

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

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**FAO No.3263 of 2021 (O&M)
Date of Decision: 16.12.2022**

Gurjot Singh Sidhu

... Appellant

Versus

Raspreet Kaur

... Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Anurag Chopra, Advocate and
Ms. Himani Jamwal, Advocate,
for the appellant.

Mr. Rishu Garg, Advocate,
for the respondent.

MANISHA BATRA, J.

1. The present appeal has been directed against the judgment and decree dated 15.11.2021 whereby the petition filed by the appellant-petitioner husband for seeking dissolution of his marriage with the respondent-wife had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this appeal are that the appellant-husband filed the aforementioned petition through his father and power of attorney holder Sh. Ranjodh Singh @ Jodh Singh Sidhu on the averments that he got married with the respondent on 20.04.2016 according to sikh rites and ceremonies at Barnala. No child was born out of the wedlock. The appellant had gone to Canada on 20.06.2016. During the period of his stay with the respondent at her matrimonial house, the latter did not perform her matrimonial obligation as dutiful wife since the very beginning. She used to receive calls on her cell phone from strange persons in the absence of

the appellant. When the appellant asked her about the same, then instead of giving any reply, she warned him to not to interfere in her personal life. She was a short tempered lady and her behaviour towards the respondent and his family members was very rude and cruel. She kept on quarreling with the petitioner on petty matters. The entire atmosphere of the house of the appellant had become full of tension and stress. The appellant submitted that he had been living separately from the respondent w.e.f. 20.06.2016 and was not able to live with her as she had foisted false cases upon him and his family members and thereby had caused mental shock, pain and agony to him. Hence, he prayed for dissolution of his marriage with the respondent.

3. Notice of the petition was given to the respondent. She appeared through her maternal uncle and power of attorney holder Satpal Singh and filed reply admitting the factum of marriage between the parties. It was asserted that on asking of the appellant and his family members, her parents had spent an amount of Rs.70 lacs on their marriage. The appellant and his parents were permanent residents of Canada before marriage. One FDR for a sum of Rs. 21 lacs was prepared in the joint name of the appellant and respondent by her parents. Apart from this, her parents had given a big quantity of gold ornaments to the appellant and his family members besides incurring expenditure of a huge amount of money in making other arrangements of marriage. However, the appellant and his family members were still not satisfied with the same and immediately after marriage, they started taunting her on account of spending less money by her parents and on account of bringing insufficient dowry. When the respondent resisted, then the appellant had slapped her. Her parents-in-law and sister-in-law instigated the appellant to leave her after getting car from her parents and

raised demand of a car. Ultimately, an amount of Rs.6.5 lacs was given by her parents to the appellant. The appellant and his parents left for Canada on 20.06.2016. However, during their stay at Barnala, they kept on giving taunts to her and also extended beatings to her. After they had left for Canada, the keys of their house were taken from the respondent by one Baljinder Singh who did not return the same. The appellant had assured to sponsor the respondent to Canada but after reaching there, he did not do so. The parents of the appellant returned to India in November 2016. A panchayat meeting was convened by parents of the respondent but they were insulted by her in-laws. The respondent and his parents requested the parents of the petitioner to return her *Istri Dhan* but they refused to do so. They again went to Canada on 07.12.2016. It was alleged that the respondent was subjected to cruelty by the appellant and his parents on account of demand of dowry and that the appellant had deserted her without any reasonable cause. Hence prayer was made for dismissing the petition.

4. The appellant filed rejoinder controverting the pleas as taken in the written statement and re-asserting those in the petition. On the pleadings of the parties, the following issues were settled by learned trial Court:-

1. Whether the respondent treated the petitioner with cruelty? OPP
2. Whether the respondent deserted the petitioner since 20.06.2016? OPP
3. Whether the petitioner is not entitled to take benefit of this wrong? OPR
4. Relief.”

Ranjodh Singh @ Jodh Singh Sidhu appeared as PW-1 and the appellant also examined his mother Jatinder Pal Kaur. The respondent examined her father Nirmal Singh Bhangu as RW-2 and her power of attorney holder Satpal Singh as RW-1. Both the parties also placed reliance upon certain documents.

6. After appreciating the evidence produced on record and considering the contentions raised by both the parties, the learned trial Court vide judgment and decree dated 15.11.2021 dismissed the petition.

7. Feeling aggrieved, the present appeal has been filed by the appellant-husband through his power of attorney holder Sh. Ranjodh Singh @ Jodh Singh Sidhu.

