

Gurbux Singh vs Harminder Kaur on 8 October, 2010

Equivalent citations: AIR 2011 SUPREME COURT 114, 2010 AIR SCW 6160 2011 AIR CC 1845 (SC), 2011 AIR CC 1845 (SC), 2010 AIR SCW 6160, 2011 (2) AIR JHAR R 320, (2011) 1 PAT LJR 75, 2010 (14) SCC 301, (2011) 1 ICC 578, (2010) 83 ALL LR 466, (2011) 4 CAL HN 22, (2011) 1 HINDULR 21, (2011) 1 MAD LW 115, (2011) 1 ALL WC 735, (2010) 4 CURCC 214, (2010) 4 CIVILCOURTC 724, (2011) 1 PUN LR 130, (2010) 10 SCALE 659, (2010) 2 CLR 1093 (SC), (2010) 2 DMC 706, (2011) 2 KER LJ 1, (2010) 8 MAD LJ 1011, (2011) 2 MARRILJ 92, (2011) 1 RAJ LW 829, (2010) 4 RECCIVR 822, (2011) 1 WLC(SC)CVL 101, (2010) 95 ALLINDCAS 34 (SC), (2011) 1 BOM CR 235

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Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5010 OF 2007

Gurbux Singh

.... Appellant (s)

Versus

Harminder Kaur

.... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

1) The appellant, a Principal in ITI College, Sirhali, Amritsar, has approached this Court against the judgment and final order dated 11.05.2007 of the High Court of Punjab & Haryana at Chandigarh in FAO No. 252-M of 2006 whereby the learned single Judge dismissed the appeal filed by him against the judgment and order dated 11.10.2006 of the Additional District Judge (Ad hoc), Amritsar, dismissing the petition filed under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act") for a decree of divorce against the respondent-

wife, who is working as a Librarian in Government Institute DIET at Verka, Amritsar on the ground of 'cruelty'. Both the courts have rejected the claim of the appellant herein on the ground that he has failed to prove 'cruelty' sufficient for grant of a decree of divorce.

The case of the Appellant

2) (a) On 23.11.1997, the appellant got married with the respondent at Amritsar according to Sikh rites and customs. Even on the date of marriage, the respondent had been working as a Librarian in a Government Institute DIET at Verka, Amritsar. From the very beginning, the respondent expressed her dislike towards the appellant and his family and gradually started misbehaving with them. She started exhibiting short-

tempered behaviour and treated the parents of the appellant with cruelty and disrespect. The father of the appellant is aged about 80 years and his mother is more than 75 years. In the month of January 1998, on the first Lohri festival after their marriage, the respondent being annoyed with the appellant on a trivial issue, abused his mother in filthy language in the presence of their relatives and neighbours causing immense pain to the entire family. Since then, the respondent started insisting that she cannot live with the parents of the appellant who are mental and nuisance in her life and pressed upon the appellant to have a separate abode from his parents.

(b) On 15.05.1999, a male child was born out of the wedlock. Even after the birth of the child, there was no improvement in the behaviour of the respondent. She always insisted that she being financially independent is not in need of the appellant and his family.

(c) Just five days before the third birthday of their child i.e. on 10.05.2002, the respondent, without any justifiable reason left the matrimonial home leaving the child unattended and went to her parents house and staying there since then. The appellant having failed in his efforts to bring back the respondent to the matrimonial home and in view of the consistent cruelty filed HMA Case No. 19 of 2003 before the Addl. District Judge, Amritsar, praying for a decree of divorce under Section 13 of the Act.

The stand of the Respondent

3) In reply to the divorce petition, while denying all the averments made by the appellant, the respondent has stated that the appellant is a greedy person and not satisfied with the dowry articles

received in marriage. He always misbehaved and maltreated her and abused on several occasions. She alleged that the appellant is a habitual drinker and used to threaten her to kill with poison. She also alleged that the appellant pulled her hair and gave merciless beatings in the presence of his parents.

Decision of the District Court and High Court

4) By judgment dated 11.10.2006, the Additional District Judge, Amritsar, after analyzing the plea of both the parties, oral and documentary evidence concluded that the appellant-husband failed to substantiate the allegations of 'cruelty' and dismissed his divorce petition.

