

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No. 2815 of 2019
Date of Decision: 10.5.2019

Jaswinder Pal

.....Appellant

Vs.

Ruchi

.....Respondent

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

Present: - Mr. Varun Sharma, Advocate for
Mr. P.S.Jammu, Advocate
for the appellant.

HARNARESH SINGH GILL, J.

Challenge in the present appeal is to the judgment and decree dated 11.2.2019 passed by Additional Principal Judge, Family Court, Ludhiana vide which petition filed by the appellant-husband under Section 13 of the Hindu Marriage Act, 1955 ('Act' for short) for dissolution of his marriage has been dismissed.

Brief facts of the present case are that marriage between the parties was solemnized on 10.3.2012 by way of Hindu rites at Ludhiana. Out of the said wedlock, one daughter, namely, Akriti was born on 2.5.2013. As per the allegations of the appellant-husband, he offered the best of his love and affection to the respondent-wife but somehow could not keep her happy. It was the specific demand of the respondent-wife to live separately from the old aged parents of the appellant. On this issue, she used to quarrel with the appellant and also with his mother. Further allegations of the appellant were that the respondent refused to perform the matrimonial duties and did not offer tea or water to the visiting guests. Ultimately, in the

year 2014, the appellant filed an application before Additional Deputy Commissioner of Police-4, Ludhiana on 22.4.2014. A compromise was effected and both of them started living separately from the parents of the appellant. Later on, again the respondent left the company of the appellant and, thus, the appellant was compelled to file a petition in the Court where the respondent-wife appeared through her counsel and flatly refused to join the company of the appellant. Thus, the respondent had withdrawn from the company of the appellant without any sufficient cause.

Upon notice, the respondent had appeared and filed her written statement denying the allegations levelled against her. It was stated that sufficient dowry articles were given to the appellant and his family by way of *Istri Dhan*. The relations between both of them remained cordial upto December, 2012. On 24.1.2013, when the brother of the respondent suddenly died, behaviour of the appellant and his family changed towards the respondent. She was turned out of the matrimonial home when she was at the advanced stage of pregnancy. Thus, the respondent had no option except to take shelter in her parental home. All the expenses were borne by the parents of the respondent, at the time of the birth of a baby girl, namely, Hargun on 2.5.2013. It was further averred that on 12.2.2014, *panchayat* was convened but the appellant refused to rehabilitate the respondent.

On the pleadings of the parties, issues were framed and they led their respective evidence.

After taking into consideration the evidence on record and the rival contentions of the parties, the trial Court dismissed the petition filed by the appellant-husband by holding that there was no act of mental cruelty

caused to the appellant-husband by the respondent-wife. It was also taken into consideration that Om Parkash Dhamija father of the appellant stepped into the witness box as PW-3 but he did not face the cross-examination. PW-5 Pritpal Singh deposed that the appellant and respondent had started living in a rented accommodation and he was also residing nearby. As per this witness, the attitude of the respondent towards the appellant was teasing and insulting and she used to quarrel on trifles and refused to perform the matrimonial duties. He further deposed that in the month of July 2014, the respondent had left her matrimonial home.

On the other hand, the evidence brought on record by the respondent wife was also taken into consideration by the Court below. The respondent tendered in evidence the complaint made to the police Ex. R-2 and the compromise Ex. R-3. It was also been brought on record that *panchayat* was convened to rehabilitate the respondent but the appellant and his family members refused to rehabilitate the respondent in her matrimonial home, rather they insulted them.

We have heard learned counsel for the appellant but do not find any merit in the present appeal.

The Court below has rightly taken into consideration that no specific date and time has been mentioned regarding the cruelty committed by the respondent against the appellant and his family members. All the allegations against the respondent were found to be vague. Even the appellant had not produced his mother in the witness box to prove the allegations that the respondent used to quarrel with her mother-in-law and refused to cook food. Even the name of the guests to whom the respondent

refused to serve tea were not stated in the petition or in the evidence.

The appellant has deposed that he was working with M/s Pritam Singh and Sons as an Accountant but had to leave the job because of the matrimonial dispute. In cross-examination, he admitted that no complaint was filed by the respondent or her parents in his office. The appellant had failed to place on record the appointment letter or his salary slip showing that he was employed with M/s Pritam Singh and Sons at any stage.

The Court below has rightly drawn a conclusion that the allegations made by the appellant are general and vague which are common wear and tear of the matrimonial life insufficient to constitute cruelty.

While passing the judgment, the Court below has rightly taken support from the judgment passed by this Court in ***Harjeet Singh versus Harpreet Kaur 2016 (3) Law Herald 2442*** wherein it was held that the allegations of cruelty should not be based on the trivial matters. Rather such allegations should have origin in the context of time, place and the manner of cruelty. The cruelty should be of such a nature in which it is not reasonably expected to live together. The appellant in the present case has failed to prove any specific act on the part of the respondent which may fall under the definition of cruelty.

Thus, from the above facts and circumstances, we hold that the appellant has levelled general allegations of cruelty which are found to have occurred in the day-to-day family life. No specific incident of cruelty which had tormented appellant and made him to suffer pain and agony has been pleaded and established. The weak moral fibre of the appellant-husband

would have forced the respondent to live separately from him. Even then she was prepared to join the appellant forgetting his past conduct. Thus, the allegation of desertion or cruelty, attributed to the respondent also does not survive for consideration.

The Court below has rightly drawn a conclusion that no permanent alimony of a sum of ₹ 25.00 lakhs can be granted to the respondent-wife from the husband as a decree of divorce is a condition precedent for exercise of jurisdiction under Section 25(1) of the Act. The wife can claim maintenance under any other law but no permanent alimony under Section 25 of the Act can be claimed where a decree of divorce has not been granted.

In our opinion, cruelty which constitutes a ground for divorce, whether it is mental or physical in nature, is a question of fact. Determination of such a fact depends on the evidence. No uniform formula can be laid down for guidance. The behaviour which may constitute cruelty in one case may not be cruelty in another. There must be to a large extent, a subjective as well as an objective aspect involved. One may tolerate the behaviour of his or her spouse which may be intolerable to another. Separation is usually preceded by marital dispute and unpleasantness. The Court should not grant a decree of divorce on evidence of merely distasteful or irritating conduct on the part of the offending spouse. The word cruelty denotes excessive sufferings, severity of pain, mercilessness, not mere displeasure, irritation, anger or dissatisfaction. In the case in hand there is only small wear and tear, matrimonial ties which does not constitute an act of cruelty.

In the grounds of appeal, the appellant has relied upon *Samar Ghosh versus Jaya Ghosh (2007) 4 SCC 511* illustrating the mental cruelty and on that basis it is argued that when 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 laws in such cases does not serve the sanctity of marriage. On the contrary, it shows scant regard to the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

The case law referred to by the appellant does not support his case because in the present case, the respondent-wife was ready and willing to join the matrimonial home, whereas the appellant and his family members had ill-treated her. The appellant-husband has failed to point out any time, date or year specifying the act of cruelty on the part of the respondent.

Keeping in view the above facts and circumstances we are not inclined to interfere in the well reasoned judgment and decree of the Court below.

Hence, the appeal is dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

May 10, 2019
Gurpreet

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