

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

FAO No.M-248 of 2014.

DATE OF DECISION: January 20, 2015.

SUKHWINDER KAUR

....APPELLANT.

VERSUS

KULDIP SINGH

....RESPONDENT.

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

Present: Mr. P.S. Bajwa, Advocate for the appellant.

Mr. G.S. Brar, Advocate for the respondent.

SNEH PRASHAR, J.

1. This appeal assails the judgment and decree dated 14.05.2014 passed by learned District Judge, Sri Muktsar Sahib, dismissing HMA Case No.66 of 2012 under Section 13 of the Hindu Marriage Act, 1955 (in short “the Act of 1955”) filed by appellant-wife Sukhwinder Kaur for dissolution of her marriage with respondent-husband Kuldeep Singh by a decree of divorce.

2. Precisely, the relevant facts are as under:-

Appellant Sukhwinder Kaur was married to respondent Kuldeep Singh in the month of September, 2006 at Lishkara Marriage

Palace, Warring, District Sri Muktsar Sahib according to customary rites and ceremonies. Her parents spent approximately ₹2 lacs on marriage. After marriage, they lived together as husband and wife, but no issue was born out of their wedlock.

The appellant submitted that prior to her marriage with the respondent, she was married to Paramjit Singh son of Tek Singh of village Doda, District Sri Muktsar Sahib and a daughter was born out of the wedlock. Paramjit Singh died in harness on 21.12.1999. On compassionate ground she was appointed as Lady Constable with Punjab Police and was posted in the Office of Deputy Superintendent of Police, Vigilance Bureau, Muktsar Sahib at the time of her marriage with the respondent.

The allegation of the appellant was that just after three months of the marriage, the respondent gave beatings to her and started demanding dowry. He pressurized her to sell the Kothi situated at village Bir Sarkar and give the money to him. He gave beatings to her daughter and even tried to kill her by catching her from the neck and by giving her kick blows. He, his sister and mother pressurized her to send him to some foreign country at her expenses as her brother was settled in America. They also pressurized her to get his sister married with her relative settled abroad. Her entire money was snatched from her and she was pressurized to take share in the property of her first husband. Many Panchayats were convened to reconcile the dispute but all in vain. Ultimately, on 09.09.2007, the respondent gave beatings to her and her daughter and

deserted them. Efforts made by her father Ajit Singh, brothers Gurmit Singh, Harbhajan Singh and Boota Singh to rehabilitate her proved futile.

On 05.11.2007 the respondent gave beatings to her in the presence of her staff members. He broke her ear rings and also threatened to kill her. A First Information Report No.136 dated 03.07.2008 under Sections 353, 332 and 186 of Indian Penal Code (in short "I.P.C.") was registered against him at Police Station City, Muktsar. Alleging that the respondent was a greedy and cruel person and had treated her with cruelty and had also deserted her for a continuous period of more than five years, the appellant prayed for a decree of divorce dissolving their marriage on both the said grounds.

3. The respondent contested the petition. In the written statement filed by him, he raised preliminary objections with regard to maintainability of the petition and concealment of true and material facts by the appellant. He pleaded that he was always ready to rehabilitate the appellant at any time in the matrimonial home whereas she herself had left his society willfully and without any rhyme or reason. He also alleged that the brother of the appellant, who is permanent resident of America, intends to marry her with someone else at America in order to permanently settle her in the said country. Earlier also a petition for divorce was filed by the appellant on different facts, which was later withdrawn by her. The factum regarding first marriage of the appellant with Paramjit Singh and birth of a daughter out of that wedlock was admitted by the respondent, but he denied that he had ever beaten the

appellant or his daughter or had pressurized her for sale of the house etc. The incident of beating the appellant in the presence of her staff members was denied and it was alleged that a false First Information Report was got registered by the appellant in collusion with her colleagues. As such, a prayer for dismissal of the petition was made.

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

- (1) Whether after the solemnization of the marriage, the respondent has treated the petitioner with cruelty? OPP
- (2) Whether the respondent has deserted the petitioner for a period of exceeding two years immediately prior to the institution of petition? OPP.
- (3) Whether the petition is not maintainable in the present form? OPR.
- (4) Relief.

