

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

FAO-M-120 of 2012

Date of Decision: March 26, 2018

Rishi Pal

.....Appellant

Vs.

Meenakshi

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.
HON'BLE MR. JUSTICE GURVINDER SINGH GILL.

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Present: Mr. J.K. Chauhan, Advocate for the appellant.

Mr.S.S. Jattan, Advocate for the respondent.

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M.M.S. BEDI, J.

Aggrieved by dismissal of his petition for divorce under Section 13 of the Hindu Marriage Act, for short 'the Act', by the lower Court vide judgment and decree dated January 24, 2012, the husband has preferred this appeal.

As per the averments in the petition under Section 13 of the Act, filed by the appellant/ husband, his marriage with respondent was solemnized on February 15, 2009 at Village Babial Tehsil and District Ambala and the parties last cohabited at Village Kakkar Majra but no child was born out of the wedlock. As per the allegations in the original petition, the appellant had observed a long cut with 15/16 stitches at the abdomen of

the respondent and another small size scar with 4/5 stitches just below it on the right side. On asking about the details, the respondent wife avoided the straight answer but she disclosed that she had fallen from the stairs in her house and some broken pieces of glass had caused wounds. On another occasion she informed that she got hurt with an iron rod. It is averred in the petition that in the last week of February 2009, the respondent developed acute pain in her belly and started crying as a result of which Doctor gave her medicines and applied injections in her veins. The respondent disclosed that she had been experiencing these pains since childhood and that she was treated at Ambala Cantt, Jalandhar, Command Hospital, Chandigarh and Delhi but she was not relieved of the pains till date. Even operation by Doctor Handa in Military Hospital did not bring relief to the respondent from pain. In the year 1997, the treatment at PGI Chandigarh also could not bring any relief to the respondent and as such the respondent is dependent upon the sedatives and injections for the relief of pain. The respondent after betrothal ceremony on April 27, 2008 had been in communication with the appellant but she never gave any hint of her ailment. She had disclosed that she had been warned by her parents not to disclose of her ailment. It was averred in the petition that the respondent intermittently continued suffering from the pain. Appellant asked her father about her ailment but it was stated that it was because of her damage of her food pipe which had been replaced through the Doctor but the paid subsidies only after the injection of sedative drugs are applied. He also disclosed that it was on account of damage to her intestine but her uncle allegedly informed the appellant that pain was on account of removal of an ulcer. The appellant suffered mental agony on

account of physical suffering of the respondent and on account of the contradictory and confusing explanations of the respondent as well as members of her family. In October 2009, the respondent got acute pain in the midnight. The mother of the appellant was shocked when the respondent attempted suicide by applying cuts on her wrists. Doctor was requested to apply bandage and to give some medicines and injections. The appellant approached some respectable of the village next morning and apprised of the incident of the previous night. The matter was informed to his father-in-law as a result of which he came after 5/6 months along with few persons. The said persons told the father of the respondent that he should not have concealed about the ailment of his daughter before the betrothal ceremony. The father of the respondent admitted his fault and promised that he would take his daughter back along with him and get her diagnosed and treated from some competent Doctor and would send her back after she gets well perfectly. But instead of taking respondent to some competent Doctor he started visiting tantriks for her treatment by casting some evil spell upon the appellant. Whenever the respondent contacted the appellant on telephone she threatened him that if the appellant would not allow her to live with him, she would commit suicide and lay blame on his head. In the month of June 2010, she arrived in Kakkar Majra and forcibly entered the house to live there and when the appellant asked her whether her parents have got her treated from some doctor, she replied that it was not their responsibility. The appellant requested her parents to come again and to settle the matter once for all as she was not well and has been threatening to commit suicide and to involve the appellant, his mother and sister by laying blame of murder

upon them. In the presence of the respectables the respondent continued threatening the appellant and her father kept mum. When the respectables asked him that in case his daughter tried to commit suicide in the fit of pain or in the fit of anger, the police would lay blame on the appellant. The respondent indulged in threatening telephonically to the appellant after she had been taken by her father on the advice of respectables. In the month of July 2010, the appellant approached Women Cell through S.P. Ambala, where respondent was summoned. She sought time to give her statement in writing after some days but she did not submit any reply and indulged in levelling allegations of demand of dowry, atrocities and blamed the mother and married sisters of the appellant. The appellant claims that he had suffered mental pain and agony at the hands of the respondent which caused mental cruelty, physical inconvenience to the appellant on account of the detail mentioned in the petition.

