2025:PHHC:047855-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-7886-2017 (O&M)
Date of decision: 18.03.2025

DHARMINDER KUMAR ...Appellant

Versus

PUSHPA DHIMAN ...Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present:- Mr. Brijender Kaushal, Advocate for appellant.

Mr. Karan Chand Dhiman, Advocate for respondent.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 16.10.2017, passed by the learned Additional District Judge (Family Court), Ambala (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, was dismissed.

2. The aforesaid petition had been filed by the appellant-husband, *inter alia*, pleading therein that his marriage with the respondent-wife was solemnized on 13.05.2013, according to Hindu rites. The appellant-husband claimed that shortly after the marriage, the respondent-wife had displayed cruel behaviour, including removing her wedding Chuda two days after the wedding and

throwing it into a drain in front of the house of appellant-husband, stating that she disliked him and that the marriage had been forced upon her by her parents. Despite the assurances of the appellant-husband to treat her well and cooperate with her, the respondent-wife refused to perform household duties; insulted the appellant-husband and his family, and had created disturbances in the family atmosphere. It was further asserted that the respondent-wife would leave the house without informing anyone and had threatened to involve the family of the appellant-husband in false criminal cases, claiming that her siblings were lawyers. During the festival of Diwali, the respondent-wife quarreled with the appellant-husband and his sister, forcing them out of the house. Further, it had been claimed that the respondent-wife had later filed false complaints against them at the Police Station, which were ultimately, found baseless after investigation. Furthermore, the respondent-wife had refused to engage in sexual relations with the appellant-husband, causing him mental distress and depression, which had negatively impacted his small "Light and Sound" business. It was also claimed that the parents of the respondent-wife had tried to intervene, but she refused to change her behaviour, and even the intervention of the Panchayat had no effect. The respondent-wife had left the matrimonial home in the year 2014, taking all her valuables and belongings.

3. Upon notice, the respondent-wife entered appearance and filed her written statement, admitting the factum of marriage. The appellant-husband and his family members had allegedly threatened to expel the respondent-wife from her matrimonial home, and to further

their ulterior motives, the appellant-husband, in collusion with his elder sister Geeta Dhiman, had filed a civil suit for eviction against the respondent-wife in the Civil Courts at Ambala. The appellant-husband had also disconnected the electricity supply to her room at House no. 2640, Bengali Mohalla, Ambala Cantt., forcing her to live in the dark for several days. Eventually, she had managed to secure a separate electricity connection with the help of local administration. The appellant-husband had not been providing any maintenance, and since her marriage, she had been supported by her own family. From the inception of their marriage, the appellant-husband and his family had been harassing and mistreating her over dowry demands. Irrespective of the said harassment, the respondent-wife had continued to live in the matrimonial home to save her marriage.

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

> "1. Whether the petitioner is entitled for decree of divorce on the grounds pleaded in the petition? OPP
>
> 2. Relief."

5. In evidence, the appellant-husband examined himself as PW-1 and had also examined PW2-Geeta Rani (his sister), besides tendering certain documents. On the other hand, the respondent-wife examined herself as RW1 besides tendering documents Mark-DW1/1 and Mark-DW1/2.

6. The learned Family Court, after taking into consideration the rival contentions and evidence on record, dismissed the petition filed by the appellant-husband, as noticed above.

7. Learned counsel for the appellant-husband has vehemently argued that the impugned judgment and decree passed by the learned Family Court are based on conjectures and surmises. It is further argued that the appellant-husband had led sufficient evidence on record to prove the cruelty on the part of the respondent-wife, but the same has been totally ignored by the learned Family Court. It is further argued that specific averments with dates and times had been mentioned by the appellant-husband in the divorce petition and the said assertions were duly corroborated by the oral and documentary evidence led by the appellant-husband. It is yet further argued that all the witnesses examined by the appellant-husband coupled with the documents on record, clearly proved that the respondent-wife had treated the appellant-husband with cruelty. It is further argued that the parties have been living separately since 2014 and since then, there has been no resumption of the matrimonial ties between them. Thus, it is argued that the marriage between the parties has become unworkable and the appellant-husband is entitled to a decree of divorce.

8. On the other hand, learned counsel appearing for the respondent-wife, while defending the impugned judgment and decree passed by the learned Family Court, has contended that the findings recorded by the learned Family Court are based on the evidence on record and that it was rightly found that the appellant-husband could not prove on record the alleged cruelty committed by her against the appellant-husband. It is further argued that it was for the appellant-husband to lead cogent and convincing evidence in respect of the

allegations contained in the divorce petition, which he had failed to do so and, therefore, no indulgence is required to be granted to the appellant-husband. It is further argued that merely because the parties have been living separately for a long period is no ground to grant the decree of divorce even when the respondent-wife is ready and willing to stay with the appellant-husband.

9. We have heard learned counsel for the parties and have also gone through the impugned judgment and decree. In our opinion, the following questions would arise for adjudication in the present appeal: -

> "1. Whether a long separation between the parties, rendering the marital bond as unworkable and its having been ruptured beyond repair, amounts to mental cruelty?
>
> 2. Whether the impugned judgment and decree passed by the learned Family Court, requires any interference?

