IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-M-190 of 2010 (O&M) and
FAO No. 3554 of 2016

Date of decision :- September 13, 2022

Karamjit Singh

…..Appellant

Versus

Davinder Kaur

…..Respondent

CORAM :- HON'BLE JUSTICE MS. RITU BAHRI
HON'BLE JUSTICE MS. NIDHI GUPTA

Present :- Mr. Navjot Singh, Advocate for the appellant.

Mr. S.P. Soi, Advocate for the respondent.

NIDHI GUPTA, J.

By this order we shall dispose of two Appeals, being FAO-M-190 of 2010, and FAO 3554 of 2016 - as the fundamental factual matrix of both cases is identical.

FAO – M 190 of 2010:

This appeal has been filed by the appellant-husband against the order dated 21.4.2010 passed by the learned Additional District Judge, Hoshiarpur, whereby his petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter 'the Act'), for grant of divorce

on the ground of cruelty and desertion on part of the respondent, has been dismissed.

Brief facts of the case are that the appellant and the respondent were married as per Sikh rites and rituals on 03.03.2004, at Nakodar. Out of this wedlock, one son, namely, Navjot was born on 02.12.2004 at the house of the parents of the respondent-wife, where she had been residing since September 2004.

It is the case of the appellant that he is handicapped and afflicted by Polio since childhood. At the time of his marriage with the respondent, she and her parents had told the appellant that the respondent was 28-29 years old and had been married earlier but as her first husband was an alcoholic and used to beat her, they had divorced each other under Section 13-B of the Act by mutual consent. It was only subsequently that the appellant found out that the actual age of the respondent was not 28/29 years but was about 38 years, and that she had also had a child with her first husband who had died. It is further stated that only after about 8-10 days of the marriage, the respondent started insulting the appellant and mocking him publicly for his physical disability and used to tauntingly called him *lulalangra* in front of his family and friends. This behavior of the respondent caused so much trauma to the appellant that he stopped calling his friends and relatives to his house. It is further stated that as a result of bad behavior on the part of the respondent, the appellant's parents even disinherited him from their property and also told him to live separately. The notice of disinheritance was published in the newspaper 'Nawan Zamana' Jalandhar on 17.06.2004. The appellant has further stated that even despite the separation, the behavior of the respondent did

not improve. The respondent continually taunted the appellant regarding his virility, and even used to snatch his crutches and physically throw the appellant on the ground in the presence of his friends and relatives. As such, the appellant was undergoing tremendous mental agony and trauma, as well as physical abuse at the hands of the respondent. It is also alleged and pleaded in the petition that on 15.9.2004, the respondent threatened to kill the appellant. Even her brother threatened the appellant on the telephone that he is handicapped and they (the respondent and her brother) will kill him and his parents and inherit all their property. The appellant then lodged a complaint with the Sarpanch, and a Panchayat was called. Even in the Panchayat, the respondent openly said that she did not want to live with the appellant as he is not capable of being a husband and also raised false allegations against him, and abused and insulted the parents of the appellant. At the intervention of the Panchayat, the appellant took the respondent to her village Ramuwal on 22.09.2004. However, while leaving, the respondent cleverly and secretly took all the gold ornaments and cash lying in the house without telling the appellant, and since then the respondent had been living at her parental house. All efforts on part of the appellant to bring her back to the matrimonial home had failed. Accordingly, the appellant stated, the respondent had treated him with cruelty, and also deserted him without reasonable cause or excuse. As such, he was left with no alternative but to file the petition under Section 13 of the Act on 9.6.2005/2008.

