

2025:PHHC:028983-DB



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

FAO-M-253-2018 (O&M)
Reserved on 10.02.2025
Pronounced on: 24.02.2025

SHIV KUMAR

...Appellant

Versus

KAVITA SHARMA

...Respondent

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

Present:- Mr. G.S. Ghumman, Advocate for appellant.
Mr. Shobit Phutela, Advocate for respondent.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 18.08.2018 passed by the learned Additional District Judge, Kaithal (for short 'the trial Court'), whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the appellant-husband was dismissed.

2. The aforesaid petition had been filed by the appellant-wife, *inter-alia*, pleading therein that his marriage with the respondent-wife was solemnized on 17.04.1998 as per Hindu rites and out of the said wedlock, two daughters and one son were born. It was further alleged that in 2001, the respondent-wife deserted the

appellant-husband without any reason and started living with her parents. She joined his company in 2005, but again deserted him and she along with the two daughters, started living at Kurukshetra with her parents. In 2006, when the appellant-husband got the job of a Guest Teacher at Government Girls Middle School, Bandrana, he requested the respondent-wife to live with him at Village Chandlana, but she refused to do so. In 2008, with the intervention of the relatives, the respondent-wife again joined the company of the appellant-husband and started living with him. On 04.02.2011, when the appellant-husband was at school, the respondent-wife with two unknown persons entered his house at Village Chandlana and took away the valuable documents and other articles. On 22.03.2011, the respondent-wife got the school leaving certificate of both the daughters without giving any information to the appellant-husband. When on 01.06.2011, the appellant-husband visited the parental house of the respondent-wife to bring her back, her father had misbehaved with him in her presence. On 22.07.2011, the appellant-husband filed a petition for the custody of the minor daughter in the Court at Kaithal and as a counterblast to it, the respondent-wife had filed an application under Section 125 Cr.P.C., besides filing a suit for declaration with possession and permanent injunction in respect of personal property of the appellant-husband. The respondent-wife was not allowed to meet his daughter Vidhi in her School at Kurukshetra. Terming the aforesaid acts and conduct of the respondent-wife as cruelty, a decree of divorce had been sought for.

3. Upon notice, the respondent-wife entered appearance and filed her written statement admitting the factum of marriage and birth of the children. However, it was alleged that the behaviour of the appellant-husband and his family members towards the respondent-wife was cruel and they used to raise illegal demands of dowry. The appellant-husband had levelled false allegations against her character and had also threatened of getting the DNA test of all the children done. The appellant-husband had also caused cruelty to the respondent-wife by not allowing her to continue her study. Many Panchayats had been convened, but to no avail. It was further alleged that she had never deserted the appellant-husband. Rest of the allegations regarding cruelty to the appellant-husband were denied.

4. On the basis of the pleadings of the parties, the following issues were framed by the trial Court :-

- i) Whether the petitioner is entitled for a decree of divorce on the grounds taken in the petition? OPP
- ii) Whether the petitioner has suppressed the true and material facts from the Court? OPR
- iii) Relief.

5. In evidence, the appellant-husband examined himself as PW-1; PW2-Ishwar Ghavri, Criminal Ahlmad and PW3-Gulshan Tanawar Clerk, Maharana Partap Public School (Junior Wing), Kurukshetra besides tendering evidence Ex.P1 to Ex.P8. On the other hand, the respondent-wife examined herself as RW1 and Rw2-Divya (her daughter), besides leading documentary evidence Ex. R1 to Ex.R-

19. In rebuttal evidence, the appellant-husband tendered Ex.P9; Ex.P10/A to Ex.P10/H and Ex.P10/I.

6. The learned trial Court after taking into consideration rival contentions of the parties and evidence on record, dismissed the petition filed by the appellant-husband, as noticed above.

7. Learned counsel for the appellant-husband has vehemently argued that the impugned judgment and decree passed by the learned trial Court is based on conjectures and surmises inasmuch as the learned trial Court has completely lost sight of the cogent and convincing evidence produced on record by the appellant-husband in respect of the acts of cruelty committed by the respondent-wife. It is further argued that the appellant-husband had specifically pleaded in the divorce petition the acts of cruelty on the part of the respondent-wife including her not allowing the appellant-husband to meet the minor child. It is still further argued that the conduct of the respondent-wife in initiating multiple litigation against the appellant-husband speaks volume of the fact that she was least interested in maintaining the matrimonial alliance and rather, was hell bent to harass and humiliate the appellant-husband. It is yet further argued that the marriage between the parties was solemnized in 1998 and they have been living separately since 2011. The long separation between the parties has rendered the matrimonial alliance as unworkable and, therefore, no purpose would be served by keeping the dead alliance as alive.

8. On the other hand, learned counsel for the respondent-wife, while defending the impugned judgment and decree passed by the learned trial Court, argues that the appellant-husband had failed to prove by way of cogent and convincing evidence before the learned trial Court, the alleged cruelty committed by the respondent-wife. It is further argued that it was the appellant-husband, who had sought the decree of divorce and it was his bounden duty to prove the factum of cruelty. It is further argued that the learned trial Court has rightly found that the allegations levelled by the appellant-husband were regarding the trivial matters and same being the minor wear and tear of the matrimonial life, a decree of divorce was rightly denied to him. It is further argued that merely because the parties have been living separately for quite a long time, is no ground to grant a decree of divorce, especially when the respondent-wife has every desire to live in the company of the appellant-husband.

