

FAO-M-246-2015

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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FAO-M-246-2015

Date of Decision:01.06.2018

Rashi Kakkar

.....Appellant

Versus

Harminder Singh Bindra

.....Respondent

**CORAM: HON'BLE MR.JUSTICE M.M.S. BEDI.
HON'BLE MR.JUSTICE HARI PAL VERMA.**

**Present: Mr. B.R. Mahajan, Senior Advocate with
Mr. Prateek Mahajan, Advocate,
for the appellant.**

Mr. Akshay Jindal, Advocate, for the respondent.

HARI PAL VERMA, J.

The appellant-wife has filed the present appeal against the judgment and decree dated 24.03.2015 passed by learned Additional District Judge, Panchkula, whereby her petition under Section 13(1)(i-a)(i-b) of Hindu Marriage Act, 1955, (for short “the Act”) seeking dissolution of marriage by a decree of divorce was dismissed.

Briefly stated, marriage between the parties was solemnized on 23.01.2005 according to Sikh rites and ceremonies. Out of this wedlock, one female child Yana was born on 22.10.2009. However, immediately after two months of the marriage, parents of the respondent-husband started displaying inimical behaviour towards her. She was blamed for practicing

“black magic” which in fact was never done by the appellant, rather used to

be played by the parents of the respondent-husband. She was accused of committing theft of household goods which were actually recovered from the possession of her mother-in-law. She was forced by her in-laws to undergo sex determination test of her foetus as the respondent family was eager to have a male child. At the time of her delivery, she was admitted in Alchemist Hospital, Panchkula. No one from the family of the respondent attended her while she was in hospital. They were disappointed after hearing the news of birth of a girl child and avoided joining the essential ceremonies commensurate with the birth of a child. On 13.12.2009 when the appellant had gone to her matrimonial house at Mohali, she was not welcomed either by the respondent-husband or his family members. On 17.12.2009 when the appellant complained of abdominal pain, she was not taken to the nearby doctor. Though on the next day, the respondent dropped her at Alchemist Hospital. The respondent did not attend her personally rather called appellant's brother to attend her. She was threatened and abused by the respondent when the appellant asked the respondent to take her back in the matrimonial home. The respondent rather asked the appellant to bring sufficient money and articles necessary for the upbringing of a girl child. On 20.12.2009, parents of the appellant along with relatives visited the respondent's house but the respondent and his parents reiterated their demand for money and valuables of an amount of ₹2 lacs. The respondent abused and physically hurt her family members and relatives. The respondent withdrew ₹30,000/- by using her ATM Card of the HDFC Bank. In the month of April 2010, the respondent vacated the rental accommodation at Kendriya Vihar, Sector 25, Panchkula, without her consent and knowledge. The respondent in order to manipulate his own

allegations against her. The respondent did not take any step to bring her back in the matrimonial home. In this manner, the appellant was deserted by the respondent for more than 2½ years without any reasonable or justifiable cause. Thus she sought divorce on the grounds of cruelty and desertion.

The respondent contested the petition on the ground of maintainability, estoppel, from act and conduct, concealment of material facts and cause of action. On merits, it has been stated that the marriage between the parties was an inter-caste love marriage resented to by appellant's parents. The respondent has denied that she was ever blamed for practicing 'black magic', stealing household valuables or compelled to undergo sex determination test of her foetus. In fact, the real cause is frequent visits of the appellant to the house of her parents/grandmother at Panchkula without his wish and consent. Still in order to save the married life, the respondent conceded to the dictate of the appellant and rather shifted to a rented accommodation leaving his parents alone despite being a single child of his parents. The appellant without any reasonable excuse herself abandoned the matrimonial home and even did not respond to legal notice dated 09.09.2010. The parents of the appellant visited the house of the respondent-husband at Mohali, but they created an undesired scene in the presence of his relatives and neighbours. The respondent not only attended the appellant when she was in her family way, but had also borne all the delivery expenses at Alchemist Hospital, Panchkula. The respondent tried his best to reconcile the matter with the appellant by visiting her relatives and friends, but she declined every such attempt. The respondent financially helped the appellant for starting a new business of glass art and

deposited ₹60,000/- in her account.

