

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

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FAO No.5 of 2021 (O&M)

Reserved on 11.11.2022

Date of Pronouncement 08.12.2022

RAJENDER SINGH

.... Appellant

Versus

PARDEEP KAUR

.... Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present : Appellant in person with
Ms. Savita Devi, Advocate.

Mr. Ved Prakash, Advocate for the respondent.

MANISHA BATRA, J.

CM-10523-CII-2022

Application is allowed, subject to all just exceptions.

Annexures A-1 to A-6 are taken on record.

FAO No.5 of 2021

[1] Having lost his case of seeking dissolution of his marriage with respondent-wife on the ground of cruelty and desertion in terms of Section 13 (1) (i-a) and (i-b) of Hindu Marriage Act, 1955 (hereinafter to be mentioned as “the Act”) before the Principal District Judge, Family Court, Ambala, the husband has knocked at the door of this Court by way of filing the present appeal.

[2] As per the factual matrix, the marriage between the parties was solemnized on 11.12.2009 at Barara, District Ambala as per Sikh rites and

ceremonies. Out of the wedlock, a male child, namely, Kuljot Singh was born on 26.10.2011. The petition thereafter was filed on 15.09.2016 by the appellant-husband. In order to substantiate the case for cruelty and desertion, various instances were cited in the petition. It was pleaded that the appellant-husband was an Army personnel. The appellant-husband and his family members had made it clear to the respondent and her family members at the time of marriage that it would be a simple ceremony. The expenses of marriage were contributed by both the parties. It was alleged that since the very inception of the marital life of the parties, behaviour of the respondent with the appellant and his family members was rude, rough and abnormal. She had no respect for her in-laws' family. She used to treat the appellant as her slave. The appellant-husband remained posted at various stations as a Commissioned Officer in Indian Army. The respondent-wife avoided to reside with the appellant-husband on one pretext or the other, and she lived with him only once during his posting at Sumdo (Srinagar) and Pune (Maharashtra). For rest of the time, she stayed with the parents of the appellant at Barara in her matrimonial home. Whenever she stayed with the appellant, she used to quarrel with him and his parents. She used to pass sarcastic remarks. She also used to leave her matrimonial house at her own sweet will, without the permission of the appellant and his parents. She was a selfish and ill-tampered lady who used to quarrel with the appellant-husband and her in-laws on petty matters. She left her matrimonial house on 25.10.2014 along with minor child and her parents while taking all her jewellery and with the promise that she would return back after 10 days. However, she did not turn up and deserted the company of the appellant willingly. The Panchayats were convened by the appellant and his family members at the parental house of the respondent but she refused to join

his company. It was alleged that the parties had no matrimonial relationship since 12.06.2012 and the marriage between them had almost broken down. It was further pleaded that the appellant-husband had filed a divorce petition on 18.03.2015, but on promise given by the respondent to join him and not to cause any dis-respect for the appellant-husband and his family members, he had got the said petition dismissed in default vide order dated 19.02.2016. The respondent however, lived with the appellant-husband for two days only thereafter and again left the house of the appellant-husband after collecting all gold and silver ornaments and cash amount of Rs.2 Lakh and thereafter, she refused to join him.

[3] On the basis of aforesaid grounds, it is the case of the appellant-husband that the respondent was treating him by way of cruelty and had deserted him and accordingly, he prayed that his marriage with the respondent be dissolved.

[4] The petition was resisted by the respondent by denying the aforesaid allegations in the reply filed by the respondent-wife. She alleged that in fact she had always paid complete respect to the parents and other relatives of the appellant-husband. She alleged that she was forced to stay away from the appellant-husband by himself as he did not allow her to enter into the bedroom. She had tried her best to join her husband at new places of posting but the same had been denied to her. The respondent had already filed a petition under Section 9 of the Act. There were all chances of re-conciliation between them. She had lived together with the appellant-husband at various places after her marriage. It was alleged that the appellant-husband had no legal ground for getting divorce and hence dismissal of the petition was prayed for.

