

2024:PHHC:162029-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision-13.11.2024

FAO-3502-2019 (O&M)

KANWAR BHAN ...Appellant
Versus

BABLI RANI ...Respondent

FAO-M-145-2019 (O&M)

KANWAR BHAN ...Appellant
Versus

BABLI RANI ...Respondent

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

Present:- Mr. Sanjay Jain, Advocate, for the appellant.

Ms. Harmanpreet Kaur, Advocate, for the respondent.

SUDHIR SINGH, J.

This order shall dispose of the above noted two appeals,
involving common questions of law and facts.

2. Challenge in FAO-3502-2019 is to the judgment and
decree dated 05.03.2019, passed by the learned District and Sessions
Judge, Principal Judge, Family Court, Ambala (for short `the Family
Court`), whereby the divorce petition filed by the appellant-husband
under Section 13 of the Hindu Marriage Act, 1955 (for short `the
Act`) was dismissed.

3. FAO-M-145-2019 lays challenge to the judgment and decree dated 05.03.2019 passed by the learned Family Court, whereby the petition under Section 9 of the Act, filed by the respondent-wife was allowed.

4. For the facility of reference, facts are taken from FAO-3502-2019.

5. The aforesaid petition under Section 13 of the Act, had been filed by the appellant-husband, *inter-alia*, pleading therein that his marriage with the respondent-wife was solemnized in the month of November, 1999 as per Hindu rites and two children were born out of the wedlock. It was asserted that the respondent-wife used to misbehave and insult him at the instance of her two sisters and their husbands and she used to stay out of her matrimonial home. The appellant – husband further alleged that the respondent – wife physically mistreated their children, and despite his repeated attempts to make her understand the matrimonial duties, his efforts were unsuccessful. The appellant – husband further pleaded that when his attempts to resolve the issues with the respondent – wife proved ineffective, he reported the matter to his family. On 31.10.2012, the respondent – wife's sister and two brothers-in-law visited the matrimonial home and took her with them, promising to counsel her and assured that she would behave appropriately. The appellant-husband asked the respondent-wife to withdraw her petition under Section 125 Cr.P.C. and to join his company and take care of their minor children, but she flatly refused to do so. The appellant-husband claimed that she deserted him without any justifiable cause. The

appellant-husband claimed mental and physical harassment at the hands of the respondent-wife and stated that reconciliation was not possible nor was he willing to forgive her for the acts of cruelty. It was further pleaded that the respondent -wife left the company of the appellant-husband in 31.10.2012. Because of the aforesaid acts and conduct of cruelty and desertion, a decree of divorce was sought for.

6. Upon notice, the respondent-wife appeared and filed her written statement alleging therein that the appellant-husband did not approach the Court with honest intentions, concealing key facts and failing to show respect towards her and her family. The respondent – wife further pleaded that the divorce petition was a retaliatory move in response to her petition filed under Section 125 Cr.P.C. and the petition under Section 9 of the Act. Additionally, she alleged that the appellant-husband was living with another woman, neglecting her and their children and should not be allowed to take benefit of his own wrongs. It was further pleaded that the respondent-wife had always been willing to live with the appellant-husband.

7. 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 decree of divorce in the grounds pleaded in the petition?
OPP
- ii) Whether the petition is not maintainable?
OPR
- iii) Relief

8. In evidence, the appellant-husband examined himself as PW-1; PW2-Ram Pal, PW3-Jaswant and PW4-Rajneesh besides

tendering documentary evidence as Ex. P1 and Mark - A. On the other hand, the respondent-wife examined herself as RW3; Usha Devi as RW1 and Amarjeet Kaur as RW2.

9. The learned Family Court after taking into consideration rival contentions of the parties and evidence on record, dismissed the divorce petition filed by the appellant-husband, as noticed above.