The petition filed by the appellant was contested by the respondent wife raising a preliminary objection regarding maintainability of the petition, concealment of the material facts pleading that she was a sincere wife and had always given due respect to the appellant but the appellant was a man of bad habits not maintaining good character having illicit relations with other lady and having bent upon to get rid of the respondent by filing false petition. She expressed her desire and readiness to live with the appellant at matrimonial home or at the place of posting of the appellant. The respondent and her parents along with relatives had convened a biradari panchayat on December 13, 2009 and tried to persuade the appellant to keep and maintain the respondent with him but the appellant

refused to keep and maintain the respondent. Finding no alternative, the respondent had to file a complaint against the appellant and his family members to SP, Ambala regarding demand of dowry and cruel attitude of the appellant and his family members. It was averred in reply that the respondent was operated of her abdomen to remove the stone when she was 9 years of age and after marriage when the appellant asked the respondent about the said stitches she had disclosed the facts to him but the appellant had taken it otherwise and had concocted and manipulated a wrong version in the petition with due deliberations as he is well aware about the stitches disclosed by respondent. The said operation of removal of stone has never created any problem to the respondent at any time before or after the marriage. She never complained of any acute pain in her belly, as alleged. She was got medically examined by the sister of the appellant, namely, Mamta from the doctors at Kurukshetra and Pehowa and all the medical reports were satisfactory and in this regard all the reports of tests are with the sister of the appellant and the appellant has concealed true facts from the Court with some ulterior motive to mislead the Court. It is pleaded by respondent that she was quite hale and hearty and was not suffering from any ailment in any manner and stayed in the matrimonial home for about 4 months after marriage but thereafter the appellant and the family members started teasing and taunting her for bringing less dowry. They started demanding more dowry and even demanded a Car and cash amount of Rs.1 lac to get the land of the father of the appellant redeemed but on refusal, the appellant gave beatings to the respondent and treated the respondent with cruelty and also extended beatings without any fault which was tolerated by

the respondent with a hope that better sense would prevail upon the appellant and his family members. Father of the respondent paid a sum of Rs.60000/- on June 30, 2009 in order to see that his daughter was happy in matrimonial home. He also paid a sum of Rs.40000/- on October 30, 2009 but the lust of the appellant and his family was never ended. The allegations regarding visiting to tantrik by the respondent and her parents were denied. It was pleaded that at some time the appellant and his family members poured kerosene oil upon the respondent to kill her and the appellant had also tried to cut vein of the respondent in order to finish her but she was saved. Appellant and his family members are guilty of demand of dowry and extending merciless beatings to the respondent and the respondent has already filed a compliant to SP Ambala and the Women Cell which is still under investigation.

On the pleadings of the parties, following issues were framed:-

- “1. Whether the petitioner is entitled to decree of divorce on the grounds pleaded in the petition?
OPP.
2. Relief.”

On appreciation of evidence produced by the appellant, PW2 Mehar Chand and by him as PW1 and the evidence of respondent as RW1, Pawan Kumar as RW2 and Gian Chand as RW3, issue No.1 was decided against the appellant. The lower Court also considered the allegations levelled by the respondent wife and observed that the appellant having illicit intimacy with some other lady, does not amount to cruelty. Her case was that the appellant husband is bent upon to get rid of her.

Learned counsel for the husband- appellant has vehemently urged that the appellant is entitled to a decree of divorce on the basis of the established allegations that he had been treated with cruelty. The respondent having concealed her painful ailment has caused mental agony to the appellant besides the fact that the allegations of illicit relation with some lady levelled by the respondent are sufficient enough to grant the decree of divorce as the respondent has not been able to substantiate the vague and baseless allegations pertaining to the character of the appellant. He placed reliance on the judgment of **Vijaykumar Ramchandra Bhate Vs. Neela Vijaykumar Bhate**, 2003 (1) Apex Court Judgments 677 and **Narinder Kaur Vs. Lt. Col. Ravinder Pal Singh Dhillon**, 2011 (6) RCR (Civil) 79.

Counsel for the respondent has submitted that no specific allegations have been levelled by the wife in her affidavit regarding his illicit relations with any lady. He has stated that the appellant has failed to establish the alleged mental agony and that on account of his own wrongs he wants to get rid of the respondent whereas there is nothing wrong with the respondent that she has not been able to perform her matrimonial duties as wife.

