

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CFA No. 25/2005
IA Nos. 33/2007, 28/2006 & 42/2005

Parkash Kour

.....Appellant(s)

Through: Mr. Rajnish Raina, Sr. Advocate with
Mr. Rishu Rajeshwar Upadhyay,
Advocate.

Vs

Amarjeet Singh

.....Respondent(s)

Through: None.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
(09.04.2026)

1. Heard Mr. Rajnish Raina, learned Senior Advocate assisted by Mr. Rishu Rajeshwar Upadhyay, Advocate.
2. The respondent is set *ex parte*.
3. Through the medium of this appeal under section 34 of the Jammu and Kashmir Hindu Marriage Act, 1980, the appellant-Parkash Kour is seeking setting aside of the decree of divorce granted by the court of Additional District Judge (Matrimonial Cases), Jammu in a petition filed by the respondent-Amarjeet Singh on file No. **154/HM Act of 1995**.
4. The respondent came forward with the petition for divorce on the factual basis that matrimony between the appellant and the respondent had taken place on **25.05.1981** in village Partap Singh Pura, Ramgarh out of which two children begotten but the appellant is a woman of quarrelsome nature who made the life of the

respondent miserable by nagging him but, nevertheless, the respondent kept on tolerating every alleged cruel act from the end of the appellant with the hope that a better sense would prevail upon the appellant with the passage of time but nothing of that nature came to take place and rather the behavior of the appellant towards the respondent had become bad to worse.

5. In his petition, the respondent refers to allege incident of **23.04.1991** relating to his illness and being admitted to the Military Hospital, Samba wherefrom he was discharged on **06.05.1991** but during the period of his hospitalization, the appellant had taken away the valuable items and cash entrusted to her by the respondent and left the matrimonial house not to come back which resulted in filing of the petition under section 9/13 of the Jammu & Kashmir Hindu Marriage Act, 1980 but due to the intervention of the respectable persons of the Baradari, the appellant had joined back the matrimonial house in November, 1994 from which date onwards the two have been cohabiting but the appellant relapsed into bad habits and attitude towards the respondent as a result whereof the respondent was constrained to seek dissolution of his marriage with the appellant by a decree of divorce.

6. With the aforesaid tone and tenor of the averments and allegations, the respondent submitted his petition for dissolution of marriage on **07.08.1995**.

7. The appellant from her end came forward with her reply/response to the divorce petition.

8. The appellant in her reply filed on **23.03.1996** denied each and every allegation so made against her from the end of the respondent.

9. The appellant from her end came forward with clear assertions that at no point of time, she was in any sort of deficiency and default in performance of her marital obligations and responsibilities towards the respondent and, therefore, the petition filed by the respondent against her is misconceived.

10. On the basis of the pleadings, the court of Additional District Judge, Matrimonial Cases, Jammu came to frame the following four issues:

- “1. Whether the respondent has treated the petitioner with cruelty? OPPमेव जयते
2. Whether the petition is time barred? OPR.
3. Whether the petition is barred by Res judicata? OPR.
4. Relief.”

11. The respondent came forward with his testimony in which regard he examined himself as his own witness and also got one Satya Kour and Surjeet Singh to depose in support of his case set up against the appellant.

12. On the other hand, the appellant from her end examined herself as her own witness supported by Rajinder Singh and Jeet Kour.

13. By carrying out appraisal and evaluation of the evidence so led in the form of testimony of the witnesses and by bearing in perspective the judgment of the Hon'ble Supreme Court of India in case of **"A. Jayachandra Vs. Aneel Kaur"** reported in **(2005) 2 Supreme Court Cases 22**, the court of Additional District Judge, Matrimonial Cases, Jammu came up with a very self contradictory finding to the fact that though the allegations of cruelty are not proved but since the parties have reached to a situation of no return which has rendered the marriage subsisting between the appellant and the respondent just for the name sake rendering it a dead matter, as such, the only option left for the court is to be guided by the judgment of the Hon'ble Supreme Court of India in the case of **"Chanderkala Trivedi Vs. Dr. S. P. Trivedi"** reported in **AIR 1993 (4) SC 232**.

14. A Hindu marriage is meant to be dissolved by decree of divorce only on the basis of the grounds as expressly laid and provided in section 13 of the Jammu & Kashmir Hindu Marriage Act, 1980, which was then in force at the time when the respondent had preferred the divorce petition.

15. One of the grounds for seeking divorce was on the charge of cruelty by one spouse against

an aggrieved spouse as provided in section 13(1) (ii) of the Jammu & Kashmir Hindu Marriage Act, 1980. Charge of cruelty is not meant to be made for the sake of charge but for the purpose of proving it literally as a quasi criminal standard of charge proving.

16. The very fact that the trial court of Additional District Judge, Matrimonial Cases, Jammu came to a finding of the fact that by no stretch of evidence reading and inference to be drawn therefrom charge of cruelty was being proved from the end of the respondent is itself sufficient to have put the court of Additional District Judge, Matrimonial Cases, Jammu on back foot and to dismiss the petition of the respondent without resorting to luxury of usurping the jurisdiction of Hon'ble Supreme Court of India which is reserved under article 142 of the Constitution of India in which the Hon'ble Supreme Court of India can invoke the principle of irretrievable breakdown of the marriage to dissolve a marriage that too after first exhausting efforts for amicable settlement and mediation failing which as a matter of last remedy to annul a matrimony on the basis of irretrievable break down.

17. The court of Additional District Judge, Matrimonial Cases, Jammu at no point of time was ever vested and is vested even as on date with any such jurisdiction to declare dissolution of marriage on the basis of irretrievable break down theory.

18. In this regard, Mr. Rajnish Raina, learned Senior Advocate appearing for the petitioner comes forth with the citation in the case of **“Manju Kumari Singh Vs. Avinash Kumar Singh”** reported in **2018 (17) SCC 383** to lend confirmation to the aforesaid stand point of this Court in holding the judgment and decree dated **29.07.2005** of the court of Additional District Judge, Matrimonial Cases, Jammu as nullity in itself and is, accordingly, set aside, with imposition of costs of Rs. **50,000/-** payable from the end of the respondent towards the appellant for enabling her to bear the cost of litigation which he has made the appellant to go through right from 1995 till the adjudication of the present matter taking place by virtue of this judgment in April, 2026.

19. Disposed of.



सत्यमेव जयते

(RAHUL BHARTI)
JUDGE

JAMMU
09.04.2026

Shivalee

Whether the order is speaking	Yes
Whether the order is reportable	Yes