

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

**FAO-M-357-2010 (O&M)
Reserved on 22.08.2024
Pronounced on: August 30, 2024**

Vishal Dharam **.....Appellant**

vs.

Raman Kumari **.....Respondent**

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. H.S. Saggu, Advocate,
for the appellant

Mr. Vijay Rana, Advocate,
for the respondent.

SUDEEPTI SHARMA J.

1. The appellant-husband in the present appeal has challenged the judgment and decree dated 12.06.2010 in a case bearing HMA Case No. 170 of 2008, passed by learned Addl. Judge (Adhoc), Fast Track Court, Hoshiarpur, whereby the petition filed by the appellant-husband under Section 13 of Hindu Marriage Act, 1955, (for short 'Hindu Marriage Act, 1955') for dissolution of their marriage, has been dismissed on the ground that he has failed to prove his case against the respondent-wife.

BRIEF FACTS OF THE CASE AS PER THE PLEADINGS

2. The brief facts of the case as mentioned in the divorce petition are that the marriage between the parties took place on 20.07.2003, at village Baruhi, P.O Chowki Maniar, District Una (HP), as per Hindu rites and ceremonies. Out of the said wedlock, a female

child was born on 14.11.2007. Due to temperamental differences, they could not stay together and the appellant-husband filed the divorce petition, which was dismissed by the Court below.

3. The relevant portion of the judgment dated 12.06.2010 reads as under:-

“12. The perusal of the record reveals that in order to prove his case the petitioner has examined PW-1 Ram Parshad who has furnished his affidavit Ex.PW1/A in his examination in chief in support of the case of the petitioner, but while facing cross-examination this witness has deposed that the house of the petitioner Vishal is at a distance of one kilometer from his house. He is having family relations with the family of the petitioner. He visit the house of the petitioner occasionally. He does not whether the petitioner and his parents were maltreating the respondent and misbehaved with her. He does not know if they were making demand of more dowry. He does not know about the registration of criminal case against the petitioner and his family members, whether it was right of wrong. The petitioner has further examined PW-2 Ichchya Devi who has furnished her affidavit Ex. PW2/A in her examination in chief in which she has deposed in support of the case of the petitioner. But while facing cross examination this witness has deposed that they and the petitioner are having house in one vehra, She has admitted that the respondent is a doctor by profession and belong to well educated family having good image in the society. The Panchayat was convened prior to the

filing of the present petition. She has admitted that this act has been mentioned in her affidavit Ex.PW2/A. The petitioner has further examined PW-3 Asha Kumar mother of the petitioner who has furnished her affidavit Ex.PW3/A in her examination in chief in support of the case of the petitioner. But while facing cross examination this witness has admitted that petitioner her son Vishal and respondent were posted together at Jubbhal (HP). She does not know that her son was blessed with a daughter. Volunteered said she came to know about that. She came to know on the third day of birth. She does not know the date of filing of the present petition. Her son was admitted in Satyam Hospital, Jalandhar on 19.6.2007. The respondent visited Jalandhar at Satyam Hospital. She does not know if the brother of the respondent also visited Satyam Hospital, Jalandhar. She has denied that the bills of Satyam hospital were paid by the respondent. Though she has denied that Zen car and golden ornaments were recovered from her house but voluntarily she deposed that they produced the same before the police. Today she did not wear the mangal sutra although her husband is alive. She cannot say if the petitioner himself left the job. She has categorically deposed that she is not willing to keep the respondent any more as she cause quarrel towards them. The petitioner has further examined PW-4 Shashi Bala who has furnished her affidavit Ex.PW4/A in her examination in chief in support of case of the petitioner, but while facing cross examination this witness has deposed that the house of

