



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-159-2021 (O&M)
Reserved on 31.08.2024
Pronounced on: September 13, 2024

Preeti JainAppellant

vs.

Sanjeev JainRespondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Appellant in person with
Mr. Dinesh Garg, Advocate,
for the appellant.

Respondent in person with Ms. Samridhi Sareen, Advocate
and Mr. Harlove Singh Rajput, Advocate and
Mr. Sandeep Kumar, Advocate,
for the respondent.

SUDEEPTI SHARMA J.

1. The appellant-wife in the present appeal has challenged the judgment and decree dated 22.01.2021 in DMC/1023/2018 passed by learned Principal Judge, Family Court, Hisar, whereby the petition filed by the respondent-husband under Section 13 of Hindu Marriage Act, 1955 (for short 'HMA') for grant of decree of divorce, was decided in his favour and the marriage between the parties was dissolved by a decree of divorce on the ground of mental cruelty by the appellant-wife.

BRIEF FACTS OF THE CASE

2. The brief facts of the case as mentioned in the divorce petition are that the marriage between the parties took place on



19.06.2004, according to Hindu rites and ceremonies. Out of the said wedlock, one female child was born on 10.03.2005. As per pleading of the petition, the appellant-wife used to quarrel over trivial issues, misbehave with the respondent-husband and his family members. She also lodged F.I.R under Section 498-A of the Indian Penal Code, 1860, which was dismissed. Due to temperamental difference between the parties (previously also), the divorce petition was filed by the respondent-husband, which was dismissed as withdrawn on 03.01.2014 from the Court of learned District Judge, Family Court, Hisar. Since the matter was settled between the parties, both of them started living together.

3. The appellant-wife then filed a petition under Protection of Women from Domestic Violence Act, 2005 against the respondent-husband and his family members, which was dismissed. The appellant-wife used to use filthy language against the respondent-husband and his family members. The appellant-wife did not allow the respondent-husband to meet his minor daughter-Shradha. Since there were many disputes between the parties, the respondent-husband filed a divorce petition under Section 13 of the Hindu Marriage Act, 1955 for dissolution of marriage between the parties on the ground of cruelty.

4. In response to the same, the appellant-wife in the written statement denied the allegations made in the petition.

5. After hearing both the parties, the learned Family Court allowed the petition filed by the respondent-husband and granted the decree of divorce on the ground of cruelty, vide judgment and decree dated 22.01.2021. The relevant portion of the judgment is reproduced as



“22 As stated earlier, the onus to prove the ground of divorce is on the petitioner by establishing the allegations put forward to prove the grounds. However, it is settled proposition of law that in matrimonial cases strict proof is not necessary. On the other hand, the Court must be satisfied on matters alleged before it with a reasonable satisfaction based on preponderance of probabilities and not on absolute satisfaction beyond reasonable doubt. The only precaution is that the court should consider that the petitioner is not taking any undue advantage of the circumstances in his favour. Matrimonial disputes have to be decided by courts in a pragmatic manner keeping in view the ground realities. For this purpose almost all factors have to be taken into consideration and the most important being whether the marriage can be saved and the husband and wife can live together happily and maintain a proper atmosphere at home for the upbringing of their off-springs. The court has to decide in the fact and circumstances of each case and it is not possible to lay down any fixed standards or even guidelines.

23. Applying the above settled proposition of law to the facts in hand and on comprehensive appraisal of the evidence led by both the parties and the matrimonial life of the parties, it comes out that all allegations put forward by the petitioner-husband and respondent-wife on each other, are relating to mental cruelty on the part of each other, based on harassment, mis-behaviour and other acts of omissions and commissions of the same nature and those are sufficient to prove mental cruelty and to justify a decree of divorce.

24. There is evidence on record that the sustained unjustified conduct and behaviour of the respondent-wife actually affected both physical and mental health of the petitioner-husband and the entire abusive and humiliating treatment proved to be caused by respondent-wife, was calculated to torture, discommode or render miserable life of the

petitioner-husband just for the sake of her own ego. The treatment complained of and the resultant danger or apprehension is proved to be very grave, substantial and weighty. The result of this act and conduct of the parties is that their ill conduct is persistent for a fairly long period resulting into deterioration of their relations to such an extent that the parties have a reasonable apprehension in their minds that it will be harmful and injurious for him to live with the respondent-wife specifically when she levelled allegations of character assassination against the petitioner and his mother, who is held entitled for divorce of dissolution of his marriage with the respondent-wife on the ground of cruelty.

