

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

**FAO No.1398 of 2015 (O&M)
Date of decision: 21.02.2015**

Reetika Guleria

.....Appellant

Vs.

Yashvir Singh Guleria

.....Respondent

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

Present: Mr. Vipul Dharmani, Advocate for the appellant-wife.

Ajay Kumar Mittal,J.

1. This appeal has been filed by the appellant-wife against the judgment and decree dated 21.1.2015 passed by the trial court whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (in short, "the Act") filed by the respondent-husband for dissolution of marriage on the ground of cruelty has been allowed.

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 17.2.2009 at Ambala according to Hindu rites and ceremonies. The respondent was posted as Divisional Signal and Telecom Engineer in the office of Chief Project Manager, Railway Electrification, Ambala whereas the appellant was M.Sc Bio Technology

and was doing M.Phil/Ph.D programme in New Delhi. Although the parties lived together as husband and wife but no child was born. As pleaded by the respondent in his petition under section 13 of the Act, the behaviour of the appellant wife from the very inception of the marriage was very cruel. She was non-responsive all the time. After returning from honeymoon on 10.3.2009, both the husband and wife came to Bharuch (Gujarat) where the respondent was posted but the behaviour of the appellant became bad to worse. She used to shout at the respondent as and when he wanted to have a talk with her. She started causing mental harassment and torture to the respondent. She treated the respondent with cruelty and her behaviour was totally indifferent. She stated that she wanted to marry some Army officer and had been forcibly married with the respondent against her wish and consent. According to the respondent, the marriage was simple. No dowry was taken in the marriage. Even the two cheques which were brought by the respondent were returned to her during *phera* ceremony. The respondent was vegetarian whereas the appellant used to cook non-veg food despite protest being raised by him. She did not respect the respondent and his parents. During January 2011 when the parents of the respondent visited them at Vadodara, she told the respondent to either send his parents back to their home at Shimla or she would leave the matrimonial home. The respondent did not want to leave Delhi but wanted to enjoy independent life in Delhi. The respondent wrote a letter to the appellant as well as her father on 16.2.2011 but the appellant served the respondent with a legal notice dated 10.3.2011 for initiating legal proceedings. Again a legal notice was served upon him by the appellant on 30.3.2011 claiming maintenance and

other expenses. The appellant sought information under the RTI Act from various departments in order to harass and humiliate the parents of the respondent. The respondent had earlier filed a petition for divorce on 17.2.2011 before the District Judge Shimla, which was contested by the appellant. The appellant was paid ₹ 10,000/- per month as maintenance pendente lite but on the issue of jurisdiction of the divorce petition at Shimla, the said petition was withdrawn on 11.6.2012 with the consent of the parties. She also filed petitions under the Protection of Women from Domestic Violence Act, 2005 and under Section 125 Cr.P.C. Upon notice in Section 13 petition, the appellant appeared and filed written statement controverting the averments made in the petition. The trial court after appreciating the evidence on record allowed the petition filed by the respondent-husband vide impugned judgment and decree dated 21.1.2015. Hence the instant appeal by the appellant wife.

3. We have heard learned counsel for the appellant-wife and perused the record.

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

- i) “Whether the petitioner is entitled for decree of divorce on the grounds of cruelty, as taken in the petition? OPP.
- ii) Whether the petition is not maintainable? OPR
- iii) Relief.”

In order to prove his case, the respondent appeared as PW1 and tendered his affidavit Ex.PW1/A reiterating the averments made in the petition under Section 13 of the Act. He tendered documents Ex.P1 to Ex.P.32 and Mark A.1 to Mark A.15. The respondent also examined his father Kuldip Singh