With the assistance of counsel for the parties we have gone through the pleadings and the entire evidence. The main ground for divorce raised by the appellant is that the respondent on account of her having 15/16 stitches on the abdomen and another scar with 4/5 stitches not disclosed to him that she has been suffering from pain as such she has got suicidal tendency which is a cause of mental cruelty as the ailment was not disclosed to him. The main contention of counsel for the appellant is that the

allegation of illicit relations with lady has been levelled against the appellant in order to show that on account of his own wrong he cannot be granted a decree of divorce as the allegation having not been substantiated by the respondent wife, would entitle him to the decree of divorce.

With the assistance of counsel for the appellant we have carefully gone through the evidence produced by the appellant and peruse the findings of the Court below given on the basis of the appreciation of evidence. A perusal of the ground for cruelty as pleaded by the appellant husband would indicate that he has alleged that on account of non-disclosure of some ailment on account of which the respondent has got surgery cut of 15/16 stitches on her abdomen having not been disclosed, he would be deemed to have been treated with cruelty. The acute pain allegedly suffered by the respondent for undisclosed ailment has also been sought to be treated as cruelty by the appellant. The trial Court has dealt with the allegation of the appellant by giving the following observations:-

“However, there is no cogent evidence on file to prove that the respondent is suffering from incurable disease. There is no cogent and convincing evidence to prove that the respondent wife is suffering from genitals deformity and incapable of having sexual relationship. The petitioner in the cross-examination has stated that for about one month from marriage, it was smooth relation. He has stated that he had come to know about stitches after about 5-6 days of the marriage. Thus, even after coming to know about stitches after about 5-6 days of

marriage, the petitioner continued cohabiting. He has stated that he did not consult any doctor about nature of stitches. He also stated that he did not take the respondent to any doctor. Regarding acute pain allegedly experienced by the respondent, the petitioner- husband has stated in his cross-examination that he did not take the respondent to any doctor and he has no medical proof/ record with regard to abdomen pain of respondent. It is the case of the respondent that she was got medico legally checked up by Mata, sister of the petitioner, from doctors and all her medical reports are O.K. and the reports of tests are with sister of the petitioner. If the respondent was suffering from pain in her abdomen, it was the duty of the petitioner/ husband to take her to doctor for her treatment but instead of doing so the petitioner has filed this petition for divorce. Simply because there is cut in the stomach of respondent having 15-16 stitches particularly when the respondent has alleged that some operation was performed to remove the stone when she was of the age of nine years, the same does not amount to cruelty to husband.

We have considered the pleadings and entire evidence produced by both the parties again which includes the statement of the appellant himself, statement of Mehar Chand and statement of respondent as RW1,

statement of Pawan Kumar as RW2 and Gian Chand as RW3 who have been produced by both the parties to substantiate the respective pleadings.

After going through their testimony we are also of the opinion that there being no incurable disease having been established so far as the respondent is concerned, and having all the important organs of the body being without any defect, there is no ground for arriving at a conclusion that respondent is suffering from any such ailment which can be said to effect the matrimonial life of the parties. The existence of stitch marks on the abdomen will not ipso facto tantamount to arrive at a conclusion that non-disclosure of the same before marriage would tantamount to cruelty especially when it could not be proved that respondent is suffering from any ailment which would be prejudicial to the cohabitation of the parties. We do not find any ground to differ from the opinion formed by the lower Court.

Counsel for the appellant has vehemently contended that the respondent wife had levelled allegations regarding the character of the appellant in her pleadings and in the evidence as such the said act would tantamount to cruelty warranting grant of decree of divorce.

With the assistance of counsel for the appellant we have gone through the pleadings. As per the written statement, the respondent wife has pleaded as follows in para 6:-

“That para No. 6 of the petition is wrong and as such is denied. The petitioner never suffered any mentally agony rather the petitioner is taking false plea. As a matter of fact the petitioner is having illicit relation with some other lady who is employed with his sister and now

the petitioner wants to get rid of the respondent by leveling all false allegations. The respondent is quite hail and hearty and is not suffering from any ailment in any manner as alleged. The respondent lived in the matrimonial home nicely for about 4 months after the marriage and thereafter the petitioner and his family member started teasing and taunting the respondent for brining less dowry and started demanding more dowry and even demanded a Car and cash amount of Rs.One Lacs to redeemed the land of father of the petitioner, on the refusal of the respondent, the petitioner also extended beating to the respondent and treated the respondent with atmost cruelty and also extended beating without any fault and the respondent tolerated all the excess with a hope that better sense will prevail upon the petitioner and his family members. Even the father of the respondent paid a sum of Rs.60,000/- on 30.06.2009 in order to see her daughter happy in the matrimonial home. Even thereafter the father of the respondent has also paid a sum of Rs.40000/- on 30.10.2009, but the lust of the petitioner and his parents never ended.”

