

2024:PHHC:167295-DB



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

FAO-5778-2024 (O&M)

Date of Decision: December 11, 2024

Manmeet Kaur

.....Appellant

versus

Narinder Pal Singh and another

.... Respondents

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

Present:- Mr. Munish Gupta, Advocate for the appellant.

SUDHIR SINGH, J.

CM-21995-CII-2024

For the reasons stated in application, same is allowed. Delay of 330 days in filing the appeal is condoned.

Main case (O&M)

Challenge in the present appeal is to the judgment and decree dated 07.11.2023 passed by learned Additional Principal Judge, Family Court, Patiala (for short ‘Family Court’), whereby, the petition under Section 13 of the Hindu Marriage Act, 1955 (for short ‘Act’) filed by respondent No.1-husband has been allowed, and marriage between the parties was dissolved by way of a decree of divorce on the ground of cruelty.

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 04.12.2000 according to Sikh rites and out of the said wedlock, two children, namely, Harveen Kaur and Simranjeet Singh were born. Initially, there were temperamental differences between the parties, but subsequently, on their shifting to Patiala, the relations became normal. Respondent No.1-husband had purchased property in the name of the appellant-wife and had always given priority to her and the children. It was noticed by respondent No.1-husband that in his absence, one young boy aged 25 years used to visit his house and whenever respondent No.1-husband would return, the said boy used to leave the matrimonial house. Upon inquiry, the appellant-wife had always changed the topic by putting one or the other excuse. It was further asserted that one day when respondent No.1-husband was at home, he saw the appellant-wife chatting with respondent No.2 on Facebook. Respondent No.1-husband requested the appellant-wife not to indulge in such kind of activities. After few days, respondent No.1-husband had found the appellant-wife carrying one mobile phone, which was given to her by respondent No.2. The appellant-wife told respondent No.1 that she wanted a divorce from him in order to marry respondent No.2. Respondent No.1-husband made all out efforts to save his matrimonial alliance, but all in vain. Respondent No.1 moved an application to the police wherein, the parents, friends and relatives of respondent No.2 had undertaken that respondent No.2 would not be interfering in the matrimonial life of the parties, but despite that the appellant-wife and

respondent No.2 continued to be in touch with each other. It was further alleged that in his absence, the appellant-wife and respondent No.2 managed to arrange duplicate keys of Godrej Almirah, opened the same and stole cash amount of Rs.3-4 lakhs and silver articles related to respondent No.1-husband's business. The appellant-wife had apologized for her said acts. At one stage, the parties had decided to dissolve the marriage by mutual consent and a petition under Section 13-B of the Act was filed and on 06.04.2017, the first motion statement was recorded and the appellant-wife had received all her dowry articles and Rs.2.50 lakhs. However, when the family of the appellant-wife came to know about the said divorce petition, they issued threats to respondent No.1-husband to implicate him in false litigations. It was further alleged that due to bad influence of the appellant-wife, the minor daughter of the parties had also indulged into objectionable activities and she used to talk on mobile secretly till late night with boys. Terming the aforesaid acts as cruelty, respondent No.1-husband had sought for a decree of divorce.

3. Upon notice, the appellant/wife and respondent No.2 entered appearance, but when the matter was fixed for filing written statement, respondent No.2 absented himself from the Court proceedings and consequent thereto, he was proceeded against *ex parte*, vide order dated 23.10.2018. However, upon an application for setting aside the said order, respondent No.2 was allowed to join proceedings, but he again absented himself from the proceedings and consequently, he was proceeded against *ex parte* vide order dated 16.07.2019.

4. In the written statement filed by the appellant-wife, she admitted the factum of marriage and birth of the children. However, it was asserted that divorce petition had been filed just to harass and humiliate and defame her. It was further asserted by her that she had been taunted for bringing insufficient dowry. It was further alleged that respondent No.1-husband had neglected the appellant-wife and the minor children and did not fulfill his duties of maintaining them. On 18.01.2017, respondent No.1-husband and his family members tried to dispossess the appellant-wife from her matrimonial home, but when the matter was complained to the police, the police, instead of taking action against respondent No.1-husband and his family members, initiated proceedings under Sections 107/151 of Cr. P.C. against her. It was further alleged that the appellant-wife was subjected to physical and mental cruelty, at the hands of respondent No.1-husband and his family members. It was further alleged that respondent No.1-husband was a man of suspicious nature and he used to doubt the appellant-wife and their minor children. He had also filed a suit against the minor daughter by levelling false allegations against her. The allegations regarding cruelty were denied.

