

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

**FAO-M No.202 of 2011(O&M)
Date of Decision:01.06.2016**

Harjit Singh

.....Appellant

Vs

Harpreet Kaur

.....Respondent

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

Present: Mr. S.S. Ranghi, Advocate
for the appellant.

Ms. Amandeep Sibia, Advocate
for the respondent.

RAJ MOHAN SINGH J.

[1]. Husband-appellant remained unsuccessful in his endeavour to seek divorce under Section 13 of Hindu Marriage Act before the trial Court who dismissed the petition vide judgment and decree dated 22.04.2011. That is, how, the present appeal came to be filed by the husband-appellant.

[2]. Husband-appellant filed petition under Section 13 of Hindu Marriage Act for dissolution of marriage by decree of divorce, alleging that the marriage was solemnized with the respondent on 26.10.2004 as per Sikh rites and ceremonies.

The marriage was consummated but no child took birth from this wedlock. The behaviour of the respondent-wife was not proper towards the husband and his family members. She creating nuisance on petty issues and even she refused to go for honeymoon with the husband, alleging that the marriage was not performed as per her wishes.

[3]. The cruelty was alleged by the husband as against the wife as she insulted the husband and his parents in the presence of relatives and friends. The husband-appellant used to bear the expenses of the wife as she was visiting Punjabi University for her personal contract programme. The allegation of taking out of a sum of Rs.2500/- from the pocket of the appellant-husband without disclosing anything to the husband was also made against the respondent-wife.

[4]. Appellant-husband further alleged that on 02.01.2005, the respondent-wife along with her mother went to Mansa against the wishes of the husband and while leaving her matrimonial house, she took away entire gold ornaments and costly items along with her. On 09.01.2005, the husband along with Paramjit Singh went to the house of the respondent-wife for discussing the matter with the father of the respondent regarding her behaviour. The father of the respondent did not give any satisfactory answer and on 16.01.2005, father of the

respondent came to the house of the husband and dropped her in the house.

[5]. It was further alleged that on the same day, in the evening, respondent-wife told the husband-appellant that she was suffering from mental ailment and that is why she was not ready for the marriage and she did not want to live with the husband and wanted to go to Mansa. Threat of committing suicide was also given in the event of non-fulfilment of her desire. Finding no alternative, the husband took the respondent-wife to her parental house and narrated the whole story to her parents.

[6]. The non-disclosure of mental ailment by the respondent and her family members was claimed to be a cruelty on their part. She never did any household work. She did not allow the husband to have his matrimonial right. The mother of the husband was admitted in the Hospital on account of her ailment. The respondent and her family members never visited to see the ailing mother of the appellant.

[7]. On 23.01.2005. the husband along with his father and other relatives visited the house of the respondent at Mansa and requested the father of the respondent that the appellant-husband was ready to pursue the matter on mutual divorce as the husband did not want to go to the Court. The father of the

respondent started giving threats to the husband-appellant and other persons. With this background, petition came to be filed.

[8]. Upon notice, respondent-wife contested the case on all counts. She denied all the allegations in pith and substance. Respondent claimed that being a highly qualified lady she was leading her matrimonial life by fulfilling all her matrimonial obligations with due care and caution, but it was the appellant and his parents who was bent upon to get rid of her in order to fulfill their lust for dowry. The respondent and her relatives came to see the ailing mother of the husband-appellant, when she was admitted in the hospital, but they were not properly attended by the husband and his relatives.

[9]. On the very inception of the marriage, the husband was stressing upon the father of the respondent to keep him as 'Ghar Jawai', but the condition was not adhered to by the father of the respondent and as a result of that the husband was keeping grudge. The respondent never suffered from any mental disorder as alleged by the husband. Even the elder brother of the husband under the influence of liquor used to misbehave the respondent.

[10]. Both the parties went to trial on the following issues:-

“1. Whether the respondent has treated the petitioner with cruelty as alleged? OPP

2. Whether the petitioner is entitled to the

decree of divorce as alleged?

3. Whether the petition is not maintainable in the present form as alleged? OPR

4. Whether.”

[11]. The husband appeared himself as PW-1 and also got examined Raminderjit Singh, a close friend as PW-2. Besides examining Mammohan Singh brother of the husband as PW-3, Dr. Kulwant Singh was examined as PW-4.

[12]. On the other hand, respondent-wife appeared herself as RW-1 and her father was examined as RW-2. Thereafter, evidence of the respondent was closed. However, documents Ex.R-1 to Ex.R-13 were tendered in evidence.

[13]. After hearing the parties, the trial Court dismissed the petition vide judgment and decree dated 22.04.2011.

[14]. We have heard learned counsel for the parties and have carefully perused the record.

[15]. It is true that before the trial Court, an application was moved by the appellant for an order, facilitating medical examination of the respondent-wife to know her mental faculty. Husband alleged in the application that the respondent-wife be got examined from PGI, Chandigarh in the department of Psychiatry in order to test her mental faculty whether he was of sound mind or not.

[16]. Before taking up the issue of filing such application, we

thought it appropriate to see the material on record in terms of pleadings of the parties and evidence adduced thereto.

[17]. While appearing as RW-1, the respondent-wife has categorically mentioned in her examination-in-chief that she never refused to go for honeymoon, rather, the husband himself refused to go for honeymoon by saying that he did not have any money for that purpose. The respondent further stated that she never stated that she was not inclined to go to the matrimonial house or that she ever rendered insane by the in-laws. In fact, no such occurrence took place, rather the same was the creation on the part of the husband.

