

2025:PHHC:045765-DB



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

FAO-120-2025 (O&M)

Date of decision: 19.03.2025

RAVINDER KAUR

.....Appellant

Versus

HARPREET SINGH

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present:- Mr. L.S. Sidhu, Advocate for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 22.11.2024 passed by learned Additional Principal Judge, Family Court, Patiala (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, was allowed, and the marriage between the parties was 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 the appellant-wife was solemnized on 12.05.2014, according to Sikh rites and out of the said wedlock a male child, namely, Ekmanjot Singh, was born on 25.11.2012. It was further pleaded that after some time of

the marriage, the appellant-wife started showing her true colours. Her behaviour and attitude was arrogant. She was short tempered and non-co-operative towards the respondent-husband and his parents. She would pick up quarrels with them at the instance of her parents and brother. She would disclose each and every thing of the matrimonial life to her parents and brother. The respondent-husband continued tolerating such behaviour of the appellant-wife with the hope that a better sense would prevail upon her. The sister of the respondent-husband was 90% disable, but the appellant-wife refused to adjust in the family. She openly told that she could not live with the respondent-husband until his handicapped sister was sent to Pingla Ashram. She would give threats to the respondent-husband and his family members to commit suicide and involve them in a false case. She had consumed some tablets, but she was saved with the timely help of the Doctors of Ajeet Nursing Home. The appellant-wife had pressurized the respondent-husband to snap his ties with his parents and live separately. She left the matrimonial home on 21.08.2014. A Panchayat was taken to her parental house to bring her back on 03.09.2014, but her mother had refused to send her back. On 07.09.2014, when the respondent-husband again visited her parental house to bring her back, her parents had put a condition that he would have to abandon his mentally retarded sister. On 14.06.2015, the respondent-husband and his family members again visited the parental house of the appellant-wife to bring her back, but her parents had misbehaved with the respondent-husband and his family members, but with the intervention of the respectable members, the matter was

pacified and it was reduced into writing. On 03.09.2015, the mother of the appellant-wife called her on mobile and started instigating her against the respondent-husband and his family members. The appellant-wife started shouting and threatening that she was going to call the Police to get the respondent-husband and his entire family involved in non bailable offences. When she became pregnant, her parents took her to their place and when the respondent-husband and his parents went to see the child after his birth, the appellant-wife and her mother had misbehaved with them. A false complaint was moved by the appellant-wife and her parents to Police Station Tripuri Patiala. The respondent-husband and his parents were called to the Police Station, but later on, the matter was compromised. She moved an application to SSP, Patiala, against the respondent-husband and his parents on 03.05.2016, but her father at her instance withdrew the said complaint. She left his company on 12.02.2016, without any reasonable cause. The respondent-husband had filed a petition under Section 13 of the Act on the ground of cruelty on 27.02.2017, wherein the appellant-wife appeared and filed her written statement. Efforts were made by the respectable persons from both the sides to reconcile the matter, but the appellant-wife had put a condition to the respondent-husband that she would join his company only if he withdrew the divorce petition filed by him and ultimately, he withdrew the same on 25.01.2018. However, despite the aforesaid withdrawal of the petition, she did not join his company and rather with a view to harassing him, she had filed a petition under Section 125 Cr.P.C. However, she did not join his company which led him to

the filing of the divorce petition. Terming the aforesaid acts and conduct of the appellant-wife as cruelty and desertion, a decree of divorce had been sought for.

