

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-4461-2013 (O&M)
Date of Decision: May 30 , 2023

Satish Appellant

Versus

Darshana Respondent

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

Present: Mr. Sushil Jain, Advocate for the appellant
Mr. Vishal Nehra, Advocate for the respondent.

LISA GILL, J.

1. Appellant – husband has filed this appeal challenging judgment and decree dated 08.08.2012 passed by learned District Judge (Family Court), Sonipat whereby his petition under Section 13 of the Hindu Marriage Act (for short – ‘the Act’) has been dismissed.

2. Brief facts necessary for adjudication of the case are that appellant – husband filed petition under Section 13 of the Act with the averment that marriage between the parties was solemnised on 12.02.2006 in a simple manner. One child i.e. son was born from this wedlock on 23.11.2006. It is pleaded that parties lived together happily but after the birth of son on 23.11.2006, parental family of the respondent – wife particularly

her mother started interfering in the family affairs of the parties. Separate residence and mess was demanded by the respondent at the instigation of her mother. It is stated that separate residence and mess was not possible at that particular point of time due to financial condition of the appellant. It is alleged that respondent became short tempered and quarrelsome on petty issues and also started giving away valuable articles of the appellant's family to her parental family. It is further pleaded that respondent – wife started leaving the matrimonial home without even giving necessary information to the appellant and would threaten him with false implication in criminal case when asked. Respondent – wife is stated to have finally left the matrimonial home on 1.08.2007 in the absence of the appellant and his other family members, alongwith minor son, valuable articles. Appellant is stated to have found out that she was residing at parental home but he was not allowed to talk to her on 22.08.2007 when he went there. Panchayat is stated to have been convened on 01.09.2007 consisting of the appellant's father, one Ishwar Singh, Balbir Singh, Jai Bhagwan and other relatives. However, respondent – wife refused to accompany appellant to the matrimonial home alongwith the minor son on the premise that she would join appellant only when separate mess and residence, away from the joint family is arranged. Panchayats were again convened on 15.08.2008 and 31.10.2009 but turned out to be an exercise in futility.

3. Petition under Section 9 of the Act was filed by the appellant but when respondent recorded her statement on 01.04.2010 that she did not wish to cohabit with the appellant for the time being due to temperamental differences petition, said petition was withdrawn. It is averred that appellant

provided all material comforts and facilities as per his status. Appellant and his family members provided due respect and affection to her but respondent refused to join the company of the appellant due to which petition under Section 13 of the Act was filed by him.

4. Respondent – wife in the written statement filed by her controverted the allegations in the petition stating that petition was filed only as a counterblast to the petition filed by her under Section 125 Cr.P.C. While admitting the factum of marriage and birth of child besides the factum of the parties living happily in the matrimonial home initially, all other allegations negative to the respondent, were denied. It is pleaded that it is the respondent – wife who was treated with cruelty for bringing insufficient dowry but still she did not take any step for registration of criminal case as she wished to resume cohabitation with her husband. It is pleaded that she was compelled to leave the matrimonial home due to the hostile atmosphere created by the appellant and his family members. Dismissal of the petition was prayed for.

5. Replication was filed.

6. Following issues were framed on the basis of the pleadings of parties:-

1. Whether the petitioner is entitled to decree of divorce on the grounds of cruelty and desertion? OPP

2. Relief.

7. Evidence was led by the parties. Appellant apart from himself deposing as PW1, examined as many as five witnesses including Ishwar Singh (PW3) and Balbir Singh (PW5), who are stated to be the members of Panchayats convened for amicable settlement and also tendered in evidence,

Ex.P1 to Ex.P3. Respondent – wife herself deposed as RW1.

8. Learned Family Court on considering the evidence on record, facts and circumstances concluded that the appellant failed to prove cruelty and desertion on the part of respondent – wife, entitling him to seek dissolution of marriage. Aggrieved therefrom, present appeal has been filed.

9. Learned counsel for the appellant vehemently argued that evidence on record clearly proves that respondent has not only acted in a manner, which amounts grave mental cruelty to the appellant but she has also deserted the appellant and has no intention to cohabit with him. Allegations, as in the petition, are reiterated while submitting that demand of separate residence compelling the appellant to live away from his old parents in itself constitutes cruelty. Learned Family Court, it was contended, ignored material evidence on record, which reveals that respondent – wife has meted out cruel treatment to the appellant and has deserted him, entitling him to a decree of divorce. It was further submitted that all efforts to resume matrimonial ties were made by the appellant at different stages but to no avail. It is, thus, prayed that this appeal be allowed.

