

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

**FAO-6255-2019 (O&M)
May 12, 2023**

Sneh Lata

...Appellant

Versus

Devender

... Respondent

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

Present: Mr. Yashveer Kharb, Advocate
for the appellant.

Respondent proceeded *ex parte*
vide order dated 14.02.2023.

RITU TAGORE, J

1. Being aggrieved of dismissal of her petition under Section 13 (1) (ia) of the Hindu Marriage Act 1955 (hereinafter to be referred as 'the Act'), appellant-wife has filed this appeal, seeking setting aside of judgment and decree dated 19.07.2019 passed by learned Additional Principal Judge, Family Court, Sonapat (hereinafter to be referred as the 'Family Court'), and grant of decree of divorce on ground of 'cruelty'.

2. For the sake of convenience, parties are being referred to as per their original nomenclature as given in the petition before the learned Family Court.

3. Facts necessary for adjudication are that petitioner-wife (present appellant) filed a petition under Section 13 of the Act for dissolution of marriage by decree of divorce pleading therein that marriage between the parties to the *lis* was solemnized on 17.06.1999 under Hindu rites and ceremonies at village Gagsina, District Karnal and two children were born from the wedlock.

4. It is claimed by the petitioner that sufficient dowry, beyond her financial capacity was given by her widowed mother to the respondent and his family members at the time of their marriage, but they pressurized her to bring a motorcycle and cash from her parental home. Her pleas of financial incapability of her mother to fulfill their additional demand of dowry fell on deaf ears of the respondent and his family members; who subjected her to many atrocities and humiliation, and even ousted her from the matrimonial home on many occasions for their lust of obtaining more dowry.

5. It is petitioner's case that on *Pilia* ceremony after the birth of a son, her mother on demand of respondent gave several gifts and ₹50,000/- cash for purchase of a motorcycle; even then, the respondent and his family members insulted her family for not giving gifts as per the standard suited to them. *Contrarily*, respondent wasted ₹50,000/- on consumption of liquor etc. On another occasion, in the month of January 2001, respondent and his family members pressurized the petitioner to bring ₹1 lakh and a motorcycle, and on expressing her inability to fulfill their illegal demands, respondent and his family members manhandled her, gave severe beatings and also tried to kill her by burning her alive by pouring kerosene oil on her. Somehow, she managed to save herself and came to her parental home and narrated all her woes to her mother, who assured to take up the issue with respondent and his family members and request them not to raise illegal demands and treat her in a respectful manner.

6. Petitioner averred that respondent is a property dealer and also has more than 3 acres of agricultural land in his name but he has wasted all his earnings on bad habit of consuming liquor. She tolerated unbecoming behaviour of respondent and his family members, hoping for a change for the better in her circumstances but in vain; and her life became more painful after the birth of a

daughter in the year 2003. Petitioner alleged that in 2010 respondent drove her out from the matrimonial home along with both the minor children after subjecting her to beatings. She made a representation to Women Cell, Karnal, whereupon respondent before the police gave an assurance to maintain her with love and affection, and thereafter brought her back to the matrimonial home.

7. Reciting further instances of cruelty, the petitioner stated that she started working in Jain Senior Secondary School, Ganaur for the better future of her family and minor children but, respondent, on instigation of his other family members started pressurizing her to leave her job. On 04.08.2013, in the evening, she was beaten by the respondent and his family members necessitating her to take shelter at her mother's house. Again on 11.08.2013, respondent not only manhandled her but also her mother, and forced her mother to transfer one acre of land in his name to let the petitioner to live in peace.

8. On 17.08.2013, when petitioner was heading to her school to attend her duty, respondent assaulted her near Railway Station, Ganaur and threatened to eliminate her if she dared to go for her work. Again, on 21.08.2013, when she was going to her school to collect some documents, respondent chased her in an auto and beat her. She informed the incident to her mother and her aunt and took treatment from Civil Hospital, Panipat and was also medico-legally examined. She filed a petition under Section 12 of the Domestic Violence Act in Court of Area Magistrate, Panipat and respondent by way of his affidavit gave an assurance to pay ₹5,000/- p.m. as maintenance for her and their children and also promised not to interfere in her life, in view thereof she withdrew her petition but respondent did not honour his undertaking. It is alleged that since August 2013, petitioner along with her minor children, has been living separately from respondent, who has refused and neglected to maintain them, thereby, constraining her to file a petition under Section 125

Cr.P.C. Petitioner pleaded that in the given circumstances, there is no hope of restitution of matrimonial ties between her and the respondent. Also, she apprehends threat to her life and to her minor children at the hands of respondent. With the above material averments, petitioner made a prayer to dissolve her marriage with the respondent.

