

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

FAO-M-130-2014 (O&M)
Date of decision:- 24.08.2022

Amandeep Singh

...Appellant

Vs.

Manjit Kaur

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: Mr. Arvind Mittal, Advocate
for the appellant-husband.

Mr. Ramneek Vasudeva, Advocate
for the respondent-wife.

Ritu Bahri, J.

By way of filing the present appeal, the appellant-husband is seeking setting aside of judgment and decree dated 24.12.2013 passed by Addl. District Judge (Fast Track Court), Rupnagar, whereby petition filed by him under Section 13 of the Hindu Marriage Act, 1955 (for short 'Act 1955'), for dissolution of marriage between the parties by a decree of divorce on the grounds of cruelty and desertion, has been dismissed.

Brief facts of the case as stated by the appellant-husband in the Court below are that he was married to the respondent according to Sikh rites and ceremonies at village Shiamipur on 31.01.1999. After the marriage, the parties resided together as husband and wife. Two children namely Bikramjit Singh and Parminder Singh were born from this wedlock. Since the inception of the marriage, the behaviour, conduct and attitude of the respondent was not good towards the appellant and his family members.

After few days of the marriage, she used to pick up fights on petty matters. She started to give beatings to the children in the presence of appellant and his family members. The respondent also lodged F.I.R No. 128 dated 05.09.2008 under Sections 406/498-A IPC at Police Station Sadar Ropar against the appellant and his family members. The appellant and his family members were also arrested and remained in judicial custody. Hence, a petition was filed by the appellant under Section 13 of the Hindu Marriage Act for dissolution of marriage.

On notice of the petition, the respondent-wife admitted the relationship between the parties but specifically denied each and every allegation levelled against her. She claimed that the appellant maltreated her on one pretext or the other and demanded dowry from her. Due to this, she registered the F.I.R against him and his family members. Under the influence of liquor and intoxicant, the appellant used to give severe beatings to her.

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

1. Whether the petitioner is entitled for dissolution of his marriage with the respondent as prayed for?OPP
2. Whether the petition is not maintainable ? OPR
3. Whether the petitioner is estopped by his own act and conduct from filing the present petition? OPR
2. *Relief.*

In order to prove his case, the appellant-husband stepped into witness box as PW1 besides examining P.W.2-Gulzar Singh & Avtar Singh as P.W.3.

On the other hand, respondent herself appeared as R.W.1

The Family Court below has returned a finding against the appellant-husband and decided issued No. 1 in favour of the respondent-wife. It was observed that desertion on the part of the respondent was not proved. It was held that it must be shown that the respondent had withdrawn herself from the society of the appellant without any reasonable cause and she had intentionally refused to perform her marital obligations. However, in the present case, appellant has failed to bring any evidence on record to prove this fact. It was held that the married life should be assessed as a whole and a few isolated instances over certain period cannot amount to cruelty and desertion.

Heard learned counsel for the parties at length.

The appellant filed the present appeal in the year 2014 and on 28.03.2014, this Court issued notice to the respondent and the appellant was directed to bring a demand draft for a sum of Rs.15,000/- towards litigation expenses for the respondent-wife. Thereafter, on 15.07.2014, the parties were referred to Mediation and Conciliation Centre of this Court. However, as per mediation report dated 19.08.2014, the mediation has failed between the parties and the case was sent back to this Court. The appeal was then admitted on 26.02.2015 and CMM No. 169-2014 filed by the respondent-wife seeking grant of maintenance pendente lite was disposed of and she was awarded Rs.6000/-per month to be paid by the appellant from the date of filing of the application. However, in the meantime, a judgment dated 02.06.2014 has been placed on record as Annexure A-1 whereby the appellant and his family members were acquitted of the charges framed against them by giving them benefit of doubt, as the prosecution remained unsuccessful in establishing the guilt of the accused beyond shadow of

doubt.

The appellant-husband also filed an application bearing No. 6618-CII-2019 seeking modification of order dated 26.02.2015 whereby the respondent-wife was granted maintenance pendente lite of Rs.6000/- per month on the ground that Bikramjit Singh (son of the parties) attained majority w.e.f 21.08.2018. It has further been stated that the respondent-wife filed an appeal against the judgment of acquittal, which was dismissed on 09.08.2018 (A-2) on the ground of delay and laches. Reference has further been made to civil suit No. RT-649 dated 21.07.2010 filed by Gulzar Singh (father of the appellant) against respondent and others, seeking permanent injunction restraining the defendants from interfering in the peaceful possession over house shown in ABCDEF in the site plan. The suit was decreed on 31.08.2017 (A-3) and the defendants were restrained from interfering in the peaceful possession of plaintiff over suit property.

Learned counsel for the appellant has argued that judgment of acquittal dated 02.06.2014 (A-1) as well as the fact that the suit filed by the father of the appellant was decreed on 31.08.2017 (A-3) shows that the appellant and his family members were harassed at the hands of the respondent. They were remained in judicial custody as well and later on acquitted. The above grounds are sufficient enough to show the cruelty of the respondent and thus the appellant be granted the decree of divorce.

The issue for consideration in the present appeal would be whether the relationship of the husband and wife has come to an end and if the respondent-wife is not ready to give a mutual divorce to the appellant-husband, whether this act of her's, would amount to cruelty towards the appellant-husband, keeping in view the fact that she is not staying with her

husband for a long time and there is no scope that they can cohabit as husband and wife again.

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 cases, 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.

Further reference can be made to a judgment of this Court in a

case of **Imlesh vs. Amit** AIR 2014 (P&H) 89 wherein it has been held that where the wife files a false criminal complaint against the husband and his family members under Sections 406/498-A of IPC, which results in their acquittal, this act of the wife tantamount to mental cruelty and the husband would be entitled to a decree of divorce under Sections 13 (1) (ia) of the Act of 1955.

Hon'ble the Supreme Court in the case of **Naveen Kohli vs. Neetu Kohli**, 2006 (4) SCC 558 dealt with an issue where the 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 held 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 present case, the marriage between the parties has broken down irretrievably and there is no chance of their coming together, or living together again. Further, not to grant decree of divorce would be disastrous for the parties. The respondent lodged the F.I.R against the appellant and his family members in which they were acquitted vide judgment dated

02.06.2014 (A-1). Against the judgment dated 02.06.2014 , the respondent

filed an appeal which was also dismissed on 09.08.2018 (A-2).

Applying the ratio of the above mentioned judgments to the facts of the present case and keeping in view the extra-ordinary facts and circumstances of the case, the appeal is allowed and judgment and decree dated 24.12.2013 passed by Addl. District Judge (Fast Track Court), Rupnagar is set aside and the decree of divorce is granted to the parties. Decree-sheet be prepared accordingly. However, we direct the appellant-husband to pay an amount of Rs.10 lacs in the name of the respondent-wife as permanent alimony within a period of three months.

(RITU BAHRI)
JUDGE

24.08.2022
G Arora

(NIDHI GUPTA)
JUDGE

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