

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

FAO-M-79-2017 (O&M)
Date of decision:- 02.05.2022

Maheep Singh

...Appellant

Vs.

Loveleen Kaur

...Respondent

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

Present: Mr. Sandeep Bansal, Advocate
for the appellant-husband.

Mr. S.S. Rangi, Advocate
for the respondent-wife.

Ritu Bahri, J.

C.M. No. 9683-CII-2019

Application is allowed as prayed for.

Accordingly, Annexure A-1 is taken on record.

FAO No. M-79-2017

By way of filing the present appeal, the appellant-husband is seeking setting aside of judgment and decree dated 24.10.2016 passed by Addl. District Judge, Amritsar, 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 are that the appellant was married to the respondent according to Hindu rites and ceremonies at Amritsar on

06.10.2011. No dowry was given at the time of marriage. After the marriage, the parties resided together as husband and wife. No child was 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, the respondent stated that she has been forcefully married and the appellant was not of her choice. She used to pick up fights on petty matters. She also used to abuse in filthy language. She also threatened the appellant that she will implicate him and his family members in a false and frivolous criminal case. Finally she left the matrimonial home on 29.10.2012. She then lodged a complaint against the appellant and his family members at Police Station Mahila Thana on 14.12.2012. After putting pressure on the appellant and his family members, she received Rs.1,25,000/- (Rs.70,000/- vide cheque and Rs.55000/- as cash) and also received articles which were brought by her of her own will. Later on she withdrew the complaint, vide statement dated 16.01.2013. With the intervention of respectables, it was decided between the parties that they will file a petition for mutual divorce. Subsequently, a petition was filed under Section 13-B of the Hindu Marriage Act but later on she withdrew her statement for consent of divorce and petition was dismissed as withdrawn on 15.02.2013. Since then the respondent is residing in her parental residence. Hence, a petition was filed by him under Section 13-B of the Hindu Marriage Act for dissolution of marriage.

In the Family Court proceedings, the respondent-wife admitted the relationship between the parties but specifically denied each and every allegation levelled against her. She claimed that the appellant had levelled absolutely false and frivolous allegations against her as it was the appellant

who wanted to get rid of her. She further alleged that it was the appellant who did not want to live with her. However, she admitted that she had lodged the complaint and later on withdrew the same. She further admitted that she received Rs.1,25,000/- (Rs.70,000/- vide cheque and Rs.55000/- as cash) and also received articles which were brought by her.

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

1. Whether the petitioner is entitled to decree of divorce on the grounds on cruelty and desertion?OPP
2. Whether the petition is not maintainable in the present form? OPR
3. Whether the petition is an abuse of process of law? OPR
2. *Relief.*

In order to prove his case, the appellant-husband stepped into witness box as PW1 besides examining P.W.2-Major Kuldeep Singh, Gurkanwar Singh as P.W.3, Jaspal Singh as P.W.4.

On the other hand, respondent herself appeared as R.W.1 besides examining Harjit Singh as R.W.2 & Prem Singh as R.W.3.

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 the appellant and the respondent are educated persons and both are working as Government teachers. The appellant admitted that it was an arrange marriage settled by both the parents. The marriage was performed with the consent of both the parties. Even if the respondent really did not like the appellant then should never agree to get marry with him as she is not an illiterate dependent person rather she is an educated and financially independent person. As far as cruelty is concerned, the Court was of the opinion that mere trivial irritations, quarrels are normal wear and tear of married life, which happens in day to day life in all

families and thus, is not an adequate ground for grant of divorce on the ground of mental cruelty. The ill conduct must be persistent and for a long time and it must be of such a nature that because of it, the other spouse feels extremely difficult to live with the party. The appellant had levelled general and vague allegations against the respondent-wife. There is nothing on record to corroborate the pleas taken by the appellant. Reference has further been made to statements of P.W.3 and P.W.4 who only stated that there was an exchange of hot words between the parties. They never stated that the respondent used filthy language against the appellant and his family members in their presence and refused to serve tea or cook food for guests. With respect to complaint filed by the respondent, it has been observed that if the respondent has any grievance against the appellant and to redress her grievance, if she approached to the police authorities, it does not mean that she has intentionally made a false complaint against the appellant and his parents. It has further been observed that if the respondent has withdrawn her consent under Section 13-B of the Hindu Marriage Act as she does not want to seek divorce from the appellant then it does not mean that the respondent has mentally harassed the appellant. Finally, it has been observed that the appellant has not taken any steps to settle the matrimonial life with the respondent rather he has filed the present petition seeking dissolution of marriage.

Heard learned counsel for the parties at length.

The appellant filed the present appeal in the year 2017 and on 17.03.2017, this Court issued notice to the respondent and the appellant was directed to bring a demand draft for a sum of Rs.20,000/- towards litigation expenses for the respondent-wife. Thereafter, on 30.07.2018, the parties

were referred to Mediation and Conciliation Centre of this Court. However, as per mediation report dated 10.10.2018, the mediation has failed between the parties and the case was sent back to this Court.

It is not a case where the respondent-wife states that she is not financially secure as she is working as a Government teacher. It is to be noted that the parties are staying separately for the last about 10 years and this Court made several attempts to settle the dispute amicably between the parties but all in vain. Living together is not a compulsory exercise. But marriage is a tie between two parties. The Court below did not find any adequate material to come to the conclusion that the appellant was entitled to divorce on the grounds of cruelty. The marriage never took off from the very first day. All mediation efforts have also failed. Now, the marriage cannot be revived after 10 long years of separation. The respondent is a secured and financially independent woman but still is not ready to settle the dispute amicably. She does not want to move ahead in her life and is adamant that even appellant should not move ahead in his life.

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 the last about 10 years 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 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.

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

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. It has also not been disputed that . The respondent lodged a complaint against the appellant and vide judgment dated 17.10.2018 (A-1), the appellant was discharged. Against the judgment dated 17.10.2018, the respondent filed revision petition under Section 397 to 401 Cr.P.C, which was also dismissed on 27.08.2019 by Additional Sessions Judge, Amritsar (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 dated 24.10.2016 passed by Addl. District Judge, Amritsar 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 make an F.D of

Rs.6 lacs in the name of the respondent-wife.

(RITU BAHRI)
JUDGE

02.05.2022
G Arora

(ASHOK KUMAR VERMA)
JUDGE

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