A perusal of the above pleading indicates that the allegation levelled by the respondent is that the appellant on account of his illicit relation with some other lady employed with his sister wants to get rid of her by levelling false allegations. The said plea if taken in context to the statute

i.e. Section 23 A of the Act is permitted to be taken as a defence. As per the said Section any one who approached matrimonial Court for relief would be denied the relief in case he himself is guilty of a matrimonial wrong. Section 23-A of the Act reads as follows:-

“Section 23 A: Relief for respondent in divorce and other proceedings.—In any proceeding for divorce or judicial separation or restitution of conjugal rights, the respondent may not only oppose the relief sought on the ground of petitioner's adultery, cruelty or desertion, but also make a counter-claim for any relief under this Act on that ground; and if the petitioner's adultery, cruelty or desertion is proved, the court may give to the respondent any relief under this Act to which he or she would have been entitled if he or she had presented a petition seeking such relief on that ground.”

The respondent wife has, as per her understanding and belief put-forward the reason with an intention to explain as to why false plea of cruelty has been raised against her. She has not leveled any specific allegation of involvement of the appellant with any particular lady by referring to any specific instance. Whether such a general plea which is permissible under law, if taken in written statement, could be treated as prejudicial to a wife has been considered by us in peculiar circumstances of this case and the law referred to by counsel for both the parties.

Counsel for the appellant has referred the judgments of **Vijay Kumar Ramchandra Bhate’s** case (supra) and **Narinder Kaur’s** case

(supra) wherein levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital relationship is a gravest assault on the character and reputation of the spouse and such an act was brought in the category of act of cruelty.

Counsel for the respondent has relied upon **Indra Bhardwaj Vs. Rajesh Bhardwaj**, 2016 (3) RCR (Civil) 44, in which case the husband had sought divorce on the ground of cruelty by wife. Wife had made allegations of having extra-marital affair but could not prove the same. The said pleading was held to be not sufficient ground for husband to seek divorce. Reliance was placed on **Ramchander Vs. Ananta**, 2015 (2) RCR (Civil) 1 wherein it was held that such a conduct of wife was not so grave and batty that it could be treated to be more serious than an ordinary wear and tear of married life.

We have heard counsel for both the parties and are of the opinion that the concept of cruelty varies from case to case depending upon the allegations and counter-allegations and also varies from individual to individual but no straight jacket formula can be laid down that in every case where the allegations raising a question pertaining to the character of the spouse remaining not substantiated by evidence would ipso facto tantamount to cruelty. In few cases, the allegations could be just vague and uncertain but in some cases such allegations could be of high magnitude with details available but on account of non-availability of adequate direct evidence such allegations might not have been proved. Sometimes, such allegations levelled against the husband could actually cause damage to his reputation making it difficult for him to live in the society amongst the persons in

whose eyes the reputation stood damaged depending upon the nature of the allegations, nature of the harm apparently caused to the status of the spouse, the element of cruelty or mental cruelty and have been appreciated depending upon the wisdom of the Presiding Officer deciding the same but in every case non- substantiated allegations of character assassination against the spouse will not ipso facto tantamount to cruelty for grant of divorce.

We have arrived at this conclusion taking into consideration the statutory plea available to a spouse to point out the known or alleged wrongs of the other spouse in order to defeat the right of said spouse to claim any relief under the Act. The above said examples are illustrative and not exhaustive.

We have carefully appreciated the facts and circumstances of the present case in context to the above said parameters and are of the opinion that the respondent wife had made an attempt to explain the cause for which the serious allegations of cruelty had been levelled against her. Her plea was not intended in any manner to insult him in general public or before the Court. The allegation against the character of the husband in the present case are not that once for arriving at a conclusion that the respondent intended to damage the reputation of the husband. The allegations were merely pointer towards the probable wrong of the husband for filing the petition.

In view of said circumstances, it is held that the appellant who instead of making an attempt to help the respondent for any pain or ailment has come forward with a claim that said act of wife is cruelty to him. The

divorce has not been sought on the ground that for any act of the respondent wife it is not feasible for the parties to stay together.

In view of above circumstances, we do not find any ground to set aside the order passed by the lower Court.

The appeal is dismissed.

(M.M.S. BEDI)
JUDGE

March 26, 2018
sanjay

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.