

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 79 of 2015 (O&M)

Date of Decision: 8.1.2015

Smt. Suman

....Appellant.

Versus

Gajender

...Respondent.

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

PRESENT: Mr. Nipun Vashist, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. Delay of 7 days in refiling the appeal is condoned.
2. This appeal has been filed by the wife against the judgment and decree dated 16.9.2014 passed by the Additional District Judge, Family Court, Gurgaon whereby the petition filed by the husband-respondent under Section 13(1)(ia) and (ib) of the Act for dissolution of marriage by a decree divorce, was allowed.
3. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The marriage between the parties was solemnized on 21.4.2007 at village Sikanderpur Badha, Tehsil and District Gurgaon according to Hindu rites and ceremonies. As per the averments made in the petition, the appellant refused to consummate the marriage on the very first night, i.e. on 22.4.2007. When the respondent entered in the bed room, the

respondent had already prepared two separate beds and she did not permit him to approach her. She also threatened him to commit suicide in case he tried to force himself upon her. After some time, the respondent again approached the appellant but she refused to cohabit with him and declared that she did not want to be pregnant and was not ready to enjoy sex despite her capability and willingness of the respondent. When he tried to coax her, she started shouting and abusing him and called her parents telephonically. In the presence of all family members, she humiliated the respondent by levelling false allegations that he had tried to force upon her. On the next day, the parents of the appellant approached the respondent in his office and threatened his family with dire consequences. They took away the appellant to their house. The respondent approached the parents of the respondent after a week to take her back but the father of the appellant refused to send her. After some days, the respondent and his family again approached the appellant and persuaded her to return to her matrimonial home. On return, the appellant complained of being sick and wanted to be treated from the doctor in her own village. She refused to take medical aid from any other doctor. She did not perform any household chores. On her insistence for visiting her village doctor, the respondent took her there. On reaching the village, she refused to go to the doctor without visiting her family. At her house, she claimed that she was alright and not sick and wanted to stay with her parents for a few days. The respondent then returned back to his home. On the next day, on the occasion of Karvachauth, the brother of the appellant approached the respondent with customary gifts but there was an altercation between them and they refused to send back the appellant.

During the entire period of their married life, the appellant never cohabited with the respondent. She had taken away all her jewellery and other valuables including those gifted to her by the respondent's family. All the efforts to settle the matter had failed but she had returned at the instance of the panchayat. She refused to join the company of the respondent or to consummate the marriage with him. The respondent brought this fact to the notice of her mother but her mother and brother took her away on the pretext of resolving the matter. She stayed there for a few months. She was again left in the matrimonial house in 2009 by her father and some others but once again she returned to her parental house after few days. She had only stayed in her matrimonial house for about 15 days in all and during this period, her behaviour was rude and cruel towards every one. Even the respondent and his family members were involved in criminal case bearing FIR No. 259 dated 29.10.2010, registered under Sections 406, 498-A, 506/34 of the Indian Penal Code at Police Station Kherki Daula. She also filed a petition under Section 125 of the Code of Criminal Procedure. Accordingly, the respondent filed a divorce petition. The said petition was contested by the appellant by filing a written statement. Besides raising various preliminary objections, it was pleaded that sufficient dowry was given at the time of the marriage. The respondent and his family members used to harass and humiliate her as they were dissatisfied with the dowry given to them. It was pleaded that the respondent had illicit relations with someone else and whenever she objected to the said relationship, she was given beatings in the presence of his family members. It was further pleaded that her father convened a panchayat and under pressure of the panchayat, she was accepted back on 3.9.2010 but was

again thrown out on the following day after being beaten. 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 court below framed the following issues:-

1. Whether the petitioner is entitled for a decree of divorce on the grounds as mentioned in the petition? OPP

2. Relief.

4. In support of his case, the respondent besides examining himself as PW1 also placed on record a copy of judgment dated 4.1.2014 as Ex.P1 and statements of Suman as Ex.P2 and Tirath Ram as Ex.P3. On the other hand, the appellant in support of her case examined herself as RW1 and her brother Tirath Ram as RW2.

