

2024:PHHC:149936-DB



110

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

FAO-M-29-2008 (O&M)
Date of Decision: November 18, 2024

Smt. Meenakshi Kansal

.....Appellant

Versus

Sanjay Kansal

.... Respondent

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

Present:- Mr. Sukesh K. Jindal, Advocate
Amicus Curiae and
Mr. Vijiyesh Malhotra, Advocate,
Mr. Bharat Bhandari, Advocate for the appellant.

Mr. Divanshu Jain, Advocate and
Mr. Abhinav Goel, Advocate for the respondent.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 25.01.2008 passed by learned Additional District Judge, Panchkula (for short the ‘Family Court’), whereby the petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (for short ‘the Act’) filed by the respondent-husband, was allowed, and the marriage between the parties was dissolved by a decree of divorce.

2. The aforesaid petition had been filed by the respondent-husband, *inter-alia*, contending therein that his marriage with the appellant-wife was solemnized on 05.06.1994 and out of the said wedlock, a child was born in November, 1995. It was further alleged that the appellant-wife was a very short tempered lady and she did not give any respect to her parents-in-law. When the matter was reported to the parents of the appellant-wife, they assured to prevail upon her, but despite that the behaviour of the appellant-wife did not change. On 09.06.1996, the parents of the appellant-wife came to the house of the respondent-husband along with 10-12 persons and had created scenes and, thereafter, taken the appellant-wife along with the minor son to Nabha. Thereafter, in October, 1996, the maternal uncle of the respondent-husband along with other relatives came to Nabha from Delhi to bring back the appellant-wife, but she refused to join his company and when she finally returned in 1996 itself, she insisted for residing separately from her parents-in-law. The respondent-husband took on rent a house in Sector 12 Panchkula, where the parties resided from November, 1996 to May, 1997. The appellant-wife used a filthy language against her parents-in-law and openly asked the respondent-husband to take his share in the property of his parents. It was further alleged that the behaviour of the appellant-wife created a nuisance in the locality. Owing to the differences between the parties, in July, 2020 several meetings were held at Panchkula and Chandigarh, wherein the appellant-wife gave assurance to live properly in future and then the parties started living at the said rented accommodation. Thereafter, the appellant-wife went to Nabha along with minor son, but did not return to join the company of the respondent-husband. Terming the aforesaid acts as cruelty, a decree of divorce was sought for by the respondent-husband.

3. Upon notice, the appellant-wife entered appearance and filed her written statement, admitting the factum of marriage and the birth of a child. It was, however, alleged that the respondent-husband and his mother used to harass her for bringing insufficient dowry. It was further alleged that she was not provided with any medical help and rather, she had been ill-treated. It was further alleged that the respondent-husband used to beat her and she was sent to her parental home for delivery of the child in 1995, where the male child was born on 07.11.1995. The allegations of issuance of threats were denied by her. It was yet further asserted that she went to Nabha because the respondent-husband did not pay the rent of the house at Panchkula and rather took another house on rent.

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

- “i) Whether the respondent has treated the petitioner with cruelty as alleged, if so to what effect? OPP*
- ii) Relief.”*

5. In evidence, the respondent-husband examined himself as PW1; PW2-Gian Parkash; PW3-Ajit Kumar and PW4-Dr. Lalit Kaushal, besides tendering into evidence Ex.P1 to Ex.P5. On the other hand, appellant-wife examined herself as RW1.

6. The learned Trial Court after taking into consideration rival contentions of the parties and evidence on record, allowed the petition filed by the respondent-husband and dissolved the marriage between the parties by way of decree of divorce, as noticed above.

7. Learned counsel appearing for the appellant-wife has vehemently contended that the findings recorded by the learned Family Court are beyond evidence on record. It is further argued that there was no evidence on record

to establish that the father of the respondent was assaulted by the relatives of the appellant-wife, in which he had got his finger fractured, yet a finding has been recorded that such act has constituted a cruelty on her part. It is further argued that the father of the respondent-husband had disinherited him just to wriggle out of any liability for the acts done by them, but the learned Family Court has wrongly held that such act of disinheriting was taken because of the compelling circumstances created by the appellant-wife. It is yet further argued that the finding that the appellant-wife had compelled the respondent-husband to live separately from his parents, is also not tenable as it was the pleaded case of the appellant-wife that she had left for her parental house because of the non-payment of rent by her husband of the house at Panchkula, where the parties had been residing. Thus, it is argued that the impugned judgment and decree is based on conjectures and surmises and the same is liable to be set aside.