Aggrieved by the same, the appellant approached the High Court by filing FAO No. 252-M of 2006. The learned single Judge of the High Court, by the impugned order dated 11.05.2007, while agreeing with the conclusion of the Additional District Judge dismissed the appeal filed by the appellant. Questioning the above said orders, the appellant has filed the present appeal by way of special leave petition.

5) Heard Mr. Vinay Kumar Garg, learned counsel for the appellant and Mr. Seeraj Bagga, learned counsel for the respondent.

6) The only question for consideration in this appeal is whether the appellant-husband has made out a case for divorce on the ground of 'cruelty' by the respondent-wife.

7) Section 13 of the Act specifies the grounds on which a decree for divorce may be obtained by either party to the marriage. Though in the divorce petition filed before the Additional District Judge, Amritsar in HMA No. 19 of 2003, the appellant had sought divorce merely mentioning Section 13 of the Act for dissolution of marriage by decree of divorce, and did not specify the grounds on which he is entitled to decree of divorce. In the petition, the appellant has highlighted only one aspect, namely, that after the marriage, in the month of January 1998, on first festival of Lohri, when they were enjoying the festival, the respondent-wife abused his mother and the father in the presence of relatives and neighbours. In para 6 of the petition, the appellant has alleged that:

".....She called nuisance, idiot and mental to the parents of the petitioner and the respondent openly said that she did not want to live with the petitioner if he live with his old parents."

In para 10, the appellant has stated:

"That on 10th May of 2002, the respondent left her matrimonial home without giving any information to any member and she also left her child in the matrimonial home this shows that the respondent did not have any love and affections towards petitioner and his family members. She is living in her parental house for the last more than one year. Hence, the necessity has been arisen to file the present petition....."

Except the above allegations, the appellant has not highlighted any other instance(s) about cruelty by the respondent. Though learned counsel for the appellant attempted to argue "desertion", in the absence of any plea/evidence and material, we disallowed him to pursue the said point.

8) In the reply to the petition under Section 13 of the Act, the respondent has highlighted her stand and in fact denied all the allegations against her. She also projected her case that the custody of the child was forcibly taken by the appellant when she returned from her matrimonial home. She also highlighted that the appellant used to force her to bring cash from her parents as he wanted to purchase a car in the month of February 2000. When she refused to bring cash, she was mercilessly beaten by the appellant. She also stated that in February 4, 2000, her parents gave Rs. 50,000/- to the appellant and thereafter the appellant agreed to keep the respondent in her matrimonial home. She also alleged that the appellant is habitual of taking liquor and under influence of liquor, he used to beat her. She further alleged that the appellant's maternal uncle's daughter used to interfere in their family affairs.

9) Apart from the above pleadings, both parties filed statement in the form of an affidavit/petition and also let in evidence reiterating their respective pleas. As discussed earlier, the only instance highlighted by the appellant for divorce was that the respondent-wife abused his parents on the day of festival of Lohri in the presence of relatives and neighbours.

10) In *Samar Ghosh vs. Jaya Ghosh*, (2007) 4 SCC 511, a three-Judge Bench of this Court while considering Section 13(1)(i-a) of the Act laid down certain guidelines.

The analysis and ultimate conclusion are relevant which reads as under:-

"98. On proper analysis and scrutiny of the judgments of this Court and other courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of "mental cruelty" within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

99. 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 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 beliefs, human values and their value system.

100. 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 a 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 while taking aforementioned factors in consideration.

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, discomode 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."

