

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

**FAO-M-442 of 2014 (O&M)**

**Date of decision: 11.02.2015**

**Sweta**

**.....Appellant**

**Vs.**

**Yogesh Khurana**

**.....Respondent**

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

Present: Mr. Ashish Gupta, 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 15.11.2014 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-husband for dissolution of marriage on the grounds of cruelty and desertion 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 19.4.2009 at Karnal. After the solemnization of marriage, both the parties lived together as husband and wife but no child was born. As alleged in the petition under section 13 of the Act filed by the respondent-husband, the behaviour and attitude of the appellant-wife from the very beginning was unbearable as she used to insult the respondent on one pretext or the other and pick up quarrel even on petty matters. She used to threaten the respondent and his family members that she would leave the matrimonial home and visit her parental house without any intimation to the respondent or his family members. The respondent was pressurized to leave his house and settle in her parental home and on being refused by the respondent, threats were given to him that she would involve the respondent as well as members of his family in false criminal cases. In December 2009, she left the matrimonial home and went to her parental house. In spite of efforts made by the respondent to bring her back, she did not return. The respondent filed petition under Section 9 of the Act for restitution of conjugal rights and the matter was sent to Mediation centre twice for amicable settlement but she did not agree to come back. Ultimately, the said petition was dismissed as withdrawn vide order dated 29.3.2012. She also filed a criminal case under sections 323, 406, 498A and 506 read with section 34 IPC against the respondent and his mother. Upon notice in Section 13 petition, 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 the respondent-husband vide impugned judgment and decree dated 15.11.2014. Hence the instant appeal by the appellant-wife.

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 the petitioner is entitled to a decree under Section 13 of the Hindu Marriage Act, 1995 as prayed for ? OPP
- ii) Whether the petition of the petitioner is not legally maintainable in the present form? OPR
- iii) Whether the petitioner has not come to the court with clean hands and has suppressed the true facts from the Court? OPR
- iv) Relief."

In support of his case, the respondent appeared as PW1 and tendered in evidence his affidavit Ex.PW1/A reiterating the stand taken in the petition under Section 13 of the Act. He also examined Shanti Devi, his mother as PW2 who tendered in evidence affidavit Ex.PW2/A, Vijay Kumar, family friend, neighbour and participant of the panchayat as PW3 who tendered in evidence affidavit Ex.PW3/A supporting the version given by the respondent. On the other hand, the appellant appeared as RW2 and tendered in evidence her affidavit Ex.RW2/A reiterating the allegations contained in the written statement. She also examined Smt.Kamalpuri, her mother as RW3 who tendered in evidence her affidavit Ex.RW3/A wherein she corroborated the stand taken by the appellant. She further examined Vishnu Bahadur, employee of State Bank of India as RW1 in order to prove the family income of the respondent on account of lease of their building with the Bank. The trial court after appreciating the evidence produced on record accepted the petition under section 13 of the Act filed by the respondent and

passed a decree of divorce vide judgment and decree dated 15.11.2014.

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, from the evidence on record, it has been duly proved that the appellant wife was not at all interested to go back to her matrimonial home inspite of willingness of the respondent. She even made statement Ex.P.1 in proceedings under section 9 of the Act that she did not want to accompany the respondent. She further stated that even if the respondent settles at Karnal, she will not join his company. She also filed criminal case against the respondent and his family members. Moreover, the parties are living separate from each other for the last more than four years. During this long period, the parties did not spend a single minute together. The relevant finding recorded by the trial court reads thus:-

“32. From the statement Ex.P.1, it is clear that the respondent is not at all interested to go back to her matrimonial home inspite of willingness of the petitioner. It is also clear from statement Ex.P.1 that she did not raise any allegation against the petitioner regarding giving beatings and demand of dowry and these allegations were put against the mother and sister of the petitioner. Allegations of demand of dowry were raised only in the complaint which was filed after institution of the petition under Section 9 of the Act as that petition was instituted on 21.5.2011 whereas the FIR was lodged only on 13.6.2011, therefore, the allegation of the respondent that the petition under section 9 of the Act is a counter blast to the criminal case, has no legs. The respondent failed to establish that the allegations levelled by her against the petitioner are true. As already stated the allegations which are not mentioned in written statement cannot be taken into consideration being beyond pleadings. Even otherwise had there been any such alleged harassment, extending of beatings and threats to life for

demand of dowry at the hands of the petitioner and his family members then who obstructed the respondent to lodge the case against the petitioner and his family members immediately after the said demand or other shunting her out from the matrimonial home. The criminal case against the petitioner was lodged only after institution of petition under section 9 of the Act and that too after two years of the marriage. The respondent admitted in her cross examination that she did not lodge any complaint in Police Station Indri and for the first time she made complaint against the petitioner and his family members in the year 2011. Hence the allegations regarding demand of dowry, harassment, maltreatment and extending of beatings by the petitioner are not proved.

33. There is no dispute with regard to the proposition of law as settled in the case laws cited by learned counsel for the respondent but in the present case the respondent has failed to controvert the allegations of the petitioner. As already stated the evidence led by her does not prove that she was treated with cruelty by the petitioner and his family members.

34. Undisputably, the respondent lodged FIR under Sections 323, 406, 498-A and 506 read with Section 34 of the Indian Penal Code against the petitioner and his old mother and they were arrested and detained which caused utmost humiliation and embarrassment and agony to the petitioner and further they are still facing trial in the said case and the same would constitute mental cruelty to enable the husband to seek decree of divorce on this sole ground. Further, leaving of matrimonial home by the respondent without any sufficient cause and to start living at her parents house, itself is a cause of mental cruelty. Leaving aside the other allegations put forward by both the sides

against each other, the fact remains that the parties to the petition have been living separate from each other for the last more than four years. The entire substratum of the marriage has already disappeared. During this long period, the parties did not spend a single minute together. Now the parties have no feeling and emotions towards each other. Respondent has been living separately at her parents house since January 2010 and now we are running in the year 2014. As there has been no relationship of husband wife between the parties which again is a cause of mental cruelty to the petitioner, entitling him to a decree of divorce.

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44. Adverting to the facts of the case in hand, as per own version of the respondent wife she left the matrimonial home in January 2010 and did not return to the matrimonial home. She even refused to join the company of petitioner during the reconciliation proceedings in petition under Section 9 of the Act and in this regard, she had given statement before the court. Further, before this court as well during her cross examination she has clearly stated that even now if the petitioner alongwith his mother and all other relatives come to bring him then also she will not join the company of petitioner. She further specified that even if the petitioner shifts or settles at Karnal even then she will not join his company and that she will not live with the petitioner in any circumstances. This act of the respondent can be said to be her intention to permanently bring cohabitation to an end i.e. animus deserendi. Admittedly, the parties have been living separately for a statutory period of more than two years. They did not live together under one roof since the date the respondent left the matrimonial home. So ground of desertion also stands proved.”

appreciating the entire evidence on record. 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 11, 2015**  
**gs'**

**(Sneh Prashar)**  
**Judge**