

FAO-M-193-2018 (O&M)

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

FAO-M-193-2018 (O&M)

Date of Decision: December 01, 2022

Ajay Mehra

... Appellant

Versus

Gauri

...Respondent

**CORAM: HON'BLE MR. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE DEEPAK GUPTA**

Present:- Mr. R.S. Bajaj, Advocate for the appellant.

Mr. Prateek Sodhi, Advocate for the respondent.

DEEPAK GUPTA, J.

1). Having lost his case for seeking dissolution of his marriage with the respondent – wife on ground of cruelty in terms of section 13 (1)(i-a) of Hindu Marriage Act, 1955 (here in after referred to as ‘the Act’) before Ld. Additional District Judge Amritsar, the husband has filed the present appeal.

2). According to the petitioner - appellant, marriage between the parties was solemnized on 20.11.2011 according to Hindu rites and ceremonies. It was a simple marriage. No dowry was given or taken except some ornaments given to the respondent by parents of the parties. From the wedlock of the parties, a female child was born on 5.11.2012, who is in the custody of the petitioner.

3). Petitioner submitted further that after about four months of the marriage, he noticed that the behavior of the respondent was not normal. He talked about the same to the mother of the respondent, who put off the matter on one or other pretext. He also let it go keeping in

FAO-M-193-2018 (O&M)

view their recent marriage. However, after delivery of the child, the petitioner found that the behavior of the respondent has become more furious and thereafter, the petitioner and his parents came to know that respondent has been suffering from some mental ailment. With passage of time, the behavior of the respondent became more violent and she used to claim to kill herself or other family members. On 2.3.2013, the respondent became so violent that he had to call her mother and sister, who took her to the parental home along with female child. The mother of the respondent also threatened to involve the petitioner and his family members in criminal cases. The respondent also used to threaten the petitioner and his family members to implicate them in false criminal cases by committing suicide.

4). Maintaining further, the petitioner pleaded that he filed a divorce petition and as a counter- blast, the respondent and her mother also got registered a false criminal cases against him and his other relatives vide FIR no. 16 under section 406/498– A/120–B IPC in police station women, Amritsar. In order to save the relatives from harassment of police, he compromised the matter and brought the respondent back to her matrimonial home. He withdrew the divorce petition and the FIR was quashed. All the gold articles and other goods were returned to the respondent at the time of hearing the bail application of the petitioner.

5). The petitioner alleged that after bringing the respondent back to her matrimonial home, her conduct became more cruel and she started torturing the petitioner and his parents physically as well as mentally and made their lives a living hell, adding more mental torture and cruelty to

FAO-M-193-2018 (O&M)

him. The respondent started insulting the petitioner and his parents by slapping them in front of their relatives and whenever the petitioner tried to resist, the respondent threatened him to re-open the FIR. The respondent refused to even cook food. His mother used to cook food for the family. The respondent in her fit of anger used to go out of the house and sit on the road or garden around the house for hours together and he used to bring her back with great difficulty. It is alleged that the respondent is suffering from an incurable disease. She even did not allow the petitioner to establish physical relations and whenever he made advances towards her, she used to give threats of police, adding more mental cruelty and torture to him. The respondent even did not take care of the minor child, who is being brought up by the petitioner with the help of his old aged mother. The mental torture so given by the respondent is of such an extent that he started thinking in terms of committing suicide, but he could not do so for the sake of the child. The petitioner and his per family members are undergoing an insurmountable mental stress at the hands of the respondent.

6). The petitioner averred further that respondent left the matrimonial home without his consent one week prior to the filing of the petition. The mother of the respondent made a false complaint before the police. Even after the filing of the divorce petition, the respondent along with her mother and sister forcibly entered into the residence of his father, which constrained his father to make police report. The mother of the respondent even tried to break open the locks of the house to render the divorce petition infructuous that constrained his father to file a suit

FAO-M-193-2018 (O&M)

for permanent injunction against the respondent and her mother, which is still pending. The mother of the respondent also got registered a case against the petitioner and his parents vide FIR 88 dated 30.10.2015 under section 406/498 -A/120 B IPC police station, Mahila, Amritsar .

