

2023:PHHC:080690-DB

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****FAO-401-2023 (O&M)****Date of Decision: 02.06.2023****PRABH DAYAL**

..... Appellant(s)

&**MADHU**

..... Respondent(s)

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr. Ketan Chopra, Advocate for
Mr. Vishal Munjal, Advocate
for the appellant.

LISA GILL, J.

1. This appeal has been preferred by the appellant-husband challenging judgment and decree dated 22.12.2022, passed by learned Principal Judge, Family Court, Pathankot, whereby petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act), filed by the respondent-wife, seeking dissolution of her marriage with the appellant-husband, has been allowed.

2. Brief facts necessary for adjudication of the matter are that petition under Section 13 of the Act, seeking decree of divorce was filed by the respondent-wife (petitioner before the learned Family Court and hereinafter referred to as the wife). It is pleaded in her petition that marriage between the parties was solemnized as per Hindu rites in the month of December, 2010 and one son was born from this marriage on 02.03.2012. It is pleaded that marriage between the parties was solemnized

after spending a huge amount by parents of the wife but she was humiliated by the husband on the ground of sub-standard dowry being brought by her. It is pleaded that despite best efforts by the wife, the husband and his family members were not satisfied and would some times even manhandle the petitioner. Allegations of the husband using filthy language towards the petitioner and also threatening to commit suicide, if she ever asked him to meet her parents were raised. It is further pleaded that the husband was a drug addict in the habit of consuming and injecting toxic medicines and drugs. He was working at the Ashoka Medical Store, Dalhousie Road, Pathankot. Husband is alleged to have created such an atmosphere in the matrimonial home that it became difficult for the wife to continue living with him and other family members, therefore, left with no option she was forced to leave the matrimonial home alongwith the minor child in the month of May, 2013. It is the case of the wife that she has been living at her parental house since then but the husband or his family members never bothered to inquire about her welfare or that of the minor child. She was thus forced to start working as Staff Nurse at Sukh Sadan Hospital, Bathinda so as to provide for the minor child whereas the husband despite having sufficient means failed to maintain the wife and the minor child, therefore, it is alleged that the husband caused cruelty and deserted the wife. Accordingly, petition under Section 13 of the Act was filed by the wife.

3. The husband opposed the petition. All allegations of cruelty and desertion were denied while pleading that marriage was solemnized on 06.12.2009 and not in 2010 in a simple manner without any kind of demand raised by the husband or his family. The child is stated to have been born on 02.03.2011 at the matrimonial home and not on 02.03.2012. The husband

contended that he alongwith his brothers except one were married and were living separately. His father is stated to have passed away in the year 1988 and the mother in April, 2018. It is pleaded that the wife did not perform her matrimonial duties and never looked-after the mother of the husband. It is pleaded that father of the wife suffered a paralytic attack in the year 2013-2014 due to which she started pressurizing the husband to shift to her parental home on the plea that there was none to look-after her father. It is further pleaded that the husband being an innocent, faithful and obedient husband lived at the parental home of the wife from 2014 to 2017 and provided all services at her parental home. The wife is stated to have taken all her *Istridhan* including clothes and ornaments when she went to her parents' home in 2013. However, respondent's mother is stated to have become unwell in the month of January, 2018. However, as the wife refused to return to the matrimonial village, he came back to his mother to serve her and take care of her. The wife did not even attend the last rites of his mother. The husband claimed to have been running a chemist shop in village Gharota earlier but due to unavoidable circumstances the shop was closed in the year 2010 and he started working as a salesman at Puri Medical Store, Gandhi Chowk, Pathankot and thereafter at Ashoka Medical Store, Gandhi Chowk, Pathankot. It is asserted that the husband provided for and looked-after the wife and minor child at all times and that she had left his society without any reasonable cause for no fault on his part. Despite efforts she refused to join his company. All allegations of consumption of intoxicants etc. were denied. It is pleaded that an absolutely false and incorrect petition has been filed without any reasonable cause. Dismissal of the petition was sought.

4. Rejoinder was not filed. Following issues were framed from the pleadings of the parties:-

1. Whether petitioner was subjected to cruelty at the hands of respondent? OPP
2. Whether respondent has left the society of petitioner without any sufficient cause for a period of more than two years immediately before filing of this petition? OPP
3. Relief.

5. The wife in order to prove her case stepped in the witness box as PW-1 and in additional evidence tendered certified copies of applications under Section 125(3) Cr.P.C. as Ex.P-1 to P-4.

