



123

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

FAO-5649-2024 (O&M)

Date of Decision: December 03, 2024

Gurmeet Kaur

.....Appellant

versus

Roor Singh

.... Respondent

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

Present:- Mr. K.B. Raheja, Advocate for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 24.09.2024 passed by learned Additional Principal Judge, Family Court, Sirsa, Camp at Dabwali (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 on the grounds of cruelty and desertion.

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 12.12.1998 according to Sikh rites and out of the said wedlock, two children were born. The appellant-wife was a short tempered lady and she would refuse to do household chores and also

disrespected the respondent-husband terming him not a man of her choice. She had also created scenes by raising hue and cry publically. In 2008, the appellant-wife ousted the respondent-husband from their house and deprived him of meeting the children. Even a *Panchayat* was convened, but the same did not yield any result. Terming the aforesaid acts as cruelty and desertion, 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 children. It was alleged that the petition for divorce filed by the respondent-husband was a counterblast to an order dated 30.11.2017 passed by the SDJM, Dabwali. The respondent-husband and his family members harassed the appellant-wife on account of dowry demands. The respondent-husband was in the habit of drinking and taking intoxicants. It was further alleged that the respondent-husband had purchased a plot in the name of the appellant-wife with the help of her parents and thereafter, construction was raised thereon. It was further alleged that a number of *Panchayats* were convened, but the respondent-husband did not give up his vices.

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

- “1. *Whether the petitioner is entitled for a decree of divorce as alleged in the petition? OPP*
2. *Whether the petition is not maintainable in the present form? OPR*
3. *Whether the petitioner has no cause of action to file the present petition? OPR*
4. *Whether the petitioner is estopped by his own act and conduct to file the present petition? OPD*
5. *Whether the petitioner has concealed the true and material facts from the Court? OPR*

6. *Relief.”*

5. In evidence, the respondent-husband examined himself as PW1, besides tendering certain documents as Mark-A to Mark-U. On the other hand, the appellant-wife examined herself as RW1 and tendered documents Exhibits R.1 to R.5.

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 for the appellant-wife has argued that while passing the impugned judgment and decree, the learned Family Court has failed to take into consideration that it was the respondent-husband and his family members, who had treated the appellant-wife with cruelty as they continued harassing her by raising repeated demands of dowry. It is further argued that the respondent-husband had been in huge arrears of maintenance amount awarded to the appellant-wife, which substantiated her allegations regarding the respondent-husband shirking from his liability to maintain the appellant-wife and the minor child. It is further argued that the respondent-husband could not be allowed to take benefit of his own wrongs. It is yet further argued that merely because the parties have been living separately for a long time could not have been made the basis for granting the decree of divorce by learned Family Court.

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. The learned Family Court has found that the appellant-wife in her cross-examination admitted that it was not safe for the parties to live together as husband and wife and rather, it would be calamitous. It was further found that she stated that she did not want to keep the respondent-husband with her at the matrimonial home. It was further found that the said testimony of hers was contrary to the averments contained in the written statement, wherein she had pleaded that she was ready for reconciliation. It was, thus, found by the learned Family Court that the conduct of the appellant-wife in continuing the litigation but not agreeing to the detachment from the marital ties, amounted to cruelty.

11. It is well settled that in order to constitute 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 law laid down by the Hon’ble Apex Court in the aforesaid judgments, it would come out that the appellant-wife herself testified before the Court that she was not ready to live in the company of the respondent-husband. It was established on record that the appellant-wife along with the minor children was living in the matrimonial home. The learned Family Court has rightly found that as the appellant-wife was not ready to live in the company of the respondent-husband, the same itself amounts to cruelty and desertion.

13. Still further, it may be noticed that the parties have been living separately since 2008 and since then there has been no resumption of matrimonial obligations/cohabitation between the parties. Thus, there is no possibility of their reunion. Undoubtedly, it is an obligation on the part of the Court that matrimonial bond should as far as possible, be maintained, but when the marriage has become unworkable and it has become totally dead, no purpose would be served by ordering the reunion of the parties.

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. It could not be pointed out that any evidence has been misread or not taken into consideration.

16. Consequently, finding no merit in the present appeal, the same is hereby dismissed.

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

18. At this stage, 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 03, 2024
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No