

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : FAO Nos.1786 & 1790 of 2018

Date of Decision : March 12, 2020

Anita Aggarwal	 Appellant (in both FAOs)
vs.	
Ramesh Aggarwal	 Respondent (in both FAOs)

**CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY.
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA.**

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Present : Mr. Amaninder Preet Singh, Advocate
for the appellant.

Mr. Deepak Sabherwal, Advocate
for the respondent.

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MEENAKSHI I. MEHTA, J. :

This order shall dispose of two appeals, i.e. **FAO No. 1786 of 2018** preferred by the appellant-wife (hereinafter referred to as 'the wife') to assail the judgment and decree dated 22.02.2018, handed down by learned District Judge (Family Court), Moga, dismissing the petition as filed by her against the respondent-husband (hereinafter referred to as 'the husband') under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') and **FAO No. 1790 of 2018**, as filed by her to challenge the judgment and decree passed by the above-said Court on the same day, whereby the petition, as preferred by the husband against her under Section

13 of the Act, seeking dissolution of their marriage by way of the decree of

divorce, was allowed. Both these appeals are being taken up together for adjudication as these have the genesis in the matrimonial discord between the same parties.

2. As per brief factual matrix, as canvassed by the husband (the petitioner) in the divorce petition, which has culminated in FAO No.1790 of 2018, the marriage between the parties was solemnized on 08.10.1995 at Dina Nagar as per Hindu Rites and Ceremonies. Out of this wedlock, two children named Parshant and Shreya were born, who were residing with him. The relations between the parties remained cordial up to the year 2005 but thereafter, the attitude of the wife started changing towards him. However, she was not having harmonious relations with his parents and other family members from the very beginning of their married life. She had been insisting for shifting to Moga and due to her misbehaviour towards his parents and younger brother, his father got a house constructed providing therein separate portions for him and his brother. In the year 2006, his wife misbehaved with him, his parents and brother on his having asked her to seek the repayment of a sum of Rs.2 lacs from the husband of her elder sister as given to him on loan basis. At the time of *Greh Parvesh* (house-warming) ceremony, the brothers and sister of his wife came to Dina Nagar and she started using filthy language against him and his family members and also pushed his brother aside on his having tried to pacify her.

3. The husband further averred that on 25.11.2008, his parents visited the residential portion occupied by him and were talking to their children but the wife gave beatings to the children and also caused injuries

to his parents with her nails. However, the matter was compromised due to intervention of the respectables and she admitted her fault in the presence of her mother and brothers and this compromise was penned down wherein she also assured to improve her behaviour but she did not mend her ways. On 18.07.2011, she left her matrimonial home while saying that she would return after 10-15 days but she returned on 08.10.2011 and was accompanied by her brother. She again misbehaved with his father and threw her slipper towards him. This incident was reported to the police and thereupon, she gave written assurance that she would improve her behaviour. On 24.06.2012, on his reaching home, he found his daughter crying and when inquired, she disclosed to him that the wife had beaten her and had not served lunch to her. On his talking to his wife about the same, she started abusing and beating him and she also threatened to commit suicide. He got himself medically treated at the hospital and also reported the matter to the police. On 27.07.2012, the wife left her matrimonial house in his absence. Thus, she subjected him and their children as well as her parents-in-law to cruelty, mental as well as physical and also withdrew from his society without any sufficient and reasonable cause.

4. In her written reply, the wife (the respondent in the divorce petition), controverted the stand of the husband, inter-alia, on the grounds of maintainability, concealment of true facts and estoppel. She also asserted that it was her husband who had treated her with cruelty and she had always been willing to live in her matrimonial home. She had always fulfilled her duties as a wife and had never compelled her husband to shift to Moga. She

never misbehaved with her husband or any of his family members. Her brother-in-law used to serve chicken to her minor kids on the occasions of their dining out. On 25.11.2008, her husband and his family members gave her severe beatings and her brother and sister had to take her for her medical treatment. When her family members requested her husband to keep her at her matrimonial home, they were compelled to sign some blank papers which were, subsequently, misused by her husband.

