

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-214 of 2008

Date of Decision: 4.2.2015

Rajinder Singh

....Appellant.

Versus

Kamaljit Kaur

...Respondent.

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

PRESENT: Pt. Hari Om Sharma, Advocate for the appellant.

Mr. Abhijeet Partap, 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 22.7.2008 passed by the Additional District Judge (A), Fast Track Court, Sangrur by way of instant appeal.

2. Shorn of unnecessary details, the facts relevant for adjudication of the present appeal as narrated therein may be noticed. The marriage between the parties was solemnized on 10.5.1997 by Anand Karaj ceremony at village Thalesan. After the marriage, the parties cohabited as husband and wife at village Nangla and from their lions, two children, namely, Ramanpreet Kaur (daughter) and Gurvarinder Singh (son) was born who were residing with the appellant.

The parties were residing at village Nangla along with the parents, sisters and brother of the appellant. The sisters of the appellant were married and his brother was residing in Germany with his family. Earlier, the respondent was residing happily with the appellant and his family but she started pressurizing him for separate residence from his parents. On his refusal, the respondent started misbehaving with the appellant and his parents. Even she pressurized the appellant to go abroad. She did not allow the appellant for sexual intercourse though she was residing in his house and had deserted him. She used to visit her parental house without informing the appellant or his parents. In December, 2005, the respondent sprinkled kerosene oil and tried to immolate herself and she was saved by the appellant and his mother. Thereafter, the father of the appellant convened a panchayat and asked the respondent that as to why she tried to immolate herself upon which she stated that the appellant was not ready to go abroad and also was not ready for separate residence from his parents. Accordingly, the appellant 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 respondent by filing a written statement. It was pleaded that in the marriage valuable articles were given and the barat accompanied 100-125 persons. The parents of the appellant always demanded dowry in the shape of cash. They used to say that if she did not bring ₹ 2 lacs from her father, then they would remarry the appellant with a girl of rich family. 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 respondent is guilty of cruelty if so its effect? OPP
2. Whether the respondent has deserted the petitioner for the last more than two years?OPP
3. Whether the petitioner is entitled for the divorce? OPP
4. Relief.

3. In support of his case, the appellant besides examining himself as PW3 and tendering his affidavit as Ex.PW3/A also examined Darshan Singh as PW1 who tendered his affidavit Ex.PW1/A, Karamjit Singh Sarpanch as PW2 who tendered his affidavit Ex.PW2/A and Chanan Ban as PW4 who tendered his affidavit as Ex.PW4/A. He also tendered certified copies of *Farad Maqbooji* as Ex.P1 and FIR as Ex.P2. On the other hand, to rebut the evidence of the appellant, the respondent examined herself as RW1 and tendered her affidavit as Ex.RW1/A, Mohinder Singh as RW2 who tendered his affidavit Ex.RW2/A and Mohinder Singh as RW3 who also tendered his affidavit as Ex.RW3/A.

4. The trial court took issues No.1 to 3 together and on appreciation of evidence led by the parties, decided the same against the appellant holding that the appellant had failed to prove the cruelty to such an extent that it was not safe for him to live with the respondent. Further, the respondent was turned out of the matrimonial home by the appellant and, therefore, he was not entitled to a decree of divorce. Accordingly, the trial court vide judgment and decree dated 22.7.2008 dismissed the divorce petition. Hence, the present appeal.

5. Learned counsel for the appellant submitted that from the

evidence on record, it was made out that the respondent had treated the appellant with cruelty but the trial court had held to the contrary. It was further submitted that the trial court erred in law in dismissing the petition under section 13 of the Act filed by the appellant as the respondent wife was living separately. Her behaviour towards the appellant and his family members was not good from the very beginning. She had no intention to live with the appellant. She used to pressurize the appellant for having a separate house from his parents and to go abroad. The behaviour of the respondent caused mental cruelty to the appellant as she had refused for physical relationship. It was further contended by the learned counsel that cruelty was caused by the respondent-wife as false criminal case filed by her against the appellant and his family members had resulted in their acquittal in proceedings under section 406, 498A, 323 of the Indian Penal Code and the appeal against the said judgment was also dismissed. With these contentions, learned counsel prayed for dissolution of marriage between the parties by a decree of divorce on the ground of cruelty.

6. On the other hand, learned counsel for the respondent submitted that the trial court had rightly dismissed the divorce petition filed by the appellant by passing a detailed and well reasoned judgment. It was further submitted that false allegations were levelled by the appellant as no cruelty was committed by the respondent.

7. After hearing learned counsel for the parties, we find force 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, 323 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, 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.”

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, the appellant and his mother were acquitted vide judgment dated 4.7.2012 (Annexure A-1) in the dowry case got registered vide FIR No. 7 dated 20.7.2006, under Sections 498-A, 406, 323 of the Indian Penal Code. Against the judgment of acquittal, the appeal filed by the respondent was dismissed by the appellate court vide judgment dated 7.5.2014 (Annexure A-2). The aforesaid documents, Annexures A-1 and A-2 had been allowed as additional evidence under Order 41 Rule 27 read with Section 151 of the Code of Civil Procedure by way of order of even date passed in CM No. 2419-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 appellant and his mother amounted to cruelty towards the respondent. Thus, the irresistible conclusion would be that the respondent-wife had treated the husband-appellant with cruelty.

16. In view of the above, the present appeal is allowed and the finding on issue No.1 regarding cruelty recorded vide judgment and decree dated 22.7.2008 passed by the trial court is set aside. The petition filed by the appellant under Section 13 of the Act for dissolution of marriage by a decree of divorce stands allowed on the ground of cruelty.

(AJAY KUMAR MITTAL)
JUDGE

February 4, 2015
gbs

(SNEH PRASHAR)
JUDGE