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

- “1. Whether the respondent no.1 has treated the petitioner with cruelty, if so its effect? OPP
2. Whether the respondent no.1 has deserted the petitioner without any reasonable cause and excuse? OPP
3. Whether the respondent no.1 is living in adultery with respondent no.2? OPP

4. *Whether the present petition is not maintainable in the present form? OPR*
5. *Relief.”*

6. In evidence, respondent No.1-husband appeared as PW1 and examined SC Boota Singh as PW2 and Harpreet Singh as PW3, besides tendering Exhibit PW1-PW5 and Mark P1-P7 and also tendered in evidence Exhibit P1 to P5; Mark PA to PG; Mark P3/1, Mark P3/2, Mark P6 and Mark P7. On the other hand, the appellant-wife examined herself as RW1.

7. 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.

8. Learned counsel appearing on behalf of the appellant-wife has vehemently contended that while passing the impugned judgment/decreed, learned Family Court has failed to take into consideration that by not appearing in the petition under Section 13-B of the Act, after having taken an amount of Rs.2.5 lakhs, the appellant-wife has committed cruelty to respondent No.1-husband. It is further argued that learned Family Court has not gone into the second instances, which led to the non-appearance of the appellant-wife in the aforesaid proceedings. It is further argued that once learned Family Court has recorded a finding that respondent No.1-husband had failed to prove the ground of adultery, there was no occasion for recording finding that respondent No.1-husband was not expected to live in the company of the appellant-wife. Still further, it is argued that litigations had been initiated by the appellant-wife against respondent No.1-husband and his family

members due to the acts and conduct of respondent No.1 and his family members and it cannot be said that initiation of said litigations has caused them any cruelty. Thus, it was submitted that the impugned judgment/decreed is based on conjectures and surmises and the same is liable to be set aside.

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/decreed passed by learned Family Court requires any interference by this Court.

11. On the basis of evidence led by the parties, it was found that learned Family Court that respondent No.1-husband was able to prove cruelty on the part of the appellant-wife. It was found that there was no evidence of beating caused to the appellant-wife by respondent No.1-husband. On the basis of testimony of PW2-SC Boota Singh, who proved on record the police file Exhibit PW2-A, it was established that there was some link relations between the appellant-wife and respondent No.2, who had been in continuous touch with each other by making calls and exchanging text messages. It was further found that even respondent No.2 had confessed his guilt in the compromise dated 25.03.2015 (Mark P3/2) produced and proved by PW3-Harpreet Singh. It was further found in her cross-examination, the appellant-wife admitted that she had received an amount of Rs.2.5 lakhs and her dowry articles at the time of recording of first motion statement in the petition under Section 13-B of the Act on 06.04.2017, but she had intentionally withdrawn her consent

and did not transfer half share in the plot in the name of respondent No.1-husband despite having agreed to the same at the time of recording of their first motion statement in the Court. Thus, it was concluded by learned Family Court that withdrawal of the appellant-wife from the second motion statement despite having received the amount of Rs.2.5 lakhs and the entire dowry articles amounted to cruelty. It was also found that though respondent No.1-husband could not prove by way of leading cogent and convincing evidence that the appellant-wife was living an adulterous life, yet there being a link evidence establishing continuous conversation between the appellant-wife and respondent No.2, respondent No.1-husband could not be expected to live with her.

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 behaviour 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. 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.eRooham, 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. There seems to be no possibility of their re-union. 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."

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 acts and conduct of the appellant-wife certainly amounts to cruelty. The appellant-wife could not explain before learned Family Court as to what led to her withdrawal from the proceedings under Section 13-B of the Act. Though, as per settled law, the parties to the petition under Section 13-B can withdraw their consent before recording second motion statement, yet it must be shown that it was so done with a view to continue the matrimonial relationship between the parties. In the instant case, neither any such ground could be explained by the appellant-wife nor had she returned the amount of Rs.2.5 lakhs received by her. Even before this Court, learned counsel for the appellant-wife could not explain the conduct of the appellant-wife in withdrawing from proceedings under Section 13-B of the Act. Still further, no husband is expected to bear the unbecoming character of his wife when she indulges into suspicious activities with another man. Though as noticed above, the adultery could not be proved by respondent No.2-husband yet, the facts remain that the material and documents on record had clearly cast a dent on the trust between the parties, and thus, learned Family Court is

perfectly justified in holding that acts and conduct on the part of the appellant-wife had caused cruelty to respondent No.2-husband.

15. Apart from that, it may be noticed that the parties have been living separately since 2018 and since then there is no resumption of marital ties between the parties. Thus, apart from findings of cruelty, which has been recorded by learned Family Court, it is also observed that the marriage between the parties has become unworkable and has reached the stage of beyond repair. If they are called upon to reside with each other, the same would amount to mental cruelty to both of them.

16. 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. Hence, 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.

19. Apart from that, the appellant-wife will be at liberty to file execution proceedings in respect of non-payment of maintenance amount, if any, by respondent No.1-husband.

(SUDHIR SINGH)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

December 11, 2024
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No