

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

**FAO-M-289 of 2014 (O&M)
Date of decision: 05.02.2015**

Smt. Parvesh

.....Appellant

Vs.

Jagat Singh and another

.....Respondents

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

Present: Mr. Abhimanyu Singh, Advocate for the appellant-wife.

Ajay Kumar Mittal,J.

1. This appeal has been filed by the appellant-wife against the judgment and decree dated 6.3.2014 passed by the trial court whereby the petition under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 (in short, “the Act”) filed by the respondent-husband for dissolution of marriage on the ground of cruelty and adultery 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 February 2004 according to Hindu rites and ceremonies at Yamuna Nagar. Out of the wedlock, one son namely Vaibhav was born on 31.7.2005 to the appellant. However, the second son is alleged

to be belonging to respondent No.2. In the year 2009, respondent No.1 shifted his residence from Raghunath Puri, Jagadhri to 48, Arjun Nagar, near Om Jewellers, opposite ESI Hospital, Jagadhri. The appellant joined service in 2008 as ANM and later on she had been transferred to the Dispensary, Opposite ITI, Yamuna Nagar. The behaviour of the appellant was insulting and full of hatred towards respondent No.1. She used to leave the house without asking respondent No.1 and most of the times, she used to come back at late night hours. She never used to respect respondent No.1 husband. On 16.3.2008, she left the matrimonial house without telling anything to respondent No.1. Later respondent No.1 came to know that she was in illicit relationship with respondent No.2-Jaspal Singh who resides at a short distance from the residence of respondent No.1. On 7.3.2011, during the day, respondent No.1 was out due to some urgent work and when he came back in the night at about 12 O'clock and after knocking the door when the appellant did not open the door, Sunil Kumar and Anil Kumar Aggarwal, neighbours were called by respondent No.1 who broke open the door. He saw that in the room both the appellant and respondent No.1 were in objectionable position. Respondent No.1 was shocked. Both the appellant and respondent No.2 confessed that for the last two years three months they were in illicit relations with each other. They made statements in their own handwriting in front of the witnesses. Appellant also confessed that the second son Aarav was born due to illicit relations between her and respondent No.2. Since 8.3.2011, the appellant and Aarav are residing separately from respondent No.1. The acts committed by the appellant caused mental cruelty to respondent No.1 and it became difficult for him to

live with her. He filed petition under Section 13 of the Act for dissolution of 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 filed by respondent No.1 husband vide impugned judgment and decree dated 6.3.2014. Hence the instant appeal by the appellant wife. She has also filed application under Section 5 of the Limitation Act, 1963 for condonation of 68 days in filing the appeal.

3. We have heard learned counsel for the appellant-wife and perused the record.

4. The trial court on the pleadings of the parties framed the following issues:-

- i) "Whether petitioner is entitled for decree of divorce on the grounds mentioned in the petition? OPP
- ii) Whether petition is not maintainable? OPR1
- iii) Whether petitioner is estopped from filing the present petition by his own act and conduct? OPR1
- iv) Whether petitioner has got no cause of action to file the present petition? OPR1
- v) Relief."

In support of his case, respondent No.1-husband appeared as PW1 and examined Sunil Kumar as PW2, HC Neeraj Kumar as PW3, Mam Chand Saini, Phone Mechanic as PW4, Sukhbir Singh as PW5, Rajesh Kumar as PW6, EHC Jitender Kumar as PW7, ASI Raj Pal as PW8, Vaibhav as PW9, Anil Aggarwal, Advocate as PW10. The appellant appeared as RW1 and examined Mohan Lal as RW2, CI Sunil Kumar as RW3 and Inspector Rajeev as RW4. Respondent No.1 in his statement as PW1 reiterated the

averments as narrated in his petition under Section 13 of the Act. His entire case was that from the very beginning of marriage, he was subjected to cruelty by the appellant and that on 7.3.2011, the appellant committed adultery with respondent No.2 after developing illicit relationship with him. The main witness in the case is the real son of the appellant Vaibhav who appeared as PW9 and supported the version narrated by his father respondent No.1. He deposed in his cross examination that respondent No.2 used to visit their home in the absence of his father. The trial court after examining the entire evidence allowed the petition under section 13 of the Act by the respondent No.1-husband and granted decree of divorce for dissolution of marriage to him vide judgment and decree dated 6.3.2014. The relevant finding recorded by the trial court reads thus:-

“11. In case of adultery, there are very less chances of direct evidence but in cases in hand there are instances which duly reveal that respondent No.1 and respondent No.2 were having long understanding in between them. It is settled law that in divorce petition on the ground of adultery proof of actual adultery is not necessary and circumstantial evidence which leads to an inference of adultery is sufficient. It is also settled law that degree of proof need not reach certainty but it must carry a high decree of probability.

In case in hand, petitioner succeeded to prove one writing of respondent No.1 and respondent No.2 which is Ex.P.1 and is written with their own hands by both respondents. Writing Ex.P.1 cannot be ignored and if writing Ex.P.1 is presumed to be true then in that eventuality court has no option but to rely upon the case of the petitioner.

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Keeping in view all the evidence produced on behalf of

both parties and case law cited by counsel for petition, this court has reached at considered opinion that petitioner was subjected to cruelty by respondent No.1 and that respondent No.1 was having illicit relationship with respondent No.2. Thus, the petitioner has cause of action to file the present petition which is duly maintainable and petitioner has not committed any act and conduct which could debar him from filing the present petition. Accordingly, all the four issues are decided in favour of petitioner and against the respondents”

5. Section 13(1)(ia) of the Act empowers the Court to dissolve the matrimonial ties between the parties by a decree of divorce on a petition by either spouse where the said spouse has been treated with cruelty after the solemnization of the marriage. Cruelty has not been defined in 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. Whether a spouse is inflicted with physical cruelty or not, it can be judged on the basis of direct evidence whereas mental cruelty is to be inferred on analyzing the factual matrix of each case and drawing conclusion thereon.

6. 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.

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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.”

7. 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.”

8. In the present case, the illicit relationship of the appellant with respondent No.2 has been duly proved on record by various instances. The main witness in this case is the real son of the appellant namely Vaibhav who appeared as PW9 whose statement corroborated the version given by respondent No.1. Such relationship was also proved by writing Ex.P.1 by the appellant and respondent No.2. The acts committed by the appellant wife caused mental cruelty to respondent No.1 husband and it became impossible for him to live with her. The adultery between appellant and respondent No.2 also stood established. The findings have been recorded by the trial court after appreciating the entire evidence on record. The trial court had rightly granted a decree of dissolution of marriage between appellant and respondent No.1 on the ground of cruelty and adultery. Learned counsel for the appellant has not been able to show any illegality or perversity in the said findings which may warrant interference by this Court. Consequently, finding no merit in the appeal, the same is hereby dismissed.

9. In view of the dismissal of appeal on merits, no order is required to be passed on the application under Section 5 of the Act for condonation of delay, which is left open.

(Ajay Kumar Mittal)
Judge

February 05, 2015
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(Sneh Prashar)
Judge