

(2003) 02 P&H CK 0276

High Court Of Punjab And Haryana At Chandigarh**Case No:** First Appeal from Order No. 65-M of 1991

Ram Mehar Singh

APPELLANT

Vs

Urmila Kumari

RESPONDENT

Date of Decision: Feb. 5, 2003**Acts Referred:**

- Hindu Marriage Act, 1955 - Section 13, 13(1)

Citation: (2004) 3 CivCC 659 : (2004) 138 PLR 435 : (2005) 1 RCR(Civil) 330**Hon'ble Judges:** S.S. Saron, J**Bench:** Single Bench**Advocate:** I.S. Balhara, for the Appellant; R.K. Malik, for the Respondent**Final Decision:** Dismissed

Judgement

S.S. Saron, J.

Ram Mehar husband of Smt. Urmila Kumari has filed this appeal u/s 28 of the Hindu Marriage Act (hereinafter to be referred to as the "Act") against the judgment and decree dated 9.2.1991 passed by the learned Additional District Judge (III), Rohtak, whereby his petition u/s 13 of the Act for the grant of a decree for divorce on the ground of cruelty and desertion has been dismissed with costs.

2. The marriage between the parties was solemnised according to Hindu rites and ceremonies at village Sheikhpura, Tehsil and District Karnal on 2.7.1979. After the marriage the parties resided at village Khanpur Kalan, Tehsil Gohana, District Sonapat. Out of the wedlock, a daughter was born. The appellant filed a petition u/s 13 of the Act for the grant of divorce on the ground of cruelty and desertion alleging that about six years earlier to the filing of the petition, the respondent on the pretext of participating in the marriage of her maternal cousin's daughter at village Bijewa, left his house leaving the daughter. She left with her maternal uncle Suraja and took away all her valuable clothes and ornaments. After about 20 days thereafter the father of the respondent reportedly made a demand of Rs. 50,000/-

from the father of the appellant on the ground that he had entered into an agreement for the purchase of some agricultural land and he was short of money. The appellant's father expressed his inability to arrange the said amount, whereupon the father of the respondent got annoyed and left the house of the appellant expressing great resentment. It is further alleged that after about 2-1/2 months on coming to know that the respondent had reached her parental house went, there to bring her. However, the parents of the respondent declined to send her as his father had not given financial help for purchasing the land. The respondent also showed her resentment. Efforts were made by the appellant, his father and other relatives and respectables which included Pandit Ganga Ram, Kehri Singh, Ujala and others, who all went to the house of the respondent to bring her back to the house of the appellant. However, the same proved futile. The appellant wanted to bring back the respondent after a week but he was given beating by the respondent and her uncles Maha Singh and Daya Singh and her brothers Jagbir Singh and Balwan Singh. The appellant sent a registered notice to the respondent on 15.7.1986 after the said incident. This enraged the family members of the respondent and they made several attempts to do away with the life of the appellant and for this purpose they made secret visits at odd hours to the village. However, the appellant was saved through providential grace and thus constrained to make complaints to the police apprehending great danger to his life. The matter came to such a stage that the respondent and her parents are in no way prepared to reconcile and thus the relations between the parties have totally broken down. In these circumstances, it has become well-nigh impossible for resumption of matrimonial relations between them. The appellant had earlier filed a petition for divorce but the same was dismissed in default. The respondent filed a petition u/s 125 Cr.P.C. where maintenance allowance for the respondent was granted by the Court in District Karnal. All these facts were indicative of a situation of complete break and estrangement of relations between the parties.

3. The respondent appeared before the learned trial Court and filed her written statement. The averment with regard to the factum of marriage and the fact that a daughter was born out of the wedlock have been admitted. However, by way of preliminary objection, it was stated that the petition is an abuse of process of the Court and the same was filed on the basis of false, fabricated and frivolous allegations. Besides, the appellant had not come to the Court with clean hands and he had suppressed the material facts. As a matter of fact, it was he who had deserted the respondent of his own without any rhyme and reasons. The appellant and his parents are stated to be greedy persons and were persistently pressing their demand of a motor cycle. The appellant asked the respondent several times to get money for the purchase of motor cycle from her parents but the respondent showed her inability to bring money from her parents. Due to this reason the behaviour of the appellant and his family member became strange towards her. The appellant used to hurl abuses and gave severe beatings to the respondent. All the

ornaments and valuable goods of the respondent were kept by the appellant and his parents. She was turned out of the matrimonial home in three clothes in June, 1987. It is further stated that the respondent was ready and willing to live with the appellant and she is not residing at her parental home by her own consent and will. Rather, it was the appellant who compelled her to leave the matrimonial home. The respondent in her written statement has repeatedly stated that she was willing to live with the appellant as she was a devoted wife. It is also stated that the appellant snatched away the baby Neelam from her custody and he never cared for her during her illness. Regarding dismissal of the petition for divorce in default, it is stated that the appellant was not ready to pay maintenance and so he withdrew the said petition. The fact that respondent had filed an application u/s 125 Cr.P.C. for maintenance which was allowed, has been admitted. The other allegations made by the appellant have been denied.

4. On the pleadings of the parties, the following issues were framed by the learned trial Court:-

1) Whether the petitioner is entitled to a decree of divorce on the grounds of cruelty and desertion? OPP

2) Relief.

5. After examining the evidence of both the parties led before it, the learned trial Court came to the conclusion that the appellant had maltreated the respondent and that she had not left the matrimonial home of her own accord. It was held that the respondent was still prepared to go and live with the appellant, whereas the appellant was not ready to keep her. In view of the aforesaid findings on the sole issue, the husband's petition was dismissed which resulted in the filing of the present appeal by the appellant and assailing the judgment and decree dated 9.2.1991.

6. Shri I.S. Balhara, learned counsel for the appellant has contended that the learned trial court has committed a grave irregularity and illegality in dismissing the petition of the appellant for the grant of divorce. He has argued that the respondent had treated the appellant with cruelty which was of such a nature as to cause danger to his life and limb, besides causing mental injury to him. He also argued that the respondent has deserted the appellant inasmuch as she left the matrimonial home six years earlier to the filing of the petition by the appellant and, therefore, the appellant has been deserted for a continuous period of two years before the presentation of the petition. In these circumstances, he submitted that the appellant is entitled to matrimonial relief of divorce u/s 13(1)(i-a) and 13(1)(i-b) of the Act.

7. On the other hand, while refuting the contentions raised by the learned counsel for the appellant, Shri R.S. Malik, learned counsel for the respondent has contended that the respondent was always been ready and willing to live with the appellant and it is rather the appellant who turned out the respondent and there is nothing on

record to show that the respondent has treated the appellant with cruelty or has deserted him in any manner.

8. I have considered the respective submissions of the parties. It may be mentioned that efforts were made before the Lok Adalat on 16.12.1999 and 12.1.2000 for reconciliation between the parties. On 16.12.1999 the wife-respondent was present before the Lok Adalat and stated that she was prepared to go to her matrimonial home unconditionally. However, the appellant was not present on that day and the case was adjourned to 12.1.2000. On the adjourned date the wife re-asserted that she was ready and willing to go to her matrimonial home without any condition. On the contrary, it was alleged that the wife had re-married and her petition for maintenance u/s 125 of the Code of Criminal Procedure has also been dismissed. The Hon"ble Lok Adalat recorded that there was no possibility of compromise and the matter should be decided on merits by this Court.

