

2025:PHHC:028262-DB



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

FAO-1174-2025 (O&M)

Date of Decision: February 25, 2025

Manju

.....Appellant

versus

Sunil

.... Respondent

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

Present:- Mr. Hemant Hans, Advocate for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 18.01.2025 passed by learned Principal Judge, Family Court, Rohtak (for short '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 marriage between the parties was dissolved by way of 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 22.11.2004 according to Hindu rites, and out of the said wedlock, a male child was born, who was in the custody of the appellant/wife. After sometime of the marriage, the appellant/wife started taunting and harassing the respondent/husband and his family members. She used to insult him in the presence of his family members and would leave the matrimonial home without

the permission of the respondent/husband. She used to pressurize him to live separately from his family. They started living separately at Nazafgarh, Delhi, but she again started harassing the respondent/husband. The parents of the appellant/wife brought her from Nazafgarh and a criminal case bearing FIR No.751 dated 12.10.2010 was got registered by her under Sections 498-A/406 of IPC against the respondent/husband and his family members. It was further alleged that in the said FIR, the respondent/husband and his family members were acquitted of the charge(s) framed against them. The appellant/wife had filed a petition under Section 125 of the Cr. P.C., in which the respondent/husband was regularly paying the maintenance. It was further alleged that in September, 2010, the appellant/wife left the company of the respondent/husband and since then, she had been residing at her parental home.

3. Upon notice, the appellant/wife entered appearance and filed her written statement. It was alleged that the respondent/husband could not be permitted to take advantage of his own wrongs. The allegations regarding cruelty and interference by the parents of the appellant/wife were denied. It was further alleged that the FIR No.751 aforesaid was based on true facts and the acquittal of the respondent/husband and his family members in the said FIR was no ground to infer that the said FIR was based on false facts. It was further alleged that the respondent/husband had neglected to maintain the appellant/wife and the minor child and she had to file a petition under Section 125 of the Cr. P.C. for maintenance. It was yet further alleged that she was turned out of the matrimonial home on 06.09.2010 after having been given severe beatings. The respondent/husband and his family members had harassed and tortured her for bringing insufficient dowry. In 2007, when the appellant/wife was turned out of the matrimonial home, an application was moved to the Crime Against Women

cell, Rohtak. A compromise was arrived at on 17.07.2007 and on the assurance of the respondent/husband, the appellant/wife was sent with him. The respondent/husband continued giving her beatings despite the fact that her father had given Rs.40,000/- on the demand of the respondent/husband. It was further alleged that the aforesaid FIR had been registered due to the beatings given to her and turning her out of the matrimonial home.

4. On the basis of 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 marriage between the parties? OPP*
2. *Whether the respondent has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition without any reasonable cause and without the consent or against the wish of the petitioner? OPP*
3. *Whether the petition is not maintainable in the present form? OPR*
4. *Whether the petitioner has no locus-standi and cause of action to file the instant petition? OPR*
5. *Relief.”*

5. In evidence, the respondent/husband appeared as PW1 and examined PW2-Mahender Singh Rohilla, (his father), PW3-Krishan Dahiya and PW4-Anuj besides tendering documents i.e., Exhibits P1 to P4 and Mark-A. On the other hand, the appellant/wife examined herself as RW1 and RW2-Anju, (her sister) and also tendered documents i.e., Exhibits R1 to R4 and Mark-A and Mark-RW2/B.

6. Learned Family Court, after considering rival contentions of the parties and evidence on record, allowed the petition filed by the respondent/husband, as noticed above.

7. Learned counsel appearing on behalf of the appellant/wife has vehemently argued that the findings recorded by the learned Family Court are

based on conjectures and surmises. It is further argued that acquittal of the respondent/husband and his family members in the criminal proceedings arising out of the aforesaid FIR, does not *ipso facto* amounts to cruelty, especially when, such acquittal has not been earned by the respondent/husband and his family members on merits, and they had been given the benefit of doubt by the concerned Court. It is further argued that the father of the respondent/husband, while appearing as PW2, clearly stated that the appellant/wife had never fought with the respondent/husband in his presence and that she used to do all the household work. It is yet further argued that RW2 – Anju i.e., sister of the appellant/wife categorically stated in her testimony that the respondent/husband used to give her merciless beatings and he had also raised demand of dowry. Learned counsel has further argued that the appellant/wife, by way of her cogent and convincing evidence, had proved on record that it was the respondent/husband who had treated her with cruelty. It is also argued that the reliance of the learned Family Court on the testimony of PW4 is not tenable in the eyes of law as the landlord cannot be said to be privy to the conversation between husband and wife. It is further argued that the finding of desertion recorded by the learned Family Court, is also not sustainable as the ingredients to prove desertion were also not fulfilled. It is accordingly, prayed that the impugned judgment and decree passed by the learned Family Court be set aside.

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

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

10. Learned Family Court has found that in the FIR got registered by the appellant/wife for matrimonial offences against the respondent/husband and his family members, they were acquitted of the charge(s) framed against them. It was further found that in the judgment of acquittal, the testimony of the appellant/wife was described as vague, obscure and general in nature and the same was disbelieved by the Court. The allegation of giving an amount of Rs.40,000/- was found to be an afterthought as the said allegation did not find any mention in the aforesaid FIR. It was also found that the appellant/wife, in her cross-examination deposed that after 2007 whenever she along with the respondent/husband and their son used to come to Rohtak, they would partways at the Railway Station and that she used to go to her parental house, whereas the respondent/husband would go to his house. On the basis of said testimony, it was found that there was no justification in levelling allegations of demand of dowry and beatings against the entire family. Learned Family Court has also found that RW2 – Anju, sister of the appellant/wife did not level any allegations of dowry demand and beatings against family members of the respondent/husband. It was also found that the appellant/wife did not depose in her testimony that her sister used to visit and stay in her matrimonial home and had witnessed the alleged beatings given by the respondent/husband, and on the basis thereof, testimony of her sister RW2 – Anju, was disbelieved.

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

behaviour 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 drew 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 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”.

12. 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 of learned Family Court are examined in light of the law laid down by the Hon'ble Supreme Court in the aforesaid judgments, it would come out that acts of the appellant/wife in levelling false allegations against the respondent/husband and his family members, as regards the dowry demands and beatings given to her, amount to cruelty. As noticed above, in the FIR got registered by the appellant/wife for the matrimonial offences, the respondent/husband and his family members have been acquitted. Learned counsel for the appellant/wife could not point out that the aforesaid judgment of acquittal has been altered or modified in an appeal or revision. Apart from that, the testimony of RW2 – Anju, sister of the appellant/wife, was disbelieved by the learned Family Court as the same did not find any corroboration from the testimony or the stand taken by the appellant/wife in her written statement. As regards desertion, learned Family Court has found that the parties had been living separately since September, 2010. There is nothing on record to prove that after the aforesaid desertion, any effort had been made by the appellant/wife to join the company of the respondent/husband and/ or had filed a petition under Section 9 of the Act seeking restitution of conjugal rights. Thus, on both the counts i.e., cruelty and desertion, the findings recorded by the learned Family Court, are based on cogent and convincing evidence on record.

14. We find that the findings recorded by the learned Family Court, are based on the evidence on record and the said findings cannot be said to be suffering from any patent illegality or perversity warranting interference by this Court in the present appeal. It could not be shown that any evidence was misread or not taken into consideration. Hence, the present appeal is hereby dismissed.

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

16. 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.

(SUDHIR SINGH)
JUDGE

(SUKHVINDER KAUR)
JUDGE

February 25, 2025
mahavir

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