

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

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FAO No.M-13 of 2015

DATE OF DECISION: January 16, 2015.

Surender

....APPELLANT.

VERSUS

Meena

....RESPONDENT.

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

Present: Mr. Chander Shekhar, Advocate for the appellant.

SNEH PRASHAR, J.

1. Assailing the judgment and decree dated 04.10.2014 passed by learned Additional District Judge, Rohtak, dismissing the petition under Section 13 of the Hindu Marriage Act, 1955 (in short “the Act of 1955”) filed by Surender appellant-husband for dissolution of his marriage with respondent Meena-wife, the instant appeal was preferred by the appellant.

2. The facts extracted from the record are recapitulated hereunder:-

The marriage between the parties was solemnized on 07.06.2002 according to Hindu rites and rituals. After marriage, they

cohabited together amicably for sometime and a daughter namely, Tannu was born on 14.11.2007 out of the wedlock, but unfortunately she expired in the month of May, 2008.

The appellant alleged that after the death of the daughter, the behaviour of respondent changed and she started to rebuke him on one pretext or the other. He was not allowed to have marital relationship with her. He tried to enquire the reason of such ill treatment and misbehaviour, but she could not give any satisfactory reply, rather taunted in loud voice that he was **“Pagal”** and was a son of **“Pagal mother”**. She called him impotent and showed immoral gestures towards him. His mother, aged about 75 years and being a widow, felt humiliated hearing unsocial remarks in the presence of neighbours and villagers from the daughter-in-law. For sometime, he and his mother tolerated the ill behaviour of the respondent because she was disabled by legs. They showed sympathy towards her but she remained adamant and continued to use abusive language towards them. She told his mother that **'she was a widow as a punishment from God and was not having any other male issue except petitioner who is 'Pagal' and this is also a punishment to her'**.

It was further pleaded by the appellant that in July, 2008, the respondent sprinkled kerosene oil on her body and threatened to implicate him and his family members in false criminal cases. It was his sister Beermati who snatched the match box, otherwise the respondent would have set herself ablaze. After 15 days, she threatened to consume poison and some sulphas pills were recovered from her. He narrated the said

incident to her brother namely, Deepak who came to their house in August, 2008. Seeing her activities, he felt ashamed and took the decision to take her back to the parental house. On 18.08.2005, she left with her brother. After sometime, he and his mother went to bring her back, but she flatly refused to join his conjugal company. Again in the first week of September, his mother Hukam Kaur, brother-in-law Jai Narain and sister Beermati went to bring back the respondent but they were ill treated and abused. Bad names like '**Haramjadi mother-in-law, sister-in-law**', '**Harami Brother-in-law**' were called to them. The respondent also levelled allegation on Jai Narain that he had tried to outrage her modesty and had tried to commit heinous crime with her. Submitting that the act and conduct of the respondent had been extremely cruel towards him, appellant prayed for dissolution of his marriage with the respondent.

3. The respondent contested the petition. Besides raising preliminary objections with regard to maintainability of the petition and cause of action etc., she submitted that the female child Tannu was born to her on 15.11.2005 and not on 14.11.2007 as pleaded by the appellant. She denied all allegations levelled by the appellant relating to her behaviour and pleaded that she was handicapped since birth and was unable to move on feet. After marriage, the appellant, his mother, sister and brother-in-law had started harassing her physically and mentally. At times she used to be severely beaten. When she gave birth to a female child, the appellant and his family members remarked that '**she was enough for them and she had created another problem by giving birth to a female child**'.

She was not allowed to take care of the child and was only asked to do the entire domestic work. Because of mal-feeding and neglect by the appellant, the child expired in the month of April, 2009.

It was further pleaded by the respondent that her sister-in-law Beermati and brother-in-law Jai Narain used to live with them at village Rurkee. On the directions of her mother-in-law, they used to give her beatings. By selling the land of her husband-appellant, they constructed house for themselves in village Saidpur, Tehsil Kharkhoda, District Sonapat and not a penny was paid to her or the appellant. On 15.04.2009, when she asked for the sale consideration amount in order to purchase some agricultural land, she was turned out of the matrimonial home in bare three clothes and was not allowed to enter the house again. She informed her father Dharamvir and brother Deepak, who came to Rurkee and when despite requests by them, the appellant refused to allow her to live in the matrimonial home, she was brought back to her parental home. Since then i.e. 15.04.2009 she had been residing at the mercy of her parents. Her father accompanied by her brother-in-law and some respectable persons of village Jassour Kheri and Assan, namely, Zile Singh, Meda, Rohtash and Sukhbir went to the house of the appellant a number of times to persuade him to take her back but he outrightly refused to reconcile the matter.

4. On the pleadings of the parties, following issues were framed:-

(1) Whether the petitioner is entitled for dissolution of his

marriage with the respondent on the ground as alleged in the petition? OPP.

(2) Whether this petition is not maintainable in the present form? OPR.

