



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO No. 5078 of 2024 (O&M)
Date of decision:04th November, 2024.

NarenderAppellant

Versus

SavitaRespondent

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

Present: Mr. Deepamm Raghava, Advocate for the appellant.

SUDHIR SINGH, J.

1. Challenge in the present appeal is to the judgment and decree dated 23.09.2024 passed by the learned Principal Judge, Family Court, Karnal (for short ‘the Family Court’), whereby the petition under Section 13(i)(a) of the Hindu Marriage Act, 1955 (for short ‘the Act’), filed by the respondent-wife, was allowed and the marriage between the parties was dissolved by a decree of divorce on the grounds of cruelty and desertion.

2. The aforesaid petition had been filed by the respondent-wife, *inter alia*, asserting therein that her marriage with the appellant-husband was solemnized on 23.12.2002 according to Hindu Rites and Ceremonies and out of the said wedlock, three children were born on 23.12.2003, 27.02.2007 and 02.04.2010 respectively and all the children were living with the respondent-wife. It was further asserted that during her stay at the matrimonial home, the respondent-wife had faced cruelty at the hands of the appellant-husband and

subjected her to severe beatings many a time and he had even tried to kill her.

The said acts and conduct of the appellant-husband were reported on 1091 helpline but the police did not take any action against him. It was further asserted by her that after her selection in Haryana Police, the appellant-husband had characterly assassinated her by saying that she had been having relations with the higher officials. He used to hurl abuses in filthy languages upon her in the presence of her relatives and neighbours. The parents of respondent-wife tried to make the appellant-husband understood but all in vain and that finally, the appellant-husband turned the respondent-wife out of the matrimonial home and she had been living separately for the last two years. Terming the aforesaid acts of the appellant-husband as cruelty and desertion, a decree of divorce was sought for.

3. Upon notice, the appellant-husband entered appearance and filed his written statement. The factum of solemnization of the marriage and birth of three children was admitted. It was further alleged that filing of the divorce after seventeen years of marriage itself speaks of the fact that the allegations contained in the divorce petition were baseless. It was further asserted by the appellant-husband that the respondent-wife was earning a handsome salary of Rs.60,000/- per month whereas the appellant-husband was privately employed. He had been paying the school fee of children and was still ready and willing to join the company of the respondent-wife. It was further pleaded that the respondent-wife had shown the appellant-husband as her dependent in her service record and she was in receipt of the allowance on this ground. In the passport prepared by her, she had shown her status (divorcee) without actually getting any divorce from the appellant-husband. It was further pleaded that the appellant-husband had purchased a plot at Gharaunda out of his own funds but the respondent-wife had compelled him to execute the sale deed in her name.

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

“1. Whether the petitioner is entitled to a decree of divorce from the respondent on the ground of cruelty and desertion, as prayed for? OPP.

2. Whether the petition is maintainable in the present form? OPR

3. Whether the petition is liable to be dismissed being false and frivolous? OPR

4. Relief. ”

5. In evidence, the respondent-wife appeared as PW1 besides tendering documents Ex.P1 to P.25. On the other hand, the appellant-husband examined himself as DW1 and had also tendered documents Ex.D1 to D8 and Mark ‘DA’, Mark DB and Mark RA and Mark RB.

6. The learned Family Court after taking into consideration the rival contentions and findings on record, decreed the petition filed by the respondent-wife as noticed above.

7. Learned counsel for the appellant-husband has vehemently argued that in the instant case it is the respondent-wife, who had deserted the appellant-husband as after her selection in Haryana Police, she had no desire to maintain her relationship with the appellant-husband. It is further argued that the appellant-husband has always been ready and willing to live in the company of the respondent-wife and for that matter, he had also filed a petition under Section 9 of the Act. It is further argued that learned Family Court has failed to take into consideration that the said petition was dismissed as the respondent-wife had made a statement therein that she was not willing to live in the company of the appellant-husband. It is, thus, argued that no party can be allowed to take benefit of his/her wrongs. It is further argued that though the respondent-wife had alleged in the divorce petition that she had been

characterly assassinated by the appellant-husband yet no evidence was led to substantiate the said allegations. It is further argued that the allegations levelled by the respondent-wife were general and vague in nature and the same being minor wear and tear of married life could not have been taken to be cruelty and desertion by the learned Family Court.

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

9. The only question that requires consideration by this Court is 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 had been seeking information about each and every moment of his wife from her department, which was exhibited from the documents Ex.P12 to Ex.P25. It was, thus, found that seeking information under Right to Information Act, about the respondent-wife from her department, only showed that he had been least concern for his wife. It was further found that in her petition, the respondent-wife had clearly alleged that the appellant-husband had been assassinating her character but the appellant-husband in his reply has not specifically denied the said allegations. It was, thus, found that the appellant-husband did not demonstrate slightest of concern for the public image of his wife on many occasions by putting her in situation of embarrassment which has only led to humiliation. Thus it was found that the acts and conduct of the appellant-husband amounted to cruelty against the respondent-wife.

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 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 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”.

12. On the ground of desertion, it was found by learned Family Court that the marriage between the parties was solemnized in 2002, the parties had been living separately since 2018 and there was no chance of reconciliation. The petition under Section 9 of the Act filed by the appellant-husband was withdrawn by the appellant-husband. On the basis of these facts, the issue of desertion was also decided against the appellant-husband and in favour of the respondent-wife.

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."

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.”

13. 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.

14. In view of the above, we do not find any illegality or perversity in the impugned judgment and decree passed by the learned Family Court. It could not be pointed out that any evidence has been misread or not taken into consideration.

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

16. Pending application(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

04th November, 2024.
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(JASJIT SINGH BEDI)
JUDGE

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