

2024:PHHC:166834-DB



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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-M-73-2009 (O&M)
Date of Decision: December 10, 2024

Amarjit Singh
.....Appellant
versus
Satinder Pal Kaur
....Respondent

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

Present:- Mr. Sandeep Singh Sangwan, Advocate for the appellant.
Ms. Tamana Sharma, Advocate as Legal Aid Counsel
for the respondent.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 06.06.2008 passed by learned Additional District Judge-II, Panchkula (for short ‘trial Court’), whereby the petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (for short ‘the Act’) filed by the appellant-husband was dismissed.

2. The aforesaid petition had been filed by the appellant-husband, *inter-alia*, alleging therein that his marriage with the respondent-wife was solemnized on 23.10.1993 according to Hindu rites, but no child was born out of the said wedlock. It was further averred that barely after two months of the marriage, the respondent-wife became adamant and asked for a separate residence and when the appellant-husband had refused to accede to her demand, the respondent-wife had exhibited an arrogant, aggressive and

belligerent attitude towards the appellant. The appellant-husband had narrated 14 instances in respect of cruelty committed by the respondent-wife. It was further alleged that on 26.01.1997, the respondent-wife had physically assaulted the appellant-husband when he refused to accompany her for a picnic as his mother was ill. On 27.01.1997, the respondent-wife created an ugly scene in the matrimonial home by throwing utensils on the appellant/husband. On 26.01.1999, the respondent-wife threatened to commit suicide, if her mother-in-law had not left the home. It was further alleged that due to the acts of cruelty and harassment at the hands of the respondent-wife, the appellant-husband suffered mental torture and he underwent regular treatment for neuropsychiatry under the medical advice of Dr. Satyawati Devi, Senior Psychiatrist in Delhi. It was further pleaded that the parties had been living separately since 01.02.2000 and the matrimonial ties between them had ruptured beyond repair. Terming the aforesaid acts of the respondent-wife as cruelty, a decree for divorce was sought for.

3. Upon notice, the respondent-wife appeared and filed her written statement admitting the factum of marriage. However, allegations of cruelty and physical assault had been denied. It was further alleged that the appellant-husband wanted to get rid of the respondent-wife by levelling false allegations against her. Still further, it was the case of the respondent-wife that on 25.01.1997, her mother expired and she had been at Amritsar, where she stayed for 10 days and thus, there was no question for her to ask the appellant-husband to take her for a picnic on 26.01.1997, and so was the incident of causing alleged assault on 27.01.1997 with the aforesaid allegations, the respondent-wife prayed for dismissal of the petition.

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

- “i) Whether the petitioner is entitled for a decree of divorce on the ground of cruelty as alleged? OPA*
- ii) Whether this petition is not maintainable, as alleged: OPR*
- iii) Relief.”*

5. In evidence, both the sides appeared and tendered their respective evidence.

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

7. Learned counsel for the appellant-husband has vehemently argued that the findings recorded by the learned trial Court suffer from patent illegality and perversity, inasmuch as while doing so, the pleaded case of the appellant-husband was totally ignored. It is further argued that once the respondent-wife had caused physical assault to the appellant, there was no occasion for the learned trial Court to hold that the instances alleged by the appellant-husband in the divorce petition were general and vague in nature. It is yet further argued that the divorce petition was filed in 2005 and the decree of divorce was granted on 06.06.2008. The appeal was admitted on 07.12.2011. It is further argued that during long pendency of the appeal before this Court, various efforts for reconciliation and/or for an amicable settlement between the parties remained unsuccessful. It is, thus, argued that long separation of the parties for nearly 24 years has rendered the matrimonial ties between them as unworkable and there is no chance of the parties living together in future.

8. On the other hand, learned counsel appearing on behalf of the respondent/wife, while countering arguments raised by learned counsel for the appellant-husband has vehemently argued that the appellant-husband failed to prove any cruelty on the part of the respondent-wife. While referring to the findings recorded by learned trial Court, it is argued that all the instances cited by the appellant-husband in his divorce petition, had been dealt with in detail by the learned trial Court, and it was found that there was no substance in the same and accordingly, the divorce petition was rightly dismissed. It is further argued that merely because the parties have been living separately for the last 24 years, is no ground to grant divorce in favour of the appellant-husband as any such indulgence would amount to allow the appellant-husband to take benefit of his wrong, who himself had deserted and committed cruelty to the respondent-wife. Accordingly, a prayer has been made for dismissal of the appeal.

9. We have heard learned counsels for the parties and have also gone through the records of the case.

10. Though the divorce petition filed by the appellant-husband was dismissed by the learned trial Court, yet as the parties have been living separately for the last 24 years and during this period, there has been no resumption in their matrimonial ties. Thus, we find that the following questions would arise for determination 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. A perusal of the findings recorded by the learned trial Court would make it clear that the appellant-husband had failed to prove cruelty allegedly committed by the respondent-wife. Though, he had specially pleaded the instances of cruelty, yet the learned trial Court has found that the same were not corroborated or substantiated by way of any cogent or convincing evidence. It was also found that there had been incomplete information on record so far as alleged acts of cruelty were concerned and further, the appellant-husband remained unsuccessful in proving on record that he had suffered any mental illness on account of alleged acts of cruelty on the part of the respondent-wife.

12. Although the appellant-husband was unable to provide evidence of cruelty or desertion 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 24 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. It may also be noticed that during pendency of the appeal before this Court, parties had been relegated before the Lok Adalat/ Mediation and Conciliation Centre of this Court and various efforts were made for an amicable settlement of the dispute/differences between the parties, but the same remained unsuccessful. The report dated 29.11.2010 of the Mediator would read as under:-

“After about 12 dates and after holding many mediation sessions, the parties could not reach to any

settlement inspite of best efforts of the mediator as well as the advocate. As such, the case is being sent back to the Hon'ble High Court for further adjudication."

14. Thereafter, vide order dated 23.12.2015, the matter was put up before the Lok Adalat, and the Lok Adalat passed the following order on 11.04.2016:-

"Parties have put in appearance.

The matter has been discussed. They could not arrived at a settlement in spite of the best efforts.

In that view of the matter, returned to the High Court."

15. Still further, vide order dated 24.11.2023, the matter was once again put up before the Mediation and Conciliation Centre of this Court, and the Mediator, submitted his report dated 20.03.2024, which reads as under:-

" Both the parties could not reach at an amicable settlement. The case is fixed for hearing on 08.04.2024 before the Hon'ble Court. Hence, the case file is sent back to the Hon'ble Court."

16. It may further be noticed that before learned counsel for the parties started advancing their respective arguments, this Court had called upon the parties whether there was any chance of an amicable settlement and/or whether the parties were ready to convert the present proceedings into a petition under Section 13-B of the Act. However, the response was in negative, and therefore, this Court had proceeded to hear arguments of the counsel for the parties, as noticed above.

17. 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.

18. 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.eRooham, 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 (Chhattisgarh) 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.”

19. 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 2000, 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.

20. Still further, there is nothing on record to indicate that since the date of filing of the divorce petition by the appellant-husband, the respondent-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.

21. 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.

22. Consequently the present appeal is allowed. The impugned judgment and decree passed by the learned trial Court is set aside and the marriage between the parties is dissolved by way of a decree of divorce. Question No.2 is answered in affirmative.

23. Decree sheet be prepared accordingly.

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

(SUDHIR SINGH)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

December 10, 2024

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No