[5] The appellant-husband had filed replication controverting the pleas as taken in the reply filed by the respondent and re-asserting those of the petition. On the pleadings of the parties, following issues were settled by the learned Family Court, Ambala :-

1. *Whether the petitioner is entitled to a decree of divorce, as alleged? OPP*
2. *Whether the petition is not maintainable in the present form, as alleged? OPR*
3. *Relief.*

[6] The parties adduced evidence in support of their respective assertions. The appellant-husband examined himself as PW-1, produced his father-Ajit Singh as PW-2 and a neighbour-Jasbir Singh as PW-3, besides placing reliance upon certain documents. On the other hand, the respondent examined herself as RW-1 and her father-Darshan Singh as RW-2. She too placed reliance upon certain documents.

[7] After appraising the evidence produced on record and hearing the contentions raised by both the sides, learned Family Court vide judgment dated 12.03.2020 decided issues No.1 and 2 against the appellant-husband and dismissed the petition with costs.

[8] It has been submitted in the grounds of appeal and it was argued by learned counsel for the appellant that the learned Family Court had gravely erred in dismissing the petition as from the evidence produced on record, it can be inferred that the respondent had treated the appellant-husband with cruelty. It was argued by the counsel for the appellant-husband that the respondent denied conjugal bliss to him and picked up quarrels with him and his family members on petty matters. The acts committed by her amounted to mental

cruelty as defined under the Act. She was also proved to have deserted him. It was submitted that it was not possible for the appellant-husband to reside with the respondent. Learned Family Court had ignored the fact that the respondent had made several complaints against the appellant before his superiors, levelling allegations which were not proved to be true and this act itself amounted to cruelty on the part of the respondent-wife. Thus, the impugned judgment passed by the learned Family Court was based on conjectures, surmises and casual hypothetical approach, and the same is liable to be set aside. He further argued that since the parties were not staying together since 2016, therefore, a decree for divorce was required to be passed.

[9] On the other hand, it was argued on behalf of the respondent that the learned Family Court after having appreciated the evidence on record had come to conclusion that it was not a case where it could be stated that any act of cruelty or desertion was committed by the respondent against the appellant-husband. A false bogey was created by the appellant-husband regarding certain circumstances for which there were no independent witnesses and only on false premise, acts of cruelty were attributed to her. In fact the appellant was not ready and willing to keep her and this was not a ground for passing a decree in his favour. It was further argued that acts of cruelty as pleaded by the appellant-husband in his petition were neither proved nor the same even otherwise amounted to cruelty within the meaning of Section 13(1) (i-a) of the Act and further that the appellant-husband had failed to make out any case that the respondent-wife had deserted him. It was urged that the findings as given by learned Family Court were well reasoned and did not deserve to be reversed. Hence it was stressed that the appeal did not deserve to be allowed.

[10] Based on the pleadings and evidence available on record and contentions of the counsel, the following points are arising in this appeal:-

1. Whether the appellant proved the acts of cruelty or desertion as pleaded by him?
2. Whether the order passed by the Family Court in dismissing the petition for divorce requires any interference by this Court?

[11] Now on the basis of the evidence available on record, it is to be ascertained whether the contention of the appellant-husband that the respondent-wife was ill-treating him and committed acts of cruelty with him stands proved or not? In relation to matrimonial matters, it is contemplated that a conduct of such type which endangers the living of other amounts to cruelty. Cruelty consists of acts which are dangerous to life, limb or health. It may be physical or mental. Mental cruelty is conduct of the other spouse which causes mental suffering or fear to the matrimonial life of the other. Cruelty however, has to be distinguished from the ordinary wear and tear of the family life. The question whether the act complained of was a cruel act, is to be determined from the whole facts and matrimonial relations between the parties. The Hon'ble Apex Court has given certain illustrative examples wherefrom inference of mental cruelty can be drawn in **Samar Ghosh vs. Jaya Ghosh, (2007) 4 SCC 511.** Some of the illustrations as given by Hon'ble Apex Court are reproduced as under:-

“(i) On consideration of complete matrimonial life of the parties, the acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot

reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of the other for a long time may lead to mental cruelty.

