

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**F.A.O. (F.C.) No.64 of 2021**

**Reserved on: 19.09.2026**

**Date of Decision: 28.09.2026**

**Uploaded on:28.09.2026**

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**Shri. Rajeev Kumar**

**.....Appellant**

**Versus**

**Smt. Sharmila Thakur**

**.....Respondent**

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*Coram*

*Hon'ble Mr. Justice Ajay Mohan Goel, Judge*

*Hon'ble Mr. Justice Yogesh Jaswal, Judge*

*Whether approved for reporting?<sup>1</sup> Yes.*

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**For the appellant:** Ms. Babita Chauhan, Advocate.

**For the respondent:** Mr. R.P. Singh, Advocate.

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**Yogesh Jaswal, J.**

This is an appeal filed by the appellant, Rajeev Kumar (*hereinafter referred to as "**the petitioner**"*), against the judgment and decree dated 09.08.2021, passed by the learned District Judge, Family Court Mandi, District Mandi, H.P., in Registration No.334/2018 (Filing No.206/19/18), titled as *Rajeev Kumar versus Smt. Sharmila Thakur*, whereby the learned Court below dismissed the petition filed by the husband under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act,

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<sup>1</sup> *Whether reporters of Local Papers may be allowed to see the judgment? Yes.*

1955, (*hereinafter referred to as "the Act"*), seeking dissolution of marriage on the grounds of cruelty and desertion.

**2.** Brief facts necessary for the adjudication of the appeal are that the appellant/husband herein, namely, Rajeev Kumar filed a petition for dissolution of marriage against the respondent-wife herein, namely, Smt. Sharmila Thakur (*hereinafter referred to as "the respondent"*), alleging *inter alia* that their marriage was solemnized on 19.04.2015 according to Hindu rites and ceremonies. The parties cohabited as husband and wife, and out of their lawful wedlock, one male child, namely, Akashat Kumar was born, who is residing in the care and custody of the respondent. It was pleaded that at the time of marriage, the respondent was undergoing training for G.N.M. at Chandigarh, and immediately after the marriage, she left for Chandigarh to pursue the said training. The petitioner claimed to have borne the entire expenses of her training. It was further alleged that the respondent used to stay mostly at her parental home and stayed at the house of the petitioner only occasionally for brief intervals of two to three days.

**3.** It was further averred that upon completion of her training, the petitioner requested the respondent to reside with him in his

ancestral home as well as at his place of posting at Baddi, but she flatly refused to do so. The respondent allegedly started quarrelling with the petitioner on one pretext or the other. Furthermore, the respondent initiated proceedings under Section 125 of the Code of Criminal Procedure on false and frivolous grounds at Ghumarwin. She also levelled false allegations against the petitioner and his parents, intentionally dragging them into litigation under the Protection of Women from Domestic Violence Act, 2005. According to the petitioner, the respondent failed to join his company regularly after the marriage, and since 01.12.2016, she permanently took up residence at her parental home. It was asserted that the respondent had deserted the petitioner without reasonable cause and treated him with cruelty, making his day-to-day life intolerable and wrecking their marital relationship.

**4.** The respondent contested the petition by filing a reply raising preliminary objections qua maintainability, cause of action, and estoppel. On merits, the respondent vehemently denied the allegations levelled against her and pleaded that the petition was founded upon a concocted story merely to harass her and to evade statutory liabilities towards her and the minor child. It was asserted that the petitioner subjected the respondent to cruel treatment and merciless beatings,

and she was ousted from her matrimonial home, which compelled her to take shelter at her parental home. The respondent maintained that it was due to the cruel behaviour and beatings meted out to her that she was constrained to live separately and initiate proceedings under Section 125 Cr.P.C. and under the Protection of Women from Domestic Violence Act.