the petitioner is situated opposite to their house. She has admitted that after the gate of the house of the petitioner, there is a gap of about 20 meters in the shape of fields. She has admitted that earlier petitioner was serving at Jubbal district Shimla and left his job at his own. She is not having mangal sutra today. She has admitted that respondent is doctor by profession and gentle lady having good image. The parental family of the respondent is of well qualified. The petitioner Dr. Vishal Dharwal himself appeared in the witness box as PW-5 and has furnished his affidavit Ex.PW5/A in his examination in chief in support of his pleadings in the petition, but while facing cross examination he himself has admitted that charge under Section 498A and 406 IPC has been framed against him and his mother and father. He has admitted that seizer memo dated 4.7.2008 Mark A prepared in case No. 265/08 bears his signatures. He had not produced the car before the police at my time. He was arrested in this case on 3.7.2008. He identified his signatures on photocopy which is Mark B. Though he has denied that his wife alone purchased the car in the year 2003 from Shimla by obtaining loan from Department. Volunteered he deposed that he and his wife purchased the cash. He has admitted that the car purchased by his wife was hypothecated with SBI Ganbhi, District Shimla. He has admitted that till 31.7.2006 he and his wife were in service as govt. doctors at Jubbal district Shimla at the same station in the same government hospital. They lived together in a joint house. He

has admitted that he himself resigned from the government job from Jubbal district Shimla. He is working on contract basis with Zila Parishad, Hoshiarpur. He has admitted that bills/cash receipts No. 107965 Mark C to Mark I pertaining to his treatment at Satyam Hospital, Jalandhar. He has further admitted that cash receipt of PGI Chandigarh dated 10.8.07 and 11.8.2007 Mark M to Mark O pertaining to his treatment and these receipts

13. On the other hand, respondent Raman Kumari herself appeared in the witness box as RW-1 and furnished her affidavit Ex.RW-1/A in her examination-in-chief in which she has deposed with regard to the averments made in the written statement. Though she was cross-examined at length by the learned counsel for the petitioner, but nothing could be extracted from her lengthy cross examination. Even in her cross examination, she has deposed that she got lodged the FIR under section 406, 498A IPC against the petitioner and his parents. She moved the application for registration of the case prior to registration of the case. She had been residing with the petitioner at his place of posting from time to time. Car was purchased after 1½ months of marriage. She sought the permission for purchase of car, two days prior to the purchase of the car. The petitioner and his parents raised the demand of car even from the day of reception of the marriage. Even after the day of reception, the petitioner started to harass her on the demand of car, but she did not disclose the said fact to her

parents at the initial stage. Even, she did not tell the same till the purchase of the car. She has denied that she got her delivery at Government Hospital, Una at her own sweet will.

14. The perusal of the testimony of the petitioner himself reveals that he has himself admitted that he is facing trial in a criminal case No. 265/08. He has admitted that he was arrested in that case and the recovery of the dowry articles was effected from his possession. He has further admitted that the car was purchased by his wife and the same was hypothecated with the State Bank of India. He has further admitted that his wife had come to see him when he was admitted in Satyam hospital, Jalandhar. He has further admitted that the deliver of the female child had taken place at civil hospital, Una. He has further admitted that he and his wife were serving as doctor at Jubbal district Shimla at same station in the same hospital. He has further admitted that he has resigned from the job at has own and at present he is serving on contract basis with Zila Parishad, Hoshiarpur.

15 Though the petitioner has sought decree of divorce on the basis of certain allegations that even prior to the marriage, he had received certain letters from some unknown person with regard to the imaged and reputation of the respondent and her family members, but even then he solemnized his marriage with the respondent. The perusal of the evidence lead by the petitioner reveals that this version of the petitioner has not been corroborated by any of the witness of the petitioner.

Further there are allegations of the petitioner that the respondent did not wear mangal sutra and did not solemnize the ceremony of karva chauth which is social obligation in the family of the petitioner, but the perusal of the testimony of the witnesses of the petitioner who have been examined by him in support of his case namely Asha Kumari his mother and Shashi Bala reveals that they were also not wearing mangal sutra at the time of their examination in the court as per the suggestion given by the learned counsel for the respondent and further no other witness of the petitioner has deposed that there was any social obligation of the respondent to solemnize the karva chauth, rather the respondent herself has deposed as such that she was performing all the matrimonial obligations in order to save her matrimonial life. The third allegation of the petitioner is that the respondent is a lady of quarrelsome nature and she was creating unwanted scenes in the house as a result of which he remained tense and under tension, he met with an accident and suffered multiple Injuries on his person and remained admitted in Satyam Hospital, but the respondent did not visit him to see him at Satyam Hospital. The perusal of the testimony of the petitioner himself reveals that he himself has admitted that she had come to see him at Satyam Hospital, Jalandhar and this fact also find corroboration from the testimony of PW-3 Asha Kumari mother of the petitioner who has also deposed that respondent had come to see the petitioner in the hospital and further the respondent has placed