6. The husband testified as RW-1 besides examining RW-2 Rajesh Kumar, Ex. Sarpanch. Certified copies of cross-examination of the wife in the petition under the Guardians and Wards Act, 1890, copies of payment of ₹10,000/- and ₹6,000/- in execution proceedings and applications for withdrawal of the execution application being satisfied were tendered as Ex.D-1 to D-8.

7. Learned Family Court after considering the evidence on record, facts and circumstances concluded that the wife was successful in proving her case on the basis of the evidence on record. Accordingly, petition under Section 13 of the Act, filed by the wife was allowed on the ground of cruelty and desertion, vide the impugned judgment dated 22.12.2022. Aggrieved therefrom present appeal has been filed by the husband.

8. Learned counsel for the appellant vehemently argued that the learned Family Court has grossly erred on facts and in law in allowing the

petition under Section 13 of the Act. Learned counsel for the appellant argued that learned Family Court has ignored the clear and cogent evidence on record and incorrectly concluded that the parties lived together till May, 2013. While referring to the cross-examination of the wife in the proceedings under the Guardians and Wards Act, 1890, it is submitted that the wife admitted that they were living separately since 2013 but effectively the separation was from 2017. This fact, it is submitted, had not been considered in the correct perspective by the learned Family Court. Therefore, the ground of desertion is not made out as the petition under Section 13 of the Act was filed on 06.07.2018. It was further contended that this fact is proved from the factum of filing of petition under Section 125 Cr.P.C. in February, 2019 by the wife. It is asserted that there is no evidence whatsoever to indicate any kind of cruelty or maltreatment being meted out to the wife by the husband or any of his family members. It is, thus, prayed that present appeal be allowed and impugned judgment and decree dated 22.12.2022, passed by learned Family Court, Pathankot, be set aside and the petition under Section 13 of the Act, filed by the wife be dismissed throughout.

9. We have heard learned counsel for the appellant and have gone through the photocopy of the record, which was requisitioned.

10. Marriage solemnized between the parties is admitted as is the birth of the son though the parties are at variance regarding dates thereof. Perusal of the evidence on record reveals that the wife has indeed been able to prove her case on the touchstone of preponderance of probabilities. This is so for the reasons as are discussed in the following paras.

11. It is the assertion of the wife that sufficient dowry as per financial status of her parents was given at the time of marriage but the same was not to the satisfaction of the husband and his family members. Though, it is stated by the husband that it was a simple marriage and no dowry etc. was given, it is to be noted that the husband while deposing as RW-1 has admitted that at the time of marriage 'normal items' like refrigerator, bed, almirah etc. were given at the time of marriage by parents of the wife. Though, it is stated by the husband that these articles were taken back with her when she went to her parental home in May, 2013, there is no such evidence on record.

12. Furthermore, it is categorically asserted on behalf of the appellant-husband that absolutely unsubstantiated allegations of abuse of narcotics/toxic drugs have been raised. At this stage we would refer to the cross-examination of the wife in the proceedings under the Guardians and Wards Act, 1890, which has also been referred to by learned counsel for the appellant. We noticed that a specific question in this regard had been put to her to which the wife responded that she had admittedly not got any medical test conducted for the same but at the same volunteered that the husband had cut his veins on the wrist, which was even evident on that date. She accepted the suggestion that marks of the cuts on the wrist do not prove addiction of the petitioner. Be that as it may, it does indicate the emotional state of the husband, thereby corroborating the version put forth by the wife that such circumstances had been created in the matrimonial home due to which she was constrained to leave the matrimonial home alongwith her minor child in May, 2013. We also take note of the fact that the appellant-husband has himself stated in his testimony that earlier he himself was

running a chemist shop, which was closed in the year 2010 and thereafter he started working as a salesman at different chemist shops. No plausible explanation thereof is forthcoming.

13. At this juncture, it is pertinent to note that a suggestion was put to the wife that her younger brother used to come to Puri Medical Store and abuse the husband due to which he was shunted out of his job in or around 2010. In such circumstances, it is opposed to all logic that the husband would have gone to live with the wife at her parental home and continued residing there from 2014 to January, 2018, purportedly to look-after the ailing father of the wife. In any case, it is not denied that the wife also had a brother and it was not as if there was none else in the family to look-after her ailing father. Testimony of RW-2 Rajesh Kumar does not in any manner come to the aid of the husband, as has been discussed and detailed by the learned Family Court. It has been rightly held by learned Family Court that there was no occasion for the parties for living together after May, 2013.

