

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

FAO-M-453 of 2014

Date of decision: 11.02.2015

Manjit Kaur

.....Appellant

Vs.

Balwant Singh

.....Respondent

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

Present: Mr. Parminder Singh Sekhon, 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 17.11.2014 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 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 13.12.1990 at Village Raidhariana, Tehsil Sunam, District Sangrur. After the marriage, both the appellant and the respondent resided together at Village Dhaliwal Bas, Village Jakhepal, Tehsil Sunam, District Sangrur as husband and wife and three children were born. Two children had died and one child namely Kirpal Kaur is alive who has been residing with the appellant wife. From the very beginning, the attitude of the appellant towards the respondent and his family members was not cordial.

She used to quarrel on petty matters. She wanted to live separately from the family members of the respondent. She used to insult and humiliate the respondent and his family members. She also threatened the respondent that she would commit suicide and involve him and his family members in false criminal case. In April 1996, she left the matrimonial home and did not come back. Ultimately, the respondent filed petition under Section 13 of the Act on the ground of cruelty 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 the respondent-husband vide impugned judgment and decree dated 17.11.2014. 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 respondent has treated the petitioner with cruelty? OPP
- ii) Whether the respondent has deserted the petitioner for a continuous period of two years or more immediately prior to filing of the petition? OPP
- iii) Relief."

In support of his case, respondent husband appeared as PW1 and examined Darshan Singh as PW2, Jagga Singh as PW3, Head Constable Jasvir Singh as PW4 and HC Karnail Singh as PW5. On the other hand, the appellant wife appeared as RW1 and examined Pritam Dev as RW2. The respondent while appearing as PW2 reiterated the averments as made in petition under

Section 13 of the Act. He deposed that from the very inception of marriage, attitude of the appellant towards the respondent was very rude and cruel as the appellant used to pressurize the respondent to live separately from his parents and when the respondent did not accept the said demand, the appellant started insulting and abusing the respondent and his family members besides threatening them that she would commit suicide and would involve them in false criminal cases. She was also involved in illegal activities of selling liquor and other intoxicants. She was arrested by the police many times. She created such atmosphere which caused mental cruelty to the respondent and it became impossible for him to live with her. The trial court after examining the entire evidence allowed the petition under section 13 of the Act by the respondent and granted decree of divorce for dissolution of marriage on issue No.(i) i.e. cruelty to him vide judgment and decree dated 17.11.2014.

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, the behaviour and attitude of the appellant wife from the very beginning with the respondent and his family members was not cordial. The relations between the parties had deteriorated to such an extent that it became absolutely impossible for them to live together. All the efforts made by the respondent husband to resolve the matter amicably proved futile. The appellant wife was also involved in illegal activities of selling liquor and other intoxicants. She was arrested on numerous occasions. The circumstances created by the appellant wife caused mental cruelty to the respondent husband. The trial court has rightly granted divorce on the ground of cruelty caused by the appellant wife. The relevant finding recorded by the trial court reads thus:-

“17. However, as regards allegation of the petitioner that

the respondent was involved in illegal activities, we find that besides oral evidence of petitioner Balwant Singh (PW1) corroborated by PW2 Darshan Singh and PW3 Jagga Singh, both respectables of the village, there is testimony of PW4 Head Constable Jasvir Singh who has proved copy of First Information Report No.41 of 14.4.2012 under Section 61 of the Punjab Excise Act lodged at Police Station, Lehra against the respondent as Exhibit PW4/1. Similarly, PW5 Head Constable Karnail Singh has proved copies of First Information Reports No.90 dated 11.6.2009, under Section 61 of the Punjab Excise Act, 91 dated 11.6.2009 under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 and no.127 of 14.8.2013 under section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station, Dirba against the respondent as Exhibits P.1 to P.3 respectively. Both the aforesaid official witnesses have not been confronted with suggestion on behalf of the respondent that aforesaid criminal cases were not registered against her. Even in cross examination, respondent Manjit Kaur, while appearing as RW1 admitted that she was in custody in case bearing First Information Report No.127 dated 14.8.2003 (copy Exhibit P.3). She further admitted that in case bearing First Information Report No.91 dated 11.6.2009 (copy Exhibit P.2), she was convicted and sentenced by learned Special Court, Sangrur. Even at the time of appearing in the witness box on 18.7.2014 in this case, the respondent was in custody and admitted that she was in judicial custody for the last one year. Therefore, from the aforesaid evidence led by the petitioner regarding registration of four criminal cases on the allegation of indulging in illegal activities like possessing contraband and illicit liquor coupled with the fact that it has also come on record that in one case, she was in custody and in another case registered against her, she

had been convicted and sentenced, it stands amply proved on record that the respondent has been involved in illegal activities and her aforesaid conduct certainly has caused great mental agony to the petitioner and the petitioner must have felt ashamed in the society due to aforesaid criminal conduct of the respondent.

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22. It thus comes out that the evidence available on record when tested on the touchstone of the cited judgments is found sufficient to return a finding that the respondent treated the petitioner with cruelty as the respondent is involved in criminal activities and levelled false allegation of adultery against the petitioner and aforesaid conduct of the respondent satisfy 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 complaining spouse to secure divorce.”

9. The findings have been recorded by the trial court after 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
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(Sneh Prashar)
Judge