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43. Before pondering the rival contentions, advanced by learned counsel of both the parties and after scanning the evidence, it would be imperative to give backdrop of the case. On 06.03.2013, a complaint was made by the respondent-wife and on the basis of that complaint, a case under section 498 A IPC was lodged against the petitioner and the same was decided in acquittal vide judgment dated 14.03.2014. On 28.09.2013, present petitioner had filed the divorce petition titled as Sanjeev Vs. Preeti and the same was withdrawn on 03.01.2014. It was resolved between the parties during litigation that they will live together and the respondent was ready to live and reside happily alongwith her husband in her matrimonial home. Since then, they were residing together but the allegation of the petitioner that she did not improve her conduct and started leveling false allegations regarding character assassination between mother and son which amounts to cruelty. The messages are as given below:-

DATED 21.03.2018-

(a) EK MAA JO APNE BETE KO USKI SHADI KE BAD APNA GULAM BANAKAR USKO APNI BIWI OR BETI SE ALAG RAKHTI HAI WO MAA NAHI HAI, WO EK NEECH AURAT HAI JO DUSRI AURAT KA PATI RAKHTI HAI.



DATED 11.04.2018-

(B) HATHON ME CHUDIA PEHAN KAR KON BAITHTA HAI,
SAMJHNE WALE SAMAJH GAYE.

DATED 08.05.2018-

(C) APNI PATNI VAI 13 SAAL KI BETI KO ALAG CHHOD RAKHA
HAI. KHUD 42 SAAL KA SHADI SHUDA, EK BETI KA BAAP
SANJEEV JAIN KAYAR APNE MAA BAAP KE SAHARE REH RAHA
HAI.

DATED 21.05.2018-

(D) SAUNA KAHI KHANA KAHI, KHONA KAHI AUR ANDAR DALNA
KAHI..... HA HA HA.

* INPUT KAHI OUTPUT KAHI....HA HA HA

DATED 13.08.2018-

(E) AREY KAYAR AAJ TEEJ HAI. APNI MAA KO HARA BHARA KAR
DIYA ACHE SE UPAR SE NICHE TAK.

* NAHI KIYA TO KAR DO.

* BECHARI KO EK KAM PAD RAHA THA JO TUIHE BHI RAKH
LIYA.

* AB TU USKOP KAM SE KAM MAA KEH KE MAA SHABD KA
APMAN MAT KARIYOO KAYAR.

* KOI AUR NAAM RAKH USKA.

*JAISE VAI SE TUIHE ITNA ISHARA KAFI HAI. TU KHUD BHI AISI
AURTO KE HI LAYAK HAI.

* TABHI TO NA GHAR KA RAHA NA GHAT KA.

*JISKA EK SA KAAM NAHI CHALTA.

*SAMAJH TO TU ACHE SE GAY. BUS MAN HI MAN MUSKURA
RAH HAI KYAR.

44. Applying the above settled preposition of law to the facts in the hand and on comprehensive appraisal of the evidence led by both the parties and the matrimonial life of the parties, it comes out that husband has successfully proved his case with cogent and reliable evidence which proves that he is entitled for divorce on the ground of cruelty.

45. Needless to say, the entitle allegations of cruelty put forwarded by the petitioner in para 4(vii) of the petition, pertains to illicit relation between petitioner and his mother are



substantiated from acts of omission and commission admitted by respondent-wife in the written statement as well as in the affidavit tendered in evidence Ex.PW4/A in the Court. The allegations levelled about character assassination not specifically denied by her but merely saying that these whatsapp messages were sent due to anger and frustration. The allegations regarding illicit relation between petitioner and his mother was wholly unwarranted and in fact, amounts to a deliberate assault on the character of the mother of the petitioner without any worthy of credence evidence. Whereas, the petitioner in order to prove the allegations regarding character assassination of petitioner besides examining himself as PW3, has also examined PW1 and PW2, who specifically supported and corroborated the stand of the petitioner. Thus, under these circumstances, the court has no scintilla of doubt that the uncalled for allegations are bound to create mental agony and anguish in the mind of husband-petitioner.

