

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-28 of 2015

Date of Decision: 21.1.2015

Narpreet Kaur

....Appellant.

Versus

Manjit Singh

...Respondent.

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

PRESENT: Mr. Anil Chaudhary, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the wife against the judgment and decree dated 4.11.2014 passed by the Additional District Judge, Ludhiana, whereby the petition filed by her under Section 13 of the Hindu Marriage Act, 1955 (in short "the Act") for dissolution of marriage by a decree of divorce, was dismissed.

2. Put shortly, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The marriage between the parties was solemnized on 29.2.2004 in accordance with Sikh rites and ceremonies at village Kanech District Ludhiana. After the marriage, the parties lived together as husband and wife and cohabited as such at village Paddi, District Ludhiana. Out of the said wedlock, two children, namely, Mehakpreet Kaur (daughter) and Ekamjot Singh (son) were born on 27.1.2005 and 5.12.2006, respectively who are in the custody of the respondent. In the marriage huge amount was spent by the parents of the appellant and dowry was given as per the demand of

the respondent and his family members. After the marriage, the respondent and his family members started taunting the appellant for bringing less dowry. Lateron, they started demanding money from the appellant on the pretext that the same was to be invested in share and on showing her inability to bring any money from her parents, she was beaten mercilessly. The respondent and his family members started pressurizing the appellant that in case she was unable to bring money from her parents, she could take share from the property of her father. The appellant then talked to her parents who in order to save her matrimonial home, gave cash amount to the respondent and his family members several times but they were not satisfied and kept on treating the appellant with cruelty. She was turned out of the matrimonial home many a times after being beaten up. Every time the parents of the appellant got her rehabilitated in the house of the respondent but when the atrocities continued, she moved a complaint against the respondent and his family members. However, the matter was compromised. On 20.11.2011, the appellant was beaten up and turned out of the matrimonial house and was asked to return only when the demands of the respondent were met. Panchayat was convened but the appellant was not rehabilitated. The respondent and his family members failed to return the *istridhan* of the appellant. In this way, the respondent had treated the appellant with utmost cruelty both mental as well as physical. Accordingly, the appellant filed a petition under Section 13 of the Act for dissolution of marriage by a decree of divorce on the ground of cruelty. The said petition was contested by the appellant by filing a written statement. Besides raising various preliminary objections, it was pleaded that it was the appellant who was guilty of committing cruelty and

deserting the respondent without any reason. After the marriage, the respondent provided all love and affection but the respondent did not reciprocate. The parental family of the appellant interfered with their matrimonial life and the respondent was harassed and humiliated. The other averments were denied and a prayer for dismissal of the divorce petition was made. From the pleadings of the parties, the trial court framed the following issues:-

1. Whether the petitioner was subjected to cruelty by the respondent? OPP
2. Whether present petition is not maintainable? OPR
3. Relief.

3. To prove her case, the appellant examined herself as PW1, her mother Satya Devi as PW2 and a neighbourer Baljit Kaur as PW3. On the other hand, to controvert the case of the appellant, the respondent himself appeared as RW1.

4. The trial court on appreciation of evidence led by the parties decided issue No.1 against the appellant holding that the appellant failed to establish any cruelty suffered by her at the hands of the respondent. Issue No.2 was decided against the appellant holding the petition to be maintainable. Accordingly, the trial court vide judgment and decree dated 4.11.2014 dismissed the divorce petition. Hence, the present appeal.

5. Learned counsel for the appellant submitted that cogent evidence regarding cruelty meted out to the appellant was produced but the trial court has wrongly dismissed the divorce petition. It was urged that the appellant was turned out of her matrimonial home by giving

beatings to her. Learned counsel for the appellant produced the copy of the pleadings and the evidence to urge that the respondent had levelled false allegation of adultery against the appellant which amounted to cruelty.

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

7. Cruelty has not been defined under 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.

8. The Apex Court in **Vinita Saxena v. Pankaj Pandi, (2006) 3 SCC 778** while examining legal proposition on the aspect of cruelty had observed as under:-

“It is settled by catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the Section. It is to be determined on whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such wilful treatment of the party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case.

The word 'cruelty' has not been defined and it 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. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the 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.”

9. In the present case, the appellant while appearing as PW1 deposed in consonance with her pleadings whereas PW2 and PW3 also deposed on the similar lines. It was not the case of the appellant that the respondent had ever raised allegations of adultery against her or that he ever maltreated or beat up her on suspicion of her having illicit relations. It was neither in the pleadings nor in evidence that the respondent raised false allegations of having illicit relations with one Avtar Singh. It was in the cross examination of the respondent when a question was put by the learned counsel for the appellant that it was stated that the appellant-wife had illicit relations with Avtar Singh. This would not satisfy the test of levelling false allegation of chastity by the respondent against the appellant. Further, no specific instances were alleged or stated in the evidence by the appellant and only general allegations were made regarding maltreatment to her. Admittedly, the

marriage between the parties was solemnized on 29.2.2004 and two children born out of the said marriage were residing with the respondent who was taking care of them. Keeping in view the overall facts and circumstances of the case, the trial court has held that the appellant failed to establish any cruelty suffered by her at the hands of the respondent. The relevant findings recorded by the trial court are as under:-

“12. It is not the case of the petitioner that respondent had ever raised allegations of adultery against the petitioner or that he ever maltreated or beat up the petitioner on suspicion of the petitioner having illicit relations with Avtar Singh.

13. Where it is neither in the pleadings of the petitioner nor in her evidence, of the respondent raising false allegations of having illicit relations with one Avtar Singh though this fact was so stated by the respondent in his cross examination, this fact by itself cannot be considered to be a ground to hold the respondent to have raised allegations of adultery against the petitioner or to prove that respondent had ever maltreated the petitioner on the ground of any illicit relations.

14. Further with regard to the evidence of maltreatment of the petitioner at the hands of the respondent general allegations were made in this regard and where marriage of the petitioner and respondent was solemnized on 29.2.2004 and two

children born out of the said marriage residing with the respondent, who was looking after and taking care of them, in absence of any specific instance alleged or stated in the evidence of the petitioner and only general allegations being made of certain amounts given at different times by parents of the petitioner to respondent omitting to mention any specific date or cash ever advanced and no record in the form of any complaint made with regard to any maltreatment made to any official, simple factum of incompatibility between the petitioner and respondent would not necessarily amount to cruelty and in these circumstances petitioner remaining unable to establish any cruelty suffered at the hands of the respondent.”

8. In view of the above and the findings recorded by the trial court which could not be demonstrated to be erroneous or perverse in any manner being based on misreading or misappreciation of evidence on record, no interference is called for by this Court. Accordingly, the judgment and decree passed by the trial court dismissing the divorce petition is upheld and the instant appeal is dismissed.

(AJAY KUMAR MITTAL)
JUDGE

January 21, 2015
gbs

(SNEH PRASHAR)
JUDGE