

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-16 of 2015 (O&M)

Date of Decision: 13.1.2015

Shera alias Shamsheer

....Appellant.

Versus

Sukhdevi alias Neelam

...Respondent.

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

PRESENT: Mr. Raj Kapoor Malik, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. Feeling aggrieved by the judgment and decree dated 22.12.2014 passed by the District Judge, Kaithal, whereby the petition filed by the respondent-wife under Section 13 of the Hindu Marriage Act, 1955 (in short "the Act") for dissolution of marriage by a decree divorce was allowed, the appellant-husband has approached this Court by way of instant appeal.

2. A few facts necessary for adjudication of the present appeal as narrated therein may be noticed. The respondent-wife filed a divorce petition, *inter alia*, pleading that her marriage was solemnized with the appellant about 12 years ago according to Hindu rites and ceremonies at village Sultania, Tehsil Guhla, District Kaithal. After the marriage, they lived together as husband and wife and cohabited as such and from their wedlock, three female children, namely, Tamana, Neha and Mafi were

born. All the children are living with the respondent at her parental house at village Sultania and are studying in 5th class, 2nd class and in Nursery class, respectively. The appellant was addicted to liquor and used to beat the respondent under the influence of liquor. She tolerated all the cruelty caused to her with the hope that due to passage of time the behaviour of the appellant would change but his behaviour became more cruel towards her. Even the father of the appellant supported him in drinking and beating the respondent. The father of the respondent requested the appellant not to consume liquor and not to beat and harass her upon which the father of the appellant assured to keep the respondent with full regard and on that assurance, she was sent to her matrimonial home. After the birth of third female child, the behaviour of the appellant and his family members became more cruel towards her and they used to taunt her that she could not give birth to a male child and had put burden of three female children on them. In the month of April, 2011 the appellant gave severe beatings to her and she was turned out of her matrimonial home along with the third daughter and since then she was living at her parental house. The parents of the respondent convened many panchayats at the house of relatives of the appellant for keeping the respondent and her daughters with love and affection but to no use. Accordingly, the respondent filed a petition under Section 13 of the Act for dissolution of marriage by a decree of divorce. The said petition was contested by the appellant by filing a written statement. Besides raising various preliminary objections, it was pleaded that the respondent was a very clever and quarrelsome lady. She used to pick quarrels with him and his family members on petty matters and abused him in an un-parliamentary language. When the

appellant tried to understand the respondent, she used to abuse him and also threatened to commit suicide and involve him and his family members in false cases. She never prepared meals for him and her children and refused to do the household work and did not care for the children. It was further pleaded that the respondent had performed second marriage with one Sharab Singh on 25.6.2013 and since then she was residing with him. According to the appellant, the respondent had left the matrimonial home without any rhyme and reason and without his consent. The other averments made in the petition were denied and a prayer for dismissal of the same was made. From the pleadings of the parties, the trial court framed the following issues:-

1. Whether the petitioner is entitled for decree of divorce on the ground of cruelty, as alleged in the petition? OPP
2. Whether the petitioner has not come to the court with clean hands as alleged and as such, the petition is not maintainable in the eyes of law? OPR
3. Relief.

3. In support of her case, the respondent besides examining herself as PW1, also examined her father Dalmira as PW2 and Balkar Singh as PW3. On the other hand, to rebut the evidence of the respondent, the appellant examined himself as RW1 and also tendered certified copy of complaint No. 728 of 2013 as Ex.RA.

4. The trial court took issues No.1 and 2 together being interconnected and on appreciation of evidence led by the parties, decided the same in favour of the respondent holding that the

respondent was entitled to a decree of divorce on the ground of cruelty. Further, it was held that the appellant had failed to prove on record that the respondent had not come to the court with clean hands. Accordingly, the trial court vide judgment and decree dated 22.12.2014 allowed the petition and dissolved the marriage between the parties by a decree of divorce. Hence, the present appeal.

5. Learned counsel for the appellant submitted that the respondent had contracted second marriage and the complaint, Ex.RA was filed in this regard. Learned counsel further contended that the appellant had not committed any cruelty upon the respondent and she had left the matrimonial home of her own will. According to the learned counsel, the allegations levelled by the respondent were general in nature and without any specific instances.

