



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

FAO-M-2-2022 (O&M)
Date of Decision: 12.08.2024

AMANPREET KAUR

...Appellant

Versus

KANWALVIR SINGH KANG

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. R.S. Bains, Senior Advocate assisted by
Mr. Mohan Singh Chauhan, Advocate
for the appellant.

Mr. S.K. Garg Narwana, Senior Advocate assisted by
Mr. Ravinder Singh Randhawa, Advocate and
Mr. Nitin Sachdeva, Advocate
for the respondent.

HARSH BUNGER, J.

Appellant-wife (Amanpreet Kaur) has come up in this appeal against the judgment and decree dated 18.10.2021 passed by the learned District Judge, Chandigarh, whereby the petition filed by the respondent-husband (Kanwalvir Singh Kang) under Section 13 of the Hindu Marriage Act, 1955 (in short '*the 1955 Act*') seeking dissolution of marriage by a decree of divorce, has been allowed and divorce stands granted.

2. Succinctly, the marriage of appellant-Amanpreet Kaur was solemnized with respondent-Kanwalvir Singh Kang on 08.02.2014 at Chandigarh as per Sikh rites and ceremonies.

2.1 It transpires that on account of marital discord, the parties started residing separately and subsequently, the respondent (husband) filed a petition under Section 13 of the 1955 Act, seeking divorce from the

appellant (wife). The pleaded case of the respondent (husband) in the divorce petition was that right from the very inception of the marriage, the appellant showed constant and conscious disrespect towards the respondent and his family members and she did not show any inclination to undertake her matrimonial responsibilities. It was stated that the appellant-wife was working in Australia prior to the marriage, it was told that she is not interested to live in Australia anymore and wanted to settle in India. The respondent sought divorce on the grounds of cruelty, adultery and desertion. In the divorce petition, the following acts of cruelty, adultery and desertion were alleged by the respondent-husband against the appellant-wife:

A. CRUELTY

- i. The appellant-wife persistently refused to have sexual relations with the respondent-husband.*
- ii. The appellant wife not only refused to take care of the mother of the respondent-husband but also insulted and humiliated her. Consequently, the mother of respondent husband who is physically handicapped and completely dependent on respondent-husband and resides at Patiala, stopped visiting them at Chandigarh.*
- iii. The appellant-wife stole a t-shirt while shopping at Elante Mall, Chandigarh and was caught by the security guard. The respondent-husband paid for the said t-shirt and saved her but the same caused humiliation and harassment to him.*
- iv. On 11.05.2014 the respondent-husband along with his mother visited Channi Walia (mediator of marriage) to discuss the matter and the appellant-wife was present there, who abused and physically assaulted the respondent and his mother.*
- v. Appellant-wife along with one Ginni Walia, went to the ancestral village of the respondent-husband and levelled false allegations of dowry against him and in this regard, one DDR 87 dated 14.07.2014 was entered.*

- vi. *The appellant-wife has caused immense loss to the reputation of the respondent-husband by visiting his friends and colleagues and telling them that the respondent is impotent and also tried to convince the clients of the respondent-husband to withdraw their cases from him.*
- vii. *The appellant-wife gave a forged representation in the name of respondent-husband, seeking official record and the said record was provided by the Delhi Bar council. On filing of the complaint by respondent-husband, an FIR for cheating and forgery was registered against the appellant-wife.*
- viii. *On 03.01.2015, the appellant-wife sent her male friends to attack the mother of the respondent-husband but she was timely saved by her driver. Consequently, an FIR No.7 dated 03.01.2015 under Section 452,506,120-B of the IPC was registered against her.*
- ix. *The appellant-wife threatened to implicate the husband and his family members in false cases and thereafter, the following complaints/FIR were filed by the appellant-wife to humiliate, harass and defame the respondent-husband and his family:*
- *Criminal complaint no.2530 dated 11.07.2014 before SSP, Patiala for registration of FIR under Section 406 and 498-A IPC.*
 - *Criminal complaint no. PW/2014/8921 dated 16.07.2014 on same grounds (as in Criminal complaint no.2530) before SSP, Chandigarh.*
 - *Complaint through respondent-husband's mother before Mohali police with allegations of threats- (withdrawn later)*
 - *Complaint to ADGP (crime) for conducting enquiry on allegations of dowry made by the appellant-wife.*

B. ADULTERY

- i. *The appellant-wife has committed continuous acts of adultery since the date of marriage. She is deeply associated in an adulterous relationship with one Subhash Chander Marwaha (former judicial officer terminated on ground of corruption). On 26.09.2014 the appellant-wife was found wearing a men's shirt in the bedroom of*

the said person at a flat rented by him in village Kundli. A criminal complaint no. 277/2014 under Section 383,387,388,497,506 read with Section 120-B IPC was filed before the learned JMIC, Chandigarh

ii. One Sh. Brahm Inder Singh Toor, Advocate (an associate of respondent-husband) disclosed to the respondent-husband that in March, 2014; he (Mr. Toor) had witnessed Subhash Chander Marwaha with the appellant-wife in the house of respondent-husband at Chandigarh when respondent-husband was at Patiala, whereupon the appellant-wife begged Mr.Toor to not disclose the said incident to respondent-husband.

C. DESERTION

- i. The appellant wife left her matrimonial home on 27.03.2014 over a petty issue and took all her belongings but on 09.04.2014, with the intervention of elders, she returned back to her matrimonial home and started living at Chandigarh but she only brought her daily wear in a small suitcase.*
- ii. Appellant-wife finally deserted the respondent-husband on 25.04.2014 and started living in House No.387, Phase IV, Mohali. The respondent- husband even informed the police about the factum of desertion.*
- iii. Several efforts of reconciliation were made by the respondent-husband and his family members but the appellant-wife refused to reconcile.*

2.2 In this backdrop, the divorce petition was filed.

3. On the other hand, the appellant (wife) contested the afore-said divorce petition, by filing her written statement wherein the alleged acts of cruelty, desertion and adultery were denied. It was, *inter alia*, pleaded that at the time of marriage and on all the ceremonies, appropriate *shagun* was given from the appellant's side to the respondent-husband. It was stated that the respondent-husband and his mother were expecting huge cash and they were dissatisfied with the FDR (Fixed Deposit Receipt) of Rs 5,46,000/-,

which was made in favour of the appellant-wife and gold bracelets were given to the couple. The respondent-husband and his mother even humiliated and harassed the appellant-wife on the issue of lehnga and artificial jewellery for the occasion of reception. The appellant-wife further alleged that she was abused and physically tortured by the respondent-husband and was even humiliated during the honeymoon period. It is further stated by the appellant-wife that she never refused for sexual relations. It is still further stated that the respondent-husband's mother is not physically or financially dependent upon respondent-husband rather she avails the services of several servants and driver. Appellant (wife) claimed that when she was trying the clothes in Lifestyle Store, it was the respondent-husband, who had put one shirt in her bag and forced her to accept the responsibility of that incident. It is further alleged that the respondent-husband even tried to prove abnormality in her by taking her to a psychiatrist. It was next stated by the appellant-wife that her jewellery is still lying with the respondent-husband. She further admits that she moved an application to the Bar Council of Punjab and Haryana High Court but the same was done to settle the matrimonial dispute. Further moving of other applications to police authorities is also admitted but it is stated that the same was done to save her matrimonial life.

