

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 682 of 2015 (O&M)

Date of Decision: 23.1.2015

Mohit Malhotra

....Appellant.

Versus

Smt. Swati

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE GURMIT RAM.**

PRESENT: Mr. Arun Luthra, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the husband against the judgment and decree dated 1.11.2014 passed by the District Judge, Family Court, Sonipat, whereby the petition filed by the wife under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (In short "the Act") for dissolution of marriage by a decree of divorce, was allowed.

2. A few facts necessary for disposal of the instant appeal as narrated therein may be noticed. The marriage of the parties was solemnized on 28.1.2008 at Gohana. After the marriage, the parties lived together as husband and wife and cohabited as such. Out of the said wedlock, a daughter, namely, Diksha was born on 10.11.2008. According to the respondent, the appellant was guilty of various cruelties caused to her and she had every apprehension in her mind that it would be harmful and dangerous to her life if she continued to live in the

company of the appellant. Before the marriage, the appellant told that he was earning a lot as he was a partner in Sehgal Automobiles firm and had also the agency of Honda Scooters. His father was an officer in Public Health Department of Government of Haryana. At the time of marriage, sufficient dowry and cash was given to the appellant and his family members. After a day of the marriage, the appellant started taunting regarding insufficient dowry and quality of dowry articles. The appellant and his family members started pressurizing the respondent to bring more cash and washing machine from her parents. Even the mother of the appellant started taunting the respondent that she had not given birth to a male child. On 10.11.2008 at the time of birth of the daughter, the appellant and his family members started harassing and humiliating the respondent on one pretext or the other and kept on causing cruelty to her and they made her life a hell. At the time of opening ceremony of the newly constructed house of the parents of the respondent, the appellant and his family members were invited on 2.11.2009 but on 3.11.2009 when the respondent went back to her matrimonial home, they showed their dissatisfaction about the same. The appellant gave severe beatings to her with hockey stick and when she did not stop weeping, he again gave her beatings in the presence of his parents. In the night, she gave a call to her parents and told about the episode and in the next morning her parents came to the house of the appellant but he and his family members misbehaved with them by hurling abuses. The parents of the respondent were told by the appellant and his family members that they have no concern with the respondent and that they were free to remarry her elsewhere. On 3.11.2009, the respondent was turned out of her matrimonial home. She

lodged a complaint under Sections 498-A, 406, 506 of the Indian Penal Code at Police Station Gohana and the appellant and his parents felt sorry and a compromise was arrived at between the parties. Thereafter, a joint petition under Section 13-B of the Act for divorce by mutual consent was filed by the parties on 19.7.2010 and their statements were recorded on the same day. However, the said petition was withdrawn by the appellant on 15.4.2011 without any 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 controverting the averments made in the petition, it was pleaded that the respondent had left the society of the appellant on 15.6.2009 without any reasonable excuse leaving behind her minor daughter, namely, Diksha. The appellant requested her to join his company but to no effect. He was still ready and willing to take back the respondent to her matrimonial home. The houses of the parents of the respondent and that of the appellant were situated in one street and both the parties were neighbours and they knew very well about the financial status of each other. According to the appellant, the respondent received a sum of ₹ 2,65,000/- from him for filing mutual divorce petition but he was not ready for mutual divorce keeping in view the welfare of his minor daughter. The prayer for dismissal of the divorce petition was made. From the pleadings of the parties, the trial court framed the following issues:-

1. Whether the respondent has treated the petitioner with cruelty and as such he is entitled to decree of divorce? OPP
2. Relief.

3. The respondent in support of her case examined herself as PW1 and also examined Vipin Sharma as PW2, Dr. Hemant Kumar, Medical Officer, General Hospital, Naraingarh as PW3, Shamp her brother as PW4 and her mother Smt. Nirmal as PW5. On the other hand, the appellant rebutted the claim of the respondent by examining himself as RW1, Subhash as RW2 and Puran Chand as RW3.

4. The trial court on appreciation of the evidence led by the parties, decided issue No.1 in favour of the respondent holding that the appellant had treated her with cruelty, mental as well as physical and, therefore, she was entitled to dissolution of marriage on this ground. Accordingly, the trial court vide judgment and decree dated 1.11.2014 allowed the divorce petition and dissolved the marriage between the parties by a decree of divorce. Hence, the present appeal.

5. Learned counsel for the appellant submitted that there were contradictions in the statements of the witnesses. It was further submitted that no demand of dowry was raised as it would be discernible from a perusal of cross-examination of the respondent. It was urged that the marriage between the parties was a love marriage and the respondent had concealed the fact in her petition filed under Section 13 of the Act. It was also contended that had there been any beating or giving of slaps to the respondent, she being an educated lady would have filed a complaint against the appellant but no such complaint was filed. Serious efforts were made to demonstrate that the findings of the trial court were vitiated being contrary to record.

