

2024PHHC125217-03H



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO-4431-2024 (O&M)

Date of decision: 18.09.2024

VANITA RANI

...Appellant

Versus

NARINDER KUMAR

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present:- Mr. Ashok Kumar Khunger, Advocate for appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 12.08.2024, passed by the learned Additional Principal Judge, Family Court, Bathinda (for short the 'Family Court'), whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act'), filed by the respondent-husband has been allowed and the marriage between the parties has been dissolved by a decree of divorce on the grounds of cruelty and desertion.

2. The aforesaid petition had been filed by the respondent-husband, *inter alia*, pleading therein that his marriage with appellant-wife was solemnized on 07.03.2010 and out of the said wedlock a male child was born. It was further pleaded that the appellant-wife was a quarrelsome lady and she had started disrespecting the

respondent and his family members, right from the beginning of the marriage. It was further stated that her parents used to interfere in the matrimonial life of the parties. It was yet further pointed out that under the compelling circumstances the respondent-husband started residing separately from his parents. Ramesh Kumar (brother of the appellant-wife), was married to one Jaswinder Kaur, but said Jaswinder Kaur was murdered for demand of more dowry, which led to the registration of FIR No.81 dated 15.08.2010 under Sections 302, 498-A, 148, 149 IPC against said Ramesh Kumar, appellant-wife and her parents. The appellant-wife had left the matrimonial home many times, but she was brought back by the respondent-husband in order to save the matrimonial life. It was further pleaded that ultimately about 5-1/2 years back, the appellant-wife withdrew herself from the company of the respondent-husband and went to her parental house. It was further pleaded that the appellant-wife had filed a petition under Section 9 of the Act on 27.02.2017, but the same was dismissed as withdrawn on 03.04.2019. It was, thus, averred that the appellant-wife had abstained from the company of the respondent-husband for last more than 5 years without any justified cause. Terming the aforesaid acts as cruelty and desertion, a decree of divorce was sought for.

3. Upon notice, the appellant-wife entered appearance and had filed her written statement, admitting therein the factum of marriage and birth of child. Further, it was pleaded that the respondent-husband had given her merciless beatings and he was a daily drunkard and intoxicated person and under the influence of liquor, he used to beat the appellant. It was further pleaded that the

respondent-husband used to lock the appellant-wife in a room without any reasonable cause or excuse and he had harassed the appellant for bringing insufficient dowry. The appellant-wife was compelled to bring more money from her parents for construction of the house. It was further pleaded that the appellant-wife was ready and willing to live in the company of the respondent-husband.

4. On the basis of pleadings of the parties, the following issues were framed by learned Family Court:-

“1. Whether the petitioner is entitled for dissolution of marriage by decree of divorce on the ground of cruelty and separation? OPP

2. Whether the present petition is not maintainable? OPR

3. Whether the petitioner has no locus standi or cause of action to file the present petition?OPR

4. Relief.”

5. In evidence, the respondent-husband examined himself as PW-3 and had also examined PW-1-Harbans Lal Arodhia and PW-2-Suraj Bahn. The appellant-wife examined herself as RW-1 and had also examined RW-2-Babu Ram and tendered into evidence documents Ex. R1 to Ex.R-5.

6. The learned Family Court, after taking into consideration the rival contentions of the parties and evidence on record, allowed the petition filed by the respondent-husband, as noticed above.

7. Learned counsel appearing for the appellant-wife has vehemently contended that the impugned judgment and decree passed by the learned Family Court is totally illegal inasmuch as the respondent-husband has not been able to prove the cruelty. It is further contended that despite the said fact, the learned Family Court has held that the cruelty has been proved on the basis of the admission of the appellant-wife in her testimony and the testimony of her father. It was further submitted that it was the specific stand of the appellant-wife before the learned Family Court that she had been thrown out of the matrimonial house and she along with the minor child had every intention to reside in the company of the respondent-husband in the matrimonial house. It is further submitted that since the appellant-wife had been thrown out of the matrimonial home by the respondent-husband, there was no occasion for her to live in the company of the respondent-husband.

8. We have heard learned counsel for the appellant-wife and have also gone through the impugned judgment and decree passed by the Court below.

9. The issue that requires consideration by this Court is whether the impugned judgment and decree passed by learned Family Court requires any interference.

10. From a perusal of the impugned judgment and decree of the learned Family Court, it would appear that the learned Family Court has observed that the appellant-wife had admitted in her affidavit that she would mend her ways and live with the respondent-husband as a dutiful wife, but the respondent-husband had refused to

rehabilitate her till the demand of additional dowry was met. On the basis of the testimony of PW-2 Suraj Bhan, it was found that the appellant-wife had treated the respondent-husband with cruelty. We find that the allegations of cruelty levelled by the husband were not proved by cogent and convincing evidence. The allegations in this regard levelled by the respondent-husband are general and omnibus in nature and the same could not have been made basis by the learned Family Court to return a finding that the appellant-wife had treated him with cruelty.