certain documents and receipts of hospital and bills from which it can be easily presumed that she has gone to attend the petitioner when he was under treatment at Satyam Hospital, Jalandhar, rather she has deposed specifically in her testimony that she had withdrew Rs. 25000/- and Rs. 50000/- for two times from her GPF account and paid the same to the petitioner and his parents for his treatment and further she took leave of 10 days in order to attend the petitioner, though she was pregnant in those days. So, this allegation of the petitioner is also appears to be without any merit.

16. The next allegation of the petitioner is that after feeling fed up from the company of the respondent, he had to resign and had to join a job on contract basis in district Hoshiarpur under compelling circumstances, but the perusal of the testimony of the petitioner reveals that he himself has admitted that he had resigned from the post at his own accord when he was posted at Jubbal district Shimla and they were posted in the same hospital at the same station. So, this contention of the petitioner is, also devoid of any merit.

17 Further there are allegations of the petitioner that the respondent got registered a false criminal case against him and his family members, during the pendency of the present petition under section 406, 498A IPC. The perusal of the testimony of the petitioner reveals that he himself has admitted about the registration of the case and further he has admitted that he was arrested in this case and he has further admitted that he is

facing trial in that case alongwith his family members and further he has admitted that the dowry articles ie. car and ornaments were produced by them which were taken into possession by the police vide recover memo which was signed by him. The perusal of the testimony of the respondent reveals that she has specifically deposed with regard to the demand of dowry made by the petitioner and his family members like car and AC and she has further deposed that petitioner used to harass and torture her in order to meet the demand of dowry and he used to give abuses and maltreatment to her from time to time. She has further deposed that the petitioner left his job at his own in order to leave the company of the respondent and further she has deposed that even then she tried her level best to visit at the place of posting of the petitioner at Talwara in order to perform her matrimonial obligations after covering long and tiresome journey, but despite that the behaviour and attitude of the petitioner did not change. The perusal of the testimony of Asha Kumar/mother of the petitioner reveals that she has categorically deposed that she does not want to keep the respondent any more in her family. This all reflect the conduct of the petitioner and his family members. Though, it is admitted fact on record that a criminal case under section 406, 498A IPC has been registered against the petitioner and his family members and they are facing trial as per the testimony of the petitioner himself, though still the guilt of the accused is to be proved after trial, but however, since there are prima

facie allegations of maltreatment, demand and misappropriation of dowry articles, so, at this stage, it cannot be presumed that the act and conduct of petitioner is in way upto the mark. The testimony of PW-4 Shashi Bala reveals that she has deposed that the petitioner was serving as doctor earlier at Jubbal and has left his job at his own. She has admitted that the respondent is doctor by profession and gentle lady having good image. The parental family of the respondent is of well qualified. So, from the evidence on record, it cannot be presumed that the respondent has treated the petitioner and his family members with cruelty and it is further proved on record that since no ground of divorce is available to the petitioner as such, the petition filed by the petitioner is not maintainable at all and further the conduct of the petitioner also reveals that he himself is estopped by his act and conduct from filing the present petition. So, the judgments referred by the learned counsel for the petitioner are of no help to the case of the petitioner as the facts of the reported judgments are quite distinguishable from the facts of the present case, rather I find force from the judgments referred by the counsel for the respondent. As such, issue No. 1 is decided against the petitioner and in favour of the respondent and issues No. 2 & 3 are decided in favour of the respondent and against the petitioner.”

SUBMISSIONS OF THE COUNSEL FOR THE APPELLANT-HUSBAND

the parties are living separately since 2007 i.e for almost 17 years. He further contends that even the mediation between the parties before the Family Court, Hoshiarpur as well as before this Court, has failed.

