

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**FAO-M-200-2014 (O&M)
Date of decision: 02-2-2015**

Poonam

.....Appellant

Vs.

Ramesh Kumar and another

.....Respondents

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

Present: Mr. Naveen Sharma, Advocate for the appellant-wife.
Mr. Tarun Singla, Advocate for Mr. Rajinder Kumar
Singla, Advocate for the respondent-husband.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the appellant – wife against the judgment and decree dated 18.3.2014 passed by the trial court, 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 on the ground of cruelty has been allowed.

2. A few facts relevant for the decision of the controversy involved as available on the record may be noticed. Marriage between the parties was solemnized in the month of March 1991 as per Hindu rites and

ceremonies at Amritsar. After the marriage, the parties lived together and cohabited as husband and wife at Ludhiana and out of the wedlock, two children i.e. one daughter namely Ruchika and one boy Rajat were born. Both the children are at present residing with the respondent. The respondent is handicapped and is serving as Science teacher with Government High Court, Salem Tabri, Ludhiana. From the very beginning, the behaviour of the appellant with the respondent and his parents was very rude. She always used to pressurize the respondent to live separately. She used to insult the respondent in the presence of his friends and relatives being handicapped. She used to make wild and reckless allegations against the character of the respondent. In July 2002, old parents of the respondent were thrown out of the house by the appellant. She made the life of the respondent a hell. Thereafter, the respondent came to know from some reliable sources that the appellant was in illicit relations with one Manjit Lal. Even the wife of the said Manjit Lal had left his society because her husband was living in adultery with the appellant. Panchayati compromise was also effected between the parties. Since 28.6.2009, the appellant is living separately from the respondent. Ultimately, the respondent filed petition under Section 13 of the Act for dissolution of the marriage. Upon notice, the appellant appeared and filed written statement controverting the averments made in the petition. The trial court after examining the entire evidence on record allowed the petition under section 13 of the Act filed by the respondent vide judgment and decree dated 18.3.2014 impugned herein. Hence the instant appeal by the appellant wife.

3. We have heard learned counsel for the parties and perused the

record.

4. On the pleadings of the parties, the trial court framed the following issues:

- “1. Whether the petitioner is entitled to get decree of divorce from respondent No.1 Poonam on the grounds set up in the petition under Section 13 of HMA?OPP
- 2.Whether the petition filed by the petitioner is not maintainable in the present form? OPR
- 3.Whether the petitioner has no locus standi to file the present petition? OPR
- 4.Whether the petitioner has not come to the court with clean hands and has suppressed material facts, if so, its effect? OPR
- 5.Relief.”

In support of his case, the respondent-husband appeared as PW1 and tendered his affidavit Ex.PA reiterating his entire assertion as made by him in his petition under Section 13 of the Act. He also produced his son PW2 Rajat Sharma, PW3 HC Ajit Singh, PW4 ASI Gurmit Singh, PW5 Kranti K.Sharma and PW6 Om Parkash in his defence. In his statement, the respondent husband deposed that from the very beginning, the attitude and behaviour of the appellant was very cruel towards him and his parents. She used to quarrel on petty matters. She used to insult him in the presence of his friends and relatives being handicapped person. She also used to level allegations against his character. She was also found to be in illicit relations with one Manjit Lal. This was proved from the fact that their son Rajat Sharma had seen both of them in objectionable position. In this way, the appellant caused mental cruelty to the respondent husband. The version given by the respondent was supported by his son Rajat Sharma as PW2.

PW3 HC Ajit Singh deposed about the complaint filed by the respondent in

the year 2009 against the appellant wife with SSP Ludhiana. PW4 ASI Gurmit Singh proved the filing of application by the wife of Manjit Lal about the illicit relations of her husband. He also proved copy of Panchayati Rajinama dated 28.6.2009, Ex.P.1. PW5 Kranti K.Sharma, Handwriting and Finger Print Expert compared the signatures of the appellant wife on the compromise Ex.P.1 with her standard signatures. On the other hand, the appellant appeared as RW1 wherein she reiterated the entire averments of her written statement. The trial court after considering the entire evidence on record granted decree of divorce in favour of the respondent on account of adultery and cruelty caused by the appellant vide judgment and decree dated 18.3.2014. The relevant finding recorded by the trial court reads thus:-

“18. In the totality of circumstances, that is (a) Rajat Sharma, own son of the respondent having caught his mother Poonam with Manjit Lal in a compromising position, (b) lodging of complaint by petitioner Ramesh Lal in Police Station levelling allegations of adultery against respondent Poonam and (c) Panchayati compromise (Ex.P.1) establishing the illicit relations of Poonam with Manjit Lal and on all these points, one can reach to the conclusion that Poonam was living in adultery with Manjit Lal.

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21. On scrutinizing of evidence led by the parties, as above, it stands proved that the respondent Poonam is indulged in extra marital sexual relationship with Manjit Lal. The illicit relations carried on by the respondent wife must have naturally caused tension and suffering to the petitioner-husband. Besides other acts of cruelty, respondent has also levelled allegations against character of petitioner Ramesh Kumar which she has failed to substantiate in her evidence and it is a settled law that even the allegations made during the

course of pleading also amounts to cruelty. Therefore, in view of above facts and circumstances of the case, it also stands established that respondent wife has treated the petitioner with cruelty.”

