

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

FAO No.1088 of 2016(O&M)

Date of Decision:-03.11.2017

Dr. Sonia Kuruvilla.

.....Appellant.

Versus

Dr. Simon Chaudhary.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- Mr. Vipul Aggarwal, Advocate for the Appellant.

Mr. Ashish Chopra, Advocate for the respondent.

JASWANT SINGH, J.

1. Appellant-Wife-Sonia Kuruvilla has filed the present appeal aggrieved against the judgment dated 19/01/2016, whereby petition filed by respondent husband-Simon Chaudhary under Section 10 of the Divorce Act 1869, has been allowed and consequently, marriage dated 05/11/2012 between the parties was dissolved on account of subjecting the husband to severe mental cruelty by wife.

2. In brief, facts of the case are that the parties to the present 'Lis' are Christian by religion, doctors by profession and their marriage was solemnized on 05/11/2012 according to Christian rites and

ceremonies at a Church of South India, Christ Church, Thiruvananthapuram (Kerala). Thereafter, the parties started residing at their matrimonial home at House No. 823, Sector 2, Panchkula. The matrimonial home consisted of the parents and brother of the husband, wife and the husband himself. However, as per the petition filed for divorce, after a few days, the behaviour of wife started to change and she used to get recurrent attacks of insanity. Further, as per the allegations, wife wanted to reside separately from the joint household of husband and after a few months, husband allegedly accepted the demand of wife and shifted to a separate household in January 2013 at House No. 139-B, Sector 4, Panchkula. It is further alleged by the husband that despite shifting to the said separate household, wife used to leave for her parents home i.e. Kerala after every 15 days and subsequently, she wanted the husband to shift to Kerala and start the Medical practice there. However, husband refused to shift to Kerala, which led to numerous incidents of alleged cruelty as mentioned in the divorce application because of which the parents of husband were constrained to file a suit for permanent injunction, in which an order was passed, whereby, wife was injuncted from entering the House of parents situated at House No 823, Sector 2 Panchkula. It is further alleged by the husband that a false FIR No. 453 dated 06/09/2013 was lodged against him, his parents and brother by the wife under Sections 323, 406, 498-A, 506 and 34 of IPC which included leveling of serious allegations of unnatural sex, harassment etc. Simultaneously, an

application under Section 12 of the Domestic Violence Act was also filed by her and at present, she is earning handsomely and has got a job as a Resident Doctor in Sector 32, Government Hospital, Chandigarh. With these allegations, husband had prayed for grant of decree of divorce on account of cruelty having been committed by the wife.

3. On the other hand, in the written statement filed by the wife, it was alleged by her that after 5-10 days of marriage it was the husband and his family members who started harassing her for bringing less dowry. As per her, the family of the husband wanted her to earn money, as she is M.D in Gynecology and feed them. It was further alleged that in fact, cruelty has been committed by the family members of the husband, as in December 2012, she had conceived but husband and his parents did not want a child and therefore, sought abortion. In order to avoid the said abortion, she went to Kerala but the pregnancy could not be saved. It was further alleged that on 10/01/2013, she was beaten up by the family of the husband and again cruelty was committed upon her. Apart from these, numerous other incidents were mentioned, refuting the incidents mentioned by the husband in his divorce petition. It was rather stated that she does not intend to take divorce and wants to rehabilitate with her husband. Remaining averments were denied. However, lodging of an FIR and complaint under Domestic Violence Act were admitted to be correct.

4. In order to prove their assertions, both husband and wife appeared as the sole witnesses of the case, as PW-1 and RW-1

respectively. After hearing both the parties, the learned Trial Court granted the husband divorce on the ground of cruelty. The Court, after analysing the other evidence came to a conclusion that the wife was indeed committing cruelty upon him, by discussing the aggravating circumstances. Hence the present appeal.

