

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO-3933-2017 (O&M)

Date of Decision: 2.6.2017

Paramjit Kaur

....Appellant.

Versus

Hardev Singh

...Respondent.

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

PRESENT: Mr. Manbir Singh Batth, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. Feeling aggrieved by the judgment and decree dated 24.4.2017 passed by the District Judge (Family Court), Shaheed Bhagat Singh Nagar, whereby the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (in short “the Act”) for dissolution of marriage by a decree of divorce was allowed, the appellant-wife has approached this Court by way of instant appeal.

2. A few facts necessary for adjudication of the present appeal as narrated therein may be noticed. The marriage between the respondent-husband (hereinafter described as “the respondent”) and the appellant-wife (hereinafter referred to as “the appellant”) was solemnized on 2.1.2006 according to Sikh religious rites and ceremonies. The marriage was consummated by the parties, but no child was born from the said wedlock.

After his marriage, the respondent remained in India for about 26 days as he

had come from Italy for solemnizing his marriage. No dowry was either demanded or given at the time of marriage. The marriage was registered with the office of Sub Registrar, Nawanshahr. As the appellant was not holding a valid passport, her passport was applied. He used to regularly speak to her once he reached Italy. He also got incorporated the name of the appellant in his passport while in Italy so that she could join him over there. The respondent again visited India in July, 2006 to get the requisite papers of the appellant completed so that she could join in Italy as soon as possible. As her passport was not received, he returned to Italy on 22.8.2006. Soon after his departure to Italy, the appellant went to her parents after informing his parents that she would return back within 7-10 days. However, she did not return and on informing his parents about this, the respondent gave telephone call to the appellant and asked the reason for staying in her parental house, but she did not state any specific reason. The elder brother of the respondent was in the process of completing the immigration papers and when the appellant failed to cooperate, her immigration papers could not be completed. She made an application dated 14.1.2009 to the Senior Superintendent of Police, Nawanshahr making false allegations against the respondent and his other family members regarding the demand of dowry and misappropriation of dowry articles allegedly given to her. His family members were called in Women Cell, Nawanshahr on 27.1.2009 and after investigation, her allegations were found to be false. It was agreed that the appellant would join the parents of the respondent on 28.1.2009. As per compromise, the parents of the respondent brought the appellant to their house on 28.1.2009. On the very next day, the appellant created a scene in the house and the parents called the village Panchayat and the parents of the

appellant tried to prevail over the appellant to mend her behaviour. However, the appellant left the matrimonial home on 1.2.2009 without any reason. After leaving the house of the parents of the respondent, she started giving threats to his family members through Gurnam Singh and Gurbachan Singh and a complaint in this regard was made to the police who challaned the appellant and her two conspirators under Sections 107/151 of the Code of Criminal Procedure. Further, the appellant went on to harass the respondent and his family members by implicating them in a false case of misappropriation and demand of dowry by filing a false complaint under Sections 406, 498-A of the Indian Penal Code which caused mental agony and cruelty upon the respondent. The appellant had treated the respondent with cruelty and had deserted his company without any reasonable cause. Accordingly, the respondent filed a petition under Section 13 of the Act for dissolution of marriage by a decree of divorce. The said petition was resisted by the appellant by filing a written statement. Besides raising various preliminary objections, it was pleaded that the respondent left India for Italy after 26 days of the marriage and she remained residing in her in-laws house for about six months till she was turned out from the same after misbehaving and maltreatment for want of dowry. Further, the respondent and his family members were not satisfied with the dowry given by the parents of the appellant and also misappropriated the dowry articles. A complaint was also filed against the respondent in which he was declared a proclaimed offender by the trial Court. According to the appellant, it was the respondent who had deserted and neglected her and treated her with physical and mental cruelty. The other averments made in the petition were denied and a prayer for dismissal of the same was made. The respondent

controverted the averments made in the written statement by filing the replication and reiterated that in the divorce petition. From the pleadings of the parties, the trial Court framed the following issues:-

1. Whether the respondent has treated the petitioner with cruelty? OPP
2. Whether the respondent has deserted the petitioner without any reasonable cause and excuse? OPP
3. Relief.