5. To substantiate her claim, the petitioner examined as many as six witnesses. She herself appeared in the witness box as PW1 and reiterated on oath the allegations of cruelty and desertion levelled against the respondent. She further examined PW2 Jarnail Singh; PW3 Dharminder Singh; PW4 Phoolwant Kaur; PW5 Head Constable Bakhtaur Singh; and PW6 Lovepreet Singh, who all corroborated her version on all material particulars and proved copy of First Information Report No.136 dated 03.07.2008 registered under Sections 353/332/186 of I.P.C. and First Information Report No.192 dated 01.10.2012 registered under

Sections 341/323/506/148/149 of I.P.C. Ex.P1 and Ex.P2 respectively; and Daily Diary Report No.21 dated 08.12.2012 Ex.P3.

On the other hand, no evidence (ocular or documentary) was led by the respondent despite numerous opportunities availed by him.

6. Considering the evidence of the petitioner and the submissions made on behalf of the parties, learned trial Court came to the conclusion that the petitioner had failed to prove that she had been treated with cruelty by the respondent or had been deserted by him. Accordingly, Issues No.1 and 2 were decided against the petitioner-appellant.

As a consequence to the decision on these issues, the petition was dismissed with costs.

7. Feeling aggrieved by the judgment and decree dated 14.05.2014 passed by the learned trial Court, Sukhwinder Kaur preferred the instant appeal.

8. We have heard the submissions made by Mr. P.S. Bajwa, learned counsel representing the appellant and Mr. G.S. Brar, learned counsel representing the respondent.

9. The admitted facts are that petitioner Sukhwinder Kaur was married to one Paramjit Singh son of Tek Singh of village Doda, District Sri Muktsar Sahib and a daughter namely, Phoolwant Kaur was born out of their wedlock. Unfortunately, Paramjit Singh died on 21.12.1999. On compassionate ground, the petitioner was given job as Lady Constable with Punjab Police and was posted in the Office of Deputy Superintendent of Police, Vigilance Bureau, Muktsar. Thereafter, in the month of

September, 2006, Sukhwinder Kaur married Kuldip Singh-respondent, according to customary rituals.

10. The allegations of appellant Sukhwinder Kaur were that just after three months of marriage the respondent started beating her and demanded dowry. He pressurized her to sell the Kothi situated at Beer Sarkar and give money to him. He also gave beatings to her daughter and even tried to kill her by giving her kick blows and by holding her from the neck. He and his mother pressurized her to send him abroad and bear the expenses because her brother was settled in America. They also insisted to marry his sister with a relative living abroad. He snatched all her money, pension amount, FDRs and pressurized her to demand share of her first husband from his parents.

11. Three main incidents of cruelty were narrated by the petitioner-appellant and her witnesses. The petitioner stated that on 09.09.2007 the respondent gave severe beatings to her and her daughter. Thereafter, her father Ajit Singh and brother Gurmit Singh accompanied by Harbhajan Singh of Beer Sarkar and Boota Singh of Kotli Ablu went to the house of respondent at village Bhangewala and requested him to change his behaviour and maintain the petitioner and her daughter, but the respondent refused to accede to their request.

The other incident disclosed by the appellant was of 05.11.2007 when the respondent came to her office where she was discharging her official duties and used criminal force upon her. He broke her ear rings and ran away threatening to kill her and her family or to get

her kidnapped by some people known to him. A case bearing First Information Report No.136 dated 03.07.2008 under Sections 353/332/136 of I.P.C. was registered at Police Station City, Muktsar, in respect of the said incident. It was also her allegation that whenever she came to her office on scooter, her husband would waylay her by stopping his car in front of her scooter.

12. PW2 Jarnail Singh, Retired Sub Inspector, being an eyewitness of the incident that took place on 05.11.2007 supported the version of the appellant. He stated that in his presence the respondent entered the office of the appellant and holding her from the hair, he took her out into the courtyard. He slapped and abused her and threatened to kill her and her daughter. He (PW2), being on duty, intervened and rescued the appellant.