10. The learned Family Court has dismissed the divorce petition filed by the appellant-husband holding that the appellant-husband was not able to prove and provide specific details (date, time, year) regarding the alleged incidents of cruelty, such as the respondent-wife throwing her wedding Chuda or making threats of suicide. It was further found that despite claims of the respondent-wife threatening to commit suicide and involving the family of the appellant-husband in false cases, no police complaints were filed. It has been further noted by the learned Family Court that the appellant-husband's sister (PW2), who corroborated the claim of the appellant-

husband, was an interested witness, and her allegations against the respondent-wife were found to be false and fabricated. The testimony of the respondent-wife also suggested that she was subjected to cruelty, including dowry demands and being harassed by the appellant-husband and his family. It has been further found that the respondent-wife expressed her willingness to live with the appellant-husband, while the appellant-husband refused to accept her back, which indicated that the breakdown of the marriage was caused by the appellant-husband himself. Lastly, it was observed by the learned Family Court that the appellant-husband did not attempt to reconcile through a petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, but directly filed for divorce.

11. Although the appellant-husband was unable to provide evidence of physical or mental cruelty or desertion before the Family Court, we must examine whether the marital relationship between the husband and wife has ruptured beyond repair, especially when the parties have been living separately for more than 11 years and during this period, there has been no resumption of their relationship and rather on account of protracted litigation, the same has got worsened day by day.

12. In the present case, efforts have been made firstly to resolve the matrimonial dispute through the process of mediation, which is one of the effective modes of alternative mechanism in resolving the personal dispute but the mediation between the parties failed. The parties were directed to be present before the Mediator

vide order dated 31.05.2019 passed by a Co-ordinate Bench of this Court. The said order reads as under:-

> *"Learned counsel for the appellant has handed over Rs. 11,000/- in cash to the respondent, who is present in Court.*
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> *On the joint request of counsel for the parties, the matter is referred to the Mediation and Conciliation Center of this Court for 09.08.2019.*
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> *Both the parties are directed to appear before the Mediator on the date fixed.*
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> *List before this Court on 04.10.2019."*

Joint and separate sessions were held between the parties on 16.08.2019, 28.08.2019, 10.09.2019, 16.09.2019 and 30.09.2019. The report of the Mediator dated 30.09.2019 stating that the mediation between the parties has failed reads as under :-

> *"Joint as well as separate sessions held with the parties. There is no chance for amicable settlement. Hence, the matter is sent back to the Hon'ble High Court for further adjudication."*

Furthermore, the Order dated 04.10.2019 passed by a Co-ordinate Bench of this Court also recorded regarding the failure of mediation between the parties and the said order reads as under:-

> *"Mediation has Failed.*
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> *Counsel for the parties pray for time to address arguments on merits.*
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> *Adjourned to 20.01.2020.*
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> *LCR, if not available, be requisitioned."*

13. Indisputably, the parties have been living separately since 2014. In the absence of any resumption of matrimonial obligations and cohabitation between the parties for a long period, there is no possibility of their reunion. The mediation proceedings before this Court, for an amicable settlement of the dispute between the parties, remained unsuccessful. This further speaks of the bitterness of their relationship. 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. 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.

15. In **Samar Ghosh v. Jaya Ghosh**, (2007) 4 SCC 511, it was held by the Hon'ble Supreme court that no uniform standard can be laid down as regards the cruelty, but certain instances of human

behaviour, relevant in dealing with the cases of `mental cruelty', were formulated. It was held by the Hon'ble Apex 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:
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> (*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.
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> (*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.
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> (*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.
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> (*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.
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> (*v*) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.
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> (*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.
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> (*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.
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> (*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."

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…"

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.
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> 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 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."

16. If the facts of the present case are examined in the light of the law laid down by the Hon'ble Supreme Court in the aforesaid judgments, it would come out that the parties, who have been living separately since 2014, if compelled to live together, would become a fiction supported by a legal tie and it would show scant regard for the feelings and emotions of the parties. This, in itself would amount to mental cruelty to both the parties.

17. Still further, there is nothing on record to indicate that since the date of filing of the divorce petition the respondent-wife had made any effort to join his company and/or had filed any petition under Section 9 of the Act for restitution of conjugal rights.

18. In view of the above, considering the totality of the facts and circumstances of the case, while deciding Question No.1, we hold that the marriage between the parties has become unworkable and has reached the stage of beyond repair and if the parties are called upon to stay together, it may lead to mental cruelty to both of them.

19. Consequently, the present appeal is allowed. The impugned judgment and decree passed by the learned trial Court, is set aside and the marriage between the parties is dissolved by a decree of divorce. Question No.2 is answered, accordingly.

20. Decree sheet be prepared accordingly.

21. We grant liberty to the respondent-wife to move an appropriate application before learned Family Court for grant of permanent alimony. If any such application is filed by the respondent-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.

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

[SUDHIR SINGH]
JUDGE

[SUKHVINDER KAUR]
JUDGE

18.03.2025
Himanshu

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