**5.** Based on the pleadings of the parties, the learned Trial Court framed the following issues on 28.12.2019:-

- "1. Whether the petitioner is entitled for decree of divorce on the ground of cruelty, as prayed for? OPP*
- 2. Whether the petitioner is entitled for decree of divorce on the ground of desertion, as prayed for? OPP*
- 3. Whether the petition is not maintainable the present form? OPR*
- 4. Whether the petitioner has estopped by his act, conduct and omissions to file the present petition? OPR*
- 5. Whether the petition has no cause of action to file the present petition? OPR*
- 6. Whether the petitioner has not come to the Court with clean hands and has suppressed the material facts from the Court? OPR*
- 7. Relief."*

**6.** In support of his case, the petitioner examined himself as PW-1 and examined one Smt. Nirmala Devi as PW-2. He tendered in documentary evidence a copy of the application under Section 125

Cr.P.C. (Ext.PX) and a copy of the order dated 29.06.2018 passed under Section 12 of the Protection of Women from Domestic Violence Act (Ext.PY). On the other hand, the respondent examined herself as RW-1 and produced her mother, Smt. Kamla Devi, as RW-2.

**7.** Upon appreciation of the ocular and documentary evidence, the learned District Judge, Family Court Mandi, answered Issues No.1, 2, 3, 4, and 6 in the negative, while Issue No.5 was decided in the affirmative. Consequently, the divorce petition was dismissed with costs vide impugned judgment and decree dated 09.08.2021.

**8.** The appellant-petitioner has assailed the impugned judgment and decree primarily on the ground that the learned Trial Court failed to appreciate that the respondent had withdrawn from his society without any justifiable cause and that the parties have been residing separately since December 2016, rendering the marital tie completely broken. It has been further contended that the filing of cases under Section 125 Cr.P.C. and the Domestic Violence Act constituted cruelty per se.

**9.** We have heard the learned counsel for the parties and have meticulously scrutinized the record.

**10.** The law on cruelty under Section 13(1)(i-a) of the Act is well established. Cruelty, though not defined under the Act, but has been

construed as wilful and unjustifiable conduct of such character as to cause danger to life, limb, or health, or to give rise to a reasonable apprehension of such danger. In ***Dr. N.G. Dastane vs. Mrs. S. Dastane, AIR 1975 SC 1534***, and ***V. Bhagat vs. Mrs. D. Bhagat, AIR 1994 SC 710***, the Hon'ble Supreme Court held that mental cruelty is that conduct which inflicts upon the other party such mental pain and suffering as would make it impossible for that party to live with the other. Cruelty cannot be decided on mere hyper-sensitivity; it must be grave and weighty, distinguishing itself from the ordinary wear and tear of married life.

**11.** In this context, it is pertinent to refer to the Hindu Marriage and Divorce (Himachal Pradesh) Rules, 1982. Under the statutory scheme of these Rules, where a petition for divorce is preferred on the ground of cruelty, it is mandatory that the petition specifies with sufficient particularity the specific acts of cruelty, along with the time, date, place, and circumstances under which such acts were committed. A spouse seeking dissolution of marriage cannot rest his/her case on vague, ambiguous, or generalized assertions.

**12.** A perusal of the petition filed by the petitioner reveals that the allegations of cruelty are formulated in purely bald and generalized terms. The petitioner has merely asserted that the respondent used to

pick up quarrels and that her behavior was intolerable. Not a single date, month, or specific incident of quarrel has been specified. The petition is completely non-compliant with the requirement of specific particularity mandated by the Rules.

**13.** Adverting to the ocular evidence, the petitioner, testifying as PW-1, failed to corroborate his allegations by leading credible evidence. Shockingly, during his cross-examination, the petitioner went to the extent of admitting that he does not even know the date of birth of his own minor child, Akashat Kumar. Such conduct reflects utter apathy and indifference towards his own offspring, rather than a genuine desire to discharge matrimonial obligations.

**14.** Crucially, in his cross-examination, PW-1 categorically admitted that he never took any respectable persons, panchayat members, or village elders to the parental home of the respondent to reconcile the dispute or call her back. He also bluntly admitted that he never instituted any legal proceedings for restitution of conjugal rights under Section 9 of the Act to bring the respondent back to the matrimonial home.

**15.** Furthermore, the sole witness examined by the petitioner in support of his case, namely, Smt. Nirmala Devi (PW-2), who is merely a neighbour, proved to be of no assistance to him. In her cross-

examination, PW-2 plainly admitted that she had no knowledge whatsoever regarding the dispute between the parties and was not present at the time of any compromise. She specifically admitted that she was unaware of the internal affairs ("*andruni baatein*") of the parties and did not know the real cause of their discord. The admission of PW-2 conclusively demonstrates that her testimony is devoid of any probative value and cannot be relied upon to substantiate the charge of cruelty.

