

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

**FAO-5037-2022 (O&M)
Date of Decision: 31.01.2023**

SUKHWINDER SINGH

..... Appellant(s)

&

HARPREET KAUR

..... Respondent(s)

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

Present: Mr. Rishav Jain, Advocate
for the appellant.

LISA GILL, J.

Appellant has filed this appeal challenging judgment and decree dated 14.10.2022, passed by learned Family Court, Sangrur, whereby petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act), filed by the respondent-wife, seeking dissolution of her marriage with the appellant-husband, has been allowed.

Brief facts necessary for adjudication of the matter are that the petition under Section 13 of the Act, seeking a decree of divorce was filed by the respondent-wife. It is pleaded therein that marriage of the parties was solemnized on 20.07.2003 as per Sikh rites at Gurudwara Sahib, village Majha, Tehsil Bhawanigarh, District Sangrur. Parties cohabited as husband and wife at the matrimonial home at village Bhattian Khurd. Two children were born out of the said wedlock i.e. a daughter on 18.09.2004 and a son on 30.06.2009. It is alleged that the appellant-husband and his family

members started maltreating and misbehaving with the wife (petitioner before the learned Family Court) after marriage. It is pleaded that the husband used to quarrel on trivial matters and demanded dowry articles including a car. When the wife expressed her inability to fulfill their demands, she was allegedly beaten mercilessly and subjected to starvation as well. It is alleged that the husband even tried to strangle the wife once. The conditions ultimately, it is stated drove the wife to thoughts of committing suicide. However, the thought of the plight of her grand-mother, who had arranged her marriage and incurred expenses thereof after death of the mother of the wife, helped her to pull herself together. It is further alleged that after birth of the daughter, behavior of the husband as well as his family members (in-laws of the wife) became even more cruel.

Mother-in-law of the wife is alleged to have pressurized her to get a share in the property from her parents as mother of the wife had already died and her property was yet to be distributed amongst the legal heirs. It is pleaded that though the attitude of the husband and his family members was cruel and inhuman right from inception of marriage but she tolerated all atrocities with the hope that good sense would prevail especially after the birth of her two children. However, the same did not happen. The husband, it is stated, was addicted to alcohol and used to sell valuable articles, clothes and gold ornaments, which had been given to the wife by her grand-mother at the time of her marriage. It is further pleaded that various Panchayats were convened for rehabilitation of the wife at her matrimonial home wherein the husband accepted his guilt and assured not to harass his wife. However, in the month of June, 2018 the wife, it is pleaded, was turned out of the matrimonial home alongwith both the minor children

and since then she is residing separately at her parental home. The children are stated to be residing with the mother. The husband, it is pleaded, made no attempt to get back his wife and children to the matrimonial home and neither did he give any maintenance whereas he was working as an electrician and also was engaged in the business of sale of milk besides being the owner of agricultural land. The wife, therefore, sought a decree of divorce on the ground of cruelty and desertion.

Present appellant-husband appeared upon notice and filed a reply taking various legal objections including that of the wife not coming to the Court with clean hands and having concealed material facts. It is stated on merits that the wife was not residing at the given address but at Patiala alongwith minor children and that the husband was ready and willing to cohabit with his wife alongwith the minor children. It is stated that marriage was solemnized in a simple manner with no dowry articles being given or demanded as both the parties belong to poor families. All allegations regarding maltreatment, abusive language, harassment by the husband and his family members were specifically denied. The wife on the other hand is alleged to have demanded separate accommodation away from the family members and that she neglected house-hold chores and she used derogatory words towards her mother-in-law i.e. mother of the husband. It is further stated that the wife kept raising demands on every possible occasions and would waste hard-earned money of the respondent. It is stated that the husband made numerous efforts to get back the wife and the minor children but she herself refused to join his company. Dismissal of the divorce petition was sought.

Following issues were framed from the pleadings of the parties:-

1. Whether respondent treated the petitioner with cruelty and petitioner is entitled for decree of divorce? OPP
2. Whether respondent deserted the petitioner without any reasonable cause? OPP
3. Whether present petition is not maintainable? OPR
4. Relief.

The wife in order to prove her case stepped in the witness box as PW-1. Her sister was examined as PW-2 and a cousin brother examined as PW-3.

Appellant-husband, however, did not step in the witness box neither examined any witness despite availing several opportunities and ultimately evidence of the husband was closed by order. Learned Family Court while considering the evidence on record concluded that the wife is entitled to decree of divorce on the ground of cruelty though desertion it is held, was not proved. Aggrieved therefrom present appeal has been filed by the husband.