7). On the basis of aforesaid averments, the appellant-husband has sought decree of divorce on ground of cruelty.

8). The respondent –wife contested the petition by denying the aforesaid allegations in toto and averred that petitioner is guilty of his own wrongful acts and omissions and as such, he is not legally entitled to any relief against her. Even at the time of filing the divorce petition, she was living with the petitioner in her matrimonial home.

9). On merits, the respondent submitted that the marriage of the parties was performed with great pomp and show and sufficient dowry in the shape of 'Istridhan' and gold ornaments was given to the petitioner and his family members, which are still lying in their custody. Ever since the performance of her marriage with the petitioner, she has been harassed and humiliated by him and his parents on demand of dowry. Being unsatisfied with the same, the petitioner and his family members, particularly her father-in-law, started pressurising and forcing her to bring share from her father's property, and for that she was mercilessly tortured by the petitioner and his parental relations. She was also turned out from the matrimonial home. As a result, the matter was reported to the police. The petitioner and his family members admitted their guilt and agreed to rehabilitate the respondent and assured not repeat their mistakes. It is claimed by the respondent that genuine and valid FIR was registered

FAO-M-193-2018 (O&M)

against the petitioner and his parents. To save their skin from legal action, they offered to compromise the matter with the respondent and in order to save her matrimonial relations, she also gave no objection to said compromise, which resulted into the quashing of the FIR so registered against the petitioner and his family members. However, the compromise was just a fraudulent act on the part of the petitioner and his family members. As a matter of fact, the answering respondent went into depression on account of wrongful acts being performed by the petitioner and his parental relations, due to which, she was made to get treatment from the doctor. She was facing depression only and has no mental disease. By denying other allegations so made against her, she prayed for the dismissal of the petition.

10). The petitioner filed the replication and repeated his stand so taken by him by controverting the version as set up by the respondent in the written statement.

11). On the pleadings of the parties, following issues were settled by the learned trial court:

1. Whether the petitioner is entitled to decree of divorce on ground of cruelty? OPP
2. Whether the petition is not legally maintainable? OPR
3. Relief.

12). The parties adduced evidence in support of their respective assertions. The appellant – husband examined himself as PW4 and also examined HC Sushil Kumar as PW1, HC Rajesh Kumar as PW2, Dr BL Goyal as PW3 and Dr Prabhjeet Singh as PW5 besides placing reliance upon certain documents.

FAO-M-193-2018 (O&M)

13). On the other hand, respondent examined HC Ashok Kumar as a RW1, Promila Kapoor - her mother as RW2 and she herself appeared into the witness box as RW3. The respondent also placed reliance on certain documents.

14). After appraising the evidence produced on record and hearing the contentions raised by both the sides, learned trial court vide the impugned judgment decided issue No.1 against the appellant -husband and issue no 2 in favour of the respondent and dismissed the petition with cost .

15). We have heard learned counsel for the parties and have gone through the record and the paper book with their assistance.

16). Taking through the evidence of the parties, learned counsel for the appellant-husband contended that there is ample evidence to show that that the respondent treated the petitioner and his family members with utmost cruelty. He also gave various instances of the conduct of the respondent to the effect that the respondent used to behave in abnormal manner; used to issue threat to commit suicide and involve him and his family in criminal cases; used to leave the matrimonial home without his consent and sit on road or garden out side the house for hours together; refused to cook food and look after the child; used to refuse for conjugal relations; used to insult the petitioner and his family members and slap them in front of others, and used to exhibit the cruel behavior against the petitioner and his family members.

