

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

**FAO No.1992 of 2016
Date of decision: 27.09.2022**

Anju Sharma

.....Appellant

Versus

Rishi Sharma

.....Respondent

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

Present: Mr. P.K. Chugh, Advocate,
for the appellant.

Mr. Satbir Rathore, Advocate,
for the respondent.

Ritu Bahri, J.

Appellant-wife has come up in appeal against the judgment dated 25.01.2016 passed by the District Judge, Family Court, Gurgaon, whereby petition filed by respondent-husband under Section 13 (1) (ia) of the Hindu Marriage Act, 1955, for dissolution of marriage, has been allowed.

Marriage of the parties was solemnized on 17.11.2003 as per Hindu rites and ceremonies at Athithi Bhawan, Palam, New Delhi. They have three children from this wedlock. The husband-respondent was a helper in his father's shop and was being paid Rs.5000/- per month. After the marriage, wife started residing at her matrimonial home with the respondent-husband. It is stated that soon after the marriage, she (appellant) declared that she was not able to live in a joint family and wanted a separate residence. Finally, parents of respondent-husband permitted him to shift with her at House No.166/10, Bhim Nagar, New Railway Road, Gurgaon. The wife-appellant was graduate and the husband-respondent was less

was a foreman in DTC, often abused and insulted the husband and his family members publicly. It was further stated that the wife had worked with various banks on contract basis, but she never spent her salary on his family. Rather, she used to give money to her father, who was a drunkard. He used to demand money from the respondent (petitioner therein) and his father. His wife had taken a shop on rent at Mauji Wala Kuan, near Fire Station, Railway Road, Gurgaon, where she started a placement agency and property dealing. When he (husband) tried to enquire about it, she refused to speak to him and humiliated him. The shop was being run in the name of 'Charu Enterprises', where she had employed three boys. She was running a partnership with a person, namely Ravinder. On seeing her husband, she got angry and threw him out of the shop. On 15.12.2012, she left the house for work and in the evening, she told that she was going to Balaji with her sister and her husband. When he asked her sister, she told that she did not have any such plan nor she was aware about the whereabouts of Anju (appellant). She returned back on the next evening and on being asked, she stated that no one could question her. On 24.12.2012, she did not return home till 9.00 P.M. and humiliated the husband when he tried to ask her. On 01.01.2013, Anju, Ravinder and 2-3 persons came to the shop of her father-in-law and started creating a scene because she wanted to take over the shop. Thereafter, she lodged several false complaints against her husband and his family members. Hence, the petition.

Upon notice, respondent-wife (appellant herein) filed reply stating that the petitioner-husband had filed a false and frivolous petition merely to harass her. She also levelled allegations of cruelty, adultery and desertion against the husband. It was stated that she had got registered DDR No.20

dated 01.01.2013 at Police Post, New Colony, Gurgaon against her husband. It was further stated that her husband had bribed the police officials to mentally and sexually assault her. She also got lodged FIR No.689 dated 20.08.2013 at Police Station, City, Gurgaon against her husband. It was denied that she demanded a separate home. As per wife, she had lived with her in-laws for 12 long years. She was harassed for want of dowry and her children were also taken away from her custody. All other allegations made in the petition were denied and a prayer for dismissal of the petition was made.

From the pleadings of the parties, following issues were framed by the Family Court:-

1. Whether the petitioner is entitled for a decree of divorce on the grounds as mentioned in the petition, as alleged? OPP
2. Relief.

In order to prove his case, husband had appeared as PW-1 and placed on record documents Ex.P1 to Ex.P19. On the other hand, respondent-wife also appeared as RW-1 and tendered into evidence documents Ex.R1 to Ex.R6.

In the present case, initially, the parties had filed a petition for divorce by mutual consent, in which, their first motion statements were recorded. However, thereafter, the wife had withdrawn her consent by making a statement Ex.P18, pursuant to which, order Ex.P19 was passed. The husband (respondent) had placed on record documents Ex.P1 to Ex.P10 to show that the wife was involved in various litigation, including complaints with senior police officers. After going through the evidence, the Family Court gave a finding on issue No.1 in favour of the husband and

