

2024:PHHC:161865-DB



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

FAO-M-156-2017 (O&M)

Date of decision: 03.12.2024

Kuldeep Kaur

...Appellant

Versus

Sukhwinder Singh

...Respondent

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

Present:- Mr. Rakesh Sobti, Advocate,
for the appellant.

Mr. G.P.S. Bal, Advocate,
and Mr. Shubham Makkar, Advocate,
for respondent.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 06.05.2017 passed by the learned Additional District Judge, Fatehgarh Sahib (for short 'the trial Court'), whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the respondent-husband, was allowed and the marriage between the parties was dissolved by a 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 20.10.2006, as per Sikh rites. No child was born out of the said wedlock. It was further pleaded that from the

beginning of the marriage, the attitude of the appellant-wife was very indifferent towards the respondent-husband and his family members. It was further pleaded that the respondent-husband being an Armed Personnel, joined his service after about 20 days of the marriage and, thereafter, he used to talk to the appellant-wife through the landline number. After about 10 days of leaving his village, the respondent-husband came to know from his father that the appellant-wife had left the matrimonial home without any reason. It was further pleaded that the appellant-wife had demanded a separate residence as she did not want to stay along with the parents of the respondent-husband. The respondent-husband repeatedly requested the appellant-wife to adjust and live peacefully, but she remained adamant and her relatives used to encourage her to pressurize the respondent-husband to live separately from his parents. In March, 2009, the respondent-husband requested the appellant-wife to stay with him, as his parents had gone to Hazoor Sahib for 2-3 weeks, but she insisted that her mother would also accompany her at her matrimonial home. But, there was no change in the attitude of the appellant-wife and there was continuous denial of the sexual intercourse on her part. The respondent-husband further pleaded that on 16.04.2009, the younger brother

of the appellant-wife along with some unknown persons, came to his house and used abusive language against the parents of the respondent-husband. Thereafter, the appellant-wife left the matrimonial home and when efforts were made by the respondent-husband to bring her back, she flatly refused to join back his company.

3. Upon notice, the appellant-wife appeared and filed her written statement denying the allegations levelled by the respondent-husband in his petition. It was pleaded by the appellant-wife that the respondent-husband and his family members were not happy with the appellant-wife on account of insufficient dowry. She was harassed, humiliated and pressurized to bring more dowry. It was further pleaded that after 10 days of her marriage, when the respondent-husband left for his job, the appellant-wife was forcibly turned out of the matrimonial home by her parents-in-law. It was further pleaded that *Panchayats* were convened and efforts were made to persuade the respondent-husband and his family members to take the appellant-wife back to the matrimonial home, but all in vain. Accordingly, a prayer was made for dismissal of the 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 dissolution of his marriage with the respondent as prayed for? OPP.

2. Whether the petition is not maintainable? OPR.

3. Relief.”

5. In evidence, the respondent-husband himself stepped in the witness box as PW-3 and examined PW-1 Kesar Singh (his father), PW-2 Bhupinder Singh, Lamberdar and PW-4 Dalbir Singh, Sarpanch. On the other hand, the appellant-wife examined herself as RW-1, Ajaib Singh as RW-2 and her cousin brother RW-3.

6. The learned trial Court after taking into consideration rival contentions of the parties and evidence on record, allowed the petition filed by the respondent-husband, as noticed above.

7. Learned counsel for the appellant-wife has vehemently contended that the allegations contained in the divorce petition filed by the respondent-husband were totally baseless and the same were not proved by leading any cogent and convincing evidence. It is further argued that the stand of the appellant-wife in her written statement was duly corroborated by the testimony of RW1 to RW3, but the same was not taken into consideration by the learned trial Court, while passing the impugned judgment and decree. It is further argued

that it was the respondent-husband, who had not only withdrawn from the society of the appellant-wife and deprived her of the matrimonial bliss, but had also shirked of liability to maintain her. It is still further argued that the appellant-wife had proved on record that it was the respondent-husband and his family members, who had caused cruelty to the appellant-wife. 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 trial Court, has argued that the appellant-wife had levelled false and fabricated allegations of demand of dowry by the respondent-husband and his family members and no substance was found in the said allegations by the learned trial Court. It is, thus, argued that the findings recorded by the learned trial Court are legal and valid and the same do not require any interference by this Court.

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

10. Though, the learned trial Court has found that the respondent-husband had been able to prove the cruelty on the part of the appellant-wife, yet we may notice that the parties have been living separately since

2009 and since then there is no resumption of cohabitation between them. Thus, in our opinion, the following questions would arise for consideration:-

“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?

11. The learned Trial Court, on the basis of the evidence led by the parties, came to the conclusion that the allegations of beatings levelled by the appellant-wife against the respondent-husband and his family members were baseless as she failed to lead any documentary/medical evidence to corroborate the said allegations. It was further found that the appellant-wife had failed to show any reasonable cause for leaving the matrimonial home. It was further found that being an Armed Forces Personnel, the respondent-husband used to come on leave for specific periods and during that time, the appellant-wife had never given him any access to establish the physical relations with her. It was further found that the respondent-husband had proved on record that he was ready and willing to stay with the appellant-wife, which was proved by the testimony of the witnesses examined by him. The trial Court further found

that the respondent-husband had proved that the appellant-wife had treated him with cruelty.

12. Now, 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 15 years now 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.

13. 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 dispute, but the mediation between the parties failed. The parties were directed to be present before the Mediator vide order dated 10.04.2019 passed by a Co-ordinate Bench of this Court. However, the mediation had failed and the order dated 13.11.2019 passed by the Co-ordinate Bench of this Court, reads as under:-

“Matter has been returned from Mediation, which could not be proceeded due to non-appearance of the respondent. Hence, respondent is directed to remain present on the next date of hearing.”

14. Further, subsequent mediation took place between the parties and as per the Mediation report dated 28.08.2023, the case was sent back to the Court

and was listed for hearing on 20.09.2023. The report of the Mediator reads as under;-

“In the present case, on 22.05.2023 only respondent appeared and none appeared for petitioner, on 07.07.2023 and 25.08.2023 only petitioner came present and none appeared for respondent and today none came present for petitioner and on the other hand, Kesar Singh father of respondent-Sukhwinder Singh came present. Thus, both the parties never came present together and in this manner, this case remained a non-starter.

The aforesaid case is fixed for 20.09.2023 before the Hon’ble Court. Therefore, the case file be sent back to the Hon’ble Court for further adjudication.

15. Indisputably, the parties have been living separately since 2009. 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.

16. 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.

17. 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.

18. 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 and the findings recorded by the learned trial Court, 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 2009, 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. Still further, there is nothing on record to indicate that since the date of filing of the divorce petition by the respondent-husband, the appellant-wife had made any effort to join his company and/or had filed any petition under Section 9 of the Act for restitution of conjugal rights. The only aim of the appellant-wife appears to be to frustrate the respondent-husband’s claim and further keep him engaged in the protracted litigation.

21. In view of the above, considering the totality of the facts and circumstances of the case, we uphold the findings recorded by the learned trial Court and also 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.

22. Consequently, the present appeal is dismissed. The impugned judgment and decree passed by the learned trial Court, is upheld. Question No.2 is answered, accordingly.

23. At this stage, we may notice that while passing the impugned judgment and decree, no permanent alimony was granted to the appellant-wife by learned trial Court. Therefore, we grant liberty to the appellant-wife to move an appropriate application before learned trial Court/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.

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

**[SUDHIR SINGH]
JUDGE**

**[JASJIT SINGH BEDI]
JUDGE**

03.12.2024
Ajay Prasher

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No