

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

FAO-5280 of 2019

Date of decision:- 22.12.2021

Kusum @ Sunaina

...Appellant

Vs.

Arun Kumar

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Rajesh Bansal, Advocate
for the appellant-wife.

Mr. Ashwani Talwar, Advocate
for the respondent-husband.

Ritu Bahri, J.

The appellant-wife has come up in appeal before this Court, seeking setting aside of judgment dated 03.08.2019 passed by Principal Judge, Family Court, Panchkula, whereby the petition filed by her husband under Section 13 of the Hindu Marriage Act, 1955 (for short 'Act 1955'), for dissolution of marriage between the parties by decree of divorce on the grounds of cruelty and desertion, has been allowed.

Brief facts of the case are that the marriage of the appellant-wife was solemnized on 06.11.2011 with the respondent-husband. Out of this wedlock, one son was born on 16.10.2012 at Rohtak, who is currently residing with the appellant at Jhajjar. In the petition, it was alleged by the respondent-husband that her wife has treated him with cruelty and deserted him. She used to pick up quarrels on petty matters and used to throw tantrums, she was disrespectful towards elders and the parents of the

respondent-husband. She used to abuse the respondent-husband and threaten to commit suicide. It was alleged that on the first night of the marriage, the wife told him that she did not wish to marry him and used to chat with a person namely Rohil Kumar on the social media. Even after the birth of their child, the appellant-wife rebuked the respondent-husband in the presence of one Vijay son of Surajmal. On 28.11.2012, the brother of the appellant-wife visited Mishri Devi Hospital, where the respondent-husband was working on part time basis and in the presence of Shri Vijay Kumar son of Surajmal, the appellant-wife threatened the respondent-husband that he should separate from his parents. In November, 2013, the appellant-wife went to visit her parental home, but refused to return despite the efforts made by the respondent-husband, who had visited her at her parental house along with Mohit son of Anand Prakash.

On 25.07.2014 the respondent-husband joined at Civil Hospital, Jhajjar on contract basis under District Early Intervention Centre Scheme where the appellant-wife and her parents forced him to get his ration card transferred to Jhajjar. In the year 2014, the appellant-wife started working as a teacher in a senior secondary school and she used to remain away from home for very long hours and used to return home very late.

On 05.06.2015, the appellant-wife left the house of the respondent-husband along with the dowry articles and has deserted him. There are allegations of incidents dated 10.07.2015 and 11.07.2015 when the appellant-wife visited Civil Hospital, Jhajjar, where the respondent-husband was working and created ruckus in the presence of a peon namely Mukesh. On 29.08.2015 the appellant along with her brothers came to Rohtak at the house of the respondent-husband. She kept sitting in the car

outside, whereas her brothers caused injuries to the parents and sister of the respondent-husband. A written complaint was given at police station Civil Lines, Rohtak by the father of the respondent-husband and all the three injured were taken to Civil Hospital, Rohtak. The appellant-wife requested the respondent-husband not to pursue the matter and that a Panchayat shall be convened, but the appellant-wife denied to get the matter considered before the Panchayat. It was thus, alleged that considering the specific incidents alleged by the respondent-husband against the appellant-wife, immense cruelty has been caused to the respondent-husband and his family.

Notice of the petition was issued to the appellant-wife, who filed her written statement and on merits, she admitted the marriage between the parties and that a son has been born from their wedlock. It was, however, averred that she and her son have been intentionally and willfully neglected and deserted by the respondent-husband. The allegations of bad behaviour of the appellant-wife that she used to abuse the respondent-husband or was disrespectful towards the elders and parents of the respondent-husband, were denied. It was also denied that any such desire of not intending to marry the respondent-husband was made by the appellant-wife. It was denied that she used to chat with a person called Rohil Kumar, as alleged or that any incident, as alleged, took place, when she had slept in the room of the sister of the respondent-husband. It was denied that she ever threatened the respondent-husband or his family members in respect of dowry or that she would commit suicide. Appellant-wife also denied that she rebuked the respondent-husband in front of any person called Vijay. It was denied that her brother threatened the respondent-husband at the place of his work or that she and her parents forced the respondent-husband to get

