

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO No.1271 of 2020(O&M)
Date of decision: May 18, 2023

Anil Parkash Sharma

.....Appellant

Versus

Sunita Rani

..... Respondent

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

Present: Mr. Ramender Chauhan, Advocate
for the appellant.

Ms. Shaveta Sanghi, Advocate
for the respondent.

LISA GILL, J.

1. Appellant-husband has filed this appeal, challenging judgment and decree dated 10.01.2020 passed by the learned Family Court, Hisar, whereby petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the respondent-wife has been allowed.

2. Brief facts necessary for adjudication of the matter are that respondent-wife filed a petition under Section 13 of the Act, seeking dissolution of her marriage with the present appellant, which was solemnized on 15.11.2005 at Bhiwani. She pleaded that marriage was consummated, but no child was born from the wedlock. She pleaded that parties did not have a happy marriage as since the day of marriage, she was harassed by the husband and his family members beyond limits. Appellant-husband is stated to have fallen to bad habits including that of imbibing

excessive liquor. It is alleged that he used to come home late at night under influence of liquor along with his friends and would compel her to cook food for all of them and would pick up quarrels with her without any reasonable cause and even physically abused her. Household expenses, it is stated were never given to her, to the contrary, she was pressurized to bring money from her parents. When she expressed her inability to bring money from her parents and also requested him to give up his vices, he would beat her and turn her out of the matrimonial home. It is pleaded that she was turned out of her matrimonial home on several occasions, but each time she was settled in the matrimonial home due to intervention of Panchayat and after fulfilling demands of the appellant-husband and his family members, directly or indirectly. It is further pleaded that appellant-husband was in the habit of wasting his income by living a life of extravagance. However, she continued to perform her matrimonial obligations with love and respect as she wanted to save her matrimony, but the husband and his family members always treated her like a servant without even providing her a proper meal. Vices of the husband were supported by all the family members. It is also stated that it came to her notice that husband was having extra-marital relations with some other lady to whom he was giving a major part of his income. He refused to refrain from having contact with the said lady and even threatened to take divorce from her and perform second marriage. It is stated that in the month of June 2017, appellant-husband came home under influence of liquor and threw her out of the matrimonial home after beating her. The wife is stated to have reached her parental home and narrated the incident to her parents, who convened a Panchayat in which husband refused to cohabit with her. It is thus pleaded that husband has deserted her without any reasonable cause and that all his acts created a reasonable apprehension

in the mind of the wife that it would be harmful and injurious for her to continue living with him. Accordingly, she filed petition under Section 13 of the Act in the month of July 2019, seeking dissolution of marriage with the appellant-husband.

3. Appellant-husband (respondent before the learned Family Court, Hisar), contested the petition. In the reply filed by him, he denied all allegations against him as contained in the petition, to be false and frivolous with concealment of true facts from the Court. He pleaded that marriage was a simple affair and that appellant lived with his wife affording all due love and affection to her. All family members also treated her with respect and affection. To the contrary, the wife was a quarrelsome lady and would boss around him and even call him bad names. It is asserted that the wife was in the habit of sleeping late at night and waking up late as well. She would never enter the kitchen or prepare any food etc and that she would demand new and expensive jewellery for herself. He further pleaded that the wife under influence of her parents pressurized him to live separately from his parents and even during his stay in the matrimonial home, she would talk with her mother and other relatives about lodging false dowry case against him and his family members. In order to save his married life, appellant stated that he started living separately from his parents in the year 2009. At the time of marriage, appellant had cleared her 10+2. When she expressed her desire to go for higher study, appellant arranged for the same and she completed her B.A and JBT course. Respondent-wife, it is stated joined government service as JBT teacher at Government Girls Primary School, Paluwas on 02.05.2017. This, it is stated was possible due to the encouragement and efforts of the husband. However, after joining government service as JBT teacher, the wife started bossing around and she