In response, the respondent, in her written reply, admitted to the marriage as well as birth of the child yet denied that she had treated the appellant with cruelty. She stated that her first husband

was alcoholic and used to beat her and it was in that scenario that they had parted ways by mutual consent. The respondent further stated that her parents had spent handsome amount on her wedding and had given gifts and dowry articles to the appellant and his family including T.V., fridge, gold ornaments, utensils, beddings etc. Despite this they started demanding more dowry from her and her family, and used to ill treat her.She denied insulting the appellant or calling him *'lula-langra'*. She denied knowing about his parents disinheriting him and stated that that may have been due to petitioner's bad habits but not due to any act on her part. She also denied any knowledge about the convening of Panchayat by the appellant and stated that it was absolutely incorrect that appellant had taken her to her village Ramuwal on 22.9.2004. Respondent alleges that in the month of October 2004 when she was pregnant she was turned out of the matrimonial home by the appellant and that upon birth of the child no one came to see the newly born child even though intimation regarding birth was sent to the appellant and his family. All the medical expenses relating to the delivery were borne by the parents of the respondent. She further stated that Panchayat consisting of respectables, including her brothers, tried their level best to rehabilitate the respondent, but without any result. Ultimately on 7.5.2005, the respondent was sent back with the appellant, but again after a few days the appellant misbehaved and demand Rs.1 lac from the respondent and on 15.5.2005 she was again turned out of the matrimonial home with the minor child. Respondent stated that since then she is living with her parents and appellant has filed divorce petition by leveling false allegations against her.

From the pleadings of the parties, the learned Additional District Judge framed the following issues:-

1. Whether respondent treated the petitioner with cruelty? OPA
2. Whether the respondent has deserted the petitioner for a continuous period of more than two years without reasonable cause or excuse.? OPR
3. Relief.

Thereafter, the appellant as well as respondent led evidence and examined their respective witnesses. On the basis of the pleadings and evidence led by the parties, the learned Additional District Judge dismissed the appellant's petition under Section 13 vide impugned order dated 21.4.2010, holding therein that the appellant-petitioner had failed to prove cruelty and desertion on part of the respondent-wife.

It is to challenge this order dated 21.4.2010 that the appellant has filed the present appeal before this Court.

Notice was issued to the respondent on 20.5.2010, who duly put in appearance. On 9.9.2010, this Court referred the matter to Mediation Centre, but to no avail.

For proper adjudication of the matter, the Lower Court Record was called for and examined in detail by this Court.

During arguments, counsel for the appellant vehemently contended that the findings given by the learned Additional District Judge to the effect that no cruelty and desertion is proven against the respondent, is contrary to the facts and evidence on record. In this

regard counsel referred to the findings at para 13 of the impugned order, which is as follows:

> "There is no evidence as to in what way, the behaviour of the respondent with petitioner and his parent was derogatory and insulting. There is just an allegation that respondent called the petitioner "loola langra" and many a time snatched the crutches and forcibly threw the petitioner in the presence of his friends and relatives. No date, month or year was given when any such incident took place. The names of friends and relatives were also not given. It is not disputed that petitioner is polio stricken and walks with a crutch and his handicap is visible to all. PW7 Amrik Singh has stated in cross examination that this fact was disclosed to the respondent at the time of settlement of marriage and respondent gave her consent for marriage after seeing the petitioner. In these circumstances, there was no question of respondent calling the petitioner "loola langra"."

In response, ld. counsel then referred to the LCR, and took us through the statements of PW2 Rakesh Kumar Vohra, PW5 Surjit Kumar, and PW10 Iqbal Singh, besides PW7 Amrik Singh father of the appellant, and stated that learned lower court had committed grave error in overlooking the testimonies of these above said witnesses wherein each of them have categorically deposed that the respondent used to insult the appellant in their presence and use derogatory words and taunts against him, as well as physically manhandled him and even snatched his crutches and made him laughing stock due to his physical disability which resulted into mental cruelty to him. Witness

have also stated that in their presence even number of times respondent pressed the appellant to get his share from his father and after selling the same they should leave the village and start living in the village of her parents. Witness statement also testify to the fact that Amrik Singh father of the appellant had disinherited him on 17.6.2004, thereafter the respondent used foul language against the appellant and insulted the parents of the appellant as well as physically manhandled him. Statements also testify that the respondent had left the marital home in September 2004, and that the witnesses and other respectables had tried several times to reconcile and rehabilitate the respondent with the appellant, however she was stubborn, and adamantly unwilling to return to her matrimonial home. Counsel for the appellant stated that he had convened numerous panchayats to settle the matter and to persuade the respondent to return home, but all were unsuccessful.

