

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO-M-100-2013(O&M)
Reserved on 13.08.2024
Pronounced on: August 29, 2024

Ashima GuptaAppellant

vs.

Vaneet GuptaRespondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Kanwaljit Singh, Sr. Advocate assisted by
Mr. Saurav Kanojia, Advocate, for the appellant

Ms. Sehej Sandhawalia, Advocate, for the respondent.

SUDEEPTI SHARMA J.

1. The appellant-wife in the present appeal has challenged the judgment and decree dated 10.01.2013 in a case bearing HMA No. 213 of 2007, passed by learned Addl. District Judge, Chandigarh, whereby the petition filed by the respondent-husband under Section 13 of Hindu Marriage Act, 1955, (for short ‘Hindu Marriage Act, 1955’) for dissolution of their marriage, is decided in his favour and the marriage between the parties is dissolved by a decree of divorce on the ground of mental cruelty by the appellant-wife.

BRIEF FACTS OF THE CASE AS PER THE PLEADINGS

2. The brief facts of the case as mentioned in the divorce petition are that the marriage between the parties took place on 22.02.2004, at a marriage place namely, Bhinder Farm, near Airport Chowk, Chandigarh, according to Hindu Rites and Customs. Out of the said wedlock, a male child namely Sayuj Gupta was born on 5.04.2005.

3. A perusal of the petition shows that after the marriage, the appellant-wife lodged various complaints against the respondent-husband. She filed the first complaint on 16.09.2004 to the Police Authorities at Police Station, Kotwali, Patiala and on enquiry, the same was found to be false. Subsequently, a compromise dated 23.09.2004 was effected between the parties. The appellant-wife then filed second complaint on 23.03.2006 to S.S.P, Patiala for registration of a case under Sections 498-A/406 of the Indian Penal Code, 1860 and the same was investigated by the Women's Cell, Patiala. This complaint was also found to be false. She filed another complaint on 26.08.2006 to D.S.P, Patiala and on inquiry, this complaint was also found to be false, vide report dated 16.10.2006. She then filed a complaint on 11.11.2006 under Section 156 (3) of Code of Criminal Procedure, 1973 before Magistrate, Patiala for registration of F.I.R under Sections 498-A/406 of IPC. This mental harassment by the appellant-wife led the respondent-husband to file a divorce petition under Section 13 of Hindu Marriage Act, 1955 on the grounds of cruelty and desertion by his wife i.e present appellant and the same was allowed by the Court below. Hence the present appeal by the appellant-wife.

SUBMISSIONS OF THE COUNSEL FOR THE APPELLANT-WIFE

4. Learned senior counsel for the appellant-wife submits that the learned Court below has misled and misconstrued the evidence led by the respondent-husband and has wrongly come to a conclusion that the allegations of cruelty are established. He further contends that the learned Court below has wrongly concluded that the appellant-wife is guilty of cruelty and on this basis only, the decree of divorce has wrongly been granted to the respondent-husband.

5. He further submits that divorce was wrongly granted and the decree of divorce dated 10.01.2013 deserve to be set aside and the present appeal be allowed.

SUBMISSIONS OF THE COUNSEL FOR THE RESPONDENT-HUSBAND

6. *Per contra*, learned counsel for the respondent-husband submits that the parties have hardly stayed together and have parted ways about 19 years back. She further submits that the appellant-wife made numerous complaints against him, which on enquiry were found to be false. This act of the appellant-wife amounts to cruelty against the respondent-husband, therefore, the decree of divorce has rightly been granted. She further submits that the marriage between the parties has been irretrievably broken down and at this stage, they cannot live together as husband and wife. She prayed for dismissal of the appeal.

7. We have heard learned counsel for the parties and perused the whole record of this case.

8. Section 23(2) of the Hindu Marriage Act, 1955, reads as under:-

“23. Decree in proceedings:-

* * * * *

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties: Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds

specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.

The intention of the legislature in incorporating the above-mentioned provision [Section 23(2)] is that even if one of the parties has filed the petition under Section 13 of the Hindu Marriage Act, 1955 for dissolution of marriage on the grounds mentioned therein, it shall be the duty of the courts, in every case where it is possible so to do consistently with the nature and circumstances of the case to make every endeavour to bring about reconciliation between the parties. That is why for the grant of divorce under Section 13 of the Hindu Marriage Act, 1955, wherein certain grounds for grant of decree of divorce are given, no strict method for proving the same is required and even if any of the ground is proved to be correct, still Section 23(2) of the Hindu Marriage Act, 1955, casts mandatory duty upon the Court before proceeding to grant any relief under the Hindu Marriage Act, 1955 to make every endeavour to bring about the relationship between the parties.

