

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

249

FAO-6918-2019 (O&M)

Date of decision: 22.11.2022

NISHA RANI

.... Appellant

Versus

PAPPU RAM

.... Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

HON'BLE MRS. JUSTICE MANISHA BATRA

Present : Mr. Abhaysher Singh, Legal Aid Counsel
for the appellant.

Respondent in person with
Ms. Parminder Kaur, Advocate.

MANISHA BATRA, J. (oral)

CM-23759-CII-2019

This application has been filed for condonation of delay of 19 days in filing the appeal.

For the reasons mentioned in the application, the same is allowed and the delay of 19 days in filing the appeal is condoned.

CM-3259-CII-2021

Since the main appeal is also listed for today, therefore, this application has been rendered infructuous.

FAO-6918-2019

[1] The present appeal has been filed against the judgment and decree dated 25.09.2019 passed by the learned Additional Principal Judge (Family Court), Ambala, whereby the petition filed by the respondent herein under Section 13 of the Hindu Marriage Act, 1955 [‘for short ‘the Act’] for dissolution of marriage has been allowed.

[2] For the sake of convenience, the parties shall be referred to, as per the original nomenclature as given in the original petition, as filed by the husband.

[3] Brief facts of the case as pleaded in the petition are that the marriage between the petitioner-husband and respondent-wife was solemnized on 02.12.2009 as per Hindu rites and ceremonies. No child was born out of the wedlock. The petitioner-husband is suffering from 70% physical disability and before marriage this fact had been disclosed to the respondent-wife and her family members. Soon after the marriage, the respondent-wife started humiliating and insulting the petitioner-husband on account of his disability. She used to address him as “Langda”. She also started pressurizing him to live separately from his parents. Just few months after her marriage, the respondent-wife started visiting her parental home on short intervals and used to stay there for long durations of time. She did not inform or ask the petitioner before leaving her nuptial home. Whenever she used to stay with the petitioner-husband, she used to make scenes in the house. She left the nuptial home after one year of the marriage at her own. The petitioner visited parental house of the respondent-wife and requested her to join his company, but she refused to do so. Thereafter, the family members and friends of the petitioner-husband approached the respondent and her parents and made her understand. The respondent-wife joined the company of the petitioner-husband, but shortly thereafter, she adopted the same trend. She ultimately, left her matrimonial house on 05.03.2012 and thereafter refused to come back. The petitioner-husband alleged that she did not use to cook food for him or wash his clothes. She did not fulfill her matrimonial obligations. She treated the petitioner-husband with utmost cruelty and used to threaten him that she would implicate him and his parents in false cases of demand of dowry. She also extended threat to commit suicide. She made his life a virtual hell. She also filed false criminal cases against him and his family members and thereby defamed the petitioner. While alleging that it was not conducive for him to live

with the respondent with harmony, the petitioner prayed for dissolving the marriage between the parties by passing a decree of divorce.

[4] The respondent appeared in response to the notice and filed written statement denying the allegations levelled in the petition in toto and alleged that it was the petitioner, who was a short tempered man, he did not provide three meals to the respondent-wife; she was made to sleep on floor; he harassed and maltreated the respondent-wife and turned her out of her matrimonial house in three wearing apparels and that she was used to be beaten up by the petitioner-husband on account of demand of dowry. Several Panchayat meetings were convened but to no avail. She was living separately from the appellant-husband since 05.03.2012. The appellant-husband compelled her to initiate criminal proceedings against him. While controverting the pleas taken in the petition, dismissal of the same had been prayed for. No rejoinder had been filed. On the pleadings of the parties, the following issues were framed by the learned trial Court: -

1. Whether the petitioner is entitled for decree of divorce on the grounds pleaded in the petition? OPP
2. Relief.

[5] The parties adduced evidence in support of their respective assertions. The appellant-husband himself stepped into witness-box PW-1 and tendered affidavit Ex.PW1/A reiterating the facts and averments mentioned in different paras of the petition. He also examined PW2 Mohit Kumar, Surpanch of his village and PW3 Baljit Singh, co-villager and Devi Chand, his father as PW-4 whereas the respondent-wife examined herself as RW1 and produced her father Phool Chand as RW2. No rebuttal evidence had been adduced.

[6] Each of the grounds as pleaded by the parties were meticulously examined by learned trial Court in the light of evidence available on record and it was found that the respondent-husband had established commission of acts of cruelty by the appellant-wife and that the marriage between the parties had

[7] Feeling aggrieved, the appellant-wife has challenged the adverse findings on the grounds that the same were unsustainable in the eyes of law being perverse and erroneous. It is argued that the learned trial Court committed grave error while ignoring the fact that a decree for restitution of conjugal rights had been passed in favour of the appellant showing her willingness to remain in company of the respondent and also showing that she had not committed any acts of cruelty. The evidence produced on record by her had not been properly appreciated whereas, undue weightage had been given to the evidence led by the respondent which was not at all convincing. The respondent had failed to plead or prove the specific instances of cruelty allegedly committed by the appellant. The allegations levelled by the respondent were not at all sufficient to conclude that on account thereof, cohabitation of the parties was impossible. While arguing that the respondent had failed to plead and prove the mandatory requirement of provisions of Section 13(1)(i-a) of the Act, it is argued that the appeal filed by her deserves to be allowed.