14. Furthermore, we find no merit in the argument that the husband had been providing for and depositing maintenance for the wife and child. Documents placed on record by the husband himself reveal that first and foremost application under Section 125 Cr.P.C. was decided *exparte* as he chose not to join the said proceedings. Maintenance @ ₹3,000/- per month was awarded to the wife and the child vide order dated 24.10.2019, passed by learned Family Court, Pathankot in the proceeding under Section 125 Cr.P.C. The wife, however, had to file execution applications even for recovery of the said amount. Therefore, it has been correctly held by the learned Family Court that withdrawal of the applications for execution being fully satisfied cannot in any manner advance the cause of the husband

and does not in any manner indicate that he was taking care of the wife and child. Learned counsel for the appellant is unable to deny that the husband was still in arrears of maintenance at the time of passing of judgment dated 22.12.2022. It is to be noted that the husband has admitted in his cross-examination that petition under the Guardians and Wards Act, 1890 seeking custody of the minor child was filed by him after the application under Section 125 Cr.P.C. and present petition were filed by the wife.

15. As has been noticed in the foregoing paras, appellant-husband failed to rebut the evidence on record. He could not prove that the averments and allegations as raised by the respondent-wife are incorrect or opposed to the factual position. In the given facts and circumstances, needless to say an adverse inference has to be drawn qua the husband. His subsequent conduct itself can also be said to be an act of cruelty, giving cause of action to the respondent-wife to seek a decree of dissolution of marriage.

16. At this juncture, it is to be noted that the term 'cruelty' is not defined in the Hindu Marriage Act, 1955. It has been held in a plethora of cases that there is no strait jacket formula to define cruelty.

17. Hon'ble Supreme Court in ***Praveen Mehta Vs. Inderjit Mehta, 2002(5) SCC 706***, held as under:-

“The legal conception of cruelty and the kind of degree of cruelty necessary to amount to a matrimonial offence has not been defined under the Act. Probably, the Legislature has advisedly refrained from making any attempt at giving a comprehensive definition of the expression that may cover all cases, realising the danger in making such attempt. The accepted legal meaning in England as also in India of this expression, which is rather difficult to define, had been 'conduct of such character as to have

caused danger to life, limb or health (bodily or mental), or as to give rise to a reasonable apprehension of such danger' (*Russel v. Russel*, 1897 AC 395 and Mulla Hindu Law, 17th Edition, Volume II page 87). The provision in clause (ia) of Section 13(1), which was introduced by the Marriage Laws (Amendment) Act, 68 of 1976, simply states that "treated the petitioner with cruelty". The object, it would seem, was to give a definition exclusive or inclusive, which will amply meet every particular act or conduct and not fail in some circumstances. By the amendment the Legislature must, therefore, be understood to have left to the Courts to determine on the facts and circumstances of each case whether the conduct amounts to cruelty. This is just as well since actions of men are so diverse and infinite that it is almost impossible to expect a general definition which could be exhaustive and not fail in some cases. It seems permissible, therefore, to enter a caveat against any judicial attempt in that direction (Mulla Hindu Law, 17th Edition, Volume II, page 87)."

18. In ***A. Jayachandra Vs. Aneel Kaur, 2005(1) RCR (Civil) 309***, it has been held by the Hon'ble Supreme Court that

"The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. 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, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse, same 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. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony,

torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However, insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent."

19. Gainful reference can also be made to the judgment of the Hon'ble Supreme Court in *Samar Ghosh Vs. Jaya Ghosh, 2007(4) SCC 511*.

20. Keeping in view the evidence on record and the factual matrix of the matter, the wife has duly proved the allegations as raised by her by leading clear and cogent evidence. Learned Family Court has, thus,

correctly held that the respondent-wife is entitled to the decree of divorce on the ground of cruelty and desertion.

21. Learned counsel for the appellants is unable to point out any illegality, infirmity or irregularity in the impugned judgment dated 22.12.2022, passed by the learned Family Court, Pathankot, which calls for any interference by this Court in this appeal.

22. No other argument has been raised.

23. Judgment and decree dated 22.12.2022, passed by learned Principal Judge, Family Court, Pathankot, is upheld.

24. Accordingly, this appeal is dismissed with no order as to cost.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

02.06.2023

Sunil

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