

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

FAO No.M-33 of 2013 (O&M).

DATE OF DECISION: February 19, 2015.

Parshotam alias Gandhi

....APPELLANT.

VERSUS

Manju Devi

....RESPONDENT.

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

Present: Mr. Som Nath Saini, Advocate for the appellant.

Mr. Kulbhushan Raheja, Advocate for the respondent.

SNEH PRASHAR, J.

CMM No.160 of 2013

Learned counsel for the respondent-wife states that the litigation expenses have been paid and he be allowed to withdraw the instant application.

C.M. stands dismissed as withdrawn.

FAO-M No.33 of 2013

1. A petition bearing HMA case No.41 of 2011 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 respondent-wife Manju Devi against her husband-appellant Parshotam alias Gandhi, which was allowed by learned Additional District Judge, Ferozepur, vide judgment and decree dated 11.01.2013 and the marriage between the parties was dissolved by a decree of divorce. Assailing the said judgment and decree, the instant appeal was preferred by the appellant-husband.

2. Precisely, the facts extracted from the record are as under:-

The marriage between the parties was solemnized on 23.11.2009 at village Shergarh, Tehsil Abohar, District Ferozepur, as per Hindu rites and ceremonies. After marriage, they resided at village Pilliabanga, District Hanumangarh (Rajasthan).

Manju Devi-respondent averred that her family gave dowry articles worth Rs.3 lacs and spent Rs.1 lac on marriage functions. From the very beginning, the behaviour of the appellant was cruel towards her. He was in bad company and was habitual of taking alcohol, drugs (smack) etc. and was also involved in criminal activities. Several criminal cases were registered against him including a case bearing First Information Report No.438 dated 27.09.2010 under Section 394, 398, 307 read with Section 34 of Indian Penal Code (in short, "I.P.C.") at Police Station Pilliabanga, District Hanumangarh. He usually returned home late at night in a drunk condition. On 09.06.2010, he came alongwith his three friends, namely, Bablu, Amit and the name of third was not known and forced her to serve whisky and food to them. He teased and humiliated her and even tried to sexually molest her in the presence of aforesaid persons and when

she objected, he gave beatings to her.

It was further pleaded by the wife that parents of appellant used to instigate him to beat her. Panchayats were convened for amicable settlement with the involvement of her brother, Sant Ram Sarpanch and various other members of village Shergarh. The appellant was asked to mend his ways but all efforts proved futile. Ultimately, a compromise took place between them and an amount of Rs.3,50,000/- by way of permanent alimony was received by her, documents were accordingly executed and they agreed to dissolve the marriage by mutual consent by filing a petition under Section 13-B of the Act of 1955.

Subsequently, the appellant got a case registered against her, her parents, brother and other relatives under Section 454, 380, 312 and 120-B of I.P.C. at Police Station Pilliabanga. The allegations in the complaint were found to be false and the case was accordingly disposed of. With the said submissions, the wife prayed for dissolution of her marriage with the appellant by a decree of divorce on the ground of cruelty.

3. The appellant-husband contested the petition and averred that the wife had concealed the fact that a petition under Section 9 of the Act of 1955 was filed by him which was pending in the Court of District Judge, Hanumangarh (Rajasthan). Denying all the allegations levelled against him, he pleaded that the respondent had left the matrimonial home of her own volition and without any sufficient cause. He denied the incident of 09.06.2010 stating that he was never involved in drinking or

any criminal acts.

The appellant further averred that the respondent had lodged a false First Information Report under Section 495 and 498-A I.P.C. due to which his family members had entered into a compromise with her. Submitting that he made attempts to bring the wife back to his house but she refused, the appellant prayed for dismissal of the petition.

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

- (1) Whether the respondent has treated the petitioner with cruelty? OPP.
- (2) Whether the petitioner is entitled to the decree of divorce on the grounds mentioned in the application? OPP.
- (3) Whether the petitioner has concealed the material facts from the court? OPR.
- (4) Relief.

5. Both the parties adduced evidence to substantiate their respective contentions.

6. Appraised of the evidence adduced by the parties and the submissions made on their behalf, learned trial Court finding that the wife had successfully proved that the appellant had treated her with cruelty decided Issue No.1 in her favour and allowed the petition dissolving the marriage between them by granting a decree of divorce.

7. Feeling aggrieved by the impugned judgment and decree dated 11.01.2013, appellant Parshotam alias Gandhi preferred the instant appeal.

8. The submissions made by Mr. Som Nath Saini, learned counsel representing the appellant and Mr. Kulbhushan Raheja, learned counsel representing the respondent-wife have been considered and record has been perused.

9. The main allegations of the wife were firstly that the appellant was involved in criminal activities so much so that a case bearing First Information Report No.438 dated 27.09.2010 under Section 394, 398, 307 read with Section 34 I.P.C. was registered against him and some other persons at Police Station Pilliabanga, District Hanumangarh; secondly the appellant had got registered a case under Sections 454, 380, 312 and 120 I.P.C. against her, her parents, brother and other relatives at Police Station Pilliabanga, District Hanumangarh (Rajasthan) but during enquiry the allegations levelled by him were found to be false; lastly in addition to the above, she pleaded that the behaviour of the appellant was so cruel towards her that on 09.06.2010 he came home alongwith his three friends the name of one of whom was not known to her and the other two were Bablu and Amit and asked her to serve glasses for taking whisky and some food etc. to them. At the same time, he started teasing and humiliating her and tried to sexually violate her person in the presence of his friends and when she objected he gave her severe beatings.

