

226.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-M-16-2016

Date of decision:18.05.2018.

Sanjay Sehgal

... Appellant

Versus

Sonia

.... Respondent

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

Present: Ms. Payel Mehta, Advocate,
for the appellant.

Respondent *ex parte*.

HARI PAL VERMA, J.

Appellant-husband has filed the present appeal challenging the judgment and decree dated 02.11.2015 passed by learned Additional District Judge, Karnal, whereby his petition filed under Section 13 of the Hindu Marriage Act, 1955 for dissolution of marriage with the respondent-wife on the ground of cruelty and desertion, was dismissed.

Briefly stated, the appellant-husband had filed a petition under Section 13 of the Hindu Marriage Act, 1955 for dissolution of marriage on the ground of cruelty and desertion. Marriage between the parties was solemnized on 17.10.2007. After the marriage, parties lived together as husband and wife and two sons were born out of this wedlock. Appellant had sought divorce on the ground that from the very beginning of the marriage, respondent-wife was very rude and treated the appellant in an

wife is expected in a matrimonial home. She refused to share the bed with him and also in habit of using filthy language with him as well as his family members. The family members of the respondent-wife used to interfere in their matrimonial life and under the influence of her parents, respondent used to pick up quarrel with the appellant and his family members. At the time of their marriage, respondent was undergraduate and the appellant encouraged her to improve her education. In this manner, she did M.Sc.(Zoology) after the marriage, and all the expenses were borne by the appellant. While the respondent used to remain busy in her study, parents of the appellant used to take care of her children. On number of occasions, respondent left the matrimonial home without any sufficient cause and she was taken back with the intervention of the Panchayat. She never treated the appellant in a respectful manner, but still the appellant tolerated her all kinds of bad and cruel behaviour expecting that sooner or later better sense shall prevail upon her and he will lead a happy married life. But instead of improving her behaviour, her attitude and conduct became more and more cruel towards the appellant. On 30.07.2011, the respondent in the absence of the appellant left the matrimonial home without prior intimation. While leaving the house, she took away all the gold and silver ornaments along with both the children. The appellant visited the house of the respondent's parents in order to bring her back to the matrimonial home. But the respondent refused to join his company and since then, she has been living separately from the appellant. The parents of the appellant convened several panchayats, but without any result.

Upon notice, respondent appeared through counsel. However,

she did not appear in person before the Court despite specific directions to

appear for reconciliation. On 20.07.2015 when the case was fixed for presence of the parties and no one appeared on behalf of respondent, she was proceeded against ex parte.

The appellant led ex parte evidence and examined himself as PW1, his father Khairati Lal as PW2 and one Bhagwan Singh as PW3. Certified copy of order dated 05.01.2015 (Ex.P1) and certified copy of petition (Ex.P2) were tendered in evidence. Ex.P1 is a copy of order passed by learned District Judge, Karnal in a petition filed by the respondent under Section 13 of the Hindu Marriage Act seeking dissolution of marriage between the parties and vide order dated 05.01.2015, the said petition was dismissed in default. Similarly, Ex.P2 is a copy of a petition filed by the respondent-wife seeking dissolution of marriage as provided under Section 13 of the Hindu Marriage Act.

The court below dismissed the petition, as the appellant failed to prove the allegations of cruelty. The Court held that in a petition filed by the respondent under Section 13 of Hindu Marriage Act, she had levelled serious allegations against the appellant who had given her merciless beatings and thrown her out of the matrimonial home. Rather the trial Court, after going through the contents of Ex.P2, observed that it is the appellant who treated the respondent-wife with cruelty and deserted her without reasonable and probable cause and it is an act of wrong on the part of the appellant-husband. Therefore, he cannot be allowed to take advantages of his own wrong, as provided under Section 23(1)(a) of Hindu Marriage Act.

Aggrieved against the aforesaid judgment and decree dated 02.11.2015, the appellant-husband has filed the present appeal.

Learned counsel for the appellant has argued that on the grounds of mental harassment and cruelty extended upon the appellant by the respondent-wife, the appellant filed a petition under Section 13 of the Hindu Marriage Act for dissolution of marriage, but the same was dismissed without appreciating the material facts available on record. The court below has passed a completely one sided judgment by keeping the material facts, that favoured the appellant, at bay. There are sufficient instances of maltreatment met to the appellant *stricto sensu* to bring the case of the appellant for divorce on the ground cruelty. The appellant and his family members were falsely roped in FIR under Sections 406, 498-A IPC at the instance of the respondent-wife. Registration of FIR has caused a great mental trauma and brought social stigma to the appellant and his family. The appellant and his family felt defamed because of the act and conduct of the respondent. The court below has taken contradictory stances while deciding the plea of the appellant and failed to appreciate the fact that cruelty at the behest of the respondent was continuing one. The appellant has been able to prove his case while leading evidence of PW2 (father) and PW3 (neighbour), but these statements were ignored. PW3-Bhagwan Singh (neighbour) was a natural witness and he has corroborated cruelty extended by the respondent upon the appellant. No doubt “cruelty” has not been defined and there is no straightjacket formula to define cruelty, but in the case in hand, the act of the wife was of such cruelty or magnitude which has caused mental agony and suffering to the appellant and his family. The instances of insulting and non-cooperative attitude bring out a case of the appellant within the ambit of 'mental cruelty'. Counsel for the appellant has

(Civil) 534 and Amarjeet Kaur Versus Joginder Singh-2009 (2) R.C.R. (Civil)82 in support of her arguments.

