



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-M-59-2013(O&M)

Reserved on 01.08.2024

Pronounced on: August 23, 2024

Namrata Kalia

.....Appellant

Vs.

Sameer Kalia

.....Respondent

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

Present: Mr. Ajay Kumar Kansal, Advocate
for the appellant

Mr. Kanwaljit Singh, Sr. Advocate assisted by
Mr. Sandeep Bansal & Mr. Gagandeep Singh, Advocates
for the respondent.

SUDEEPTI SHARMA J.

1. The appellant-wife in the present appeal has challenged the judgment and decree dated 24.12.2012 in HMA No. 412 of 2006 whereby the petition filed by the respondent-husband under Section 13 of Hindu Marriage Act, 1955 (for short 'HMA') for dissolution of their marriage is decided in his favour and the marriage between the parties is dissolved by a decree of divorce on the ground of mental cruelty by the appellant-wife.

BRIEF FACTS OF THE CASE

2. The brief facts of the case as mentioned in the divorce petition are that the marriage between the parties took place on 27.04.2003. Out of the said wedlock, one girl child namely Aarushi was born on 4.9.2004.

3. A perusal of the record shows that after the marriage, both the parties were not regularly staying together and in July 2004, the respondent-



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husband filed a petition under Section 9 of HMA for restitution of conjugal rights. A perusal of the record further shows that at one point of time, the parties were sent to Lok Adalat for reconciliation and as per order dated 23.04.2005 of Lok Adalat, both the parties amicably resolved to reside together.

4. Ex-R1 shows that on 16.05.2005, a DDR No.53 is lodged at Police Station Sector 26, Chandigarh against the husband. Further Ex. P2 shows that the appellant wife submitted a complaint against the respondent-husband in “*Mahila Nyay Samiti*”, Sector 9-C, Chandigarh, wherein the finding was given against the appellant-wife.

5. The respondent-husband withdrew the above petition under Section 9 of HMA on 21.12.2005 and filed a petition under Section 13 of HMA on 28.01.2006. The same was decided vide judgment and decree dated 24.12.2012 whereby the marriage between the parties was dissolved on the ground of mental cruelty by the appellant-wife. The same has been challenged by the appellant-wife in the present case.

SUBMISSIONS OF THE COUNSELS

6. Learned counsel for the appellant submits that the matter between the parties was resolved before the Lok Adalat and consequent thereto a petition under Section 9 of the HMA filed by the husband was withdrawn, which amounts to condonation of cruelty. He further submits that no fresh ground of cruelty occurred or lodged to have occurred, as there was no resumption or cohabitation between the parties after compromise or withdrawal the petition under Section 9 of HMA by the respondent-husband. Hence the petition with allegation of cruelty deserve to be dismissed on this ground alone. He further contends that divorce was wrongly granted on the ground of refusal to cohabit just after the marriage, which fact is belied by the birth of daughter on 04.09.2004. He submits that

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respondent-husband himself is not willing to resume the matrimonial ties. He further submits that divorce was wrongly granted and the decree of divorce dated 24.12.2012 deserve to be set aside and the present appeal be allowed.

7. *Per contra*, learned counsel for the respondent-husband submits that the parties have hardly stayed together and have parted ways about 20 years back. He further submits that the wife made complaints against him and his family members, which amounts to cruelty, therefore, decree of divorce has been rightly granted and, therefore, the present appeal may kindly be dismissed.

8. We have heard learned counsel for the parties and perused the whole record.

9. To make one more effort, the parties were called to be present in person before this Court alongwith their daughter-Aarushi on 25.07.2024. We have interacted with the parties and found that since they are living separately for almost 20 years and no effort is made by any of the parties to resolve the dispute between them. Therefore, at this stage, we do not think it appropriate to discuss the evidence led by them, the parties to determine the allegations or fault by both of them. As per the record, there are allegations and counter-allegations against each other. The relationship between the parties has become so bitter that we find that there is no possibility of their being stayed together under one roof. Even the efforts made by Lok Adalat failed in the present case. Matrimonial cases practically speaking cannot be decided on the basis of allegations made against each other, evidence led by both the parties and the proof of those allegation. In fact the decision depends upon the amount of bitterness between each other and the scope of love and affection after so much litigation between each other, it can be decided whether on the date of decision of the appeal practically they should be forced to live together by not granting the divorce or allowing the appeal



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against the decree of divorce. Even if the Courts appreciate the evidence on record in matrimonial matters and reject the prayer for dissolution of marriage still they cannot be forced to live together. It is only their personal efforts which can decide the dispute between them.

SETTLED LAW

10. 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..

11. Constitution Bench of Hon'ble the Supreme Court in Shilpa Sailesh

v. Varun Sreenivasan, 2024(1), 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.

12. 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*



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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.

13. This Court in FAO-M-287 of 2018 held as under:-

“26. In view of latest law laid down by Hon’ble the Supreme Court, every effort should be made by the Courts to save the marriage of the parties but where the Courts find that there is no possibility of their reconciliation since the parties are emotionally hurt and broken down then by announcing the judgment and directing them to live together by not granting the decree of dissolution of marriage would amount to forcing them to live together under one roof. Further it would amount to inviting emotional break down of both of them.

27. In the present case, the parties have been separated since 2011 and for the last 13 years, neither of them has made any effort to resume their relations or to cohabit.

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.



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30. *Therefore, in view of law laid down by Hon'ble Supreme Court in matrimonial matters under the Hindu Marriage Act, 1955, we do not find any possibility of any kind of settlement between the parties whereby they can be forced to live together."*

14. In view of the above, the present appeal is dismissed and judgment and decree dated 24.12.2012 passed by learned Additional District Judge, Chandigarh, dissolving the marriage between the parties by decree of divorce is hereby affirmed.

PERMANENT ALIMONY

15. The parties alongwith their daughter were called on 25.07.2024. Since this Court found that there is no possibility of settlement between the parties to stay under one roof, this Court adjourned the matter to 01.08.2024 to give them one chance to arrive at an amicable settlement to depart their ways gracefully.

16. The respondent-husband made the following offer on solemn affirmation on 01.08.2024

"Stated on oath that I am ready to give an amount of Rs. 30 lacs to my wife towards permanent alimony. I shall deposit a sum of Rs.25 lacs in the shape of FDR in the name of my daughter. I am also ready to pay Rs.10,000/- per month to my daughter in her saving account, which shall be provided by her or her mother i.e present appellant. I shall also bear the expenses of the marriage of my daughter. The daughter will not be disinherited from my estate."

17. This offer was not acceptable to the appellant-wife. She was not even ready to give the account number of her daughter so that the husband could deposit the amount of Rs.25 lacs in the shape of FDR and Rs.10,000/- per month

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in her account.

18. In view of the statement made by the respondent-husband on 01.08.2024, he is directed to pay permanent alimony to the tune of Rs.30 lacs to the appellant-wife by depositing it in her account. He is further directed to pay a sum of Rs.25 lacs in the shape of FDR in the name of his daughter and Rs.10,000/- per month in her saving account by 7th day of each month. He shall also bear the marriage expenses of his daughter and further directed not to disinherit his daughter from his estate. The respondent-husband is directed to comply with the order within two months from the date of pronouncement and shall remain bound by his statement dated 01.08.2024 made before this Court.

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

August 23, 2024
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Whether speaking/reasoned: Yes
Whether reportable: Yes