



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

FAO-6205-2019 (O&M)

Date of decision: 18.11.2024

Amit Bhadana

....Appellant

Versus

Akansha Singh Bhadana

....Respondent

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

Present: Mr. Sanjay Kaushal, Senior Advocate, with
Ms. Ojaswini Gagneja, Advocate,
for the appellant-husband.

Respondent-wife in person with
Mr. Hitesh Malik, Advocate, and
Mr. G.S. Aulakh, Advocate, for the respondent.

SUDHIR SINGH, J.

The present appeal has been filed against the judgment and decree dated 10.05.2019 passed by the learned Additional Principal Judge, Family Court, Faridabad, whereby the petition under Section 13(1)(i) & (ia) of the Hindu Marriage Act, 1955 (for brevity 'the Act') filed by the appellant-husband for dissolution of marriage by way of decree of divorce on the grounds of cruelty and adultery, has been dismissed.

2. The brief facts of the case are that the marriage between the parties was solemnized on 13.04.2003, according to Hindu rites. Out of the said wedlock, two daughters, namely, Vaishnavi and Kaashvi were born on 12.11.2007 and

19.01.2009 respectively. It was averred by the appellant-husband that the behaviour of the respondent-wife towards him and his family members had been rude, arrogant and hostile and she had insulted the appellant-husband many times and this had caused mental cruelty to him. It was further stated that the respondent-wife used to taunt and humiliate the appellant-husband for being less qualified than her. It was stated that in the 1st week of June, 2003, the respondent-wife had been quarreling with the mother of appellant-husband and when, he (the appellant) intervened in the matter, the respondent-wife became furious and pushed him hard against the wall. She used to leave the matrimonial home and stay at her parental home for many days without the consent of the appellant-husband. She continuously pressurized the appellant-husband to live separately from his parents and told him that she could not stay with his parents in one house. Under the pressure of the respondent-wife, the appellant-husband took a separate accommodation at House No.495, Sector 14, Faridabad, but even thereafter, there was no change in the behaviour of the respondent-wife. It was further the case of the appellant-husband that on 12.11.2007, at the time of birth of the first child, the respondent-wife misbehaved with the mother and sisters of the appellant-husband. It was also the case of the appellant-husband that the respondent-wife used to go to club and late night parties. She was also in relation with a man namely, Punit Sharma, with whom she used to talk and send messages on phone. The respondent-wife had been living

separately since August, 2014 and there had been no cohabitation between the parties. Terming the aforesaid acts on the part of the respondent-wife as cruelty and adultery, a decree of divorce was sought.

3. Upon notice, the respondent-wife appeared and filed her written statement denying the allegations levelled in the petition. Rather, it was pleaded that she had suffered harassment, taunting, teasing and mental cruelty at the hands of the appellant-husband and his family members. It was denied that the respondent-wife had illicit relations with the said Punit Sharma or anyone else. It was pleaded that in fact, the appellant-husband and his family members wanted a male child from the respondent-wife and they were unhappy with the birth of two female children. Accordingly, a prayer for dismissal of the petition was made.

4. From the pleadings of the parties, the Family Court framed the following issues:-

1. Whether the petitioner is entitled to a decree of divorce on the grounds of cruelty and adultery? OPP.
2. Whether the petition is not maintainable? OPR.
3. Relief.

5. In evidence, the appellant-husband himself appeared in the witness box as PW-1 and had also examined Rajeev Lochan, Clerk, Apollo Hospital, Delhi, as PW-2, Smt. Renu Chaudhary as PW-3 and Smt. Sunita Devi as PW-4. Apart from this, the appellant-husband tendered into evidence documentary evidence Ex.P1 to Ex.P73. On the other hand, the respondent-wife herself appeared as RW-1.

6. After hearing the contentions of both the parties and considering the evidence on record, the learned Family Court, dismissed the petition granting a decree of divorce, as noticed above.

7. Learned Senior counsel for the appellant-husband has vehemently contended that the appellant-husband is the only son of his parents and claims that the respondent-wife had forced him to live separately from them. It is further argued that the respondent-wife had an affair with Punit Sharma and others, which had caused significant distress and mental cruelty to the appellant-husband (a specific reference has been made to the objectionable photographs of the respondent-wife with various males). It is further argued that the respondent-wife had neglected him and his mother during their hospitalization and that she had also got terminated her pregnancy without the consent of the appellant-husband. Additionally, the learned Senior Counsel further has further argued that the respondent – wife’s damaging allegations in her reply, had harmed his reputation. Still further, it is asserted that that the marriage is beyond repair since the parties have not been in cohabitation since 2014. The learned Senior counsel for the appellant-husband has also argued that vide order dated 28.10.2022, the appellant-husband had offered the respondent-wife Rs.2 crore alongwith an independent resident i.e. House No. 145, Sector 14, Faridabad as One Time Settlement which was flatly refused by the respondent – wife.

8. On the other hand, learned counsel for the respondent-wife, submits that the allegations levelled by the appellant-husband in the divorce petition, are incorrect as it is the appellant-husband, who had committed cruelty upon the respondent-wife and the children. It is argued that the appellant-husband abandoned the respondent-wife along with the children and refused to maintain them. Further, it is asserted that since the alleged adulterer has not been arrayed as a party, hence, the ground taken by the appellant – husband does not stand, which proves the said allegations to be fallacious. It is further argued that in the instant case, the appellant-husband has made no effort to rehabilitate the respondent-wife in the matrimonial home or take care of the children and shoulder their responsibilities and thus, he cannot be allowed to take benefit of his own wrongs.