46 Regard being had to the above said, we have to evaluate the instances. This Court is of the considered opinion that a normal reasonable man is bound to feel the sting and the pungency. The conduct and circumstances make it graphically clear that the respondent-wife had really humiliated him and his mother and caused mental and physical cruelty. He conduct clearly exposit that it has resulted in causing agony and anguish in the mind of husband. She had made allegations regarding illicit relation with his mother and other ladies to destroy the dignity and respect of the petitioner and his mother in the society. These allegations are not merely allegations but these are aspersions cast on their character. In the Indian culture, history, religion and civilization, the honour is highly prized and ill-fame is considered worst than death. Even lord Krishna had to invoke Arjun's sense of personal pride and from the aforesaid allegations, it is clear that the loss of reputation is worst than death of a man and this is what in our Hindu society our Saints and Gurus have said about the same.



Because of the loss of the reputation, the petitioner and his family have suffered a lot within the family and outside his family, relatives and friends. This all happened due to the malafide and irresponsible act and conduct of the respondent. The respondent has intentionally and willfully done all this knowing-fully well of the consequences, with a view to lower the moral, social and intellectual character of the petitioner. The respondent must have realized the consequences of leveling of such unwarranted and defamatory allegations against her husband and her mother-in-law. After coming to know about such type of scandalous allegations, it is very hard time for a mother to stand before her children. Lord Guru Nanak Dev Ji also chanted same words in "Guru Granth Sahib" (So Kyon Mandaa Aakhiye, Jin Janme Rajan)". Do not call her from bad name who has given birth to kings also. The petitioner has rightly recited about the Indian culture in which even Lord Krishna "had to invoke Arjun's sense of personal pride and honour, when everything else failed, what worked is this:-

"Besides man will even recount thy ill fame and, for one whose has been honoured, ill fame is worse than death.....could anything be sadder than that...."

47. In the present case, the respondent merely said in her defence that she sent the messages due to anger and frustration. Merely saying that she sent the messages due to anger and frustration is not sufficient to wash the dirt which has thrown on the character of the petitioner and his mother. It is commonly stated that those who live in glass houses themselves should not throw pebbles on others, because to every such action, there is always an equal opposite reaction, whereby their own glass houses are likely to get damaged considerably.

48. Adverting now to the allegedly defamatory phraseology set out in the petition, it is clear cut language which is sufficient to lower down the prestige and image of the petitioner in the



society as well as before the relatives and friends because these messages also sent on the social media to the acquainted persons known to the petitioner. The plea of learned counsel for respondent that these messages are not admissible in evidence according to IT Act because the certificate u/s 65 B of Evidence Act is required to prove these messages. The contention of the counsel for respondent is merely a figment of imagination and does not hold water because respondent herself admitted in her written statement and in her affidavit Ex.RW4/A that she sent the messages to her husband and others. The admitted facts need not to be proved. Due to the vulgar messages sent by the respondent, the feeling of deep anguish, disappointment, agony and frustration of the husband is obvious. It can be stated with certitude that the cumulative effect of the evidence brought on record clearly establish a sustained attitude of causing humiliation and calculated torture on the part of fe to make the life of husband miserable. The husband felt humiliated both in private and public life. Indubitably, it created a dent in his reputation which is not only the salt of life, but also the purest treasure and most precious perfume of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity. Thus, analyzed it would not be out of place to state that his brain and the bones must have felt the chill of humiliation. The cruel behaviour has frozen the emotions and snuffed out the bright candle of feeling of the husband because he has been treated as unperson. So in these circumstances, husband cannot be asked to continue to live with her.

49. In today's materialistic word, passion, lust, greed and pride has taken a front seat, but basic theology of life, like devotion, honesty and self discipline has faded in oblivion. This has led to wide spread disillusionment of educated class. are living in the civilized society and a person spent whole life to gain the reputation in the society and one alien comes, without getting



anything, destroy the whole reputation by levelling derogatory remarks, regarding the character of the other persons. The loss of reputation can never be rebuilt in the eyes of society.

50. "Lord Krishna" in "Chapter 16 of Shrimad Bhagvat Gita" said that "one should not find fault with others or correct them unnecessarily. Of-course, to call a thief, a thief is not fault finding, but to call an honest person a thief is very much offensive for one, who is making advancement in spiritual life".