Learned counsel for the appellant vehemently argues that the learned Family Court, Sangrur has proceeded on the basis of conjectures and surmises to allow the petition under Section 13 of the Act, filed by the respondent-wife. It is contended that vague and general allegations have been raised by the wife in her petition, which in any case cannot form the basis of a decree of divorce. It is further argued that once the ground of desertion as taken by the wife was not proved, it is apparent that false and incorrect grounds have been raised by the wife. Cruelty on the basis of

evidence on record, it is stated, is not proved in any manner. In fact, the appellant-husband tried to fulfill all demands of the wife. He is stated to be a poor electrician, who despite his best efforts failed to fulfill her unreasonable demands, due to which she has withdrawn from his company without any reasonable cause. The appellant, it is submitted, seeks to resume matrimonial ties with his wife. It is, thus, prayed that impugned judgment and decree dated 14.10.2022, passed by learned Family Court, Sangrur, be set aside.

We have heard learned counsel for the appellant and have gone through the photocopy of the record produced in Court today by learned counsel for the appellant.

Factum of solemnization of marriage between the appellant and the respondent on 20.07.2003 and birth of two children on 18.09.2004 and 30.06.2009 is a matter of record. It is affirmed that both the children have been and are still residing with the respondent-mother and the parties have been living separately since June, 2018. It is relevant to note at this stage that appellant-husband did not step in the witness box and neither was any evidence led by him to substantiate his pleas or to rebut the version of the petitioner. It is a matter of record that various opportunities were afforded to the husband to lead evidence but on his failure to do so, his evidence was closed by order by the learned Family Court on 02.09.2022.

The averments on behalf of the wife as have been detailed in the foregoing paras are duly proved by the evidence on record. Respondent-wife has testified as PW-1. Her real sister and cousin brother have been examined as PW-2 and PW-3 respectively. We have perused statements of all the witnesses. All of them have specifically deposed in tune with the

allegations as contained in the petition. It is consistently stated that the husband, who is a habitual drunker, subjected his wife to mental and physical cruelty. It is further stated that the husband neglected his wife and children, even though he was fruitfully employed and working as an electrician, besides having agricultural income and income from selling milk. Perusal of cross-examination of these witnesses reveals that nothing fruitful could be elicited by the husband in his favour. It has come on record that the respondent-wife is making a living by running a Beauty Parlour at her house. She is paying the school fee of her children and taking care of their up-keep and development. PW2 Manjit Kaur – sister of the wife has categorically asserted in the cross-examination that she had accompanied the Panchayat consisting of relatives on two or three occasions. She has given the names of the relatives, who were Members of the Panchayat/s, which were convened for rehabilitation of the couple.

As has been noticed in the foregoing paras, appellant-husband failed to rebut the evidence on record. He has not produced an iota of evidence to indicate that the averments and allegations as raised by the respondent-wife are incorrect or opposed to the factual position. In the given facts and circumstances, needless to say an adverse inference has to be drawn qua the husband for not even stepping in the witness box himself. His conduct itself can be said to be an act of cruelty, giving cause of action to the respondent-wife to seek a decree of dissolution of marriage. It is to be noted at this stage 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.

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).”

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."

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*.

Perusal of the file reveals that Co-ordinate Bench on 29.11.2022 had adjourned the matter to enable learned counsel for the appellant to seek instructions as to whether the appellant would deposit ₹ 2,00,000/- in favour of each child. None had appeared on behalf of the appellant on the next date of hearing. Today, on a pointed query, learned counsel for the appellant submits that the appellant is unable to deposit any amount in favour of the minor children.

It is to be noted at this stage that the respondent-wife has duly proved the allegations as raised by her by leading clear and cogent evidence. We are thus compelled to observe that in the given factual matrix, learned Family Court has correctly observed that the respondent-wife is entitled to the decree of divorce on the ground of cruelty. Subsequent conduct of the appellant also indicates that he is not serious about seeking resumption of matrimonial ties.

Learned counsel for the appellants is unable to point out any illegality, infirmity or irregularity in the impugned judgment dated 14.10.2022, passed by the learned Family Court, Sangrur, which calls for any interference by this Court in this appeal.

No other argument has been raised.

Judgment and decree dated 24.08.1990, passed by the learned District Judge, Sangrur, is upheld.

Accordingly, this appeal is dismissed with no order as to cost.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

31.01.2023
Sunil

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