

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-M-56-2017 (O&M)

Date of Decision: July 04, 2023

Ajay Kumar Bajpai

..... Appellant

Versus

Meenakshi Bajpai

..... Respondent

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

Present: Ms. Vijay Lakshmi, Advocate for the appellant.

Ms. Sinderjeet Kaur, Advocate and
Mr. R.S. Budhwar, Advocate for the respondent.

LISA GILL, J.

1. Appellant – husband has filed this appeal challenging judgment and decree dated 10.01.2017 passed by learned District Judge, Kurukshetra whereby petition under Section 13 of the Hindu Marriage Act (for short – ‘the Act’) filed by the present respondent – wife has been allowed.

2. Brief facts necessary for adjudication of the case are that respondent – wife filed petition under Section 13 of the Act seeking dissolution of her marriage with the present appellant solemnised on 17.11.2008 according to Hindu rites and ceremonies. It is pleaded that both

the parties cohabitated at Prem Nagar, Delhi after marriage for ten days and thereafter shifted to Kurukshetra as the wife was working at Kurukshetra University. They then cohabited at Kurukshetra in a rented house and a son was born on 04.10.2010 from this wedlock. It is pleaded that since beginning of marriage, husband behaved in an improper and abnormal manner with the wife by even proclaiming that it was an imperfect match and he was unable to live with her. Behaviour of the husband was stated to be rude and infact barbaric since inception of marriage as he was alleged to be addicted to wine, smack and other intoxicants. It is stated that after consumption thereof, he would physically abuse and insult the wife without any cause and allegations of cigarette buds being put to the body of wife are also raised. It is alleged that husband did not make any provision for day to day expenses of the wife and minor child. Allegations of illicit relations of the husband have also been raised.

3. It is further stated that the wife purchased a plot at Shanti Nagar, Thanesar in the year 2011 by herself arranging funds and from members of her parental family. House thereon was constructed by the wife after obtaining loan from the bank with instalments thereof being paid from her salary. It is stated that after shifting in the said house the husband started pressurising the wife to transfer the house to his name. On refusal, she was physically abused. Son of the wife from her first marriage was legally adopted by the husband on 18.11.2008. However, this son from her first marriage was also beaten and never given any facility or maintenance. Complaint to the police is also stated to have been filed by the wife on

account of physical abuse but the matter was compromised with intervention of relatives.

4. It is further pleaded that wife's mother retired from Kurukshetra University in August, 2013. Husband thereafter started pressurising the wife to obtain her share in the retiral benefits of her mother and that she was beaten on 19.11.2013 on account of the same with the husband subsequently leaving the house alongwith the minor son born from this wedlock between the parties without any information to the wife. Husband allegedly also took passports of the petitioner and their son from this marriage alongwith other important documents. It is alleged that husband was running a successful courier business at Delhi and was earning handsome amount of ₹2 lakhs per month and living a luxurious life possessing a flat at Vaishali, Ghaziabad where his brother and sister-in-law were residing. However, husband, it is stated, deserted the wife and refused to even give any maintenance whatsoever. Despite best efforts, husband did not resume cohabitation with the wife.

5. It is further stated that petition under Section 13 of the Act earlier filed by the wife was withdrawn by the wife in order to file petition under Section 13B of the Act when the husband recorded his statement that he was ready to seek divorce by mutual consent. Said petition under Section 13B of the Act was indeed filed and statements of the parties at first motion were recorded on 13.09.2014. However, husband on 03.04.2015 backed out from his previous statement and refused for divorce. Accordingly, present petition under Section 13 of the Act was again filed by the wife.

6. Appellant – husband on notice appeared and contested the petition while raising various preliminary objections. All allegations against him and family members on merits were denied. Dismissal of the petition was sought.

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

1. Whether the respondent had committed cruelty with petitioner, if so, whether she is entitled for a decree for dissolution of marriage by way of divorce? OPP
2. Whether the petition is not maintainable? OPR
3. Whether the petitioner has no cause of action for filing the present petition? OPR
4. Whether the petitioner is stopped from filing the present petition by her own act and conduct? OPR
5. Whether the petitioner has not come to the court with clean hands and has concealed the true and material facts from the courts, if so its effect? OPR
6. Relief.

8. Wife testified as PW1 and her mother testified as PW2 in order to substantiate the case. Husband testified as RW1. Another witness namely Balbir Sharma has also been examined as RW1. RW2, namely Sanjeev Kumar an employee of the SBI bank at Kurukshetra who produced the record of account of the wife from 02.03.2011 to 14.08.2013, was examined as well.

9. Learned trial Court on considering the evidence on record, facts and circumstances concluded that the wife had successfully proved her case

on the touchstone of preponderance of probabilities, consequently, her petition under Section 13 of the Act was allowed vide judgment and decree dated 10.01.2017. Aggrieved therefrom, present appeal has been filed by the husband.

10. Learned counsel for the appellant vehemently argued that appellant – husband has always been ready and willing to cohabit with his wife and that the learned trial Court has incorrectly passed the impugned judgment and decree dated 10.01.2017, without proper appreciation of the evidence on record. It is submitted that it was second marriage of both the parties and that appellant had afforded due love and affection to the wife and had also adopted her son from the first marriage. Plot in the name of wife was purchased in the year 2011 out of his own hard earned money and he also transferred the amount of Rs.9,80,000/- in the account of his wife on different occasions and house has been constructed thereon for her comfortable lifestyle. Deposit of money by the appellant in the wife's bank account is duly admitted by her but this fact has not been taken into account by the learned trial Court. Moreover, wife admitted in her cross examination that she had separated from her earlier husband as he had wanted to live with his parents but she did not wish for the same. Therefore, it is apparent that wife was trying to take advantage of her own wrong, thus, decree of divorce should not have been granted. It is, thus, prayed that this appeal be allowed. Judgment and decree dated 10.01.2017 be set aside with petition under Section 13 of the Act filed by the wife being dismissed throughout.

