

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1816-2024 (O&M)
Date of Decision: 01.05.2024

Kusum
Versus
Sahib Singh

...Appellant
...Respondent

CORAM: HON’BLE MR. JUSTICE SUDHIR SINGH
HON’BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Rajesh Arora, Advocate
for the appellant.

HARSH BUNGER, J.

1. Appellant-wife (Kusum) has come up in this appeal against judgment and decree dated 19.03.2024 passed by the learned Principal Judge, Family Court, Gohana, Sonipat, whereby the petition filed by the respondent-husband (Sahib Singh) under Section 13 of the Hindu Marriage Act, 1955 (in short ‘the 1955 Act’) seeking dissolution of marriage by a decree of divorce, has been allowed and divorce stands granted.
2. Succinctly, the marriage of appellant- Kusum was solemnized with respondent-Sahib Singh on 13.05.2013 as per Hindu rites and ceremonies. The marriage was duly consummated; however, no child was born from the wedlock.
3. The pleaded case of respondent-husband in his petition under Section 13 of the 1955 Act was that after one month of the marriage, appellant started misbehaving with him and she used to abuse him.

According to the respondent, the appellant started pressurizing him for a separate house; and she used to misbehave with his mother and has even slapped her in the presence of relatives. It was stated that the appellant left respondent-husband on 23.06.2013 and after three years of separation, she had dragged the respondent and his parents in false case of dowry and cruelty, upon which, case FIR No.242 dated 22.07.2016 was registered and the respondent-husband and his mother were charge-sheeted under Sections 498-A, 406, 323 and 506 read with Section 34 of the Indian Penal Code; however, both of them were acquitted by the Court vide judgment dated 16.12.2019. It was further stated that the appellant-wife also filed a petition under Section 125 of the Code of Criminal Procedure and a complaint under Section 12 of the Protection of the Women from Domestic Violence Act, 2005 with false allegations against them. It was averred by the respondent-husband that all efforts to reconcile the disputes had turned futile. It was further stated that the acts of cruelty had not been condoned by respondent-husband and it had become impossible to live with the appellant.

Apart from the above, it was stated by the respondent-husband that the appellant-wife had deserted his company on 23.06.2013 as she left him without sufficient cause; and had also taken away all valuables and jewellery, etc. It was asserted that the respondent-husband had made several efforts to bring her back but she did not return. In this backdrop, the divorce petition was filed.

4. On the other hand, the appellant contested the aforesaid divorce petition, *inter alia*, on the plea that her parents had spent about 15-20 Lacs on marriage but the respondent-husband and his family members were not satisfied with the dowry given at the time of marriage and rather they had

demanded a big car instead of small car in the dowry. The appellant alleged that the marriage was solemnized by concealing the true and material facts as she was told that the respondent-husband was serving in Merchant Navy and earning 1.5 Lacs per month, whereas he was unemployed. The appellant further alleged that on 23.06.2013, when her brother had come to her nuptial home, he was taunted for giving a small car in dowry and was abused and assaulted, however when the appellant tried to rescue her brother, she was turned out of the home. Upon this, Rs. 3 Lacs was given by the appellant's father to the respondent and his family to buy peace. She alleged that the brother of the respondent-husband had a bad eye on her and when she apprised the respondent-husband and his family in this regard then they remarked that she will have to bear it until their dowry demand was fulfilled. The appellant maintained that it was the respondent-husband and his family members, who were torturing her and she had rightly lodged the cases against them. Accordingly, the appellant prayed for dismissal of the divorce petition.

5. On the basis of pleadings of the parties, following issues were framed:-

- “1. Whether the petitioner is entitled for a decree of divorce on the grounds mentioned in the petition? OPP*
- 2. Relief.”*

6. In order to prove his case, the respondent-husband (Sahib Singh), appeared in witness box as PW-1 and tendered his affidavit as Ex. PW1/A.

