

Punjab-Haryana High Court

Neelam Kumari vs Gurnam Singh on 30 May, 2003

Equivalent citations: AIR 2004 P H 9

Author: S Saron

Bench: S Saron

JUDGMENT S.S. Saron, J.

1. Appellant-Neelam Kumari has filed this appeal under Section 28 of the Hindu Marriage Act 1955 (hereinafter referred to as the Act) against the judgment and decree dated 16-9-1997 passed by the learned Additional District Judge, Ambala, whereby the petition of the respondent-Gurnam Singh under Section 13 of the Act for dissolution of the marriage was accepted.

2. The facts leading to the case are that the marriage between the parties was solemnized on 6-5-1987 at village Bharog, tehsil Naraingarh, district Ambala according to Hindu rites and ceremonies. After marriage, the parties lived and cohabited together as husband and wife till March 1989. A male child was born from this wedlock. The respondent-Gurnam Singh filed a petition under Section 13 of the Act for dissolution of the marriage alleging therein that the behaviour of the appellant was always hostile towards him and his family members and she used to quarrel with him as also with his family members on one pretext or the other. She always used to say that the respondent should live separately from his parents. However, the respondent turned down her requests and told her that his parents were old and he was the only earning hand in the family. Despite this, the behaviour of the appellant did not change. It was further alleged by respondent that the parents of the appellant used to interfere in his family affairs and they always used to threaten him that either he should live separately from his parents otherwise they would take away the appellant from his house. Not only this, the appellant and her parents whenever they visited the house of the respondent insulted him, and his parents and even told him that he is like her shoe in the foot (PAIR KI JOOTI) and that he was no match for the appellant. In the month of July 1987, the appellant went to her parents against the wishes of the respondent. The marriage was simple but while leaving the appellant took with her all valuable clothes and jewellery including that of the respondent. However, when the respondent approached her to come and live with him as a good wife, she flatly refused. On persuasion of some persons of brotherhood, the appellant came and lived with the respondent in the month of December 1987 but without change in her behaviour. She always treated the respondent in an inhuman manner and even refused to make two meals and it is the mother of the respondent who used to prepare the meals for the family. Thereafter in the month of March 1989, when the parents of the appellant visited the house of the respondent she went with them telling the respondent that she was going to her parents house for 4/5 days. She also took her jewellery and valuable clothes with her including that of the respondent. Thereafter, she never returned in spite of several visits by the respondent. The respondent even requested the appellant and her parents that the appellant was pregnant and his parents wanted that she should give birth to a child at his house. But her parents flatly refused to his request and openly declared that the appellant, would never come to his house and that now there was no relationship between them. The respondent visited the house of the appellant with his parents and some other persons of the brotherhood namely Bachana Ram and Som Nath but the appellant flatly refused to come. Rather she filed a complaint on false and frivolous ground under Sections 498-A and 406 read with Section

34, IPC against respondent, his mother and brother. The appellant levelled false allegations in the complaint regarding demand of dowry and cash amounting to Rs. 10,000/- by the respondent and his parents. She also levelled false allegations that the respondent was a dead drunkard and after taking liquor, used to beat the appellant mercilessly and had thrown her out of the house many times. All these allegations were levelled by the appellant on false grounds knowing fully well that they were false. The respondent is a vegetarian and never took liquor. On these premises it is alleged that these acts of the appellant show that she has treated the respondent with cruelty which entitled him to a grant of divorce under Section 13 of the Act. Earlier also the respondent had filed a petition under Section 13 of the Act for grant of divorce but in those proceedings re-conciliation efforts were made and the appellant regretted her past behaviour and expressed her desire to join the matrimonial home. Resultantly, the said petition was withdrawn by the respondent and the appellant accompanied him to village Khanpur Majra. However, after a few days she started maltreating the respondent and started quarrelling with him on petty matters so much so she did not cook food for the respondent nor did she do any domestic work rather she started cooking her separate meals. There was no cohabitation between the parties and the appellant denied matrimonial obligations which caused mental agony to him. These acts also, it is alleged amount to cruelty on the part of the appellant. It is also alleged that the appellant was seen in the company of Karam Chand Sarpanch of the village and another person, who is resident of village Samleheri near Raipur Rani. She openly told the respondent that when she resided with the man for such a long time he could not do anything against them and now he could not do anything against her and Sarpanch Karam Chand. The appellant left her matrimonial home on 26-7-1995 without any rhyme and reason after abusing the respondent and his parents. She also took the child from the school and has not returned from her parental home despite requests and efforts made by the respondent and his parents. Therefore, it is alleged that the appellant has withdrawn from the matrimonial society of the respondent without any cause and excuse.

