

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

FAO-M-493-2015

Date of decision:- 05.01.2023

Harjeet Kaur

....Appellant

vs.

Satpal Singh

...Respondent

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

Present: Mohd Yousuf, Advocate
for the appellant.

Mr. Ankur Bansal, Advocate
for the respondent.

Ritu Bahri, J.

By way of filing the present appeal, the appellant-wife is seeking setting aside of judgment and decree dated 15.10.2015 passed by Addl. District Judge, Jalandhar, whereby petition filed by respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (for short 'Act 1955'), for dissolution of marriage between the parties by a decree of divorce on the grounds of cruelty and desertion, has been allowed.

Brief facts of the case as stated by the respondent-husband in the Court below are that the marriage between the parties was solemnized on 18.11.1990 according to Hindu rites and ceremonies at Una. After marriage, they lived together as husband and wife. However, the appellant-wife refused to life in a joint family. She did not want the respondent to

start his medical practice in Village Oel, District Una where his family was

residing. She abstained from doing her house-hold chores. She never treated the parents of the respondent with respect. In January, 1992, the appellant-wife left the company of respondent when the appellant was in family way. She gave birth to a male child at her parent's village Hazara, District Jalandhar. The respondent after the birth of child, visited village Hazara, District Jalandhar along with customary gifts, sweets, clothes etc and requested the parents of the appellant to let her accompany him but her parents insisted upon separate residence and only then the appellant and the child would accompany him. Thus, the respondent filed a petition for Restitution of Conjugal Rights under the Hindu Marriage Act on 06.05.1992, which was decided on 21.03.1994. Despite passing of the decree of Restitution of Conjugal Rights, the appellant failed to join the company of respondent. Then the respondent filed a divorce petition before the District Judge, Una, which was later dismissed on 26.03.1996 as compromised was effected and the appellant joined the company of the respondent at her in-laws village Oel, Tehsil and District Una, Himachal Pradesh.

However, after joining the company, the appellant started pressing for her old demands asking the respondent to separate from his parents and to live separately. On the insistence of the appellant, the respondent started his medical practice at Village Bhungrani, Tehsil and District Hoshiarpur. But the appellant again started insisting upon the respondent to shift the medical practice to village Hazara, Tehsil and District Jalandhar. On not doing so, the appellant started levelling allegations against the respondent that he has illicit relations with the ladies visiting his clinic at Bhungarni. The respondent was defamed in the area,

which affected his medical practice.

The respondent further alleged that there was one Balbir Singh (cousin brother of the appellant) posted as DSP (CID) Punjab Police Hoshiarpur, He used to call the respondent through DSP (Rural) Hoshiarpur pressurizing him to shift the medical practice at Jalandhar. The respondent was forced to return to his vilalge Oel, District Una, Himachal Pradesh. The appellant also filed a criminal complaint under Sections 406/498-A at Jalandhar. When the respondent reached the police station, the appellant and his family members started demanding a sum of Rs.10,00,000/- for withdrawal of the complaint and for giving divorce to him. When the respondent failed to meet their demands, F.I.R No. 420 dated 08.10.2005 under Sections 406/494/498-A IPC was registered against him levelling allegations of cruelty against him. It was also alleged that the respondent entered into a bigamous marriage with one Anil Kumari without getting divorce from her. The respondent and his family members were arrested in the above case and remained in custody for about a month. However, the respondent was acquitted vide judgment dated 06.10.2010. The appeal filed against the above said judgment by the appellant-wife was also dismissed on 05.11.2012. The appellant-wife also filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, which was also dismissed in default on 05.03.2010.

On notice, the appellant-wife put in appearance and contested the petition by filing her written statement. She admitted the marriage of the parties but denied all the allegations of cruelty and harassment levelled against her by the respondent and prayed for dismissal of the petition.

From the pleadings of the parties, the following issues were framed:-

1. Whether the respondent has treated the petitioner with cruelty.? OPP
2. Whether the petitioner is entitled to a decree of divorce as prayed for? OPP
3. Whether the petitioner has not come to the Court with a clean hands and has suppressed material facts from the Court?OPR
4. Relief.”

The Family Court after going through the evidence led by the parties, took both issue Nos. 1 and 2 together for adjudication. The Family Court decided Issue No. 1 and 2 in favour of the respondent-husband and held that the respondent-husband has been able to establish that the appellant-wife committed cruelty upon the respondent-husband. It has been held that the marriage has broken down irretrievably because of the acts of cruelty upon the respondent-husband by the appellant-wife. The appellant-wife in the written statement has not denied the registration of the above F.I.R registered against the respondent. She has not denied the acquittal of the respondent by the trial Court as well as the Appellate Court. She also admitted that she levelled allegations that the respondent had performed second marriage with one Anil Kumari. She admitted that the respondent remained in custody for about one month. Thus, it was held that there is no possibility of the parties living together in future. The respondent-husband has proved on record the mental cruelty meted out to him and his family members by the appellant-wife.

Feeling aggrieved of the impugned judgment, the respondent-wife preferred the present appeal. This Court on 24.12.2015 stayed the

operation of impugned judgment during the pendency of the appeal. Thereafter, on 23.08.2016, the parties were relegated to Mediation and Conciliation Centre of this Court. However, as per report of the Mediator dated 20.09.2016, the parties could not crease out their differences at this stage and the matter was sent back to the Court. On 14.05.2018, CMM 207-2015 was allowed and the appellant-wife was held entitled to maintenance pendente lite of Rs.10,000/- per month from the date of filing of application i.e December, 2015. It was made clear that a sum of Rs.5000/- which is being paid in proceedings under Section 125 Cr.P.C will be adjusted from this amount of maintenance. On 10.12.2019, this Court was informed that the entire arrears of maintenance pendente lite have been cleared by the respondent-husband. Finally, on 06.12.2022, the matter was heard on merits and was reserved.

Learned counsel for the appellant is relying upon a judgment of Hon'ble Supreme Court of India in a case of ***Mangayakarasi vs. M. Yuvaraj, 2020 (2) RCR (Civil) 155*** wherein the appellant-wife filed an appeal assailing the judgment dated 20.07.2018 granting divorce to the respondent-husband. The marriage of the parties was solemnized on 08.04.2005 and they were living separately since 2007. The appeal was allowed and it was held that merely because the parties were living separately since long, would not be a valid ground to grant the decree of divorce. More particularly when restitution of conjugal rights also considered simultaneously. In para No. 15 and 16, it has been observed as under:-

15. It cannot be in doubt that in an appropriate case the unsubstantiated allegation of dowry demand or such other allegation has been made and the husband and his family members are exposed to criminal litigation and

ultimately if it is found that such allegation is unwarranted and without basis and if that act of the wife itself forms the basis for the husband to allege that mental cruelty has been inflicted on him, certainly, in such circumstance if a petition for dissolution of marriage is filed on that ground and evidence is tendered before the original court to allege mental cruelty it could well be appreciated for the purpose of dissolving the marriage on that ground. However, in the present facts as already indicated, the situation is not so. Though a criminal complaint had been lodged by the wife and husband has been acquitted in the said proceedings the basis on which the husband had approached the Trial Court is not of alleging mental cruelty in that regard but with regard to her intemperate behaviour regarding which both the courts below on appreciation of the evidence had arrived at the conclusion that the same was not proved. In that background, if the judgment of the High Court is taken into consideration, we are of the opinion that the High Court was not justified in its conclusion.

16. The learned counsel for the respondent however, contended that ever since the year 2007 the parties have been litigating and were living separately. In that situation it is contended that the marriage is irretrievably broken down and, therefore, the dissolution as granted by the High Court is to be sustained. The learned counsel has relied on the decisions in the case of [Naveen Kohli vs. Neelu Kohli](#) (2006) 4 SCC 558, in the case of [Sanghamitra Ghosh vs. Kajal Kumar Ghosh](#) (2007) 2 SCC 220 and in the case of [Samar Ghosh vs. Jaya Ghosh](#) (2007) 4 SCC 511 to contend that in cases where there has been a long period of continuous separation and the marriage becomes a fiction it would be appropriate to dissolve such marriage. On the position of law enunciated it would not be necessary to advert in detail inasmuch as the decision to dissolve the marriage apart from the grounds available, will have to be taken on case to case basis and there cannot be a strait jacket formula. This Court can in any event exercise the power under [Article 142](#) of the Constitution of India in appropriate cases. However, in the instant facts, having given our thoughtful consideration to that aspect we notice that the parties hail from a conservative background where divorce is considered a taboo and further they have a female child born on 03.01.2007 who is presently aged about 13 years. In a matter where the differences between the parties are not of such magnitude and is in the nature of the usual wear and tear of marital life, the future of the child and her marital prospects are also to be kept in view, and in such circumstance the dissolution of marriage merely because they have been litigating and they have been residing separately for quite some time would not be justified in the present facts, more particularly when the restitution of conjugal rights was also considered simultaneously.

Learned counsel for the appellant-wife has further relied upon judgment of Rajasthan High Court in a case of ***Kailash Deo vs. Smt Shanti, 2012 (4) CCC 019 (Rajasthan)*** wherein it has been held that irretrievable breakdown of marriage cannot be made a ground to grant divorce even though the parties are living separately for the last more than twenty years. Further it was held that merely leaving matrimonial home and living separately with her father and filing of complaint under Section 498-A/406 IPC and maintenance under Section 125 Cr.P.C does not entitle the husband to seek divorce.

