

Before Rajan Gupta & Manjari Nehru Kaul, JJ.

SANGEETA SINGH — Appellant

versus

RAVI RANJAN PRASAD SINGH — Respondent

FAO No.904 of 2016

December 20, 2019

(A) *Hindu Marriage Act, 1955—S.13(1) (ia)—Cruelty—Wife’s appeal against the Family Court judgment allowing the husband’s petition for divorce—Held, no precise definition of cruelty has been given in the Act—court has to derive a satisfaction that wife’s conduct had become intolerable for the husband to suffer any longer, making it impossible for them to live together—this has to be judged by taking into account the gravity of conduct complained of coupled with the fact whether the wife’s intention was to inflict pain and agony on the husband—on facts, it was found strange that the Family Court chose to believe the version put forth by elder daughter (who was in husband’s custody) and rejected the younger daughter’s testimony (who was in wife’s custody) by holding it to be a tutored one—the younger daughter, a minor, deposed on the basis of questions put to her by the court and not on the examination-in-chief by her counsel—in such a situation for the court to hold her version is tutored one, does not depict judicious approach—further held, the elder daughter’s testimony that wife (mother) would force her to fetch cigarettes and liquor for her consumption when she was in class 3rd or 4th, comes across as totally unbelievable and unacceptable—it is strange how the Family Court chose to believe this testimony —wife’s report against husband to the Protection Officer and he being summoned to police station, just corroborates wife’s version of being subjected to acute cruelty and torture, leaving her with no option but to seek the help of authorities—it was also found that the husband had been indulging in blatant discrimination viz-a-viz both his daughters—wife’s and her younger daughter’s version found reasonable and believable—consequently, Family Court judgment and decree was set aside while allowing the appeal.*

Held that, since no precise definition of 'cruelty' has been given in the Act, a satisfaction shall have to be derived at, by the court, that the conduct of the appellant-wife was such that it had become intolerable for the respondent-husband to suffer any longer and thus,

making it impossible for them to live together. However, the same shall have to be judged and satisfaction arrived at, after taking into account the gravity of the conduct complained of coupled with the fact whether the intention of the appelland wife was to inflict pain and agony on the respondent-husband.

(Para 13)

Further held that, in the instant case, learned court below gave a finding in favour of the respondent-husband by believing the testimony of elder daughter Sangh Rakshita PW-2 and holding that the conduct of the appelland-wife towards not only the respondent-husband but also towards her mother-in-law and the servants was inappropriate and cruel for which the respondent husband was entitled to a decree of divorce. It is indeed very strange that the family court chose to believe the version put forth by the elder daughter PW-2 and rejected the younger daughter's testimony by holding it to be a tutored version. In fact on reappraisal of the deposition of the younger daughter Sangh Nehita – RW-2 it comes across as a very spontaneous and natural testimony wherein she has not spit out any venom against the father but has only answered in a very child-like and innocent manner to the questions, which were put to her by the Court itself. It would be pertinent to notice that whatever has been stated by RW-2 Sangh Nehita was on the basis of questions put to her by the court and not on the examination-in-chief done on her by her counsel. In such a situation for the court to hold that her version is a tutored one, does not depict a judicious approach. Learned court thus, erred in brushing aside the testimony of RW-1 in one stroke of pen as being a tortured version particularly when there was hardly any reliable evidence led to substantiate the allegations of the respondent husband that the appelland-wife was a drunkard and a smoker, who would indulge in unruly and uncalled for behaviour. Nevertheless, even the cross examination, which was done on the young girl RW-2 Sangh Nehita, who at that time was about 14 years of age, in our considered opinion was a rather aggressive one yet the young child withstood the test of cross-examination by her consistent testimony from which an inference can safely be derived that in fact her testimony was most truthful and natural, without any pressure much less it being a tutored one. In fact it is the testimony of the elder daughter, who appeared as PW-2, which raises eyebrows and appears to be tutored to a great extent. The testimony of the elder daughter PW-2 Sangh Rakshita that the appelland-wife (mother) would force her to go and fetch cigarettes and liquor for her consumption when she was in class 3rd or 4th and many-a-times, when she went to fetch them, she