3. The appellant filed her written statement before the learned trial Court, in which the material aspects of marriage between the parties and birth of a son were admitted. The allegations as made in the petition with regard to cruelty and withdrawing from the society of the respondent, were denied. It was stated that the respondent had concealed the actual facts and as a matter of fact just after the marriage he and his relatives threatened and harassed the appellant for bringing insufficient dowry and started raising demands for more, besides other financial demands. When the parents of the appellant did not comply with the demands of the respondent's relations, she was tortured and ultimately turned out of the matrimonial home in three clothes by giving severe beatings. The appellant was forced to file a petition in February 1990 as also a criminal case under Section 406/498-A, IPC (FIR No. 39 dated 25-3-1990) was also registered. It is further stated that the appellant never interfered in the family matters of the respondent and they never threatened the respondent as alleged. All the allegations regarding conduct of the appellant were false and frivolous to the knowledge of the respondent. It is admitted that the respondent also filed a petition for divorce which was compromised and she went to live with the respondent along with her minor son. However, the behaviour of the respondent was the same and he started misbehaving with the appellant, besides torturing and harassing her. The appellant was again turned out in July 1994. Even during the stay of the appellant with the respondent, he did not provide her and the minor child with basic and ordinary facilities of life. It was the parents of the petitioner who used to pay

tuition fee of the minor and had also been sending money for her maintenance and that of her son. The respondent and his relatives had snatched all the gold ornaments from her just after the marriage but again her parents gave a pair of gold earrings to her besides silver 'pajeb'. The appellant's parents also gave her clothes but all have been snatched by the respondent from her. The respondent had compromised the matter just to avoid payment of maintenance in the petition pending against him since 1990 and also to get rid of the criminal case against him. The appellant did not leave the matrimonial home and rather she was turned out when she was pregnant and she was treated shabbily and in an inhuman manner. In this view of the matter, it was stated that the petition be dismissed.

4. The respondent filed his replication to the written statement and the averments made in the written statement to the extent the contents of the petition were not admitted were denied and those of the petition were reiterated.

5. On the pleadings of the parties, the trial Court framed the following issues :--

1. Whether the respondent has treated the petitioner with cruelty as alleged? OPP.

2. Relief.

6. The learned Additional District Judge, Ambala after appreciating the evidence and material on record came to the conclusion that the respondent was entitled to a decree for divorce and accordingly dissolved the marriage between the parties by a decree of divorce. The wife has assailed the said judgment and decree passed by the learned Additional District Judge.

7. I have heard Ms. K. B. Jain, learned Advocate appearing for the appellant and Mr. Arvind Kashyap, learned Advocate appearing for the respondent and with their assistance have gone through the records of the case.

