

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-305 of 2014

Date of Decision: 16.2.2015

Paramjit Singh

....Appellant.

Versus

Jaspreet Kaur

...Respondent.

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

PRESENT: Mr. Janak Singh Bhinder, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the husband against the judgment and decree dated 26.5.2014 passed by the District Judge, Sangrur whereby the petition filed by him under Section 13 of the Hindu Marriage Act, 1955 (In short "the Act") for dissolution of marriage by a decree of divorce, was dismissed.

2. Put shortly, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The marriage of the parties was solemnized on 29.11.1992 by way of Anand Karaj ceremony at village Bhutta, Tehsil Payal, District Ludhiana. After the marriage, the parties lived together as husband and wife at village Kanganwal, Tehsil Malerkotla, District Sangrur and out of the said wedlock, three female children, namely, Harpreet Kaur, Jaspreet Kaur and Gurpreet Kaur were born. After few days of the marriage, the respondent treated the appellant and his family members with utmost cruelty and compelled him to reside separately from his parents at Ahmedgarh. However, the

appellant showed his inability to do so as he was the only son of his parents. She used to abuse the parents of the appellant and did not do any household work. When the appellant refused to accede to illegal and unreasonable demands of the respondent, she started threatening him and his parents that she would commit suicide and would involve them in a criminal case. Due to the quarrel in the family, the mother of the appellant died in the year 2001. Even after the death of the mother of the appellant, the respondent could not adjust with him and his family members. Thereafter, the appellant started residing separately with the respondent at Ahmedgarh in the year 2003. There also, the behaviour and attitude of the respondent did not change towards the appellant and she even refused to have marital relations with him. There was no cohabitation between the parties for the last one year from the date of filing of the petition. She did not prepare food for the appellant and his father since the year 2002. Accordingly, the appellant filed a petition under Section 13 of the Act for dissolution of marriage by a divorce of divorce. Upon notice, the respondent did not appear and was, therefore, proceeded against *ex parte* by the trial court vide order dated 13.3.2014.

3. In support of his case, the appellant besides examining himself as PW1 also examined his father Chand Singh as PW2 and Numberdar Balwinder Singh as PW3.

4. The trial court on appreciation of the evidence led by the appellant dismissed the divorce petition vide judgment and decree dated 26.5.2014 holding that the appellant had failed to prove his case that he was treated with cruelty by the respondent after the solemnization of marriage. Hence, the present appeal.

5. Learned counsel for the appellant submitted that the

respondent treated the appellant and his family members with cruelty. It was further contended that the respondent failed to prepare meal and to do other household chores. It was urged that upon the insistence of the respondent, the appellant started residing separately at Ahmedgarh in the year 2003 but her behaviour and attitude towards him did not change and she threatened to commit suicide and to involve him and his family members in a criminal case. With these contentions, learned counsel prayed for dissolution of marriage by a decree of divorce.

6. After hearing learned counsel for the appellant, we do not find any merit in the appeal.

7. Cruelty has not been defined under 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.

8. 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.

XX XX XX
XX XX XX

21. Cruelty for the purpose of Section 13(1)(ia) is to be taken as a behaviour 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 behavior 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.”

9. 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.”

10. In the present case, the instances of the appellant were merely the result of wear and tear of the married life and could not be treated as cruelty of such a degree that the parties could not live together or their marriage needs to be dissolved. The appellant in his affidavit Ex.PW1/A had reiterated the averments as made in the petition and his statement as PW1 was supported and corroborated by his father PW2 Chand Singh and Numberdar PW3 Balwinder Singh. But the perusal of evidence of the appellant PW1, PW2 Chand Singh and PW3 Balwinder Singh is not sufficient to come to the conclusion that the respondent-wife was treating the appellant with cruelty. The trial court had after analyzing the evidence held as under:-

