

2024:PHHC:169682-DB



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

FAO-M-194-2012 (O&M)

Date of decision: 19.11.2024

Kawaljit Kaur

....Appellant

Versus

Satpal Sharma

....Respondent

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

Present: Mr. Kuldip Sanwal, Advocate,
for the appellant-wife.

Mr. Yogesh Jangra, Advocate,
for Mr. Sherry K. Singla, Advocate,
for the respondent-husband.

SUDHIR SINGH, J.

The present appeal has been filed against the judgment and decree dated 09.03.2012 passed by the learned Additional District Judge, Patiala (for short 'the trial Court'), whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for brevity 'the Act') filed by the appellant-wife for dissolution of marriage, has been dismissed.

2. The aforesaid petition had been filed by the appellant-wife, *inter-alia*, pleading therein that her marriage with the respondent-husband was solemnised on 08.03.1996 as per Hindu rites. Out of the said wedlock, two children were born, who were living with the appellant-wife.

It was further pleaded that from the very inception of the marriage, the behaviour of respondent-husband and his family members was rude and arrogant towards her as they were not satisfied with the dowry articles given by her parents. It was further pleaded that the appellant-wife was harassed and humiliated by the respondent-husband and his family members for bringing inadequate dowry. They used to demand more money from the appellant-wife and when she showed her inability to meet their demands, she was given beatings by them. It was further pleaded that the respondent-husband was a drug addict and he used to sell her jewellery to fund his addiction. It was further asserted that the respondent-husband used to visit *tantriks*. Instigated by his parents, the respondent-husband created an unbearable environment, forcing the appellant-wife to leave the matrimonial home and live in a rented accommodation along with her mother and children.

3. Upon notice, the respondent-husband entered appearance and filed his written statement, admitting the factum of marriage and the birth of two children. It was stated that the allegations levelled by the appellant-wife against him were false and frivolous. The allegations of demand of dowry etc., were denied. It was pleaded that the appellant-wife was given love and respect in the matrimonial home, but she chose to leave the respondent-

husband without any reasonable cause. It was further pleaded that the appellant-wife was under the influence of her parents and her mother used to interfere in their marital life. It was further pleaded that the respondent-husband had filed a petition under Section 9 of the Act, which showed that he was willing to reconcile with the appellant-wife. Accordingly, a prayer for dismissal of the petition was made.

4. From the pleadings of the parties, the trial Court, framed the following issues:-

1. Whether the respondent subjected the petitioner to cruelty after marriage? OPP
2. Whether the petition is not maintainable in the present form? OPR.
3. Whether the petitioner has not come to the court with clean hands? OPR
4. Relief.

5. In evidence, the appellant-wife herself appeared as PW-1 and had examined PW-2 Darshan Kaur and PW-3 Karnail Singh. On the other hand, the respondent examined himself as RW-1.

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-wife, as noticed above.

7. Learned counsel for the appellant-wife has vehemently contended that the appellant-wife had proved by way of evidence on record that the respondent-husband and his family members had committed cruelty against her. It is further submitted that the respondent-husband exhibited a controlling and distrustful attitude by frequently questioning the character of the appellant-wife and limiting her movement. Respondent-husband also threatened to take his own life and falsely implicate the appellant-wife and her mother in criminal cases. It is further argued that it was the pleaded case of the appellant-wife that the respondent-husband used to remain under addiction and he had sold her entire jewellery to meet the expenses upon the intoxicants. It is further submitted that once the respondent-husband had withdrawn from all matrimonial obligations and responsibilities, the approach of the learned trial Court, in denying the decree of divorce to the appellant-wife is not justified in law.

8. On the other hand, learned counsel for the respondent-husband, while defending the findings recorded by the learned Family Court, submitted that the allegations levelled by the appellant-wife 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 is further submitted that the appellant-wife was treated with

love and respect in the matrimonial home, but she left respondent-husband without any valid reason. It was further argued that the parents of the appellant-wife, particularly her mother, were interfering in the marital life of the parties. It was further argued that the respondent-husband had always been ready to reside in the company of the appellant-wife, which is substantiated from filing of the petition under Section 9 of the Act.

