

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.

FAO No. 962 of 2015

DATE OF DECISION: February 02, 2015.

Sanjeev Kumar

....Appellant

VERSUS

Kamna Devi

....Respondent

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

Present: Mr. Ashit Malik, Advocate
for the appellant.

SNEH PRASHAR, J.

CM No.2559-CII of 2015

For the reasons mentioned in the application delay of one day
in filing the appeal is condoned.

Application stands disposed of.

FAO No. 962 of 2015

1. This appeal has been preferred by the appellant-husband Sanjeev Kumar against the judgment and decree dated 22.12.2014 passed by the learned District Judge, Family Court, Ambala, whereby his petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') was dismissed.

2. The relevant facts garnered from the record are as under:

The marriage between the parties was solemnized on 25.09.2000 according to Hindu rites and ceremonies at Ambala. After marriage, they cohabited as husband and wife and two daughters were born out of the wedlock who are residing with the appellant father.

The appellant averred that from the very inception of the marriage, the respondent showed discontentment with the same. He and his family members thought that her attitude will change with the passage of time and she will adjust in the environment of the family but her behaviour remained the same and she started avoiding all matrimonial obligations. She picked up quarrels on trivial matters and always remained in contact with her parental family. He informed her parents about her attitude but instead of advising her they openly abused him and his family members. As he was serving in the Army he used to remain away from the house but whenever he returned home he found that the behaviour of the respondent was rude and harsh. Even after the birth of the daughters she did not mend her ways and was hardly bothered about the health and upbringing of the children.

The appellant further submitted that the respondent remained

busy in her own world and always threatened him and his family members not to interfere in her life or she would falsely implicate them in a dowry case. In the month of August, 2008, when he was posted at Jabalpur he took the respondent and his daughters with him with the hope that with the change of place there might be change in her behaviour but there also she started abusing him in filthy language and one such incident was witnessed by one of his colleagues, namely, Havaladar Gurinder Singh. He brought the respondent and his daughters back to his village from Jabalpur on 12.04.2009. The respondent was taken to department of Psychiatric of Military Hospital for check up and on her medical examination the doctor gave observation that she was suffering from schizophrenia, which was a mental disorder. He informed the family members of the respondent but they did not agree and misbehaved with him.

On 20.04.2009 in his absence, father of the respondent came to his house and created a scene. He threatened his family members to implicate them in a false dowry case and took the respondent with him. While leaving the respondent took away with her all belongings including jewellery etc. and left the minor daughters behind. He made many efforts for reconciliation with the help of respectables of both

families but failed. Submitting that the respondent had treated him with physical and mental cruelty and had deserted him for the last two years i.e. since 20.04.2009 without any rhyme or reason, he prayed for dissolution of their marriage with a decree of divorce.

3. The respondent contested the petition. In the written statement filed by her the primary objections raised were with regard to the maintainability of the petition in the present form; concealment of true and material facts by the petitioner, cause of action, estoppel etc. Replying on merits the respondent admitted the inter-se relationship of the parties. She also admitted that they had two daughters but vehemently denied all allegations levelled against her by the appellant. She submitted that after marriage she resided with the respondent at village Sehla, District Ambala for a short period and then in the year 2001, the entire family of the appellant including her shifted to Sadhaura, District Yamuna Nagar. Though she adjusted herself in the environment of in-laws family, but she was tortured and ill treated by them. The appellant, being in army, remained posted at various places and in his absence his family members treated her with utmost cruelty for bringing insufficient dowry. They forced her to bring a car from her parents and often gave her beatings for not

fulfilling their demand. They wanted to get rid of her and remarry the appellant with some other girl in their relation. On many occasions her parents gave cash amount to the appellant but that did not satisfy him. She denied that any untoward incident had taken place when she was living in the company of the appellant. She also denied that she had ever refused to perform her marital obligations or that she was ever medically examined or the doctor had opined that she was suffering from schizophrenia. According to her she continued to bear all the atrocities committed on her and lived with the petitioner and his family. In March 2011, the parents and sister-in-law(Bhabi) of the appellant gave her merciless beatings and left her at Shastri Nagar, Saharanpur. In April, 2011 in the presence of the Panchayat the parents of the petitioner assured to keep and maintain her cordially and peacefully and brought her back to the matrimonial home at Sadhaura. Denying all other allegations of the appellant the respondent prayed for dismissal of the petition.

4. Both the parties adduced evidence to substantiate their rival contentions.

5. To substantiate his allegations the petitioner himself appeared in the witness box as PW1 and tendered his affidavit Ex. PW1/A. He examined

PW-2 Mohan Lal, PW-3 Lt. Col. (Doctor) H.K. Bedi, Classified Specialists

Psychiatry in his cross-examination, he stated that the respondent had given birth to mentally and physically fit daughters.

On the other hand respondent herself appeared in the witness box as RW-1 and tendered her affidavit Ex. RW1/A. In her cross-examination, she stated that she never suffered with the ailment of depression.

