

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

FAO-9245 of 2018 (O&M)
Date of decision:- 24.08.2022

Ram Mehar Singh

...Appellant

Vs.

Urmila Kumari

...Respondent

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

Present: Mr. Keshav Pratap Singh, Advocate
for the appellant-husband.

Mr. Rajender Kumar, Advocate for
Mr. M.S. Khillan, Advocate
for the respondent-wife

Ritu Bahri, J.

The appellant-husband has come up in appeal before this Court, seeking setting aside of judgment dated 19.09.2018 passed by District Judge, Addl. Family Court, Karnal, whereby the 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 decree of divorce on the grounds of cruelty and desertion, has been dismissed.

Brief facts of the case as recorded by the Family Court reads as under:-

“The marriage between the parties was solemnized on 02.07.1979 according to Hindu rites and ceremonies at village Shekhupura Khalsa, Tehsil Gharaunda, District Kamal and a female child was born from the wed-lock. The behaviour of the respondent was not good towards the petitioner and his family members and she started pressurizing the petitioner to

separate from his family as she was not willing to live in a joint family. The respondent used to quarrel with the petitioner and his family members on one pretext or the other. The appellant was not in a position to separate from his family as his elder brother and his wife were also living in a joint family along with his parents. Also the petitioner was dependent upon the income of his parents. In the month of June 1983, the respondent along with her maternal uncle namely Surja left the house of the petitioner on the pretext of participating in the marriage of her cousin's daughter at village Bijewa, district Panipat. The respondent left her one year old minor daughter with the petitioner and thereafter, she did not return to the matrimonial home. The respondent took all her valuable clothes and ornaments with her. After about 20 days, the father of the respondent and her maternal uncle Surja came to the house of the petitioner and demanded Rs. 50,000/- from the father of the petitioner on the ground that he had entered into an agreement to purchase agricultural land but was short of money. When the father of the petitioner expressed his inability to arrange the money, the father of the respondent got annoyed and left the house after expressing great resentment. After 2-2 ½ months, the petitioner came to know that the respondent had reached her parental home and when he went there to bring her back, her parents refused to send her as the father of the petitioner had not given them financial help for purchase of the land. The respondent also expressed her resentment. The petitioner and his father convened a Panchayat at the house of the respondent and the Panchayat members made efforts to bring the respondent back to the matrimonial home but in vain. One week thereafter, the petitioner again went to the house of the respondent in order to bring her back to the matrimonial home but he was given beatings by the uncles of the respondent namely Maha Singh and Daya Singh and her brothers namely Jagbir Singh and Balwan Singh and he was turned out of the

house. The petitioner sent a registered notice to the respondent on 15.07.1986 advising her to return to the matrimonial home but this enraged her family members and they made several attempts to kill the petitioner and for this purpose they made secret visits to the village of the petitioner at odd hours. The appellant was saved with the grace of God and was constrained to make complaints to the police regarding his apprehension of grave danger to his life. The respondent and her parents were not ready to resolve the dispute and relations between the parties broke down making it impossible for resumption of matrimonial relations between them. Ultimately the appellant filed a petition under Section 13 of the Hindu Marriage Act on the ground of cruelty and desertion at Sonipat and the said petition was transferred to Rohtak where it was dismissed on 09.02.1991. The appellant filed an appeal against the impugned judgment and decree but that too was dismissed on 05.02.2003. Thereafter, the appellant filed another petition under Section 13 of the Hindu Marriage Act at Sonipat which was dismissed in default on 12.04.2005. Thereafter, the respondent moved an application against the petitioner before SSP Sonipat on 13.10.2005 which was marked to SHO, P.S. Gohana for investigation who after detailed inquiry observed that the respondent had filed the application for Peshbandi as the petitioner had got FIR no. 446 dated 01.09.2005 under Section 192, 194, 195, 205, 120-B IPC P.S. Civil Lines, Karnal lodged. During the inquiry the respondent made a statement that a case may be registered against the petitioner but the application was disposed of as it was without any merit. The respondent again moved an application on the lines of her earlier application and by concealing the fact that her earlier application had already been disposed off by S.P Sonipat, only to harass and humiliate the petitioner and the same was marked to SHO, Police Station City, Sonipat and false FIR bearing No. 98 dated 21.03.2006 under Sections 192, 195, 250, 420, 120-B IPC was

lodged in Police Station City, Sonipat against the petitioner. However, after due investigation a cancellation report was submitted by the police on 12.06.2007. Thereafter, the respondent filed a protest petition against the cancellation report but the same was dismissed by the Id. Magistrate for want of prosecution and the cancellation report submitted by the police was accepted. This also amounts to cruelty on the part of the respondent. Aggrieved by the order of Id. CJM, Sonipat the respondent moved a complaint against the Id. CJM, before the Hon'ble Chief Justice of India on 08.03.2008 which was sent to Hon'ble Punjab and Haryana High Court, Chandigarh and was further sent to Ld. District Judge, Sonipat. The Id. Sessions Judge, Sonipat treated the complaint as a revision petition and sent it to Id. JMIC Sonipat who marked it for reinvestigation. The investigating officer by concealing the true and material facts as well as the FSL Report and knowing fully well that the earlier case has been dismissed and cancellation report had been accepted by Id. CJM, Sonipat, prepared a false report under Section 173 Cr.PC and a false challan was submitted before the Court of Ld. Illaqa Magistrate, Sonipat. Thereafter, the appellant filed a petition under Section 438 Cr.PC and he was granted anticipatory bail vide order dated 12.01.2009. The respondent made a complaint against the Id. Addl. Sessions Judge, Sonipat who had granted bail to the Hon'ble Chief Justice of India. The Id. Illaqa Magistrate sent FIR no. 98 to Ld. Sessions Judge, Sonipat that on the ground that offence under Section 195 IPC was to be tried by the Id. Sessions Court and vide order dated 21.04.2011, learned Additional Sessions, Sonipat held that no case was made out under Section 195 IPC and the file was sent back to the Id. Illaqa Magistrate, Sonipat who framed charge against the petitioner vide order dated 18.07.2014. Aggrieved by the said order the petitioner filed writ petition bearing no. 41048/2014 before Hon'ble Punjab and Haryana High Court

for quashing of the FIR and the said writ was admitted by the Hon'ble High Court after issuing notice of motion to the respondent. During her stay in the matrimonial home the behavior of the respondent was cruel and arrogant and her father and brother used to interfere in the affairs of the parties. They did not allow the respondent to live peacefully as a good wife and made the life of the petitioner hell. No effort was made from the side of the respondent to reconcile the matter since May 1983 had made every effort for reconciliation. The respondent filed a petition under Section 125 Cr.PC which was allowed on 07.02.1991 and the maintenance was later enhanced to Rs. 2,500/- per month by the ld. ACJM, Karnal. Thereafter, the respondent filed an execution petition and the appellant paid maintenance upto 27.11.2014. With an intention to harass and humiliate the petitioner, the respondent filed a complaint under Section 494, 496, 109 IPC against the appellant on 27.05.2003 at Karnal and only the petitioner was summoned whereas the other five persons named in the complaint were not summoned by the ld. JMIC, Karnal. Aggrieved by the order dated 07.02.2004 the respondent filed a revision petition which was dismissed by ld. Additional Sessions Judge, Karnal vide order dated 11.07.2005. During the pendency of complaint before ld. JMIC, Karnal the respondent examined a witness as Surja Ram but said Surja Ram had already expired on 11.04.2003. Therefore, an application under Section 340 Cr.PC was filed against her which is pending. This act of the respondent shows that she is not sparing any opportunity to harass and humiliate the petitioner in the society. In a revision petition filed by the respondent against order of Id. JMIC, Karnal and ld. Additional Sessions Judge, Karnal the petitioner appeared before the Hon'ble Punjab and Haryana High Court at Chandigarh. The respondent was directed by the Hon'ble High Court to produce Surja Ram but she could not do so as he had

already expired and on her request for some time, the case was adjourned to 12.05.2005. Ultimately the respondent withdrew her petition on 22.05.2008 and finding no merit in her complaint under Section 494, 406, 109 IPC the appellant was discharged vide order dated 25.01.2012. The respondent filed a revision petition against the said order which is pending. In May 2014 the respondent filed a complaint under the DV Act on false and frivolous grounds by claiming that she was living in a rented accommodation at Karnal though she is not living in a rented house. The application of the respondent for interim maintenance was dismissed by the Court on the ground that she has concealed true and material facts from the Court in her petition. Since 1983 the petitioner has no relation with the respondent and they are not living in a shared house, therefore, question of domestic violence does not arise. The respondent is not leaving any stone unturned to harass and humiliate the petitioner and his family members which amounts to cruelty. The respondent has concealed the fact that she is the wife of the appellant and is getting maintenance under Section 125 Cr.PC and she is claiming widow pension from Social Welfare Department, Karnal. The respondent has also levelled false allegations against the petitioner in reply to application under dated 04.08.2010 filed by him to the effect that he was having illicit relations with the wife of his elder brother till the year 1997 though in all her pleadings and statements before the Court she has claimed that she is living in village Shekhupura Khalsa with her parents since 1987. The respondent has levelled the same allegations against the petitioner in petition under Section 494 Cr.P.C which amounts to cruelty. There have been extreme acts for cruelty by the respondent against the petitioner, therefore, he deserves dissolution of the marriage. The respondent also filed civil suit no. 310/01 for permanent injunction restraining the petitioner from alienating ancestral property inherited by him from his father but that suit was

ultimately dismissed in default under order 9 Rule 8 CPC. There is no relationship of husband and wife between the parties since the year 1983 as the respondent has refused to live with the petitioner without any rhyme or reason.

