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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****FAO-8106-2017 (O&M)****Date of Decision: 09.09.2024**

SHEELAWANTI DEVI

. . . . Appellant

Vs.

DHARAMPAL INDORA

. . . . Respondent

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH**

Present: Mr. Ashwani Gaur, Advocate and
Ms. Shivangi Sharma, Advocate
for the appellant.

Mr. Akashdeep Singh, Advocate
for the respondent.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. This is an appeal pending since 2017. Although the counsel appearing for the respondent has prayed for adjournment, however, considering that the appeal is pending since 2017, we have refused the prayer for adjournment. Proxy counsel appearing for the respondent has thereafter called the arguing counsel who is ready to argue the case.
2. Counsel appearing for the appellant-wife has taken this Court to the judgment passed by the Family Court, Rohtak, and he submits that the respondent-husband had earlier filed a divorce petition which he had withdrawn. The ground for divorce taken in the said petition was of her causing mental cruelty. No permission was asked or given to file a fresh divorce petition. So far as the appellant is concerned, she and her



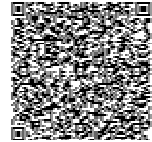
children were living together, and the husband was staying separately since 1994 as the wife was in government service at Delhi while the husband was posted in bank and at various different places. Thus, there was no case of deliberate or willful act of the wife of not living with or staying away from her husband and it was on account of her service condition that the wife was living separately. The fresh divorce petition was filed on the grounds of causing mental cruelty and desertion, but the Family Court did not find the desertion proved against wife and divorce decree has been granted holding wife of having caused mental cruelty on account of filing complaint under section 498-A of IPC.

3. Learned counsel for the appellant submits that complaint under Section 498-A IPC was filed by the appellant-wife against her husband in the year 2000 but the same was withdrawn, and therefore there was no continuance of mental cruelty on her behalf. She in fact had been living alone and maintaining the family, and it has come on record that even in her retiral papers, she has made her husband as a nominee. It is also submitted that the respondent-husband had also made the appellant as a nominee in his retiral papers, and the same reflects that there was no case of causing mental cruelty to the husband.
4. Learned counsel has taken this Court to the judgment passed by the Family Court to submit that the Family Court Judge has not even referred to the written statement filed by the wife, nor has he referred to her cross-examination. The allegations of the husband being called son of a chowkidar has also been denied by appellant in her cross-



examination, while she admits that the father of the husband is a village chowkidar.

5. Learned counsel, thus submits that the case set up by the husband does not come within the four corners of the ground of mental cruelty being caused by the wife to her husband.
6. Learned counsel appearing for the respondent-husband has supported the order passed by the Family Court, and he submits that the husband has suffered mental cruelty at the hands of his wife which has been amply proved before the Family Court, and therefore there is no interference warranted in the order passed by the Family Court.
7. Heard both the parties. This is a regular appeal against the order of the Family Court and therefore we have heard the counsel on merits also and perused the record.
8. The husband in his cross-examination states that he did not want to live with wife and children at any condition and cost. He also admits that he had filed a divorce petition in 2000 or 2001 which he has withdrawn. He also states that the same was not dismissed on merits. The husband also has stated that he resided in the house of his in-laws from 1981 to 1994 which was a rented accommodation, and during that period, he was posted at Muradabad, and presently he is living at village Jassiya with his brother's family. He has also stated that he does not have a ration card. He retired in December, 2015. He admits that he has not removed the name of his wife from nominee, and in his wife's retirement papers, she has shown him as a nominee. In the cross-examination, a photograph Ex.D2 was shown to him and he



mentions that Kiran is wife of his brother Dharmender, and she resides at Sector-2 Rohtak, and she had been thrown on the road and had been terrorized by the respondent's daughter. It is stated that the respondent's daughter Soniya who is born out of the wedlock of the appellant and the respondent, had lodged an FIR against Kiran and other family members, and the case is pending after the charge-sheet has been filed before the JMIC, Rohtak.

9. We also notice that the respondent and the appellant's daughter Soniya is an Assistant Professor in Delhi University. Respondent also admits that in the FIR neither the respondent nor his brother or Kiran have been made as an accused. There is a suggestion of the respondent having illicit relations with his bhabhi Kiran, which he has denied. His daughter has filed case under Domestic Violence Act, which was withdrawn. It has also come on record that the appellant was of 65 years of age and her husband was 61 years of age at the time of cross-examination held on 03.02.2017.

10. We have also carefully gone through the statement of the appellant as well as her cross-examination. The appellant has denied the suggestion that she gave beatings to her husband on 17.07.2000. She has also stated that her husband attended marriage of her brother and she also attended functions of the family of her husband. She has denied suggestion that she pressurized her husband due to her father, uncle and brother. The FIR said to have been registered by the daughter is also on record which reflects that it was registered for offence under Section 451/427/34 IPC against three persons namely Neelam, Sonu



and Kuntesh, and all the three persons had allegedly entered into the house of the daughter of the appellant and there is no allegation against the respondent-husband or his Bhabi Kiran. A suit has also been filed for declaration and permanent injunction by the appellant against the respondent husband in regard to house which is in her ownership.

