

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**FAO-M-45 of 2015 (O&M)  
Date of decision: 06.02.2015**

**Minakshi**

**.....Appellant**

**Vs.**

**Sombir**

**.....Respondent**

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

Present: Mr. Naresh Singh Shekhawat, Advocate for the appellant-wife.

**Ajay Kumar Mittal,J.**

1. This appeal has been filed by the appellant-wife against the judgment and decree dated 6.1.2015 passed by the trial court whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (in short, "the Act") filed by the respondent-husband for dissolution of marriage on the ground of cruelty has been allowed.

2. A few facts relevant for the decision of the controversy involved as available on the record may be noticed. Marriage between the parties was solemnized on 28.4.2009 at Village Barsi, Tehsil and District Mohindergarh according to Hindu rites and ceremonies. After the marriage, both the appellant and the respondent resided together at Village Bigowa,

Tehsil Charkhi Dadri, District Bhiwani as husband and wife but no child was born. On the very first night after the marriage, the respondent husband felt that the behaviour of the appellant wife towards him was indifferent. She never wanted to marry in the village family. She told the respondent that her marriage had been performed against her wishes. She used to insult and humiliate the respondent and his family members. She used to quarrel on petty matters. The respondent tried to resolve the dispute many times but in vain. Finally, the appellant left her matrimonial home on 19.12.2009 without the consent of the respondent or his family members. Panchayat was held in December 2009 at the instance of the respondent but she refused to accompany the respondent and threatened him to involve all his family members in dowry case. FIR No.80 dated 14.2.2010 under Sections 498A, 406, 323/34 IPC was registered by the appellant against the respondent. The respondent was arrested and was also sent to jail where he was given beatings in the presence of the respondent and her family members at their instance. Ultimately, the respondent filed petition under Section 13 of the Act on the ground of cruelty for dissolution of marriage. Upon notice, the appellant appeared and filed written statement controverting the averments made in the petition. The trial court after examining the entire evidence on record allowed the petition filed by the respondent-husband vide impugned judgment and decree dated 6.1.2015. Hence the instant appeal by the appellant wife.

3. We have heard learned counsel for the appellant-wife and perused the record.

4. The trial court on the pleadings of the parties framed the

following issues:-

- i) “Whether petitioner is entitled to decree of divorce on the grounds alleged in the petition? OPP
- ii) Relief.”

In support of his case, respondent husband appeared as PW2 and examined Sandeep Sahrawat as PW1, Vijay Kumar as PW3 and Satyawar as PW4. On the other hand, the respondent appeared as RW1 and examined Hoshiyar Singh as RW2. The respondent while appearing as PW2 reiterated the averments as made in the petition under Section 13 of the Act. He deposed that from the very beginning, the attitude of the appellant towards him and his family members was not good. She lodged FIR under Sections 498-A, 323, 406, 504 read with Section 34 IPC against the respondent and his family members. In spite of holding panchayat, she did not agree to come back to the matrimonial home. All the efforts made by the respondent to resolve the issue proved futile. She left the matrimonial home of her own. The relations between the parties had deteriorated to such an extent that it became impossible for them to live together as husband and wife. The trial court after examining the entire evidence allowed the petition under section 13 of the Act by the respondent and granted decree of divorce for dissolution of marriage to him vide judgment and decree dated 6.1.2015.

The relevant finding recorded by the trial court reads thus:-

“26. The petitioner when appeared as PW2 has stated that he is the only son of his old aged parents and he was liable to look after his old parents and sisters. It has appeared in the testimony of respondent that since February 2010, she was living at her parents house as according to her she was thrown out from her matrimonial home whereas as per the

petitioner, the respondent left her matrimonial home on 19.12.2009 without the consent of the petitioner or his family members alongwith her Bhabhi and two other unknown persons with the threat to involve the petitioner and his entire family and since then she was living at her parental house and it is an admitted fact that the respondent got registered an FIR No.80 dated 14.2.2010 in Police Station Satnali and petitioner and his family members were arrested and petitioner had to remain in judicial custody for some days. According to the petitioner, he was humiliated and harassed and misbehaved by the police. Since the petitioner remained in custody because of the complaint lodged by the respondent, so the relations between the parties have become very strained. The arrest of the parents of Sombir has added fuel to the fire. The petitioner has felt insulted in the village and petitioner has alleged that the relations between them have deteriorated to such an extent i.e. it has become impossible for them to live together as husband and wife and this court is of the opinion that conduct of the respondent by lodging an FIR is so grave and weighty that it has made the cohabitation between the parties virtually unendurable. The period spent by Sombir in custody has left a permanent impression in his mind and has created an anguish endangering the mental health of Sombir.

27. While deciding mental cruelty the court has to see the physical and mental condition of the parties as well as their social status and the impact of personality and conduct of one spouse on the mind of the other and taking into the consideration all these facts this court is satisfied that it has become impossible for the petitioner to live with the respondent any further.

28. On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that

situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.”

5. 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.

6. 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.

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.”

7. Further, setting out illustrative cases of mental cruelty, the Supreme Court in **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511** had held as under:-

“No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of

human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the

feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

8. In the present case, it has been duly proved on record that the appellant-wife had lodged FIR under Sections 406, 498A, 323 and 504 read with Section 34 IPC against the respondent and his family members. The respondent and his family members were arrested and they had to remain in judicial custody for few days. This action of the appellant would satisfy the test of mental cruelty to the respondent-husband within the meaning of Section 13(1) (ia) of the Act. Further the behaviour and attitude of the appellant wife from the very beginning with the respondent and his family members was not cordial. She created such circumstances that it became absolutely impossible for the husband to live with her. All the efforts made by the husband to resolve the matter amicably proved futile. The acts committed by the appellant wife caused mental cruelty to him. The findings have been recorded by the trial court after appreciating the entire evidence on record. Learned counsel for the appellant has not been able to show any illegality or perversity in the said findings which may warrant interference by this Court. Consequently, finding no merit in the appeal, the same is hereby dismissed.

**(Ajay Kumar Mittal)**  
**Judge**

**February 06, 2015**  
**gs'**

**(Sneh Prashar)**  
**Judge**