

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

Pronounced on : 11.05.2026
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CM(M) No. 82/2026
CM No. 2733/2026

Cav. No. 947/2026

Dr. Jyoti Memoalia

.....Petitioner

Through: Mr. Amrit Sarin, Advocate

Vs

Mamit Kumar

.....Respondent

Through: Mr. Gagan Oswal, Advocate

CORAM: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE
ORDER
(11.05.2026)

- 01.** The respondent herein-Mamit Kumar has come to file a petition under **Section 13 of Hindu Marriage Act, 1955** before the court of learned Additional Principal Judge, Family Court, Jammu.
- 02.** The institution of the petition relates back to **January, 2025.**
- 03.** In his petition, the respondent, by referring to the fact the matrimony between him and the petitioner took place on **03.05.2018** at Jammu out of which a daughter, namely,

Pravya Bhagat came to be born on **01.09.2019**, he has been subjected to cruelty in the context of the facts alleged right from inception of matrimonial relationship between two. It needs no emphasis that the accusations/allegations of cruelty so set up by the respondent against the petitioner are true or false is a matter of trial.

04. The respondent-Dr. Jyoti Memoalia, who is respondent before the court below, upon her appearance in the petition has come forward with her reply/objections denying and negating the accusations and allegations so leveled against her from the end of the respondent herein-who is petitioner before the court below and is thus, seeking dismissal of the divorce petition.

05. In fact, the respondent-Dr. Jyoti Memoalia, submits that it is she who is victim of marital misconduct from the end of the respondent-Mamit Kumar but still she wants to carry on with the matrimonial relationship by her return to the matrimonial home.

06. On the basis of the pleadings, the court of learned Additional Principal Judge, Family Court, Jammu, by virtue of an order dated **24.09.2025**, came to frame the following issues :-

- 1) Whether the respondent has treated the petitioner with 'cruelty' within the meaning of Section 13(1) (i-a) of the Hindu Marriage Act, 1955 ?(OPP)**

- 2) Whether the petitioner caught respondent red handed sending kiss emojis to one Dr. Rishav ?(OPP)
- 3) Whether the respondent threatened the petitioner that she is in contact with gundas and she would get the petitioner killed ?(OPP)
- 4) Whether the respondent after attending the marriage of her brother reached back to her matrimonial house with her minor female child as she was dropped by her cousin but the parents of the petitioner did not allow the respondent to enter her matrimonial house?(OPR)
- 5) Relief(OPP)

07. The petitioner-Dr. Jyoti Memoalia, came forward with an application thereby seeking framing of an additional issue and striking out issue No. 2.
08. The additional issue proposed by the petitioner is to the following effect :-

“Whether the petition under Section 13 of the Hindu Marriage Act for the dissolution of marriage by a decree of divorce is maintainable in the present form, especially when the petition does not disclose any ground for seeking divorce, much less the ground of cruelty as contained in Section 13(1)(ia) of the Hindu Marriage Act.”

09. The issue which the petitioner intends to be struck off is **“Whether the petitioner caught respondent red handed sending kiss emojis to one Dr. Rishav”**.
10. Although, Issue No. 2 *per-se* ought not to have been framed in the context that Issue No. 1 is what is meant to be proved by the respondent against the petitioner and for that purpose all the alleged acts of cruelty which the respondent means to have suffered at the hands of the petitioner included the alleged act with respect to which Issue No. 2 came to be framed.
11. The manner in which the issue No. 2 has been framed by the court below would then mean each and every allegation/accusation from the end of the petitioner against the respondent and vice versa should have been framed as an issue of fact and that would have been an unending list of issues.
12. Likewise is the position with respect to the issues No. 2 and 3.
13. Be that as it may, still this Court finds no prejudice being caused to the petitioner with the issues No. 2 and 3 as framed in the sense that it is the respondent who is supposed to bring home the charge of marital cruelty against the petitioner and succeed in getting a decree of divorce otherwise the failure to come up with evidence in

support of the allegations and accusations of cruelty is going to bring the respondent's petition to failure and this is what would vindicate the stand of the petitioner that she did not conduct herself in any manner whatsoever amounting to cruelty against the respondent.

14. Therefore, this Court is not convinced that the petitioner was entitled to ask for deletion of issue No. 2 particularly, when the petitioner from her end is denying the allegations as made by the respondent leading to the framing of issue No. 2.

15. On the other hand, the issue proposed by the petitioner to be framed that whether the divorce petition of the respondent in the form without disclosing any ground for seeking divorce much less ground of cruelty is maintainable is nothing but a self serving judgment by the petitioner against the case set up by the respondent.

16. A divorce petition for its maintainability requires allegations and accusations of marital cruelty. Whether the allegations and accusations are true or correct is the domain of evidence leading. Even if the tone and tenor of the divorce petition is being read by the petitioner as respondent's condonation of alleged acts of cruelty from her end still it is for the respondent to come forward with evidence not only proving the charge of cruelty but also the aspect that at no

point of time, he ever condoned any act of marital cruelty as alleged on the part of the respondent.

17. Therefore, this Court is not convinced that there is a scope for framing of an additional issue as proposed by the petitioner.

18. This Court, therefore, is not inclined to entertain the present petition but still leaves it for the court below to consider as to whether the petitioner in her objections/reply to the divorce petition has come forth with a plea that the alleged acts of cruelty came to be condoned by the respondent and if the petitioner is coming forth with any such plea then an issue to said effect ought to have been framed for enabling the petitioner to lead evidence from her end to succeed in her defence in seeking the dismissal of the respondent's divorce petition.

19. In the light of the aforesaid, this petition is thus, **dismissed** accordingly.

(RAHUL BHARTI)
JUDGE

JAMMU
11.05.2026
SUNIL

Whether the order is speaking ? : Yes/No
Whether the order is reportable ? : Yes/No