

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-347 of 2013

Date of decision: 3.12.2014

Pratham Singh

.....Appellant

Vs.

Rajesh

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE SNEH PRASHAR**

Present: Mr. Vikas Kumar, Advocate for the appellant.
Mr. Shiv Kumar, Advocate for the respondent.

Ajay Kumar Mittal, J.

1. This appeal has been preferred by the appellant – husband against the judgment and decree dated 3.10.2013 passed by the trial court, whereby the petition filed by him under section 13 of the Hindu Marriage Act, 1955 (in short, “the Act”) for dissolution of marriage on the grounds of cruelty and desertion has been dismissed.

2. A few facts relevant for the decision of the controversy involved as available on the record may be noticed. Marriage between the parties was solemnized on 8.7.1992 according to Hindu rites and ceremonies. The appellant was under JBT training from 28.9.1992 to July 1994 and came into government job on 14.10.1995. No issue was born out of the said wedlock. The parties lastly resided together as husband and wife at the house of the appellant at Aurangabad. The marriage was simple. From the very beginning, behaviour of the respondent was not good towards the appellant and his family members.

She was interested to live in her parental house. The appellant is M.A.B.Ed and physically handicapped person. The respondent never liked him and disregarded him. She also wanted to live separately with the appellant from his parents. The appellant even accepted her demand and started living at house No.756 w.e.f 22.10.1995. Despite that, her behaviour did not change. She used to curse the appellant to be a handicapped person. On 18.12.1997, she gave beating to the appellant with lathi blows. A complaint dated 18.12.1997 was lodged by the appellant against the respondent. In 1999, the respondent left the matrimonial home. On the request of the appellant and his family members, she came back. On 14.10.2000, she again left the matrimonial home. The appellant felt shocked when he and his family members were got involved in a false criminal case by lodging FIR dated 27.3.2001 by the respondent under Sections 498A, 406, 506 IPC. The appellant was arrested on 4.4.2001 and remained in jail for four days till 8.4.2001 before getting bail. However, the appellant and his family members were acquitted vide order dated 28.7.2010 by the trial court. The appeal filed by the respondent against acquittal was also dismissed. She filed application under section 125 Cr.PC for maintenance. She was granted Rs.3000/- per month as maintenance which was paid by the appellant regularly. The respondent also filed complaint under sections 494/109 IPC against the appellant and his family members which was also dismissed. Ultimately, the appellant filed petition under Section 13 of the Act for dissolution of marriage on the grounds of cruelty and desertion. Upon notice, the respondent appeared and filed written statement controverting the averments made in the petition. The trial court after examining the entire evidence on record dismissed the

petition vide impugned judgment and decree dated 3.10.2013. Hence the instant appeal by the appellant husband.

3. We have heard learned counsel for the parties and perused the record.

4. Learned counsel for the appellant husband submitted that the trial court erred in law in dismissing the petition under section 13 of the Act filed by the appellant. The respondent wife is living separately since 14.10.2000. No issue was born out of the wedlock. Her behaviour towards the appellant and his family members was not good from the very beginning. She had no intention to live with the appellant. She used to curse the appellant being a handicapped person. The behaviour of the respondent caused mental cruelty to the appellant. Reliance was placed on judgments in **Vidhya Vishwanathan vs. Kartik Balakrishnan, 2014 (4) RCR 563** and **Vishwanath Agrawal vs. Sarla Vishwanath Agrawal, (2012) 7 SCC 288**. In view of pronouncement of the Apex Court in **K.Srinivas Rao vs. D.A.Deepa, (2013) 5 SCC 226**, it was contended that cruelty was caused by the respondent-wife as false criminal complaint filed by her against the appellant and his family members had resulted in their acquittal in proceedings under section 406, 498A, 506 of the Indian Penal Code and the appellant is entitled to the grant of divorce.

