

2025:PHHC:033547-DB



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

FAO-1012-2025 (O&M)

Date of decision: 25.02.2025

SONIA

.....Appellant

Versus

RAJESH KUMAR

.....Respondent

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

Present:- Mr. Satbir S. Gill, Advocate for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 27.11.2024 passed by learned Principal Judge, Family Court, Jhajjar (for short the 'Family Court'), whereby the petition under Section 13(1)(ia) and (ib) 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 24.02.2011, according to Hindu rites, and out of the said wedlock a male child was born on 26.01.2012. It was further alleged that since the very beginning of the

marriage, the appellant-wife started creating troubles for the respondent-husband and his family members. She was a quarrelsome lady and used to pick up the issues without any reason. She would pressurize the respondent-husband to live separately from his family. It was further alleged that despite residing with the respondent-husband at Moga (Punjab), where the respondent-husband was posted, the appellant-wife did not change her behaviour. It was further the case of the respondent-husband that he joined a Government Job at Sonapat and shifted to Bahadurgarh as the appellant-wife was working as a Guest Teacher at Delhi. She joined the company of the respondent-husband in June, 2012, and started living with him at Bahadurgarh. Her father had also started residing with the parties in the rented accommodation at Bahadurgarh and when the respondent-husband had objected to that, the appellant-wife told him that she could not live without her parents. She had been under the influence of her parents and would leave the matrimonial house without the consent of the respondent-husband. On 15.05.2016, in the presence of the friends and relatives, the appellant-wife hurled abuses at him and turned the respondent-husband out of his home and he had to take shelter at Chottu Ram Dharamshala. On 25.05.2016, the appellant-wife left the company of the respondent-husband while taking along the minor son and her valuables and jewellery. Several Panchayats had been convened but to no avail. It was further alleged that the respondent-husband had filed a petition under Section 9 of the Act, which was decreed but despite that, the appellant-wife did not join his company. Apart from that, the respondent-husband had also filed a

petition under Section 25 of the Guardians and Wards Act, 1890 for the custody of the minor child, whereas the appellant-wife had filed a petition under Section 125 Cr.P.C., seeking maintenance and that both the said petitions were pending adjudication. 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. She had denied all the allegations of cruelty as set out by the respondent-husband in his divorce petition. It was further alleged by her that she had been turned out of the matrimonial home by the respondent-husband after giving her beatings. It was further asserted that she had tried her level best to adjust in the matrimonial life, but the respondent-husband had made her life a hell.

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

- “1. Whether the petitioner is entitled to a decree of divorce on the ground of cruelty allegedly committed by the respondent against him?
OPP
2. Whether the petitioner is entitled to a decree of divorce on the ground of his desertion by the respondent since 25.05.2016 without any reasonable cause? OPP
3. Relief.”

5. In evidence, the respondent-husband appeared as PW-2 and had also examined PW1-Ramesh Kumar and PW3-Balwant Singh(his father), besides tendering documents Ex.P1 to Ex.P12. On the other hand, the appellant-wife examined herself as RW1 and her brother Parveen as RW2.

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 allegations of cruelty could not be proved by the respondent-husband by leading independent witness. It is further argued that PW1-Ramesh Kumar is a co-villager of the respondent-husband and PW3-Balwant Singh is none-else but the father of the respondent-husband and, therefore, both these witnesses were interested witnesses and their testimony could not have been relied upon by the learned Family Court to return a finding of cruelty on the part of the appellant-wife. It is further argued that the allegations levelled by the respondent-husband in the divorce petition were minor wear and tear of a matrimonial life and the same could not have been made the basis for granting a decree of divorce by the learned Family Court. It is further argued that pursuant to the decree passed by the Court in the petition under Section 9 of the Act, it was the respondent-husband, who was to rehabilitate the appellant-wife in the matrimonial home. It is further argued that the respondent-husband could not show before the learned Family Court that he had filed any execution

application for execution of the decree for restitution of conjugal rights which clearly shows that the respondent-husband was not interested in rehabilitating the appellant-wife. It is also argued that the testimony of the respondent-husband and his witnesses nowhere points out any specific dates and instances of the alleged cruelty on the part of the appellant-wife. It is also argued that as the respondent-husband himself had deserted the appellant-wife, the finding of the learned Family Court regarding desertion by the appellant-wife is not tenable in the eyes of law.

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. It was found by the learned Family Court that despite the decree for restitution of conjugal rights, the appellant-wife chose not to join the company of the respondent-husband and there was no justification for doing so. It was further found that in the proceedings under Section 9 of the Act, the appellant-wife suffered her statement on 03.11.2018 (Annexure P1) that she did not want to reside with the respondent-husband as she was apprehending danger to her life and that the respondent-husband had beaten her on several occasions. However, it was found that she could not prove any MLR or complaint moved by her to the police against the respondent-husband. The factum of convening of Panchayats on behalf of the respondent-

husband was proved on record. It was further found that the parties have been living separately since 25.05.2016 and they had been into litigation since 2018 i.e., when the petition under Section 9 of the Act was filed. It was, thus, found that the marriage between the parties had become unworkable and the respondent-husband was held entitled to the decree of divorce on the ground of cruelty.

11. As regards desertion, it was found by the learned Family Court that the respondent-husband had obtained a decree for restitution of conjugal rights, but the appellant-wife did not join his company. It was also noticed that the appellant-wife had made a statement on 03.11.2018 regarding her intention not to join the company of the respondent-husband. It was also noticed that the appellant-wife in her cross-examination stated that when the case was referred to Mediation Centre, she had expressed her unwillingness to join the company of the respondent-husband. On the basis of thereof, it was found that the parties had been living separately since 25.05.2016 and the appellant-wife was not able to give any justifiable reason for residing separately from the respondent-husband.

12. 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.”

13. If the facts of the present case and the findings recorded by the learned Family Court are examined in the light of the aforesaid judgments of the Hon’ble Apex Court, it would come out that the acts and conduct of the appellant-wife in firstly not contesting the petition under Section 9 of the Act wholeheartedly and then after passing a decree for restitution of conjugal rights not joining the company of the respondent-husband, certainly amounts to cruelty. The learned counsel for the appellant-wife could not point out any justifiable reason for the said conduct. We may also notice that the marriage between the parties was solemnized on 24.02.2011. The parties got separated in 2016. The petition under Section 9 of the Act was filed in

2018 and the present divorce petition was filed on 20.05.2019. As has been noticed by the learned Family Court, there has been no resumption of the matrimonial obligations between the parties since their separation. Therefore, we find that any direction for their reunion after a long separation, would amount to cruelty to both of them. Thus, we find that the findings of the learned Family Court regarding the cruelty and desertion are based on the facts and evidence on record and we do not find that such findings suffer from any patent illegality or perversity. 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. 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

25.02.2025
himanshu

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