

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

**107**

**FAO No.M-18 of 2015**

**DATE OF DECISION: January 13, 2015.**

Dev Raj Sharma

....APPELLANT.

**VERSUS**

Usha Kumari

....RESPONDENT.

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

**Present: Mr. Kirpal Singh Thakur, Advocate for the appellant.**

**\*\***

**SNEH PRASHAR, J.**

1. A petition under Section 13 of the Hindu Marriage Act, 1955 (in short “the Act of 1955”) for dissolution of marriage by a decree of divorce was filed by appellant-husband Dev Raj Sharma against his wife-respondent Usha Kumari Sharma, which was dismissed by learned Additional District Judge, SAS Nagar (Mohali), vide judgment and decree dated 20.11.2014. Assailing the said judgment and decree, the instant appeal was preferred by appellant-husband.

2. In precise, the facts which need to be noticed are as under:-

Appellant-petitioner Dev Raj Sharma was married to respondent Usha Kumari Sharma on 01.05.1983 at village Thou, Tehsil

Bhoranj, District Hamirpur. After marriage, they cohabited as husband and wife and lived initially at village Panjot and then at various places where the appellant used to be posted during his service tenure and ultimately they settled at village Balongi, Tehsil and District Mohali. Out of the wedlock, two sons namely, Ashok Kumar and Manoj Kumar were born on 30.11.1985 and 25.12.1986 respectively.

The appellant alleged that from the very inception of marriage he was treated with cruelty by respondent Usha Kumari. He being employed in a bank had remained posted at different places and was presently posted at Chandigarh. After the death of his father, his mother was living alone in their ancestral village. Being the only son, he wanted to look after his old and infirm mother and brought her to village Balongi. However, respondent Usha Kumari was not happy and she started quarreling with him and kept the atmosphere in the house charged. She refused to serve his mother and humiliated her to the extent that she went back to the ancestral village at Panjot and was again living there all alone.

The appellant further pleaded that as and when he used to send some allowance to his mother for her maintenance and medical expenses etc., his wife Usha Kumari would fight with him. Whenever any friend or relative came to their house, she refused to come out of her room to meet them or prepare tea etc. for them which caused humiliation to him in front of the guests. She also refused to perform her marital obligations and did not allow him to have sex with her for the last three years which also amounted to mental cruelty to him. She was also in the habit of

leaving matrimonial home without informing him. She was engaged in the vocation of tailoring and had employed ten persons who had been working in the shop opened in the house. She had just stopped cooking food etc. for him and had been filing complaints against him based on false allegations before the police.

With the above submissions, the appellant prayed for dissolution of his marriage with the respondent by a decree of divorce.

3. The petition was contested by respondent-wife Usha Kumari. Admitting that she is legally wedded wife of the appellant and that two sons were born out of their wedlock, she submitted that both the sons were living under her care and custody. From the very beginning, the appellant had been cruel and harsh towards her. He had various vices including taking excessive liquor and non vegetarian food etc. He never paid the school/college fee of the children and whenever she reminded him of the same, he would give her merciless beatings. He would spend all his income on bad habits and would never think about kitchen expenses of the family. Many a times, he even threatened to sell the house which was the only shelter for her and the children.

Narrating the incidents of cruelty towards her, the respondent pleaded that in the year 1984, she was administered 'Tejab' by the appellant deceitfully in a liquid medicine. She was taken to the hospital and she remained under treatment for a month. Yet, she remained quiet considering the reputation of her and her parental family. Secondly, in the year 1992, the appellant came home in odd hours under the influence of

liquor and when she objected, the appellant picked up a hot cooker and hit the same on right side of her head near the ear. She was taken to Government hospital by a neighbour for treatment. When she informed her parents about the incident, her father came and took her to the parental home.

The respondent further alleged that the mother of the appellant was getting Army pension of her husband and was not dependent upon the income of her son, rather she had been providing financial help to him as and when needed and was being looked after by her daughters. All other allegations of the appellant were denied.

