

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

**FAO-M-307 of 2014 (O&M)
Date of decision: 23.02.2015**

Jasvir Singh

.....Appellant

Vs.

Gyatri Jyoti @ Simran

.....Respondent

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

Present: Mr. S.P.Soi, Advocate for the appellant-husband.
Mr. Nandan Jindal, Advocate for the respondent-wife.

Ajay Kumar Mittal,J.

1. This appeal has been filed by the appellant-husband against the judgment and decree dated 16.8.2014 passed by the trial court whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (in short, "the Act") filed by the respondent-wife 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 on 31.1.2005 at Sangrur. After the marriage, they resided together as husband and wife at Patiala and one female child namely Simardeep Kaur was born on 4.1.2006. Soon after the marriage, the respondent and his parents started misbehaving with the respondent for

bringing more dowry in the shape of cash and Zen car. They used to pick up quarrels on petty matters. When the respondent expressed inability of her mother and brother to fulfill their demand of Zen car, she was given beatings mercilessly. She was compelled to sleep in one room with the brother of the appellant. The expenses on the birth of child were borne by the parents of the respondent. On 18.6.2008, she was turned out of the matrimonial home alongwith her minor child. On 21.9.2008, panchayat was convened at the house of the appellant and his family members to rehabilitate the respondent in her matrimonial house but to no effect. The respondent filed petition under Section 13 of the Act in which parties entered into compromise and the said petition was dismissed on 21.7.2010. Thereafter again the appellant and his family members started maltreating the respondent by demanding Zen car from her besides calling her with bad names. On 24.2.2013, the appellant and his family members gave beatings to the respondent and turned her out of the matrimonial house. On 3.3.2013, the respondent and her brother convened panchayat to persuade the appellant and his family members to rehabilitate the respondent in her matrimonial house but they remained adamant and refused to rehabilitate the respondent. Ultimately, the respondent filed petition under section 13 of the Act for dissolution of marriage on the ground of cruelty. Upon notice, the appellant appeared and filed written statement controverting the averments made in the petition. It was stated that the appellant was ready to live with the respondent at any place but she was not ready. She was under the influence of her brother and other family members. The respondent who was government employee wanted to get rid of the appellant. The trial court

after appreciating the evidence on record allowed the petition filed by the respondent-wife vide impugned judgment and decree dated 16.8.2014.

Hence the instant appeal by the appellant husband.

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

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

- i) "Whether the respondent has treated the petitioner with cruelty, if so, to what effect? OPP
- ii) Relief."

The respondent in order to prove her case appeared as PW1 and reiterated the averments as made in the petition under Section 13 of the Act. She also examined PW2 Lalit Jyoti, her brother, PW3 Rekha Jyoti, her sister and tendered various documents. On the other hand, the appellant appeared as RW2 and examined Parminderjit Singh as RW1, Ruldu Ram Khushdil as RW3 - Municipal Councillor. In her statement as PW1, the respondent deposed about various instances of physical and mental cruelty meted out to her at the hands of the appellant and his family members. PW2 Lalit Jyoti her brother and PW3 Rekha Jyoti her sister supported the version given by her. Ex.P.1 is the copy of First Information report lodged by Jaspreet Kaur, wife of Baljit Singh, brother of the appellant against her husband, father-in-law and mother-in-law. Mark A is the copy of proceedings initiated under Sections 107/151 Cr.P.C. at the instance of the father of Jaspreet Kaur alleging maltreatment of his daughter at the hands of her husband and other members of his family. Mark B is the copy of medico legal report of Jaspreet Kaur. Mark C is copy of complaint made by her against her

husband and his family members alleging dowry and maltreatment. Mark D is the copy of public notice vide which Baljit Singh had been disowned by his parents. All these instances show the conduct of the family members of the appellant. Mental and physical cruelty was caused to the respondent by the appellant and his family members for not bringing dowry in the shape of cash amount and Zen car. On her inability to fulfill their demand, she was given beatings by them. She was turned out of the matrimonial house. The appellant and his mother also compelled her to sleep in one single room of brother of the appellant. She was also forced to file divorce petition but the same was dismissed as withdrawn due to compromise between the parties. Even thereafter, the appellant and his family members did not mend their behaviour and again started pressurizing the respondent to bring car and money from her parents. In such circumstances, it became impossible for the respondent wife to live with the appellant. The appellant on the other hand denied all the allegations levelled by the respondent. He stated that the respondent resided with his family members for a short period. She was under the influence of her parental family who had been interfering in her family life. Even the earlier divorce petition was filed at their instance. The trial court examined the entire evidence and recorded that the appellant treated the respondent with cruelty and it was not possible for the respondent to live with the appellant under one roof. Vide judgment and decree dated 16.8.2014, the petition was allowed and decree of divorce was granted to the respondent.

