

2024:PHHC:172638-DB



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

FAO-M-171-2018 (O&M)

Date of decision: November 22, 2024

Baljinder Singh

....Appellant

versus

Rajwinder Kaur and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Mr. Sunny K. Singla, Advocate for the appellant.

Mr. Gurcharan Dass, Advocate for respondent No.1.

None for respondent No.2.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 27.03.2018 passed by learned Additional District Judge, Ludhiana (for short 'trial Court'), whereby a petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'Act') filed by the appellant-husband was dismissed.

2. The aforesaid petition had been filed by the appellant-husband, *inter alia*, asserting therein that his marriage with respondent No.1-wife was solemnized about 15 years back and out of the said wedlock, one female child was born on 15.11.2004. It was further alleged that the appellant-husband was serving in the Indian Army and that respondent No.2, a co-villager of the appellant-husband, used to visit his house in his absence, during night time and he had developed illicit relations with his wife (respondent No.1), and out of the said illicit

relationship, one male child was born. It was further alleged that respondent No.1-wife used to administer sedatives to the parents of the appellant-husband whenever, respondent No.2 visited the house of the appellant-husband, to commit sexual intercourse with him. It was further pleaded that the appellant-husband retired from his service in February 2010, and in the month of March, 2010, he found respondent No.1 talking to respondent No.2 on her mobile phone. This fact was disclosed by the appellant to his in-laws and after the said incident, respondent No.1-wife left the matrimonial home, while carrying along with her all the gold ornaments and clothes. Thereafter, in April 2010, a *panchayat* was convened and respondent No.1-wife was brought back to the matrimonial home. Before Panchayat, respondent No.1 had admitted her relationship with respondent No.2. Even after few days, the appellant-husband saw his wife-respondent No.1 and respondent No.2 in a compromising position, in his house, when he returned to his house. It was, thus, pleaded that respondent No.1-wife was living an adulterous life and her act was highly unpardonable. It was further alleged that respondent No.1-wife left the matrimonial home in April, 2010 and thereafter, she did not come back. Thus, a decree of divorce was sought for on the grounds of cruelty and adultery.

3. Upon notice, respondent No.1-wife entered appearance, admitting factum of marriage between the parties. The allegations of adultery were denied. It was rather pleaded that under influence of liquor, the appellant-husband used to beat respondent No.1-wife mercilessly at the instance of his family members. It was also pleaded that on one occasion, the appellant-husband had also threatened to commit suicide, if

respondent No.1-wife had not accepted his demand. It was further alleged that on 22.08.2011, respondent No.1-wife was turned out of the matrimonial home by the appellant-husband after giving her beatings when she had refused to agree for divorce. It was yet further asserted that as the appellant/husband had failed to maintain respondent No.1/wife and the minor children, respondent No.1/wife had filed a petition for maintenance before the Civil Judge (Junior Division), Ludhiana.

4. Upon notice, respondent No.2 had also appeared and took the stand that his name had wrongly been dragged into the litigation. The allegation of adultery against him were denied.

5. On the basis of pleadings of the parties, the trial Court had framed the following issues:-

- “1-A. Whether respondent No.1 is living in adultery with respondent No.2? OPP*
- 1-B. Whether respondent No.1 had treated petitioner with cruelty? OPP*
- 1. Whether the petitioner is entitled for dissolution of marriage, if issues No.1-A and 1-B are proved? OPP.*
- 2. Whether the petition is not maintainable? OPR.*
- 3-A. Whether the present petition is bad for misjoinder of parties? OPR.*
- 4. Relief.”*

6. In evidence, the appellant examined himself as PW1 and had also examined PW2-Harpreet Singh; PW3-Sampuran Singh and PW4-Narinder Singh. On the other hand, respondent No.1-wife examined herself as RW1, whereas respondent No.2 appeared as RW2.

7. Learned trial Court, after considering the rival contentions of the parties and the evidence on record, had dismissed the divorce petition filed by the appellant/husband, as noticed above.

8. Learned counsel appearing on behalf of the appellant-husband has vehemently argued that the averments contained in the divorce petition were proved by him by leading cogent and convincing evidence inasmuch as, all the witnesses examined by him had reiterated said averments. It is further argued that the learned Family Court had wrongly held that the appellant-husband was not able to prove illicit relationship of respondent No.1-wife with respondent No.2, whereas the fact remains that it was the pleaded case of the appellant-husband that he had himself seen his wife (respondent No.1) in a compromising position with respondent No.2. It is, thus, argued that no husband is expected to live with his wife when he himself has noticed and witnessed the adulterous conduct of his wife and therefore, the findings recorded by learned trial Court are liable to be set aside. It is further argued that the parties have been living separately since 2010 and the matrimonial bond between them has become unworkable and the long separation itself amounts to cruelty.

9. On the other hand, the learned counsel appearing on behalf of respondent No.1, while defending the impugned judgment and decree passed by learned Family Court, has contended that learned Family Court recorded the findings on the basis of the evidence. It is further argued that the appellant-husband could not lead any evidence in respect of the alleged illicit relations between respondent No.1-wife and respondent No.2. It is, thus, argued that no interference is warranted by this Court in the present appeal. It is further argued that merely because the parties have been living separately for a long period, is no ground to grant the decree of divorce in favour of the appellant-husband.

10. We have heard learned counsel for the parties and have also gone through the impugned judgment and decree.

11. In our opinion, the following questions would arise for adjudication in the present appeal:-

“1. *Whether a long separation between the parties, rendering the material 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?”*

12. The learned trial Court has found that no case for grant of decree of divorce was made out inasmuch as the appellant-husband was not able to prove allegations of adultery and rather, it was observed that at the time when sedatives were allegedly given to the parents of the appellant-husband by respondent No.1, they had already been dead. Further, the paternity of the child, who as per version of the appellant-husband was born out of illicit relationship between respondent No.1 and respondent No.2, was proved to be that of the appellant-husband. However, in the facts and circumstances of the case, 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 now and during said 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, as has been noticed in the order dated 24.01.2023 passed by the Coordinate Bench of this Court, the parties did not agree for an amicable settlement. Even before the learned counsel for the parties started advancing their arguments, we have called upon the

parties to resolve their dispute by way of a settlement, to which the answer was in negative.

14. 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 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.

15. It is well settled that in order to constitute a 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.

16. 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 par-

ents 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.”

17. 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 judg-

ments, it would come out that the parties, who have been living separately since 2010, 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.

18. 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 had made any effort to join her company or bring her back to the matrimonial home and/or had filed any petition under Section 9 of the Act for restitution of conjugal rights.

19. 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.

20. 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.

21. Decree sheet be prepared accordingly.

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

23. At this stage, we may notice that while passing the impugned judgment and decree, no permanent alimony was granted to respondent No.1/wife by learned Family Court. Therefore, we grant liberty to respondent No.1/wife to move an appropriate application before

learned Family Court for grant of permanent alimony. If any such application is filed by respondent No.1/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

(ALOK JAIN)
JUDGE

November 22, 2024
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No