

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-51 of 2015

Date of Decision: 11.2.2015

Mrs. Ginni

....Appellant.

Versus

Mr. Vikas Mehra

...Respondent.

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

PRESENT: Mr. Gagandeep Singh, Advocate for the appellant.

Mr. Parveen K. Kataria, Advocate for caveator-respondent.

AJAY KUMAR MITTAL, J.

1. By way of instant appeal, the appellant-wife has challenged the judgment and decree dated 14.11.2014 passed by the Additional District Judge, Amritsar, whereby the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (in short “the Act”) for dissolution of marriage by a decree of divorce on the ground of cruelty, was allowed.

2. A few facts necessary for adjudication of the present appeal as narrated therein may be noticed. The husband-respondent filed the divorce petition, *inter alia*, pleading that the marriage between the parties was solemnized on 17.10.2010 as per Hindu rites at Amritsar. After the marriage, the parties lived together as husband and wife at Amritsar and consummated the marriage. The respondent noticed that the appellant takes some tables not covered in any wrapper. However, he could not

know as to which medicine she was taking without his knowledge and for what purpose. She became pregnant but there was miscarriage in April, 2011. On taking her to the doctor, the respondent and his parents came to know about some mental ailment of the appellant. After miscarriage, the appellant could not take the medicines which she used to take earlier as she was under the care of her mother-in-law. Due to that, her behaviour became violent. When the doctor was consulted, he pointed out that she might be using some medicines relating to mental disorder and prescribed brain mapping test to which she refused and even threatened to kill herself, if she was compelled for the test. She used to lock herself in bathroom/kitchen for hours together and used to say that she would kill herself or other members of the family. She used to move out of the house at midnight by opening doors while other members were sleeping and she had to be brought back with difficulty. Later on, the parents of the appellant disclosed that she was suffering from acute mental disorder and was under medication since childhood and that disorder was not curable. She in the presence of her parents threatened to kill Mrs. Rohni, bhabhi of the respondent with knife. She also used to threaten the respondent and his family members that she would commit suicide and would involve them in criminal case. The parents of the respondent made a request to the presents of the appellant that they want divorce but they made a request that they have marriage of their younger daughter on 4.12.2011 and they have taken opinion of doctor who had confirmed that she could not be cured and as such she would not spoil life of the respondent. However, her parents agreed that in case of any criminal act of respondent, the appellant and his family members would not be responsible. The agreement was reduced into

writing in this regard. She was living in her parental house since 30.10.2011 and the marriage was not consummated since then. Even she had not allowed sexual intercourse to the respondent since the day of miscarriage. In this way, the appellant and his family members were undergoing mental torture at the hands of the appellant. Unfortunately, in January, 2012, the father of the appellant died and the matter of divorce could not be finalized. Thereafter, the father of the respondent approached the mother of the appellant who sought some time but thereafter she did not reply. The mother of the respondent along with 2-3 persons was threatening the respondent to involve him and his family members in false criminal cases. In September, 2012, the appellant and his family members received telephonic call from Mahila Wing regarding complaint filed by the appellant on 5.9.2012 and they appeared before them. However, the appellant withdrew the said complaint on 20.2.2013. After some time, the respondent again received a telephonic call from Mahila Wing and appeared before it on 26.8.2013 and then on 7.9.2013. The second complaint was also dismissed by the Commissioner of Police vide order dated 27.9.2013. Thereafter, the appellant moved third complaint before the police in which the respondent and his family members appeared on 21.10.2013 and the statements of the respondent and his father were recorded. Accordingly, the respondent prayed for a decree of divorce. Upon notice, the appellant filed a written statement controverting the averments made in the petition. Besides raising various preliminary objections, it was pleaded sufficient dowry including jewellery articles and car was given on the demand of the respondent and his family members. It was admitted that she became pregnant but the factum of miscarriage in April/May, 2011 was denied. However, it

was pleaded that the mother and bhabhi of the respondent took her to a diagnostic centre and on coming to know about the female child in the womb of the appellant, they gave some wrong medicine and got the child aborted without her consent. She was not suffering from any mental disorder as she had got brilliant academic carrier upto master of commerce. According to the appellant, the behaviour of the respondent and his family members was harsh and they used to demand luxury car with cash amount of ₹ 5 lacs. She was maltreated, kept confined and locked in room and was given severe beatings many times by the respondent and his family members. She tolerated all such atrocities hoping that better sense would prevail upon the respondent and his family members with the passage of time but to no avail. In mid of October, 2011, she was turned out of the matrimonial home, after giving beatings by the respondent and his family members for not fulfilling their demand of ₹ 5 lacs and a luxury car. However, her parents gave ₹ 3.5 lacs to the appellant. After some time, the behaviour of the respondent and his family members again changed and they started demanding remaining amount of ₹ 1.5 lacs and luxury car. The signatures of her parents were obtained on blank/stamp papers on the pretext that the same were required for furnishing some security in the bank for loan to be raised by the respondent for his business. Her parents signed thereon without suspecting any foul play and they forged and fabricated alleged writing. Due to the atrocities of the respondent and his family members, her father had expired. On 27.1.2012, the mother of the appellant along with her had gone to the house of the respondent to rehabilitate her in the matrimonial house but the respondent and his family members refused and since then she was living in her parental

