

2025:PHHC:037358-DB



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

FAO-1356-2025 (O&M)

Date of decision: 28.02.2025

Gurpal Singh

....Appellant

Versus

Parminder Kaur

....Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. H.S. Jaswal, Advocate,
for the appellant-husband.

SUDHIR SINGH, J.

The present appeal has been filed against the judgment and decree dated 07.01.2025 passed by the learned Additional Principal Judge, Family Court-I, Jalandhar (for short 'the Family Court'), whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for brevity 'the Act') filed by the respondent-wife was allowed and 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-wife, *inter-alia*, pleading therein that her

marriage with the appellant-husband was solemnized on 06.07.2014 as per Sikh rites, but no child was born out of the said wedlock. It was pleaded that though at the time of marriage, the parents of respondent-wife had given sufficient dowry i.e., gifts and gold jewellery etc. to the appellant-husband and his family members, yet they were not satisfied with the same. It was further pleaded that the appellant-husband was a permanent resident of England and after marriage, he stayed in India only for one month and during that period, he had maltreated the respondent-wife. He used to turn her out of his room at night by saying that it was his private room and he had to talk with someone on phone in England. When the respondent-wife tried to persuade the appellant-husband, he used to beat her and did not behave properly. It was further pleaded that the appellant-husband was a drunkard and used to take liquor every day. Even, her mother-in-law did not support the respondent-wife in this regard. After the appellant-husband had left for England, the mother-in-law of the respondent-wife used to harass and humiliate her on the pretext of bringing insufficient dowry. She had instigated the appellant-husband against the respondent-wife. It was further pleaded that the appellant-husband had asked the respondent-wife that if she was willing to migrate to England, then she had to bring Rs.15,00,000/- from her

parents. On account of the aforesaid maltreatment suffered by the respondent-wife at the hands of her mother-in-law, she remained sick and weak, but despite that she was not allowed to go for medical check-up. In the month of February, 2015, when the parents of the respondent-wife came to know about her ill condition, they took her from the matrimonial house and got her medically treated. It was further asserted that the parents of the respondent-wife convened several *panchayats* seeking her rehabilitation, but the appellant-husband and her mother remained adamant. The appellant-husband had refused to return the *istridhan* and other household articles of the respondent-wife. Thereafter, the respondent-wife filed a complaint against the appellant-husband and his family members at Police Station, Nurmahal, whereupon FIR No.11 dated 24.02.2019, under Sections 406/498-A IPC was registered against them. Previously, the respondent-wife had filed a petition under Section 13 of the Act, but the same was withdrawn by her as a compromise was effected between the parties. It was further asserted that the respondent-wife is residing separately since February, 2015 as there is no chance of reconciliation between the parties as the marriage had been irretrievably broken down. Terming the aforesaid acts and conduct of the appellant-husband as cruelty and desertion, a decree of divorce was sought for.

3. Upon notice, the appellant-husband entered appearance through his attorney/mother Smt. Siso and filed written statement admitting the factum of marriage but denying the allegations made in the petition. It was pleaded that earlier also, the respondent-wife had filed a divorce petition against the appellant-husband, which was dismissed by the Court. It was stated that neither the appellant-husband had deserted the respondent-wife nor he ever subjected her to any alleged cruelty. The allegations of maltreatment and demand of dowry were specifically denied. It was further stated that the respondent-wife had not come to the Court with clean hands and suppressed the true and material facts. It was further pleaded that no such acts/incidents, as alleged in the divorce petition, had been committed by the appellant-husband or any of his family members. It was further pleaded that after one month of the marriage, the appellant-husband had left for England and thereafter, the respondent-wife had stayed in the matrimonial home only for three days. During her stay at the matrimonial home, the behaviour of the respondent-wife towards her mother-in-law was rude and arrogant. The respondent-wife was a quarrelsome lady and use to insult the mother of appellant-husband. It was further stated that the respondent-wife had joined the IELTS course at Jalandhar and the entire expenses of the said course was

borne by the appellant-husband. It was further stated that the appellant-husband was still ready and willing to take the respondent-wife to her matrimonial house without any condition. It was further stated that the respondent-wife had herself left the matrimonial home without any reasonable cause and refused to join the company of appellant-husband. Despite his efforts to reconcile the matter, she purportedly avoided living with him.