On the pleadings of the parties, the trial Court framed the following issues:-

- “i) Whether the respondent-husband has treated the petitioner with cruelty as alleged? OPP*
- ii) Whether the respondent-husband has deserted the petitioner wife, as alleged?OPP*
- iii) Whether the petition is not maintainable in the present form?OPR*
- iv) Whether the petitioner has concealed material facts?OPR*
- v) Relief”.*

The appellant has examined herself as PW1, her father Sunil Kakkar as PW2 and her aunt Pomey Malhotra as PW3. She has placed on record a list of shagun articles as Ex.PW1/2, copy of legal notice dated 09.09.2010 Ex.P1, SBI account statement of her father as Ex.PW2/1 and her personal diary as Ex.PA, whereas the respondent appeared and examined himself as RW1 and placed on record receipts Exs.R1 to R4, receipts of Group Housing Society Exs.R5 and R6, certificate of transaction issued by HDFC Bank Exs.R7 to R9, certificate of transaction issued by SBI as Exs. R10 and R11, statement of transaction issued by ICICI Bank as Ex.R12, salary slip of the respondent as Ex.R13, receipt of insurance premium as Exs.R14 to R16, resignation of the respondent as Ex.R17, nomination form as Ex.R-18, bill issued by Alchemist Hospital, Panchkula as Ex.R19, letter dated 20.10.2009 as Ex.R20, attendance register of the respondent as Ex.R21, salary slip as Ex.R22, no due certificate of the appellant as Ex.R23 and transaction statement as Ex.R24 to R26 and the letters issued by HDFC Bank to the appellant as Mark A to C and other documents as Mark D to O.

The trial Court dismissed the petition filed by the appellant and

had observed that the appellant has failed to prove that she is a victim of

matrimonial cruelty and the respondent had necessary *animus deserendi* to bring an end to cohabitation and other matrimonial obligations permanently.

Aggrieved against the judgment and decree dated 24.03.2015, the appellant-wife has preferred the present appeal.

Mr. B.R. Mahajan, learned senior counsel appearing on behalf of the appellant has argued that the Court below has committed error in law and facts in not appreciating the proposition of facts that the petition filed by the appellant-wife before the Court for dissolution of marriage was on the ground of cruelty and desertion. Both the propositions are mutually exclusive substantial grounds for divorce. So far as the allegation of desertion of matrimonial home by the appellant-wife is concerned, it is unfounded, rather desertion is attributable to the act and conduct of the respondent-husband. She was admitted in the hospital in October 2009 for delivery and a female child was born to her on 22.10.2009 at Alchemist Hospital, Panchkula. After being discharged from the hospital she was just convalescing at her parents' house upto 13.12.2009. She went to her matrimonial home thereafter and started living there despite there being unwelcoming treatment by her in-laws. On 17.12.2009, she developed abdominal pain, but she was not taken to the doctor or any hospital despite being in severe pain. It was only on the next day i.e. on 18.12.2009, she was taken to Alchemist Hospital, where the respondent-husband instead of attending her, called her brother to take care of his sister. The appellant had to be taken to her parents' house with the hope that the respondent-husband would come and take her back to the matrimonial home but he never returned. In fact, the respondent started neglecting the appellant as he and his family members were not happy on account of the birth of a girl child.

