

2024 FI-HC:132332-DB



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

FAO-4664-2024 (O&M)
Date of decision: 30.09.2024

Pavita

....Appellant

Versus

Ajay Kumar

....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. V.M. Handa, Advocate,
for the appellant.

SUDHIR SINGH, J.

Present appeal has been filed against the judgment and decree dated 27.08.2024 passed by the Principal Judge, Family Court, Camp Court at Kanina (for short 'Family Court'), whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the respondent-husband was allowed and the marriage between the parties was dissolved by a decree of divorce on the ground of cruelty.

2. The aforesaid petition has been filed by the respondent-husband, *inter alia*, pleading therein that his marriage with appellant-wife was solemnized on 30.11.2012 as per Hindu rites and out of this wedlock, a daughter namely, Yashvi was born on 12.09.2013, who was residing

with the appellant-wife. It was further asserted that the appellant-wife was a short tempered and quarrelsome lady and her behaviour had been abnormal towards the respondent-husband and his family members since the very inception of marriage. It was further pointed out that when the appellant-wife conceived, she did not want to give birth to the child and asked the respondent-husband to get it aborted. She had also extended threats to commit suicide and implicate the respondent-husband and his family members in a false case. It was further pointed out that the appellant-wife was suffering from mental illness and the said fact was concealed by her parents. She had been taking treatment from various hospitals. She used to throw food etc. and even had put red chilli in the mouth of the minor daughter. It was further the case of the respondent-husband that in order to change the circumstances, he took the appellant-wife to Mumbai i.e. his place of posting and took a flat on rent there, but the abnormal behaviour of the appellant-wife continued as such. Due to the aforesaid acts of the appellant-wife, the respondent-husband had to vacate the rented accommodation at Mumbai. It was further pleaded that the appellant-wife used to come to Mumbai all of a sudden and she had also approached the higher officer of the respondent-husband by making false complaints

against him. Terming the aforesaid acts of the appellant-wife as cruelty, a decree of divorce was sought for.

3. Upon notice, the appellant-wife appeared and filed her written statement admitting the factum of marriage and birth of a female child. However, it was alleged by her that she had been harassed and maltreated by the respondent-husband and his family members on account of bringing insufficient dowry. It was further alleged that the respondent-wife and his family members wanted a son, but when she gave birth to a daughter, their behaviour became cruel and after the birth of the girl child, the respondent-husband and his family members had demanded a D-Zire car. In September, 2015, the appellant was taken to Mumbai by the respondent-husband, where she had again conceived, but the foetus was got aborted by the respondent-husband in Ashwani Hospital, Mumbai and thereafter, he left the appellant-wife at village Makrana. The behaviour of the respondent-husband's father was objectionable and indecent and when she had objected to the same, she was warned that she would be got declared as a person of unsound mind and her marriage with the respondent-husband will be got annulled. It was further alleged that on 24.04.2016, the respondent's father tried to outrage her modesty and when she objected to it, she had been confined in a room. Thereafter, she was rescued by

the villagers and thereupon, she had been ousted from the matrimonial home. The father of the respondent-husband had filed a civil suit against the State of Haryana and the parents of the appellant at Charkhi Dadri, which was subsequently withdrawn. When the appellant-wife came to her matrimonial home to collect the *Istridhan*, she had been given beatings. She called the police and at the instance of the police, the appellant was sent to *Nari Niketan* at Narnaul. The appellant filed a complaint on 28.03.2017 to the Superintendent of Police, Mohindergarh, upon which, FIR No.51 dated 26.10.2017, under Sections 313, 323, 343, 354-A, 498-A, 406 and 506 read with Section 34 IPC was registered. Subsequently, she had also filed a petition under Section 125 Cr.P.C., besides filing a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

4. From the pleadings of the parties, the trial court framed the following issues:-

- “1. Whether petitioner is entitled to a decree of divorce from the respondent on the grounds of cruelty as alleged in the petition? OPP.
2. Whether the present petition is not maintainable in present form? OPR.
3. Relief.”

5. In evidence, the respondent-husband himself appeared in the witness box as PW-3 and examined Krishan Kumar PW-1, Raj Karan PW-2 and his father Dharam Singh

as PW-4. He also tendered documentary evidence Ex.P1 to Ex.P8 and Mark A to Mark E. On the other hand, the appellant-wife examined herself as RW-1 and examined Hoshiyar Singh as RW-2.

6. After hearing the contentions of both the parties and considering the evidence brought on record, the trial court allowed the petition, granting a decree of divorce.