9. We have heard learned counsel for the parties and have also gone through the record of the case. In our opinion, the following questions would arise for adjudication in the present appeal:-

“1. Whether a long separation between the parties, rendering the marital bond as unworkable and its having been ruptured beyond repair, amounts to mental cruelty?

2. Whether the impugned judgment and decree passed by the learned Family Court, requires any interference?

10. It may be noticed that vide the impugned judgment and decree, the learned trial Court has found that the evidence led by the

appellant-husband was not cogent and convincing so as to allow him to grant the decree of divorce on the grounds pleaded therein. However, as we have framed the aforesaid two issues, the matter is to be examined on the following factual scenario.

11. Although the appellant-husband was unable to produce evidence of cruelty or desertion before the learned trial Court, we must examine whether the marital relationship between the parties has ruptured beyond repair, especially when the parties have been living separately for nearly 14 years now and during this period, there has been no resumption of their relationship and rather on account of protracted litigation, the same has got worsened day by day.

12. It is pertinent to note here that the marriage between the parties was solemnized in 1998. As per the facts on record, the parties have been living separately since 2011. The divorce petition was filed in 2016 and the impugned judgment and decree was passed on 18.08.2018. The appeal was filed in September, 2018. Vide order dated 07.09.2018, the notice of motion was issued and the appellant-husband was directed to pay the respondent-wife a sum of Rs.25,000/- towards interim litigation expenses. In the order dated 26.03.2019, passed by a Co-ordinate Bench of this Court, it was noticed that there was no chance of a compromise between the parties. Subsequently, vide order dated 13.11.2019, the matter was referred to the Mediation & Conciliation Centre of this Court to explore the possibility of a settlement between the parties. However, a perusal of the Mediation proceedings available on the file would show that despite joint sessions held on 28.11.2019 and 14.01.2020, the parties failed to

arrive at an amicable settlement and consequently, vide report dated 14.01.2020 of the mediation cell, the matter was sent back to the Bench. The said report reads as under:-

“ As per report dated 14.01.2020 (Flag-A) of Mr. Gunjan Mehta Mediator, the parties have failed to arrive at any amicable settlement between them. Hence, the cases be sent to the Branch concerned for listing the same before the Hon ' ble Bench ” .

13. Thereafter, vide order dated 30.01.2020, the Co-ordinate Bench had directed the parties to remain present in the Court along with the children. In the order dated 14.02.2020, it was noticed that inspite of efforts by the Court as well as by the learned counsel for the parties, there appeared to be no chance of amicable settlement between the parties. Thereafter, as recorded in various orders passed, this Court had made its best endeavour to ensure that the matter between the parties is amicably settled, but to no avail.

14. Indisputably, the parties have been living separately since 2011. In the absence of any resumption of matrimonial obligation and cohabitation between the parties for a long period, there is no possibility of their reunion. The mediation proceedings before this Court, for an amicable settlement of the dispute between the parties, remained unsuccessful. This further speaks of the bitterness of their relationship. Undoubtedly, it is an obligation on the part of the Court that matrimonial bond should as far as possible, be maintained, but when the marriage has become unworkable and it has become totally

dead, no purpose would be served by ordering the reunion of the parties.

15. 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 reunion 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.

16. In **Samar Ghosh v. Jaya Ghosh**, (2007) 4 SCC 511, it was held by the Hon'ble Supreme court that no uniform standard can be laid down as regards the cruelty, but certain instances of human behaviour, relevant in dealing with the cases of 'mental cruelty', were formulated. It was held by the Hon'ble Apex Court as under:-

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such

that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the

consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

In **Naveen Kohli v. Neetu Kohli**, 2006 (4) SCC 558, the Hon’ble Apex Court was considering a case of irretrievable breakdown of marriage. In the said case, the wife had been living separately for a long time, but did not want divorce by mutual consent only to make life of her husband miserable. The Hon’ble Apex Court, while holding the acts and conduct of the wife as cruelty, has held as under:-

"62. Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again. The High Court ought to have visualized that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.

67. The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.

68. In our considered view, looking to the peculiar facts of the case, the High Court was not justified in setting aside the order of the Trial Court. In our opinion, wisdom lies in accepting the pragmatic reality of life and take a decision which would ultimately be conducive in the interest of both the parties.”

Still further, in **K. Srinivas Rao v. D.A. Deepa**, 2013 (5)

SCC 226 has observed that when a marriage is dead for all purposes, it cannot be revived by Court's verdict, if the parties are not willing since marriage involves human sentiments and emotions and if they have dried up, there is hardly any chance of their springing back to life on account of artificial reunion created by the Court's decree.

