

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-M-347-2018 (O&M)
Date of decision 26.04.2022

Sunder Devi

....Appellant

VS

Prem Kumar

...Respondent

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

Present: Mr. J.K. Sehrawat, Advocate
for the appellant.

Mr. Jitender Dhanda, Advocate
for the respondent.

Ritu Bahri, J. (Oral)

C.M. No. 26398-CII-2018

For the reasons mentioned in the application, delay of 30 days in
filing of the appeal is condoned.

The application stands allowed,

FAO No. M-347-2018

The present appeal has been filed against the judgment and decree
dated 25.09.2018 passed by learned District Judge, Additional Family
court, Hisar, vide which petition filed under Section 13 of the Hindu Marriage
Act, 1955 (for short 'Act 1955') by the respondent-husband has been allowed.

Brief facts of the case are that marriage between the parties was
solemnized on 16.02.1991 according to Hindu rites and ceremonies at Village
Agroha, Tehsil and District Hisar. No child was born out of this wedlock.
However, the appellant-wife left the house of the respondent-husband on
18.02.1991. The appellant-wife thereafter started moving applications to the
police against the respondent-husband and his family members. F.I.R NO. 154

dated 11.07.1995 under Section 498-A/506 IPC was registered against the respondent-husband and his family members, in which they were acquitted, vide judgment dated 20.03.2001. Another F.I.R No. 257 dated 31.08.1997 under Sections 323/326/452/506/148/149 IPC at P.S. Agroha was also registered, in which the respondent-husband and family members were released on probation, vide judgment dated 20.05.2009. The appellant-wife also filed an application under Section 125 Cr.P.C. Thereafter, the respondent-husband filed divorce petition. However during the pendency of this petition, another case under Sections 376-A/452 IPC bearing F.I.R No. 2 dated 02.01.2011 against the respondent-husband was registered, in which he was also acquitted on 16.09.2011.

After going through the judgment and decree dated 25.09.2018 and after hearing learned counsel for the parties at length, the present appeal deserves to be dismissed.

It is not in dispute that the appellant-wife stayed with the respondent-husband only for some time and thereafter, she started giving complaints against the respondent-husband and his family members. However, the respondent-husband and his family members were acquitted from the charges framed against them. The marriage is of the year 1991 and as and when the appellant-wife gets an opportunity, she tries to involve the respondent-husband and his family members. The cruel nature of the appellant-wife is clear from the fact that she was interested in getting the respondent-husband punished by making complaints time and again. She went up to the extent that she tried to implicate him for the offence under Section 376-A of IPC.

Reference at this stage can be made to a judgment of Hon'ble

the Supreme Court of India in a case of ***Chandra Kala Trivedi vs. Dr. S.P.***

Trivedi, 1993 (4) SCC 232 wherein Hon'ble the Supreme Court while considering a case where marriage was irretrievably broken down and held that in these case, the decree of divorce can be granted where both the parties have levelled such allegations against each other that the marriage appears to be practically dead and the parties cannot live together.

Reference at this stage can be made to a judgment of three Judge Bench of Hon'ble the Supreme Court of India in case of **A Jayachandra vs. Aneel Kaur, 2005 (2) SCC 22** wherein Hon'ble the Supreme Court had an occasion to consider the case of divorce on the basis of cruelty including mental cruelty. While examining the pleadings and evidence brought on record, the Court emphasized that the allegation of cruelty is of such nature in which resumption of marriage is not possible, however, referring to various decisions, the Court observed that irretrievable breaking down of marriage is not one of statutory grounds on which Court can direct dissolution of marriage, but the Court with a view to do complete justice and shorten the agony of the parties engaged in longdrawn legal battle, directed in those cases dissolution of marriage. In para 17, it has been observed as under:-

17. Several decisions, as noted above, were cited by learned counsel for the respondent to contend that even if marriage has broken down irretrievably decree of divorce cannot be passed. In all these cases it has been categorically held that in extreme cases the court can direct dissolution of marriage on the ground that the marriage had broken down irretrievably as is clear from para 9 of Shyam Sunder case. The factual position in each of the other cases is also distinguishable. It was held that long absence of physical company cannot be a ground for divorce if the same was on account of the husband's conduct. In Shyam Sunder case it was noted that the husband was leading

adulterous life and he cannot take advantage of his wife shunning his company. Though the High Court held by the impugned judgment that the said case was similar, it unfortunately failed to notice the relevant factual difference in the two cases. It is true that irretrievable breaking of marriage is not one of the statutory grounds on which court can direct dissolution of marriage, this Court has with a view to do complete justice and shorten the agony of the parties engaged in long- drawn legal battle, directed in those cases dissolution of marriage. But as noted in the said cases themselves, those were exceptional cases.

