

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-72 of 2015

Date of Decision: 26.2.2015

Sodagar Singh

....Appellant.

Versus

Meenu

...Respondent.

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

PRESENT: Mr. Amandeep Singh Saini, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. Feeling aggrieved by the judgment and decree dated 16.1.2015 passed by the Additional District Judge, Sahibzada Ajit Singh Nagar (Mohali) allowing the petition filed by the wife-respondent under Section 13 of the Hindu Marriage Act, 1955 (in short "the Act") for dissolution of marriage by a decree of divorce, the husband-appellant has approached this Court by way of instant appeal.

2. A few facts necessary for adjudication of the present appeal as narrated therein may be noticed. In the divorce petition filed before the trial court, it was averred that parties are residents of village Mullanpur Garib Dass, Tehsil Kharar, District SAS Nagar (Mohali) and their houses are adjoining to each other and the marriage between the parties was solemnized on 7.6.2012. The respondent was treating the appellant like her brother and there was no relation of any kind between

them. On 11.6.2012, the appellant took the respondent from her house on the pretext of getting her a job. She was taken to a Gurudwara Sahib where she was compelled to marry the appellant. In the Gurudwara Sahib, the appellant, his parents, sister, brothers and some other relatives were present. The respondent got married with the appellant by way of Anand Karaj under their threat. Thereafter, she was taken to a hotel in Mohali where they remained for two days, i.e. 11.6.2012 and 12.6.2012. The appellant also got the marriage registered on 7.6.2012 at the back of the respondent. The appellant also filed a petition under Section 482 of the Code of Criminal Procedure in this Court for protection of life and liberty of the parties. The said petition was allowed and the SSP, Mohali was directed to examine the petition and take necessary steps, if so warranted, in accordance with law. On 14.6.2012, without the consent of the respondent, the appellant committed rape upon her. Even the brothers of the appellant also committed rape upon the respondent without her consent. However, she became pregnant and the appellant and his parents along with his brothers got aborted the child. Thereafter, the appellant and his family members started harassing the respondent and threatened her to take share in the property of her father failing which they would not allow her to live in their house. They also used to beat her. The father of the respondent filed CrI.WP No. 19152 of 2012 in this Court. The respondent was present in the said case and she was directed to file her affidavit vide order dated 17.12.2012. She was threatened by the appellant to give statement that she would reside with the appellant and was not ready to go with her father. Under the compelling circumstances, she made a statement that she would go and reside with the appellant and would not go with her

father. On 6.4.2013, the respondent in the absence of the appellant ran away and went to her parental house at village Mullanpur Garibdas wherein she narrated the entire story to her father, who took her to Police Station, Mullanpur Garibdass and got recorded FIR No. 33 dated 6.6.2013, under Sections 323, 376, 498-A, 315, 316, 506, 511 of the Indian Penal Code against the appellant and his parents, brothers and sister. Thereafter, she filed a petition under Section 13 of the Act for dissolution of marriage between the parties by a decree of divorce. The said petition was contested by the appellant by filing a written statement. Besides raising various preliminary objections, it was pleaded that the petition has been filed under the influence of her parents. She had got recorded the FIR against the appellant and his family members under the influence of her parents. It was a love marriage and the parties had appeared before this Court for taking directions against the parents of the respondent and had also made a statement in this regard before this Court. Thereafter, the relations between the parties worsened due to interference by the parents of the respondent. According to the appellant, he and the respondent fell in love with each other and the parents of the respondent refused for their marriage. They ran away from the house and got married. They applied for protection before this Court and they were granted protection. The father of the respondent filed a habeas corpus petition which was dismissed by this Court. The appellant was very happy when he came to know about the pregnancy of the respondent. The parents of the respondent got the child aborted and levelled false allegations against the appellant and his family members. The other averments made in the petition were denied and a prayer for dismissal of the same was made. From the pleadings of the parties, the

trial court framed the following issues:-

1. Whether the respondent has treated the petitioner with cruelty? OPP
2. Whether the petitioner is entitled to decree of divorce by dissolution of her marriage with the respondent? OPP
3. Relief.