3.1 With the afore-said submissions, the appellant sought dismissal of the divorce petition.

4. Replication was filed by the respondent-husband. On the basis of the pleadings of the parties, the trial court framed the following issues:-

“1. Whether the petitioner is entitled for divorce on the grounds of cruelty and adultery as alleged? OPP

2. Whether the petition is not maintainable as it is based on false facts? OPR
3. Whether the petitioner has no cause of action to file the present petition? OPR
4. Relief.”
5. In order to prove his case, following witnesses (PWs) were examined by the respondent-husband:

S. No.	PW	PERSON
1	PW1	Manish Kapoor (Record keeper)
2	PW2	Rajbir Singh (Senior Constable)
3	PW3	Jagat Singh (Head Constable)
4	PW 4	Sandeep Kumar (Civil Ahlmad)
5	PW 5	Kanwalvir Singh (Respondent- Husband)
6	PW 6	Rajesh Chhikara (Advocate)
7	PW 7	Brahminder Singh Toor (Advocate)
8	PW 8	Ashish Gupta (Advocate)
9	PW 9	Harmesh Inder Singh (Cousin brother of the respondent-husband)
10	PW 10	Mohit Dangi (Store Manager- Lifestyle)
11	PW 11	Sanju (Security Guard-Lifestyle)
12	PW 12	Veena Devi (Head Security Guard-Lifestyle)
13	PW 13	Sheela (Ahlmad)
14	PW 14	Malkiat Singh (Deputy Secretary- Bar Council)
15	PW 15	Bachhitar Singh (Head Constable)
16	PW 16	Vikram Singh (Head Constable)
17	PW 17	Amit Rai (Judicial Assistant, Metropolitan Magistrate, Saket)

5.1 The respondent-husband also lead documentary evidence, as referred in the impugned judgment, however for sake of brevity, the same is not being referred herein.

6. On the other hand, the appellant-wife examined the following witnesses (RW's):

S. No.	RW	PERSON
1	RW1	Amanpreet Kaur (Appellant-wife)
2	RW2	Sarabjit Singh (HeadConstable)
3	RW3	Shamsher Singh (Head Constable)
4	RW 4	Malkiat Singh (Deputy Secretary, Bar Council)
5	RW 5	Gian Chand (ASI)
6	RW 6	Gurinder Singh (Branch Manager,Central Cooperative Bank)
7	RW 7	Puneet Kumar (HR Executive, Swift Securities)
8	RW 8	Parminder Kumar Singh (Constable)
9	RW 9	Bhagwant Singh (Head Constable)
10	RW 10	Dr.Paijat (Distt. Medical Officer)
11	RW 11	Sorav Deep Singh (Chief Nodal Officer)
12	RW 12	Jaideep Narula (Star Studio, Patiala)
13	RW 13	Dr.Rashmi Sharma(Junior Scientific Officer,CFSL)
14	RW 14	Jagbir Singh (Alternate Nodal Officer, Vodafone)
15	RW 15	Amit Kumar Sharma (Nodal Officer, Reliance)
16	RW 16	Govind Ram (Nodal Officer, Bharti Airtel)
17	RW 17	ShubhashChander

6.1 The appellant-wife also led documentary evidence, as referred to in the impugned judgment, however for sake of brevity, the same is not being referred herein.

7. Upon considering the pleadings as well as evidence/ material available on record, the Family Court below accepted the divorce petition filed by the respondent-husband, as noticed above and passed a decree of divorce dissolving the marriage between the parties.

8. While passing the impugned judgment, the Family Court below has made certain observations on conduct of parties and further returned findings on acts of cruelty and adultery; which can be summed up as under:-

- **Observations on conduct of parties:**

- (i) *Both the parties tried to waste the time of the court.*
- (ii) *From the demeanor of the parties, observed during the course of arguments, it has become very clear that they cannot reside together what to talk of leading happy married life by them.*

- **Acts of Cruelty:**

- (i) *The complaints and applications moved by appellant-wife against the respondent-husband to the various police authorities in Patiala and Chandigarh are containing the averments against the respondent-husband and his mother regarding demand of dowry and causing harassment to her but despite that she is saying that her intention was not to seek any action against the respondent-husband.*
- (ii) *The appellant after moving one complaint, moved another complaint to another authority and thereafter, without waiting for the decision, made another complaint to the higher ups. She did not approach those authorities afterwards to pursue those and now the arguments are being advanced that she was not summoned by the police but this fact is not denied by her that she was contacted by those authorities telephonically but she always avoided appearing before those authorities on one pretext or the other.*

The reason given by appellant for not putting appearance before the police is that she was apprehending threat to her life

at the hands of respondent-husband but now she says that she can settle with the respondent-husband happily.

- (iii) There is nothing on the record to show that any dowry was given to the respondent-husband on his demand and if any gift or other article has been given by the family of appellant to the respondent-husband or his family member then it cannot be said that the same was given on the demand of the respondent-husband.*
- (iv) Appellant has levelled the allegations against the character of the parents of respondent-husband and tried to take advantage of the fact that the parents of respondent-husband were not residing together at the time when the marriage of respondent with the appellant had taken place.*
- (v) Appellant has blown hot and cold in the same breath. On one hand, she has set up a claim that the relations between the respondent-husband and his mother were not cordial and they resided separately since the year 2006 itself. On the other hand, it is the case of appellant that the mother of the respondent-husband used to side with him in demand of dowry.*
- (vi) When the parties stopped residing together and admittedly are residing separately, the visit of the appellant in the house of Harmesh Inder Singh @ Lalli and creating nuisance there by the appellant will also be covered under the acts of cruelty by the appellant towards the respondent-husband.*

Although the appellant denied her visit to house of Harmesh Inder Singh @ Lalli on 10.07.2014; however, the trial court observed that in case appellant has not visited house of Harmesh Inder Singh @ Lalli (PW9) then there was no occasion for him to have moved a complaint Ex. RX against the appellant to the SHO of Police Station sector 11, Chandigarh.

- (vii) At the time of Bhog ceremony of mother of the respondent-husband, the visit of appellant was certainly an act of grave cruelty towards respondent-husband. Although the case of appellant is that she went there to pay her last respect towards the departed soul and she denied creating nuisance there yet*

her presence there itself speaks volumes otherwise and the police had even registered a DDR in this respect and her nuisance there is even recorded in a CD. Meaning thereby, it is clear that the appellant has no concern with the public image of her husband rather she had tried to damage the same by way of her above acts and thus is certainly guilty of causing cruelty to her husband.

- (viii) *In the Elante Mall, when the couple went for shopping, the appellant is stated to have stole a ladies top in her bag and when the appellant was caught while leaving the Mall, respondent-husband felt humiliated and got the matter settled by making payment of that ladies top.*

Appellant's initial stand was that the said ladies top was kept by respondent-husband in her bag and during course of evidence, the version of appellant was that it was not a ladies top rather it was a pant.

Trial court observed that the happening of this incident is an admitted fact and the bills (Ex. PW10/1 and PW10/2) were suggestive of this incident. It was further held that the testimonies of PW10 Mohit Dangi, Store Manager, Life Style Showroom; PW11 Mrs. Sanju, Security Guard and PW12 Ms. Veena Devi, Head Security Guard, Life Style Showroom, Elante Mall, Chandigarh, also prove the fact that the version of respondent-husband is correct and it was the appellant who was apprehended with the ladies top in her bag. It was observed that the said witnesses were able to withstand the test of cross-examination.