observed that none of the complaints led to filing of any case, except FIR No.289 dated 20.08.2013 against the husband and his family members. She had filed a petition under the D.V. Act as well. She had admitted before the police that she was running a placement agency as on 04.02.2013 as per Ex.P7. The document Ex.P7 was sufficient to show that the wife was not unemployed. Rather, she was running a placement agency. In the petition under Section 13-B of the Hindu Marriage Act, statement of the parties were recorded on 05.03.2015. As per the settlement, husband-Rishi was to pay an amount of Rs.4 Lakhs to his wife, out of which, Rs.1.5 Lakhs were paid on the date of recording of first motion statements on 05.03.2015 as per Ex.P17. The balance amount was to be paid at the time of recording of second motion statements and the wife-Anju was to facilitate in quashing of the FIR, which was got registered by her against her husband and his family members. However, on the next date i.e. 25.09.2015, she made a statement withdrawing her consent and also repaid the amount of Rs.1.5 Lakhs. The Family Court observed that the wife had got lodged various complaints against the husband. Later on, she entered into a compromise with him on 28.02.2013. The wife was earning more than her husband (respondent). Before the Family Court, respondent-wife had placed on record document Ex.R2 to show that the husband had moved an application seeking protection for himself and his children from his wife. As per Ex.R4, her father used to remain unwell as he used to drink liquor. No explanation was given by the wife, as to why she was staying separately from her husband. Part of diary Ex.P5, showed that she did not want to get engaged or marry the petitioner (respondent herein). The diary and its contents had been admitted by the wife before the Family Court. The Family Court further

gave a finding that it was a complete break down of the marriage between the parties and no useful purpose was likely to serve, if they were forced to drag this marriage on their shoulders. There were no chances of reviving the marriage. It is a better course to separate the two instead of permitting one spouse to continue to victimize the other. It was further observed that the complaints made to various authorities indicated that all the allegations levelled by the wife against her husband were seriously investigated but no iota of evidence was found against him. Therefore, no action was taken against the husband. With these observations, petition filed by the husband was allowed and a decree of divorce was passed.

Learned counsel for the appellant has argued that Ex.P2 is the information, which was given to the appellant about theft in the house and that has nothing to do with the matrimonial dispute and Ex.P3 is the report of the police on that complaint. Ex.P4 is the complaint made by the appellant, on the basis of which, *Kalandra*/proceedings under Sections 107/151 Cr.P.C. were prepared. Ex.P5 is the complaint given by Bhim Sharma, brother-in-law of the appellant. Ex.P8 is a complaint relating to domestic violence, in which statements of parties were recorded by the police and vide Ex.P7, the police reported that the matter could not be settled. Ex.P9 is a complaint regarding misbehaviour of the police official and husband of the appellant towards the appellant, wherein no action had been taken by the police. He has referred to the document Ex.P10, which is a complaint, on the basis of which, FIR No.689 dated 20.08.2013 was registered. Learned counsel has further argued that a false and fabricated complaint has been filed by the husband against the appellant, which is pending adjudication before the JMIC, Gurugram. He further argued that

the husband-respondent is having adulterous relationship with a lady namely Alka Sharma and this fact was totally ignored by the Family Court while allowing the petition filed by respondent-husband. The wife had also made a complaint Ex.R2 for safeguard and protection of her life from the respondent-husband and his family members. Learned counsel for the appellant has referred to the judgment passed in **Padam Kumar Jain vs Ashi Jain @ Babita Jain**, 2016 (3) RCR (Civil) 396, on the proposition that even though the husband is acquitted in a criminal complaint filed by the wife, it would not be a ground to seek divorce. He has further referred to a judgment passed by Hon'ble the Supreme Court in **Manisha Tyagi Vs. Deepak Kumar**, 2010 (4) SCC 339, whereby appeal filed by the wife had been allowed. In that case, the husband and wife both levelled allegations of mental cruelty against each other. The Family Court granted a decree of judicial separation on the ground that it was not possible for the parties to live together. The wife filed an appeal before the High Court. Instead of passing a decree of divorce, the High Court set aside the judgment passed by the Family Court ordering judicial separation. The husband had not challenged the order of judicial separation. Hon'ble the Supreme Court allowed the appeal filed by the wife and held that the High Court could not have altered the decree of judicial separation.

In the facts of the present case, the wife has got registered FIR No.689 dated 20.08.2013 against the husband-respondent and trial, in that case, is still pending. She also filed a complaint under the D.V. Act. As per Ex.P7, she was not unemployed and was running a placement agency. Another fact, which requires to be ascertained is that initially, a petition under Section 13-B of the Hindu Marriage Act, 1955 was filed by the

parties and after record of their first motion statements, Rs.1.5 Lakhs were paid by the husband to the wife and the balance amount was to be paid at the time of recording of second motion statements. However, on the next date, the wife withdrew her consent. In this case, the appellant-wife is earning more than the husband. The husband-respondent had also moved an application Ex.R2 seeking protection for himself and his children from his wife. Children are staying with the husband, who was working as helper at his father's shop. The parties are staying separately since 24.12.2012. The children are being brought up by the husband. Conduct of the appellant-wife can be seen from the fact that after taking a sum of Rs.1.5 Lakhs, she refused to get decree of divorce by mutual consent. For all intents and purposes, it is a dead marriage. The wife is not performing any duty to bring up her children. If, she is earning more than her husband, she can also give something to the children for their better life. It is not the case of appellant-wife that she has done anything for the children. The respondent-husband and his family members are facing trial in criminal cases, which were got registered by the appellant-wife. As per diary Ex.P5, the appellant did not want to be engaged or marry with the respondent-husband. Being financially more secure, she has duty/responsibility towards her own children. Not doing anything for the children also amounts to cruelty against the husband, who is working as helper in his father's shop.

