

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

FAO-M No.29 of 2015 (O&M).

DATE OF DECISION: January 21, 2015.

ASHOK KUMAR

....APPELLANT.

VERSUS

ANUPAMA SHARMA

....RESPONDENT.

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

Present: Mr. Ajay Aggarwal, Advocate for the appellant.

SNEH PRASHAR, J.

1. The present appeal was filed under Section 28 of the Hindu Marriage Act, 1955 (in short, “the Act of 1955”) by the husband Ashok Kumar challenging the judgment and decree dated 01.12.2014, whereby the petition under Section 13 of the Hindu Marriage Act, 1955 preferred by the respondent-wife Anupama Sharma had been allowed and the marriage between the parties had been dissolved by a decree of divorce.

2. The relevant facts which need elaboration are as under:-

The marriage between the parties was solemnized on

29.10.2001 at Karnal according to Hindu rites and ceremonies. After marriage, they lived together as husband and wife at Karnal. The marriage was duly consummated and a daughter namely Advitiya was born out of their wedlock on 09.05.2006.

The respondent-wife averred that the appellant-husband was a habitually drunkard and hot tempered person. He used to misbehave with his brother, who then asked him to reside separately and accordingly, in the first week of December, 2001, they shifted to a rented accommodation in Bank Colony, Karnal. Thereafter, he started taunting her for bringing insufficient dowry and low quality dowry articles in marriage, though her father had spent more than Rs.10 lacs on the marriage. He would come home late in the night under the influence of liquor and would give her beatings without any rhyme or reason. He was employed with Dhillon Kool Drinks Pvt. Ltd. but was removed from the job in September, 2003 because of his misbehaviour with seniors.

In the month of February, 2004, the appellant joined as Front Office Executive in the Bank of Punjab, Kunjpura Road, Karnal. There also, he misbehaved with his senior Managers under the influence of liquor, upon which he was transferred to Kesari Singhapura Branch of the Bank but he left the job. The respondent also averred that she could not conceive for 3/3½ years after the marriage because of mental and physical torture at the hands of the appellant. She took treatment from Dr. Bharti Kalra Hospital, Karnal with the help of her parents but the appellant misbehaved with the doctor also. He often used to turn her out of the

matrimonial home during late night leaving her to sit at the staircase in the house throughout the night.

In May 2004, her mother-in-law started residing with her but she never rescued her from the beatings and cruel behaviour of her husband. On 09.05.2006, she gave birth to a female child. The appellant then started harassing her more and when her brother came to visit them, the appellant hurled filthy abuses at him and extended threats to kill him.

The respondent further pleaded that on 07.08.2010, she was turned out of the matrimonial home after being given severe beatings and she came to her parental home with her father. On 09.08.2010, the appellant came to her parental house in a drunken condition and gave filthy abuses to her father and when she tried to stop him, he entered into a scuffle and gave slaps and fist blows to her father. He also threatened to kill him and other family members. A First Information Report No.655 dated 09.08.2010 under Sections 323,452 and 506 of Indian Penal Code (in short, "I.P.C.") was registered at Police station Civil Lines, Karnal, in respect of the incident. She also filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short, "the Domestic Violence Act"), wherein the matter was compromised on 08.01.2011 in the Mediation and Conciliation Center, Karnal pursuant to which an amount of Rs.23 lacs was given to her for her betterment as well as for her daughter Advitiya by the appellant and she accompanied him to her matrimonial home on 08.01.2011.

It was further pleaded by the respondent that with the

consent of the appellant she purchased a Flat in Alpha City, Gurgaon for which Rs.12 lacs were to be paid as sale consideration. An amount of Rs.5,73,000/- was paid by her to the appellant for purchase of that plot. However, the plot was sold by the appellant for a sum of Rs.10 lacs and the money was kept by him. After 08.01.2011, the appellant started torturing her by giving beatings and by taunting her for bringing insufficient dowry and even remarked on her character. On 03.08.2011, she was not allowed by the appellant to join the birthday ceremony of her niece. He once tried to commit suicide under the influence of intoxication by locking himself in his residential house on 31.08.2010.