the ration card transferred, as alleged. She also denied that she used to remain outside the house for long hours without any reason. It was denied that she has deserted the respondent-husband, as alleged or that she created any ruckus at the premises of Civil Hospital, Jhajjar, where the respondent-husband was working. It was also denied that she along with her brothers visited the house of the respondent-husband and that she remained sitting outside in the car and her brothers injured the parents and sister of the respondent-husband. It was averred that the medical reports are false and it was denied that the parents and sister of the respondent-husband sustained any injury, as alleged. She had averred that rather, it is the respondent-husband who has caused her mental and physical cruelty since the respondent-husband and his parents used to raise demand of dowry despite the fact that her father had spent more than Rs.20 lakhs at the time of marriage. There are allegations against the parents of the respondent-husband and his two maternal uncles that even on the day of the marriage they had taunted the father of the appellant-wife for bringing insufficient dowry. She has alleged that the mother of the respondent-husband used to taunt her in respect of the household work performed by her. She has averred that every now and then, on festivals, demand of dowry, gifts and cash was raised by the respondent-husband and his family members. It was also averred that on one occasion when the uncles of the appellant-wife came to visit her in the matrimonial home, the parents of the respondent-husband called bad names to her. It is alleged that the respondent-husband used to doubt her character and used to give beatings to her when he used to come home under the influence of liquor. It was also alleged that the respondent-husband and his parents used to taunt her that she was suffering

from some chronic skin disease. She also alleged that when she wanted to take coaching classes in order to get a job of PGT teacher, the mother of the respondent-husband did not allow her to attend the said classes. It was also alleged that the respondent-husband and his parents sent a message through one Raj Singh Dhankhar to her and her parents that in case she wanted to come back and live in their house, her parents should pay an amount of Rs.10 lakhs so that the respondent-husband can set up a clinic at Rohtak.

It was averred that on 27.08.2015, the brother of the appellant-wife namely Narender Verma submitted an application against the respondent-husband and when he came to know about it he and his parents asked the appellant-wife and her parents to come to Rohtak to discuss the matter. It was alleged that she was taken to her matrimonial home by her brothers where the sister of the respondent-husband made repeated demands of a sum of Rs.10 lakhs and when she and her brothers refused to meet the demand, his sister attacked her and her brothers with "Farsa" and "Lathis". Resultantly, her brother Narender Verma sustained injuries and was admitted in Civil Hospital, Rohtak and then he was referred to PGI,Rohtak. The matter was compromised between the parties whereas despite the requests made by her, she was not taken back by the respondent-husband. It is alleged that the respondent-husband himself has withdrawn from the society of the respondent and hence, the petition be dismissed.

On the pleadings of the parties, following issues were framed on 09.03.2017:

“1. Whether the petitioner is entitled for grant of decree of divorce on the grounds of cruelty and desertion as alleged in the petition?OPP

2. Relief.”

The Family Court has referred to a complaint dated 04.04.2016 filed against the respondent-husband by one Kuchhal Shardhanand, copy of which is Ex.P1 and Ex.P3. This complaint was with regard to the appointment of the respondent-husband on contractual basis at Civil Hospital, Jhajjar, by giving false application, vide letter dated 08.04.2016, copy of which is Ex.P2, Civil Surgeon, Jhajjar sought report from the Deputy Civil Surgeons, Jhajjar on the said complaint. Vide letter dated 17.05.2016 (Ex.P4), the inquiry report against the respondent-husband was forwarded to the Civil Surgeon, Jhajjr. Ex.P5 to Ex.P7 are also the copies of proceedings conducted in the said inquiry. Ex.P8 is copy of report of inquiry vide which the allegations against the respondent-husband of not maintaining the headquarters was found to be proved. Thereafter, Ex.P9 is copy notice dated 01.03.2018 issued by the Civil Surgeon, Jhajjar to the petitioner regarding, termination of his services. Ex.P10 is letter dated 06.04.2018 issued by the Deputy Civil Surgeon, Jhajjar to the Civil Surgeon, Jhajjar regarding initiation of proceedings against the respondent-husband. Ex.P11 is copy of letter dated 12.01.2018 issued by the Mission Director, NHM, Haryana to the Civil Surgeon, Jhajjar accompanied by inquiry report that the charges against the respondent-husband were proved. It is the case of the respondent-husband that when he had received a notice regarding termination of his services, he approached the Hon'ble High Court of Punjab & Haryana against the said order and vide order dated 23.03.2018, copy of which is Ex.P12, the termination of his services was stayed. It is the case of the respondent-husband that Kuchhal Shardhanand, through whom the complaint was initiated, had also been set up by the appellant-wife and her brothers. His complaint coincided with the present