11) A Hindu marriage solemnized under the Act can only be dissolved on any of the grounds specified therein. We have already pointed out that in the petition for dissolution of marriage, the appellant has merely mentioned Section 13 of the Act and in the body of the petition he highlighted certain instances amounting to cruelty by the respondent-wife. Cruelty has not been defined under the Act. It is quite possible that a particular conduct may amount to cruelty in one case but the same conduct necessarily may not amount to cruelty due to change of various factors, in different set of circumstances. Therefore, it is essential for the appellant, who claims relief, to prove that a particular/part of conduct or behaviour resulted in cruelty to him. No prior assumptions can be made in such matters. Meaning thereby that it cannot be assumed that a particular conduct will, under all circumstances, amount to cruelty, vis-à-vis the other party. The aggrieved party has to make a specific case that the conduct of which exception is taken amounts to cruelty. It is true that even a single act of violence which is of grievous and inexcusable nature satisfies the test of cruelty. Persistence in inordinate sexual demands or malpractices by either spouse can be cruelty if it injures the other spouse. There is no such complaint by the appellant. In the case on hand, as stated earlier, the appellant has projected few instances in which, according to him, the respondent abused his parents. We have verified all the averments in the petitions, reply statement, written submissions as well as the evidence of both parties. We are satisfied that on the basis of such instances, marriage cannot be dissolved.

12) The married life should be assessed as a whole and a few isolated instances over certain period will not amount to cruelty. The ill-conduct must be precedent for a fairly lengthy period where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, one party finds it extremely difficult to live with the other party no longer may amount to mental cruelty.

Making certain statements on the spur of the moment and expressing certain displeasure about the behaviour of elders may not be characterized as cruelty. Mere trivial irritations, quarrels, normal wear and tear of married life which happens in day to day life in all families would not be adequate for grant of divorce on the ground of cruelty.

Sustained unjustifiable and reprehensible conduct affecting physical and mental health of the other spouse may lead to mental cruelty. Both the appellant and respondent being highly qualified persons, the appellant being Principal in ITI College, the respondent working as a Librarian in a Government Institute, an isolated friction on some occasion like festival of Lohri even in the presence of others cannot be a valid ground for dissolving the marriage.

13) Learned counsel appearing for the appellant by drawing our attention to certain allegations made by the respondent-wife in the reply to the petition under Section 13 of the Act before the Addl. District Judge submitted that by considering all these aspects it is just and reasonable to consider and grant divorce on the ground of cruelty. In support of the same, he relied on the decision of this Court in Vijaykumar Ramchandra Bhate vs. Neela Vijaykumar Bhate, (2003) 6 SCC 334. No doubt, in that decision, this Court has held that allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfying the requirement of law has also to be taken note of while considering the claim of either party. In the case on hand, it is true that the respondent-wife has made certain allegations against her husband-appellant. However, admittedly based on the same, the trial Court has not framed any issue and no evidence let in in support of the same. In such circumstances, the said decision is not helpful to our case. Admittedly, no such issue was framed by the trial Court or any point determined by the High Court based on such averments in the reply/written statement. Accordingly, we reject the said contention.

14) As regards the allegations about beating her child and not feeding him, the High Court, after analyzing the entire materials, disbelieved the same. It is also brought to our notice that the appellant condoned the alleged act of cruelty as he wanted to bring back the respondent to his house. As such, the allegations of cruelty do not appear to be truthful. It is also proved that the appellant is not interested to keep the respondent as his wife and he wants divorce by any means. As observed earlier, except the grounds enumerated in Section 13, a Hindu marriage solemnized under the Act cannot be dissolved on any other grounds.

15) Finally, a feeble argument was made that both the appellant and respondent were living separately from 2002 and it would be impossible for their re-union, hence this Court exercising its jurisdiction under Article 142 of the Constitution their marriage may be dissolved in the interest of both parties. Though, on a rare occasion, this Court has granted the extraordinary relief de hors to the grounds mentioned in Section 13 in view of the fact that the issue has been referred to a larger Bench about permissibility of such course at present, we are not inclined to accede to the request of

the appellant. If there is any change of law or additional ground included in Section 13 by the act of Parliament, the appellant is free to avail the same at the appropriate time.

16) In the light of the above discussion, we are unable to accept the claim of the appellant, on the other hand, we are in entire agreement with the conclusion arrived at by the Addl. District Judge as well as the High Court.

Consequently, the appeal fails and the same is dismissed with no order as to costs.

.....J. (P. SATHASIVAM)J. (DR. B.S. CHAUHAN)
NEW DELHI;

OCTOBER 8, 2010.