Guleria as PW2 who tendered his affidavit Ex.PW2/A supporting the version given by the respondent. On the other hand, the appellant wife appeared as RW1 and tendered her affidavit Ex.RW1/A reiterating the averments made in the written statement and controverting the allegations made by the respondent husband. She examined her father Shri G.S.Minhas as RW2 who tendered his affidavit Ex.RW2/A. After examining the documentary and oral evidence on record, it was recorded by the trial court that the behaviour of the appellant towards the respondent and his family members was not cordial. The parents of the appellant instead of resolving the matter started blaming the respondent. In spite of legal notices sent to the respondent, the appellant denied having sent such notices. She sought information under RTI Act against the respondent and his parents regarding their place of posting, transfer and occupation of government accommodation. Even the mother of the appellant moved application to seek certain information regarding the post held by the father of the respondent as well as his pension. On the one hand, she was trying to get information under RTI Act, on the other hand, she was denying having made such applications. The intention of seeking information was to malign and lower down the image of the respondent and his family members in the eyes of their respective employers. She could not give any instance as to what was the demand of dowry. The allegations levelled by the appellant were not supported by any cogent and convincing evidence. No effort had been made by the parents of the appellant to rehabilitate their daughter in the matrimonial home. The trial court taking into consideration the evidence on record allowed the petition filed by the respondent husband and granted

decree of divorce.

5. 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.

6. In *Vishwanath vs. Sau.Sarla Vishwanath Agrawal*, 2012 (7) SCC 288, the Apex Court while elaborating 'cruelty' observed as under:-

“17. The expression 'cruelty' has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status. [In Sirajmohamedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan and another](#), (1981) 4 SCC 250, a two-Judge Bench approved the concept of legal cruelty as expounded in *Sm. Pancho v. Ram Prasad*, AIR 1956 Allahabad 41, wherein it was stated thus: -

“Conception of legal cruelty undergoes changes according to the changes and advancement of social concept and standards of living. With the advancement of our social conceptions, this feature has obtained legislative recognition that a second marriage is a sufficient ground for separate residence and

separate maintenance. Moreover, to establish legal cruelty, it is not necessary that physical violence should be used.

Continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and an assertion on the part of the husband that the wife is unchaste are all factors which may undermine the health of a wife.

It is apt to note here that the said observations were made while dealing with the Hindu Married Women's Right to Separate Residence and Maintenance Act (19 of 1946). This Court, after reproducing the passage, has observed that the learned Judge has put his finger on the correct aspect and object of mental cruelty.

18. [In Shobha Rani v. Madhukar Reddi](#)[3], while dealing with “cruelty” under Section 13(1)(ia) of the Act, this Court observed that the said provision does not define “cruelty” and the same could not be defined. The “cruelty” may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem to determine it. It is a question of fact and degree. If it is mental, the problem presents difficulty. Thereafter, the Bench proceeded to state as follows: -

“First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, 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.

19. After so stating, this Court observed about the marked change in life in modern times and the sea change in

matrimonial duties and responsibilities. It has been observed that when a spouse makes a complaint about treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatized as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. Their Lordships referred to the observations made in *Sheldon v. Sheldon* (1966) 2 All England Reporter 257, wherein Lord Denning stated, “the categories of cruelty are not closed.” Thereafter, the Bench proceeded to state thus: -

“Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty.

These preliminary observations are intended to emphasise that the court in matrimonial cases is not concerned with ideals in family life. The court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord Ried observed in *Gollins v. Gollins* (1963) 2 All England Reporter 966:

In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with this man or this woman.”

20. [In V. Bhagat v. D. Bhagat \(Mrs.\), 1994\(1\) RRR 354 : \(1994\) 1 SCC 337](#), a two-Judge Bench referred to the amendment that had taken place in Sections 10 and 13(1)(ia) after the Hindu Marriage Laws (Amendment) Act, 1976 and proceeded to hold

that the earlier requirement that such cruelty has caused a reasonable apprehension in the mind of a spouse that it would be harmful or injurious for him/her to live with the other one is no longer the requirement. Thereafter, this Court proceeded to deal with what constitutes mental cruelty as contemplated in Section 13(1)(ia) and observed that mental cruelty in the said provision can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. To put it differently, the mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It was further observed, while arriving at such conclusion, that regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances. What is cruelty in one case may not amount to cruelty in another case and it has to be determined in each case keeping in view the facts and circumstances of that case. That apart, the accusations and allegations have to be scrutinized in the context in which they are made. Be it noted, in the said case, this Court quoted extensively from the allegations made in the written statement and the evidence brought on record and came to hold that the said allegations and counter allegations were not in the realm of ordinary plea of defence and did amount to mental cruelty.”

