

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

FAO 6740 of 2018

Date of Decision:- September 26,2022

Renuka

.....Appellant

Versus

Shelly Kumar

.....Respondent

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

Present:- Mr. Vivek Khatri, Advocate for the appellant
Mr. Shelly Kumar, Respondent in person with his
counsel Mr. Naveen Siwach, Advocate

NIDHI GUPTA, J.

This is an appeal filed by the wife against the dismissal of her petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter 'the Act'), by Additional Family Court, Hisar vide impugned judgment and decree dated 28.9.2018.

Brief facts of the case are that the parties were married as per Hindu rites and ceremonies on 12.8.2012. Though they cohabited, no child was born out of their wedlock. After marriage, the appellant lived together with the respondent, his mother Santosh, his brother Raju, and

Raju's wife Kajal, in a joint family. It is appellant's case that the respondent and his family constantly tortured her physically, mentally, emotionally, and pestered her incessantly demanding more dowry. The appellant used to work as a Counsellor in an Institute at Hisar even prior to her marriage, and was drawing a salary of Rs. 13,000/- per month. She had saved a sum of Rs. 1 lac before her marriage, but after marriage this money was also taken away by her mother-in-law purportedly to repay the debts that were incurred for the purpose of this marriage. At the time of marriage, the respondent was working and was earning a salary of Rs.25,000 per month. However, after marriage he had stopped working also. Appellant further states that in October 2012 she got pregnant. However, the respondent forcibly got her pregnancy terminated stating that he had no means to bring up the child. Even after termination of her pregnancy she was not allowed to rest as was required for recovery, and though she felt very weak still the respondent and his mother made her work due to which the appellant developed gynaecological complications due to which she was not able to conceive again. Appellant states that this caused her tremendous mental agony. It is also stated that the respondent used to force her for unnatural sex. The appellant further states that the respondent and his family doubted her character and used to call her characterless and abused her with filthy expletives. The respondent and his family did not allow the appellant even to interact or talk with her parents or siblings or other persons from her office as they were very suspicious in nature. Finally in July 2014, it is alleged that the appellant was turned out of the matrimonial home whereafter a Panchayat was convened at the behest of which the appellant was taken back to her matrimonial home with the assurance that respondent and

his family members would not torture her after that. In November 2014 respondent asked the appellant to leave her job, and as she wanted her marriage to work, she quit her job on 29.1.2015. On 9.2.15, on her birthday, the appellant was receiving greetings and good wishes from her colleagues, friends and family members, the respondent got suspicious and not only shouted at her but also hurled obscene and filthy expletives at her, called her characterless, broke her mobile phone and hit her. Then on 13.3.2015 when the parties were living in a rented accommodation, respondent picked up a quarrel with the appellant for no reason or cause and left their home, taking his clothes and belongings with him. In this situation, the appellant had no means to maintain herself and was left with no choice but to go to her parental home. It is accordingly alleged that the respondent treated the appellant with cruelty and deserted her. On this ground the appellant filed petition under Section 13 of the Act before the Family Court, Hisar.

The respondent filed written statement before the Family Court, and primarily stated that actually it was due to interference of the family members of the appellant that their marriage did not work. He stated that he remained under pressure and couldn't work because of this reason, and that he was willing to keep the appellant with him and his family.

On the basis of pleadings of the parties, the Id. Family Court framed the following issues:

“1. Whether the respondent has treated the petitioner with such degree of cruelty as would amount to a matrimonial offence and the marriage has irretrievably failed? OPP

2. Whether the petition is not maintainable?

OPR

3. Relief.

In support of their respective stand the parties adduced evidence, as detailed in paras 8 and 9 of the impugned judgment and decree, which are reproduced below:-

“8. The petitioner Renuka in her evidence has examined Ct. Gulab Singh as PW1, herself as PW2 and her brother Mohit as PW3. Thereafter, the petitioner closed her evidence. Besides this, she also relied upon the following documents:-

Ex.P1	Copy of online complaint.
Ex.P2	Printout of e-mail.
Ex.P3 to 5	OPD Cards.
Ex.P5	Printout of online complaint.
Ex.P6	Final report u/s 173 Cr.PC in FIR No.1277/15 PS City Hisar.
Ex.P7	FIR No.1277/15 PS City Hisar
Mark-A&B	Photocopy of OPD Slips.

9. On the other hand, the respondent Shelly Kumar examined his mother Santosh as RW1 and himself as RW2. Thereafter, the respondent closed his evidence.”

On the basis of pleadings and evidence led by the parties, Additional Family Court, Hisar vide impugned judgment and decree, held that no cruelty or desertion was made out on the part of the respondent and accordingly dismissed the appellant's petition under Section 13 of the Act. Hence, the present appeal.