51. In the present case also, the respondent being wife of petitioner has tried to tarnish the image of her husband and her mother-in-law by levelling the allegations of character assassination through whatsapp messages. The respondent did not stop here, she and her father crossed all the limits by moving 29 applications against the petitioner and his family members in order to demoralize them, which adversely affected the reputation of the petitioner in the society. Even otherwise, in our civilized society, ill fame is considered worst than death. The sin committed by the respondent is not merely reprehensible but it is also un-excusable in the Hindu Society because the father of the respondent also admitted that all the complaints filed by her daughter with his consent and suggestions.

52. As a sequel of above said discussion, it is proved that the allegations levelled by the respondent through whatsapp messages regarding character assassination of the mother of petitioner as well as 29 complaints filed by the respondent, amounts to a mental cruelty. All the complaints filed by the respondent and her father, were found false and nothing is incriminating against the petitioner. In our society, the relation between son and mother are pious relation, which the respondent tried to malice in the society and that cannot be excusable. This court has gone through the citations between the lines referred to by the counsel for the respondent are on different footing and are not applicable to the facts of the present case.



53. Taking into consideration the conduct and the behaviour of wife, it is apparent that there had no such future assurance on their part showing conjugal kindness between both because respondent-wife made allegations regarding illicit relation between petitioner and his mother and with other ladies. It is worthwhile to mention here that the court has also made endeavour to reconcile the matter between the parties but due to allegations of character assassination it would not be possible for them to reunite. There is an expression not only the character but also a maladroitness effort to malign.

54. So far as the contentions of the learned counsel for the petitioner that the respondent has deserted the petitioner without any reasonable excuse is concerned, the same has remained unproved. No doubt, it is a settled law that no decree of divorce could be granted on this ground in the absence of pleading and proof. Desertion for the purpose of seeking divorce under the Act, means the intentional permanent forsaking the abandonment of one spouse by the other, without that other's consent and without reasonable cause. Desertion is not the withdrawal from a place, but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations. The essential ingredients of desertion that (i) the factum of separation and (ii) the intention to bring cohabitation permanently to an end-animus deserendi. The element of performance which is a prime condition requires that both these essential ingredients should continue during the entire statutory period of two years. But in the present case, from the perusal of case file, it is revealed that parties are residing separately since March, 2018 and since then, there is no cohabitation between the parties till the filing of the petition on 05.09.2018. Therefore, desertion for continuous period of two years prior to filing of petition is not proved.

55. So far as the contention for the learned counsel for the petitioner that the respondent did not make any effort for reconciliation as admitted by the respondent while appearing



as RW-4 as well as her father RW-3. No evidence could be led by the respondent to prove that there has been made any effort on her part to return to her matrimonial home prior and after to the filing of the present petition. Had there been any efforts made by the respondent that the situation should be otherwise, but no efforts were made by respondent and her family members. So the observation made in case Sarabjeet Kaur (Supra) is fully applicable to the facts of the case.

55. This court noticed at this stage that the intention to be cruel is 56. not an essential element of cruelty as envisaged under section 13(1-a) of the Hindu Marriage Act. If bitter waters are flowing, it is not necessary to inquire from which source the spring. The intention or motive behind the cruelty has lost significance in the changed society and the social atmosphere of the present days. It is sufficient that if the cruelty is of the type which indicates that the relations between the spouses had deteriorated to such an extent due to the conduct of one or the other that it has become impossible for them to live together without mental agony. In matrimonial matters, the feelings and attitudes of minds are material. In the present case, the act and conduct of respondent-wife, is sufficient to create mental agony.

57. All these factual details culled out from the pleadings and evidence of both the parties clearly shows that the conduct of respondent- wife towards the husband, with these acceptable facts, it cannot be concluded that the petitioner-husband has not made out a case of mental cruelty at the hands of respondent-wife. Thus, the Court is satisfied that the petitioner-husband led ample evidence on the record that the respondent-wife caused grave mental cruelty by leveling false allegations regarding illicit relations between the petitioner and his mother. There is no possibility of reunion of marital life between them in view of the above said circumstances.

58. Resultantly, this issue is proved in favour of the petitioner-husband, who is held entitled for decree of dissolution of his



marriage with the respondent on the ground of mental cruelty. As a result of above discussion, issue No.1 is decided in favour of petitioner.