17). It is submitted that learned trial court misread the expert evidence of the doctors, who clearly proved that the respondent was

FAO-M-193-2018 (O&M)

suffering from some mental ailment. This substantiates the version of the appellant that due to said ailment the behavior of the respondent was very violent and indecorous towards him and his family members. As such, the family life of the appellant had been disturbed to the extent that it had become impossible for him to live with the respondent any more with safety to his life and his other family members. The medical evidence clearly proved that the mental ailment of the respondent was not curable at all, which made the life of the appellant, as detailed herein before, a living hell. The respondent in her testimonial account has also admitted that she was suffering from mental depression. The learned trial court, however, failed to properly appreciate the evidence brought on record by the appellant and wrongly dismissed the petition of the appellant. It was urged that the impugned findings are based on conjectures and surmises and are liable to be set aside.

18). Submitting further, learned counsel stated that since the parties are not staying together since long, therefore, a decree of divorce is required to be passed as forcing the parties to live together in such an acrimonious relationship is nothing but cruelty for both of them. With aforesaid submissions a prayer was made to allow the appeal.

19). On the other hand, it was argued on behalf of the respondent that learned trial court on appreciating the evidence on record has come to the conclusion that it was not the case, where it could be stated that any alleged acts of cruelty were committed by the respondent against the appellant- husband. The appellant is rather guilty of his own wrongful acts and omissions and is not legally entitled to any relief against the

FAO-M-193-2018 (O&M)

respondent. The marriage of the respondent was performed with great pomp and show by giving lots of dowry articles and gold ornaments, which are still lying in the custody of the appellant. Ever since the performance of marriage, the respondent was harassed and humiliated by the petitioner and his parental relations for not giving dowry as per their expectations. She was harassed and pressurized to bring share from her father's property and was tortured. The matter was also reported to the police, where compromise was arrived at by the appellant with fraudulent intent. After quashing of the FIR, the appellant and his family members again started harassing the respondent. She went into depression and took treatment for the same. The learned counsel stated that the respondent was facing depression only and she was not suffering from any mental ailment. The learned trial court on appraisal of the evidence rightly held so and dismissed the petition. A prayer was made to dismiss the appeal being devoid of merits.

20). Based on the pleadings and evidence available on record and contentions of the counsel, the following points are raised in this appeal.

1. Whether the appellant proved the acts of cruelty as pleaded for by him?
2. Whether the order passed by the learned trial court in dismissing the petition for divorce requires any interference by this court?

21). It is settled proposition of law that whenever a spouse pleads ground of 'cruelty', heavy burden, rests upon him or her to prove it. 'Cruelty' has not been defined anywhere in the Act. 'Cruelty' needs not to

FAO-M-193-2018 (O&M)

be physical but it can be mental as well, which can give rise to a decree of divorce. Nonetheless, it has to be gathered and assessed from several instances/circumstances pleaded and proved on record by both the parties. It is the sum total of act and conduct of the parties towards each other that needs to be gathered from the record in order to assess the allegations of cruelty. It is a course of conduct of one which is adversely affecting the other party. No straitjacket formula can be laid. It has to be assessed from case to case. When mental pain, agony and suffering would not make possible for the parties to live with each other, it would come within the broad parameters of cruelty. It is impossible to give comprehensive definition of cruelty, but when reprehensive conduct or departure from normal standard of conjugal kindness causes injury to the health or an apprehension of it to other partner, it amounts to cruelty.

22). Cruelty, therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with other party. Cruelty, therefore, has to be distinguished from ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be judged on the basis of course of conduct, which would, in general be dangerous for spouse to live with other.

In case **Gurbax versus Harminster Kaur reported in II(2010), DMC 706**, Hon'ble Supreme Court of India held that the married life should be assessed as a whole and few isolated instances over certain period will not amount to cruelty. The ill conduct must be persistent for a fairly long period, where relationship has deteriorated to such an extent

FAO-M-193-2018 (O&M)

that because of the acts and behaviour of a spouse, one party finds difficult to live with the other party .

In **Dastane, versus Dastane, AIR, 1975 Supreme Court 1534**, it was observed that any enquiry covered by section 13 of Hindu Marriage Act had to be whether the conduct charged as cruelty is of such a character as to cause in mind of the petitioner a reasonable apprehension that it will be harmful or injurious to live with the respondent .