- **Adultery:**

- (i) *Regarding the allegation of adultery, respondent-husband has come with the following version(s):*
- (a) *During the period of their co-habitation, he had himself noticed the presence of the appellant and Subhash Chander Marwaha (Respondent No. 1 and 2 respectively, in divorce petition) in his house.*

- (b) Secondly, respondent-husband examined one Harmesh Inder Singh Toor (PW7) who was stated to be a junior of respondent-husband in March 2014 and during one weekend in March, 2014 when respondent-husband had gone to Patiala, he had visited respondent-husband's residence-cum-office and noticed presence of appellant and Subhash Chander Marwaha in the bedroom of respondent-husband in objectionable clothes.
- (c) Third incident is of 26.09.2014, when respondent-husband and his witness Rajesh Chhikara, Advocate (PW6) had visited the Flat of Subhash Chander Marwaha in Kundli (Sonapat) alongwith police, where appellant was stated to have been found present in the bedroom of Subhash Chander Marwaha and she was wearing gents shirt of Subhash Chander Marwaha.
- (d) Fourth incident is of the house of mother of appellant where one Harsh Bhardwaj had noticed the appellant and Subhash Chander Marwaha (Respondent No. 1 and 2 respectively, in divorce petition) in compromising position and later when said Harsh Bhardwaj disclosed the said fact to the appellant then she made physical relations with Harsh Bhardwaj also.
- (ii) Trial Court observed that even if the version of respondent-husband that he had himself noticed the presence of the appellant and Subhash Chander Marwaha in his house is ignored then also the evidence of PW7-Braham Inder Singh Toor, Advocate cannot be ignored, who withstood the test of cross-examination at the hands of appellant. Trial Court observed that it is not denied that this witness was having the key of the house of the respondent-husband with him and his version is very natural that when he came to the house of respondent-husband to work in his office, he heard noise of television in the room and thinking that respondent-husband might have forgotten to turn off the television, he went towards

the room of respondent-husband, where he saw appellant and Subhash Chander Marwaha in objectionable clothes.

- (iii) *As regards incident of Kundli, Trial Court did not find any substance in the objection raised by the appellant that in the affidavits of the witnesses, a wrong date had been mentioned as regards the incident of Kundli. It was observed that the witnesses have owned the contents of their affidavits and have been tested by way of cross-examination at the hands of appellant.*

Trial court did not accept the version of appellant that the relations between appellant and Subhash Chander Marwaha were of father and daughter like and there was a lot of age gap between them.

Trial Court also did not accept the submission on the part of the appellant that Subhash Chander Marwaha repeatedly tried to get himself medically examined to prove that he was not in a position to perform sexual inter-course, as he was suffering from diabetes. Trial Court observed that it is not to be seen on the day of evidence if the adulterer is able to perform sexual intercourse rather it is to be seen on the date of filing of petition and prior to that. It was further observed that Subhash Chander Marwaha could have got himself examined from a private practitioner to prove his version but in respect of the fact that he was suffering from diabetes, he did not annex his medical record on the case file.

Trial Court observed that adultery has to be inferred from circumstances and admittedly appellant and Subhash Chander Marwaha stayed in the flat of Subhash Chander Marwaha for 5-7 days together. It was further observed that though wearing a gents shirt by a lady is no circumstance to presume adultery yet in the case in hand, it shows how much intimacy was there between the appellant and Subhash Chander Marwaha. It is yet further observed that there was no extreme emergency due to which appellant had to rush to the flat of Subhash Chander Marwaha at late hours. It was held by trial

court that if there was no malafide on the part of appellant and Subhash Chander Marwaha in wearing the gent's shirt by appellant then why she changed that shirt immediately on the arrival of respondent-husband and his witness Rajesh Chhikara as well as police there, is not explained.

Trial Court held that the circumstances of the case are suggestive of the fact that the relations between appellant and Subhash Chander Marwaha (Respondent No. 1 and 2 respectively, in divorce petition) were not as pious as have been stated by them.

- (iv) As regards the statement of Harsh Bhardwaj, Trial Court observed that there is direct evidence when the witness Harsh Bhardwaj had seen the respondents in compromising position.*
- (v) Trial court in para 161 of the impugned judgment has observed as under:-*

“161. If the evidence brought on the record by the parties is minutely perused then the fact which certainly emerges is that the respondent no.1 is an ultra modern lady who has no hitch in maintaining the sexual relations with many persons. In this respect, it is pertinent to mention that even while staying in Australia, she had resided with another male friend in one room disclosing to her landlord that she will marry that friend and thus in one way or the other, it is her admission that she had stayed there with that person as husband and wife.”

8.1 Accordingly, the trial Court held that the respondent-husband has been successful in proving the facts that the appellant has treated the respondent-husband with cruelty and was leading adulterous life. Consequently, the marriage between respondent-husband and the appellant was dissolved by granting the decree of divorce in favour of respondent-husband.

9. Being aggrieved against the impugned judgment, the appellant-wife has filed the present appeal before this Court.

10. Learned senior counsel appearing for the appellant submitted that the Family Court below has erred in law and facts in passing the impugned judgment and decree. It is submitted that the divorce petition filed by respondent-husband has been wrongly decreed in favour of respondent-husband by relying upon material, which is beyond the pleadings. It is submitted that the learned trial Court has erred in relying upon the statement under Section 313 Cr.P.C. made by one Harsh Bhardwaj, who was an accused in a theft case; so as to record finding on adultery against the appellant-wife. It is submitted that the said person namely Harsh Bhardwaj was neither examined nor cross-examined in the divorce petition and therefore no reliance could have been placed upon the said statement of Harsh Bhardwaj. It is further submitted that the trial Court has failed to take note of two orders i.e. order dated 28.04.2017 (Annexure A-21) and order dated 23.04.2018 (Annexure A-22) passed during the trial of the divorce petition (HMA case No. 727 of 30.10.2015); whereby the prayer of respondent-husband to examine Harsh Bhardwaj, was rejected. It is yet further submitted that the aforesaid orders (Annexure A-21 and A-22) have already attained finality as the same were never challenged by the respondent-husband.

10.1 Learned senior counsel for the appellant submitted that the trial Court has further erred in relying upon the photographs of the appellant while she was in Australia and that too of a period prior to marriage. It is submitted that the said photographs were in the hard drive, which was stolen by Harsh Bhardwaj and the same have been wrongly accepted by trial Court

despite the fact that no certificate under Section 65B of the Indian Evidence Act, was provided in that regard.

10.2 Learned senior counsel for the appellant submitted that the trial Court has wrongly doubted the relation between the appellant and Subhash Chander Marwaha, who was a father-like figure to the appellant and was almost 35 years older than appellant. It is stated that Subhash Chander Marwaha has already expired and even otherwise, said Subhash Chander Marwaha took a stand that he was impotent. It is stated that Subhash Chander Marwaha had applied twice before the concerned Courts for getting himself medically examined to ascertain that he was impotent, however the applications submitted by Subhash Chander Marwaha for his medical examination were declined. It is submitted that although the onus is on the person who alleged adultery against the other spouse to prove the said fact, however in the instant case, the respondent-husband had opposed the application submitted by Subhash Chander Marwaha for getting himself medically examined to ascertain that he was impotent.

10.3 Learned senior counsel for the appellant submitted that the trial Court has wrongly drawn inference regarding adultery against appellant, only on the basis that the appellant was at the Flat of Subhash Chander Marwaha at Kundli; despite the fact that at the time when respondent-husband alongwith police came to the said Flat, Subhash Chander Marwaha was not even there. It is submitted that the trial Court has wrongly remarked against the appellant and Subhash Chander Marwaha and that too by ignoring father-daughter like relation between them. It is submitted that presence of appellant at the Flat of Subhash Chander

Marwaha was duly explained, however the same was not appreciated by the trial Court in its right perspective.

10.4 Learned senior counsel for the appellant submitted that the trial Court has also failed to consider and appreciate the evidence of PW-6 (Rajesh Chikkara). It is submitted that PW-6 (Rajesh Chikkara) is not an eye witness to the so-called Kundli incident and even the video clip of 10 seconds, is tampered. It is submitted that PW-6 (Rajesh Chikkara) stated that the video clip was made from the mobile of respondent-husband, however no such mobile was produced during trial and neither any certificate under Section 65B of the Indian Evidence Act, in that regard is forthcoming. It is stated that there is nothing on record to show that the appellant was in the bedroom of Subhash Chander Marwaha (alleged adulterer) in his Flat at Kundli (Sonapat).