8. Learned counsel for the appellant argued that the impugned judgment and decree dated 15.11.2021 were liable to be set aside as the learned trial Court did not appreciate the evidence produced on record by him in the right perspective. There was overwhelming evidence on record to prove that the respondent had deserted him and had not stayed with him w.e.f. June 2016. It was also well proved on record that after the appellant and his parents had left for Canada in June 2016, the respondent had mortgaged the properties owned by them to some other persons, had dragged them into criminal litigation by filing a false case under Sections 498-A and 406 of IPC and had even by misrepresentation of facts executed lease deed and mortgage deed in respect of the properties owned by her in-laws over which she had no right of ownership. He argued that all these tantamounted to gross acts of committing mental cruelty upon the petitioner but the learned trial Court did not take the same into consideration. He further argued that the marriage between the parties had been irretrievably

broken down and there were no chances of their staying together. Even the respondent had also shifted to Canada but had not chosen to stay with the appellant there. It was submitted that the learned trial Court had committed a grave error in dismissing the petition filed by the appellant and, hence, it was urged that the appeal deserved to be allowed. To fortify his arguments, learned counsel for the appellant placed reliance on authorities cited as **Naveen Kohli v. Neelu Kohli**, 2006 (4) SCC 558; **K.Srinivas Rao v. D.A. Deepa**, 2013 (5) SCC 226; **Samar Ghosh v. Jaya Ghosh**, 2007 (4) SCC 511 & **Joginder Singh v. Rajwinder Kaur (Punjab and Haryana High Court)**, FAO-M-12 of 2017 decided on 29.10.2022.

9. Learned counsel for the respondent, on the other hand, argued that the findings as given by learned trial Court were well reasoned and did not warrant any interference. The appellant had miserably failed to quote specific instances of cruelty on the part of the respondent or to prove it. He had also failed to prove that the respondent had deserted him rather it was he who had left the matrimonial home of the parties just two months after their wedding, had gone to Canada and did not come back till date and even the petition for divorce had been filed by him through his power of attorney holder and not himself. It was, therefore, urged that the appeal did not deserve to be allowed.

10. We have given due deliberations to the contentions as raised by both the sides and have carefully gone through the evidence placed on record of learned trial Court. At the outset, it may be mentioned that the appellant-husband had filed an application under Order 41 Rule 27 of CPC before this Court seeking permission to produce by way of additional evidence documents Annexures A-1 to A-7. The said application had been

allowed vide order dated 04.11.2022 and Annexures A-1 to A-7, the details of which will be discussed in the later part of this judgment, were taken on record. It is also relevant to mention here that though this Court tried to make efforts for re-conciliation between the parties but since both the parties are residing at Canada and did not appear in person, hence, dispute could not be resolved amicably.

11. On the basis of pleadings and evidence available on record as well as on consideration of the contentions raised by learned counsel for the parties, the following points arise for determination in this appeal:-

- i) Whether the appellant proved the acts of cruelty or desertion as pleaded by him?
- ii) Whether the order passed by the trial Court in dismissing the petition requires any interference by this Court?

12. On the basis of evidence available on record, it is to be ascertained whether the contention of the appellant that the respondent-wife ill-treated him and committed acts of cruelty with him and deserted him stands proved or not? The learned trial Court after synchronizing on these grounds has held that the appellant failed to prove that the respondent-wife had deserted him or had committed acts of mental cruelty upon him and had also held that due to filing of civil suits and FIR against the appellant/his family members, no false allegations amounting to cruelty were proved to have been levelled by the appellant. Before delving on the point that the respondent had committed cruelty upon the appellant or deserted him, let us firstly refer to the provisions of Section 13 (1) (i-a) of the Hindu Marriage Act, 1955 [‘for short ‘the Act’] which are relevant for the purpose. This provision clearly provides that a decree of divorce can be granted in case

after the solemnization of marriage, a spouse has been treated with cruelty by the other spouse. The term 'cruelty' has not been defined in the Act and the same has been a subject matter of debate for long. The idea regarding the meaning of term 'cruelty' and its constituents has been rendered in several pronouncements of Hon'ble Apex Court as well as various High Courts. In *Samar Ghosh's* case (Supra), the Hon'ble Supreme Court while referring to Oxford Dictionary, defined 'cruelty' as '*the quality of being cruel; disposition of inflicting suffering; delight in or indifference to another's pain; mercilessness; hard-heartedness*'. The concept of cruelty was also expounded in **Pancho vs. Ram Prashad, AIR 1956 Allahabad 41** wherein, it was observed that continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and an assertion on the part of the husband that the wife is unchaste are all factors which may undermine the health of wife. In **Shobha Rani vs. Madhukar Reddi, (1988) 1 SCC 105**, while dealing with 'cruelty' under Section 13(1)(i-a) of the Act, it was observed by the Hon'ble Apex Court that the said provision did not define 'cruelty' and the same could not be defined. Cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem to determine it. It is a question of fact and degree. If it is mental, the problem presents difficulty. It was observed that ultimately, it was a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There might be cases where the conduct complained of itself is bad enough and *per se* unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established, if the conduct itself is proved or

admitted.