left the matrimonial home along with all her jewellery and cash while refusing to join his company on the premise that now she was in government service while he was an agriculturist. Despite various requests by the husband, the wife is alleged to have refused to join the matrimonial home. Number of Panchayats were convened to bring her back, but parents of the wife raised demand of Rs. 10 lakhs for sending her to the matrimonial home. Appellant pleaded that he along with his family members was threatened with dire consequences, in case demand of Rs. 10 lakhs was not fulfilled. He pleaded that this act and conduct of the wife amounts to cruelty towards him and his family members, but he hoped that good sense would prevail and their marriage could be saved. Appellant also filed petition under Section 9 of the Act. All allegations regarding being addicted to alcohol and physical abuse of the wife are denied. It is pleaded that it is the wife herself, who intentionally deserted him without any sufficient cause, therefore dismissal of the petition was sought.

4. From pleadings of the parties, following issues were framed by the learned Family Court:-

1. Whether the respondent has treated the petitioner with such degree of cruelty as would amount to a matrimonial offence and the marriage has irretrievably failed? OPP
2. Whether the respondent has deserted the petitioner? OPP
3. Relief.

5. Both the parties led evidence in support of their respective claims/stands.

6. Learned Family Court, Hisar, after considering the facts and circumstances as well as the evidence on record, concluded that wife had succeeded in proving her case and was entitled to the decree of divorce.

Accordingly, petition under Section 13 of the Act, filed by the wife was allowed, vide judgment and decree dated 10.01.2020, passed by the learned Family Court, Hisar.

7. Aggrieved therefrom, present appeal has been filed by the appellant-husband.

8. Learned counsel for the appellant vehemently argued that the learned Family Court, Hisar, has grossly erred on facts and in law in allowing the petition under Section 13 of the Act. In-fact, the wife has been afforded benefit of her own wrong. It is asserted that the wife was able to complete her higher education and get a job as JBT teacher only due to efforts of the appellant, with the entire expense being borne by him. It is only after getting the job that she chose to desert the appellant and it is not a case where any cruelty has been meted out to her and neither has the appellant ever deserted her. It is contended that appellant is in-fact a large hearted man, who allowed her to complete her education. Reference is made to the statement of PW-2 i.e, mother of the wife to say that she could not even reveal from where the wife got the money to study. Therefore, it is apparent that the appellant is not guilty of any cruelty. Furthermore, from the year 2005 till 2016, the wife lodged no complaint whatsoever against the appellant or his family members and neither is there any medical evidence on record to prove that she was physically abused by the appellant. Even as on date, appellant seeks to resume matrimonial ties with the respondent-wife, who it is stated is now in a live-in relationship with somebody else and has even given birth to a child from this illegal alliance. No evidence has been led to prove that the appellant was in a relationship with any other lady and the same is proved to be a baseless allegation. It is thus prayed that this appeal be allowed and judgment and decree dated 20.01.2020, passed by the learned Family Court, Hisar, be set aside and petition under Section 13 of the Act, filed by the respondent-wife be dismissed throughout.

9. *Per contra*, learned counsel for the respondent while refuting all the argument as raised on behalf of the appellant submits that present is a case where the wife was subjected to abject cruelty right from the very beginning. She was a young woman at the time of marriage and had dreams of a happy matrimony like any normal girl. However, she was subjected to extreme harassment and cruelty at the hands of the appellant, who was addicted to alcohol and other bad vices. It is submitted that the respondent-wife never lodged any complaint till filing of the petition seeking divorce for the reason that she did not have the wherewithal to pursue the same and neither was her parental family financially sound enough to support her. In this situation, she decided to first complete her education, stand on her own feet and thereafter take necessary steps. In case, she had filed complaints etc., her attention would have been diverting from attaining education. It is denied that expense of education was borne by the appellant. The wife, it is stated has categorically stated that she would give tuitions and also do the work of beautician to raise finance her education. To the contrary, appellant as well as the witnesses who have deposed on his behalf have admitted that he is unemployed and is not doing any work. At the time of marriage, appellant was working as an electrician at the shop, but thereafter, he stopped working and seeks resumption of matrimonial ties only because the respondent-wife has a permanent job and would be his regular source of income. Furthermore, petition under Section 9 of the Act filed by the appellant-husband can be of no avail as the conduct of the husband indicates that he is not in-fact interested in resuming matrimonial ties due to any affection for her. It is thus prayed that impugned judgment and decree 10.01.2020 passed by the learned Family Court, Hisar, be upheld and present appeal be dismissed being devoid of any merits.

10. We have heard learned counsel for the parties and have gone through the record with their able assistance.

11. Marriage between the parties as solemnized on 15.11.2005, is a matter of record. It is further admitted that no child was born from this wedlock. Parties lived together from 2005 till June 2017. Admittedly, the wife had cleared her 10+2 at the time of marriage. She completed her studies after marriage. It is categorically stated by the wife in her testimony while deposing as PW-1, that she could not complete her BA and JBT Course from 2002 till 2006 because during this period, she learnt the work of boutique and beautician. She secured admission in D-ed course in the year 2009 i.e., four years after her marriage; besides taking coaching for HTET. She was selected as JBT teacher in the year 2014. PW-1, the respondent-wife has explained that prior to 2014, she would give tuitions and also worked as a beautician to earn enough money to pay for her education. Details of students who took tuitions from her have been given in her testimony. She has categorically stated that she lived in the matrimonial home from the date of her marriage till the time she was thrown out thereof. She stated that Panchayats were convened 10 to 15 times from the year 2005 till August 2016. However, no criminal proceedings were initiated by her as she could not pursue the same along with her studies. We do not find any reason to disbelieve the testimony of PW-1, which is duly corroborated by PW-2, her mother, who has deposed regarding the maltreatment meted out to her daughter in her matrimonial home at the hands of the appellant and his family members. Appellant has been unable to bring on record any evidence on record to discredit the reliable version of the wife.

12. In the given facts and circumstances, in our considered opinion, the respondent-wife has successfully proved her case on the touchstone of preponderance of probabilities. There is no evidence on record which causes us to doubt the version as put-forth by her. In-fact, we find a definite ring of truth to the stand taken by the wife that she did not indulge in initiation of criminal proceedings against her husband and family members for the reason that she

wished to focus on completing her higher studies and becoming financial independent and that she did not have the wherewithal to carry out that litigation. The exact word used by her in her cross-examination is that 'her back was not strong' enough to initiate and carry on with litigation against the appellant-husband and his family members. It appears that the wife in this case sought to focus on her education and raising finances for the same. Accordingly, she undertook the work of beautician, took tuitions and did not engage in criminal litigation. It is clear that she did not even wish to burden her parents with the same. Mere reference to the statement of PW-2, mother of the wife to the extent that she could not reveal the source of finances of the wife's education is of no avail to the appellant in the given factual matrix. It is correctly observed by the learned Family Court that education courses in the State of Haryana up to BA or JBT are not so expensive that it is out of reach of every common person.

13. Argument raised by learned counsel for the appellant that it was the appellant who provided finances for the same, is not borne out from the record. Appellant-husband admits that initially he used to work as an electrician, earning a sum of Rs.15,000/- or so per month, however, thereafter, he was unemployed. RW-1, a neighbour of the husband categorically stated in his cross-examination that the appellant is un-employed though hale and hearty. An attempt was made by the appellant to prove that he had raised money for education of the respondent-wife from RW-2, however, we do not find any merit in the same as RW-2 while stating that the appellant borrowed money from him for educational expenses of the wife went on to state that the same was never paid to the wife in his presence and neither did he have any documentary proof regarding borrowing of money from him by the appellant.

Though transactions are however stated to have been going on since the last 15-20 years from date of his deposition i.e., 21.12.2019. RW-2, could not give the

date, month or the amount of money which had been borrowed by the appellant. Thus much credence cannot be afforded to the testimony of RW-2.

14. Father of the appellant also deposed as RW-3. However, there is nothing in his testimony which could shake the version put-forth by the wife. RW-3, father of the appellant stated that the appellant was suffering from backache and was mentally disturbed. However, it is a matter of record that there is no evidence on record to indicate that the appellant was mentally disturbed in any manner. Treatment slips Ex. PW-5/E and Ex. PW-5/F merely reflect the appellant to be suffering from pain in the lower back/spine region. Furthermore, appellant, his father and other witnesses of the appellant have stated that respondent-wife was a lady of quarrelsome and bossy nature besides having the habit of sleeping late at night and waking up late and she never entered the kitchen or prepared any food. Allegation that respondent-wife was in habit of sleeping late at night and waking up late, is belied by the evidence on record, wherein it is admitted that she used to go for classes at 8.00 a.m in the morning. There is no palpable and credible evidence qua other allegations as well. It is also to be noted that convening of Panchayats is admitted not only by the appellant himself, but by his father as well i.e. RW-4. RW-4, admitted that Panchayats were convened 3-4 times, though he did not remember the date and time. The fact that Panchayats were convened also corroborates the version of respondent-wife as pleaded.

15. In the given factual matrix, learned Family Court, Hisar has correctly held that appellant is an idle person and only sought to enjoy the earnings of his wife. It is pertinent to note at this stage that appellant had also sought maintenance from the wife by way of filing an application under Section 24 of the Act before the learned Family Court, Hisar. The spend-thrift habits of the appellant are apparent from the record that on one

occasion, he claimed himself to be unemployed seeking maintenance from the wife and on the other hand, he admitted to buying an Indica Car, which in itself corroborates the stand of the wife that appellant used to live beyond his means, while spending money on a lavish lifestyle.

16. It is to be noted that the term 'cruelty' is not defined in the Act. It has to be read in context of human conduct and behavior in the given conspectus of facts. Cruelty can be mental or physical and there is no strait jacket formula for defining the same. It would depend upon the sensibilities and sensitivities of the persons involved. The 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).”

17. 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."

18. 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**.

19. Learned counsel for the appellant at the time of arguments had stated that the respondent was now in a live-in relationship with somebody else from which a child had also been born. Be that as it may, we do not find it to be a sufficient ground to set aside impugned judgment and decree dated 10.01.2020 as it does not wash away the allegations against the appellant, duly proved on record. It is to be noted at this stage that the respondent-wife has duly proved the allegations as raised by her by leading clear and cogent evidence. In the given factual matrix, learned Family Court has correctly observed that the respondent-wife is entitled to the decree of divorce on the ground of cruelty. Conduct of the appellant also indicates that he is not serious about seeking resumption of matrimonial ties. Argument raised on behalf of learned counsel for the appellant that filing of petition under Section 9 of the Act revealed his intention to resume cohabitation is devoid of any merit as admittedly petition under Section 9 was filed two years after parties started living separately. Furthermore, it is not denied that even subsequently appellant has been submitting complaints against the respondent-wife, before her employer also. Learned Family Court has

specifically observed in the impugned judgment dated 10.01.2020 that since last three years despite earnest efforts for mediation, none of the parties displayed any inclination to live together. Parties had been called in person before this Court as well but disinterest in resumption of matrimonial ties was evident.

20. Learned counsel for the appellants is unable to point out any illegality, infirmity or irregularity in the impugned judgment dated 10.01.2020, passed by the learned Family Court, Hisar, which calls for any interference by this Court in this appeal.

21. No other argument has been raised.

22. Judgment and decree dated 10.01.2020, passed by the learned Family Court, Hisar, is thus upheld.

23. Appeal is accordingly dismissed with no order as to cost.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

May 18, 2023.
s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.