The above allegations were proved by the wife by leading ocular and documentary evidence.

10. Learned counsel for the appellant argued with vehemence that the criminal case bearing First Information Report No.438 dated

27.09.2010 under Section 394, 398, 307 read with Section 34 I.P.C. against the appellant was based on false and frivolous facts. Trial in the said case had since completed and the appellant was acquitted of the charges levelled against him by learned Additional Sessions Judge, Hanumangarh vide judgment dated 29.05.2012. That was the only criminal case registered against the appellant and his acquittal proved that he had been falsely implicated. While he was confined behind the bars in the said criminal case the wife had left the matrimonial home believing that he will remain in jail for a long time and the case can result in his conviction also. After the appellant was admitted to bail, he immediately went to the parental home of the respondent to bring her back but her parents refused to send her without any rhyme or reason.

As far as the criminal case got registered by the appellant against the wife and her family members was concerned, learned counsel contended that it came into existence only after the respondent got a criminal case under Sections 406 and 498-A I.P.C. registered against him. Forced by the facts and circumstances, which were true, the appellant had exercised his legal right of lodging complaint to the police and that could not be termed as an act of cruelty towards the wife. In any case, that First Information Report was cancelled by the police and no further step against the wife or her family members was taken by the appellant. In the said set of facts, the allegation of the wife that she had been treated with cruelty by the appellant was not available to her and therefore, her petition deserved outright dismissal.

11. The word “cruelty” used in Section 13(1)(ia) of the Act of 1955, which can be a ground for divorce, denotes mental as well as physical cruelty intentional or unintentional. If the cruelty is physical, the Court has no problem in determining the same as there can be tangible and direct evidence for the same. But in the case of 'mental cruelty', there may not be direct evidence and in such a case the Court is required to probe into the mental process and mental effects of the incidents that are brought out in evidence. “Cruelty” for the purpose of Section 13(1)(ia) is to be taken as a behaviour 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.

12. Elaborately analyzing the expression 'cruelty' as a ground of divorce under the Act, the 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.

XX XX XX

XX XX XX

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. Reverting to the instant case, the allegations of the wife against the appellant consisted of not only physical cruelty towards her but also that she was victimized by grave mental cruelty. Considering the facts and circumstances of the case and the ocular and documentary

evidence led by the parties, the relevant findings of learned trial court were as under:-

“In the case at my hand, the allegation raised by the petitioner have been sufficiently corroborated by her brother as PW2 and even Sarpanch of the village Shergarh, Sant Ram as PW3 has deposed that the behaviour of the respondent was cruel from the very beginning of the marriage with the petitioner and there had been Panchayats convened many times. The respondent was compelled to leave her matriculation home and ultimately, petitioner received Rs.3,50,000/- as amount of permanent alimony from the family of the respondent. It was agreed that the petition for natural divorce shall be moved in the court but the respondent later on backed from the same.

The registration of the criminal case against the respondent vide Ex.P3 and P4 stand duly proved on the record. Filing of the false case against the petitioner and her family members vide FIR Ex.P1 and the contents of the investigation revealed that the respondent had intentionally raised the false allegations against the petitioner and her family members and even there had been a compromise between the family of the respondent and the petitioner, by which an amount of Rs.3,50,000/- was paid to the petitioner for her permanent claim qua alimony and Istridhan etc.”

14. The fact that the appellant was an accused in a criminal case bearing First Information Report No.438 dated 27.09.2010 under Section 394, 398, 307 read with Section 34 I.P.C. registered at Police Station Pilliabanga, District Hanumangarh was not disputed by him. He may have since been acquitted in the said case but his involvement in the criminal

case within less than one year of marriage with the respondent was certainly a matter which was sufficient to cause extreme mental agony/disturbance to the wife. That was not the end of the matter. In fact, prior to involvement of the appellant in the criminal case, his behaviour towards the respondent was extremely bad and that can be assessed from the incident dated 09.06.2010 quoted by her. She specifically named two of the friends of the appellant namely Bablu and Amit, in the presence of whom the said incident had taken place. Had there been no truth in her version, the appellant could have produced either of his friends named by the wife to controvert her allegation. There being no evidence of the appellant to refute the allegation that the wife was teased, humiliated and sexually assaulted by the appellant in the presence of his friends, nothing more was required for the wife to prove that the act and conduct of the appellant towards her was most cruel.

15. In addition to the above, it has also come in evidence that after release of the appellant from jail, he managed to get registered a criminal case (FIR Ex.P1) under Sections 454, 380, 312 and 120-B of I.P.C. at Police Station Pilliabanga, District Hanumangarh against the respondent, her parents, brother and other relatives. During investigation, his allegations were found to be false and the First Information Report was cancelled vide cancellation report Ex.P2.

By getting registered a criminal case levelling false allegations against the respondent and her family members, the appellant certainly added mental pain and sufferings to the wife. It has been held by

the Apex Court in a recent judgment in ***K. Srinivas Rao vs. D.A. Deepa, 2013(5) SCC 226*** that it is now beyond cavil that if a false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce.

16. The facts and circumstances pleaded and proved by the wife indicate that the marriage between the parties has irretrievably broken down owing to the harsh and cruel behaviour of the appellant and it is no longer possible for them to live together under the same roof.

Thus, there being no adversity, perversity or error of law in the findings of learned trial court warranting intervention, the appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

February 19, 2015.

jitender

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