



121

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO-5370-2024 (O&M)

Date of Decision: November 20, 2024

Rajni Bala

.....Appellant

versus

Vikhyat Mahajan

.... Respondent

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

Present:- Mr. Abhishek Thakur, Advocate for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 16.09.2024 passed by learned Principal Judge, Family Court, Pathankot (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 has been allowed and the marriage between the parties has been dissolved, by a decree of divorce.

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 21.07.2016 according to Hindu rites and out of the said wedlock, no child was born. It was further alleged that soon after the marriage, the appellant-wife started putting pressure upon the respondent-husband to live separately from his parents and had also asked him to buy a plot and created FDRs in her name. It was further alleged that the appellant-wife was a stubborn and quarrelsome lady. She

used to insult and humiliate the respondent-husband and had never performed her matrimonial obligations. It was further alleged that she used to leave the matrimonial home without the consent of the respondent-husband and besides that she had also tried to commit suicide 2/3 times with the sole objective to implicate the respondent-husband and his family members in a false case of demand of dowry. On 15.08.2016, the appellant-wife left the company of the respondent-husband without any justified cause. The respondent-husband made efforts to reconcile the matter but to no avail. He even went to file a petition under Section 9 of the Act, but as the appellant-wife refused to join his company, he withdrew the said petition. Rather, the appellant-wife had filed a petition under Section 125 Cr.P.C.. The father of the respondent-husband passed away on 26.02.2017, but the appellant-wife did not bother to participate in the last rites of his father. 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. It was further alleged that the respondent-husband and his family members used to harass her on the pretext of bringing less dowry and rather demanded Rs.12,00,000/- for construction of the house, but she expressed her inability to meet the said demands. It was further alleged that the respondent-husband used to give beatings to the appellant-wife under the influence of liquor and had ultimately, thrown her out the matrimonial home. Yet further alleged that the matter was reported to the Police on 05.04.2017, wherein a compromise was effected but despite that, the appellant-wife was not rehabilitated in the matrimonial home.

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

- “1. *Whether the petitioner was subjected to cruelty at the hands of respondent? OPP*
2. *Whether the respondent has left the society of petitioner without any sufficient cause continuously for a period not less than two years immediately preceding the presentation of this petition? OPR*
3. *If these issues are proved in affirmative, whether petitioner is entitled to the decree of divorce as prayed for? OPP*
4. *Relief.”*

5. In evidence, the appellant-husband examined himself as PW1 and also examined Devinder Mahajan (father) as PW2 and Raj Kumar Gupta as PW3. On the other hand, the respondent-wife examined herself as RW2 and also examined her father as RW1, besides tendering into evidence Ex. R1 and R2.

6. Learned Family Court, after considering rival contentions of the parties and evidence on record, allowed the petition filed by the respondent-husband, as noticed above.

7. Learned counsel appearing on behalf of the appellant-wife has contended that while passing the impugned judgment and decree, learned Family Court has failed to consider that it was the respondent-husband who had treated the appellant with cruelty and had also deserted her. It is further argued that it was specifically pleaded by the appellant-wife in her written statement that there were constant demands of dowry from the respondent-husband and his family members inasmuch as a sum of Rs.12,00,000/- had been demanded, but the learned Family Court has totally ignored the said aspect of the matter. Still further it is argued that the respondent-husband had though filed a petition under Section 9 of the

Act, yet the same was withdrawn and the said fact clearly indicates that he had no intention to rehabilitate the appellant-wife in her matrimonial home. It is yet further argued that the allegations contained in the divorce petition were normal wear and tear of the matrimonial life and the learned Family Court fell in error of law in terming the same as cruelty.

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

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

10. The learned Family Court on the basis of the testimony of the respondent-husband and his witnesses, has found that the allegations of threat issued by the appellant-wife as regards committing suicide stood proved on record inasmuch as PW3- Raj Kumar Gupta, in his testimony deposed before the Court that the appellant-wife had issued such threats in front of him. It was further found that the appellant-wife in her testimony deposed that there was no demand of dowry from the respondent-husband or his family members. It was further found that the appellant-wife had failed to prove Ex.R1 as no witness had been examined in this regard. It was also found that in the petition under Section 9 of the Act, the appellant-wife refused to join company of the respondent-husband. Apart from that, it was found that the case set up by the appellant-wife was not supported by her own father who had appeared as RW1.

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 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 recorded by the learned Family Court are examined in the light of the aforesaid judgments of the Hon’ble Apex Court, it stands established that the respondent-husband was able to prove the ground of cruelty. In the instant case, it was none else but the father of the appellant-wife, who deposed before the Court that despite the fact that the respondent-husband and his family members had approached the appellant-wife in order to rehabilitate her in the matrimonial home, she did not make any

efforts to join the company of the respondent-husband. Still further it was proved on record that as per the compromise effected before the Police, the efforts were made by the respondent-husband to bring the appellant-wife back, but the same did not yield any result. It was further found that living apart from her husband for seven years and not responding to the calls of re-union with the respondent-husband, amounts to cruelty. Therefore, we do not find that the findings recorded by the learned Family Court suffers from any patent illegality or perversity. It could not be pointed out that any evidence has been misread or not taken into consideration.

- 13. No other point has been urged.
- 14. Hence, the same is hereby dismissed.
- 15. Pending application(s), if any, shall also stand disposed of.
- 16. However, the appellant-wife will be at liberty to move an appropriate application for grant of permanent alimony before the learned Family Court. We make it clear that if any such application is moved, the same shall be decided by the learned Family Court in accordance with law, preferably within a period of six months.

(SUDHIR SINGH)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

November 20, 2024
mahavir

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