8. The learned counsel appearing for the appellant has contended that the learned Court below has committed a material illegality and irregularity in decreeing the petition of the respondent for grant of divorce. Besides, it is contended that inadmissible evidence has been taken into consideration. Reference has been made to the affidavit Mark X which is not admissible in evidence and even was held to be inadmissible yet it was noticed which had a material bearing and effect on the resultant decree that was passed. The learned Court below has also erred in holding that the appellant had not treated the parents of the respondent and the respondent properly. The allegations levelled by the respondent are stated to be reckless. It is also contended that the finding of the fact that marriage between the parties is dead emotionally and practically are devoid of any force and that the respondent cannot be allowed to take advantage of his own wrong. Besides, the finding that the appellant was moving with some unknown persons has not been proved on record. The witnesses produced in this regard are the respondent's relations or are otherwise interested witnesses. Besides, these allegations were earlier levelled in the petition for divorce which were later on withdrawn as such the same stand condoned.

9. The primary ground for claiming matrimonial relief in this petition is on the ground of cruelty.

10. In order to see whether the respondent has been treated with cruelty by the appellant, the provisions of Section 13(1)(i-a) of the Act may be noticed :--

"13 Divorce :-- (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party --

(i) xx xx xx xx

(i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty

(i-b) xx xx xx xx"

11. In order to claim matrimonial relief under Section 13(1)(i-a) of the Act, it is to be seen whether the respondent has been treated with cruelty by the appellant. 'Cruelty' under the Act can be both mental and physical. The degree of 'cruelty' necessary to claim a matrimonial relief has not been defined under the Act. It depends from case to case and the Legislature has also refrained from giving a comprehensive definition of the expression that may cover all cases. In order to claim divorce on the ground of cruelty, it may be shown that the other spouse has treated the complaining spouse with cruelty which may be physical or mental. This has been so held even by the Hon'ble Supreme Court in the case of Parveen Mehta v. Inderjit Mehta (2002) 5 SCC 706 : (AIR 2002 SC 2582). Besides mental cruelty is a state of mind and feeling of one of the spouses due to the behaviour or behavioural pattern of the other. It is a matter of inference to be drawn from the facts and circumstances of the case and proper approach requires the assessment of the cumulative effect of the attending facts and, circumstances as established from the facts and circumstances on record. Physical cruelty on the other hand consists of such acts which endanger a physical health of one of the parties to the marriage and includes the inflicting bodily injury or giving cause for such injuries. Reference in this regard may be made to Savitri Pandey v. Prem Chandra Pandey (2002) 2 SCC 73 : (AIR 2002 SC 591). Therefore, in this background from the material on record it is to be seen whether the respondent has been subjected to such decree of cruelty so as to sustain the judgment and decree under appeal.

12. The respondent in his evidence produced Bachan Singh PW-1, who is of the same brotherhood and belongs to the village of the respondent. He has deposed that third persons used to visit the appellant after marriage and he tried to make her understand that they should not visit her. However, the appellant used to say that they were her relatives, but, in fact they were not her relatives. It is due to this reason that there was quarrel between the parties. About 7/8 months earlier, to his deposition i.e. 20-8-1996, his nephew Karam Chand was elected as Sarpanch of the village. The appellant remained with him out of her house for four days. On that account again there

was quarrel between the parties? He visited the parental house of the appellant so that the matter may be reconciled. However, the mother of the appellant told him that she had left her husband and that she would not send the appellant to the matrimonial home. Bachna Ram appeared as PW-2. He is maternal uncle of the respondent and he knows the parties. He has deposed that the appellant never performed her domestic obligations besides was leading an immoral life. He stated that the appellant is having illicit relations with one Sarpanch of the village of the respondent. The respondent himself appeared as PW-3 and he narrates his version as given in the petition for divorce. He stated that when the appellant went to her parental home in November-December 1987, he along with Bachna Ram and Som Nath went to the parental house of the appellant to get her but her brother and mother assaulted him and hurled abuses upon him and thereafter took away all her ornaments with her. He also made a reference to the Criminal case under Section 498-A, IPC filed by the appellant against his mother, father, brother and sisters. After 2/3 years of filing of the complaint, the respondent filed a petition for divorce which was later on withdrawn as the appellant had given an affidavit that she would behave properly and would withdraw all her cases. However, the behaviour of the appellant remained the same and she was nagging and she used to go to the house of Karam Chand Sarpanch. She also used to go to Bhura, Bittu and some other boys for which he forbid her from going to those persons. The appellant used to remark that she did not want to reside with him. After she returned she did not keep any relationship of husband and wife and used to sleep separate from him. Thereafter on 26-7-1995, the appellant left her matrimonial home and also took the son of the parties from school along with her. The respondent went to her parental home to bring her but she did not return. Lastly, it is stated that he does not want to keep the appellant with him because she is of bad character.