[18]. She further deposed that she was very much present in the matrimonial house in the month of April, 2005, when she appeared for M.A. (English) 2nd years at Modi College, Patiala and cleared the same despite the fact that the husband-appellant and his family members had created hell like situation in the matrimonial house and she was unable to pay proper attention towards her study. Even thereafter, she was turned out of matrimonial house and she did B.Ed also.

[19]. The allegation of desertion whether can be considered in the absence of *animus deserendi* in the light of aforesaid assertion, remained to be appreciated in the light of other attending circumstances. The respondent-wife further stated

that no Panchayat was ever convened by the appellant-husband to resolve the matrimonial dispute, rather Panchayat was convened at the instance of her father and the husband and his family members were sought to be apprised, but that was of no avail as they kept on repeating their demands under the lust of more dowry. Rather, the husband kept on pressing his demand to keep him as 'Ghar Jawai'.

[20]. In the cross-examination of the respondent, she has specifically denied of her ever visited to Rajindra Hospital, Patiala. She also denied of being under any treatment of doctor throughout her life, rather, she submitted that she had taken coaching for joining M.A. course from some officer in Military and got admission for M.A. course at Patiala University. On specific suggestion, she replied that she got admission in Punjabi University, Patiala and denied that she was under great depression, when she joined M.A English or she had been taking treatment from doctor for that ailment. She further denied that she was still under treatment for depression.

[21]. Having failed to extract any favourable response from the wife in the cross examination, the appellant-husband ventured to file application (Annexure A-1) attached with the appeal without adverting to the exact date on which the said application was filed. The filing of that application itself was an

exercise of futility inasmuch as that the examination of the respondent-wife was complete in terms of her cross examination, wherein specific suggestions were refuted and denied with reference to instances of studies, where the respondent sought admission and was involved in pursuing her studies. When the respondent could not extract anything incriminating from the testimony of the wife, he filed the said application, which was nothing but an abuse of process of law. The non-decision of such application in considered opinion of this Court was not fatal to the decision made by the trial Court. The Court in its judicial wisdom has to consider whether such application was at all necessary for just decision of the case. The answer is in negative.

[22]. The appellant sought divorce on the ground of cruelty and desertion. The ground as advanced was available to him under Section 12 of Hindu Marriage Act, but the appellant-husband sought to project a case of cruelty on account of non-disclosure of the ailment, which the respondent was suffering from at the time of marriage. No medical evidence was adduced by the appellant, nor any expert (Doctor) was examined to substantiate the allegation of mental disorder of the respondent-wife. Even in the cross examination, a feeble attempt was made to put certain questions which were effectively denied by the

respondent-wife.

[23]. 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.

[24]. 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.

[25]. 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 harassment in a given situation.

[26]. 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.

[27]. 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.

[28]. If the instances alleged by the appellant-husband are decided on the very threshold of law laid down on the subject of cruelty, it will be found that the case of the appellant is lacking in demonstrating cruelty at the instance of the respondent-wife. Normal wear and tear of matrimonial life and trivial issues cannot form cruelty so as to allow the husband to take divorce. It was not alleged that the conduct of the respondent-wife was such that in which appellant-husband had any reasonable apprehension of receiving any bodily injury or otherwise, rather evidence on record proved to be otherwise.

[29]. As regards the ground of desertion, period of separation of the couple was not on account of *animus deserendi* at the instance of the respondent-wife. She was sufficiently prevented from the company of the husband as she was shunted out from the matrimonial house and was not kept properly.

[30]. The testimony of the respondent while appearing as RW-1 i.e. her averment made in the context of her turning out from matrimonial house and creation of hell like atmosphere in the matrimonial house were never sought to be refuted by way of cross examination of the respondent. Feeble attempt was made by the appellant to extract something on the aspect of alleged mental disorder of the respondent-wife, which was

effectively denied by the respondent-wife in her cross examination. Living separately from matrimonial house was not on account of any *animus deserendi* at the instance of the respondent-wife, therefore, merely living separately cannot be considered to be a ground to seek divorce on the ground of alleged desertion.

[31]. Learned counsel for the appellant at last attempted to cull out favourable observations on the ground that the marriage has been irretrievably broken down keeping in view the period of separation between the couple and therefore, the marriage should be dissolved as the appellant-husband is not willing to join the matrimonial ties. The ground of irretrievable broken down of marriage even though followed at one point of time, now cannot be appreciated. Firstly, no such ground is available under the provisions of Hindu Marriage Act and secondly, the said ground can only be appreciated by the Hon'ble Apex Court while exercising powers under Article 142 of the Constitution of India. The precedents cited on that score i.e. **Durga Prasanna Tripathy Vs. Arundhati Tripathy, 2005(3) RCR (Civil) 819,** **Naveen Kohli Vs. Neelu Kohli, 2006(2) RCR (Civil) 290** and **G.V.N. Kameswara Rao Vs. G.Jabilli, 2002(2) RCR (Civil) 15** can be noticed only with the observation that the Hon'ble Supreme Court has all the command in terms of Article 142 of

the Constitution of India. Now the ground of divorce on account of that marriage having irretrievably broken down is no longer available to the parties under the provisions of Hindu Marriage Act.

[32]. Having considered the controversy, this Court is not inclined to interfere in the judgment and decree dated 22.04.2011 passed by Additional District Judge, Patiala. The appeal is dismissed and the decision of the trial Court is maintained.

(RAJ MOHAN SINGH)
JUDGE

01.06.2016

Prince

(M. JEYAPPAUL)
JUDGE