9. Upon notice, respondent-husband appeared before the Court, filed a written statement and admitted his relationship with the petitioner as his legally wedded wife and the birth of two children from their wedlock. The respondent pleaded that a simple marriage with no dowry was performed by parents of the petitioner. He denied the allegations of demand of motorcycle, cash from petitioner or her parents; or subjecting her to cruelty or ousting her from the matrimonial home in relation thereto. By way of counter, he pleaded to have maintained the petitioner with love, affection and dignity from the very inception of their marriage. Also, pleaded that he tried to provide all necessary facilities and amenities of life to petitioner and children. Respondent refuted that petitioner or her mother ever gave any amount of ₹50,000/- or that he squandered it on liquor, rather claimed himself to be a teetotaler. He also denied all the incidences of beatings levelled by the petitioner. On the contrary, pleaded that petitioner is guilty of wrongful acts and a non-cooperative attitude towards him and subjected him to extreme mental cruelty; and dragged him into unnecessary litigation and got registered a false criminal case bearing FIR No.256/17 under Sections 376-B, 341, 506 of IPC at P.S. Gharaunda against him; subsequently, he was found innocent and the said FIR against him was cancelled. It is alleged by the respondent that petitioner got him kidnapped with the help of her brother and an accomplice with an intent to confine him; he got registered a criminal case bearing FIR No.285/17 under Sections 323, 365, 452, 506, 34 of IPC at P.S. Ganaur but he was threatened and pressurized to

withdraw the aforesaid case. Respondent also pleaded that petitioner always pressurized him to separate from his parents and to maintain his matrimonial life and peace in the family, he agreed to her illegal demands and purchased a house in her name and shifted to Ganaur; and gave all love, affection and respect for 18 years and also invested his entire wherewithal to enable the petitioner to stand on her own legs and motivated her to complete her M.A. and B.Ed courses, as a result of which she became a Lecturer and secured a job in Jain Girls College, Ganaur. He denounced the allegations of treating the petitioner with cruelty and ousting her from the matrimonial home on demand of dowry or forcing her to give up her work; instead pleaded that he funded her study expenses and has no concern with her job. The respondent asserted that petitioner left his society at her own volition at the time when he was in an acute need of financial, emotional and social support from his spouse. He denied to be a property dealer by profession or having any agricultural land in his name. He, rather pleaded meagre earnings from labour work, and abundant earnings of petitioner from her salary and tuition work. Respondent alleged that petitioner is hell bent to spoil her life and that of the children and has never tried to restore conjugal relations with him; whereas he has always been willing to maintain the petitioner and children with love and affection and meet all necessary expenses for their survival. With the aforesaid material averments, respondent prayed for dismissal of petition as being without merits.

10. No rejoinder was filed by petitioner. On the basis of above averments, learned Family Court framed following issues for consideration:-

1. *Whether the petitioner is entitled for a decree of divorce on the grounds mentioned in the petition, as alleged? OPP.*
2. *Relief.*

11. In order to prove her case, petitioner herself stepped in the witness box as PW-1 and substantiated her version as set out in the petition. She narrated about commission of various acts of matrimonial cruelty and domestic violence to her by respondent on demand of dowry along with various instances of his cruel behaviour and misconduct. Mother of the petitioner, Smt. Krishna Devi, appeared as (PW-2) and spoke in favour of her daughter, testifying that her daughter was subjected to cruelty, both mental and physical by respondent and his family members qua demand of dowry. Petitioner in support of her version also tendered documentary evidence i.e. copy of FIR No.285 dated 26.05.2017 (Mark-A); copy of MLR of Sneha Lata dated 21.08.2013 (Mark-B/Exh.PW-1/B); copy of FIR No.256 dated 11.05.2017 (Exh.P-1); copy of FIR No.124 dated 14.12.2016 (Exh.P-2); copy of MLR of Sneha Lata dated 03.05.2017 (Exh.P-3); copy of receipt issued from Chief Minister Office regarding registration of representation of the petitioner (Exh.P-4) and copy of complaint moved by the petitioner to Superintendent of Police dated 06.12.2016 (Exh.P-5).