5. On the other hand, learned counsel for the respondent supported the impugned judgment and decree.

6. Section 13(1)(ia) of the Act empowers the Court to dissolve the matrimonial ties between the parties by a decree of divorce on a petition by either spouse where the said spouse has been treated with cruelty after the solemnization of the marriage. Cruelty has not been

defined in the Act but various pronouncements of the Apex Court and other High Courts have outlined the scope of the term 'cruelty'. Cruelty is evident where one spouse treats the other and manifests such feelings towards him or her as to cause reasonable apprehension that it will be harmful or injurious to live with the other spouse. Cruelty may be physical or mental. Whether a spouse is inflicted with physical cruelty or not, it can be judged on the basis of direct evidence whereas mental cruelty is to be inferred on analyzing the factual matrix of each case and drawing conclusion thereon.

7. Further, in **Vidhya Vishwanathan's case (supra)**, it was held by the Apex Court as under:-

“13. In **Vinita Saxena vs. Pankaj Pandit (2006) 3 SCC 778** regarding legal proposition on aspect of cruelty has made the following observations:

“31. It is settled by a catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the section. It is to be determined on whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such wilful treatment of the party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances

of the case.

32. The word “cruelty” has not been defined and it has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.”

8. Still further, in **Vishwanath Agrawal's case (supra)**, it was observed as under:-

“24. In **Shobha Rani v. Madhukar Reddi**, while dealing with 'cruelty' under Section 13(1)(ia) of the Act, this Court observed that the said provision does not define 'cruelty' and the same could not be defined. The 'cruelty' may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem to determine it. It is a question of fact and degree. If it is mental, the problem presents difficulty. Thereafter, the Bench proceeded to state as follows:

“4.....First, the enquiry must begin as to the

nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.”

25. After so stating, this Court observed in Shobha Rani case about the marked change in life in modern times and the sea change in matrimonial duties and responsibilities. It has been observed that:

“5.... when a spouse makes a complaint about treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatized as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It

may also depend upon their culture and human values to which they attach importance.”

26. Their Lordships in Shobha Rani case referred to the observations made in ***Sheldon v. Sheldon (1966) 2 WLR 993***, wherein Lord Denning stated, “the categories of cruelty are not closed”. Thereafter, the Bench proceeded to state thus: (Shobha Rani case, (1988) 1 SCC 105) SCC p. 109, paras 5-6)-

“5.Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty.

6. These preliminary observations are intended to emphasise that the court in matrimonial cases is not concerned with ideals in family life. The court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord Ried observed in ***Gollins v. Gollins, 1964 AC 644***:

“....In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial

offence to fall below the standard of the reasonable man (or the reasonable woman).

We are dealing with this man or this woman.”

(emphasis in original).

27. In *V. Bhagat v. D. Bhagat (Mrs.)*, (1994) 1 SCC

337, a two-Judge Bench referred to the amendment

that had taken place in Sections 10 and 13(1)(ia) after

the Hindu Marriage Laws (Amendment) Act, 1976 and

proceeded to hold that the earlier requirement that

such cruelty has caused a reasonable apprehension

in the mind of a spouse that it would be harmful or

injurious for him/her to live with the other one is no

longer the requirement. Thereafter, this Court

proceeded to deal with what constitutes mental cruelty

as contemplated in Section 13(1)(ia) and observed

that mental cruelty in the said provision can broadly

be defined as that conduct which inflicts upon the

other party such mental pain and suffering as would

make it not possible for that party to live with the

other. To put it differently, the mental cruelty must be

of such a nature that the parties cannot reasonably be

expected to live together. The situation must be such

that the wronged party cannot reasonably be asked to

put up with such conduct and continue to live with the

other party. It was further observed, while arriving at

such conclusion, that regard must be had to the social

status, educational level of the parties, the society

they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances. What is cruelty in one case may not amount to cruelty in another case and it has to be determined in each case keeping in view the facts and circumstances of that case. That apart, the accusations and allegations have to be scrutinized in the context in which they are made. Be it noted, in the said case, this Court quoted extensively from the allegations made in the written statement and the evidence brought on record and came to hold that the said allegations and counter allegations were not in the realm of ordinary plea of defence and did amount to mental cruelty.

28. In ***Praveen Mehta v. Inderjit Mehta, (2002) 5 SCC 706***, it has been held that mental cruelty is a state of mind and feeling with one of the spouses due to behaviour or behavioural pattern by the other. Mental cruelty cannot be established by direct evidence and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment, and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The facts and circumstances are to be assessed emerging from

the evidence on record and thereafter, a fair inference has to be drawn whether the Petitioner in the divorce petition has been subjected to mental cruelty due to the conduct of the other.