was eve-teased on the way, comes across as totally unbelievable and unacceptable. It is strange how the family court chose to believe the testimony of PW-2 Sangh Rakshita because no shop would ever sell cigarettes and liquor to a child as young as in class 3rd or 4th. From this part of her testimony, it is clearly discernible that she has chosen to parrot her father's version. Rather on a perusal of the testimonies of both respondent-husband and PW-2 Sangh Rakshita, it conclusively stands proved that the respondent-husband used to keep liquor at home and was also a frequent consumer of the same. In view of this admitted fact, the version of not only the appellant-wife but also RW-2 Sangh Nehita that the respondent-husband would under the influence of liquor indulge in abusive behaviour appeals to reason and comes across as believable. This fact finds corroboration from the testimony of RW-2 Sangh Nehita, who on being examined by the court deposed that the fights between the parents would often happen when her mother would stop her father from drinking.

(Para 14)

(B) *Hindu Marriage Act, 1955 -S.9– Restitution of conjugal rights - Wife's appeal against the Family Court judgment dismissing her petition—Held, it is the cardinal rule of matrimonial law that spouses are entitled to consortium of each other—on facts, it was found that husband had withdrawn from wife's society without any sufficient and reasonable cause—even if he had to move out on account of wife's complaint under the Domestic Violence Act, she could not be faulted on that count—she had been pushed against the wall by the husband's own misconduct leaving her with no option but to seek protection from the authorities—wife could not be expected to endure husband's cruel treatment till she is blue in the face—appeal allowed.*

Held that, in view of our detailed findings as already given above, the impugned order under Section 9 of the Act also deserves to be set aside.

(Para 19)

Further held that, it need not be over emphasised that it is the cardinal rule of matrimonial law that the spouses are entitled to consortium of each other.

(Para 20)

Further held that, adverting to the case in hand, in the facts and circumstances, the appellant-wife has a right in law to seek restitution of the marital ties from the respondent-husband as it is evident that the

respondent-husband has withdrawn from her society without any sufficient and reasonable cause. Even if, we accept that the respondent-husband moved out and started staying separately on account of her lodging a complaint under Domestic Violence Act, she cannot be faulted with on that count. It is not hard to discern that she had been pushed against the wall by the husband's own misconduct leaving her with no other option but to seek protection from the authorities. The lament of the respondent-husband that it was on account of the appellant-wife's misconduct he had to shift out is unacceptable as he comes across the erring party. The appellant-wife could not have been expected to endure the husband's cruel treatment till blue in the face.

(Para 21)

Vimal Kirti Singh, Advocate
for the appellant.

H.S.Dahiya, Advocate
for respondent.

MANJARI NEHRU KAUL, J.

(1) This order will dispose of above-said two appeals filed by the wife – Sangeeta Singh against the decree of divorce granted vide dated 01.10.2015 under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 (for short 'the Act') as well as the dismissal of the petition filed by her under Section 9 of the Act by the District Judge, Family Court, Gurgaon. The facts of the case are being taken from FAO No.904 of 2016.

(2) The instant appeal has been preferred by the wife – Sangeeta Singh against the judgment and decree dated 01.10.2015 passed by District Judge, Family Court, Gurgaon whereby the petition filed by the husband – Ravi Ranjan Prasad Singh under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 (for short 'the Act') was allowed.

(3) Few facts necessary for adjudication of the instant appeal as pleaded in the petition filed by the respondent-husband before the learned Court below may be noticed.

(4) Marriage between the parties was solemnized on 05.05.1992 according to the Hindu rites and ceremonies. Two daughters were born out of the said wedlock. It was pleaded by the respondent-husband that the appellant-wife was not only arrogant, ill tempered and of a quarrelsome nature but was also a drunkard and heavy smoker, who would refuse to discharge her marital duties towards him. She would

not take interest in the household work claiming that it was a job of the servants. Whenever the parents of the respondent-husband visited them, the appellant-wife would create ugly scenes as a result of which the parents would be compelled to leave the house within a few days. She was taking regular medication for treatment of her mental ailments, a fact which came to his knowledge much later. She did not refrain from smoking and drinking even during her pregnancy. She would neglect her children as a result of which the major responsibility of the household work as well as care of the children had to be shouldered by the respondent-husband. He put up with the misbehaviour of the appellant-wife for more than 15 years. When the respondent-husband was transferred to Gurgaon in February, 2006, the relations between the spouses deteriorated even further. Under the influence of her relatives, the appellant-wife started humiliating and harassing the respondent-husband even more and severed all conjugal relations. Her unbecoming behaviour had an adverse impact on their children. On 08.04.2010, she picked up a quarrel with the respondent-husband at 9.00 pm and when he tried to reason with her, he was subjected to physical assault by her. On the same day at about 10.45 pm, about 10-15 policemen from two different police stations barged into their house at the behest of a relative of the appellant-wife, who was a bureaucrat. The policemen informed the respondent-husband that a complaint had been made to the Protection Officer on 29.03.2010 in Gurgaon. The Protection Officer disbelieved the version of the respondent-husband and instead asked him to give maintenance to the appellant-wife. On 19.04.2010, he moved a complaint to the Joint Commissioner of Police against the Protection Officer whereupon the parties were directed to appear before the Women's Cell on 23.04.2010. The appellant-wife refused to appear as a result of which the Protection Officer continued to harass the respondent-husband. In order to save himself from false implication, the respondent-husband left the house on 27.04.2010 but the Protection Officer continued to threaten him. While leaving the house, he was compelled to take his elder daughter with him as his wife was cruel to her and the child apprehended torture in her father's absence. While leaving, he also took along his personal belongings i.e. clothes and books and handed over a cheque of Rs.5,000/- besides providing the grocery to the appellant-wife. He informed the appellant-wife that he would continue to meet all the monthly expenses including that of the rent, electricity bills etc. The cheque given to the appellant-wife was not encashed by her and when he sent money through his elder daughter, she refused to accept it. The respondent-husband and his

elder daughter thereafter started residing in a separate accommodation where his mother joined to take care both of them. The elder daughter kept in touch with the appellant-wife and the younger daughter. It was further pleaded that he had to seek anticipatory bail and it was thereafter that he returned to his house on 21.05.2010. The appellant-wife instituted a petition under Section 125 Cr.PC. With the passage of time, the behaviour of the appellant-wife worsened and she filed a petition under the Domestic Violence Act on false allegations. Interim maintenance was awarded to the appellant-wife and the younger daughter. Meanwhile, the parties vacated flat No.103 and shifted to flat No.303 in the same housing society. The behaviour of the appellant-wife remained the same as before. She yet again filed a false complaint to the police on 06.10.2010 in pursuance to which the respondent-husband was taken to the police station. However, no action was taken against him. The respondent-husband pleaded that in the aforementioned circumstances it had become impossible for him to live with the appellant-wife as their marriage had completely broken down and therefore, he had been left with no other option but to shift with his elder daughter in the adjoining housing society.

(5) On the contrary, the appellant-wife in her written statement filed before the Court below, refuted and denied all the allegations of the respondent-husband. She submitted that she was a well accomplished person with a sound and sober mind. It was, in fact, the respondent-husband, who was ill-tempered and consumed by his vices. He would indulge in abusive behaviour under the influence of alcohol and would not hesitate to get violent. He would not even give her enough money for her personal and domestic expenditure as a result of which she had to always ask her parents for financial assistance, which was a cause of huge embarrassment for her. The behaviour of the respondent-husband worsened after the death of her elder brother in June, 1994 as there was no one to give her the much needed support since her father kept ill. When she narrated the circumstances to her father-in-law, she was threatened by the respondent-husband with dire consequences. On one occasion, she was hit hard on her forehead by the respondent-husband for which she had to be rushed to a hospital in Kanpur where she received 8 stitches. At the insistence of her mother-in-law, she conceived again against her wishes but the moment her mother-in-law and the respondent-husband found out that it was a female foetus, they wanted to get her pregnancy aborted. After her father-in-law's death in 2006, parties shifted to Gurgaon where her mother-in-law started visiting them very frequently and would not

hesitate to humiliate and harass her. On 08.04.2010, she was assaulted by the respondent-husband as a result of which she reported the matter to the police but it was on the intervention of the relatives, she did not press the charges. The appellant-wife alleged that the respondent-husband was living a life of luxury while on the other hand, she had been left to the mercy of her mother. The respondent-husband never paid a single penny towards the household expenses nor towards the education of the younger daughter. The appellant-wife alleged that it was in fact the respondent-husband, who had deserted her and the younger daughter on 29.04.2010 and returned on 21.05.2010 but left again on 02.10.2010 without caring to inform her of his whereabouts.

(6) From the pleadings of the parties, following issues were framed by the learned trial Court:

1. Whether the petitioner is entitled for a decree of divorce on the grounds as mentioned in the petition? OPP
2. Relief.

(7) Both the parties adduced evidence in support of their respective stands. The respondent-husband himself stepped into the witness box as PW-1. Besides himself, he examined his elder daughter Sangh Rakshita as PW-2 and mother namely Lajwanti Singh as PW-3. On the other hand, appellant-wife stepped into the witness box as RW-1 and examined her younger daughter Sangh Nehita as RW-2.

(8) On an analysis of the evidence led, the trial Court allowed the petition filed by the respondent-husband and dissolved the marriage between the parties.

(9) We have heard learned counsel for the parties and perused the evidence as well as other material available on record.

(10) Learned counsel for the appellant-wife has strenuously contended that the trial court gravely erred in believing the allegations of cruelty levelled against her by the respondent-husband in the absence of any cogent much less convincing evidence adduced in support thereof by him. It has further been contended that the family court for reasons very strange chose to place complete reliance on the deposition and testimony of elder daughter namely Sangh Rakshita, who stepped into the witness box as PW-2 and for reasons best known to the court discarded the entire testimony of the younger daughter, who stepped into the witness box as RW-2 by holding that the younger daughter's version appeared to be a tutored one. It was contended that a perusal of

the comparative testimonies of both the daughters, who stepped into the witness box as PW-2 and RW-2 left no manner of doubt that in fact it was the elder daughter Sangh Rakshita-PW-2, who parroted the version of her father for reasons but obvious. While drawing the attention of this Court to the averments of the respondent- husband that the appellant-wife was taking some medicines for mental ailment, the same too was not supported by any shred of evidence, which in turn lent credence to her stand that he was levelling false allegations against her.

(11) Learned counsel for the respondent-husband reiterated and maintained the stand as taken by the husband before the Court below.

(12) It would be pertinent to mention that during the pendency of the instant appeal, the parties were referred to Mediation and Conciliation Centre of this Court to explore the possibility of an amicable settlement, however, it failed to yield any positive result.

(13) Since no precise definition of 'cruelty' has been given in the Act, a satisfaction shall have to be derived at, by the court, that the conduct of the appellant-wife was such that it had become intolerable for the respondent-husband to suffer any longer and thus, making it impossible for them to live together. However, the same shall have to be judged and satisfaction arrived at, after taking into account the gravity of the conduct complained of coupled with the fact whether the intention of the appellant- wife was to inflict pain and agony on the respondent-husband.

(14) In the instant case, learned court below gave a finding in favour of the respondent-husband by believing the testimony of elder daughter Sangh Rakshita PW-2 and holding that the conduct of the appellant-wife towards not only the respondent-husband but also towards her mother-in- law and the servants was inappropriate and cruel for which the respondent- husband was entitled to a decree of divorce. It is indeed very strange that the family court chose to believe the version putforth by the elder daughter PW-2 and rejected the younger daughter's testimony by holding it to be a tutored version. In fact on reappraisal of the deposition of the younger daughter Sangh Nehita – RW-2 it comes across as a very spontaneous and natural testimony wherein she has not spit out any venom against the father but has only answered in a very child-like and innocent manner to the questions, which were put to her by the Court itself. It would be pertinent to notice that whatever has been stated by RW-2 Sangh Nehita was on the basis of questions put to her by the court and not on the examination-in- chief done on her by her counsel. In such a situation