13. In **V. Bhagat vs. D. Bhagat, (1994) 1 SCC 337**, it was held by Hon'ble Apex Court that the earlier requirement that cruelty has caused a reasonable apprehension in the mind of a spouse, that it would be harmful or injurious for him to live with the other one, is no longer the requirement. The Court proceeded to deal with what constituted 'mental cruelty' as contemplated in Section 13 (1) (i-a) of the Act and observed that the mental cruelty 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 other. To put it differently, 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. In **Parveen Mehta vs. Inderjit Mehta, (2002) 5 SCC 706**, it was held that mental cruelty is a state of mind and feeling with one of the spouses due to the behavior or behavioural pattern by the other. Mental cruelty cannot be established by direct evidence and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case emerging from the evidence on record. In **A. Jayachandra vs. Aneel Kaur (2005) 2 SCC 22**, it was ruled that the question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status and environment in which they live. If from the conduct of the spouse, it is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse about his or her mental welfare then this conduct amounts to cruelty. It is also well settled

that making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of false complaints and cases in the Court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other.

14. On examining the claim of the appellant in the light of above settled position of law, it emerges that the first instance of cruelty as quoted by the appellant-husband was that the respondent-wife used to make conversations on her cell phone secretly with some strange persons and whenever she was asked about the same, she used to give curt replies and had even warned the appellant to not to interfere in her personal life. The learned trial Court had observed that the appellant had failed to prove this allegation by leading any satisfactory evidence. We are of the same opinion in view of the fact that the appellant himself had not stepped into the witness box to prove this allegation. Though PW-1 & PW-2 who are parents of the appellant had alleged so in their sworn affidavits Ex.PW-1/A and PW-2/A respectively filed by them by way of examination-in-chief. However, during cross-examination PW-1 admitted that neither he had taken any call detail records of cell phone of the respondent nor he had any proof regarding the calls so made by the respondent to some strange person. Then he narrated a new story to the effect that the respondent used to make calls to one Ani Singh resident of Village Dangarh by claiming him to be her cousin but since no such plea had been taken by the appellant in his petition; therefore, the statement of PW-1 to this effect being beyond pleadings cannot be accepted. PW-2 also could not disclose the phone number of any such person to whom the respondent used to make calls and she could not disclose even the cell number of respondent. The statements

of both these witnesses hence not be stated to be sufficient to prove that the respondent used to make calls to strange persons and had committed any act of cruelty upon the appellant by doing so.

15. Another allegation levelled by the appellant against the respondent was that she was short tempered, did not perform her matrimonial duties in a proper manner and further that her behaviour was cruel with the appellant during her stay with him for the period of two months. The learned trial Court had disbelieved the version of the appellant on that point. On assessing the statements of PW-1 & PW-2, we are also inclined to hold that since general allegations have been levelled by both these witnesses against the respondent without quoting any specific instance as to her temperament and alleged misbehaviour on her part, therefore, the appellant was proved to have failed so.

16. The appellant had further alleged that the respondent-wife had committed grave acts of mental cruelty by not only dragging his family members in false civil suits but also by lodging a FIR under the provisions of Sections 406 & 498-A of IPC. The appellant had placed on record Mark 'A' certified copy of challan report filed in case bearing FIR No.03 dated 06.06.2017 registered under Sections 406 & 498-A of IPC at Police Station N.R.I. Sangrur, Mark 'B' copy of plaint of Civil Suit No.259 of 2017 titled *Raspreet Kaur v. Gurjot Singh Sidhu and others* and Mark 'C' copy of Civil Suit No.540 of 2019 titled as *Narinder Kaur and another v. Jodh Singh and another*. As discussed above, the appellant was also allowed to place certain documents on record of this Court by way of additional evidence.