The respondent mentioned that the appellant possessed qualification of M.A., M.B.A and had worked with Dhillon Cool Drinks Pvt. Ltd., Chandigarh, Bank of Punjab, Karnal, Ansal Housing Company, Indusind Bank, Narsi Village, Karnal, Kotak Mahindra Bank, Karnal on various posts from time to time but because of misbehaviour with the seniors and colleagues under the influence of liquor, his services were terminated every time. She was employed as a teacher in Dayal Singh Public School, Karnal and on 28.09.2011 he came under the influence of liquor to her school and started hurling filthy abuses to her in front of school children and the staff. She gave an application at Police Post Sector-6, Karnal and the Principal of the school also reported the incident to the police on which the appellant was got medico-legally examined and challaned under Section 107/151 Code of Criminal Procedure (in short, "Cr.P.C.") by the police. Same day i.e. on 28.09.2011 she also sent

applications through registered post to the Deputy Commissioner, Superintendent of Police, Karnal and National Human Rights Commission and National Women Commission, New Delhi.

Lastly, the respondent submitted that her father had convened a Panchayat on 02.10.2011 for compromise but the dispute could not be settled and therefore, she had been residing with the parents since 28.09.2011. On these allegations, the respondent wife sought a decree of divorce on the ground that she had been treated with cruelty by the appellant.

3. The appellant-husband contested the petition by filing a written statement. The preliminary objections raised by him were that the present petition was not maintainable and no cause of action had arisen in favour of the respondent-wife because she had herself left the matrimonial home without any rhyme or reason. On merits, it was pleaded that the respondent-wife had refused to join his conjugal company and due to her rigid nature and adamant behaviour, she could not settle and adjust herself at the matrimonial home. It was further pleaded that the respondent had left her matrimonial home with all gold, silver and the diamond ornaments which were lying with her. A petition under Section 9 of the Act of 1955 for restitution of conjugal rights was filed by him and he also filed a petition for guardianship for betterment of the minor child. He pleaded that he and the respondent had a love affair since the year 1992 and after a long relationship of 9 years, their marriage was solemnized on 29.10.2001 according to Hindu rites and ceremonies at Karnal. It was a love-cum-

arranged marriage and a dowry less marriage. After marriage, the respondent proved to be a hot tempered and quarrelsome lady. She started creating mess in the joint family where his brother was also residing. In the first week of December, 2001, they shifted to a rented accommodation at Bank Colony, Karnal. After four years of marriage, the respondent conceived but she got the pregnancy aborted without his permission. He suffered a set back and got depressed by the act of the respondent. As a consequence thereof, he was unable to work and therefore, he left his bank job. After a period of six months, when he came out of depression on counseling done by his family, they started living happily and on 09.05.2006, the respondent gave birth to a female child.

The appellant-husband alleged that the father of the respondent-wife was not happy with the marriage and he always tried to degrade and misguide the respondent. After some time, the respondent under the wrongful advise of her parents, exerted pressure upon him to give them money and transfer his house in her name. As he was reluctant to do so, the respondent left the matrimonial home and out of the joint locker held with HDFC Bank she took away all the gold, silver and diamond ornaments. He asked her about withdrawal of the ornaments and to join his conjugal company but she refused and asked him to come at her parental house. He went to her parental house where suddenly, Kashmiri Lal-father and Ankit-brother of the respondent attacked him and gave merciless beatings. Being under the influence of the father, the respondent got a false First Information Report dated 09.08.2010 under Sections 323,

452 and 506 of I.P.C. registered against him with the police. On 15.09.2010 she also filed a complaint under the Domestic Violence Act, 2005. The dispute was compromised before the Mediation and Conciliation Centre, Karnal on 08.01.2011 and by virtue of the compromise, an amount of Rs.13,72,000/- by way a cheque was paid by him to the respondent and an amount of Rs.5,50,000/- was paid in cash. FDRs amounting to Rs.3,10,825/- and 70,000/- were given to the respondent for purchase of a plot. Besides, an amount of Rs.8,00,000/- was paid by him. Two months thereafter, the respondent with the help of her brother Ankit sold the plot for Rs.10 lacs and whole of the amount was retained by her.

It was further the allegation of the appellant-husband that in September 2011, the respondent under the influence of her parents pressurized him to transfer the matrimonial house and some agriculture property in her name. When he refused to do so, the respondent on 28.09.2011, went for joining job at Dayal Singh Public School and did not return home thereafter. She left the matrimonial home without any rhyme or reason and refused to join his conjugal company. She filed a criminal complaint against him at Women Cell. The police, on inquiry, however found that the respondent had taken money from him on account of compromise and her father was not allowing her to return to the matrimonial home. He went to the respondent to bring her back but she refused to accompany him. After few days, he came to know that the respondent had filed a petition for divorce against him.

