



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

FAO-6019-2023 (O&M)

Date of decision: 21.11.2024

Vivek Kumar Sharma

....Appellant

Versus

Sonia Gujral

....Respondent

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

Present: Ms. Deepali Verma, Advocate,
for the appellant.

Mr. Aditya Yadav, Advocate,
for the respondent.

SUDHIR SINGH, J.

The present appeal has been filed against the judgment and decree dated 27.09.2023 passed by the learned Principal Judge, Family Court, Gurugram, whereby the petition under Section 13 (1) (ia) (ib) 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 desertion, has been dismissed.

2. The brief facts of the case are that the marriage between the parties was solemnized on 04.12.2011, according to Hindu rites at Ambala. Out of the said wedlock, one male child was born on 01.12.2012. 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 in this way, had caused mental cruelty to him. It was further stated that soon after the marriage, the respondent-wife refused to reside

at her matrimonial house at Sagarpur, New Delhi, as she did not want to live with her parents-in-law and other family members of the appellant-husband. It was the pleaded case of the appellant-husband that he took a loan of Rs.18 lakhs from his friends and relatives for construction of a house at Sagarpur, New Delhi. However, after the birth of the child on 01.12.2012, the respondent-wife remained at her parental home up till April, 2013. It was further stated that the respondent-wife did not allow the parents of the appellant-husband to meet the newly born child and she had thrown all the gifts, which were brought by them. It was stated by the appellant-husband that after staying with him for about 4-5 hours, the respondent-wife left the home along with the newly born child by saying that she would not be able to reside in that house. Thereafter, she started living at her Bua's (aunt) house and told the appellant-husband that if, he wanted to see the face of his child, then he had to take another accommodation. The appellant-husband took a rented accommodation at A-1-324, Ist Floor, Sushant Lok, Gurugram and started living with the respondent-wife and the minor son, but the behaviour of the respondent-wife did not change and she used to quarrel with the appellant-husband on petty matters. She used to humiliate the appellant-husband on account of his salary. She refused to have physical relations with the appellant-husband. It was also the case of the appellant-husband that the respondent-wife used to give beatings to the minor son and on 12.04.2016, she tried to administer many tablets of 'Cetrizine' to the minor son. The respondent-wife had been living separately from the appellant-husband since 01.03.2018 and there had been no cohabitation between the parties.

3. Upon notice, the respondent-wife entered appearance and filed her written statement admitting the factum of marriage between the parties and the birth of the minor child. It was pleaded that earlier, the appellant-husband was married to one lady namely, Pinky and the appellant-husband had filed a divorce petition against his earlier wife. At that time, his earlier wife (Pinky) was residing with the parents of the appellant-husband at the matrimonial home, whereas the appellant-husband was residing separately. Thereafter, he paid huge amount to his earlier wife and managed to get divorce from her. He was attempting the same tactics with the respondent-wife. It was pleaded that the appellant-husband did not take the respondent-wife for honeymoon. Most of his salary used to spend in clearing the house loan, car loan, education loan and other expenses. It was pleaded that none of the family members of the appellant-husband was ready to take care of the respondent-wife and the minor child, therefore, she remained at Ambala upto march, 2013. It is further pleaded that the respondent-wife had to resign from her job as her mother-in-law refused to take care of the minor child. The respondent-wife denying all 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 refused to reside in her matrimonial house. 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 for a decree of divorce on the grounds mentioned in the petition? OPP.
2. Relief.

5. In evidence, the appellant-husband himself appeared in the witness box as PW-1 and examined Shri Dalip Kumar, Manager HR in Richa Global Exports, as PW-2 and Shri Arnabh Assistant, Columbia Asia Hospital, Gurugram as PW-3, besides tendering into evidence documentary evidence Ex.P1 to Ex.P15 and Mark PA to Mark PW1/K. On the other hand, the respondent-wife herself appeared as RW-1 and tendered documentary evidence Ex.R1, Ex.R2 and Ex.RW1/2 to Ex.RW2/4 and also Mark RW1/1; Mark RW1/2 and Mark RAA.

6. After hearing the contentions of both the parties and considering the evidence brought on record, the learned Family court dismissed the petition, as noticed above.

7. Learned counsel for the appellant-husband has vehemently argued that the averments contained in the divorce petition, which are duly corroborated by the evidence led by the appellant, have totally been ignored by the learned Family Court. It is further argued that the respondent-wife had attempted to commit suicide, regarding which the appellant had filed a complaint before the police, but, the said fact has totally been ignored by the learned Family Court. It is further argued that the finding of learned Family Court that the appellant-husband had pressurized the respondent-wife to file a complaint against him in the year 2021, is also not tenable. It is yet further argued that it was the pleaded case of the appellant-husband that the respondent-wife had got the abortion done without the approval and consent of the appellant-

husband, but the learned Family Court has wrongly recorded that there was no evidence led to that effect. It is lastly argued that the parties have been living separately since 01.03.2018 and during this period, there has been no resumption of marital relations or cohabitation between them and, thus, their marriage has become unworkable.

8. On the other hand, learned counsel appearing for the respondent-wife, while defending the impugned judgment and decree passed by the learned Family Court, has argued that the allegations levelled by the appellant-husband were general and vague in nature and that he could not prove the same by leading any cogent and convincing evidence. It is further argued that the appellant-husband had earlier filed a petition under the Guardians and Wards Act, 1890, regarding the custody of the minor child, but, later on he had withdrawn the same, and apart from that, he had also filed a civil suit in order to take custody of the car in which the minor child of the parties used to go to school, but the said suit was also dismissed. Thus, it is contended that the findings recorded by the learned Family Court, do not require any interference by this Court.

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 consideration:-

- “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 appellant-husband was not able to prove that the respondent-wife had treated him with cruelty and the acts of cruelty so pleaded by the appellant-husband were held to be minor wear and tear of the marital life. It was further found that no complaint was filed or FIR lodged by the respondent-wife against the appellant-husband under Section 498-A IPC, which generally a female files whenever any difference occurs between husband and wife. Still further it was held that the complaint under the Protection of the Women from Domestic Violence Act, was filed in the year 2021, due to the pressure created by the appellant-husband. Still further, it was found that the allegations of the respondent-wife getting abortion done unilaterally, were not proved on record.

11. Though, the divorce petition filed by the appellant-husband was dismissed, yet, 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 six years now 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. Indisputably, the parties have been living separately since 2018. In the absence of any resumption of matrimonial obligation and cohabitation between the parties for a long period, there is no possibility of their reunion. 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.

13. It is well settled that in order to constitute 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.

14. 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.”

15. 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 2018, if compelled to live together, would become a fiction supported by a legal tie and it would show scant regard for the feelings and emotions of the parties. This, in itself would amount to mental cruelty to both the parties.

16. Still further, there is nothing on record to indicate that since the date of filing of the divorce petition by the respondent-husband, the appellant - wife had made any effort to join his company and/or had filed any petition under Section 9 of the Act for restitution of conjugal rights. The only aim of the appellant-wife appears to be to frustrate the respondent-husband's claim and further keep him engaged in the protracted litigation.

17. 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.

18. 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.

19. Decree sheet be prepared accordingly.

20. At this stage, we may notice that while passing the impugned judgment and decree, no permanent alimony was granted to the appellant-wife by learned Family Court. Therefore, 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 considered and decided by the Court concerned, in accordance with law, preferably within a period of 06 months from the date of filing thereof.

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

(SUDHIR SINGH)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

21.11.2024
Ajay Prasher

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