

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

FAO No.M-4615 of 2014 (O&M).

DATE OF DECISION: January 28, 2015.

JAGBIR @ JAGGU

....APPELLANT.

VERSUS

MAUSAM

....RESPONDENT.

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

**Present: Mr. Vijay Singh Kajla, Advocate
for the appellant.**

**Mr. Narender Kajla, Advocate
for the respondent.**

SNEH PRASHAR, J.

CM No.13034-CII of 2014

After hearing the learned counsel for the parties and perusing the application, delay of 25 days in filing the appeal is condoned.

C.M. stands disposed of.

FAO No.4615 of 2014

1. A petition under Section 13 of the Hindu Marriage Act, 1955 (in short “the Act of 1955”) for dissolution of marriage by a decree of divorce was filed by petitioner-wife Mausam against her husband-

appellant Jagbir @ Jaggu, which was allowed by learned District Judge, Family Court, Hisar, vide judgment and decree dated 07.04.2014. Assailing the said judgment and decree, the instant appeal was preferred by appellant-husband.

2. In precise, the facts which need to be noticed are as under:-

The marriage between the parties was solemnized on 01.03.2009 at village Sarsana, Tehsil Barwala, District Hisar as per Hindu rites and ceremonies. After marriage, they cohabited as husband and wife, but no issue was born out of the wedlock. Petitioner Mausam averred that from the very beginning of the marriage, the conduct of the appellant-husband was not good towards her. He often used to stay away from the matrimonial home causing mental harassment to her. Just some days after marriage, the appellant committed rape on her relative and the victim committed suicide. He was arrested and subjected to trial and was ultimately convicted by learned Additional Sessions Judge, Hisar, for commission of offence under Sections 376/306/451 of Indian Penal Code (in short "I.P.C.") and was sentenced to undergo imprisonment for a period of eight years.

The petitioner pleaded that in view of said circumstances, it was impossible for her to live with the appellant under the same roof. She had left the matrimonial home and was living at the mercy of her poor parents for the last about three years. Hence, she prayed for dissolution of her marriage with the appellant-husband by a decree of divorce.

3. The petition was contested by appellant Jagbir @ Jaggu.

Preliminary objections with regard to maintainability of the petition and suppression of true and material facts etc. were raised.

Replying on merits, the appellant denied that he had not been living properly with the petitioner or had ever harassed her mentally. He alleged that he was falsely implicated in a rape case by his own relatives, but admitted that he was convicted and was presently undergoing sentence at Central Jail, Hisar. As regards, the plea of desertion, the respondent submitted that when he was undergoing trial in the criminal case, the petitioner was residing at the matrimonial home but about eight months back she left him without any rhyme or reason and started residing at her parental home. Controverting all allegations, he prayed for dismissal of the petition.

4. On the pleadings of the parties, following issues were settled:-

- (1) Whether the petitioner is entitled for the decree of divorce on the ground of cruelty, as alleged in the petition? OPP.
- (2) Whether the petitioner has been deserted by her respondent-husband, as alleged? OPP.
- (3) Whether the petitioner has suppressed the material facts from the Court? OPR.
- (4) Whether the petition is not maintainable in the present form? OPR.
- (5) Relief.

5. Both the parties adduced evidence in support of their respective contentions.

Petitioner Mausam appeared as PW1 and reiterated her allegations against the respondent.

On the other hand, respondent Jagbir @ Jaggu stepped into the witness box as RW1 and reiterated the defence set up by him.

6. Considering the evidence adduced by the parties and the submissions made on their behalf, learned trial court finding that involvement of the respondent in a rape case amounted to cruelty on the petitioner, held her entitled to a decree of divorce and decided Issue No.1 in her favour. Issue No.2 was not pressed during arguments and there being no evidence on Issues No.3 and 4, the same were decided accordingly.

Consequent to the decision on Issue No.1, the petition was allowed and a decree of divorce as envisaged under Section 13(1)(ia) of the Act of 1955 was passed.