Elaborating further, the appellant submitted that the respondent used to comment on the status of his family, claiming that she belongs to a royal family. During her stay with him at the matrimonial home, whenever she was asked to attend to the household affairs, she would feel uneasy and would ask to engage a servant for doing the work. Submitting that he had tried his level best to keep the atmosphere in the house as per liking of the wife and to carry on the martial tie in a harmonious manner but the respondent under the complete influence of her parents had been behaving like a puppet in their hands, the husband sought dismissal of the petition.

4. On the pleadings of the parties, following issues were settled by learned trial court:-

1. Whether the respondent has caused cruelty to the petitioner as alleged? OPP.
 2. Whether the petition is not maintainable? OPR.
 3. Whether the petitioner has no cause of action to file the present petition? OPR.
 4. Relief.
5. Both the parties adduced evidence to substantiate their respective contentions.

The respondent herself stepped into the witness box as PW1 and reiterated her allegations against the appellant. She also examined PW2 Siri Niwas Bhardwaj, PW3 Kashmiri Lal her father, PW4 Gulshan Kumar, Reader, PW5 Des Raj Clerk and PW6 Satish Kumar, Criminal

Ahlmad.

On the other hand, the appellant-husband examined RW1 Sumit, Assistant Manager, HDFC Bank and RW2 Vijay Goel, Branch Manager, Indusind Bank, Karnal.

6. Scrutinizing the evidence adduced by the parties and the submissions made on their behalf, learned trial Court came to the conclusion that the wife had well proved on record that the appellant had caused cruelty to her and on that ground she is entitled to a decree of divorce from him. As a result thereof, the petition was allowed with costs.

7. Feeling aggrieved by the impugned judgment and decree dated 01.12.2014 passed by learned trial court, appellant Ashok Kumar preferred the instant appeal.

8. The submissions made by Mr. Vijay Aggarwal, learned counsel representing the appellant have been considered.

9. The respondent-wife Anupama Sharma sought dissolution of her marriage with the appellant (husband Ashok Kumar) on the ground that she had been treated with cruelty by him. As indicated above, learned trial court finding the allegations proved allowed her petition. Assailing the findings of learned trial court, learned counsel for the appellant argued that it is apparent from the pleadings and evidence adduced by the parties that prior to 2010 the respondent-wife had no grievance against the appellant and had never filed any complaint against him with the police or any other authority alleging that she was being maltreated by him. In fact, because of her own rigid nature and adamant behaviour, the respondent

could not settle and adjust herself in the matrimonial home. She was arrogant to the extent that after four years of their marriage she conceived but got her pregnancy terminated without intimation or permission of the appellant. Because of her act and conduct the appellant went in depression. So much so that he even left his job. RW1 Sumit, Manager, HDFC Bank, Sector-8, Karnal produced the summoned record pertaining to locker no.432 jointly held by the parties. He proved certified copy of the locker operation details Ex.R4 according to which the locker was operated for the first time on 04.04.2009 and also on every occasion thereafter it was operated only by respondent Anupama Sharma as Ex.R4 bears only her signatures. Similarly, it was proved by RW2 Vijay Goel, Branch Manager of Indusind Bank, Sector-12, Karnal that account no.0073-H 54030010 was in the joint name of Ashok Sharma and Anupama Sharma (the parties) and as per statement of account Ex.R5 of the said account vide cheque dated 08.02.2010 Ex.R6 amounting to Rs.5 lacs issued in the aforesaid account, the amount was withdrawn by Anupama Sharma.

Learned counsel asserted that from both the said incidents, it is evident that the conduct of the respondent-wife was not true and sincere towards the appellant because of which their relations became strained. Otherwise also, admittedly a compromise had taken place between the parties in January, 2011 in pursuance of which the respondent had returned to her matrimonial home. Consequent to the compromise all acts of cruelty which the respondent narrated to support her allegation that the

behaviour of the appellant was harsh and cruel towards her, stood condoned. There was not a single incident after January, 2011 which could come within the ambit of 'cruelty' and therefore the respondent-wife was not entitled to the decree of divorce.

10. “Cruelty” is a ground for divorce under Section 13(1)(ia) of the Act of 1955. The word “cruelty” used in the said provision, though not defined, but denotes mental as well as physical cruelty intentional or unintentional. It is to be taken as a behaviour 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.