10. Learned counsel for the appellant-husband has vehemently argued that learned Family Court has wrongly held that allegations contained in the divorce petition were general and vague in nature, especially when the appellant-husband had given specific instances of cruelty and desertion. It is further submitted that through specific narration of the dates, it was pleaded by the appellant in the divorce petition that there was continuous interference of the parents of the respondent-wife in their matrimonial life and she had been under their influence, but the learned Family Court, has erroneously held that the appellant-husband was not able to prove said fact. Still further, it is argued that regarding the short temperament and creating of the nuisance, the findings recorded by learned Family Court, suffer from fallacy as the acts and conduct pleaded in the petition clearly indicated such behaviour and conduct on the part of the respondent-wife. Still further, it is argued that learned Family Court has erred in law in not taking into consideration that the remaining away from the company of the appellant-husband and denying him access to the matrimonial bliss also amounted to cruelty. It is also argued that the respondent-wife had alleged illicit relations of the appellant-husband with one Sneha, but she could not prove the same. It is thus, argued

that once allegation regarding character castration had been levelled by the respondent-wife and she was unable to prove the same, it amounted to mental cruelty to the appellant-husband. Still further, it is argued that the finding of learned Family Court that allegations regarding illicit relations between the appellant-husband and aforesaid Sneha was an uneasy act, but the same did not amount to cruelty, is also misplaced. It is lastly argued that it was proved on record that the parties had been living separately since 31.10.2012, but the said fact has been ignored by learned Family Court, while holding that the appellant-husband had failed to prove desertion.

11. On the other hand, learned counsel for the respondent-wife, while defending the impugned judgment and decree passed by learned Family Court has argued that the findings recorded by learned Family Court are based on evidence on record. It is further submitted that mere allegations would not amount to cruelty unless the same are substantiated by way of evidence. It is yet further argued that having failed to prove grounds of cruelty or desertion, the appellant-husband cannot be heard saying that findings recorded by learned Family Court are liable to be set aside.

12. We have heard learned counsel for the appellant and have also gone through the impugned judgment. In our opinion, the following questions would arise for adjudication in the present appeal:-

“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?

13. The learned Family Court has found that the appellant-husband has failed to prove the cruelty and desertion. It was further found that the allegations levelled in the divorce petition were general and vague in nature and that the testimony of the appellant-husband suffered from contradictions. It was further found that the appellant seemed to want to get rid of the respondent-wife by levelling all sorts of allegations. It was further found that the differences between the parties, were affecting the children and thus, the plea of the appellant-husband that grant of divorce would be for his wellbeing as well as for the children, was not made out.

14. Although the husband was unable to provide evidence of cruelty before the Family Court, 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 the last more than 12 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.

15. In the present case, efforts have been made firstly to resolve the matrimonial dispute through the process of mediation, which is one of the effective modes of alternative mechanism in resolving the personal dispute but none of the parties had appeared for the mediation.

16. It is well settled that in order to constitute a 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.

17. 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.

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.”

A Division Bench of the Chhattisgarh High Court in

DuleshwariSahu 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.”

18. 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 31.10.2012, 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. We are further of the opinion that long gap in the marital communication only leads to the bitterness to the relationship.

19. In view of the above, considering the totality of the facts and circumstances of the case, we 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 allowed. The impugned judgment and decree passed by the learned Family Court, is set aside and the marriage between the parties is dissolved by a decree of divorce. Question No.2 is answered accordingly. Decree sheet be prepared accordingly.

21. Furthermore, once the divorce has been granted on the ground of long separation, the decree under Section 9 of the Act, will no longer be relevant or enforceable. The grant of the divorce effectively supersedes any or all orders related to the restoration of the marital relationship. Consequently, FAO-M-145-2019 is also allowed and the judgment and decree dated 05.03.2019 passed in the petition under Section 9 of the Act, is set aside

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

23. At this stage, we may notice that while passing the impugned judgment and decree, no permanent alimony was granted to the respondent/wife by learned Family Court. Therefore, we grant liberty to the respondent-wife to move an appropriate application before learned Family Court for grant of permanent alimony. If any such application is filed by the respondent-wife, the same shall be considered and decided by the Court concerned, in accordance with

law, preferably within a period of 06 months from the date of filing thereof.

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

13.11.2024
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No