13. The third specific incident was disclosed by PW4 Phoolwant Kaur, daughter of the petitioner. She deposed that in the morning on 20.06.2007 the respondent gave beatings to her and her mother and tried to kill her by pressing her neck. Her mother raised alarm hearing which their neighbour Dharminder Singh came and rescued them from the clutches of the respondent. Dharminder Singh appeared as PW3 and fully corroborated the version of PW4 Phoolwant Kaur.

Similarly, PW6 Lovepreet Singh, nephew of the appellant, testified about the atrocities inflicted by the respondent on his aunt in his presence.

14. As indicated above, no evidence worth in its name was led by

the respondent to rebut/controvert the deposition of the petitioner and her witnesses.

15. Learned counsel for the appellant argued that since the evidence of the appellant remained unchallenged and unimpeached, it was sufficient to prove that the appellant had been treated with cruelty by the respondent and had also been deserted by him for the last about eight years i.e. since 2007. It was mentioned by learned trial court in para 12 of the impugned judgment that the respondent availed numerous opportunities to produce his evidence, but even he himself failed to appear in the witness box. After his evidence was closed by court order dated 03.10.2013, he again moved an application for leading evidence which was allowed but despite that neither he appeared himself nor adduced any evidence.

16. On the other hand, learned counsel for the respondent argued with vehemence that the respondent may or may not have led evidence, but the settled proposition of law is that the petitioner can succeed only on the strength of her own case and cannot be allowed to take advantage of weakness in the case of the respondent. Learned counsel contended that all allegations of the petitioner were general in nature. No such incident could be disclosed by her which could be treated as an act of 'cruelty' towards the petitioner. Rather, it is apparent from her own evidence that her conduct towards the respondent had been rude and harsh. She admitted that respondent was residing in her parental house at Bhangewala, where she lived with him for 14-15 days only and thereafter,

she started residing at Sri Muktsar Sahib. She also admitted that she convened a Panchayat and advised the respondent not to visit her house at Sri Muktsar Sahib. Apart from that, she got a criminal case bearing First Information Report No.136 dated 03.07.2008 under Sections 353/332/186 of I.P.C., registered against the respondent, which after trial, resulted in acquittal of the respondent. PW4 Phoolwant Kaur, daughter of the appellant, admitted that the respondent used to visit her school to attend Parents-Teacher Meeting and he treated her as his daughter. In the said set of facts, by no stretch of imagination, it can be assumed that the behaviour of the respondent towards the appellant was cruel which prompted her to file this petition for a decree of divorce.

17. The arguments of learned counsel for the respondent may appear to be attractive but are completely devoid of merit. The appellant, during her deposition, not only narrated her tale of agony and stated the atrocities she had to face at the hands of the respondent, but also explained the reason for each and every factum/circumstances put to her by the respondent during cross-examination.

18. Admittedly, the petitioner stated that after marriage she lived with the respondent at Village Bhangewala only for 10/15 days, but in the very next breadth, she stated that thereafter, she had started residing in the house of her first husband at Sri Muktsar Sahib with the consent of the respondent. Admittedly, she was living at Sri Muktsar Sahib because she was posted there in the Office of Deputy Superintendent of Police.

No doubt, she admitted that after they started living

separately, she convened a Panchayat and advised the respondent not to visit the house where she was residing at Sri Mukhtsar Sahib, but she volunteered to state that she did so because the respondent had been giving her beatings and she was residing in the house of her first husband.

19. PW4 Phoolwant Kaur deposed that she and her mother had been going to Village Bhangewala, i.e. native village of the respondent on Saturdays and Sundays. She explained that the mother of the respondent wanted her mother to reside in Village Bhangewala, but they were unable to shift to the said village because her mother was employed in Punjab Police and she was studying at Muktsar. She also stated that after marriage the respondent had started residing in the paternal home of her mother situated in Chak Bir Sarkar and he pressurized her mother to transfer the house in his name. She too stated that her mother asked the respondent in the presence of the Panchayat not to visit her house because he had been quarreling with her.

20. No doubt, the criminal case bearing First Information Report No. 136 dated 03.07.2008 under Sections 353/332/186 of I.P.C. at Police Station City, Muktsar, registered at the instance of the appellant, resulted in acquittal of the respondent, but it has come in evidence that the appellant had filed an appeal against the judgment of acquittal which was still pending. An appeal amounts to continuation of the case and the respondent cannot derive any benefit from the judgment of acquittal. Otherwise also, the yardstick of proof of charges in a criminal case is much higher than the standard of proof required for proving a factum in a

civil matter.

