

2024:PHHC:146876-DB



113

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

FAO-5263-2024 (O&M)

Date of Decision: November 08, 2024

Mamta

.....Appellant

versus

Nitin Kataria

.... Respondent

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

Present:- Mr. Sushil Jain, Advocate for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 08.10.2024 passed by learned Principal Judge, Family Court, Gurugram (for short 'Trial Court'), whereby, the petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (for short 'Act') filed by the respondent-husband was allowed and 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 the appellant/wife was solemnized on 13.11.2011 and out of the said wedlock, a female child was born. It was further alleged that soon after the marriage, the appellant/wife started taking up quarrels with the

respondent/husband and his family members on trivial issues. She had further pressurized the respondent/husband to live separately from his parents and had further insulted him and his father whenever she was asked for any household work. It was further alleged that the appellant/wife had refused to maintain any physical relations with the respondent/husband since May 2017. In July 2018, she went to her parental home of her own. She was brought back in November 2018, but just after two days of her return to the matrimonial home, she had threatened to falsely implicate the respondent/husband in criminal case. In December 2018, she made an attempt to commit suicide and finally on 17.05.2019, she alongwith minor daughter left the company of the respondent/husband. On 02.07.2019, the appellant/wife came to matrimonial home alongwith her father and other members of her family and had quarreled with mother of the respondent/husband, who filed a police complaint under Sections 323, 354 and 506 of the Indian Penal Code, 1860 (for short 'IPC') and as a counter-blast to the same, the appellant/wife had filed a cross complaint against the respondent/husband and his parents. Terming the aforesaid acts as cruelty, the respondent-husband had sought for a decree of divorce.

3. Upon notice, the appellant-wife entered appearance and filed her written statement admitting the factum of marriage and birth of female child. However, it was alleged by her that the respondent/husband and his family members used to manhandled her. In March 2012 and September 2016, her father-in-law tried to outrage her modesty and when she had brought the said fact to the notice of her husband, instead of

taking any action against his father, he had blamed the appellant/wife for the said incident. It was further alleged that on 02.07.2019, when the appellant/wife alongwith her family members went to matrimonial house to resolve the matter, the respondent/husband and his family members tried to kill her by causing her grievous injuries using sharp edged weapons and she had got registered a criminal case bearing FIR No.320/2019, under Sections 323 and 506 of IPC.

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

- “1. *Whether the marriage between the parties is liable to be dissolved by passing a decree of divorce on the grounds as mentioned in the petition? OPP*
2. *Whether the petitioner is stopped by his own act and conduct from filing the present petition? OPP*
3. *Relief.”*

5. In evidence, the respondent-husband appeared as PW1 besides tendering certain documents. On the other hand, the appellant/wife appeared as RW1 and had also tendered some documents.

6. Learned Trial Court, after considering rival contentions of the parties and evidence on record, allowed the petition filed by the respondent-husband and dissolved the marriage by a decree of divorce on the ground of cruelty, as noticed above.

7. Learned counsel appearing on behalf of the appellant-wife has vehemently contended that while passing the impugned judgment/decreed, learned Family Court has failed to consider that there was no direct or indirect evidence brought by the respondent/husband on record, which could prove the cruelty of her part. It is further submitted that it was because of the acts of atrocities, the appellant/wife had to

initiate proceedings against them and the respondent/husband cannot be allowed to take benefit of his own grounds. It is further submitted that learned Family Court has totally ignored the transcript dated 14.05.2019, wherefrom it was clear that the respondent/husband used to beat her and would snatch hard earned money of hers to spend the same on his concubines. Still further, learned Family Court has failed to take into consideration that because of the acts and conduct of the respondent/husband and his family members, the appellant/wife went into depression, anxiety and she had been subjected to domestic violence. Thus, it is submitted that the impugned judgment/decreed is based on conjectures and surmises and the same is liable to be set aside.

8. We have heard learned counsel for the appellant and have also gone through the impugned judgment/decreed.

9. The only issue that requires consideration by this Court is whether the impugned judgment/decreed passed by learned Family Court requires any interference by this Court.

10. From the perusal of judgment passed by learned Family Court, it would be clear that the respondent/husband had produced on record a CD i.e., recording of conversation and its Hindi transcription is Exhibit PW-1/F and Exhibit PW-1/G respectively. Further to prove the said digital evidence, he also placed on record his affidavit Exhibit PW-1/M, under Section 65-B of the Indian Evidence Act, 1872. The said part of the evidence of the respondent/husband was not objected to by or on behalf of the appellant/wife and thus, learned Family Court held that the same amounted to admission on the part of the appellant/wife. On the

basis of the said transcript, it was found that the appellant/wife had used filthy and abusive language against the respondent/husband and his mother and had further threatened to commit suicide. It was, thus, found that none of the spouse is supposed to use such filthy language against each other. It was further found that there was no substance in the allegation of the appellant/wife that her father-in-law had tried to outrage her modesty when she was taking rest in her bedroom in March 2012 and the said act was also repeated by him in the year 2016. However, in her cross-examination, she admitted that her relationship with her husband was sweet and without any hassle and that the dispute used to arise only when her mother-in-law would instigate her husband on the pretext of dowry and when he (respondent/husband) used to show her his objectionable videos and photos of his girlfriend. It was, thus, found that had there been any truth in the allegations of the appellant/wife as against her father-in-law, she would not have remained calm for all these years and rather would have objected or reported the matter to the police, which was not so done. Still further, it was found that in her written statement, the appellant/wife had alleged that her husband was having extramarital relations with some female, but no evidence to that effect was led. Thus, it was found that she had assassinated the character of her husband without there being any proof to the effect. It was yet further found that as regards the averments and pleadings of the appellant/wife, whereby she had claimed cruelty at the hands of the respondent/husband and his family members, she did not examine either of her parents. Thus, learned Family Court found that had there been any brain of truth in the

allegations levelled by the appellant/wife, her maternal family must have supported 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 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 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 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 facts of the present case and the findings of learned Family Court are examined in light of the law laid down by the Hon’ble Supreme Court in the aforesaid judgments, it would come out that conduct of the appellant/wife is clearly indicative of an act of cruelty. Apart from the said allegations, two major allegations levelled by her against her husband and father-in-law were regarding their character

assassination. It may be noticed that the appellant/wife had alleged that her father-in-law tried to outrage her modesty firstly in 2012 and then in 2016. However, no evidence to that effect was led by her. Still further, it was the case of the appellant/wife that her husband was having extramarital affairs with some woman, but again no evidence to this effect was led by her. It is very surprising that on the one hand, the appellant/wife has alleged that her husband was having extramarital relations with other female, but on the other hand, she had testified before the Court that she was having sweet relations with her husband. Yet further, though it was the averment of the appellant/wife that when she had reported the matter to attempt to outrage her modesty by her father-in-law to her husband, the latter had blamed her. Further, it is also beyond comprehension as to how the lady can term the relationship between her and her husband as sweet from 2012 to 2016 when she had alleged an act of outraging her modesty at the hands of her father-in-law. Suffice to say that she had led no evidence to this effect, which in-turn establishes that there was no substance in her defence/allegations.

13. Thus, learned Family Court has rightly concluded that acts and conduct of the appellant/wife amounted to cruelty.

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. Hence, the same is hereby dismissed.

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

16. 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.

(SUDHIR SINGH)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

November 08, 2024
mahavir

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