Punjab-Haryana High Court
Smt. Gurdip Kaur vs Balbir Singh on 1 December, 1994
Equivalent citations: II (1995) DMC 108
Author: V Bali
Bench: S Kurdukar, V Bali
JUDGMENT V.K. Bali, J.

1. Appellant-wife in this appeal filed by her under Clause X of the Letters Patent craves setting-aside of judgment and order dated April 26, 1990 passed by learned Single Judge of this Court in F.A.O. No. 50-M of 1989 confirming the judgment passed by the Matrimonial Court dissolving the marriage of the parties in a petition filed by respondent-Balbir Singh for divorce under Section 13 of the Hindu Marriage Act. In her endeavor to get the impugned orders reversed, appellant-wife raises a solitary but important question i.e. as to whether it was a case of ordinary wear and tear of the married life of the parties that prompted respondent-husband to plead for divorce by exaggerating and even falsely introducing events or with a view to make out a ground for divorce i.e. cruelty or it was actually a case of mental or physical cruelty as defined under Section 13(1)(1A) of the Hindu Marriage Act. Answer to this question obviously lies in the pleadings of the parties and the evidence that has come on record to substantiate particular facts on the basis of which the husband thinks that it shall imperil his sense of personal safety and mental happiness.

2. Marriage between the parties was solemnized on October 12, 1983 in accordance with Sikh rites at Jalandhar City. The parties cohabited together as husband and wife for nearly a period of 3-1/2 years. The appellant-wife conceived during this period but unfortunately she gave birth to a still-born child. The husband at the time of marriage was living in House No. B-14/908-A, Arjan Nagar, Jalandhar City with his parents in a joint family. It is his case that the appellant-wife was looked after properly but only after a month or so of the marriage, she all of a sudden, started putting pressure on him to live separately from his parents. The suggestion was not compatible with the circumstances of the husband and instead of giving flat refusal, he kept postponing the matter with the hope that with the lapse of time the wife may soften or totally give-up her stand of living separately from her in-laws. Far from being that, it is the case of the husband, that the appellant-wife became far more vociferous and persisted her demand as noticed above and with a view to achieve the said object, she started insulting him and his parents on triffles, the atmosphere in the house, thus, became surcharged. She even insulted him and his parents by calling them cads, who were trying to live on her earnings. She refused to have food and threatened to commit suicide in case her demand for separate residence was not acceded to. The husband and his family members were, thus, totally up-set. She also developed aversion for the members of the family and refused to take meals prepared by his mother voicing suspicion that the food might be poisoned. Her attitude towards the visiting relatives was also wholly unbecoming and she even stopped getting and wishing them. She refused to do house-hold chores and refused to help her mother-in-law by saying that she was not their maid-servant. She threatened to commit suicide thus involving him and his family members in a criminal case. She left the matrimonial home on June 2, 1984 against the wishes of the husband and continued living in the house of her parents till July 13, 1985. However, on account of sustained efforts on behalf of the husband and his parents, she resumed cohabitation in July, 1985. A year's separation had in fact brought no change in her and the moment she joined the

matrimonial home, she again started clamouring for having a separate residence. The husband seeing his marriage on rocks conceded to her demand of a separate house when on May 20, 1987 he shifted to a rented house at Jalandhar City in Arjan Nagar itself. For a small period of five months, the parties lived in the separate house, as the wife left once again the matrimonial home a week before October 6, 1987 when the husband filed petition for divorce. It is the case of the husband that even in the rented house the appellant-wife insisted upon her husband to stop visiting his parents or to have any sort of connection with them and threatened to immolate herself if he had any social contact with his parents. It is also the case of the husband that she threw household articles on him. She once hurled a chappal on him during the course of visit of his younger brother. It is on the pleadings, as mentioned above, that the husband sought a decree for divorce on the ground that the attitude and behaviour of the wife was totally callous resulting into untold misery and hardship to him and his parents. The ground of cruelty was, thus, pressed into service so as to seek divorce.

3. The story as put-forth by the husband was stoutly denied by the appellant-wife in her written statement. It was pleaded that she loved and respected the family members of her husband and that no demand was made by her for a separate house. The plea was fabricated with a view to create a ground for filing divorce petition. She had never adopted harsh attitude towards her husband or his family members. She never insulted him and his parents and that she had done nothing that might surcharge the atmosphere in the house. She also pleaded that her parents gave dowry worth lac of rupees in the marriage and ever since the day of marriage she had been giving her full salary to her husband. Despite that, the husband and his parents were not satisfied and they started demanding a scooter. On account of insufficient dowry, she was, thus, ill-treated. However, with a hope that the marriage between them might survive, she had been tolerating the harassment and mal-treatment meted out to her. She further pleaded that she was an educated and civilised lady and belonged to a respectable, noble family and she always treated her husband and his parents with full respect. She deined that she had ever asked her husband and his parents that they were living on her earnings or that she ever refused to have food or that she ever threatened to commit suicide in case her demand for separate residence was not fulfilled. She was even beaten on account of in-sufficient dowry and was left at her parents house on June 5, 1984 by the husband. She fell ill on account of mental agony and physical pain, thus, resulting into birth of a premature baby in Mangat Hospital, Jalandhar on June 13, 1984, who was already dead. A message was sent to the husband and his parents but none came to see her in that precarious condition. However, when they came to the hospital and were informed regarding the birth of a dead child, they abused her and went away and never visited her again. Her father made strenuous efforts for her rehabilitation in the matrimonial home but the husband and his parents refused to keep her unless the demands made by them were fulfilled. Her brother also made number of attempts and even once took her to her in-laws and left her there on May 29, 1985. However, despite the fact that she had given full respect to her husband and his parents, their behaviour towards her did not change and they always hated and neglected her. It is further pleaded by her that she served in the school as well as in the house. She never refused to do house hold work or to help her mother-in-law in the discharge of daily duties. One of her brothers had gone to United States of America (USA) and settled there. It had further led to more demands made by her husband and his parents, who insisted upon a scooter and VCR as also some cash. She admits having shifted to the rented house on May 20, 1987 but pleads that none of the dowry articles were given to her for her use. In the circumstances that she was placed, she admits that once

she thought of committing suicide. However, she stoutly denies that she ever threatened to commit suicide with a view to involve her husband and his family members in a criminal case. In paragraph 6 of the written statement she specifically pleaded that she was always willing and is even now ready and willing to join the society of her husband and to resume cohabitation as a dutiful and obedient wife.

4. The plea of the wife that it is she, who in turn was not looked-after well, was denied by the husband in the replication filed by him. Respondent-husband, with a view to prove that the wife had been cruel to him, examined himself as his own witness as PW 1 as also his father Sadhu Singh as PW 2. He also examined one Hans Raj son of Daulat Ram who was/as per his version, known to both husband and wife.

5. The appellant-wife examined herself with a view to rebut the evidence of respondent-husband and also examined Mohan Singh son of Shiv Chand, whose house is located just opposite to the house of the father of appellant. She also examined her father as RW 3.

6. Obviously, in the very nature of things, whereas, husband and his father have supported the contents of the divorce petition, appellant-wife and her father have stuck to the version given in the written statement. Insofar as statement of PW 3 Hans Raj is concerned suffice it to say that even the Trial Court has not placed any reliance upon his statement as the version of cruelty and the incidents leading to the same were reported to him by the husband or his father. It is only on the statements of the husband and his father that the Trial Court held that the plea of cruelty had been proved, thus, resulting into dissolution of marriage between the parties.

7. The appellant -wife carried an appeal before this Court which came to be disposed of by learned Single Judge and vide impugned orders, appeal was dismissed. The matter first came up before the Division Bench of this Court when after making enquiries from the parties as to whether there were any chances of compromise and finding that there were none, the appeal was dismissed. A special Leave Petition was preferred against the dismissal order and the Apex Court set-aside the said order. The matter was remanded to this Court to hear it from the stage it stood before the impugned order dated September 20, 1990 was passed and to dispose of the appeal afresh in accordance with law. This order was passed by the Supreme Court on October 15, 1992.

8. During the pendency of the first appeal before the learned Single Judge, respondent-husband filed an application under Order 41 Rule 27 of the Code of Civil Procedure so as to bring on records the complaint filed by appellant-wife under Sections 406/498A of the Indian Penal Code with a view to further advance his plea that he had been subjected to mental cruelty on account of false assertions made by the appellant-wife. This application was allowed without hearing the appellant-wife. She has, thus, filed reply to the aforesaid application during the pendency of this appeal.

9. Before we proceed any further in the matter in noticing the rival contentions of learned Counsel representing the parties, it will be useful to note that the word 'cruelty' has not been defined. It has, in the every nature of things, to be understood in relation to human conduct or human behaviour or

in respect of matrimonial duties and obligation. It may be mental or physical, intentional or un-intentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. In that situation the impact or the injurious effect on the other spouse need not be enquired into. The cruelty will be established if the conduct itself is proved or admitted. In matrimonial duties and responsibilities, there has been a sea-change. When a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court is not to search for standards in life. A set of facts said to be constituting cruelty might not be so in another case. There is no litmus test by which cruelty can be established. There cannot be any water-tight compartments and, therefore, each case has to depend upon its peculiar facts and circumstances.