5. He further contends that the respondent-wife got the criminal case (i.e F.I.R No. 265 dated 02.07.2008 under Sections 498-A/406/506/34 of Indian Penal Code) registered against the appellant and his family members, in which the appellant and his father remained in custody for 03 days and after facing the trial for 07 years, the appellant and his family members were acquitted, vide judgment dated 17.04.2015 passed by learned Judicial Magistrate Ist Class, Una (H.P). Further two separate appeals filed against the said judgment by the State of H.P and the complainant i.e respondent-wife, were also dismissed, vide common judgment of learned Addl. Sessions Judge, Suna (HP) dated 12.06.2018, whereby the acquittal of the appellant and his parents was upheld.

6. Learned counsel for the appellant contends that the lodging of the above criminal case against the appellant and his family members amounts to cruelty.

7. He further contends that even a complaint was lodged by the respondent-wife to the employer of the appellant to take action against him, as criminal case under Sections 498/406/506/34 IPC is pending against him. However, after the detailed enquiry conducted by the department, the appellant was exonerated.

8. Learned counsel for the appellant contends that one another case under the Protection of Women from Domestic Violence Act, 2005 against the appellant and his elderly parents was filed by the

respondent-wife to harass them.

SUBMISSIONS OF THE COUNSEL FOR THE RESPONDENT-HUSBAND

9. *Per contra*, learned counsel for the respondent-wife submits that the judgment and decree dated 12.06.2010 has rightly been passed by learned Addl. Judge (Adhoc), Fast Track Court, Hoshiarpur

10. We have heard learned counsel for the parties and perused the whole record of this case.

11. Section 23(2) of the Hindu Marriage Act, 1955, reads as under:-

“23. Decree in proceedings:-

* * * * *

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties: Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.

The intention of the legislature in incorporating the above-mentioned provision [Section 23(2)] is that even if one of the parties has filed the petition under Section 13 of the Hindu Marriage Act, 1955 for dissolution of marriage on the grounds mentioned therein, it

shall be the duty of the courts, in every case where it is possible so to do consistently with the nature and circumstances of the case to make every endeavour to bring about reconciliation between the parties. That is why for the grant of divorce under Section 13 of the Hindu Marriage Act, 1955, wherein certain grounds for grant of decree of divorce are given, no strict method for proving the same is required and even if any of the ground is proved to be correct, still Section 23(2) of the Hindu Marriage Act, 1955, casts mandatory duty upon the Court before proceeding to grant any relief under the Hindu Marriage Act, 1955 to make every endeavour to bring about the relationship between the parties.

ANALYSIS OF THE RECORD

12. We have seen the whole record of the case including the pleadings, written statement, evidence on record i.e. oral as well as documentary. It is an admitted fact that the parties are living separately since 2007. Meaning thereby that since last almost 17 years the parties are living separately.

13. A perusal of the impugned judgment dated 12.06.2010 passed by the Addl. Judge (Adhoc), Fast Track Court, Hoshiarpur shows that even during the pendency of the petition, filed by the appellant-husband under Section 13 of the Hindu Marriage Act, 1955, no efforts were made by both the parties to settle down their differences.

14. The conduct and behaviour of both the parties against each other throughout the litigation as per the record shows the intensity of bitterness in their relationship.

15. Issue No.1, which was framed by the learned Family Court is reproduced as under:-

“Whether the respondent has treated the petitioner with cruelty?”

16. In the present case, the learned Family Court on the one hand has observed that it is an admitted fact on record that a criminal case under Sections 406/498-A/506/34 of the Indian Penal Code has been registered against the appellant-husband and his parents and they are facing trial, as per testimony of petitioner/appellant himself but on the other hand has stated that still the guilt of the accused is to be proved after trial, but however, since there are prima facie allegations of maltreatment, demand and misappropriation of dowry articles, so, at this stage, it cannot be presumed that the act and conduct of petitioner is in way upto the mark.