5. The trial court on appreciation of evidence led by the parties, decided issue No.1 in favour of the respondent holding that the respondent was subjected to mental cruelty by the appellant as she had refused to consummate the marriage with him and had also alleged that he was involved in an extra marital relationship. Further, the appellant abandoned the marital relationship without any reason which amounted to desertion. Accordingly, the trial court vide judgment and decree dated 16.9.2014 allowed the divorce petition filed under Section 13 (1)(ia) and (ib) of the Act by the husband by passing a decree of divorce. Hence, the present appeal by the wife.

6. Learned counsel for the appellant submitted that due to cruel behaviour of the respondent towards the appellant, there was no physical relationship between the parties. Learned counsel further submitted that the respondent had failed to prove that he was treated

with cruelty and desertion by the appellant.

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

8. The court below while rejecting the aforesaid contentions of the appellant had recorded as under:-

“14. It may also be pointed out here that where false allegations are made by the wife regarding the conduct of the husband especially pertaining to his illicit relations it amounts to mental cruelty. This view was taken by the Hon'ble Himachal Pradesh High Court in **Rajna Choudhary versus Raghubir Singh 2012 (1) Civil Court Cases 347 (H.P.)** as well as by the Hon'ble Apex court in **Vishwanath s/o Sitaram Agrawal vs. Sau. Sarla Vishwanath Agrawal, 2012 (3) Civil Court Cases 292 (S.C.)**. In the instant case also, the respondent had mentioned in her written statement that the petitioner was having an extra marital affair. The respondent has failed to substantiate this contention in any manner. In fact, while deposing as RW1 she did not even reiterate this assertion and her brother Tirath Ram (RW2) also did not utter a single word in this regard. It is, therefore, apparent that this was a frivolous plea raised by her just for the sake of opposing the petitioner's claim. However, it would have caused much mental trauma to him.

15. In view of the foregoing discussion, it is

apparent that the petitioner has been subjected to much mental cruelty by the respondent in so far as she has refused to let the marriage be consummated and has also alleged that he is involved in an extra marital relationship. It is also apparent that she has abandoned the marital relationship without any reason which amounts to desertion. Though she had levelled allegations of demand of dowry, she has failed to substantiate the same. Thus, this issue is decided in favour of the petitioner and it is held that he is entitled to a decree for divorce as prayed for.”

9. The Apex Court in **Shobha Rani v. Madhukar Reddi, (1988) 1 SCC 105**, while dealing with cruelty under Section 13(1)(ia) of the Act, had observed that cruelty has not been defined in the Act. It may be mental or physical, intentional or unintentional. In case of physical cruelty, the court will have no problem to determine it which is a question of fact and degree. Where cruelty is mental, certain difficulty arises to reach to any conclusion in that regard. Thereafter, the Bench proceeded to state as follows: -

“First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the

conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.”

10. In the present case, false allegations of illicit relations of the husband were made by the wife which would amount to mental cruelty. The appellant in her written statement had mentioned that the respondent was having an extra marital affair but she had failed to substantiate the said allegation in any manner. She while appearing as RW1 did not reiterate this assertion and her brother Tirath Ram (RW2) also did not utter a single word in this regard. Further, the appellant had refused to consummate the marriage with the respondent. This would also result in mental cruelty to the respondent-husband as the marital obligation was not being performed by the appellant-wife. She also abandoned the marital relationship without any reason which amounted to desertion. The trial court had, thus, rightly granted a decree of divorce to the respondent-husband on the ground of cruelty and desertion. Learned counsel for the appellant was unable to demonstrate that there was any error or perversity in the findings recorded by the trial court which may warrant interference by this Court. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

11. There is a delay of 36 days in filing the appeal. CM No. 346-CII of 2015 has been filed for condonation of 36 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.

12. An application bearing CMM No. 6 of 2015 has been filed under Section 24 of the Act for grant of maintenance pendente-lite and litigation expenses during the pendency of the appeal. Since the main appeal has been dismissed in *limine*, CMM No.6 of 2015 is also dismissed.

(AJAY KUMAR MITTAL)
JUDGE

January 8, 2015
gbs

(SNEH PRASHAR)
JUDGE