7. On the other hand, appellant-Kusum appeared as RW1 and tendered her affidavit as Ex. RW1/A.

8. After considering the pleadings of the parties and also the evidence available on record, learned Principal Judge, Family Court, Gohana, Sonipat, vide impugned judgment and decree dated 19.03.2024, allowed the divorce petition. The divorce has been granted on the grounds of cruelty and desertion. A perusal of the impugned judgment would show that the following acts of cruelty and desertion were considered by the Family Court, as proved:-

a) Cruelty:

(i) *From oral and documentary evidence, it is evident that the couple got married about eleven years back. The marriage took place on 13.05.2013 and they are residing separately w.e.f. 23.06.2013 and hardly lived together for a month.*

(ii) *Admittedly, the parties got separated on 23.06.2013 and after three years thereafter, the appellant had filed a criminal case bearing case FIR No.242 dated 22.07.2016, in which the respondent-husband and his mother were charge-sheeted under Sections 498-A, 406, 323, and 506 read with 34 of the Indian Penal Code, however, they were acquitted of the said charges vide judgment dated 16.12.2019 (Ex. P4).*

(iii) *The appellant-wife in her testimony as RW-1 has not been able to give any specific instance of maltreatment on account of demand of dowry or alleged cruelty and in absence thereof, it was inferred that the appellant had taken undue advantage of her position as a wife and had dragged respondent and his family members into unnecessary litigation by getting false FIR lodged against them.*

(iv) *The Family Court relied upon “**Jagbir Singh Vs. Nisha**”, 2015 (9) RCR (Civil) 873, “**Rishipal Vs.***

Luxmi Devi”, 2009 (4) RCR (Civil) 811, “Dharampal Vs. Smt. Pushpa Devi”, 2004 RCR (Civil) 717, “Major Ashish Poonia Vs. Mrs. Nilima Poonia”; “Mangayakarasi Vs. M.Yuvaraj” (2020) 3 SCC 786, “K. Srinivas Rao Vs. D.A. Deepa”, 2013 5 SCC 226 and “K.Srinivas Vs. K.Suneetha” (2014) 16, SCC 34, wherein it was held that making unfounded allegations and filing false complaints against the spouse or his relatives amount to cruelty to the other spouse and held that acquittal of respondent-husband and his mother in criminal case filed by appellant in fact goes to show that respondent-husband has indeed faced matrimonial cruelties at the hands of appellant.

(v) It was observed by the Family Court that the couple have been living separately for ten years and this long separation has in fact put them in such a situation that matrimonial bond has broken down beyond repair. It was further observed that there are no chances of the couple living together and such a marriage is now unworkable and can be a source of great misery for the parties, if allowed to be continued.

Accordingly, it was concluded that the respondent-husband has been able to prove the ground of cruelty.

b) Desertion:

(i) Family Court observed that the allegation of the appellant-wife that she has been shunted out of matrimonial house due to demand of dowry has not been proved rather it had come in evidence that she herself left the matrimonial home without sufficient cause on 23.06.2013 and after three years of the same, she has filed a case FIR against respondent-husband and his family members with false allegations. There was no effort on the part of appellant to return to fold of respondent-husband.

She had deserted respondent only after one month of marriage and during this span of eleven years, there was no effort on part of the appellant to return to respondent-husband.

(ii) It was concluded that the appellant had put the relationship to a permanent end and had not joined the respondent-husband. She has not filed any case under section 9 of the 1955 Act for restitution of conjugal rights. Hence, it is evident that the factum of separation, intention to bring cohabitation to a permanent end, goes to establish that appellant has deserted respondent-husband without reasonable cause continuously for a period of more than two years, immediately preceding the presentation of petition in 2020. Thus, respondent-husband proved the ground of desertion.

