

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-406 of 2013 (O&M)

Date of Decision: 5.2.2015

Pushpinder Kaur

....Appellant.

Versus

Thakur Dass

...Respondent.

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

PRESENT: Mr. Sanjiv Gupta, Advocate and
Mr. K.K. Chaudhry, Advocate for the appellant.

Mr. Akshay Jindal, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the appellant-wife against the judgment and decree dated 3.12.2013 passed by the Additional District Judge, Panchkula, whereby the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (in short "the Act") for dissolution of marriage by a decree of divorce, was allowed.

2. Shorn of unnecessary details, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The marriage between the parties was solemnized on 3.12.1999 at village Marranwala, Tehsil Kalka, District Panchkula according to Hindu rites and ceremonies. The parties cohabited at village Plankhwala, District Solan (HP) and out of the said wedlock, a male child, namely,

Ishant @ Vivek was born on 18.9.2000. When the respondent objected to the appellant to her frequent visits to her parental house, she misbehaved and used defamatory language by levelling false allegations against him and his family members. She also got registered an FIR No. 230 dated 14.9.2003, under Sections 323, 342, 406, 498-A, 506 read with Section 34 of the Indian Penal Code at Police Station, Pinjore against the respondent and his family members on the ground of dowry and illicit relationship of the respondent with his sister-in-law. However, they were acquitted by the trial court vide judgment dated 16.4.2010. Thereafter, the appellant filed a petition under Sections 12, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 against the respondent which is pending adjudication in the court of Chief Judicial Magistrate, Panchkula. She also filed a petition under Section 125 of the Code of Criminal Procedure on 9.10.2003, wherein the trial court vide order dated 5.8.2004 granted consolidated interim maintenance to her at the rate of ₹ 1000/- per month and the revision preferred against the said order was also dismissed vide order dated 1.10.2004. The appellant thereafter filed a petition under Section 18 of the Hindu Adoption and Maintenance Act before the Civil Judge (Senior Division), Nalagarh (HP) and the same was got dismissed in default on 11.5.2005. According to the respondent, the appellant had levelled false allegations regarding demand of dowry and illicit relations which were found to be incorrect. The respondent and his family members remained in police as well as judicial lock up for a considerable period which caused mental and physical cruelty to him. She also deserted the respondent from 13.9.2003 as she was living separately from him without any reasonable cause. 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 resisted by the appellant by filing a written statement. Besides raising various preliminary objections, it was pleaded that though her father had spent huge amount on her marriage but she was taunted, harassed and humiliated by the respondent and his family members by demanding dowry. It was further pleaded that she trapped the respondent in a compromising position with his sister-in-law (Bhabhi). The respondent asked the appellant to bring a scooter or ₹ 35,000/- for purchasing the scooter. Even the father of the appellant sent a complaint dated 9.5.2002 to the President, Gram Panchayat, Kajahal for taking action against the respondent and his family members but to no result. In December, 2003, on refusal of the appellant for bringing ₹ 1 lac for starting the business of the respondent when her brother-in-law came to Palankhwala, she was given beatings by the respondent and his family members. However, a compromise was executed between the parties on 20.7.2003 but the behaviour of the respondent did not improve. Even she was given beatings on 12.9.2003 when she refused to sign on blank papers. She was forced to leave the matrimonial home and to lodge the aforesaid FIR against the respondent and his family members. 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 as prayed for, if so to what effect? OPP
2. Whether the petitioner has concealed the true and material facts from this Court? OPR
3. Relief.

3. In support of his case, the respondent examined himself as PW1. On the other hand, the appellant besides examining herself as RW2, also examined RW1 Harish Kumar and RW3 Raj Kumar. Besides this, both the parties tendered various documents in evidence.

4. The trial court on appreciation of evidence led by the parties, decided issue No.1 in favour of the respondent and issue No.2 was decided against the appellant. Accordingly, the trial court vide judgment and decree dated 3.12.2013 allowed the petition and dissolved the marriage between the parties by a decree of divorce on the ground of cruelty under Section 13(1)(ia) of the Act. Hence, the present appeal.

5. Learned counsel for the appellant submitted that from the evidence on record, no ground of cruelty was made out. It was further submitted that the respondent made a false story to get a decree of divorce whereas the respondent and his family members treated the appellant with cruelty and the appellant had got registered a criminal case bearing FIR No. 230 dated 14.9.2003 under Sections 323, 342, 406, 498-A, 506 read with Section 34 of the Indian Penal Code at Police Station Pinjore. According to the learned counsel, the allegations levelled by the respondent were general in nature and without any specific instances.

6. On the other hand, learned counsel for the respondent besides supporting the judgment passed by the trial court submitted that the trial court vide judgment dated 16.4.2010, Ex.P1 acquitted the respondent and other relations in FIR No. 230 dated 14.9.2003, registered under Sections 323, 342, 406, 498-A, 506 read with Section 34 of the Indian Penal Code, Police Station Pinjore, on the complaint of the appellant. The appellant did not prefer any appeal or revision

against the said judgment.

7. After hearing learned counsel for the parties, we do not find any merit in the contentions of learned counsel for the appellant.

8. The primary question that arises for consideration in this appeal is whether the acquittal of the husband and his family members of matrimonial offences under Sections 323, 342, 406, 498-A, 506 read with Section 34 of the Indian Penal Code would be sufficient to hold that it has caused mental cruelty to the husband so as to entitle him to a decree of divorce under Section 13(1)(ia) of the Act.

9. 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.

10. 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 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.”

11. 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.”

