

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-M-388-2016

Date of Decision: 8.5.2017

Mamta Rani

....Appellant.

Versus

Sonu

...Respondent.

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

PRESENT: Mr. Jaswinder Singh Grewal, Advocate for the appellant.

None for the respondent.

AJAY KUMAR MITTAL, J.

1. In the instant appeal, the appellant-wife has challenged the judgment and decree dated 3.9.2016 passed by the Additional District Judge, Fazilka, whereby the petition filed by her under Section 13 (wrongly mentioned as Section 13A in the heading of the petitioner) of the Hindu Marriage Act, 1955 (in short "the Act") for dissolution of marriage by a decree of divorce, was dismissed.

2. Put shortly, the facts necessary for adjudication of the present appeal as narrated therein may be noticed. The marriage between the parties was solemnized on 14.6.2003 at village Razi Ka Kalan, Tehsil and District Bathinda, according to Hindu rites and rituals. The parties lived together as husband and wife and cohabited as such. Out of the said wedlock, two sons, namely, Sahil and Shantu were born. The respondent maltreated the appellant for bringing less dowry and demanded more dowry in the shape of cash amount of ₹ 2 lakhs. He in connivance with his family members caused mental as well as physical cruelty to the appellant and gave severe beatings

to her. He was addicted to intoxicants. On 18.5.2014 and 2.10.2014, the

appellant was turned out of her matrimonial home by the respondent after giving beatings to her and she was admitted to Civil Hospital, Abohar. On 19.10.2014, the appellant convened a panchayat to the house of the respondent and requested him not to cause physical and mental cruelty to her and her minor children, but to no effect. Accordingly, the appellant filed a petition under Section 13 (wrongly mentioned as Section 13A in the heading of the petitioner) of the Act for dissolution of marriage between the parties by a decree of divorce. The said petition was contested by the respondent-husband by filing a written statement. Besides raising various preliminary objections, it was pleaded that the appellant was caught red handed with one Pawan Kumar and the matter was reported to the Police Station, City I, Abohar where the compromise was effected on the condition that said Pawan Kumar would leave the area. 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 petitioner is entitled to decree of divorce as prayed for? OPP
2. Whether the respondent has treated the petitioner with cruelty? OPP
3. Whether the petitioner has got no cause of action to file the present petition? OPR
4. Whether the petitioner has not come to the court with clean hands and suppressed the material facts? OPR
5. Relief.

3. In support of her case, the appellant examined herself as PW1, her father Karanjeet Singh as PW2, her sister Mamta Rani as PW3, Ami Chand as PW4, Dr. Amita Choudhary, Medical Officer, Civil Hospital, Abohar as PW5 and Dr. Sandeep Kumar Khosa, Epidemiologist as PW6. On the other hand, the respondent himself appeared as RW1 and closed his evidence.

4. The trial court on appreciation of evidence led by the parties, decided issues No.1 and 2 together being interconnected against the appellant and in favour of the respondent holding that she had failed to prove the ground of cruelty as against the respondent. Issues No.3 and 4 were decided together in favour of the respondent and against the appellant. Accordingly, the trial court vide judgment and decree dated 3.9.2016 dismissed the petition filed under Section 13 of the Act for dissolution of marriage by way of passing a decree of divorce. 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.

XX	XX	XX
XX	XX	XX

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, specific allegations were levelled by the respondent that the appellant was having illicit relations with one Pawan Kumar and she was caught red handed, in a compromising position with said Pawan Kumar which gave rise to disturbed relationship between the

parties. Further, there is admission on the part of the appellant on the document Ex.D1 proved on the file. On the one hand, the appellant moved an application to the Deputy Superintendent of Police, Abohar that said Pawan Kumar was in the habit of teasing her when her husband was away from the house and on the other hand in her statement as PW1 she had denied having any acquaintance with Pawan Kumar. There were material discrepancies in the statements of PW1 and PW2. The respondent proved on file the resolution of the panchayat Mark D1/A signed by more than 22 persons regarding the character of the appellant, however, the original of the said document was not proved on the file. On the basis thereof, the trial court held that the appellant had failed to prove the ground of cruelty as against the respondent. It was further held that the false allegations were levelled by the appellant as nothing was mentioned by the appellant or at the time of statement as to what kind of articles were given by her parents in her marriage and what kind of articles were demanded by the respondent after the marriage. The injuries suffered on the person of the appellant were not sufficient to prove any kind of cruelty as no eye witness was examined by her who had witnessed the occurrence. The credibility of the statement of the appellant was doubted. The relevant findings recorded by the trial court read thus:-

“21. In view of the peculiar circumstances of the present case and the case law as discussed above in detail, I have reached at the conclusion that the petitioner has failed to prove the ground of cruelty as against the respondent. Nothing has been mentioned in the present petition or at the time of appearing into the witness box

as to what kind of articles were given by the parents of the petitioner in her marriage and what kind of articles were demanded by the respondent after the marriage. It seems that the ground of demand of dowry has been taken by the petitioner just in order to prove the cruelty as against the respondent. The injuries suffered on the person of petitioner are not sufficient to prove any kind of cruelty on the part of the respondent as no eye witness has witnessed the occurrence when the injuries might have been caused on the person of the petitioner as alleged by her. Since the petitioner herself leveled false allegations as against the respondent throughout the present petition, as such, the allegations levelled by the petitioner against the respondent cannot be termed to be authentic one and no reliance can be placed on them.”

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
gbs

(RAMENDRA JAIN)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes