

2025.PHHC.034752-DB



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

FAO-1421-2025 (O&M)

Date of decision: 03.03.2025

URMIL

.....Appellant

Versus

SUNIL KUMAR

.....Respondent

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

Present:- Mr. Amitabh Tewari, 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, Gurugram (for short the 'Family Court'), whereby the petition under Section 13(1)(ia) 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 and the appellant-wife was held entitled to permanent alimony of Rs.5 lakh.

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 28.06.2005, according to Hindu rites, but not child was born out of the said wedlock. It was further

alleged that after the marriage, the elder brother of the respondent-husband had provided accommodation to the respondent-husband and the appellant-wife till the necessary arrangements, but when the appellant-wife came to know about it, she left the matrimonial house. It was further alleged that when the respondent-husband informed the father of the appellant-wife that he was working as a driver on contract basis, the appellant-wife screamed and started messing up with the respondent-husband and his parents. The respondent-husband and his elder brother contacted the parents of the appellant-wife, but they told that the appellant-wife had to do further study. The brother of the respondent-husband acceded to the said demand and the appellant-wife remained with her parents, pursuing her studies. Persistent attempts to contact the appellant-wife by the respondent-husband remained unsuccessful and she rather, abused him on small issues and tried to demean him. She completed her B.com, M.com and B.Ed courses and the brother of the respondent-husband had paid all the expenses towards her studies. The parents of the appellant-wife had instigated her to separate from her in-laws. During 13 years of forceful separation in the marriage, the respondent-husband had been caused a mental agony. The appellant-wife filed a complaint before the crime against Women Cell Gurugram, but later, on the intervention of the relatives, the said complaint was withdrawn. When he visited the parental house of the appellant-wife, he did not find her home and rather, he came to know that she had gone with some unknown persons and upon an enquiry, the appellant-wife termed the said unknown person as her brother. She was habitual in taunting the

respondent-husband and had filed a false complaint under Sections 498-A, 406 and 506 IPC against the respondent-husband, besides filing a petition under the Protection of Women from Domestic Violence Act, 2005. Despite the fact that the respondent-husband was having a suitable accommodation, the appellant-wife refused to live in his company. The parties had lastly resided together till 29.02.2013. All efforts to bring her back remain unsuccessful. There was no possibility of having the meeting of minds of both the parties.

3. Upon notice, the appellant-wife entered appearance and filed her written statement, admitting the factum of marriage. However, it was alleged that she had been maltreated and harassed by the family of the respondent-husband for insufficient dowry. It was further alleged that despite having huge income, the respondent-husband had neglected the appellant-wife and paid nothing towards her maintenance. It was further alleged that a demand of Rs. 20 lakhs was raised by the respondent-husband and that the family members of the appellant-wife were unable to meet the said illegal demand. The allegations of cruelty levelled by the respondent-husband were denied.

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 mentioned in the petition? OPP
2. Whether petition is not maintainable? OPR
3. Relief.”

5. In evidence, the respondent-husband appeared as PW-1, besides tendering documents Ex.P1 to Ex.P11. On the other hand, the appellant-wife examined herself as RW1 and had also tendered documents Ex.R1 to Ex.R31.

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 impugned judgment and decree passed by the learned Family Court is based on conjectures and surmises. It is further argued that in her cross-examination, the appellant-wife categorically stated that she had resided with the respondent-husband in her matrimonial home at Delhi for 2-3 months and that she had merely resided for 2-3 months with the respondent-husband during the entire span of the matrimonial life. It is further argued that the respondent-husband in his evidence deposed that the appellant-wife resided with him till 29.02.2013. It is, yet, further argued that while passing the impugned judgment and decree, the learned Family Court did not notice that the respondent-husband had filed a petition under Section 9 of the Act after 9 years of the marriage and had the appellant-wife resided with him for 2-3 months during their entire married life, there was no occasion for him to file such a petition after a period of 9 years. It is also argued by the learned counsel for the appellant that the statement given by the appellant-wife in the petition under Section 9 of the Act had been wrongly interpreted by the learned Family Court and that

she only did not want to live at Village Jhojhu, Charkhi Dadri for the fact that she had either resided at Delhi or Bahadurgarh. It is also argued that merely because the respondent had been acquitted in the FIR got registered by the appellant-wife, was no ground to grant a decree of divorce. Accordingly, a prayer has been made for setting aside 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. It was found by the learned Family Court that during her education time, the appellant-wife had neglected to have meeting with the respondent-husband which made it clear that she had kept herself away from maintaining the conjugal relationship with the respondent-husband and the same amounted to cruelty. It was further found that the appellant-wife was more educated than the respondent-husband and all the degrees so obtained by her, were after marriage. It was further found that the intention of the appellant-wife was that she was not interested in residing with the respondent-husband. As regards the allegations of demand of dowry, it was found that in the FIR got registered by her for the offences under Sections 498-A, 406 and 506 IPC vide judgment dated 15.03.2023 (Ex.P-11), the respondent-husband was acquitted. It was found that the allegations in respect of the offence under Section 354 IPC against the real brother of the

respondent-husband were also found to be false. The respondent-husband had made endeavour to bring back the appellant-wife to the matrimonial home and had also filed a petition under Section 9 of the Act, but the appellant-wife did not show any interest in coming back.

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 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 not joining the company of the respondent-husband and not allowing him the access towards the matrimonial obligations, amounts to cruelty. As per her own testimony, the appellant-wife did not want to reside with the respondent-husband at his village. The petition filed by the respondent-husband under Section 9 of the Act was dismissed as withdrawn when the appellant-wife stated that she was not interested to reside with the respondent-husband. Still further, the criminal trial in the FIR registered by the appellant-wife, ended into the acquittal of the respondent-husband. The allegations of the offence under Section 354 IPC against the brother of the respondent-husband levelled by the appellant-wife were also found false. Learned counsel for the appellant-wife is not able to impeach the finding of the learned Family Court that the appellant-wife did not allow any conjugal access to the respondent-husband. It may also be noticed that the marriage between the parties was solemnized on 28.06.2005. The divorce petition was filed on 09.01.2019. The decree of divorce was granted on 23.01.2025. It had come into evidence that the appellant-wife had only remained in the company of the respondent-husband for 2-3 months. Thus, in view of the facts and circumstances of the case

coupled with the evidence led by the parties, the learned Family Court has rightly granted the decree of divorce in favour of the respondent-husband.

13. No other point has been urged.
14. Finding no merit in the present appeal, the same is hereby dismissed.
15. Pending application(s), if any, shall also stand disposed of.

[SUDHIR SINGH]
JUDGE

[SUKHVINDER KAUR]
JUDGE

03.03.2025
himanshu

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