In **Ravi Kumar versus Julmi Devi, 2010 (2) R CR (civil) 178**, it was held that in matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses, which embitters the relationship and often leads to various outburst of behavior, which can be termed as cruelty. Sometimes, cruelty in matrimonial relationship may take the form of violence, sometimes a different form. At times, it may be just an attitude or an approach. Silence in some situations may also amount to cruelty.

23). Adverting to the facts of the present case, the petitioner - PW4 in his deposition reiterated several instances of cruel behavior and conduct of the respondent towards him and his family members. He specifically deposed that the respondent is suffering from mental ailment and he found her behavior abnormal after the marriage and discussed the same with the mother of the respondent, who put off the matter. He too let it go keeping in view his recent marriage. He also deposed that the behavior of the respondent became more violent after the birth of the child and she would issue threats to commit suicide and involve them in criminal cases. Her mother and sister also threatened to involve him and

FAO-M-193-2018 (O&M)

his family in false criminal cases that led him to file a divorce petition and as a counterblast, the respondent also filed a criminal case of dowry demand and harassment, which later on resulted into the compromise between the parties. He withdrew the divorce case and the FIR was quashed. The petitioner further deposed that thereafter, the parties again started living together but act and conduct of the respondent did not change towards him and his other family members. Rather, she became more violent and made his life and his parents, a living hell. The respondent started insulting him and his parents in front of his relatives and refused to perform the household work and look after the minor child. The respondent even stopped performing her matrimonial obligations and deprived him of marital bliss. The petitioner also deposed that the respondent has remained under treatment from doctors and placed on record the prescription slips as exhibit PW3/1 to PW3/3 . The behavior of the respondent has been very so cruel towards him and his family members that it is not possible for him to live her any more with solace of mind and safety to his life.

24). The oral account of the petitioner received support from the statement of Dr B L Goyal - PW3, who stated that he had treated the respondent for obsessive compulsive disorder, which is generally called as illness of doubts and in such disorders, the patient does not feel satisfied with the work done by him or her. He stated that it is the psychological problem and illness is treatable but not curable and family life is not disturbed and patient does not become violent. PW5 Dr. Prabhjeet Singh, on other hand, deposed that he had examined the

FAO-M-193-2018 (O&M)

patient with complaints of violent behavior and excessive anger. He also deposed that patient of such a disease can harm others as well as himself or herself. Such a disease can be treated but not fully curable.

25). On the other hand, the respondent RW3 denied the allegations made against her bad act and conduct towards the petitioner and his family members. Rather, she deposed that she went into depression on account of wrongful acts being perpetuated by the petitioner and his parental relations on account of demand of dowry and cruelty and also forced her to get share from her father's property. On account of her depression, she was made to take treatment from the doctors. However, she denied that her mental condition was not good or that she caused cruelty to the petitioner and his family members. Her mother - RW2 supported the version of the respondent.

26). The learner trial court fell in error when observed that the medical evidence has failed to support the version of the petitioner or that the respondent is not suffering from such a mental ailment or that she has not caused mental cruelty to him. It is observed that the learner trial court failed to appreciate the evidence on the aforesaid aspect in right prospective. PW5 Dr Prabhjeet Singh pointedly deposed that the patient was suffering from psychological problem and she had come with complaints of violent behavior and excessive anger. This contradicted the version of PW3, who opined that such a patient cannot become violent. Both the doctors PW3 and PW5 have categorically stated that the psychological problem of the respondent was though treatable but not curable. This shows that the said mental ailment / problem would remain

