

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO-M-198 of 2009 (O&M)
Date of decision: 24.02.2015**

Indu Bala

.....Appellant

Vs.

Tirath Singh

.....Respondent

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

Present: Mr.Amrik Singh Kalra, Advocate for the appellant-wife.
Mr. Sanjeev Manhas, Advocate (Legal Aid Counsel) for the
respondent-husband.

Ajay Kumar Mittal,J.

1. This appeal has been filed by the appellant-wife against the judgment and decree dated 29.4.2009 passed by the trial court whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (in short, “the Act”) filed by her for dissolution of marriage on the ground of cruelty has been dismissed.

2. A few facts relevant for the decision of the controversy involved as available on the record may be noticed. Marriage between the parties was solemnized on 23.6.2004 as per Hindu rites and ceremonies at Ramgarh, Hoshiarpur. Both of them lived together as husband and wife but

no child was born out of this wedlock. According to the appellant, the respondent was a drunkard person from the very beginning. He used to take liquor continuously and remained under its influence for 24 hours. The respondent did not show any interest in married life. The appellant tried to make the respondent understand about his matrimonial obligations but he slapped her in the presence of all his family members. The parents of the respondent also started torturing the appellant physically and mentally. They cursed the appellant for not bringing dowry as per their standard. The respondent was not doing any work. He demanded ₹ 1 lac in November 2004 from the parents of the appellant for sending him abroad. The respondent and his parents tortured the appellant by not allowing her to sleep in bed room. The respondent openly claimed that he will resume relationship with the appellant only if she brings ₹ 1 lac from her parents. She was treated as servant at home. She was not allowed to go to the market. In December 2004, the respondent tried to push the appellant from the first floor of the house. When the appellant apprised her parents about the situation, she was given beatings by the respondent on 4.1.2005. The respondent turned her out from the matrimonial home and since then she is living at her parents house. The respondent threatened the appellant that he will kill her if she returns to her matrimonial house without ₹ 1 lac. The appellant filed petition before the expiry of one year from the date of marriage but the same was withdrawn on 7.1.2006. Ultimately, the appellant filed petition under section 13 of the Act for dissolution of marriage on the ground of cruelty. Upon notice, the respondent appeared and filed written statement controverting the averments made in the petition. He denied all

the allegations levelled by the appellant. He inter alia stated that maternal uncle of the appellant started interfering in their personal life. They were demanding a shop owned by his father situated near Government College Hoshiapur to be given to them and on refusal on the part of his father, the maternal uncle of the appellant started instigating the appellant against the respondent. In the month of January 2005, the appellant at the instance of her material uncle filed application against the respondent and his parents under the Dowry Prohibition Act, 1961 at Mahila Police station and threatened to register case against them. Under these circumstances, the police as well as her maternal uncle got his signatures on many papers under coercion and received a sum of ₹ 35,000/- as past, present and future maintenance. She also received her dowry articles. The trial court after examining the oral and documentary evidence on record dismissed the petition vide judgment and decree dated 29.4.2009. Hence the instant appeal by the appellant wife.

3. We have heard learned counsel for the parties and perused the record.

4. The trial court on the pleadings of the parties framed the following issues:-

- i) "Whether the respondent has treated the petitioner with cruelty? OPA
- ii) Relief."

In order to prove her case, the appellant appeared as AW1 and examined Sheela Devi as AW3, Sanjiv Kumar as AW4, Gursharan Singh as AW1 (inadvertently numbered) and Sadhu Singh as AW5. On the other hand, the respondent appeared as RW1 and closed his evidence. The appellant in her

statement as AW1 furnished her affidavit Ex.AW1/A reiterating the averments made in her petition under Section 13 of the Act. She examined her maternal grand mother as AW3 who deposed that the appellant was living with her as her parents had gone abroad. The respondent was drunkard. The respondent and his parents were greedy. They tortured the appellant for bringing less dowry. After one and a half months from the day when the appellant was turned out of matrimonial house, the respondent entered into a writing signed by both the parties as he was not ready to take her with him. The appellant also examined Sanjiv Kumar her maternal uncle as AW4. He supported the version given by the appellant. The appellant also produced Gursharan Singh, Assistant Project Director, Aas Kiran De Addiction Centre as AW1 (inadvertently numbered). He brought the record regarding admission and discharge register regarding admission and discharge of the persons admitted to the centre. As per the record, the respondent was admitted to the institute on 11.5.2004 and discharged on 20.5.2004. His previous treatment showed that he was taking injections and tobacco. He was again admitted to the centre on 17.7.2004 and discharged on 28.7.2004. For the third time, he remained admitted in the institute from 2.9.2004 to 10.9.2004. In the column of addiction, it was mentioned as multiple injections, tobacco, smoking and tablets. In the column of occupation, it was mentioned as currently unemployed. The appellant also examined Sadhu Ram as AW5 who deposed that the appellant had moved an application against the respondent and his parents at Mahila Police Station, Hoshiarpur. The appellant was not ready to join the company of the respondent. This witness also went to the house of the respondent to take

dowry articles of the appellant after the writing Ex.R.3. The respondent on the other hand denied all the allegations levelled by the appellant. The trial court did not believe the evidence produced by the appellant and dismissed the petition filed by the appellant-wife vide judgment and decree impugned herein.

