

2024:PHHC:154639-DB



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

FAO-5463-2024 (O&M)

Date of Decision: November 22, 2024

Sanju

.....Appellant

versus

Pardeep Kumar and another

.... Respondents

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE ALOK JAIN**

Present:- Mr. Mandeep Singh Dhaliwal, Advocate for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 14.10.2024 passed by learned Additional Principal Judge, Family Court, Sonipat (for short the 'Family Court'), whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for short the 'Act') filed by the appellant-husband has been allowed and the marriage between the parties has been dissolved by a decree of divorce on the grounds of cruelty and adultery.

2. The aforesaid petition had been filed by respondent No.1-husband, *inter alia*, pleading therein that his marriage with the appellant-wife was solemnized on 13.07.2016 and out of the said wedlock, one male child was born on 26.07.2018. It was further alleged that being in the Indian Air Force and posted at Assam, respondent No.1-husband was unable to take the appellant with him. The mother of respondent No.1

informed him telephonically that on 28.10.2018, she had found the appellant and respondent No.2 (close friend of respondent No.1) in a compromising position. Respondent No.1 had called respondent No.2 and the latter had admitted his illicit relations with the appellant. The father, brothers and other family members of the appellant, instead of making her understand, scolded respondent No.1 and blamed him for the whole wrong doing. Because of the threats issued by the appellant and her family members regarding tarnishing reputation of respondent No.1 and his family, he was forced to keep quiet and take the appellant with him at his place of posting, but even then, the appellant did not change her behavior and remained in talking terms with respondent No.2. The said conduct of the appellant-wife was unbearable to respondent No.1 and, therefore, he finally left the appellant at her parental home. Terming the aforesaid acts as cruelty and adultery, respondent No.1-husband had sought for a decree of divorce.

3. Upon notice, the appellant-wife entered appearance and filed her written statement terming respondent No.1 guilty of mental and physical cruelty, desertion and criminal misappropriation of dowry articles, *Istridhan* belonging to the appellant. It was asserted that respondent No.1, in collusion with respondent No.2, had defamed her with the sole objective to obtain divorce from her on the basis of false and concocted version. Respondent No.1 and his family members used to taunt her for bringing insufficient dowry. Respondent No.1 used to beat the appellant and was forced to do unnatural intimacy without her consent. Even her father-in-law had outraged her modesty, which was brought to the notice of respondent No.1, but she was threatened with

dire consequences, in case she had disclosed the same to anyone. On 04.08.2017, the brother of respondent No.1 committed a rape upon her, but instead of taking any action against his brother, respondent No.1 threatened her to keep quiet else she would be done to death. Similarly, cousin brother of respondent No.1 had also committed a rape upon her when she was alone in the house.

4. During the pendency of petition before learned Family Court, respondent No.2 had expired and proceedings *qua* him were dropped.

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

- “1. Whether the petitioner is entitled to get decree of divorce on the grounds of adultery and cruelty as envisaged under Section 13(1)(i) and (ia) of the Hindu Marriage Act, 1955? OPP
2. Relief.”

6. In evidence, respondent No.1-husband examined himself as PW1; his mother Kamla Devi as PW2 besides tendering documents Exhibits P1 to P4. On the other hand, the appellant-wife appeared as RW1, besides tendering documents Exhibits R5 to R6.

7. Learned Family Court, after considering rival contentions of the parties and evidence on record, allowed the petition filed by respondent No.1-husband, as noticed above.

8. Learned counsel appearing for the appellant-wife vehemently contends that no evidence was led with regard to the alleged adultery pleaded by respondent No.1 and yet the learned Family Court, proceeded on to grant the decree of divorce on the ground of adultery. It is further argued that the learned Family Court has completely brushed aside the fact that the alleged adulterous relations of appellant-wife with

respondent No.2 (since deceased) was a concocted version and was a result of connivance between the respondents. It is further argued that it was the pleaded case of the appellant that her father-in-law had outraged her modesty and that brother of respondent No.1 and his cousin had also committed a rape upon her, but the learned Family Court, has totally ignored the said facts. It is yet further argued that the CD and Exhibit P.2, were not admissible in evidence as the same were not proved by respondent No.1 in terms of the provisions of the Evidence Act.

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

10. 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.

11. The learned Family Court has found that there was no specific denial of the averments made in para No. 7 of the petition, wherein the allegations of illicit relations of the appellant-wife with respondent No.2, were levelled by respondent No.1-husband. Still further, it was found that while appearing as RW1, the appellant-wife had coined a new version than the one contained in the written statement. It was further found that the appellant-wife herself admitted of committing extra-marital relations twice (two times by mistakes) in Ex.DA and that no suspicion could be created upon the veracity of Ex. DA and further no request had been made by the appellant to play Ex.P1 (CD) in the Court. Still further, it was found that conversation Ex.P2 (of 25 minutes) stood proved on record and it clearly proved the illicit relations between the appellant-wife and respondent No.2. Still further, as regards the third

conversation (Exhibit P3) between respondent No.1 and his father, to which again, no question or suggestion was put by the appellant. It was found that perusal of cross-examination of RW1 shows her *mala fide* intention, act and conduct and dubious character as well as her vindictive nature. On 02.11.2018, the immediate action on the part of respondent No.1 had shown the urgency of matter and mental trauma and cruelty faced by him at the hands of the appellant. Not even a single person from the family of the appellant came forward to protect her version. It was further found that lodging of an FIR under Sections 323, 498-A of IPC by the appellant was a vindictive action on her part just to save herself from the allegation of adultery. It was yet further found that not a single document had been placed on record by the appellant to show that she had moved any application under Section 319 of Cr. P.C., in the aforesaid FIR case, for summoning her father-in-law or any separate criminal complaint against him. Still further, the learned Family Court did not find any substance in the allegations of the appellant-wife as regards the sexual assault committed by brother of respondent No.1 and one Manoj (cousin bother of respondent No.1).

12. 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.”

13. 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 respondent No.1 had proved allegations of adultery and cruelty by adducing cogent and convincing evidence. Still further, levelling of false allegations of rape against the family members of the husband, also amounts to cruelty. In the instant case, firstly, the appellant-wife had alleged that her father-in-law had outraged her modesty and further alleged that the brother of respondent No.2 and his cousin had also committed rape upon her. However, no evidence was led by to substantiate the said allegations. This Court in FAO-1995-2024-Priyanka @ Pinki Vs. Sandeep Kumar, decided on 16.05.2024 has upheld the findings recorded by the Family Court that once the allegations of sexual assault levelled by the wife against all the male members of the family, are found false, the same amounts to cruelty and the husband is entitled to a decree of divorce on the ground of cruelty. In this case too, we find that levelling false allegations of sexual assault

against father-in-law and brothers-in-law, also amounts to mental cruelty against the husband.

14. No other point has been urged.

15. 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.

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

(SUDHIR SINGH)
JUDGE

(ALOK JAIN)
JUDGE

November 22, 2024

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No