

2024-PH1107-150075-DD



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

FAO-6042-2012 (O&M)
Decided on: 19.11.2024

Major Gaurav Bhardwaj

...Appellant

Versus

Monika alias Divya Sharma

...Respondent

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

Present:- Mr. Munish Gupta, Advocate,
for the appellant.

Ms. Manjit Kaur Saini, Advocate and
Mr. Minkal Thatai, Advocate
for the respondent.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 17.10.2012 passed by the learned District Judge, Family Court, Gurgaon (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 appellant-husband, for dissolution of marriage on the grounds of cruelty, was dismissed.

2. The aforesaid petition had been filed by the appellant-husband, *inter-alia*, pleading therein that his marriage with the respondent-wife was solemnized on 18.04.2006 as per Hindu rites and out of the said wedlock, a female child was born on 15.12.2007. It was pleaded that

at the time of marriage, the appellant-husband was serving an officer in the Indian Army and was posted at Nasik

(Maharashtra). It was further pleaded that the respondent-wife and her parents had played a fraud upon him, as they did not disclose that the respondent-wife was suffering from Asthma. The appellant-husband further pleaded that from the very inception of the marriage, the behaviour of the respondent-wife was not good towards the appellant-husband and his family members and she used abusive language in front of relatives and the neighbours. It was further pleaded that in the absence of the appellant-husband, the respondent-wife maintained relations with Captain Mullick Chand and further, she had maligned his image by saying that the appellant was impotent. Owing to the torturous behaviour of the respondent-wife, the appellant-husband remained mentally upset and he had to take treatment from Psychiatrist. She used to leave her matrimonial home without informing the appellant-husband. Finally, she left the matrimonial home on 12.05.2007 and never came back. It was further pleaded that the respondent-wife also refused to give the custody of the minor daughter to the appellant-husband.

3. Upon notice, the respondent-wife entered appearance and filed her written statement denying the allegations levelled in the petition. Rather, it was pleaded that she had suffered harassment and mental cruelty at the hands of the appellant-husband and his family members. It was denied that she had deserted the appellant-husband. It

matrimonial home by the appellant-husband and his family members. Accordingly, a prayer was made for the dismissal of the divorce petition.

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

- “1. *Whether the petitioner is entitled for the decree of divorce on the ground mentioned in the petition? OPP*
2. *Whether the petitioner has no cause of action? OPR*
3. *Whether the petitioner has not come to the Court with clean hands and has suppressed the material facts? OPR*
4. *Whether the petitioner has no locus standing to file the petition? OPR*
5. *Whether the petitioner is estopped by his own act and conduct to file the petition? OPR*
6. *Relief.”*

5. In evidence, the appellant-husband himself stepped into the witness box as PW-2 and examined PW-1 Jaswinder Singh, Clerk, Municipal Council, Bahadurgarh, PW-3 Yogesh Chand Bhardwaj (father), PW-4 Nikesh Chauhan, PW-5 Sanjeet Sangwan, PW-6 Col. S. Mehrotra, Senior Advisor Medicines at Military Hospital, Ambala and PW-7 Mahesh Chand Yadav. On the other hand, the respondent-wife herself appeared as RW-3 and examined her father Prem Singh Sharma as RW-1 and Satbir Singh Rathie as RW-2.

6. The learned Family 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 contended that the appellant-husband had proved by way of evidence on record that the respondent-wife had committed cruelty to him. It is further submitted that the appellant-husband had duly proved before the Family Court that the respondent-wife and her family members had concealed the factum of her being an Asthmatic patient and thereby they had played a fraud upon him. It is further argued that the respondent-wife had not only deserted the appellant-husband, but also treated him with cruelty. It is further submitted that once the respondent-wife had withdrawn from all matrimonial obligations and responsibilities, the approach of the learned Family Court, in denying the decree of divorce to the appellant-husband is not justified in law.

8. It is further argued that the parties have been living separately since 2007 and during this long period of nearly 17 years, there has been no resumption of marital ties between the parties and, thus, the matrimonial alliance of the parties has reached the dead end.