9. In the aforementioned circumstances, present appeal has been filed before this Court.

10. Learned counsel for the appellant submits that the learned Family Court has erred in law and facts in allowing the divorce petition filed by the respondent-husband. It is submitted that the family court has wrongly relied upon the acquittal of the respondent-husband in criminal case by holding that filing of criminal case amounts to cruelty against the husband. Learned counsel has further submitted that the divorce petition has wrongly been allowed on the ground of cruelty, rather the appellant had been treated with cruelty at her matrimonial home and she had only availed her legal remedies by filing cases as regards the cruelty meted out to her and also as regards the demand of dowry by the respondent-husband and his family members, however the same have been wrongly taken against the

appellant. It is further submitted that the Family Court has wrongly concluded that the appellant had deserted the respondent-husband, whereas it was the respondent, who had compelled the appellant-wife to leave her matrimonial home. Learned counsel for the appellant has also placed reliance upon the judgment passed by a Division Bench of this Court in **“Mickey Prem Singh v. Dr. Kiran Bhagat”, 2024(1) R.C.R. (Civil) 437**. It is further submitted that no efforts were made by the Family Court to reconcile the matter between the parties and no permanent alimony was decided. It is therefore contended that the findings returned by the Family Court are un-sustainable in the eyes of law.

11. We have heard learned counsel for the appellant and perused the paper-book as well as the impugned judgment.

12. The following question arises for consideration before this Court:

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

13. In **“Jagdish Singh v. Madhuri Devi”, 2008(10) SCC 497**, the Hon'ble Supreme Court while considering the scope of interference by first appellate court, observed as under:-

“24. It is no doubt true that the High Court was exercising power as first appellate court and hence it was open to the Court to enter into not only questions of law but questions of fact as well. It is settled law that an appeal is a continuation of suit. An appeal thus is a re-hearing of the main matter and the appellate court can re-appraise, re-appreciate and review the entire evidence "oral as well as documentary" and can come to its own conclusion.

25. *At the same time, however, the appellate court is expected, nay bound, to bear in mind a finding recorded by the trial court on oral evidence. It should not forget that the trial court had an advantage and opportunity of seeing the demeanour of witnesses and, hence, the trial court's conclusions should not normally be disturbed. No doubt, the appellate court possesses the same powers as that of the original court, but they have to be exercised with proper care, caution and circumspection. When a finding of fact has been recorded by the trial court mainly on appreciation of oral evidence, it should not be lightly disturbed unless the approach of the trial court in appraisal of evidence is erroneous, contrary to well-established principles of law or unreasonable...*

14. Further, the concept of cruelty within the meaning of Section 13(1)(i-a) of the Hindu Marriage Act has been explained by the Hon'ble Supreme Court in case of ***“Joydeep Majumdar v. Bharti Jaiswal Majumdar”***, 2021(2) R.C.R. (Civil) 289, by observing as under:-

“10. For considering dissolution of marriage at the instance of a spouse who allege mental cruelty, the result of such mental cruelty must be such that it is not possible to continue with the matrimonial relationship. In other words, the wronged party cannot be expected to condone such conduct and continue to live with his/her spouse. The degree of tolerance will vary from one couple to another and the Court will have to bear in mind the background, the level of education and also the status of the parties, in order to determine whether the cruelty alleged is sufficient to justify dissolution of marriage, at the instance of the wronged party...”

15. In ***“Samar Ghosh v. Jaya Ghosh”***, (2007) 4 SCC 511, Hon'ble Supreme Court gave illustrative cases where inference of mental cruelty could be drawn even while emphasizing that no uniform standard can be laid down and each case will have to be decided on its own facts.

“85. 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...”

16. Coming to the case in hand, the marriage between appellant and respondent was solemnized on 13.05.2013 and concededly, they have been residing separately since 23.06.2013. Apparently, the appellant and the respondent stayed together only for about a month. It is not disputed that the appellant got a criminal case bearing FIR No.242 dated 22.07.2016 registered against the respondent-husband and his mother, wherein they were charge-sheeted under Sections 498-A, 406, 323, 506 read with Section 34 of the Indian Penal Code. Admittedly, the respondent and his mother were acquitted by the Court of the aforesaid charges vide judgment dated 16.12.2019 (Ex. P-4).