“9. Reverting to the case in hand, petitioner Paramjit Singh, in his sworn affidavit Exhibit PW1/A, reiterated on oath the averments, as set out in the petition and his statement was supported and corroborated by PW2 Chand Singh, his father and PW3 Balwinder Singh, Numberdar. The only

allegations of the cruelty levelled by the petitioner are that the respondent insisted the petitioner to live separate from his parents; that for the last one year from the date of filing the petition, respondent refused to have sexual intercourse with the petitioner; and that the respondent failed to prepare meals and to do other household chores and even threatened to commit suicide. Though PW2 Balwinder Singh stated that the respondent treated the petitioner with cruelty but petitioner Paramjit Singh neither in the petition nor while appearing as PW1 stated that he was treated with cruelty by the respondent in the presence of said PW Balwinder Singh. PW2 Chand Singh is father of the petitioner and thus he is interested witness. PW2 Chand Singh has also not stated that at any point of time, his son i.e. petitioner was treated with cruelty by the respondent in his presence and he has also not given any specific instance of alleged cruelty. Therefore, evidence of PW2 Chand Singh and PW3 Balwinder Singh is after thought and is of no avail to the plea of the petitioner that he was treated with cruelty by the respondent. No doubt, as per own showing of the petitioner, he along with the respondent started residing at Ahmedgarh in the year 2003 and even at the time of filing of petition, the petitioner disclosed his residential address of Ahmedgarh but surprisingly, no body from Ahmedgarh

has turned up to support the claim of the petitioner despite the fact that the parties were residing at Ahmedgarh for the last ten years.”

11. Further, the examination of evidence on record relating to the allegations of the appellant that the respondent refused to perform her matrimonial duties and used to insist him to reside separately from his parents or threatened to commit suicide and to falsely implicate him and his family members points towards that they are vague and general in nature as the appellant had failed to disclose the time, date, month and year when all this happened. Even the appellant had failed to prove that any effort was made to prevail upon the respondent to mend her behaviour towards him and his family members by calling her parents or by convening a panchayat. Further, the appellant had not been able to explain why the petition had been filed on 20.4.2013 whereas the instances, according to him, relate to 1992, i.e. 20 years prior to the filing of the petition. The appellant had failed to explain the aforesaid delay in filing the divorce petition. There are no concrete instances and evidence to show the conduct of the respondent-wife to be cruel. In such circumstances, the appellant had failed to prove that he was treated with cruelty by the respondent. The relevant findings recorded by the trial court read thus:-

“12. Another ground to disbelieve the version of the petitioner is that though it was alleged that the petitioner and his family members were treated with cruelty by the respondent but if it is so, petitioner and his family members must have convened Panchayat or must have called parents of the respondent with a

request to prevail upon the respondent to change her attitude towards the petitioner and his family members but in this regard also, petition is silent as neither it has been alleged nor proved that any effort was made to prevail upon the respondent to mend her behaviour towards the petitioner and his family members. Though PW3 Balwinder Singh tried to exaggerate his version by stating that he was conversant with the facts of the case as number of times he tried to prevail upon the respondent but the respondent refused to accede to his request and request of other respectables but it is not the case of the petitioner that any effort was made to prevail upon the respondent to mend her behaviour towards the petitioner and his family members. Moreover, he has not disclosed the time, date, month or year when he or any other respectable of the village allegedly tried to prevail upon the respondent.

13. It, thus, comes out that the evidence available on record when tested on the touchstone of the cited judgments is found too far from being sufficient to return a finding that the respondent has treated the petitioner with cruelty because to constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more

serious than "ordinary wear and tear of married life".

14. It further needs to be pointed out that as per petitioner's plea, after the marriage, respondent started compelling the petitioner to live separately from his parents and that she would use filthy language against the petitioner and his parents and did not do any household work. This would bring commencement of the alleged cruel behaviour of the respondent to somewhere in the year 1992. However, the petition has been filed on 20.04.2013 i.e. after more than 20 years. This attracts provisions of Section 23 of the Hindu Marriage Act which enumerates the grounds that disentitle a petitioner to a decree of divorce and one of the grounds is unnecessary and unreasonable delay in filing of the petition. The petitioner has not explained the interregnum that intervened the year 1992 and the date of filing the petition, i.e. 20.04.2013."

12. Learned counsel for the appellant was unable to demonstrate that there was any error or perversity in the findings recorded by the trial court being based on misappreciation or misreading of evidence which may warrant interference by this Court. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

February 16, 2015
gbs

(SNEH PRASHAR)
JUDGE