17. Thereafter, the learned Family Court observed that from the evidence on record, it cannot be presumed that the respondent-wife has treated the appellant-husband and his family members with cruelty and on this ground, after holding that it is proved on record that no ground for divorce is available to the petitioner/appellant, the petition filed by the appellant was dismissed.

18. As observed by this Court in many cases that the logic followed by the Family Courts in allowing/dis-allowing the divorce petition (s) is strictly on the basis of evidence on record without appreciating the very fact that once divorce is filed on the ground of cruelty and it is proved by documentary evidence on record that there are allegations and lodging of FIR's but still the Courts below did not

appreciate the fact of possibility of reunion of the parties. Rather the Courts are forcing the parties to live together despite the fact that one part has made allegations against the other party.

CONCLUSION

19. In the present case, a perusal of the record shows that the respondent-wife got the criminal case (i.e F.I.R No. 265 dated 02.07.2008 under Sections 498-A/406/506/34 of Indian Penal Code) registered against the appellant-husband and his family members, in which the appellant and his father remained in custody for 03 days and after facing the trial for 07 years, the appellant and his parents were acquitted, vide judgment dated 17.04.2015 passed by learned Judicial Magistrate Ist Class, Una (H.P). Further two separate appeals filed against the said judgment by the State of H.P and the complainant I.e respondent-wife, were also dismissed, vide common judgment of learned Addl. Sessions Judge, Una (HP) dated 12.06.2018, whereby the acquittal of the appellant and his parents was upheld. Thus, the cruelty on the part of the respondent-wife has been duly proved. Further the respondent-wife made a complaint to the employer of the appellant-husband to take action against him, in view of pendency of criminal case under Sections 498/406/506/34 IPC is pending against him. This shows the conduct of the respondent-wife and shows that she do not want to live peacefully with the appellant-husband. The spouse who want to save his married life, would not lodge criminal cases against his husband or give complaint to the employer of his husband. This fact is totally ignored by the learned Family Court while dismissing the petition filed by the appellant-husband.

SETTLED LAW

20. While discussing the judgments passed by Hon'ble the Supreme Court in **Naveen Kohli v. Neelu Kohli, 2006 AIR Supreme Court 1675**, held as under:-

24. *The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions and their culture and human values to which they attach importance. Each case has to be decided on its own merits.*

28. *This Court in the case of Savitri Pandey v. Prem Chandra Pandey, 2002(1) RCR (Civil) 719 : (2002)2 SCC 73, stated that mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other*

31. *In Chetan Dass v. Kamla Devi, 2001(2) RCR (Civil) 641 : (2001)4 SCC 250, this Court observed that the matrimonial matters have to be basically decided on its facts. In the words of the Court : "Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit,*

healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of "irretrievably broken marriage" as a straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case." 32. In *Sandhya Rani v. Kalyanram Narayanan*, (1994) Supp. 2 SCC 588, this Court reiterated and took the view that since the parties are living separately for the last more than three years, we have no doubt in our mind that the marriage between the parties has irretrievably broken down. There is no chance whatsoever of their coming together. Therefore, the Court granted the decree of divorce. 33. In the case of *Chandrakala Menon v. Vipin Menon*, (1993)2 SCC 6, the parties had been living separately for so many years. This Court came to the conclusion that there is no scope of settlement between them because, according to the observation of this Court, the marriage has irretrievably broken down and there is no chance of their coming together. This Court granted decree of divorce.

41. The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However, insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life

may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

42. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court.

43. In Durga P. Tripathy v. Arundhati Tripathy, 2005(3) RCR (Civil) 819 : (2005)7 SCC 353, this Court further observed that Marriages are made in heaven. Both parties have crossed the point of no return. A workable solution is certainly not possible. Parties cannot at this stage reconcile themselves and live together forgetting their past as a bad dream. We, therefore, have no other option except to allow the appeal and set aside the judgment of the High Court and affirming the order of the Family Court granting decree for divorce.