5. The wife further asserted that on 18.07.2011, she had not left her matrimonial home and rather, her husband and his family members sent her to her parental home after giving her beatings. She returned to her matrimonial house on her own on 08.10.2011 but she never misbehaved with her father-in-law nor threw any slipper towards him. In fact, Pawan, the cousin brother of her husband and one Ashok visited her matrimonial home and they, along-with her husband and his family members, again gave her beatings and though the matter was reported at Police Station, Dina Nagar but the police officials, under the influence of her husband, procured her signatures on the blank papers. She did not leave her matrimonial home on 27.07.2012 and rather, she had gone to her parental home on 26.07.2012 on the occasion of Raksha Bandhan festival and five days thereafter, she returned to her matrimonial home but was not allowed to enter there. On the next day, her family members reached at Dina Nagar and she was taken back to her parental home on the assurance that her husband would bring her back to her matrimonial home after two months but he did not come to take her back there. Then, she returned to Dina Nagar on 25.12.2012 and

lived there with her husband upto 25.12.2013 in the rented accommodation belonging to one Vijay Mahajan and again, she was left by her husband at her parental home. On 06.03.2015, she returned to her matrimonial home but was not allowed to enter the same and when she reported the matter to the police, she came to know about the ex-parte decree, as passed in the divorce petition which was, later-on, set aside.

6. The husband filed rejoinder and from the pleadings of the parties, the following issues were framed on 15.03.2016:-

- “1. Whether the respondent treated the petitioner with cruelty? OPP*
- 2. Whether the respondent has deserted the petitioner without any sufficient cause? OPP*
- 3. If issues No.1 and 2 are proved, whether the petitioner is entitled to decree of divorce? OPP*
- 4. Whether the present petition is not maintainable in any manner? OPR*
- 5. Whether the petitioner has not approached the Court with clean hands and concealed the true facts? OPR*
- 6. Relief.”*

7. Both the parties led their evidence, oral as well as documentary, in support of their respective contentions. It is worthwhile to mention here

that while addressing the arguments before the trial Court, learned counsel for the husband made a statement regarding not pressing the ground of desertion. Hence, issue no.2 was disposed of accordingly. Learned Trial Court answered issues no1 and 3 to 5 in favour of the husband. Resultantly, the petition was allowed and a decree of divorce was passed in favour of the husband while directing him to pay maintenance allowance to the wife @ Rs.20,000/- per month.

8. The facts, in brief, as set forth by the wife in her petition under Section 9 of the Act, leading to the filing of **FAO No.1786 of 2018**, are that the marriage between the parties was solemnized on 08.10.1995 and two children were born out of this wedlock. After the marriage of her brother-in-law Rajnish, the behaviour of her husband and his family members drastically changed towards her but she did not disclose this fact to her family members with the hope that some day, better sense would prevail upon them. On 25.12.2013, her husband sent her to her parental home at Moga while assuring that he would bring her back shortly. Thereafter, despite her repeated telephonic requests, he did not turn up. On 06.03.2015, she returned to her matrimonial home on the occasion of Holi festival but she was not allowed to enter there and rather, her husband and his family members called the police officials there and then, she came to know about the ex-parte decree of divorce qua the dissolution of their marriage, which was, subsequently, set aside but her husband had illegally married one Reena whereas she was still ready and willing to reside with him in her matrimonial home. However, her husband refused to reside with her and

thus, withdrew from her society without any reasonable cause.

9. The husband, in his written reply, contested the claim of the wife, primarily, on the grounds of maintainability, mala-fides and false allegations. He also asserted that his wife intended to disturb his marital life with his second wife. She used to insist for shifting to Moga or Chandigarh and also misbehaved with and humiliated him as well as his family members on several occasions and had also been maltreating their children. She had even caused injuries to him and his parents and also neglected to look after their children. She used to threaten to commit suicide. On 27.07.2012, she left her matrimonial home and all his efforts to contact her remained futile and finally, she told him that she would live only at Chandigarh.

10. On the basis of the pleadings of the parties, learned Trial Court framed the following issues on 03.04.2017 :-

- “1. Whether petitioner is entitled to restitution of conjugal rights, as prayed for? OPP*
- 2. Whether there is sufficient cause with the resonant to leave the society of the petitioner? OPR*
- 3. Whether petition is not maintainable? OPR*
- 4. Relief.”*

11. Both the parties adduced their evidence to substantiate their respective contentions in this petition. Learned Trial Court settled issues no.1 to 3 against the wife and dismissed her petition.

12. We have heard learned counsel for the parties in both the present appeals and have perused the record thoroughly.

13. Learned counsel for the wife contended that the wife had always been ready and willing to stay in her matrimonial house and she never misbehaved with the husband or his family members and rather, the husband had subjected her to cruelty and had neglected her but learned Trial Court wrongly dismissed the petition, as preferred by the wife under Section 9 of the Act and allowed the petition, as filed by the husband under Section 13 of the Act and therefore, both the impugned judgments and decrees, as passed in these petitions, were liable to be set aside.

