

2024:PHHC:164516-DB



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

FAO-5725-2024 (O&M)

Date of Decision: December 05, 2024

Gursimran Singh

.....Appellant

versus

Meena

....Respondent

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

Present:- Mr. Amitabh Tewari, Advocate for the appellant.
(presence marked through video-conferencing)

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 04.11.2024 passed by learned Additional Principal Judge, Family Court, Patiala (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/wife, was allowed and the marriage between the parties was dissolved by a decree of divorce on the grounds of cruelty and desertion.

2. The aforesaid petition had been filed by the respondent/wife, *inter alia*, pleading therein that her marriage with the appellant/husband was solemnized on 04.06.2014, but no child was born out of the said wedlock. It was further alleged that the appellant/husband had compelled the respondent/wife to spend an amount of Rs.2,00,000/- out of her

savings on the purchase of household articles. It was further alleged that mother-in-law of the respondent/wife had started pressurizing her to break her ties with the appellant/husband, and on 11.07.2014, she had obtained signatures of the respondent/wife on some blank papers. When the appellant/husband started residing separately from the respondent/wife, the appellant/husband had filed a petition under Section 9 of the Act, pursuant where to, the matrimonial ties between the parties were revived. However, the appellant/husband did not stop raising his illegal demands. The respondent/wife was working as a Clerk in the Punjabi University, Patiala and the appellant/husband had compelled her to give him half of her salary on monthly basis. The appellant/husband used to extract money from the respondent/wife in order to satiate his addiction for alcohol. Even the appellant/husband had extracted money from the respondent/wife on the ground that the same was required for repair of an accidental car and to compromise the matter in a criminal case registered against him. On 31.03.2015, the appellant/husband had left the company of the respondent/wife and despite repeated requests, he did not join her company. It was yet further asserted that against the harassment and torture of the appellant/husband and his mother, the respondent/wife had filed an application dated 18.02.2019 to the Senior Superintendent of Police, Patiala, but no action was taken therein. Terming the aforesaid acts as cruelty, the respondent/wife had sought for a decree of divorce.

3. Upon notice, the appellant/husband entered appearance and filed his written statement admitting the factum of marriage. However, the allegations of cruelty and desertion were denied. It was further

pleaded that the appellant/husband was always ready and willing to live in the company of the respondent/wife and for that purpose, he had filed a petition under Section 9 of the Act, which was withdrawn when the respondent/wife refused to live with him. It was further pleaded that the respondent/wife was working as a Senior Assistant and was getting a salary of Rs.62,000/- per month whereas the appellant/husband was working as a Clerk in the Punjabi University, Patiala, on *ad hoc* basis and getting monthly salary of Rs.40,000/-. The police did not find any substance in the allegation contained in the application submitted by the respondent/wife. 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 petitioner is entitled to the decree of divorce on the ground of cruelty as prayed for? OPP*
2. *Whether the petitioner is entitled to the decree of divorce on the ground of desertion as prayed for? OPP*
3. *Whether the petition is not maintainable in the present form? OPR*
4. *Whether the petitioner has concealed true and material facts from the court, if so its effect? OPR*
5. *Relief.”*

5. In evidence, the respondent/wife appeared as PW1 besides tendering certain documents. She had also examined her sister-in-law as PW2. On the other hand, the appellant/husband appeared as RW1.

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

7. Learned counsel appearing on behalf of the appellant-husband has vehemently contended that while passing the impugned judgment and decree, learned Family Court has failed to take into consideration that the appellant/husband was always ready to rehabilitate the respondent/wife and for that purpose, he had moved a petition under Section 9 of the Act. It is further argued that normal wear and tear of matrimonial life have wrongly been termed to be cruelty and desertion by learned Family Court. It is yet further argued that the testimony of the respondent/wife, she had admitted that rent of the accommodation was to be paid by the appellant/husband, which clearly shows that relations between the parties were normal. It is further argued that though in the divorce petition, the respondent/wife had alleged that the appellant/husband would demand money for his daily needs, yet in her testimony, she deposed that she did not remember dates when the appellant had done so. In her testimony, she had further deposed that she was not coerced by the appellant/husband to give him money and that there was no demand of dowry. It is thus, argued that the findings recorded by learned Family Court are based on conjectures and surmises and thus, the impugned judgment/decreed passed by learned Family Court is liable to be set aside.

8. We have heard learned counsel for the appellant-husband 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. On the basis of evidence led by the parties, the learned Family Court has found that acts and conduct of the appellant/husband, in demanding money from the respondent/wife on the pretext of a criminal case pending against him and not returning the same, was proved. It was further found that the respondent/wife had proved on record the purchase of household articles after withdrawing the amount from her salary, but despite that the appellant/husband had left her company. The stand taken by the appellant/husband that he had withdrawn the petition under Section 9 of the Act when the respondent had refused to join his company, was not proved as neither any copy of such petition nor any statement and/or order passed in the said petition was placed on record. It was further found that the appellant/husband had deserted the respondent/wife without any justifiable cause.

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.”

In Naveen Kohli v. Neetu Kohli, 2006 (4) SCC 558, the Hon’ble Apex Court was considering a case of irretrievable breakdown of marriage. In the said case, the wife had been living separately for a long time, but did not want divorce by mutual consent only to make life of her husband miserable. The Hon’ble Apex Court, while holding the acts and conduct of the wife as cruelty, has held as under:-

"62. Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again. The High Court ought to have visualized that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.

