

2024:PHHC:138320-DB



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

Date of decision: 21.10.2024

1. FAO-4948-2024 (O&M)

Neelam VermaAppellant

Versus

Sudhir KumarRespondent

2. FAO-4947-2024 (O&M)

Neelam VermaAppellant

Versus

Sudhir KumarRespondent

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

Present: Mr. Sandeep Sharma, Advocate,
for the appellant(s).

SUDHIR SINGH, J.

This judgment shall dispose of the above noted two Appeals i.e. FAO-4948-2024 and FAO-4947-2024 involving the common question of law and facts. For facility of reference, facts are taken from **FAO-4948-2024**.

2. The present appeal (**FAO-4948-2024**) has been filed against the judgment and decree dated 13.09.2024 passed by the learned Additional Principal Judge (Family Court), Gurugram (for short `the Family Court'), whereby the petition

under Section 13 of the Hindu Marriage Act, 1955 (for brevity '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.

3. The aforesaid petition had been filed by the respondent-husband, inter-alia, pleading therein that the marriage between the parties was solemnized on 23.11.2005, according to Hindu rites and that out of the said wedlock, one child was born on 19.03.2008. It was averred by the respondent-husband that the behaviour of the appellant-wife had been aggressive, rude and improper and she had insulted the respondent-husband many times and in this way, she had caused mental cruelty to the respondent-husband. It was further stated that the appellant-wife had left the house of the respondent-husband when their son was 09 months' old and since then, there had been no cohabitation between the parties. It was further stated that on 17.10.2014, the appellant-wife, along with her father, had visited the house of the respondent-husband and decamped with all the household articles. She had also filed false cases against the father of respondent-husband under the Protection of Women from Domestic Violence Act, 2005. It was further the case of the respondent-husband that on 05.01.2019, he along with his father was present in the litigation hall, when the appellant-wife came there and started hurling abuses upon the respondent-husband and his father. She also threatened the respondent-husband with dire

consequences. The said incident was witnessed by Sh. Rajesh Kumar and other members of the Bar.

4. Upon notice, the appellant-wife appeared and filed her written statement denying the allegations of harassment, cruelty and desertion. Rather, it was pleaded that from the very inception of the marriage, the appellant-wife was working as a teacher in Saraswati Senior Secondary School, Narnaul and she used to hand over all her salary to her parents-in-law. It was further stated that she had suffered harassment at the hands of the respondent-husband and his family members. Accordingly, a prayer for dismissal of the petition was made.

5. From the pleadings of the parties, the Family Court framed the following issues:-

1. Whether the marriage between the parties is liable to be dissolved as per Section 13 of HMA mentioned in the petition? OPP.
2. Whether the petitioner is estopped by his own act and conduct from filing the present petition? OPR.
3. Relief.

6. In evidence, the respondent-husband himself appeared in the witness box as PW-3 and examined HC Ranjeet Singh as PW-1 and Rajesh Sharma, Advocate, as PW-2, besides tendering documentary evidence Ex.P1 to Ex.P27. On the other hand, the appellant-wife herself appeared as RW-1.

7. After hearing the contentions of both the parties and considering the evidence brought on record, the learned Family court allowed the petition, granting a decree of divorce, as noticed above.

8. Learned counsel for the appellant-wife has vehemently contended that filing of the petition under Section 9 of the Act, by the appellant-wife itself was indicative of the fact that she had been ready and willing to stay with the respondent-husband. However, the said aspect has totally been discarded by the learned Family Court. It is further submitted that documents (Annexures A1 to A-43), annexed by the appellant-wife with the present appeal, have wrongly been interpreted by the learned Family Court and so was the testimony of PW-1 to PW-3. It is still further argued that the respondent-husband had sought the decree of divorce on the ground of mental and physical cruelty as well as desertion. The learned Family Court has wrongly held that the complaints filed by the appellant against the respondent-husband were false, whereas the fact remains that the respondent-husband himself had caused cruelty to the appellant and not only the appellant-wife was deserted by the respondent-husband, but he had also neglected the minor child, who was only 09 months old when she was thrown out of the matrimonial house. It is further argued that the appellant-wife had moved to Delhi for the higher education with the consent and prior permission of the respondent-husband and it could not be said that she had deserted him or had taken the decision with the sole intention to grab his salary. It is further submitted that the appellant-wife had filed the complaints before the police authorities because the respondent-husband had given her beatings and that is why, the inquiries in the said complaints were conducted by the police. It is yet further submitted that in

the inquiries of the complaints so submitted by the complainants, no message or notice was ever sent to the appellant and in the said inquiries, a favourable report had been procured by the respondent-husband by exerting his influence upon the police authorities. It is further submitted that the respondent-husband himself is an Advocate and therefore, he obtained favourable results in the inquiries conducted into the complaints filed by the appellant-wife. It is further argued that even, in the complaint filed before the National Human Rights Commission, the matter was ordered to be investigated and there also, the respondent-husband had managed to obtain a favourable report. Still further, it is argued that the respondent-husband had given a complaint at C.M. Window and the matter was got enquired into at the back of the appellant-wife and no notice was given to her to either appear or participate in the said proceedings.

