

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No. 877 of 2015 (O&M)

Date of Decision: 11.2.2015

Vikas Sharma

....Appellant.

Versus

Poonam

...Respondent.

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

PRESENT: Mr. Rohan Jain, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. Having remained unsuccessful in a petition filed under Section 13 of the Hindu Marriage Act, 1955 (In short "the Act") for dissolution of marriage by a decree of divorce, the appellant-husband has approached this Court by way of instant appeal challenging the judgment and decree dated 30.10.2014 passed by the District Judge, Family Court, Gurgaon.

2. Sans unessentials, the facts of the case are that the marriage between the parties was solemnized on 27.4.2009 at village Kasar, Tehsil Bahadurgarh, District Jhajjar (Haryana) as per Hindu rites and ceremonies. After the marriage, the parties lived together as husband and wife and out of the said wedlock, a son, namely, Sidhhant was born on 16.4.2012. The respondent was egoistic and misbehaved

with the appellant and his family. She refused to do the household chores and levelled false allegations against his mother. The appellant and his mother complained to her parents but they did not make any efforts to persuade her to behave properly. The respondent did not like his parents and was abusive towards them. The appellant started living separately with the respondent but she was still dissatisfied. He suspected that she was involved in an extra marital relationship. She threatened him and his family members to implicate them in false criminal cases. Even she filed a complaint against the appellant and his family members to extract money from them. She made a complaint at Police Post Rajendra Park, Gurgaon and the local police had visited the appellant. However, after investigation, he was found innocent and the respondent was at fault. The respondent finally refused to cohabit with him and left the matrimonial home on 7.11.2010 without his consent. The appellant along with his elder brother Neeraj and cousin Vijay had gone to her parental house on 27.3.2011 to bring her back but they refused to send her. He also filed a petition under Section 9 of the Act for restitution of conjugal rights. The matter was compromised and the said petition was withdrawn on 25.11.2011. However, her behaviour did not change and she even filed a petition under Section 125 of the Code of Criminal Procedure in the court at Bahadurgarh. In the year 2011, she conceived and during her pregnancy, she threatened to kill herself and implicate the appellant and his family members. On 16.4.2012, a son was born and she did not permit the appellant and his family to handle the child and on enquiry she disclosed that the child was fathered by someone else. The appellant told this fact to her family but her father continued to support her. She finally left the matrimonial home on

1.7.2012 along with her jewellery and other belongings. All the efforts of the appellant to bring her back had failed and she had deserted him without any cause. Accordingly, the appellant filed a petition under Section 13 of the Act for divorce. The said petition was contested by the respondent by filing a written statement. It was pleaded that infact it was the appellant who had always been cruel and harsh to the respondent. He was trying to take advantage of his own wrong. She had always been harassed by the appellant and his family members for bringing less dowry. Her father had given ₹ 51,000/- in cash and had spent approximately ₹ 6 lacs on the marriage but the appellant and his family members were dissatisfied with the same. They tried to pressurize her for bringing a motorcycle and she was frequently abused and ill-treated as their demands were not fulfilled. She was turned out of the matrimonial home on 29.6.2009 for want of motorcycle. Her father convened a panchayat who tried to persuade the appellant but he refused to bring her back. Ultimately, he took her back on the repeated requests of her father but her sisters-in-law abused her and continued with the demand of a motorcycle and ₹ 50,000/- in cash. They also threatened to kill her and in March, 2010, an attempt was made to kill her but she was saved by the timely intervention of a neighbour. It was pleaded that she was frequently starved and ill treated and thrown out of the house. She had filed a petition under Section 125 of the Code of Criminal Procedure and made complaints to the Women Cell, Jhajjar and the panchayat. Despite the birth of a son, the behaviour of the appellant and his family members did not improve and they continued to harass her for want of dowry and on 19.4.2012, they demanded ₹ 51,000/- for her bhelli ceremony. However, her father gave them

₹ 5100/- and other gifts but they were not satisfied and she was thrown out of the matrimonial home on 30.6.2012 by keeping the minor son with them. She reported the matter to Police Station Rajendra Park, Gurgaon and the custody of the child was restored to her. The other averments made in the petition were denied and a prayer for dismissal of the same was made. From the pleadings of the parties, the trial court framed the following issues:-

