

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

FAO No.M-193 of 2014 (O&M).

DATE OF DECISION: January 27, 2015.

JYOTSNA SHARMA

....APPELLANT.

VERSUS

GAURAV SHARMA

....RESPONDENT.

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

Present: Mr. Amit Prashar, Advocate for the appellant.

None for the respondent.

SNEH PRASHAR, J.

1. By way of this appeal, Jyotana Sharma-appellant (hereinafter referred to as “the appellant”) assailed the judgment and decree dated 24.03.2013 passed by the learned Additional District Judge, Panchkula, allowing the petition for divorce under Section 13 (1) (i-a) of the Hindu Marriage Act, 1955 (in short 'the act of 1955') filed by her husband Gaurav Sharma-petitioner-respondent (hereinafter referred to as “the petitioner”).

2. The relevant facts extracted from the record are as under:

Appellant Jyotsna Sharma was married to respondent Gaurav

Sharma on 08.07.2010 at Alwar, as per Hindu rites and ceremonies. They lived and cohabited as husband and wife at the matrimonial home in Jaipur.

The allegation of the petitioner-husband was that the appellant used to misbehave with him and his family members. He elaborated incidents of mental cruelty by the appellant, which included non-participation in post-marriage ceremonies and other family functions; shouting and arguing loudly on petty issues; non performance of household chores; locking the bathroom from inside to cause annoyance and delay to him in going to the office; extending threats of committing suicide and of false implication in criminal cases.

The petitioner further pleaded that the appellant use to leave the matrimonial home without his consent and even without informing him. She admitted her fault and guilt through letter(s) and affidavits but failed to mend her ways. All his efforts to reconcile the disputes with the mediation of friends, relatives and respectables proved futile. Finally, on 22.04.2011, the appellant left the matrimonial home and since then they were living separately. He prayed for dissolution of their marriage by a decree of divorce on the ground that he had been treated with cruelty by the appellant and had been deserted by her.

3. The appellant contested the petition. Besides raising preliminary objections with regard to maintainability of the petition and suppression of true and material facts by the petitioner, the appellant specifically dealt with and denied incident(s) of cruelty narrated in the

petition. She pleaded that the respondent and his family was not satisfied with the articles of dowry given by her parents at the time of marriage and they consistently harassed her and demanded an I.20 Car and ₹20 lacs in cash as a precondition to settle her in matrimonial home. She was forced to file a complaint before the Mahila Police Station at Alwar against the respondent and his family members due to unabated ill treatment at their hands. With the said submissions, she prayed for dismissal of the petition with costs.

4. On the pleadings of the parties, following issues were framed:-

- (1) Whether the petitioner is entitled to divorce on the ground of cruelty? OPP
- (2) Whether the petition is not maintainable? OPP.
- (3) Relief.

5. During evidence, petitioner Gaurav Sharma stepped into the witness box as PW6 and reiterated his allegations on oath. To corroborate his version, he examined PW1 Vinod Sharma, PW2 R.C. Verma, PW3 Balraj Sharma, PW4 Vimal Sharma, PW5 Bhavik Sharma and tendered documents Ex.PW4/1 to Ex.PW4/28 and also Ex.PW6/A, Ex.PW6/2 to Ex.PW6/65.

On the other hand, the respondent appeared as RW1 reiterating the defence set up by her and tendered documents Ex.R1, Ex.R2 and Ex.RA.

6. Scrutinizing the evidence adduced by the parties and

considering the submissions made on their behalf, learned trial Court finding that the petitioner had successfully proved ground of 'mental cruelty' under Section 13 (1) (ia) of the Act of 1955 against the appellant, decided Issue No.1 in his favour and allowed the petition. A decree for divorce dissolving the marriage between the parties was passed.

7. Feeling aggrieved by the impugned judgment and decree dated 24.03.2014 passed by learned Additional District Judge, Panchkula, appellant Jyotsna preferred the instant appeal.

8. The submissions made by Mr. Amit Prashar, learned counsel representing the appellant have been heard and record has been perused.

9. At the very outset, learned counsel for the appellant argued that no substantive evidence could be adduced by the petitioner to prove any overt act on part of the appellant which could be termed as 'cruelty' within the provisions of Section 13(1) (ia) of the Act of 1955. The witnesses examined by him had no first hand information of the reasons for quarrel between him and the appellant. PW1 Vinod Sharma admitted in his cross-examination that the incident of non-cooperation of the appellant stated by him had been told to him by the petitioner. Similarly, PW2 R.C. Verma expressed ignorance that the petitioner was being treated for depression illness as stated by him. PW3 Balraj Sharma was a colleague of the petitioner who was working in Infosys and he stated that he had met the appellant only once in February, 2011. PW4 Vimal Sharma, father of the petitioner, admitted that he had resided with the appellant only for about 10-15 days on 2-3 occasions and since

07.11.2010 they have never lived together. His knowledge regarding the nature of relations between the parties was also based on the information given by the petitioner.

Learned counsel contended that in fact it was the petitioner who on account of non-fulfillment of his demand for valuable articles had been maltreating the appellant. In his first breath he stated that he had never physically assaulted the appellant under any circumstance but when confronted with Ex.RA, which is a hand written document, he admitted that he had slapped the appellant but he could not assign any reason for doing so. He could also not tell the reason why the appellant had banged her head against the wall. Learned counsel asserted that as postulated under Section 23(1) (a) of the Act of 1955 the petitioner cannot take benefit of his own wrongs.

10. While dealing with the rival contention of the parties and analyzing the evidence adduced by them, the findings of learned trial Court are as under:-

“Now I propose to examine the evidence given on behalf of the petitioner on the ground of cruelty keeping in view the status of the parties to the litigation. Admittedly, the petitioner has been working in M/s Infosys Company Ltd., and the respondent is also qualified holding MBA Degree and other post graduate degrees. PW1 in his affidavit Ex.PW1/A has deposed about the behaviour of the respondent on post-marriage-ceremonies and on the day of Dipawali and Bhaiya Dooj. PW2 has disclosed about the relationship of the parties when they stayed at Panchkula. PW3 is also working in the same company where the

petitioner has been working and he described the characteristics of the petitioner post marriage. PW4 is father of the petitioner. PW5 is close relative of both the parties and mediator of the marriage. The petitioner has himself appeared in the witness box as PW6 and reiterated the contents of the petition in his affidavit Ex.PW6/A.

*In **Rajesh Dodiwal's case (supra)**, it has been held that if wife fails to perform her household responsibility of providing food and comfort to the in-laws then the same falls in the definition of "mental cruelty". In **Vishwanath s/o Sita Ram Aggarwal's case (supra)**, it has been held that the husband is entitled for divorce on the ground of mental cruelty when his wife used to crumple the iron clothes and hide the keys of motorcycle and closed the main gate while he was getting ready to go to factory. The said incidents were taking place for long time which caused embarrassment and harassment to the husband. In **Dinesh Kumar Tripathi's case (supra)** it has been held that when allegations of misbehaviour has not been specifically denied then it leads to the inference that behaviour of wife is cruel. In **Harbhajan Singh Monga's case (supra)** divorce was granted on the ground of cruelty when wife giving threat to commit suicide.*

Even if I exclude the entire oral testimony adduced on behalf of the petitioner, even then there is sufficient material in the form of documentary evidence and admission of the respondent (RW1) to sustain the plea of divorce on the ground of cruelty. The respondent in her written statement has leveled allegations of demand of dowry against the petitioner and his family members thereby forcing her to get FIR No.16 dated 17.1.2012 registered in Mahila Police station at Alwar. As per the respondent, she was physically and mentally tortured by the petitioner for bringing I-20 car

and ₹20 lacs from her parents as precondition to settle her in the matrimonial home. Interestingly, the respondent did not take any action against the petitioner regarding alleged demand of dowry till the time she stayed with the petitioner but swung into action after filing of the present petition.

