

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

**Reserved on 11.02.2022
Date of decision: 15.02.2022**

(i) FAO-589-2021 (O&M)
Kuljit SinghAppellant

Versus

Meena Kumari SainiRespondent

(ii) FAO-591-2021 (O&M)
Kuljit SinghAppellant

Versus

Meena Kumari SainiRespondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr.Deepak Sabherwal, Advocate for the appellant

Mr.Gaurav Partap Singh Pathania, Advocate for the respondent

ASHOK KUMAR VERMA, J.

1. This order will dispose of FAO Nos.589 and 591 of 2021 filed by the appellant-husband against the respondent-wife as common questions of facts and law are involved in both these appeals.

2. Brief facts as culled out from the paper books are that the parties were married on 07.05.2015 as per Hindu rites and ceremonies. After the marriage, the parties started residing together at the family house of the appellant-husband at Village Doburi, District Gurdaspur. Just after 15 days,

the marriage ran into rough weather. The respondent-wife stayed in matrimonial home just for 15 days and both the parties are living separately since 22.05.2015. The respondent-wife lodged an FIR No.261 dated 29.08.2015 under Section 498-A of the Ranbir Penal Code (for short “the RPC”) at Police Station Kathua, Jammu & Kashmir against the appellant and his other family members alleging demand of dowry. Thereafter, the brothers of the appellant-husband filed a petition under Section 561-A of the Cr.P.C. for quashing the aforesaid FIR in the High Court of Jammu & Kashmir at Jammu. The respondent-wife even filed a case under the Domestic Violence Act, 2005 against the appellant.

3. The appellant filed divorce petition under Section 13 of the Hindu Marriage Act, 1955 (for short “the Act”) against the respondent-wife on the ground of non-consummation of marriage and physical and mental cruelty. The respondent-wife also filed a petition under Section 9 of the Act for restitution of conjugal rights. The petition filed by the appellant-husband under Section 13 of the Act has been dismissed and the petition filed by the respondent-wife under Section 9 has been allowed by the Principal Judge, Family Court, Pathankot vide its common judgment dated 31.05.2021. Aggrieved against the aforesaid judgment, the appellant-husband has approached this Court by challenging the same in these two appeals.

4. When these matters came up for hearing before this Court on 14.7.2021, notice of motion was issued by this Court for 19.8.2021. On 19.8.2021 the respondent did not appear despite service. The matter was adjourned to 17.9.2021 and the operation of the impugned judgment dated 31.5.2021 was stayed by this Court. Thereafter, the respondent-wife joined

the proceedings before this Court. On number of dates, this Court tried to resolve the dispute amicably. However, the same remained fruitless. Once again on 09.11.2021, this Court put a specific query to the respondent-wife who appeared in person before this Court, whether she wants to have a divorce by way of mutual consent as both the appellant and the respondent stayed together only for a period of 15 days and thereafter they have been living separately. Replying to that query, she stated that she was not ready for divorce by way of mutual consent whereas the appellant-husband was ready to make payment of Rs.15,00,000/- towards permanent alimony. Thereafter, this Court proceeded to hear the matter on merits.

5. Learned counsel for the appellant has submitted that the impugned judgment passed by the Family Court is illegal and has no leg to stand. Learned counsel has submitted that respondent-wife is a lawyer and from the very first day of the marriage, the respondent-wife treated the appellant with utmost physical and mental cruelty. On the first night, the respondent-wife told the appellant that she wanted to marry somewhere else and did not want to marry the appellant. She has solemnized the marriage just to please her parents as she did not want to go against the wishes of her parents. The respondent-wife stayed only for 15 days after the marriage and the marriage was even not consummated between the parties. Learned counsel has submitted that non-consummation of marriage itself constitutes mental cruelty. Learned counsel has also submitted that the respondent wife has lodged the FIR alleging demand of dowry just after 03 months of the marriage against the appellant-husband and his family members and even filed case under the Domestic Violence Act. All these show that the

respondent-wife is hell bent to harass and humiliate the appellant and the same also amounts to physical and mental cruelty. Learned counsel further submits that the relationship between the parties is irretrievably broken down because of hostile attitude of the respondent-wife. Learned counsel, while referring to the testimony of the respondent-wife as RW-1 as also the testimony of RW-2 and RW-3, submits that no dowry has been given at the time of marriage and as such the allegation of demand of dowry is totally false and concocted just to harass the appellant and his entire family members. In support of his above submissions, learned counsel relies on judgments passed in *Mamta Goyal Vs. Ramgopal, 2011(6) RCR (Civil) 783; Shri Rajeev Chadha Vs. Ms. Shama Chadha Nee Shama Kapoor, 2014(4) RCR (Civil) 587; Praveen Mehta Vs. Inderjit Mehta, Law Finder DC ID #2774; K. Srinivas Vs. K. Sunita, 2014(16) SCC 34 and Sivasankaran Vs. Santhimeenal, 2021(4) RCR (Civil) 237*. Learned counsel thus submits that the Family Court has erred in dismissing the petition of the appellant for grant of divorce under Section 13 of the Act.