1. Whether the petitioner is entitled for the decree of divorce on the grounds as mentioned in the petition? OPP
2. Relief.
3. The appellant in support of his case examined himself as PW1 and his mother Smt. Shakuntla as PW2. On the other hand, the respondent examined herself as RW1 and her father Govind as RW2.
4. The trial court on appreciation of the evidence led by the parties, decided issue No.1 against the appellant holding that the appellant could not take advantage of his own wrong as he had failed to prove that the respondent was cruel to him or his family. Accordingly, the trial court vide judgment and decree dated 30.10.2014 dismissed the divorce petition. Hence, the present appeal.
5. Learned counsel for the appellant submitted that the behaviour of the respondent towards the appellant and his family members was cruel. It was further submitted that the respondent never did the household chores and picked up quarrel on petty matters. It was urged that the respondent left the matrimonial home on 30.6.2012 leaving the child behind. It was also contended that she had falsely implicated the appellant and his family members in a dowry 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, there are instances that the appellant and his family members frequently threw the respondent out of the matrimonial home as her family members were unable to meet their demands for dowry. They demanded a motorcycle and cash from the respondent. Even on the birth of son, the appellant's family raised a demand of ₹ 51,000/- in cash but the father of the respondent arranged a sum of ₹ 5100/- and gave them. Further, the respondent filed a petition under Section 125 of the Code of Criminal Procedure which was pending at the time of filing the present petition. The appellant did not contest those proceedings and opted to abstain therefrom though he claimed to be well aware about the same. Meaning thereby, he did not contest or dispute the contentions of the respondent raised in the petition for maintenance. The only inference that could be drawn by the Court is that the appellant had been cruel and non-caring towards the respondent. Further, the averments made in the petition and the evidence led in support thereof only show the sensitivity of the appellant with respect to the conduct of the respondent which could not be termed more than ordinary wear and tear of the family life. 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:-

“11. Needless to state here that the respondent

denies all these allegations and has submitted that in fact it was the petitioner and his family members who would frequently throw her out because she and her family were unable to meet their demands for dowry. A motorcycle and cash were frequent demands made from her. Even on the birth of her son, the petitioner's family raised the same demand and also wanted ₹ 51,000/- in cash which her father was unable to afford. His offering of ₹ 5100/- was met with much disdain. The respondent (RW1) and her father Shri Govind (RW2) have both deposed in this regard. This court is inclined to believe the version of the respondent because she has placed on record a copy of judgment passed in the connected proceedings under section 125 Cr.P.C. as Ex.R1. The perusal of this judgment shows that the present petitioner did not even contest those proceedings, though in the present case he claims to be well aware about the same.

It may be highlighted here that this petition was instituted on 16.7.2012 and in the petition itself, the petitioner has referred to the pendency of the proceedings under section 125 Cr.P.C. before the learned JMIC, Bahadurgarh in para No.9 of the petition in this case. The judgment Ex.R1 was passed on 22.7.2013. This means that the petition under Section 125 Cr.P.C. was pending even after the filing

of the instant petition and despite being fully aware of it, the petitioner Vikas Sharma opted to abstain from those proceedings. It is thus evident that he did not contest or dispute the contentions of the respondent raised in the proceedings for maintenance. It may further be highlighted here that the perusal of judgment, Ex.R1 further reflects that the pleadings raised by the respondent in that case were identical to the stand adopted by her in the instant proceedings. As such, the only inference which can be drawn by this court is that it is the petitioner who has been cruel and abusive towards the respondent. It is he who had thrown her out of the house and the complaint made by her to various authorities are not prima facie false. In these circumstances, the petitioner cannot be permitted to take advantage of his own wrong and therefore it is held that he has failed to prove that it is the respondent who has been cruel to him or his family. As such, he is not entitled to divorce from her on this ground.”

11. 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.

12. There is a delay of 21 days in filing the appeal. CM No. 2367-CII of 2015 has been filed for condonation of 21 days' delay in

filing the appeal. Since the appeal has been dismissed on merits, no further orders are required to be passed in the application for condonation of delay in filing the appeal and the same is disposed of as such.

(AJAY KUMAR MITTAL)
JUDGE

February 11, 2015
gbs

(SNEH PRASHAR)
JUDGE