10. While controverting the arguments raised on behalf of the appellant, learned counsel for the respondent vehemently argued that learned Family Court has passed a well-reasoned and logical judgment after proper appreciation of the evidence on record. It is submitted by learned counsel for the respondent that merely because the parties have been living apart for a number of years, cannot be a ground for grant of decree of divorce. Appellant is not entitled to a premium for his wrongs. It is, thus, prayed that this appeal be dismissed.

11. We heard learned counsel for the appellant and went through the record with their able assistance.

12. Factum of marriage being solemnised between the parties on 12.02.2006 and birth of son on 23.11.2006 is admitted. It is also admitted by the appellant that initially the parties did live happily. It is the case of the appellant that behaviour of respondent – wife changed after birth of son whereas respondent – wife asserts that she was meted out cruel treatment on account of bringing insufficient dowry. Parties have admittedly been living apart from each other since August, 2007.

13. At this stage, 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'. What amounts to 'cruelty' in a given situation necessarily has to be tested in a particular set of facts and circumstances. It is yet again settled that cruelty need not be confined to physical cruelty only. The same can be physical or mental, intentional or unintentional. 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)."

14. 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."

15. 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.

16. In the present case, it is a matter of record that respondent – wife left the matrimonial home on 20.08.2007. Reason for her leaving the matrimonial home is given differently by each of the parties as has been averted to in the foregoing paras. Respondent – wife claimed that she never deserted the appellant but was compelled to leave due to circumstances created by the appellant and his family members which made her continued stay at the matrimonial home impossible. It is pleaded that an attempt was made to kill her by hanging on 20.08.2007. However, we find no such material evident on record. No complaint whatsoever was ever filed by her in respect to cruel treatment meted out to her by the appellant or his family members. Per contra, appellant – husband has led clear and cogent evidence on record to indicate that respondent left the matrimonial home alongwith their son out of her own accord without even intimating him or other family members. At this stage, reference to the cross examination of respondent – wife, who deposed as RW1 is useful. In her cross examination, respondent – wife admitted that at the time of her marriage, the appellant was not in service. She further admitted that no money or dowry articles were given at the time of marriage, which was solemnised in a simple manner while admitting that appellant refused to take any dowry. Relevant part of cross examination of RW1 reads as under:-

“ Satish petitioner was not in service at the time of my marriage. No money was given at the time of marriage as dowry. No dowry articles were given at the time of my marriage. It is correct that my marriage was solemnized in a very simple manner. It is also correct that the petitioner refused to take dowry. It is correct that our marriage was arranged one.

It was not known to me or to my parents at the time of the marriage that the petitioner is having his step mother. It was known to me later on after the marriage. Satpal Dahiya was the mediator of this marriage. He was a friend of my father. Satpal Dahiya was working in a private school but what he is doing presently is not known to me. When exchange of hot words started then Satpal Dahiya was called by my father. It was in the year of 2007 but I do not remember the date and month. Again stated it was 29.7.2007 at Gohana. Satish was also called by Satpal at Gohana. Satish visited at my parents with the version that he had a talk for my appointment as guest teacher, hence I accompanied him. First the hot words were exchanged in September, 2006 on the eve of birth of my child. Prior to that hot words were exchanged between me and the mother of the petitioner but I did not intimate the said fact to the petitioner as he was on training. Satish petitioner has two more brothers. They are Ajay and Sumit. At the time of my marriage both used to reside with us but I do not know presently where they are residing now. They were unmarried at that time. I started living separately from my in-laws with effect from 1.8.2007. The petitioner took me from my parents' house with the condition that they will reside separately and our mess will be separate. It is wrong to suggest that on the first night after the marriage I had asked Satish that he was not her liking since I had affairs with some other boy. I do not know Bijender resident of Adrash Nagar, Gohana. It is wrong to suggest that I had ever told the petitioner that I have physical relations with Bijender and my family members had forcefully solemnized my marriage with him. I remained as Guest Teacher for about 12/13 days only. It is correct that the above mentioned appointment was managed by the petitioner. It is correct that the petitioner filed a petition under section 9 of the Hindu Marriage Act. It is also correct that I had made a statement in that petition that I do not want to join