9. Terming the findings recorded by the learned Family Court to be suffering from conjectures and surmises, it is argued that the learned Family Court has not taken into consideration that the respondent-husband being an Advocate, had procured the documents/inquiry reports in his favour. It is further argued that the acts of minor wear and tear of marital life, have wrongly been termed to be cruelty by the learned Family court. It is yet further argued that when the appellant-wife herself had filed a petition under Section 9 of the Act, she cannot be said to have deserted the respondent-husband and thus, the finding

recorded by the learned Family Court as regards desertion is also liable to be set aside.

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

11. The question that arises for consideration before this Court is as follows:-

“Whether the impugned judgment and decree passed by the learned Family Court requires any interference by this Court?”

12. It may be noticed that vide impugned judgment and decree, the learned Family Court has decided two cases together i.e. a petition under Section 13 of the Act filed by the respondent-husband for decree of divorce and another petition under Section 9 of the Act filed by the appellant-wife for restitution of conjugal rights. It may further be noticed that the petition under Section 13 of the Act was allowed, whereas the petition under Section 9 of the Act was dismissed by the learned Family Court.

13. The marriage between the parties and the birth of a child from the said wedlock is not disputed. The learned Family Court has found that the appellant-wife had filed various complaints against the respondent-husband. While referring to the testimony of PW1 HC Ranjeet Singh, it was found that the said witness had proved on record the complaints Ex.P1 to Ex.P10. So much so, it was further found that whosoever was assigned the inquiries into the complaints filed by the appellant-wife, she had also filed a complaint against the said

official/officer. Thus, it was observed that the appellant-wife was habitual in filing complaints by levelling bald allegations. It was further found that as regards the incident allegedly occurred on 29.12.2018, the matter was enquired into by the police. In the said incident, the appellant-wife had alleged that she had been beaten by her husband, but again the police did not find any substance in the said allegation. Similar was the fate of the complaint Ex.P2. Rather, in the complaint filed by the respondent-husband, a report was submitted on 24.02.2019, wherein the police had found that the appellant had committed mis-behaviour in the chambers of the Advocates. Still further, from the documents Ex.P5 to Ex.P10, it was found by the learned Family Court that the complaints filed by the appellant-wife were found to be false and frivolous. The learned Family Court found that the act of shouting loudly by the appellant-wife at the work place of the husband, diminished the reputation of the husband. The appellant-wife went to the seat of the respondent-husband in the litigation hall, Narnaul and misbehaved with him. The conduct of the respondent-wife in filing the complaints not only against her husband, but also against the police officials/officers, who had conducted the inquiries into the complaints filed by her, was taken to be an act of cruelty. Accordingly, it was held that the appellant-wife was guilty of committing cruelty against the respondent-husband. It was further found that the incident dated 05.01.2019, whereby the appellant-wife had misbehaved with the father of the respondent-husband was also found to be correct in the police

inquiries. Still further, the learned Family Court did not find any substance in the stand of the appellant-wife that she was having life threats from her husband.

14. Coming to the point of desertion, the learned Family Court has found that in her cross-examination, the appellant-wife deposed that she was having threats from her husband and that she was taking care of all the requirements of her son, but she was not able to say anything as to where, the child was studying. It was, thus, found that as per her own version, she had been residing separately from her husband since 2009 when her child was only 9 months' old. Thus, it was found that the matrimonial bond of the parties has become unworkable. Lastly, it was found that though the appellant-wife had claimed that the complaint filed by her under the Protection of Women from Domestic Violence Act was compromised, but the order dated 30.05.2024 showed that the said complaint was dismissed on account of non appearance of the appellant.

15. It is well settled that in order to constitute a cruelty, the party alleging the same must prove on record that the behaviour of the party complained against is or has been as such that it has made it impossible for the said party to live in the company of the party complained against. The acts of cruelty must be such from which it can be reasonably and logically concluded that there cannot be any re-union between the parties due to the said acts. The cruelty can either be physical or mental or both. Though there is no mathematical formula to devise the extent of

cruelty alleged against, yet the facts and circumstances of each and every case must be examined in the light of the gravity contained in them.

