

2024:PHHC:052458-DB
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-M-10-2024 (O&M)
Date of decision: 01.04.2024

ArchanaAppellant

Versus

Yogesh BirdiRespondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE HARSH BUNGER**

Present: Mr. Parminder Singh, Advocate for the appellant.

SUDHIR SINGH, J.

Present appeal has been filed against the judgment and decree dated 03.02.2024 passed by the Additional District Judge, Chandigarh, whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for brevity `the Act`) filed by the respondent-husband was allowed and the marriage between the parties was dissolved by a decree of divorce on the grounds of cruelty and desertion.

2. The brief facts of the case are that the marriage between the parties was solemnized on 15.05.2001, according to Hindu rites at Chandigarh. No child was born out of the said wedlock. The respondent-husband filed a petition filed a petition under Section 13 of the Act, seeking dissolution of marriage by a decree of divorce on the grounds of cruelty and desertion. It was stated that the appellant-wife had created a scene at the time of the departure of the *Barat*; locked herself in the hotel room, and had even misbehaved with the respondent's father. As a result,

the *Barat* had to return without the bride. It was further averred that the appellant never visited the respondent's house for 10 years in the stretch, and the respondent-husband rented a house in Chandigarh to live with the appellant away from his own family. Even then, the appellant-wife never socialized with anyone in the neighbourhood or her relatives, confined herself in one room and treated the respondent as a stranger, and refused to cohabit with him. The respondent-husband had to move back to Jalandhar to look after his parents, but the appellant-wife refused to accompany him to the matrimonial house and instead went back to the house of her parents. The respondent-husband filed a petition under Section 9 of the Act, for restitution of conjugal rights, but in the meanwhile the appellant-wife moved a complaint to the Superintendent of Police at Jalandhar. It was further stated that during this time, the appellant-wife conditionally agreed to live at her matrimonial home in Jalandhar on 12th January 2012 but refused to meet the parents of the respondent-husband when they came back from Australia and rather she had left for the house of her parents in Chandigarh, the following day. After a great persuasion, in April 2012 she agreed to live back with the respondent-husband at Jalandhar, but separately in a rented accommodation. Even after this, the behaviour of the appellant never changed, and finally, the appellant again left the company of the respondent-husband in March 2013 and never joined him back.

3. Upon notice, the appellant-wife appeared and filed her written statement. It was stated therein that she had neither

deserted the respondent-husband nor there was any element of *animus deserendi*, and that it was the respondent-husband and his parents, who had pushed her out of her matrimonial home, as no child was born out of their wedlock. It was further stated that she was forced to live at Chandigarh with her brother and sister-in-law and old parents. It was also stated that the parties lived as husband and wife at the parental house of the respondent-husband i.e. House No. 818, Baba Isher Singh, Village Dhina, Jalandhar, and also in the residential portion constructed over shop Nos. 22-23, Dhina Pholriwal Road, Dhina, Jalandhar and at House No. 3476/35D, Chandigarh and House No. 3451/35C, Chandigarh. It was stated that the respondent-husband had leveled baseless allegations against the appellant-wife of her not being emotionally stable with a sole motive to harass her. It was alleged that the respondent-husband himself wanted to live at Chandigarh at the cost of the appellant's parents, and the appellant never had any issue as regards living in a joint family. She had readily lived with the respondent-husband at Chandigarh and other places. It was further stated that the respondent-husband and his family members used to harass and humiliate the appellant-wife on account by raising dowry demands. The factum of filing a complaint to the Police at Jalandhar, was admitted, but it was pointed out that the same ended in a compromise between the parties. It was further alleged that in March, 2014, the appellant-wife had been turned out of her matrimonial home on the condition that she would be

allowed to live in her matrimonial home only if she brought a car from her parents.

4. From the pleadings of the parties, the trial court framed the following issues:-

1. Whether the Petitioner is entitled for decree of divorce on the ground of cruelty? OPP.
2. Whether the Petitioner is entitled for decree of divorce on the grounds of desertion? OPR.
3. Whether the petitioner has not approached the court with clean hands? OPR
- 4 Whether the petitioner has concealed the material facts from Court? OPR
5. Relief.

