

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CMM No. 65 of 2009 and
FAO-M-116 of 2009 (O&M)

Date of Decision: 24.2.2015

Smt. Munesh Devi

....Appellant.

Versus

Ashok Kumar

...Respondent.

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

PRESENT: Mr. J.P. Sharma, Advocate for the appellant.

None for the respondent.

AJAY KUMAR MITTAL, J.

1. Having lost before the District Judge, Rewari 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 wife-appellant has approached this Court by way of instant appeal challenging the judgment and decree dated 27.1.2009.

2. Put shortly, the facts necessary for adjudication of the present appeal as narrated therein may be noticed. The marriage of the parties was solemnized on 3.7.1998 at village Basduda according to Hindu rites. The marriage was consummated and a male child, namely, Govind was born on 13.5.2001 out of the said wedlock. The expenses of the delivery were borne by the father of the appellant. The respondent had not seen the child and had neglected to maintain him.

The respondent and his family members were greedy persons and they treated the appellant with cruelty on account of demand of dowry. Two sisters of the appellant were also married with the brothers of the respondent at the same time. In July, 1998, the respondent and his family members had thrown out all the dowry articles brought by the appellant. The respondent stated that after killing the appellant, he would get himself remarried in a rich family. She was confined in a room for whole night and was not provided with meals. However, she escaped with difficulty and told the incident to her parents and others. Even on the eve of Raksha Bandhan, the appellant was not allowed to go to her parental house. On 14.1.2000, on the eve of Makar Sankranti, the father of the appellant came to her matrimonial home but he was not allowed to see her. She was given beatings by her mother-in-law along with Luxmi Devi and Kushan Devi on 15.10.2000. They were talking about setting her on fire so that the respondent could be remarried with a serving girl as he was a qualified mechanic. She secretly escaped from the matrimonial home and saved her life. She lodged a criminal case under Sections 498-A, 406, 323, 506 of the Indian Penal Code at Police station Khola against the respondent and his family members. She had not condoned the act of cruelty of the respondent and that he had deserted her from the year 2000, even though he obtained a decree for restitution of conjugal rights under Section 9 of the Act and had neglected to maintain her. 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. Besides raising various preliminary objections, it was pleaded that he had obtained a decree under Section 9 of the Act and the appellant out

of her own will and without any reasonable excuse was living at her parental house. He was ready and willing to keep her with him as his wife. He had been keeping the appellant properly but she left her matrimonial home without any reasonable cause. The other averments made in the petition were denied and a prayer for dismissal of the same was made. Since the respondent had failed to pay the maintenance pendente lite and litigation expenses, his defence was struck off by the trial court vide order dated 14.5.2008.

3. The appellant in support of her case, examined her father as PW1 Tej Ram and herself as PW2. She also tendered documents in her evidence.

4. The trial court on appreciation of evidence led by the appellant dismissed the divorce petition vide judgment and decree dated 27.1.2009 holding that the appellant had failed to prove that the respondent had treated her with cruelty or had deserted her. Hence, the present appeal.

5. Learned counsel for the appellant submitted that the findings recorded by the trial court that the respondent had not treated the wife with cruelty was against the record. It was further submitted that the respondent and his family members were harassing the appellant and abusing her. It was urged that the defence of the respondent was struck off due to non-payment of maintenance pendente lite and litigation expenses and, therefore, the divorce petition was liable to be decreed.

6. After hearing learned counsel for the appellant, we do not find any merit in 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. The Apex Court in **Vinita Saxena v. Pankaj Pandi, (2006) 3 SCC 778** while examining legal proposition on the aspect of cruelty had observed as under:-

“It is settled by 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.

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. 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.”

10. No doubt, the trial court vide order dated 14.5.2008 had struck off the defence of the respondent-husband on account of non-payment of maintenance pendente lite and litigation expenses. Still, the appellant-wife who had sought divorce from the respondent-husband was required to produce cogent and convincing evidence so as to stand on her own feet to establish the grounds of cruelty and desertion against the respondent-husband.

11. Examining the factual matrix of the present case, it may be noticed that admittedly a decree of restitution of conjugal rights had been passed on 6.8.2005 against the appellant. Though the respondent could not produce the said decree on record by way of evidence as his defence was struck off for non-payment of maintenance pendente lite or litigation expenses, but the factum of decree could not be controverted by the appellant-wife except to claim that an appeal had been filed

before the High Court of Rajasthan which fact was not substantiated as nothing had been produced on record to verify the same. Even if the appeal had been filed challenging the decree dated 6.8.2005, it would not prevent the decree of restitution for conjugal rights to become operational unless the operation of the said judgment and decree was stayed by the higher court. The passing of the decree would prove that the respondent had not treated the appellant with cruelty and deserted her since 2000. Therefore, it is proved that the appellant had withdrawn herself from the society of the respondent without any reasonable excuse. Further, the allegations of cruelty levelled by the appellant by way of affidavits of herself and her father were vague and general in nature. The appellant failed to prove as to how she stayed at her matrimonial home after July, 1998 when her belongings were thrown out of the matrimonial home. She claimed that on 15.10.2000 she was beaten by her mother-in-law and others and she left the matrimonial home on the same day. However, she had not lodged any report on that day or soon thereafter. She lodged a case bearing FIR No. 224 under Sections 498-A/406/506 read with Section 34 of the Indian Penal Code only on 31.12.2003. Therefore, no reliance could be placed on the evidence led by the appellant. The facts and circumstances cumulatively leads to irresistible conclusion that the appellant was neither treated with cruelty by the respondent nor he had deserted her.

12. The trial court on appreciation of evidence on record had rightly held that no finding of cruelty or desertion could be recorded in favour of the appellant. The relevant findings recorded by the trial court read thus:-

“12. Even otherwise, the allegations of the petitioner

contained in her petition regarding cruelty, which are sought to be proved in the affidavits of the petitioner and her father, are very vague and general in nature. It does not become clear from the averments of the petitioner as to how she stayed at her matrimonial home after July, 1998, the month of her marriage, when her belongings were thrown out of her matrimonial home. She was stated to be coming from the family of beggars. In December 1998, she has claimed that Ashok Kumar respondent had declared that he would get remarried in a rich family after killing her and that he had kept her confined in a room for a whole night and was not provided with meals. She has also claimed that she escaped with a lot of difficulty. How she escaped if the respondent and his family members wanted to eliminate her is a question which does not find answer in the pleadings of the petitioner or her evidence. 15.10.2000 is the only date on which she claimed that she was beaten by her mother in law and others. She has claimed that on that day, she had finally left her matrimonial home. She did not lodge any report at that time or soon thereafter. The report lodged for an offence punishable under Sections 498-A/406/506 read with Section 34 IPC at police station Khol by way of FIR No. 224 is dated 31.12.2003. This further shows that no reliance can be placed on the evidence led in a

routine manner to prove this allegation.”

13. Learned counsel for the appellant was unable to demonstrate that there was any error or perversity in the findings recorded by the trial court based on misappreciation or misreading of evidence on record which may warrant interference by this Court. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

14. Learned counsel for the appellant stated that he does not press the application bearing CMM No. 65 of 2009 under Section 24 of the Act for grant of maintenance pendente lite and litigation expenses. Accordingly, CMM is dismissed as not pressed.

(AJAY KUMAR MITTAL)
JUDGE

February 24, 2015
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(SNEH PRASHAR)
JUDGE