

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

**CMM No.163 of 2014
FAO-M-385 of 2013 (O&M)
Date of decision: 13.02.2015**

Rajni

.....Appellant

Vs.

Sandeep

.....Respondent

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

Present: Ms. Neeru Bansal, Advocate for the appellant-wife.
Mr. Bhim Singh, Advocate for Mr. G.C.Shahpuri,
Advocate for the respondent.

Ajay Kumar Mittal,J.

1. This appeal has been filed by the appellant-wife against the judgment and decree dated 26.8.2013 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 grounds of cruelty and desertion 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 18.7.2008 according to Hindu rites and ceremonies at Yamuna Nagar. As alleged in the petition under Section 13 of the Act by the husband, the marriage was solemnized in a very simple manner as it was based on love affair between the parties. The parents of the husband were initially reluctant to accord their approval for the marriage because the husband was earning ₹ 3500/- per month whereas the wife was earning ₹ 25,000/- per month and they were apprehending that the marriage could not prove successful. However, later they agreed. After the marriage, the parties lived together at Jagadhri with husband's parents but the wife compelled the husband to live separately from them in Yamuna Nagar. The husband initially did not agree to her proposal in view of old age of his parents. She continued pressurising the husband and even used abusive and threatening language. The husband then shifted to Yamuna Nagar and started living with her in a rented house. The wife after separating the husband from his parents continued harassing and torturing him in one way or the other and compelled him for purchasing a house and to provide cash to her knowing well that he was not in a position to accede to her demands. The wife even refused to perform household job and marital obligations. She started even threatening the husband to implicate him and his parents in a false case if her demands were not met. She even told the respondent that she had divorced her first husband after extracting huge money and implicating him and his parents in a dowry case. The wife had ultimately turned the present husband out of the rented house and shifted to her parental home alongwith entire household goods in September 2008. Later

she got the husband and his parents implicated in a case under sections 498A/406/506 IPC. Upon notice in Section 13 petition, the appellant appeared and filed written statement controverting the averments made in the petition. The trial court after examining the entire evidence on record allowed the petition filed by the respondent-husband vide impugned judgment and decree dated 26.8.2013. Hence the instant appeal by the appellant wife.

3. We have heard learned counsel for the parties and perused the record.

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

- i) “Whether the marriage between the parties is liable to be dissolved by a decree of divorce on the ground of exercise of cruelty on the petitioner by the respondent, as alleged? OPP
- ii) Whether the marriage between the parties is also liable to be dissolved on the ground of desertion of the petitioner by the respondent, as alleged? OPP
- iii) Whether the petitioner has concealed the true and material facts from the court as alleged? If so, to what effect? OPR
- iv) Whether the petition is liable to be dismissed with special costs, as alleged? OPR
- v) Relief.”

In support of his case, the respondent husband appeared as PW1 and produced Devinder Singh PW2 who supported the version given by him.

On the other hand, the appellant wife appeared as RW1 and examined Anil Lamba as RW2. In his statement, the respondent reiterated the averments as made in his petition under Section 13 of the Act. PW2 Devinder Singh who was working in the same factory where the respondent was working

supported the version given by the respondent. The appellant wife in her statement reiterated the averments made in the written statement while controverting the allegations made by the respondent-husband. The trial court after appreciating the evidence on record accepted the petition under section 13 of the Act filed by the respondent and granted divorce vide judgment and decree dated 26.8.2013.

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. 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.

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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.”

7. 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.”

8. In the present case, from the evidence on record, it has been duly proved that the appellant wife had married the respondent after taking divorce from her first husband. Her attitude towards the respondent and his family members was not cordial from the very beginning. She used to pressurize the respondent to live separately from his parents. Ultimately the husband agreed to live at Yamuna Nagar in a rented accommodation. Even there, she did not mend her behaviour. She pressurized the husband for purchase of a house inspite of his weak financial position. She created such circumstances that it became impossible for the husband to live with her. She turned the respondent out of the house and went to her parental home alongwith household articles. She even lodged criminal case against the respondent and his parents under sections 498A/406/506 IPC. It was not controverted that vide order dated 2.8.2014, they were acquitted by the trial court. The findings have been recorded by the trial court after appreciating the entire evidence on record. The relevant finding recorded by the trial court reads thus:-

“12. The parties have, thus, levelled allegations and counter allegations against each other. Each of them while appearing in the witness box have examined one witness to support their version. The question is as to whose version deserves credibility. It is indisputable fact that the wife had married the husband after taking divorce from her previous

husband. This fact has been clearly admitted by the wife in her deposition. The husband's version, thus, seems plausible that the marriage was solemnized in a simple manner and no dowry was given. It is therefore difficult to digest wife's version on the point that the husband and his parents used to tease her on the ground of bringing inferior quality articles or for bringing dowry not upto their expectation. The major thrust of the wife in her written statement was that the husband had turned her out of the matrimonial home due to non fulfilment of dowry demands. However, she has not uttered even a word as to what particular demand was being raised by the husband. The most surprising feature of the case is that not even a suggestion was put in cross examination of husband that he or his family members had raised some demand or had harassed her for dowry.

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19. In view of above discussion, the court finds the husband's version one trustworthy as compared to the wife's allegations that she was harassed and turned out of the matrimonial home for dowry. Accordingly, it is held that the wife has treated the husband with cruelty by first forcing him to live separate from his parents in a rented house and later by implicating the husband and his family members in a criminal case on the allegation of dowry demand and she has deserted him without sufficient cause. Both these issues are, thus, decided in favour of the husband.”

9. 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.

10. The appellant wife has also filed application under section 24

of the Act for grant of maintenance pendente lite and litigation. Reply has been filed by the respondent-husband in Court which is taken on record. It has been inter alia stated therein that the appellant wife has concealed the fact that she is a government employee and earning ₹ 30,000/- per month. Learned counsel for the appellant has not been able to controvert the said fact. Thus, the appellant has sufficient source of income to maintain herself. Consequently, CMM No.163 of 2014 is also dismissed.

(Ajay Kumar Mittal)
Judge

February 13, 2015
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(Sneh Prashar)
Judge