

2024.PHHC.117377-DB



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

FAO-M-69-2019 (O&M)

Date of decision: 06.09.2024

SAVITRI

...Appellant

Versus

RAJU

...Respondent

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

Present:- Mr. Rajesh Lamba, Advocate for appellant.

None for the respondent.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 10.01.2019 passed by learned Additional District Judge, Palwal (for short the 'Family Court'), whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred as 'the Act') filed by the appellant-husband, has been allowed.

2. The aforesaid petition had been filed by the respondent-husband, inter alia, averring therein that his marriage with appellant-wife was solemnized on 14.07.2010, according to Hindu rites and no child was born out of the said wedlock. It was further asserted that from the very beginning of the marriage, the appellant-wife had been

temperamental, rude and cruel towards the respondent-husband and his family members; that she had never performed her household duties and would rather pick up quarrels with the respondent-husband and his family members and that she used to threaten to commit suicide, if compelled to do the household work. It was further alleged that she was having illicit relations with some other person and that under the influence and misguidance of her father, she would leave the matrimonial home and go to her parental house without any justified cause. It was further stated that the appellant-wife had put pressure upon the respondent-husband to transfer one acre of agricultural land in her name and that in the month of April, 2013, she left the matrimonial home in the absence of the respondent-husband, while carrying along all gold and silver ornaments, besides a sum of Rs.80,000/-. It was further asserted that efforts were made to settle the matter and rehabilitate the appellant-wife in the matrimonial home, but all in vain. The respondent-husband had also filed a petition under Section 9 of the Act, which was decided *ex-parte* by the Court of learned Additional Chief Judicial Magistrate, Palwal, vide order dated 19.08.2015.

3. Upon notice, the appellant-wife entered appearance and had filed her written statement. The factum of marriage between the parties was accepted. However, it was alleged that the parents of the appellant-wife had incurred huge expenses in the said marriage. It was further alleged that after the marriage of the respondent-husband, his parents had raised demands of dowry and when the appellant-wife was unable to meet their illegal demands, she had been given beatings

by them. In this regard, she had made a complaint to the Commissioner of Police Mathura and Women Cell Mathura on 11.06.2014. It was further asserted that she had been residing with her parents since 11.06.2014, and was fully dependent upon her parents.

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

“1. Whether the respondent has committed the acts of cruelty? OPP

2. Whether the respondent is living in adultery? OPP

3. Whether the petitioner is stopped from filing the present petition? OPR

4. Relief.”

5. In evidence, the respondent-husband examined himself as PW-1 and had also examined PW-2-Smt. Jagwati and PW-3-Poonam, besides leading documentary evidence Ex.P-1 to P-2. The appellant-wife examined herself as RW-1 besides examining RW-2 Tej Singh and RW-3 Lekh Raj, but she did not lead any documentary evidence.

6. The learned Family Court, after taking into consideration the rival contentions of the parties and evidence on record, allowed the petition filed by the respondent-husband and granted a decree of divorce under Section 13 (i-a) of the Act, in favour of the respondent-husband and against the appellant-wife.

7. Learned counsel appearing for the appellant-wife has vehemently argued that while appearing as PW-1, the respondent-

husband stated that he was ready and willing to live with the appellant-wife. It was further deposed by him that he was not paying any maintenance to the appellant-wife. Still further, while referring to the testimony of PW-2 Smt. Jagwati, mother of the respondent-husband, it is contended that even the mother of the respondent-husband in her testimony had deposed that she was ready and willing to live in the company of the appellant-wife. It is, thus, argued that once it was the stand of the respondent-husband and his mother that they were ready and willing to live in the company of the appellant-wife, there was no occasion for the learned Family Court to return a finding that she had treated the respondent-husband and his family members with cruelty.

8. There is no representation on behalf of the respondent-husband.

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

10. It may be noticed that the present appeal was filed in the year 2019. Vide order dated 04.09.2019, passed by a Coordinate Bench of this Court, the parties were directed to appear in the Mediation and Conciliation Centre of this Court on 16.09.2019. A perusal of the file would show that the efforts were made by the Mediators to settle the disputes between the parties, but the mediation remain unsuccessful and thereafter, the case was sent back to the Court for further adjudication.

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

12. From a perusal of the impugned judgment and decree, it is apparent that it was found by the learned Family Court that though PW-2 Smt. Jagwati, mother of the respondent-husband in her cross-examination deposed that she had no objection in case the appellant-wife lived with them, yet it was observed that the willingness of the mother of the respondent-husband could not be fastened upon the respondent-husband as it was the acts of cruelty upon the respondent-husband, which were the foundation for his claim of divorce. It was further found that the allegations of the respondent-husband were fortified from the testimony of PW-3 Poonam, the real sister of the appellant-wife, when she had deposed that in her cross-examination that the respondent-husband did not commit any act of cruelty or gave any merciless beatings to the appellant-wife.

13. The learned Family Court further found that the allegations of demand of dowry were baseless and further found that the father of the appellant-wife while appearing as RW-2 had given evasive answers. It was further found that the appellant-wife while appearing as RW-1 had admitted that her father had asked her husband to transfer one acre land in her name, which established that she was under the influence of her father. Still further, from the testimony of the real sister of the appellant-wife, it was found that the appellant-wife had been living with her parents since April, 2014.

However, no substance was found in the allegations regarding adultery.

14. 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...”

In K. Srinivas v. K. Sunita, 2015(1) RCR (Civil) 38, Hon'ble Apex Court observed as under:-

“6. Another argument which has been articulated on behalf of the learned counsel for the Respondent is that the filing of the criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filing of the husband's divorce petition, and being subsequent events could have been looked into by the Court. In any event, both the parties

were fully aware of this facet of cruelty which was allegedly suffered by the husband. When evidence was led, as also when arguments were addressed, objection had not been raised on behalf of the Respondent-Wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf.

7. In these circumstances, we find that the Appeal is well founded and deserves to be allowed. We unequivocally find that the Respondent-Wife had filed a false criminal complaint, and even one such complaint is sufficient to constitute matrimonial cruelty.

8. We, accordingly, dissolve the marriage of the parties under Section 13(1)(ia) of the Hindu Marriage Act...”

In **Ramchander v. Ananta**, (2015) 11 SCC 539, it has been 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”.

15. 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 above said cases, we find that the act and conduct of the appellant-wife in leveling false allegations regarding dowry demands, merciless beatings, mental torture and harassment at the hands of the respondent-husband, amounts to cruelty. The testimony of the real sister of the appellant-wife and her father clearly prove that neither there was any such demand nor any such treatment was meted out to

the appellant-wife. It may be noticed that the parties have been living separately since April, 2014. The appellant-wife’s own witness(es) did not support her case and she could not prove on record that she had been thrown out of the matrimonial home by the respondent-husband or his family members. Thus, we do not find that the findings recorded by the learned Family Court, suffer from any illegality or perversity.

16. No other point has been urged.
17. In view of the above, finding no merit in the present appeal, the same is hereby dismissed.
18. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

06.09.2024
Himanshu

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