

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

FAO-M-263 of 2009

Date of Decision: 12.02.2015

Tarsem Singh

....Appellant

Versus

Jago Devi

....Respondent

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

Present: Mr. Akshay Kumar Goel, Advocate
for the appellant.

None for the respondent.

SNEH PRASHAR, J.

1. By way of this appeal, Tarsem Singh-appellant/petitioner (hereinafter referred to as 'the petitioner') assailed the judgment and decree dated 06.06.2009 passed by the learned Additional District Judge (Adhoc)/Fast Track Court, Panchkula, dismissing H.M.A Case No. 48 dated 05.11.2008, filed by him against his wife Jago Devi - respondent for dissolution of their marriage.

2. The facts garnered from the record are as under:

The marriage between the parties was solemnized on 25.05.1993 according to Hindu Rites and ceremonies. After marriage, they lived together as husband and wife at village Cheerha and two sons aged 14 and 12 years (at the time of filing of the petition) were born out of the wedlock.

The petitioner averred that after marriage, the relationship

between him and the respondent remained smooth for a period of 5 - 6 years. Thereafter, the respondent started remaining absent from the house, sometimes for a week and sometimes even for 15 days. In the past year, she remained missing from the house for more than one month. In the year 2008, she was missing from the matrimonial home for more than 2 months. It was suspected that she had eloped with a village boy and the matter was reported at police post Marhawala.

The petitioner further pleaded that at about 8.00 pm on 31.10.2008 the respondent came back home but the same night she again disappeared along with all jewellery and clothes etc. It appeared as though she had given him sleeping pills in the food. A case under Section 294 of the Indian Penal Code had been registered against her and her friend Labh Singh which was pending in the Court of Judicial Magistrate First Class, Panchkula. On account of non-appearance, warrants of arrest against both of them were issued by the Court. Alleging that because of the said act and conduct, the respondent had treated him with cruelty, the petitioner prayed for dissolution of his marriage with the respondent by a decree of divorce.

3. Despite repeated issuance of the notices to the respondent and ultimately serving notice through substituted mode i.e. by way of publication in newspaper, the respondent did not appear to contest the petition and was proceeded against ex-parte.

4. In his ex-parte evidence, the petitioner himself stepped into the witness box as PW2 and examined one Kanshi Ram-PW1 of his village and father Saddi Singh-PW3 to support his version PW4-

Des Raj was examined by way of additional evidence.

Finding that no act on part of the respondent amounted to cruelty to allow a decree of divorce to the petitioner, the learned trial Court dismissed the petition.

5. Feeling aggrieved by the impugned judgment and decree dated 06.06.2009 passed by the learned trial Court, the petitioner preferred the instant appeal.

6. Heard the submissions made by learned counsel for the appellant and perused the record available on file.

7. The allegation of the petitioner against the respondent was that after about 5-6 years of smooth married life with him, she started missing from the matrimonial home for different periods. In the year 2008, when he filed the petition she had been missing for the last about 2 months. The report regarding her missing was lodged by him at Police Post Marhawala. She came back home on 31.10.2008 at about 8.00 pm but then around midnight she again left home along with some valuables. The petitioner suspected that he might have been given some sleeping pills in his food by her because he was in fast sleep when she left the house.

8. To substantiate his allegations, the petitioner examined one Kanshi Ram-PW1 of his village, his father Saddi Singh-PW3 and one Des Raj-PW4 also a co-villager. All the three unequivocally corroborated his version that for the last few years, respondent had been leaving home without anyone's permission and that too with some other person. PW3-Saddi Singh stated that when she used to come back, they would excuse her on her tendering an apology and for the sake of the two sons but she was again missing for the last

about 4 months and a case had been registered against her in which also she was absconding. She had taken the younger son and the elder one was with them. He added that the respondent had brought shame to him and the family and she had since outrightly refused to stay in the matrimonial home.

9. Exactly on the same lines, as far as the facts are concerned, was the statement of PW1-Kanshi Ram and PW4-Des Raj. Both the said witnesses were independent persons not related to the petitioner but residents of the same village to which the petitioner belonged. PW4-Des Raj stated that the respondent had developed illicit relations with another person of the village, namely, Labh Singh. Apparently, PW1 and PW4 had no reason to depose against the respondent or in favour of the petitioner and therefore, it was not judicious to disbelieve them especially when their deposition remained unchallenged. The order dated 24.10.2008 of Judicial Magistrate First Class, Panchkula Ex.C2 tendered in evidence by the petitioner proved that a case under Section 294 of the Indian Penal Code was registered against the respondent and one Labh Singh of Village Muja Khokhra. On account of their default in appearance in the said case they had been ordered to be summoned through warrants of arrest.

During the course of arguments, learned counsel for the petitioner-appellant had produced on file copy of the complaint given by him to SHO Police station Pinjore dated 03.11.2004 wherein he had stated that the respondent had gone with one Labh Singh of his village and a case against her and Labh Singh was pending in the Court of Judicial Magistrate First Class, Panchkula.

10. The respondent being ex-parte there is no rebuttal to the evidence of the petitioner and all his allegations have remained unimpeached.

11. 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. Leaving matrimonial home without consent of the husband and even without informing anyone else in the family was an act which tantamounted to grave mental cruelty to the husband. Moreover, the oral and documentary evidence led by the petitioner indicated that the respondent after leaving the matrimonial home had not gone to her parental home, rather she had eloped with some other person of the village. No additional act on the part of the respondent was required except the one proved by the petitioner, to establish that the behaviour and conduct of the respondent had given him acute mental pain, agony and suffering. In other words, it stood established that the petitioner had been a victim of mental and physical cruelty at the hands of the

respondent.

13. In the above premises, finding that the petitioner had successfully proved that the respondent was guilty of causing cruelty to him and the kind of conduct and behaviour she displayed, left no scope for him to live with her under the same roof, it is held that the petitioner is entitled to dissolution of his marriage with the respondent by a decree of divorce.

Accordingly, the judgment and decree passed by learned trial Court is set aside. The petition is allowed and a decree of divorce dissolving the marriage of the petitioner with the respondent is passed.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

12.02.2015

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