6. After hearing learned counsel for the appellant, we do not find any merit in the appeal.

7. Cruelty has not been defined under 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.

8. 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 behavior 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.”

9. 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.”

10. In the present case, the marriage between the parties was

solemnized on 28.1.2008. A perusal of the testimonies of the respondent and the witnesses examined by her shows that she was harassed and tortured for demand of dowry being raised subsequent to the marriage. She was also assaulted and given beatings for non-fulfilling the demand of dowry. A perusal of MLR, Ex.P6 makes it clear that the respondent was beaten by the appellant on 13.3.2012. There was a love-cum-arranged marriage between the parties and the respondent who was a housewife would not withdraw herself from the society of the appellant unless she had compelling circumstances. The parties belonged to middle class families and harassment for demand of dowry and dissatisfaction for the gifts given by the parents of the respondent amounted to mental and physical cruelty to the wife. The parties had also filed a petition under Section 13-B of the Act and their statements at first motion were also recorded. Later on, the appellant withdrew his consent. No satisfactory explanation had been furnished for firstly filing joint petition under Section 13-B of the Act and making statement at first motion and then withdrawing the consent later on. Though learned counsel for the appellant had made efforts in hair splitting of evidence but the court while deciding the issue of cruelty is required to examine the totality of facts and evidence on record. The proceedings for dissolution of marriage by a decree of divorce under the Act are of civil nature and its proof is not to be judged on the touch-stone of 'beyond the shadow of doubt' but only on the preponderance of probabilities leading to a fair inference as a necessary conclusion on the evidence and from the circumstances of a case. The factum of cruelty is dependent upon facts and circumstances involved in the case. The conclusion on appreciation of overall evidence led by the parties points

towards physical and mental cruel treatment meted out by the husband to the respondent-wife. The trial court had rightly passed a decree of divorce in favour of the respondent. The relevant findings recorded by the trial court read thus:-

“9. After giving my thoughtful consideration to the rival contentions and appreciating the evidence adduced in the case, I am of the considered opinion that the petitioner has proved the ground of cruelty. Admittedly, marriage between the parties was solemnized on 28.1.2008 and it was a love marriage between them and no dowry was given at that time. A daughter was born out of the wedlock on 10.11.2008. According to the petitioner, she has been living separately since 3.11.2009. There is evidence of the petitioner and four other witnesses to the effect that she was harassed and tortured for demand of dowry which was raised subsequent to the marriage and this was a continuous demand of the respondent and his family members. The petitioner was also assaulted and given a beating due to non-fulfillment of the said demand of dowry. Even, during the pendency of the present petition, the petitioner was given a beating on 13.3.2012 and copy of the MLR is Ex.P6. The petitioner is a housewife and there is nothing to show as to why she would withdraw from the society of the respondent unless she had compelling reasons, especially when, it was a love-cum-arranged marriage

between the parties and, there was, as such, no issue of compatibility. According to the version of the petitioner, she was also cursed for having given birth to a daughter and not a son. Like physical cruelty, the petitioner has also been subjected to mental cruelty. The mental cruelty cannot be established by direct evidence and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, dis-appointment and frustration in one spouse caused by the conduct of other can only be appreciated on assessing the attending facts and circumstances, in which, two partners of matrimonial life have been living. Thus, the question of mental cruelty has to be considered in the light of norms of the marital ties of the particular society, to which, the parties belong, their social values, status and environment, in which, they lived. In the present case, the parties belong to middle class families and harassment for demand of dowry and dis-satisfaction for the gifts given by the parents of the wife, would indeed amount to mental and physical cruelty to the wife. Admittedly, the parties had also filed a petition for mutual divorce under Section 13-B of the Hindu Marriage Act, 1955 and, their statement on first motion was also recorded. However, later on, the husband i.e. the respondent, retracted from his consent and withdrew the same. It was, thereafter,

that the present petition was filed. After marriage, the parties lived together for less than two years and the petitioner started residing separately when demand of dowry of the respondent and his family members could not be satisfied and beatings given to her, became intolerable. Thus, the evidence led by the petitioner is found more reliable and trustworthy as compared to that of the respondent and, hence, relying upon the same, it is held that the respondent has treated the petitioner with cruelty, mental as well as physical, and she is entitled to dissolution of her marriage on this ground.”

11. No illegality or perversity could be noticed in the findings recorded by the trial court which are based on correct appreciation of evidence. Thus, no interference is called for by this Court. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

12. There is a delay of 47 days in filing the appeal. CM No. 1867-CII of 2015 has been filed for condonation of 47 days' delay in filing the appeal. Since the appeal has been dismissed on merits, no further orders are required to be passed in the application for condonation of delay in filing the appeal and the same is disposed of as such.

(AJAY KUMAR MITTAL)
JUDGE

January 23, 2015
gbs

(GURMIT RAM)
JUDGE