12. On the other hand, respondent-husband, Devender appeared as RW-1 and denied allegations of petitioner in entirety; rather deposed that it is the petitioner who caused cruelty to him by leaving the matrimonial home without any reasonable cause and by filing false cases against him. In support of his version, he tendered in evidence copy of report under Section 173 Cr.P.C. (Exh.D-1).

13. After appreciating and evaluating evidence led by the parties, learned Family Court returned the finding that petitioner did not come to the Court with clean hands; her version that she was subjected to cruelty is not supported by any independent witness from the neighbourhood and the documentary evidence i.e. MLR etc.; various instances of cruelty do not

disclose any specific date and time. Accordingly, issue No.1 was decided against the petitioner by observing that the petitioner failed to prove the ground of cruelty, as alleged in the petition by bringing any cogent and reliable evidence on record. Petition was consequently dismissed.

14. Learned counsel for petitioner contended that impugned judgment and decree dated 19.07.2019 passed by learned Family Court, dismissing the petition suffers from infirmities and conclusions so drawn by the Court are contrary to the material placed on record. It was stated that petitioner (PW-1) categorically supported each of her allegations contained in the petition and specifically deposed that during her stay in the matrimonial home, respondent and his family members treated her with utmost cruelty by repeatedly subjecting her to physical abuse and even tried to kill her by burning her alive by pouring kerosene oil in order to coerce her into fulfilling their demands for motorcycle and cash in shape of dowry, also ousted her and minor children several times from the matrimonial home and refused to keep and maintain them. Learned counsel further submitted that misconduct on part of the respondent is evinced from the fact that he did not fulfill his undertaking to provide maintenance to the petitioner and further, by not relenting from his cruel behaviour towards the petitioner. It was stated by learned counsel that Family Court wrongly rejected the testimonial account of the petitioner (PW-1) and her mother (PW-2), on surmises and conjectures, which in fact received support not only from documentary evidence led on record by the petitioner but also from the admissions of respondent about his estranged and litigious relationship with the petitioner and their living separately for long. Learned counsel stated that learned Family Court erred in perceiving and concluding such acrimonious and caustic relations between the couple as an ordinary wear and tear of matrimony. It is stated that unreasonable and irresponsible behavior of

the respondent can be gauged from the fact that he has not bothered to even appear in the present proceedings despite service. He is also not depositing any maintenance towards to the petitioner and children. It is submitted that non-payment of maintenance to wife and children, beating and driving out wife along with minor children from the matrimonial home on demand of dowry and further willful absence of the husband in the matrimonial proceedings pending against him are the instances of cruelty by the husband to the wife.

15. Finally, learned counsel for the petitioner stated that the parties have been living separately for more than ten years and there is no possibility of revival of their relationship. Therefore, in given circumstance, dissolution of marriage will help and enable the parties to live peacefully and lead their respective lives with dignity. Grant of decree of divorce by setting aside impugned judgment and decree dated 19.07.2019 passed by learned Family Court was prayed for.

16. We have heard learned counsel for petitioner and have gone through the record with his assistance.

17. Since the petitioner has sought divorce on the ground of 'cruelty', at this stage, it is desirable to go through the provisions of Section 13 (1) (ia) of the Act, which provides that a marriage can be dissolved by a decree of divorce, on a petition presented either by husband or the wife, on ground that other party has, after solemnization of the marriage, treated the petitioner with cruelty.

18. In fact, what constitutes 'cruelty' in a marriage is not possible to define. Hon'ble the Supreme Court and this High Court in number of decisions have acknowledged the aforesaid fact and held that 'cruelty' in a marriage is to be determined in the facts and circumstances of each case. In '**Praveen Mehta v. Inderjit Mehta**' 2002 (3) RCR (Civil) 529 Hon'ble the Supreme Court very

elaborately analyzed the expression 'cruelty' as a ground of divorce under the Act. The relevant portion thereof reads thus:-

"Under the statutory provision cruelty includes both physical and mental cruelty. 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'.

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21. Cruelty for the purpose of Section 13(1)(ia) is to be taken as a behaviour by one spouse towards the other which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other."

