

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-77 of 2015

Date of Decision: 27.2.2015

Dhanpat

....Appellant.

Versus

Shimla

...Respondent.

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

PRESENT: Mr. Sushil Kumar Verma, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. Having remained unsuccessful before the Additional District Judge, Sirsa in a petition filed 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 challenging the judgment and decree dated 22.10.2014.

2. The facts, in brief, necessary for adjudication of the present appeal as narrated therein may be noticed. The marriage between the parties was solemnized on 1.7.1993 at village Chhota Jhanda, Tehsil Sardulgarh, District Mansa. After the marriage, they lived together as husband and wife at the house of the appellant and cohabited as such but no child was born out of the said wedlock. The respondent was under the influence and pressure of her parents from the very beginning. She was a lady of dominant nature. The parents of the respondent used to pressurize her as they wanted that the parties should settle at their house but the appellant refused to accept her request. She used to leave the matrimonial house many a times and the appellant brought her

back sometimes either by making request or with the help of the panchayat. She used to harass, humiliate and maltreat the appellant and his parents. His parents allowed the appellant to live separately from them but even then the respondent did not mend her ways and always created trouble in the matrimonial life. In June, 2010, she left the matrimonial house without any reasonable cause and reached her parental house. She refused to join the company of the appellant and seeing no possibility of the respondent to join him, the appellant filed a petition under Section 13 of the Act for dissolution of marriage by a decree of divorce. The said petition was contested by the respondent by filing a written statement. Besides raising various preliminary objections, it was pleaded that at the time of marriage, her parents had given sufficient dowry articles but the appellant and his family members started demanding more dowry articles including the cash amount from the respondent and her family members. The appellant used to oust the respondent from the matrimonial home and she used to go to the matrimonial home after convening the panchayats. The appellant started threatening the respondent to perform the second marriage with any other girl in order to get the child and when she did not agree for the same, she was given merciless beatings. 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 petitioner is entitled to a decree of divorce u/s 13 of Hindu Marriage Act against the respondent on the grounds taken in the petition? OPP

2. Whether the petition is not maintainable in the present form? OPR
3. Whether the petitioner has concealed the true and material facts from the court. If so, its effect? OPR
4. Whether the petitioner has no cause of action to file and maintain the petition? OPR
5. Relief.

3. The appellant in support of his case, examined himself as PW1 and tendered his affidavit as Ex.PW1/A and Ramesh as PW2 who tendered his affidavit as Ex.PW2/A. On the other hand, the respondent appeared as RW1 and examined Nachhatar Singh Namberdar as RW2.

4. The trial court on appreciation of evidence led by the parties, decided issue No.1 against the appellant holding that the grounds of cruelty and desertion as pleaded by the appellant were not proved. Issues No.2 to 4 were decided in favour of the respondent observing that the petition was not maintainable in the present form nor the appellant had any cause of action to file and maintain the petition and he had concealed the true facts from the court. Accordingly, the trial court vide judgment and decree dated 22.10.2014 dismissed the divorce petition. Hence, the present appeal.

5. Learned counsel for the appellant submitted that the finding recorded by the trial court that the grounds of cruelty and desertion were not proved was against the record. It was further submitted that the respondent used to leave the matrimonial home without the consent of the appellant and he used to bring her back with the help of the Panchayat. It was urged that in June, 2010, she left the matrimonial

home and thereafter never joined the company of the appellant. It was also contended that the behaviour of the respondent towards the appellant and his family members was cruel.

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 **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. 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. Examining the factual matrix of the present case, it may be noticed that the respondent had examined Nachhatar Singh as RW2 who corroborated her version and categorically stated that the appellant used to give merciless beatings to the respondent and used to turn her out from the matrimonial home. The parents of the respondent convened several panchayats in which RW2 was also one of the panchayat members. He further deposed that the panchayat requested

the appellant to keep the respondent with him but he refused to do so. Admittedly, no child was born from the said wedlock. The respondent filed a petition under Section 125 of the Code of Criminal Procedure but the appellant had not paid the maintenance which showed that he wanted to get rid of her in one way or the other. Further, the respondent remained at her matrimonial home only for a period of three months from the date of her marriage. In the present case, the appellant appeared to be adamant and even he stated that he was ready to rehabilitate her if she so desired. He had contested the petition half heartedly. Further, the appellant had made general and vague allegations as his statement did not disclose any incident about which the alleged averments could be proved. Rather, from the evidence on record, the conduct of the appellant appears to be cruel towards the respondent. The facts and circumstances cumulatively lead to irresistible conclusion that the appellant had failed to prove the grounds of cruelty and desertion. The trial court had, thus, rightly dismissed the petition.

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 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 27, 2015
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(SNEH PRASHAR)
JUDGE