7. Learned counsel for the appellant-wife has vehemently argued that the impugned judgment and decree passed by the learned Family Court is based on conjectures and surmises inasmuch as the general and vague allegations leveled by the respondent-husband have been held to be cruelty. It is further submitted that the appellant-wife was/is always ready and willing to live with the respondent-husband and therefore, the learned Family Court has wrongly held that long separation between the parties also amounts to cruelty. Still further, it is argued that it was the pleaded case of the appellant-wife that her father-in-law had tried to outrage her modesty and this fact clearly shows that it was the respondent-husband and his family members, who had committed cruelty towards the appellant. So far as the initiation of various proceedings is concerned, the learned counsel contends that the appellant-wife had been compelled to initiate the said proceedings when she had been left with no alternative remedies.

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

9. The sole question for consideration before this court is :-

“Whether the impugned judgment and decree passed by the learned Family Court requires any interference.?”

10. It was found by the learned Family Court that petition under the provisions of Protection of Women from Domestic Violence Act, wherein the appellant-wife had levelled the allegations of physical and mental cruelty and demand of dowry against the respondent-husband and his family members, was dismissed vide order dated 29.09.2022 passed by the learned Sub Divisional Judicial Magistrate, Kanina. Apart from that, a petition under Section 9 of the Act filed by the appellant-wife was also dismissed as withdrawn on the statement of respondent-husband that he had already filed the divorce petition. It was further found that during investigation in the aforesaid criminal case i.e. FIR No.51 dated 26.10.2018, all the family members of the respondent-husband were found innocent and the challan was presented only against the respondent-husband. The appellant-wife had also filed an application under Section 319 Cr.P.C., but the same was dismissed by the Court. Apart from that it was found that the appellant-

wife had levelled serious allegations of outraging her modesty against her father-in-law. Such allegations were also reiterated in the petition filed by her under the Protection of Women from Domestic Violence Act and the aforesaid FIR, but in both the said cases, no substance was found in the allegations levelled by the appellant-wife. It was further found that the parties had been living separately since 2016. During the period eight years, there had been no cohabitation or resumption of the marital ties between the parties and thus, the learned Family Court found that marriage between the parties had become a dead-wood and it had ruptured beyond repair. It was, thus, held that long separation also amounts to cruelty.

11. 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.

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 drew 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”.

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.”

12. If, the findings recorded by the learned Family Court are seen in the light of the law laid down by the Hon'ble Supreme Court in the aforesaid judgments, it would come out that the act and conduct of the appellant-wife amounts to cruelty. Firstly, in the petition under the Protection of Women from Domestic Violence Act, filed by the appellant-wife against the respondent-husband and his family members containing allegations of harassment, maltreatment and dowry demand, no substance was found by the learned Sub Divisional Judicial Magistrate, Kanina. Still further, she had lodged a criminal case against the respondent-husband and his family members. In the said

criminal case, during investigation, all the family members of the respondent-husband were found innocent and the challan was presented only against the respondent-husband. So much so, an application under Section 319 Cr.P.C. filed by her for summoning the family members of the respondent-husband was dismissed. Still further, the appellant-wife had specifically levelled the allegations of outraging her modesty against her father-in-law, but the said allegations could not be substantiated by any cogent or convincing evidence. Rather, it has come on record that the proceedings under the Protection of Women from Domestic Violence Act and the aforesaid FIR also contained similar allegations, but no substance was found in the said allegations. The marriage between the parties was solemnized on 30.11.2012. The parties had resided together till 2016. Thereafter, there had been no resumption or co-habitation between them. Thus, it is clear that the marital bond between the parties has reached the stage of beyond repair and the emotions and sentiments, which are required for a matrimonial alliance to sustain, have completely dried up. Thus, in view of the judgment of the Hon'ble Supreme Court in **Samar Ghosh** (supra), the learned Family Court has rightly held that the long separation between the parties also amounts to cruelty.

13. No other point has been urged.

14. Thus, after careful perusal of the judgment of the learned Family Court, we find that no case is made out to interfere with the findings recorded by it.

15. In view of the above, we find no merit in the present appeal and the same is hereby dismissed.

16. All pending applications(s), if any, shall also stand disposed of.

17. Liberty is however, granted to the appellant-wife, to file an application seeking grant of permanent alimony, if so advised, before the learned Family Court. If any such application is moved by the appellant-wife, the same shall be decided, in accordance with law, preferably within a period of six months.

(SUDHIR SINGH)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

30.09.2024
Ajay Prasher

-	<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
-	<i>Whether reportable:</i>	<i>Yes/No</i>