

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-M-83-M2005 (O&M)
Date of decision 19.05.2022

Suba

....Appellant

VS

Saroj

...Respondent

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

Present: Mr. T.C. Dhaliwal, Advocate
for the appellant.

None for the respondent.

Ritu Bahri, J. (Oral)

The present appeal has been filed against the judgment and decree dated 06.01.2005 passed by learned Addl. District Judge, Fatehabad, vide which petition filed under Section 13 of the Hindu Marriage Act, 1955 (for short 'Act 1955') by the respondent-wife has been allowed.

Brief facts of the case are that marriage between the parties was solemnized on 01.03.1998 according to Hindu rites and ceremonies at Village Gorakhpur. No child was born out of this wedlock. However, in the month of April, 2001, the appellant-husband has thrown out the respondent from the matrimonial home, after giving several beatings to her. Thereafter, a Panchayat was convened and the appellant agreed to keep the respondent-wife. However, the appellant again started harassing the respondent for bringing less dowry and she thus filed a complaint under Section 406/498-A IPC against the appellant, his father, his brother and his sister-in-law

After going through the judgment and decree dated 06.01.2005 and after hearing learned counsel for the appellant at length, the present appeal

It is not in dispute that the marriage is of the year 1998 and there is no child from this wedlock. The respondent was about 18 years of age at the time of marriage and the appellant was about 40 years of age. The appellant was widower having two children. Further the appellant-husband has levelled various allegations against the respondent-wife that she committed theft in the matrimonial home and took away ornaments of his bhabhi. It has further been alleged that the respondent has performed second marriage with another person for a consideration of Rs.20,000/-. But the appellant has failed to produce any evidence on record to prove the above assertions.

The learned Court below has rightly granted the decree of divorce in favour of the respondent-wife on the ground that on the one hand, the appellant asserts that his wife is a thief, who has committed theft in her own house and he also makes allegations that the wife has been sold off to another person for a consideration of Rs.20,000/- and on the other hand, he is still ready to take back his wife and to reside with her. He was held not to be a reliable and trustworthy person. It was held that the respondent succeeded in proving the grounds of cruelty, sufficient for dissolving the present marriage.

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 while considering a case where marriage was irretrievably broken down and held that in these case, 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 had 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 to 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, but the Court with a view to do complete justice and shorten the agony of the parties engaged in longdrawn 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.

The three Judge 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 a Court's verdict, if parties are not willing to work out their differences. 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 an artificial reunion created by a Court decree.

Hon'ble the Supreme Court in the case of ***Naveen Kohli vs. Neetu Kohli, 2006 (4) SCC 558*** was considering a case where wife was 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 being a cruel treatment by the respondent-wife and 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.

In the facts of the present case, the marriage between the parties was solemnized on 01.03.1998 . No child was born out of this wedlock. It is not in dispute that the parties are residing separately since long. It is also not in dispute that at the time of marriage the respondent was only 18 years of age and the appellant was of 40 years of age. The allegations levelled by the appellant against his own wife of theft and that she performed second marriage, was not proved by the appellant and thus the decree of divorce was rightly granted on the ground of cruelty.

There appears no chance that the parties can now stay together and thus, if the appeal filed by the appellant-husband is allowed, the respondent-wife will face mental agony. 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 has already 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

(ASHOK KUMAR VERMA)
JUDGE

19.05.2022
G Arora

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