

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

FAO No.1257 of 2020 (O&M)

Date of decision : April 26, 2022

Ekta

..... Petitioner

Versus

Vikas Karadwal

..... Respondent

CORAM : HON'BLE MS. JUSTICE RITU BAHRI

HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Appellant in person along with Mr. Gagan Oberoi, Advocate.

Respondent in person along with Mr. Harish Sharma, Advocate.

RITU BAHRI, J. (ORAL)

Challenge in the present appeal is the judgment and decree dated 18.11.2019 passed by the learned Addl. Principal Judge, Family Court, Ludhiana, whereby the divorce petition filed by the appellant-wife was dismissed.

Appellant-Ekta had filed a petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') on 11.03.2015. She stated that her marriage was solemnized with Vikas Karadwal on 30.03.2011 as per Hindu rites; she gave birth to a son, namely Vibhor, on 22.05.2012. Soon after the marriage, behaviour of the husband and his family members was not cordial with the petitioner and they started demanding Rs.10 lacs from her family members for repayment of a loan. The parents of the petitioner gave Rs.5 lacs in the presence of one Dinesh Kumar, brother of the petitioner, Jagdish maternal uncle of the petitioner, Lokeshwar and uncle Deewan Chand and other respectables on 01.11.2011. She was thrown out

of her matrimonial home on 25.12.2011 when she was pregnant of two months. The husband instead of rehabilitating with his wife threatened her that he would not allow her to enter to her matrimonial home. The efforts of the Panchayat also remained futile.

- 1. FIR No.91, dated 06.09.2013 registered under Sections 406/498-A of IPC was registered at Police Station Women Cell, Ludhiana against the respondent.**
- 2. Appellant-Ekta filed a complaint under Section 12 read with Sections 17, 18, 19, 20, 21, 22 and 23 of the Protection of Women from Domestic Violence Act, on 22.08.2013, which was pending in the Court at Ludhiana.**
- 3. Appellant filed an application under Section 125 of Cr.P.C. at Ludhian Courts and she was awarded monthly maintenance of Rs.8,000/- vide order dated 26.09.2013.**

The Family Court, Ludhiana framed the following issues:

*“1. Whether the petitioner is entitled for dissolution of her marriage on the ground of cruelty and desertion as prayed for?
OPP*

2. Whether the petition is not maintainable? OPR

3. Relief.”

The appellant while leading evidence with regard to the issues PW1 Dinesh Kargwal, PW2 Deewan Chand and she herself stepped into the witness box as PW3 and closed her evidence. The respondent, on the other hand, himself stepped into the witness box as RW1, examined RW2 Manjit Kumar and RW3 Pritpal Singh and closed his evidence.

After going through the evidence, the Family Court has given

the findings on issue no.1 that no cruelty and desertion was made out against the respondent-husband.

In FIR No.91, dated 06.09.2013, challan was presented as per copy Ex.P3 before the concerned Court for trial of the respondent but the same case has not been decided. Copy of the Civil Suit No.980 of 2015 is Ex.P4, which has been filed by the appellant-wife against the respondent and his family members.

Respondent-husband appeared as RW1 and had referred to Ex. R-1, a complaint made by the father of appellant-Ekta to the Sr. Superintendent of Police, Ludhiana and the same was consigned after recording the statement Ex.R-2 as per order passed by the Sr. Superintendent of Police, Fazilka, Ex.R3.

The petition filed under Section 12 read with Sections 17, 18, 19, 20, 21, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005 on 22.08.2013 against the mother of the respondent, Veena Rani, his sister Manju, her husband Om Parkash and his sister Happy was pending and in this application, and interim maintenance of Rs.3,000/- was awarded vide order dated 18.04.2014.

Thereafter, in an application filed under Section 24 of the Act, maintenance of Rs.6,000/- was awarded to the appellant vide order dated 21.09.2016.

The respondent-husband had filed an application for permission to meet her son Vibhor on 14.09.2018 and as per the order dated 14.09.2018, the appellant was directed to bring her son Vibhor on the next date of hearing on 08.10.2018 but the child was not brought on that date and

even on the next date of hearing the child was not brought in the Court.

In the aforesaid FIR, the family members were declared innocent and challan was presented only against the respondent-husband. An application filed under Section 319 Cr.P.C., for summoning the other family members was dismissed and no revision was filed against that order. However, it is further observed that a complaint under Section 12 of the Protection of Women from Domestic Violence Act was withdrawn by the appellant-wife along with application under Section 125 Cr.P.C. in which she got maintenance in the Family court. The appellant was not ready to join the society of the husband and was contesting the petition under Section 9 of the Act filed by the respondent-husband.

From the above facts, the Family Court has returned a finding that the appellant-wife has created such circumstances which has constrained the husband to live separately and no evidence of cruelty has been made out against the husband and issue no.1 was decided against the appellant-wife and in this backdrop the petition was dismissed.

Learned counsel for the appellant has made reference to the order dated 06.05.2014 passed by this Court in CRM-M No.38428 of 2013, whereby the anticipatory bail was dismissed by this Court as Vikas Karadwal had made a statement before the Court that he will make a demand draft of Rs.5 lacs which was to be paid to the complainant-appellant-wife and on this condition he was to grant anticipatory bail. However, Vikas Karadwal failed to make the aforesaid payment and his anticipatory bail was dismissed on 06.05.2014, which order has attained finality.

Today the matter has taken up and both the parties are present in the Court and the appellant has informed this Court that her parents are suffering from cancer and she does not want any permanent alimony for herself as well as her 10 years old son and this fact was noticed in the order dated 03.03.2022.