(iv) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(v) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.”

[12] After adverting to the material placed on record of the Family Court, it is revealed that the appellant-husband narrated certain instances to show that the act and conduct of the respondent-wife had been cruel towards him and his parents to that extent that made it impossible for him to live with the respondent-wife any more. These instances as quoted by the appellant-husband were that the behavior of the respondent-wife was rough, rude and abnormal towards him and his family members since the very beginning of their marital life; that the respondent-wife paid no respect to his parents or himself and used to treat them as a slave; that she used to pass sarcastic remarks against him by proclaiming that the appellant-husband was not handsome and not a match for her and she was a highly qualified person; that she used to criminally assault the appellant-husband and his parents in presence of respectable members of Biradari; that she used to fight with him and his family members over trivial issues; that she used to quarrel with him

during her stay with him at some places of his posting; that she did not use to cooperate with him whenever he visited his parental home and further that her parents used to interfere in the matrimonial affairs of the parties and also used to instigate the respondent-wife. On appreciating the evidence produced on record, in our view the learned Family Court had rightly considered all the above mentioned aspects in paras No. 57 to 69 of its judgment. Regarding the allegation that the behavior of the respondent-wife was rough, rude, unrespectful and abnormal towards the family members of the appellant-husband and himself and that she used to treat them as slaves, it was observed that there was neither any specific averment nor evidence to show as to how her behavior had been rough, rude and abnormal towards the appellant-husband and his parents and what particular act and conduct of the respondent-wife constituted dis-respect towards the appellant-husband and his parents. It is revealed from the evidence led before the learned Family Court that the appellant could not quote any specific incident, instance or manner to show that how the respondent-wife used to treat him and his parents as slaves. Rather, PW-2 i.e. the father of the appellant-husband is shown to have stated that he treated the respondent as his daughter and he did not quote any specific instance of misbehaviour or showing of disrespect by the respondent. Learned Family Court had rightly observed that it had come in evidence that the respondent-wife had stayed with her parents-in-law in her matrimonial house for quite some time as being an Army personnel, the appellant-husband was having his postings at different places.

[13] It is also the plea taken by the appellant-husband himself that the respondent-wife stayed with him only at some places of his posting. The evidence led by the parties proved that the respondent-wife stayed with the

appellant-husband at Sumdo (Srinagar) from 10.04.2012 to 19.04.2012 and at Pune (Maharashtra) from 05.05.2013 to 05.11.2013 and at Hisar from 14.09.2015 to 19.03.2016. She is also proved to have stayed with him at Pune and at their matrimonial home at Barara during the period from April 2015 to September 2016. The appellant-husband had alleged that the respondent-wife used to prepare meals for herself alone. However, PW-2 with whom the respondent had stayed in her matrimonial house at Barara for most of the time did not say so. Even testimony of PW-3 i.e. Jasbir Singh to the effect that he had been hearing the quarrels and noises coming from the house of the appellant and further that the several Panchayats were convened with regard to the behavior of the respondent-wife, appear to be hearsay version only as he could not disclose the exact dates when such Panchayats were convened. The allegations as levelled by the appellant-husband with regard to the alleged rough and rude behavior of the respondent-wife were general and vague in nature and by any stretch of imagination these allegations cannot be assumed to have constituted cruelty. The allegations as to respondent-wife indulging in fight with the appellant-husband and his parents on trivial matters were also sweeping in nature and in our opinion, the same did not ascribe to the term “cruelty”. The learned Family Court in our view had thus, rightly found that the appellant-husband had failed to prove that the act and conduct of the respondent-wife was rough, rude and dis-respectful towards him and his family members.

