

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-M-107-2004

Date of Decision: 9.5.2017

Dilbag

....Appellant.

Versus

Smt. Sushila

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU.**

PRESENT: Mr. Amit Aggarwal, Advocate for
Mr. Sudershan Goel, Advocate for the appellant.

None for the respondent.

AJAY KUMAR MITTAL, J.

1. Having remained unsuccessful 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 before the Additional District Judge, Bhiwani, the appellant-husband has approached this Court by way of instant appeal challenging the judgment and decree dated 31.1.2004.

2. A few facts necessary for adjudication of the present appeal as narrated therein may be noticed. The marriage between the parties was solemnized in the year 1981 at village Mandola, Tehsil Dadri, District Bhiwani, according to Hindu rites and ceremonies. They lived together as husband and wife at village Imlotha and cohabited as such. From the said wedlock, a male child was born on 2.2.1988. After 1½ years, the respondent started behaving in an abnormal manner as she stopped doing the routine household work. She used to go to her parental home when asked to behave properly. After making efforts for reconciliation, she was brought back to

the matrimonial home. The younger sister of the respondent was also married to the younger brother of the appellant and they were residing as husband and wife in ordinary manner in the same house jointly. In April, 1990, the respondent left her matrimonial home on the pretext that she was going to field to meet the appellant but had gone to her parents house. When the parents of the appellant again made efforts in the year 1992 to reconcile the matter and had gone to her parents along with some respectables of the village, some ladies misbehaved with the mother of the appellant and gave her slap. In April, 1990, the respondent had deserted the appellant. Accordingly, the appellant 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 respondent-wife by filing a written statement. Besides raising various preliminary objections, it was pleaded that the behaviour of the appellant was not good and he always used to quarrel with her without any reason. Further, the appellant and his mother did not allow the respondent to live in the matrimonial home. She is ready to live with the appellant. The other averments made in the petition were denied and a prayer for dismissal of the same was made. The appellant filed replication controverting the averments made in the petition and reiterated the averments made in the petition. From the pleadings of the parties, the court below framed the following issues:-

1. Whether the petitioner is entitled to dissolution of marriage on the grounds of desertion and cruelty as mentioned in the petition? OPP
2. Whether the petition is not maintainable in the present form? OPR

3. Relief.

3. In support of their case, the parties have led their respective evidence.

4. The trial court on appreciation of evidence led by the parties, decided issue No.1 against the appellant holding that no evidence was produced to show that the respondent had caused cruelty and desertion by her act and conduct. Further, it was held that the appellant had failed to establish that the respondent had left the matrimonial home without his consent and not returned thereafter. Issue No.2 was decided against the respondent being not pressed. Accordingly, the trial court vide judgment and decree dated 31.1.2004 dismissed the divorce petition filed under Section 13 of the Act. Hence, the present appeal.

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

6. 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.

7. 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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21. Cruelty for the purpose of Section 13(1)(ia) is to be taken as a behaviour 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.”

8. 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.”

9. In the present case, the instances of the appellant were merely the result of wear and tear of the married life and could not be treated as cruelty of such a degree that the parties could not live together or their marriage needs to be dissolved. Further, the averments made in the petition and the evidence led in support thereof only show the sensitivity of the appellant with respect to the conduct of the respondent which could not be

termed more than ordinary wear and tear of the family life. The circumstances or the allegations levelled by the appellant are not of such serious nature as no specific date, month or year of the alleged incidents had been given either in the pleadings or in the statements. Further, the appellant had not brought on record any substantive, trustworthy and independent evidence to prove the allegations that the respondent was of quarrelsome nature. There are no concrete instances and evidence to show the conduct of the respondent-wife to be cruel. In such circumstances, the appellant had failed to prove that he was treated with cruelty by the respondent. Further, the trial court had held that the witnesses examined by the appellant were interested witnesses and even the appellant had failed to produce any evidence to show that the respondent had caused cruelty and desertion by her act and conduct. The respondent was ready to live with the appellant but he had thrown her out from the matrimonial home. It was also held that the appellant had failed to establish that the respondent had left the matrimonial home without the consent of her husband.

10. The trial Court after appreciating the testimonies of various witnesses had rightly concluded that no cruelty or desertion on the part of the respondent stood established. The relevant findings recorded by the trial court read thus:-

“8. I have perused the statements of the parties and witnesses examined by them. All the witnesses examined by the petitioner are his relatives. PW2 Bharat Singh is the grand-father of the petitioner. PW3 Baljit Singh is the brother of the petitioner. PW4 Subhash Chander is also the relative of the petitioner. They are interested witnesses. There is no evidence on the file to show that the respondent has caused cruelty and

desertion by her act and conduct. The respondent has deposed that she is ready to live with the petitioner, but it is the petitioner who has thrown her out from the matrimonial home. The petitioner has kept his son Sonu with him of his own. PW3 Baljit Singh has deposed that she used to throw stones upon them in market but in cross-examination he could not tell the date and month when she pelted stones upon them. The statement of this witness is not reliable. No person who has joined the Bhai Biradari Panchayat was examined by the petitioner. The younger sister of the respondent has been living in the matrimonial home with her husband, therefore, it cannot be believed that the respondent has deserted the petitioner. It is not established on the record that the respondent has left the matrimonial home without husband's consent and not returning thereafter. Therefore, in my opinion, the cruelty and desertion have not been proved on the record.”

11. No illegality or perversity could be pointed out by the learned counsel for the appellant in the aforesaid findings recorded by the trial court which may warrant interference by this Court. Accordingly, the present appeal being devoid of any merit, is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

May 9, 2017
gbs

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes