

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-M No.324 of 2017
Date of Decision: 17.04.2023

Major Sumit Joshi

... Appellant

Versus

Dr. Aditi Sharma

... Respondent

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

Argued by: Mr. Kanwar Yuvraj Singh, Advocate,
and Mr. Rajesh Kumar, Advocate,
for the appellant.

Mr. Raman Mahajan, Advocate,
for the respondent.

MANISHA BATRA, J.

1. Having lost his case of seeking dissolution of his marriage with the respondent-wife on the ground of cruelty in terms of Section 13 (1) (i-a) of the Hindu Marriage Act, 1955 (hereinafter to be mentioned as “the Act”) before the Additional District Judge, Panchkula, the husband has knocked at the door of this Court by filing the present appeal.

2. For the sake of convenience, the parties shall be referred to as per the nomenclature as given in the original petition as filed by the petitioner-husband.

3. The case as set up by the petitioner is that he got married with the respondent-wife on 29.11.2010 according to Hindu rites and ceremonies. A simple marriage was performed between the parties. There was no demand of dowry. Just after the marriage, the parties had gone to

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Mauritius for their honeymoon. The behaviour of the respondent was not normal since the very inception of their marital life and she acted in a strange manner at the airport itself while going to Mauritius by disappearing and on search being made by the petitioner, was found sitting in an isolated place. She argued and quarreled with the petitioner on trivial matters even on honeymoon. The parties started residing at their matrimonial house at Panchkula after their marriage. The house of parents of the respondent was situated nearby and she visited there almost every day without seeking consent from the petitioner or his parents. Her behaviour was secretive and rude. She did not render any help in performing domestic chores. She compelled the petitioner and his parents to serve everything to her in her bedroom. She used to make secretive talks on her cell phone and did not allow the petitioner and his family members to enter her room. In the month of March 2011, the petitioner who is an Army Officer was posted at Leh which was a Field posting. During that time, instead of staying at her matrimonial house, the respondent insisted for staying with her mother. She did not visit her matrimonial house in the absence of the petitioner at all. The petitioner had subsequently called her at Leh. The parties had gone abroad on their first Anniversary and on returning back, the respondent insisted to stay with her mother by making one pretext or the other and stayed there till September 2012. She joined the company of the petitioner after making lot of persuasions and pleadings by him. She had become pregnant and came back in January 2013. A female child was born to the parties on 07.08.2013. After discharge from the Command Hospital, Panchkula, the respondent instead of going to her matrimonial house, went

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to her parental house. She refused to join the company of the petitioner when he had been transferred to Bhopal and it was only after making many efforts that she had joined him there. While staying at Bhopal, the respondent caused embarrassment to the petitioner by making false and frivolous complaints against him. It was alleged that the mother of the respondent used to interfere in their matrimonial life thereby aggravating the situation. The petitioner while submitting that he could not lead a normal married life with the respondent, because of her behaviour, prayed for dissolution of marriage between them.

4. The respondent filed written statement taking various preliminary objections. It was submitted that the marriage of the parties was fixed through some matrimonial advertisement. The parents of the petitioner had concealed the fact that he was a short Service Commissioned Officer at that time and had represented that he was a Commissioned Officer with Indian Army having rank of Captain. It was alleged that the parents of the petitioner had raised demand of an amount of Rs.8 lacs for purchasing Honda City car besides other items. Their demands were fulfilled by widow mother of the respondent. The respondent, who had lost her father in an accident on 26.04.2009, yearned for a father's love and took delight in looking after her parents-in-law. She had remained docile, soft spoken and was well versed with domestic chores besides being a doctor. She left her internship midway at the time of her marriage. Her parents-in-law wanted a male child and were not happy when a female child was born to her. She had stayed at her mother's house till 40 days after her delivery on asking of petitioner and his parents. It was denied that she had ever misbehaved with

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the petitioner or his family members or relatives. It was alleged that as the petitioner was not getting permanent commission with the Army, therefore, his behaviour had become quite erratic and he used to feel irritated and disturbed. He used to even shout when the infant child cried. The respondent endeavoured to stay with him at every place of posting and even gave up her career as a doctor and pursued B.Ed. Course. At the time of karwa chauth festival in the year 2013, the petitioner had extended beatings to her without any fault. The behaviour of the petitioner was quite rude when after his posting at Bhopal, the respondent had gone to live there along with her daughter. The petitioner had closed the bank account which was in their joint name and had opened a separate joint account with his mother. He had started giving tough times to the respondent. He had gone to Mhow for three months course while she was staying at Bhopal and had left cheques of a very meagre amount of money. He did not come to Bhopal even on festivals due to which the respondent was constrained to come back to Panchkula but even her in-laws did not allow her to enter her matrimonial house. She was insulted by them. The petitioner had filed petition for divorce against her while she was living at Bhopal with her infant daughter. On 07.03.2015, he had come to Bhopal and had started throwing the personal belongings of the respondent out of his house and had directed her to leave his house in a condition when the daughter of the parties was diagnosed with the Pneumonia and was ill. The respondent was allowed to stay there only when she had brought these facts to the notice of superior officers of the petitioner. It was denied that she used to make any secretive calls on mobile phone or her behaviour was rude with the petitioner or his

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family members. While setting up a case of denial throughout, she claimed that she had never been disobedient towards the petitioner and his family members and had performed her household duties with commitment and dedication.

5. No rejoinder had been filed. On the pleadings of the parties, the learned trial Court framed the following issues vide order dated 06.08.2015:-

“1. Whether the petition is maintainable in the present form? OPP.

2. Whether the petitioner is entitled to decree of divorce on the ground of cruelty and desertion alleged against the respondent? OPR

3. Relief.”

6. The parties adduced oral as well as documentary evidence in support of their respective assertions. The petitioner himself appeared as PW-1 and examined his mother Smt. Suman Joshi as PW-2 whereas the respondent examined herself as RW-1 and her sister Anchal Bhatnagar as RW-2.

7. No rebuttal evidence had been produced.

8. On evaluation of the pleadings and evidence produced by the parties, the learned trial Court came to a finding that the petitioner-husband had not been able to establish his case against the wife and dismissed the petition.

9. Feeling aggrieved, the appellant-petitioner preferred the instant appeal.

10. It is submitted in the grounds of appeal and it was vehemently argued by learned counsel for the appellant that the impugned judgment and

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decree dated 22.11.2017 was liable to be set aside as the findings as given by learned trial Court were not sustainable in the eyes of law and were liable to be reversed. He argued that it was well proved on record that the respondent was a materialistic and ambitious person and had remained comfortable with him till her demands were fulfilled. The greedy mindset of the respondent was exposed from the fact that after filing of divorce petition by the petitioner, she had immediately moved an application with the Army authorities to claim maintenance and also filed an application under Section 24 of the Act though she was working in a renowned firm at that time. The learned trial Court failed to consider the fact that the respondent belonged to a dysfunctional family which was embroiled in legal litigation. Her father had another wife and daughter. The behaviour of the respondent was proved to be erratic. It was fully proved on record that she had failed to perform her matrimonial obligations and had treated the petitioner and his family members with utmost mental cruelty. Even after filing of the divorce petition by him, she had subjected him to mental cruelty by lodging frivolous complaints against him to his superior officers and thereby defaming him and maligning him in the Army though he had an excellent and outstanding record. He further argued that the respondent had now shifted to Canada with their daughter in the year 2019 and this subsequent event could not be ignored which proved that she with intent to harass him even more and to desert him, had done so. She had not even accepted offer of permanent alimony of Rs.50 lacs or a flat as made by him. All this proved that she did not want to live with him. He further argued that the parties had been staying separated from the last 8 years. Even otherwise, their marriage

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had been broken down completely and had become dead. While concluding his argument, learned counsel for the appellant urged that the impugned judgment was liable to be set aside, the appeal filed by him deserved to be accepted and the appellant deserved a decree of dissolution of marriage between the parties. To fortify his argument, learned counsel for the appellant placed reliance upon authorities cited as **V.Bhagat v. D.Bhagat**, (1994) 1 SCC 337; **Samar Ghosh v. Jaya Ghosh**, (2007) 4 SCC 511; **Naveen Kohli v. Neelu Kohli**, (2006) 4 SCC 558 & **Sandhya Rani v. Kalyanram Narayanan**, 1994 (Supplementary) 2 SCC 588.

11. Per contra, it was argued by learned counsel for the respondent that the findings given by learned trial Court were well reasoned and no ground had been made out to interfere with the same. He argued that the appellant had miserably failed to establish that the respondent had subjected him to any cruelty and rather it was he who was proved to have harassed the respondent since the very beginning of their marital life. He argued that the respondent was constrained to shift to Canada to seek her livelihood as the appellant had failed to provide any maintenance to their daughter and the respondent. She was still very much willing to live with the petitioner and could leave Canada. Hence, it was urged that there was no merit in the appeal and it was liable to be dismissed.

12. It will not be out of place to mention at the outset that before the learned trial Court and even before this Court, efforts were being made for effecting settlement between the parties. The parties had appeared before Mediation & Conciliation Centre of this Court. Joint and separate mediation sessions were held but unfortunately the same proved to be futile.

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13. The appellant-petitioner has sought dissolution of his marriage with the respondent mainly on the ground that he had been treated by her with mental cruelty. The expression “cruelty” has not been defined in the Act. It is, however, well settled that 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. In **A. Jayachandra v. Aneel Kaur**, (2005) 2 SCC 22, the Hon'ble Apex Court had observed that the question of mental cruelty has to be considered in the light of norms of marital ties of the particular society to which the parties belong, their social values, status and environment in which they live. Cruelty, includes mental cruelty, which falls within the purview of a matrimonial wrong. 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 **V.Bhagat's** case (Supra), the Apex Court had held that mental cruelty means 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 the other, must be of such a nature that the parties could not reasonably be expected to live together. Regard must be had to the social status, education level of the parties and the society they move in. In **Dr. N.G. Dastane v. S. Dastane**, (1975) 2 SCC 326, the Hon'ble Apex Court held that the cruelty for the purpose of Section 13 (1) (i-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable

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apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to be established by direct evidence. This is necessarily a matter of inference to be drawn from the facts and circumstances of the case. The feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In the instant case, the foundation of the case of cruelty as a matrimonial offence is based on the allegations made by the appellant-husband that right from the day after the marriage, the behaviour of the respondent-wife was not proper and she had committed such acts and conduct thereby causing mental cruelty to him. The pleas which were taken by him in his petition quoting instances of cruelty were with regard to her behaviour with his family members and himself and further that her behaviour was secretive and rude and that she used to stay at her parental house without seeking consent from his parents or himself. The learned trial Court observed that the appellant had failed to produce any clinching evidence on record with regard to the allegations as levelled by him as against the respondent and no substantial circumstance or evidence had come on record to conclude that the respondent used to treat him with physical or mental cruelty. In the petition filed by him, it was not pleaded by the petitioner that the respondent had subjected him to cruelty by filing any

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false and frivolous complaints against him and this plea had been taken by him during the course of leading evidence. He produced on record Ex.P-2 to show that the respondent had humiliated him by filing false complaints against him before his superior authorities. No doubt, filing false complaints before the superior officers of the husband with an intent to cause harm and damage to his reputation certainly amounts to an act of mental cruelty. However, on perusal of record, we are satisfied that no such material had been produced on record by the appellant which could prove that the respondent had filed complaint before his superior officers with such an intention. The instances as cited against the respondent were also resting upon bare oral statement of the appellant and his mother which could not be stated to be sufficient. However, during the course of arguments in this case, it has been vehemently argued by learned counsel for the appellant that the event subsequent to filing of this appeal by the appellant is required to be taken into consideration. He has pointed out that the respondent had left the country in the year 2019 and has settled in Canada with the daughter of the parties and is doing a job there and that there are no chances of her coming back and joining the appellant. He has also argued that the marriage between the parties has irretrievably broken down and hence urged that the appellant deserves to be given a decree of divorce in his favour as the fact that the parties are living separately from a sufficiently long time while making allegations against each other itself amounts to cruelty.

