

2024:PHHC:148399-DB



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

FAO-5241-2024 (O&M)
Date of decision: 07.11.2024

Silky @ Silky Puri

....Appellant

Versus

Vishal Vohra

....Respondent

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

Present: Ms. Rashi Hooda, Advocate,
for Mr. Omkar Chauhan, Advocate,
for the appellant.

SUDHIR SINGH, J.

Present appeal has been filed against the judgment and decree dated 15.10.2024 passed by the Principal Judge, Family Court, Karnal (for short 'Family Court'), whereby the petition under Section 13(i)(a) 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 had been filed by the respondent-husband, *inter alia*, pleading therein that his marriage with appellant-wife was solemnized on 05.10.2017 as per Hindu rites, but no child was born out of the said wedlock. It was further pleaded that the appellant-wife was

a lady of short temperament and always used to quarrel with everyone without any reason. It was further asserted that at the insistence of the appellant-wife, the respondent-husband was compelled to purchase the luxury items and spend money for visiting the costly restaurants and cinemas. It was because of the appellant-wife that the health of the mother of the respondent-husband got deteriorated and she was admitted to a private hospital at Karnal. The appellant-wife pressurized the respondent-husband to live separately from his parents and they started residing as such at a rented accommodation in Sector-6, Karnal w.e.f. 07.05.2018. It was further alleged that when the respondent-husband would go to the bathroom at night, the appellant-wife used to hit the latch off the door from inside the room many a time and as such, the respondent-husband had to sleep outside the room. She would further ask the respondent-husband to take bath, failing which, she would refuse to sleep with him. She used to beat up the respondent-husband on petty matters. The respondent-husband bore the aforesaid behaviour of the appellant-wife with the hope that things would get normal, but all in vain. On 7.11.2018, the father and brother of the appellant-wife entered the house of the respondent-husband forcibly and issued threats to his mother. The matter was reported to the police, wherein the

appellant-wife and her family members apologized and promised in writing that they would not interfere in the family matters of the respondent-husband in future. It was further alleged by the respondent-husband that the appellant-wife did not allow him to have physical relations with her and on account of the said conduct of the appellant-wife, she had never conceived the child. It was further asserted that earlier on a few occasions, when he had established physical relations with the appellant-wife, she had openly told him that she was using precautions and was not interested in giving birth to a child. Brother of the appellant-wife had a scuffle with the respondent-husband, due to which, the police was called and the family members of the appellant-wife had apologized for the said incident before the police. Thereafter, the appellant-wife vacated the rented accommodation, while taking along all the household items without the permission of the respondent-husband.

3. Upon notice, the appellant-wife entered appearance and filed her written statement admitting the factum of marriage between the parties. However, it was alleged that the respondent-husband wanted to go abroad along with the appellant-wife and as such, he himself did not want any child. The allegations of ill-treatment by the appellant-wife to the respondent-husband and his family

members, was denied. It was further alleged that the appellant-wife wanted to live in her matrimonial home, but the mother and maternal aunt of the respondent-husband had forced her to live separately. The alleged incident of locking the respondent-husband in bathroom was denied. It was further asserted that the rent of the house, where the parties were living separately was paid by the parents of the appellant-wife and respondent-husband left the aforesaid rented house of his own on 08.03.2020, leaving behind the appellant-wife alone.

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 prayed for? OPP.
2. Whether the petition is maintainable in present form? OPR.
3. Whether the petition is liable to be dismissed being false and frivolous? OPR
4. Relief.”

5. In evidence, the respondent-husband himself appeared in the witness box as PW-1 and examined Vikas Vohra as PW-2. He also tendered documentary evidence Ex.P1 to Ex.P13. On the other hand, the appellant-wife examined herself as RW-1 and examined her mother namely, Smt. Jyoti Puri as RW-2, besides tendering the documentary evidence as Ex.R1 to Ex.R22.

6. After hearing the contentions of both the parties and considering the evidence brought on record, the learned Family Court allowed the petition granting a decree of divorce, as noticed above.

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. It is further argued that the learned Family Court has wrongly concluded that the testimony of the appellant-wife suffered from contradictions. It is further argued that it was the pleaded case of the appellant-wife that her mother-in-law and maternal aunt (*massi* of the respondent-husband) had forced the appellant to leave the matrimonial home and to live separately along with her husband. It is further argued that the said aspect was duly proved on record, but the learned Family Court had totally ignored the same. It is further argued that the finding of the learned Family Court regarding the appellant-wife not permitting the respondent-husband to have physical relations with her, is also factually incorrect. It is further argued that it is the case of the respondent-husband himself that he used to establish physical relations with the appellant-wife occasionally and that once such fact was admitted by the respondent-husband himself, mere absence of sexual relations on every occasion could not be a ground

to hold that the appellant-wife had treated the respondent-husband with cruelty. It is further argued that the act of sexual intercourse between the partners is a matter of privacy and there cannot be any direct evidence to the same nor there can be any independent witness to corroborate it. It is lastly argued that since the respondent-husband himself deserted the appellant-wife by leaving her company from the rented accommodation, it was him, who had caused cruelty to the appellant-wife and thus, the impugned judgment and decree is liable to be set aside.

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 PW-2 Vikas Vohra, in his cross-examination, stated that his *massi* Neelam used to reside at Rohtak at the time of marriage of the parties. It was further deposed by him that the parties shifted to Sector-6, Housing Board Colony, Karnal and thereafter, in May, 2018, they shifted to Sector-7, Karnal and that he had never visited their rented accommodation. This witness further deposed that the

appellant-wife was never forced to live separately. It was further found that the appellant-wife, while appearing as RW-1, admitted in her cross-examination that the behaviour of her husband with her was cordial. She further deposed that the *massi* of her husband came to reside with her mother-in-law after the death of her husband and that at that time, the appellant-wife was living separately at a rented accommodation with her husband. It was further found that there was no evidence on record to justify as to why, a son would get separated from his mother without any reason. It was yet further found that no explanation worth consideration was given by the appellant-wife, as to why she used to refuse to have sexual intercourse with the respondent-husband. The allegations of the appellant-wife regarding demand of dowry were also found to be baseless. It was further found that when the appellant-wife admitted in her cross-examination that the behaviour of the respondent-husband towards her was cordial, then there was no substance in her allegation that the respondent-husband had deserted her.

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 behaviour 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 behaviour 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”.

12. 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.”

13. If, the findings recorded by the learned Family Court 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 act of the appellant-wife in denying the respondent-husband access to sexual intercourse, clearly amounts to mental cruelty. Still further, the entire version of the appellant-wife was that she had been forced by her mother-in-law and the maternal aunt (*massi*) of her husband to live separately from them. However, in her testimony before the Court, she had deposed that when the maternal aunt of her husband came to reside with her mother-in-law, she had already been living at a rented accommodation. Yet further, the appellant-wife could not prove on record that she had been deserted by the

respondent-husband. Even, during arguments before this Court, learned counsel for the appellant could not point out any evidence on record to indicate that the findings recorded by the learned Family Court suffer from any patent illegality or perversity.

14. No other point has been urged.

15. 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.

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

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

18. 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**

**(JASJIT SINGH BEDI)
JUDGE**

07.11.2024
Ajay Prasher

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