In **'A. Jayachandra vs. Aneel Kaur' (2005) 1 R.C.R. (Civil) 309**

regarding 'cruelty', Hon'ble the Supreme Court carved out the following points :-

"(1) Cruelty can be physical or mental, intentional or unintentional - 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 - It may be words, gestures or by mere silence, violent or non-violent.

(2) Cruelty should be willful 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.

(3) Proof beyond doubt, as in criminal trials is not required to prove cruelty.

(4) 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 - For proof of mental cruelty Court has to find out nature of cruel treatment, impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other.

(5) There may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal - Then the impact or injurious effect on the other spouse need not be enquired into or considered. AIR 1988 Supreme Court 121 relied.

(6) Whether the conduct of a spouse amounted to cruelty has to be considered in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions.

(7) Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty.

(8) The Courts do not have to deal with ideal husbands and ideal wives - It has to deal with particular man and woman before it - The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court. AIR 1975 Supreme Court 1534 relied."

19. To determine the degree of cruelty allegedly inflicted upon spouse, same would have to be inferred from the consequences of the act and not from the act alone. Cruelty is a course of conduct which can adversely affect the other spouse. Though, no uniform yardstick can be laid down for construing cruelty. While dealing in the case of **Samar Ghosh vs. Jaya Ghosh 2007 (4)**

SCC 511, Hon'ble the Supreme Court deliberated upon the concept of 'cruelty' and summed up by setting out illustrative cases as under:-

"85. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) *Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.*

(viii) *The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.*

(ix) *Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.*

(x) *The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.*

(xi) *If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.*

(xii) *Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.*

(xiii) *Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.*

(xiv) *Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie,*

the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

Yet again, in **'Ravi Kumar vs. Julmi Devi' (2010) 4 SCC 476,**

Hon'ble the Supreme Court observed as under:-

"18. It may be true that there is no definition of cruelty under the said Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behavior which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, some time it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty."

20. In the light of jurisprudence evolved concerning the matrimonial offence of 'cruelty', we are of the firm view that learned Family Court has returned incorrect findings, for the reasons detailed and discussed below.

21. From the facts, it emerges that relationship between the parties and birth of two children from the wedlock is not in dispute. It is also not disputed by the respondent that petitioner alongwith minor children is living separately from him. Respondent in his cross-examination has admitted that he is residing in the house which is in the name of petitioner. He also admitted that petitioner is living separately from him since 2015 (though petitioner has alleged separation from 2013). Nonetheless, fact remains that both are not enjoying their nuptial togetherness since long. The petitioner filed the present petition in November, 2016. From the statement of the parties, it is made out that they have registered criminal cases against each other. Respondent admitted that

three criminal cases are pending against him filed by the petitioner. On the other hand, petitioner has also stated that respondent got registered a criminal case against his cousin and others. Both respondent and petitioner have admitted that they had never filed any petition under Section 9 of the Act against each other asking for restitution of conjugal rights. Though, both of them have deposed that *Panchayats* were convened to resolve the matter but they yielded no results. Copies of FIRs (Exh.P-1, Exh.P-2) and copy of report under Section 173 Cr.P.C. (Exh.D-1) placed on record by the parties suggests that the acrimony between the parties have escalated with the passage of time leading to filing of criminal cases against each other.

22. When there are routine incidents of cruelty, beating etc. in a domestic relationship, it is not possible for the victim partner (herein the wife-petitioner) to remember each and every date of such episodes. In the present case, petitioner has given the details of some of the incidents when she was subjected to beatings, maltreatment by the respondent and his family members. It is often times experienced that wife tends to overlook and forget some bad moments/experiences in the matrimony with her husband, in-laws and other family members, in order to save her matrimonial life and in a hope that with passage of time, differences may be sorted out between her, her husband and other family members. In the present case, petitioner (PW-1) has deposed that she tolerated all the inhuman treatment and atrocities given to her in the matrimonial home, compromised the matter with the respondent in proceedings under the Domestic Violence Act, 2005 and also convened meetings to save her married life but yielded no result. There is nothing on record to doubt her version on this account. The mother of the petitioner (PW-2) has duly supported the petitioner's case. In the circumstances, giving no complaint to the police when respondent and his family members tried to kill her by pouring kerosene

oil, suggests that petitioner never wanted to blow up the issue and wanted to solve the matrimonial issue with a cool mind and endurance. Likewise, if petitioner did not collect medical record of some of the incidents of beatings given to her by the respondent and his family members, this again does not make her version unreliable. It is commonly observed that in such like matrimonial or family disputes, a partner in a matrimony invariably does not collect evidence unless he or she plans to use it against the other later on, for his or her advantage. In the present case, it has come on record that petitioner has compromised the matter with respondent, suggesting that she wanted to settle the dispute with respondent. Further, a woman, who is enjoying cordial relations in her matrimonial home with her husband and other family members, would be the last person to leave them. Learned Family Court thus, to our mind failed to assess the testimony of the petitioner in correct prospective on the touch stone of probability and ordinary course of human conduct and nature.