14. Now the question that arises for consideration is as to whether the long separation of the parties to a marriage amounts to cruelty. In

Satish Sithole v. Ganga, AIR 2008 SC 3093, the Hon'ble Apex Court had

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observed that living of parties to a marriage separately for a long time and making acrimonious allegations against each other amounted to cruelty and continuance of such marriage was a further act of cruelty. In **Samar Ghosh's** case (Supra), the Hon'ble Supreme Court had observed that no uniform standard could ever be laid down for guidance but some instances of human behaviour which might be relevant in dealing with the cases of “mental cruelty” could be enumerated. Several such instances were quoted and one of them was that where there has been a long period of continued separation, it might be fairly concluded that the matrimonial bond was beyond repair. In that case, the parties were living separately for a period of more than 16 years. It was observed that the marriage had become a fiction though supported by a legal tie and by refusing to sever that tie, the law in such cases, did not serve the sanctity of marriage; on the contrary, it showed scant regard for the feelings and emotions of the parties and in such like cases, it might lead to mental cruelty. The Hon'ble Apex Court further observed that the irresistible conclusion would be that the matrimonial bond had been ruptured beyond repair. In **Naveen Kohli's** case (Supra), the parties were living separately for more than 10 years. Civil as well as criminal proceedings were initiated by them against each other. The Hon'ble Apex Court had observed that once the parties had separated and the separation continued for a sufficient length of time and one of them has presented a petition for divorce, it could well be presumed that the marriage has broken down. It was further held that the Courts, no doubt, should seriously make an endeavour to reconcile the parties, yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. It was

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observed that the consequences of preservation in law of an unworkable marriage which has long ceased to be effective are bound to be a source of great misery for the parties. In **Sandhya Rani's** case (Supra), the Hon'ble Apex Court had observed that there was no justification for continuing with the marriage which had broken down irretrievably since the parties were living separately for last more than 3 years and there was no doubt in taking the stand that their marriage had broken down irretrievably and the Court had no option but to grant decree of divorce.

15. In the instant case, an important aspect of the matter which can be taken note of is that though it was not one of the grounds as taken in the Memorandum of Appeal that the subsequent act of respondent-wife was required to be taken into consideration but in our opinion, it needs no special emphasis to state that subsequent conduct of the husband/wife can be taken into consideration under certain circumstances. In this regard, we reply upon observations made by Hon'ble Apex Court in **A. Jayachandra's** case (Supra) wherein it was held that if acts subsequent to filing of the divorce petition can be looked into to infer condonation of aberrations, acts subsequent to the filing of the petition can be taken note of to show the pattern in the behaviour and conduct. In **Dr. (Mrs.) Malathi Ravi, M.D v. Dr. B.V . Ravi M.D**, (2014) 7 SCC 640, it was held that subsequent events which are established on the basis of non-disputed material brought on record can be taken into consideration. In **Sivasankaran v. Santhimeenal**, 2021 SCC OnLine SC 702, the Courts below did not find adequate material to come to the conclusion that the appellant was entitled to divorce on grounds of cruelty. However, the Hon'ble Apex Court observed that there

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were many subsequent circumstances which had arisen in the case which necessitated the examination of that aspect. It was observed that the act of the respondent after the trigger for divorce amounted to mental cruelty as she had resorted to filing multiple cases in Court against the appellant had made representation to the college authorities wherein the appellant was working and had sought disciplinary proceedings against him. It was held that these were episodes of further harassment by the respondent and continuing acts of respondent amounted to cruelty even if the same had not arisen as a cause prior to the institution of the petition. The conduct of respondent showed disintegration of marital unity and disintegration of the marriage. In the conspectus of all the facts, it was held that the ground of irretrievable breakdown of marriage and ground of cruelty on account of subsequent facts would favour the grant of decree of divorce in favour of the appellant. In view of this position of law and on taking note of the subsequent undisputed fact that during the pendency of this appeal which was filed in the year 2017, the respondent along with her minor daughter has migrated to Canada in the year 2019 and admittedly she is working as Pharma-co-vigilance Associate with one company there since May 2021. The appellant placed on record Annexure A-1 photocopy of the LinkedIn Profile of the respondent by moving an application for additional evidence. The respondent-wife has also filed a counter affidavit admitting therein that she has shifted to Canada but it is submitted by her that she has shifted there only to ensure livelihood for her daughter and for herself and is ready to leave Canada and is willing to join his company. The parties have been living separately since March 2015 i.e. for over a period of 8 years. There is