8. On the other hand, learned counsel for the respondent-husband, while defending the judgment and decree passed by the learned Family Court, submits that specific reasons supported by the evidence on record, have been given by the learned Family Court to reach the finding of cruelty. It is further argued that it is not the one circumstance, but the result of all the circumstances pitted against the appellant-wife, through which the acts of cruelty were proved, that the finding of cruelty has been recorded by the learned Family Court. Thus, a prayer has been made for dismissal of the appeal.

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

10. Though the learned trial Court has granted the decree of divorce on the ground of cruelty on the part of the appellant-wife, yet certain facts need to be noticed here. The marriage between the parties was solemnized on 05.06.1994, the parties have been living separately since 2001, meaning thereby that they have been living separately for 23 years now. The decree of divorce was granted on 25.01.2008. During the pendency of the present appeal, the matter was referred to the Lok Adalat and Mediation & Conciliation Centre of this Court to explore the possibility of a settlement, but the same did not yield any result. Keeping in view the aforesaid factual position, 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?”*

11. It may be noticed here that even before the counsel for the parties started advancing their arguments as noticed above, we called upon the parties to mutually resolve their differences/disputes, but to no avail.

12. Although the wife was unable to contradict the allegations of cruelty levelled by the respondent-husband 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 more than 23 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.

13. In the present case, efforts were made firstly to resolve the matrimonial dispute through the process of several mediations, which is one of the effective modes of alternative mechanism in resolving the personal dispute, but the mediation between the parties failed. On 08.08.2011, the matter was taken up before the Daily Lok Adalat and the following order was passed:-

“After discussing the case with the parties as well as with learned counsel for the parties, there does not seem any likelihood of the matter being settled by way of compromise. Consequently, as prayed for, the case is sent back to Hon’ble High Court for adjudication.”

14. Further, vide order dated 15.12.2022, the matter was placed before the Mediation and Conciliation Centre of this Court, and joint and separate sessions were held with the parties on 20.12.2022 and 05.01.2023. However, the matter could not be resolved and on 10.02.2023, it was reported as under:-

“The parties have not been able to reach any amicable settlement. The matter is fixed for 16.02.2023 before the Hon’ble Court. Hence, the case file be sent back to the Hon’ble Court for adjudication.”

15. Indisputably, the parties have been living separately since 2001. In the absence of any resumption of matrimonial obligation and cohabitation between the parties for a long period, there is no possibility of their reunion. The mediation proceedings before this Court, for an amicable settlement of the dispute between the parties, remained unsuccessful. This further speaks of the bitterness in their relationship. Undoubtedly, it is an obligation on the part of the Court that matrimonial bond should as far as possible, be maintained,

but when the marriage has become unworkable and it has become totally dead, no purpose would be served by ordering the reunion of the parties.

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

XXX XXX XXX

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.

XX XX XX

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 **Duleshwari Sahu 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. There 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. In the instant case, the marriage between the parties was solemnized on 05.06.1994. The divorce petition was filed on 11.08.2001 and it was decreed on 25.01.2008. The parties have been living separately since 2001. During the pendency of the present appeal, the matter was referred to

the Lok Adalat and Mediation & Conciliation Centre of this Court to explore the possibility of a settlement, but the same did not yield any result. Thus, if the parties are compelled to live together, it would become a fiction supported by a legal tie and would show scant regard for the feelings and emotions of the parties. This, in itself would amount to mental cruelty to both the parties

19. Still further, there is nothing on record to indicate that since the date of filing of the divorce petition by the respondent-husband, the appellant-wife had made any effort to join his company or come back to the matrimonial home and/or had filed any petition under Section 9 of the Act for restitution of conjugal rights. This clearly speaks volumes of the conduct of the appellant-wife that she is not bothered about the well being and maintenance of the respondent-husband and their son. The only aim of the appellant-wife appears to frustrate the respondent-husband and further keep him engaged in the protracted litigation.

20. In view of the above, considering the totality of the facts and circumstances of the case, while upholding the findings recorded by the learned Family Court, we also 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.

21. Consequently the present appeal is dismissed and the impugned judgment and decree is affirmed. Question No.2 is answered in negative.

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 appellant-wife by learned Family Court. Therefore, we grant liberty to the appellant-

wife to move an appropriate application before learned Family Court for grant of permanent alimony. If any such application is filed by the appellant-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

November 18, 2024
mahavir

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