13. The appellant on the other hand examined herself as RW-1 and stated that she was harassed for bringing inadequate dowry and was turned out from her matrimonial home. She filed a petition for maintenance against the respondent in the year 1990 after birth of the child. She did not take any action against the respondent except the petition at that time. She also states that she did not file any complaint against the respondent in respect of his demand for dowry. She went back after the filing of the earlier petition for divorce by the respondent as the matter was compromised. However, the behaviour of the respondent remained the same. In her cross-examination, she states that she knows Som Nath resident of village Samlehri near Raipur Rani and that he is not her relative. She has no other relation in that village. She denies the suggestion that she resided with the said Som Nath even for a single day. She also states that she had given in writing at the time of compromise that she would not live with any person. Learned Sessions Judge, recorded a note, which is to the effect : "at this stage at the intervention of the learned counsel for the respondent (now appellant) the respondent has stated that she did not give any such writing", She further states that the affidavit mark X shown to her on the date of her deposition bears her signatures. However, she did not know as to what was written on the same. She further states that she did not make the statement recorded in the affidavit Mark X and she had not purchased the stamp paper. She also denied the suggestion that the affidavit mark X was got attested from an Oath Commissioner. She denied other allegations of her not performing her matrimonial obligations. She also states that she does not know whether any Karam Chand is Sarpanch of village Khanpur and it was wrong to suggest that she remained in the company of Karam Chand Sarpanch for 3/4 days at that stage. She also denies the suggestion that when Gurnam Singh (now respondent) tried to ask her to mend her ways, she

remarked that earlier the respondent could not do anything against her, what could he do now. She also states that she voluntarily left her matrimonial home without intimating the respondent or his family members. She went from the matrimonial home after she was turned out. She only examined herself and did not produce any other witness.

14. The learned counsel for the appellant contends that there are only bald allegations of the appellant being seen in the company of others and from this it cannot be inferred that the appellant has treated the respondent with cruelty. In support of her contention she has relied upon a decision of this Court in *Kulwinder Kaur v. Jagdish Singh* 2001 (2) Marriage LJ 258.

15. In the said case divorce was claimed by the husband on the ground of adultery, cruelty and desertion. It was also contended that the wife had called the husband at police station and got him humiliated which amounts to cruelty. It was held that the evidence was hearsay, borrowed opinion and hence not proved. The wife in the said case was turned out of the house and, therefore, it was held that there was no desertion. The grant of divorce by the trial Court was reversed. In the said case, the husband had suffered a fracture and was bed-ridden and it was alleged that during this period the wife used to leave him by making lame excuses and in fact she used to move with respondent No. 2 in a Car/Taxi freely. It was held in the said case that the averments made by the husband were totally hearsay and he simply relied upon borrowed opinion which was not accepted by the trial Court. The wife in her deposition in Court had categorically stated that she did not have illicit relations with any person much less with respondent No. 2 therein.