10.5 Learned senior counsel for the appellant further submitted that the trial Court has also failed to consider and appreciate the evidence of PW-7 (Brahminder Singh Toor) who is stated to be a witness of an alleged incident at the House of respondent-husband in Sector 2, Chandigarh. It is submitted that the said witness had made a vague statement without specifying the date and time of the said incident. It is stated that PW-7 (Brahminder Singh Toor) was examined by respondent-husband by pleading that said PW-7 (Brahminder Singh Toor) was his junior in March, 2014 and he was an eye witness to the alleged act of adultery of appellant and Subhash Chander Marwaha (alleged adulterer) at the House of respondent-husband in Sector 2, Chandigarh. It is contended that there is no evidence on record to substantiate the plea that said PW-7 (Brahminder Singh Toor) was working as a junior of respondent-husband in March, 2014 and in the absence of the

same, no credence can be attached to the statement of said PW-7 (Bhraminder Toor).

10.6 Learned senior counsel for the appellant contended that there are major contradictions in the statement of the witnesses examined by respondent-husband, therefore, no reliance could have been placed upon the same. It is stated that strict proof for an allegation of adultery was required, which was never adduced in this case. It is, therefore, contended that the finding(s) returned by trial Court that the appellant was leading an adulterous life, is flawed and liable to be set aside.

10.7 Learned senior counsel for the appellant also stated that the alleged acts of cruelty attributed to the appellant were all stage managed by the respondent-husband. It is submitted that the incident at Elante Mall was managed by the respondent-husband although there is no eye witness to the alleged theft of article from Lifestyle outlet at Elante Mall, Chandigarh. It is stated that apart from the two receipts with regard to purchase of articles with a time gap of about 9 minutes, which were brought by PW-10 (Mohit Dangi), Store Manager; there is no other evidence in the form of CCTV footage or any other evidence to substantiate the allegation of theft made against appellant. As regards witnesses namely Miss Sanju (PW-11) and Veena Devi (PW12), it is stated that the said witnesses do not know Punjabi language and they have only signed on the affidavits prepared by counsel for the respondent-husband.

10.8 Learned senior counsel for the appellant submitted that the complaint submitted by Harmesh Inder Singh (PW-9) as regards the alleged incident of nuisance created by appellant at his place on 11.07.2014, was a bogus complaint as on the said date, the appellant was not even in

Chandigarh. It is stated that witness-Harmesh Inder Singh (PW-9), is an interested witness, who deposed at the instance of respondent-husband, therefore, he is not an independent witness.

10.9 Learned senior counsel for the appellant further submitted that there is also no evidence on record to show that the appellant visited the native village of respondent-husband to malign his image. As regards the allegation of theft of passport, driving licence and Samsung mobile phone of mother-in-law of appellant against appellant is concerned, it is submitted that an FIR No. 126 dated 06.06.2014 (Ex. R-1/46) was registered regarding theft of passport, which was against unknown persons.

10.10 Learned senior counsel for the appellant contends that the trial Court has misread the evidence on record and has returned totally wrong and perverse findings, which are untenable and liable to be set aside.

10.11 Further, learned senior counsel for the appellant would submit that in fact, it is the appellant who was treated with cruelty by the respondent-husband. It is submitted that a false complaint was submitted by respondent-husband to the Delhi Bar Council on 04.08.2014 and an FIR No. 952 dated 28.08.2014 was registered against appellant at the instance of the respondent-husband, wherein the appellant had to remain in custody for 14 days in Tihar Jail, New Delhi. It is stated that another false FIR No. 7 dated 03.01.2015 was got lodged by the mother-in-law of the appellant on the allegation that some persons were sent by appellant to threaten her mother-in-law. It is stated that in the said FIR No. 7, the mother-in-law never stepped into the witness box nor any allegations were proved against the appellant. It is further stated that a false private criminal complaint was filed by the respondent-husband at Chandigarh on 03.11.2014 alleging adultery

under Section 497 of the Indian Penal Code; wherein the appellant was discharged on 07.04.2022. It is submitted that the respondent-husband cannot be permitted to take benefit of his own wrongs. It is also submitted that the trial Court has wrongly dismissed the application filed by the appellant for leading additional evidence. Accordingly, it is prayed that the impugned judgment and decree be set aside and the divorce petition filed by the respondent-husband be dismissed.

11. Per contra, Learned senior counsel appearing for the respondent-husband opposed the submissions made on behalf of appellant-wife and supported the findings returned by the Family Court below. It is submitted that the appellant (wife) had treated the respondent (husband) with cruelty, which was duly proved by leading evidence before the trial Court. It is submitted that the appellant had committed an act of stealing at 'Life Style' showroom, Elante Mall, Chandigarh on 27.02.2014 where the respondent had taken the appellant for shopping. It is submitted that while walking out of the showroom, the security alarm beeped and the appellant was surrounded by the security personnel for checking and one T-shirt was found in her bag, which according to the respondent, he did not want the appellant to buy. It is submitted that the things did not stop there and rather the appellant offered bribe to the security staff and on refusal to accept the same by them, she tried to run away. It is submitted that the said act of stealing was duly proved on record by way of statement of PW-11 (Smt. Sanju, Security Guard), PW-12 (Smt. Veena, Security Guard) and also by the evidence of PW-10 (Mohit Dangi, Store Manager, Life Style Showroom). It is submitted that the said act of stealing was also admitted by the appellant and this act lowered the image of the respondent and made him

to suffer humiliation. Learned counsel for the respondent further submitted that apart from the afore-said act of stealing, the appellant also committed various acts of maligning professional image of the respondent, who is an Advocate, by submitting false complaint against him before the Bar Council of Punjab and Haryana and seeking cancellation of his license. It is submitted that the appellant further created scenes at the Office of Bar Council, which incident was witnessed by various persons present there. It is further submitted that the complaints made by the appellant against the respondent contained scandalous remarks, wherein the appellant had alleged that the respondent maltreated her physically, emotionally, mentally and wanted to grab her property. It is next submitted that the above-referred conduct of the appellant was duly proved by PW-8 (Ashish Gupta), who had deposed regarding the manner in which the appellant created a scene in the corridors of Bar Council and defamed respondent-husband in full public view by hurling abuses against him. It is submitted that the complaints submitted by the appellant against the respondent before the Bar Council, were also duly proved on record by PW-14 (Malkiat Singh, Deputy Secretary, Bar Council) whereupon the respondent-husband was issued a notice to appear before the Bar Council.

11.1 Learned senior counsel for the respondent further submits that the appellant submitted various false police complaints to implicate the respondent and his 75 years old ailing mother (since deceased). It is submitted that in the complaint submitted to the Senior Superintendent of Police, Patiala, various allegations regarding demand of dowry, beating and threatening etc. were made by the appellant against the respondent and in the said complaint, the respondent was also summoned by way of notice under

Section 160 of the Cr.P.C. It is further submitted that another complaint was submitted by the appellant against the respondent to the Senior Superintendent of Police, Chandigarh, which was found baseless and was consigned to the records. According to the respondent, the said complaint was duly proved on record by examining PW-16 (Head Constable, Vikram Singh). Another complaint submitted by the appellant to the Senior Superintendent of Police, Mohali was also consigned to the record, which fact was admitted by the appellant during her cross-examination.

11.2 Apart from the afore-said three complaints, one more complaint was also submitted to Additional Director General of Police (Crime), Punjab. Learned senior counsel for the respondent-husband submitted that the afore-said complaints against the respondent were found to be baseless and were consigned to the record, therefore, filing baseless complaints to the police against the husband, is clearly an act of cruelty on the part of the appellant-wife against the respondent-husband. It is stated that the acts of cruelty on the part of the appellant-wife were duly proved on record and the trial Court has rightly granted divorce on the ground of cruelty.