ISSUE No.2

59. Onus to prove this issue was upon the respondent. However, no evidence was led to prove that the present petition is not maintainable. Hence, this issue is returned in favour of petitioner and against the respondent.

ISSUE No.3 (Relief):

60 As a sequel of aforesaid findings on the issue No.1, the petition is accepted and a decree of divorce dissolving the marriage of the petitioner with the respondent on the ground of cruelty is granted in favour of petitioner-husband and against the respondent-wife under section 13(1-a) of Hindu Marriage Act, 1955. Decree sheet be drawn accordingly and the file be consigned to the records.”

6. A perusal of the above judgment shows that the learned Principal Judge, Family Court, Sonipat, has taken into consideration each and every aspect of relationship between the parties and the relevant evidence i.e documentary as well as oral evidence on record in a detailed manner.

SUBMISSIONS OF THE COUNSEL FOR THE APPELLANT-WIFE

7. Learned counsel for the appellant-wife contends that the judgment and decree dated 22.01.2021 passed by the learned Family Court is unreasonable, unjustified and against the settled principle of law. He further contends that the learned Family Court has wrongly concluded that the appellant-wife is guilty of cruelty and on this basis only, the decree of divorce has wrongly been granted to the respondent-husband.

8. He further submits that divorce was wrongly granted and the decree of divorce dated 22.01.2021 deserve to be set aside and the present appeal be allowed.

SUBMISSIONS OF THE COUNSEL FOR THE RESPONDENT-HUSBAND

9. *Per contra*, learned counsel for the respondent-husband submits that the divorce had rightly been granted on the ground of cruelty. He further submits that the marriage between the parties has been irretrievably broken down and at this stage, they cannot live together as husband and wife. He prayed for dismissal of the appeal.

10. We have heard learned counsel for the parties and perused the whole record.

11. Section 23(2) of the Hindu Marriage Act, 1955 reads as under:-

“23. Decree in proceedings:-

* * * * *

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties: Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.

The intention of the legislature in incorporating the above-



mentioned provision [Section 23(2)] is that even if one of the parties has filed the petition under Section 13 of the Hindu Marriage Act, 1955 for dissolution of marriage on the grounds mentioned therein, it shall be the duty of the courts, in every case where it is possible so to do consistently with the nature and circumstances of the case to make every endeavour to bring about reconciliation between the parties. That is why for the grant of divorce under Section 13 of the Hindu Marriage Act, 1955, wherein certain grounds for grant of decree of divorce are given, no strict method for proving the same is required and even if any of the ground is proved to be correct, still Section 23(2) of the Hindu Marriage Act, 1955 casts mandatory duty upon the Court before proceeding to grant any relief under the Hindu Marriage Act, 1955 to make every endeavour to bring about the relationship between the parties.

12. Further, before deciding whether to grant or deny decree of divorce for dissolution of marriage, it is important to have a meeting with both parties to assess the current status of their relationship.

13. Section 23(2) of Hindu Marriage Act, 1955 reads that before proceeding to grant any relief under the Hindu Marriage Act, 1955 it shall be the duty of the Court in the first instance, in every case, where it is possible so to do consistently with the nature and circumstance of the case, to make every endeavour to bring about the reconciliation between the parties.

14. In compliance of Section 23(2) of Hindu Marriage Act, 1955, parties are present in the Court today i.e 31.08.2024 along with their Advocates. Every effort was made to settle down the dispute between the parties with respect to their living together or gracefully



such that we did not find any positive result and observe that the relationship between the parties has become so bitter that it is impossible for them to stay together under one roof.

15. We have interacted with the parties and found that they are living separately since 2012 i.e for more than 12 years and no effort was made by any of the parties to resolve the dispute between them. Therefore, at this stage, we do not think it appropriate to discuss the evidence led by them, and to determine the allegations or fault by both of them. As per the record, there are allegations and counter-allegations against each other. The relationship between the parties have become so bitter that we find that there is no possibility of their staying together under one roof. Even the efforts made by this Court as well as the Mediation Centre of this Court failed in the present case.

16. The matrimonial cases cannot be decided on the basis of allegations made against each other, evidence led by both the parties. In fact, the decision depends upon the amount of bitterness between each other and the love and affection left between the parties after so many litigation. Even if the Courts appreciate the evidence on record in matrimonial matters and reject the prayer for dissolution of marriage, still they cannot be forced to live together. It is only their personal efforts which can decide the dispute between them.