9. Another aspect which needs to be mentioned is that the respondent had filed a petition for the grant of maintenance in terms of Section 125 of the Code of Criminal Procedure. The learned Judicial Magistrate 1st Class vide his order dated 7.2.1991 awarded maintenance to the wife at the rate of Rs. 300/- per month by accepting her petition. However, both the parties preferred criminal revisions in the Sessions Court and the learned Additional Sessions Judge, Karnal, vide order dated 22.10.1991 dismissed the revision petition of the appellant-husband and allowed that of the respondent-wife by enhancing the amount of maintenance at the rate of Rs. 500/- p.m. The appellant-husband thereafter filed Criminal Misc. No. 14859-M of 1991 in this Court against the aforesaid order dated 22.10.1991. The said petition was disposed of by this court vide order dated 9.8.2000 and the amount of maintenance for the wife was fixed at Rs. 450/- p.m. It was made clear that in case any event subsequent to 1991 warrants a further enhancement, it would be open to the respondent to seek the same by moving an appropriate application before the trial Court.

10. A perusal of the evidence on record shows that the appellant in support of his case has examined himself as PW-1. Besides, he examined Gagan Ram as RW-2 and Ishwar Chand as PW-3. The respondent examined herself as RW-1, besides she produced her father Gaje Singh as RW-2 and Ram Singh son of Surat Singh, Headmaster as RW-3.

11. While appearing as PW-1 the appellant reiterated his assertion made in the petition and re-asserted his story that the father of the respondent had demanded Rs. 50,000/- for purchase of some land and due to their inability to pay the said amount he got annoyed. He further states that after about 2 or 2-1/2 months of the respondent going with her maternal uncle, he went to the house of her parents along with his relative Bishan Singh to bring her back but the father of the respondent did not send her on the ground that they had not helped him. He again went after about ten days to bring back the respondent but she was not sent by her

father. Then in the month of June or July 1985 they took a Panchayat to the house of the parents of the respondent which included Ujala, Kehri, Pandit Gagan Ram and some other persons. In the meeting of the Panchayat, the father of the respondent agreed to send the respondent to her matrimonial home in a week's time. After one week the appellant went to the house of the respondent along with Gagan Ram to bring her back and on that occasion the father and brother of the respondent and some other persons gave them beating. They then returned and it is stated that the respondent had deserted him since May 1993 without any reason. He also states that regarding the beating he had made an application to the Superintendent of Police, Sonapat copy of which is Mark A. It does not bear his signatures and no action was taken by the police. In the cross-examination the appellant categorically states that now he does not want to keep the respondent with him as his wife.

12. Gagan Ram has appeared as PW-2 and Ishwar Chand as PW-3. PW-2 merely states that he had gone with the Panchayat about 5-6 years back to the house of the father of the respondent and that her father refused to send her to the house of the appellant. He further states that the father of the appellant was not present in the said Panchayat and that Kehri uncle of the appellant and Gaje Singh father of the respondent had quarreled there in the Panchayat and they then returned to the village. To the same effect is the statement of Ishwar Chand (PW-3) who also states that he had gone with the Panchayat and both the parties had an altercation.

13. The respondent appeared as RWI and stated that she was ill-treated by the appellant and his parents during the period she remained in the matrimonial home and that the appellant and his parents had been demanding a motor cycle, gold ring, colour television, gold chain and Rs. 40,000/-. They had asked her to bring the said articles from her parents. She further states that they could not meet the demands of the appellant and his parents and she was given beatings several times by the appellant and his parents. On several occasions she was not given any food and she was also given some poison in the milk as a result of which she had grown weak and developed skin disease on her hand and legs. In the month of January and February, 1987, she remained admitted in the Civil Hospital, Karnal for one month and eight days for her treatment. She denies any demand made by her father from the appellant for the purchase of any land. While she was lying ill in the month of February, 1987 her daughter Neelam was forcibly taken away by the appellant. Her father had taken a panchayat to the house of the appellant twice to persuade him to keep her in the matrimonial home but he did not agree. She states that she does not want divorce from the appellant and she is still prepared to live with him in the matrimonial home.

