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

**FAO-M No.98 of 2010 (O&M)
Date of Decision: 31.03.2016**

Suman

.....Appellant

Vs

Dalbir

.....Respondent

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. R.N. Lohan, Advocate
for the appellant.

None for the respondent.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. This appeal is directed against the judgment and decree dated 13.01.2010 passed by Additional District Judge, (Fast Track Court), Rohtak, whereby petition under Section 13(1)(ia) of Hindu Marriage Act (hereinafter referred to as 'the Act') filed by the appellant was dismissed.

[2]. Appellant filed the petition for dissolution of her marriage with the respondent by decree of divorce under Section 13(1) (ia) of the Act on the ground that her marriage

was solemnized with the respondent on 03.07.1999 according to Hindu rites and ceremonies. The marriage was consummated and three children took birth from this wedlock.

[3]. Appellant alleged that the conduct of respondent-husband was very cruel towards her as he used to give merciless beatings to her on regular basis. He was addicted to liquor and narcotics. She quoted an instance of 10.04.1997, when she was broadly beaten under the influence of liquor and was turned out from matrimonial house. The matter was settled due to the intervention of respectables and she was sent back to the matrimonial house on 15.04.2007. Again on 10.08.2007, the respondent pressurised the appellant to bring money and buffalo from her parents. On showing inability she was beaten. Appellant informed her brother Dharambir, who gave buffalo and calf to the respondent, but the respondent sold the buffalo in order to fulfil his nefarious activities.

[4]. It is further alleged that the appellant was humiliated and tortured mercilessly. Respondent sold his agricultural land without any legal necessity and spent all the amount on his bad habits. When the misdeeds of the respondent was brought to the notice of the brother of the appellant, he convened a Panchayat in the month of December 2008 and asked the respondent to mend his behaviour, but there was no effect on

the conduct of the respondent, rather he insulted the Panchayat members and tried to give beatings to the appellant in their presence. He used filthy language against the appellant and shunted her out of the matrimonial house by snatching all the three children on 02.01.2009. Thereafter matter was sought to be settled on 15.01.2009 with the intervention of brother of the appellant and respectables of the village, who went to the house of the respondent, but respondent under the influence of liquor did not allow them to enter in the house and threatened them of dire consequences. He also refused to hand over the children. With these allegations, the petition under Section 13(1)(ia) of the Act came to be filed for dissolution of the marriage by decree of divorce.

[5]. The petition was contested by the respondent on all counts. Respondent submitted that he was a poor agriculturist. He never gave beatings to the appellant nor turned her out of the matrimonial house. No demands of money and buffalo were ever made by him. The allegations raised by the appellant were false. The agricultural land is still in the name of his father, who was still alive and there was no question of selling agricultural land for alleged intoxicants.

[6]. The respondent also contested the allegation of his being a drug addict. He submitted that he never consumed

liquor and, therefore, convening of Panchayat on said premises never happened. In fact appellant deserted him leaving behind all the three children with him and that caused mental and physical cruelty to the respondent. The petition was filed by the appellant-wife on false premise only with a view to get herself remarried with the brother-in-law (Devar) of her sister.

[7]. On the basis of pleadings of the parties, following issues were framed:-

“(i) Whether the petitioner is entitled for dissolution of her marriage with the respondent on the grounds alleged in the petition? OPP

(ii) Relief.”

[8]. Both the parties led their respective evidence on the aforesaid issues to prove their case.

[9]. Trial Court vide judgment and decree dated 13.01.2010 dismissed the petition with costs.

[10]. We have heard learned counsel for the appellant at some length.

[11]. Apparently the allegations of beatings have been alleged by the appellant against the respondent. Respondent has admitted in his cross-examination that his wife used to give money to her brother and that is why she was beaten by him

and she suffered injuries also. He himself got her treated. That occurrence took place on 10.04.2007. Thereafter the matter was resolved between the parties with the intervention of the respectables and appellant was sent back to the matrimonial house. In this way whatever happened on 10.04.2007 stood condoned between the parties.

[12]. The appellant while appearing in the witness box admitted in her cross-examination that her father-in-law Mahabir was still alive and agricultural land was in the name of his father-in-law. The agricultural land owned by the family was ancestral in nature. The allegation of selling land by her husband could not be fortified by any material on record, nor the allegation of demand of buffalo could be established by the appellant by way of any cogent evidence. Even according to respondent, he was dealing in trade of buffalo and his wife had brought two buffalo for which she was paid Rs.50,000/- for those buffalo.

