



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1370-2024 (O&M)
Date of decision: 10.09.2024

URVASHI

...Appellant

Versus

Dr. DEEPAK BHATIA

...Respondent

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

Present:- Mr. Jaspreet Singh Brar, Advocate for appellant.

SUDHIR SINGH, J.

CM-5396-CII-2024

For the reasons given in the application, the same is allowed and delay of 179 days in filing the appeal is condoned, subject to all just exceptions.

FAO-1370-2024

Challenge in the present appeal is to the judgment and decree dated 02.09.2023 passed by learned Principal Judge, Family Court, Amritsar (hereinafter referred as to Family Court), whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred as 'the Act') filed by the respondent-husband, has been allowed and the marriage between the parties has been dissolved by a decree of divorce.

2. The aforesaid petition had been filed by the respondent-husband, inter alia, averring therein that his marriage with appellant-wife was solemnized on 18.11.2011, according to Hindu rites and out

of the said wedlock, three children, namely, Saanvi Bhatia, aged about 12 years; Shaksham Bhatia, aged about 11 years and Sumeet Bhatia aged about 7 years, were born. It was further alleged that two children, namely, Shaksham Bhatia and Sumeet Bhatia, were living with the respondent-husband, whereas Saanvi Bhatia was living with the appellant-wife. It was further alleged that the respondent-husband was working as Sub Divisional Magistrate, Baba Bakala whereas the appellant-wife was a Lecturer on contract basis at Government Polytechnic College, Jalandhar. It was further asserted that behavior of the appellant-wife right from beginning of the marriage was not good and she used to pick up quarrels on petty matters and would demonstrate such behavior in the streets of the locality. It was further alleged that the appellant-wife used to often leave her matrimonial home without the consent and knowledge of the respondent-husband and his family members. Under the pressure of the appellant-wife, the respondent-husband took a separate residence and started living separately from his mother and elder brother. It was further the case of the respondent-husband that after his selection in the PCS (Punjab Civil Services), he remained posted as DTO, Patiala, but the appellant-wife had also created scenes there. Thereafter, in August 2017, the respondent-husband joined as Assistant Commissioner (Grievances) at Jalandhar and took along his family. It so happened that the only son (special child of the sister of the respondent-husband) expired in January, 2017 and in order to bring happiness in her life, the appellant-wife had given her consent to give birth to a child and further give the said child into adoption to the sister of the

respondent-husband. Accordingly, after the birth of the said child (Sumeet Bhatia), he was given into adoption to Jyoti Bhatia and Vipin Kumar (sister and brother-in-law of the respondent-husband) vide adoption deed dated 18.10.2017 duly registered with the Sub Registrar, Jalandar. However, under the influence of her parents, the appellant-wife had demanded the custody of the said child back from Jyoti Bhatia and Vipin Kumar and, thus, had violated the terms of the said adoption deed saying that she had never consented for giving the custody of the minor child to the aforesaid adoptive parents. It was further alleged that in the proceedings under Section 9 of the Act, filed by the respondent-husband, the custody of the minor son (Sumeet Bhatia) was given to the respondent-husband on 27.10.2018. It was further alleged that the respondent-husband had requested the appellant-wife to handover the custody of the child to his adoptive parents, she started quarreling with the respondent-husband. It was further asserted that the appellant-wife had started character assassination of the mother of the respondent-husband and ultimately, in the second week of June, 2018, the appellant-wife along with the minor son left for her parental house. Thereafter, on 24.06.2018, she came back to her matrimonial home, but again left the matrimonial home with her brothers, father and maternal aunt (*Massi*) on 01.07.2018, along with three minor children. After a great persuasion, the appellant-wife came to back to the matrimonial home on 30.07.2018, but she again left for her parental house along with minor children, Saanvi Bhatia and Sumeet Bhatia leaving behind minor child Shaksham Bhatia with the respondent. It was further alleged that the

appellant-wife did not allow any access to the respondent-husband to establish physical relations with her. On 31.07.2018, the appellant-wife came to the house of the respondent at Jalandhar and tried to forcibly take minor son Shaksham Bhatia with her, but the child refused to go with his mother and rather, expressed his willingness to stay with the respondent-husband. Alleging the aforesaid acts as cruelty, the respondent-husband had sought for a decree of divorce.