5. In evidence, the respondent-husband himself appeared in the witness box as PW-1 and examined Charan Birdi as PW-2 besides tendering documentary evidence Ex.P2 to Ex.P5. On the other hand, the appellant-wife examined herself as RW-1. In rebuttal evidence, the respondent-husband examined Manjeet Singh, Data Entry Operator, RLA, Sector 17 Chandigarh, as PW-3.

6. After hearing the contentions of both the parties and considering the evidence brought on record, the trial court allowed the petition, granting a decree of divorce.

7. Learned counsel for the appellant-wife, while assailing the impugned judgment and decree passed by the trial Court, has submitted that the trial Court has erred in law by discarding the pleadings raised and evidence led by the appellant. It is further submitted that it was the respondent-husband and his family members, who had caused cruelty upon the appellant-

wife and had compelled her to leave the matrimonial home. It is yet further submitted that the alleged incidents held to be cruelty on the part of the appellant, are nothing but normal wear and tear of matrimonial life and the respondent-husband, had condoned the said acts, by sending her messages from his own mobile phone. The very fact that the messages were sent by the respondent-husband from his own mobile, which had never been reported as being lost, clearly shows that he had sent all these messages, and the contents thereof would clearly establish his acquiescence. It is further submitted that merely because the reply to the said messages was not produced by the appellant-wife, is no ground to discard the conduct of the respondent-husband.

8. Per contra, learned counsel for the respondent-husband has categorically submitted that the messages produced by the appellant-wife by way of Exh.R.1 to Exh.R155, do not indicate the intention of the respondent-husband to condone the acts of the appellant and to take her back to the matrimonial home. He has further submitted that while granting the decree for divorce, the learned trial Court, has taken into consideration the entire material evidence on record and, therefore, the findings recorded by the trial Court, do not call for any interference by this Court.

9. We have heard the learned counsel for the parties and have also gone through the impugned judgment and decree passed by the learned trial Court.

10. The sole question for consideration before this court is :-

“Whether the decree for divorce granted on the grounds of cruelty and desertion by the Family Court, requires interference?”

11. The learned trial Court on the basis of the evidence on record, came to the finding that the conduct of the appellant-wife amounted to grave mental and physical cruelty on the respondent-husband. It was further found that the reclusive conduct of the appellant-wife had made it impossible for the respondent to live and cohabit with her and the marriage had been rendered completely “lifeless and purposeless.” To prove the conduct of the appellant-wife amounting to act of cruelty, the respondent-husband had examined himself as PW-1 and corroborated the allegations made in the petition.

12. The marriage in the instant case took place in 2001. The petition for divorce was filed by the respondent-husband in the year 2016. Soon thereafter, the appellant-wife had got registered FIR No.48 dated 01.06.2017 under Sections 406/498-A IPC at Women Police Station, Chandigarh against the respondent-husband. The trial Court had discussed the entire evidence on record to come to the conclusion that the allegations leveled by the appellant-wife as regards the dowry demand and giving her beatings, were totally baseless. The trial Court has also found that the appellant-wife had deposed in her cross-examination that the respondent-husband, had been keeping another woman, but she could not substantiate the said

allegation by way of any evidence and it was thus, found that leveling of such false allegation, certainly amounted to cruelty towards the respondent-husband.

13. It was further found by the learned trial Court that during her cross-examination, the appellant-wife failed to name the landlord of the rented accommodation and any other occupants of the rented house where she had lived for ten years. She could not name the shop in the locality from where she used to buy the groceries or any of her neighbours. She never attended any family obligations. The appellant never called anyone from her family to meet her at the house where she was staying. All these facts were found to establish the highly elusive and strange nature of the appellant. Because of the said conduct of the appellant-wife, the respondent-husband had to face constant embarrassment in society as well as great agony and suffering in his personal and professional life, which amounted to great mental and physical cruelty. Furthermore, she also filed a complaint with the Superintendent of Police at Jalandhar against the respondents' family, which caused them to face extraordinary hardships.

14. In Samar Ghosh Vs. Jaya Ghosh (2007) 4 SCC 511, the Hon'ble Supreme Court has laid down the factors wherefrom inference of mental cruelty can be drawn.

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

xx xx xx

(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.

xx xx xx

(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.

xx xx xx

(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.”

The acts and conduct of the appellant-wife in her failure to perform her matrimonial obligation; levelling false allegations against her husband and further getting registered a criminal case on dowry allegations that too after a period more than 16 years and specially when the trial Court, did not find any substance in such allegations, amounts to mental cruelty.