Instead of taking her back to the matrimonial home, she was served with a

legal notice Ex.P1 dated 09.09.2010. The trial Court has failed to examine the issue that she was deserted w.e.f. 18.12.2009 till the date of filing of the present petition under Section 13 of the Act and the marriage has broken down owing to the conduct exclusively attributable to the respondent. The desertion on the part of the respondent-husband is proved on record. The trial Court has failed to appreciate the fact that there is no evidence led by the respondent that he had ever taken any steps to bring her back to the matrimonial home between 18.12.2009 to 09.09.2010 except issuance of a legal notice Ex.P1. The conduct of the respondent shows that he was least interested for the restitution of relationship between him and the appellant-wife along with the minor daughter. Mere denial in the written statement or issuance of a legal notice is not sufficient to disprove the desertion of the appellant-wife. The husband is guilty of causing cruelty. The neglect of a legally wedded wife on the ground of giving birth to a girl child is a matter relating to discrimination on the ground of sex and every citizen of India should dissuade himself from acting in such a way.

The trial Court has failed to act in-consistence with the intention of the legislature while enacting the Act. Though an irretrievable break down of marriage is not a ground for divorce under Section 13 of the Act, yet the legislature has laid down in clear words by dint of Section 13 (A) of the Act that in the event of allegation of desertion and cruelty in any case under Section 13 of the Act, the Court is competent to grant a *suo moto* decree of judicial separation. The appellant-wife is not required to make a plea in the petition. The trial Court has tried to side track the personal diary Ex.PA as maintained by the appellant. The appellant was in the habit of maintaining a diary, narrating the events taking place in her married life

etc., but the same has been ignored on the plea that the personal diary

should have been pleaded in the petition and in the absence thereof, it cannot be looked into. The trial Court has not considered the fact that in the pleadings the evidence except the necessary facts is not to be stated. The personal diary Ex.PA has been admitted in evidence and the same was never objected to by the respondent. In the personal diary so maintained by the appellant, she has recounted the atrocities perpetrated by the respondent-husband and his family members. The respondent is also guilty of desertion as he deserted her without any reasonable cause for a period of two years. The readiness as shown by the respondent to stay in the matrimonial home is nothing but a camouflage so as to defeat the claim of the appellant.

On the other hand, Mr. Akshay Jindal, Advocate, appearing on behalf of the respondent has argued that the allegation that she was ever blamed for practicing black magic, stealing household articles or was ever compelled to undergo sex determination test of her foetus are absolutely wrong. In fact, there was undue interference by the parents of the appellant and the appellant used to frequently visit her parents without his wish and consent. The respondent remained a caring husband throughout. He purchased life insurance policy in her name for which he exclusively has paid the premium. The admission of the appellant in the Alchemist Hospital, Panchkula was made under his signatures. Even the discharge was made under his signatures. Therefore, the allegation that she was not attended by the respondent is contrary to the record. The appellant's parents visited his house at Mohali and created an undesired scene, but still the respondent is ready to stay with the appellant-wife. The allegations made by the appellant are vague and uncertain. He has relied upon the judgments of the Hon'ble Supreme Court in Neelam Kumar Versus Dayarani, 2010

R.C.R. (Civil) 663, Savitri Pandey Versus Prem Chandra Pandey, 2002

(1) R.C.R. (Civil) 719, Bharat Bhushan Sharma Versus Pratibha, 2007

(3) R.C.R. (Civil) 655, Dr. (Mrs.) Malathi Ravi Versus Dr. B.V. Ravi,

2014(3) R.C.R. (Civil) 621 and of this Court in Gursimrat Pal Kaur

Versus Asha Nand, 2012(42) R.C.R. (Civil) 249.

We have heard the learned counsel for the parties and with the assistance of both the parties have gone through the entire evidence.

The nature of allegations levelled by the appellant are quite serious. The parties are blessed with a minor daughter who is staying with the appellant-wife. No wife would like to leave the matrimonial home unless she is compelled to do so. In the case in hand, the couple was blessed with a daughter on 22.10.2009 and after birth of the daughter, the appellant has never stayed with the husband. Even otherwise, no sincere efforts have been made by the respondent to bring her back to the matrimonial home. The argument made by learned counsel for the respondent that the allegation against in-laws is not cruelty, cannot be accepted. Once it is established that the allegations are false, even if it is against the in-laws is bound to have reaction and therefore can be termed as "cruelty". The parties are living separately since 18.12.2009. The appellant is qualified person being a B.A. B.Ed and was working as a teacher in Central School, Dappar.

