

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.M-32 of 2014

DATE OF DECISION: DECEMBER 14, 2016

Sangita Rani wife of Sanjeev kumarAppellant

Versus

Sanjeev Kumar son of Sh.Manmohan LalRespondent

CORAM:- HON'BLE MR.JUSTICE M. JEYAPPAUL
HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Ms.Ritu Punj, Advocate for the appellant.

Mr.GPS Bal, Advocate for the respondent.

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TEJINDER SINGH DHINDSA, J.

Appellant – Sangita Rani assails the judgment and decree dated 30.9.2013 passed by the Additional District Judge, Ludhiana allowing the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (for short “the 1955 Act”) thereby dissolving marriage of the parties.

2. The husband (respondent herein) filed a petition under Section 13 of the 1955 Act seeking divorce on the twin grounds of cruelty and desertion. It was averred that marriage between the parties was solemnized on 8.12.1990 according to Hindu rites and ceremonies. After solemnization of marriage, the parties lived and cohabited together and two daughters and one son were born out of the wedlock. The husband sought to substantiate the grounds of cruelty and desertion by stating that

the wife is a hot tempered lady and is in the habit of picking up quarrels over petty issues. It was asserted that the wife used to taunt the mother of the husband, who happens to be blind. It was also the case of the husband that the wife did not perform her marital obligations and has refused to do house-hold work like preparing food, washing clothes, utensils etc. It was averred in the petition filed by the husband under Section 13 of the 1955 Act that he had proceeded abroad in the month of August, 2004 and had returned to India in the year 2009 and even during such period, the attitude of the wife towards his family members was cruel. It was claimed that the father of the husband who was running a Post Office in the house had even transferred a portion of the house along with the post office in the name of the wife keeping in view her welfare, but inspite thereof, there was no improvement in her behaviour and attitude. Husband claimed that the parties were living separately since the year 2004 and there was no relationship of husband and wife between them. Yet another allegation levelled is that the husband has been falsely implicated in FIR bearing No.186 of 2009, dated 11.7.2009, under Sections 353, 186, 323 of the Indian Penal Code at Police Station Dehlon, Ludhiana at the instance of the wife.

3. The wife (appellant herein) filed a written statement denying all the allegations. To the contrary, the wife accused the husband of harassment and cruelty. It was stated that FIR No.186 of 2009 was lodged on 11.7.2009 when the husband had trespassed into the Post Office and demanded copy of an Insurance Policy and upon being denied the same he had beaten

up the wife mercilessly and in such occurrence, the wife had received multiple injuries. It was stated that the trial pertaining to FIR No.186 of 2009 is pending before the competent criminal Court. The wife maintained a stand that she was a dutiful wife and had been serving not only the husband but also her in-laws. The husband was accused of gross neglect inasmuch as during the entire period that he remained in foreign land i.e. from 2004 to 2009 he never sent back any money.

4. The trial Court framed the following issues:

1. Whether the petitioner is entitled to the decree of divorce u/s 13 of H.M.A. on the ground of cruelty as alleged?OPP

2. Whether the present petition is not maintainable?OPR

3. Relief.

5. It may be noticed that even though the petition had been filed by the husband/respondent herein under Section 13 of the 1955 Act for dissolution of marriage by grant of decree of divorce on the grounds of cruelty and desertion, yet the issue framed by the trial Court was qua the ground of cruelty alone.

6. The trial Court permitted the parties to lead evidence in support of their respective contentions. The husband stepped into the witness box as PW1 and examined Vanit Kumar as PW2 and Daljit Kaur as PW3. On the other hand, the wife appeared as DW1 and examined Balwinder Kaur as also Chetan Sharma as DW2 and DW3 respectively.

7. Learned trial Court after considering the pleadings, the

evidence adduced and rival submissions determined issue No.1 in favour of the husband. Trial Court also returned a finding that the marriage between the parties had 'broken down irretrievably'. As a consequence, the petition filed by the respondent/husband under Section 13 of the 1955 Act was allowed and a decree of divorce dissolving marriage between the parties was granted.

8. Feeling dissatisfied with the judgment passed by the trial Court, the instant appeal has been preferred by the appellant/wife.