These documents are **Annexure A-1** copy of an agreement dated 17.05.2017 shown to be executed by the respondent wife in favour of

Hardeep Singh s/o S. Naranjan Singh r/o Kaleke Tehsil and District Barnala thereby leasing out 14 acres of land owned by her father-in-law by representing that the latter had gone abroad and she was the one who was taking care of the said land. She is even shown to have received a sum of Rs.80,000/- from the abovesaid Hardeep Singh on the same day. **Annexure A-2** is English translated copy of an agreement executed by the respondent on 08.05.2019 in favour of Narinder Kaur wife of Bhajan Singh r/o Gobind Colony, Barnala & Tejinder Singh s/o Uttam Singh r/o Village Mehta, District Barnala thereby mortgaging and handing over possession of a house and plot owned by her husband and other in-laws, in lieu of a sum of Rs.10 lacs and is thereby shown to have received the said amount of Rs.10 lacs on the same day. **Annexure A-6** is copy of an order dated 09.09.2021 passed in Civil Suit No.540 of 2019 (copy of plaint Mark 'C') titled as *Narinder Kaur and another v. Jodh Singh and another* which shows that Smt. Narinder Kaur and Tejinder Singh who were parties to agreement **Annexure A-2** had filed this suit against the father of the appellant seeking relief of permanent injunction with regard to the house owned by the latter and the said suit had been dismissed in default. The respondent was impleaded as proforma defendant in the said suit. **Annexure A-4** is copy of judgment passed in Civil Suit No.422 of 2017 titled as *Jodh Singh Sidhu @ Ranjodh Singh Sidhu and another v. Raspreet Kaur and others*.

17. On a collective perusal of documents Mark 'B', Mark 'C' **Annexures A-1 to A-4 & Annexure A-6**, it is very much clear that during the period from 2017 to 2019, when the parents of the appellant as well as the appellant were staying at Canada then behind their back, the respondent-

wife had entered into agreements **Annexure A-1** and **Annexure A-2** in

favour of third parties and had mortgaged/leased out the properties owned by her father-in-law/husband without their knowledge and consent and is also proved to have received huge amount of money in lieu thereof. It is also proved from these documents that on the basis of agreement **Annexure A-2**, the above named Narinder Kaur & Tejinder Singh had even dragged the father of the appellant in civil litigation claiming rights over his property and the said suit had been ultimately dismissed. It is also revealed that the father of the appellant had also filed suit against Hardeep Singh who was party to agreement Annexure A-1 and the said suit had been decreed in his favour vide judgment Annexure A-4. The application for additional evidence as filed by the appellant before this Court had not been contested by the respondent. Meaning thereby that she accepted correctness of these documents and therefore, there is no reason to disbelieve the authenticity of these documents and they can be acted and relied upon. It is explicit that respondent executed **Annexure A-1 & Annexure A-2** agreements thereby creating charge over the properties owned by her in-laws for some personal gain and obviously with intent to harass them and in consequence thereof dragged them into unnecessary civil litigation. This act and conduct of the respondent by no stretch of imagination be considered as an act done in protection of her lawful right and hence the same amounted to subjecting the appellant and his family members to mental cruelty.

18. Proceeding further, the learned trial Court had observed that since the appellant had been declared a proclaimed person in FIR No.03 of 2017 lodged by the respondent and had not faced trial, therefore, it could not be stated that the allegations levelled against him in the said FIR were false and lodging of FIR in that case did not amount to an act of cruelty on

her part. In the peculiar circumstances of the case, we are unable to accept this contention. The parents of the appellant are proved to have faced trial in the above-mentioned criminal case and have since been acquitted. No appeal has admittedly been filed against the judgment of acquittal by the respondent. Meaning thereby that the findings as given in favour of parents of the appellant have attained finality. Obviously, the allegations levelled against the parents of the appellant were not proved beyond doubt and it can well be assumed that the above said FIR had been filed on false allegations as against the parents of the appellant. Filing of false criminal case against the parents of the appellant also amounted to commission of an act of mental cruelty upon the appellant and constituted sufficient ground for grant of divorce. In this regard, we are fortified by the ratio of law as laid down in **Vishwanath Agrawal vs. Sarla Vishwanath Agrawal**, (2012) 7 SCC 288; **K. Srinivas vs. K. Sunita**, 2014 (16) SCC 34; **Rashi Kakkar vs. Harminder Singh Bindra**, 2018 (4) CCC, 475 (P&H); **Satyawan vs. Rekha**, 2017 (Suppl) CCC, 169 (P&H); **Jagwati vs. Gajender Kumar**, 2017(Suppl.) CCC, 751 (Delhi); **Meenu Devi vs. Amit Kumar**, 2018(4) CCC, 612 (Jharkhand); **Neetu Aggarwal vs. Gireesh Gupta**, 2011 AIR (Del) 101 and **Narain Prasad Saraswat vs. Shaifali alias Muniya**, 2016 SCC Online All 2651 and *K. Srinivas Rao's case* (Supra). In view of this discussion, it is held that there was ample evidence on record to prove that the respondent-wife committed acts of mental cruelty upon the appellant and his family members by dragging them into litigation. The criminal litigation initiated against the parents of the appellant was found to be false. She also compelled them to enter into unnecessary civil litigation to seek

