

2024:PHHC:115345-DB



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

FAO-1845-2024 (O&M)

Date of decision: 02.09.2024

PARVEEN SHARMA

...Appellant

Versus

KUNDAN DEEP

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. Shubhashish Kukreti, Advocate for appellant.

SUDHIR SINGH, J.

The present appeal is directed against the judgment and decree dated 05.05.2023 passed by learned Additional Principal Judge, Family Court, Patiala, Punjab (hereinafter referred as to Family Court), whereby the petition under Section 13 of the Hindu Marriage Act, 1956 (hereinafter referred as 'the Act') filed by the appellant-husband, was dismissed.

2. The aforesaid petition had been filed by the appellant-husband, inter alia, averring therein that his marriage with respondent-wife was solemnized on 10.11.2008, according to Hindu Rites at Patiala and out of the said wedlock two daughters, namely, Hetal Sharma, aged about 8 years and Vanshika Sharma, aged about 3 years, were born. It was further stated that the respondent-wife was a short tempered lady and used to pick up quarrel with the appellant-husband

and his widowed mother. The respondent-wife asked the appellant-husband to pay her the entire salary and that his mother should not ask for money from him for the medicines, clothes and for day to day routine expenses. She had further pressurized the appellant-husband to take a separate house and had further threatened to involve the appellant-husband and his mother in a false case of dowry, besides giving the threats of committing suicide along with the kids. Sometimes, she used to jump from the moving vehicles, while sitting with the appellant-husband. Her behavior became more aggressive after the birth of the girl child as she wanted a male child and after the birth of the second girl child, she had started ignoring the said child. Respondent-wife had levelled allegations that the appellant-husband was having extra-marital relations with his sister-in-law (brother's wife) Annu Priya. She sometimes started shouting in the streets in order to gain attention and sympathy from the neighbours. Brother of the respondent visited the house of the appellant-husband and had an altercation with the appellant. The respondent-wife had left her matrimonial home many times saying that she did not want to live with the mother of the appellant-husband. Under the pressure of the respondent-wife, the appellant-husband had resigned from the Company, namely, Old Micro Lab. The respondent-wife was brought back from her parental house to her matrimonial home. For some days, she remained quite but again she started repeating the earlier behavior. On 26.06.2017, the respondent-wife left the house along with children by saying that she will only come to the house when mother of the appellant-husband leave the house or on the day she

dies and had also threatened not to send kids to the school. She openly issued threats to the appellant-husband that she will get married second time as was done by her brother and sister. It was further averred that the appellant-husband bore all types of cruelties at the hands of respondent-wife as he wanted to save his matrimonial life. It was further stated that the parties had living separately since 26.06.2017, and that the respondent-wife did not return to her matrimonial home in spite of repeated phone calls. The appellant-husband along with his mother and the mediator visited the parental house of the respondent-wife on 02.07.2017, but she was adamant in not returning to her matrimonial home. It was, thus, averred that the said behavior of the respondent-wife had caused a cruelty towards the appellant-husband and there being no chance of reconciliation between the parties, a decree of divorce was prayed for.

3. Upon notice, the respondent-wife appeared and filed her written statement denying the allegations levelled by the appellant-husband. The factum of marriage and birth of two female children was admitted. It was further stated that the appellant-husband was a man of means and earning Rs. 55,000/- per month while working with Cadila Pharmaceuticals and in Sadbhawna Hospital and was leading a luxurious life. It was further stated that the appellant had purchased a house for an amount of Rs.50 lacs and he also owned various cars and every year he used to go on international holidays. It was further pointed out that while the appellant-husband was leading a luxurious life, he was not paying even a single penny towards the maintenance.

It was further averred that after the birth of the second girl child, the

appellant became more aggressive and started hurling abuses upon the respondent-wife. The factum of parties living separately since 26.06.2017, was admitted, but it was alleged that the respondent-wife was given merciless beatings by the appellant-husband and had been turned out of the matrimonial home along with the minor children. Thus, a prayer for dismissal of the petition was made.

4. On the basis of pleadings of the parties the following issue framed by learned Family Court:-

“1. Whether the petitioner is entitled to decree of divorce under Section 13 of the Hindu Marriage Act on the ground of cruelty as prayed for in the petition? OPP

2. Whether the petition is not maintainable? OPR

3. Relief.”

5. In evidence, the appellant-husband examined himself as PW-1 besides examining PW-2-Vivek Kumar and PW-3-Sandeep Sharma. He also led documentary evidence Ex.R1/A to Ex. R1/F ; Ex. P1 to Ex.P23 and Mark-P1 to Mark-P14. On the other hand, the respondent-wife examined herself as DW-1 and tendered into evidence Ex.DX1/A to DX1/D.

6. The learned Family Court after taking into consideration the rival contentions of the parties and evidence on record, dismissed the petition filed by the appellant-husband, as noticed above.