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

- (1) Whether the petitioner was treated with cruelty by the respondent, as alleged? OPP.
- (2) Whether this petition is not maintainable in the present form? OPR.
- (3) Whether petition has no locus standi to file the present petition? OPR.
- (4) Relief.

5. Both the parties adduced evidence to substantiate their respective contentions.

The appellant stepped into the witness box as PW5 and examined PW1 Durga Parshad, PW2 Rattan Lal, PW3 Bhagan Devi and PW4 Shahdab son of Nafis Ahmed to support his version.

On the other hand, respondent Usha Kumari appeared as RW1 and made a self serving statement.

6. Considering the evidence adduced by the parties and the submissions made on their behalf, learned trial Court arrived at the conclusion that the appellant had failed to prove his allegation of cruelty against his wife-respondent and decided Issue No.1 against him. Issues No.2 and 3 were answered against the respondent but in the light of the decision under Issue No.1, petition was dismissed leaving the parties to bear their own costs.

7. Feeling aggrieved by the judgment and decree dated 20.11.2014, appellant Dev Raj Sharma has preferred the instant appeal.

8. The submissions made by Mr. Kirpal Singh Thakur, Advocate, learned counsel representing the appellant have been considered.

9. Bare perusal of the judgment of learned trial Court shows that in the head note of the petition, appellant Dev Raj Sharma mentioned his age as 51 years and the age of his wife-respondent Usha Kumari Sharma as 44 years. In other words, having been married on 01.05.1983 the parties were now in middle age having two sons namely, Ashok Kumar and Manoj Kumar, born out of the wedlock on 30.11.1985 and 25.12.1986 respectively. The petition was filed on 09.02.2011. On the said date, even both the sons of the parties were 25/26 years old.

After having faced ups and downs of life together for 28 years, the appellant had filed the instant petition for dissolution of his

marriage with the respondent on the grounds, firstly that when he brought his old widowed mother from his ancestral village in Himachal Pradesh to his house at Balongi, the respondent refused to serve her and humiliated her to the extent that she went back to her ancestral village; secondly, that the respondent used to refuse to entertain and prepare tea etc. for his relatives and friends; thirdly, that for the last three years she would refuse to allow him to have sexual intercourse with her; and lastly that she was in the habit of leaving the matrimonial home without informing him and had also stopped cooking food etc. for him.

10. The respondent on the other hand had not only refuted the allegations of the appellant but had explained each and every circumstance relating to which the allegation had been levelled. She had further disclosed number of specific incidences which were in real terms the acts of cruelty of the appellant towards her. She mentioned that in the year 1994, the appellant administered 'Tejab' (acid) to her under the garb of a liquid medicine. She had to be hospitalized and she remained under treatment for one month but considering her own reputation and of her parental family she remained mum. She further stated that in the year 1992, the appellant came home during odd hours after consuming excessive liquor and pressurized her to prepare meat. When she refused, he picked up a hot cooker and hit the same on her head. She was taken to the Civil Hospital by a neighbour for treatment.

11. Indeed, under Section 13(1)(ia) of the Act of 1955, a matrimonial tie between the parties can be dissolved by a decree of

divorce on the ground that the complaining spouse had been treated with cruelty by the other spouse. However, the word “cruelty” used in the said provision has not been defined in the Act. It has been used in relation to human conduct or human behaviour or in respect of matrimonial duties and obligations, but every matrimonial conduct which may cause annoyance to the other may not amount to cruelty. It has been held by Hon'ble Apex Court in **Gurbax Singh versus Harminster Kaur 2010(3) Apex Court Judgments 703 (SC)** that a particular conduct may amount to cruelty in one case but the same conduct may not necessarily amount to cruelty in different set of circumstances due to change of various factors.