14. However, learned counsel for the husband argued that in fact, the wife had constantly been subjecting the husband to cruelty, mental as well as physical, by maltreating him, his family members and their kids and she even caused injuries to her husband and also the parents-in-law and she used to give beatings to her children and even neglected to provide meals to them and in these circumstances, it was not possible for the husband to stay with her and after taking all the afore-discussed facts and circumstances into consideration, learned Trial Court rightly dismissed the above said petition of the wife and allowed the divorce petition filed by the husband.

15. Before adverting to the discussion on the merits of FAO No.1786 of 2018 arising out of the petition filed by the wife under Section 9 of the Act, we deem it expedient and appropriate to discuss and adjudicate the ground of cruelty as taken by the husband in his petition under Section

of 2018 as the adjudication thereof will be relevant and necessary for deciding afore-said FAO No.1786 of 2018.

16. Exhibits P-1 and P-2 are the copies of the respective medico-legal reports of Brij Rani and Roop Lal, i.e. the parents-in-law of the wife. As specifically deposed by the husband, as PW1, in his affidavit Exhibit PW-1/A and by his father Roop Lal, as PW-2, in his affidavit Exhibit PW-2/A in the above-said divorce petition, the parents-in-law of the wife visited the portion of the house, occupied by the husband, on 25.11.2008 and while they were talking to their grandchildren there, the wife started using filthy language against them and also caused injuries to them and then, they were medico-legally examined at Civil Hospital, Dina Nagar.

17. Learned Trial Court has categorically observed in para no.41 of the impugned judgment, as rendered in the afore-mentioned petition, that the husband, as PW-1, had not been cross-examined by the wife regarding the injuries given by her (wife) to her parents-in-law or the medico-legal reports Exhibits P-1 and P-2 pertaining to his parents nor was suggested that these medico-legal reports were false or procured ones or the injuries on the persons of his parents were self-inflicted or that she had not caused these injuries. Similarly, in para no.48 of this judgment, it has been observed that no suggestion had been given to PW-2 Roop Lal that the said medico-legal reports were false or procured ones or that the injuries on his person and on the person of his wife were self-inflicted.

18. Rather, Exhibit P-3 is the copy of the compromise deed dated 29.12.2008 wherein it has been specifically mentioned that the wife, in the

presence of her family members and other witnesses, admitted her mistake regarding the above-said incident and she also promised that she would not commit any such mistake in future. Although in her affidavit Ex.RW-7/A, tendered while appearing as RW-7, the wife had deposed that she and her family members were compelled by the husband and his family members to sign the blank papers and in a bid to save her matrimonial life, they had agreed for the same and that these papers were subsequently misused by the husband but however, in normal course of events, no prudent person can be expected to sign the blank papers and even if for the sake of arguments, it is presumed that the wife and her family members had done so under the pressure at the hands of the husband and his family members, even then the fact remains that no person could be expected to keep mum thereafter and not to report such matter to the competent authorities at the earliest available opportunity. Moreover, the wife has not even mentioned this fact in her petition, as preferred under Section 9 of the Act, despite the fact that the said petition was filed in the year 2016, i.e. much later than the filing of the divorce petition by the husband in the year 2012. In such circumstances, the above-discussed version, as put forth by the wife regarding her own signatures as well as the signatures of her family members on compromise deed Exhibit P-3, does not inspire any confidence.

19. As deposed by the afore-named PW-1, the husband and PW-2 Roop Lal, his father, the parties shifted to their new house in October, 2008 and on the occasion of "*Greh Parvesh*" (house-warming) ceremony, the

wife got agitated and started using filthy language against the husband and

his family members and when her husband's brother tried to pacify her, she asked him to shut up and pushed him aside. PW-7 Parshant, the son of the parties, also corroborated the above-discussed depositions in his affidavit Exhibit PW-7/A. During her cross-examination as RW-7, the wife herself categorically admitted that during her cross-examination in the petition under Section 9 of the Act, she had stated that she had raised a dispute during the *Greh Parvesh* ceremony. This admission on her part, rather, fortifies the afore-discussed depositions as made by PW-1, PW-2 and PW-7 regarding the said occurrence.

