

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF SEPTEMBER 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

MISCELLANEOUS FIRST APPEAL NO.1411/2018 (FC-DIV)

BETWEEN:

SRI. KISHORE
S/O. LATE SUDHAKAR,
AGED ABOUT 38 YEARS,
R/O. #28, CHINNAPPA COLONY,
OPP TO FCI GODOWN, VIJINAPURA,
BANGALORE-560 016.

...APPELLANT

(BY SMT. DIVYA KRISHNA, ADVOCATE)

AND:

SMT. RADHIKA
W/O. KISHORE,
AGED ABOUT 38 YEARS,
R/O. B-5, 60/1, 15TH MAIN,
HAL 2ND STAGE, INDIRANAGAR,
BANGALORE-560 008.

...RESPONDENT

(BY SRI. MOHAMMED USMAN SHAIKH, ADVOCATE)

THIS MFA FILED UNDER SECTION 19(1) OF THE FAMILY COURTS ACT, 1984, AGAINST THE JUDGEMENT AND DECREE DATED 03.01.2018 I M.C.NO.1282/2014 ON THE FILE OF THE VI ADDITIONAL PRL. JUDGE, FAMILY COURT, BENGALURU, DISMISSING THE PETITION FILED U/S 13(1)(IA) & (IB) OF THE HINDU MARRIAGE ACT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 24.08.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, **HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN** MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE D K SINGH
AND
HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN)

The present appeal is directed against the judgment and decree dated 03.01.2018 passed by the VI Additional Principal Judge, Family Court, Bangalore, in M.C.No.1282/2014 ('the Trial Court' for brevity) whereby the petition filed by the petitioner-husband under Section 13(1)(i-a) and 13(1)(i-b) of the Hindu Marriage Act, 1955 ('the Act' for short), came to be dismissed.

2. For the sake of convenience, the parties shall be referred to as per their ranking before the Trial Court.

3. It is the case of the petitioner-husband that though the marriage was initially cordial, the respondent-wife subsequently started humiliating and taunting him and his parents with regard to their financial status and

insisted that he should establish a separate residence away from his parents. According to him, when he did not accede to her demand, she started threatening him and his family and eventually left the matrimonial home. He further contended that the respondent initiated criminal proceedings under Sections 498-A and 506 read with Section 34 of the IPC and other proceedings, making false and baseless allegations against him and his parents. The petitioner relied upon the FIR and charge-sheet marked as Ex.P4 and Ex.P5 and contended that the criminal proceedings and the allegations made therein caused him and his family considerable mental agony.

4. It was his further case that the respondent had voluntarily left the matrimonial home and had been living separately for several years, thereby constituting desertion within the meaning of Section 13(1)(i-b) of the Act. The petitioner maintained that he had made efforts to resume matrimonial life, but the respondent was unwilling to return. He also relied upon the allegations made by the respondent against his father, including the allegation that

his father had attempted to harm the child, and submitted that such allegations amounted to character assassination and mental cruelty. According to the petitioner, the matrimonial relationship had completely broken down and there was no possibility of the parties living together peacefully.

5. The respondent-wife resisted the petition and denied that she had treated the petitioner with cruelty or had deserted him. She contended that, after the birth of the child, she was subjected to ill-treatment and was compelled to undertake household work while also attending her employment and caring for the child. She alleged that the petitioner and his parents subjected her to physical and mental harassment, humiliated her, and failed to provide proper care to the child. She further stated that the child suffered serious health problems and that she had herself taken responsibility for the child's treatment, producing medical records, hospital documents and bills in support of her case.

6. The respondent further contended that it was, in fact, the petitioner, who had driven her and the child away from the matrimonial home and thereafter failed to resume cohabitation. She relied upon the decree passed in M.C. No.370/2013 filed under Section 9 of the Act for restitution of conjugal rights and contended that, despite the said decree, when she went to the petitioner's house along with the child and requested him to resume matrimonial life, he refused to take them back. She, therefore, maintained that the petitioner could not take advantage of his own wrong and seek divorce on the ground of desertion. She accordingly sought dismissal of the petition.

7. The Family Court in the impugned judgment and decree framed the following three points for consideration:

1. Whether the petitioner proves that she was subjected to cruelty at the hands of the respondent?

2. Whether the petitioner proves that the respondent deserted him immediately two years preceding the presentation of the petition?

3. What order?

8. The petitioner examined himself as PW.1 and marked Ex.P1 to Ex.P5, consisting of the marriage invitation, marriage photographs, FIR and charge-sheet. During cross-examination, several material aspects of his case were brought out. He admitted that the parties had lived cordially from the date of marriage until 2010 and that he had not specifically stated when the alleged change in the respondent's behaviour had occurred. His allegation that the respondent insisted upon a separate residence was also not satisfactorily established. Significantly, he admitted that he had not sent any SMS or e-mail asking the respondent to rejoin him and that he had himself taken the respondent and the child to her parental home. The Court also noticed that he had not issued a legal notice calling upon her to return.

9. The respondent examined herself as RW.1 and produced a substantial set of documents as per Exs.R4 to

47, including photographs, discharge summaries, medical case sheets, prescriptions, laboratory reports, rent receipts and hospital bills, as well as certified copies of depositions and evidence from the connected proceedings. In cross-examination, however, the respondent admitted that she had not lodged a complaint against her father-in-law in respect of the alleged threat to the child and had not mentioned that allegation in her earlier complaint. She also admitted that the criminal case had been initiated without first issuing notice to the petitioner or approaching the authorities earlier. Thus, while the respondent placed medical documents before the Court concerning the child's condition and treatment of the child, several of her specific allegations of physical and mental cruelty were found by the Trial Court to be unsupported by independent or convincing evidence.

10. In the light of the evidence led by the parties, the Trial Court found that the allegations of cruelty made by the petitioner were largely general in nature. Though he alleged that the respondent had constantly taunted and

humiliated him and his parents, his own cross-examination showed that their relationship had remained cordial from 2006 until 2010, and he was unable to furnish specific particulars as to when and in what circumstances, the alleged conduct occurred. The Trial Court, therefore, held that such general allegations could not, by themselves, constitute 'cruelty'. The Trial Court similarly examined the respondent's allegations of ill-treatment and physical abuse and found that several of those allegations were not supported by medical records, complaints or independent evidence.

11. At the same time, the Trial Court noticed that the respondent had made reckless allegations against the petitioner's father, particularly regarding his conduct towards the child. However, the petitioner failed to establish that his father's death was caused by depression or mental agony allegedly resulting from the criminal proceedings. The Trial Court also attached considerable significance to the earlier decree for restitution of conjugal rights in M.C. No.370/2013. The respondent had thereafter

gone to the petitioner's house with the child and sought to resume matrimonial life, but the petitioner refused to take them back. The said decree had not been challenged by the petitioner. In those circumstances, the Trial Court held that the petitioner could not successfully contend that the respondent had deserted him.

12. The Trial Court also took note of the condition of the child, who was suffering from serious health problems and required continuous care. The respondent had been attending to the child and bearing the medical expenses, whereas the evidence disclosed that the petitioner had not visited the child for a considerable period. The Court observed that both parties, as parents, had a responsibility towards the child and that the decree for restitution of conjugal rights had been passed with the expectation that the parties would discharge their marital obligations and make an effort to re-unite. The Trial Court, therefore, considered that re-union would be in the interests of both parties and more importantly, the child.

13. In view of the above discussion, the Trial Court held that the petitioner had failed to establish either cruelty under Section 13(1)(ia) or desertion under Section 13(1)(ib) of the Act. Consequently, both points were answered in the negative and the petition filed by the petitioner-husband seeking dissolution of marriage was dismissed, with no order as to costs.

14. Aggrieved by the said order of the Trial Court, the petitioner has filed the instant appeal.

15. We have heard Smt.Divya Krishna, learned counsel appearing for the petitioner-husband and Sri.Mohammed Usman Shaikh, learned counsel appearing for the respondent-wife and have carefully perused the records of the case.

16. It is submitted by the learned counsel for the petitioner that the learned Trial Court has failed to properly appreciate the oral and documentary evidence on record and has consequently erred in dismissing the petition for divorce. It is urged that the respondent subjected the petitioner and his parents to mental cruelty

by taunting them about their financial status, insisting that the petitioner should leave his aged parents and reside separately, threatening to initiate false criminal proceedings, and making serious and baseless allegations against the petitioner's father. It is further contended that the respondent had initiated proceedings under Section 498-A of the IPC and the Protection of Women from Domestic Violence Act, and that the subsequent acquittal of the petitioner and his parents in the criminal case was a relevant circumstance, which ought to have been considered while determining the plea of cruelty. It is also contended that the respondent had voluntarily withdrawn from the matrimonial home and had deserted the petitioner, and that the Trial Court failed to properly appreciate the long separation between the parties and the conduct of the respondent. On these grounds, the petitioner submits that the findings recorded on 'cruelty' and 'desertion' are contrary to the evidence on record and seeks setting aside of the impugned judgment and decree

and grant of divorce under Sections 13(1)(ia) and 13(1)(ib) of the Act.

17. Having heard the learned counsel for the parties, the point that arises for our consideration is,

“Whether the impugned judgment and decree passed by the Trial Court suffers from any illegality or infirmity warranting interference by this Court?”

18. Upon consideration of the pleadings, oral and documentary evidence and the findings recorded by the Trial Court, we are of the view that no ground is made out for interference with the impugned judgment. The petitioner sought dissolution of marriage on the grounds of cruelty and desertion, but the allegations of cruelty were found to be general and lacking in specific particulars. In his cross-examination, the petitioner himself admitted that the relationship between the parties had remained cordial from the date of marriage till 2010 and was unable to state with precision as to when and in what circumstances the alleged change in the conduct of the respondent had

occurred. The Trial Court, therefore, rightly held that such general allegations, without cogent and convincing material, could not constitute matrimonial cruelty.

19. Insofar as the ground of desertion is concerned, the material on record does not establish that the respondent had withdrawn from the society of the petitioner with the intention of permanently bringing the matrimonial relationship to an end. On the contrary, the evidence indicates that it was the petitioner, who had left the respondent and the child at her parental home and thereafter had not made any genuine or consistent effort to bring her back. The petitioner admitted that he had not sent any SMS, e-mail or legal notice calling upon the respondent to rejoin him. More importantly, the respondent had obtained a decree for restitution of conjugal rights in M.C. No.370/2013, and the said finding that the petitioner had deserted the respondent remained unchallenged. In these circumstances, the petitioner cannot be permitted to take advantage of his own conduct and contend that the respondent was guilty of desertion.

20. We also find that the Trial Court has considered the evidence of both parties in its proper perspective and has assigned cogent reasons for answering both the points against the petitioner. The respondent had produced material relating to the health condition and treatment of the child, and the Trial Court was conscious of the fact that the parties had been living separately for a considerable period. The earlier decree for restitution of conjugal rights was also rightly taken into consideration, particularly with the object of giving the parties an opportunity to discharge their marital obligations and to consider re-union in the larger interest of the child. The conclusion of the Trial Court that the petitioner failed to establish 'cruelty' or 'desertion' is based on appreciation of evidence and does not suffer from perversity or any error warranting appellate interference. Therefore, the appeal, being devoid of merit, deserves to be **dismissed**. Accordingly, we pass the following;

ORDER

The appeal is dismissed.

The judgment and decree dated 03.01.2018 passed by the VI Additional Principal Judge, Family Court, Bangalore, in M.C.No.1282/2014, is hereby affirmed.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(H.SHANTHI BHUSHAN)
JUDGE**

KNM