

2024:PHHC:164890-DB



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

FAO-5540-2024 (O&M)

Date of Decision: December 10, 2024

Reshma Pall

.....Appellant

versus

Rajeev Singh

....Respondent

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

Present:- Mr. Pradeep Virk, Advocate for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 04.09.2024 passed by learned Principal Judge, Family Court, Gurugram (for short the 'Family Court'), whereby, the petition under Section 13(1)(ia)(ib) 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.

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 11.03.2015, and out of the said wedlock, one male child, namely, Veer Partap, was born, who was in the custody of the appellant/wife. It was further asserted that soon after the marriage, the appellant/wife had started quarreling with the

respondent/husband on trivial matters. She did not like to stay with the parents of the respondent/husband and therefore, they started living separately, but still her behaviour did not change. In order to placate her, the respondent/husband had transferred his properties and investments in her name. It was further alleged that owing to market and family conditions, the respondent/husband had suffered financial losses and he was arrested in a criminal case bearing FIR No.232 of 2016 and that he remained in custody for a period of 10 month i.e., from 01.08.2017 till 09.06.2018. Instead of visiting the respondent/husband in the jail, the appellant/wife had moved a false complaint against him in the Police Station Sushant Lok-I and Sector 53, Gurugram, besides filing a petition under the Protection of Women from Domestic Violence Act, 2005 (for short 'DV Act') in the District Courts at Chandigarh. Terming the aforesaid acts as cruelty, the respondent/husband had sought for a decree of divorce.

3. Upon notice, the appellant/wife had entered appearance and filed her written statement admitting the factum of marriage and birth of the child. It was asserted that the respondent/husband did not disclose the factum of him being divorcee. It was further alleged that the respondent/husband was having extra-marital relations with one lady named Sabina Suri. It was yet further asserted that the respondent/husband had forged her signatures on several loan papers regarding which an FIR No.186 of 2018 was registered under Sections 420, 467, 468, 471, 506, 323, 498-A and 406 of IPC. Accordingly, prayer for dismissal of divorce petition was made.

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

- “1. *Whether the marriage between the parties is liable to be dissolved u/s 13(1)(a) on the grounds of cruelty as mentioned in the petition? OPP*
2. *Whether the marriage between the parties is liable to be dissolved u/s 13(1)(b) on the grounds of desertion as mentioned in the petition? OPP*
3. *Whether the petitioner is estopped by his own act and conduct from filing the present petition? OPR*
4. *Relief.”*

5. In evidence, the respondent/husband appeared as PW1 besides tendering certain documents. On the other hand, the appellant/wife appeared as RW1 along with certain documentary evidence.

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 vehemently argued that learned Family Court has failed to give any reasoning as to how and in what manner cruelty was caused to the respondent/husband. It is further argued that the respondent/husband had failed to disclose registration of an FIR against him under Section 498-A of IPC by his earlier wife and such concealment had impinged upon sanctity of the marriage of the parties. It is further argued that it was the respondent/husband who had shirked from his responsibility to maintain the appellant/wife and the minor child, and rather, he had abandoned them, but learned Family Court has failed to take into consideration such vital aspects. It is further argued that merely because the appellant/wife did not visit the respondent/husband in jail, is no ground to hold that she

had caused him cruelty, inasmuch as the criminal case in which the respondent/husband was arrested was not initiated at the hands of the appellant/wife. Still further, it is argued while passing the impugned judgment/decree, the learned Family Court has failed to grant any permanent alimony to the appellant/wife whereas it is a settled law that while granting a decree of divorce, issue of permanent alimony must be decided alongside. Thus, a prayer for setting aside the impugned judgment/decree has been made.

8. We have heard learned counsel for the appellant/wife 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.

10. It was found by learned Family Court that the appellant/wife did not stand with the respondent/husband during his crunch period when he had been lodged in jail in a criminal case registered against him. Rather when the respondent/husband was in jail, the appellant/wife had filed a petition under the DV Act. It was also proved on record that the appellant/wife had lodged an FIR No.186 dated 12.12.2018 against the respondent/husband, under Sections 323, 406, 498-A, 506, 467, 420, 421 and 468 IPC, at Women Police Station, Gurugram. The stand of the appellant/wife before the learned Family Court that the aforesaid FIR was lodged by her due to the matrimonial manhandling by the respondent/husband on the pretext of dowry and also on the ground that he had forged her signatures in the blank papers, did not find any favour with the learned Family Court as no evidence *qua* the said forgery was

placed on record. It was thus, found that registration of FIR was based on incorrect facts. It was further found that though, the appellant/wife had alleged that the respondent/husband was having an extramarital affair with one Sabina Suri, yet no evidence was led to that effect and thus, the said allegations levelled by the appellant/wife were found to have caused cruelty to 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 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 of learned Family Court are examined in light of the law laid down in the aforesaid judgments of the Hon’ble Apex Court, it has come out that acts and conduct of the appellant/wife were rightly held to have caused cruelty to the respondent/husband. Even if the finding of the learned Family Court regarding the appellant/wife not visiting the respondent/husband in jail, is

taken to be not an act of cruelty, still the cruelty has been proved otherwise as baseless allegations were levelled by the appellant/wife regarding the respondent/husband forging her signatures on blank papers and him having extramarital relations with another lady, which certainly proves the acts of cruelty. On one hand, the appellant/wife had levelled such serious allegations against the respondent/husband and on the other hand (as noticed by learned Family Court), she was ready to resume matrimonial ties with the respondent/husband. Learned Family Court has rightly found that no wife would like to stay with her husband, if such allegations were true. The arguments of the learned counsel for the appellant that alleged acts of cruelty were minor wear and tear of the matrimonial life, is not tenable as allegations levelled by the appellant/wife had not only resulted in registration of a criminal case, but has also caused character castration of the respondent/husband. The learned Family Court has rightly found that acts and conduct of the appellant/wife had shaken the foundation of the marriage and the same amounted to cruelty.

13. The findings recorded by the learned Family Court are based on evidence on record. In view of the above, we do not find the said findings to be suffered from any illegality or perversity.

14. No other point has been urged.

15. In view of the above, finding no merit in the present appeal, the same is hereby dismissed.

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

17. 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

December 10, 2024
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No