3. In support of his case, the respondent-husband besides examining himself as PW1 and tendering various documents into evidence, also examined his maternal uncle Mehnga Singh as PW2 and Sarpanch Balbir Singh as PW3. Balkar Singh as PW2. On the other hand, to rebut the evidence of the respondent-husband, the appellant-wife examined herself as RW1 and also tendered documents. She also examined her mother Gurcharan Kaur as RW2.

4. The trial Court on appreciation of evidence led by the parties, decided issue No.1 in favour of the respondent. It was held that the wife had treated the husband with cruelty. Issue No.2 was also decided in favour of the respondent and against the appellant holding that there was a wilful neglect on the part of the appellant-wife which amounted to desertion. Accordingly, the trial Court vide judgment and decree dated 24.4.2017 allowed the petition subject to payment of ₹ 5,00,000/- to the appellant-wife as permanent alimony and dissolved the marriage between the parties by a decree of divorce. Hence, the present appeal.

5. After hearing learned counsel for the appellant-wife, 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 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.”

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. Examining the factual matrix in the present case, it may be noticed that after the marriage, the respondent remained 26 days in India and both of them visited various religious places and their relatives and also got their marriage registered with the office of Sub Registrar, Nawanshahr. The respondent also got the name of the appellant incorporated in his passport and also applied for her passport so that she could join him in Italy. In July, 2006, the respondent visited India for taking the appellant along with him to Italy but as the passport was not received by the appellant, he returned to Italy on 22.8.2006. The appellant went to her parental house with a promise to return back after 7-10 days but she did not return back. Since she did not cooperate, so her immigration papers were not completed. Thereafter, she moved an application against the respondent and his family members to the Senior Superintendent of Police, Nawanshahr for demand of dowry. During investigation, all the allegations levelled by the appellant were found to be false. Thereafter, a compromise was effected and as per the said compromise, the appellant came back to her matrimonial home on 29.1.2009. She again left her matrimonial home on 1.2.2009 without any reason. She also filed a complaint under Sections 406, 498-A of the Indian Penal Code against the respondent and his family members.

The respondent and his family members were acquitted in the said

complaint by the trial Court vide order dated 4.11.2016, Ex.P1. All the said instances were admitted by the appellant during her cross-examination. Even RW2 Gurcharan Kaur (mother of the appellant) had also admitted the said facts during her cross-examination. In view of the above conduct of the appellant and filing of the complaints against the respondent who stayed with the appellant only for few days after the marriage, itself created mental trauma on the respondent. Further, the above acts created great disappointment and frustration in the mind of the respondent resulting into great mental agony and pain. The allegations of the appellant regarding harassment, beatings and maltreatment were found to be false by the criminal court. On the basis of the evidence produced by the parties, it stands concluded that the respondent was entitled to the grant of divorce on the ground of cruelty. So far as the ground of desertion is concerned, it is noticed that both the parties were residing separately from each other for the last seven years before filing of the divorce petition and there was specific evidence that the appellant had refused to resume cohabitation. It was proved on the record that there was wilful neglect by the appellant to accompany with the respondent. Besides, refusing to attend household chores and showing disrespect to the respondent-husband and his family members amounted to cruelty towards him. Thus, the irresistible conclusion would be that the appellant-wife had treated the husband-respondent with cruelty.

10. The trial Court after appreciating the testimonies of various witnesses had rightly concluded that the appellant had treated the respondent with cruelty. Further, it was held that the respondent had no intention to bring cohabitation permanently to an end but it was the

appellant who deserted the respondent since the year 2009. It was proved on record that there was willful neglect on the part of the appellant which amount to desertion.

11. In view of the above, learned counsel for the appellant was unable to demonstrate that there was any error or perversity in the findings recorded by the trial court which may warrant interference by this Court. Accordingly, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

June 2, 2017
gbs

(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes