

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-333 of 2013 (O&M)

Date of Decision: 15.1.2015

Kamal Verma

....Appellant.

Versus

Nidhi

...Respondent.

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

PRESENT: Mr. Vikram Singh, Advocate and
Mr. Rubi Kumar, Advocate for the appellant.

Mr. Sandeep Kotla, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. Feeling aggrieved by the judgment and decree dated 1.10.2013 passed by the Additional District Judge, Panipat, whereby the petition filed by the respondent-wife under Section 13 of the Hindu Marriage Act, 1955 (in short "the Act") for dissolution of marriage by a decree of divorce was allowed, the appellant-husband has approached this Court by way of instant appeal.

2. Put shortly, the facts necessary for adjudication of the present appeal as narrated therein may be noticed. The marriage between the parties was solemnized on 2.7.2000 at Panipat, as per Hindu rites and ceremonies. The marriage was consummated between the parties. Out of the said wedlock, a daughter, namely, Vanshika was born on 25.10.2012 who is residing with the respondent. After few days of the marriage, the appellant and his family members started teasing,

taunting and beating the respondent on petty matters. The appellant demanded ₹ 1 lac from the respondent for purchasing a plot measuring 32 square yards in Tej Colony, Tehsil Camp, Panipat. The said plot was purchased for ₹ 30,000/- and construction thereon was raised by the mother of the respondent. The appellant pressurized the respondent and her mother to transfer the ownership of the said house in his name. The appellant was a drunkard and used to give beatings to the respondent. He did not pay the domestic expenses to the respondent and she had to run household from the income of her mother who was serving in Sewa Dal at Civil Hospital, Panipat. The appellant used to come home at late night and threatened to remarry with some other girl if the said house was not transferred in his name. The appellant had stolen the sale deed of the said house and blackmailed the respondent to sell the same upon which she moved a complaint to the police. However, the matter was compromised and the respondent received the sale deed back. On 1.8.2008, the appellant gave beatings to the respondent and thrown her out of her matrimonial home along with minor daughter and threatened to face dire consequences if she would not bring ₹ 50,000/- cash. Efforts were made to settle the matter through panchayat but to no effect. Accordingly, the respondent filed a petition under Section 13 of the Act for dissolution of marriage by a decree of divorce. The said petition was contested by the appellant by filing a written statement. Various preliminary objections were raised. It was pleaded that respondent Nidhi was also known as Seema Rani and both of them had met in the month of May, 2000 in a STD/PCO Booth at Amar Bhawan Chowk, Panipat and their consent meeting turned into friendship which lateron, resulted into their marriage. The mother of the

respondent was happy with their marriage but the parents of the appellant did not agree and, therefore, he shifted in a rented house as he was in true love with her. Since the mother of the respondent was a poor widow, their marriage was performed by Nari Kalyan Samiti (Registered), Panipat in West Hotel, GT Road, Panipat on 2.7.2000. The appellant also got released the father of the respondent on bail who was involved in some criminal case. Later on, the father of the respondent disclosed that he was having two wives, i.e. the mother of the respondent as well as one Jagwanti. The respondent and one son, namely, Rinku @ Lalit Kumar were from his first wife, while from the second wife Jagwanti, he had two sons, namely, Deepak and Raju. He himself, along with son Rinku @ Lalit Kumar was living with his second wife. The appellant had to sell his plot situated at Ujha Road, Panipat under the pressure of the respondent and her mother for a consideration of ₹ 1,90,000/- and then he purchased a plot in Tej Colony, Panipat for a sale consideration of ₹ 90,000/-. The appellant constructed a one room set over the said plot by spending ₹ 80,000/-. In the month of September, 2007, a boy told the appellant that his brother Ajay Kumar had developed relations with the respondent and he threatened the appellant to take divorce from the respondent so that his brother could marry with her. On enquiry, the appellant came to know that the respondent and said Ajay Kumar were working in BRM Institute, Model Town, Panipat and the respondent used to talk with him on his mobile No. 9813506338. Thereafter, the respondent and her mother forced the appellant to give divorce to the respondent and also filed a false complaint against him regarding theft of original sale deed of the said house. The police asked the appellant either to leave the said house or

he would be implicated in some false theft case, due to which he left the said house on 10.10.2007 and the respondent withdrew the complaint as compromised. On 16.11.2007, the respondent filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against the appellant but withdrew the same on 13.5.2008 by making a statement that she did not want to continue with the said case as she was leading happy married life. Thereafter, the appellant, respondent, her mother and brother Rinku @ Lalit Kumar had also attended a Jagran got organized by her mother. Besides this, the appellant had also paid the installments of committee taken by the respondent and paid charges of physical fitness course attended by her. A criminal case bearing FIR No. 487 dated 30.5.2009, under Section 392 of the Indian Penal Code, Police Station City, Panipat was registered against the brother of the respondent upon which, the respondent asked the appellant to arrange ₹ 50,000/- for contesting the case. However, when the appellant expressed his inability, the respondent filed the divorce petition. The other averments made in the petition were denied and a prayer for dismissal of the same was made. From the pleadings of the parties, the trial court framed the following issues:-

1. Whether the petitioner is entitled to a decree of divorce on the grounds as mentioned in the petition? OPP
2. Whether the petitioner has no locus standi to file the present petition? OPR
3. Whether the petition is not maintainable? OPR
4. Whether the petitioner is stopped by her own act and conduct from filing the present

petition?OPR

5. Relief.

3. In support of her case, the respondent examined herself as PW1 besides examining Sham Lal as PW2, Ashok Kumar as PW3 and her mother Vanita as PW4. On the other hand, the appellant himself appeared as RW1 and examined Krishan Lal Grover as RW2 and also placed on record newspaper cutting as Ex.R1 and Panchayati compromise as Mark A.

4. The trial court on appreciation of evidence led by the parties, decided issue No.1 in favour of the respondent holding that the marriage between the parties had broken irretrievably and the respondent could not be forced to undergo further harassment at the hands of the appellant. Issues No.2 to 4 were decided against the appellant being not pressed. Accordingly, the trial court vide judgment and decree dated 1.10.2013 allowed the divorce petition filed under Section 13 of the Act by the wife by passing a decree of divorce. Hence, the present appeal.

5. Learned counsel for the appellant submitted that no cruelty was ever meted out to the respondent but the trial court has wrongly granted a decree of divorce on that ground. It was further submitted that the false allegations were levelled by the respondent as no evidence was led by her to substantiate her statement and the allegations. It was contended that all the witnesses produced by the respondent were interested witnesses being her uncles and mother. It was urged that it was the respondent whose character was not above board.

6. On the other hand, learned counsel for the respondent besides supporting the judgment and decree passed by trial court

submitted that from the testimonies of the witnesses, it was clear that the appellant had committed cruelty upon her by raising demand of money as well as house from her and had deserted her. It was further submitted that the appellant had not paid a single penny to the respondent to run the household and she had to manage at her own by doing some job.

7. After hearing learned counsel for the parties , we do not find any merit in submissions made by learned counsel for the appellant.

8. 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.

9. The Apex Court in **Parveen Mehta v. Inderjit Mehta 2002 (3) 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.

XX	XX	XX
XX	XX	XX

21. 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. 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.”

10. Further, 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.”

11. As per the averments, the dispute between the parties was with regard to physical, mental cruelty and demand of money by the appellant. The respondent proved her stand while appearing as PW1 which was corroborated by the other witnesses examined by her. The mother of the respondent purchased a plot for the parties and had also got constructed a house over the same. The appellant insisted for transfer of the said house in his name and also gave beatings to the respondent on this account. He took away the original sale deed of the house in question but the respondent got back the same with the police help. Even the appellant failed to maintain the respondent and her daughter. All the above said instances show that the respondent was treated with cruelty by the appellant. The witnesses examined by the

respondent were uncles and mother. Though they may not be independent witnesses, but their testimonies inspire confidence to establish that the appellant had committed cruelty to the extent that she was compelled to file the divorce petition. It cannot be held that the testimony of only independent witnesses can be accepted, as at many times it may not be possible and feasible to have independent witnesses. It depends upon facts of each case and it is the testimony of the witness which has to be given weightage unless shown to be untrustworthy in the course of cross-examination. The appellant had failed to elicit anything from these witnesses, i.e. PW2, PW3 and PW4 during the lengthy cross-examination conducted by his counsel. The appellant was not able to rebut the evidence of the respondent except reiterating the stand taken in the written statement. He himself admitted in his cross-examination that the respondent was kind and nice with him and his family members. Even RW2-Krishan Lal Grover in his cross-examination admitted that the sale deed of the plot was forcibly taken by the appellant from the respondent. Further, the appellant failed to produce any documentary evidence regarding purchase of plot. The appellant had mentioned that the father and brother of the respondent were involved in some criminal cases and to contest their cases, the respondent and her mother demanded money from him. To prove this allegation, no evidence was led by the appellant. Regarding the allegation of illicit relationship of the respondent with one Ajay Kumar, it was also not proved by producing the phone call details and other material evidence. The cumulative effect of the facts and circumstances point out to an irresistible conclusion that the respondent was treated with cruelty. The relevant findings recorded by the trial court read thus:-

“10. After having heard both sides at length and going through entire record carefully, it transpires that the facts of marriage between the parties and birth of daughter out of this wedlock are not disputed. It is also not disputed that the marriage between the parties was got solemnized by Nari Kalyan Samiti and it was simple one. The dispute between the parties to the petition, as per allegations of the petitioner, is with regard to physical and mental cruelty as well as demand of money by the respondent and desertion of petitioner on this account. In this regard, the petitioner, while appearing as PW1, has fully proved her stand, which is duly corroborated by the other witnesses examined by her, as discussed above. It is the specific stand of the petitioner that her mother had got purchased a plot to them and had also got constructed a house over the same. However, the respondent kept on insisting to get transferred the ownership of the same in his name and also gave beatings to the petitioner on this account. Even he took away the original sale deed of the house and with the police help, the petitioner could get the same back. Further, the respondent failed to maintain his wife and daughter and the petitioner had to maintain her household by doing job herself. Though matter was tried to be settled through various panchayats, but could not be sorted out. All these instances clearly

indicate towards the physical as well as mental cruelty, suffered by the petitioner at the hands of the respondent. The version of the petitioner is duly supported by PW2 Sham Lal and PW3 Ashok Kumar, who had also attended the said panchayats. Even PW4 Vanita, mother of the petitioner has also deposed on the lines of the petitioner. No doubt, all the witnesses of the petitioner are related to each other, however, due to this ground only, the otherwise trustworthy and reliable evidence of the petitioner can not be discarded, especially when the respondent could not elicit anything favourable to him, during their thorough cross-examination. It's a domestic dispute and normally outsiders hesitate to interfere in such disputes as the same relate to a family. Moreover, parties in such dispute also don't want to create a scene by making their dispute a public show. In these circumstances, though the evidence of the petitioner is bereft of independent corroboration, but the testimony of the witnesses of the petitioner inspire faith that the respondent has committed cruelty upon the petitioner to such extent that she had to compel to file this petition and it can be safely held that the cruelty caused by the respondent to the petitioner is of such a character, leading to apprehension that it will be harmful or injurious for the petitioner to live with the respondent.

11. Respondent has not been able to rebut the evidence of the petitioner by leading any trustworthy evidence. Though while appearing as RW1, the respondent has reiterated his stand taken in the written statement, however, during cross-examination, he himself admitted that the petitioner was always kind and nice with him and his family. Moreover, RW2 Krishan Lal Grover, during cross-examination, has only given evasive replies to almost all questions put to him and he also admitted that the sale deed of the plot was forcibly taken from the petitioner.

12. Moreover, though respondent has submitted that he himself had purchased the aforesaid plot and had got constructed a house over it, but no evidence, in this regard, has been led by the respondent. No doubt, petitioner has also not produced any documentary evidence regarding purchase of plot and construction of house by her mother, however, her case is duly supported by the oral evidence, led by her, whereas the evidence of the respondent is bereft of any such evidence.

13. Further, though it is the case of the respondent that the father and brother of the petitioner were involved in some criminal cases and to contest their case, petitioner and her mother had demanded money from him, however, no evidence has been led by the respondent to prove this allegation. Similar is

the case with regard to allegation of the respondent regarding illicit relationship between the petitioner and some Ajay Kumar. Though the respondent has alleged that the petitioner used to talk with said Ajay Kumar from her mobile phone, but no such call detail etc. has been proved by the respondent. In fact, respondent has not been able to prove any of his allegations, by leading any cogent and convincing evidence on record.”

12. Learned counsel for the appellant was unable to demonstrate that there was any error or perversity in the findings recorded by the trial court being based on misappreciation or misreading of evidence which may warrant interference by this Court. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

January 15, 2015
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(SNEH PRASHAR)
JUDGE