Respondent Vikas Karadwal was present in the Court and he was specifically asked by this Court whether he can make an F.D.R. in favour of the appellant and their son. He said that he does not want to give divorce to her wife i.e. the appellant and wanted to meet his son. He was asked to make an F.D.R. in favour of his minor son in the pre-lunch session, but he has not put in appearance post-lunch session and his counsel has informed this Court that he does not have any money to make an F.D.R.

As far as the judgment was passed by the Family Court no doubt keeping in view the fact that the wife had got the FIR registered against the husband and his family members and after investigation all the family members were found innocent and challan Ex.P3 was presented only against the husband. Hence, with respect to the allegations against the family members, the complaint was found to be false. She had initiated a complaint under Section 12 of the Protection of Women under the Domestic Violence Act. Even her father had made a complaint Annexure R-1 against the respondent which was consigned to the record room after investigation by the Superintendent of Police, Fazilka vide Exs.R-2 and R-3.

The Family Court has rightly come to the conclusion that in view of the steps taken by the wife cruelty cannot be attributed to the husband. However, the cruelty in a matrimonial relationship has a wide

meaning. It can be physical as well as mental. In the present case, as observed above, when the husband had filed a petition for grant of anticipatory bail, the Court had granted anticipatory bail subject to the fact that the respondent-husband will make a demand draft of Rs.5 lacs in favour of the complainant-wife. He did not make the demand draft and his anticipatory bail was dismissed. Thereafter, keeping in view the fact that the parties had been residing separately since 2012 for an out of court settlement to secure the future of the child, this Court had asked the counsel for the respondent that if the respondent could make an F.D.R. of Rs.5 lacs in favour of his minor son. The respondent has refused to do so also. The fight is between husband and the wife and the child has no role to play in this dispute. Even if the divorce petition has been dismissed, respondent Vikas Karadwal would be father of the child and it was his duty to secure the future of his child which in the present case he has not done. In the present case, he says that he does not want to make any F.D.R. in favour of his minor child. Another fact which requires consideration is that both the parents of the appellant-Ekta are suffering from cancer and she wants to close this chapter in her life. Keeping in view the fact that the couple had been staying separately since 2012 for almost 10 years now and she wants to move on during the life time of her parents who are suffering from cancer. In such a sensitive situation where the child of the respondent was being brought up by the wife along with her parents, it was expected that the father will be sensitive and secure the future of his child. Not doing so on asking of the Court, would amount to mental cruelty to the child as well as to the mother. Hence, during the pendency of this appeal, the circumstances

have changed. The parents of the appellant-wife are suffering from cancer and the child who is only 10 years old is not getting any financial support from his father. Even though, the father of Vibhor is not ready to give anything to the child. These circumstances can amount to mental cruelty and as these are the facts which have come on the surface now.

On 03.03.2022, when this case was taken up, the appellant-wife had stated that she was not interested in taking any interim maintenance in the application filed under Section 24 of the Act and wanted a final decision keeping in view the fact that her parents are suffering from cancer. The appellant-wife had placed on record Annexure A-1, the prescription from Deep Hospital, Department of Histopathology of her father Naurang Lal, who is 71 years old and suffering from acute calculous cholecystitis and Annexure A-2 of her mother Harvinder Kaur where she has been suspected with rise of supraclavicular nodes in her abdomen. In order to show that the respondent-husband having land, she has placed Annexure A-3 and Annexure A-4 to show that he is running a school in the land of their family members. Since the appellant-wife is not claiming any alimony keeping in view the fact that her parents are suffering from cancer and the fact that the husband has even refused to secure the child by making an F.D.R. of Rs.5 lacs and he had not given an F.D.R. when he wanted anticipatory bail as is observed from the order dated 06.05.2014 passed in CRM-M-38428-2013 the husband is not showing any responsibility towards the emotional and financial needs of the child. The abovesaid facts would amount to cruelty against the child and wife Ekta.

Hon'ble the Supreme Court in a case of Naveen Kohli vs. Neetu Kohli, 2006 (4) SCC 558 while dealing with a question of irretrievable breakdown of marriage where the wife was living separately for long but did not want divorce by mutual consent only to make the life of her husband miserable. Thus, the decree of divorce was granted and it was held to be a cruel treatment which showed that the marriage had broken irretrievably. In para 62, 67, 68 and 69, it has been observed as under:-

“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 was granted to the parties, as the marriage between them had broken down irretrievably and there was 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 was discussed in detail by referring the 71 st report of the Law Commission of India.

Hon'ble the Supreme Court in the 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 a Court's verdict. 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.

The short question for consideration in the present case is that whether respondent-husband, whose anticipatory bail was dismissed on the ground that he could not make a demand draft of Rs.5 lacs and even today, he has not taken any bonafide step to secure the future of his son, who is residing with the mother-appellant. Conclusion can be drawn that he does not want to spend a single penny to maintain his son. At the same time, he does not want to give divorce to his wife. This Court is of the view that the above facts make out mental cruelty against the appellant and her son Vibhor. Therefore, this appeal deserves to be allowed.

Learned counsel for the appellant submits that during the pendency of the appeal, no maintenance was even fixed and nothing has been paid to the appellant. Since the appellant is not claiming any alimony, no order in respect of the permanent alimony is to be passed.

The present petition is allowed and the marriage of the parties is hereby dissolved. Decree sheet be prepared accordingly.

(RITU BAHRI)
JUDGE

(MEENAKSHI I MEHTA)
JUDGE

April 26, 2022

sarita

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No