17. There is sufficient case law on the issue that if the wife files frivolous and un-true complaints against her husband, of which he is ultimately acquitted, it amounts to cruelty. In this regard reference may be made to one such judgments passed by Hon'ble the Supreme Court in **“Rani Narsimha Sastry vs. Rani Suneela Rani” (2020) 18 SCC 247**, wherein Hon'ble Supreme Court held as follows: -

"13. In the present case the prosecution is launched by the respondent against the appellant under Section 498A of IPC making serious allegations in which the appellant had to undergo trial which ultimately resulted in his acquittal. In the prosecution under Section 498A of IPC not only acquittal has been recorded but observations have been made that the allegations of serious nature are levelled against each other. The case set up by the appellant seeking

decree of divorce on the ground of cruelty has been established.....

14.....But when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498A of IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has meted on the husband. As per pleadings before us, after parties having been married on 14.8.2005, they lived together only 18 months and thereafter they are separately living for more than a decade now.

15. In view of forgoing discussion, we conclude that appellant has made a ground for grant of decree of dissolution of marriage on the ground as mentioned in Section 13(1)(i-a) of the Hindu Marriage Act, 1955."

18. Further, Hon'ble Supreme Court in Para 16 of "**K. Srinivas Rao v. D.A. Deepa**", 2013(2) RCR (Civil) 232, has held as follows:

"16. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh v. Jaya Ghosh, 2007(2) RCR (Civil) 595 : 2007(2) RCR (Criminal) 515 : 2007(2) Recent Apex Judgments (R.A.J.) 177 : 2007 (4) SCC 511, 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."

19. A reference can also be made to a judgment passed by the Division Bench of this Court in "**Kusum @ Sunaina v. Arun Kumar**", 2022(1) RCR (Civil) 746, in which a number of judgments passed by the Supreme Court on the issue of cruelty by filing false complaint against the husband and his family members were referred to. In the case of

“Sushma Taya v. Arvind”, 2015(2) RCR (Civil) 888 (P&H), it has been held that filing of false criminal complaint by a spouse constitutes matrimonial cruelty and entitles the other spouse to claim divorce.

20. When the case in hand is considered in the light of the judicial pronouncements referred to above, especially the fact that respondent-husband was acquitted in the FIR lodged by appellant-wife, a case for cruelty by appellant-wife against the respondent-husband is clearly made out. Because of such acts, the respondent-husband had to face embarrassment in the society as well as great agony and sufferings in his life.

21. As regards the argument raised by learned counsel for the appellant that the respondent-husband had failed to prove the acts of cruelty alleged against the appellant by him, we have gone through the observations made by the trial Court in paragraph No.21 of the impugned judgment that there is no cogent evidence brought on record of the case, except the self serving statement of the appellant; to establish the fact that appellant herein misbehaved with the respondent-husband and had used filthy language against him as well as his family members and also the appellant had slapped his mother. Suffice it to say that even if the aforesaid contention of appellant is to be accepted, the fact remains that the allegation made by appellant that she was shunted out of the matrimonial home due to demand of dowry, was not proved. Rather, it has come on record that it is the appellant, who herself had left the matrimonial home without any sufficient cause on 23.06.2013. It has also been held by the Family Court that the parties stayed together for only about a month and during the long span of eleven years, no effort was made on the part of appellant to return to her

matrimonial home/husband. The appellant had not filed any petition under Section 9 of the 1955 Act seeking restitution of her conjugal rights. Considering the aforementioned circumstances, the learned Family Court had concluded that the appellant had put the relationship to a permanent end, therefore, the factum of separation, intention to bring cohabitation to a permanent end, established that the appellant had deserted the respondent without any reasonable cause. Therefore, even the ground of desertion stood proved in this case.