20. Further, the above-named PW-1, PW-2 and PW-7 have deposed in their above-said respective affidavits that the wife left her matrimonial home on 18.07.2011 with her brother and returned on 08.10.2011 and she misbehaved with the husband and threw her slipper towards her father-in-law and the matter was reported to the police. During her cross-examination as RW-7, the wife deposed that she did not remember if she had returned on 08.10.2011 or any report was lodged against her on the next day whereas Exhibit P-7 is the copy of DDR as entered against her as well as her brother on 08.10.2011 for using filthy language and beating her in-laws and also for threatening them.

21. Again, PW-1, PW-2 and PW-7 have also deposed in their respective affidavits that on 24.06.2012, the wife had not served lunch to her children and had also beaten them and when the husband asked her about the reason for the same, the wife abused and gave beatings to him and also threatened to commit suicide and the husband got himself medically

examined. Exhibit P-4 is the copy of the medico-legal report showing the injuries on the person of the husband. Exhibit P-5 is the copy of the DDR, as recorded on 25.06.2012 at the instance of the husband, regarding the above-said occurrence.

22. However, learned Trial Court has specifically observed in para no.41 of the judgment under challenge that while cross-examining the husband as PW-1, it was never suggested to him that the injuries on his person were self-inflicted and as rightly mentioned in para no.85 of this judgment, the wife, as RW-7, deposed that she did not know as to whether the matter had gone to the police also or that she had threatened to commit suicide and thus, she had not specifically denied both the above-said facts. Moreover, learned Trial Court has also observed in paras no.41 and 48 of the said judgment that PW-1 and PW-2 had not been given any suggestion by the wife qua the factum of her having threatened to commit suicide.

23. It is pertinent to mention here that though in para no.11 of her written-reply as filed in the divorce petition, the wife has alleged that on 24.06.2012, the husband, alongwith his brother, parents and the wife of his brother, had given her merciless beatings leading to a fracture in her arm and though in her affidavit Exhibit RW-7/A also, she has made depositions to the same effect but however, she has not produced any medical evidence on the file to substantiate her afore-mentioned allegation. Rather, during her cross-examination as RW-7, she stated that her medical reports were lying in the office of her counsel, but however, the fact remains that had these reports been available with her counsel, he could not be expected to

have withheld the same from being placed on the record despite being fully aware of the relevance as well as the evidentiary value thereof. RW-8 Pawan Kumar, the brother of the wife, also stated that his sister had been medically examined by the doctor and the medico-legal report was lying with him. In case this witness was in possession of any such report, then he could have produced the same on the file but again, no explanation came forth from his side for not doing so. In these circumstances, an adverse inference has to be drawn against the wife in respect of the same. All the above-discussed facts and circumstances unequivocally lead to an irresistible conclusion that the wife had subjected the husband to cruelty.

24. Seen from yet another angle, though the afore-mentioned incidents of the disputes raised by the wife at the time of *Greh Parvesh* ceremony and her having caused injuries to her parents-in-law pertain to the period prior to 29.12.2008, i.e. the date of execution of the compromise deed (Exhibit P-3) and even if this document may be taken to be amounting to the condonation of these incidents of cruelty by the husband but it is worthwhile to mention here that the above-described incidents of the wife having thrown her slipper towards her father-in-law and having caused injuries to the husband relate to the period subsequent to the execution of the said compromise deed. A three Judges' Bench of the Hon'ble Apex Court has made the following observations in **Dr. N.G. Dastane vs. Mrs. S. Dastane 1975(2) SCC 326** :-

“57. But condonation of a matrimonial offence is not to be likened to a full Presidential

Pardon under Article 72 of the Constitution which, once granted, wipes out the guilt beyond the possibility of revival. Condonation is always subject to the implied condition that the offending spouse will not commit a fresh matrimonial offence, either of the same variety as the one condoned or of any other variety. No matrimonial offence is erased by condonation. It is obscured but not obliterated. Since the condition of forgiveness is that no further matrimonial offence shall occur, it is not necessary that the fresh offence should be ejusdem generis with the original offence. Condoned cruelty can, therefore, be revived, say, by desertion or adultery.”

25. While relying upon the above-discussed observations, as made by Hon'ble Supreme Court, learned Single Judge of this Court categorically held in **Sqrn. Leader P.S. Kher vs Mrs. Kamal-Nainjit Kaur 1981 HLR 569** that “*the fresh act of cruelty on the part of the wife would revive her earlier conduct even if condoned previously*”. In view of these observations, it becomes quite explicit that the afore-mentioned events, which took place subsequent to the execution of compromise deed dated 29.12.2008 (Exhibit P-3), do suffice to hold that these revived the cruelty which could be taken to have been condoned vide this document.