[13]. Learned counsel for the appellant by highlighting the statement of RW-3 Rajbala submitted that the same amounted to cruelty as some unfounded allegations were made regarding her illicit affairs.

[14]. Careful perusal of the record reveals that appellant is not having custody of three children, who are in custody of the

respondent. The cross-examination of the appellant further showed that she never wanted to remain with the children, rather her stand was that after getting divorce, she will get the custody of the children. Her brother in his cross-examination admitted that the respondent had come to him to bring his sister, but he did not allow him to do so and asked him to go away and bring his elder brother. The reason for such denial was stated to be his drunken habits and beating his wife.

[15]. The main allegation against the respondent was that of beating his wife under the influence of liquor. Raj Singh PW-3 in his cross-examination has admitted that the father and brother of the respondent are good persons and he also admitted that respondent was also a good person, but later on he switched over to bad habits of taking liquor. This witness also admitted that except liquor, respondent has no other vices. The respondent has also admitted that previously he used to take liquor on some occasions, but now he has given up the liquor.

[16]. The allegation of cruelty should not be based on trivial matters, rather such allegations should have the origin in the context of time, place and manner of occurrence. General allegations of cruelty cannot constitute cruelty in the eyes of law so as to part ways in matrimonial house. In **A. Jayachandra vs. Aneel Kaur, 2005(1) RCR (Civil) 309**, the Hon'ble Apex Court

held that irritation or mere annoyance may not amount to cruelty, rather it is a spontaneous change of human behaviour based on problems of human being.

[17]. Cruelty has not been defined strictly anywhere, and it has to be gathered from attending circumstances of each case. The allegations of cruelty without specific particulars with regard to time, date and manner of committing cruelty cannot form cruelty in strict sense. In **Sushil Kumar vs. Pushpa Rani, 2014(1) Hindu Law Reporter, 197** the aforesaid proposition was highlighted for not constituting cruelty on that premise. The cruelty should be of such nature in which it is not reasonably expected to live together.

[18]. Cruelty has a wider connotation in the context of its root and configuration. It should be wilful and unjustifiably conduct of the spouse of such degree which may endanger the life of other spouse and may cause bodily injury to the spouse and the spouse has a reasonable apprehension of such danger. In **Gannath Pathaik vs. State of Orissa, (2002) 2 SCC 619** the Hon'ble Apex Court has commented upon the concept of cruelty and held that its effect varies from individual to individual, depending upon the social and economic status to which such person belongs. Cruelty may not physical. Even mental torture or abnormal behaviour may amount to cruelty and harrassment

in a given situation.

[19]. In **Samar Ghosh vs. Jaya Ghosh, 2007(2) RCR (Crl.) 515**, the Hon'ble Apex Court summed up the concept of mental cruelty by holding that no uniform standard can be laid down for guidance, but still instances were enumerated highlighting cruelty/mental cruelty.

[20]. 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. Mere coldness or lack of affection cannot amount to cruelty. In **V. Bhagat vs. D. Bhagat, AIR 1994 Supreme Court 710**, the underlying principles of mental cruelty were highlighted by the Hon'ble Apex Court. The relevant criteria is that in order to prove mental cruelty or cruelty based on mental disorder of one of the spouse, it has to be proved that it is not possible to live together and the same cannot be reasonably expected also.

[21]. Even filing of criminal cases *per se* are not to be construed in any strict way, directing cruelty. Mere filing of criminal cases cannot be sufficient to construe an act of cruelty unless and until such cases are found to be false. Mere utterances by RW-3 cannot be construed to mean cruelty as no such allegation was made by the respondent. Womenfolk while exchanging hot words *inter se* may resort to something which

cannot be proved by any cogent evidence. Admittedly all the children are living with the respondent. Use of liquor on some occasion cannot be held to be a continuing misconduct on the part of the husband. The conduct of the respondent is not sufficient to attract any culpability against him. No allegation has come forth to highlight antecedent behaviour of the respondent in the context of use of liquor or narcotics, rather the evidence of PW-3 Raj Singh is in consonance with the stand of the respondent, which otherwise appears to be *bona fide*.

[22]. In view of aforesaid, this Court is not in agreement with the contention raised by the learned counsel for the appellant. Consequently, finding no merit in this appeal, the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

March 31, 2016

Atik

(M. JEYAPPAUL)
JUDGE