15. Learned counsel for the appellant has vehemently argued that the trial Court has failed to appreciate the messages Ex. R1 Ex. R155 sent by the respondent-husband to the appellant by which the said acts of cruelty stand completely condoned. However, the learned counsel for the appellant could not counter the finding recorded by the trial Court that the appellant-wife had failed to bring on record any response/reply to the said messages. Cruelty does not emerge from a single act of any of the spouses, but it is a series of acts and a spouse alleging the same must prove it on record. On the other hand, the act of condonation must contain two things i.e. forgiveness and restoration. In the instant case, both are lacking.

16. The Hon'ble Apex Court in N.G. Dastane Vs. S. Dastane MANU/SC/0330/1975, while considering the said aspects of the matter, has held as under:-

“56. Condonation means forgiveness of the matrimonial offence and the restoration of offending spouse to the same position as he or she occupied before the offence was committed.To constitute condonation there must be, therefore, two things : forgiveness and restoration.[*The Law and Practice of Divorce and Matrimonial Causes by D. Tolstoy Sixth Ed., p. 75.*] The evidence of condonation in this case is, in our opinion, as strong and satisfactory as the evidence of cruelty. But that evidence does not consist in the mere fact that the spouses continued to share a common home during or for some time

after the spell of cruelty. Cruelty, generally, does not consist of a single, isolated act but consists in most cases of a series of acts spread over a period of time. Law does not require that at the first appearance of accrual act, the other spouse must leave the matrimonial home lest the continued co-habitation be construed as condonation. Such a construction will hinder reconciliation and thereby frustrate the benign purpose of marriage laws.”

Applying the ratio as laid down by the Hon’ble Court in *Dastane’s case (supra)*, we find that there was no express act of condonation on the part of the respondent-husband. The factum of the respondent-himself filing the divorce and never expressing any intention for condonation of the appellant's act during any stage of the trial discredits the appellants’ stand. Furthermore, as noticed above, the failure on the part of the appellant to bring forth the reply to these messages, only strengthens the adverse inference drawn against her by the trial Court.

17. It is settled law that in order to prove the desertion, factum of separation and the intention to bring cohabitation permanently to an end, must be proved. Hon’ble Supreme Court in Debananda Tamuli Vs. Kakamoni Katakya, (2022)5 SCC 459, has held as under:-

“7. We have given careful consideration to her submissions. Firstly, we deal with the issue of desertion. The learned counsel appearing for the appellant relied upon the decision of this Court in the case of Lachman Utamchand Kirpalani (supra) which has been consistently followed in several de-

cisions of this Court. The law consistently laid down by this Court is that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be animus deserendi on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home.

xx xx xx

12. Thus, in our considered view, the ground of desertion under clause (ib) of sub-section (1) of Section 13 of HM Act has been made out as the desertion for a continuous period of more than two years before the institution of the petition was established in the facts of the case. But, after having carefully perused the evidence on record, we find that no case is made out to disturb the findings recorded by the Courts on the issue of cruelty.”

In the instant case, the trial Court has also found that the appellant-wife had been living separately from the respondent-husband since 2013. No evidence was led that the appellant was having sufficient reasons/grounds to stay away from the company of the respondent-husband. The respondent-husband, while appearing as PW1, proved had deposed that the appellant had left his house in March 2013 permanently and thereafter never joined the matrimonial life. The divorce petition has been filed on 05.02.2016. As per Section 13(1)(ib) of the Act, the

ground of desertion is made out if the parties have been separated for a continuous period of more than two years before the institution of a divorce petition, which has been held to be so in the case in hand. In her testimony, the appellant-wife (RW-1) conveniently stated that she had been living apart from the respondent since March 2014 without stating any reasonable cause. The learned trial Court found no reason to accept the bare testimony of the appellant-wife. Thus, after careful perusal of the judgment of the learned trial court, we find that no case is made out to interfere with the findings recorded by it.

18. In view of the above, we find no merit in the present appeal and the same is hereby dismissed.

19. All pending applications(s), if any, shall also stand disposed of.

(Sudhir Singh)
Judge

(Harsh Bunger)
Judge

01.04.2024
ds

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Whether speaking/reasoned:

Yes/No

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Whether reportable:

Yes/No