(3) Whether the petitioner has no cause of action to file the present petition? OPR.

(4) Relief.

5. Both the parties adduced evidence in support of their respective contentions.

6. Considering the evidence available on record and the submissions made on behalf of the parties, learned trial Court came to the conclusion that there was no substantial piece of evidence to suggest that the respondent-wife had treated the appellant-husband with cruelty at any point of time. Accordingly, issue no.1 was decided against the appellant. Issues no.2 and 3 were resolved against the respondent for not having been pressed during arguments.

Consequent to the decision of issues, the petition for divorce of the appellant was dismissed.

7. Feeling aggrieved by the judgment and decree dated 04.10.2014, appellant Surender preferred the instant appeal.

8. The submissions made by Mr. Chander Shekhar, Advocate, learned counsel representing the appellant have been considered.

9. Admittedly, respondent-wife Meena was disabled from legs since birth. The appellant-husband sought dissolution of his marriage with

the respondent mainly on the ground that he had been treated with cruelty by her. The evidence led by the appellant to substantiate his allegations consisted of his own statement being in the shape of his affidavit Ex.PW2/A and the testimony of his mother Hukam Kaur, who appeared as PW1. Dealing with the allegations of the appellant in the light of evidence led by him, learned trial Court recorded the following findings:-

“In the present case, the petitioner has failed to prove on the file by which it can be ascertained that the respondent has committed the cruelty with the petitioner. No doubt, mental cruelty cannot be established by the direct evidence but in the present case, there is no standard evidence on the file by which inference can be drawn from the facts and circumstances of the case. There is no material on the file by which inference can be drawn that the respondent has committed the physical or mental cruelty and there are also no evidence on the file by which it can be inferred from the fact and circumstances that the respondent has caused the cruelty. There are no cogent evidence on the file which goes to show this fact that it is not possible by them to reside together as husband and wife. The petitioner has not pin point any single act of the cruelty after the marriage which is a valid ground for divorce”.

10. Learned counsel for the appellant failed to point out any error or perversity in the findings recorded by learned trial Court. Admittedly, the respondent was handicapped since birth and was unable to move freely on her feet. All allegations of physical and mental cruelty levelled by the appellant on the respondent were general in nature. No specific

incident involving the conduct or behaviour of the respondent could be narrated or proved by him which could be termed as an act of cruelty within the meaning of Section 13(1)(ia) of the Act of 1955.

11. The allegation of the appellant that the respondent abused him and his mother and passed unsocial remarks towards them were controverted by the respondent. She stated that because she was handicapped, she was harassed and often physically assaulted by the appellant and his family members. On 15.11.2005, a daughter was born to her out of the wedlock. Firstly, she was maltreated for giving birth to a female child; secondly she was not allowed to take care of the child and was only directed by the appellant to remain busy in domestic work and because of mal-feeding and negligence, the child expired in April, 2009. She further categorically mentioned that her sister-in-law Beermati and brother-in-law Jai Narain, who were living with the appellant, had sold away his land and had constructed their house at village Saidpur, Tehsil Kharkhoda, District Sonapat. Not a penny out of the sale consideration was given to her or her husband and when she asked them to account for the same so that she could purchase some agricultural land, she was beaten and turned out of the matrimonial home in wearing clothes. Thereafter, she was not allowed to enter the matrimonial home and on being informed, her father Dharamvir and brother Deepak brought her back to the parental home on 15.04.2009.

The appellant failed to controvert the aforesaid facts either by filing replication or during evidence when he appeared in the witness box.

12. No witness could be examined by the appellant to support his allegations that the respondent insulted him or his mother in the presence of his neighbours and relatives. He could not mention date, month or year on which the respondent had sprinkled kerosene oil on herself threatening that she will commit suicide and will implicate the appellant and his family members in a false criminal case.

He also did not examine his sister Beermati or his brother-in-law Jai Narain to substantiate his allegation that when they had gone to the parental home of the respondent to bring her back, she had insulted them and had levelled allegation that his brother-in-law Jai Narain had tried to outrage her modesty. In that manner none of the allegations could be substantiated by the appellant with concrete and reliable evidence.

13. Analyzing the expression 'cruelty' as a ground of divorce under the Act, the Hon'ble Apex Court held in **Parveen Mehta vs. Inderjit Mehta, 2002(3) RCR (Civil) 529** 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, realizing 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.”

14. Having tested the facts and circumstances emerging from evidence in the case in hand, we are of the considered opinion that the learned trial Court rightly concluded that the allegations levelled by the

appellant were vague and general in nature. These were ordinary wear and tear of marriage which would not constitute 'cruelty'. Disharmony is not cruelty and will not furnish a cause for dissolution of marriage.

In the said premises, no interference in the findings of learned trial Court is called for by this Court. Resultantly, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

January 16, 2015.

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Note: Whether to be referred to the Reporter or not? Yes/No.