

2024-PHHC-153500-DB



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

FAO-1140-2023 (O&M)

Date of Decision: 21.11.2024

Kiran

...Appellant

Versus

Gagan Puri

...Respondent

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

Present:- Mr. Jarnail S. Saneta, Advocate
for the appellant.

Mr. Anil K. Malik, Advocate
for the respondent.

SUDHIR SINGH, J.

CM-17197-CII-2024

Keeping in view the averments made in the application, the same is allowed. Copy of order dated 12.07.2024 (Annexure R-1) is taken on record.

CM-17198-CII-2024

The instant application is for early hearing of the main appeal, which is fixed for 16.12.2024.

For the reasons mentioned in the application, the main appeal i.e. FAO-1140-2023 is preponed and taken up today itself for disposal.

Applications stands allowed.

FAO-1140-2023

Challenge in the present appeal is to the judgment and decree dated 12.01.2023 passed by the learned Principal Judge, Family Court, Kurukshetra, Camp Court at Pehowa (for short 'the Family Court'), whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the respondent-husband was allowed and marriage between the parties was dissolved on the grounds of cruelty and desertion.

2. The aforesaid petition had been filed by the respondent-husband, *inter-alia*, pleading therein that his marriage with the appellant-wife was solemnized on 13.05.2013 as per Hindu rites. Out of the said wedlock, a female child was born on 12.07.2014. It was averred by the respondent-husband that from the very inception of marriage, the behaviour of the appellant-wife towards him and his family members had been rude, arrogant and cruel and she used to insult the respondent-husband in front of relatives and friends and in this way, had caused mental cruelty to him. The respondent-husband further pleaded that the appellant-wife did not perform the household chores and used abusive language against him. It was further pleaded that the appellant-

wife threatened the respondent-husband to implicate him in a false criminal case. It was further pleaded that the appellant-wife had left the matrimonial home on 8.5.2015 alongwith the minor child without any reason and since then, there had been no cohabitation between the parties. It was further pleaded that the appellant-wife got registered a criminal case bearing FIR No. 148 dated 29.10.2015 under Sections 406 & 498-A IPC at Police Station Ismailabad against the respondent-husband and his family members.

3. Upon notice, the appellant-wife entered appearance and filed her written denying all the allegations levelled in the petition. It was pleaded that the respondent-husband and his family members treated the appellant-wife with cruelty. They used to harass and humiliate her on the pretext of bringing insufficient dowry. They demanded a motorcycle from her. It was further pleaded that the respondent-husband and his family members used to taunt the appellant-wife for giving birth to a female child. It was further the case of the appellant-wife that in May, 2015, the respondent-husband turned her out of the matrimonial home along with the minor child after giving beatings to her.

4. On the basis of the pleadings of the parties, the following issues were framed by the Family Court:-

- i) Whether the petitioner is entitled for dissolution of marriage by way of decree of divorce? OPP
- ii) Whether the petition is not maintainable? OPR
- iii) Relief.

5. In evidence, the respondent-husband examined himself as PW-1 besides tendering documentary evidence Ex.P1 to Ex.P19. On the other hand, the appellant-wife examined herself as RW1 and had also examined Reena Devi (her sister) as RW2.

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

7. Learned counsel for the appellant-wife has vehemently contended that the appellant-wife had proved by way of evidence on record that the respondent-husband and his family members had treated her with cruelty. It is further submitted that the appellant-wife was ill-treated as she gave birth to a female child. Learned counsel further submits that the respondent-husband has not examined any witness to support his contention that the *panchayats* were convened to settle the matrimonial dispute.

8. On the other hand, learned counsel for the respondent-husband, while defending the findings recorded by the learned Family Court, submits that the

allegations levelled by the appellant-wife in the written statement, were general and vague in nature and the same could not be proved by way of any cogent and convincing evidence. It is further submitted that the appellant-wife had failed to narrate any specific dates or events as regards the alleged cruelty committed to her. It is yet further submitted that the appellant-wife had initiated/filed a police complaint against the respondent-husband and his family members, which amounts to mental cruelty towards him.

9. We have heard learned counsel for the parties and have also gone through the impugned judgment.

10. Though, the learned trial Court has found that the respondent-husband has been able to prove the cruelty and desertion on the part of the appellant-wife, yet we may notice that the parties have been living separately since 2015 and since then there is no resumption of cohabitation between them. Thus, in our opinion, the following questions would arise for consideration:-

- “1. Whether a long separation between the parties, rendering the marital bond as unworkable and its having been ruptured beyond repair, amounts to mental cruelty?
2. Whether the impugned judgment and decree passed by the learned Family Court, requires any interference?

11. The learned Family Court has found that vide judgment dated 03.11.2018 (Ex.P5), the respondent-husband and his mother had been acquitted in the criminal case, which was got registered by the appellant-wife under Sections 323, 406, 498-A and 506 IPC. It was further found that registration of false criminal case against the husband or his family members under Section 498-A IPC would amount to mental cruelty. It was also observed by learned Family Court that there had been total repudiation of the matrimonial obligations on the part of the appellant-wife and thus, the allegations of cruelty stood proved against the appellant-wife. It was further found that the appellant-wife had deserted the respondent-husband without any reason since 2015 and there had been no cohabitation between the parties since then. It was also observed by the learned Family Court that the appellant-wife had never tried to rejoin the company of the respondent-husband as there was no evidence on record to show that she had ever filed any application/petition Section 9 of the Act for restitution of conjugal rights.

12. Now, we must examine whether the marital relationship between the husband and wife has ruptured beyond repair, especially when the parties have been living separately for more than nine years and during this

period, there has been no resumption of their relationship and rather on account of protracted litigation, the same has got worsened day by day.

13. Indisputably, the parties have been living separately since 2015. In the absence of any resumption of matrimonial obligation and cohabitation between the parties for a long period, there is no possibility of their reunion. This further speaks of the bitterness of their relationship. Undoubtedly, it is an obligation on the part of the Court that matrimonial bond should as far as possible, be maintained, but when the marriage has become unworkable and it has become totally dead, no purpose would be served by ordering the reunion of the parties.

14. It is well settled that in order to constitute cruelty, the party alleging the same must prove on record that the behaviour of the party complained against, is or has been as such that it has made it impossible for the said party to live in the company of the party complained against. The acts of cruelty must be such from which it can be reasonably and logically concluded that there cannot be any re-union between the parties due to the said acts. The cruelty can either be physical or mental or both. Though there is no mathematical formula to devise the extent of cruelty alleged against, yet the facts and

circumstances of each and every case must be examined in the light of the gravity contained in them.

15. In **Samar Ghosh v. Jaya Ghosh**, (2007) 4 SCC 511, it was held by the Hon'ble Supreme court that no uniform standard can be laid down as regards the cruelty, but certain instances of human behaviour, relevant in dealing with the cases of 'mental cruelty', were formulated. It was held by the Hon'ble Apex Court as under:-

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

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

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

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

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

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

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

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

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

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

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

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

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any

physical incapacity or valid reason may amount to mental cruelty.

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

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

In **Naveen Kohli** v. **Neetu Kohli**, 2006 (4)

SCC 558, the Hon’ble Apex Court was considering a case of irretrievable breakdown of marriage. In the said case, the wife had been living separately for a long time, but did not want divorce by mutual consent only to make life of her husband miserable. The Hon’ble Apex Court, while holding the acts and conduct of the wife as cruelty, has held as under:-

"62. Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again. The High

Court ought to have visualized that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.

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67. The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.

68. In our considered view, looking to the peculiar facts of the case, the High Court was not justified in setting aside the order of the Trial Court. In our opinion, wisdom lies in accepting the pragmatic reality of life and take a decision which would ultimately be conducive in the interest of both the parties.”

Still further, in **K. Srinivas Rao v. D.A. Deepa**, 2013 (5) SCC 226 has observed that when a marriage is dead for all purposes, it cannot be revived by Court's verdict, if the parties are not willing since marriage involves human sentiments and emotions and if they have dried up, there is hardly any chance of their springing back to life on account of artificial reunion created by the Court's decree.

15. A Coordinate Bench of this Court in **Amandeep Goyal Vs. Yogesh Rani**, 2022(1) PLR 479, while considering the long separation of 10 years between

the parties and the factum of wife not ready and willing to give mutual divorce, held that the marriage was dead and it amounts to cruelty towards the husband. The relevant extract from the said judgment would read as under:-

“20. In the present case, it is not in dispute that both the appellant and respondent are working as teachers on regular basis in Government departments. Further they are living separately since 27.07.2011. The elder son (Manav Goyal), who is suffering from cancer, is living with appellant- husband and the younger son (Rooham) is staying with the mother. After living separately from her husband for more than 10 years, the respondent- wife is still not ready to give divorce to him.

