

2025:PHHC:025075-DB



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

FAO-210-2025 (O&M)

Date of decision: 19.02.2025

VINOD JULKA

.....Appellant

Versus

KIRAN BALA

.....Respondent

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

Present:- Mr. Raj Kumar Kakkar, Advocate for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 09.12.2024 passed by learned Principal Judge, Family Court, Ferozepur (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-wife, 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-wife, *inter alia*, averring therein that her marriage with the appellant-husband was solemnized on 10.10.1994, according to Hindu rites but no child was born out of the said wedlock. It was further alleged that both the parties had adopted a female child. It was yet further pleaded

that after the marriage, the appellant-husband treated the respondent-wife with mental and physical cruelty, which had created an apprehension in her mind that it would be harmful for her to live in his company. The appellant-husband was a spendthrift and was a man of vices and he had sold the entire household articles, including the gold ornaments to fulfil his lust. It was further alleged that though the appellant-husband was working as an Accountant with different Rice Shellers, yet he did not contribute even a single penny from his salary to the respondent-wife for household expenses. He used to give her severe beatings and had issued threats to her that he would commit suicide and involve her in false criminal cases. He turned the respondent-wife out of the matrimonial home after giving her severe beatings and since then she had been residing with her parents at Ferozepur. A number of Panchayats were convened, but all in vain. It was, thus, alleged that the marriage between the parties had irretrievably broken down and continuation of it will take the life of the respondent-wife towards death. Terming the aforesaid acts and conduct of the appellant-husband as cruelty and desertion, a decree of divorce had been sought for.

3. Upon notice, the appellant-husband entered appearance and filed his written statement, admitting the factum of marriage but pleaded that the respondent-wife had not come to the Court with clean hands and concealed the true and material facts from the Court. It was further alleged that the respondent-wife was doing a job in the Railway Department and she superannuated from the said Department on 30.11.2018. Prior to her retirement, her brother had started

interfering in their matrimonial life and the behaviour of the respondent-wife towards the appellant-husband became rude. It was further pleaded that the brother of the respondent-wife had pressurized the parties to adopt his daughter and he succeeded in getting released all the services/retiral benefits of the respondent-wife from Railway Department from time to time. Ultimately, in the last week of January, 2021, the brother of the respondent-wife took her from the matrimonial home without her consent and knowledge and thereafter, she never come back despite convening of Panchayats. It was further alleged that the respondent-wife had filed the divorce petition at the instance of her brother. The appellant-husband was still ready and willing to rehabilitate the respondent-wife in the matrimonial home.

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

- “1. Whether the petitioner is entitled for decree of divorce under Section 13 of the HM Act as prayed for? OPP
2. Whether the present petition is not maintainable in the present form? OPR
3. Whether the petitioner has not come in the Court with clean hands and suppressed and concealed the material facts from the Court ?OPR
4. Relief.”

5. In evidence, the respondent-wife appeared as PW-1 and had also examined PW2-Veena Rani, besides tendering document

Ex.P1. On the other hand, the appellant-husband examined himself as RW1.

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

7. Learned counsel for the appellant-husband has vehemently argued that the marriage between the parties was solemnized on 10.10.1994. The divorce petition had been filed on 07.05.2021 and, thus, there is an inordinate delay in filing the said petition, but the learned Family Court, while passing the impugned judgment and decree, has totally ignored the said vital fact. It is, further argued that no finding has been recorded by the learned Family Court as regards any physical violence having been committed by the appellant-husband against the respondent-wife. It is further argued that the respondent-wife had retired from the Railway Department after completing her services and she had been in receipt of pension and other service benefits and that she had filed the divorce petition with an objective to leave the appellant-husband in lurch, who has no sufficient income from his job or business. It is, thus, argued that the impugned judgment and decree passed by the learned Family Court is based on the conjectures and surmises and the same is liable to be set aside by this 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. A perusal of the findings recorded by the learned Family Court would show that the appellant-husband had failed to prove that he was maintaining the respondent-wife during the period she remained at matrimonial home or after their separation, whereas on the other hand, the respondent-wife had proved on record certified copy of the order dated 13.02.2023 (Ex.P-1) passed in the petition under Section 125 Cr.P.C., whereby the prayer for grant of maintenance by the appellant-husband was declined. It was also found that the appellant-husband had filed an application under Section 24 of the Act seeking maintenance *pendente lite* but the said application was also dismissed vide order dated 04.08.2023. It was, thus, found that the respondent-wife did not leave the matrimonial house of her own and she had remained in the company of the appellant-husband for more than 8 years. It was also found that the only objective of the appellant-husband was to claim the pensionary benefits/pension amount of the respondent-wife.

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 findings recorded by the learned Family Court are examined in the light of law laid down by the Hon’ble Apex Court in the aforesaid judgments, it would come out that the acts and conduct of the appellant-husband in compelling the respondent-wife to leave the matrimonial home and then claiming maintenance from her, amounts to cruelty. It was proved on record before the learned Family Court that the respondent-husband had made attempts firstly by way of a petition under Section 125 Cr.P.C., and thereafter by way of an application under Section 24 of the Act, claiming maintenance from the respondent-wife and both the said proceedings were dismissed. Though, the learned counsel appearing for the appellant-husband has vehemently argued that the learned Family Court did not record any finding regarding the physical violence or cruelty, yet we find that the acts and conduct of the appellant-husband in compelling the respondent-wife to live separately from him certainly amounts to cruelty. There is no substance in the arguments of the learned counsel for the appellant-husband that the divorce petition filed by the

respondent-wife was time barred. It may further be noticed that the appellant-husband could not show that he is not an able bodied person to maintain himself. There is no explanation forthcoming except the allegation that during Covid period he had lost his business, to the effect that there is no source of income with him. Rather, the factum of him claiming maintenance from the respondent-wife speaks volumes of his greed and, therefore, the learned Family Court was perfectly justified in holding that he had not only caused cruelty to the respondent-wife but had also deserted her.

13. Thus, we find that the findings recorded by the learned Family Court do not suffer from any patent illegality or perversity. 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.

[SUDHIR SINGH]
JUDGE

[SUKHVINDER KAUR]
JUDGE

19.02.2025
himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No