

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 7906 of 2014 (O&M)

Date of Decision: 19.1.2015

Smt. Sonia

....Appellant.

Versus

Pramod

...Respondent.

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

PRESENT: Mr. Himansu Puri, Advocate for
Mr. Jagmohan S. Ghuman, Advocate for the appellant.

Mr. Manish Soni, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

CM No. 93-CII of 2015

Dismissed as withdrawn.

FAO No. 7906 of 2014

1. This appeal has been filed by the wife against the judgment and decree dated 2.9.2014 passed by the District Judge, Family Court, Gurgaon, whereby the petition filed by the 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. The facts, in brief, necessary for adjudication of the present appeal as narrated therein may be noticed. The respondent filed a divorce petition, *inter alia*, pleading that the marriage of the parties was solemnized on 3.7.2002 at Gurgaon as per Hindu rites and ceremonies.

After the marriage, the parties lived together as husband and wife at Gurgaon. The appellant never performed her duties as expected of a wife. She started mentally torturing the respondent and his family members being lazy, unfriendly and cruel towards them. She tried to control and dominate the respondent and misbehaved with others. She did not like relatives visiting them. Despite best efforts by the respondent, she was not happy and picked up quarrels on petty matters. After the marriage, when her brother Sudhir came to take her, she refused to visit her parental house and started abusing her father and brother. She was convinced to accompany her brother by the family members but thereafter she started visiting them frequently without informing any one in the family. If any one tried to stop her from going to her parental home, she started abusing and misbehaving with them. Due to her indifferent and rude behaviour, the couple shifted to the first floor of the house in April, 2006 from where they shifted to Hope Apartments, Sector 15, Gurgaon in April, 2007. On 26.12.2007, the appellant went to the parental house of the respondent and presuming that his mother would be alone, she started threatening her. His younger brother Manoj who was present there, intervened and requested her to calm down and to refrain from using abusive language. The matter was reported to the police and was compromised under pressure from her father who threatened to falsely implicate them in dowry case. Thereafter, she returned to her parental home and visited Hope Apartments on 1.1.2008. At that time, the respondent was teaching the children and she managed to send them away. She threatened the respondent and by abusing slapped him. The respondent informed his brother Manoj who came there with the police and got the door opened

and she was found beating him. In the meantime, her father along with some other family members reached the spot. She administered some tablet and liquid in water to the respondent due to which he became unconscious and was removed to Lifeline Hospital where he remained for two to three days. Several meetings were convened to settle the dispute but to no effect. The appellant did not live and cohabit with the respondent which caused mental and physical agony to him. She used to threaten that she would commit suicide if her demands were not fulfilled. She had illicit relations with one Suraj to whom she used to give tuition. The respondent had objected to their obscene behaviour and to the tuition, but she did not pay any heed. The respondent and his family members tried to make her understand but to no avail. The respondent had no physical relations with the appellant since 2005 but she was found pregnant in the year 2007 of which he was not aware. She had a separate bank account and she never gave money to him. All efforts made by the respondent and his family members to settle the matter have failed.

3. The appellant contested the divorce petition by filing a written statement. Various preliminary objections were raised therein. It was pleaded that her parents had spent ₹ 15 lacs on the marriage besides giving car and jewellery etc. The respondent and his family members were dissatisfied with the same due to which she was harassed, humiliated and beaten by them. The allegations regarding attempts to kill her by starving her and by leaving the gas in the kitchen open or administering unknown substances in milk were made. Her sister-in-law Ruchi had stolen her mobile phone and had made calls from the same which were being used to blackmail her. She was

taunted by the brothers of the respondent for want of dowry. On 31.3.2007, the three brothers in collusion with some anti social elements tried to kill her while she was returning from school and she met with an accident with a car. However, she had a narrow escape. The respondent disclosed his hand in the incident subsequently when he was drunk. He took away the documents pertaining to the repair of the car and her ATM card from which he withdrew ₹ 20,000/-. She was beaten and kicked in her stomach and locked in the flat. She managed to escape and on 24.11.2007 her mother took her to a doctor who advised her to undergo abortion to save her life. On 26.12.2007, her mother-in-law had lodged a false complaint against her in Police Station Civil Lines. The respondent took her home on the pretext of talking to her but she was beaten and they attempted to disrobe her. She again managed to escape and told the entire incident to her father who reported the matter to the police. However, the matter was compromised on 31.12.2007 under pressure. On 1.1.2008, the respondent in drunk condition was present with his family members and some anti social elements in the flat and when the appellant came, he shouted at her and threatened to kill her and himself commit suicide. Her family members and Manoj (brother of the respondent) came there and the latter tried to kill her with a knife. He was thrown out by her maternal uncle and some police officials. Her father also reached the spot and got an FIR registered at Police Station Civil Lines. The respondent and his family members had been threatening her and even her father had been assaulted by some anti social elements. On two occasions, the appellant brought ₹ 30,000/- to settle the matter. She had got an FIR No. 256 dated 30.7.2009, under Sections 498-A, 406, 323, 506 of the

Indian Penal Code, Police Station Sector-5, Gurgaon registered 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 for the decree of divorce on the grounds mentioned in the petition? OPP
2. Whether the petition is not maintainable? OPR
3. Whether the petitioner has no cause of action to file the present petition? OPR
4. Relief.