[8] Per contra, it has been argued by the learned counsel for the respondent that overwhelming evidence had been produced on record by him to prove that he had been subjected to mental cruelty by the appellant-wife. Those acts were fully established from the evidence produced on record. Learned trial Court had rightly observed that the marriage between the parties has irretrievably broken down and possibility of restitution or re-union is bleak. They have been residing separately since long. The respondent has already filed an application for setting aside the decree of restitution of conjugal rights which was obtained *ex parte* by the appellant. He has even performed re-marriage. Hence, it has been argued that in view of the evidence produced on record in support of the pleadings of the parties, the findings as recorded by learned trial Court do not warrant interference in this appeal and it is urged that same is liable to be dismissed.

[9] We have minutely scrutinized the evidence available on the trial Court record. It has been revealed that while giving findings on issue No.1, the learned trial Court had synchronized the grounds on which the respondent-husband had alleged commission of cruelty by the appellant-wife. Before delving on those grounds, let us firstly refer to Section 13(1)(i-a) of the Act which is 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 High Courts. In **Samar Ghosh Vs. Jaya Ghosh, (2007) 4 SCC 511**, 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’*.

[10] 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.

[11] 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 behavioral 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, amounts to causing mental cruelty to the other.

[12] Let us examine the claim of the appellant-wife as per the mandate of the Section 13(1)(i-a) of the Act and meaning assigned to the term 'cruelty' as noted and discussed above. As mentioned earlier, Section 13(1) (i-a) of the Act clearly provides for grant of decree for divorce on the ground of cruelty which can either be physical or mental. The petitioner in order to succeed in a petition for divorce on the grounds of cruelty has to plead and prove instances

of cruelty. The instances as quoted by the respondent-husband in the present case were as follows: -

- (a) The act of appellant of addressing the respondent-husband as 'langda.
- (b) Filing of a complaint under Sections 406, 498A, 323 and 506 read with Section 34 of IPC by the appellant against the respondent and his mother;
- (c) Pressure exerted by the appellant upon the respondent-husband to live separately from his family members and refusal on her part to do domestic chores.

[13] The respondent-husband is shown to have narrated the above-mentioned circumstances to show that the act and conduct of the appellant was so cruel towards him and to that extent that made it practically impossible for him to live with her any more. The learned trial Court after going through the evidence led by both the parties and after evaluating the submissions made by their counsel is shown to have recorded categorical findings of the fact that appellant had committed acts of mental cruelty against the respondent. On appreciation of evidence produced on record, we are of the opinion that the above-mentioned circumstances had been rightly considered by learned trial Court in its judgment. The respondent-husband had alleged that the appellant used to insult him by addressing him as Langda and her behaviour was rude and humiliating towards him. Learned trial Court observed that the witnesses examined by the respondent including himself had deposed so. On going through the statements of the respondent and witnesses examined by him, it is revealed that their statements with regard to the fact that the appellant used to humiliate the respondent and called him as Langda have remained unshattered. The respondent placed on record of the trial Court Mark-A, a certificate showing himself to be suffering from 70% permanent physical disability. It is well settled proposition of law that a spouse is ridiculed on behalf of his/her physical imperfection by the other, the same certainly would cause great embarrassment and pain to the other and tantamounts to mental cruelty. In our opinion, the learned trial Court had rightly observed that by calling the

respondent as Langda, the appellant had caused mental cruelty to the respondent.

[14] The learned trial Court further observed that filing of a complaint against the respondent and his family members on allegation of demand of dowry by the appellant and acquittal of the respondent and his mother in that case was such an act which constituted cruelty on the part of the appellant-wife. We are inclined to concur with the observations so made. Admittedly, the appellant had filed a complaint against the respondent and his mother under Sections 323, 406, 498 and 506 read with Section 34 of IPC and both of them have been acquitted in the said case. The appellant is not proved to have filed any appeal against the said judgment of acquittal. As such in our opinion, it can very well be assumed that the said case had been filed on false allegation and hence, launching of the same certainly amounted to commission of act of mental cruelty upon the respondent and constituted sufficient ground for granting divorce. In this regard, we are fortified by the ratio of law as laid down in **Vishwanath Aggrawal vs. Sarla Vishwanath Aggrawal (2012) 7 SCC 288; K. Srinivas vs. K. Sunita 2014 (16) SCC 34; Rashi Kakkar vs. Harinder 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) and Meenu Devi vs. Amit Kumar, 2018(4) CCC, 612 (Jharkhand); TK. Srinivas Rao vs. D.A. Deepa, 2013 (2) RCR (Civil) 232; Neetu Aggarwal vs. Gireesh Gupta 2011 AIR (Del) 101 and Narayanan Prasad Saraswat vs. Smt. Shaifali 2016 (5) ADJ, 666.**