SETTLED LAW

17. While discussing the judgments passed by Hon'ble the Supreme Court in **Naveen Kohli v. Neelu Kohli, 2006 AIR Supreme Court 1675**, held as under:-

“24. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social



conditions and their culture and human values to which they attach importance. Each case has to be decided on its own merits.

28. *This Court in the case of Savitri Pandey v. Prem Chandra Pandey, 2002(1) RCR (Civil) 719 : (2002)2 SCC 73, stated that mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other*

31. *In Chetan Dass v. Kamla Devi, 2001(2) RCR (Civil) 641 : (2001)4 SCC 250, this Court observed that the matrimonial matters have to be basically decided on its facts. In the words of the Court : "Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of "irretrievably broken marriage" as a straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case.*

32. *In Sandhya Rani v. Kalyanram Narayanan, (1994) Supp. 2 SCC 588, this Court reiterated and took the view that since the parties are living separately for the last more than three*



years, we have no doubt in our mind that the marriage between the parties has irretrievably broken down. There is no chance whatsoever of their coming together. Therefore, the Court granted the decree of divorce. 33. In the case of Chandrakala Menon v. Vipin Menon, (1993)2 SCC 6, the parties had been living separately for so many years. This Court came to the conclusion that there is no scope of settlement between them because, according to the observation of this Court, the marriage has irretrievably broken down and there is no chance of their coming together. This Court granted decree of divorce.

41. 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.

42. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and



mental conditions of the parties, their character and social status. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court.

*43. In **Durga P. Tripathy v. Arundhati Tripathy, 2005(3) RCR (Civil) 819 : (2005)7 SCC 353**, this Court further observed that Marriages are made in heaven. Both parties have crossed the point of no return. A workable solution is certainly not possible. Parties cannot at this stage reconcile themselves and live together forgetting their past as a bad dream. We, therefore, have no other option except to allow the appeal and set aside the judgment of the High Court and affirming the order of the Family Court granting decree for divorce.*

50. On May 22, 1969, the General Assembly of the Church of Scotland accepted the Report of their Moral and Social Welfare Board, which suggested the substitution of breakdown in place of matrimonial offences. It would be of interest to quote what they said in their basis proposals: "Matrimonial offences are often the outcome rather than the cause of the deteriorating marriage. An accusatorial principle of divorce tends to encourage matrimonial offences, increase bitterness and widen the rift that is already there. Separation for a continuous period of at least two years consequent upon a decision of at least one of the parties not to live with the other should act as the sole evidence of marriage breakdown." Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable



marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.

52. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised 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 do not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

53. Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

54. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist..

18. A constitution Bench of Hon'ble the Supreme Court in **Shilpa Sailesh v. Varun Sreenivasan, 2024(1), Apex Court Judgment (SC) 9**, observed as under:-

33. Having said so, we wish to clearly state that grant of divorce on the ground of irretrievable breakdown of marriage by this Court is not a matter of right, but a discretion which is to be exercised with great care and caution, keeping in mind several factors ensuring that 'complete justice' is done to both parties. It is obvious that this Court should be fully convinced and satisfied that the marriage is totally unworkable, emotionally dead and beyond salvation and, therefore, dissolution of marriage is the right solution and the only way forward. That the marriage has irretrievably broken down is to be factually determined and firmly



established. For this, several factors are to be considered such as the period of time the parties had cohabited after marriage; when the parties had last cohabited; the nature of allegations made by the parties against each other and their family members; the orders passed in the legal proceedings from time to time, cumulative impact on the personal relationship; whether, and how many attempts were made to settle the disputes by intervention of the court or through mediation, and when the last attempt was made, etc. The period of separation should be sufficiently long, and anything above six years or more will be a relevant factor. But these facts have to be evaluated keeping in view the economic and social status of the parties, including their educational qualifications, whether the parties have any children, their age, educational qualification, and whether the other spouse and children are dependent, in which event how and in what manner the party seeking divorce intends to take care and provide for the spouse or the children. Question of custody and welfare of minor children, provision for fair and adequate alimony for the wife, and economic rights of the children and other pending matters, if any, are relevant considerations. We would not like to codify the factors so as to curtail exercise of jurisdiction under Article 142(1) of the Constitution of India, which is situation specific. Some of the factors mentioned can be taken as illustrative, and worthy of consideration.