9. Learned counsel appearing for the appellant has argued that no substantive evidence had been adduced by the respondent/husband to prove any overt act on the part of the appellant/wife which could be termed as 'cruelty' within the provisions of Section 13(1)(i-a) of the 1955 Act. It was contended that the ocular and documentary evidence led was insufficient to prove the act and conduct of the appellant/wife to fall within the scope and ambit of the term 'cruelty' so as to form a basis for grant of decree of divorce. Further categorical submission raised by learned counsel is that 'irretrievable break down of marriage' is not a ground for divorce under the 1955 Act and it was open for either of the spouses to claim decree of divorce only on the statutory grounds provided under Section 13 of the 1955 Act.

10. At this stage, we may notice that on an earlier date of hearing i.e. on 4.11.2016, the defence set up by the respondent-husband in the instant appeal had been struck off for the reason that inspite of repeated opportunities having been granted he had not paid and furnished the sum of ₹20,000/- awarded towards

litigation expenses for the appellant/wife. Be that as it may, we have afforded an opportunity to Mr.GPS Bal, learned counsel representing the respondent/husband to advance submissions so as to counter the arguments and contentions raised on behalf of the appellant/wife.

11. Mr.Bal has contended that the period of separation between the parties is for a substantial length of time and which is bound to create an unbridgeable distance between husband and wife. It is his contention that under such circumstances, the trial Court was justified to sever the marital tie on the ground of 'irretrievable break down of marriage'.

12. We have heard learned counsel for the parties and perused the records.

13. Under Section 13 (1)(i-a) of the 1955 Act, one of the grounds on which a spouse can seek dissolution of his/her marriage is that he/she had been treated with 'cruelty'. The term 'cruelty' has not been defined by the 1955 Act, but it is a settled proposition of law that to constitute cruelty, the conduct complained of should be grave and weighty so as to come to a conclusion that a complaining spouse cannot reasonably be expected to live with the other spouse. In other words, the 'act' complained of must be something far more serious than the ordinary wear and tear of a married life.

14. The Apex Court in **Parveen Mehta v. Inderjit Mehta, 2002(3) RCR (Civil) 529** had elaborated on the expression 'cruelty' as a ground of divorce under the 1955 Act and had observed as under:

“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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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.”

15. It is also well settled that vague assertions of jealousy, selfishness and possessiveness causing unhappiness or stress, mere coldness or lack of affection and other attendant circumstances in the normal wear and tear of a marriage do not constitute cruelty so as to form a basis for dissolution of marriage and grant of divorce under Section 13 of the 1955 Act.

16. In the light of such settled principles, we would now advert back to the instant appeal.

17. The respondent-husband had appeared before the trial Court as PW1. To substantiate the ground of cruelty, he has deposed that the wife (appellant herein) was a hot tempered lady

and used to pick up quarrels over trivial issues. In spite of having made efforts to make her understand, she used to misbehave and that too, in the presence of the friends and relatives of the husband. The respondent/husband further stated that the wife was used to a high profile life and used to get up late in the morning. She was even accused of mal-treating and taunting the mother of the husband in spite of the old lady being blind. To corroborate the ground of cruelty, the respondent/husband had even examined Vanit Kumar, PW2 as also Daljit Kaur, PW3. The deposition of Vanit Kumar, PW2 and Daljit Kaur, PW3 is verbatim and on the same lines as per averments contained in the petition filed by the husband under Section 13 of the 1955 Act. The allegations raised by the respondent/husband and as discernible from the petition as well as deposition of the husband and his witnesses are devoid of any material particulars, much less reference to any specific acts of cruelty, whether physical or mental. A perusal of the findings recorded by the trial Court would reveal that the respondent-husband has not been able to prove any specific instance of cruelty. It appears that the trial Court has taken the assertion made by the respondent-husband against his wife as regards cruelty to be a gospel truth. This Court would view the witnesses examined by the husband i.e. PW2 Vanit Kumar and PW3 Daljit Kaur as interested witnesses. Admittedly, PW2 Vanit Kumar is not only a co-villager but also happens to be a cousin brother of the respondent/husband. Likewise, PW2 Daljit Kaur was also a permanent resident of the same village as of the respondent/husband and it would be

natural for such witness to have supported the cause of the husband. In any event, the deposition of PW2 and PW3 does not disclose any particular date or incident in relation to the alleged cruel behaviour attributed to the wife i.e. the present appellant. To the contrary, the deposition of the respondent-husband as also his witnesses PW1 and PW2 would suggest that it is the husband who has been remiss towards his marital obligations. In his cross-examination, Sanjeev Kumar, PW1, respondent/husband admitted that it was the wife who was maintaining and taking care of the children as also paying all the expenses towards their education. He also admitted that he had remained out of the country from August, 2004 till the year 2009 and he did not possess any receipts regarding payment/money having been sent back for the sustenance of the family. In cross-examination, the respondent/husband stated that he does not even remember the date of birth of his children. He also stated that his wife Sangita Rani had convened the Panchayat on three occasions to facilitate a reconciliation, but the same did not yield any positive result. Vanit Kumar, PW2 i.e. cousin brother of the respondent/husband, in cross-examination, stated that he does not remember any date or instance when the husband and wife quarrelled with each other. He also admitted that it was the wife i.e. present appellant who is paying the maintenance and educational expenses of the children.