petition of divorce, the notice of which had been received by the appellant-wife. The matter regarding filing of complaints against the employment and services of the respondent-husband did not rest here. The brother of the appellant-wife i.e. Narender Verma filed complaint dated 14.06.2017 to the Health Minister, Haryana, copy of which is Ex P13. Thereafter, proceedings and inquiry was initiated in respect of the said complaint, copies of which are Ex.P14 to Ex.P16. It is also important to notice that the said complainant Kuchhal Shardhanand had also raised an objection through his complaint regarding the appointment of the respondent-husband in district Jhajjar. This complaint was in consonance with that filed by the brother of the appellant-wife, taking advantage of the knowledge that at the time of advertisement regarding the contractual job at Civil Hospital, Jhajjar, some extra marks were to be awarded to the residents of district Jhajjar.

Thus, the family of the appellant-wife has tried their level best in getting the job of respondent-husband terminated. It has been held that merely because the said complaints have not been initiated by the appellant-wife herself, the same cannot absolve her from taking responsibility of this action, undertaken by her brothers. This allegation of the respondent-husband substantiated with the oral as well as documentary evidence and cannot be said to be general allegations of cruelty.

From the afore discussed evidence adduced by the parties, the Court below has held that no stone has been remained unturned on the part of the family of the appellant-wife in getting the government job of the respondent-husband terminated. It was held to be joint act on the part of the appellant-wife and her family members to take step of filing complaints against the respondent-husband with regard to termination of his

government job. These complaints could result in termination of his job. Livelihood of a person is crucial to him. Further the appellant-wife also lodged F.I.R No. 16 dated 23.03.2016 (Ex R5) against the respondent-husband under Sections 323/406/498-A/506 IPC at Women Police Station, Panchkula. He was however acquitted of the charges framed against him, vide judgment dated 17.11.2018 (Ex PAA). Thus, it was held that cruelty has been caused to the respondent-husband at the hands of the appellant-wife and her family members. The parties cannot live under one roof.

Heard learned counsel for the parties at length.

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of ***Chandra Kala Trivedi vs. Dr. S.P. Trivedi, 1993 (4) SCC 232*** wherein Hon'ble the Supreme Court was considering a case where marriage was irretrievably broken down and held that in these cases, the decree of divorce can be granted where both the parties have levelled such allegations against each other that the marriage appears to be practically dead and the parties cannot live together.

Reference at this stage can be made to a judgment of three Judge Bench of Hon'ble the Supreme Court of India in case of ***A Jayachandra vs. Aneel Kaur, 2005 (2) SCC 22*** wherein Hon'ble the Supreme Court was having an occasion to consider the case of divorce on the basis of cruelty including mental cruelty. While examining the pleadings and evidence brought on record, the Court emphasized that the allegation of cruelty is of such nature in which resumption of marriage is not possible, however, referring various decisions, the Court observed that irretrievable breaking down of marriage is not one of statutory grounds on which Court can direct dissolution of marriage, this Court has with a view to do complete

justice and shorten the agony of the parties engaged in long drawn legal battle, directed in those cases dissolution of marriage. In para 17, it has been observed as under:-

17. Several decisions, as noted above, were cited by learned counsel for the respondent to contend that even if marriage has broken down irretrievably decree of divorce cannot be passed. In all these cases it has been categorically held that in extreme cases the court can direct dissolution of marriage on the ground that the marriage had broken down irretrievably as is clear from para 9 of Shyam Sunder case. The factual position in each of the other cases is also distinguishable. It was held that long absence of physical company cannot be a ground for divorce if the same was on account of the husband's conduct. In Shyam Sunder case it was noted that the husband was leading adulterous life and he cannot take advantage of his wife shunning his company. Though the High Court held by the impugned judgment that the said case was similar, it unfortunately failed to notice the relevant factual difference in the two cases. It is true that irretrievable breaking of marriage is not one of the statutory grounds on which court can direct dissolution of marriage, this Court has with a view to do complete justice and shorten the agony of the parties engaged in long- drawn legal battle, directed in those cases dissolution of marriage. But as noted in the said cases themselves, those were exceptional cases.

