2025:PHHC:039337-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-1154-2015 (O&M)
Date of decision: 04.03.2025

VIKAS DHUPER ...Appellant

Versus

HENA DHUPER ...Respondent

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

Present:- Mr. Manish Soni, Advocate for appellant

Ms. Digantika Rao, Advocate for
Mr. Aman Pal, Advocate for the respondent

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 31.10.2014 passed by the learned District Judge, Family Court, Gurgaon (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. It may be noticed that during the pendency of the present appeal, vide order dated 27.01.2025, following directions *inter- alia* were issued by this Court to the learned Family Court:

"xx xx xx xx

Considering the aforesaid, it is directed the aforesaid execution petition pending before the learned Family Court

be disposed of, preferably, within a period of 03 weeks from today"

xx xx xx xx

3. In pursuance of the said order, the learned Principal Judge, Family Court, Gurugram, on 10.02.2025, while disposing of the execution application, passed the following order:-

"Respondent has appeared in person alongwith Shri Paras Yadav, Advocate. The respondent has made the payment of Rs. 19,50,000/- through cheque. He also got recorded his statement that, in case, cheque is dishonoured he would be liable to pay the double amount of cheque to the petitioner. The petitioner has received the cheque vide separate statement. I have seen the calculation of both the parties also. The respondent claimed that he has also paid the amount through three execution petition filed by the petitioners. He has also paid Rs.1,95,000/- in the Hon'ble High Court. That amount is still lying over there. He has shown the court entry to entry of bank account statements and claimed that he has cleared all the outstanding amount. Petitioner is in habit of filing the wrong calculation. He also furnished the affidavit that in case there is any outstanding he is ready to make the payment. He claimed that he has already paid the excess amount to the tune of Rs. 2,60,000/-. The total amount has already been paid by him in four lots. First, he paid Rs.19,90,000/-, he paid Rs. 1,95,000/-, Rs.3,25,000/- and today he has been paying Rs.19,50,000/-. In this way the total amount has been paid Rs.44,60,000/- to the petitioner. The total amount was required to be paid Rs.42 Lakhs. He has

paid a sum of Rs.2,60,000/- extra amount to the petitioner till today. He claimed that this amount be adjusted in forthcoming maintenance amount.

Since he has made the payment through the cheque. The present execution petition stands disposed off. It is also made clear that in case cheque is dishonoured, he shall be liable to pay the double the amount and face the consequences as per law. It is also made clear that the excess amount paid by the respondent shall be liable to be adjusted in the forthcoming maintenance amount. This payment shall be subject to the objection if any on the part of the petitioner, in case petitioner proves, that she has to recover extra more amount in that case the respondent shall be bound by the undertaking furnished by him today in the court in the shape of affidavit. File be completed and consigned to the record room"

3. Considering the fact that since there is no maintenance amount pending now, the learned counsel for the appellant-husband prays that the appeal be decided on merits. Thus, we proceed to decide the main appeal.

4. The aforesaid divorce petition had been filed by the appellant-husband, *inter-alia*, pleading therein that his marriage with the respondent-wife was solemnized on 12.11.2002, as per Hindu rites and out of the said wedlock, two children were born. The appellant-husband alleged that the respondent-wife had a history of problematic behaviour, including theft of jewellery in the year 2004, to which she later apologized. Further, the respondent-wife also consumed alcohol

and would frequently leave the house without informing anyone and on being confronted, she became abusive. It was also asserted that the respondent-wife neglected her wifely duties, such as maintaining the house, and got engaged in petty acts like blocking the sewerage to harass the appellant-husband's family. Furthermore, on 18.03.2011, the respondent-wife left the house under the pretext of her mother being unwell. Upon checking, the appellant-husband found her in a bedroom with a friend of the appellant-husband, which left him in an utter shock. It was further asserted that the respondent-wife frequently hosted liquor parties and took sleeping pills, leading to an attempted suicide incident for which, she had later apologized and promised a better behaviour after a psychiatric evaluation. On 25.01.2012, the respondent-wife along with their children, left the appellant-husband, taking valuables, clothes, and the children's passports. However, she continued threatening the appellant-husband, who did try to resolve the situation amicably, but to no avail.

6. Upon notice, the respondent-wife appeared and filed her written statement, admitting the factum of marriage and birth of the children. However, it was asserted by her that she along with her two children was residing at her parental house. The respondent-wife claimed that the appellant-husband and his family had been demanding and receiving additional dowry from her and her parents, and, thus, he should not be allowed to benefit from his own wrongs. Rest of the allegations were denied in toto. It was further pleaded by the respondent-wife that she had lodged DDR No. 19 on 21.01.2012 and was medically examined at Civil Hospital, Gurgaon, leading to

the registration of FIR No. 36 on 15.02.2012, under sections 498-A, 406, 323, and 506 IPC against the appellant-husband and his family. The respondent-wife also alleged that the appellant-husband's brother, Rahul, had spoken to her parents, but he himself had an inappropriate interest in her. The respondent-wife further maintained that she had always treated his family with respect and had never organized parties or threatened the appellant-husband. It was further the case of the respondent-wife that she had taken medication only under medical advice and the mother of the appellant-husband had been taking her to a Psychiatrist without informing her parents and had been administering drugs to her. The respondent-wife further pleaded that she had tried to resolve the matter with the appellant-husband, but he refused to settle, claiming that there were several women eager to marry him.