18. In the light of the evidence adduced on record, we are of the considered view that the finding recorded by the trial Court in favour of the respondent-husband and against the wife on the

ground of cruelty is perverse and cannot sustain.

19. A perusal of the impugned judgment and decree passed by the trial Court would clearly reveal that the petition filed by the respondent/husband under Section 13 of the 1955 Act seeking dissolution of marriage has been allowed by recording a finding that the marriage between the parties has 'irretrievably broken down'. The relevant extract of the impugned judgment reflecting the reasoning adopted by the trial Court in such regard is being re-produced hereunder:

*“.....The counsel for the petitioner has relied upon the law settled in **Naveen Kohli v. Neelu Kohli, 2006(2) RCR 290** wherein the Hon'ble Supreme Court of India has held that divorce may be granted on the ground that the marriage has broken down irretrievably, though the wife does not want divorce. The law settled in this ruling is applicable to this case. It is proved that the parties are residing separately since the year 2004 and have not cohabited with each other thereafter. The criminal litigation is also pending between them. The marriage has broken down beyond repair.”*

20. We are completely in agreement with the submission raised by learned counsel appearing for the appellant/wife that the ground of irretrievable break down of the marriage has not been provided by the legislature for granting a decree of divorce under Section 13 of the 1955 Act. As such, it was not open for the trial Court to have added such a ground to Section 13 of the

1955 Act as the same would tantamount to amending the Act itself. Such a course of action was not permissible. In taking such view, we would draw support from the judgment of the Hon'ble Supreme Court in **Vishnu Dutt Sharma v. Manju Sharma, 2009(2) RCR (Civil) 506** and wherein it had been authoritatively held as under:

“10. On a bare reading of Section 13 of the Act, reproduced above, it is crystal clear that no such ground of irretrievable breakdown of the marriage is provided by the legislature for granting a decree of divorce. This Court cannot add such a ground to Section 13 of the Act as that would be amending the Act, which is a function of the legislature.

11. Learned counsel for the appellant has stated that this Court in some cases has dissolved a marriage on the ground of irretrievable breakdown. In our opinion, those cases have not taken into consideration the legal position which we have mentioned above, and hence they are not precedents. A mere direction of the Court without considering the legal position is not a precedent.

12. If we grant divorce on the ground of irretrievable breakdown, then we shall by judicial verdict be adding a clause to Section 13 of the Act to the effect that irretrievable breakdown of the marriage is also a ground for divorce. In our opinion, this can only be done by the legislature and not by the Court. It is for

the Parliament to enact or amend the law and not for the Courts. Hence, we do not find force in the submission of the learned counsel for the appellant."

21. In **Anil Kumar Jain v. Maya Jain**, 2009(4) RCR (Civil) 309, the Apex Court had sounded a word of caution that the High Court as also the trial Court cannot grant a decree of divorce on the ground of irretrievable break down of marriage as there is no such provision/ground available under Section 13 of the 1955 Act. It was further held that only the Supreme Court itself in exercise of its extra-ordinary powers under Article 142 of the Constitution of India, can grant divorce on such ground or on any other ground not provided under Section 13 of the 1955 Act. We have no hesitation in holding that the trial Court has clearly exceeded its jurisdiction while passing the impugned judgment and decree dated 30.9.2013 and thereby granting divorce on the ground of 'irretrievable break down of marriage'.

22. In view of what has been discussed hereinbefore, the instant appeal is allowed. The impugned judgment and decree dated 30.9.2013 passed by the trial Court is set aside. The petition for divorce filed by the respondent/husband shall stand dismissed.

23. Appeal allowed.

(M. JEYAPPAUL)
JUDGE

(TEJINDER SINGH DHINDSA)
JUDGE

DECEMBER 14, 2016
SRM

Note: *Whether speaking/reasoned? (Yes/No)*
Whether referred to Reporter? (Yes/No)