From the pleadings of the parties, following issues were framed:

- “1. Whether the respondent has treated the petitioner with cruelty, if so to what effect?OPP*
- 2. Whether the respondent has deserted the petitioner, if so to what effect?OPP*
- 3. Whether the petition is not maintainable in the present form? OPR*
- 4. Relief.”*

The Family Court however dismissed the petition filed by the appellant and held that due to lodging of FIR No. 98 and the long drawn out legal battle between the parties, it is clear that the appellant deliberately did not appear before the Court on 12.4.2005 due to the allegations levelled against him by the respondent i.e he had manufactured a false power of attorney on her behalf, and for the same reason the petition was not got restored rather a fresh petition i.e, the present petition has been filed. Reference was made to case '***Smt. Karuna Chaturvedi v. Smt. Sarojini Agarwal (MP)(DB) 2010(2) CivilLJ 127 and Suraj Rattan Thirani v. Azamabad Tea Co. Ltd., (SC) 1965 AIR (SC) 295*** wherein similar observations have been made. Further, admittedly the first petition filed by the appellant under section 13-B of the Hindu Marriage Act was dismissed and the appeal filed by him was also dismissed by this Court but the appellant has again withheld copies of both judgments though they were

judicata. Admittedly the marriage between the parties was solemnized on 02.07.1979 and though the appellant has claimed that they have not lived together since the year 1983, the respondent on the other hand in her cross-examination has claimed that she lived with the appellant till the year 1987. However the fact remains that the parties have not lived together since the filing of the first divorce petition. The appellant filed the first petition under Section 13 of the Hindu Marriage Act on the ground of cruelty and desertion at Sonipat which was dismissed on 09.02.1991 and the appeal filed by him was dismissed on 05.02.2003. No doubt the appellant has alleged that the respondent by levelling false allegations against him, which are after the decision of the earlier petition, has subjected him to cruelty but he is also seeking a decree of divorce on the ground of desertion and as mentioned above since the parties are not living together as husband and wife since the decision of the earlier petition therefore, a very heavy onus was upon the appellant that the matter directly and substantially in issue in both the petitions were not the same qua ground of desertion but he has failed to discharge the said onus by withholding the judgments of the Id. Addl. Sessions Judge and this Court regarding the first petition.

Learned counsel for the appellant has argued that after dismissal of his petition in default, the second petition was filed by him on fresh cause of action seeking divorce from the respondent, as all the proceedings initiated by the respondent-wife have been dismissed at that point of time. The appellant was also discharged. Thus, the Family Court has wrongly dismissed the petition of the appellant on the sole ground that the petition was barred under Order 9 Rule 9 CPC.

Learned counsel for the respondent has not been able to dispute the factual position that the respondent withdrew her petition on 22.05.2008 and finding no merit in her complaint under Section 494, 406, 109 IPC the appellant was discharged vide order dated 25.01.2012. It is also not disputed by learned counsel for the respondent that the respondent was held guilty, vide judgment dated 21/22.03.2016 (Ex P-17) in a case titled as State vs. Urmila Kumari and she was convicted of offence under Section 195 IPC and was sentenced to undergo rigorous imprisonment of one year along with fine of Rs.10,000/-. It has also not been disputed that the protest petition of respondent was dismissal on 01.03.2008 and the cancellation report submitted by the police in F.I.R No. 98 was accepted.

Heard learned counsel for the parties at length.

The acquittal of husband in a criminal case filed by the wife would itself amounts to cruelty, as held in a case of ***Sushma Taya vs. Arvind, 2015 (2) RCR 888 (P&H)***, wherein it was held that filing of false criminal complaint by a spouse invariably and indubitably constitute matrimonial cruelty and can entitle the other to claim divorce.

In the present case, the respondent-wife was convicted of offence under Section 195 IPC and was sentenced, vide judgment dated 21/22.03.2016 (Ex P-17). The divorce petition filed by the appellant-husband could not have been dismissed under Order 9 Rule 9 CPC as after dismissal in default of the second divorce petition, subsequent events had taken place which would make fresh cause of action for seeking divorce on the ground of cruelty. The appellant-husband has been acquitted in all the proceedings initiated by his wife. After his acquittal, his petition deserves to

be allowed. Apart from mental cruelty, the appeal deserves to be allowed, as

the marriage was irretrievably broken down, keeping in view the litigation initiated by the respondent-wife.

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 was considering a case where marriage was irretrievably broken down and held that in these cases, 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 was having 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 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, this Court has 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.

