

2024:PHHC:152854-DB



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

**FAO-5434-2024 (O&M)**

**Date of Decision: November 20, 2024**

Kuljit Kaur

.....Appellant

versus

Tejinder Singh

.... Respondent

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

**Present:-** Mr. Ankit Kaushal, Advocate for the appellant.

**SUDHIR SINGH, J.**

Challenge in the present appeal is to the judgment and decree dated 29.08.2024 passed by learned Principal Judge, Family Court, Tarn Taran (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 and the petition under Section 9 of the Act, seeking restitution of conjugal rights, filed by the appellant-wife has been dismissed.

2. The aforesaid petition had been filed by the respondent-husband, *inter alia*, pleading therein that his marriage with the appellant was solemnized on 06.07.2017 according to Sikh rites and out of the said wedlock, one female child was born on 30.01.2019. It was further averred that the behaviour of the appellant-wife right from the beginning of the marriage, was cruel, disrespectful, harsh, rude and quarrelsome. She used to threaten to implicate the respondent-husband and his family members in false criminal cases including that of dowry. It was yet further asserted that

ultimately on 17.09.2018, the appellant-wife left the matrimonial home without the consent of the respondent-husband and his mother. On 17.10.2021, a written compromise was effected between the parties and the appellant-wife came back to her matrimonial home, but there was no change in her behaviour. It was further alleged that on 25.10.2021, in the absence of the respondent-husband, the appellant-wife gave beatings to the mother of the respondent-husband and left the matrimonial home along with the minor child. Terming the aforesaid acts 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 and birth of the female child. It was further alleged that the appellant-wife had been harassed by the respondent and his mother on account of bringing insufficient dowry and their behaviour became more cruel after the birth of the female child as they wanted a male child. The respondent-husband and his mother had pressurized the appellant to bring Rs.2,50,000/- for repair/construction of their house. It was further alleged in January 2021, the appellant was thrown out of the matrimonial home, but the matter was compromised. However, again in October 2021, she along with the minor child was thrown out of 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 is entitled to the decree of divorce on the ground of cruelty? OPP*
2. *Whether the petition is not maintainable? OPR*
3. *Relief.”*

5. The appellant-wife had also filed a petition under Section 9 of the Act seeking decree of restitution of conjugal rights. The said petition

was also contested by the respondent-husband. In the said proceedings the following issues were framed:-

- “1. *Whether the petitioner is entitled to relief of restitution of conjugal rights? OPP*
2. *Whether the respondent has withdrawn from the society of the petitioner without any reasonable excuse? OPP*
3. *Whether the petition is not maintainable? OPR*
4. *Relief.”*

6. Both the aforesaid petitions were consolidated on 20.07.2024, as the same contained common questions of law and facts.

7. In evidence, the appellant-wife appeared as PW1 and examined PW2-Shindo and PW3-Lakhbir Singh. On the other hand, the respondent appeared as RW1 and also examined RW2-Parkash Kaur and RW3-Surjit Singh.

8. Learned Family Court, after considering the rival contentions of the parties and evidence on record, allowed the petition under Section 13 of the Act filed by the respondent-husband, whereas the petition under Section 9 of the Act filed by the appellant-wife, was dismissed.

9. Learned counsel for the appellant-wife has vehemently argued that it was pleaded case of the appellant-wife that the respondent-husband used to remain under the influence of alcohol and he used to give her beatings on the provocation of his mother on account of bringing less dowry. It is further argued that the learned Family Court has wrongly held that the appellant-wife, by giving beatings to the mother of the respondent-husband, had caused cruelty to the respondent-husband and his mother, whereas the fact remains that no police official was summoned to ascertain the veracity of the complaint given by the mother of the respondent-husband to the police. It is further argued that the filing of the petition under Section 9 of the Act by the appellant-wife was itself indicative of the fact that she

had every desire to live in the company of her husband (respondent) and rather it was the respondent-husband who had withdrawn from her company without any justified cause. It is, thus, argued that the forcible ouster of the appellant-wife from her matrimonial home cannot be said to have been termed to be cruelty.

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

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

12. The learned Family Court has found that the allegations of demand of dowry propounded by the appellant-wife could not be proved by her by way of any cogent and convincing evidence. Rather, on the other hand, it was found that the complaints were filed by the appellant-wife and her mother before the police and the women cell, wherein the police did not find any substance. Still further, it was found that as per application (Mark-B), moved by the mother of the respondent-husband, she had been physically assaulted by the appellant-wife on 25.10.2021 and the contents of the said document were corroborated by other evidence on record. It was further found that on the one hand, the appellant-wife had levelled the allegations of the respondent being under the influence of liquor and giving her beatings but on the other hand, she had filed the petition under Section 9 of the Act and, thus, the stands taken by the appellant-wife were found to be contradictory.

13. 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.”*

14. 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 the factum of cruelty was proved by the respondent-husband by leading cogent and convincing evidence. Such evidence could not be impeached by the appellant-wife so as to create any dent in that. As noticed above, the allegations of demand of dowry were found to be baseless. The very factum of assaulting the mother of the respondent-husband was taken to be an act of cruelty by the learned Family Court. Though, the requisite police record regarding the said assault, was not summoned, yet on the basis of the corroborating circumstances, it was found by the learned Family Court that the appellant-wife had treated the respondent-husband with cruelty. Still further, it had come in the testimony of the appellant-wife that during her stay in her matrimonial home, her expenses were borne by her husband and thus the allegations of the appellant that her husband was expending on alcohol and not maintaining her did not find any favour with the learned Family Court.

15. The findings recorded by the learned Family Court are based on the evidence on record. It could not be pointed out that any evidence has been misread or not taken into consideration. Consequently, we do not find that such findings suffer from any patent illegality or perversity warranting any interference by this Court in the present appeal.

- 16. No other point has been urged.
- 17. Hence, the same is hereby dismissed.
- 18. Pending application(s), if any, shall also stand disposed of.

(SUDHIR SINGH)  
JUDGE

(JASJIT SINGH BEDI)  
JUDGE

November 20, 2024  
mahavir

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