Final report {Ex.PW6/51} in F.I.R. No.16/12, Mahila Police Station, Alwar has been filed against the petitioner. From copy of complaint {Ex.PW6/52}, it is clear that the complaint of demand of dowry has been filed as a counter blast to the divorce petition. Similarly, petition under section 125 Cr.P.C. {Ex.PW6/59} and Application under the provisions of D.V.Act {Ex.PW6/60} has been filed after filing of present petition. Though learned counsel for the respondent has argued that the respondent has legal right for filing these petitions but nonetheless, had the respondent been subjected to any kind of ill-treatment, then she would have filed all those petitions earlier and not after filing the present petition.

I have carefully gone through the testimony of RW1-Jyotsna who has admitted that in Goa, the petitioner behaved properly because there was no interference from his family members there. It is further admitted that before filing of the petition she had not filed any complaint against the petitioner and his relatives before police or in the Court. It is further stated that the final report/challan has been filed against the petitioner only and his family members have been found innocent in investigations and till date, she has not challenged those investigations.”

11. Learned counsel for the appellant failed to demonstrate any perversity or error of law in the findings of learned trial Court emerging from mis-appreciation of evidence. Admittedly, the appellant in her

written statement levelled allegation of demand of dowry against the petitioner and his family members and alleged that he lodged a complaint on the basis of which First Information Report No.16 dated 17.01.2012 was registered at Mahila Police Station at Alwar. The said First Information Report was got registered by the appellant only after the petitioner filed the instant petition. In other words, it was nothing but a counter attack of the appellant. Moreso, as admitted by the appellant, her allegations against the family members have been found to be false during investigation and she has not challenged the said findings till date. Levelling false allegations of demand of dowry and maltreatment against the family members certainly amounted to mental cruelty to the husband-petitioner.

12. Learned trial Court noticed that the appellant categorically admitted having written letter Ex.PW4/4 but described the same to have been got written from her forcibly. The plea of the appellant was not believed in view of high educational status of the parties. In the said letter, the appellant admitted her fault by which she caused pain and discomfort to the parents of the petitioner. Similarly, as mentioned in para 36 of the judgment of learned trial Court, in her affidavit Ex.PW6/3 the appellant expressed regret for causing inconvenience, discomfort and pain to the petitioner on account of her act and conduct.

13. In the light of above discussed documents, it does not lie in the mouth of the appellant to say that the petitioner was in any way trying to take advantage of his faults. Commission of matrimonial offences was

on her part as admitted by her in her writings.

Indeed, the word “cruelty” used in section 13(1)(ia) of the Act of 1955 has not been defined in the said Act. However, it has been used in relation to human conduct, human behaviour or in respect of matrimonial duties and obligations. Every matrimonial conduct which may cause annoyance to the other may not amount to cruelty but the kind of degree of cruelty necessary to amount to a matrimonial offence has also not been defined anywhere.

14. Elaborately and analyzing the expression 'cruelty' as a ground of divorce under the Act, the Apex Court held in **Parveen Mehta vs. Inderjit Mehta, 2002(3) RCR (Civil) 529** as under:-

“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.”

15. As discussed above, the ocular and documentary evidence led by the parties is sufficient to prove that the act and conduct of the appellant had been such that she had been causing mental cruelty to the petitioner by being disrespectful to the petitioner and his parents and also by levelling false allegations against them in her complaint to the police. She admitted her faults, regretted, but continued to cause mental pain to the petitioner. On the said ground the petitioner was indeed, entitled to

dissolution of his marriage with the appellant.

Thus, the findings of learned trial court does not warrant intervention and there being no merit in the appeal, it is hereby dismissed.

CMM No.87 of 2014

Since the appeal of the appellant Jyotsna Sharma has been dismissed on merits in limine on the ground that her husband respondent Gaurav Sharma had successfully proved that she had been causing mental cruelty, equally we do not find any justification to accept the application for maintenance allowance and accordingly the CMM is also dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

January 27, 2015.

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Note: Whether to be referred to the Reporter or not? Yes/No.