11.3 Learned senior counsel for the respondent-husband also submitted that besides the afore-said acts of stealing and submitting false complaints against the respondent by the appellant, she also committed an act of forgery and mis-representation by forging the signatures of respondent-husband before the Bar Council of Delhi and on a complaint filed by the respondent-husband, an FIR No.952 under Sections 420, 468 and 471 IPC was registered against the appellant at Police Station Hauz Khas, Delhi, wherein the trial is stated to be pending. The other acts of

cruelty, as indicted by the respondent-husband in the divorce petition, were also highlighted by the learned counsel for the respondent-husband.

11.4 Apart from the afore-said acts of cruelty, learned senior counsel for the respondent-husband argued that the appellant had committed continuous acts of adultery since the date of marriage as she was in an adulterous relationship with one Sh. Subhash Chander Marwaha (respondent No.2, since deceased). It is submitted that the appellant was found at the flat of Sh. Subhash Chander Marwaha at Kundli (Sonapat), wearing his shirt, when the respondent-husband along with police and other witnesses reached there. It is also the pleaded case of the respondent-husband that it is the appellant-wife, who had called him at Kundli. It is submitted that the afore-said facts have been duly admitted and proved on record. It was further submitted that subsequent to the afore-said incident at Kundli, one of the associates of the respondent-husband namely, Brahminder Singh Toor, Advocate disclosed that in the month of March-2014, when respondent was away to Patiala on a long weekend to meet his mother, then the appellant had stayed back in their office-cum-residence in Chandigarh. It is stated that Mr. Toor had a separate set of keys of the office of respondent at Chandigarh, being his associate and on one day, when he entered the premises, he found the appellant wearing short night dress and Sh. Subhash Chander Marwaha, was wearing boxer shorts and both were watching T.V while closely sitting together. It is submitted that the afore-said acts of adultery were duly proved on record by leading evidence by way of statements of PW-6 (Rajesh Chhikara) and PW-7 (Brahminder Singh Toor, Advocate).

11.5 Learned senior counsel for the respondent submitted that the learned trial Court has inferred the acts of adultery on the part of the appellant and Sh. Subhash Chander Marwaha, by taking into account various circumstances. Learned counsel for the respondent further submitted that even prior to the marriage between the appellant and the respondent, the appellant was leading a colourful life with another man in Australia and the said fact can be ascertained from the photographs, which are available on the record. It is also submitted that one of the tenants of the appellant namely, Harsh Bhardwaj, had also testified regarding the adulterous conduct of the appellant, while recording his statement under Section 313 Cr.P.C in a criminal case against him. Accordingly, it is contended that the acts of cruelty and adultery on the part of the appellant-wife, have been duly proved on record and the learned trial Court has passed the well-reasoned and justified order granting divorce on the grounds of cruelty and adultery. Accordingly, prayer for dismissal of the appeal has been made.

12. We have heard learned senior counsel(s) for the rival parties and perused the paper-book as well as the impugned judgment and record, with their able assistance.

13. Upon considering the rival contentions of both the parties, in our considered view, the following issue would arise for consideration by this Court:-

“Whether in the peculiar facts and circumstances of this case, the impugned judgment and decree of divorce granted by the Family Court, Chandigarh, requires any interference?”

14. Before we consider the merits of the case, it will be appropriate to note here that we have given number of opportunities to the parties for an

amicable settlement but in spite of the efforts made by the Court, the parties could not arrive at any such settlement.

15. It is apposite to refer to observations made by Hon'ble Supreme Court in ***Jagdish Singh v. Madhuri Devi, 2008(10) SCC 497***, which read as under:-

“24. It is no doubt true that the High Court was exercising power as first appellate court and hence it was open to the Court to enter into not only questions of law but questions of fact as well. It is settled law that an appeal is a continuation of suit. An appeal thus is a re-hearing of the main matter and the appellate court can re-appraise, re-appreciate and review the entire evidence "oral as well as documentary" and can come to its own conclusion.

25. At the same time, however, the appellate court is expected, nay bound, to bear in mind a finding recorded by the trial court on oral evidence. It should not forget that the trial court had an advantage and opportunity of seeing the demeanour of witnesses and, hence, the trial court's conclusions should not normally be disturbed. No doubt, the appellate court possesses the same powers as that of the original court, but they have to be exercised with proper care, caution and circumspection. When a finding of fact has been recorded by the trial court mainly on appreciation of oral evidence, it should not be lightly disturbed unless the approach of the trial court in appraisal of evidence is erroneous, contrary to well-established principles of law or unreasonable.”

15.1 Keeping in view the aforesaid observation in ***Jagdish Singh's*** case (supra), let us examine the case in hand.

16. We deem it appropriate to firstly deal with the allegations of ‘adultery’ levelled by the respondent-husband against the appellant wife.

16.1 So far as adultery is concerned, in ordinary sense, it is sexual intercourse of a married person with one of the opposite sex other than the husband or wife, as the case may be. It is well settled that mere making allegation of adultery is not sufficient. The allegations must be proved with relevant materials before the Court of law. Since the allegations affect the reputation of the wife, such allegations have to be proved and should be conclusive in nature. Mere inferences are not sufficient to prove such allegations.

16.2 In *Manjit Kaur v. Santokh Singh, 1997(1) RCR (Civil) 616*; this court observed as under:-

“10. Adultery is one of the grounds for a spouse to seek dissolution of marriage under section 13 of the Act. Its sub-section (1) provides that any marriage solemnized before or after the commencement of the said Act may, on a petition filed either by husband or wife, be dissolved by a decree of divorce, on the ground that the other party has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse. Therefore, what is required to be proved in this case is that since June/July 1990 appellant-wife had voluntary sexual intercourse with Jaswant Singh respondent No. 2 to establish the aforementioned ground. The original clause "is living in adultery" is substituted by the present clause referred to above, which is a verbatim reproduction of the original section 10(1)(f) before its deletion in 1976. After the amendment made in 1976, it is sufficient to prove that the respondent had voluntary sexual intercourse with any other person other than the spouse. Now it need not be proved that the respondent has been living in adultery. A comparison of the provisions prior to amendment and subsequent to amendment would indicate that the rigour of establishing "living in adultery" has been lessened by requiring

to prove that the spouse had voluntary sexual intercourse with any person other than his or her spouse.

11. In such matters public interest requires that marriage bonds shall not be set aside lightly or without strict enquiry and proof. The act of adultery in its nature is a very secret act. Direct proof could not be available in all cases. It is extremely difficult to get direct evidence and if the Courts insist on direct evidence in proof of adultery it will amount to a denial of the legitimate protection of material rights. Therefore, proof of actual adultery is not necessary and circumstantial evidence which leads to an inference of adultery is sufficient. The decree of proof need not reach certainty but it must carry a high degree of probability. Hence it is required that appreciation of evidence in such cases must be careful and proper. Only when the evidence is cogent, consistent and reliable, the finding of adultery could be recorded, but where the evidence of the petitioner is lacking in corroboration and is inconsistent and unnatural, no finding of adultery could be recorded...”

16.3 Keeping these principles in view, the evidence produced by the parties is to be scanned very minutely to arrive at a conclusion whether the husband (respondent) has proved by cogent, reliable and unimpeachable evidence that the appellant-wife had sexual intercourse with Subhash Chander Marwaha.

16.4 A perusal of the impugned judgment would manifest that the trial Court has *inter-alia* placed reliance upon the statement of one Harsh Bhardwaj made by him under Section 313 Cr.P.C. in a theft case registered against him, wherein he (*Harsh Bhardwaj*) had stated that he had seen appellant-wife and Subhash Chander Marwaha in a compromising position and when he disclosed this fact to appellant-wife then she developed physical relations with him as well. Admittedly, the aforesaid person namely Harsh Bhardwaj was never examined/cross-examined in the present case.