[14] So far as, the allegations that the respondent-wife used to criminally assault the appellant-husband and his parents in presence of other members of the Biradari are concerned, the learned Family Court had rightly observed that there was neither any averment about the manner in which the

alleged assaults were made by the respondent-wife nor the appellant-husband or the witnesses examined by him could give any specific instance as to when the respondent-wife had criminally assaulted the appellant-husband or his parents. In the absence of any specific evidence forthcoming on record to that extent, it obviously could not be held that the respondent-wife committed any act of physical cruelty by assaulting the appellant-husband or his family members. Then with regard to the allegations as levelled by the appellant-husband against the respondent-wife that she used to pass sarcastic remarks against him, the appellant-husband could not give any specific instance nor could name any person before whom the respondent-wife had passed any such remarks. The appellant-husband had also alleged that the respondent-wife during the period of her stay with him at some places of his posting, used to quarrel with him. Bare statement of appellant on this point could not be corroborated with any cogent and convincing evidence. As already discussed, it has come in evidence placed on record by both the parties that in fact, the respondent-wife stayed with her in-laws at her matrimonial house at Barara for most of the time and not with the appellant-husband. Rather admittedly, she stayed with him during short spans at Sumdo (Srinagar), Pune (Maharashtra) and Hisar. The deposition made by the respondent-wife that she stayed at Barara continuously from 2009 to 2013 remained uncontroverted. Rather as per appellant's own admission as made in his cross-examination he never stayed alone at any place of his posting with the respondent-wife as his mother always stayed with them during that period. The respondent-wife had deposed that the appellant-husband did not permit her to sleep with him and did not even allow him to enter his room and this fact was admitted by the appellant-husband also. Though, he alleged that the respondent-wife had suicidal

tendencies, but no evidence whatsoever, had been produced on record by him to show that any such attempt had ever been made by the respondent-wife. This goes to show that it was the appellant-husband who did not allow the respondent-wife to co-habit with him. Admittedly, the parties were not having any marital relations since 12.06.2012 and it was admitted by the appellant-husband that he did not have any physical relationship with the respondent-wife despite her willingness. The appellant-husband failed to produce any convincing evidence on record to show that the respondent-wife was a person of ill-temperament or she quarreled with the appellant-husband and his family members over small issues. Further, no specific evidence could not be brought on record by the appellant-husband to prove that the parents of the respondent-wife had been interfering in the matrimonial life of the parties. The well settled proposition of law is that the allegations of cruelty must be supported by cogent pleadings and material particulars with regard to date, time and month as well as names of persons before whom the alleged acts of aggregation, quarrel and violence on the part of the spouse were complained of. The general allegations levelled by the appellant without mentioning the manner in which his wife ill-treated him obviously did not amount to cruelty. Rather on the contrary it is revealed from the record that it was the appellant-husband who had not allowed the respondent-wife to enjoy regular co-habitation with him and she was in matrimony with the appellant-husband since the year 2009, who had stayed with the appellant-husband during short span of time, she had been staying with her in-laws at her matrimonial house, for the remaining period. If her conduct would not have been good she would not have stayed with her in-laws in the absence of her husband. The appellant to justify his own act and conduct is shown to have levelled allegations of cruelty. The learned Family

Court had considered all these aspects in detail and therefore, in our considered opinion had correctly rejected the appellant's case on alleged cruelty on the part of the respondent-wife on the grounds as mentioned above.

[15] It was strenuously argued by the counsel for the appellant-husband that there was overwhelming evidence on record to prove that the respondent-wife had moved an application Ex.R-3 to the senior officers of the appellant-husband levelling allegations of appellant-husband having extra marital affairs with some Sona Rathore and had failed to prove those allegations. He argued that the learned Family Court had ignored the fact that levelling of false allegations to that effect amounted to committing act of cruelty upon the appellant-husband by the respondent-wife and therefore, he argued that the learned Family Court committed a grave error in not considering this fact while dismissing the petition filed by the appellant-husband. To fortify his argument, learned counsel for the appellant placed reliance upon the judgment dated 26.02.2021 passed by the Apex Court in Civil Appeal Nos.3786 & 3787 of 2020 titled as ***Joydeep Majumdar vs Bharti Jaiswal Majumdar***, and judgment dated 06.05.2022 passed by a Coordinate Bench of this Court in FAO-M-272-2017 titled as ***Harbans Kaur Vs. Joginder Pal***, wherein it was observed that when the reputation of the spouse sullied amongst his colleagues, superiors and the society at large, due to allegations levelled against him by other spouse, it would be difficult to accept condonation of such conduct by the effected party. Filing of the complaints of issuing of notices or news items which might have adverse impact on the business prospectus and job of the spouse would in fact amount to causing mental cruelty to other spouse.