Before we examine the judgment passed by the Court below, it has become imperative to understand and comprehend the concept of cruelty.

The Shorter Oxford Dictionary defines 'cruelty' as 'the quality of being cruel; disposition of inflicting suffering; delight in or indifference to another's pain; mercilessness; hard-heartedness'.

The term "mental cruelty" has been defined in the Black's Law

Dictionary [8th Edition, 2004] as under:

"Mental Cruelty - As a ground for divorce, one spouse's course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse."

The concept of cruelty has been summarized in Halsbury's Laws of England [Vol.13, 4th Edition Para 1269] as under:

"The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. In cases where no violence is averred, it is undesirable to consider judicial pronouncements with a view to creating certain categories of acts or conduct as having or lacking the nature or quality which renders them capable or incapable in all circumstances of amounting to cruelty; for it is the effect of the conduct rather than its nature which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the impact of the personality and conduct of one spouse on the mind of the other, weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complainant's capacity for endurance and the extent to which that capacity is known to the other spouse. Malevolent intention is not

essential to cruelty but it is an important element where it exists."

In American Jurisprudence 2d, the term "mental cruelty" has been defined as under:

"Mental Cruelty as a course of unprovoked conduct toward one's spouse which causes embarrassment, humiliation, and anguish so as to render the spouse's life miserable and unendurable. The plaintiff must show a course of conduct on the part of the defendant which so endangers the physical or mental health of the plaintiff as to render continued cohabitation unsafe or improper, although the plaintiff need not establish actual instances of physical abuse."

In the instant case, our main endeavour would be to define broad parameters of the concept of 'mental cruelty'. Thereafter, we would strive to determine whether the instances of mental cruelty enumerated in this case by the appellant would cumulatively be adequate enough to grant a decree of divorce on the ground of mental cruelty according to the settled legal position as crystallized by a number of cases of this Court and other Courts.

The Apex Court had an occasion to examine in detail the position of "mental cruelty" in *N.G. Dastane Vs. S. Dastane (1975) 2 SCC 326* at page 337, paragraph 30 and observed as under :-

"The enquiry therefore has to be whether the conduct charges as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent."

In the case of *Sirajmohmedkhan Janmohamadkhan v.*

Haizunnisa Yasinkhan & Anr. (1981) 4 SCC 250, the Court stated that the

concept of legal cruelty changes according to the changes and advancement of social concept and standards of living. With the advancement of our social conceptions, this feature has obtained legislative recognition, that a second marriage is a sufficient ground for separate residence and maintenance. Moreover, to establish legal cruelty, it is not necessary that physical violence should be used. Continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and an assertion on the part of the husband that the wife is unchaste are all factors which lead to mental or legal cruelty.

In the case of *Shobha Rani v. Madhukar Reddi-(1988) 1 SCC 105*, the Court had also an occasion to examine the concept of 'cruelty'. The word 'cruelty' has not been defined in the Hindu Marriage Act. It has been used in Section 13(1)(i)(a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of 'one', which is adversely affecting the 'other'. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. The absence of intention should not make any difference in the case, if by

ordinary sense in human affairs, the act complained of, could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment on the part of other person.

There can be cruelty without any physical violence, and there is abundant authority for recognizing mental or moral cruelty, and not infrequently the worst cases supply evidence of both. It is for the judges to review the married life of the parties in all its aspects. The several acts of alleged cruelty, physical or mental, should not be taken separately. Several acts considered separately in isolation may be trivial and not hurtful but when considered cumulatively they might well come within the description of cruelty. (see: Jamieson v. Jamieson, [1952] 1 All E.R. 875; Waters v. Waters, [1956] 1 All E.R. 432.

"The general rule in all questions of cruelty is that the whole matrimonial relations must be considered."
(per Lord Normand in King v. King [1952] 2 All E.R. 584).