Further, learned senior counsel for the appellant has referred to two orders i.e. order dated 28.04.2017 (Annexure A-21) and order dated 23.04.2018 (Annexure A-22) passed during the trial of the divorce petition (HMA case No. 727 of 30.10.2015); whereby the prayer of respondent-husband to examine Harsh Bhardwaj was rejected. It is not disputed before us that the aforesaid orders (Annexure A-21 and A-22) have already attained finality as the same were never challenged by the respondent-husband. Therefore, we are of the considered view that the trial Court has erred in placing reliance upon the statement of Harsh Bhardwaj.

16.5 The other circumstance considered by the trial Court to remark that the appellant-wife is an ultra modern lady, is that, while in Australia, the appellant-wife was living with another person in the same rented accommodation. Trial Court has also referred to few photographs, which are only marked documents; wherein appellant-wife is seen with some boy. A perusal of the statement of appellant-wife as regards the aforesaid circumstances would indicate that a shared rented accommodation was taken under compelling circumstances as there was a shortage of accommodation in Australia due to floods and the photographs pertained to some rehearsal of a skit in Australia. In our considered view, the aforesaid two circumstances are to be kept out of consideration for the simple reason that these pertain to the period, which was prior to the marriage between the appellant-wife and respondent-husband. Moreover, taking shared accommodation during the period when the persons are pursuing their studies or in early days of one's career and that too in a foreign country, is not an unknown circumstance. It is a matter of common knowledge and quite normal as well that majority of students who come from not very affluent families, while pursuing their

studies or in early phases of their careers, do take shared rented accommodations and not only in foreign countries, but in India as well. Further, a mere glance at the marked photographs would also not reflect anything objectionable therein.

16.6 Coming to the incident at the office-cum-residence of respondent-husband in House no. 87, Sector 2, Chandigarh; it is alleged by the respondent-husband that on a weekend in March, 2014 when his junior namely, Sh. Brahm Inder Singh Toor, Advocate (PW7), had visited his office-cum-residence then he had witnessed appellant (wife) in short clothes and Subhash Chander Marwaha in boxers, sitting close to each other; however, it is observed that no specific date and time of the aforesaid alleged incident has come forth in this case. Only a general allegation of this incident has been made and in order to prove the same, Brahm Inder Singh Toor, Advocate was examined as PW7, however during his cross-examination, he stated that he had seen appellant-wife with Subhash Chander Marwaha in odd circumstances. Further, on a specific question being put to him as to whether the appellant-wife and Subhash Chander Marwaha were in a compromising situation; his answer was in negative. Therefore, no reliance can be placed on the statement of Sh. Brahm Inder Singh Toor, Advocate (PW7) so as to draw an inference regarding adultery, moreso when the alleged incident is to be of some weekend of March, 2014 but was alleged to have been disclosed to the respondent-husband only after the Kundli incident.

16.7 Further, as regards the Kundli incident, we have gone through the material on record and have also considered the findings returned by the trial Court, however, we are of the considered view that the trial Court has

erred in drawing inference regarding adultery against the appellant, only on the basis that the appellant was at the Flat of Subhash Chander Marwaha at Kundli and was wearing the shirt of said Subhash Chander Marwaha. It is apposite to state here that concededly, at the time when respondent-husband alongwith police came to the flat rented by Subhash Chander Marwaha at Kundli (Sonepat), said person (S.C. Marwaha) was not even there. All along the stand of the appellant (wife) was that the relation between the appellant and Subhash Chander Marwaha, was that of daughter-father like and there was an age gap of 35 years between the two. Merely because the appellant had stayed in the flat of Subhash Chander Marwaha for 5-7 days, does not lead to an inference of adulterous relationship between the two; especially when in the criminal complaint filed by respondent-husband under Section 497 IPC at Chandigarh, the appellant-wife was discharged by the Court of learned Judicial Magistrate Ist Class, Chandigarh, vide its judgment dated 07.04.2022, as the respondent-husband did not lead any evidence. This Court takes judicial notice of the aforesaid fact that the appellant-wife stood discharged in the criminal complaint filed by respondent-husband under Section 497 IPC at Chandigarh, as the respondent-husband did not lead any evidence therein. It is interesting to note that the respondent-husband chose to pursue the allegation of adultery in the divorce petition only for the obvious reasons that the standard of proof as regards allegation of adultery in a divorce petition is only by way of preponderance of probabilities and not that of beyond any reasonable doubt. It is also noticed that the trial Court has wrongly assumed regarding relations between the appellant (wife) and Subhash Chander Marwaha, on the basis that at one point of time in the past, the appellant (wife) had worked with Subhash Chander Marwaha.

16.8 One cannot lose sight of the fact that in the present modern day times, women are engaged in every field and they are not only working in offices but also doing business independently and they are well placed in many offices, institutions, companies etc., in this era. Merely because women are moving out of the home for work or business purpose(s) and even travelling with their male colleagues or senior officials in relation to their work/business, that itself cannot be a determinative factor to presume that all such women have developed intimacy with such persons and leading an adulterous life. If such an approach is adopted, the image of the entire female community will be tarnished. Therefore, in the absence of any evidence to prove the adulterous life, mere allegation is not at all sufficient. Accordingly, we are of the considered view that the respondent-husband has not led any cogent evidence, which may prove alleged acts of adultery on the part of appellant-wife or even to infer such conduct. There is not even a scintilla of evidence on record to prove that they have any soft feelings or any intimate relations or they are enamored or have mutual passion for each other. In the absence of such evidence on record, no inference as regards *adultery* can be drawn. Consequently, the finding of the trial Court as regards adulterous life of appellant (wife) is untenable and the same is set aside.

17. Now let us examine as to whether the respondent-husband has established the grounds of cruelty allegedly meted out to him by the appellant-wife. However, before concluding the acts of cruelty alleged by the respondent-husband, it would be apposite to refer to a few judicial pronouncements.

17.1 In **Rakesh Raman v. Kavita, 2023(2) RCR (Civil) 781**; the Hon'ble Apex Court, has observed as under:-

“16. Matrimonial cases before the Courts pose a different challenge, quite unlike any other, as we are dealing with human relationships with its bundle of emotions, with all its faults and frailties. It is not possible in every case to pin point to an act of "cruelty" or blameworthy conduct of the spouse. The nature of relationship, the general behaviour of the parties towards each other, or long separation between the two are relevant factors which a Court must take into consideration...”

17.2 Further, in **Vinit Saxena v. Pankaj Pandit, 2006(2) RCR (Civil) 302**, while dealing with the issue of mental cruelty, the Hon'ble Supreme Court held as follows: -

"31. It is settled by a catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the section. It is to be determined on whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such wilful treatment of the party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case...”

17.3 The concept of cruelty within the meaning of Section 13(1)(i-a) of the Hindu Marriage Act has been explained by the Hon'ble Supreme Court in case of **“Joydeep Majumdar v. Bharti Jaiswal Majumdar, 2021(2) R.C.R. (Civil) 289**, by observing as under:-

“10. For considering dissolution of marriage at the instance of a spouse who allege mental cruelty, the result of such mental cruelty must be such that it is not possible to continue with the matrimonial relationship. In other

words, the wronged party cannot be expected to condone such conduct and continue to live with his/her spouse. The degree of tolerance will vary from one couple to another and the Court will have to bear in mind the background, the level of education and also the status of the parties, in order to determine whether the cruelty alleged is sufficient to justify dissolution of marriage, at the instance of the wronged party... ”

17.4 In **Samar Ghosh v. Jaya Ghosh, 2007(2) RCR (Criminal) 515**, Hon'ble the Apex Court has given certain illustrative examples wherefrom inference of mental cruelty can be drawn. The Court itself has observed that they are illustrative and not exhaustive. We think it appropriate to reproduce some of the illustrations: -

"(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.

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(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.

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(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.

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(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.