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67. The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.

68. In our considered view, looking to the peculiar facts of the case, the High Court was not justified in setting aside the order of the Trial Court. In our opinion, wisdom lies in

accepting the pragmatic reality of life and take a decision which would ultimately be conducive in the interest of both the parties.”

Still further, in **K. Srinivas Rao v. D.A. Deepa**, 2013 (5) SCC 226 has observed that when a marriage is dead for all purposes, it cannot be revived by Court's verdict, if the parties are not willing since marriage involves human sentiments and emotions and if they have dried up, there is hardly any chance of their springing back to life on account of artificial reunion created by the Court’s decree.

A Coordinate Bench of this Court in **Amandeep Goyal Vs. Yogesh Rani**, 2022(1) PLR 479, while considering the long separation of 10 years between the parties and the factum of wife not ready and willing to give mutual divorce, held that the marriage was dead and it amounts to cruelty towards the husband. The relevant extract from the said judgment would read as under:-

“20. In the present case, it is not in dispute that both the appellant and respondent are working as teachers on regular basis in Government departments. Further they are living separately since 27.07.2011. The elder son (Manav Goyal), who is suffering from cancer, is living with appellant- husband and the younger son (Rooham) is staying with the mother. After living separately from her husband for more than 10 years, the respondent- wife is still not ready to give divorce to him.

21. The issue for consideration in the present appeal would be whether the relationship of the husband and wife has come to an end and if the respondent-wife is not ready to give mutual divorce to the appellant- husband, whether this act of her, would amount to cruelty towards husband, keeping in view the fact that she is not staying with her husband for the last 10 years and there is no scope that they can cohabit as husband and wife again.

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32. In the present case, the appellant-husband is looking after his son Manav Goyal since 27.07.2011 and has borne all the expenses incurred upon his son, who is suffering from Cancer. Thus, if the appeal filed by the appellant-husband is dismissed, he will face mental agony with his son, who is ill and requires repeated check ups and treatments from various hospitals. The appellant and the respondent are very sure that they cannot live together as husband and wife. The appellant-husband has shown that he also loves his second son i.e Rooham, as he brought gifts for him on 18.08.2021 and even respondent-wife also brought gifts for Manav Goyal. Both the appellant and the respondent are regular government teachers and are getting good salary and they are bringing up one child each. If the parents are not granted divorce, then both the children namely Manav Goyal and Rooham Goyal will not be able to meet each other in a positive environment. This will further result in cruelty because of the rigid attitude in giving divorce. Further when the appellant and the respondent came to this Court on 18.08.2021, they expressed their love and affection to child, who is not staying with them. The element of marriage which has become dead will result in further loss to both the children. It is a right time if both the children meet with each other in a positive environment as the parents are finally independent. The element of silence between the parties will result into mental cruelty to the children, as both the siblings cannot meet with each other. Mental cruelty will blend with irretrievable and dead marriage is a good ground to grant divorce to the parties.”

A Division Bench of the Chhattisgarh High Court in **Duleshwari Sahu Vs. Ramesh Kumar Sahu**, 2023 AIR (Chhattishgarh) 95, has held that where the wife had been residing separately from the husband for a long period without any justifiable cause, the same would amount to cruelty. It was held as under:-

“15. In the present matter, on perusal of the pleadings of the respective parties and the evidence adduced by them in support thereof, as also the admission of the parties and their witnesses, it

is found that the respondent wife is living separately from her husband at her parental home without any just and reasonable cause since May, 2014. She lodged a report on 17/09/2014 against the husband under Sections 498-A, 323, 294, 506 of IPC and after trial, he was acquitted of all the charges. This apart, the wife also made a report against the husband and his parents under Protection of Women from Domestic Violence Act. It is also admitted position that the wife filed divorce petition under section 13 of the Hindu Marriage Act which was dismissed for want of prosecution. It is also admitted by the wife that no application under section 9 of the Hindu Marriage Act for restitution of conjugal rights was filed by her. It is not disputed that the wife is working as Panchayat Secretary and is also getting Rs. 7,000/- per month as maintenance. Therefore, in the given facts and circumstances of the case, the conduct of the wife, in light of the judgments of Hon'ble Supreme Court as mentioned above, the act committed by the wife against the husband amounts to cruelty and it stands proved that she is living separately from the husband since 2014 without any just and reasonable cause. They are seems to be no possibility of their reunion. In these circumstances, this Court finds no illegality or perversity in the impugned judgement of the Family Court granting decree of divorce in favour of the husband.”

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 is established on record that the appellant/husband had not only caused cruelty to the respondent/wife, but he had also deserted her without any justifiable cause. Still further, it may be examined that the marriage between the parties was solemnized on 04.06.2014. The divorce petition was filed on 26.08.2019 and the decree of divorce was passed on 04.11.2024. The parties have been living separately since 31.03.2015. Since then, there has been no resumption of

the matrimonial ties between the parties. Though the appellant had pleaded before the learned Family Court that he had moved a petition under Section 9 *ibid*, yet he could not prove the same. Thus, the totality of circumstances indicates that there is no scope of resumption of matrimonial ties between the parties and marriage has become unworkable. Thus, apart from upholding the findings recorded by the learned Family Court on the grounds of cruelty and desertion, we also hold that the marriage between the parties had become unworkable and has reached the stage of beyond repair.

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.

(SUDHIR SINGH)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

December 05, 2024
mahavir

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