

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

**FAO No.6969 of 2019 (O&M)
Date of Decision: July 05, 2022**

Anmol Verma

.....Appellant.

Versus

Radhika Sareen

.....Respondent.

**CORAM: *HON'BLE MS. JUSTICE RITU BAHRI*
 *HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA***

Argued by:- Mr. Akshay Kumar Jindal, Advocate
 for the appellant.

Mr. Jagram Singh Cooner, Advocate
 for the respondent.

MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the judgment and decree dated 22.07.2019 as handed down by learned Principal Judge, Family Court, Panchkula (for short, 'the trial Court') whereby the petition preferred by the appellant-petitioner-husband (here-in-after to be referred as 'the petitioner') against the respondent-wife (here-in-after to be referred as 'the respondent') under Section 13 of the Hindu Marriage Act, 1955 (for short, 'the Act') for seeking the dissolution of their marriage by way of a decree of divorce, has been dismissed, the petitioner has filed this appeal.

2. Shorn and short of unnecessary details, the facts, as canvassed by the petitioner in the petition, are that the marriage between the parties was solemnised on 26.09.2014 at Chandigarh according to Hindu rites and ceremonies. No issue has born out of this wedlock. The respondent is quite

arrogant and rude person and she used to quarrel with him and his family members over petty matters and to frequently threaten to commit suicide. She did not attend the religious function of '*Sai Sandhya*', arranged by his family, on 11.01.2015. He, along-with the respondent as well as his mother and sister, had gone to Mata Naina Devi Temple on 25.01.2015 to pay obeisance and the respondent created a scene and even slapped him there in the presence of the entire gathering and while returning from there, they visited the Gurudwara at Anandpur Sahib and she created nuisance there also. After returning to Panchkula, she left their home on 26.01.2015 and took away her belongings. Then, on 27.01.2015, she and her parents came to Panchkula and she (respondent) banged at the doors and windows of their house and shouted loudly and also threatened to involve him in some false complaint/case.

3. The petitioner has also averred that on 01.02.2015, the respondent called him and expressed her desire to end the relationship with him. On 09.02.2015 and again on 15.02.2015, she had come to their house at Delhi and had taken away all her belongings including her educational qualification certificates and clothes etc. On 26.02.2015, the respondent came there in the midnight at about 01.00 A.M. and started shouting. He opened the door and she entered into the house but throughout the night hours, she quarrelled with him and thus, mentally harassed him. On the same date, she again created a scene in the evening hours and started crying after deliberately locking the room of their house while he was in the office and sent messages to him and his mother threatening therein that she would

commit suicide. In these circumstances, he got a DDR lodged at the Police Station at Delhi to seek protection from her. Then, she returned to her parental house at Ambala and again, visited his house at Panchkula along-with her parents and tried to forcibly enter into the house. On 02.03.2015, she lodged a complaint with the Crime Against Women Cell against him, his mother and sister as well as his uncle but later-on, she made a statement before the police authorities to the effect that she did not want to pursue her complaint further and the same be filed and accordingly, the said complaint was filed. However, during the pendency of this complaint, he and his family members were called by the police authorities on 7th, 9th, 12th and 14th March, 2015 and the respondent and her parents misbehaved with them on the said occasions.

4. The petitioner has, further, averred that on 14.03.2015, the concerned Assistant Commissioner of Police sent the parties to Baldev Nagar Police Station. The respondent again submitted a complaint against him and his family members there also and in pursuance of the same, the police arrested him by invoking the provisions of Sections 107/151 Cr.PC and prepared a Calendra against him and his mother. The respondent and her parents had also been challaned under the said provisions. He appeared before the Executive Magistrate, Ambala on six dates of hearing in respect of the above-mentioned proceedings but the respondent did not make any statement before the said Authority and finally, he was discharged in the said proceedings on 18.08.2015. Even thereafter, the respondent kept on moving false complaints against him and his family members at Crime

Against Women Cell, so as to harass and mentally torture them and she has been maligning and tarnishing their image and reputation before their relatives and all the concerned and has, thus, subjected him to cruelty and in such circumstances, it would not be possible for the parties to live together.

5. In her written statement, the respondent has contested the claim of the petitioner by asserting that the petition was not maintainable because the petitioner himself was guilty of deserting her at the instance of his mother and sister who were adamant to oust her from her matrimonial home. The petitioner had also disclosed to her that his mother and sister had threatened to commit suicide in case he took her back to his house. Her mother-in-law also demanded Skoda luxury car in dowry. She (respondent) had sent the message qua committing suicide, in the extreme circumstances when she had been left on the road in the late hours. Whenever she and her parents tried to talk to the petitioner and his family members to settle the dispute and visited their home at Panchkula for this purpose, they refused for the same. The petitioner had levelled false and frivolous allegations in the petition and therefore, the same deserved dismissal.

6. The parties were put to the trial by framing the following issues on 04.02.2017:-

“1. Whether the petitioner is entitled for grant of decree of divorce on the grounds of cruelty as alleged in the petition? OPP

2. Relief.”

Both the parties led their evidence, oral as well as

documentary, in support of their respective contentions and after appreciating and evaluating their evidence and hearing their learned counsel, the trial Court settled issue No.1 against the petitioner and accordingly, dismissed the divorce petition.

7. We have heard learned counsel for both the parties and have also perused the record thoroughly.

8. Learned counsel for the petitioner has contended that the respondent is a short-tempered person and she used to quarrel with the petitioner and his family members over trivial matters and to frequently threaten them that she would commit suicide and moreover, she has been moving false complaints to the police against them and she even slapped the petitioner in Mata Naina Devi Temple in the presence of the gathering as well as at Gurudwara, Anandpur Sahib and also created a ruckus in the rented accommodation at Delhi where she and the petitioner had resided for some time after their marriage and the petitioner was constrained to move an application to the SHO of the area for seeking protection in view of her errant act and conduct and thus, the respondent has subjected the petitioner to cruelty after their marriage and hence, it would not be possible for the petitioner to live with the respondent and rather, their marriage has irretrievably broken down and is a dead marriage but the trial Court did not appreciate the evidence, as led on the record and the contentions as raised by the petitioner, in the right perspective and has, erroneously, dismissed the said petition vide the impugned judgment and decree and the same deserve to be set-aside.

9. Per contra, learned counsel for the respondent has argued that the petitioner is under the influence of his mother and sister who started feeling insecure after the marriage of the parties and they did not want the petitioner to devote time and attention to the respondent and started poisoning him against her (respondent) which resulted in the marital discord between the parties and the petitioner and his family members had turned the respondent out of her matrimonial home on 26.01.2015 and the petitioner never reciprocated to the endeavours made by the respondent and her parents to get the matter compromised between the parties and in these circumstances, it is quite explicit that it is the petitioner himself who has harassed and ill-treated the respondent and therefore, he cannot take the benefit out of his own wrong by seeking the dissolution of his marriage with the respondent. To buttress his contentions, he has placed reliance upon **Ashok Kumar Jain Versus Sumati Jain (2013) 2 R.C.R. (Civil) 835 (SC)** and **Savitri Pandey Versus Prem Chandra Pandey (2002) 1 R.C.R. (Civil) 719 (SC)**.

10. Undisputedly, the marriage between the parties had been solemnised on 26.09.2014 at Chandigarh and soon thereafter, the parties went to Delhi in connection with their respective jobs and started residing in a rented accommodation there. On 26.01.2015, the respondent was allegedly turned out of her matrimonial home at Panchkula and she went to her parental home at Ambala. However, Exhibit P-2 is the screen-shot of the *WhatsApp* messages sent by the respondent to the petitioner on 28th and 30th January, 2015 wherein she has mentioned that she could not envisage

her life with him (petitioner). Exhibit P-3 is the transcript of the audio-chat between the parties that took place on 01.02.2015 and a perusal of the same also shows that the respondent had expressed therein that they would proceed towards separation. Exhibit P-4 is another transcript of the audio-chat of the same day between the parties wherein the respondent has spoken about engaging a lawyer and qua the preparation of the divorce-papers. Exhibit P-5 is, again, a screen-shot of the *WhatsApp* chat of that very day wherein the respondent is shown to have made a request to the petitioner to return her things on the next day. The above-discussed evidence renders the version of the respondent regarding her having been ousted by the petitioner and his family members from her matrimonial house at Panchkula, highly doubtful.

11. Further, Exhibit P-13 is the copy of the messages (SMS) sent by the respondent to the petitioner on 26.02.2015 threatening him therein that she would either go to the police or commit suicide as she was on the road because the petitioner had locked the house. Though the respondent has alleged that on that day, the petitioner had locked their house at Delhi and he also did not respond to her phone calls and she was on the road in the late hours but it is worth-while to mention here that while appearing as PW1, the petitioner has categorically deposed during his cross-examination that the respondent was having a second set of keys of their house with her and on the said day also, she came back in the evening and opened the house and during the day, she had threatened him several times about her committing suicide and his facing dire consequences of legal proceedings

and she had sent the similar messages to his mother and other relatives also. During her cross-examination as RW2, the respondent has admitted that there were two keys of the rented accommodation at Delhi and though she has further stated that she lost her key when she went to U.S. in the first week of December, 2014 but however, the fact remains that she has not led any evidence on the file to show that she had ever asked the petitioner to get the new lock for their home or to make some alternative arrangement in such an eventuality. Then, Exhibit P-14 is the copy of the screen-shot of the message, sent by her to the petitioner on the same day, threatening him therein that she was going to commit suicide because he (petitioner) did not pick her call and that he would be responsible for her death. Exhibit P-15 is the copy of the application, moved by the petitioner to the SHO, Gobind Puri Police Station, New Delhi on 26.02.2015, wherein he has stated that the respondent came to their house on that day at about 01.00 A.M. and she disturbed him throughout the night and he apprehended danger to his life and property at her and her family members' hands and hence, he needed protection. Further, Exhibit P-16 is the transcript of the audio-chat which took place between the parties on the very next day, i.e on 27.02.2015, wherein the respondent is shown to have used the unparliamentary and rather, abusive and filthy language for the petitioner.

12. Though the respondent has examined SI Dharam Singh as RW1 who has made depositions in his affidavit Exhibit RW1/A to the effect that he had made efforts to get the matter reconciled between the parties and that the petitioner had told him that his mother and sister would

commit suicide in case he took the respondent back to his home but however, it is pertinent to mention here that Exhibit P-17 is the transcript of the audio-chat that took place between this witness and the petitioner on 28.02.2015 wherein he (RW1) has clearly expressed that the petitioner was a nice person but he (RW1) did not like the behaviour of the respondent as she had talked over-cleverly and during his cross-examination, he (RW1) has feigned ignorance regarding the said conversation and has not been able to specifically deny the same. It being so, the testimony of this witness does not inspire any confidence.

13. To add to it, Exhibit P-18 is the copy of the complaint dated 02.03.2015 (shown to have been received in the office of D.C.P, Ambala on 05.03.2015) as moved by the respondent against the petitioner and his family members while levelling several allegations against them. However, Exhibit P-19 is the copy of the statement made by the respondent before the police on 28.03.2015 mentioning therein that she did not want any action on the above-said complaint and the same be filed and Exhibit P-20 is the copy of the proceedings as carried out by the competent police authorities to file the afore-said complaint. Though Exhibit P-32 is the copy of another complaint moved by the respondent to the above-said Authority with the allegations that her as well as her father's signatures had been procured on the blank papers on the pretext of marking their attendance before the police authorities and the same had been misused by recording her statement incorrectly thereon but however, vide Exhibit P-33, the aforementioned complaint had also been recommended to be filed on the ground

that no cognizable offence was found to have been made out.