7. Coming to the factual matrix in the present case, the behaviour and attitude of the appellant from the very beginning was not cordial towards the respondent and his parents. After leaving the matrimonial home, she sent legal notices to the respondent. She sought information under the

RTI Act regarding the place of posting, transfer and relating to government

accommodation in respect of the respondent and his parents. The respondent proved the allegations of cruelty levelled by him against the appellant by producing documentary evidence in the form of Ex.P.1 to P.32 besides producing witnesses in oral evidence. The version of the appellant including denial of having sent legal notice through her counsel Shri S.C.Katoch, Advocate, Palampur and also that she had never sought any information under RTI Act was falsified by the documentary evidence produced by the respondent-husband. The acts committed by her caused mental tension to the respondent. Although the respondent informed the parents of the appellant about her behaviour, they instead of making the appellant understand, they started blaming the respondent. She was not at all interested to go back to her matrimonial home inspite of willingness of the respondent. The relevant findings recorded by the trial court read thus:-

“21. In the instant case, the petitioner while appearing in the witness box as PW1 specifically deposed that the behaviour of the respondent towards the petitioner was hostile since the very inception of the marriage. Although he informed the parents of the respondent about the behaviour of the respondent but instead of making the respondent understand, they started blaming the petitioner. The petitioner also reiterated his allegations in his letters Ex.P.1 and Ex.P.2 written to the respondent and her father respectively. In response to the said letters, the respondent sent legal notice to the petitioner on 10.3.2011 vide Ex.P.3 through Shri S.C.Katoch, Advocate, Palampur. It may be observed that in her cross examination, the respondent denied having sent legal notice Ex.P.3 to the petitioner on her instructions, although, she admitted that Shri SC Katoch was her advocate who was pursuing her two cases in

Palampur (Himachal Pradesh). Perusal of legal notice Ex.P.3 clearly reveals that the said legal notice had been sent by Shri SC Katoch Advocate on the instructions of the respondent for initiating legal proceedings.

22. In the said legal notice Ex.P.3, the respondent levelled number of allegations against the petitioner and his family members that they wanted a bride with M.Sc. Mathematics qualification; the gifts and dowry articles in the marriage were of sub standard besides they wanted big item. The said legal notice Ex.P.3 also finds mention that even at the place of work of the petitioner at Bharuch, the petitioner on the instigation of his parents used to abuse the respondent and her parents. The jewellery from both the sides was kept by mother of the petitioner in the bank locker at Shimla and that the respondent had to undergo a lot of mental torture which made the life of the respondent a hell and that the petitioner did not allow the respondent to call her parents and insulted the respondent when she took their calls. It also finds mention that on 24.1.2011 when the respondent returned from school in the evening, her belongings had been packed and on arrival of the petitioner from his office, he snatched respondent's mobile phone physically abused her and ultimately he left the respondent at her parents' home on 25.1.2011 at Nasirabad (Rajasthan) where her father was posted at that time and that thereafter the petitioner broke all links of communication with the respondent.

23. To the utter surprise, the respondent denied having sent legal notice Ex.P.3 to the petitioner on her instructions. Not only this, even the respondent feigned ignorance about the fact that legal notice Ex.P.3 was replied by the petitioner or not vide Ex.P.4 and receipt thereof Ex.P.5. The version of the respondent is not at all believable when she stated that her counsel did not inform her about reply Ex.P.4. Similarly,