house. The respondent also moved a complaint against them regarding demand of dowry and torture. After that, the respectables from both the sides intervened and tried to effect a compromise and on the assurance of the respondent and his family members that they would not cause any cruelty to her, she withdrew the complaint. However, the respondent backed out and she filed another complaint. The other averments made in the petition were denied and a prayer for dismissal of the same was made. The respondent controverted the averments made in the written statement by filing replication. From the pleadings of the parties, the court below framed the following issues including additional issue No.2-A:-

1. Whether the petitioner is entitled to get divorce from the respondent on the ground of cruelty?OPP
2. Whether the petition is not maintainable? OPR
3. Relief.

Additional Issue 2-A

- 2-A. Whether petitioner is entitled to get divorce on the ground of mental unsoundness of the respondent? OPR

3. In support of his case, the respondent besides examining himself as PW4 also examined Anil Mehra as PW1, HC Ashok Kumar as PW2, Dr. Ajit Inder Singh Bhatia as PW3, Dr. Gurpreet Inder Singh as PW5, Ashok Mehra as PW6 and Dr. Madhu Arora as PW7. On the other hand, the appellant examined her uncle Baldev Raj as RW1 who tendered his affidavit Ex.RW1/A.

4. The trial court took issues No.1 and 2-A together being

interconnected and on appreciation of evidence led by the parties, decided issue No.2-A against the respondent and issue No.1 in his favour. It was held that the respondent was treated with cruelty by the appellant. Issue No.3 was decided against the appellant. Accordingly, the trial court vide judgment and decree dated 14.11.2014 allowed the divorce petition filed under Section 13 of the Act by the husband and passed a decree of divorce. Hence, the present appeal.

5. Learned counsel for the appellant submitted that the false allegations were levelled by the respondent . It was further submitted that the respondent and his family members were not satisfied with the dowry and harassed and tortured and turned the appellant out of the matrimonial home. It was urged that no cogent evidence regarding cruelty meted out to the respondent was produced but the trial court has wrongly granted a decree of divorce.

6. After hearing learned counsel for the appellant and the caveator-respondent, we do not find any merit in aforesaid submissions.

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.

XX XX XX
XX XX XX

21. Cruelty for the purpose of Section 13(1)(ia) 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.

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.”

9. 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.”

10. Adverting to the findings of cruelty, it may be noticed that the respondent had made various references regarding acts of cruelty of the appellant. He categorically stated that the appellant did not allow sexual intercourse to him since the day of miscarriage in April/May 2011.

The appellant failed to rebut the same as she did not appear in the witness box. The appellant had been attending the court proceedings and made her statement on 16.2.2014 when she closed her evidence. The refusal of a wife to allow husband to have sexual intercourse without any reasonable cause was an act of cruelty. Further, various complaints were filed by the appellant against the respondent and his family members which also caused him a lot of harassment and mental torture and as such was an act of cruelty. A complaint dated 3.9.2012 (Ex.P5) was filed by the appellant levelling allegations of dowry and harassment and had requested the police to register a criminal case under Sections 406/498-A/506/34 of the Indian Penal Code which was later on withdrawn by her vide statement Ex.P6. Thereafter, she filed another complaint dated 19.8.2013 (Ex.P9) against the respondent and his family members and the said complaint was also dismissed in view of the report dated 27.9.2013 (Ex.P11) of the Additional Deputy Commissioner of Police, Amritsar. Being dissatisfied with the enquiries, she also moved an application dated 10.10.2013 to the Commissioner of Police, Amritsar that the matter be inquired into from Kaustab Sharma, IPS, Deputy Commissioner of Police, Amritsar who inquired into the matter and asked the appellant to appear for her medical examination before Dr. P.D. Garg, Professor and Head of Psychiatry, Government Medical College, Amritsar, vide letter, Ex.P13. Since she failed to appear for medical examination, the complaint was ordered to be filed being based on incorrect allegations vide report Ex.P15, dated 9.11.2013. Further, the allegations regarding demand of luxury car and cash amount of ₹ 5 lacs remained unproved as neither she nor her mother stepped into the witness box to substantiate the said averment. Even the allegation

regarding the signatures of her parents taken on blank papers was not proved by any evidence. However, RW1 Baldev Raj in his cross-examination admitted that Ex.P2 bears the signatures of the parents of the appellant. The cumulative effect of the facts and circumstances point out to an irresistible conclusion that the respondent was treated with mental cruelty and the petition for divorce filed by the respondent-husband had been rightly accepted by the trial court.

11. Learned counsel for the appellant was unable to demonstrate that there was any error or perversity in the findings recorded by the trial court being 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

February 11, 2015
gbs

(SNEH PRASHAR)
JUDGE