7. Learned counsel appearing for the appellant-husband has vehemently argued that it was specifically pleaded in the petition filed

by the appellant-husband that the respondent-wife had treated him with cruelty. Various instances and circumstances had been given in detailed in the said petition. The said pleadings were proved by way of leading cogent and convincing evidence besides leading documentary evidence. It is further submitted that the respondent-wife in her written statement had only denied the said allegations and did not lead any evidence to controvert the pleadings of the appellant-husband, which were duly proved by way of cogent and convincing evidence. It is, thus, argued that the finding recorded by the learned Family Court that the appellant-husband has failed to prove the cruelty meted at the hands of the respondent-wife is not sustainable in the eyes of law.

8. We have heard learned counsel for the appellant-wife and have also gone through the impugned judgment and decree passed by the Court below.

9. The only issue that requires consideration by this Court is whether the impugned judgment and decree passed by learned Family Court requires any interference.

10. It may be noticed that the entire pleadings of the appellant-husband are in respect of the cruelty allegedly committed by the respondent-wife. All the allegations and averments made in the petition are in respect of the behavior, temperamental aspects and the incidents of leaving the matrimonial home by the respondent-wife. Thus, we are to see if such allegations were proved or not.

10. The learned Family Court examined the aforesaid pleadings on the basis of the evidence led by the appellant-husband.

Referring to the judgment of the Hon'ble Supreme Court in **Naveen Kohli Vs. Neelu Kohli 2006(2) Civil Court Cases 226 (SC)**, and also taking into consideration the evidence led by the respondent-wife, it was found that the parties had been living separately since 26.06.2017. It was further found that the appellant-husband had given a complaint against the respondent-wife and her uncle Chiranji Lal, for procuring his account statements and after recording the statements of the respondent-wife and her uncle, the said complaint was filed. It was also found that it had come on record that earlier during the stay of the respondent-wife and the minor children with the appellant-husband, he used to deposit the school fee of the minor daughters and he did so till January 2018, but there was nothing on record to prove that he had paid the school fee of the children thereafter and had also maintained them. It was, thus, found that after the parties started residing separately, the expenses of both the minor daughters were being borne by the respondent-wife. As regards the allegations of the appellant-husband that his mother had been harassed or maltreated by the respondent-wife, the appellant-husband did not lead any evidence in this regard. Both the witnesses produced by the appellant-husband (PW-2 and PW-3) only referred to the incident of 26.06.2017 to depose that the respondent-wife had deserted the appellant-husband. The learned trial Court had also found that mother of the appellant-husband would have been the best witness in this regard, but she was not examined. In para No. 21 of its judgment, the learned Family Court, found to the following effect:-

“As such, considering the arguments of learned counsel for both the parties, this Court is of the considered view that the petitioner has failed to prove his case by leading sufficient evidence that the respondent failed to prove his case by leading sufficient evidence that the respondent is short tempered lady and she used to quarrel with the petitioner or his mother and had not even cared for her second daughter as she wanted a male child, rather it is proved on record that it is the respondent, who is taking care of both minor daughters since her separation from the petitioner since 26.06.2017 and the petitioner had never contributed towards their maintenance or filed any petition U/s 9 HMA for restitution of conjugal rights”.

11. In **K. Srinivas Rao v. D.A. Deepa**, 2013(2) RCR (Civil) 232; Hon'ble Apex Court observed as under:-

“14. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh, we could add a few more. 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...”

12. In **Ramchander v. Ananta**, (2015) 11 SCC 539, it was held that cruelty has not been defined in the Act and the same is to be taken as the behavior by one spouse towards the other. The cruelty can be physical or mental, but such cruelty must be proved. It was held as under:-

“10. The expression “cruelty” has not been defined in the Hindu Marriage Act. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behavior by one spouse towards the other, which causes a reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Cruelty can be physical or mental. In the present case there is no allegation of physical cruelty alleged by the plaintiff. What is alleged is mental cruelty and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. It is settled law that the instances of cruelty are not to be taken in isolation but to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the plaintiff has been subjected to mental cruelty due to conduct of the other spouse. In the

decision in Samar Ghosh case (Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511) this Court set out illustrative cases where inference of “mental cruelty” can be drawn and they are only illustrative and not exhaustive”.

13. In our opinion, the findings recorded by the learned Family Court are plausible findings based on the evidence on record. Once, it stands proved on record that the appellant-husband has failed to take care and maintain the respondent-wife and the minor daughters, and rather it is the respondent-wife, who has been taking care of the minor children and bearing their expenses, it is not open to the appellant to plead that he had been treated with cruelty by the respondent-wife. Thus, we find no illegality or perversity in the findings recorded by the learned Family Court.

14. No other point has been urged.

15. In view of the above, finding no merit in the present appeal, the same is hereby dismissed.

16. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

02.09.2024
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No