12. Elaborately 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, 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.*

XX XX XX

XX XX XX

*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.”*

13. Reverting to the instant case, as observed above, the entire allegations of the appellant were vague and general. No specific incidence of quarrel with him or his mother, of the respondent which humiliated either of them, could be stated by the appellant. He could not state any

date, month or year when the respondent insulted him in presence of his friends or relatives or left the house without informing him. On the other hand, the respondent had not only countered but offered a reasonable explanation for each allegation of the appellant. She stated that the mother of the appellant Bhagan Devi has never lived with them at Balongi. She had visited their house only for one day about a year back and that too on her request. She was getting family pension from Army and was not dependent on the income of the appellant. The mother of the appellant Bhagan Devi appeared in the witness box as PW3. Though she supported the allegations of her son-appellant, but in her cross-examination she was unable to tell the date, month, year or period during which she had visited the house of the parties. Though she stated that her son had been giving her money, but she admitted that her husband was serving in Army and she is getting family pension. Her statement affirmed the testimony of the respondent more than that of the appellant.

14. Similarly, PW2 Rattan Lal, maternal uncle of the appellant, who appeared to support the allegation of the appellant that the respondent had refused to entertain him and to offer him tea, food etc. when he visited their house, could not state the date, month or year of his visit at the house of the parties in village Balongi. His testimony indicated that he was a procured witness and because of the relationship with the appellant had come forward to support him.

15. As regards, allegation of the appellant that the respondent had been refusing to allow him sexual intercourse for the last three years

preceding the filing of the petition which caused him mental cruelty, the respondent deposed that their sons are presently aged 25 and 26 years respectively and have attained marriageable age. They had been studying upto late night hours and therefore, it was not appropriate for the appellant to ask for sexual intercourse. Lastly, the witness PW1 Durga Parshad, owner of a Dhaba, who filed his affidavit Ex.PW1/A, supporting the appellant that he had been taking breakfast and dinner at his Dhaba because his wife does not cook food for him at home, did not appear for cross-examination. The statement of a witness who could not be produced for cross-examination by the opposite party for testing his credibility, cannot be looked into.

Thus, it was the conduct of the appellant which could be a reason of a feeling of anguish disappointment and frustration in the mind of the respondent led to disharmony and nothing abnormal in the conduct of the respondent could be proved by the appellant.

16. Considering the facts emerging from the evidence adduced by the parties, the findings recorded by learned trial Court are as under:-

*“The petitioner has not been able to show that he had been fulfilling his duties as a husband and as a father. The allegations levelled by him against the respondent are of general and sweeping nature, which have not been substantiated by him by way of cogent evidence. Otherwise also, when the petitioner has not been able to fulfill his obligations, he is not expected to ask the respondent to fulfil matrimonial obligation in his favour. When the petitioner has not treated his wife and sons properly, then, he is not to*

*expect fulfil of matrimonial obligations from the side of his wife. Otherwise also, if a lady, who is allergic to liquor and non-veg. food, is not supposed to prepare meat and serve liquor for friends and relative of her husband. Thus, the petitioner has not been able to prove the allegations of instances of cruelty against his wife in the above mentioned facts and circumstances. Rather, it can be said that he wants to take the benefit of his own wrongs, which is to operate as a bar to matrimonial relief, as envisaged under section 23 of Hindu Marriage Act. Moreover, the petitioner has not come to the Court with clean hands.”*

17. No error of law or perversity in the findings recorded by learned trial Court arising from misreading or misappreciation of evidence could be pointed out by learned counsel for the appellant which could warrant intervention by this Court. Since the appellant had failed to prove the allegation of having been treated with cruelty by the respondent-wife, learned trial Court had rightly dismissed his petition. Finding no merit in the appeal, it is hereby dismissed.

**(AJAY KUMAR MITTAL)**  
**JUDGE**

**(SNEH PRASHAR)**  
**JUDGE**

**January 13, 2015.**

*jitender*

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