14. The father of the respondent Gaje Singh appeared as RW-2. He has also reiterated the deposition of the respondent with regard to demand of articles and ill-treatment meted out to his daughter. The last witness examined by the respondent is Ram Singh who is Headmaster, Govt. High School, Gudha, District

Karnal. He is also one of the members of the Panchayat who was taken by the respondent in January 1987 to the house of the appellant so as to effect a compromise between the parties. He states that in the panchayat the appellant had agreed to bring back the respondent to the matrimonial home within 15 days. Again a panchayat was taken to the village of the appellant in March 1987 because the appellant had not come to take the respondent to the matrimonial home. The appellant again had agreed to take the respondent in April 1987 he had taken the respondent to the matrimonial home. However, the respondent then fell seriously ill and she was left at the house of her parents.

15. On the basis of the evidence, it is to be seen whether the respondent has treated the appellant with cruelty within the meaning of 13(1)(i-a) and deserted him within the meaning of Section 13(1)(i-b) of the Act.

16. It is appropriate to note that the Hon"ble Supreme Court in [Savitri Pandey Vs. Prem Chandra Pandey](#), held that cruelty u/s 13(1)(i-a) of the Act may be physical or mental. Physical cruelty consists of acts which endanger the physical health of one of the parties to the marriage and includes inflicting of bodily injury or giving cause for apprehension of such injury. Mental cruelty consists of conduct which causes mental or emotional suffering or induces fear in respect of matrimonial relationship. In *Parveen Mehta v. Inderjit Mehta* (2002) 132 PLR 492 the Hon"ble Supreme Court held that Section 13(1)(i-a) of the Hindu Marriage Act includes both mental and physical cruelty. The legal concept of cruelty and the kind of degree or cruelty necessary to amount to a matrimonial offence has not been defined under the Act. The legislature has refrained from giving a comprehensive definition of the expression that may cover all cases. It was held that mental cruelty is a state of mind and feeling of one of the spouses due to the behavior or behavioural pattern by the other. It is therefore, necessarily a matter of inference to be drawn from the facts and circumstances of each case. Proper approach requires the assessment of the cumulative effect of the attending facts and circumstances established by the evidence on record and that only then can the inference be drawn that the petitioner has been caused to suffer mental cruelty by the spouse. It was clarified that individual instances of misbehaviour seen in isolation would not be sufficient to establish mental cruelty.

17. In order to establish cruelty, the conduct must be of such a character as to cause danger to life, limb or health, (physical or mental) so as to give rise to a reasonable apprehension of such a danger. This has been accepted to be the meaning of cruelty and has been held by the Courts to be rather difficult to define. It depends upon the facts and circumstances in each case which is to be assessed bearing in mind the social status of the parties, their customs and traditions, their educational level and the environment in which they live.

18. The parties in the present case are living in rural area in village Khanpur Kalan, Tehsil Gohana, District Sonapat. The wife has consistently stated that she has been

ready to live with her husband. The appellant has not placed any material on record to show that he has been subjected to such conduct which is of such a character so as to cause danger to life, limb or health (physical or mental) so as to give rise to a reasonable apprehension that it would be dangerous to the life of the appellant. The respondent has written her name as Urmila with a shaky hand from which it can be inferred that she can only sign and is at the most semi-literate. It is not the case of the appellant that his wife used to abuse him or hurl abuses upon his family members. It is also not in evidence that she did not perform her matrimonial duties and did not behave as a dutiful wife. Besides, it is pertinent to note that the appellant in his deposition as PW-1 states that in the Panchayat Ujala, Kehri and Pandit Gudan Ram had gone with him besides some other person who were members of the panchayat. However, Gudan Ram PW-2 except for Kehri does not name the other persons who had reportedly gone with the panchayat. Ishwar Chand PW-3 is not named by appellant-Ram Mehar, in his deposition as PW-1 as one of the member of the Panchayat. Therefore, in the circumstances, it is difficult to accept that a panchayat had indeed gone to the house of the respondent to get her back. Resultantly there has been no sincere efforts on the part of the appellant to reconcile with the respondent. The evidence of Ram Singh (RW-3) who is an independent witness and the S. Headmaster of a Government School shows that in April 1987 the appellant had taken the respondent but she fell seriously ill and left at the house of her parents. As such there is no sincere effort on the part of the appellant to settle the respondent and the evidence led by him shows that he only made a pretence of settling the respondent without any real intention to do so. Therefore, in the circumstances, it is not a case that would amount to cruelty on the part of the respondent against the appellant within the meaning of Section 13(1)(i-a) of the Act.