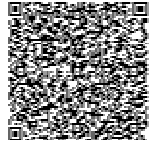
11. From perusal of all the above statements and the documents which are on record and after independently examining the same, we find that there is no incident or allegation of lodging FIR against the husband by the wife after 2013. Earlier, a complaint was registered in the year 2000 which was withdrawn, whereafter the husband when filed a divorce petition, also withdrew it unequivocally.
12. The learned Family Court Judge has proceeded to take into consideration the said event as well as the suggestion made during the cross-examination of illicit relationship with the Bhabhi of the respondent husband to reach to a conclusion of mental cruelty.
13. To determine whether mental cruelty has been caused to any of the spouses, we would have to look into the circumstances which we have noticed above.
14. In the case of *A. Jayachandra vs. Aneel Kaur, (2005) 2 SCC 22*, the Apex Court was examining the requisite ingredients for constituting cruelty as under:

“10. The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension



of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of his spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, a proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

11. The expression 'cruelty' has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem in determining it. It is a question of fact and degree. If it is mental, the



problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted (See Sobh Rani v. Madhukar Reddi, AIR 1988 SC 121).

12. To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct



inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.”

15. Considering the above, if we examine the present facts, we find that both husband and wife have been living off and on together and mainly separated on account of them being in service. It is an admitted position that husband was posted at various places and he would join the matrimonial home at his in-laws house off and on. He does not say or mention about any cruelty being caused to him while living together. It is only one incident of 2000 where he alleges his wife to have beaten him up. The reasons are not coming forthwith. So far as the appellant-wife is concerned, she is a teacher and has retired as Principal of a school, and therefore her normal behaviour cannot be said to be of a violent nature. Her children are also living with her and she has brought them up well with her daughter being an Assistant Professor in Delhi University which reflects the education which she has provided to her children.
16. The husband on the other hand appears to be not interested in continuing to stay with his wife, but the reasons are not forthcoming. Merely on the basis of bald circumstances without pleadings of suffering mental cruelty, a person cannot be said to be suffering such a mental trauma that the matrimonial home should be allowed to be broken. Foundation of a sound marriage is tolerance as well as

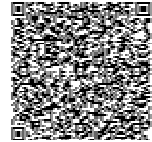


adjustment. Sporadic incidents which were condoned would not constitute a continuous mental cruelty.

17. In ***Dr. N.G. Dastane vs. Mrs. S. Dastane, 1975(2) SCC 326***, the Apex Court was examining the aspect regarding condonation of conduct of the spouse in relation to cruelty and it was held as under:

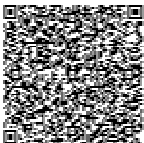
“54. Even though condonation was not pleaded as a defence by the respondent it is our duty, in view of the provisions of, Section 23(1) (b), to find whether the cruelty was condoned by the appellant. That section casts an obligation on the court to consider the question of condonation, an obligation which has to be discharged even in undefended cases. The relief prayed for can be decreed only if we are satisfied "but not otherwise", that the petitioner has not in any manner condoned the cruelty. It is, of course, necessary that there should be evidence on the record of the case to show that the appellant had condoned the cruelty.

55. Condonation means forgiveness of the matrimonial offence and the restoration of offending spouse to the same position as he or she occupied before the offence was committed. To constitute condonation there must be, therefore, two things : forgiveness and restoration : The Law and Practice of Divorce and Matrimonial Causes by D. Tolstoy, Sixth Ed., p. 75. The evidence of condonation in this case is, in our opinion, as strong and satisfactory as the evidence of cruelty. But that evidence does not consist in the mere fact that the spouses continued to share a common home during or for some time after the spell of cruelty. Cruelty, generally, does not consist of a single, isolated act but consists in most cases of a series of acts spread over a period of time. Law does not require that at the first appearance of a cruel act, the other spouse must leave the matrimonial home lest the continued cohabitation be construed as condonation. Such a



construction will hinder reconciliation and thereby frustrate the benign purpose of marriage laws.”

18. Coming to the present case, we find that the respondent had filed a divorce petition in the year 2000 which he had withdrawn. At that time also, he had claimed mental cruelty. The basis was a complaint filed by his wife under Section 498-A IPC, which stood withdrawn. Thus, we find that he has condoned the said act and withdrew his petition for divorce. After the said incident, the husband has not come out with any new aspect or any new incident or overt act of his spouse which could be a reason for seeking divorce on the ground of mental cruelty caused by his wife. Of course, he mentions about the case registered by his daughter under the Domestic Violence Act at this instance of his wife, but the reasons for registration of the said case have not come out and there is no evidence on record to attribute to his wife (the appellant).
19. We, therefore, are unable to accept the findings and conclusions drawn by the Family Court that the appellant-wife had in any manner been a source of causing mental cruelty to her husband (respondent).
20. We also notice that both the husband and wife have retired from service and are leading life peacefully, though separately. Granting divorce to such a couple who have accepted of making each other as a nominee to their respective retiral benefits, reflects that they continue to have some inkling of relationship between them, and it cannot be said that the thread of bondage between the two has snapped. It is also not a case of irretrievable breakdown of marriage. May be the children may have some grouse against their father, but the same cannot be a



ground or a reason for allowing the divorce petition filed by the respondent-husband.

21. We, therefore, *allow* this appeal and set aside the order passed by the Family Court dated 21.11.2017.

22. All pending applications also stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

September 09, 2024

Mohit goyal

1. Whether speaking/reasoned?	Yes/No
2. Whether reportable?	Yes/No