21. The issue for consideration in the present appeal would be whether the relationship of the husband and wife has come to an end and if the respondent-wife is not ready to give mutual divorce to the appellant-husband, whether this act of her, would amount to cruelty towards husband, keeping in view the fact that she is not staying with her husband for the last 10 years and there is no scope that they can cohabit as husband and wife again.

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32. In the present case, the appellant-husband is looking after his son Manav Goyal since 27.07.2011 and has borne all the expenses incurred upon his son,

who is suffering from Cancer. Thus, if the appeal filed by the appellant-husband is dismissed, he will face mental agony with his son, who is ill and requires repeated check ups and treatments from various hospitals. The appellant and the respondent are very sure that they cannot live together as husband and wife. The appellant-husband has shown that he also loves his second son i.e Rooham, as he brought gifts for him on 18.08.2021 and even respondent-wife also brought gifts for Manav Goyal. Both the appellant and the respondent are regular government teachers and are getting good salary and they are bringing up one child each. If the parents are not granted divorce, then both the children namely Manav Goyal and Rooham Goyal will not be able to meet each other in a positive environment. This will further result in cruelty because of the rigid attitude in giving divorce. Further when the appellant and the respondent came to this Court on 18.08.2021, they expressed their love and affection to child, who is not staying with them. The element of marriage which has become dead will result in further loss to both the children. It is a right time if both the children meet with each other in a positive environment as the parents are finally independent. The element of silence between the parties will result into mental cruelty to the children, as both the siblings cannot meet with each other. Mental cruelty will blend with irretrievable and dead marriage is a good ground to grant divorce to the parties.”

16. A Division Bench of the Chhattisgarh High Court in **Duleshwari Sahu Vs. Ramesh Kumar Sahu,** 2023 AIR (Chhattishgarh) 95, has held that where the wife had been residing separately from the husband for a long period without any justifiable cause, the same would amount to cruelty. It was held as under:-

“15. In the present matter, on perusal of the pleadings of the respective parties and the evidence adduced by them in support thereof, as also the admission of the parties and their witnesses, it is found that the respondent wife is living separately from her husband at her parental home without any just and reasonable cause since May, 2014. She lodged a report on 17/09/2014 against the husband under Sections 498-A, 323, 294, 506 of IPC and after trial, he was acquitted of all the charges. This apart, the wife also made a report against the husband and his parents under Protection of Women from Domestic Violence Act. It is also admitted position that the wife filed divorce petition under section 13 of the Hindu Marriage Act which was dismissed for want of prosecution. It is also admitted by the wife that no application under section 9 of the Hindu Marriage Act for restitution of conjugal rights was filed by her. It is not disputed that the wife is working as Panchayat Secretary and is also getting Rs. 7,000/- per month as maintenance. Therefore, in the given facts and circumstances of the case, the conduct of the wife, in

light of the judgments of Hon'ble Supreme Court as mentioned above, the act committed by the wife against the husband amounts to cruelty and it stands proved that she is living separately from the husband since 2014 without any just and reasonable cause. They are seems to be no possibility of their re-union. In these circumstances, this Court finds no illegality or perversity in the impugned judgement of the Family Court granting decree of divorce in favour of the husband.”

17. If, the facts of the present case are examined in the light of the law laid down by the Hon'ble Supreme Court in the aforesaid judgments, it would come out that the parties, who have been living separately since 2015, if compelled to live together, would become a fiction supported by a legal tie and it would show scant regard for the feelings and emotions of the parties. This, in itself would amount to mental cruelty to both the parties.

18. Still further, there is nothing on record to indicate that since the date of filing of the divorce petition by the respondent-husband, the appellant-wife had made any effort to join his company and/or had filed any petition under Section 9 of the Act for restitution of conjugal rights. This clearly speaks volumes of the conduct of the appellant-wife that she is not bothered about the well being and maintenance of the respondent-

husband. The only aim of the appellant-wife appears to be to frustrate the respondent-husband's claim and further keep him engaged in the protracted litigation.

19. In view of the above, considering the totality of the facts and circumstances of the case, while upholding the judgment and decree passed by the learned Family Court, we also hold that the marriage between the parties has become unworkable and has reached the stage of beyond repair and if, the parties are called upon to stay together, it may lead to mental cruelty to both of them. Question No.1 is answered in affirmative.

20. Consequently, the present appeal is dismissed. The impugned judgment and decree passed by the learned Family Court, is upheld. Question No.2 is answered, accordingly.

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

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

21.11.2024

Ajay Prasher

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No