In **K. Srinivas Rao v. D.A. Deepa, 2013(2) RCR**

(Civil) 232; Hon'ble Apex Court observed as under:-

“14. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse...”

In **K. Srinivas v. K. Sunita, 2015(1) RCR**

(Civil) 38, Hon'ble Apex Court observed as under:-

“6. Another argument which has been articulated on behalf of the learned counsel for the Respondent is that the filing of the criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filing of the husband's divorce petition, and being subsequent events could have been looked into by the Court. In any event, both the parties were fully aware of this facet of cruelty which was allegedly suffered by the husband. When evidence was led, as also

when arguments were addressed, objection had not been raised on behalf of the Respondent-Wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf.

7. In these circumstances, we find that the Appeal is well founded and deserves to be allowed. We unequivocally find that the Respondent-Wife had filed a false criminal complaint, and even one such complaint is sufficient to constitute matrimonial cruelty.

8. We, accordingly, dissolve the marriage of the parties under Section 13(1)(ia) of the Hindu Marriage Act...”

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”.

In **Samar Ghosh Vs. Jaya Ghosh** (2007) 4 SCC 511, the Hon’ble Supreme Court has laid down the factors wherefrom inference of mental cruelty can be drawn. It was held as under:-

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of ‘mental cruelty’. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of the complete matrimonial life of the parties, acute mental pain, agony, and suffering as would not make it possible for the parties to live with each other could come within the broad parameters of mental cruelty.

xx xx xx

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

xx xx xx

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

xx xx xx

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.”

16. 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

17. If, the facts of the present case and the findings recorded by the learned Family Court are examined on the basis of the aforesaid judgments, it would come out that cruelty on the part of the appellant-wife stands established on record. The respondent-husband, by way of examining PW1 HC Ranjeet Singh and PW2 Rajesh Sharma and further proving on record documents Ex.P1 to Ex.P10, has been able to establish that the acts and conduct of the appellant-wife had caused him mental cruelty. There is clear and categorical finding of the learned Family Court that the appellant-wife was in the habit of filing false and frivolous complaints and those complaints were not only filed against the respondent-husband, but also against the police officials/officers, who had conducted the inquiries into her complaints. This fact clearly shows that the appellant-wife was a cantankerous complainant and this nature of hers had caused mental cruelty to the respondent-husband. One of the acts of the appellant-wife in visiting the chambers of her husband, who was an Advocate by profession and shouting loudly therein, was also proved in the inquiry conducted by the police. Nothing could be shown to establish that such inquiry report of the police was based on incorrect facts or was for any extraneous consideration. Yet further, it was also proved on record that the appellant-wife had also misbehaved with the father of the respondent-husband and had escalated the matter before the police. It has come on record that the appellant is M.Phil, Ph/D., NET and GRF and that she was serving in Amity University, Pachgaon, Tehsil Manesar, District Gurugram. The appellant-

wife has not controverted the said fact. Rather, the complaint filed by her under the Protection of Women from Domestic Violence Act was dismissed by the Court concerned vide order dated 30.05.2024 on account of her non appearance. In our opinion, apart from cruelty proved on record, it also stands established that the parties have been residing separately since 2009. For all these years, there has been no cohabitation between the parties. Non resumption of matrimonial bonding for years together leaves the matrimonial alliance as unworkable. In the instant case, though the appellant-wife had filed a petition under Section 9 of the Act for restitution of the conjugal rights, yet the fact remains that in view of the proven acts of cruelty and desertion, the Family Court had dismissed the petition under Section 9 of the Act. In our opinion as well, once the Court has reached the conclusion that the appellant-wife was guilty of committing cruelty and had deserted the respondent-husband, there is no possibility of the parties living together. Their matrimonial bond has reached the point of no return and thus, it has ruptured beyond repair.

18. Thus, after careful perusal of the impugned judgment of the learned Family Court, we find that no case is made out to interfere with the findings recorded by it. It could not be shown that any evidence has been misread or not taken into consideration by the learned Family Court while passing the impugned judgment.

19. No other point has been urged.

20. In view of the above, we do not find any illegality or perversity in the findings recorded by the learned Family Court. Accordingly, finding no merit in the present appeals (**FAO-4947-2024 and 4948-2024**), the same are hereby dismissed.

21. All pending applications(s), if any, shall also stand disposed of.

(SUDHIR SINGH)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

21.10.2024
Ajay Prasher

- | | | |
|---|------------------------------------|---------------|
| - | <i>Whether speaking/ reasoned:</i> | <i>Yes/No</i> |
| - | <i>Whether reportable:</i> | <i>Yes/No</i> |