

2024:PHHC:124993-DB



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

**FAO-4481-2024 (O&M)**

**Date of Decision: September 20, 2024**

Lakhwinder Kaur

....Appellant

versus

Gurjant Singh

.... Respondent

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

**Present:-** Ms. Amandeep Soni, Advocate for the appellant.

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**SUDHIR SINGH, J.**

Challenge in the present appeal is to the judgment and decree dated 13.08.2024 passed by learned Principal Judge, Family Court, Tarn Taran (for short 'the Family Court'), whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the respondent/ husband has been allowed and 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*, stating therein that his marriage with the appellant-wife was solemnized on 05.10.2019 according to Sikh rites. However, no child was born out of the said wedlock. It was further asserted that behaviour of the appellant-wife was not good and she used to fight with

the respondent-husband and his family members on petty matters. She did not show any respect or regard towards the respondent-husband or his family members. In March, 2020, the appellant-wife left matrimonial home, in the absence of the respondent-husband, by levelling false and baseless allegations against him. The respondent-husband brought back the appellant-wife, but again after a few days, she had started repeating her old behaviour. It was further asserted that on 26.04.2020, the appellant-wife left the matrimonial home when the respondent-husband had refused to succumb to her demand of a separate residence. It was yet further asserted that the respondent-husband had made efforts to bring back the appellant-wife to the matrimonial home, but to no avail.

3. Upon notice, the appellant-wife entered appearance and filed her written statement, alleging therein that it was the respondent-husband, who had committed cruelty towards the appellant-wife. It was further asserted that the appellant-wife was maltreated by the respondent-husband and his family members on account of bringing less dowry and that the respondent-husband was having illicit relations with Simranjit Kaur. It was further stated by the appellant-wife that in the month of November, 2020, the respondent-husband, under the influence of drugs and at the provocation of his family members, gave severe beatings to the appellant-wife and threw her out of the matrimonial home. Thereafter, a *Panchayat* was convened, but the respondent-husband and his family members did not allow rehabilitation of the appellant-wife in the matrimonial home.

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

- “1) *Whether the petitioner is entitled to the decree of divorce under Section 13 of the HMA, 1955 on the ground of cruelty? OPP*
- 2) *Whether the present petition is not maintainable? OPR*
- 3) *Whether the petitioner has not come to the Court with clean hands and has suppressed material facts from the Court? OPR*
- 4) *Relief.”*

5. In evidence, the respondent-husband appeared as PW1 and further examined Malkeet Kaur as PW2, Jagroop Singh as PW3 and Gulzar Singh as PW4 besides tendering some documents.

6. On the other hand, the appellant-wife appeared as RW3 and had also examined Kulwinder Kaur as RW1 and Sarmail Singh as RW2.

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

8. Learned counsel for the appellant-wife has vehemently contended that findings recorded by the learned Family Court are based on conjectures and surmises. It is further submitted that the appellant-wife had been thrown out of matrimonial home after having been given beatings by the respondent-husband under the influence of drugs and at the instigation of his family members. It is further argued that at one point of time, the atrocities and cruelty committed by the respondent-husband and his family members were reported to the police, but reconciliation was done. However, despite that, behaviour of the respondent-husband and his family members did not change. It is yet further argued that learned Family Court has wrongly observed that in the

FIR registered by the appellant-wife, a cancellation report was filed whereas the correct factual position is that though the police had filed said cancellation report yet the Court concerned did not accept the same. Lastly, it is contended that merely because the appellant-wife had filed criminal complaints against the respondent-husband and his family members would not amount to cruelty as said proceedings had been initiated when the appellant-wife was turned out of matrimonial home and was left with no alternative.

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

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

11. The marriage between the parties was not disputed. Undisputed is also the fact that the parties have been living separately since April/November, 2020 and there has been no cohabitation between them since then. It was found by learned Family Court that though the appellant-wife had initiated criminal proceedings against the respondent-husband, his family members and relatives, yet as the said proceedings are pending, the same cannot be held to be an act of cruelty, and therefore, the Court proceeded further to scrutinize allegations of cruelty on the basis of evidence available on record.