14. Further, Exhibit P-22 is the copy of another complaint dated 14.03.2015 moved by the respondent against the petitioner and his family members and Exhibit P-23 is the copy of the Calendra (report) as prepared and presented against them under Sections 107, 151 and 150 Cr.PC. As per Exhibit P-25, the petitioner had been arrested in connection with the said proceedings but it would be relevant and necessary to point it out here that in Para No.58 of his affidavit Exhibit PW1/A, the petitioner (PW1) has categorically deposed that he was discharged in the above-said proceedings on 18.08.2015 and that the respondent never came forward to make any statement during these proceedings. To cap it all, Exhibit P-26 is the copy of the Calendra as prepared against the respondent and her parents under Sections 107 and 150 Cr.PC at the instance of ASI Om Parkash, who has specifically recorded therein that the respondent and her parents got angry and tried to hit the petitioner and his mother and then, he had to intervene and but for his intervention, any cognizable offence could have been committed. Again, Exhibit P-65 is the copy of the complaint preferred by the respondent against the petitioner and his family members under various provisions of the Protection of Women from Domestic Violence Act, 2005 and the same is stated to be pending in the Court. During her cross-examination as RW2, the respondent has made categorical depositions to the effect that she had filed the afore-said complaint after the petitioner filed the divorce petition and that she had also moved the petition under Section 9 of the Act and another petition under Section 125 Cr.PC against the

petitioner.

15. The above-discussed facts and circumstances unequivocally speak volumes of the fact that the respondent has incessantly been filing the complaints against the petitioner as well as his family members and the petitioner even had to go behind the bars in connection with one of those complaints, resulting in harm/damage to his image and reputation in the eyes of their relatives and the society at large. It has recently been observed by a three Judges' Bench of the Apex Court in **Joydeep Majumdar Versus**

Bharti Jaiswal Majumdar 2021 (2) R.C.R. (Civil) 289 that:-

“12. When the appellant has suffered adverse consequences in his life and career on account of the allegations made by the respondent, the legal consequences must follow and those cannot be prevented only because, no Court has determined that the allegations were false. The High Court however felt that without any definite finding on the credibility of the wife's allegation, the wronged spouse would be disentitled to relief. This is not found to be the correct way to deal with the issue.

13. Proceeding with the above understanding, the question which requires to be answered here is whether the conduct of the respondent would fall within the realm of mental cruelty. Here the allegations are levelled by a highly educated spouse and they do have the propensity to irreparably damage the character and reputation of the appellant. When the reputation of the spouse is sullied amongst his colleagues, his superiors and the society at large, it would be difficult to expect condonation of such

conduct by the affected party.”

The present case is squarely covered by the above-discussed observations and in the light of the same, it is held that the respondent has subjected the petitioner to cruelty after their marriage. Even otherwise, the parties are living separately since 26.01.2015, i.e for the last more than 07 years and therefore, their marriage can safely be termed as a dead marriage.

16. The observations, as made by Hon’ble the Supreme Court in **Ashok Kumar Jain (supra)** and **Savitri Pandey (supra)**, are of no avail to the respondent because the facts and circumstances of the case in hand are quite distinguishable from those of the cited above. In **Ashok Kumar Jain (supra)**, the appellant-husband had married earlier and a son had born out of that wedlock but he had concealed this fact at the time of marrying the respondent and even during the pendency of the appeal, he had placed the matrimonial advertisement in the newspaper and thus, he wished to enter into third marriage whereas it is no so in the present case. In **Savitri Pandey (supra)** also, the Apex Court observed that the trial Court as well as the High Court had found on the facts that the wife had failed to prove the allegations of cruelty attributed to the respondent and the concurrent findings of facts, arrived at by the Courts, could not be disturbed in exercise of the powers under Article 136 of the Constitution of India whereas, in the instant case, the petitioner has led cogent and sufficient evidence on the record to prove the factum of his having been subjected to cruelty by the respondent after their marriage.

17. As a sequel to the fore-going discussion, the present appeal is

allowed and the impugned judgment and decree dated 22.07.2019 passed by the trial Court are set-aside and the petition filed by the petitioner-husband against the respondent under Section 13 of the Act is allowed and the marriage, as solemnized between the parties, hereby stands dissolved under Section 13 of the Hindu Marriage Act, 1955.

(RITU BAHRI)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

July 05, 2022
Yag Dutt

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>