

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-M-2 of 2016

Date of Decision: 8.5.2017

Lakhvir Singh

....Appellant.

Versus

Rupinder Kaur

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. Anupam Singla, Advocate for the appellant.

None for the respondent.

AJAY KUMAR MITTAL, J.

1. In this appeal, the appellant-husband has challenged the judgment and decree dated 3.10.2015 passed by the Additional District Judge, Bathinda, whereby the petition filed by him under Section 13 (1) of the Hindu Marriage Act, 1955 (in short “the Act”) for dissolution of marriage by a decree of divorce was dismissed.

2. Briefly stated, the facts necessary for adjudication of the present appeal as narrated therein may be noticed. The marriage between the parties was solemnized on 9.3.2008 at City Palace, Goniana Mandi, District Bathinda by way of Anand Karaj ceremony. The parties lived together as husband and wife and cohabited as such. Out of the said wedlock, a female child was born. The respondent was of quarrelsome nature lady and used to pick up a quarrel with the petitioner-appellant

without any reasonable cause and also insulted the appellant and his family

members in the presence of respectable, relative, visiting guests and neighbourers. Even the respondent left the house many times after short intervals and the appellant used to bring her back with the request to mend her ways. But she did not mend her ways and continued to harass, humiliate and maltreated him and his family members. The respondent demanded expensive articles and due to non-fulfilment of her demands, she started dominating him and caused mental cruelty to him. Further, the respondent was suffering from serious ailment of Gathia and did not take care of her child. On 15.7.2011, the respondent along with his parents and brother entered the house of the appellant and threatened him and his mother of dire consequence in case they told the disease of the appellant to any one. In this regard, a complaint was also got lodged with the police on 16.7.2011. The appellant tried his level best to bring the respondent back to the matrimonial house and even also took the matter in the panchayat, but she refused to come and live with the appellant. Accordingly, the appellant filed a petition under Section 13(1) 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 marriage was solemnized with great pomp and show and a sum of ₹ 30 lakhs was spent on the marriage. The parents of the respondent tried to fulfill the demands of the appellant and his family but they always remained dis-satisfied and ultimately she was turned out from the matrimonial home. She always wanted to join the company of the appellant but he refused to do so. The appellant and his family were under the influence of one Manpreet Kaur, resident of Malaysia, who used to interfere in the martial life of the couple.

Even they demanded more dowry and due to non-fulfilment of their demands, the respondent was given beatings. Further, the respondent was ready and willing to join the company of the appellant who failed to rehabilitate her and forcibly turned her out of the matrimonial home. The other averments made in the petition were denied and a prayer for dismissal of the same was made. From the pleadings of the parties, the court below framed the following issues:-

1. Whether the respondent has treated the petitioner with cruelty? OPP
2. Whether the present petition is false, frivolous and baseless, if so its effect? OPR
3. Relief.

3. In support of his case, the appellant besides sworn his affidavit Ex.PW4/A, examined PW1 Gurpreet Singh, PW2 Gobind Singh, PW3 Jaswinder Kaur and PW5 Swaran Singh. On the other hand, the respondent herself appeared as RW1 and had examined RW2 Mohtam Singh, RW3 Buta Singh and her mother Jasbir Kaur as RW4.

4. The trial court on appreciation of evidence led by the parties, decided issue No.1 against the appellant holding that he had not been able to establish the grounds of mental as well as physical cruelty. Issue No.2 was decided against the respondent being not pressed. Accordingly, the trial court vide judgment and decree dated 3.10.2015 dismissed the divorce petition filed under Section 13 (1) 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 some 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. The relevant findings recorded by the trial court read thus:-

“13. Perusal of the entire pleadings and evidence brought on record by the petitioner, reveals that the quarrels and fights mentioned by the petitioner are nothing but normal wear and tear of normal life and do not come within the purview of cruelty, so serious, that the petitioner can be

given the decree of divorce on the basis of alleged cruelty. Under Section 13(1)(a) of the Act, the marriage could be dissolved by a decree of divorce on the ground that the either party has, after the solemnization of the marriage, treated the petitioner with cruelty.

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14. In the light of the aforesaid observations it is to be seen as to whether the petitioner is successful to make out a case or circumstances which constitute cruelty. The circumstances or the allegations levelled by the petitioner already discussed in detail are not of such serious nature as no specific date, month or year of the alleged incidents has been unfolded by the petitioner either in the pleadings or in the statements. Though, the petitioner levelled allegations that the respondent wife was of some quarrel some nature, but he has not brought on record any substantive, trustworthy and independent evidence to prove this fact and accordingly, such an unfolded and false allegations, otherwise, amounts to cruelty qua respondent wife. Apparently, from the evidence available on record, it appears that there were some quarrels between the petitioner husband and respondent wife coupled with some allegations and counter allegations , between themselves which are not more than normal wear and tear of family life and are not sufficient to grant

decree of divorce.”

10. Learned counsel for the appellant was unable to demonstrate that there was any error or perversity in the findings recorded by the trial court being based on misappreciation or misreading of evidence which may warrant interference by this Court. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

May 8, 2017
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(RAMENDRA JAIN)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes