

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

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**FAO No.5207 of 2019 (O&M)
Reserved on: 15.12.2022.
Pronounced on:09.01.2023**

Dharshana

... Appellant

Versus

Mahabir Singh

... Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Gaurav Tyagi Advocate,
for the applicant-appellant.

Mr. Ashwani Gaur, Advocate,
for the respondent.

MANISHA BATRA, J.

1. The present appeal has been directed against the judgment and decree dated 04.01.2019 whereby the petition filed by the respondent-husband under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (for short-the Act) for seeking dissolution of his marriage with the appellant-wife has been allowed.

2. For the sake of convenience, the parties shall be referred as husband and wife respectively, hereinafter.

3. Briefly stated the case of the husband was that he got married with the wife on 08.05.2008 at Village Siwadi, Tehsil Farrukhnagar, District Gurugram, according to Hindu rites and ceremonies and a male child namely, Sahil, was born out of this wedlock. The behaviour of the wife with the husband and family members was very aggressive and hostile since the very beginning of their marital life. She used to pick up quarrels with the husband

on trivial matters. Even on visit of neighbours and relatives, she used to do so. She did not use to extend courtesies to the visitors by serving tea etc. upon them; her aim was that her family members of in-laws should dance at her tunes; she did not extend any assistance in the household work; she used to watch T.V. serials till late night and then pressurized the husband to buy such new dresses and ornaments that used to be worn by the actresses of those T.V. serials; she shifted her entire gold and silver jewellery to her parental house; even the behaviour of her parents was not proper and they used abusive language with the husband and his family members and used to extend threats to them. The wife was in habit of leaving her matrimonial house and used to return back after great persuasions by husband. She left her matrimonial house on 8.02.2009 and 01.04.2014. She filed complaint against husband on these dates and it was on finding those complaints to be false that she was advised by the Police to go back to her matrimonial house. Ultimately, she withdrew from the society of the husband on 07.04.2014. She used to make threatening calls to the husband. While alleging that the wife had treated him with utmost cruelty and it was not possible for him to live with her any more, the husband prayed for dissolving the marriage between the parties by decree of divorce.

4. In her reply, the wife raised preliminary objections as to maintainability of the petition and suppression of material facts. The allegations levelled in the petition were denied. It was admitted that the minor child of the parties was residing with the husband. While asserting that she was thrown out of her matrimonial house by the husband without any rhyme and reason; that the custody of the minor child was also denied to her and that she was ready to join company of the husband, she prayed for dismissal of the petition.

5. On the pleadings of the parties , the learned trial Court had framed the following issues;-

1. Whether the petitioner is entitled for a decree of divorce on the ground of cruelty? OPP

2. Relief.

6. The parties adduced evidence in support of their claims. The husband-Mahabir Singh examined himself as PW-1 and produced his uncle PW2- Ran Singh and his aunt PW3- Kashmiri Devi. On the other hand, the wife besides herself stepping into the witness box, examined her mother RW2- Raj Bala.

7. Learned counsel for the appellant-wife has argued that the impugned judgment was liable to be set aside as the findings as given by the learned trial Court were not sustainable in the eyes of law being based on conjectures and surmises. The learned trial Court did not apply its judicious mind. The fact that the husband had miserably failed to plead and prove the instances of cruelty allegedly committed upon him by the wife, had not been taken into consideration and a non-speaking order had been passed. Overwhelming evidence produced on record by the wife, had not been properly appreciated. With these broad submissions, it was stressed that the appeal deserved to be accepted and the decree passed in favour of the husband was liable to be set aside.

8. Per contra, learned counsel for the respondent argued that the findings as given by learned trial Court were well reasoned and did not warrant any interference. Hence, it was urged that the appeal was devoid of any merit and was liable to be dismissed.

9. Based on the pleadings and evidence available on record and contentions raised by learned counsel for the parties, respectively, in our opinion, following points crop up for consideration in this appeal:-

1. Whether the husband had proved the acts of cruelty as pleaded by him in the petition filed under Section 13(1)(i-a) of the Act?
2. Whether the order passed by the learned trial Court in allowing the petition for divorce requires any interference by this Court?

10. Before delving on the point that the wife had committed acts of cruelty upon the husband, let us firstly refer to the provision of Section 13(1)(i-a) of the Act, which is relevant for the purpose. As per this provision, 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 various High Courts. In **Samar Ghosh v. 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'. 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 behavioural 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, amount to causing mental cruelty to the other.

12. On examining the claim of the husband in the light of above settled position of law, it emerges that in the present case, the instances of cruelty as quoted by the husband were that since the very beginning of their marital life, the behaviour of the wife was hostile and aggressive towards the respondent-husband as well as his family members, that she used to pick up quarrels on trivial matters, that she was habitual of leaving her marital home without the consent of the husband or elderly family members and stayed at her parental house for long; that she was addicted to watching TV serials till late night and avoided preparing meals for her in-laws family; that she used to raise demand for such ornaments and dresses which were worn by the actresses in the TV serials and that on 29.05.2014, she had lodged FIR under Sections 498-A and 406 of IPC against her husband. The learned trial Court while deciding issue No.1 in favour of the respondent husband had observed that the wife had made a vague denial of the particular instances of cruelty as quoted by the husband and no explanation had been given by her as to why she had

left her matrimonial house on various occasions and had made false police complaints against the husband and his family members. It was also observed that the appellant did not visit her house since 03.01.2014 and had never met her minor child, who was aged only 5 years at all and that she did not file any case for either seeking custody of the minor child or for visitation rights. While further observing that since the parties had not cohabited for almost five years and there had been a long period of continued separation, it was concluded that the matrimonial bond was beyond repair. On a close scrutiny of the evidence produced on record, in our opinion, the observations made by learned trial Court that the husband was proved to be subjected to mental cruelty due to the various acts and conduct of the wife, were correctly made and the same warrant no interference. A perusal of the contents of the written statement reveals that apart from making omnibus denial to the averments in the petition, wife in her written statement did not explain anything as to how and since when she had left her matrimonial house. No other assertion had been made by her therein, apart from taking the pleas that she had been thrown out from her matrimonial house, was denied the custody of her minor child and that she was ready to join the company of the husband. The general and vague denial on the part of the wife of the allegations in the petition in a way amounted to the acceptance of the correctness thereof. Then the evidence which was led by her was totally beyond pleadings, as at that stage, she came out with a new case by deposing that the husband and his family members used to harass and torture her on account of bringing less dowry and by demanding more dowry. She deposed that after the marriage of her brother-in-law Radhe, the behaviour of the husband and his family members had become more aggressive and they pressurized her to give an amount of Rs.30,000/- and threatened that otherwise she would not be allowed to stay in her matrimonial house. She also stated that on 03.01.2014, her husband, his brother and brother's wife had extended beatings to her and rescuing herself from their clutches, she had gone to her parental house and further that on 16.12.2014, the

husband along with his brother had come to her parental house and again demanded a sum of Rs.30,000/- and then had given merciless beatings to her mother, brother and herself. However, she gave a contradictory statement during her cross-examination itself, by saying that on 16.02.2014, the husband and his brother had not come to her parental house. By saying so, she falsified her own claim about raising demand of Rs.30,000/- by the husband or about extending beatings to her family members and herself. The plea taken by the wife with regard to demand of Rs.30,000/- by the husband also stood falsified on account of the fact that during cross-examination, it was admitted by her that in FIR No.145 dated 29.05.2014 lodged by her under Sections 498A, 406 etc. of IPC, she had alleged that demand of dowry amounting to Rs.10 lacs had been raised by the husband and his family members. The simple denial of the pleas as taken in the petition filed by the husband coupled with the fact that the case as set up by the wife in her sworn deposition, was totally beyond pleadings and her statement even on that point is found to be self-contradictory as observed above, it is explicit that a false story had been set up by the wife with regard to the respondent-husband throwing her out of her matrimonial house or torturing her on account of demand of dowry. The net result is that the evidence led by the husband quoting specific instances of cruelty has remained unshattered and hence the same could certainly be acted and relied upon for the purpose of proving that wife had committed acts of cruelty with him.

13. It is also important to note that admittedly, the wife had launched criminal prosecution against the husband and his family members by lodging FIR No.145 dated 29.05.2014 under Section 406 and 498 A etc. of IPC. Though, neither of the parties placed on record copy of the said FIR nor any evidence was led as to what was the fate of that criminal prosecution, however, nonetheless, it is clear in view of the above discussion that due to the reason that with regard to the demand of dowry, the allegations in the FIR which were about demand of Rs.10 lacs by the husband, stood contradicted from the plea taken in her sworn testimony that the husband raised demand of Rs.30,000/-, there is no gain-saying that these allegations

were unsubstantiated and false. It is well settled proposition of law that even filing of criminal case on unsubstantiated allegations of offence of cheating, criminal misappropriation or subjecting to cruelty on account of demand of dowry are sure to cause humiliation and mental agony to the husband. The learned trial Court on considering the fact that the wife who in her reply had vaguely denied the instances of cruelty as cited by the husband, had admittedly filed Police complaints against him including one FIR, had admittedly, not visited her in-laws house since 03.01.2014 and that she had not met her child for a period of more than about 5 years till the date on filing of the petition and had not made any effort to seek custody of her child, was proved to have committed no error in observing that these acts of the wife, tantamounted to committing cruelty upon the husband. In view of the discussion as made above, we are inclined to held that the findings given by learned trial Court on this point deserve to be upheld.

14. That apart, it is very much clear that the parties are living separately for a period of more than 7 years. During this span, the appellant had never gone to live with the husband, as such there is no possibility of their re-union. Even though the appellant is insisting for joining the company of respondent-husband, however, in our opinion, there is total disappearance of emotional substratum in the marriage between the parties. Not taking notice of this fact would certainly be injurious to the interests of the parties and also harmful to the society. No doubt, it is 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 the parties tied to a marriage which in fact has ceased to exist. There is no possibility of resumption of normal marital life by the spouses. Undoubtedly, irretrievable break down of marriage is not a ground for divorce under Section 13 of the Act but the Hon'ble Apex Court in a

catena of decisions while dealing with the facts and circumstances of individual cases, has observed that when there are no chances of the parties living together again and marriage between them has been irretrievably broken down, a decree for divorce should be granted as there is no purpose in keeping the legal bond alive *de jure* where *de facto*, it is primarily dead. Learned trial Court while considering all these aspects, therefore, had rightly passed a decree of dissolution of marriage between the parties and in view of the discussion as made above, we see no reason as to why, the findings as given by the learned trial Court should not be upheld. The points of determination are answered accordingly. Resultantly, finding no merit in the appeal, the same is dismissed.

15. Before concluding, it will be proper to deal with one argument raised by learned counsel for the appellant-wife that some permanent alimony be granted to her. No separate application seeking permanent alimony has been filed by the appellant-wife along with this appeal. However, it has come on record that she has filed a separate petition under the provisions of The Protection of Women From Domestic Violence Act, 2005 (for short-the Act, 2005), seeking monetary relief against the husband. Section 25 of the Act empowers the Court to award permanent alimony and maintenance to the spouse. As per this Section, the Court can direct the non-applicant to pay for maintenance and support the applicant such gross sum or such monthly sum or periodical sum for a term not exceeding the life of the applicant having regard to the respondent's income and other property, if any, and the income and other property of the applicant. It further lays down that the Court has also to take into account the conduct of the parties and other circumstances of the case. In ***Umarani vs D.Vivekannandan, 2000 (2) CTC 449***, High Court of Madras has held that a written application is not mandatory and the permanent alimony can be granted even on oral prayer. In ***Chand***

Dhawan vs. Jawaharlal Dhawan, AIR 1993 SCW 2548, it was observed by the Hon'ble Supreme Court that the Act has preserved the right of permanent alimony in favour of the husband or the wife, as the case may be, dependent on the Court passing a decree of the kind as envisaged under Sections 9 to 14 of the Act. When by the Court's intervention under the Act, disruption to the marital status has come by, at that juncture, while passing a decree, it has power to grant permanent alimony or maintenance, if that power is invoked at that time. In the light of the aforesaid discussion, it is clear that the Court has power to grant permanent alimony while passing a decree for divorce. The learned trial Court while dissolving the marriage between the parties has not granted any permanent alimony in the instant case. Nothing has been brought on record to show that the appellant-wife is having any source of income to maintain herself. It is not clear as to whether in the proceedings initiated under the Act, 2005, any interim maintenance has been directed to be paid to her or not and as to what is the amount of the said maintenance? Keeping in view the social and economic status of the parties, the fact that the parties are living separately for a period of more than 7 years and further that the male child of the parties is being maintained by the respondent-husband, we fix the permanent alimony of the appellant-wife to the extent of Rs.4 lacs which would be just and proper in the circumstances. It is further ordered that in the event of getting permanent alimony, the appellant-wife would not be entitled to get any maintenance under the provisions of the Act, 2005, under Section 125 of the Cr.P.C or under any other proceedings. Keeping in mind the well settled proposition of law and circumstances prevailing in this case, the decree of divorce granted by the learned trial Court is upheld subject to payment of permanent alimony of the amount as mentioned above.

16. The permanent alimony shall be deposited by the respondent-husband before the learned trial Court in the following manner:-

- 1. 50% of the alimony amount will be deposited within two months from the date of passing of this order i.e. today.
- 2. Remaining 50% of the alimony amount shall be deposited within next two months.

17. It is also made clear that if the respondent-husband fails to deposit the aforesaid amount, the decree of divorce would be rendered ineffective.

18. A copy of this judgment be sent to the learned trial Court who shall ensure that on deposit of the alimony amount, the appellant-wife is served with notice qua the said deposit.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

09.01.2023
Jyoti-IV

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