

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

**FAO-M-50 of 2014 (O&M)
Date of decision: 27.02.2015**

Ashok Kumar

.....Appellant

Vs.

Kiran

.....Respondent

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

Present: Mr.Mandeep S.Sachdev, Advcoate for the appellant-husband.
Mr. Ashok Giri, 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 20.12.2013 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 21.1.2005 at Jalandhar according to Hindu rites and ceremonies. A male child namely Krish was born. Behaviour of the respondent was quite good for some time. During this period, parents of the

appellant took all jewellery from the respondent to put it in a locker. They were not satisfied with the quantity and quality of dowry articles. After one month of marriage, they started quarrelling with the respondent on petty issues. His parents also instigated the appellant that the parents of the respondent had been settled in USA but they had not settled their son in law. In this way, the appellant started beating the respondent and putting pressure upon her to bring cash from her parents. When the respondent became pregnant, the appellant pressurized the respondent for her delivery in USA. Her condition was not good for delivery in USA but under pressure of the appellant, she had gone to USA for delivery so as to make base for settling him abroad. Even the family members of the appellant started demanding gifts from parents of the respondent. On one occasion, amount of ₹ 1 lac was given to the appellant. Still, on instigation of his parents, he gave beatings to the respondent and turned her out of the matrimonial house alongwith minor son. Later compromise was effected. As per compromise, the appellant and the respondent were to reside separately and he was required to give maintenance to her but the appellant resiled from the compromise. Rather he filed complaints before Anti Fraud Wings against the respondent and her family members. He also got the respondent arrested. Ultimately, the respondent filed petition under section 13 of the Act for dissolution of marriage on the ground of mental cruelty. Upon notice, the appellant appeared and filed written statement controverting the averments made in the petition. The trial court after appreciating the evidence on record allowed the petition filed by the respondent-wife vide impugned judgment and decree dated 20.12.2013. 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 in such a way causing mental cruelty? OPP
- ii) If Issue No.1 is proved, whether petitioner is entitled for divorce? OPP
- iii) Relief.”

The respondent appeared as PW1 and examined her brother Dheeraj Bhandari as PW2. On the other hand, the respondent husband appeared as RW1 and examined Mahavir Gupta as RW2. The respondent in her statement as PW1 reiterated the averments as made in her petition under Section 13 of the Act. Her version was supported by her brother Dheeraj Bhandari PW2. On the other hand, the appellant reiterated his stand in the written statement. RW2 Mahavir Gupta deposed that the marriage was simple. There was no harassment or demand of dowry. False FIR had been registered against the appellant. The trial court taking into consideration the entire evidence on record held that parents of the respondent were residing in USA since 2001. The respondent used to visit USA and even worked there for some time. She gave birth to the child in USA. After her return from USA, the relations between the appellant and the respondent became strained. The appellant wanted to be settled in USA for which he was putting pressure upon the respondent. He had got lodged an FIR No.2 dated 4.8.2011 under Section 420, 465, 467, 468 and 471 IPC at Police Station,

NRI, Jalandhar against the respondent and her parents on the allegation that they had forged date of birth record, two ration cards, name record etc. for issuance of new passports. Despite compromise in mediation centre, the appellant took no interest to abide by the terms to ensure separate residence for the respondent. Rather, he appeared as prosecution witness in the trial to ensure that his wife and her parents were convicted. All the acts committed by the appellant husband caused mental cruelty to the respondent. The trial court taking into consideration the oral and documentary evidence on record allowed the petition and granted decree of divorce to the respondent wife vide judgment and decree impugned herein.