[16] Undoubtedly, it has come on record that the respondent-wife had moved an application Ex. R-3 to the superior officers of the appellant-husband as on 19.03.2016 wherein, it was alleged by her that she thought that the appellant-husband was having an extra martial affairs. The learned Family Court had observed that the allegation so levelled by the appellant-husband could not be taken as reckless or wild allegations so as to constitute cruelty upon the appellant-husband. On perusal of record, we do not find any ground to differ with these observations in view of the fact that the respondent-wife had relied upon Ex.R-1 which was part of a register containing writing as “I love you Sona”. The appellant-husband admitted that this was his own hand writing. He, however, explained that the name Sona was an imaginary character. It had come on record that the relation between the appellant-husband and the respondent-wife were not normal. The appellant-husband was rather being indifferent towards her as it has been proved on record that he was neither talking to the respondent-wife nor he was permitting her to co-habit with him. In such circumstances, the writing as made by the appellant-husband on Ex. R-1 obviously could create a reasonable apprehension in the mind of the respondent-wife about having his having affair with some Sona. As such, the fact that in her application Ex.R-3 she had alleged that the appellant-husband was probably having affair with someone, could not be taken as a wild allegation so as to constitute cruelty and a ground for divorce and in our opinion, the learned Family Court had therefore, rightly held so. In this regard reliance can be placed upon the observations made by the Apex Court in case of ***Raj Talreja Vs. Kavita Talreja***, 2017 SCC (online) SC 462, wherein the Apex Court had held that mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints.

[17] On taking an overall view of the matter and considering the evidence as a whole, in our opinion, the case put forward by the appellant regarding acts of cruelty as pleaded in the petition on the part of respondent-wife as is nothing but an imaginary one and therefore, the decision of the Family Court that the appellant-husband had failed to make out a case of cruelty against the respondent-wife, is not required to be interfered with.

[18] With regard to the allegation that the respondent-wife had deserted the appellant-husband, the learned Family Court had observed that the condition of statutory period of two years for deserting spouse to have left the deserted spouse continuously before the presentation was not satisfied. As far as, the desertion is concerned, in order to get divorce on the ground of desertion, the following ingredients are required to be proved:- (i) separation (ii) intention to separate permanently or (iii) to bring co-habitation permanently to an end. It is well settled if a deserted spouse joins the matrimonial home before the completion of two years and then leaves the other party, the desertion of two years cannot be counted from the date of first act of desertion. In the present case, admittedly, the respondent-wife had left her matrimonial house on 25.10.2014. The appellant-husband had filed a divorce petition against her on 18.03.2015. As per own versions of the appellant-husband during the pendency of the said petition, the respondent-wife had re-habilitated with him and hence the said divorce petition was dismissed in default on 19.02.2016. It is also undisputed that the respondent-wife remained at her matrimonial house at Barara from 16.03.2014 to 26.04.2015 and then till September 2015. She had left her matrimonial house on 19.03.2016. the appellant-husband filed instant petition for divorce on 15.09.2016 when the condition of completion of statutory period of two years for deserting the

appellant-husband by the respondent-wife had not been satisfied. Therefore, there can be no hesitation in saying that the appellant-husband was not entitled to seek a decree of divorce from the respondent-wife on the ground of desertion. In the light of the discussion as made above and after giving thoughtful consideration to the controversy between the parties, we are unable to accept the contentions of the appellant-husband that he was entitled to a decree of divorce against the respondent-wife on the grounds of cruelty and desertion, hence no ground is made out to interfere with the findings of the learned Family Court. Accordingly, points No.1 and 2 are answered in negative. The conclusion derived by the learned Family Court is affirmed. Consequently, the appeal fails and is dismissed.

[19] There is no order as to costs.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

08.12 .12.2022
Jyoti-IV

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