21. PW2 Jarnail Singh, Retired Sub Inspector, was on duty in the office of Vigilance Bureau Muktsar on 05.11.2007. He was neither related to the appellant nor was in her controlling staff, rather, he was a senior official. Supporting the version of the appellant he deposed that on 05.11.2007 at 2.00 P.M. the respondent came into their office and using criminal force on the appellant, who was discharging her official duties, he took her into the courtyard. He added that in his presence he slapped and abused the appellant and threatened to kill her and her daughter.

22. During cross-examination of PW2 Jarnail Singh, nothing such could be derived by the respondent which could cast even a slight doubt on his credibility. He affirmed that his statement regarding the incident was recorded by the police. There is nothing to indicate that the said witness had any score to settle with the respondent or there was any reason for him to be hostile against the respondent. Since the occurrence had taken place in the office of the appellant only the officials present on duty could be the witnesses.

23. Similarly, PW3 Dharminder Singh was not directly related to the appellant. He stated that he was a nephew of the appellant in brotherhood. According to him, his house in village Chak Bir Sarkar is situated just in front of the house of the appellant and as such he is her neighbour. He further testified that after marriage of the parties the respondent started living with the appellant in her house in village Chak Bir Sarkar and after some time he started beating the appellant and her

daughter on account of his demand for dowry and pressurized her to take share in the property of her deceased husband and also to sell of the house at Chak Bir Sarkar and give money to him. It was further stated by PW3 that on 20.06.2007 the respondent gave severe beatings to the appellant and her daughter. Hearing the shouts, he rushed to their house and when he reached the respondent was holding Phoolwant Kaur from her neck and was pressing the same but he rescued her. He further stated that on 09.09.2007 also the respondent had beaten the appellant and her daughter in his presence and he had saved them.

24. It has already been observed above that PW4 Phoolwant Kaur, narrating the incident of 20.06.2007, had stated that when the respondent throttled her neck, she was rescued by their neighbour Dharminder Singh. The statement of PW3 Dharminder Singh cannot be brushed aside merely for the reason that he was a neighbour or relative of the appellant in brotherhood. He was a natural witness being a neighbour and had no reason to falsely support the appellant.

Similarly, PW6 Lovepreet Singh was a relative of the appellant and had personal knowledge about the behaviour and conduct of the respondent towards the appellant. His statement can also not be ignored especially when no evidence could be led by the respondent to rebut the same.

25. PW5 Head Constable Bakhtaur Singh, in addition to the First Information Report Ex.P1 registered against the respondent on the complaint of the appellant, proved another First Information Report Ex.P2

bearing No.192 dated 01.10.2012 registered under Sections 341/323/506/148/149 of I.P.C. to which subsequently offence under Sections 354/511 of I.P.C. was added. The said case was registered against the respondent on the statement of one Har Kirat Singh son of Avtar Singh Sidhu. No doubt, the First Information Report Ex.P2. The First Information Report Ex.P2 could not be directly related to the matrimonial dispute between the appellant and the respondent but it certainly reflected on the conduct of the respondent.

26. Analyzing the expression 'cruelty' as a ground of divorce under the Act, the Hon'ble 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, realizing 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.”

27. The evidence led by the appellant, as discussed above, undoubtedly proved that the respondent was guilty of treating her with utmost cruelty. He not only physically assaulted her and her daughter but also gave her mental pain by threatening her and pressurizing her to fulfill his illegal demands. He could not even come forward to refute the allegations by making a self serving statement on oath.

Resultantly, the findings of learned trial court on Issues No.1

and 2 are set aside and it is held that the petitioner on the ground of having been treated with cruelty by the respondent is entitled to dissolution of her marriage with the respondent by a decree of divorce.

Accordingly, the judgment and decree dated 14.05.2014 passed by learned trial court is set aside, the instant appeal is allowed and the marriage of appellant with the respondent is dissolved by a decree of divorce.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

January 20, 2015.

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