Reference, at this stage, can be made to the judgment passed by Hon'ble the Supreme Court in **Naveen Kohli vs. Neelu Kohli**, 2006 (4) SCC 558. That was a case of irretrievable breakdown of marriage, wherein the wife was not ready to give divorce to the husband by way of mutual consent. Hon'ble the Supreme Court held that it was a cruel treatment as the

marriage had broken irretrievably. They were granted divorce as there was no chance of coming together or living together again. Non grant of decree of divorce would be disastrous to the parties. Further, in **K. Srinivas Rao vs. D.A. Deepa**, 2013 (5) SCC 266, Hon'ble the Supreme Court has observed that once the marriage is dead for all purposes, it 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. Ultimately, divorce was granted to the husband. It was further observed as under:-

“28. In the ultimate analysis, we hold that the respondent-wife has caused, by her conduct, mental cruelty to the appellant-husband and the marriage has irretrievably broken down. Dissolution of marriage will relieve both sides of pain and anguish. In this Court, the respondent-wife expressed that she wants to go back to the appellant-husband, but, that is not possible now. The appellant-husband is not willing to take her back. Even if, we refuse decree of divorce to the appellant-husband, there are hardly any chances of the respondent-wife leading a happy life with the appellant-husband because a lot of bitterness is created by the conduct of the respondent-wife.”

A three Judge Bench of Hon'ble the Supreme Court in **Samar Ghosh vs. Jaya Ghosh**, 2007 (4) SCC 511 passed the decree of divorce 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. In a recent judgment passed in **N. Rajendran Vs. S. Valli**, 2022 (1) RCR (Civil) 847, Hon'ble the Supreme Court held that consent of parties is not necessary to declare a marriage dissolved. In that case, there was no possibility of husband and wife stitching together any kind of reasonable relationship as tie between them had broken beyond

repair. While exercising powers under Article 142 of the Constitution of India, marriage was declared as dissolved. In that case, it was further observed as under:-

“32. Having found that consent of the parties is not necessary to declare a marriage dissolved, we cannot be unmindful of the facts as they exist in reality. There has been a marriage which took place on 31.10.2004. There is a child born in the said marriage. No doubt being in contravention of Section 15, it becomes a *fait accompli* but at the same time, we do not reasonably perceive any possibility of the appellant and the respondent cohabiting as husband and wife. Whatever life was there in the marriage has been snuffed out by the passage of time, the appearance of new parties and vanishing of any bond between the parties. Not even the slightest possibility of rapprochement between the appellant and the respondent exists for reasons, though which are entirely due to the actions of the appellant and for which the respondent cannot be blamed. The marriage between the appellant and the respondent has become dead. It can be described as a point of no return. There is no possibility of the appellant and the respondent stitching together any kind of reasonable relationship as the tie between the parties has broken beyond repair and having regard to the facts of this case, we should think that it would be in the interest of justice and to do complete justice to the parties that we should pass an order dissolving the marriage between the appellant and the respondent.

33. We make it clear that this decision of ours is not based on our approval of the conduct of the appellant nor is it based on sitting in judgment over the conduct of the respondent. In other words, we find that respondent is blameless in the matter but the facts as they have unfolded and the developments which have taken place, render it unavoidable for us to consider dissolution of marriage as the best course open in the interest of justice.”

In the facts of the present case, the husband-respondent has been granted divorce on the ground of cruelty. If, the present appeal, filed by the wife, is accepted, it will not create an atmosphere of patch up for both the parties. The husband-respondent has brought up two children alone. The appellant-wife is financially independent and has consciously left her matrimonial house. Neither she filed any petition for the custody of the

children nor she made any attempt to meet them. In this backdrop, we are of the view that no useful purpose will be served by asking the parties to reside together as husband and wife. Rather, non grant of divorce would amount to mental cruelty towards the husband-respondent as well as the respondent.

Keeping in view the above discussion and the ratio of the aforesaid judgments, the present appeal is dismissed.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

27.09.2022
ajp

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