Law of divorce based mainly on fault is inadequate to deal with a broken marriage. Under the fault theory, guilt has to be proved; divorce courts are presented concrete instances of human behaviour which bring the institution of marriage into disrepute.

The Apex Court in Naveen Kohli v. Neelu Kohli-(2006) 4 SCC 558 dealt with the similar issues in detail. Those observations incorporated in paragraphs 74 to 79 are reiterated in the succeeding paragraphs.

"74. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the

parties. Where there has been a long period of continuous separation, it may fairly be surmised 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.

75. Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

76. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist."

77. Some jurists have also expressed their apprehension for introduction of irretrievable breakdown of marriage as a ground for grant of the decree of divorce. In their opinion, such an amendment in the Act would put human ingenuity at a premium and throw wide open the doors to litigation, and will create more problems than are sought to be solved.

78. The other majority view, which is shared by most jurists, according to the Law Commission Report, is that human life has a short span and situations causing misery cannot be allowed to continue indefinitely. A halt has to be called at some stage. Law cannot turn a blind eye to such situations, nor can it decline to give adequate response to the necessities arising therefrom.

79. When we carefully evaluate the judgment of the High Court and scrutinize its findings in the background of the facts and circumstances of this case, it becomes obvious that the approach adopted by the High Court in deciding this matter is far from satisfactory."

On proper analysis and scrutiny of various judgments, the Apex Court has come to a definite conclusion that there cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors

PW1-appellant in her cross-examination has clearly stated that after delivery of the child on 22.10.2009 at Alchemist Hospital, Panchkula, she was discharged at the signatures of the respondent and the medical expenses were paid by the employer of the respondent. But she has further stated that she was admitted in the hospital by her parents and there was nobody from her in-laws and not even her husband to get her admitted in the hospital. On 17.12.2009, she complained of abdominal pain, but she was not taken to the hospital rather she was taken to the hospital on the next day. The respondent-husband and his parents misbehaved with the parents of the appellant by abusing them and pushing them out of the house which certainly disturbed the appellant. This Court has looked into the extracts of the diary Ex.PA written and maintained by the appellant, wherein she has narrated her agony and cruelty. She has repeatedly written that she is being harassed by the respondent consistently.

It is not in dispute that the parties are living separately for the last about 8 years and this Court had directed the parties to appear in person. After having interacted with them, this Court found that the parties are not ready to stay together any more. Therefore, it would be prudent and appropriate that the parties part ways. 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. 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. There are strained relations between the parties. Though mere trivial irritations, quarrels, wears and tears of the married life which

happen in day to day life would not be adequate for grant of divorce on the ground of mental cruelty. But in the case in hand, the parties are living in distress and are not mentally prepared to stay together as husband and wife any more. Once there has been a long period of continuous separation, it may fairly be summarised 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 situation, it may lead to mental cruelty. Therefore, having regard to the proper consideration of cumulative facts and circumstances of the case, the judgment passed by the Court below and after carefully observing the demeanour of the parties, this Court finds that the institution of marriage may not work between the parties any more.

The totality of the circumstances available on the record indicate that the appellant on account of unbearable circumstances has left the matrimonial home. No wife having a child would like to abandon her matrimonial home if there are no compelling circumstances. The compelling circumstances have been pleaded by the appellant and also proved by her by producing her evidence.

Accordingly, we find that the claim of the appellant deserves to be accepted and the impugned judgment and decree dated 24.03.2015 passed by the lower Court is required to be set aside. The allegations levelled against the respondent are serious in nature and no sensible lady would like to stay in the matrimonial home in such like circumstances. Accordingly, it is held that the appellant was treated with cruelty by the respondent-husband. The cruelty established in the present case is mental

as well as physical. Therefore, the appeal is allowed. The impugned

judgment and decree dated 24.03.2015 passed by learned Additional District Judge, Panchkula, is hereby set aside. The marriage of the appellant with the respondent is dissolved by a decree of divorce.

(M.M.S. BEDI)
JUDGE

(HARI PAL VERMA)
JUDGE

01.06.2018
seema

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No