16. The facts in the case in hand, are somewhat different. In para 10 of the petition it has been specifically pleaded by the respondent that the appellant was seen in the company of Karam Chand, the Sarpanch of the village and one person resident of village Samleheri near Raipur Rani and that she openly told the respondent that when she resided with a man for such a long period, the respondent could not do anything against him and now he cannot do anything against her and sarpanch Karam Chand. These averments were not denied in the written statement. Rather para 10 of the written statement reads as under :--

"That para No. 10 of the petition is admitted to the extent that a petition for Divorce was filed by the petitioner and the respondent agreed to live with him but however it is incorrect to say that she regretted or express at her parents behaviour as she never misbehaved to the petitioner. As a matter of fact, the petitioner compromise with the respondent with ulterior motive to get rid of maintenance petition and criminal case pending against him. The respondent joined her matrimonial house with all intention to live but again it was the petitioner who ill-treated the respondent and turned her out."

17. Not only this, the appellant while appearing in the witness box accepted the suggestion that she knew Som Nath resident of village Samleheri near Raipur Rani and that he was not her relative and she had no other relative in that village. She also accepted the suggestion that she had given in writing at the time of compromise that she shall not live with any other person. The learned District Judge, noted that it is with the intervention of her learned counsel that the appellant stated that she did not give any such writing.

18. It may also be noticed that Bachan Singh PW. 1 is uncle of Karam Chand Sarpanch and is resident of the village and is working as a Cook in the Central Industrial Security Force. He has categorically stated that he had seen the appellant in the company of Karam Chand Sarpanch of the village who was his nephew. The appellant remained with him out of the house for four days. On account of which there was quarrel between the parties. He had been advising the appellant that third persons should not visit her to which she used to say that they were her relatives. In this way she paid no heed to the advise given by Bachan Singh PW-1. Therefore, it is not a case where the evidence on record is hearsay or on borrowed opinion. Besides, the present is not a case of adultery. However, when wife in the rural set up in the village is seen in the company of other persons and that too frequently and not to the liking of the respondent as also the others in the brotherhood, it would be definitely amount to mental cruelty in accordance with the test laid down in Parveen Mehta's case (AIR 2002 SC 2562) (supra).

19. In G.V.N. Kameswara Rao v. G. Jabilli (2002) 2 SCC 296 : (AIR 2002 SC 576), it was held that mental cruelty is to be assessed bearing in mind social status of the parties, their customs, traditions and their education level and the environment in which they live. As already noticed, the parties are living in a rural set up and the respondent is doing the work of labourer. Therefore, for him to see his wife in the company of others including the Sarpanch of the village would definitely have a bearing in his mind which can be safely inferred for giving him cause for mental and emotional suffering or inducing fear in respect of matrimonial relationship.

20. The learned counsel for the appellant, however contends that since after the filing of the earlier petition for divorce, the appellant had started living with the respondent and, therefore, the alleged act, if any, even otherwise stood condoned, I have considered this aspect of the matter. Keeping in view the fact that there was again separation subsequently, the past conduct of the appellant would have a bearing on his mind and throw an insight of the appellant's behaviour and the helpless situation of the respondent. It is though not in dispute that the standard of proof regarding proving allegations of the lady frequently visiting others in the village is substantially high. However in the fact of the deposition made by PW-1 Bachan Singh, who is uncle of Karam Chand and it is not shown in any manner as to why he would make such a deposition, it is difficult to discard his sworn testimony. No suggestion was put to this witness as to whether he was in any manner inimical towards his nephew Karam Chand Sarpanch or that Karam Chand, his nephew was inimical to him. He has in my view deposed truthfully. There could have been a possibility on his part not to involve his own nephew in such a relationship. Therefore, the evidence of Bachan Singh PW. 1 is independent, convincing and reliable and there is no reason to disbelieve or discard the same. The case of Anand Bhushan Bhardwaj v. Smt. Nirmala 1990 (13) Marriage LJ 3 (P & H) referred to by the learned counsel for the appellant is a case relating to charge of adultery. Therefore, the ratio of the judgment therein is inapplicable to the case in hand.