Hon'ble the Supreme Court in a case of **Naveen Kohli vs. Neetu Kohli**, 2006 (4) SCC 558 was considering a case of irretrievable break down of marriage. In this case, wife 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 and held it is a cruel treatment and showed 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 petitioner 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 petitioner 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 petitioner 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 petitioner on the direction of the Trial Court. The respondent would be at liberty to withdraw this amount with interest. Therefore, now the petitioner would pay only Rs.20,00,000/- (Rupees Twenty lacs) to the respondent within the stipulated period. In case the petitioner 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.*

between the parties had 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.

The three Judges' 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 Court's verdict, if parties are not willing since 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 artificial reunion created by court decree.

Recently, Hon'ble the Supreme Court in a case of ***Sivasankaran vs. Santhimeenal, passed in SLP (C) Nos. 17505-17506/2019, decided on 13.09.2021***, was considering a case, where the husband filed an appeal for dissolution of marriage between the parties. The appellant-husband and the respondent-wife solemnized their marriage on 07.02.2002. The appeal was allowed and it was held that the marriage never took off from the first day. The marriage was never consummated and the parties have been living separately from the date of marriage for almost 20 years. The appellant remarried after 06 years of the marriage, 05 years of which were spent in trial Court proceedings. The marriage took place soon

after the decree of divorce was granted. All mediation efforts have failed. Further the respondent lodged a criminal complaint against the appellant under Section 494 IPC. However, the High Court quashed the proceedings. There are episodes of further harassment by the respondent even at the place of work of the appellant including insulting the appellant in front of students and professors. She is stated to have threatened the appellant of physical harm in front of his colleagues as per the testimony of P.W.3 and complained to the appellant's employer threatening to file a complaint against him.

In the facts of the present case, the marriage between the parties was solemnized on 02.02.1979. Out of this wedlock, one female child was born. It is not in dispute that this Court made several attempts to settle the dispute amicably between the parties. The parties are living separately since June, 1983. This Court sent the matter to mediation centre but the mediation failed between the parties. Thereafter, the matter is now being heard on merits for disposal. It is not disputed by the respondent-wife that she lodged various complaints against the appellant, in which he has been acquitted. Further, it has also come on record that all possible efforts have been made by the appellant-husband to take his wife back.

Now, once the respondent-wife who is not staying with the appellant-husband for the last about 39 years, reference at this stage can be made to ***Naveen Kohli's case (supra)***, which was a case of cruelty (physical and mental) where Hon'ble the Supreme Court considered the concept of irretrievable breakdown of marriage. In this case as well, the parties were living separately for the last 10 years and the wife was not ready to give

divorce to the husband. Hon'ble the Supreme Court granted decree of

divorce but directed the husband to pay a sum of Rs.25 lacs towards permanent maintenance. In para 58, it has been observed as under:-

“58. The High Court ought to have considered the repercussions, consequences, impact and ramifications of all the criminal and other proceedings initiated by the parties against each other in proper perspective. For illustration, the High Court has mentioned that so far as the publication of the news item is concerned, the status of husband in a registered company was only that of an employee and if any news item is published, in such a situation, it could not, by any stretch of imagination be taken to have lowered the prestige of the husband. In the next para 69 of the judgment that in one of the news item what has been indicated was that in the company, Nikhil Rubber (P) Ltd., the petitioner was only a Director along with Mrs. Neelu Kohli whom held 94.5% share of Rs.100/- each in the company. The news item further indicated that Naveen Kohli was acting against the spirit of the Article of the Association of Nikhil Rubber (P) Ltd., had caused immense loss of business and goodwill. He has stealthily removed produce of the company, besides diverted orders of foreign buyers to his proprietorship firm M/s Navneet Elastomers. He had opened bank account with forged signatures of Mrs. Neelu Kohli and fabricated resolution of the Board of Directors of the company. Statutory authority-[Companies Act](#) had refused to register documents filed by Mr. Naveen Kolhi and had issued show cause notice. All business associates were cautioned to avoid dealing with him alone. Neither the company nor Mrs. Neelu Kohli shall be liable for the acts of Mr. Naveen Kohli. Despite the aforementioned finding that the news item was intended to caution business associates to avoid dealing with the petitioner then to come to this finding in the next para that it will by no stretch of imagination result in mental cruelty is wholly untenable.

In the present case, efforts were made firstly to resolve the matrimonial dispute through the process of mediation, which is one of the effective mode of alternative mechanism in resolving the personal dispute but the mediation failed between the parties.

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 19.09.2018 passed by District Judge, Addl. Family Court, Karnal is set aside and the decree of divorce is granted to the appellant. Decree-sheet be prepared accordingly.

(RITU BAHRI)
JUDGE

24.08.2022
G Arora

(MEENAKSHI I. MEHTA)
JUDGE

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