9. Further, before deciding whether to grant or deny decree of divorce for dissolution of marriage, it is important to have a meeting with both parties to assess the current status of their relationship.

10. Section 23(2) of Hindu Marriage Act, 1955, reads that before proceeding to grant any relief under the Hindu Marriage Act, 1955, it shall be the duty of the Court in the first instance, in every case, where it is possible so to do consistently with the nature and circumstance of the case, to make every endeavour to bring about the reconciliation between the parties.

11. To make one more effort, we have interacted with the parties

and found that they are living separately for almost 19 years and no effort was made by any of the parties to resolve the dispute between them. Therefore, at this stage, we do not think it appropriate to discuss the evidence led by them, and to determine the allegations or fault by both of them. As per the record, there are allegations and counter-allegations against each other. The relationship between the parties have become so bitter that we find that there is no possibility of their staying together under one roof. Even the efforts made by this Court as well as the Mediation Centre of this Court failed in the present case.

12. The matrimonial cases cannot be decided on the basis of allegations made against each other, evidence led by both the parties. In fact, the decision depends upon the amount of bitterness between each other and the love and affection left between the parties after so many litigations. Even if the Courts appreciate the evidence on record in matrimonial matters and reject the prayer for dissolution of marriage, still they cannot be forced to live together. It is only their personal efforts which can decide the dispute between them.

SETTLED LAW

13. While discussing the judgments passed by Hon'ble the Supreme Court in **Naveen Kohli v. Neelu Kohli, 2006 AIR Supreme Court 1675**, held as under:-

24. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions and their culture and human values to which they attach importance. Each case has to be decided on its own merits.

28. This Court in the case of Savitri Pandey v. Prem Chandra Pandey, 2002(1) RCR (Civil) 719 : (2002)2 SCC 73, stated that mental cruelty is the conduct of other spouse which causes mental

suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other

31. In Chetan Dass v. Kamla Devi, 2001(2) RCR (Civil) 641 : (2001)4 SCC 250, this Court observed that the matrimonial matters have to be basically decided on its facts. In the words of the Court : "Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of "irretrievably broken marriage" as a straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case." 32. In Sandhya Rani v. Kalyanram Narayanan, (1994) Supp. 2 SCC 588, this Court reiterated and took the view that since the parties are living separately for the last more than three years, we have no doubt in our mind that the marriage between the parties has irretrievably broken down. There is no chance whatsoever of their coming together. Therefore, the Court granted the decree of divorce. 33. In the case of Chandrakala Menon v. Vipin Menon, (1993)2 SCC 6, the parties had been living separately for so many years. This

Court came to the conclusion that there is no scope of settlement between them because, according to the observation of this Court, the marriage has irretrievably broken down and there is no chance of their coming together. This Court granted decree of divorce.

41. The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However, insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

42. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court.

43. *In Durga P. Tripathy v. Arundhati Tripathy*, 2005(3) RCR (Civil) 819 : (2005)7 SCC 353, this Court further observed that Marriages are made in heaven. Both parties have crossed the point of no return. A workable solution is certainly not possible. Parties cannot at this stage reconcile themselves and live together forgetting their past as a bad dream. We, therefore, have no other option except to allow the appeal and set aside the judgment of the High Court and affirming the order of the Family Court granting decree for divorce.

50. On May 22, 1969, the General Assembly of the Church of Scotland accepted the Report of their Moral and Social Welfare Board, which suggested the substitution of breakdown in place of matrimonial offences. It would be of interest to quote what they said in their basis proposals: "Matrimonial offences are often the outcome rather than the cause of the deteriorating marriage. An accusatorial principle of divorce tends to encourage matrimonial offences, increase bitterness and widen the rift that is already there. Separation for a continuous period of at least two years consequent upon a decision of at least one of the parties not to live with the other should act as the sole evidence of marriage breakdown." Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.

52. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised 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 do not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

53. Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

54. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist..

14. A constitution Bench of Hon'ble the Supreme Court in **Shilpa Sailesh v. Varun Sreenivasan, 2024(1) Apex Court Judgment (SC) 9**, observed as under:-