The three Judge Bench of Hon'ble the Supreme Court in a case of ***Samar Ghosh vs. Jaya Ghosh, 2007 (4) SCC 511*** passed the decree on the ground of mental cruelty but the concept of irretrievable breakdown of marriage has been discussed in detail referring the 71st report of the Law Commission of India

Hon'ble the Supreme Court in a case of ***K. Srinivas Rao vs. D.A. Deepa, 2013 (5) SCC 266*** has observed that though irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, however, marriage which is dead for all purposes, cannot be revived by a Court's verdict, if parties are not willing to work out their differences. Marriage involves human sentiments and emotions and if they have dried up, there is hardly any chance of their springing back to life on account of an artificial reunion created by a Court decree.

Further reference can be made to a judgment of this Court in a case of ***Imlesh vs. Amit*** AIR 2014 (P&H) 89 wherein it has been held that where the wife files a false criminal complaint against the husband and his family members under Sections 406/498-A of IPC, which results in their acquittal, this act of the wife tantamount to mental cruelty and the husband

would be entitled to a decree of divorce under Sections 13 (1) (ia) of the Act of 1955.

Hon'ble the Supreme Court in the case of **Naveen Kohli vs. Neetu Kohli**, 2006 (4) SCC 558 was considering a case where wife was living separately for long but did not want divorce by mutual consent only to make life of her husband miserable. Thus, the decree of divorce was granted being a cruel treatment by the respondent-wife and that the marriage had broken irretrievably. In para 62, 67, 68 and 69, it has been observed as under:-

“62. Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again. The High Court ought to have visualized that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.

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67. The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.

68. In our considered view, looking to the peculiar facts of the case, the High Court was not justified in setting aside the order of the Trial Court. In our opinion, wisdom lies in accepting the pragmatic reality of life and take a decision which would ultimately be conducive in the interest of both the parties.

69. *Consequently, we set aside the impugned judgment of the High Court and direct that the marriage between the parties should be dissolved according to the provisions of the [Hindu Marriage Act, 1955](#). In the extra-ordinary facts and circumstances of the case, to resolve the problem in the interest of all concerned, while dissolving the marriage between the parties, we direct the appellant to pay Rs.25,00,000/- (Rupees Twenty five lacs) to the respondent towards permanent maintenance to be paid within eight weeks. This amount would include Rs.5,00,000/- (Rupees five lacs with interest) deposited by the appellant on the direction of the Trial Court. The respondent would be at liberty to withdraw this amount with interest. Therefore, now the appellant would pay only Rs.20,00,000/- (Rupees Twenty lacs) to the respondent within the stipulated period. In case the appellant fails to pay the amount as indicated above within the stipulated period, the direction given by us would be of no avail and the appeal shall stand dismissed. In awarding permanent maintenance we have taken into consideration the financial standing of the appellant.*

In the case of ***Sushma Taya vs. Arvind, 2015 (2) RCR 888 (P&H)***, it was held that filing of false criminal complaint by a spouse invariably and indubitably constitutes matrimonial cruelty and can entitle the other to claim divorce.

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***, decided 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 very first day. The marriage was never consummated and the parties had 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 failed. Further the respondent lodged a criminal complaint against the appellant under Section 494 IPC. However, the High Court quashed the proceedings. There were 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. It was thus held by the Hon'ble Court that a decree of divorce dissolving the marriage between the parties be passed not only in the exercise of power under Article 142 of the Constitution of India on ground of irretrievable breakdown of marriage, but also on account of cruelty under Section 13 (1) (ia) of the Hindu Marriage Act in the light of subsequent conduct of the respondent during the pendency of the judicial proceedings at various stages.

In the facts of the present case, the marriage between the parties was solemnized on 16.02.1991. No child was born out of this wedlock. It is not in dispute that the parties are residing separately since 18.02.1991 i.e only after one day of their marriage. It is also not disputed by the appellant-wife that she lodged the above complaints/F.I.Rs, in which the respondent-husband and his family members were acquitted.

There appears no chance that the parties can now stay together and thus, if the appeal filed by the appellant-wife is allowed, the respondent-husband will face mental agony. 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 has already failed between the parties.

Applying the ratio of the above mentioned judgments to the facts of the present case, the present appeal is dismissed.

(RITU BAHRI)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

26.04.2022
G Arora

<i>Whether speaking/reasoned</i>	: Yes/No
<i>Whether reportable</i>	: Yes/No