

2024.PHHC.132509-DB



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

FAO-5663-2019 (O&M)

Date of decision: 24.09.2024

NIDHI SHARMA @ NIDHI KAUSHIK

...Appellant

Versus

MANU KAUSHIK

...Respondent

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

Present:- Mr. G.S. Madaan, Advocate, for appellant.

Mr. Kshitij Sharma, Advocate and
Ms. Shruti Sharma, Advocate
for respondent.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 02.08.2019 passed by the learned Additional Principal Judge, Family Court, Gurugram (for short 'the Family Court'), whereby the petition under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the respondent-husband has been allowed and the marriage between the parties has been dissolved by decree of divorce on the ground of cruelty.

2. The aforesaid petition had been filed by the respondent-husband, *inter alia*, pleading therein that his marriage with the appellant-wife was solemnized on 19.11.2010, as per Hindu rites and out of the said wedlock two children were born on 24.02.2012 and

14.10.2014, respectively. It was further pleaded that soon after the marriage the appellant-wife started humiliating the respondent-husband physically as well as mentally. On 22.09.2013, the appellant-wife left the matrimonial house for about two months without any intimation. The respondent-husband sent a notice dated 12.11.2014, asking the appellant-wife for restitution of conjugal rights, but she intentionally did not accept the said notice. The parties resided at House No.613, Sector 10A, Gurugram. The owner of the said house was 70-75 years old lady, but the appellant-wife levelled very scandalous allegations against the respondent-husband alleging that he was having relations with the said lady. It was further alleged that the appellant-wife used to beat the minor sons without any reason and used to further extend threats of beatings to be given to the respondent-husband at the hands of her cousin brother. It was further alleged that in September, 2013, the appellant-wife, left Gurugram for Jaipur and there, she had maltreated her in-laws and used derogatory remarks against them. On 23.04.2014, the appellant-wife quarreled with the respondent-husband and made a call to the police on 100 number. It was further alleged that again on 21.10.2014, the appellant-wife filed a false complaint at Police Station Manesar against the respondent-husband wherein he was arrested by the police and was put behind the bars. Subsequently, he was released on bail. The respondent-husband and his parents were also summoned by the CAW Cell Bulandsahar (U.P.) on the false and frivolous complaint of the appellant-wife and they had filed the same reply on 22.01.2015. It

was further alleged that the marriage between the parties was beyond repair and there was no possibility of living together.

3. Upon notice, the appellant-wife entered appearance and filed her written statement alleging therein that her parents had incurred huge expenses in the marriage and that the respondent-husband used to maltreat, torture and insult her for non-fulfilling the illegal demands of dowry. It was further alleged that in September, 2010, the appellant-wife was turned out of the matrimonial home and that at the time of delivery of the first child, the respondent-husband and his family members refused to bear the expenses and, therefore, she went to her parental house. When she was again brought to the matrimonial home, she was given beatings by the respondent-husband for non-fulfilling the illegal demands of Rs.10 lakh. It was further alleged that on 14.10.2014, the respondent-husband gave merciless beatings to the appellant-wife and even tried to kill his daughter. Still further, it was alleged that on 22.10.2014, the appellant-wife was compelled by the respondent-husband to leave the matrimonial home and, thus, she along with her children came to her parental house. A complaint was lodged by the appellant-wife, but the matter was compromised. It was further pointed out that the appellant-wife came back to her matrimonial home, but the respondent-husband was not paying any household or education expenses of the children. It was yet further pointed out that the appellant-wife was still living in her matrimonial home with her parents-in-law and that she had been compelled to live in a garage without any door or fan. Thus, it was

pleaded that it was the respondent-husband, who had treated the appellant-wife with cruelty.

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

“1. Whether the petitioner is entitled for a decree of divorce on the ground of cruelty? OPP

2. Relief.”

5. In evidence, the respondent-husband examined himself as PW-1; PW-2 Madho Singh, Sub Inspector; PW-3 ASI Sukhbir Singh; PW-4 Anil Kumar Sharma; PW-5 Vibha Kaushik; PW-6 LHC Beena Devi and PW-7 Arun Kumar, besides tendering into evidence Ex.P1 to Ex.P34. On the other hand, the appellant-wife appeared as RW-1 and examined Durgesh daughter of late Chandrahas Sharma as RW-2, besides leading documentary evidence Ex.RW1/B to Ex.RW1/H, Ex.R1, Ex.R2 and Ex. RX and Ex.RY.

6. The learned Family Court, after taking into consideration the rival contentions of the parties and the evidence on record, has allowed the petition filed by the respondent-husband and dissolved the marriage between the parties by a decree of divorce, as noticed above.