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 mental cruelty, the Apex Court in *A. Jayachandra vs. Aneel Kaur*, AIR 2005 SC 534 observed as under:-

“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 Sobh 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 in the present case, since the parents of the respondent wife were in USA, the appellant and his family members started harassing the respondent for not settling the appellant abroad. They even pressurized the respondent for her delivery in USA even though her condition was not fit for travelling. The relations between the parties became strained only when the respondent returned from USA and did not hand over the documents pertaining to child's birth to his father. The appellant even lodged complaint against the respondent and her parents. It was not disputed that the criminal court vide judgment dated 10.11.2014 had acquitted all the accused in FIR No.2 dated 4.8.2011 lodged at the instance of appellant-husband. Despite compromise in mediation centre, the appellant took no interest to abide by the terms to ensure separate residence

for the respondent. Rather he appeared as prosecution witness in the trial to ensure that his wife and in-laws were convicted. The acts committed by the husband caused mental cruelty to the wife and it became impossible for her to live with him. The relevant finding recorded by the trial court reads thus:-

“8. It is admitted case of parties that their marriage took place on 21.1.2005. Parents of petitioner were residents of USA since 2001. Petitioner used to visit USA and even worked there for some time. Petitioner was pregnant. She alongwith her pregnant sister visited USA. Both of them gave birth to respective children in USA. Son named Krishi Kaura was born to petitioner on 15.1.2008 in USA. From the evidence on record it is admitted position that there was no dispute between the parties prior to visit of petitioner to USA on 10.6.2009. From the evidence, it also appears that on return from USA alongwith her son, petitioner did not go to her matrimonial house. She admitted that she took her son to respondent's house two or three times which shows that decay in the relationship started appearing.

9. It is admitted case of parties that respondent had filed a petition under Section 9 of Hindu Marriage Act, which he withdrew on 22.4.2013 (Ex.PW2/B).

10. It is admitted that respondent filed a complaint and got lodged an FIR No.2 dated 4.8.2011 under sections 420, 465, 467, 468 and 471 IPC at Police station NRI, Jalandhar against petitioner (wife), Bharat Veer Bhandari (father in law) and Meena Bhandari (mother in law) with allegations that they have forged date of birth record, two ration cards, name record etc. for issuance of new passports.

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20. Therefore, in this case court may not to wait for decision of trial court on the FIR No.2 pending against petitioner, her

father and mother. Impact of trial and preceding incidents is to be seen. The following circumstances significantly prove that the conduct of respondent has risen to cruelty:

i) Respondent who has come to know about secret of his in laws family about two passports and name etc. and had used it in vindictive manner.

ii) Respondent has lodged complaint against his wife and inlaws not out of social service to the cause of law and justice, but to wreck vengeance upon his wife and in-laws on account of matrimonial discord.

Iii) Respondent not only lodged the complaint but pursued it vigorously by providing the necessary documents to police to ensure that petitioner and her parents are properly and effectively booked/charged.

iv) Respondent ensured that complaint shall fructify into FIR No.2.

v) On the basis of FIR registered, petitioner wife as well as her father and mother remained behind bars. No other act will manifest the mental tension for a wife than this one.

vi) Despite compromise in Mediation centre respondent appeared as prosecution witness against his wife and in-laws to ensure that they are convicted.

Vii) Respondent appears more interested in prosecution than saving his matrimonial home.

Viii) Respondent withdrew his application under Section 9 of HMA without assigning any reason (Ex.PW2/B). It shows that he is not interested in restitution of conjugal of bliss.

21. These acts of respondent naturally constitute mental cruelty for petitioner. As husband respondent was supposed to stand by her in the fight against prosecution. On the contrary, respondent has initiated prosecution which resulted into incarceration of not only of petitioner wife, but also her parents. Nothing more can be more tormenting for a

wife that due to acts of her husband not only she, but her parents had to cool the heels and in the jail. The husband who has gone to the extent of ensuring trial and jail for his wife. Respondent has left no stone unturned to legally dissipate his wife and her family. The apprehension of petitioner is genuine that it will not be physically and mentally safe for her life, limb and liberty to cohabit with such a husband under the same roof.”

8. The petition filed by the respondent wife has thus rightly been allowed by the trial court. The findings have been recorded by the trial court after appreciating the entire evidence on record and keeping in view the overall facts and circumstances of the case. 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 27, 2015
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(Sneh Prashar)
Judge