Reference has further been made to judgment of Calcutta High Court in a case of ***Smt. Piyasa Ghosh vs. Somnath Ghosh, 2009 (2) CCC 619 (Calcutta)*** wherein it was held that merely on the ground that wife initiated complaint under Section 498-A IPC, the husband is not entitled for decree of divorce. Even if there is irretrievably break down of marriage, the husband is held to be responsible for such a situation.

On the other hand, learned counsel for the respondent has referred to recent judgment of Hon'ble the Supreme Court of India in a case of ***Poonam vs. Surender Kumar, 2021 (4) RCR (Civil) 528***, wherein the appeal filed by the appellant-wife was allowed. It was held that the marriage did not take off from very beginning. After 10 days of marriage, the wife registered a case under Section 498-A/406 IPC with the allegation that she was not permitted to enter the house on account of her inability to satisfy dowry demands. It was held that if parties not able to subserve very objective of marriage of companionship for each other from very inception and living apart for more than 19 years, it amounts to irretrievable break down of marriage.

Reference has further been made to judgment of Hon'ble the Supreme Court of India in a case of ***Joydeep Majumdar vs. Bharti Jaiswal Majumdar, 2021 (2) R.C.R. (Civil) 289*** wherein the appeal filed by the husband was allowed. In para No. 10 to 15, it has been observed as under:-

“10. For considering dissolution of marriage at the instance of a spouse who allege mental cruelty, the result of such mental cruelty must be such that it is not possible to continue with the matrimonial relationship. In other words, the wronged party cannot be expected to condone such conduct and continue to live with his/her spouse. The degree of tolerance will vary from one couple to another and the Court will have to bear in mind the background, the level of education and also the status of the parties, in order to determine whether the cruelty alleged is sufficient to justify dissolution of marriage, at the instance of the wronged party. In Samar Ghosh Vs. Jaya Ghosh¹, this Court gave illustrative cases where inference of mental cruelty could be drawn even while emphasizing that no uniform standard can be laid down and each case will have to be decided on its own facts.

11. The materials in the present case reveal that the respondent had made several defamatory complaints to the appellant's superiors in the Army for which, a Court of inquiry was held by the Army authorities against the appellant. Primarily for those, the appellant's career progress got affected. The Respondent was also making complaints to other authorities, such as, the State Commission for Women and has posted defamatory materials on other platforms. The net outcome of above is that the appellant's career and reputation had suffered.

12. When the appellant has suffered adverse consequences in his life and career on account of the allegations made by the respondent, the legal consequences must follow and those cannot be prevented only because, no Court has determined that the allegations were false. The High

Court however felt that without any definite finding on the credibility of the wife's allegation, the wronged spouse would be disentitled to relief. This is not found to be the correct way to deal with the issue.

13. Proceeding with the above understanding, the question which requires to be answered here is whether the conduct of the respondent would fall within the realm of mental cruelty. Here the allegations are levelled by a highly educated spouse and they do have the propensity to irreparably damage the character and reputation of the appellant. When the reputation of the spouse is sullied amongst his colleagues, his superiors and the society at large, it would be difficult to expect condonation of such conduct by the affected party.

14. The explanation of the wife that she made those complaints in order to protect the matrimonial ties would not in our view, justify the persistent effort made by her to undermine the dignity and reputation of the appellant. In circumstances like this, the wronged party cannot be expected to continue with the matrimonial relationship and there is enough justification for him to seek separation.

15. Therefore, we are of the considered opinion that the High Court was in error in describing the broken relationship as normal wear and tear of middle class married life. It is a definite case of cruelty inflicted by the respondent against the appellant and as such enough justification is found to set aside the impugned judgment of the High Court and to restore the order passed by the Family Court. The appellant is accordingly held entitled to dissolution of his marriage and consequently the respondent's application for restitution of conjugal rights stands dismissed. It is ordered accordingly. “

Heard learned counsel for the parties at length.

With respect to judgments cited by learned counsel for the appellants, the same would not be applicable to the facts of the present case,

dealing with a case of parties, who got married on 08.04.2005 and one female child was born out of this wedlock on 03.01.2007. The wife was of quarrelsome nature and thus, the husband filed the divorce petition and the wife initiated the petition under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights. The wife left the matrimonial house on 12.04.2007. The wife also preferred complaint in which the husband was arrested and remained in judicial custody for seven days. The petition filed by the husband was dismissed by the trial Court and appeal against this judgment was also dismissed. However, the appeal filed before the Hon'ble High Court was allowed on the ground that the criminal case filed by the wife alleging that the husband and his parents demanded dowry, was found to be false for want of evidence. However, the appeal filed by the wife before Hon'ble the Supreme Court was allowed on the ground that the husband has failed to prove on record any mental cruelty by the wife before the trial Court and the Appellate Court as well. The High Court was held not justified in its conclusion. It was held that the difference between the parties are not of such magnitude that they could be granted divorce.