4. In support of his case, the respondent examined as many as nine witnesses, namely, Constable Harkesh as PW1, Anil Kumar Ahlmad as PW2, Principal Jagwati Devi as PW3, himself as PW4, Neelam Rani Principal as PW5, MHC Shiv Rattan as PW6, Manoj as PW7, Pawan Malik Ahlmad as PW8 and Ajay Kumar Ahlmad as PW9. On the other hand, the appellant besides examining herself as RW1 also examined Sanjay Kumar as RW2.

5. Issues No.1 to 3 were taken up together being inter-linked and inter-connected and the trial court on appreciation of evidence led by the parties, decided the same in favour of the respondent and against the appellant holding that the appellant had been cruel to him and had deserted him. Further, it was held that the divorce petition was maintainable and the respondent had sufficient cause to file the same. Accordingly, the trial court vide judgment and decree dated 2.9.2014 passed a decree of divorce in favour of the respondent. Hence, the

present appeal by the wife.

6. Learned counsel for the appellant submitted that the main allegation of cruelty was the miscarriage which infact was a result of kick given by the respondent in her stomach. It was further submitted that it was not the case of cruelty to the respondent rather it was the respondent who treated the appellant with cruelty. It was contended that the respondent had thrown the appellant out of her matrimonial home and was guilty of constructive desertion. According to the learned counsel, there were material discrepancies in the statements of the witnesses and the divorce petition was erroneously allowed by the trial court.

7. On the other hand, learned counsel for the respondent besides supporting the judgment and decree passed by the trial court submitted that the behaviour of the appellant was rude and abusive towards him and his family members.

8. After hearing learned counsel for the parties and perusing the record, we do not find any merit in the contentions of learned counsel for the appellant.

9. The question that arises for consideration in this appeal is whether the appellant had treated the respondent with cruelty and also deserted him so as to entitle him to a decree of divorce under Section 13 of the Act.

10. 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.

11. 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 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.”

12. 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.”

13. Examining the factual matrix involved herein, it may be noticed that the respondent while appearing as PW4 and his brother PW7-Manoj had cited number of incidents pleading that the appellant lost her temper and had thrown things and got violent and assaulted the family members. Both the witnesses were cross-examined by the appellant but their version remained unshattered. She had been rude, cruel and also using abusive language against him and his parents. The testimony of the appellant as RW1 claiming that she had always behaved in a decorous manner had not been corroborated from any quarter. Further, the relationship of the appellant with one Suraj was questionable as she used to spend long hours even late at night with him in a bolted room while giving tuition to him, though the appellant denied the said relationship. FIR No.7 dated 3.1.2008 at Police Station Civil Lines, was got registered by the husband-respondent against her when she had attempted to administer some unknown substance to him. There was several litigations initiated against each other. On 31.12.2007, the appellant had assaulted the mother of the respondent-husband whereupon complaint was lodged against the appellant. The appellant had left the home of the respondent with the intention never to return back and also initiating criminal cases against the husband and his family clearly showed her intention and conduct in the matter. The allegations levelled by the appellant against the respondent remained unsubstantiated including regarding both the abortions. The cumulative effect of the evidence noticed hereinbefore is irresistible conclusion that the appellant-wife had been cruel to the respondent-husband and had

deserted him without any reasonable excuse. The relevant findings recorded by the trial court are as under:-

“In the instant case the conduct of the respondent in leaving the matrimonial home and then never returning back, initiating criminal cases against the husband and his family and holding him responsible for all kinds of vicious acts certainly reflects the intention of the respondent in not returning to him. She has admitted that she is getting maintenance from him and that she had lived separately from him for several years before leaving his house. There is nothing on record to show that she was ever thrown out of the matrimonial home. His efforts to settle the dispute amicably have all failed. It is he who had made the first complaint of assault against the respondent and her father which was found genuine enough to result in a trial which is still pending. The petitioner has asserted that no attempt to settle the matter has ever been made by the respondent and she herself does not dispute this contention. She has only levelled allegations against the petitioner which remain unsubstantiated. No doubt a dowry demand case lodged by her is still pending and this also indicates the irrevocable break down of their marriage. The fact that she never levelled any allegations against him before the doctors while getting herself medically treated for two abortions

allegedly caused by him and the fact that the other allegations now levelled by her also did not result in any complaint or report indicate that she has not approached the court with clean hands.

17. Before parting with this judgment, it may be high lighted that the petitioner had examined as many as nine witnesses of whom constable Harkesh (PW1), Anil Kumar Ahlmad (PW2), MHC Shiv Rattan (PW6), Pawan Malik (PW8) and Ajay Kumar Ahlmad (PW9), all of whom have produced the relevant documents from their respective police station and courts. Jagwati Devi Principal (PW3) had produced relevant record Ex.PA and Ex.PB to prove that Sonia had attended M.C. Model school in November and December 2007. Neelam Rani Principal (PW5) had produced a register to prove that 31.3.2007 was a holiday on account of Mahavir Jayanti. Obviously, Sonia could not have attended school on that day. The documents produced by these witnesses have already been discussed above.

It is the petitioner who has successfully proved that the respondent has been cruel to him and has deserted him. Though irretrievably break down of marriage by itself is not a ground for divorce, it is apparent that in the instant case any attempt to save this marriage would be counter productive. The parties are indulging in highly contested litigation and

can barely tolerate being in the presence of the other.

Therefore, this court is of the considered opinion that it is better to put an end to this mutually inflicted misery.”

14. In view of the above, no illegality or perversity could be found in the findings recorded by the trial court being based on misappreciation or misreading of evidence on record which may warrant interference by this Court. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

January 19, 2015
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(SNEH PRASHAR)
JUDGE