3. Upon notice, the respondent-wife entered appearance and filed her written statement, averring therein and filed her written statement stating therein that she did not want to break the marriage and rather was ready and willing to live with the respondent-husband and further was willing for reconciliation. The factum of marriage and the birth of three children was admitted. It was further pointed out that the respondent-husband and his family members were not satisfied with the dowry given in the marriage and the respondent-husband under the influence of liquor used to give merciless beatings to the appellant-wife. It was further asserted that when the respondent-husband was not able to clear his PCS examination, he had blamed the appellant-wife terming her as unlucky for him. Various meetings were arranged by the family members of the appellant-wife and efforts had been made to rehabilitate her in the matrimonial home. It was further pointed out that the appellant-wife was pressurized to give birth to the second child and despite the birth of the male child in November, 2013, the behavior of the respondent-husband and his family members did not improve. The appellant-wife was forced to leave her job and the mother and sister of the respondent-husband used to openly say

that she was brought for doing the household work. The birth of the third child was also termed to be an act of pressure upon the appellant-wife as the said child was given to be in adoption to the sister and brother-in-law of the respondent-husband. When the appellant-wife expressed her desire not to give the minor child in adoption, she was maltreated, tortured and given beatings by the respondent-husband and his family members. It was further asserted that the mother and sister of the respondent-husband did not allow her to sleep with her respondent-husband and on 01.07.2018 she along with her three children was thrown out of the matrimonial home. However, as the study of the children was suffering, she came back to her matrimonial home after 4-5 days, but she was not allowed to enter it and rather the custody of the minor son was forcibly taken by the respondent-husband. It was further averred that the respondent-husband had filed a petition under Section 9 of the Act, containing totally false and frivolous allegation. Thereafter, on 27.10.2018, on the eve of Karwachoth, when the appellant along with her minor children went to her matrimonial home, the mother of the respondent-husband did not open the gate and allow her to enter the said house and had forcibly taken the custody of the minor son. Thereafter, the dispute between the parties was patched up. On 23.01.2019, the appellant-wife again went to matrimonial home, but mother of the respondent-husband did not allow her to meet her minor son, who was ill then. The appellant-wife was given beatings due to which she had received serious injuries in her intestine. The appellant-wife was taken to the police station, but despite repeated requests, no medical

examination of her was conducted. The police had acted at the instance of the respondent-husband and had not registered any case. It was further alleged that the appellant-wife was pressurized to make the statement in proceedings under Section 9 of the Act, whereas the fact was that she had compromised with the respondent-husband in order to save her matrimonial life and for welfare of the children.

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

- “1. Whether the petitioner is entitled for decree of divorce on the ground of cruelty? OPP
2. Whether the present petition is not legally maintainable? OPR
3. Whether the petitioner has not approached the Court with clean hands and has suppressed the true and material facts from the notice of the Court? OPR
4. Relief.”

5. In evidence, the respondent-husband examined PW1- Akhil Dhanta, Deputy Manager, Chandigarh University; PW2- Cherry Bhatia and he himself appeared in the witness box as PW3; and further examined PW4- Kuldeep Kaur and PW5- Chander Bhan Pal, Asst. Manager, SBI, Branch Basant Avenue, besides leading documentary evidence. On the other hand, the appellant-wife appeared as RW1 and had also examined RW2-Usha Devi and RW3- Kewal Kumar and also led 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, as noticed above.

7. Learned counsel appearing for the appellant-wife has vehemently argued that the findings recorded by the learned trial Court are based on conjectures and surmises. It is further submitted that it had been the stand of the appellant-wife throughout that she was ready and willing to live in her matrimonial home. It is further argued that in the proceedings under Section 9 of the Act, the appellant-wife had made statement and/or compromised the matter keeping in view the welfare of the children and in order to save her matrimonial life, but the learned Family Court has wrongly relied upon the said statement/compromise to return the findings against the appellant-wife. It is further argued that the finding of the learned Family Court that the appellant-wife did not allow the respondent-husband to establish physical relations with her, is not tenable in the eyes of law. There was no denial by her at any point of time and rather it was due to the acts and conduct of the respondent-husband and his family members that there was hardly any time for intimate access between them. Still further, it is submitted that the concept of cruelty has wrongly been defined by the learned Family Court so as to record a finding against the appellant-wife. It is also argued that while passing the impugned judgment and decree, no permanent alimony has been awarded to the appellant-wife. Accordingly, a prayer for setting aside of the impugned judgment and decree has been made.