33. Having said so, we wish to clearly state that grant of divorce on the ground of irretrievable breakdown of marriage by this Court is not a matter of right, but a discretion which is to be exercised with great care and caution, keeping in mind several factors ensuring that 'complete justice' is done to both parties. It is obvious that this Court should be fully convinced and satisfied that the marriage is totally unworkable, emotionally dead and beyond salvation and, therefore, dissolution of marriage is the right solution and the only way forward. That the marriage has irretrievably broken down is to be factually determined and firmly established. For this, several factors are to be considered such as the period of time the parties had cohabited after marriage; when the parties had last cohabited; the nature of allegations made by the parties against each other and their family members; the orders passed in the legal proceedings from time to time, cumulative impact on the personal relationship; whether, and how many attempts were made to settle the disputes by intervention of the court or through mediation, and when the last attempt was made,

etc. The period of separation should be sufficiently long, and anything above six years or more will be a relevant factor. But these facts have to be evaluated keeping in view the economic and social status of the parties, including their educational qualifications, whether the parties have any children, their age, educational qualification, and whether the other spouse and children are dependent, in which event how and in what manner the party seeking divorce intends to take care and provide for the spouse or the children. Question of custody and welfare of minor children, provision for fair and adequate alimony for the wife, and economic rights of the children and other pending matters, if any, are relevant considerations. We would not like to codify the factors so as to curtail exercise of jurisdiction under Article 142(1) of the Constitution of India, which is situation specific. Some of the factors mentioned can be taken as illustrative, and worthy of consideration.

15. In **Rakesh Raman v. Kavita, 2023 AIR Supreme Court 2144**, the Hon'ble Apex Court held as under:-

18. *We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1)(ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that*

a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock.

16. This Court in **FAO No.M-287-2018**, titled as ***Sanjeev Kumar Vs. Suman*** observed as under :-

“20. There is no dispute regarding the fact of institution of different cases against the appellant-husband as well as his family members. Though under Section 13 of Hindu Marriage Act, 1955, different grounds for dissolution of marriage are mentioned and the decree of divorce can be granted, if any of the parties are able to prove the same against the other by leading cogent and convincing evidence etc. But the factual and practical aspect of such kind of cases is that the Courts cannot force the parties to live together, despite the dismissal of Section 13 of Hindu Marriage Act, 1955 petition for decree of divorce filed by any of the parties and despite the fact of their not being able to prove the ground on which they were asking for dissolution of marriage. In litigation under the Hindu Marriage Act, 1955, practically speaking, there cannot be any win or loose situation. The only win-win situation is that the parties amicably settle down their status mutually. Even if the divorce petition under Section 13 of Hindu Marriage Act, 1955 for grant of decree of divorce is dismissed or for that matter petition under Section 9 of Hindu Marriage Act, 1955 for restitution of conjugal rights is allowed, practically speaking there cannot be any execution in such kind of matters. Since the parties to the litigation are not the

properties for which execution can be filed to retrieve it to the other party. Emotions are attached to the parties for which they cannot be forced to live together. Once the conduct and the effort to live together during the period of their separation and gravity of allegations made against each other is observed, that would actually be the weights and measures to decide the matrimonial cases under the Hindu Marriage Act, 1955.

* * * *

28. *In matrimonial cases seeking a decree of divorce on any other grounds, it is often difficult to practically prove the allegations made by the parties inter se. Courts should not decide such cases solely on the basis of proof of allegations or the evidence presented, as is done in criminal cases. After all even if the allegations are proved to be correct beyond reasonable doubt, these are not the criminal cases where the offence is punishable.*

29. *In matrimonial matters, the only possible outcomes are either the granting of a decree of divorce or the dismissal of the petition for such a decree. In either case, no execution or punishment can be imposed, as no court can compel the parties to live together under one roof or to cohabit.”*

17. Recently, this Court in **FAO No. 3803-2023**, titled as ***Rohit Watts vs. Sonia Virk***, decided on 28.08.2024 has observed as under:-

“37. Under Section 13 of the Hindu Marriage Act, 1955, certain grounds are specified for granting a decree of divorce.

However, regardless of whether these grounds are proven, once parties are involved in matrimonial disputes, there are often allegations and counter-allegations. These cases cannot be treated in the same way as other civil or criminal matters.

38. *Following are the factors which are to be considered by the Courts while granting the decree of divorce :-*

- i) The period of separation between the parties;*
- ii) The number of litigation between the parties;*
- iii) The efforts made by the parties individually to settle down the dispute between them;*
- iv) Over all conduct and behaviour/psychology of the parties with regard to the grant of decree of divorce or to deny the same.”*

CONCLUSION

18.1 The undisputed facts in the present case are that both the parties are living separately since 19 years and the appellant-wife lodged many complaints against the respondent-husband.

18.2 No effort has been made by both the parties during the period of 19 years of separation to settle down the dispute between them.

18.3 Overall, the conduct and behaviour of the parties shows that there is a psychological breakdown between the parties.