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(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."

In the said case, Hon'ble Apex Court has also observed thus: -

"99. The human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in the other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What

may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances."

17.5 In **K. Srinivas Rao v. D.A. Deepa, 2013(2) RCR (Civil) 232**, while dealing with the instances of mental cruelty, Hon'ble Supreme court opined that to the illustrations given in the case of **Samar Ghosh**, certain other illustrations could be added, namely: -

"Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse."

18. Here, we also deem appropriate to refer to certain portions of the cross-examination of the appellant, which read as under :-

"...It is correct that on 22.10.2017, I had gone to Patiala for Antimbhog and Ardaas on the demise of the mother of the petitioner at their house.

Q. It is correct that at the time when you had gone to Patiala to attend the bhog ceremony of the mother petitioner, you were restrained from attending the same due to strained relationships, upon which you created scene under a plan?

A. Before going to the house of the mother of the petitioner I had sent an e-mail to the concerned SHO as well as SSP Patiala and IG zone Patiala informing him that I was going only to attend the bhog ceremony and not for any purpose. After reaching there I was mis-behaved by Mr. NK Nanda and

petitioner's mother driver Gurpreet Singh and his cousin Harmesh Inder Singh @ Lalli and this incident was published in the newspaper. I had no intention to create any scene.

It is incorrect to suggest that I had visited Patiala to attend bhog ceremony just to create a scene in front of the house of the petitioner's mother. It is also incorrect to suggest that I argued with the police. I had simply informed the police that I wanted to attend the bhog ceremony, volunteered, that I had already informed the concerned SHO as well as SSP Patiala and IG zone Patiala (volunteered portion objected to being improvised).

Q. It is correct that you at the bhog ceremony kept shouting at the gate of the house in the presence of police and respectables and you claimed that "mainu pata lagaya ha ike mere husband ne kitey hor viyah karwa liya hai, mainu pata lagaya hai, I just came here to check whether it is right or wrong, this is my right, at-least lokaan nu das sakdi haan ke I am here, I am not divorced, I am alive, you cannot keep anyone else."

A. I do not want to answer this question being beyond pleadings.

*At this stage, a video and audio recording in the form of C.D as Mark PX20 of the incident which took place at the bhog ceremony on the gate of the house is shown and played to the witness in his mobile wherein she is alleging the wording mentioned in question above. However, the witness is not willing to answer this question being beyond pleadings. Volunteered, that my face is not visible in the video and the possibility of video being morphed cannot be ruled out. I do not remember the faces of the police officials shown in the above video even, I cannot say, the persons whom I was shown talking is a police official or not because he was not in a uniform. It is wrong to suggest that I have been intentionally denied the correctness of the video and audio shown to me and has not answered it being beyond pleadings, so as to cover my own wrong. It is incorrect to suggest that I had left the place on the asking of police and DDR as **Mark PX21** in this regard was lodged by SHO Kotwali, Patiala, self stated, I have no idea of any such DDR. It is incorrect to suggest that when the*

incident of my stealing in Elante Mall was narrated to my maternal uncle Gurrattan Pal Singh by the petitioner, I felt humiliated and embarrassed. It is further wrong to suggest that the petitioner did not suppress any short comings and rather shared the stealing incident with my maternal uncle Gurrattan Pal Singh. I became revengeful to the petitioner and became determined to spoil his life and carrier. It is further wrong to suggest that by act of my stealing in the Elante Mall, the petitioner became publicly humiliated and developed grave sense of insecurity about my behavior. It is further wrong to suggest that the incident of stealing in the Elante mall dated 27.2.2014 became the turning point of fall out of my relationship with the petitioner. It is correct to suggest that I had never made any complaint or statement to any authority that I was wrongly framed. It is correct that I had gone to Elante mall on 27.2.2014.

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It is wrong to suggest that false and frivolous pleas have been taken by me in para no.15 of my examination in chief. It is correct that after the return of Ginni Walia from Khamano, I had gone to Khamano, voltd. I had gone there for different reasons. I do not know that Ginni Walia had gone to Khamano to meet the relatives of the petitioner. It is wrong to suggest that I went to Khamano to defame the petitioner in front of his relatives by meeting them. It is wrong to suggest that after the return of Ginni Walia who had gone there and defamed the petitioner at Khamano. It is correct that I went to the office of Bar Council of Punjab & Haryana on 30.7.2014 and furnished a complaint against the petitioner. It is wrong to suggest that I knew that petitioner was not enrolled at Bar Council of Punjab & Haryana at Chandigarh at that time. I do not remember whether I had mentioned the enrollment number of the petitioner of Delhi Bar Council in the complaint moved by me before Bar Council of Punjab & Haryana at Chandigarh. It is wrong to suggest that I intentionally and knowingly moved a complaint against the petitioner in the office of Bar Council of Punjab & Haryana to defame him in the eyes of legal fraternity despite the fact that he

was not member of said Bar. I knew it that the petitioner was an enrolled member of Delhi Bar, voltd. I was not aware of petitioner was not member of Bar Council of Punjab & Haryana. I have seen Ex.PW14/A and it is correct that I had mentioned the enrollment number of the petitioner of Delhi Bar Council in the complaint moved by me before Bar Council of Punjab & Haryana at Chandigarh. It is wrong to suggest that the complaint moved by me before Bar Council of Punjab & Haryana bears false and frivolous contents without any basis. It is wrong to suggest that I created a scene in the corridor of Bar Council by loudly mentioning name of the petitioner with abuses to attract the crowd of advocates and categorically mentioned the petitioner at impotent, fraud lawyer and stigma to legal community. It is correct that I had received letter Ex.P14/B from the Bar Council of Punjab & Haryana regarding my complaint against the petitioner vide which I was asked to submit affidavit in support of the allegations made by me in the complaint, but I had not submitted any affidavit as required, voltd. I did not submit affidavit as I had come to know that petitioner was not member of said bar and they do not entertain matrimonial dispute. I was never informed in writing by the Bar Council that they do not entertain any matrimonial dispute, though I was informed orally but I do not know the name of the said person. It is wrong to suggest that I intentionally moved false complaint in which I did not appear and file affidavit in order to harass and defame the petitioner. Ex.PW3/1 is an application in my handwriting and signed by me in capital letters. The witness has been shown Ex.PW3/1 and it is correct that I had mentioned the subject of Ex.PW3/1 as “intimation for giving beatings for demand of dowry and threat to life” from point A to A1. The SSP, Patiala had made endorsement on Ex.PW3/1 by mentioning marked to SHO, PS Kotwali by name for necessary action at once and report ensure justice but the same was not endorsed in my presence. It is correct that after entrustment of investigation of Ex.PW3/1 by the SSP to SHO, Kotwali, I myself went to PS Kotwali for pursuing my complaint. It is wrong to suggest that in the body of Ex.PW3/1, I

had levelled false and serious allegations against the petitioner and his mother regarding demand of dowry and beatings. It is wrong to suggest that I tried my level best to get false FIR registered against the petitioner and his mother u/s 406, 498-A, 506 IPC but I failed, voltd. no such effort was ever made by me till today. It is wrong to suggest that volunteered part is false and incorrect and is after thought. It is correct that I had moved a complaint against the petitioner to SSP, Sector 9, Chandigarh on 16.7.2014, voltd. it was an application. It is wrong to suggest that I had given complaint dated 16.7.2014 Ex.PW5/1 against the mother of petitioner too, voltd. it simply contains the incident pertaining to 14.7.2014 with the background. The subject of Ex.PW5/1 is "intimation regarding beatings, demand of dowry and threat to life" from point A to A1. Ex.PW5/1 is in my handwriting. I have gone through the contents of Ex.PW5/1 from point B to B1 which as to me was the factual background of incident 14.7.2014. It is wrong to suggest that I had moved false complaint with false contents and that is why same was filed by police and no action was taken. I have no idea whether the petitioner and his mother were repeatedly called in the police station and were harassed and defamed by the police. I have seen para 18(ii) at page no.185 of my examination in chief and it is correct that Ex.PW3/1 was moved by me against the petitioner and his mother on 16.7.2014. It is wrong to suggest that I had moved application dated 20.11.2014 to SSP, Mohali which was entrusted to SHO, PS Phase I, Mohali, voltd. I was in judicial custody at Delhi on 20.11.2014. I had seen application dated 20.11.2014 enclosed with Ex.PW5/J in the court. The aforesaid application dated 20.11.2014 does not bear my signature nor it bears signatures of anybody else, though it bears the name of my mother with pen. I had never gone to the police station in connection with application dated 20.11.2014. My mother had informed me that she had moved aforesaid application due to some panic and due to her ill health she was not aware of its situation and had withdrawn the same with a liberty to file a fresh. It is wrong to suggest that aforesaid false complaint was

moved by me or my mother before SSP Mohali to harass the petitioner and same was withdrawn because the same was not proved.