4. From the pleadings of the parties, the trial Court, framed the following issues:-

1. Whether the respondent has treated the petitioner with cruelty? OPP
2. Whether the respondent has deserted the petitioner for the last more than two years without any reasonable and sufficient cause? OPP
3. Whether petitioner is entitled to the dissolution of marriage by decree of divorce? OPP
4. Whether the petition is maintainable? OPP
5. Whether petitioner is barred by her own act and conduct from filing of present petition? OPR
6. Whether the petitioner has not come to the Court with clean hands? OPR
7. Whether the petitioner is estopped from filing the present petition? OPR
8. Relief.

5. In evidence, the respondent-wife herself appeared as PW-1 and had also examined PW-2 Baljit Kaur (her mother) and PW-3 Dharam Pal, Sarpanch. She also tendered into evidence certain documents. On the other hand, the appellant-husband had examined his

mother/attorney Smt. Siso as RW-1, besides tending some documentary evidence.

6. The learned Family Court, after taking into consideration the rival contentions and evidence on record, allowed the petition filed by the respondent-wife, as noticed above.

7. Learned counsel for the appellant-husband has vehemently argued that the finding of the learned Family Court as regards the cruelty committed by him to the respondent-wife is patently illegal. He has further argued that none of the witnesses examined by the respondent-wife had specified the time and place of the alleged acts of cruelty committed by the appellant-husband. Learned counsel for the appellant-husband has further argued that the allegations levelled by the respondent-wife in the divorce petition, were general and vague in nature and the same could not be proved by way of any cogent and convincing evidence. It is further argued that despite his attempts for reconciliation, the respondent-wife avoided living with respondent-husband. Thus, it is submitted that while passing the impugned judgment and decree, the learned Family Court, has totally ignored the aforesaid vital aspects.

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

9. In our opinion, 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 RW-1, mother of the appellant-husband had deposed that the appellant-husband had been directly sending huge amount to the respondent-wife, yet no documents or details regarding the said alleged transfer of the money could be produced on record. Still further, it was found that the parties had been living separately since 2015. The allegations of the appellant-husband that the respondent-wife had demanded firstly, Rs.8 lakhs and subsequently, when the efforts for rehabilitation were made, she had demanded a sum of Rs.15 lakhs were found to be unsubstantiated, as it was the stand of the respondent-wife that when the final settlement was arrived at between the parties so as to file a petition under Section 13-B of the Act, she did not demand any amount. Still further, it was found that in FIR No.11 dated 24.02.2019, under Sections 406 and 498-A IPC, got registered by the respondent-wife, the appellant-husband was declared as proclaimed offender vide order dated 16.02.2023 passed by the JMFC, Phillaur, and an FIR under Section 174-A IPC was also registered against him. Still further, it was found that merely because

the earlier similar petition was dismissed as withdrawn, was not a ground to reject the subsequent petition. It was also noticed that the petition under Section 13-B of the Act filed by the parties could not mature as the appellant-husband did not get his second motion statement recorded. The learned Family Court has further found that the appellant-husband was residing abroad and his mother RW-1, stated to be his power of attorney holder, was the solitary witness in the case. Ex.R-26 was the photocopy of the said power of attorney, but the original document was never produced in the Court and the said document was not executed in India. Though, she had claimed to have lost the original of the said document, yet no application in that regard was ever given by her to any Police Station. She was also not in position of any other identity proof at the time of recording of her testimony in the Court. It was, thus, concluded that her testimony could not be taken into consideration on behalf of the appellant-husband. It was also found that RW-1 could not depose as to whether the appellant-husband had any intention to return to India or not. Accordingly, it was held that the appellant-husband had treated the respondent-wife with cruelty and had also deserted her.

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. 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.”

14. 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 Supreme Court, it would come out that the acts and conduct of the appellant-husband amounts to cruelty and desertion. The

learned Family Court has granted the decree of divorce exparte. The only witness examined on behalf of the appellant-husband is RW-1 i.e. his mother. She could not prove on record the power of attorney executed by her son in her favour nor did she establish her identity before the learned Family Court. The conduct of the appellant-husband in backing out of the petition under Section 13-B of the Act; living abroad and having no intention to come back; being declared as proclaimed offender in the criminal case got registered by the respondent-wife and deserting her since 2015, have rightly been considered sufficient grounds for grant of a decree of divorce.

15. Learned counsel for the appellant-husband could not point out any illegality or perversity or infirmity in the findings recorded by the learned Family Court.

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.

(SUDHIR SINGH)
JUDGE

(JASJIT SINGH BEDI)
JUDGE

28.02.2025
Ajay Prasher

-	<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
-	<i>Whether reportable:</i>	<i>Yes/No</i>