29 In ***Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate (2003) 6 SCC 334***, it has been opined that a conscious and deliberate statement levelled with pungency and that too placed on record, through the written statement, cannot be so lightly ignored or brushed aside.

30. In ***A. Jayachandra v. Aneel Kaur, (2005) 2 SCC 22***, it has been ruled that the question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status and environment in which they live. If from the conduct of the spouse, it is established and/or an inference can legitimately be drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse about his or her mental welfare, then the same would amount to cruelty. While dealing with the concept of mental cruelty, enquiry must begin as to the nature of cruel treatment and the impact of such treatment in the mind of the spouse. It has to be seen whether the conduct is such that no reasonable person would tolerate it.

31. In ***Vinita Saxena v. Pankaj Pandit, (2006) 3***

SCC 778, it has been ruled that as to what constitutes mental cruelty for the purposes of Section 13(1)(ia) will not depend upon the numerical count of such incident or only on the continuous course of such conduct but one has to really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude necessary for maintaining a conducive matrimonial home.

32. In **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511**, this Court, after surveying the previous decisions and referring to the concept of cruelty, which includes mental cruelty, in English, American, Canadian and Australian cases, has observed that the human mind is extremely complex and human behaviour is equally complicated. Similarly, human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in the other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious belief, human values and their value system. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through

print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances.

33. In ***Suman Kapur v. Sudhir Kapur, (2009) 1 SCC 422***, after referring to various decisions in the field, this Court took note of the fact that the wife had neglected to carry out the matrimonial obligations and further, during the pendency of the mediation proceeding, had sent a notice to the husband through her advocate alleging that he had another wife in USA whose identity was concealed. The said allegation was based on the fact that in his income-tax return, the husband mentioned the "Social Security Number" of his wife which did not belong to the wife, but to an American lady. The husband offered an explanation that it was merely a typographical error and nothing else. The High Court had observed that taking undue advantage of the error in the "Social Security Number", the wife had gone to the extent of making serious allegation that the husband had married an American woman whose "Social Security Number" was wrongly typed in the income-tax return of the

husband. This fact also weighed with this Court and was treated that the entire conduct of the wife did tantamount to mental cruelty.”

9. In **K.Srinivas Rao's case (supra)**, similar view was taken.

10. A perusal of the record shows that the marriage of the appellant with the respondent was solemnized in the year 1992. No issue was born out of the wedlock. The appellant being a physically handicapped person, the respondent used to curse him. She never liked him. She even gave beating to him with lathi. From the very beginning, her attitude was not good towards the appellant and his family members. She always wanted to live in her parental house whenever the appellant was on training. She left the matrimonial home several times and on the efforts made by the appellant and his family members, she used to come back. She finally left the matrimonial home on 14.10.2000 and had deserted the husband. Further, her complaint under sections 498A, 406, 506 IPC against the appellant and his family members was dismissed. Even appeal against the aforesaid order was also dismissed. Her complaint under sections 494/109 IPC remained unsuccessful. The trial court thus was not right in dismissing the petition filed by the appellant husband. It has been authoritatively held by the Apex Court in **K. Srinivas Rao's case (supra)** and a Division Bench of this Court in **Imlesh v. Amit, AIR 2014 Punjab and Haryana 89** that where the wife files false criminal complaint against the husband and his family members under Sections 406, 498A of the Indian Penal Code which results in their acquittal, this act of the wife causes mental cruelty and the husband is entitled to a decree of divorce under Section 13(1)(ia) of the Act. Considering the overall facts and circumstances of the case, we

do not find any ground to uphold the findings recorded by the trial court. As a result, we set aside the impugned judgment and decree dated 3.10.2013. The appeal filed by the appellant stands allowed. The appellant is granted decree of divorce on the grounds of cruelty and desertion caused by the respondent-wife.

(Ajay Kumar Mittal)
Judge

December 03, 2014
gbs

(Sneh Prashar)
Judge



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