We have heard counsel for the appellant.

Notice in the case was issued and the respondent was served, but no one had put in appearance on behalf of the respondent and accordingly vide order dated 21.11.2016, respondent was proceeded against ex parte. On 06.11.2017, when the appeal was taken up for hearing ex parte against the respondent, this Court had noticed that two sons born out of the wedlock are being maintained by the respondent-wife and therefore, the appellant-husband was directed to furnish the information regarding the status of any proceedings for maintenance, criminal proceedings or any other litigation *inter se* the parties before any court on the next date of hearing. Accordingly, on 09.01.2018, this Court passed the following order:-

“Affidavit of appellant placed on record pursuant to order dated 6.11.2017.

Despite service of respondent she has opted not to appear, as such, she was proceeded against ex parte. During the course of arguments, it transpires that the respondent is maintaining two children born out of the wedlock and is working as a Science Teacher in a school. Taking into consideration the welfare of the minor children, without prejudice to the rights of the parties to the litigation, we deem it appropriate, in the interest of justice that in case a sum of ₹4,00,000/- to ₹5,00,000/- is deposited in the name of both the children separately besides giving some permanent alimony to the respondent, the appeal of the appellant can be considered.

The husband present in the Court has agreed to the proposal given to him and is ready to deposit some

reasonable amount for the maintenance of the minor children and wife.

Let appellant appear in the Court on 7.3.2018 along with two bank drafts of ₹5,00,000/- each in the name of his both minor sons and another bank draft for a sum of ₹2,00,000/- in the name of his wife for consideration of the appeal ex parte against the respondent.”

The appellant had approached the trial Court for divorce primarily on the ground of cruelty and desertion alleging therein that the wife has maltreated him and had refused to perform the matrimonial obligations and had created a vitiated atmosphere wherein it is not possible for both the parties to live together. No doubt it is easy to allege cruelty but difficult to prove. However, in order to succeed in a petition under Section 13 of Hindu Marriage Act on the ground of cruelty, the petitioner is required to prove cruelty.

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 24 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 has 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, para 30 observed as under :-

"The enquiry therefore has to be whether the conduct charged 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 Hindu Marriage 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

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 as to 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 in consideration.

In the case in hand, this Court in the absence of any specific instance/details that the respondent caused any cruelty, does not find any substance in the plea so raised by the appellant. Making vague allegations about the misbehaviour was not sufficient for accepting the prayer for divorce. The evidence so adduced was scanty and in no way established cruelty.

We have also considered the contentions of the counsel for the appellant and are of the opinion that breakdown theory is not applicable for dissolving the marriage. The divorce petition (Ex.P2) was filed by the respondent-wife which was dismissed in default on 05.01.2015 and when wife has not filed restoration application, it is indicative to the fact that she did not want to take divorce and had given up and waived her right to seek divorce. Even otherwise, the allegations levelled by the appellant-husband regarding cruelty are vague enough and uncertain and are not sufficient enough to constitute cruelty in *stricto sensu*. Similarly, the appellant has also failed to establish that the respondent has deserted the appellant in any manner and has failed to come and stay with the appellant. Birth of two sons out of this wedlock is an indicative factor that the respondent-wife is not guilty of desertion as being projected by the appellant. Contrary to it, it is the wife, who has been maltreated at the behest of the appellant, for which, she filed a complainant in the Court of Illaqa Magistrate under Section 156(3) Cr.P.C. An FIR No.474 dated 10.10.2012 under Sections 406/498-A IPC, Police Station Assandh, was registered against the husband and his family members. Except mere statements of PW1 and PW2 that the respondent-wife is a quarrelsome lady and under the influence of her parents, she used to pick up quarrel and never used to do the household work, no evidence has been brought on record by the appellant, enabling him to substantiate the component of cruelty. The allegation that the respondent-wife was in habit of using filthy language to the appellant and his family members, has not been substantiated by any evidence. To the contrary, the averments made in the divorce petition (Ex.P2) filed by the respondent-wife are rather more serious. The nature of allegations as made in the divorce petition is mere

trivial irritations, quarrels, normal wear and tear of married life which happens in day-to-day life and the same are not adequate enough so as to grant a decree of divorce to the appellant on the ground of mental cruelty.

In view of above, the findings recorded by the court below does not warrant any interference as the appellant has failed to establish the very allegations of cruelty and desertion. Consequently, the appeal is dismissed. Decree sheet be prepared. Parties to bear their own costs.

(M.M.S. BEDI)
JUDGE

(HARI PAL VERMA)
JUDGE

18.05.2018
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No