

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

FAO-3277-2017 (O&M)
Date of decision: 17.10.2022

Tarun Bansal

...Appellant

Vs.

Neelam Rani

...Respondent

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

Present: Mr. Arihant Jain, Advocate,
and Mr. Rishav Jain, Advocate,
for the appellant.

Mr. S.C. Jindal, Advocate,
for the respondent.

Ritu Bahri, J. (oral)

CM-10828-CII-2017

For the reasons mentioned in the application, same is allowed
and delay of 05 days in filing of the appeal is condoned.

FAO-3277-2017

The present appeal has been filed against the judgment and
decree dated 20.03.2017 passed by the District Judge, Family Court,
Barnala, whereby petition filed by Tarun Bansal-petitioner (appellant
herein) under Section 13 of the Hindu Marriage Act, 1955, seeking decree
of divorce on the ground of cruelty and desertion, has been dismissed.

Marriage of the parties was solemnized on 11.05.2003
according to Hindu rites and ceremonies in the area of Raman Mandi,
District Bathinda. Out of this wedlock, two children namely Piya Bansal and
Gavish Bansal, were born. As per petitioner-appellant, from the very

inception, the behaviour of respondent-wife was very rude and harsh, as she used to quarrel with the husband and his family members on petty matters. She was in the habit of leaving her matrimonial home from time to time, without the consent and knowledge of the husband-appellant. She used to insult the appellant and his family members in the presence of respectables, relatives, neighbourers and visiting guests. In order to save the marriage, appellant started living with the respondent in a rented accommodation in the house of one Raj Kumar son of Nand Lal. Even, thereafter, her behaviour did not change. Thereafter, parents of the appellant got constructed a portion on the shop and he (appellant) along with the respondent-wife started residing there. As and when she went to her parental house, she was brought back by the appellant with a request to mend her ways and live as a dutiful wife. On 26.02.2012, some persons had come to see the younger brother of appellant for matrimonial purpose. When respondent-wife came to know about this, she started abusing him and his family members. On 27.02.2012, appellant went under depression and he got treatment for about 8/10 days from Dr. Gaurav Singla at Bathinda. He also got treatment for about 10 days in DMC, Ludhiana. Marriage of Puneet Bansal, brother of the appellant, was fixed on 02.06.2012. However, due to the behaviour of respondent-wife, he did not attend that marriage, as she had threatened that if, he would go to attend the marriage, she would commit suicide. On 03.06.2012, she left her matrimonial house and took away 70 tolas of gold ornaments, including the gold ornaments of the petitioner and his family members, Rs.40,000/- cash and both the minor children with along with her. In this regard, the appellant made an application dated 03.06.2012 to the Police Station, Raman, where

the wife threatened to implicate him and his family members in a false case. On 08.06.2012, she left both the children in the area of Arya Smaj Chowk, Bathinda. On coming to know about the same, Om Parkash, father of the appellant, brought the minor children along with him. Appellant got lodged DDR No.24 dated 08.06.2012 in this regard. All the above said acts of the respondent-wife gave stress and depression to the appellant. In this backdrop, he shifted to his parent's house. On 07.07.2012, when he was sitting in the shop, respondent-wife along with her mother-Sushma Rani came there. Sushma Rani gave slaps on the face of the appellant and pushed him. He fell down. Both of them gave kick blows to him. At that time, Krishan Kumar, President, Rajwinder Singh and others reached there and saved the appellant from the respondent and her mother. In this regard, appellant filed a complaint under Sections 452/323/506/379 IPC against the respondent-wife and her mother in a Court at Talwandi Sabo. Finally, appellant-husband filed a petition under Section 13 of the Hindu Marriage Act for dissolution of their marriage on the ground of cruelty and desertion.

Upon notice, respondent-wife filed written statement denying that her behaviour towards the husband or his family members was harsh or rude. It was also denied that she used to quarrel with her in-laws family. It was stated that she was subjected to physical and mental cruelty at the hands of the appellant-husband and his family members for want of insufficient dowry. All the allegations levelled by the petitioner-husband were denied and prayer for dismissal of the petition was made.

From the pleadings of the parties, following issues were framed:

1. Whether the petitioner is entitled for dissolution of his

marriage with the respondent, as prayed for? OPA

2. Whether the petition is not maintainable? OPR

3. Relief.

In order to prove his case, petitioner-husband examined HC Thana Singh (PW-1), Krishan Kumar (PW-2), Rajwinder Singh (PW-3) and he himself appeared in the witness box as PW-4.