50. On May 22, 1969, the General Assembly of the Church of Scotland accepted the Report of their Moral and Social Welfare Board, which suggested the substitution of breakdown in place of matrimonial offences. It would be of interest to quote what they said in their basis proposals: "Matrimonial offences are often the outcome rather than the cause of the deteriorating marriage. An accusatorial principle of divorce tends to encourage matrimonial offences, increase bitterness and widen

the rift that is already there. Separation for a continuous period of at least two years consequent upon a decision of at least one of the parties not to live with the other should act as the sole evidence of marriage breakdown." Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.

52. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised 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 do not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

53. Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

54. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist..

21. A constitution Bench of Hon'ble the Supreme Court in **Shilpa Sailesh v. Varun Sreenivasan, 2024(1) Apex Court Judgment (SC) 9**, observed as under:-

33. *Having said so, we wish to clearly state that grant of divorce on the ground of irretrievable breakdown of marriage by this Court is not a matter of right, but a discretion which is to be exercised with great care and caution, keeping in mind several factors ensuring that 'complete justice' is done to both parties. It is obvious that this Court should be fully convinced and satisfied that the marriage is totally unworkable, emotionally dead and beyond salvation and, therefore, dissolution of marriage is the right solution and the only way forward. That the marriage has irretrievably broken down is to be factually determined and firmly established. For this, several factors are to be considered such as the period of time the parties had cohabited after marriage; when the parties had last cohabited; the nature of allegations made by the parties against each other and their family members; the orders passed in the legal proceedings from time to time, cumulative impact on the personal relationship; whether, and how many attempts were made to settle the disputes by intervention of the court or through mediation, and when the last attempt was made, etc. The period of separation should be sufficiently long, and anything above six years or more will be a relevant factor. But these facts have to be evaluated keeping in view the economic and social status of the parties, including their educational qualifications, whether the parties have any children, their age, educational qualification, and whether the other spouse and children are dependent, in which event how and in what manner the party seeking divorce intends to take care and provide for the spouse or the children. Question of custody and welfare of minor children, provision for fair and adequate alimony for the wife, and economic rights of the children and other pending matters, if any, are relevant considerations. We would not like to codify the factors so as to*

curtail exercise of jurisdiction under Article 142(1) of the Constitution of India, which is situation specific. Some of the factors mentioned can be taken as illustrative, and worthy of consideration.

22. In **Rakesh Raman v. Kavita, 2023 AIR Supreme Court 2144**, the Hon'ble Apex Court held as under:-

18. We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1) (ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock.

23. This Court in **FAO No.M-287-2018**, titled as **Sanjeev Kumar Vs. Suman** observed as under :-

“20. There is no dispute regarding the fact of institution of different cases against the appellant-husband as well as his family members. Though under Section 13 of Hindu Marriage Act, 1955, different grounds for dissolution of marriage are mentioned and the decree of divorce can be

granted, if any of the parties are able to prove the same against the other by leading cogent and convincing evidence etc. But the factual and practical aspect of such kind of cases is that the Courts cannot force the parties to live together, despite the dismissal of Section 13 of Hindu Marriage Act, 1955 petition for decree of divorce filed by any of the parties and despite the fact of their not being able to prove the ground on which they were asking for dissolution of marriage. In litigation under the Hindu Marriage Act, 1955, practically speaking, there cannot be any win or loose situation. The only win-win situation is that the parties amicably settle down their status mutually. Even if the divorce petition under Section 13 of Hindu Marriage Act, 1955 for grant of decree of divorce is dismissed or for that matter petition under Section 9 of Hindu Marriage Act, 1955 for restitution of conjugal rights is allowed, practically speaking there cannot be any execution in such kind of matters. Since the parties to the litigation are not the properties for which execution can be filed to retrieve it to the other party. Emotions are attached to the parties for which they cannot be forced to live together. Once the conduct and the effort to live together during the period of their separation and gravity of allegations made against each other is observed, that would actually be the weights and measures to decide the matrimonial cases under the Hindu Marriage Act, 1955.

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28. *In matrimonial cases seeking a decree of divorce on any other grounds, it is often difficult to practically prove the allegations made by the parties inter se. Courts should not decide such cases solely on the basis of proof of allegations or the evidence presented, as is done in criminal cases. After all even if the allegations are proved to be correct beyond reasonable doubt, these are not the criminal cases where the offence is punishable.*

29. *In matrimonial matters, the only possible outcomes are either the granting of a decree of divorce or the dismissal of the petition for such a decree. In either case, no execution or punishment can be imposed, as no court can compel the parties to live together under one roof or to cohabit.”*

24. Recently, this Court in **FAO No. 3803-2023**, titled as **Rohit Watts vs. Sonia Virk**, decided on 28.08.2024 has observed as under:-

37. *Under Section 13 of the Hindu Marriage Act, 1955, certain grounds are specified for granting a decree of divorce. However, regardless of whether these grounds are proven, once parties are involved in matrimonial disputes, there are often allegations and counter-allegations. These cases cannot be treated in the same way as other civil or criminal matters.*

38. *Following are the factors which are to be considered by the Courts while granting the decree of*

divorce :-

- i) The period of separation between the parties;*
- ii) The number of litigation between the parties;*
- iii) The efforts made by the parties individually to settle down the dispute between them;*
- iv) Over all conduct and behaviour/psychology of the parties with regard to the grant of decree of divorce or to deny the same.*

FINDINGS

25 Section 23(2) of the Hindu Marriage Act, 1955 reads as under:-

“23. Decree in proceedings:-

* * * * *

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties: Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.

The intention of the legislature in incorporating the above-mentioned provision [Section 23(2)] is that even if one of the parties has filed the petition under Section 13 of the Hindu Marriage Act for

dissolution of marriage on the grounds mentioned therein, it shall be the duty of the courts, in every case where it is possible so to do consistently with the nature and circumstances of the case to make every endeavour to bring about reconciliation between the parties. That is why for the grant of divorce under Section 13 of the Hindu Marriage Act 1955, wherein certain grounds for grant of decree of divorce are given, no strict method for proving the same is required and even if any of the ground is proved to be correct, still Section 23(2) of the Hindu Marriage Act, 1955 casts mandatory duty upon the Court before proceeding to grant any relief under the Hindu Marriage Act to make every endeavour to bring about the relationship between the parties.

26. Further, before deciding whether to grant or deny decree of divorce for dissolution of marriage, it is important to have a meeting with both parties to assess the current status of their relationship.

27. This Court, vide order dated 16.12.2022 has sent the parties for mediation by appointing a Counsellor to assist the Court, who gave his report after interacting with the parties. The order as well as report of the Counsellor reads as under:-

“Dr. Garima Sharma, Counsellor is appointed as Counsellor in this case, to assist this Court.

After interacting with the parties, the Counsellor has submitted her report as Annexure R-1 and the same be taken on record. Copy thereof, be supplied to the parties.

An amount of Rs.5,000/-, be paid by the High Court Legal Service Authority to the Counsellor as her fee.

As per report of the Counsellor, parties are willing for divorce. The appellant-husband has offered two plots situated in Hoshiarpur and Talwara and an amount of Rs.5,00,000/- in the shape of F.D towards permanent alimony (past, present and future) for the respondent and his daughter.

Respondent who is present in the Court, prays for time to apply her mind.

Adjourned to 16.03.2023.”

“Vishal (47) and Raman Kumari (46) married in 2003 and separated since 2006. Out of this wedlock they have 1 Daughter namely Ridhma. Ridham resides with mother Hoshairpur district courts dismissed case in 2009. Vishal challenged orders in Punjab & Haryana High court in 2010. During Counselling session with Vishal he stated that he wants to secure the future of her daughter. He offered 2 plots and F.D 5 lakh. According to Vishal the market value of 6 maris plot is 11 lakh and value of 10 maria plot is 25 lakhs. While interacting with Raman she stated that she is willing for divorce with alimony of 50 Lakhs. Ice breaking session between father and daughter initiated both exchange their phone numbers. Father expressed that he is one call away from her daughter when she needs her father he is there. Even after divorce he is there for her daughter.

OBSERVATIONS & RECOMMENDATIONS

- *Both parties willing for Divorce.*
- 2 Plots (6 Marla and 10 Marla) and F.D 5 lakhs offered by Vishal*
- Raman wants alimony of 50 lakhs and plots in Una”*

28. In the present case, as discussed above, we observe that there is no possibility of settlement between the parties and thus the marriage between the parties should be dissolved, as there is no scope of their living together under one roof.