5. With regard to mental cruelty, it has been elaborately explained by the Apex Court in *Vishwanath vs. Sau, Sarla Vishwanath Agrawal*, 2012(7) SCC 288 as under:-

“18. [In Shobha Rani v. Madhukar Reddi](#), (1988) 1 SCC 105, while dealing with 'cruelty' under Section 13(1)(ia) of the Act, this Court observed that the said provision does not define 'cruelty' and the same could not be defined. The 'cruelty' may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem to determine it. It is a question of fact and degree. If it is mental, the problem presents difficulty. 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.”

19. After so stating, this Court observed about the marked change in life in modern times and the sea change in matrimonial duties and responsibilities. It has been observed that when a spouse makes a complaint about treatment of

cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatized as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. Their Lordships referred to the observations made in *Sheldon v. Sheldon*, (1966) 2 All England Reporter 257 wherein Lord Denning stated, “the categories of cruelty are not closed. Thereafter, the Bench proceeded to state thus: -

“Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty.

These preliminary observations are intended to emphasise that the court in matrimonial cases is not concerned with ideals in family life. The court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord Ried observed in *Gollins v. Gollins* (1963) 2 All England Reporter 966 :

In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with this man or this woman.

20. [In V. Bhagat v. D. Bhagat \(Mrs.\)](#), 1994(1) SCC 337, a two-Judge Bench referred to the amendment that had taken place in Sections 10 and 13(1)(ia) after the Hindu Marriage Laws (Amendment) Act, 1976 and proceeded to hold that the earlier requirement that such cruelty has caused a reasonable

apprehension in the mind of a spouse that it would be harmful or injurious for him/her to live with the other one is no longer the requirement. Thereafter, this Court proceeded to deal with what constitutes mental cruelty as contemplated in Section 13 (1)(ia) and observed that mental cruelty in the said provision can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. To put it differently, the mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It was further observed, while arriving at such conclusion, that regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances. What is cruelty in one case may not amount to cruelty in another case and it has to be determined in each case keeping in view the facts and circumstances of that case. That apart, the accusations and allegations have to be scrutinized in the context in which they are made. Be it noted, in the said case, this Court quoted extensively from the allegations made in the written statement and the evidence brought on record and came to hold that the said allegations and counter allegations were not in the realm of ordinary plea of defence and did amount to mental cruelty.

21. [In Praveen Mehta v. Inderjit Mehta, 2002\(3\) RCR \(Civil\) 529](#), it has been held that mental cruelty is a state of mind and feeling with one of the spouses due to behaviour or behavioural pattern by the other. 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, 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 facts and circumstances are to be assessed emerging from the evidence on record and thereafter, a fair inference has to be drawn whether the petitioner in the divorce petition has been subjected to mental cruelty due to the conduct of the other.

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23. [In A. Jayachandra v. Aneel Kaur, 2005\(1\) RCR \(Civil\) 309](#), it has been ruled that the question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status and environment in which they live. If from the conduct of the spouse, it is established and/or an inference can legitimately be drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse about his or her mental welfare, then the same would amount to cruelty. While dealing with the concept of mental cruelty, enquiry must begin as to the nature of cruel treatment and the impact of such treatment in the mind of the spouse. It has to be seen whether the conduct is such that no reasonable person would tolerate it.

24. [In Vinita Saxena v. Pankaj Pandit 2006\(2\) RCR \(Civil\) 302](#), it has been ruled that as to what constitutes mental cruelty for the purposes of Section 13(1)(ia) will not depend upon the numerical count of such incident or only on the continuous course of such conduct but one has to really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude necessary for maintaining a conducive matrimonial home.

25. [In Samar Ghosh v. Jaya Ghosh, 2007\(2\) RCR \(Civil\) 595](#), this Court, after surveying the previous decisions and referring to the concept of cruelty, which includes mental cruelty, in

English, American, Canadian and Australian cases, has observed that the human mind is extremely complex and human behaviour is equally complicated. Similarly, human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in the other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious belief, human values and their value system. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances.”

6. In the present case, it has been categorically recorded by the trial court that the appellant wife was in illicit relations with one Manjit Law which was duly proved on record by the statement of their own son Rajat Sharma PW2. It became very difficult for him to live with the appellant wife. The appellant had thus caused mental tension, suffering and cruelty to the respondent-husband and was also guilty of adultery. The trial court has recorded the findings after appreciating the entire evidence on record. We find no ground to differ with the view taken by the trial court keeping in view the overall facts and circumstances of the case. Learned counsel for the appellant has not been able to show that the findings recorded by the

trial court are erroneous or perverse in any manner. The appellant has also filed application under Section 24 of the Act for grant of maintenance pendente lite and ₹ 20,000/- as litigation expenses. Since the main appeal has been dismissed on the ground of mental cruelty and adultery caused by the appellant wife being in illicit relations with some other person duly proved on record, the application under Section 24 of the Act cannot be granted. Consequently, both the appeal and the application are dismissed.

(Ajay Kumar Mittal)
Judge

February 02, 2015
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(Sneh Prashar)
Judge