6. After hearing learned counsel for the appellant, we do not find any merit in the contentions of learned counsel for the appellant.

7. 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.

8. 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 behavior or behavioral 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 misbehavior 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.”

9. Examining the factual matrix herein, it may be noticed that no woman would tolerate levelling false allegations of adultery on her character. In the present case, the appellant had alleged that the respondent had performed 2nd marriage with Sharab Singh but had not led any evidence in support thereof. The appellant alleged that Risal Singh and Bhulla told him about performing of second marriage by the

respondent with Sharab Singh but he did not examine them. Complaint, Ex.RA by itself was not sufficient to establish the false and baseless allegations levelled by the husband. The payment of maintenance charges during the trial would not be enough to show that the appellant had not committed any cruelty. Being husband, it was his duty to pay the maintenance charges. The husband had failed to produce any material evidence to establish the allegations levelled by him against the respondent-wife except his bald statement. The respondent also established that the appellant had thrown her out from the matrimonial house by giving severe beatings and without any fault of her. It was not feasible safe and dignified for the respondent to live with the appellant. The trial court concluded that from the evidence, it was made out that the respondent had not condoned the acts of cruelty and, therefore, she was entitled to a decree of divorce on the ground of cruelty. The relevant findings recorded by the trial court read thus:-

“24. No woman would tolerate any aspersion on her character. Levelling charges on character of wife i.e. adultery etc. in themselves amount to cruelty. In present case, the respondent has alleged that the petitioner has performed 2nd marriage with Sharab Singh son of Leelu Ram resident of Kareliuo, District Kurukshetra, but led no evidence to support his version. He stated that Risal Singh and Bhulla told him about performing of second marriage by the petitioner with Sharab Singh, but did not examine them. He also stated that he has not seen said man (Sharab Singh). The aforesaid statement of the

respondent shows that he levelled false and baseless allegations. Mere filing of complaint (Ex.RA) does not prove allegations. This conduct of respondent amounted to cruelty. He admitted that he never tried to meet his children nor gave anything to them. It shows that he is also not bothered about them, though he claims to have filed a petition for custody of children. It appears that he just want to show that he loves his children. The payment of maintenance charges during the trial does not show that he did not commit cruelty as alleged. Being husband, he was required to pay the maintenance charges under the law. Thus, the contention of learned counsel for the respondent that he has been regularly paying the maintenance shows that he is caring husband, is not tenable in view of the conduct of the respondent exhibiting from the evidence of the petitioner.

25. The allegations, made by the respondent that the petitioner never cared for children nor cooked food for them, have also not received any support from any quarter, except his bald statement. Even otherwise, from the unrebutted statement of the petitioner and her witnesses, it is made out that all the three daughters are in her care and custody. This belies the allegation of the respondent that she is not a good mother. The respondent alleged that the petitioner refused to cook food and misbehaved with him. Again

there is solitary statement of the respondent, with no aid from any person. Even otherwise, it is not probable that a woman having children and living in matrimonial relations for 12-13 years would not cook food.

26. Having considered the fact that the respondent failed to establish the allegation of second marriage of the petitioner with Sharab Singh, shows that he levelled false allegations against the petitioner and is sufficient enough to hold that he caused cruelty upon the petitioner. Ex.PA further suggests that both parties agreed to disrupt their matrimonial alliance.

27. The petitioner also established that the respondent shunted her out from matrimonial house by giving severe beatings to her, without any fault on her part and in given circumstances it appear not feasible to live with respondent with safety to her life and with dignity and honor. There is nothing to disbelieve the version of the petitioner and her witnesses. From the evidence, it is made out that the petitioner has not condoned the acts of cruelty.

28. Per discussion, the petitioner has been able to establish on record that she is entitled for decree of divorce on the ground of cruelty. The respondent has failed to prove on record that the petitioner has not come to the court with clean hands.”

10. In view of the above, learned counsel for the appellant was

unable to demonstrate that there was any error or perversity in the findings recorded by the trial court based on misappreciation or misreading of evidence which may warrant interference by this Court. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

January 13, 2015
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(SNEH PRASHAR)
JUDGE