Q. Whether you visited Bar Council of Delhi on 27.6.2014?

A. Yes.

Q. Whether at the time of your visit at Bar Council Delhi, you had moved forged application representing yourself to be authorized by petitioner to have access to his enrollment file and obtain his testimonials from the official record of Bar Council, Delhi under the forged signatures of the petitioner?

A. The matter pertaining to this question is subjudice in Delhi Saket Court and I do not want to answer the question to reveal my defence.

Q. Is it correct that due to the forged application and impersonation along with forged signatures of petitioner by you, Bar Council of Delhi had got registered FIR against you for committing fraud, forgery with the Bar Council of Delhi and challan had already been submitted, charge has been framed and you are facing trial?

A. It is a matter of record.

It is correct that till date I have not sought quashing of the aforesaid FIR lodged by Bar Council, Delhi nor I had sought any re-investigation before submission of challan. Since the registration of FIR till date I have not moved any representation to the Bar Council of Delhi stating therein that I am innocent and I have not forged the aforesaid letter and signatures of the petitioner, voltd. I am facing multiple litigations and as such I have no time and means to do so. I have not challenged the order of framing of charge against me before Delhi higher court. It is correct that I attend the courts at Delhi regularly.”

19. In the instant case, the record reveals that the wife initiated multiple complaints against the respondent (husband) and his mother. A perusal of the complaints would clearly suggest that various allegations of demand of dowry and harassment were made therein. Apparently, such

allegations were made with an intent that some action would be taken by the police against the respondent (husband) and his mother. The stand now being taken by the appellant (wife) that such complaints were made only to save her matrimonial life, cannot be accepted as the appellant (wife) has concededly not approached those authorities afterwards to pursue those complaints despite the fact that she was contacted by those authorities telephonically. Evidently, appellant (wife) avoided appearing before those authorities on one pretext or the other with an explicit intent and motive to harass, humiliate and to defame the respondent-husband.

20. There is evidence on record that the appellant (wife) made complaints against the respondent (husband) with the Bar Council of Punjab and Haryana, containing scandalous remarks, wherein the appellant (wife) had alleged that the respondent (husband) maltreated her physically, emotionally, mentally and wanted to grab her property. The factum of filing of complaints by the appellant against the respondent before the Bar Council, was duly proved on record by PW-14 (Malkiat Singh, Deputy Secretary, Bar Council) whereupon the respondent-husband was issued a notice to appear before the Bar Council. Notably, the appellant's complaint before the Bar Council of Punjab and Haryana, was never pursued as she failed to provide the required affidavit asked from her. Further, PW-8 (Ashish Gupta), deposed regarding the manner in which the appellant (wife) created a scene in the corridors of Bar Council and defamed respondent-husband in full public view by hurling abuses against him. Such conduct amounts to a deliberate and egregious form of cruelty, reflecting a systematic effort to inflict psychological distress and undermine the husband's integrity.

21. Another instance of cruelty within the marital relationship was demonstrated by the appellant's conduct during the Bhog Ceremony of the respondent-husband's mother. Although the case of the appellant is that she went there to pay her last respect towards the departed soul and she denied creating nuisance there, yet her presence there itself speaks volumes otherwise and the police had even registered a DDR in this respect and her nuisance there is even recorded in a CD. Therefore, no fault can be found with the findings returned by the trial Court that the appellant has no concern with the public image of her husband rather she had tried to damage the same.

22. We also do not find any reason to interfere with the finding returned by the trial Court as regards another act of cruelty, when the appellant visited the house of Harmesh Inder Singh @ Lalli (PW9) and created nuisance there, for which a complaint (Ex. RX) was made against the appellant to the SHO of Police Station Sector 11, Chandigarh.

23. As regards the incident at the Elante Mall, when the couple went for shopping, the appellant is stated to have stolen a ladies top in her bag and while leaving the Mall, she was caught, thereby causing humiliation to the respondent-husband. Appellant's initial stand was that the said ladies top was kept by respondent-husband in her bag; however, during the course of her evidence, the version of the appellant was that it was not a ladies top rather it was a pant. Learned trial Court, upon appreciating the material on record, concluded that the happening of this incident is an admitted fact and the bills (Ex. PW10/1 and PW10/2) were suggestive of this incident. It was further held that the testimonies of PW10-Mohit Dangi, Store Manager, Life Style Showroom; PW11-Mrs. Sanju, Security Guard and PW12-Ms. Veena

Devi, Head Security Guard, Life Style Showroom, Elante Mall, Chandigarh, also prove the fact that the version of respondent-husband is correct and it was the appellant who was apprehended with the ladies top in her bag. It was observed that the said witnesses were able to withstand the test of cross-examination. Learned senior counsel for the appellant has not referred to any material to dislodge the aforesaid findings returned by the trial Court. Therefore, we have no hesitation in holding that the appellant (wife) has treated the respondent (husband) with cruelty.

24. No doubt, it is an obligation of the Court that marital status should as far as possible be maintained but when the marriage is totally dead, in that event, nothing is gained to keep the parties tied to a marriage, which in fact has ceased to exist.

25. In the instant case, the learned trial Court has made certain observations as regards the conduct of the parties during the pendency of divorce petition and it has been remarked that from the demeanor of the parties, observed during the course of arguments, it has become very clear that they cannot reside together, what to talk of leading a happy married life by them. Furthermore, it is not disputed that the parties have separated since 2014 and they have not been able to unite and lead a normal matrimonial life all these years. In our opinion, there is total disappearance of emotional substratum in the marriage between the parties. There is every reason, therefore, to assume that their matrimonial relationship is emotionally dead. There is nothing on record to suggest that any effort was made by appellant-wife to make adjustments, rather the evidence on record suggests otherwise.

26. From the above discussion, it is evident that the marriage between the parties has failed and the matrimonial alliance is beyond repair.

If the decree of divorce is set aside that would amount to compelling them to further live together in complete disharmony, mental stress and strain, which shall amount to perpetuating cruelty. In *Chanderkala Trivedi (Smt.) v. Dr. S.P. Trivedi, 1993(4) SCC 232*, it was held by Hon'ble the Supreme Court that if a marriage was dead and there was no chance of its being retrieved, it was better to bring it to an end.

27. Considering the totality of circumstances, although the findings returned by the trial Court as regards *adultery* are set aside, however, we do not find any reason to interfere in the findings returned by the trial Court that the appellant (wife) had treated the respondent (husband) with cruelty. Resultantly, while reversing the findings on adultery, we uphold the impugned judgment and decree dissolving marriage between the parties on the ground of cruelty and the instant appeal is accordingly, dismissed.

28. The point of determination is answered, accordingly.

29. All pending application/s, if any, shall also stand closed.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

August 12, 2024
gurpreet

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