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

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

ii) Relief.

8. In evidence, the appellant-husband examined himself as PW-1 and Ms. Mamta, DRK, District Courts Gurgaon as PW2 besides tendering document Ex. P1. On the other hand, the respondent-wife examined herself as RW1 and had also tendered documents Ex. R1 to Ex. R13 and Mark A to Mark D.

9. 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.

10. Learned counsel for the appellant-husband has vehemently contended that the respondent-wife had lodged a criminal case bearing FIR No.36 dated 15.02.2012, under Sections 323, 498A, 406, 506 and 34 IPC against the appellant-husband, which culminated into acquittal vide judgment dated 29.08.2017 passed by the trial Court. This has itself caused mental cruelty to the appellant-husband. Further, he submits that parties have been living separately since 2012, and there is nothing left in their marriage, and it has become a dead wood.

11. On the other hand, learned counsel for the respondent-wife, while defending the findings recorded by the learned Family Court, submits that the allegations levelled by the appellant-husband in the divorce petition, were general and vague in nature and the same could not be proved by way of any cogent and convincing evidence. Further, the learned counsel for the respondent-wife submits that the appellant-husband cannot take advantage of his own wrongs, inasmuch as it was the mother of the appellant-husband who had administered her drugs without her consent or knowledge and had declared her as mentally ill.

12. We have heard learned counsel for the parties and have also gone through the records of the case, including 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?

13. The learned Family Court has found that the appellant-husband and the respondent-wife presented contradictory statements regarding their relationship. The appellant-husband had levelled allegations against the respondent-wife questioning her moral character, while the respondent-wife levelled similar accusations against the appellant-husband. It was found by the learned Family Court that apart from their self-serving statements, there was no direct or credible evidence against either parties. It was further found by the learned Family Court that the appellant-husband failed to prove that the respondent-wife's conduct justified grant of a decree of divorce. Moreover, the appellant-husband failed to prove that the behaviour attributed to the respondent-wife, caused him significant mental distress, making it impossible to live with her. Further, it was found that from the evidence presented, it could not be concluded that the respondent-wife's behaviour was such that the appellant-husband could not reasonably tolerate the respondent-wife and continue living with her. Furthermore, there was no credible evidence to suggest that the respondent-wife's alleged conduct severely impacted the appellant-husband's physical or mental well-being to a degree that would justify their separation. Regarding the claim of desertion, it has

been observed that no substantial evidence has been provided. Hence, the divorce petition was dismissed, as noticed above.

14. 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 15 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.

15. 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 Mediation Centre vide order dated 15.07.2019 passed by the Co-ordinate Bench of this Court. Separate sessions were held between the parties on 17.02.2020 and 18.02.2020. The report dated 18.02.2020 of the Mediator recorded, but the settlement could not be reached. The said report reads as under:-

> *"Petitioner did not come present. However, despite various efforts, the parties could not reach at any amicable settlement. Hence, the file is sent back to the hon'ble High Court."*

16. Indisputably, the parties have been living separately since 2012. 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.
>
> 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.
>
> 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.

xx xx xx

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. 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 2012, 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.

20. It may further be noticed that the appellant-husband stands acquitted of the charges against him under Sections 323, 498-A, 406, 506 and 34 IPC passed by the Judicial Magistrate 1st Class, Gurugram vide judgment dated 29.08.2017. Even an appeal filed by the respondent-wife, against the said judgment, was dismissed by the learned Additional Sessions Judge, Gurugram, vide order dated 16.10.2024. In **Rani Narasimha Sastry vs. Rani Suneela Rani, 2019 (Suppl.) Civil Court Cases 201**, it has been held by the Hon'ble Supreme Court that if the wife initiates criminal proceedings against the husband and his family members and if ultimately they are acquitted of the charges framed against them, the same amounts to cruelty and divorce can very well be granted on the said ground. In our opinion, once the appellant-husband stands acquitted in the aforesaid FIR and even the appeal against the said acquittal, has also been dismissed, the same amounts to cruelty.

21. Still further, there is nothing on record to indicate that since the date of filing of the divorce petition by the appellant-husband, the respondent-wife had made any effort to join his company

or come back to the matrimonial home 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, 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. Question No.1 is answered in affirmative.

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

24. Further, the respondent-wife will be at liberty to move an application under Section 25 of the Hindu Marriage Act, seeking 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.

25. Decree sheet be prepared accordingly.

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

[SUDHIR SINGH]
JUDGE

[SUKHVINDER KAUR]
JUDGE

04.03.2025
Himanshu/A

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