

2024.PHHC.122108-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-4252-2024 (O&M)
Date of decision: 06.09.2024

BINDU
...Appellant
Versus
PARVEEN
...Respondent

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

Present:- Mr. R.N. Lohan, Advocate for appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 05.08.2024 passed by learned Principal Judge, Family Court, Jind (for short the 'Family Court'), whereby the petition under Section 13 of the Hindu Marriage Act (hereinafter referred as 'the Act'), filed by the respondent-husband, has been allowed and the marriage between the parties has been dissolved by a decree of divorce on the ground of cruelty.

2. The aforesaid petition had been filed by the respondent-husband, inter alia, averring therein that his marriage with appellant-wife was solemnized on 25.12.2015, according to Hindu rites and no child was born out of the said wedlock. After the marriage, the

respondent-husband went to his place of posting on 18.01.2016 and on 20.01.2016, the appellant-wife started putting pressure upon him to live separately from his parents, besides demanding an absolute right to his salary. However, when the respondent-husband showed his inability to do so, the appellant-wife had started picking up quarrel with him and speaking inappropriately about his mother. It was further averred that whenever the respondent-husband would come on leave from his job, the appellant-wife had never allowed him to establish physical relations with her and being the devotee of Baba Rampal, she was unwilling to conceive and give birth to a child.

3. Upon notice, the appellant-wife entered appearance and had filed her written statement. The factum of marriage between the parties was admitted. The allegations of cruelty were denied. It was further averred that the respondent-husband was working as a clerk in Indian Army and at the time of marriage, he was posted at Hisar Cantt. The parents of the appellant-wife had incurred huge expenses in the said marriage by giving dowry articles and cash to the respondent's family, but the respondent-husband and his family members demanded more money. It was further pointed out that the appellant-wife had requested the respondent-husband to get her name included in his service record in the Army, but instead of doing that, she was beaten up and turned out of the matrimonial home on 01.08.2017. She had moved a written complaint to the employer of the respondent-husband and it was only thereafter that the respondent-husband was directed to get his marriage registered and Part-II order was also done at the behest of the respondent-husband. The factum of

registration of FIR No.229 dated 07.10.2018 under Sections 323, 406, 498-A and 506 IPC against the respondent-husband and his family members and filing of a petition under Section 125 Cr.P.C., was admitted. The other allegations were denied.

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

“1. Whether petitioner (husband) is entitled to dissolution of marriage solemnized with respondent (wife) on the grounds mentioned in the petition as prayed for? OPP

2. Whether petitioner has not come with clean hands and suppressed true and material facts from the Court? OPR

3. Relief.”

5. In evidence, the respondent-husband examined himself as PW-1; PW-2- Sunita and PW-3-Yashpal Chand Jain, Handwriting Expert, Jind, besides leading documentary evidence Ex.P-1 to P-2. The appellant-wife examined herself as RW-1 and also examined RW-2 Rajender and tendered into evidence documents Ex. R1 to Ex.R-9.

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

7. Learned counsel appearing for the appellant-wife has vehemently argued that the findings recorded by the learned Family Court are based on conjectures and surmises. It is further argued that

even before the name of the appellant-wife was entered in service record of the respondent-husband, he had given a power of attorney dated 07.06.2018 (Ex.P-1) in favour of his mother, to file the divorce on his behalf against the appellant-wife and this clearly indicates that the respondent-husband was pre-determined to divorce the appellant-wife and the allegations of cruelty were nothing but a concocted version on his part. It is further argued that the mother (Sunita) of the respondent-husband while appearing as PW-2 deposed that the divorce petition was filed by her son himself, whereas the fact remains that it was filed by the mother of the respondent-husband. Still further, it is argued that the allegations in the petition were verified by the mother of the respondent-husband being the Special Power of Attorney, whereas the fact of the matter is that the facts, which were based on personal knowledge of the respondent-husband, could only have been verified by the respondent-husband alone and not by the Special Power of Attorney. Still further, it is argued that the approach of the learned Family Court in holding that the appellant-wife has initiated criminal proceedings, after filing of the divorce petition by the respondent-husband, is not tenable in the eyes of law as it was the stand of the appellant-wife before the learned Family Court that she had been compelled to initiate such criminal proceedings against the respondent-husband and his family members.

8. It is further argued that the respondent-husband, while appearing as PW1, deposed that the appellant-wife did not make any complaint against him to the higher authorities regarding him not incorporating the marriage in the service record and Part-II of the

order. Thus, it is submitted that the finding of the learned Family Court that the appellant-wife had moved one after the other application against the respondent-husband, to the higher army authorities, is factually incorrect and not tenable in the eyes of law. It is yet further argued that while deciding the petition filed by the respondent-husband, the learned Family Court, has not granted any permanent alimony to the appellant-wife.

9. We have heard learned counsel for the appellant-wife and have also gone through the impugned judgment and decree passed by the Court below.

10. The issue that requires consideration by this Court is whether the impugned judgment and decree passed by learned Family Court requires any interference.