On the other hand, respondent-wife appeared into the witness box as RW-1 and closed her evidence.

Family Court, after going through the evidence led by the parties, held that the allegations of cruelty without specific particulars with regard to the time, date and manner of committing the same, cannot form cruelty. Reference was made to a decision given by this Court in **Suman vs. Dalbir**, 2016 (3) CCC 749 (P&H) (DB). It was further held that allegations of cruelty cannot be based on trivial issues, rather it shall have origin with reference to the time, place and manner in which the occurrence had taken place. While referring to the judgment passed in **Baljinder Kaur vs. Pardeep Kumar**, 2016 (3) CCC 816 (P&H) (DB), it was further held that the bald statements and allegations of cruelty cannot form cruelty in the eyes of law. There must be some wilful treatment of party, for causing suffering of body and mind either as an actual fact or by way of apprehension in such a manner as to render continued living together of spouses harmful or injurious having regard to circumstances of the case, in order to constitute the cruelty. It was further observed that the appellant-husband has failed to lead any evidence with regard to date and time of the incidents when the respondent-wife had insulted the appellant and his family members and that he had met with cruelty at the hands of

respondent-wife. The appellant cannot take advantage of his own wrong. With these observations, issue nos. 1 and 2 were decided against the appellant-husband and in favour of respondent-wife. Ultimately, the petition filed by the appellant-husband was dismissed.

Heard, learned counsel for the parties.

A perusal of the impugned judgment shows that in order to prove the allegation of cruelty, the appellant had proved on record complaint No.85 dated 24.09.2013, Ex.P5, which was filed by the respondent-wife against the appellant and his family members under Sections 406/498-A/120-B IPC. In that complaint, the appellant and his family members were discharged vide order dated 22.09.2016, Ex.P6. A perusal of the order dated 22.09.2016, Ex.P6, shows that the appellant was summoned to face trial under Section 498-A IPC and at the time of pre-charge evidence, complainant did not turn up before the Court. Since no witness was examined by the complainant, accused-appellant was discharged. The appellant has also produced copy of judgment dated 22.10.2019 passed by the Judicial Magistrate Ist Class, Talwandi Sabo, whereby on a complaint filed by Tarun Bansal (appellant), respondent-wife Neelam Rani and her mother Sushma Rani were held guilty and convicted under Sections 323 and 452 read with Section 34 IPC. This order shows that complainant-Tarun Bansal (appellant herein) has been able to prove his case against the accused (respondent-wife and her mother) that on 07.07.2012, they had come to his shop and Sushma Rani gave slaps on his face, due to which, he fell down. Both the accused gave leg blows to the complainant (appellant). This allegation was proved by examining Raghav Sharma (CW-1), Krishan Mittal (CW-3) and Rajinder Kumar (CW-4), who

corroborated the version of complainant-appellant. Deposition of these witnesses remained unrebutted and unchallenged. Both the orders dated 22.09.2016 and 22.10.2019 are sufficient evidence to prove that the appellant had suffered cruelty at the hands of his wife-respondent. Both these judgments are taken on record as Annexure A-1 and A-2. Moreover, both the children were left by the wife at Arya Smaj Chowk, Bathinda. Thereafter, the children were taken back by the father of appellant to his house.

Reference, at this stage, can be made to a judgment passed by this Court in **Smt. Veena vs. Shri Naveen**, 2021 (4) RCR (Civil) 456, wherein while referring to the judgment passed in **Samar Ghosh vs. Jaya Ghosh**, 2007 (4) SCC 511, held that filing of false defamatory complaints/applications against the husband and his family members, while being in an agitated mood, definitely cause mental cruelty to the husband. 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.

In the present case, discharge of the appellant in a complaint filed by the wife under Section 498-A IPC and conviction of respondent-wife under Sections 452/323/34 IPC for inflicting injuries to her husband, is sufficient evidence to show that the appellant-husband has faced mental and physical cruelty at the hands of his wife-respondent. Moreover, both the children are staying with the father-appellant, who is looking after them. In

the facts of the present case, even though, the husband has not been granted divorce, if, this appeal is dismissed, it will not create an atmosphere of patch up for both the parties. 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 appellant as well as the respondent.

Keeping in view the above discussion and the ratio of the aforesaid judgments, the present appeal is allowed and the impugned judgment and decree dated 20.03.2017 passed by the District Judge, Family Court, Barnala, are set aside. Decree of divorce is granted to the parties. Decree sheet be drawn accordingly.

(RITU BAHRI)
JUDGE

(NIDHI GUPTA)
JUDGE

17.10.2022
ajp

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