

2025:PHHC:026639-DB



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

FAO-1230-2025 (O&M)

Date of decision: 20.02.2025

Jatinder Kaur @ Chhinderpal KaurAppellant

Versus

Ajaypal SinghRespondent

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

Present:- Mr. Abhinav Jain, Advocate for the appellant.

SUDHIR SINGH, J.

CM-3586-CII-2025

For the reasons stated in the application, the same is allowed and the delay of 470 days in re-filing the appeal is condoned, subject to all just exceptions.

CM-3587-CII-2025

For the reasons stated in the application, the same is allowed and the delay of 78 days in filing the appeal is condoned, subject to all just exceptions.

FAO-1230-2025

Challenge in the present appeal is to the judgment and decree dated 13.03.2023 passed by learned Principal Judge, Family Court, Faridkot (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 24.11.2013, according to Sikh rites and out of the said wedlock, one male child was born, who was residing with the appellant-wife. It was further alleged that there was an age gap of 15 years between the parties and their nature did not match. The appellant-wife was a short tempered lady and she used to act at the instance of her brother-Guriqbal Singh @ Gorkha. Her brother had taken lakhs of rupees from the respondent-husband and when he was asked to return the said money, there arose differences between the parties. The mother of the respondent-husband had moved an application to CM Punjab against aforesaid Guriqbal Singh; Gurminder Singh and his wife Rajwinder Kaur as the said persons wanted to grab the property of the respondent-husband and his family members. The said persons had issued threats to the mother of the respondent-husband that the appellant-wife would commit suicide after pouring oil upon her and the respondent-husband and his family members, would be sent behind the bars. The appellant-wife and her brother had snatched the car; 30 tolas gold, Rs.25 Lakh in cash and ATM card of the respondent-husband and when he went to the house of the appellant-wife, her brother had tried to kill him. He moved an application to SSP, Faridkot on 24.09.2015. The appellant-wife was always disrespectful towards the respondent-husband and his family

members. 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 his written statement admitting the factum of marriage and birth of the child. However, it was alleged that mother-in-law of the appellant-wife had started giving false applications against her brother (Guriqbal Singh) and even her own children. The respondent-husband and his family members started demanding Rs.20 lakh in cash from the appellant-wife and when she had expressed her inability to fulfil their demand, they started threatening to kill her and her child by mixing something in her drinks/eatables. On 23.09.2015, the respondent-husband along with 5-6 unknown persons came to the parental house of the appellant-wife and told that they had come to recover Rs.20 lakh. The parents of the appellant-wife tried to patch up the matter with the help of the Panchayat, but the respondent-husband had refused to rehabilitate the appellant-wife. The appellant-wife had been residing with her parents since December, 2014.

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

- “1. Whether the petitioner has been treated with cruelty? OPP
2. Whether the respondent has deserted the petitioner without any due course? OPP
3. Whether the present petition is false and frivolous ?OPR
4. Relief.”

5. In evidence, the respondent-husband appeared as PW-1 and had also examined PW2-Paramjit Kaur (his mother) and PW3-Harmanpal Singh. On the other hand, the appellant-wife examined herself as RW1 besides examining RW2-Jaswant Singh (her father); RW3-Guriqbal Singh (her brother) and RW4-Kulwant Singh.

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 the findings recorded by the learned Family Court are against the facts and evidence on record. It is further argued that it was the respondent-husband, who had treated the appellant-wife with cruelty and allowing him the decree of divorce amounts to giving him benefit of his own wrongs. It is further argued that the mother-in-law of the appellant-wife had given a number of applications to the Police against the brother and other family members of the appellant-wife and her family members and besides that even the respondent-husband had also moved some application to the Police and the same had caused her mental cruelty. It is also argued that the respondent-husband had also raised a continuous demand of Rs.20 Lakh from the appellant-wife, but the said fact has totally been ignored by the learned Family Court, while passing the impugned judgment and decree.

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. The learned Family Court has found that the appellant-wife had failed to cross-examine the respondent-husband and his witnesses on the specific averments made by him. It was further found that the appellant-wife had failed to prove her allegations regarding the demand of dowry by the respondent-husband and his family members. It was further found that RW-3 in his cross-examination deposed that he had himself taken his sister back and Bolero Vehicle, which they had given in the marriage, as the respondent-husband and his family members had threatened that they would throw his sister into a canal. It was, thus, found that these allegations had come in evidence for the first time and, thus, there were contradictory versions by and on behalf of the appellant-wife. It was further found that the parties had been living separately from each other since December 2014; the divorce petition was filed on 30.01.2017 and, thus, the factum of desertion was also proved on record.

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 on both the counts i.e., cruelty and desertion, the respondent-husband had been able to lead evidence to this effect. As noticed above, the evidence led by the appellant-wife could not contradict or rebut the averments made in the divorce petition filed by the respondent-husband and/or the evidence led by him. The factum of desertion was also admitted by the appellant-wife. Even before this Court in the present appeal, no reason is forthcoming as to the justification of the appellant-wife deserting the respondent-husband. It could not be shown that the appellant-wife had made any effort to rejoin the company of the respondent-husband and/or had initiated the proceedings for restitution of conjugal rights.

13. Thus, we find that the findings recorded by the learned Family Court do not suffer from any patent illegality or perversity. The findings so recorded are the plausible findings and no fault therewith can be found. It could not be pointed out 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

20.02.2025
himanshu

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