10. Mr. Chhibber, learned Senior Advocate appearing on behalf of the appellant-wife vehemently contends that the finding of the learned Single Judge that the wife-appellant had made an offer of living with the husband only at the stage when the matter came up for arguments, is factually incorrect. If that be so, consequential finding that the offer was made with a view to circumvent the effect of the decree passed against the appellant would also be incorrect, contends the learned Counsel. A simple offer of returning to the matrimonial fold when divorce petition is filed may not be enough to stall impending decree of divorce and in the very nature of things, the evidence of the parties with a view to return a fiding on the crucial issue of cruelty is shall necessary but the contention of the learned Counsel for the appellant that finding of the learned Single Judge that the offer was made by the wife for the first time during the course of arugments when the matter was pending before the learned Single Judge is not correct, has to be upheld. As mentioned above, in paragraph 6 of the written statement, the appellant-wife has categorically pleaded that she was ready and willing to join the society of respondent-husband as a dutiful and obedient wife. Last four lines of the paragraph dealing with the matter read a under:--

"The respondent always remained ready and willing to join the society of the petitioner and is still ready to resume cohabitation with the petitioner as his dutiful and obedient wife. The respondent never treated the petitioner with cruelty."

11. By filing replication, respondent-husband did not controvert the assertion of the appellant in paragraph 6 as noticed above. That apart, when the appellant-wife, appeared as her witness before the Trial Court on September 30, 1988, she reiterated her stand in her examination-in-chief. She deposed as follows:--

"I am prepared to live with the petitioner and his family without any condition."

12. Again there was no cross-examination on the aforesaid issue and not even a suggestion was given that the offer was made simply with a view to get the divorce petition dismised. It is proved, as has also been noticed by the learned Single Judge that the offer was made even during the pendency of the first appeal. When the appeal was dismissed and the matter came up for motion hearing, the Bench recorded the statement of learned Counsel appearing on behalf of the appellant that there were chances of reconciliation. As mentioned earlier, when the Court found that there could not be any compromise in the matter, the appeal was dismissed. Before us as well, the appellant-wife once again reiterated her stand of living with her husband without any condition. It is the husband, who

was in no circumstances, prepared to live with the appellant-wife. On the facts and circumstances, as noticed above, it has thus to be held that the appellant-wife had made an offer to live with the husband at every crucial stage from the beginning of the proceedings for divorce upto the date when the matter was argued before us. It cannot, thus, be said that the offer was made for the first time during the pendency of the first appeal before the learned Single Judge and that too with a view to frustrate the decree of divorce that had already been granted in favour of the husband. .

13. With the assistance of the learned Counsel for the parties as also at our own end, we have thoroughly gone through the evidence of respondent-husband and his father. We are satisfied that the plea of cruelty on account of the facts and circumstances detailed in the divorce petition, has not been proved. As noticed above, the husband pleads cruelty on account of the wife wanting to live in a separate house and on account of his not accepting to that request, threats by the wife to commit suicide. It shall be seen from the admitted facts of the case that the parties had actually shifted to a rented house. If the only clamour of the wife was to have separate house, there was no occasion for her to have asked the husband to sever his relations with his parents and the husband not obliging her to do so sever her own relations with the husband by shifting to her parents house. At the time of marriage, the husband, as per his own showing, was in adhoc service whereas the appellant was in regular service. He had only one sister, who was married on September 19, 1987 and his father was posted as Excise Inspector and was still in service. With this family back-ground, there could be no occasion for the wife to have demanded separate residence as the father of the husband being himself in active service, was always a source of help to the husband and wife and in no case dependent upon them. That apart, the" husband himself admits in his cross-examination that the wife had never lodged any complaint against him or his parents for the threats of the wife to commit suicide arid to implicate them in false case. This plea is not even supported by any oral evidence apart from, of course, statement of the father of husband, who is naturally inclined to depose in favour of his son. As mentioned above, the first child of the parties was a stillborn child and admittedly second pregnancy resulted into abortion in Chawla Maternity Hospital Jalandhar, on July 8, 1987. The husband admits in his cross-examination that his parents did not even visit the hospital on that occasion. The husband further admits that he did not call upon the wife during the period she remained at her parents house. The positive case of the appellant is that Panchayats were called on a number of occasions to persuade the husband to rehabilitate the wife. These Panchayats were called on October 19, 1987, October 24, 1987 and Novembers, 1987. The father of the husband admits in his cross-examination that no complaint to any respectable or even the parents of the wife was made about her misconduct. In the very nature of things, such a complaint ought to have been made atleast to the father of wife if her conduct was such as has been sought to be made out in the petition and evidence of respondent-husband and his father. It requires to be mentioned that the house of husband's parents is situated at a disance of 1 1/2 to 2 kms from the house of wife's parents as admitted by the father of husband. These basic facts and the evidence that has been noticed above, were not taken note of by the Trial Court or the learned .Single Judge. On the other hand, by almost believing the story as put-forth by the husband, the plea of cruelty was up-held. It was also noticed by the learned Single Judge that since there was no cross-examination conducted to the witnesses examined on behalf of the husband with regard to threats of the wife to commit suicide, the plea of the husband on that count was substantiated. In the ultimate analysis, the learned Single Judge while briefly noticing the contentions of learned Counsel for the parties, came to the