Counsel for the appellant also stated that the respondent was habitual of filing false and frivolous complaints against the appellant and his parents before various authorities. Counsel stated that this had caused great harassment, ignominy, and mental cruelty to not just the appellant, but also his old parents.

In this regard, counsel for the appellant referred to CM 23710-CII/ 2016 filed on 17.10.2016 under Order 41 Rule 27 CPC read with Section 151 CPC seeking permission thereby to lead additional evidence by placing on record judgment dated 26.5.2016 passed by the learned Additional Sessions Judge, Jalandhar as Annexure A-1, and judgment dated 20.9.2016 passed by learned JMIC, Hoshiarpur as Annexure A-2.

Perusal of this application reveals that the respondent had filed complaints against the appellant, his father Amrik Singh s/o Chajja Singh, and mother Smt. Manjit Kaur wife of Amrik Singh under Sections 406, 498A, 323, 506, 148,149 IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act.

Vide order dated 3.12.2014, the learned trial Court had convicted all the three accused for committing the offence under Section 498A IPC.

Appellant challenged this order of conviction dated 3.12.2014 before Additional Sessions Judge, Jalandhar who vide decision dated 26.5.2016 (Annexure A-1), set aside the judgment of conviction and order of sentence dated 3.12.2014 holding that :-

> "29. In the light of the above discussion, it is clear that the evidence led by the complainant in this case is inconsistent, contradictory and the same is not reliable. In these circumstances, the appellants-accused are entitled to benefit of doubt. In these circumstances, both the connected appeals are accepted. The judgment of conviction and the order of sentence dated 03.12.2014 passed by the court of learned SDJM, Nakodar is set aside. The appellants-accused are acquitted of the charge framed against them. The copy of this judgment be placed on the connected appeal bearing CRA No.09 of 2015. Appeal files be consigned. Trial court record be returned along with copy of this judgment."

Thereafter, the appellant filed a complaint against the respondent under Sections 500 and 211 IPC; and the respondent was convicted u/s 500 IPC for spreading defamatory remarks against the

appellant, by the JMIC, Hoshiarpur vide his order dated 20.9.2016 placed at Annexure A-2 - wherein the ld. JMIC, Hoshiarpur has held as follows:

> "21. In view of the findings on both the points of determination, accused is held guilty for the commission of offence punishable under Section 500 of IPC, but is held not guilty for the for the offence punishable under S.211 of IPC and hereby acquitted from the charge framed under S.211 of IPC. Let the accused be taken into custody and be heard on the question of sentence."

Per contra, counsel for the respondent reiterated her case as already enumerated hereinabove, inter-alia, denying that she had treated the appellant with cruelty, or insulted him or called him *'lula-langra'*. She denied knowing about his parents disinheriting him. She also denied any knowledge about the convening of Panchayat by the appellant and stated that it was absolutely incorrect that appellant had taken her to her village Ramuwal on 22.9.2004. The respondent reiterated that her parents had spent handsome amount on her wedding and had given gifts and dowry articles to the appellant and his family despite which they used to ill treat her. Respondent alleged that in October 2004 when she was pregnant she was turned out of the matrimonial home by the appellant and that upon birth of the child no one came to see the newly born child even though intimation regarding birth was sent to the appellant and his family. All the medical expenses relating to the delivery were borne by the parents of the respondent. Counsel for the respondent further stated that Panchayat consisting of respectables, including brothers of the respondent, tried their level best

to rehabilitate her, but without any result. Ultimately on 7.5.2005, the respondent was sent back with the appellant, but again after a few days the appellant misbehaved and demand Rs.1 lac from the respondent and on 15.5.2005 she was again turned out of the matrimonial home with the minor child. Counsel for the Respondent stated that since then respondent is living with her parents, but she had always been willing to live with the appellant. The testimonies of all the witnesses led by the respondent were examined and they all supported the above version of events as set out by her.