11. Learned counsel for the respondent while controverting the arguments as raised on behalf of the appellant submits that a well-reasoned and logical judgment has been passed by the learned trial Court after proper appreciation of the evidence on record. It is denied that there is any question of the wife taking advantage of her own wrongs and to the contrary conduct of the husband indicates that he was never serious about cohabiting with wife and is only interested in dragging the matter in order to cause harassment to the wife. It is, thus, prayed that this appeal be dismissed.

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

13. Factum of marriage being solemnised between the parties on 17.11.2008 and birth of son on 04.01.2010 is admitted by the parties. It is also a matter of record that it was the second marriage of the wife and she had one son from her previous marriage who was duly adopted by the husband. Parties have admittedly been living apart from each other since October 2013.

14. 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 the 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).”

15. 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."

16. 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.**

17. At the outset, it is to be noticed that the wife had earlier filed petition under Section 13 of the Act seeking divorce from the appellant – husband. Said petition was dismissed as withdrawn on 29.09.2014, in view of the statement of the husband also recorded on 29.09.2014 to the effect that he had compromised the matter with wife and they would file petition under Section 13B of the Act seeking dissolution of marriage by mutual consent. Said statement is available on record as Ex.P2. Copy of order dated 29.09.2014, vide which earlier petition under Section 13 of the Act filed by the wife, was dismissed as withdrawn is on record as Ex.P3.

18. Admittedly, petition under Section 13B of the Act was thereafter filed seeking divorce by way of mutual consent. Copy of statement of the husband at the time of recording of statements at second motion to the effect that he did not want to take divorce from the wife is on record as Ex.P5. Pursuant thereto, petition under Section 13B of the Act was dismissed on 03.04.2015 (Ex.P6). It is a matter of record that at the first instance, husband had recorded his statement at first motion, giving his

consent for dissolution of marriage by way of mutual consent. Wife's earlier petition under Section 13 of the Act was dismissed solely on account of the statement suffered by the husband to the effect that petition under Section 13B of the Act would be filed. This conduct of the husband by itself is sufficient to indicate cruel behaviour inasmuch as it is indicative of his intention to merely harass the wife. In case, appellant – husband was not intending to take divorce by mutual consent, there was no question of him earlier suffering a statement to this effect on 29.09.2014 in the proceedings under Section 13 of the Act initiated by the wife. Furthermore, wife has duly proved the allegations, as raised, by her on the basis of evidence on record.

19. Learned counsel for the appellant had referred to cross examination of PW1 and PW2 i.e. wife and her mother to urge a discrepancy therein regarding marriage between the parties being a love marriage or an arranged marriage. It was also argued that the mother (PW2) in regard to first marriage of the wife, stated that divorce had come around due to wish of the first husband to reside with his parents but the wife wanting separate residence. However, we find no merit in the argument that merely on this basis, entire case of the wife has to be discarded. That is so for the reason that said discrepancy and statement of PW2 are not sufficient to wash away specific allegations as raised by the wife which are duly proved by the evidence on record.

20. Averment on behalf of the husband that he has funded purchase of house in the name of wife is also not borne out from evidence on record.

Perusal of the record reveals that no such plea of purchase of house by funds

provided by the husband is available in the written statement filed by the husband. Neither is there any averment regarding transfer of money required for the purchase of plot and construction of the house in the account of wife. Learned trial Court has succinctly dealt with the plea of the husband that he had been regularly transferring money to the wife as under:-

“ The respondent has examined one Balbir Sharma, Officer, Oriental Bank of Commerce, Branch Office, Kurukshetra and also tendered the statement of account of Bank of Baroda and Corporation Bank but there is no evidence on the file as to any transfer of money from the account of the respondent to the account of the petitioner. The witnesses have not proved any such entry, which may show that the respondent is regularly giving money to the petitioner for their livelihood. He has not proved any specific entries by which he has given money to wife barring only nine entries which are also of nominal amount and the conduct of the respondent is clear from the fact that he has turned out his wife from the matrimonial home.”

21. We find no ground to differ. Another argument strenuously pressed in service was that no cruelty can be attributed to the husband as he had even gone to the extent of adopting the wife's child from her first marriage. Doubtlessly, husband had adopted the child from first marriage of the wife but that by itself is not sufficient to indicate that he did not indulge in behaviour as has been alleged. Adoption of said child by itself cannot wash away the allegations against him as duly proved on record and which clearly constitute 'cruelty' on his part towards the wife. It is to be noted at this stage that the appellant had not pressed issues No. 1 to 5, including issue

No. 4 i.e.,

“Whether petitioner (wife) is stopped from filing the present petitioner by her act and conduct”.

22. After careful consideration of the evidence on record facts and circumstances of the matter, we find that learned trial Court has correctly returned the findings on all the issues. The wife has been correctly held entitled to decree of divorce on account of cruelty at the hands of the appellant.

23. Learned counsel for the appellant is unable to point out any illegality, infirmity or irregularity in impugned judgment and decree dated 10.01.2017 passed by learned District Judge, Kurukshetra, which calls for interference by this Court.

24. No other argument has been addressed.

25. Present appeal is, accordingly, dismissed.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

July 04, 2023

rts

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