Counsel for the appellant inter-alia, submitted that the parties were married in the year 2012 and had admittedly been living separately since March 2015 when the respondent had walked out of the

matrimonial home. It is stated that even though the appellant is an educated and working woman, yet she was subjected to great humiliation and tortured by the respondent and his family for bringing less dowry. It is further stated that respondent and his family always doubted her character and abused her everyday and that the respondent and his brother used to beat her over smallest matters. It is then submitted that the respondent used to insult the appellant's parents and her brother and time and again demanded a huge sum of Rs. 5 lacs from the appellant and her family on the pretext that this money was needed by the respondent to set up his business.

Counsel for the appellant further contended that the appellant was heartbroken when her pregnancy was forcibly terminated at the insistence of the respondent. Even thereafter, because the respondent and his mother did not allow the appellant to take rest which is necessary for recovery, she developed gynaecological complications because of which she was unable to conceive. It is stated that the appellant also took treatment to be able to conceive but unfortunately, could not become a mother.

In support, counsel for the appellant has relied upon **Rajveer Singh v Gaganjot Kaur** 2022 (2) RCR (Civil) 514; **Sushma v Sunil Kumar** 2022(2) RCR (Civil) 642; **Som Dutt v Babita Rani** 2022 (3) RCR (Civil) 189; and **Priya Rani v Rajiv Kumar @ Bobby** 2022(3) RCR (Civil) 589.

On the other hand, the respondent perfunctorily denied the above said allegations and stated that it was a love marriage between the parties and they had known each other for 6 years prior to the marriage and the respondent was unwilling to grant divorce to the

appellant.

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

It is not in dispute that the parties have been living separately since 2015. Further, the list of acrimonious allegations by the appellant against the respondent and his family are endless. Be that as it may, Motherhood is innate, natural, and fulfilling to every woman; and the fact that the appellant was denied the same, and was forced to terminate her pregnancy against her will, at the insistence of the respondent, and thereafter could not conceive again due to gynaecological complications in our view, constitutes cruelty. We have seen the medical record appended by the appellant in this regard, in particular exhibits at Mark – A, and Mark – B, clearly show that in 2014, the appellant went to Fertility Centres where she underwent treatment because she ‘wants to conceive’. Therefore, the appellant’s averments in this regard are borne out from the evidence on record.

Further, perusal of the petition filed by the appellant before the learned Family Court, specifically paras 12 and 13 thereof, shows that the above allegations have been categorically made therein to the effect that the respondent had forced her to terminate her pregnancy against her will etc. However, reply filed by the respondent before the Family Court shows that his denial of these very serious allegations is lackadaisical and limited, without any specifics, he has only stated as follows:

“12. That the contents of para no.12 of the petition are wrong, incorrect and hence denied. The detailed facts have already been described in the forgoing paras on behalf of the respondent.

13. That the contents of para no.13 of the petition are wrong, incorrect and hence denied. The detailed facts have already been described in the forgoing paras on behalf of the respondent.”

It is well-acknowledged that what constitutes ‘Cruelty’, in a marriage is almost impossible to define. Thus, this Court, as also the Hon’ble Supreme Court, have in a number of decisions held that ‘cruelty’ in a marriage is to be determined in the facts and circumstances of each case. In this regard, the observations of the Hon’ble Supreme Court in **‘Ravi Kumar v. Julmidevi’ (2010) 4 SCC 476**, are relevant:

- “19. It may be true that there is no definition of cruelty under the said Act. Actually, such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, sometime it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty.
20. Therefore, cruelty in matrimonial behaviour defies any definition and its categories can never be closed. Whether the husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any predetermined rigid formula. Cruelty in matrimonial cases can be of infinite variety-it may be subtle or even brutal and may be by gestures and words. That possibly explains why Lord Denning in *Sheldon v. Sheldon*, [1966]

2 WLR 993 held that categories of cruelty in matrimonial cases are never closed.”

In our view, in facts and circumstances of the present case, it is not mere wear and tear of marriage, as held by the Id. Court below. The conduct of the parties in the present case evidences that there are irreconcilable differences between the parties, rendering the marriage, as of today, a mere legal fiction. It is not in dispute that the parties are residing separately since 2015. Even mediation attempts between the parties have remained unsuccessful. Though irretrievable breakdown of marriage is not available as a ground under the statute, yet, the reality of it has been recognised by the Supreme Court in a catena of decisions, 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, may be noticed. 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.

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."

In the facts and circumstances of the present case as narrated above, this appeal is accordingly, allowed. The judgment and decree dated 28.9.2018 passed by the learned Additional Family Court, Hisar, is set aside. The petition for divorce filed by the appellant-wife under Section 13 of the Act is decreed and the marriage of the parties solemnized on 12.8.2012 is dissolved by a decree of divorce.

(Nidhi Gupta)
Judge

(Ritu Bahri)
Judge

September 26, 2022

Joshi

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No