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. On the basis of the evidence led by the respondent-husband, it was found by the learned Family Court that in the proceedings under Section 9 of the Act, the appellant-wife had admitted the cruelty committed by her and assured that she would not repeat it. It was further found that photographs were produced on record along with WhatsApp messages to the effect of raising slogans with the help of some anti social elements, outside the office of the respondent-husband. It was further found that the appellant-wife sat on a *Dharna* outside the house of the respondent-husband on 21.07.2021 and broke and damaged the scooter of the brother of the respondent-husband. It was further found that the appellant-wife and her accomplices had hurled dirty abuses against the respondent-husband in the public holding the banners with the inscription as “SDM Deepak Bhatia should be removed from his job” and also banners as “Behram Pati and Behram Pita”. These banners were produced and proved on record as Ex.P-44 and Ex.P-11. From the document Ex.PW3/7, it was found that the appellant-wife had admitted that she had committed misdeeds with the respondent and would behave properly with him. It was further found that from the WhatsApp messages produced on record, it was established that the appellant-wife had levelled allegation against the character of the respondent-husband saying that he had given birth to an illegitimate child by having illicit relations with his own sister. It was further

found that proceedings under Section 340 read with Section 195 Cr.P.C had been initiated against the appellant-wife for filing a false affidavit in the Court. In the said proceedings, the respondent-husband had moved an application for restraining the appellant-wife from holding *Dharna* outside the office of the respondent-husband and despite a restraint order passed by the Court, the respondent-wife continued doing so. It was further found that not allowing the respondent-husband to establish physical relations with her amounted to cruelty.

11. It is well settled that in order to constitute a cruelty, the spouse alleging it, must prove on record that the act(s)/behavior of the spouse complained against, is or has been as such that it has made it impossible for the said spouse to live in the company of the spouse 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.

12. 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...”

13. 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”.

14. In the light of the law laid down by the Hon’ble Supreme Court in the aforesaid judgments, we find that the acts of the appellant-wife in following the respondent-husband at his office along with her accomplices and raising slogans against his integrity and further holding demonstration (*Dharna*) outside his office, clearly amounts to cruelty. It may be noticed that the matter between the parties was settled, when the appellant-wife had made statement in the proceedings under Section 9 of the Act. However, from the record, it is borne out that the said settlement did not work for a longer period and the appellant-wife had started repeating her old conduct. Still further, it has come on record that the testimony of the witnesses of the respondent-husband, clearly proved the acts of cruelty the said witnesses were cross-examined at length by the counsel for the appellant-wife, but nothing favourable to the appellant-wife, could be brought out.

15. We also do not find that the finding recorded by the learned Family Court in respect of non-establishment of physical relations between the parties suffer from any illegality. as notice

above. It is settled law that cruelty also includes the factum of not allowing the physical relations.

In **Vidhya Viswanathan v. Kartik Balakrishnan**, (2014) 15 SCC 21, it was held by the Hon'ble Supreme Court to the following effect:-

“12. Undoubtedly, not allowing a spouse for a long time to have sexual intercourse by his or her partner, without sufficient reason, itself amounts to mental cruelty to such spouse. A Bench of three Judges of this Court in *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511] has enumerated some of the illustrations of mental cruelty. Para 101 of the said case is being reproduced below: (SCC pp. 546-47)

“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.”

The abovementioned Illustrations (viii) and (xii) given in *Samar Ghosh case Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511 , support the view taken by the High Court in holding that in the present case the wife has treated her husband with mental cruelty.”

14. The findings recorded by the learned Family Court are based on the evidence led by the parties and we do not find any

illegality or perversity in the said finding, warranting any interference by this Court.

15. No other point has been urged.
16. In view of the above, finding no merit in the present appeal, the same is hereby dismissed.
17. Pending application(s), if any, shall also stand disposed of.
18. Liberty is however, granted to the appellant-wife, to file an application seeking grant of permanent alimony, if so advised, before the learned Family Court. If any such application is moved by the appellant-wife, the same shall be decided, in accordance with law, preferably within a period of nine months.

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

10.09.2024
Himanshu

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