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total lack of any effort on part of either of them to stay together. The efforts to reunite them as made by trial Court and before the Mediation Centre of this Court have proved futile. They are not discharging their matrimonial obligations from the last 8 years. The separate living of parties for such a long time while making allegation against each other itself amounts to a further act of cruelty as held in **Satish Sithole's** case (Supra). No doubt, irretrievable breakdown of marriage by itself is not a ground provided under the Statute for seeking dissolution of marriage. However, it is well settled proposition of law that on taking note of entire material and evidence available on record, in appropriate cases, the Court may bring to an end the marriage so as not to prolong the agony of the parties. In **Chanderkala Trivedi (Smt.) v. Dr. S.P. Trivedi**, (1993) 4 SCC 232, it was held that a decree of divorce on the ground that the marriage had been irretrievably broken down can be granted in those cases where both the parties have levelled allegations against each other and the marriage appears to be practically dead. On perusal of record, it clearly appears that infact there is no possibility of any reconciliation. We are convinced that any further attempt at reconciliation will be futile. For all practical purposes, the marriage between parties has become totally dead. Taking into consideration the facts in its entirety and the failure of settlement between them either before the trial Court or this Court, we are of the view that the marriage has ceased to exist in substance and in reality. Living apart is a symbol indicating the negation of sharing. It is indication of disruption of essence of marriage. In the peculiar facts and circumstances of the case, it can reasonably be stated that the marriage between the parties is only in

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name and it has been wrecked beyond the hope of salvage. The marital knot between them has completely shattered. No fruitful purpose would be served by maintaining the matrimonial ties together. Hence, we are of the view that the marriage between the appellant and respondent has broken down irretrievably leaving this Court with no other option except to grant a decree of divorce. Hence, the appeal stands allowed. The judgment passed by learned trial Court is set aside and a decree of divorce by way of dissolution of marriage between the parties is hereby passed.

16. Before concluding, we are, however, inclined to say that that no permanent alimony has been granted to the respondent-wife by the Court below. It is revealed from the record of this appeal that during the pendency of this appeal as on 02.09.2022, the appellant-husband had offered to pay a sum of Rs.50 lacs towards permanent alimony for the respondent and her daughter. Subsequently on 09.09.2022, he offered to transfer one flat in Mohali in the name of his minor daughter. The said offer had not been accepted by the respondent who is admittedly working in Canada. In her sworn affidavit submitted in this Court on 06.02.2023, the respondent expressed willingness to live with her husband. In our opinion, her desire to live with her husband at this stage cannot be stated to be genuine when she has left for Canada for about 4 years and is living separately for more than 8 years. Having regard to the fact that the young girl child of the parties is living with the respondent and regard being had to her social status, in our view, the ends of justice would be met, if following directions are issued:-

- (i) The appellant-husband shall deposit a sum of Rs.60 lacs in favour of his daughter within a period of four months before

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the trial Court/its successor Court, while moving an application along with a copy of this order.

(ii) Under the superintendence of the concerned trial Court, the amount so deposited shall be kept in the form of a FDR in a Nationalized Bank in the joint name of the respondent-wife and the minor daughter of the parties. The concerned bank shall be intimated by the trial Court that the amount so deposited will not be withdrawn by the respondent till the minor daughter attains majority.

(iii) The respondent-wife will be able to withdraw quarterly interest accrued on the deposited amount and spend it on the education of her daughter.

(iv) After the daughter of the parties attains the age of majority, the joint account shall continue and the respondent as well as daughter of the parties would be at liberty to draw the amount for education and any other urgent need of the daughter.

17. Miscellaneous application(s), if any, also stand disposed of.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

17.04.2023
manju

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