

2025.PHHC.025083-DB



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

FAO-1187-2025 (O&M)

Date of decision: 19.02.2025

RAJNI @ GARIMA

.....Appellant

Versus

TUSHAR KAKKAR

.....Respondent

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

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

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 23.01.2025 passed by learned Additional Principal Judge, Family Court, Panipat (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 ground of cruelty.

2. The aforesaid petition had been filed by the respondent-husband, *inter alia*, pleading that his marriage with the appellant-wife was solemnized on 25.11.2016, according to Hindu rites, but no child was born out of the said wedlock. It was further alleged that soon after the marriage, the appellant-wife started misbehaving with the

respondent-husband and his family members and had also pressurized him to reside separately from his parents. The appellant-wife was not interested in establishing sexual relations with the respondent-husband; that she was suffering from mental disorder and resultantly she had developed the symptoms of schizophrenia and that she would use an abusive and filthy language against the respondent-husband and his family members. On 28.12.2019, when the respondent-husband requested the appellant-wife to serve him the food, she became angry and started giving beatings to him and left the matrimonial home along with gold and silver jewellery and valuable clothes without any reasonable cause. On 14.01.2020, a Panchayat was convened in the house of the appellant-wife in order to make her understand, but all in vain. Various Panchayats were convened in February and March, 2020, but the same did not yield any result. It was further alleged that the appellant-wife had left the company of the respondent-husband without any reasonable cause. Terming the aforesaid acts and conduct 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 but she had denied the allegations of cruelty contained in the divorce petition filed by the respondent-husband. It was further alleged that the respondent-husband and his family members had started harassing and torturing her for not bringing sufficient dowry and had also given her merciless beatings. She was not provided with the basic amenities. The entire dowry articles were lying in possession of the respondent-

husband and his family members. It was further alleged that the parents of the appellant-wife tried to settle the matter by convening Panchayats, but the respondent-husband and his family members refused to rehabilitate the appellant-wife in her matrimonial house.

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 on the grounds of cruelty etc. as taken in petition? OPP
2. Whether the present petition is not maintainable in the present form? OPR
3. Whether the petitioner has no cause of action to file the present petition ?OPR
4. Relief.”

5. In evidence, the respondent-husband appeared as PW-1 and had also examined PW2-Ramakant Kakkar; PW3-Rahul Kakkar; PW4-Sunil Kakkar and PW5-Dr. Vijay Gupta, Sanjeevani Nursing Home, Panipat, besides tendering documents Ex.P1 to P21. On the other hand, the appellant-wife examined herself 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-husband, as noticed above.

7. Learned counsel appearing for the appellant-wife has vehemently argued that the impugned judgment and decree passed by the learned Family Court is based on conjectures and surmises

inasmuch as the evidence led by the appellant-wife has totally been ignored. It is further argued that the respondent-husband had failed to prove that the appellant-wife was suffering from any mental disorder/schizophrenia. It is yet further argued that a single act of alleged cruelty cannot be a ground for grant of decree of divorce particularly when, the matrimonial alliance is a sacred bond and the same cannot be allowed to be dissolved on flimsy ground. Still further, it is argued that merely because there had been temperamental differences between the parties, is no ground to hold that the appellant-wife had treated the respondent-husband with cruelty. It is lastly argued that the findings recorded by the learned Family Court are based on misreading of evidence and while granting the decree of divorce, the learned Family Court has failed to take into consideration the mandatory provisions of the Act governing the marriage between the parties.

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 testimony of the respondent-husband as regards the appellant-wife not allowing him to establish physical relations with her was not disputed by the counsel for the appellant-wife during the cross-examination of the respondent-husband while

appearing as PW1. The allegations contained in the divorce petition regarding the appellant-wife entering the matrimonial house by crossing the boundary wall and starting shouting loudly by using filthy language was also admitted by her in her written statement. It was further found that while appearing as RW1, the appellant-wife had testified that her parents had tried to settle the matter by convening Panchayats, but the respondent-husband and his family members refused to keep and maintain her with them. However, it was found that during her cross-examination, the appellant-wife admitted that her parents had died prior to her marriage. It was yet further found that the appellant-wife had levelled specific allegations against the respondent-husband that he used to bring girls at his house and when he was confronted, he told that he would perform marriage with another girl. However, it was found that in her cross-examination, she was not able to tell the name of the said girl and, thus, she had failed to prove the said allegations. It was, thus, found that the appellant-wife had levelled false allegations against the respondent-husband. It was further found that the appellant-wife had failed to prove the allegations regarding demand of dowry and giving of alleged merciless beatings to her. However, the allegations of the respondent-husband regarding the appellant-wife suffering from mental disorder/ schizophrenia were found to be not proved by him.

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”.

12. If 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, which had been proved on record by the respondent-husband clearly amounts to cruelty. Firstly, it was proved on record that the appellant-wife did not allow the respondent-husband to establish

physical relations with her. As found by the learned Family Court, the allegations contained in the divorce petition and the testimony of the respondent-husband in this regard could not either be rebutted or contradicted in the cross-examination of the respondent-husband. Still further, the allegations of the appellant-wife regarding the character assassination of the respondent-husband could not be proved by her by leading any evidence and such conduct has rightly been found to have caused mental cruelty to the respondent-husband. Yet further, the allegations regarding dowry demand and merciless beatings were also found to be false.

13. We find that the findings recorded by the learned Family Court, which are based on the evidence on record, cannot be said to be suffering from any patent illegality or perversity warranting interference by this Court in the instant appeal.

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

19.02.2025
himanshu

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