

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-248 of 2008

Date of decision: 11.2.2015

Bhagirath

.....Appellant

Versus

Mrs. Usha

.....Respondent

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

Present: Mr. Shiv Kumar, Advocate for the appellant.

Mr. Adarsh Jain, Advocate and
Ms. Manisha Sahota, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the appellant – husband against the judgment and decree dated 15.5.2008 passed by the Additional District Judge, Faridabad, whereby the petition filed by him under section 13 of the Hindu Marriage Act, 1955 (in short, “the Act”) for dissolution of marriage, was dismissed.

2. Shorn of unnecessary details, the facts relevant for the decision of the controversy involved as available on the record may be noticed. Marriage between the parties was solemnized on 15.2.1988 which was duly consummated. However, no child was born out of the said wedlock. It was a simple marriage and no articles were given at the time of marriage. The behaviour of the respondent towards the

appellant and his family members was very cruel. She gave danda blows to the appellant and his mother. She even left the matrimonial home several times without his knowledge and lived with some other unknown persons for two/three days. The appellant requested the respondent to change her behaviour but to no avail. She threatened the appellant and his family members that she would commit suicide at any time and involve them in a false criminal case as dowry death. In 1990, she while leaving the matrimonial home took away all the ornaments, valuable clothes and jewellery etc. and since then she was residing with her parents. The respondent and her parents lodged a complaint against the appellant and his family members under Sections 406, 498-A of the Indian Penal Code. The police had recovered all the *istridhan* from the appellant and his family members and handed over the same to the respondent. 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 contested by the respondent by filing a written statement. Various preliminary objections were raised therein. It was pleaded that the marriage of the parties was a standard marriage and her father had spent a sum of ₹ 3,00,000/- on the said marriage but the appellant and his parents were not happy with the dowry articles given. They started demanding cash amount and a buffalo. In the year 1990, the appellant after giving beatings to the respondent had turned her out of the matrimonial home. All the dowry articles were lying in the custody of the appellant and his family members. The father of the respondent went to the house of her in-laws many a times and requested them to keep her with them but they refused to do so. The other averments made in the petition were denied and a prayer for dismissal of the same was made.

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 and desertion?OPP
- 2) Whether the petition is not maintainable in the present form? OPR
- 3) Whether the petitioner is estopped from his own act and conduct from filing the present petition?
OPR
- 4) Relief.

3. The trial court on appreciation of evidence led by the parties, decided issue No.1 against the appellant holding that neither it was proved that the respondent had deserted the appellant without any reasonable cause nor the respondent had committed any cruelty towards the appellant. Issues No.2 and 3 were decided in favour of the respondent. Accordingly, the trial court vide judgment and decree dated 15.5.2008 dismissed the divorce petition. Hence the present appeal.

4. Learned counsel for the appellant husband submitted that the trial court erred in law in dismissing the petition under section 13 of the Act filed by the appellant. The respondent wife is living separately since the year 1990. No issue was born out of the wedlock. 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. The behaviour of the respondent caused mental cruelty to the appellant. Reliance was placed upon the judgments in **Vidhya Vishwanathan vs.**

Kartik Balakrishnan, 2014(4) RCR 563 and **Vishwanath Agrawal vs.**

Sarla Vishwanath Agrawal, (2012) 7 SCC 288. In view of pronouncement of the Apex Court in **K.Srinivas Rao vs. D.A.Deepa, (2013) 5 SCC 226**, it was contended that cruelty was caused by the respondent-wife as false criminal complaint filed by her against the appellant and his family members had resulted in their acquittal in proceedings under section 406, 498A, 506 of the Indian Penal Code vide Ex.P1 and the appellant is entitled to the grant of divorce.

5. On the other hand, learned counsel for the respondent supported the impugned judgment and decree passed by the trial court.

6. After hearing learned counsel for the parties and perusing the record, we do not find any merit in the appeal.

7. 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.

8. In **Vidhya Vishwanathan's case (supra)**, it was held by the Apex Court as under:-

“13. In **Vinita Saxena vs. Pankaj Pandit (2006) 3**

SCC 778 regarding legal proposition on aspect of cruelty has made the following observations:

“31. It is settled by a catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the section. It is to be determined on whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such wilful treatment of the party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case.

32. The word “cruelty” has not been defined and it has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be

enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.”

9. In **K.Srinivas Rao's case (supra)**, similar view was taken.

10. A perusal of the record shows that the marriage of the appellant with the respondent was solemnized in the year 1988. No issue was born out of the wedlock. The testimony of the appellant supported his version that the behaviour of the respondent towards the appellant and his family members was very cruel. She even gave beating to him and his mother with danda. She left the matrimonial home without the knowledge of the appellant and lived with some other unknown persons for two/three days. She left the matrimonial home at several times and on the efforts made by the appellant and his family members, she used to come back. She finally left the matrimonial home in 1990 and had deserted the husband. Further, her complaint under sections 498A, 406 of the Indian Penal Code against the appellant and his family members had resulted in their acquittal vide judgment dated 15.1.2000, Ex.P1. The trial court was, thus, not right in dismissing the divorce petition filed by the appellant-husband. It has been authoritatively held by the Apex Court in **K. Srinivas Rao's case (supra)** and a Division Bench of this Court in **Imlesh v. Amit, AIR 2014 Punjab and Haryana 89** that where the wife files false criminal complaint against the husband and his family members under Sections 406, 498A of the Indian Penal Code which results in their acquittal, this act of the wife causes mental cruelty and the husband is entitled to a decree of divorce under Section 13(1)(ia) of the Act. Considering the overall facts and circumstances of the case, we do not find any ground to uphold the

findings recorded by the trial court. Once the ground of cruelty stands proved, equally the ground of desertion on the part of the respondent-wife without any reasonable cause since 1990 stands established. As a result, we set aside the impugned judgment and decree dated 15.5.2008. The appeal filed by the appellant stands allowed. The appellant is granted decree of divorce on the grounds of cruelty and desertion caused by the respondent-wife.

(AJAY KUMAR MITTAL)
JUDGE

February 11, 2015
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(SNEH PRASHAR)
JUDGE