Hon'ble the Supreme Court in a case of **Naveen Kohli vs. Neetu Kohli**, 2006 (4) SCC 558 was considering a case of irretrievable break down of marriage. In this case, wife living separately for long but did not want divorce by mutual consent only to make life of her husband miserable. Thus, the decree of divorce was granted and held it is a cruel treatment and showed that the marriage had broken irretrievably. In para 62, 67, 68 and

“62. Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again. The High Court ought to have visualized that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.

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67. The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.

68. In our considered view, looking to the peculiar facts of the case, the High Court was not justified in setting aside the order of the Trial Court. In our opinion, wisdom lies in accepting the pragmatic reality of life and take a decision which would ultimately be conducive in the interest of both the parties.

69. Consequently, we set aside the impugned judgment of the High Court and direct that the marriage between the parties should be dissolved according to the provisions of the [Hindu Marriage Act, 1955](#). In the extra-ordinary facts and circumstances of the case, to resolve the problem in the interest of all concerned, while dissolving the marriage between the parties, we direct the appellant to pay Rs.25,00,000/- (Rupees Twenty five lacs) to the respondent towards permanent maintenance to be paid within eight weeks. This amount would include Rs.5,00,000/- (Rupees five lacs with interest) deposited by the appellant on the direction of the Trial Court. The respondent would be at liberty to withdraw this amount with interest. Therefore, now the appellant would pay only Rs.20,00,000/- (Rupees Twenty lacs) to the respondent within the stipulated period. In case the appellant fails to pay the

amount as indicated above within the stipulated period, the direction given by us would be of no avail and the appeal shall stand dismissed. In awarding permanent maintenance we have taken into consideration the financial standing of the appellant.

Thus, divorce had been granted to the parties, as the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again. Further, not to grant decree of divorce would be disastrous for the parties.

The three Judges' Bench of Hon'ble the Supreme Court in a case of ***Samar Ghosh vs. Jaya Ghosh, 2007 (4) SCC 511*** passed the decree on the ground of mental cruelty but the concept of irretrievable breakdown of marriage has been discussed in detail referring the 71st report of the Law Commission of India

Hon'ble the Supreme Court in a case of ***K. Srinivas Rao vs. D.A. Deepa, 2013 (5) SCC 266*** has observed that though irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, however, marriage which is dead for all purposes, cannot be revived by Court's verdict, if parties are not willing since marriage involves human sentiments and emotions and if they have dried up, there is hardly any chance of their springing back to life on account of artificial reunion created by court decree.

Recently, Hon'ble the Supreme Court in a case of ***Sivasankaran vs. Santhimeenal, passed in SLP (C) Nos. 17505-17506/2019, decided on 13.09.2021***, was considering a case, where the husband filed an appeal for dissolution of marriage between the parties. The appellant-husband and the respondent-wife solemnized their marriage on 07.02.2002. The appeal was allowed and it was held that the marriage never

took off from the first day. The marriage was never consummated and the parties have been living separately from the date of marriage for almost 20 years. The appellant remarried after 06 years of the marriage, 05 years of which were spent in trial Court proceedings. The marriage took place soon after the decree of divorce was granted. All mediation efforts have failed. Further the respondent lodged a criminal complaint against the appellant under Section 494 IPC. However, the High Court quashed the proceedings. There are episodes of further harassment by the respondent even at the place of work of the appellant including insulting the appellant in front of students and professors. She is stated to have threatened the appellant of physical harm in front of his colleagues as per the testimony of P.W.3 and complained to the appellant's employer threatening to file a complaint against him.

In the facts of the present case, the marriage between the parties was solemnized on 06.11.2011. Out of this wedlock, one son was born on 16.10.2012 at Rohtak, who is currently residing with the appellant at Jhajjar. It is not in dispute that this Court made several attempts to settle the dispute amicably between the parties. However, on 09.09.2021, this Court was informed that the parties are not able to compromise the matter. Thereafter, the matter was heard on merits for disposal.