11. The learned Family Court has found that the appellant-wife had registered an FIR against the respondent-husband and his family members for the alleged matrimonial offences. It was found that though the stand of the appellant-wife was that she was ready and willing to live in the company of respondent-husband and his family members, yet if it had been so, she could have very well filed a petition under section 9 of the Act and not an FIR for the matrimonial offences. It was further found that the appellant-wife was in the habit of moving one or the other application to the Army authorities (employer of the respondent-husband) and the Court vide order dated 16.10.2023 had categorically given an opinion that the appellant-wife wanted to make out an entirely different case by collecting evidence through the Court. It was further found that the very factum of non-

establishment of sexual relationship between the parties and rather initiation of litigation by the appellant-wife, amounts to cruelty. The relevant extracts from the judgment of the learned Family Court read as under:-

“The case law as referred to by learned counsel for the respondent-wife are of no help in the present case being distinguishable since the petitioner in the present petition has been able to highlight the factum of cruelty by establishing on record the case on probabilities to the effect that non-establishment of sexual relationship between the parties as well as the initiation of litigation by the respondent-wife. The attitude of the respondent-wife in centering herself merely to obtain the status and privileges as an army wife in fact also go on to show that the marriage was not on basis of love and affection towards each other, rather was a broken relationship in which the wife wants to continue for her selfish motive, The husband in the present petition has been able to prove majority of the allegations made by him with cogent evidence and the factum of cruelty is such that has to be seen in the background of the social situation of the parties. The husband being an employ in the army cannot be considered as a rustic and unreasonable man, rather his sensibility

has to be seen as reasonable. The husband used to visit the matrimonial home on few occasions on account of his nature of job and to be deprived of conjugal happiness even in that period is an act of cruelty. The discovery of the alleged note book undoubtedly does not lead the court to believe that the respondent was a Sanyasi but her tilt is towards a faith which is making the petitioner-husband unsatisfied on account of deficit sexual relationship. Sexual relationship between a husband and wife has to be viewed as an imperative aspect of marriage for the sacramental nature of marriage in Indian society also consider the birth of children as a logical consequence of the matrimony”.

12. In **Ramchander v. Ananta**, (2015) 11 SCC 539, it has been held that cruelty has not been defined in the Act and the same is to be taken as the behavior by one spouse towards the other. The cruelty can be physical or mental, but such cruelty must be proved. It was held as under:-

“ 10. The expression “cruelty” has not been defined in the Hindu Marriage Act. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behavior by one spouse towards the other, which causes a reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Cruelty can be physical or mental. In the present case there

is no allegation of physical cruelty alleged by the plaintiff. What is alleged is mental cruelty and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. It is settled law that the instances of cruelty are not to be taken in isolation but to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the plaintiff has been subjected to mental cruelty due to conduct of the other spouse. In the decision in Samar Ghosh case (Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511) this Court set out illustrative cases where inference of “mental cruelty” can be drawn and they are only illustrative and not exhaustive”.

13. The factum of registration of an FIR by the appellant-wife against the respondent-husband and his family members for the matrimonial offences, is not disputed. In the instant case, the learned Family Court found that the appellant-wife being the devotee of Baba Rampal, was never interested in establishing sexual relationship with the respondent-husband, conceive a child and give birth to it. The marriage between the parties was solemnized in 2015 and the parties have been living separately since 01.08.2017. The respondent-husband was serving in the Army. Establishment of sexual relationship between the husband and wife, is the vital aspect of matrimonial chord and if either of the spouses, is denying said access to the other, the same amounts to cruelty. It has been held by the Hon’ble Supreme Court in *Vidhya Viswanathan v. Kartik Balakrishnan*, (2014) 15 SCC 21, has held that now allowing a

partner to have sexual intercourse by the other, without sufficient reason, amounts to cruelty. It was held as under:-

“12. Undoubtedly, not allowing a spouse for a long time to have sexual intercourse by his or her partner, without sufficient reason, itself amounts to mental cruelty to such spouse. A Bench of three Judges of this Court in *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511 has enumerated some of the illustrations of mental cruelty. Para 101 of the said case is being reproduced below:

“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.”

The abovementioned Illustrations (viii) and (xii) given in *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511, support the view taken by the High Court in holding that in the present case the wife has treated her husband with mental cruelty.”

14. Though the proceedings in the FIR lodged by the appellant-wife are pending, yet it must be understood that if in any marriage, the criminal proceedings are initiated by the wife against the husband alleging matrimonial offences, there is hardly any room for them to live a happy conjugal life thereafter.

15. So far as the argument of the learned counsel for the appellant that the appellant-wife has not been awarded permanent alimony by the learned Family Court, suffice it to say that it would be open to the appellant-wife to file an appropriate application/petition for the same before the learned Family Court/Competent Court.

Needless to say that if, any, such application/petition is filed, the same shall be decided in accordance with law.

16. The findings recorded by the learned Family Court are plausible findings based on evidence on record. Such findings cannot be said to be suffering from any illegality or perversity, warranting interference by this Court in the present appeal.

17. No other point has been urged.

18. In view of the above, finding no merit in the present appeal, the same is hereby dismissed.

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

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

06.09.2024
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No