29. In view of the above, we find merit in the present appeal and the same is allowed. Accordingly, the judgment and decree dated 12.06.2010 passed by learned Addl. Judge (Adhoc), Fast Track Court, Hoshiarpur, is set aside. The divorce petition filed by the appellant under Section 13 of the Hindu Marriage Act, 1955 before the Addl. Judge (Adhoc), Fast Track Court, Hoshiarpur, for dissolution of marriage of the parties is allowed and marriage between the parties stands dissolved. Decree-sheet be prepared accordingly.

PERMANENT ALIMONY

30. *Section 25 of the Hindu Marriage Act, 1955, reads as under:-*

“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 applicant 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) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.”

31. While granting permanent alimony, this Court in **FAO No. 3803-2023**, titled as **Rohit Watts vs. Sonia Virk**, decided on 28.08.2024 has observed as under:-

45. *The law regarding permanent alimony and maintenance is now very clear and can be granted to both the husband and the wife. However, in recent times, we have observed that in matrimonial matters, whether the appeal is filed by the husband or the wife, wives are often trying to exploit the situation by extorting money from the husband in exchange for the relief sought by him. In many cases, it is evident from the pleadings and proven through documentary records that wives have lodged FIRs against the husband and his family members, leading to their conviction. Taking it be cruelty, if the husband files a petition under Section 13 of the Hindu Marriage Act, 1955, for the grant of decree of divorce, it is normally a wife who files the applications for maintenance under different statutes, i.e. under Sections 24 and 25 of the Hindu Marriage Act, 1955, Section 18 of Hindu Adoption and Maintenance Act, 1956, Section*

125 of the Code of Criminal Procedure, 1973, Sections 20 and 22 of Protection of Women from Domestic Violence Act, 2005. Despite the fact that they lodged FIR against husband and his family members and they were to face trial and to spend the period of conviction in jails, the wife wants the reward for the same by filing such kind of applications. And it is very unfortunate that she is also granted the same. Now it is high time and the need of the society that such type of exploitation and extortion should be stopped. Therefore, justice demands that while dealing with the matrimonial matters and while granting permanent alimony, every aspect of the case should be taken into consideration which includes behaviour, conduct and the level of allegations made by each party.

47. *Normally, it is the duty of both the parents to look after their children and fulfil their needs and requirements. A matrimonial dispute between the parties should not affect or deprive the children of their right to the love and affection of both parents. For the welfare and over all personality development of a child, the love, care and affection of both parents are essential. Because of the change of the marital status of the parents the child cannot be forced to choose one parent. The child should have the freedom to stay, visit, or meet both parents as per his/her wish and desire."*

NOW COMING TO THE GRANT OF PERMANENT ALIMONY IN THE PRESENT CASE

32. As referred to above, this Court vide order dated 16.12.2022 made an effort to settle the dispute between the parties but the respondent-wife did not agree to the settlement.

33. In the present case, since the wife is also a Doctor and as observed in FAO No. 3803-2023, the ladies are trying to exploit the situation by extorting the money. This is apparent from the order dated

16.12.2022 passed in the present case mentioned above, wherein previously, the respondent-wife was ready to grant divorce with the permanent alimony of Rs.50 lacs but on 26.04.2023, she stated that she is not ready and willing to part ways with the appellant. This shows the conduct of the appellant to extort money. This Court would not encourage this conduct of the ladies/wives of extorting money from their husband (s) in lieu of granting divorce. Since the respondent-wife is also a Doctor, therefore, she does not deserve any permanent alimony.

34. However, keeping in view the fact that there is one daughter born out of the wedlock of the parties, who is 17 years of age, this Court direct the appellant to pay Rs.10,000/- per month in her account towards her education and other expenses, till she is unable to maintain herself out of her earnings and shall bear all the expenses towards her marriage and he shall not disinherit her from his estate at any point of time.

35. All the pending applications, if any, also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

August 30, 2024

G Arora

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