

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2025:PHHC:008494-DB



120

FAO No.281 of 2025 (O&M)

Date of decision:21.01.2025

Pooja

....Appellant

Versus

Rakesh Kumar

....Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH.

HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Sanjeev Kumar, Advocate for appellant-wife.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 04.12.2024 passed by the learned Additional Principal Judge, Family Court, Rohtak (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 decreed and the marriage between the parties was dissolved by a decree of divorce on the ground of cruelty.

2. The aforesaid petition had been filed by the respondent-husband, *inter-alia*, asserting therein that his marriage with the appellant-wife was solemnized on 28.02.2017 as per Hindu rites and a male child was born out of the said wedlock, who was in the custody of the

respondent-husband. It was further averred that the appellant-wife used to insult the respondent-husband and his parents in the presence of the neighbours and would regularly leave for her parental house without the consent of respondent-husband and his family members. It was further the case of the respondent-husband that the appellant-wife had been bent upon to harass and cause him mental tension. She had put pressure upon him to live separately from his parents and when he did not accede to her demands, she had left for her parental house. She had also threatened the respondent-husband to falsely implicate him and his family members in a criminal case. On 29.05.2019, the parents of the appellant-wife along with other persons came to her matrimonial house and picked up quarrel with the respondent-husband and his parents and had taken the appellant-wife alongwith them besides taking gold ornaments and other valuable articles. However, she had left behind the minor child. It was further asserted that on 17.06.2019, the respondent alongwith his father, brother and other respectable persons went to the parental house of the appellant-wife to bring her back, but the same did not yield any result and rather, she and her father had threatened to implicate the respondent-husband and his family members in a false criminal case. Alleging the aforesaid acts of the appellant-wife as cruelty, 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 male child. However, she denied the allegations of cruelty and had rather alleged that she had been harassed and tortured by the respondent-husband and his family members for dowry demands. It was further

pleaded by her that the respondent-husband used to beat her and she had never been provided with proper food, clothing and medical treatment. It was further asserted by her that she had never sought for living separately from her parents-in-law. On 29.05.2019, the respondent-husband and his family members gave severe beatings to the appellant-wife causing her injury and ultimately, turned her out of the matrimonial home and that while doing so, they had snatched the minor child from her besides usurping the entire Istridhan and jewellery. In this regard, a complaint was made to the SSP, Rohtak, whereupon the respondent-husband and his family members had compromised the matter and assured to take the appellant-wife back to the matrimonial home, but they had never honoured the terms of the said compromise. Accordingly, a prayer for dismissal of the divorce petition was prayed.

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

1. *Whether the respondent has treated the petitioner with cruelty after solemnization of the marriage between the parties? OPP*
2. *Whether the petition is not maintainable in the present form? OPR*
3. *Whether the petitioner has suppressed the material facts from the Court? OPR*
4. *Whether the petitioner has no cause of action and locus standi to file the instant petition? OPR.*
5. *Relief.”*

5. In evidence, the respondent-husband examined himself as PW1, his mother Smt. Saroj as PW-2 and Naresh Kumar (neighbour) as PW-3. On the other hand, the appellant-wife appeared as RW1 and had

also examined RW2-Ram Chander (neighbour), RW3-Satbir, RW3-Subhash and RW4-Vikash.

6. The learned Family Court on the basis of rival contentions and evidence led by the parties decreed the petition filed by the respondent-husband, as noticed above.

7. Learned counsel appearing for the appellant-wife has vehemently argued that the finding of the learned Family Court as regards the cruelty committed by her to the respondent-husband is patently illegal. It is further argued that the version of the respondent-husband regarding the appellant-wife leaving behind the 9-month old minor child, has wrongly been believed by the learned Family Court and the version of the appellant-wife that she had been forcibly thrown out of the matrimonial home by snatching from her the child, has wrongly been discarded. It is further argued that the learned Family Court has wrongly held that the appellant-wife did not register any FIR in respect of demand of dowry whereas, the fact remains that it was the pleaded case of the appellant-wife that she had submitted a complaint to the Police, wherein the matter was compromised and the respondent-husband and his family members had assured to rehabilitate the appellant-wife. It is argued that the said materials fact have totally been brushed aside by the learned Family Court, while passing the impugned judgment and decree. While referring to the testimony of RW2-Kamlesh, who was a neighbour of appellant-wife, it is argued that the said witness had in her testimony deposed that there was no fault on part of the appellant-wife and rather the Panchayat had found fault on the part of the respondent-husband and his family members. It is, thus, argued that the findings recorded by the

learned Family Court are based on conjecture and surmises and the same are liable to be set aside by this Court.

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

9. The only question that arises for consideration in the present appeal is whether the impugned judgment and decree requires any interference by this Court.

10. The learned Family Court has found that though the appellant-wife had alleged that the respondent-husband and his family had raised demands of dowry and harassed and tortured her on this count, yet no evidence was led by her to corroborate the said allegations. It was further noticed that no FIR was registered by her under Section 498-A IPC in this regard. Still further, it was found that the demand of the appellant-wife as regards residing separately from the parents of the respondent-husband also amounted to cruelty. It was further noticed that in her cross-examination, the appellant-wife had alleged the extra-marital relations of her husband-respondent, but no evidence was led by her in this regard and, thus, it was held that levelling of false allegations, causing character assassination also amounted to cruelty. It was also observed that leaving the 9-month old minor son, that too when, he was suffering from heart disease also showed the conduct of the appellant-wife, that she was not serious about the upbringing and maintenance of the minor son.

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.

12. 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”.

13. If the findings recorded by the learned trial Court are examined in the lights of the aforesaid judgment of the Hon’ble Supreme Court, it would come out that the allegations of cruelty levelled by the respondent-husband were proved by her by way of cogent and convincing evidence. Firstly, it is admitted fact that the minor child aged 9 months had been left at the matrimonial home by the appellant-wife,

while leaving for her parental house. Though, the appellant-wife had alleged that she had been forcefully thrown out of the matrimonial home and the minor child had been snatched from her yet, there is nothing on record to indicate that she had lodged any complaint with the police in this regard or had instituted any proceedings, as regards the custody of the minor child. More so, it has also come on record by way of the testimony of respondent-husband that the minor child had been suffering from heart disease. Thus, leaving a child with such ailment clearly shows the conduct of the appellant-wife.

14. The findings regarding the false allegations as regard the demand of dowry and extra-marital relations of respondent-husband cannot also be found fault with, especially when, it could not be shown by the appellant-wife that such findings are not based on evidence on record. It could not be shown that any evidence has been misread or not taken into consideration by the learned Family Court.

15. Thus, we find that the findings recorded by the learned Family Court did not suffer from any illegality or perversity which may warrant interference by this Court in the present appeal.

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

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

18. At this stage, we may notice that while passing the impugned judgment and decree, no permanent alimony was granted to the appellant-wife by the 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 six months from the date of filing thereof.

(SUDHIR SINGH)
JUDGE

21.01.2025

(SUKHVINDER KAUR)
JUDGE

reema

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