ailing, she was also not interested in performing the household chores including cooking food etc. for them. She used to leave the matrimonial home without his permission and also without informing anyone in the family. After their son was born, she never used to allow his parents to touch the child. On 14.04.1999 at the time of Havan ceremony at his house the appellant ignoring his and his parents' request to stay at the matrimonial home for atleast 40 days went away with her parents in a

taxi. From her parental home she demanded, through her brother, a separate residence. She remained at Rewari for about 11 months and despite several efforts made by him she did not return. It was also the allegation of the respondent that in September, 2001 he had to face an inquiry in his office on a false complaint given by the appellant to various authorities. On the pretext of inquiry he was also called by the police several times to the police station.

10. To support his allegations the respondent examined PW2- Santokh Singh, PW6-Arjundev, PW-7 Keshav Ram and PW-9 Vikash, to whom the parties were known personally, and they all unequivocally deposed that from very beginning of the marriage the behaviour of the appellant was very harsh and cruel towards the respondent and his parents. They consistently narrated the incident dated 14.04.1999 when after Havan Ceremony organized at the house of the respondent on the occasion of birth of his son, the appellant ignoring the request made by the husband and his family members to live at the matrimonial home for at least 40 days after delivery had left with her parents in a taxi. They stated that the act and conduct of the appellant humiliated and defamed the respondent and his family and caused them social ridicule.

The other witnesses examined by the respondent were PW1- Yogesh Kumar-clerk who produced the summoned record and proved

copy of the application Ex. PW1/A dated 31.08.2001 given by the appellant against the respondent which was forwarded to Principal of Government Senior Secondary School, Narnaul, where the respondent was employed calling for para-wise comments/enquiry. PW-3 Smt. Prem Devi ASI conducted an inquiry on a complaint given by the appellant and filed the same; PW-5 Madan Gopal had personal knowledge of the dispute between the parties for having made efforts to bring about a settlement between them supported the allegation of the respondent that the appellant was not co-operative and despite several phone calls made by the respondent she had refused to attend any meeting and had also violated the terms of compromise.

Davinder Nath, father of the respondent, appeared as PW-10 and made statement in the shape of his affidavit on the same lines as that of his son. He too gave a detailed narration of the cruelties faced by the respondent and all family members at the hands of the appellant.

11. On the other hand, appellant-Kamlesh Devi besides appearing herself to make a self serving statement as RW-1 examined her brother RW-2- Jitesh Kumar. She as well as her brother stated that on 14.04.1999, she alongwith her 27 days old child was turned out of the matrimonial home and also that subsequently on account of sudden illness of her mother she had come to Rewari on 06.09.2000 and on the

same date the respondent came to her parents house and fought with her and did not intentionally bring her back to the matrimonial home and thus deserted her without any reasonable cause.

12. The term 'cruelty' has not been defined under the Act. A definition of the 'cruelty' is also not possible because in matrimonial relationship the question whether the husband is cruel to the wife or the wife is cruel to the husband has to be ascertained and adjudged by taking into account the entire facts and circumstances of that particular case and there can be no predetermined rigid formula for the same. 'Cruelty' is such conduct of a spouse which is something more than ordinary wear and tear of married life. It should be such that it embitters relationship and makes it difficult for the spouse complaining to live with the other spouse under the same roof. In nutshell there have to be some specific incidents which had left impact on the mind of the complaining spouse. In other words, the outbursts or behaviour of a spouse had embittered the relationship to the extent that it was no longer possible for the parties to live together without mental agony and pain.

13. The Apex Court, elucidating the term 'cruelty' as under Section 13 in **Parveen Mehta V. Inderjit Mehta 2002 (3) RCR (Civil)**

**529** has held as under:

*“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.”*

14. Reverting to the case in hand, the respondent alleged not only physical cruelty at the hands of the appellant because of her ill behavior, he also pleaded and proved that he had suffered severe

mental cruelty because of various complaints containing false allegations given by the appellant to the police and to his superior authorities because of her complaint he faced a departmental enquiry in the office as proved by PW1 Yogesh Kumar clerk and PW2 Santokh Singh Head Master Government HighCourt, Koriawas. Also from the statement of PW3 ASI Prem Devi it is evident that the respondent had to face enquiry by the police also but then finding truth in the complaint, it was filed and also made to visit police station several times.

15. Considering the rival contentions of the parties, the evidence adduced by them and the facts and circumstances of the case, the findings of the learned trial Court were as under:

*55. In the present case though the assertion of the petitioner PW-8 to the effect that the respondent is disrespectful towards his old ailing parents and forced him to live separately at some distant place from his parents have been denied by the respondent and her brother Sh. Jitesh Kumar RW2.*

*56. There is no dispute as to the fact that respondent moved an application Ex.PW4/B before the Chief Minister of Haryana which was enquired into by the police and during the proceedings of enquiry*

*respondent made statement Ex. R2 on 28.09.2001 wherein she categorically stated that her husband had assured her that he will keep her separate from her father-in-law and mother-in-law.*

*57. The averments of petitioner to the effect that respondent is disrespectful towards his old ailing parents and has put condition to return Narnaul if he reside separately from his parents at a distant place and she has refused to reside with him. She has even refused to reside in a separate portion in the same house in which his parents resides at Narnaul not only finds support from other Pws namely Santokh Singh PW2, Madan Gopal Dhamija PW5, Arjun Dev Munjal PW6, Kesho Ram Numberdar PW7, Vikash Deep PW-9 and Devender Nath PW10 but also stands corroborated from the own statement of respondent Ex. R2.*

*58. Thus, from the testimony of witnesses examined on behalf of the petitioner coupled with statement Ex.R2 it stands proved that respondent has put a condition to co-habit with the petitioner if he resides*

*separately from this old parents at a distant place not in the same house. In other words, respondent wants that petitioner should put his old ailing parents in dustbin at the evening of their life. To my mind, this conditional co-habitation amount to cruelty and covered by Section 13(1) (ia) of the Act and petitioner is entitled to a decree of divorce on the ground of cruelty.*

*59. It is worth while to mention here that besides the decree passed under Section 9 Ex.R1 against the petitioner several efforts were made for compromise between the parties during the pendency of this petition. Present petition was also put up before Lok Adalat on 14.12.2002, 30.08.2003, 07.01.2006, 04.03.2006 and 29.07.2006 and efforts were made to settle the dispute between the parties but endeavor to effect the reconciliation between the petitioner and respondent failed due to insistence of respondent to remain separate from her in-laws. This fact goes to show that the marriage has irretrievably broken down.*

16. Indeed from the evidence available it stands established that

because of her aggressive and non-cooperative behavior the appellant was unable to adjust with the respondent and her in-laws family. She wanted to have a separate residence from her parents-in-law because she did not find them to be of her status. Despite all efforts made by the respondent through brotherhood and respectable she did not mend her ways. So much so that as per observations of learned trial Court (reproduced above) the reconciliation between the parties had failed due to insistence of the appellant to live separate from her in-laws. Her conduct affirmed the allegations of the respondent that she did not want to serve his old ailing parents and had no regard for sentiments. Otherwise also because of the ill treatment and harassment the respondent had faced at the hands of the appellant it was no longer possible for him to live with her.

17. Accordingly, there being no infirmity or perversity in the findings of the learned trial Court and there being no merit in the appeal, the same is hereby dismissed.

**(AJAY KUMAR MITTAL)**  
**JUDGE**

**(SNEH PRASHAR)**  
**JUDGE**

**25.02.2015**  
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