21. The other aspect which may be considered is that the respondent while appearing as P.W. 3 stated that when the appellant was brought back after reconciliation in the earlier divorce proceedings she deprived him of having sex with her. The respondent deposed that the appellant used to remark that she did not want to reside with him and that she did not want to maintain any relationship of husband and wife. She used to sleep separately from the respondent. No suggestion

was put to PW-3 Gurnam Singh respondent that the parties had normal sexual relationship after the matter was compromised in the divorce proceedings. The learned trial Court in the circumstances in my view rightly relied upon the ratio of the judgment of this Court in *Ranbir Singh v. Balbir Kaur* 1995 (3) Pun] LR 170 : (1995 AIHC 5224), wherein it was held that the depriving the husband of cohabitation is also an act of cruelty. The other assertions are that the appellant insulted the respondent and his parents several times and she refused to cook food and discharge her other matrimonial obligations. Bachna Ram PW-2 is the maternal uncle of the respondent. He has deposed that the appellant never performed her domestic obligations. Besides, he along with Kirpu Ram, Bakshi Ram went to the village of the appellant to bring her back to her matrimonial home but she refused to come back. The respondent Gurnam Singh while appearing as P.W. 3 also deposed in this regard. The appellant herself has also been complaining with regard to the conduct of the respondent. The allegations as made by each of the parties to the marriage against the other, though are the outcome of the normal wear and tear of the marriage, and therefore they by themselves cannot amount to cruelty. However, keeping in view the circumstances noticed above and taking into account cumulatively they become relevant. The circumstances on record go to show the extent of cruelty meted out to the respondent so as to cause reasonable apprehension in his mind to live away from the appellant.

22. The learned trial Court after considering the various aspects of the case was of the opinion that the marriage between the parties is dead both emotionally and practically and to continue such a marriage would prolong the agony of the respondent. The learned counsel for the appellant however contends that the learned trial Court has gone on the assumption that the marriage has irretrievably broken down and thus the marriage should be dissolved. This according to the learned counsel is impermissible and in support of her contention she has relied upon *Vinod Kumar Gambhir v. Veena Gambhir*. 2001 (2) Marriage LJ 268, wherein this Court observed that if the marriage has broken down irretrievably, the parties should be allowed to become separate but it is equally that no person can take advantage of his own wrong. It was observed in the said case that even it was to be accepted that the respondent therein had deserted the appellant since December 1985 and the parties were living separately since then, this was so because of the acts of harassment of the respondent therein at the hands of the appellant of the said case. In these circumstances, it was held that the appellant cannot be allowed to make it a shield of this plea that the marriage has broken irretrievably. It was held that at that stage granting of decree of divorce under the furr of broken marriage would not only cause great hardship to the husband but it will mar the future of the child also.

23. It is correct that irretrievable break down of marriage by itself is not a ground for divorce and neither is there any provision in the Act for dissolution of marriage op the ground of irretrievable break down of marriage. However, the case when set up by the petitioning spouse for the grant of divorce is otherwise established for the grant of matrimonial relief, the irretrievable break down of marriage can be an additional circumstance for granting the relief. In *Parveen Mehta's case* (AIR 2002 SC 2582) (supra), it was lastly observed as follows :--

"As noted earlier, the parties were married on 6-12-1985. They stayed together for a short period till 28-4-1986 when they parted company. Despite several attempts by relatives and well-wishers no conciliation between them was possible. The petition for the dissolution of marriage was filed in the



year 1986. In the meantime so many years have elapsed since the spouses parted company. In these circumstances it can be reasonably inferred that the marriage between the parties has broken down irretrievably without any fault on the part of the respondent."

24. Keeping in view the above facts and circumstances of the case, the social set up in which the parties are living and the circumstances that the appellant has been seen in the company of others in a rural set up. Besides, her refusal to live with the respondent would amount to cruelty as respondent is denied of his wife's company and consortium. As also the fact that the marriage is virtually dead and an empty shell. In my view, there is no reason to disturb the findings recorded by the learned Additional District Judge, Ambala.

25. In the circumstances, the appeal is dismissed.

No costs.