It is not in dispute that the parties are residing separately since November, 2013 after their marriage in the year 2011. It is also not disputed by the appellant-wife that she lodged F.I.R No. 16 dated 23.03.2016 (Ex R5) against the respondent-husband, in which he has been acquitted, vide judgment dated 17.11.2018 (Ex PAA). Further the appellant-wife has failed to prove on record that the respondent-husband has ever

demanded dowry. On 29.08.2015, the brothers of the appellant-wife had gone to the house of the respondent-husband in his absence and there had been physical altercation between them and the parents and sister of the respondent-husband. The matter was compromised but this incident caused a permanent scar in the mind of the respondent-husband and her family members that it would make cohabitation between the parties virtually impossible. Further, it has also come on record that all possible efforts have been made by the brother of the appellant-wife to get the government job of the respondent-husband terminated. It can also held to be form of serious cruelty to the respondent-husband.

Now, once the appellant-wife who is not staying with the respondent-husband for the last about 10 years, reference at this stage can be made to ***Naveen Kohli's case (supra)***, which was a case of cruelty (physical and mental) where Hon'ble the Supreme Court considered the concept of irretrievable breakdown of marriage. In this case as well, the parties were living separately for the last 10 years and the wife was not ready to give divorce to the husband. Hon'ble the Supreme Court granted decree of divorce but directed the husband to pay a sum of Rs.25 lacs towards permanent maintenance. In para 58, it has been observed as under:-

“58. The High Court ought to have considered the repercussions, consequences, impact and ramifications of all the criminal and other proceedings initiated by the parties against each other in proper perspective. For illustration, the High Court has mentioned that so far as the publication of the news item is concerned, the status of husband in a registered company was only that of an employee and if any news item is published, in such a situation, it could not, by any stretch of imagination be taken to have lowered the prestige of the husband. In the next para 69 of the judgment that in one of the

news item what has been indicated was that in the company, Nikhil Rubber (P) Ltd., the appellant was only a Director along with Mrs. Neelu Kohli whom held 94.5% share of Rs.100/- each in the company. The news item further indicated that Naveen Kohli was acting against the spirit of the Article of the Association of Nikhil Rubber (P) Ltd., had caused immense loss of business and goodwill. He has stealthily removed produce of the company, besides diverted orders of foreign buyers to his proprietorship firm M/s Navneet Elastomers. He had opened bank account with forged signatures of Mrs. Neelu Kohli and fabricated resolution of the Board of Directors of the company. Statutory authority-[Companies Act](#) had refused to register documents filed by Mr. Naveen Kolhi and had issued show cause notice. All business associates were cautioned to avoid dealing with him alone. Neither the company nor Mrs. Neelu Kohli shall be liable for the acts of Mr. Naveen Kohli. Despite the aforementioned finding that the news item was intended to caution business associates to avoid dealing with the appellant then to come to this finding in the next para that it will by no stretch of imagination result in mental cruelty is wholly untenable.

In the present case, the appellant-wife also lodged F.I.R No. 16 dated 23.03.2016 (Ex R5) against the respondent-husband under Sections 323/406/498-A/506 IPC at Women Police Station, Panchkula. He was however acquitted of the charges framed against him, vide judgment dated 17.11.2018 (Ex PAA). In the case of ***Sushma Taya vs. Arvind, 2015 (2) RCR 888 (P&H)***, it was held that filing of false criminal complaint by a spouse invariably and indubitably constitute matrimonial cruelty and can entitle the other to claim divorce.

Further, the parties are living separately for the last about 10 years and there is no chance that they can stay together and thus, if the

appeal filed by the appellant-wife is allowed, the respondent-husband will face mental agony. If the parents are not granted divorce, then this will further result in cruelty because of the rigid attitude of the appellant-wife in giving divorce. The element of silence between the parties will result into mental cruelty to the child-Rudraksh.

In the present case, efforts were made firstly to resolve the matrimonial dispute through the process of mediation, which is one of the effective mode of alternative mechanism in resolving the personal dispute but the mediation failed between the parties.

Applying the ratio of the above mentioned judgments to the facts of the present case, the present appeal is dismissed.

(RITU BAHRI)
JUDGE

22.12.2021
G Arora

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No