22. Learned counsel for the appellant has failed to dislodge the aforesaid findings returned by the learned Family Court and is further unable to point out any illegality or infirmity in the impugned judgment and decree, which may call for any interference by this Court.

Also, the reliance placed upon by learned counsel for the appellant on the judgment rendered in **Mickey Prem Singh's case** (supra) is misplaced as the same is distinguishable on the facts.

23. That apart, it is very much clear that the parties have been living separately for a period of almost eleven years. During this span, the appellant has never gone to live with the husband, as such there is no possibility of their re-union and in our opinion, there is total disappearance of emotional substratum in the marriage between the parties.

24. No doubt, it is obligation of the Court that marital status should as far as possible be maintained but when the marriage is totally dead, in that event, nothing is gained from keeping the parties tied to a marriage, which in fact has ceased to exist. In our considered view, there is no possibility of resumption of normal marital life by the parties.

25. Considering the totality of circumstances, in our considered view, learned Family Court has rightly passed a decree of dissolution of marriage between the parties and we see no reason as to why, the findings as given by the learned trial Court should not be upheld. The point of determination is answered accordingly.

26. Before we part with this order, it is apposite to state here that while granting the decree of divorce, the learned Family court has not granted anything to the Appellant towards Permanent Alimony. Here it is useful to refer to Section 25 of the 1955 Act, which reads thus:

"Section 25. Permanent alimony and maintenance :- (1) Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the appellant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant (the conduct of the parties and other circumstances of the case), it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent."
(2) and (3)"

27. In the light of the language used in Section 25 of the 1955 Act, it is clear that claim under Section 25 of the Act has to be made on an application furnishing all details regarding his or her own income or other property. Further an opportunity has to be given to the other side to put forth his/her defence.

28. Admittedly, the appellant-wife has not filed any application claiming permanent alimony as per Section 25 of the 1955 Act either before the family court or before this court.

29. Be that as it may, Section 25 of the 1955 Act itself envisages that the wife can initiate proceedings for grant of permanent alimony even after the decree of divorce. Therefore, the court does not become *functus officio* with the passing of the decree and continues to have jurisdiction to award alimony even thereafter.

30. Keeping in view the totality of circumstances and to do justice to the parties, we are of the considered view that while keeping it open to the appellant-wife to institute her claim for grant of permanent alimony before the court of competent jurisdiction, we deem it appropriate to grant some amount towards interim permanent alimony subject to any final decision to be taken by the concerned court on an application to be filed under section 25 of the 1955 Act by the appellant-wife.

31. Be it stated, while granting permanent alimony, no arithmetic formula can be adopted as there cannot be mathematical exactitude. It shall depend upon the status of the parties, their respective social needs, the financial capacity of the husband and other obligations. In “*Vinny Parmvir Parmar v. Parmvir Parmar*”, 2011(3) RCR (Civil) 900 : 2011(4) Recent Apex Judgments (R.A.J.) 357 : (2011)13 SCC 112, while dealing with the concept of permanent alimony, this Court has observed that while granting permanent alimony, the Court is required to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used

to be when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the other party.

32. Be that as it may, it is the duty of the Court to see that the wife lives with dignity and comfort and not in penury. The living need not be luxurious but simultaneously she should not be left to live in discomfort. The Court has to act with pragmatic sensibility to such an issue so that the wife does not meet any kind of man-made misfortune.

33. Accordingly, we deem it appropriate to grant an amount of Rs.3,00,000/- (Rupees Three Lacs Only) towards interim Permanent Alimony to be paid by respondent-husband to the appellant-wife. Let the said amount be paid by respondent-husband to the appellant-wife within a period of three months from today; failing which the said amount shall attract simple interest @ 6% per annum.

34. Resultantly, with the aforesaid observations, the present appeal is dismissed in limine.

35. All pending applications, if any, shall also stand closed.

(SUDHIR SINGH)
JUDGE

(HARSH BUNGER)
JUDGE

May 1st, 2024
Apurva

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No