conclusion that the Trial Court rightly accepted the evidence of the husband. '

14. Insofar as filing of criminal complaint under Sections 406/498A of the Indian Penal Code by the wife is concerned, it was observed by the learned Single Judge that this fact was kept concealed by her during the period the proceedings of divorce petition remained pending. However, the husband did not take any chance and promptly filed the petition for divorce in October, 1987. This, according to the learned Single Judge, clearly reflected the intention of the wife not to come back. We find considerable force in the contention of learned Counsel for the appellant that intention of the wife for living separately simply on account of the fact that she kept concealed the criminal proceedings from the husband, cannot sustain. As mentioned above, plea of cruelty based upon criminal complaint was pressed into service for the first time during the pendency of the appeal by moving an application under Order 41 Rule 27 C.P.C. This application was allowed without giving chance to the appellant-wife to file any reply. The reply has been filed during the pendency of this appeal. From the accompanying documents, it is clear that the wife filed a complaint under Sections 406/498 IPC sometimes in November, 1987. Application, Annexure A-1, attached with the reply aforesaid, was filed for grant of anticipatory bail by the husband and his relations in the Court of Sessions Judge, Jalandhar on November 16, 1987, on which the following order was passed on March 22, 1988:--

"Notice sent to the complainant received back unserved. It appears that the particulars of the complainant were not available. I allow the prayer. The accused shall be admitted to bail as and when arrested. They shall, however, join investigation and will not leave India without the permission of the Court."

15. It is apparent from the application filed by the husband and his relations and the orders passed thereon that it was no secret that the appellant-wife had filed a complaint under Section 406/498A IPC. Assuming that the appellant-wife had concealed filing of the complaint aforesaid, it is not understandable as to how such concealment would amount to cruelty. It could also be for the reason that the husband may not know the proceedings so that he may not be infuriated and take this as a ground for completely giving up the idea of rehabilitating the wife. As mentioned above, consistent efforts were being made on behalf of the appellant so that she is restored to the matrimonial home. With the back-ground of the case and, in particular, offers made by the wife at every stage, it cannot be presumed that by mere filing of the complaint by her, she had no intentions whatsoever to re-join her husband. In no circumstances, however, the wife could be confronted with the complaint and the contents thereof so as to prove cruelty without even giving her chance to rebut the plea of the husband and, as mentioned above, the application of the husband under Order 41 Rule 27 CPC was allowed ex parte and the wife had not been given any chance to file reply to the same.

16. Faced with this situation, learned Counsel for the respondent-husband vehemently contends that it is a case of broken marriage and once the parties have lived separately for such a long time, decree of divorce should not be set-aside at this stage. We are afraid, we cannot accept this argument. It is true that the Court is inclined to grant divorce in case of broken-marriage but that is only when it is impossible for the litigating spouses to live together because of the acts committed by one of the parties which had psychologically affected the other to the extent that he had developed repulsion to the other side. Learned Counsel, however, for his aforestated contention, relies on Kiran Mandal v.

Smt. Mohini Mandal (1989-1)95 PLR 553=II (1989) DMC 104, Captain Rajinder Pal Singh v. Mrs. Manjit Kaur Bajwa, (1990-1)97 PLR 445 and Sanat Kumar Aggarwal v. Nandini Aggarwal, (1990)1 SCC 475. In our considered opinion, respondent cannot draw any assistance from the judgments quoted above.