We have heard learned counsel for the parties and examined the the entire case record in great detail.

It is not in dispute that the parties have been living separately since 2005. Thus, it is a dead marriage for all intents and purposes. Admittedly, all mediation attempts between the parties have failed. Therefore, this marriage is a mere legal fiction surviving only on paper.

Furthermore, in the present case, various prosecution witness, specifically PW2 Rakesh Kumar Vohra, PW5 Surjit Kumar, and PW10 Iqbal Singh, besides PW7 Amrik Singh father of the appellant, have testified that in their presence the respondent had not just taunted the appellant for his physical handicap, but also pushed him around and threw him on the ground by pulling away his crutches. The impugned order is strangely silent regarding these testimonies. No mention whatsoever is made in the impugned order regarding the statements of these witnesses which are vital to the case. The appellant's averments in this regard have been rejected only on the ground that he had not given the specific date and time and place when

the respondent had pushed him or taunted him. In our considered view, this is not tenable. There is sufficient evidence on record in form of above mentioned testimonies where it is established that the respondent ill-treated the appellant for his handicap. Taunting a person for his handicap, and pushing him around to throw him on the ground when he is helpless and unable to defend himself, constitutes the most inhumane kind of cruelty which can be meted out to any disabled person; and the respondent's such actions amount to her inflicting both physical and mental cruelty on the appellant. Accordingly, the findings of the ld. ADJ, Hoshiarpur in this regard are held to be erroneous and contrary to the evidence on record, and are as such, reversed.

In the above-noted facts and circumstances of the present case, the following observations of the Hon'ble Supreme Court in case of '**K. Srinivas Rao vs. D.A. Deepa' (2013) 5 SCC 226**, are important and apposite, and cover the current controversy:

> "24. In our opinion, the High Court wrongly held that because the appellant-husband and the respondent-wife did not stay together there is no question of the parties causing cruelty to each other. Staying together under the same roof is not a pre-condition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. In a given case, while staying away, a spouse can cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse's life miserable. This is what has happened in this case.

25. It is also to be noted that the appellant-husband and the respondent-wife are staying apart from 27/4/1999. Thus, they are living separately for more than ten years. This separation has created an unbridgeable distance between the two. As held in Samar Ghosh, if we refuse to sever the tie, it may lead to mental cruelty.

26. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act,1955. But where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree. …

28. In the ultimate analysis, we hold that the respondent-wife has caused by her conduct mental cruelty to the appellant-husband and the marriage has irretrievably broken down. Dissolution of marriage will relieve both sides of pain and anguish. In this Court has respondent-wife expressed that she wants to go back to the appellant-husband, but, that is not possible now. The appellant-husband is not willing to take her back. Even if we refuse decree of divorce to the appellant-husband, there are hardly any chances of the respondent-wife leading a happy life with the

> appellant-husband because a lot of bitterness is created by the conduct of the respondent-wife."

Further, no doubt, the ground of irretrievable breakdown of marriage is not available in the statute; and the power to grant divorce on ground of irretrievable breakdown of marriage is only with the Hon'ble Supreme Court under Article 142. Nonetheless, for the purposes of the present case, observations of the Hon'ble Supreme Court in the case of '**Naveen Kohli v. Neelu Kohli', (2006) 4 SCC 558** which was also a case of cruelty (mental and physical) where the Hon'ble Supreme Court also considered the concept of irretrievable breakdown of marriage. In that case too the parties had been living separately since ten years and the wife was not ready to grant divorce to her husband. However, notwithstanding this factual position, Hon'ble Supreme Court was pleased to grant divorce in said matter and further noticed as follows:

> "32. In '**Sandhya Rani v. Kalyanram Narayanan', (1994) Supp. 2SCC 588**, this Court reiterated and took the view that since the parties are living separately for the last more than three years, we have no doubt in our mind that the marriage between the parties has irretrievably broken down. There is no chance whatsoever of their coming together. Therefore, the Court granted the decree of divorce.
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> 33. In the case of '**Chandrakala Menon v. Vipin Menon', (1993)2 SCC 6**, the parties had been living separately for so many years. This Court came to the conclusion that there is no scope of settlement between them because, according to the observation of this Court, the marriage has irretrievably broken down and there is no chance of their coming together. This Court granted decree of divorce.

> 34. In the case of **Kanchan Devi v. Promod Kumar Mittal, 1996(2) RCR (Criminal) 614 : (1996)8 SCC 90**, the parties were living separately for more than 10 years and the Court came to the conclusion that the marriage between the parties had to be irretrievably broken down and there was no possibility of reconciliation and therefore the Court directed that the marriage between the parties stands dissolved by a decree of divorce."

Even further, it is also not in dispute that the respondent has filed false criminal complaints against the appellant and his old parents, in which they have been duly acquitted. It has not been denied that the respondent herself has been convicted for defamation under Section 500 of the IPC.

There is sufficient case law on the issue that if the wife files frivolous and un-true complaint against her spouse of which he is ultimately acquitted, it amounts to cruelty and is sufficient ground for divorce. In this regard reference may be made to one such judgment passed by Hon'ble the Supreme Court in the case of '**Rani Narsimha Sastry v Rani Suneela Rani' in SLP(Civil) 1981 of 2019, decided on 19.11.2019** wherein, in para 13 Hon'ble Supreme Court held as follows:-

> "13. In the present case the prosecution is launched by the respondent against the appellant under Section 498A of IPC making serious allegations in which the appellant had to undergo trial which ultimately resulted in his acquittal. In the prosecution under Section 498A of IPC not only acquittal has been recorded but observations have been made that the allegations of serious nature are levelled against

> each other. The case set up by the appellant seeking decree of divorce on the ground of cruelty has been established…….
>
> 14……..But when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498A of IPC, leveled by the wife against the husband, it cannot be accepted that no cruelty has meted on the husband. As per pleadings before us, after parties having been married on 14.8.2005, they lived together only 18 months and thereafter they are separately living for more than a decade now.
>
> 15. In view of forgoing discussion, we conclude that appellant has made a ground for grant of decree of dissolution of marriage on the ground as mentioned in Section 13(1)(i-a) of the Hindu Marriage Act,1955."

Even this Court in the case of **Sushma Taya v Arvind 2015(2) RCR 888 (P&H)** held that filing of false criminal complaint by a spouse invariably and inevitably amounts to matrimonial cruelty and entitles the other to claim divorce.

Hon'ble Supreme Court in the case of **A. Jayachandra v Aneel Kaur 2005 (2) SCC 22** has held that allegation of cruelty is of such nature that resumption of marriage is not possible.

In '**Raj Talreja v. Kavita Talreja', (2017) 14 SCC 194**, the Hon'ble Supreme Court held as follows:

> "Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely

> have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act 1955 (for short `the Act'). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty. In the present case, all the allegations were found to be false."

In the present case, as evident from Annexure A-2 dated 20.9.2016, the respondent's complaints were found to be patently false as, not only was the appellant acquitted, but the respondent has been held guilty for the commission of offence punishable under Section 500 IPC.

Accordingly, in view of the discussion hereinabove and the facts and circumstances and legal position as enumerated hereinabove, this appeal is allowed and a decree of divorce is passed under Section 13 of the Act.