5. Learned Counsel for the appellant has argued that the findings returned by the Ld. Trial court while coming to the conclusion that cruelty was committed by the wife-appellant, is completely against the record and liable to be set-aside. He has argued that baseless allegation of that appellant-wife was suffering from recurring attacks of insanity, was found to be absolutely incorrect and this fact itself shows that the respondent-husband intends to malign the reputation of the wife and also can go to any level to allege false allegations against her in order to succeed in the case of divorce. He has further argued that the findings returned by the court below that the abortion was not due to husband's act and conduct, is also wrong and perverse because the evidence led on file reveals that it was on account of cruelty meted out to her by the family members of the husband along with the husband, which led to abortion. It has been also argued that the findings of the court below that no dowry was demanded is also completely baseless and against the evidence. It is stated that the FIR is pending trial and fixed for PWs, whereas in the complaint under Domestic Violence Act, the evidence of complainant-wife is to be recorded. It has been finally argued that no cruelty has been committed by the wife which would fall

under the ambit of section 10 (x) of the Divorce Act 1869, as per which, there should be a harmful or injurious intent on part of the spouse, for the other spouse to have a reasonable apprehension in his mind that he cannot co-habit with her. However, none of the ingredient of Section 10(x) of 1869 Act are made out. Hence, prayer has been made for acceptance of the appeal and setting aside of the impugned judgment passed by the trial court.

6. On the other hand, learned Counsel for the respondent-husband has argued that the Ld. trial court had rightly come to a conclusion that appellant-wife had committed cruelty upon the husband and therefore, the well reasoned findings returned by the trial court does not warrant any interference. He has however, argued that although it is not proved that any dowry articles were given, still, in case the court directs for an amicable settlement, he is ready to compensate to the extent of 17 lakhs (which includes alleged household articles given to the respondent-wife at the time of marriage to the tune of Rs. 14 lakhs and Rs. 3 lakhs spent by wife's family at the time of solemnizing marriage in Kerala). Thus, he has prayed that the present appeal may be dismissed.

7. I have heard Ld. counsel for the parties and have perused the paper book as well as the record with their able assistance very minutely and have come to a conclusion that the present appeal is devoid of any merit and deserves to be dismissed.

Before adverting to the controversy involved in the present

case, it would be apposite to reproduce extracted Section 10 (x) of the Divorce Act, 1869 which is applicable to the present case:

“ 10(x) the respondent has treated the petitioners with such cruelty as to cause a reasonable apprehension in the mind of the petitioners that it would be harmful or injurious for the petitioner to live with the respondent ”

A bare perusal of the said section would show that in case, either of the party to the marriage has a “reasonable apprehension” in its mind that it would be harmful or injurious for him/her to reside with the spouse, then divorce can be granted to the aggrieved party. Meaning of the word “reasonable apprehension” would mean, to my mind, an apprehension which a rational or sensible human being, living an ordinary life could have. It has to be interpreted to mean the practical difficulties that a spouse may comprehend/face while living with the other spouse. As far as the words “harmful or injurious” are concerned, they may not be read as the literal dictionary meaning given to them. Rather, they have to be read co-jointly with the word “reasonable apprehension”. Consequently, “harm or injury” would include mental/physical welfare of a human being and his/her immediate family members. Further, the word “mental cruelty” is basically 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, 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's 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. The approach, therefore, should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference.

8. Accordingly, the present case has to be analyzed and decided by keeping the aforesaid definition and the meaning given to the words of Section 10(x) of Divorce Act, 1869.

In the present case, it is apparent from the record that wife, while appearing in the witness box as RW 1 has admitted in her cross examination that prior to matrimonial alliance, the husband frequently used to talk to her on her mobile phone and when her 'talking plan pack' used to come to an end, it was the husband who was getting the same recharged, telling her that it was his duty to do so. Meaning thereby, an intimacy had developed between both the partners. However, the things took a down turn after marriage and a situation arose where appellant-wife filed a criminal complaint against the husband and his family members for seeking dowry from her. However, it has come on record and it stands un-rebutted till date that no list of dowry articles was ever given or attached alongwith the police complaint (Exhibit P 53). However, the cross-examination