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

10. The learned trial Court has found that the allegations levelled by the appellant-wife against the respondent-husband were vague and general in nature and no instance was narrated by the appellant-wife, which could have strengthened her case of cruelty. It was further found that the appellant-wife did not mention any specific date, month or year when demand of dowry/money was made by the respondent-husband. It was further found by the learned trial Court that in the entire petition, the appellant-

wife did not mention any specific incident, which could prove that she was subjected to mental or physical cruelty in her matrimonial home. The Family Court further observed that though, it was alleged by the appellant-wife that her gold jewellery was sold by the respondent-husband, yet no details with regard to the said jewellery were given. Further, the allegations of cruelty levelled by the appellant-wife against the respondent-husband were found to be general in nature.

11. Although the appellant-wife was unable to provide evidence of physical or mental cruelty before the Family Court, we must examine whether the marital relationship between the husband and wife has ruptured beyond repair, especially when the parties have been living separately for more than 14 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.

12. In the present case, vide orders dated 22.12.2014 and 13.01.2015, efforts were made to resolve the matrimonial dispute in the Daily Lok Adalat, but the parties were unable to reconcile the matter. The order dated 13.01.2015 passed by the Daily Lok Adalat, reads as under:-

“There was hope for reconciliation when hearing took place on the last date of hearing. Today again, the matter

was discussed between the parties. But, all efforts made for reconciliation between them have failed. Hence, appeal returned to Hon'ble High Court."

13. Thereafter, efforts were again made to resolve the matrimonial dispute through the process of mediation, which is one of the effective modes of alternative mechanism in resolving the personal dispute. First session of mediation held on 15.03.2019, where only respondent-husband was present and none appeared for the appellant-wife and the reads as under:-

"In the absence of the petitioner, mediation could not take place. To come up on 08.04.2019 for further mediation. Let notice be issued to the petitioner and her counsel be informed telephonically about the date fixed."

14. Further, as per the report of the Mediator dated 03.07.2019, the parties did not come present for settlement, hence, the matter was sent back to the Court. The said report of the Mediator reads as under:-

"In the absence of the parties, the mediation could not be carried out. The case is fixed for 05.07.2019 before the Hon'ble High Court. Hence, the case file be sent back to the Hon'ble High Court."

15. As per the aforesaid report of the Mediator, neither of the parties appeared on the said date. This demonstrates the conduct of the parties and lack of their seriousness in reaching a settlement.

16. Indisputably, the parties have been living separately since 2010. 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 efforts for reconciliation of the dispute between the parties before the Daily Lok Adalat and the Mediation and Conciliation Centre, remained unsuccessful, as the parties were not serious enough to resolve the dispute amicably. 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 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.”

19. 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.

20. 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.”

21. A Division Bench of the Chhattisgarh High Court in **Duleshwari Sahu Vs. Ramesh Kumar Sahu**, 2023 AIR (Chhattishgarh) 95, has held that where the wife had been residing separately from the husband for a long period without any justifiable cause, the same would amount to cruelty. It was held as under:-

“15. In the present matter, on perusal of the pleadings of the respective parties and the evidence adduced by them in support thereof, as also the admission of the parties and their witnesses, it is found that the respondent wife is living separately from her husband at her parental home without any just and reasonable cause since May, 2014. She lodged a report on 17/09/2014 against the husband under Sections 498-A, 323, 294, 506 of

IPC and after trial, he was acquitted of all the charges. This apart, the wife also made a report against the husband and his parents under Protection of Women from Domestic Violence Act. It is also admitted position that the wife filed divorce petition under Section 13 of the Hindu Marriage Act which was dismissed for want of prosecution. It is also admitted by the wife that no application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights was filed by her. It is not disputed that the wife is working as Panchayat Secretary and is also getting Rs. 7,000/- per month as maintenance. Therefore, in the given facts and circumstances of the case, the conduct of the wife, in light of the judgments of Hon'ble Supreme Court as mentioned above, the act committed by the wife against the husband amounts to cruelty and it stands proved that she is living separately from the husband since 2014 without any just and reasonable cause. There seems to be no possibility of their re-union. In these circumstances, this Court finds no illegality or perversity in the impugned judgement of the Family Court granting decree of divorce in favour of the husband."

22. 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 2010, if compelled to live together, their union would become a fiction supported by a legal tie and it would show a scant regard for the feelings and emotions of the parties. This, in itself would amount to mental cruelty to both the parties.

23. 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.

24. 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.

25. Decree sheet be prepared accordingly.

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

**(SUDHIR SINGH)
JUDGE**

**(JASJIT SINGH BEDI)
JUDGE**

19.11.2024

Ajay Prasher

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