3. Upon notice, the appellant-wife entered appearance and filed her written statement, admitting the factum of marriage and birth of the child. However, it was pleaded that the divorce petition filed by the respondent-husband was barred under Order 2 Rule 2 CPC as earlier petition had been withdrawn without seeking any liberty to file a fresh petition. It was further alleged that she had been harassed by the respondent-husband and his family members for bringing insufficient dowry. Even on 19.08.2014, the respondent-husband gave her poison and she was saved, but she was turned out of the matrimonial home. A Panchayat was convened wherein a compromise took place on 14.06.2015 and the respondent-husband and his parents felt sorry. It was further alleged that the respondent-husband and his family members had given beatings to the appellant-wife. After birth of the child, they visited the parental house of the appellant-wife on 01.05.2016 and started quarrelling with her and her parents. They started abusing and threatening her and thereby caused her mental cruelty. The factum of moving of an application to the Police was admitted and so was the factum of compromise effected therein and, thus, the application was withdrawn. It was further pleaded that the respondent-husband had neglected to maintain the appellant-wife and she was forced to leave his society and was turned out of her matrimonial home. It was further pointed out that the earlier divorce petition filed by the respondent-husband was dismissed as withdrawn

on 25.01.2018. It was further asserted that the said petition was withdrawn as in the application under Section 24 of the Act filed by the appellant-wife, the respondent-husband was directed to pay Rs.5500/- as maintenance *pendente lite* and Rs.3,000/- as litigation expenses. The divorce petition was dismissed as withdrawn by the respondent-husband in order to wriggle out of his liability to pay the said maintenance amount. The respondent-husband was in arrears of the maintenance amount and the execution proceedings had been lingering on since 2017-18.

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

- “1. Whether the petitioner is entitled to decree of divorce under Section 13 of the Hindu Marriage Act on the grounds of cruelty and desertion as prayed for in the petition? OPP
2. Whether the petition is not maintainable? OPR
3. Relief.”

5. In evidence, the respondent-husband appeared as PW-1 and had also examined PW2-Manmohan Singh and PW3-ASI Jagat Singh, besides tendering documents Ex.P1 to Ex.P7; Mark-A to Mark-D; Ex.D3 and Ex.DX. On the other hand, the appellant-wife examined herself as RW1 and had also examined RW2-Pardeep Kumar, besides tendering documents Ex.D1; Ex.D2; Mark-A and Mark-DW2/X.

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

7. Learned counsel for the appellant-wife has vehemently argued that it was conceded position on record that the earlier divorce petition filed by the respondent-husband was dismissed as withdrawn without any liberty to file another petition on the same cause of action and with the same facts. It is, thus, contended that the second divorce petition was barred under Order 2 Rule 2 CPC, but the learned Family Court has totally ignored the said legal aspect of the matter. It is further argued that the appellant-wife was and is still ready and willing to live in the company of the respondent-husband, but it has been wrongly observed by the learned Family Court that there was no intention on the part of the appellant-wife to continue her matrimonial alliance with the respondent-husband. Still further, it is argued that when the appellant-wife herself appeared as RW1 and corroborated the stand taken by her in the written statement and had also produced the documentary evidence, there was no occasion for the learned Family Court to hold that she had not examined her parents. Still further, it is argued that the finding of the learned Family Court that the family of the appellant-wife was still supporting the respondent-husband as on 06.08.2024, her father along with the respondent-husband went to meet the minor child of the parties, is patently illegal and factually incorrect. Learned counsel for the appellant-wife further argues that she had never deserted the respondent-husband and rather, it was the respondent-husband, who had deserted her and ousted her

from the matrimonial home. It is also argued that while passing the impugned judgment and decree, the learned Family Court has failed to take into consideration the factum of non payment of maintenance/arrears of maintenance by the respondent-husband, which also amounts to cruelty and on that basis itself, the divorce petition was liable to be dismissed. It is, thus, contended that all the aforesaid material aspects have totally been ignored and brushed aside by the learned Family Court and accordingly, a prayer has been made for setting aside the impugned judgment and decree passed by the learned Family Court.

8. We have heard the learned counsel for the appellant and have also gone through the impugned judgment and decree.

9. The only question that arises for consideration by this Court is whether the impugned judgment and decree passed by learned Family Court, requires any interference.