the version of the respondent is also not believable when she stated that she was not having any knowledge to instruct her counsel Mr. Katoch to serve upon the partitioner legal notices Ex.P.6 and Ex.P.8 or not. Perusal of legal notices Ex.P.6 and Ex.P.8 reveals that the respondent had reiterated her allegations of Ex.P.3 in the said legal notice Ex.P.6 and Ex.P.8. She also could not recollect as to whether her counsel Mr. Katoch had informed her about the replies Ex.P.7 and Ex.P.9. Thus, the act and conduct of the respondent itself shows that it was the respondent who was not interested in the matrimonial company of the petitioner because on the one hand, the petitioner had kept on saying that she wanted to live with the petitioner but on the other hand, she was levelling number of allegations and subsequently she has been feigning ignorance about the legal notices, mentioned above, having been served upon the petitioner as well as his parents. It is not out of place to mention here that admittedly, the present respondent had also filed a petition under Section 125 of the Cr.P.C. before the Court of Judicial Magistrate Ist Class, Palampur (HP), where she was examined as PW3. During the course of her cross examination, the respondent admitted that she had tendered letters Ex.PW3/A and Ex.PW3/B dated 16.2.2011 (now Ex.PX/3 and Ex.PX/4 respectively). However, she feigned her ignorance about the copies of the notices Ex.PW3/C, Ex.PW3/D, Ex.PW3/E and Ex.PW3/F (now Ex.PX/5 to Ex.PX/8 respectively) whereas on the other hand, the present respondent in her examination in chief in the petition under Section 125 of the Code of Criminal Procedure, 1973 while appearing in the witness box as PW3 had specifically deposed that notices Ex.PW3/C, Ex.PW3/D, Ex.PW3/E and Ex.PW3/F were duly replied by her through her counsel which were Ex.PW3/G to Ex.PW3/K (now Ex.PX/9 to Ex.PX/12). Thus, it can be

inferred that the present respondent was telling lie and suppressing the truth because one after the another at different stages, she had been taking different stands as per her convenience and her depositions at different stages were contradictory. She has denied her own documents which was being produced by her in her petition under Section 125 of the Code of Criminal Procedure, 1973 which shows that she has not come to the court with clean hands.

24. Not only this, vide her application Ex.P.12, the respondent sought information under the Right to Information Act, 2005 against the mother of the petitioner regarding her places of postings including Shimla and to elucidate the reasons for not transferring her after 3 years of her stay at Shimla as well as for occupying government accommodation despite having her own accommodation. The respondent also preferred an appeal before the appellate authority cum Additional DRM, Ambala Division, Northern Railway, Ambala vide her appeal Ex.P.18 regarding denial of information against the petitioner. However, again with utmost surprise, the respondent even refused letter Ex.P.12 and Ex.P.18 bearing her signatures. She stated that the signatures appended on these documents did not belong to her and she came to know about this forgery at that very time. But surprisingly, till today, the respondent has not been able to show that she filed any complaint that her signatures were forged. Otherwise also, on a bare perusal from naked eyes, it can be easily inferred that Ex.P.12 and Ex.P.18 bore the signatures of the respondent. Thus, the version of the respondent cannot be said to be believable.

25. The matter does not end here. Even the mother of the respondent moved application to seek certain information regarding the post held by the father of the petitioner as well as his pension. But again surprisingly, the said

application Ex.P.14 bore the signatures of her mother Reeta Manhas. As regards Ex.P.23, which is another application moved by the respondent seeking certain information against the petitioner under the Right to Information Act, the respondent denied that she ever moved any such application and the signatures appended thereon did not bear her signature.

26. From the above discussed facts, it can be said that the respondent is not telling truth for the reasons best known to her because on one hand, she had been trying to seek information against the petitioner and his parents and on the other hand, in the instant petition, she has denied to have moved any such application under the Right to Information Act. It may be observed here that the intention behind the seeking of information was to malign and lower down the image of the petitioner and his family members in the eyes of their respective employer.”

Besides the aforesaid, the trial court had rightly analysed the oral as well as documentary evidence produced by the respondent-husband to prove his case and to establish that the appellant had treated him with cruelty.

8. The findings have been recorded by the trial court after appreciating the entire evidence on record. Learned counsel for the appellant has not been able to show any illegality or perversity in the said findings which may warrant interference by this Court. Consequently, finding no merit in the appeal, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

February 21, 2015
gs'

(Sneh Prashar)
Judge