12. It was found by learned Family Court that allegations levelled by the appellant-wife, as regards demand of dowry by the

respondent-husband and his family members, were not corroborated by any material evidence on record and therefore, such allegations were found to be general and vague in nature. It was, thus, found that once the appellant-wife was not able to corroborate allegations of demand of dowry by way of any cogent and convincing evidence, the same indicated that various applications moved by the appellant-wife against the respondent-husband and his family members by levelling serious allegations, amounted to cruelty. It was further found that the appellant-wife had also tried to involve real maternal uncle (Surjit Singh) of the respondent-husband and one Navdeep Singh, but they were found innocent.

13. It was further found by learned Family Court that the appellant-wife had levelled unfounded and serious allegations regarding the respondent-husband's having an extramarital relationship with one Simranjit Kaur. No evidence in this regard was adduced on record and, thus, taking into account entire factual position, the learned Family Court found that the appellant-wife had treated the respondent-husband with cruelty. It was yet further found that keeping in view initiation of criminal proceedings and proceedings under the provisions of the Protection of Women from Domestic Violence Act, 2005 by the appellant-wife against the respondent-husband and his family members, any effort for reconciliation between the parties was not possible.

14. 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 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.

In **K. Srinivas Rao v. D.A. Deepa, 2013(2) RCR (Civil)**

**232**; Hon'ble Apex Court observed as under:-

*“14. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse...”*

In **K. Srinivas v. K. Sunita, 2015(1) RCR (Civil) 38,**

Hon'ble Apex Court observed as under:-

*“6. Another argument which has been articulated on behalf of the learned counsel for the Respondent is that the filing of the criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filing of the husband's divorce petition, and being subsequent events could have been looked into by the Court. In any event, both the parties were fully aware of this facet of cruelty which was allegedly suffered by the husband. When evidence was led, as also when arguments were addressed, objection had not been raised on behalf of the Respondent-Wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf.*

7. *In these circumstances, we find that the Appeal is well founded and deserves to be allowed. We unequivocally find that the Respondent-Wife had filed a false criminal complaint, and even one such complaint is sufficient to constitute matrimonial cruelty.*

8. *We, accordingly, dissolve the marriage of the parties under Section 13(1)(ia) of the Hindu Marriage Act...*

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 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”.*

15. If the findings of the learned Family Court are examined in light of the law laid down by the Hon’ble Supreme Court in the aforesaid judgments, it is established on record that the appellant-wife had levelled

allegations of extramarital relations between the respondent-husband and one Simranjit Kaur, but she could not prove said allegation by leading any evidence. It is settled law that any character assassination without its corroboration by cogent and convincing evidence would amount to mental cruelty to the person whose character is so assassinated. Besides, the appellant-wife had initiated various criminal and civil proceedings against the respondent-husband and his family members. Learned Family Court has rightly found that the parties had been living separately since April/November, 2020 and keeping in view allegations levelled by the appellant-wife, it was not possible that reconciliation between them could be effected or the same would be fruitful. The allegations regarding dowry levelled by the appellant-wife had been found to be baseless and that in the criminal proceedings initiated by the appellant-wife against the respondent-husband and his relatives, the said relatives were found innocent. In our opinion, the findings recorded by learned Family Court are based on evidence on record. It could not be pointed out that any evidence has been misread or not taken into consideration by learned Family Court.

16. Finding no merit in the appeal, the same is hereby dismissed.

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

18. At this stage, learned counsel for the appellant-wife submits that while passing the impugned judgment/decreed, learned Family Court has not awarded any permanent alimony to the appellant-wife and he prays for grant of same. However, as there is no material or evidence

before this Court to determine the amount of permanent alimony, we grant liberty to the appellant-wife to move an appropriate application before learned Family Court for grant of permanent alimony. If any such application is filed by the appellant-wife, the same shall be decided by the Court concerned, in accordance with law, preferably within a period of 06 months.

**(SUDHIR SINGH)**  
**JUDGE**

**(JASJIT SINGH BEDI)**  
**JUDGE**

**September 20, 2024**  
mahavir

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