

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

108

**FAO-2486-2019 (O&M)
Date of Decision : 05.04.2019**

Ashutosh Gulia

... Appellant

Versus

Smt. Meenu

...Respondent

**CORAM:HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Loveleen Dhaliwal, Advocate for the appellant.

HARNARESH SINGH GILL, J.

This appeal has arisen from the judgment and decree dated 01.03.2019 passed by the learned Additional Principal Judge, Family Court, Rohtak, whereby petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the appellant-husband for the dissolution of her marriage was dismissed.

In brief, the facts are that the marriage of the appellant-husband was solemnized with the respondent-wife on 30.01.2015 as per Hindu rites and ceremonies. Out of the wedlock, a daughter was born on 02.12.2015. As per the assertions made by the appellant-husband before the Court below, the respondent-wife was a short tempered lady and used to pick up quarrel quite off and on. She was not interested in the domestic work. Under some sort of depression, she used to give beatings

to her mother-in-law and grandmother-in-law. It was further stated that when the respondent-wife was in a family way, she went to her parental house on 21.01.2016 with her brother as her father was not well. The appellant-husband, however, never came to know that his father-in-law had expired on 22.01.2016. Thereafter, the marriage of his brother-in-law was solemnized on 05.02.2016, but the appellant-husband and his family members were not invited. At one point of time, the respondent-wife tried to throttle her mother-in-law. She also refused to feed the minor child with an intention to kill her.

The allegations of the appellant-husband were resisted by the respondent-wife. She pleaded that soon after solemnization of marriage, the appellant-husband started treating her with cruelty. The appellant and his family members had expectation of bringing more dowry as they were not satisfied with the quality and quantity of the dowry which respondent-wife had brought at the time of marriage. It was further pleaded that an amount of Rs.80 lacs was spent on the marriage and a Mahindra XUV 500 and 50 grams of gold were given by the father of the respondent-wife. Despite all this, she was harassed and tortured and was sent to her parental home after pregnancy. At one point of time, father of respondent-wife had given Rs.5 lacs to fulfill the demand of the appellant-husband as the same was a pre-condition to take the respondent-wife back to her matrimonial home. Thus, it was stated that the respondent-wife had performed all matrimonial obligations towards her husband and his family. The family members of the appellant-husband expected Rs.11 lacs in cash and a new Fortuner Car, at the time of the birth of the child. On 22.12.2015 the mother, brother and maternal

uncle of the respondent-wife visited her in-laws' family and requested them to not to harass the respondent on account of their illegitimate demands. Father of the respondent-wife was seriously ill and admitted to PGIMS, Rohtak because of the pressure from the family of the respondent-wife. It was further stated that on 21.01.2016, after taking permission from her husband and in-laws, the respondent-wife had gone to meet her father once, who was critically ill. Her father died on 22.01.2016. Nobody from the side of her in-laws attended the last rites of her father. Neither the appellant nor any of his family members attended the marriage of her brother. On 17.03.2016, the respondent went to her matrimonial home with her brother and maternal uncle but she was not allowed to enter. Under these compelling circumstances, she returned to her parental house.

Taking into consideration the above pleadings, the family court framed following issues:-

1. Whether the petitioner is entitled to a decree for divorce on the grounds mentioned in the petition?OPP
2. Whether the petition of the petitioner is not maintainable?OPR
3. Relief.

After taking into consideration the evidence on record, the divorce petition was dismissed vide judgment and decree dated 01.03.2019 passed by the Additional Principal Judge, Family Court, Rohtak.

Aggrieved of the dismissal of the petition, the appellant-husband has preferred the present appeal.

Learned counsel for the appellant-husband has submitted that the marriage between the parties was solemnized on 30.01.2015 and a daughter was born on 02.12.2015. The atrocities committed by the respondent-wife upon the appellant and his family members, especially upon his mother and grandmother are brought to the notice of this Court. It has also been argued that the respondent-wife is a short tempered and quarrelsome lady and was never interested in the domestic work. Even at the time of marriage of the respondent's brother, the appellant and his family members were not invited. The appellant and his family members were not informed regarding the sad demise of father of the respondent on 22.01.2016.

After hearing learned counsel for the appellant and after going through the judgment passed by the family Court, we are not inclined to interfere in the well reasoned judgment.

The petition under Section 13(1)(i-a) of the Act was filed mainly on the ground of cruelty committed by the respondent-wife to her husband and his family members.

The expression cruelty has been used in relation to the human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, an inquiry must begin as to the nature of cruel treatment, and secondly, the impact of such treatment in the mind of the spouse, whether it causes reasonable

apprehension that it would be harmful or injurious to live with the other, is to be seen. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. But as a matter of fact, in the present case, we do not find any type of cruelty which falls in the parameters stated above.

In the present case, no doubt allegations of cruelty have been raised by the appellant-husband but there is no specific date, month or year of any such incident. Nothing has been pointed out at what occasion and what was the reason due to which the respondent-wife had caused a mental, intentional or unintentional cruelty to the appellant-husband or his family members. No proof has been placed on record so that the Court can draw the conclusion that the act of cruelty had affected the husband or his family members in any manner, at any stage.

More so, the minor daughter is in the care and custody of the respondent-wife. The appellant had also pleaded that he had apprehension of danger to his life and to the life of his minor daughter, but at no stage the appellant had moved an application for the custody of the minor daughter.

The trial court has taken into consideration the judgment passed by the Hon'ble High Court of Rajasthan titled as ***Smt. Bhawna Sharma Versus Devendra Kumar Sharma***, 2008(1) Latest Judicial Reports 74, in which it is held that normal wear and tear of married life does not amount to cruelty.

To our mind, it will not be correct to approach the Court with the assertions of cruelty on the isolated behaviour. If the appellant-husband had any reason to approach the Court on the basis of cruelty

caused by his wife, then the evidence of such cruel act should have been placed before the Court to draw a fair inference whether the appellant-husband is subjected to any mental cruelty. Rather instances given by the appellant was merely the result of wear and tear of the married life and could not be treated as cruelty of such degree that the parties could not live together or their marriage needs to be dissolved. To our mind only sensitivity of the appellant with respect to the conduct of the respondent, cannot be equated with cruelty.

In view of the above, we do not find any illegality or infirmity in the judgment and decree passed by the Additional Principal Judge, dated 01.03.2019 which may warrant interference by this Court in the present appeal.

Hence, the present appeal is dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

05.04.2019

pooja saini

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No