2025:PHHC:049913-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-107-2016 (O&M)
Reserved on 18.03.2025
Pronounced on: 09.04.2025

SHIV KUMAR ...Appellant

Versus

RIMPY RANI ...Respondent

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

Present:- Mr. Puneet Jindal, Sr. Advocate with
Ms. Malvi Aggarwal, Advocate for appellant.

Mr. Gaurav Sharma, Advocate for respondent.

SUDHIR SINGH, J.

CM-22063-CII-2024

For the reasons given in the application, the same is allowed and the documents Annexure A-1 and A-2, are taken on record.

FAO-M-107-2016

Challenge in the present appeal is to the judgment and decree dated 21.01.2016 passed by the learned Additional District Judge, Bathinda (for short 'the trial 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 10.03.2007 as per Hindu rites, but no child was born out of the said wedlock. It was alleged that the respondent-wife did not allow the appellant-husband to cohabit with her. She was a hot tempered lady and would threaten to end her life by committing suicide and involve the appellant-husband and his family members in a false criminal case. In September, 2007, some respectable persons visited the house of the respondent-wife and requested her to reside with the appellant-husband and she had assured them that she would becoming back within 15 days, but she failed to on her promise. In September 2008, she came to Rampura Phul and resided there only for 2 days. Again in September 2009, despite convening of a Panchayat, she did not return to the matrimonial home. She told the appellant-husband that she would not be residing in his company. It was further alleged that despite repeated requests, the respondent-wife did not join the company of the appellant-husband. Terming the aforesaid acts of the respondent-wife as cruelty and desertion, a decree of divorce had been sought for.

3. Upon notice, the respondent-wife entered appearance and filed her written statement, admitting the factum of marriage. However, she had levelled the allegations of demand of dowry against the appellant-husband and his family members. It was further alleged by her that she had been taunted, humiliated and harass by the appellant-husband and his family members for having brought insufficient dowry. She would leave for her parental home only during

the days of her examination. The allegations of committing suicide and issuing threats were denied.

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

i) Whether the petitioner is entitled for decree of divorce from the respondent on the grounds mentioned in the petition? OPP

ii) Whether the petition is not maintainable? OPR

iii) Whether the petitioner has got no cause of action to file the present petition? OPR

iv) Relief.

5. In evidence, the appellant-husband examined himself as PW-1 and had also examined PW2-Sukhmander Singh and PW3-Jiwan Kumar. On the other hand, the respondent-wife examined herself as RW1 and had also examined RW2-Bhim Sain.

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

7. Learned Senior counsel for the appellant-husband has vehemently argued that the findings of the learned Family Court are against the evidence on record inasmuch as the appellant-husband had proved on record the acts of cruelty and desertion by the respondent-wife. It is further argued that the learned Family Court has wrongly recorded a finding that none of the witnesses examined by the appellant-husband could state about the acts and occasions of the cruelty. It is further argued that the learned Family Court has wrongly

observed that the appellant-husband was getting like puppet in the hands of his mother and married sisters and on their instigation, he used to maltreat the respondent-wife. The learned Senior counsel further argues that it has wrongly been observed by the learned trial Court that the appellant-husband and his family members were not satisfied with the dowry given by the parents of the respondent-wife.

8. The learned Senior counsel further argues that though vide judgment dated 19.11.2019, passed by the learned Judicial Magistrate, 1st Class, Barnala, the family members of the appellant were acquitted of the charges under Sections 498-A/406 IPC, yet the appellant-husband was convicted and sentenced of the said offence. However, it is argued that in an appeal filed against the said conviction and sentence, the learned Additional Sessions Judge, Barnala, vide order dated 10.10.2024 acquitted, the appellant of the charges under Sections 498/406 IPC. It is, thus, argued that the very act of the respondent-wife in initiating criminal proceedings against the appellant-husband and his family members and their acquittal in the said proceedings clearly amounts to cruelty and the appellant-husband is entitled to the decree of divorce on the said ground itself. It is further argued that the parties have been living separately since 2008 and since then, there has been no resumption of the matrimonial ties between the parties and, thus, the marriage between the parties is become unworkable. Reliance is placed upon the judgment of In Rani Narasimha Sastry vs. Rani Suneela Rani, 2019 (Suppl.) Civil Court Cases 201.

9. On the other hand, learned counsel for the respondent-wife, while defending the judgment and decree passed by the learned Family Court, has argued that the findings recorded is based on evidence on record. It is further argued that the learned Family Court has rightly found that there was no substance in the allegations contained in the divorce petition and rather the appellant-husband at the instigation of his mother and married sisters used to commit cruelty to the respondent-wife. As regards initiation of the criminal proceedings against the appellant-husband and his family members, it is argued that the said proceedings had been initiated by the respondent-wife due to the atrocities committed by the appellant-husband and his family members. It is yet further argued that mere acquittal of the appellant-husband and his family members in the said criminal proceedings does not amount to cruelty, as the standard of prove is quite different in the criminal proceedings vis-a-vis. that in the civil proceedings. Accordingly, a prayer has been made for dismissal of the appeal.

10. We have heard learned counsel for the parties and have also gone through the record of the case including the impugned judgment and decree.

11. 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?

12. Though, the learned Family Court has found that the appellant-husband could not prove on record the acts of cruelty or desertion by the respondent-wife, yet the fact remains that in this case, the marriage between the parties was solemnized on 10.03.2007. The divorce petition was filed in the year 2014. In his divorce petition, the appellant-husband had specifically pleaded that the parties had been living separately since 2008. In her written statement, the respondent-wife did not counter the said assertion, meaning thereby that the parties have been residing separately for nearly about 17 years. During this period, there has been no resumption of their matrimonial ties.

13. 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 nearly about 17 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.

14. 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 05.04.2017 passed by a Co-ordinate Bench of this Court. The said order reads as under:-

> *"Registry had already handed over a demand draft as directed to the counsel for the respondent.*
>
> *Though the matter was earlier referred to Mediation and Conciliation Centre of this Court, respondent did not appear as notice was not served upon her, it is submitted by learned counsel for the respondent.*
>
> *We are of the considered view that there is some scope for an amicable settlement between the parties. Therefore, the matter stands referred to Mediation and Conciliation Centre of this Court for an amicable settlement.*
>
> *The parties are directed to appear before the Mediation and Conciliation Centre of this Court without fail on 25.04.2017."*

15. However, a perusal of the file shows that despite number of sessions of the Mediation, the said proceedings remained unsuccessful and the file was sent back to the Court.

16. Indisputably, the parties have been living separately since 2008. 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.

17. 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.

18. 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:
>
> (*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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> xxx xxx xxx

> 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.
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> 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 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."

19. Another fact which requires consideration by this Court is the passing of the orders by the criminal Courts in respect of the proceedings initiated by the respondent-wife against the appellant-husband and his family members. It may be noticed that vide judgment and order dated 19.11.2019 passed by the learned Judicial Magistrate 1st Class, Barnala, the family members of the appellant-husband were acquitted of the charges under Sections 498-A/406 IPC, but the appellant-husband was convicted and sentenced of the said charges. However, an appeal against the said judgment and order, has been allowed by learned Additional Sessions Judge, Barnala vide order dated 10.10.2024 and the appellant-husband has been acquitted of the charges framed against him.

20. 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 2008, 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.

21. 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.

22. 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.

23. 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.

24. Decree sheet be prepared accordingly.

25. 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.

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

[SUDHIR SINGH]
JUDGE

[SUKHVINDER KAUR]
JUDGE

09.04.2025
Himanshu

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