In **Ramchander v. Ananta**, (2015) 11 SCC 539, it has been held that cruelty has not been defined in the Act and the same is to be taken as the behavior by one spouse towards the other. The cruelty can be physical or mental, but such cruelty must be proved. It was held as under:-

“ 10. The expression “cruelty” has not been defined in the Hindu Marriage Act. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behavior by one spouse towards the other, which causes a reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Cruelty can be physical or mental. In the present case there is no allegation of physical cruelty alleged by the plaintiff. What is alleged is mental cruelty and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. It is settled law that the instances of cruelty are not to be taken in isolation but to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference

whether the plaintiff has been subjected to mental cruelty due to conduct of the other spouse. In the decision in Samar Ghosh case (Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511) this Court set out illustrative cases where inference of “mental cruelty” can be drawn and they are only illustrative and not exhaustive”.

11. If the facts of the present case are examined on the touchstone of the aforesaid parameters laid down by the Hon’ble Supreme Court, it would be clear that no case for grant of divorce on the ground of cruelty is made out and, therefore, the finding recorded by the learned Family Court on this count, is set aside.

12. Now, we have to see whether the respondent-husband was able to make out a case to seek the decree for divorce on the ground of desertion.

13. Indisputably, the marriage between the parties was solemnized on 07.03.2010. The divorce petition was filed on 03.08.2019. It is the case of the respondent-husband that the appellant-wife left his company about 5-1/2 years back (meaning thereby somewhere in 2014-15). On the other hand, the appellant-wife alleges that she had been thrown out of the matrimonial home. Learned Family Court had found that the parties had been living separately since 2015. Efforts were made for rehabilitation of the appellant-wife in her matrimonial home and the said fact was admitted by Babu Ram-RW-2 in his testimony. It was further found that the appellant-wife in her written reply had asserted that she would mend her ways and the said fact was also reiterated in her affidavit. Thus, it

was found by the learned Family Court that the appellant-wife could not give any justified ground to desert the company of the respondent-husband. The relevant extract from the impugned judgment of the learned Family Court would read as under:-

“13. Second ground is desertion. Petitioner claimed in para No.8 of petition that about 5-1/2 years back, respondent withdrew from the society of petitioner and went to her parental house, thereafter, she did not return. Respondent in cross-examination admitted that she was living separate from petitioner for about 9-1/2 years. Petition was filed on 05.08.2019. Cross examination of respondent was carried out on 10.04.2024. Meaning thereby, they are living separate from each other from year 2015. Two years of living separate from each other from filing of petition is made out. Respondent admitted that photographs Ex.R2 to Ex.R5 were of her house when petitioner convened panchayat to her house to take her to his house. Efforts were made by petitioner for rehabilitation of respondent. Said fact is made out from the admission of respondent and Babu Ram RW-2. Intention of respondent not to join the company of petitioner is spelled out from this fact since despite convening panchayat, she has not joined the company of petitioner. Notably, respondent was at fault and undertook to mend her ways as asserted in her written reply as well as in her affidavit. Respondent is living separately from petitioner without reasonable cause. Desertion is also established, as such, issued No.1 is decided in favour of petitioner and against the respondent”.

14. In Malathi Ravi v. B.V. Ravi, (2014) 7 SCC 640, it has been held by the Hon'ble Supreme Court that desertion in its essence means the intentional permanent forsaking and abandonment of one spouse by the other without the consent of the other spouse. It was held as under:-

“ 20. In the said Savitri Pandey's case (2002) 2 SCC 73, reference was also made to Lachman Utamchand Kirpalani case (AIR 1964 SC 40) wherein it has been held that desertion in its essence means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. For the offence of desertion so far as separation, and (2) the intention to bring cohabitation permanently to an end (animus deserandi). Similarly two elements are essential so far as the deserted spouse is concerned.: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation.”

15. Further, it is settled law that in order to prove the desertion, factum of separation and the intention to bring cohabitation permanently to an end, must be proved. Hon'ble Supreme Court in Debananda Tamuli Vs. Kakamoni Katakya, (2022)5 SCC 459, has held as under:-

“7. We have given careful consideration to her submissions. Firstly, we deal with the issue of desertion. The learned counsel appearing for the appellant relied upon the decision of this Court in the case of Lachman Utamchand Kirpalani (supra) which has been consistently

followed in several decisions of this Court. The law consistently laid down by this Court is that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be animus deserendi on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home.

xx xx xx

12. Thus, in our considered view, the ground of desertion under clause (ib) of sub-section (1) of Section 13 of HM Act has been made out as the desertion for a continuous period of more than two years before the institution of the petition was established in the facts of the case. But, after having carefully perused the evidence on record, we find that no case is made out to disturb the findings recorded by the Courts on the issue of cruelty.”

16. We find that as the appellant-wife had been living separately from the respondent-husband without any justified cause and there was admission on her part that she would mend her ways, but despite that she had abandoned the company of the respondent-husband. Therefore, we find that the finding of the learned Family Court on the point of desertion does not suffer from any illegality or perversity.

17. Resultantly, while setting aside the finding of the learned Family Court on the ground of cruelty, we affirm the finding of the learned Family Court on the issue of desertion.

18. With the aforesaid observation, the present appeal is hereby dismissed.

19. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[JASJIT SINGH BEDI]
JUDGE

18.09.2024
Himanshu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No