26. Now coming to the discussion on the merits in **FAO No.1786 of 2018** arising out of the petition filed by the wife under Section 9 of the Act, it is necessary and relevant to mention here she filed this petition on 04.08.2016 after the ex-parte decree of divorce, as passed in favour of the

husband in the petition preferred by him for this purpose in the year 2012, was set aside on 29.03.2016 in view of the application moved by her under Order 9 Rule 13 CPC. Moreover, during her cross-examination as PW-1, the wife stated that after filing this petition, she filed one complaint against her husband, his parents and brother etc. under Domestic Violence Act, 2005 and that she had never moved any application of any type to any Authority or the police anywhere before filing this petition, the divorce petition and the complaint under Domestic Violence Act, 2005 nor she ever got herself medically examined for the alleged beatings given to her by her husband or his parents. She further volunteered to say that on her visit to her parental home, her parents got the scanning of her brain conducted but however, she did not produce the said record on the file, for the reasons best known to her. Thus, it is explicit that the afore-said legal proceedings were initiated by her after the filing of the divorce petition by the husband.

27. In this petition also, the husband has produced the copies of the medico-legal reports of both his parents, besides his own medico-legal report, on the file as Exhibits R-1 to R-3 regarding the injuries suffered by them at the hands of the wife. Exhibit R-4 is the copy of the DDR entered against the wife and her brother Pawan on 08.10.2011 at the instance of her father-in-law regarding their misbehaving with and beating him. Exhibit R-5 is the copy of the DDR recorded on the basis of the statement of the husband on 25.06.2012 regarding his having suffered injuries at the hands of his wife and Exhibit R-6 is the copy of his statement as recorded by the police. While appearing as PW-1, the wife also admitted that during the

Greh Parvesh ceremony, she had raised the dispute voluntarily due to some problems but she did not divulge the details of such problem.

28. Further, as per the version of the wife, she was sent to Moga by her husband on 25.12.2013. During her cross-examination as PW-1, she stated that she resided in the house of one Vijay Mahajan for one year in December 2012. In these circumstances, said Vijay Mahajan could have been the best person to make depositions to corroborate the aforesaid version of the wife but significantly, he was given up by her counsel for his having been won over by the husband. In these circumstances, her version regarding her having been sent to her parental home on 25.12.2013 does not seem to be trustworthy, especially in the circumstances when the husband, as RW-1, has specifically deposed in his affidavit Exhibit RW-3/A that the wife had left her matrimonial home on 27.07.2012 in his absence and the wife, as PW-1, also categorically admitted during her cross-examination that on the said date, she had gone to Moga, i.e. her parental abode, from Dina Nagar.

29. As observed earlier also while discussing the merits of the divorce petition in **FAO No.1790 of 2018**, the wife had misbehaved with the husband, her children and parents-in-law on several occasions which squarely fall within the four corners of the term “cruelty” and she did not mend her ways even after admitting her mistake and despite promising that she would never repeat the same as specifically mentioned in the compromise-deed which has been exhibited as R-11 in this petition and P-3

husband, substantiates the afore-mentioned erratic act and conduct of the wife.

30. As per our social norms, marriage is not simply a contract between two persons and rather, it is a sacred bond wherein both the parties agree to live together as true companions and promise to share all the happiness, sorrows, problems and difficulties with each other throughout the rest of their lives. Staying together does not mean merely residing together and rather, it is perceived as living with the mutual emotional quotient sufficient enough to spend a blissful life together and unfortunately, if one of the spouses lacks in fulfilling his/her matrimonial obligations or has erratic behaviour or act and conduct towards the other spouse to the extent that it hurts the other spouse physically or mentally, then the true meaning of the marital bliss is lost and in such eventuality, the other spouse cannot be compelled to live together with the erring spouse.

31. In view of the facts and circumstances as discussed in the preceding paragraphs, we are of the considered opinion that the findings as recorded by learned Trial Court to the effect that the husband had produced ample evidence on the record to the effect that the wife had caused grave mental and physical cruelty to him and it was not possible for him to live with her and therefore, a decree of divorce deserved to be granted in favour of the husband and that he could not be compelled for the restitution of conjugal rights to co-habit with the wife, do not suffer from any infirmity, illegality or perversity and hence, the same do not warrant any interference

32. As a sequel to the foregoing discussion, it follows that both the appeals i.e. FAO No.1786 of 2018 and FAO No.1790 of 2018, being sans any merit, are hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

March 12, 2020
monika

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