12. In addition to the aforesaid, certain other illustrations were added by the Apex Court in **K. Srinivas Rao v. D.A. Deepa (2013) 5 SCC 226** as under:-

“Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other

spouse.”

13. Elucidating 'mental cruelty' the Apex Court in **K. Srinivas Rao's case (supra)** concluded that if a false criminal complaint is filed against the spouse and his/her relatives regarding matrimonial offences, it would be a case of mental cruelty. Following the aforesaid pronouncement, the Division Bench of this Court in **Imlesh v. Amit, AIR 2014 Punjab and Haryana 89**, observed as under:-

“So far as the finding of the trial Court regarding cruelty on the basis of involvement in a false criminal case is concerned, it may be said that it in itself constitutes sufficient ground for granting divorce as it amounted to cruelty. Reference in this regard may be made to the case in **K. Srinivas Rao v. D.A. Deepa (2013) 5 SCC 226: AIR 2013 SC 2176**, where it was held by Hon'ble the Supreme Court that where indecent/ defamatory statements are made in the complaint/ criminal proceedings, the same singly and cumulatively amounted to mental cruelty warranting grant of divorce. If a false complaint is filed against the spouse or his/her relatives, it amounted to mental cruelty. In the said case also, wife had filed a case under Section 498-A IPC and the husband and his family members were acquitted and decree of divorce was granted to the husband on that ground, as it amounted to mental cruelty.”

14. Similar view was reiterated by the Supreme Court in **K. Srinivas v. K. Sunita Civil Appeal No. 1213 of 2006** decided on

19.11.2014 with the following observations:-

“4. In the case in hand, learned counsel for the Respondent-Wife has vehemently contended that it is not possible to label the wife’s criminal complaint detailed above as a false or a vindictive action. In other words, the acquittal of the Appellant and his family members in the criminal complaint does not by itself, automatically and justifiably, lead to the conclusion that the complaint was false; that only one complaint was preferred by the Respondent-Wife, whereas, in contradistinction, in **K.Srinivas Rao** a series of complaints by the wife had been preferred. The argument was premised on the averment that the investigation may have been faulty or the prosecution may have been so careless as to lead to the acquittal, but the acquittal would not always indicate that the Complainant had intentionally filed a false case. What should be kept in perspective, it is reasonably argued, that the Complainant is not the controlling conductor in this Orchestra, but only one of the musicians who must deliver her rendition as and when and how she is called upon to do. Secondly, according to the learned counsel, the position would have been appreciably different if a specific finding regarding the falsity of the criminal complaint was returned, or if the Complainant or a witness on her behalf had committed perjury or had recorded a contradictory or

incredible testimony. Learned counsel for the Respondent-Wife states that neither possibility has manifested itself here and, therefore, it would be unfair to the Respondent-Wife to conclude that she had exhibited such cruelty towards the Appellant and her in-laws that would justify the dissolution of her marriage.

5. The Respondent-Wife has admitted in her cross-examination that she did not mention all the incidents on which her Complaint is predicated, in her statement under Section 161 of the Cr.P.C. It is not her case that she had actually narrated all these facts to the Investigating Officer, but that he had neglected to mention them. This, it seems to us, is clearly indicative of the fact that the criminal complaint was a contrived afterthought. We affirm the view of the High Court that the criminal complaint was "ill advised". Adding thereto is the factor that the High Court had been informed of the acquittal of the Appellant-Husband and members of his family. In these circumstances, the High Court ought to have concluded that the Respondent-Wife knowingly and intentionally filed a false complaint, calculated to embarrass and incarcerate the Appellant and seven members of his family and that such conduct unquestionably constitutes cruelty as postulated in Section 13(1)(ia) of the Hindu Marriage Act.

6. Another argument which has been articulated on behalf of the learned counsel for the Respondent is that the filing of the criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filing of the husband's divorce petition, and being subsequent events could have been looked into by the Court. In any event, both the parties were fully aware of this facet of cruelty which was allegedly suffered by the husband. When evidence was lead, as also when arguments were addressed, objection had not been raised on behalf of the Respondent-Wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf.

7. In these circumstances, we find that the Appeal is well founded and deserves to be allowed. We unequivocally find that the Respondent-Wife had filed a false criminal complaint, and even one such complaint is sufficient to constitute matrimonial cruelty."

15. Examining the factual matrix in the present case, the respondent and his family members were acquitted vide judgment dated 16.4.2010, Ex.P1 in the dowry case got registered vide FIR No. 230 dated 14.9.2003, under Sections 323, 342, 406, 498-A, 506 read with Section 34 of the Indian Penal Code at Police Station Pinjore. Against the judgment of acquittal, the appellant did not prefer any revision or

appeal and, thus, it has attained finality. A criminal case was lodged against the husband and his family members wherein they were arrested but the final outcome resulted in their acquittal. In such circumstances, it would cause a reasonable apprehension in the mind of the husband that it was not safe for him to live with the wife. Besides, refusing to attend household chores and showing disrespect to the respondent and his family members amounted to cruelty towards the respondent. The allegation of adultery levelled by the appellant in the written statement has also not been proved. Thus, the irresistible conclusion would be that the appellant-wife had treated the husband-respondent with cruelty.

16. In view of the above, learned counsel for the appellant was unable to demonstrate that there was any error or perversity in the conclusion of the trial court that the appellant-wife had treated the respondent-husband with cruelty which may warrant interference by this Court. Accordingly, finding no merit in the appeal, the same is hereby dismissed. No costs.

(AJAY KUMAR MITTAL)
JUDGE

February 5, 2015
gbs

(SNEH PRASHAR)
JUDGE