23. The statement of petitioner regarding incident of physical abuse on 21.08.2013 and the MLR (Exh.PW-1/B/ Mark-B) was discarded by the Family Court on technical aspect by observing that the time 10.30 a.m. recorded in the aforesaid MLR does not match with school opening timings which is around 9 a.m. It is a settled proposition of law that civil matters are to be tested on the touchstone of preponderance of probabilities than beyond the shadow of reasonable doubt as required in criminal case. In '*Smt. Mayadevi vs. Jagdish Prasad*' 2007AIR(SC) 1426, it was held '*the concept of 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.*'

24. Learned Family Court refused to place reliance on the oral account of petitioner on the premise that it has not received support from any person

from the neighbourhood. To our mind, said approach of the Court was incorrect; firstly, no person from the neighbourhood would like to meddle in private and intense family/matrimonial disputes; secondly, in such matters, the parties, their relatives or members of the family are the best witnesses to speak on the facts and circumstances prevailing in the family having personal knowledge of the same. In the present case, mother of petitioner has come and deposed in favour of her daughter by reaffirming the facts of the petition. A mother-in-law would not normally speak against her son-in-law unless there are serious disputes and concerns about well being and safety of her daughter. Similarly, a wife would not speak against her husband or her in-laws unless she is compelled to do so while being well aware that any such false allegation would affect her relationship in the matrimonial home.

25. Petitioner (PW-1) and her mother (PW-2) have admitted that petitioner completed her studies and pursued B.Ed and M.A and joined teaching profession after her marriage. Aforesaid admissions do not go to erase the allegations of harassment and cruelty made by the respondent against the petitioner. Had respondent been a caring and respectful husband, there would have been no occasion for the petitioner to level allegations of matrimonial misconduct against him. To the contrary, statement of respondent that petitioner left his company when he was in need of financial help and his discontentment over the petitioner leaving her job have gone to probabalise the version of petitioner that she was subjected to cruelty on demand of money and motorcycle. It further lends credence to the version of the petitioner that she was subjected to cruelty on demand of money and that her mother bore the expenses of her studies.

26. Admission made by the mother of the petitioner (PW-2) that respondent got sale deed of the house registered in the name of petitioner, and

further her failure to give the details of the seller and the amount paid to him (seller), again does not establish that respondent had purchased the house in the name of the petitioner with his own funds in particular when respondent has taken the plea of having insufficient financial resources. The aforesaid circumstance makes averments of the petitioner more probable that her mother had financially helped her in purchasing the house. It is a matter of record that respondent is residing in the said house and petitioner along with her minor children is residing in the house of her mother. Family Court again fell in error while not appreciating the cogent instances of cruelty raised by the petitioner in the light of above circumstances.

27. Learned Family Court discarded version of the petitioner on the ground that she in her cross-examination has admitted that she started residing in a rented accommodation in the year 2003-2004, therefore her allegation of being subjected to cruelty by the respondent was taken to be false. We are of the view that the learned Family Court misconstrued the evidence of the parties on the aforesaid aspect because the respondent has specifically deposed that petitioner left the matrimonial home in 2015, whereas petitioner deposed that she left in 2013. Be that as it may, admission of respondent shows that parties lived together till 2013, so her allegations that she was subjected to cruelty by the respondent in the matrimonial home, should have been considered by learned Family Court.