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. The proceedings for dissolution of marriage by a decree of divorce under the Act are of civil nature and its proof is not to be judged on the touch-stone of 'beyond the shadow of doubt' but only on the preponderance of probabilities leading to a fair inference as a necessary conclusion on the evidence and from the circumstances of a case.

6. While elaborating 'cruelty' in matrimonial cases, the Apex Court in *A. Jayachandra vs. Aneel Kaur*, (2005) 2 SCC 22 recorded thus:-

“The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. 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, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be

physical. If from the conduct of his spouse same is established and/or an inference can be legitimately 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 this conduct amounts to cruelty. In delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, a proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

The expression 'cruelty' has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in 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. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or 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 ([See Sobha Rani v. Madhukar Reddi, AIR 1988 SC 121](#)).

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". The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are

those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to [Matrimonial Court. \(See Dastane v. Dastane, AIR 1975 SC 1534\).](#)”

7. Examining the factual matrix herein, the appellant and his

parents soon after the marriage started harassing and humiliating the respondent wife for bringing insufficient dowry. They were demanding cash amount and Zen car. When the respondent expressed her inability to fulfill their demand, they turned her out of the matrimonial house. She filed petition for divorce which was dismissed as withdrawn due to compromise between the parties. Even after the compromise, the appellant and his parents did not behave properly. They again started repeating the same demand of car. Ex.P.1 is the copy of the FIR No.24 of 2011 lodged by Jaspreet Kaur, wife of Bajit Singh, brother of the appellant against her husband, father in law and mother in law which support the plea of the respondent regarding the conduct of the family members of the appellant to demand dowry. In spite of best efforts made by the respondent to live with the appellant, he did not mend his behaviour. The appellant and his parents created such circumstances that it became impossible for the respondent-wife to live with them. The findings have been correctly recorded by the trial court after appreciating the entire evidence on record. The relevant finding recorded by the trial court reads thus:-

“27. Another reason to disbelieve the version of the respondent is that though there is sufficient evidence led by the petitioner on record that Panchayat was convened from the side of the petitioner at the house of the respondent to persuade him and his family members to rehabilitate the petitioner alongwith her minor child in matrimonial house and this part of evidence alongwith other evidence relating to various instances of cruelty remained unrebutted and unchallenged on record by not cross examining the petitioner and her witnesses on these fronts. However, in support of version of the respondent that the petitioner was

not willing to remain with him as his wife and that he was ready to rehabilitate her with him as his wife, no evidence was led by the respondent in this behalf. While appearing as RW2, the respondent has not uttered even a word to say that from his side, any panchayat was convened at the house of the petitioner to bring her back to his house or to rehabilitate her as his wife.

28. As regards contention of the learned counsel for the respondent that admittedly previous divorce petition filed by the petitioner was withdrawn by her on 21.7.2010 after the parties entered into compromise and thus on 21.7.2010, the parties to the petition resolved their disputes amicably and admittedly the parties started residing together by resuming cohabitation and therefore, even if for the sake of argument, it was taken that there had been any act of cruelty by the respondent prior to 21.7.2010, the same would be deemed to have been condoned and as no new allegation of cruelty had been levelled by the petitioner against the respondent in the present petition, the petition of the petitioner was liable to be dismissed, is concerned, it needs to be stated that it is admitted case of the parties that the earlier petition filed by the petitioner was left un-prosecuted as the parties entered into compromise as the respondent agreed not to ill treat the petitioner in future. However, it is specific case of the petitioner that after the previous petition was got dismissed in default on the assurance of the respondent and his family members that they would not ill treat the petitioner, the respondent and his family members again started ill treating her and demanding dowry and ultimately, she was again turned out of her matrimonial house in wearing apparels. Therefore, once the respondent again started maltreating the petitioner by giving him beatings and compelling her to bring more dowry, it was but natural for the petitioner to file fresh petition against the

respondent seeking divorce from the respondent. Had the respondent been firm on his promise not to ill treat the petitioner, then the position would have been otherwise but once he again started maltreating the petitioner, she certainly had the right to file fresh petition seeking divorce on the grounds already available to her at the time of filing previous petition and on the other grounds available to her after decision of earlier petition.

29. It thus comes out that the evidence led by the petitioner available when tested on the touchstone of the cited judgments is sufficient to return a finding that the respondent treated the petitioner with cruelty which is of such a nature that the petitioner spouse cannot be reasonably expected to live with the other spouse and instances of cruelty pleaded and proved on record by the petitioner cannot be termed as ordinary wear and tear of married life and rather nature and extent of cruelty are such that these satisfy the conscience of the court that the relationship between the parties has deteriorated to such an extent, due to the conduct of the other spouse that it would be impossible for the petitioner to live with the respondent without mental agony, torture or distress, to entitle the compelling spouse to secure divorce.”

8. 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.

(Ajay Kumar Mittal)
Judge

February 23, 2015
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(Sneh Prashar)
Judge