With respect to ***Kailash Deo's case (supra)***, this judgment is also not applicable to the facts of the present case, as in this case, the husband has not been able to prove the cruelty meted out to him by the wife.

The judgment of ***Smt. Piyasa Ghosh*** is also not applicable to the facts of the present case, as in that case the husband was granted divorce by the Court below on the ground that the wife lodged the complaint after the husband filed a petition seeking divorce from her. However, the Calcutta High Court allowed the appeal filed by the wife and held that

divorce granted is illegal, when there was just reason for wife to file complaint and such complaint is not established to be false.

In the present case, the wife has herself admitted that she levelled allegations that the husband had performed second marriage with one Anil Kumari. This allegations were found to be false. Further husband has been able to prove on record that the wife was constantly harassing her to live separately from the parents and she was insisting upon the husband to open his clinics in Jalandhar where the parents of the wife are living. It was the wife who left the matrimonial home, when she was in the family way. Despite this fact, the husband after the birth of child, visited village Hazara, District Jalandhar along with customary gifts, sweets, clothes etc and requested the parents of the wife to let her accompany him but her parents insisted upon separate residence and only then the appellant and the child would accompany him. Further, in the present case, it was the husband who filed a petition for Restitution of Conjugal Rights under the Hindu Marriage Act on 06.05.1992, which was decided on 21.03.1994. Despite passing of the decree of Restitution of Conjugal Rights, the wife failed to join the company of husband. The above grounds were sufficient enough to come to a conclusion that the marriage between the parties has irretrievable broken down. The husband has proved that he was treated with cruelty by the wife.

Keeping in view peculiar facts of the case, at this stage, it will not be possible to tell the parties to go for shared parenting. The daughter is staying happily with the appellant-wife. The marriage is also irretrievably broken down as the parties are staying separately since long. Further respondent-husband has led sufficient evidence before the Family Court to

show that the appellant-wife was irresponsible wife and she was cruel towards him and his family members.

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of ***Chandra Kala Trivedi vs. Dr. S.P. Trivedi, 1993 (4) SCC 232*** wherein Hon'ble the Supreme Court while considering a case where marriage was irretrievably broken down and held that in these cases, the decree of divorce can be granted where both the parties have levelled such allegations against each other that the marriage appears to be practically dead and the parties cannot live together.

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

17. Several decisions, as noted above, were cited by learned counsel for the appellant-wife to contend that even if marriage has broken down irretrievably decree of divorce cannot be passed. In all these cases it has been categorically held that in extreme cases the court can direct dissolution of marriage on the ground that the marriage had broken down irretrievably as

is clear from para 9 of Shyam Sunder case. The factual position in each of the other cases is also distinguishable. It was held that long absence of physical company cannot be a ground for divorce if the same was on account of the husband's conduct. In Shyam Sunder case it was noted that the husband was leading adulterous life and he cannot take advantage of his wife shunning his company. Though the High Court held by the impugned judgment that the said case was similar, it unfortunately failed to notice the relevant factual difference in the two cases. It is true that irretrievable breaking of marriage is not one of the statutory grounds on which court can direct dissolution of marriage, this Court has with a view to do complete justice and shorten the agony of the parties engaged in long- drawn legal battle, directed in those cases dissolution of marriage. But as noted in the said cases themselves, those were exceptional cases.

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

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

Further reference can be made to a judgment of this Court in a

case of ***Imlesh vs. Amit*** AIR 2014 (P&H) 89 wherein it has been held that where the wife files a false criminal complaint against the husband and his family members under Sections 406/498-A of IPC, which results in their acquittal, this act of the wife tantamount to mental cruelty and the husband would be entitled to a decree of divorce under Sections 13 (1) (ia) of the Act of 1955.

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

“62. Even at this stage, the appellant-wife does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the appellant-wife has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the appellant-wife is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again.

The High Court ought to have visualized that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.

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67. The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce

would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.

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

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

In the present case, the marriage between the parties has broken down irretrievably and there is no chance of their coming together, or living together again. Further, not to grant decree of divorce would be disastrous for the parties. The appellant-wife filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005, which was

dismissed for non-appearance of the appellant-wife. She wants to linger on the litigation.

Applying the ratio of the above mentioned judgments to the facts of the present case, the appeal is dismissed. However, we direct the respondent-husband to pay an amount of Rs.15 lacs to the appellant-wife. This exercise shall be completed within a period of three months from the date of passing of this order and thereafter, the respondent-husband shall inform this Court.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

G Arora

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