28. As per the discussion and inferences drawn from the evidence, allegations of the petitioner that respondent and his family members subjected her to repeated acts of cruelty and even attempted to kill her by pouring kerosene oil upon her on demand of money and motorcycle, appears more probable. The charged conduct of 'cruelty' as made out by the petitioner against the respondent must have impacted her mind and caused serious apprehension

about safety to her life and limb while living in the society of the respondent, thereby giving reasonable cause to be away from his company. In 'Smt. Savitri Pandey vs. Judge, Family Court, Allahabad' 2004(3) R.C.R. (Criminal) 160, it was held that *'wife is tortured by her husband for demand of dowry or she has reasonable apprehension arising from the conduct of the husband that she is likely to be physically harmed due to persistent demand of dowry by her husband, parents or relations, such an apprehension also would be manifestly a reasonable justification for wife's refusal to live with her husband.'* In 'Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan & Anr., (1981) 4 SCC 250', the Hon'ble Apex Court has observed that *'it is a course of conduct of one spouse which adversely affects the other spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Mens rea is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or willful ill-treatment'*.

29. Furthermore from the record, it emerges that both the parties to the *lis* are living separately for the last 9-10 years and neither of them has made any attempt to restore their conjugal relationship either on their own volition or through the assistance of Court by filing petition under Section 9 of the Act. It suggests that both are not willing to continue their matrimonial relationship. In given circumstances, the statement of respondent before the learned Family Court, that he is still ready and willing to live with petitioner does not appear to be genuine. Still further, his conduct of not contesting the present appeal again

reflects his unwillingness to restore matrimonial relations and maintain his family.

30. Keeping in view the entire facts and circumstances, it is clear that relationship between the parties has come to such phase there seems no possibility of them living together. The litigation between the parties and long separation of ten years as now, has created an unbridgeable distance between the two. Given the circumstances, refusal to sever the matrimonial bond between the parties would certainly lead to increased acrimony between them and cause of incessant cruelty to both of them.

31. Hon'ble the Supreme Court in 'K. Srinivas Rao Versus D.A. Deepa' 2013(2) RCR (Civil) 232, held that '*where marriage is beyond repair on account of bitterness created by acts of the husband or the wife or the both, a marriage which is dead for all purposes, cannot be revived by the court's verdict, if the parties are not willing.*'

32. In a recent verdict in 'Shri Rakesh Raman vs. Smt. Kavita' in Civil Appeal No.2012 of 2013 decided on april 26, 2023, Hon'ble the Supreme Court observed that 'long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and existing bitterness between the married couple has to be read as 'cruelty' under Section 13 (1) (ia) of the 1955 Act.'

33. Keeping in view the above said discussion and peculiar facts and circumstances of the present case, we find impugned judgment and decree dated 19.07.2019 passed by learned Additional Principal Judge, Family Court, Sonapat to be unsustainable. Finding returned by learned Family Court is set aside. Issue No.1 is decided in favour of the petitioner and against the respondent-husband.

34. The petitioner has qualification of M.A. B.Ed. She has also worked as lecturer in a college. Two children, a girl and a boy, out of wedlock are living under the care and custody of the petitioner, who is shouldering their responsibility. The respondent is living in the house, which is registered in the name of the petitioner. No evidence has come on record to show that respondent is physically infirm and not in a position to earn. Respondent deposing as RW-1 (before the learned Family Court) has admitted that he is doing labour work. He has not contested the instant appeal, so, at this stage, there is nothing on record before us to assume that he is giving any maintenance to the petitioner and his children for their livelihood. It is asserted on behalf of the petitioner/appellant that respondent is not providing any maintenance. Keeping in view ever growing responsibilities and expenses of the children, expenses on self maintenance of the petitioner, cost of living in present and future, and further with hope that petitioner in future may also take some job/work commensurate with her qualification and experience as a teacher, and assuming the income of the respondent equivalent to a daily wage, he is directed to deposit an amount of Rs.6,00,000/- (Rupees Six lakhs) as permanent alimony to the petitioner-wife, to be payable by the respondent within two months from the date of passing of this judgment and deposit with learned Family Court, Sonapat. The same be released to appellant on furnishing adequate proof of identity.

35. As per the discussion made hereinabove, the judgment and decree dated 19.07.2019 passed by learned Additional Principal Judge, Family Court, Sonapat, is hereby set aside and petition under Section 13 (i) (ia) filed by the petitioner/appellant is allowed and decree of divorce is hereby granted in favour of the appellant-wife (Sneh Lata) and against respondent (Devender) and their marriage hereby stands dissolved.

36. Appeal is accordingly disposed of in the above terms. No order as to cost. Decree sheet be drawn accordingly.
37. Pending miscellaneous applications, if any, is/are disposed of accordingly.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

May , 2023

Manpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No