6. Heard the submissions made by Mr. Ashit Malik, Advocate representing the appellant and perused the record available on file.

7. Considering the evidence of the parties and the submissions made on their behalf learned trial Court came to the conclusion that there is no act of cruelty attributed to the respondent which could be a ground for grant of divorce and dismissed the petition.

8. Feeling aggrieved by the judgment and decree dated 22.12.2014 passed by the learned trial court, the appellant preferred the instant appeal.

9. The arguments made by Sh. Ashit Malik, Advocate representing the appellant have been considered.

10. Besides levelling the allegations of temperamental misbehaviour against the respondent the petitioner also alleged that she was suffering from schizophrenia which was a mental disorder. He deposed that the respondent had left the matrimonial home in his absence on 20.04.2009,

after creating a scene and threatening his family members to involve them in a false dowry case and since the said date i.e. 20.04.2009, she had deserted him without any rhyme or reason.

In addition to his self serving statement made through his affidavit Ex.PW1/A, the petitioner examined PW2 Mohan Lal a neighbour and PW3 Lt. Col. Dr. H.K. Bedi. Analyzing the testimony of the petitioner and PW2-Mohan Lal the findings of learned trial court were as under:

“In the instant case, in order to prove that he had been subjected to cruelty the petitioner himself appeared in the witness box as PW1. However, it may be observed that the allegations levelled against the respondent seems to have been levelled without any substance or basis. The case of the petitioner mainly revolves on the point that the respondent was suffering from schizophrenia and due to suffering of such a mental order disease, she used to misbehave with him and his family members. She used to abuse him with filthy language. Although petitioner examined PW2 Mohan Lal but he himself stated that he was residing at village Sehla and the petitioner and his family members were residing at Sadhaura. The respondent neither abused him nor any neighbourer in his presence. It may be noticed that he was not a summoned

witness, rather called by another neighbour Mirgopal and Mirgopal is non else but father of the petitioner and surprisingly said Mirgopal has not been examined by the petitioner in order to substantiate his allegations. PW2-Mohan Lal also stated it was the petitioner who told him regarding the mental disorder of the respondent. He did not know about the mental disorder.”

12. The only other witness examined by the appellant was PW3-Lt. Col (Doctor) H.K. Bedi. The statement of this witness was reproduced by learned trial court in para No.8 of the judgment as under:

“PW3 Lt. Col. Dr. H.K. Bedi, Classified Specialist Psychiatry deposed that on 08.04.2009 he had examined Kamna. After going through the mental state examination of the respondent, it revealed delusion of persecution and self referential delusions and auditory hallucinations derogatory in nature which was no schizophrenia. In his cross-examination, he stated that he did not know about the latest position of Kamna as he did not know whether he had treated Kamna after 08.04.2009 or not.”

13. In the light of statement of PW3- Lt. Col. Dr. H.K. Bedi learned trial Court recorded the findings as under:

“The testimony of PW3 Lt. Col. Dr. H.K. Bedi made it crystal

clear that the respondent was not at all suffering from schizophrenia. Thus, from the testimony of PW3 Lt. Col. Dr. H.K. Bedi, it is clear that the petitioner has made a cooked up story to get rid off the petitioner. As per the case of the petitioner, on 20.04.209, the father of the respondent had visited his house and took the respondent with him by creating scene there. Even if taking the pleadings of the petitioner to be true in this regard, it may be noticed that after expiry of period of two years he straightway filed the instant petition under Section 13 of the Hindu Marriage Act, 1955 seeking divorce from the respondent. He did not file any petition under Section 9 of the Hindu Marriage Act, 1955 for seeking restitution of conjugal rights. Although it is not a bar to come straightway to file petition under Section 13 of the Hindu Marriage Act, 1955 but the act and conduct of the petitioner shows that it was the petitioner who wanted to get rid off from the respnodent. The allegations levelled against the respondent seems to have been levelled without any substance or basis. 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'. Merely because there are allegations and counter allegations, a decree of divorce cannot follow."

14. Learned counsel for the appellant failed to demonstrate any kind of error of law or perversity in the findings of learned trial Court emerging from misreading or misappreciation of evidence of the parties. In **Parveen Mehta V. Inderjit Mehta 2002 (3) RCR (Civil) 529** Hon'ble Apex Court had very elaborately analyzed the expression 'cruelty' as a ground of divorce under the Act and held as under:

"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.”

15. Reverting to the instant case, as noticed above the appellant utterly failed to prove any of his allegations levelled against the respondent. Rather, apparently it is he who had levelled wild allegations against the respondent-wife which had no base to stand on. Learned trial Court had rightly held that it was the appellant who wanted to get rid of the respondent and therefore had filed the instant petition.

16. Finding no ground for intervention in the findings of the learned trial Court, the instant appeal being devoid of merit is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

02.02.2015
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