3. The respondent in support of her case, examined herself as PW1, her father Lal Singh as PW2, her mother Dalbir Kaur as PW3 and Diwan Singh as PW4. All the witnesses made their statements by way of their respective affidavits. On the other hand, the appellant examined himself as RW1, Dr. Vijay Bhagat as RW2 and Harpal Singh as RW3 and also tendered various documents in evidence.

4. The trial court took issues No.1 and 2 together being interconnected and on appreciation of evidence led by the parties, decided the same in favour of the respondent holding that the appellant treated her with cruelty and he used to harass and beat her and, therefore, she was entitled to a decree of divorce. Accordingly, the trial court vide judgment and decree dated 16.1.2015 allowed the divorce petition filed under Section 13 of the Act by the wife and passed a decree of divorce by dissolving the marriage between the parties. Hence, the present appeal.

5. Learned counsel for the appellant submitted that the finding recorded by the trial court that the husband treated the wife with cruelty was against the record. It was further submitted that the parties were having love affair and after solemnizing the marriage in a Gurdwara Sahib, they filed a petition in this Court for protection as they

apprehended danger at the hands of the parents of the respondent. The said petition was allowed and they were provided protection. It was contended that the respondent herself was a wrong doer and the appellant had never treated her with cruelty.

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

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.

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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.”

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, discomode 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. Examining the factual matrix in the present case, it may be noticed that the relationship between the parties was admitted. The marriage of the parties was a run away marriage which was solemnized on 7.6.2012 at a Gurdwara in Mohali. The version of PW1 that the appellant used to maltreat, harass and beat her was corroborated by the statements of the witnesses examined by her. The judgment dated 25.9.2014, Ex.R1 passed in FIR No. 33 dated 6.4.2013 lodged by the respondent had resulted in the conviction of the appellant for the offence punishable under Section 323 of the Indian Penal Code and the appellant was sentenced to undergo imprisonment which he had already undergone as he was in custody for a period of more than 1½ years. No evidence was led by the appellant to prove that the respondent or his parents had got the pregnancy aborted. The facts and circumstances cumulatively leads to irresistible conclusion that the appellant had

treated the respondent with cruelty and therefore, she was entitled to a decree of divorce. The relevant findings recorded by the trial court read thus:-

“18. From copy of judgment dated 25.9.2014 Ex.R1 brought on record by the respondent himself, it is evident that in the criminal case got registered by the petitioner against the respondent the prosecution succeeded in proving that the respondent voluntarily caused hurt to petitioner and he was held guilty for having offence punishable under Section 323 of IPC and was sentenced to undergo imprisonment. So, version of PW1 Meenu petitioner to the effect that the respondent used to maltreat, harass and beat her, finds corroboration from this judgment Ex.R1 besides statements of PW2 Lal Singh, PW3 Dalbir Kaur and PW4 Dewan Singh. Further, it is evident that from this evidence led by the petitioner as well as from copy of judgment Ex.R1 that the petitioner had leveled serious allegations against the respondent and his family members for having committed rape on her and for abortion of her pregnancy.”

11. It was concluded by the trial court as under:-

“20. So, after carefully considering the above discussed evidence led by the parties, I have reached at a considered opinion that the petitioner has succeeded in proving that the respondent treated her with cruelty and he used to harass and beat her.

Version of PW1 Meenu petitioner to this effect finds corroboration from the statements of PW2 Lal Singh, PW3 Dalbir Kaur and PW4 Dewan Singh as well as copy of judgment dated 25.09.2014 Ex.R1 and her statement Ex.R2. Therefore, the petitioner is held entitled to decree of divorce for dissolution of her marriage with the respondent on the ground of cruelty.”

12. Learned counsel for the appellant was unable to demonstrate that there was any error or perversity in the findings recorded by the trial court based on misappreciation or misreading of evidence on record which may warrant interference by this Court. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

February 26, 2015
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(SNEH PRASHAR)
JUDGE