19. Thus, in the present case, divorce had been granted to the parties, since the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again. The Court below has rightly granted the decree of divorce to the parties, vide impugned judgment and decree dated

10.01.2013. The relevant portion of the judgment reads as under:-

62. In view of discussion above, it is proved that the allegations leveled by the respondent against the petitioner and his family members about demand of dowry and treating her with cruelty, giving of beatings to her. Pressurizing her to terminate her pregnancy, etc. are without any basis and held to be false. These allegations are sufficient to cause mental cruelty to the petitioner, being sufficient not only to demoralize him but also tarnish his image as well as image of his parents in the society. Mental cruelty is to be inferred from the facts and circumstances of the case. The allegations made by the respondent in various complaints made to the police as well as in this case have painted the petitioner and his parents not only as dowry seekers but also having no respect for the women in the family, always giving beatings to the respondent. It is, therefore, held that the petitioner has succeeded in proving that the respondent treated him with cruelty. He is held entitled for decree of divorce on the ground of cruelty. In these circumstances, it cannot be said that the petitioner is taking advantage of his own wrong. All these issues are accordingly decided in favour of the petitioner and against the respondent.”

20. In view of the above, we do not find any infirmity in the impugned judgment and the present appeal being devoid of any merit is hereby dismissed. Accordingly, the judgment and decree dated 10.01.2013 passed by learned Addl. District Judge, Chandigarh, dissolving the marriage between the parties by decree of divorce under Section 13 of Hindu Marriage Act, 1955 is hereby upheld.

PERMANENT ALIMONY

21. Section 25 of the Hindu Marriage Act, 1955, reads as under:-

“25. Permanent alimony and maintenance.—(1) Any court

exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant [the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just."

22. While granting permanent alimony, this Court in **FAO No. 3803-2023**, titled as **Rohit Watts vs. Sonia Virk**, decided on 28.08.2024 has observed as under:-

45. *The law regarding permanent alimony and maintenance is now very clear and can be granted to both the husband and the wife. However, in recent times, we have observed that in matrimonial matters, whether the appeal is filed by the husband or the wife, wives are often trying to*

exploit the situation by extorting money from the husband in exchange for the relief sought by him. In many cases, it is evident from the pleadings and proven through documentary records that wives have lodged FIRs against the husband and his family members, leading to their conviction. Taking it be cruelty, if the husband files a petition under Section 13 of the Hindu Marriage Act, 1955, for the grant of decree of divorce, it is normally a wife who files the applications for maintenance under different statutes, i.e. under Sections 24 and 25 of the Hindu Marriage Act, 1955, Section 18 of Hindu Adoption and Maintenance Act, 1956, Section 125 of the Code of Criminal Procedure, 1973, Sections 20 and 22 of Protection of Women from Domestic Violence Act, 2005. Despite the fact that they lodged FIR against husband and his family members and they were to face trial and to spend the period of conviction in jails, the wife wants the reward for the same by filing such kind of applications. And it is very unfortunate that she is also granted the same. Now it is high time and the need of the society that such type of exploitation and extortion should be stopped. Therefore, justice demands that while dealing with the matrimonial matters and while granting permanent alimony, every aspect of the case should be taken into consideration which includes behaviour, conduct and the level of allegations made by each party.

47. *Normally, it is the duty of both the parents to look after their children and fulfil their needs and requirements. A matrimonial dispute between the parties should not affect or deprive the children of their right to the love and affection of both parents. For the welfare and over all personality development of a child, the love, care and affection of both parents are essential. Because of the change of the marital status of the parents the child cannot be forced to choose one parent. The child should have the freedom to stay, visit, or meet both parents as per his/her*

wish and desire.”

NOW COMING TO THE GRANT OF PERMANENT ALIMONY IN THE PRESENT CASE

23. The parties were present in the Court on 13.08.2024 and the respondent-husband made the following offer on oath:-

“Stated on oath that I am ready to give 03 BHK Flat at Kharar to my spouse and son. I also agree to give a sum of Rs.15 lacs to my spouse as permanent alimony. I along with my spouse ready to bear all the expenses of education and marriage of my son. I shall not disinherit my son from my estate.”

24. This offer was not acceptable to the appellant-wife.

25. Though as per record available, the conduct of the wife was such, that she does not deserve any permanent alimony, however, in view of the statement made by the respondent-husband on 13.08.2024, he was directed to pay permanent alimony to the tune of Rs.15 lakhs to the appellant-wife by depositing it in her account. He is further directed to transfer 03 BHK Flat at Kharar in the name of his wife and son. He and his wife i.e appellant shall also bear the marriage expenses of their son. He is further directed not to disinherit his son from his estate. The respondent-husband is directed to comply with the order within a period of four months from the date of pronouncement of this judgment and shall remain bound by his statement.

26. All the pending applications, if any, also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

August 29, 2024
G Arora