A Coordinate Bench of this Court in **Amandeep Goyal Vs. Yogesh Rani**, 2022(1) PLR 479, while considering the long separation of 10 years between the parties and the factum of wife not ready and willing to give mutual divorce, held that the marriage was dead and it amounts to cruelty towards the husband. The relevant extract from the said judgment would read as under:-

“20. In the present case, it is not in dispute that both the appellant and respondent are working as teachers on regular basis in Government departments. Further they are living separately since 27.07.2011. The elder son (Manav Goyal), who is suffering from cancer, is living with appellant- husband and the younger son (Rooham) is staying with the mother. After living separately from her husband for more than 10 years, the respondent- wife is still not ready to give divorce to him.

21. The issue for consideration in the present appeal would be whether the relationship of the husband and wife has come to an end and if the respondent-wife is not ready to give mutual divorce to the appellant- husband, whether this act of her, would amount to cruelty towards husband, keeping in view the fact that she is not staying with her husband for the last 10 years and there is no scope that they can cohabit as husband and wife again.

XX

XX

XX

32. In the present case, the appellant-husband is looking after his son Manav Goyal since 27.07.2011 and has borne all the expenses incurred upon his son, who is suffering from Cancer. Thus, if the appeal filed by the appellant-husband is dismissed, he will face mental agony with his son, who is ill and requires repeated check ups and treatments from various hospitals. The appellant and the respondent are very sure that they cannot live together as husband and wife. The appellant-husband has shown that he also loves his second son i.e Rooham, as he brought gifts for him on 18.08.2021 and even respondent-wife also brought gifts for Manav Goyal. Both the appellant and the respondent are regular government teachers and are getting good++ salary and they are bringing up one child each. If the parents are not granted divorce, then both the children namely Manav Goyal and Rooham Goyal will not be able to meet each other in a positive environment. This will further result in cruelty because of the rigid attitude in giving divorce. Further when the appellant and the respondent came to this Court on 18.08.2021, they expressed their love and affection to child, who is not staying with them. The element of marriage which has become dead will result in further loss to both the children. It is a right time if both the children meet with each other in a positive environment as the parents are finally independent. The element of silence between the parties will result into mental cruelty to the children, as both the siblings cannot meet with each other. Mental cruelty will blend with irretrievable and dead marriage is a good ground to grant divorce to the parties.”

A Division Bench of the Chhattisgarh High Court in

Duleshwari Sahu Vs. Ramesh Kumar Sahu, 2023 AIR

(Chhattishgarh) 95, has held that where the wife had been residing

separately from the husband for a long period without any justifiable cause, the same would amount to cruelty. It was held as under:-

“15. In the present matter, on perusal of the pleadings of the respective parties and the evidence adduced by them in support thereof, as also the admission of the parties and their witnesses, it is found that the respondent wife is living separately from her husband at her parental home without any just and reasonable cause since May, 2014. She lodged a report on 17/09/2014 against the husband under Sections 498-A, 323, 294, 506 of IPC and after trial, he was acquitted of all the charges. This apart, the wife also made a report against the husband and his parents under Protection of Women from Domestic Violence Act. It is also admitted position that the wife filed divorce petition under section 13 of the Hindu Marriage Act which was dismissed for want of prosecution. It is also admitted by the wife that no application under section 9 of the Hindu Marriage Act for restitution of conjugal rights was filed by her. It is not disputed that the wife is working as Panchayat Secretary and is also getting Rs. 7,000/- per month as maintenance. Therefore, in the given facts and circumstances of the case, the conduct of the wife, in light of the judgments of Hon'ble Supreme Court as mentioned above, the act committed by the wife against the husband amounts to cruelty and it stands proved that she is living separately from the husband since 2014 without any just and reasonable cause. They are seems to be no possibility of their reunion. In these circumstances, this Court finds no illegality or perversity in the impugned judgement of the Family Court granting decree of divorce in favour of the husband.”

17. If the facts of the present case are examined in the light of the law laid down by the Hon'ble Supreme Court in the aforesaid judgments, it would come out that the parties, who have been living separately since 2011, if compelled to live together, would become a fiction supported by a legal tie and it would show scant regard for the feelings and emotions of the parties. This, in itself would amount to mental cruelty to both the parties.

18. It may further be noticed that the efforts of amicable settlement between the parties had failed. Still further, there is nothing on record that the respondent-wife had made any effort to join the company of the appellant-husband and/or had filed any petition under Section 9 of the Act for restitution of conjugal rights. This clearly speaks that the matrimonial alliance between the parties has become unworkable.

19. In view of the above, considering the totality of the facts and circumstances of the case, we hold that the marriage between the parties has become unworkable and has reached the stage of beyond repair and if the parties are called upon to stay together, it may lead to mental cruelty to both of them. Question No.1 is answered in affirmative.

20. Consequently, the present appeal is allowed. The impugned judgment and decree passed by the learned trial Court, is set aside and the marriage between the parties is dissolved by a decree of divorce. Question No.2 is answered, accordingly.

21. Decree sheet be prepared accordingly.

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

23. However, we grant liberty to the respondent-wife to move an appropriate application before learned Family Court for grant of permanent alimony. If any such application is filed by the respondent-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

24.02.2025
Himanshu

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