conducted upon the wife speaks volumes of her act and conduct, whereby she has admitted that she had not gone through the contents of the complaint on the basis of which FIR (Exhibit P-54) was lodged and in fact, it is her uncle who has been pursuing the case. She falsely stated that the said FIR was lodged by the police on her own and in fact she had never pressed for the same. This fact cannot be taken to be correct because had she not been pursuing the FIR, it would have been cancelled/compromised at that time itself. Further, this statement loses its credibility because respondent-husband was remanded to police custody after arrest (supported by appellant wife and her uncle Berry Thomas) and it was after remaining in police custody for a few days that husband was able to secure his bail. Had the wife not lodged the FIR out of her own will, she could not have let her husband stay in jail and oppose grant of bail. However, admittedly, the case is still pending trial before the criminal court for PWs and this shows wife has been pursuing the same. This conduct of the appellant-wife itself goes a long way to prove that she, very cleverly, has tried to deny the respondent-husband a decree of divorce by stating that no FIR was lodged at her instance. Although, it is settled position of law that a stray incident of complaint alone cannot be construed to be an act of cruelty. However, this act of wife to file an FIR and get the husband arrested and subsequently, during divorce proceedings, trying to disown the same, by stating that police had lodged the FIR on its own, proves volumes about the act and conduct of the wife. Not only this, a complaint under

the Domestic Violence Act is also pending consideration before the criminal courts.

Not only this, the allegation of abortion as levelled against the husband were rightly found to be incorrect by the Ld. Trial Court because in the cross-examination, wife has admitted that there were complications in the pregnancy and still she preferred to leave for Kerala where pregnancy was ultimately terminated. It is on record that husband has been providing the wife with money to buy the tickets or has been by giving tickets to the wife for going to Kerala time and again. In fact, it seems that it was the wife who was adamant to leave for Kerala despite there being complications in pregnancy and despite being a doctor herself (a gynaecologist) and thus, it cannot be accepted that she did not know what could be the repercussions for travelling with such complications in pregnancy. Consequently, it cannot be entertained that husband or his family had anything to do in the termination of the pregnancy as alleged by wife and thus, false allegations were leveled against him.

It has further come on record that despite husband shifting his matrimonial home in Sector 4 Panchkula, a brawl took place in the house of parents of husband at Sector 2 Panchkula, for which a PCR was called and the parents and husband had to face harassment and embarrassment before the neighbours. Once, wife had been provided with a separate matrimonial home, it is completely unjustified for her to go her parents-in-law's home and create a scene there. Not only this, it

has also come on record that aged parents of husband had to file a suit for permanent injunction, so as to restrain the wife from entering their house in Sector 2 Panchkula (Ex P-35).

In this way, it has, clearly been established on record that the marriage between the parties is all but over and appellant-wife has been subjecting the husband-respondent with mental cruelty to such an extent that he has a valid reasonable apprehension in residing with wife-appellant as harm or injury can be caused to him. It must be kept in mind that the present appeal is being decided by keeping into consideration the ingredients of Section 10(x) of 1869 Act, as per which a reasonable apprehension is enough.

9. To the mind of this court, married life is required to be reviewed as a whole and the conduct must be persistent for a fairly lengthy period and where the relationship has deteriorated to an extent that because of the action/ behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, then, this must tantamount to be '*reasonable apprehension*' for being caused harm or injury. Since, in the present case, there is enough evidence on record to show incidents of harassment as well as criminal litigation pending between the parties, it is a fit case where divorce is required to be granted. Another factor that weighed heavily in the mind of this court is that it stands established that both the parties, well placed doctors, have been living separately for the past four years and there seems to be no possibility of rehabilitation.

10. Thus, keeping in view the totality of the facts and circumstances of the case in hand and especially keeping in view the definition of Section 10(x) of the Divorce Act, 1869, this court is of the confirmed opinion that the respondent-husband has been treated to such cruelty which has caused a reasonable apprehension in his mind that it would be harmful or injurious for him to live with the appellant-wife. Accordingly, I affirm the findings returned by the learned trial Court and dismiss the present first appeal, being without any merit.

(JASWANT SINGH)
JUDGE

November 3rd, 2017

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>