Considering the provision of Section 13(1)(ia) of the Act of 1955 and laying down the principle to be borne in mind while dealing with a petition for divorce on the ground of cruelty and type of cruelty the Apex Court in **V.Bhagat vs. Mrs. D.Bhagat AIR 1994 (SC) 710**, had observed as under:-

“17. Mental cruelty in S.13(1)(ia) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it

is neither possible nor desirably to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”

11. In ***Sujata Patil v. Uday Madhukar Patil, 2007(1) R.C.R. (Civil) 404*** the term “cruelty” has been explained by Apex Court as under:-

“The word “cruelty” and the kind or degree of “cruelty” necessary which may amount to a matrimonial offence has not been defined in the Act. What is cruel treatment is to a large extent a question of fact or a mixed question of law and fact and no dogmatic answer can be given to the variety of problems that arise before the court in these kind of cases. The law has no standard by which to measure the nature and degree of cruel treatment that may satisfy the test. It may consist of a display of temperament, emotion or pervasion whereby one gives vent to his or her feelings, without intending to injure the other. It need not consist of direct action against the other but may be misconduct indirectly affecting the other spouse even though it is not aimed at that spouse. It is necessary to weigh all the incidents and quarrels between the parties keeping in view the impact of the personality and conduct of one spouse upon the mind of the other. Cruelty may be inferred from the facts and matrimonial relations of the parties and interaction in their daily life disclosed by the evidence and interference on the said point can only be drawn after all the facts have been taken into consideration. Where there is proof of a deliberate course of conduct on the part of one, intended to hurt and humiliate the other spouse, and such a conduct is persisted, cruelty can easily be inferred. Neither actual nor presumed intention to hurt the other spouse is a necessary element in cruelty.”

12. Reverting to the instant case, there was not one but number of incidents disclosed by the respondent in support of her allegation that she had been treated with cruelty by the appellant. Elucidating and scrutinizing such incidents proved through ocular and documentary

evidence by the respondent, the learned trial court recorded his findings as under:-

“The petitioner while appearing in the witness box as PW1 has reiterated the stand taken in the petition and has given details of several instances/incidents of cruelty committed by the respondent by which he caused mental as well as physical harassment and cruelty to her. This witness while narrating the previous incidents committed by the respondent causing mental as well as physical cruelty to her, has deposed that on 27.8.2011, the respondent did not come to his house throughout the night and even no information was given to her. On the next day, when he returned to the house, he levelled certain allegations regarding her character by standing on the main door of the house in front of the neighbours and this created a tension in her mind and she could not call even her parents as he had openly threatened to kill her parents and other family members. She has further deposed that on 28.9.2011, respondent came to Dyal Singh Public School, Karnal where she was employed, under the influence of liquor and started giving filthy abuses in front of the school children and school staff. She moved an application to Police Post Sector-6, Karnal in this regard and he was challaned under Section 107/151 Cr.P.C., (the copy of which is Mark-PL). She also sent applications through registered post to the Deputy Commissioner, Karnal, Superintendent of Police, Karnal, National Human Rights Commission and National Women Commission, New Delhi. She has further narrated another incident of cruelty by respondent committed on 9.8.2010 when on that day, the respondent came to her parental house in drunken condition and started giving filthy abuses to her father and also gave slap and fist blows to her father. Regarding this incident, FIR No.655 dated 9.8.2010 under Sections 323, 452 and 506 of the Indian Penal Code was registered at Police Station Civil Lines, Karnal, (copy of which is Mark-PJ). As per the version of the petitioner, on 19.3.2011, he called her parents to his residence intentionally and threatened to kill them and she was not allowed to attend birthday ceremony of her niece on 3.8.2011 which was being celebrated at the house of her parents. The petitioner further narrated that the respondent also tried to commit suicide under the influence of intoxicant by locking himself in his residential house on 31.8.2010 and on 2.10.2011, her father convened a Panchayat at the house of the respondent and tried to convince him for not treating her with cruelty and not to give physical beatings as well as to raise doubt regarding her character but he remained

adamant.