19. In **Rakesh Raman v. Kavita, 2023 AIR Supreme Court 2144**, the Hon'ble Apex Court held as under:-

18. *We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness*



between the two, has to be read as cruelty under Section 13(1)(ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock.

20. This Court in **FAO No.M-287-2018**, decided on 21.08.2024, titled as ***Sanjeev Kumar Vs. Suman*** observed as under :-

“20. There is no dispute regarding the fact of institution of different cases against the appellant-husband as well as his family members. Though under Section 13 of Hindu Marriage Act, 1955, different grounds for dissolution of marriage are mentioned and the decree of divorce can be granted, if any of the parties are able to prove the same against the other by leading cogent and convincing evidence etc. But the factual and practical aspect of such kind of cases is that the Courts cannot force the parties to live together, despite the dismissal of Section 13 of Hindu Marriage Act, 1955 petition for decree of divorce filed by any of the parties and despite the fact of their not being able to prove the ground on which they were asking for dissolution of marriage. In litigation under the Hindu Marriage Act, 1955, practically speaking, there cannot be any win or loose situation. The only win-win situation is that the parties amicably settle down their status mutually.



Even if the divorce petition under Section 13 of Hindu Marriage Act, 1955 for grant of decree of divorce is dismissed or for that matter petition under Section 9 of Hindu Marriage Act, 1955 for restitution of conjugal rights is allowed, practically speaking there cannot be any execution in such kind of matters. Since the parties to the litigation are not the properties for which execution can be filed to retrieve it to the other party. Emotions are attached to the parties for which they cannot be forced to live together. Once the conduct and the effort to live together during the period of their separation and gravity of allegations made against each other is observed, that would actually be the weights and measures to decide the matrimonial cases under the Hindu Marriage Act, 1955.

** * * **

28. *In matrimonial cases seeking a decree of divorce on any other grounds, it is often difficult to practically prove the allegations made by the parties inter se. Courts should not decide such cases solely on the basis of proof of allegations or the evidence presented, as is done in criminal cases. After all even if the allegations are proved to be correct beyond reasonable doubt, these are not the criminal cases where the offence is punishable.*

29. *In matrimonial matters, the only possible outcomes are either the granting of a decree of divorce or the dismissal of the petition for such a decree. In either case, no execution or punishment can be imposed, as no court can*



compel the parties to live together under one roof or to cohabit.”

21. Recently, this Court in **FAO No. 3803-2023**, titled as **Rohit Watts vs. Sonia Virk**, decided on 28.08.2024 has observed as under:-

“37. Under Section 13 of the Hindu Marriage Act, 1955, certain grounds are specified for granting a decree of divorce. However, regardless of whether these grounds are proven, once parties are involved in matrimonial disputes, there are often allegations and counter-allegations. These cases cannot be treated in the same way as other civil or criminal matters.

38. Following are the factors which are to be considered by the Courts while granting the decree of divorce :-

- i) The period of separation between the parties;
- ii) The number of litigation between the parties;
- iii) The efforts made by the parties individually to settle down the dispute between them;
- iv) Over all conduct and behaviour/psychology of the parties with regard to the grant of decree of divorce or to deny the same.”

CONCLUSION

22. Therefore, we do not find that the judgment passed by the Principal Judge, Family Court, Sonipat, is bad in the eyes of the law, as in the present case, a perusal of the record shows that the kind of allegations made by the appellant-wife against the respondent-husband and his mother shows her conduct, which is unforgettable. No husband would like to stay with such a wife who tries to defame the pious relation

of mother and son. The appellant-wife lodged 29 complaints against the



respondent-husband. She also filed a petition under Section 9 of the Hindu Marriage Act, 1955. She also filed a complaint under Section 340 of the Code of Criminal Procedure, 1973 against her husband, her father-in-law mentioning the fact that House No. 336, Sector 14 is not in the name of Sanjeev Jain and Prabha Jain. This complaint was later on dismissed as withdrawn. The appellant-wife further sent Whatsapp messages to the respondent-husband attacking the character of the respondent-husband and his mother wherein she clearly mentioned that the respondent-husband was having illicit relations with his mother and other ladies. This goes to show the level of mental tension, the respondent-husband had to undergo. This fact is admitted by the appellant-wife that she had sent Whatsapp messages to the respondent-husband and other relatives to defame the respondent-husband and his mother. There are allegations to the effect that in the year 2013, the father of the appellant-wife made a complaint against the respondent-husband alleging that the respondent-husband has compelled the appellant-wife to develop relations with his friends, which amounts to cruelty. Cases under Section 12 of the Domestic Violence Act, 2005, Section 125 of the Code of Criminal Procedure, 1973 and Section 498-A of the Indian Penal Code, 1860 were also filed by the appellant-wife against the respondent-husband and his family members. Further the case filed under Section 498-A of IPC was decided in favour of the respondent-husband, vide judgment dated 14.03.2014