7. Feeling aggrieved by the judgment and decree dated 07.04.2014, appellant Jagbir @ Jaggu preferred the instant appeal.

8. The submissions made by Mr. Vijay Singh Kajla, learned counsel representing the appellant and Mr. Narender Kajla, learned counsel representing the respondent have been heard.

9. The facts pleaded by petitioner-wife Mausam could not be disputed by respondent Jagbir @ Jaggu. Admittedly, the parties were married on 01.03.2009 and soon after marriage a criminal case bearing

First Information Report No.705, dated 18.07.2009 under Sections 376/306/451 of the Indian Penal Code was registered against the appellant on the allegation that he had raped a relative of the petitioner. The trial of the case resulted in conviction of the appellant and he was sentenced to imprisonment for a period of eight years. It was also the allegation of the petitioner that from the very inception of marriage the conduct of the appellant towards her was not proper. He often used to remain out of the matrimonial home and used to cause mental harassment to her.

10. Learned counsel for the appellant argued that no such specific incident could be narrated by the petitioner which could be termed as an act of “cruelty” on part of the appellant towards her. The parties were living happily after marriage but unfortunately the appellant was falsely implicated in a case of rape at the instance of a relative who was inimical towards him. Though, he has been convicted and sentenced, but he has filed an appeal which is pending and therefore, the allegation of rape having not attained finality, cannot be used as an adverse against the conduct of the appellant.

11. Section 13(1)(ia) of the Act of 1955 postulates that a matrimonial tie between the parties can be dissolved by a decree of divorce on the ground that the complaining spouse had been treated with cruelty by the other spouse. The word “cruelty” used in the said provision has not been defined in the Act, but it has been used in relation to human conduct, human behaviour and in respect of matrimonial duties and obligations. Indeed, every matrimonial conduct which may cause

annoyance to the other may not amount to cruelty, but the kind of degree of cruelty necessarily to amount to a matrimonial offence has also not been defined anywhere.

12. Elaborately analyzing the expression 'cruelty' as a ground of divorce under the Act, the Hon'ble Apex Court held in **Parveen Mehta vs. Inderjit Mehta, 2002(3) RCR (Civil) 529** as under:-

“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.”

13. Considering the provision of Section 13(1)(ia) of the Act of 1955 and explaining the circumstances and laying down the principle to be borne in mind while dealing with a petition for divorce on the ground of cruelty and type of cruelty laid down in **V.Bhagat vs. Mrs. D.Bhagat AIR 1994 (SC) 710**, it has been observed as under:-

“17. Mental cruelty in S.13(1)(ia) 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. In other words, 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 is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While

arriving at such conclusion, 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 which it is neither possible nor desirably to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”

14. In the case in hand, admittedly the appellant has been convicted and sentenced in a criminal case on the allegation of having raped a relative of the petitioner-wife. The only evidence led by the respondent to rebut the allegation of the petitioner was his self serving statement. During his statement, he admitted that he is confined in Central Jail, Hisar, since the time of his arrest i.e. for the last about 4½ years. The said act and conduct of the appellant was undoubtedly a severest kind of mental cruelty that could be caused to a wife. In this context, the findings of learned trial court were as under:-

“The petitioner has also placed on record an attested photocopy of the judgment dated 14.12.2010 as well as the order of sentence dated 16.12.2010 passed by the learned court of Sh. H.S. Dahiya, the then Addl. Sessions Judge, Hisar in order to prove her plea that her respondent-husband has been convicted in a rape case FIR No.705 dated 18.07.2009 for the offence under Sections 451, 376, 306 IPC and he has been sentenced for a period of eight years. Thus in considered opinion of this Court, the involvement of the

respondent in a rape case soon after the marriage certainly amounts to cruelty on the petitioner for which she is entitled to obtain a decree of divorce on the ground of cruelty as envisaged under Section 13(1)(ia) of the Act. Accordingly, this issue is decided in favour of the petitioner.”

15. Apparently, there is no perversity, illegality or error in the findings of learned trial Court which can warrant intervention.

In the above premises, there being no merit in the appeal, it is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

January 28, 2015.

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Note: Whether to be referred to the Reporter or not? Yes/No.