remedy against infringement of their lawful rights by filing contesting civil suits and hence, the findings as given by learned trial Court on the point of cruelty which are to the contrary have become liable to be reversed.

19. Now coming to the question as to whether the respondent-wife was proved to have deserted the appellant since 20.06.2016. The learned trial Court had held that the appellant had failed to prove the allegations of desertion on the part of the respondent. The desertion is certainly a ground for divorce under Section 13 (1) (i-b) of the Act. In its essence, desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. It is a total repudiation of obligation of marriage. In **Lachman Utamchand Kirpalani Versus Meena alias Mota**, AIR 1964 SC 40, the Constitution Bench of Hon'ble Apex Court laid down certain parameters namely, (i) the factum of separation; (ii) animus deserendi; (iii) absence of his/her consent; and (iv) absence of his/her conduct giving reasonable cause to the deserting spouse to leave the matrimonial home for the purpose of proving desertion under the Act. Admittedly, the appellant is a permanent resident of Canada and had been staying there even prior to his marriage. Just two months after his marriage with the respondent he had gone back to Canada. Its stand proved on record that it was the appellant himself who had withdrawn the sponsorship of the respondent for shifting to Canada due to which the immigration case of the respondent was rejected. He has never come back to India after 20.06.2016. No attempt is proved to have been made by the appellant to rehabilitate her with him during the entire span of their marital life. The ocular statements of PW-1 & PW-2 cannot be stated to be sufficient to prove that it was the respondent who had deserted the

appellant. As such, we are inclined to hold that the learned trial Court had rightly observed that the appellant had failed to prove that the respondent had deserted him and hence the findings of learned trial Court on this point are upheld.

20. Apart from the discussion as made above to the effect that the respondent was proved to have committed acts of cruelty upon the appellant, it is noteworthy that shortly after his marriage with the respondent, the appellant who is a permanent resident of Canada had gone back there and has not returned till date. Even the respondent has shifted to Canada though she is obviously staying separately from him. The parties are living separately for a period of about 7 years and have been dragging each other into litigation. There is no possibility of their re-union. There is no acceptable way in which they can be compelled to resume their marital life. Even though the respondent is insisting for re-joining the appellant however, in our opinion, nothing is to be gained by trying to keep them tied forever to a marriage that infact had ceased to exist. It is abundantly clear that the marriage between the parties has broken down irretrievably and there are no chances of their living together again. Undoubtedly, the irretrievable break down of marriage is not a ground for divorce under Section 13 of the Act. However, the Hon'ble Apex Court in a catena of decisions while dealing with the facts and circumstances of individual cases has observed that when there is no possibility of resumption of normal marital life by the spouses and marriage between them has irretrievably broken down, a decree of divorce should be granted. No doubt, it is obligation of the Court that marital status should as far as possible be maintained but when the marriage is totally dead, in that event nothing is

gained to keep the parties tied forever to a marriage which infact has ceased to exist. There is total disappearance of emotional substratum in the marriage between the parties. We, therefore, are of the considered view that the findings recorded and conclusions drawn by the learned trial Court on the point of cruelty which are not supported by the evidence on record, are not sustainable. On the point of cruelty, the learned trial Court was not justified in declining the decree of divorce in favour of the appellant. We, therefore, find that the decision of learned trial Court is unsustainable in law and facts of the case to the extent to which the findings on the point of cruelty were concerned. Accordingly while reversing the findings given by learned trial Court on that point, it is held that the respondent-wife was proved to have committed acts of mental cruelty upon the appellant justifying his prayer for granting a decree of divorce on that ground. The points of determination are answered accordingly.

21. For the above stated reasons, the impugned judgment and decree dated 15.11.2021 in petition No.HMA/254/2019 is set aside and the appeal is allowed and the petition filed by the appellant seeking decree of divorce is accepted. Resultantly, the marriage between the parties is ordered to be dissolved by a decree of divorce. Parties to bear their own cost.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

16.12.2022
manju

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No