23. In view of the above, we do not find any infirmity in the impugned judgment and the present appeal being devoid of any merit is hereby dismissed. Accordingly, the judgment and decree dated



Family Court, Hisar, dissolving the marriage between the parties by decree of divorce under Section 13 of Hindu Marriage Act is hereby upheld.

PERMANENT ALIMONY

24. Section 25 of the Hindu Marriage Act, 1955 reads as under:-

“25. Permanent alimony and maintenance.—(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent’s own income and other property, if any, the income and other property of the applicant [the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.”



25. While granting permanent alimony, this Court in FAO No. 3803-2023, titled as Rohit Watts vs. Sonia Virk, decided on 28.08.2024 has observed as under:-

45. *The law regarding permanent alimony and maintenance is now very clear and can be granted to both the husband and the wife. However, in recent times, we have observed that in matrimonial matters, whether the appeal is filed by the husband or the wife, wives are often trying to exploit the situation by extorting money from the husband in exchange for the relief sought by him. In many cases, it is evident from the pleadings and proven through documentary records that wives have lodged FIRs against the husband and his family members, leading to their conviction. Taking it be cruelty, if the husband files a petition under Section 13 of the Hindu Marriage Act, 1955 for the grant of decree of divorce, it is normally a wife who files the applications for maintenance under different statutes, i.e. under Sections 24 and 25 of the Hindu Marriage Act, 1955, Section 18 of Hindu Adoption and Maintenance Act, 1956, Section 125 of the Code of Criminal Procedure, 1973, Sections 20 and 22 of Protection of Women from Domestic Violence Act, 2005. Despite the fact that they lodged FIR against husband and his family members and they were to face trial and to spend the period of conviction in jails, the wife wants the reward for the same by filing such kind of applications. And it is very unfortunate that she is also granted the same. Now it is*



high time and the need of the society that such type of exploitation and extortion should be stopped. Therefore, justice demands that while dealing with the matrimonial matters and while granting permanent alimony, every aspect of the case should be taken into consideration which includes behaviour, conduct and the level of allegations made by each party.

47. *Normally, it is the duty of both the parents to look after their children and fulfil their needs and requirements. A matrimonial dispute between the parties should not affect or deprive the children of their right to the love and affection of both parents. For the welfare and over all personality development of a child, the love, care and affection of both parents are essential. Because of the change of the marital status of the parents the child cannot be forced to choose one parent. The child should have the freedom to stay, visit, or meet both parents as per his/her wish and desire. Therefore, in the present matter, the daughter born out of the wedlock is free to meet both the parents and to stay with both the parents as per her wish and desire.”*

**NOW COMING TO THE GRANT OF PERMANENT ALIMONY
IN THE PRESENT CASE**

26. We are of the view that the kind of allegations the appellant-wife has levelled against the respondent-husband, she does not deserve any permanent alimony, as observed by this Court in FAO No. 3803-

educated lady having degree of M.Com and she can bear her own expenses. So far as daughter-Shradha is concerned, who was born out of the wedlock of the parties, this Court is of the view the children are the responsibility of both the parents. Therefore, the respondent-husband is directed to deposit Rs.10000/- per month in the account of her daughter towards her education and other expenses, till she is unable to maintain herself out of her earnings. He shall bear all the expenses towards her marriage and he shall not disinherit her from his estate at any point of time. He shall also perform all the moral obligations towards her daughter.

27. It is further clarified that Shradha is free to meet and stay with either of his parents, according to her own wishes and desires. Since, she is a minor (14 year old), the appellant shall not prevent her from meeting or communicating with her father, either through phone or in person. The respondent-husband is free to contact and visit her daughter at any time.

28. All the pending applications, if any, also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

September 13, 2024
G Arora

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