for the court to hold that her version is a tutored one, does not depict a judicious approach. Learned court thus, erred in brushing aside the testimony of RW-1 in one stroke of pen as being a tortured version particularly when there was hardly any reliable evidence led to substantiate the allegations of the respondent- husband that the appellant-wife was a drunkard and a smoker, who would indulge in unruly and uncalled for behaviour. Nevertheless, even the cross-examination, which was done on the young girl RW-2 Sangh Nehita, who at that time was about 14 years of age, in our considered opinion was a rather aggressive one yet the young child withstood the test of cross-examination by her consistent testimony from which an inference can safely be derived that in fact her testimony was most truthful and natural, without any pressure much less it being a tutored one. In fact it is the testimony of the elder daughter, who appeared as PW-2, which raises eyebrows and appears to be tutored to a great extent. The testimony of the elder daughter PW-2 Sangh Rakshita that the appellant-wife (mother) would force her to go and fetch cigarettes and liquor for her consumption when she was in class 3rd or 4th and many-a-times, when she went to fetch them, she was eve-teased on the way, comes across as totally unbelievable and unacceptable. It is strange how the family court chose to believe the testimony of PW-2 Sangh Rakshita because no shop would ever sell cigarettes and liquor to a child as young as in class 3rd or 4th. From this part of her testimony, it is clearly discernible that she has chosen to parrot her father's version. Rather on a perusal of the testimonies of both respondent-husband and PW-2 Sangh Rakshita, it conclusively stands proved that the respondent-husband used to keep liquor at home and was also a frequent consumer of the same. In view of this admitted fact, the version of not only the appellant-wife but also RW- 2 Sangh Nehita that the respondent-husband would under the influence of liquor indulge in abusive behaviour appeals to reason and comes across as believable. This fact finds corroboration from the testimony of RW-2 Sangh Nehita, who on being examined by the court deposed that the fights between the parents would often happen when her mother would stop her father from drinking.

(15) It is very apparent that the respondent-husband has left no stone unturned to level allegations of all kinds and tried to churn out a case against the appellant-wife but on a minute and thread bare perusal of the evidence on record, the version of the appellant-wife of being a victim of ill-treatment and domestic violence at the hands of the respondent-husband is clearly discernible. Even if we accept the

version of the respondent- husband that the appellant-wife reported against him to the Protection Officer and thereafter the policemen came to his house or he was summoned to the police station, it just goes to reflect and rather corroborates her version of being subjected to acute cruelty and torture leaving her with no other option but to seek the help of the authorities. Further, the allegations of the respondent-husband that the appellant-wife was under medication for some mental ailment too is nothing but just another example of levelling of sweeping allegations against her, not supported by any shred of evidence. Further, the conduct and attitude of the respondent-husband in sending messages to his younger daughter (Annexure A dated 13.08.2015) that he would be unable to provide her tuition fees reflects on his callous and unbecoming behaviour as a father. It clearly reflects to the blatant discrimination that he had been and has been indulging in viz-a-viz both his daughters i.e. PW-2 Sangh Rakshita and RW-2 Sangh Nehita.

(16) As a sequel to the above discussion, we are inclined to accept the instant appeal and set aside the impugned judgment and decree dated 01.10.2015 passed by the Court below.

(17) Consequently, the present appeal stands allowed.

(18) Adverting to the appeal filed against the dismissal of the petition under Section 9 of the Act, the factual matrix is more or less the same. The respondent-husband has reiterated his allegations and maintained the same stand as taken by him in the petition filed under Section 13 (1)(a) of the Act.

(19) In view of our detailed findings as already given above, the impugned order under Section 9 of the Act also deserves to be set aside.

(20) It need not be over emphasised that it is the cardinal rule of matrimonial law that the spouses are entitled to consortium of each other.

(21) Adverting to the case in hand, in the facts and circumstances, the appellant-wife has a right in law to seek restitution of the marital ties from the respondent-husband as it is evident that the respondent-husband has withdrawn from her society without any sufficient and reasonable cause. Even if, we accept that the respondent-husband moved out and started staying separately on account of her lodging a complaint under Domestic Violence Act, she cannot be faulted with on that count. It is not hard to discern that she had been pushed against the wall by the husband's own misconduct leaving her with no other option but to seek protection from the authorities. The

lament of the respondent-husband that it was on account of the appellant-wife's misconduct he had to shift out is unacceptable as he comes across the erring party. The appellant-wife could not have been expected to endure the husband's cruel treatment till blue in the face.

(22) Consequently, the impugned order dated 01.10.2015 passed by the Family Court, Gurgaon is set aside and the present appeal stands allowed. Decree-sheet be prepared accordingly.

Tribhuvan Dahiya