the company of the petitioner. Volunteered that at that time there was danger to my life from the petitioner still that danger is prevailing. I do not remember the exact date of that statement. I left my matrimonial home on 21.8.2007 alongwith my brother. It is also correct that after 21.8.2007 I never visited village Bhatgaon. After 21.8.2007 Satish visited once to my residence in order to fight with me and after that none of the petitioner's family visited my house. I do not know Ishwar Master, Jai Bhagwan and Bijender Dahiya resident of village Bhatgaon. I did not make any complaint to the police regarding the incident of 20.8.2007. I also did not file any complaint in the court of the llaqa Magistrate. I do not know whether October 20, 2011 was fixed for hearing in this case. It is wrong that on that day I was called by the court for effecting compromise. I have been regularly coming to the court on each and every date of hearing in this case. It is wrong to suggest that I have spent only 10 days at one time in village Bhatgaon and then I used to go to my parents house. It is wrong to suggest that I had stopped doing domestic work and started insulting the members of my in- laws family. When I left my matrimonial home, Satish had gone to his job but in the morning he was very much present in the house. No panchayat was convened by my father in reference to the matter in controversy after August, 2007. However, my father visited to the residence of the petitioner. It is correct that on 20.08.2007 I left my matrimonial home without the consent of my husband. No panchayat was convened on 31.10.2009 at the house of my parents. It is wrong to suggest that in that panchayat Ishwar, Bijender, Jai Singh Thekedar had participated in that Panchayat. At present, I do not want to live with the petitioner. Volunteered that when the petitioner mend his ways and intends to keep me with him nicely, I would accompany him. It is correct that for the last four years I am residing with my parents

at Gohana. It is correct that I have not made any effort for reconciliation. However, my father made efforts which was on my behalf only one time. I do not remember the exact month and date when my father had visited Bhatgaon. My father might have met to my father-in-law.”

17. Perusal of cross examination of RW1 clearly indicates that the respondent – wife is not really interested in resumption of matrimonial ties. Appellant has not only deposed himself regarding the averments in the petition but has also examined PW2 to PW5, who were members of the Panchayat(s), which were convened for amicable settlement. All the said witnesses have consistently stated that pre-condition from the side of the respondent – wife was that she would be sent to the matrimonial home only when she was allowed to live separately away from the joint family.

18. It is gainful to refer to the judgment of the Hon’ble Supreme Court in **Narendra versus K. Meena 2016 (4) RCR (Civil) 706** wherein it has been held that in the present social set up, it is pious obligation of the son to look after the parents and in case wife makes an attempt to deviate from the normal practice and normal custom of society, she must have some justifiable reason. Persistent efforts of the wife to be separated from parents without reasonable cause would be torturous for the husband and amounts to cruelty.

19. In the present case, wife has failed to set forth any such reason or explanation, which would explain her persistence to stay separate from the family of the husband. Moreover, we find that respondent – wife in the proceedings under Section 9 of the Act stated that she did not wish to live

with appellant because of temperamental differences. Though it is mentioned that this decision of hers was for the time being only, we find that even in her deposition before the learned Family Court she has categorically stated that she did not wish to live with the appellant till he mends his ways. However, there is no evidence regarding the wayward ways of the appellant, which may compel her to live away from the matrimonial home and mending of which is sought.

20. It is pertinent to note that even in the present proceedings, respondent despite service chose not to join proceedings and the present appeal was admitted while noting this fact on 27.01.2014, after condoning the delay in filing of the appeal.

21. CM-6471-CII-2014 was filed on 26.03.2014 by respondent seeking recall of order dated 27.01.2014. Perusal of file reveals that efforts were consistently made by the Court for an amicable settlement between the parties though on various occasions, respondent remained absent despite specific orders. Mediation between the parties remained unsuccessful. Parties have been living separately since a number of years. Subsequent conduct of the respondent –wife also clearly reveals that she does not have any intention to resume cohabitation with the appellant. It is a settled position that subsequent conduct of parties can be looked into for proper adjudication of the matter.

22. In our considered opinion, learned Family Court has erred in passing judgment and decree dated 08.08.2012 whereby petition under Section 13 of the Act filed by the appellant has been dismissed. We find that the appellant has successfully proved his case on the touchstone of

preponderance of probabilities. Finding of learned Family Court on issue No. 1 is, thus, reversed and the same is decided in favour of the appellant and against respondent – wife.

23. At this stage, we take note of the offer, which had been made by the appellant serving as Head Constable with Delhi police for handing over a sum of ₹12 lakhs as full and final settlement of all claims of the respondent and minor son towards permanent alimony, maintenance etc. We, accordingly, direct that total sum of ₹15 lakhs be deposited by the appellant before the learned Family Court within a period of eight weeks from receipt of certified copy of this order towards permanent alimony and maintenance for the respondent – wife and child. Said amount on deposit be released to the respondent on furnishing adequate proof of identity.

24. Present appeal is, accordingly, allowed. Judgment and decree dated 08.08.2012 passed by the learned District Judge (Family Court), Sonipat is set aside. Consequently, petition under Section 13 of the Act filed by the appellant is allowed.

25. Decree sheet be prepared, accordingly.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

May 30, 2023

rts

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No