17. In Kiran Mandal's case (supra) it was held that "the wife had made it insuferable for the husband to live with her and any man with reasonable self respect and power of endurance would find it difficult to live with a taunting wife, when such taunts are in fact insult and indignities. In Captain Rajinder Pal Singh's case (supra) it was held that "because of the acts committed by one of the parties which had psychologically affected the other to the extent he had developed repulsion to the other side, it would serve no purpose to keep the marriage intact and make the party suffer and it would be in the interest of justice to dissolve such a marriage." In Sanat Kumar Aggarwal's case (supra), on facts, the allegations of the husband that wife had left the matrimonial home three years ago, was established." It is, thus, clear that the plea of broken marriage only because of the parties living separately for long time cannot alone be sufficient to grant decree of divorce and in addition thereto one of the charges as envisaged under Section 13 of the Hindu Marriage Act has necessarily to be established.

18. Mr. Cheema, learned Counsel for the respondent con tends that even if on the pleadings and evidence given by the parties the peal of cruelty is not made out, still decree of divorce should be granted as the appellant-wife was supposed to defend only the allegation of cruelty made out against her and once she had travelled beyond the said defence and has alleged cruelty to the husband in her written statement, such allegations as made by her in the written statement which were totally false, should be treated as a plea on behalf of the husband to grant divorce. It is argued that fake allegations made in the written statement are enough to constitute cruelty meted out to the husband. For his afore-stated contention, learned Counsel relies on a recent decision of the Supreme Court in V. Bhagat v. Mrs. D. Bhagat, (1994-A) 106 PLR 603 (S.C.). We have considered this aspect of the matter very minutely but regret that in the facts and circumstances of the present case, relief cannot be granted to the respondent-husband on account of the counter allegations made by the wife in the written statement. It shall be seen that before parting with the judgment, the Apex Court in V. Bhagat's case (supra) said that "it was necessary to append a clarification that merely because there were allegations and counter-allegations, a decree of divorce could not follow". It was also said that "merely because there had been delay in disposal of the divorce proceedings, it was not in itself a ground for divorce. There must be really some extraordinary features to warrant grant of divorce on the basis of pleading and other admitted material without a full trial. Irretrievably breakdown of the marriage is not a ground by itself but while scrutinising the evidence on record to determine whether the ground(s) alleged is made out and in determining the relief to be granted, the said circumstances can certainly be born in mind. The unusual step as the one taken by us herein can be resorted to only to clear up an insoluble mess, when the Court finds it in the interest of both the parties". The facts of the case aforesaid reveal that divorce was sought by the husband, who was an Advocate. The wife went far beyond defending herself and in her written statement she pleaded that her husband was not a normal person, that he requires psychological treatment to restore his mental health, that he was suffering from paranoid disorder and mental hallucinations and that he and all the members of his family are a bunch of lunatics. The Supreme Court observed that" it is not as if

these words were uttered in a fit of anger or under an emotional stress. They were made in a formal pleading filed in the Court and the questions to that effect were put by her Counsel, at her instructions, in the cross-examination. Even in her additional written statement, she had asserted her right to make correct statement of facts to defend herself against the wanton, imaginary and irresponsible allegations. These are not mere protestations of an injured wife: they are positive assertions of mental imbalance and streak of insanity in the mental build-up of the husband. The husband is an advocate practising in this Court as well as in Delhi High Court. The divorce petition is being tried in the Delhi High Court itself. Making such allegations in the pleadings and putting such questions to the husband while he is in the witness box, is bound to cause him intense mental pain and anguish besides affecting his career and professional prospects."

19. The facts of the cited case were entirely different. However, as mentioned above, the Supreme Court in the very judgment clarified the position before parting with the judgment that merely because there were allegations and counter-allegations, decree of divorce could not follow.

20. After appreciating the pleadings and evidence of the parties as also rival contentions of the parties, we are of the considered view that being not able to bear with wears and tears of the life, the respondent-husband not only exaggerated the various acts imputed to the wife but even introduced such allegations which had no prop to stand. We are conscious that this Court should be loath in up-setting a finding of fact particularly when the same has been confirmed by the first Appellate Court but it also settled proposition of law that when the evidence has been mis-read and findings have been recorded which cannot sustain, there is no bar or limitation on the powers of the Appellate Court to upset the said findings.

21. For the reasons recorded above, this appeal succeeds. The decree of divorce granted by the Trial Court and so confirmed by the learned Single Judge of this Court in F.A.O. No. 50-M of 1989 is set-aside and the petition for divorce filed by the husband is dismissed. On account of fluctuating fate of the parties, we direct them to bear their own costs.