At this juncture it it important to note that a perusal of the LCR, and case record before this Court shows that since 2005 the appellant has been regularly, without fail, paying maintenance pendente lite as determined by this Court and the Courts below from time to time.

Further, in an endeavour to settle the matter, the appellant had made various offers to the respondent at different points in time.

The order dated 13.2.2020 passed by this Court in the present appeal reads as under:-

> "It has been mutually agreed between the parties with the assistance of learned counsel for the parties that the appellant-husband will pay an amount of Rs.10,00,000/- to the respondent wife and half of his share in the landed property (agricultural land) will be transferred in the name of the son. It has also been agreed by both the parties that all litigations filed by them against each other will be withdrawn.
>
> Learned counsel for the parties have undertaken to prepare the terms and conditions of the settlement and to place the same on record on the next date of hearing.
>
> Adjourned to 26.2.2020.
>
> A photocopy of this order be placed on the file of other connected case".

Thereafter, as recorded by this Court in orders dated 4.7.2022 and 1.8.2022, the appellant was willing to pay Rs.25 lacs as permanent alimony but a settlement could not be arrived at between the parties.

Though we have held that the acts of the respondent-wife amount to cruelty against the appellant-husband, we are, however, not oblivious to her requirements, and that of the son born of the parties' wedlock. Accordingly, we direct that the husband shall pay to the wife a sum of **INR 15,00,000/-** (Rupees Fifteen Lakhs only) as one time permanent alimony and she will not claim any further amount at any later stage; and a sum of **Rs. 10,00,000/-** (Rupees Ten Lakhs only)

shall be paid to their son Navjot. This amount be paid within six months from today.

The appeal is accordingly allowed. The judgment and decree dated 21.4.2010 passed by the learned Additional District Judge, Hoshiarpur, is set aside. The petition for divorce filed by the husband under Section 13 of the Act is decreed and the marriage of the parties solemnized on 3.3.2004 is dissolved by a decree of divorce. Pending application(s), if any, stand(s) disposed of.

FAO No. 3554 of 2016:

Appellant herein had filed petition u/s 25 of the Guardian & Wards Act, 1890 before the Additional Civil Judge (Senior Division) Dasuya exercising the power of District Judge, seeking custody of his son Navtej, which was dismissed by the said Court vide impugned order dated 28.1.2016. The appellant has challenged this order dated 28.1.2016 before this Court by way of present appeal, being FAO No. 3554 of 2016.

Brief facts of the case are that the appellant and the respondent were married as per Sikh rites and rituals on 03.03.2004, at Nakodar. Out of this wedlock, one son, namely, Navjot/ Navtej (the son is referred to as 'Navjot' in the petition u/s 13 HMA; and as 'Navtej' in the present petition under Hindu Minority and Guardianship Act), was born on 02.12.2004.

Admittedly, both parties/ parents have been living separately since 17.5.2005. Appellant filed for custody of his minor son Navtej, by way of G & W Act Case No. 07 of 1.6.2010, before the Additional Civil Judge, Senior Division, Dasuya, exercising the powers

of District Judge. However, this petition was dismissed vide impugned order dated 28.1.2016.

It is not disputed that the minor son Navtej has been staying with the respondent-mother throughout this period. As already noticed above, appellant has been regularly paying maintenance as determined from time to time. Accordingly, without adverting to the merits of the matter, we see no reason to interfere in above arrangement at this belated stage, especially as minor son Navtej will acquire majority on 2.12.2022, which is in a few months from now. As already directed above in FAO No. 190 of 2010, the appellant shall pay a sum of Rs.10,00,000/– **(Rs. Ten Lakhs only)**, to his son Navtej within six months from today.

In view of the facts and discussion hereinabove, this appeal is dismissed in above terms.

A copy of this order be placed on the file of FAO 3554 of 2016.

(NIDHI GUPTA)
JUDGE

(RITU BAHRI)
JUDGE

September 13,2022
Joshi.

Whether speaking/reasoned yes/no
Whether reportable yes/no