

2025.PHHC:041669-DB



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

FAO-1539-2025 (O&M)

Date of decision: 24.03.2025

DAYAWANTI

.....Appellant

Versus

RAJ SINGH

.....Respondent

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

Present:- Mr. Man Mohan, Advocate for the appellant.

SUDHIR SINGH, J.

CM-4825-CII-2025

For the reasons given in the application, the same is allowed. Delay of 288 days in re-filing the appeal is condoned, subject to all just exceptions.

CM-4826-CII-2025

For the reasons given in the application, the same is allowed. Delay of 351 days in filing the appeal is condoned, subject to all just exceptions.

FAO-1539-2025

Challenge in the present appeal is to the judgment and decree dated 06.12.2022 passed by learned Principal Judge, Family Court, Bhiwani (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*, asserting therein that his marriage with the appellant-wife was solemnized on 19.06.1996, according to Hindu rites and out of the said wedlock, two children were born. It was further alleged that the appellant-wife was a lady of autocratic thoughts and under the instigation of her family members, she would pick up quarrels with the respondent-husband and his family members on trivial issues. She would insult him in the presence of the relatives and friends. From the very inception of marriage, she had pressurized the respondent-husband to live separately from his family and in order to save his marriage, he acceded to the said demand of the appellant-wife, but her behaviour did not change. The appellant-wife had pressurized the respondent-husband to reside at Siwani, but when he expressed his inability to the said demand, the appellant-wife left the matrimonial home. She was brought back with the intervention of the Panchayat. She did not mend her ways and continued remaining outside the matrimonial home and when objected to, she had issued the threats of either leaving the matrimonial home or committing suicide and implicating the respondent-husband and his family members in a false case. Ultimately, in the month of May, 2016, the appellant-wife along with the minor children left the matrimonial home and since then, she had been residing at her parental home. When despite requests, the appellant-wife did not come back, the

respondent-husband had to file a petition under Section 9 of the Act, but instead of joining his company, she had filed a petition under Section 125 Cr.P.C., and a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005, which was dismissed on 08.10.2018. The relationship between the parties had deteriorated to such an extent that it had become impossible for the respondent-husband to reside with the appellant-wife and the marriage had irretrievably broken down. 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 children. However, it was alleged that from the very inception of the marriage, the respondent-husband and his family members started harassing and humiliating her due to insufficient dowry. She continued to bear the atrocities committed by them with a hope that their behaviour would change, but nothing of the sort happened. During her stay at the matrimonial home, the appellant-wife came to know that her husband was having illicit relations with one lady. On 01.07.2015, she had been given merciless beatings by the respondent-husband and his family members, which had compelled her to move an application before the Women Cell, Bhiwani. However, on the intervention of Panchayat and after assurance of the respondent-husband and his family members, she was brought back to the matrimonial home, but after a few days, they again started giving her merciless beatings. On account of the said acts on the part of the

respondent-husband and his family members, the appellant-wife and her daughter had to remain admitted in General Hospital, Bhiwani from 21.05.2016 to 28.05.2016. The Police did not register any case against them which had forced her to file a complaint under Sections 323, 452 and 506 IPC and a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005. It was further alleged that the respondent-husband and his family members were guilty of committing atrocious acts against her. All the allegations regarding the cruelty and desertion had been denied.

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

- “1. Whether the petitioner is entitled to a decree for dissolution of his marriage with respondent, as prayed for, on grounds as alleged in the petition? OPP
2. Whether the averments of petition do not cover under the provisions of Section 13(1)(ia)(ib) of the Hindu Marriage Act? OPR
3. Whether the petitioner has no cause of action or locus standi to file the present petition?OPR
4. Whether the petitioner has not come to the Court with clean hands and suppressed true and material facts?OPR
5. Relief.”

5. In evidence, the respondent-husband appeared as PW-1 and had also examined PW2-Ram Singh (brother of the appellant) and PW3-Sanjay Kumar. 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 for the appellant-wife has vehemently argued that the findings recorded by the learned Family Court are against the evidence on record. It is further argued that the finding of the learned Family Court that the appellant-wife had been residing separately since May, 2016, without any reasonable cause or excuse, is not tenable in the eyes of law as it was her pleaded case that due to the acts and conduct of the respondent-husband and his family members, she was forced to leave the matrimonial home. It is further argued that while passing the impugned judgment and decree, the learned Family Court has totally ignored the fact that the respondent-husband and his family members had caused injuries to her and her child, due to which they had to remain admitted in the General Hospital and when the Police did not take any action, she had lodged a criminal complaint against them. It is further argued that it is settled law that no one can be allowed to take benefit of his or her own wrongs and in the instant case, grant of decree in favour of the respondent-husband has only given him the benefit of his own wrongs. It is also argued that no independent witness had been

examined by the respondent-husband in support of his case and the witnesses examined by him i.e., PW2 and PW3 are his close relatives and them being interested witnesses, their testimony has wrongly been relied upon by the learned Family Court. Still further it is argued that initiation of the criminal proceedings cannot be said to be an act of cruelty as resort to the said criminal proceedings had been taken by the appellant-wife being her legal right. It is accordingly, prayed that the judgment and decree passed by the learned Family Court be set aside.

8. We have heard the learned counsel for the appellant-wife 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. On the basis of the evidence led by the parties, it was found by the learned Family Court that the criminal complaint filed by her against the respondent-husband and his family members was dismissed vide order dated 30.01.2019, passed by the Sub-Divisional Judicial Magistrate, Siwani. There was no evidence of physical torture found by the Police and which was why, no FIR was lodged by the Police. It was further found that the appellant-wife had left the company of the respondent-husband in May, 2016, without any reasonable or justified cause and, thus, it was found that she had deserted the respondent-husband. The learned Family Court has also concluded that in support of the allegations made in the written

statement, the appellant-wife did not examine any of her family members.

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 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 certainly amount to cruelty to the respondent-husband and his family members. It is not disputed that the criminal complaint filed by the appellant-wife, has been dismissed by the Court of Sub Divisional Judicial Magistrate on 30.01.2019.

There is nothing on record that the said decision has been altered or modified in an appeal or revision, as the case may be. It has also been recorded by the learned Family Court that earlier in the criminal complaint filed by her, the Police did not find any favour and no FIR was lodged. Though the learned counsel for the appellant-wife has argued that she had to leave the matrimonial home due the atrocious acts of the respondent-husband and his family members, yet the fact remains that the parties had been living separately since 2016. There is nothing to indicate on record that the appellant-wife had filed any petition under Section 9 of the Act or made any effort to rejoin the company of the respondent-husband. On the other hand, it is the case of the respondent-husband that he had filed a petition under Section 9 of the Act. This clearly shows that the long separation between the parties has deteriorated their relationship and any direction for their re-union would amount to a mental cruelty to both of them. The Hon'ble Supreme Court in catena of judgments has held that where the marriage has become unworkable, no purpose would be served by directing their re-union.

13. In view of the above, we find that the findings given by the learned Family Court are plausible findings based on the evidence on record. It could not be shown that any evidence has been misread or not taken into consideration.

14. No other point has been urged.

15. In view of the above, finding no merit in the present appeal, the same is hereby dismissed.

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

17. 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

24.03.2025

himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No