6. In contrast, learned counsel for the respondent-wife has vehemently submitted that when the respondent-wife reached matrimonial home, her mother-in-law started taunting her that they had asked for Rs.20,00,000/- cash and gold ornaments, and as such the marriage could not be consummated by the appellant intentionally and because of demand of dowry after the marriage, the same rightly resulted into lodging the aforesaid FIR and the case under the Domestic Violence Act. The respondent-wife was treated by the appellant with physical and mental cruelty. Learned counsel for the respondent thus submits that the Family

Court rightly dismissed the petition of the appellant under Section 13 of the Act and rightly allowed the petition of the respondent under Section 9 of the Act.

7. We have considered the rival contentions of the learned counsel for the parties. We have also scrutinized the entire Lower Court Record minutely.

8. The submissions steered by the learned counsel for the respondent-wife do not impress us. The respondent-wife lodged an FIR under Section 498-A of the RPC alleging demand of dowry against the appellant-husband and his entire family members immediately after 3 months of the marriage and a case under the Domestic Violence Act. The entire case of the respondent wife is demolished from her own testimony made before the Family Court. In her examination-in-chief, she tendered her statement by way of her affidavit as Ex.RW1/A in which she deposed that *“at the time of marriage Ramesh Chander father of the petitioner (appellant-husband herein) sent a message that it will be a dowry less marriage, accordingly booking of dowry items such as motorcycle, refrigerator, cooler etc. were cancelled.”* In her cross-examination, she further deposed that *“I remained in the matrimonial house uptill 22.5.2015.... Our marriage was not consummated during that period of 14/15 days i.e. my stay in the matrimonial house”.*

9. The aforesaid deposition of the respondent-wife before the Family Court demolishes her entire case with regard to dowry since the marriage itself was dowry less. The fact that the marriage was dowry less is also established from the deposition of RW-2, Bui Lal who is real parental

brother of the respondent-wife. They categorically deposed before the Family Court that no dowry was given by the respondent-wife at the time of marriage. Not only this, all the above said criminal proceedings have been initiated by the respondent against the appellant and his family members just after living 15 days in her matrimonial home and merely after 3 months of the marriage, and that too, without having patience to wait and make efforts to reconcile the dispute amicably. Even before this Court, we tried our best to reconcile the dispute amicably. As noticed above, the appellant was ready to pay Rs.15.00 lacs towards permanent alimony. Even at this stage, the respondent wife was not ready for divorce by way of mutual consent. It is also an admitted fact that the marriage was not consummated from the very first day. In this view of the matter, we are of the considered opinion that respondent-wife has made every effort to harass and torture the appellant which itself amounts to “cruelty”.

10. It is settled proposition of law that physical violence is not absolutely essential to constitute “cruelty” and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 13 (1) (ia) of the Act. From the analysis and evaluation of the entire evidence, it is evident that the respondent has resolved to live in agony only to make life a miserable hell for the appellant-husband. 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 as both of them are living separately after 15 days of the

marriage i.e. since 22.05.2015 and there is no chance of their coming together, or living together again.

11. From the aforesaid sequence of events and narration of facts, it is crystal clear that under the garb of criminal proceedings, the respondent-wife is trying to inflict mental cruelty which entitles the appellant for grant of divorce in his favour. This view of ours finds support from the the judgment of Supreme Court in **V. Bhagat vs D. Bhagat, 1994 SCC (1) 337** wherein it has been observed as under:-

16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner.

The aforesaid enunciation of law has been reiterated by the Hon'ble Supreme Court in **Naveen Kohli vs. Neelu Kohli, AIR 2006 Supreme Court 1675.**

12. Moreover, in the present case, both the parties are living separately continuously since 22.05.2015 just after 15 days of their marriage. As noticed above, the marriage was not consummated from the very beginning. The marriage bond is beyond repairable. In these circumstances, we are fortified by a judgment of the Supreme Court in **Samar Ghosh vs. Jaya Gosh, (2007) 4 SCC 511** wherein it has been held as under:-

“97.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii).....

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal rule. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

The aforesaid enunciation of law is fully applicable to the present case.

13. In the conspectus of all the aforesaid facts, the grounds of irretrievable breakdown of marriage, the ground of cruelty and the ground of non-consummation of marriage, on account of the aforesaid facts and circumstances would entitle the grant of decree of divorce in favour of the appellant-husband. In the present case, granting divorce is a necessary step in the process of healing and moving on to a healthier future of both the parties. Eliminating that, possibility slams the door to a toxic relationship and prevents them from creating a better future for themselves.

14. For the foregoing reasons, both the appeals are allowed and the impugned judgment dated 31.5.2021 passed by the Principal Judge, Family Court, Pathankot is set aside. The petition of the appellant-husband filed

under Section 13 of the Act for grant of divorce is allowed. Decree of divorce is granted in favour of the appellant. The marriage between the parties shall stand dissolved accordingly. Consequently petition of the respondent-wife under Section 9 of the Act for restitution of conjugal rights shall stand dismissed. Pending applications, if any, in these two appeals shall stand disposed of accordingly. Registry to return back the LCR to the Family Court, Pathankot.

**(ASHOK KUMAR VERMA)
JUDGE**

**(RITU BAHRI)
JUDGE**

15.02.2022
MFK

Whether speaking/reasoned : Yes
Whether reportable : Yes