[15] The learned trial Court further observed that the appellant was proved to have pressurized the respondent to live separately from his parents and that act also amounted to subjecting him to mental cruelty. On going through the record, we concur with the findings as recorded by the learned trial Court on this point as the respondent-husband while appearing as PW-1 had categorically deposed that the appellant-wife used to pressurize him to have a separate residence from his parents. His statement to this effect was corroborated by the testimonies of witnesses examined by him and nothing

could be extracted from their statements on the basis of which it could be stated that they were deposing falsely. Hence, there is no reason to disbelieve their statements on that point. The respondent-husband who is a differently abled person who was not having normal relationship with his wife and obviously needed the support of his parents not only physically but also emotionally. That apart, being a son he had a moral as well as legal obligation to be with his parents who were old, though they might not be financially dependent upon him. Without any justifiable strong reason, the wife should never insist that her husband should get separated from his family and live only with her and otherwise, such insistence tantamounts to mental cruelty as observed by the Hon'ble Apex Court in judgment dated 06.10.2016 passed in Civil Appeal No.3253 of 2008 titled as **Narendra vs. K. Meena** and relied by the learned trial Court.

[16] The learned trial Court also observed that the marriage between the parties had been irretrievably broken down. Learned counsel for the appellant has strenuously argued that the findings as given by the learned trial Court to that effect were not sustainable in the eyes of law as the irretrievable break down of marriage was not a ground for divorce. Undoubtedly, the irretrievable break down of marriage is not a ground for seeking decree of divorce under the provisions of the Act. However, the said ground has been recognised by the Hon'ble Apex Court while dealing with the facts and circumstances of the individual cases in which continuation of the marriage or re-union even on passing the order of restitution of conjugal rights is not possible to the spouse by living together. Reference in this regard can be made to **V. Bhagat's case (Supra)**, wherein the Hon'ble Supreme Court while dealing with a case of cruelty, in specific mental cruelty, declared that the marriage as dissolved in view of irretrievable break down of the marriage in the peculiar circumstances of the case by observing that the marriage was long dead and over despite that the wife wanted to live with the husband. The obvious conclusion was that she had resolved to live in agony only to make the life a miserable hell for the husband as well. It was observed that the callous

attitude on the part of the wife left no manner of doubt that she was bent upon treating her husband with mental cruelty. Further reliance can be placed upon ***Sandhaya Rani vs. Kalyanram Narayanan 1994 SUPP (2) SCC 588*** which was a case wherein the parties were living separately from last more than 3 years and having no chance to come together, it was observed that the marriage between the parties had irretrievably broken down and there was no chance whatsoever of their coming together and decree of divorce was granted; and in ***Durga Prasanna Tripathy vs. Arundhati Tripathy (2005) 7 SCC 353***, wherein the parties were separated from 14 years and there was no possibility of their resuming the normal marital life even though the wife was willing to join her husband. While taking into consideration the cruelty and desertion as a ground for divorce which resulted into irretrievable break down of marriage, the Hon'ble the Apex Court had granted decree of divorce.

[17] In the present case, apart from the fact that appellant is proved to have inflicted mental cruelty upon the husband, it also stands proved that they are living away from each other for the last 12 years. Their re-union is impossible. The respondent-husband has performed re-marriage. The assertion of the appellant as made through her counsel appears to be impractical a workable solution is certainly not possible. Therefore, it is abundantly clear that the marriage between the parties has broken down irretrievably and there is no chance of their coming together or living together again. There is no acceptable way in which they can be compelled to resume life with the consort and nothing is gained by the trying to keep the parties tied forever to a marriage that in fact has ceased to exist. Undoubtedly, it is the 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 parties tied forever to a marriage which in fact has ceased to exist. There is total disappearance of emotional substratum in the marriage. As such findings given by learned trial Court to the effect that the marriage between the parties has been irretrievably broken down cannot be stated to be perverse or illegal. On due appraisal of the evidence produced on record and in view of the discussion

as made above, we are of the opinion that these findings do not warrant any interference in this appeal in consequence thereof, we dismiss the appeal thereby maintaining the judgment and decree of learned trial court, decreeing the petition filed by the respondent-husband thereby, dissolving the marriage between the parties. The judgment of the learned trial Court is accordingly upheld.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

November 22, 2022

Jyoti-IV

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