19. Insofar as desertion is concerned, it may be noticed that there is no consistent definition of desertion in the Act. It merely means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes wilful neglect by the other party to the marriage. The Hon'ble Supreme Court in the case of [Adhyatma Bhattar Alwar Vs. Adhyatma Bhattar Sri Devi](#), while considering desertion as a ground for matrimonial relief held as follows:-

7. "Desertion" in the context of matrimonial law represents a legal conception. It is difficult to give a comprehensive definition of the term. The essential ingredients of this offence in order that it may furnish a ground for relief are:-

1. the factum of separation;
2. the intention to bring cohabitation permanently to an end-animus deserendi;
3. the element of permanence which is a prime condition requires that both these essential ingredients should continue during the entire statutory period"

The clause lays down the rule that desertion to amount to a matrimonial offence must be for a continuous period or not less than two years immediately preceding the presentation of the petition. This clause has to be read with the explanation. The explanation has widened the definition of desertion to include "wilful neglect" of the petitioning spouse by the respondent. It states that to amount to a matrimonial offence desertion must be without reasonable cause and without the consent or against the wish of the petitioner. From the Explanation it is abundantly clear that the legislature intended to give to the expression a wide import which includes wilful neglect of the petitioner by the other party to the marriage. Therefore, for the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*). Similarly, two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to from the necessary intention aforesaid. The petition for divorce bears the burden of proving those elements in the spouses respectively and their continuance throughout the statutory period."

20. The fact of separation (*factum deserendi*) is established in the present case. The parties are admittedly living separately. However, it is not shown that the respondent has deserted the appellant and there was an intention on her part to desert him. In other words, there is no *animus deserendi* proved from the evidence and material on record. The nature of evidence on record show that the wife was admitted in hospital during the year 1987 and thereafter she has not been taken back. Besides, the appellant while appearing as his own witness as PW-1 has categorically stated that he is not wanting to live with his wife. The wife on the other hand, stated that she was even now ready to live with him.

21. As already noticed above, during the proceedings before the Lok Adalat also recorded on 16.12.1999 and 1.12.2000 it was stated that by the respondent-wife that she was prepared to go back to her matrimonial home unconditionally. The said matter was referred to the Lok Adalat for the purpose of reconciliation. Section 23(3) of the Act reads as under;-

"23(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been effected and the court shall in disposing of the proceeding have due regard to the report."

22. The above provision shows that in order to bring reconciliation between the parties, the matter may be referred to any person named by the parties or any nominated by the Court with direction to report to the Court as to whether

reconciliation can be and has been effected and the Court in disposing of the proceedings shall have due regard to the report. The matter was referred to the Lok Adalat. The Lok Adalat though has not given any report but has recorded the statement made by the wife that she was prepared to go back to the matrimonial home unconditionally. However, it was found that there is no possibility of compromise. This unconditional offer of the wife in proceedings before the Lok Adalat can be taken into account to show her conduct as to the whether there was desertion on her part.

23. In this view of the matter, I am of the view that the plea of desertion as also cruelty on the part of the wife-respondent against the appellant does not stand established in the present case.

24. Resultantly, the appeal is without any merit and the same is dismissed. The parties are however, left to bear their own costs.