**16.** On the other hand, the respondent (RW-1) and her mother, Smt. Kamla Devi (RW-2), deposed that the petitioner used to ill-treat and beat the respondent, ultimately ousting her from the matrimonial home. No doubt, in their evidence, RW-1 and RW-2 attempted to improve upon their case by alleging that the petitioner demanded dowry/money and gave merciless beatings under the influence of liquor, which facts were not specifically pleaded in the reply. It is a settled proposition of law that evidence led beyond pleadings cannot be taken into consideration. However, even if that part of the testimony is discarded, the fact remains that the initial burden to establish cruelty squarely rested upon the petitioner, which he failed to discharge.

**17.** It is a well-recognized aspect of human conduct that in ordinary circumstances, no married woman would willingly leave her

matrimonial home and abandon the society of her husband along with an infant child unless compelled by pressing and adverse circumstances. The record probablises that the respondent was subjected to maltreatment and beatings, which justified her separate residence.

**18.** The petitioner has heavily relied upon the contention that the respondent instituted false and frivolous litigations under Section 125 Cr.P.C. and the Domestic Violence Act. However, this plea falls to the ground upon a mere examination of the record. The petitioner placed on record only a copy of the application under Section 125 Cr.P.C. as Ext.PX. He failed to place on record any order or judgment showing that the application under Section 125 Cr.P.C. was ever dismissed on merits or that the allegations made therein were found to be false, frivolous, or malicious by the Criminal Court.

**19.** On the contrary, the proceedings initiated by the respondent under Section 12 of the Protection of Women from Domestic Violence Act, 2005, culminated in a final order dated 29.06.2018 (Ext.PY) passed by the learned Judicial Magistrate First Class, Court No.2, Ghumarwin, District Bilaspur, H.P. By way of the said order, the learned Magistrate held the respondent entitled to reliefs, awarding her monthly maintenance of ₹2,000/-, directing

shared accommodation consisting of one room, kitchen, and bathroom/toilet, and awarding compensation of ₹5,000/- against the petitioner. The petitioner himself placed Ext.PY on record. The finding of a competent Court that the respondent was a victim of domestic violence directly negates the petitioner's assertion that the respondent had filed false and vexatious litigation. The recourse to statutory legal remedies by an aggrieved wife for maintenance and shelter cannot, by any stretch of imagination, be construed as mental cruelty towards the husband.

**20.** As regards the ground of desertion under Section 13(1)(i-b) of the Act, the petitioner is required to establish two essential elements: firstly, the factum of separation for a continuous period of not less than two years immediately preceding the presentation of the petition; and secondly, the intention to bring cohabitation permanently to an end (*animus deserendi*), without reasonable cause and without the consent or against the wish of the petitioner.

**21.** In the present case, although the parties have been living separately since December 2016, the petitioner has miserably failed to prove *animus deserendi* on the part of the respondent. The respondent had justifiable and compelling cause to reside separately on account of the cruel treatment, physical violence, and ouster by the petitioner.

Moreover, the petitioner made no genuine efforts to bring her back, took no panchayat, and filed no petition for restitution of conjugal rights. Where a wife is compelled to live separately due to the misconduct and cruelty of the husband, the plea of desertion is unavailable to the husband.

**22.** In view of the aforesaid discussion, we find no error, perversity, or illegality in the findings arrived at by the learned Trial Court. The petitioner miserably failed to prove the allegations of cruelty and desertion against the respondent. Consequently, the judgment and decree passed by the learned Court below warrant no interference.

**23.** Accordingly, the appeal is dismissed. The judgment and decree dated 09.08.2021 passed by the learned District Judge, Family Court Mandi, District Mandi, H.P., in Registration No.334/2018, is affirmed. Pending application(s), if any, shall also stand disposed of.

Record of the learned Court below be sent back forthwith

**(Ajay Mohan Goel),  
Judge**

**(Yogesh Jaswal),  
Judge**

**September 28, 2026**  
*Rajeev Raturi*