9. We have heard learned counsel for the parties and have also gone through the records of the case. In our opinion, the following questions would arise for adjudication in the present appeal:-

- “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?

10. The learned Family Court has found that the allegations levelled against the respondent – wife fall within the ambit of ordinary wear and tear of the matrimonial life. Further,

the allegations of having conversation with men at odd hours, were found to be not inspiring any confidence as no specific date, month or year could be furnished by the appellant – husband and also, the alleged adulterer not being arrayed as a party to the divorce petition, was also found to have cast a suspicion. Further, the learned trial Court has observed that the conduct in question was neither serious nor of such severity and thus, the divorce petition was dismissed.

11. Although the husband was unable to provide evidence of physical or mental cruelty or adultery before the Family Court, 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 ten years 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.

12. It may be noticed here that as indicated in the order dated 29.04.2022 passed by a Coordinate Bench of this court, the appellant-husband, had offered sum of Rs. 2 crore along with one independent House i.e. House No. 145, Sector 14, Faridabad measuring 350 square yards, to the respondent-wife in lieu of one time settlement. However, the said offer was not acceptable by the respondent-wife. For the sake of reference, the same order may be reproduced as under:-

“Appellant is present in Court today.

Learned counsel for the appellant, on instructions of the appellant, informs the Court that he is ready to give 72.00 crores

along with independent H. No.145, Sector 14, Faridabad, which is in 350 sq. yards plot.

Apart from this, he will look after his daughters till their marriage.

Learned counsel for the respondent, on telephonic instructions, informs that this offer is not acceptable to her.

Let this appeal be listed for final disposal on 22.08.2022.”

13. Still further, in the order dated 28.10.2022 passed by the Coordinate Bench of this Court, it was noticed that the respondent-wife stated that she had sufficient means to take care of their daughters and she would assist the court to prove the same. The said order reads as under:

“Learned counsel for the non-applicant/respondent will assist this Court as to how respondent-wife, who has refused to accept Rs.2 Crores alongwith independent House No. 145, Sector 14, Faridabad as per order dated 29.04.2022, has sufficient means to secure the future of two daughters.

Parties are also directed to be present in Court on the next date of hearing.

List on 09.12.2022 for final disposal.”

14. Again as noticed in the order dated 19.03.2024 passed by the Coordinate Bench, the appellant – husband had again offered to pay the respondent-wife a sum of Rs. 3 Crore as One Time Settlement and the counsel for the respondent-wife was directed to take necessary instructions in that regard. The said order reads as under:

“Learned Senior counsel for the appellant has submitted a chart indicating the total maintenance amount paid by

the appellant to the respondent till date, that comes to Rs.83,03,561/-.

Learned Senior counsel for the appellant has brought two Manager's Cheques bearing Nos. 013376 dated 15.03.2024, amounting to Rs.7,00,000/- and 013377, dated 15.03.2024, amounting to Rs.10,00,000/- ; both in the name of the respondent-wife (Akanksha Singh Bhadana), drawn on HDFC Bank. Both the Manager's Cheques have been handed over to learned counsel for the respondent in Court today. Photocopies thereof are supplied in Court today, which are taken on record, subject to all just exceptions. Learned Senior counsel for the appellant further submitted that the appellant is ready to pay a total amount of Rs.3,00,00,000/- as one time settlement.

Learned counsel for the respondent shall take necessary instructions with regard to the one time settlement.

Put up on 30.04.2024.

It is made clear that in case, one time settlement fails between the parties, then the matter will be taken up on merits and be decided.”

15. The aforesaid conduct of proceedings would clearly show that the appellant-husband was ready to settle the matter once and for all. However, due to her obstinate and obdurate approach, the respondent-wife had refused to accept any such proposal. 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 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.

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.

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.”

18. 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 judgments, it would come out that the parties, who have been living separately since 2014, if compelled to live together, their union would become a fiction supported by a legal tie and it would show a scant regard for the feelings and emotions of the parties. This, in itself would amount to mental cruelty to both the parties.

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. Before parting with the order, we may notice that as indicated in the order dated 19.03.2024 (supra), the appellant-husband had agreed to pay a sum of Rs. 3 Crore to the respondent-wife as One Time Settlement. Though, there is no such settlement, yet the fact remains that keeping in view the long separation between the parties, we have granted the appellant-husband a decree of divorce and, thus, we find that it would be in the fitness of things and in the interest of justice, if the respondent-wife is held entitled to a sum of Rs.3 Crore, towards permanent alimony. Accordingly, we direct the appellant-husband to pay a sum of Rs.3 Crore as permanent alimony to the respondent-wife within a period of three months, failing which the appeal shall stand dismissed automatically without any reference to the Bench.

**(SUDHIR SINGH)
JUDGE**

**(JASJIT SINGH BEDI)
JUDGE**

18.11.2024

Ajay Prasher

- *Whether speaking/reasoned:* Yes/No
- *Whether reportable:* Yes/No