FAO-M-193-2018 (O&M)

with the respondent throughout her life and she will not get rid of it. The petitioner would not seek solace during his entire matrimony. It is not such a decease, which with the passage of time after the treatment, the respondent will be cured. Persistence of such an irrational and untoward conduct of the respondent against the petitioner and his family members throughout his conjugal relationship would certainly be a constant source of immense agony and pain to the petitioner. The medical evidence, rather, supported the version of the petitioner that the respondent is suffering from mental ailment and as such, her behavior was not good towards him and his family and after the delivery of the child, her behavior became more violent. Respondent refused to perform matrimonial obligations. She stopped looking after the child also. The respondent has also admitted that she is suffering from depression. However, she stated that on account of the cruel treatment given by the petitioner and his family members on demand of dowry and forcing her to get a share in the property of her father led her to have a mental depression. Otherwise, she has no mental ailment. She also admitted that on account of depression, she has been taking treatment. This admission on the part of the respondent has also gone a long way to support the allegations of the petitioner.

27). Learned trial court, on the other hand, has observed that respondent-wife has failed to establish that petitioner and his family members ever subjected her to cruelty on demand of dowry or asking her to take share from her father's property. The trial court also observed that the respondent failed to establish that petitioner and his family members

misappropriated her dowry articles. In the face of these findings, the version of the respondent that because of the cruelty meted out to her, she has gone into mental depression appears false. This rather gives credence to the version of petitioner that the respondent is suffering from mental ailment. In face of the above evidence, it is observed that learned trial court fell into error while holding against the petitioner as regard his allegation about the matrimonial misconduct committed by the respondent .

28). A partner to the marriage when has a incurable mental ailment, leading to irresponsible and violent behavior, it certainly makes the life of the victim spouse, a living hell and makes it impossible for him to live with the partner with safety to his life and mental peace to him/her. From the evidence on record, it is made out that the petitioner had earlier filed a divorce petition, but to give a second try to his matrimonial life, he compromise the matter with the respondent despite the fact she had filed a criminal case against him and his family members. The petitioner specifically testified that after the compromise the behavior of the respondent did not change and she continued with her bad behavior. The continuance of bad behavior by the guilty spouse, which was once pardoned by the other spouse on promise and assurance that such a behavior would not be repeated, would not make out a case of condonation. The respondent has admitted in her testimonial account that after the filing of the present divorce petition, she has filed a criminal case of demand of dowry against the petitioner –husband. This again suggest an act of cruelty on the part of the respondent against the

FAO-M-193-2018 (O&M)

petitioner. The observation of the learned trial court that the petitioner did not examine any independent witness is fallacious because in matrimonial cases, the statement of the parties to the marriage is sufficient as they are potential witnesses. In the present case, the statement of the parties were sufficient on their respective allegations. Nonetheless, both the parties have also brought the statement of independent witnesses touching the other attending circumstances.

29). From the entire evidence on record, it stands proved that the relations between the parties had deteriorated to such an extent that it would be impossible for them to live together. The act and conduct of the respondent leads to an inference that there is no guarantee that in future, she would treat the petitioner with affection and respect. Further, long separation of seven years between the parties, during which they have been litigating, would show that the marriage between the parties has become a deadwood and beyond repairs on account of bitterness between the parties. The marriage has already become dead between the parties, cannot be revived by court verdict. Such long separation is bound to create an unbridgeable distance between the parties and would be a constant source of mental cruelty to the couple. There seems no purpose in compelling the party to live in matrimony. The consequence of preservation such an unworkable marriage, which has long ceased to be effective is bound to be a source of great misery for the parties.

30). As a sequel to the above discussion and the fore-going detailed reasons, it is held that the findings rendered by trial court are not based on correct appreciation of evidence and are accordingly stands

FAO-M-193-2018 (O&M)

reversed. The points framed for determination stands answered in favor of the appellant –husband .

31). The divorce petition, accordingly, stands allowed and decree of divorce is passed in favor of the petitioner -appellant dissolving the marriage between the parties namely Ajay Mehra the petitioner and respondent Mrs. Gauri on ground of ‘cruelty’. The marriage stands dissolved. Decree sheet be prepared with no order as to cost.

(RITU BAHRI)
JUDGE

(DEEPAK GUPTA)
JUDGE

December 01, 2022

sarita

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