5. After hearing learned counsel for the parties, we find that the trial court erred in recording the findings against the appellant. Firstly, it is the admitted position which is proved on record that the appellant is drunkard. He was admitted to Drug Addiction Centre three times w.e.f 11.5.2004 to 20.5.2004, 17.7.2004 to 28.7.2004 and 2.9.2004 to 10.9.2004. He was also found to be taking multiple injections and tobacco. Secondly, he was unemployed as was seen from the register of the de-addiction centre. He used to beat the appellant for not bringing money from her parents. On her failure to fulfill his demand, even his parents started torturing the appellant. Not only with the appellant, he misbehaved with her mother and sister. She was compelled to leave her matrimonial home in a miserable condition within a few months of the marriage. She had to take refuge in the house of her maternal uncle Sanjeev Kumar, AW4 at Hoshiarpur. Some relatives and responsible persons of the locality tried to persuade the respondent to mend his behaviour but in vain. In such circumstances, she had to file petition under section 13 of the Act for dissolution of marriage even before the expiry of one year prescribed under the Act which was dismissed as withdrawn. After expiry of one year, she filed the petition on the same allegations. Her parents are residing in foreign country and she is living with her maternal grand mother and maternal uncle in India. Even

after the compromise between the parties, the respondent did not mend his behaviour. The respondent being drunkard, doing no work and moreover maltreating the appellant, it became impossible for her to live with him. The relevant evidence as recorded by the trial court itself read thus:-

“10. The petitioner has further examined AW1 Gursharan Singh, Assistant Project Director, Aas Kiran De-addiction centre, Hoshiarpur who has deposed that he has brought the summoned record regarding admission and discharge register regarding admission and discharge of the persons admitted to Aas Kiran De-addiction centre, Hoshiarpur. As per record, Tirath Singh son of Surinder Singh, resident of Sutehri Road, Shiv Mandir Wali Gali, Near Maharaj Palace, Central Town, Hoshiarpur was admitted to their institution on 11.5.2004 and discharged on 20.5.2004. His previous treatment was mentioned by Dr. Baljit Singh Saini. As per the register brought by him, he was shown to be taking injections and Tobacco. For the second time, Tirath Singh was admitted to the institution on 17.7.2004 and discharged on 28.7.2004. The reasons for admission are mentioned as taking injection and tobacco. For the third time, he remained admitted in their institution from 2.9.2004 to 10.9.2004. In the column of addiction, it mentioned multiple injections, tobacco, smoking and tablets. In the column of occupation, it is mentioned as currently unemployed. As per his record, Tirath Singh did not complete the course of 21 days at any time. The entries in the register are in the hand of Rashpal Singh whose handwriting he identified. He proved on record photocopy of letter dated 12.11.2004 as Mark A. While facing cross examination, this witness has deposed that he has not brought the original of Mark A. He has seen the carbon copy of Mark A. He has not brought the register showing entries of the letter. He does not know Tirath Singh personally. He joined this institute as Assistant Director for the last one

and a half years.

11. The petitioner has further examined AW5 Sadhu Ram who tendered his affidavit Ex.AW5/A in examination in chief, in which he has deposed in support of the case of the petitioner but while facing cross examination this witness has deposed that the petitioner had moved an application against the respondent and his parents at Mahila Police Station, Hoshiarpur. The petitioner is not ready to join the company of the respondent. He went to the house of the respondent to take dowry articles of the petitioner after the writing Ex.R.3.”

6. 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. The proceedings for dissolution of marriage by a decree of divorce under the Act are of civil nature and its proof is not to be judged on the touch-stone of 'beyond the shadow of doubt' but only on the preponderance of probabilities leading to a fair inference as a necessary conclusion on the evidence and from the circumstances of a case.

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.”

8. In the present case, the trial court has not considered the material evidence on record regarding the condition of the respondent-husband which caused mental tension to the appellant wife due to which she had to leave the matrimonial house within a few months of the marriage. She had to file petition under Section 13 of the Act even before the expiry of the prescribed period. As a result, the trial court was in error in misreading the evidence and recording the finding against the appellant and the conclusion drawn by it is thus legally unsustainable. Consequently, the judgment and decree dated 29.4.2009 is set aside and the appeal stands allowed. The appellant is granted decree of divorce on the ground of cruelty.

(Ajay Kumar Mittal)
Judge

February 24, 2015
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(Sneh Prashar)
Judge