

2024:PIIIC:148805-DD



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

FAO-5345-2024 (O&M)
Date of decision: 13.11.2024

Sukhdeep Kaur

....Appellant

Versus

Manjinderjit Bawa

....Respondent

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

Present: Mr. Navinder Jit Singh Dandiwal, Advocate,
for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 23.09.2024 passed by the Principal Judge, Family Court, Barnala (for short 'the 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 had been filed by the respondent-husband, *inter alia*, pleading therein that his marriage with appellant-wife was solemnized on 10.08.2016 according to Sikh rites and out of the said wedlock, a male child was born, who was in the custody of the appellant-

wife. It was further alleged that the behaviour of the appellant-wife was not good and she used to quarrel with the respondent-husband on petty matters. She would frequently leave the company of the respondent-husband to go to her parental home. She had also pressurized the respondent-husband to live separately from her parents. Ultimately, on 04.04.2019, the appellant-wife left the company of the respondent-husband and while doing so, she took along the entire jewellery and valuable articles. On 20.04.2019, a *Panchayat* was convened to bring her back, but the same did not yield any result and rather, the respondent-husband was threatened that in case, he visited the parental house of the appellant-wife, he would not be spared. It was further the case of the respondent-husband that he had filed a petition under Section 9 of the Act, which was allowed vide order dated 06.08.2019, but even then, the appellant-wife did not join his company. Terming the aforesaid acts on the part of the appellant-wife as cruelty, a decree of divorce was sought for.

3. Upon notice, the appellant-wife entered appearance and filed her written statement admitting the factum of marriage between the parties as also birth of a male child. It was, however, asserted by the appellant-wife that the respondent-husband and his family members had concealed the factum of his previous marriage and that the

respondent-husband and his father had treated the previous wife with cruelty and demanded a sum of Rs.6 Lakh from her, besides giving her beatings, for which, FIR No.108 dated 24.09.2014, under Sections 406/498-A IPC was registered at Police Station, Ludhiana. Apart from this, another FIR No.173 dated 11.10.1994, under Sections 420/506 IPC and Section 9 of the Corruption Act was also registered against the father of the respondent-husband. It was further alleged by the appellant-wife that her father-in-law used to keep an evil eye upon her and many times, he had misbehaved with her. The grievance of the appellant-wife was not paid any heed to, by the respondent-husband and rather, her father-in-law had forcefully taken the minor child from her custody, for which, a case under Section 363 IPC was registered. The factum of a decree under Section 9 of the Act, was denied and it was asserted that any such decree obtained by the respondent-husband was a result of an act of collusion with the Process Server of the Court. It was further contended by her that she was ready and willing to reside with the respondent-husband.

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

- “1. Whether the petitioner is entitled for divorce as the respondent had treated him with cruelty? OPP.
2. Whether the petitioner is entitled to divorce as respondent has, for a period of over one year, failed to

comply with decree dated 06.08.2019 for Restitution of Conjugal rights? OPP

3. Whether the petitioner has treated the respondent with cruelty? OPR.
4. Whether the petitioner is trying to take benefit of his own wrongs? OPR
5. Relief.”

5. In evidence, the respondent-husband himself appeared in the witness box as PW-3 and examined a Lakhvir Das as PW-1 and Paramjit Das as PW-2. He also tendered documentary evidence Ex.P1 to Ex.P7. On the other hand, the appellant-wife herself appeared in the witness box as RW-2 and examined RW-1 Constable Harmandeep Singh, RW-3 Jagroop Singh, RW-4 HC Hardeep Singh and RW-5 C. Geeta Devi, besides tendering the documentary evidence as Ex.R1 to Ex.R7.

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, as noticed above.

7. Learned counsel for the appellant-wife has vehemently argued that it was the specific case of the appellant-wife that her father-in-law had tried to outrage her modesty, but the said fact was totally brushed aside by the learned Family Court. It is further argued that the factum of registration of FIR No.119 dated 26.09.2020, under Sections 498-A, 406, 506 and 354 IPC at Police

Station Chhajli, was proved on record and that the trial in the said proceedings is still pending. It is further argued that the very registration of the said FIR clearly speaks that it is the respondent-husband and his family members, who had treated the appellant-wife with cruelty. It is further argued that the learned Family Court has erred in law in holding that non joining the company of the respondent-husband by the appellant-wife despite the decree under Section 9 of the Act, is legally untenable, especially when it was pleaded by the appellant-wife that such decree had been obtained at the back of the appellant-wife. Still further, it is argued that merely because her father-in-law had been acquitted in FIR No.173 dated 11.10.1994 Ex.R1, when the appeal was allowed by this Court, is no ground to hold that the allegations levelled by the appellant-wife were fallacious. Thus, it is prayed that the findings recorded by the learned Family Court, which are based on conjectures and surmises, are 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 question that arises for 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, after examining the evidence on record, has found that the appellant-wife had levelled allegations regarding the character of her father-in-law and had also alleged molestation at his hands, but she could not prove the said allegations. Still further, it was found that the appellant-wife had also raised the issue of registration of FIR No.173 dated 11.10.1994 alleging the involvement of her father-in-law. However, the judgment dated 03.06.2000 passed by the Special Judge, Barnala in the said FIR, was set aside by the High Court on 04.07.2013 and the father-in-law of the appellant-wife was acquitted in that case. Thus, it was found that the only purpose of the appellant-wife to plead such fact was to damage the reputation of her father-in-law and it was thus, observed that the allegation of cruelty inflicted upon the father-in-law, was also a cruelty against the husband. Still further, it was found that despite a decree of restitution of conjugal rights under Section 9 of the Act obtained by the respondent-husband, the appellant-wife did not bother to join his company nor did she challenge the said decree by way of an appeal or revision. Accordingly, the learned Family Court, concluded that the appellant-wife had no intention to join the company of the respondent-husband.

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”.

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 stands established on record that by imputing the allegations of character assassination against her father-in-law, the appellant-wife has committed cruelty against the respondent-husband as well. Still further, it is an undisputed fact on record that the respondent-husband had obtained a decree for restitution of conjugal rights on 06.08.2019 and the said decree was not challenged by the appellant-wife by way of any appeal or revision nor did she comply with the said decree. Thus, the learned Family Court has recorded a finding that there was no intention on the part of the appellant-wife to join the company of the respondent-husband. Still further, the argument of the learned counsel for the appellant-wife that very registration of FIR No.119 dated 26.09.2020, as stated above, proves the cruelty on the part of the respondent-husband and his family members, is also not tenable. In the said FIR, the proceedings are still going on. It is settled law that an accused is to be treated innocent unless proved guilty. Even, during arguments before this Court, learned counsel for the appellant-wife 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. We find that the findings recorded by the learned Family Court are based on evidence on record. It could not be pointed out that any evidence has been misread or not taken into consideration. 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. No other point has been urged.

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**

13.11.2024
Ajay Prasher

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