10. On the basis of the evidence led by the parties, the learned Family Court has found that in her cross-examination, the appellant-wife admitted that she had moved a complaint against her husband for an attempted kidnap of the minor son, but the fact remained that he had gone to meet the child along with the father of the appellant-wife. She further deposed that her father was mentally ill, but when asked about the moving of the application under Section 125 Cr.P.C. and deposing in her favour in the said proceedings by her father, she stated that at that time her father was mentally sound. The learned Family Court has, thus, found that even the family members

of the appellant-wife did not support her. The learned Family Court has further found that she had filed petitions under Section 125 Cr.P.C., 128 Cr.P.C. and under the provisions of Protection of Women from Domestic Violence Act, 2005 and various execution petitions, but the fact remained that the respondent-husband was regularly making the payment of maintenance amount. It was, thus, concluded that the acts and conduct of the appellant-wife were abominable and contumacious. There had been a sustained course of abusive and humiliating treatment to torture and agonize the respondent-husband, thereby rendering his life miserable. It was further held that the acts and conduct of the appellant-wife could neither be categorized as normal wear and tear of a marital life nor could they be said to be insignificant or trivial. Still further, on the issue of desertion, it was observed by the learned Family Court that it was admitted position on record that the parties had last resided together in March, 2016. It was, thus, found that the appellant-wife had deserted the respondent-husband without any reasonable cause and excuse for a continuous period of two years prior to the filing of the divorce petition. On the issue of the divorce petition barred by Order 2 Rule 2 CPC, it was found that the cause of action was recurring and continuous and the facts which constitute cruelty, desertion or adultery as the case may be, were likely to vary giving rise to different cause of actions, depending on the facts and circumstances of each case. It was, thus, found that the divorce petition was not barred by Order 2 Rule 2 CPC.

11. It is well settled that in order to constitute 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”.

Still further 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.”

12. If the facts of the present case and findings recorded by the learned Family Court are examined in the light of the aforesaid judgment of the Hon’ble Apex Court, it would come out that the acts and conduct of the appellant-wife in falsely alleging and filing a complaint to the Police regarding the kidnapping of the minor child of the parties certainly amount to cruelty. As noticed above, it was found by the learned Family Court that the respondent-husband along with the father of the appellant-wife had gone to meet the minor child but the appellant-wife had alleged such act as kidnapping by the respondent-husband. Still further, the appellant-wife did not join the company of the respondent-husband despite the withdrawal of the earlier divorce petition filed by the respondent-husband. Though an argument has been raised by the learned counsel for the appellant-wife

that the respondent-husband has been in the arrears of maintenance amount, yet it has been observed by the learned Family Court that such maintenance amount was being regularly paid by the respondent-husband. So far as the argument regarding the divorce petition being barred by the provisions of Order 2 Rule 2 CPC, suffice to say that the earlier divorce petition was not decided on merits and it was only dismissed as withdrawn. Even if, there was no liberty sought by the respondent-husband at the time of the withdrawal of the said petition, we find that the second petition filed with the averments and allegations, which have been duly proved by way of evidence, cannot be said to be barred by the provisions of Order 2 Rule 2 CPC.

13. In view of the above, we find that the findings given by the learned Family Court are plausible findings based on the evidence on record. It could not be shown that any evidence has been misread or not taken into consideration.

14. No other point has been urged.

15. In view of the above, finding no merit in the present appeal, the same is hereby dismissed.

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

17. At this stage, we may notice that while passing the impugned judgment and decree, no permanent alimony was granted to the appellant-wife by learned Family Court. Therefore, we grant liberty to the appellant-wife to move an appropriate application before learned Family Court for grant of permanent alimony. If any such application is filed by the appellant-wife, the same shall be considered

and decided by the Court concerned, in accordance with law, preferably within a period of 06 months from the date of filing thereof.

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

[SUDHIR SINGH]
JUDGE

[SUKHVINDER KAUR]
JUDGE

19.03.2025
himanshu

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