7. Learned counsel appearing for the appellant has vehemently argued that the learned Family Court has erred in law in holding that the appellant-wife has treated the respondent-husband with cruelty by filing various complaints/cases against the respondent-husband and his family members. It is further submitted that it was the

respondent-husband and his family members, who had filed number of complaint/cases against the appellant-wife which clearly indicates that in fact the cruelty was committed by them to the appellant-wife. It is further submitted that the impugned judgment and decree passed by the learned Family Court, is based on conjectures and surmises, inasmuch as an erroneous finding has been recorded that the lodging of an FIR against the respondent-husband and his family members, amounted to cruelty, whereas the fact remains that in the said FIR, a cancellation report was filed by the police. It is yet further submitted that the appellant-wife had been compelled to lodge the FIR against the respondent-husband and his family members when she had been caused cruelty by the respondent-husband and his family members. It is, thus, submitted that mere registration of the FIR does not amount to cruelty. Lastly, it is argued that while passing the impugned judgment and decree, the learned Family Court has failed to take into consideration the hostile atmosphere in which the appellant-wife is residing in her parental home. Thus, a prayer has been made for setting aside the impugned judgment and decree.

8. On the other hand, learned counsel for the respondent-husband while defending the findings recorded by the learned Family Court, contends that it was proved on record that the appellant-wife had treated the respondent-husband and his family members with cruelty, inasmuch as many cases/complaints were filed and they were summoned by the police/various other authorities in the said cases/complaints and ultimately, the said cases were either cancelled or closed by the police/various other authorities. It is, thus, argued that

having faced harassment and humiliation at the hands of the appellant-wife, the respondent-husband has rightly been held entitled to the decree of divorce by the learned Family Court.

9. We have heard learned counsel for the parties and have also gone through the impugned order passed by the Court below.

10. The question that arises for consideration by this Court is whether the order passed by learned Family Court, requires any interference.

11. It was found by the learned Family Court that in the FIR (Ex.P-11) lodged by the appellant-wife, the police had filed cancellation report. It was further found that subsequently, the closure report submitted by the police was accepted by the Court as in the said proceedings, the appellant-wife had failed to appear in the Court. As regards the complaint/cases allegedly filed by the respondent-husband, it was found by the learned Family Court that the respondent-husband had been cross-examined at length, but nothing could be brought out that as a result of the said proceedings, the appellant-wife had suffered any cruelty, harassment or humiliation. It was, thus, found by the learned Family Court that due to physical and mental torture at the hands of the appellant-wife and filing of various complaints/cases, containing indecent and defamatory allegations against the respondent-husband and his family members, it was not possible for both the parties to reside together and as a matter of fact, the marriage had reached its dead end.

12. In **K. Srinivas Rao v. D.A. Deepa**, 2013(2) RCR (Civil) 232; Hon'ble Apex Court observed as under:-

“14. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse...”

In K. Srinivas v. K. Sunita, 2015(1) RCR (Civil) 38,

Hon'ble Apex Court observed as under:-

“6. Another argument which has been articulated on behalf of the learned counsel for the Respondent is that the filing of the criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filing of the husband's divorce petition, and being subsequent events could have been looked into by the Court. In any event, both the parties were fully aware of this facet of cruelty which was allegedly suffered by the husband. When evidence was led, as also when arguments were addressed, objection had not been raised on behalf of the Respondent-Wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf.

7. In these circumstances, we find that the Appeal is well founded and deserves to be allowed. We unequivocally find that the Respondent-Wife had filed a false criminal complaint, and even one such complaint is sufficient to constitute matrimonial cruelty.

8. We, accordingly, dissolve the marriage of the parties under Section 13(1)(ia) of the Hindu Marriage Act...”

13. In Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511, it was held by the Hon'ble Supreme 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.”

14. The marriage between the parties was solemnized on 19.11.2010. Two children were born to the parties on 24.02.2012 and 14.10.2014 respectively. As per the pleadings on record, the parties have been living separately since 22.09.2013. The efforts for mediation before this Court remained unsuccessful. Therefore, in view of the judgment of the Hon’ble Supreme Court in **Samar Ghosh’s** case (supra), the marriage between the parties has reached the stage of beyond repair and rather it has become of a fiction supported by a legal tie.

15. Thus, we find that the findings recorded by the learned Family Court do not suffer from any illegality or perversity, which may warrant interference by this Court in the present appeal.

16. No other point has been urged.
17. In view of the above, we do not find any merit in the present appeal and the same is hereby, dismissed.
18. Pending application(s), if any, shall also stand disposed of.
19. However, we grant liberty to the appellant-wife to move an appropriate application before learned Family Court for grant of permanent alimony. If any such application is filed by the appellant-wife, the same shall be considered and decided by the Court concerned, in accordance with law, preferably within a period of 06 months from the date of filing thereof.

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

24.09.2024
Himanshu

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