Regarding the incidents of cruelty, the oral version of the petitioner has been corroborated by PW4 Gulshan Kumar, Reader of court of DRO-cum-Assstt. Collector Ist Grade/Executive Magistrate, Karnal, who has brought the summoned record of proceedings u/ss 107/151 of Cr.P.C. titled as State Vs. Ashok Kumar son of Shri Ram Avtar, resident of H.No.1778/9, U.E., Karnal, DD No.16 dated 15.1.2013 of P.S. Civil Lines, Karnal initiated against Ashok Kumar on the complaint of Smt. Anupma daughter of Shri Kashmiri Lal Sharma (petitioner) and has proved the copy of the same as Ex.PW4/A. PW5 Des Raj Clerk of D.C. Office, Karnal has brought the summoned file of case titled as State vs. Ashok Sharma son of Shri Ram Avtar Sharma, resident of H.No.1778, Sector-9, U.E., Karnal, u/ss 107/151 of Cr.P.C. of P.S. Civil Lines, Karnal instituted on 13.1.2012 and decided on 30.7.2012 and has proved copy of the Calendra prepared vide DDR No.15 dated 13.1.2012, u/ss 107/151 of Cr.P.C. as Ex.PW5/A. PW6 Satish Kumar, Criminal Ahlmad of the court of learned CJM, Karnal has brought the summoned record of the case titled as State Vs. Ashok Kumar Sharma, bearing FIR No.286 dated 11.4.2013, u/ss 354 and 506 of IPC of P.S. Civil Lines, Karnal registered against Ashok Sharma son of Shri Ram Avtar Sharma, resident of H.No.1778, Sector-9, U.E., Karnal on the complaint of Anupma Sharma and has proved the copy of the FIR of the aforesaid case as Mark-A and copies of FIR No.159 dated 26.2.2013 as Mark-B, FIR No.160 dated 26.2.2013 as Mark-C and has deposed that the aforesaid criminal cases registered vide the aforesaid FIRs against Ashok Sharma are still pending in the court.”

13. To rebut the evidence of the respondent, the appellant examined only two witnesses namely RW1 Sumit, Assistant Manager, HDFC Bank and RW2 Vijay Goel, Branch Manager, Indusind Bank, Karnal. Surprisingly, the appellant himself did not care to step into the witness box to make atleast a self serving statement and controvert the allegations of the respondent. Since the evidence of the respondent had remained unimpeached, learned trial court rightly held that there was no reason to discard or discredit the same. Dealing with the contention of the

appellant that pursuant to the compromise between the parties in 2011 cruelty, if any, stood condoned, the findings of learned trial Court were as under:-

*“Now coming to the contentions of the learned counsel for the respondent. The first and foremost contention of the learned counsel for the respondent was that the previous incidents on the parts of the respondent-husband as alleged by the petitioner, owing to the cruelty to the petitioner, stood condoned after when the petitioner returned to her matrimonial home in the year 2011 in pursuance of a compromise arrived at between the parties and some of the instances are after filing of the present petition. This contention of the learned counsel for the respondent is without any merit because cumulative effect of all the circumstances culminating into deep impressionable mental cruelty beyond being retrieved and forgotten has to be seen. Reliance in this context can be placed on **Manmohan Singh's case (Supra)**. Otherwise also, there is no evidence whatsoever, on record on behalf of respondent to rebut the oral evidence of the petitioner which is supported by documentary evidence and inspires confidence of the court.”*

14. No perversity or adversity could be demonstrated by learned counsel for the appellant in the findings of learned trial court emerging from misreading or misappreciation of evidence available on record. Moreso, according to the appellant, the respondent left home on 28.09.2011 for joining a job in Dayal Singh Public School and did not return thereafter without any rhyme or reason. His version stands falsified by the document Mark-P1 according to which on 28.09.2011 the appellant came to Dayal Singh Public School, Karnal, where the respondent was employed, under the influence of liquor and started hurling filthy abuses to her in the presence of school children and school staff. She reported the incident to the police on which the appellant was challaned under Section 107/151 Cr.P.C. Meaning thereby that on 28.09.2011 also the appellant

publicly insulted, embarrassed and humiliated the respondent-wife. Subsequent to the said incident, as proved by PW6 Satish Kumar, Criminal Ahlmad to the Court of learned Chief Judicial Magistrate, Karnal, a case bearing First Information Report No.286 dated 11.04.2013 under Sections 354 and 506 I.P.C. was registered against the appellant at Police Station Civil Lines, Karnal on the complaint of the respondent. Copy of the First Information Report is Mark-A. Since subsequent to the compromise also the behaviour of the appellant continued to be bad, all his previous acts of cruelty stood revived. It was because of his cruel behaviour that the respondent finds no longer possible for her to reside with the appellant under the same roof. In the said state of facts, she had the right to seek dissolution of the marriage by a decree of divorce.

Thus, the findings of learned trial court warrant no intervention and there being no merit in the appeal, it is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(SNEH PRASHAR)
JUDGE

January 21, 2015.

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