9. On the other hand, the learned counsel for the respondent-wife, while defending the findings recorded by the learned Family Court, submits that the allegations levelled by the appellant-husband in the divorce petition, were general and vague in nature and the same could not be proved by way of any cogent and convincing evidence. It

husband, who had committed cruelty upon the respondent-wife and she was forced to leave the matrimonial home. The appellant-husband had failed to narrate any specific date or event as regards the alleged cruelty committed to him. It is yet further argued that mere long separation between the parties, is no ground to dissolve the marriage.

10. We have heard learned counsel for the parties and have also gone through the records of the case.

11. Indisputably, the marriage between the parties was solemnized in April, 2006. The parties have been living separately since 2007. The divorce petition was filed on 27.01.2009 and the same was dismissed on 17.10.2012.

12. In view of 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?”

13. The learned Family Court has found that the allegations levelled against the respondent-wife regarding the alleged cruelty committed upon the appellant-husband, were not proved on record. It was further found that the appellant-husband had also failed to prove that the respondent-wife had refused to live in her matrimonial

respondent-wife, who wanted to reside with the appellant-husband. It was further found that the respondent-wife did not file any petition under the Protection of Women from Domestic Violence Act or under Section 125 Cr.P.C., which showed her *bona-fide* that she wanted to save her matrimonial home, but the behaviour and the attitude of the appellant-husband was not conducive. It was also observed by the learned Family Court that there was no evidence to support the claim that the respondent-wife had deserted the appellant-husband.

14. Although the appellant-husband was unable to provide evidence of physical/mental cruelty or desertion before the Family Court, we must examine, whether the marital relationship between the parties has ruptured beyond repair, especially when the parties have been living separately for more than seventeen years and during this period, there has been no resumption of their relationship and rather on account of protracted litigation, the same has got worsened day by day.

15. In the present case, efforts have been made firstly to resolve the matrimonial dispute through the process of mediation, which is one of the effective modes of alternative mechanism in resolving the personal disputes, but the mediation between the parties failed. The parties were directed to be present before the Mediator vide order dated 29.04.2013 passed by a Co-ordinate Bench of this Court.

The report dated 15.07.2013 of the Mediator, reads as under:-

“The matter was discussed at length with both the parties in joint as well as in single sessions. Separate time was given to the parties to think over the possibilities for reconciliation. But inspite of best efforts, the parties have failed to settle the dispute. The matter may be sent back to the Hon’ble Court for further adjudication.”

16. Indisputably, the parties have been living separately since 2007. 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 of 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.

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

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.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. They are seems to be no possibility of their re-union. In these

circumstances, this Court finds no illegality or perversity in the impugned judgement of the Family Court granting decree of divorce in favour of the husband.”

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 2007, 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. It may further be noticed that on the one hand, the respondent-wife is defending the judgment and decree passed by the learned Family Court, but on the other hand, her behaviour during mediation proceedings remained adamant and even during the course of hearing of the appeal, she has refused to agree for a mutual divorce. It does not, thus, appeal to the common prudence, as to what would be gain to the respondent-wife by keeping this dead relationship alive.

21. 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 has made any effort to join his company and/or has filed any petition under Section 9 of the Act for restitution of conjugal rights.

Thus, the only aim of the respondent-wife appears to keep the appellant-husband engaged in the protracted litigation.

22. 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.

23. Consequently, the present appeal is allowed. The impugned judgment and decree passed by the learned Family Court, is set aside and the marriage between the parties is dissolved by a decree of divorce. Question No.2 is answered, accordingly.

24. Decree sheet be prepared accordingly.

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

26. However, the appellant-wife will be at liberty to move an appropriate application for grant of permanent alimony before the learned Family Court. We make it clear that if any such application is moved, the same shall be decided by the learned Family Court in accordance with law, preferably within a period of six months.

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

19.11.2024

Ajay Prasher

AJAY PRASHER
2024.12.17 16:42
I attest to the accuracy and
integrity of this document

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No