

2025:PHHC:017487-DB



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

FAO-M-352-2018 (O&M)

Reserved on :- 21.01.2025

Date of decision: 31.01.2025

Bhavesh Aggarwal

....Appellant

Versus

Jyoti Gupta alias Charu Gupta

....Respondent

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

Present: Mr. Robin Dutt, Advocate,
for the appellant.

Mr. Harshit Jain, Advocate,
for the respondent.

SUDHIR SINGH, J.

The present appeal has been filed against the judgment and decree dated 27.08.2018 passed by the learned Additional District Judge, Yamuna Nagar at Jagadhri, whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for brevity 'the Act') filed by the appellant-husband for dissolution of marriage by way of decree of divorce on the grounds of cruelty and desertion, has been dismissed.

2. The brief facts of the case are that the marriage between the parties was solemnized on 03.11.2011, according to Hindu rites at Jagadhri and no child was born out of the said wedlock. It was averred by the appellant-

husband that the behaviour of the respondent-wife towards him and his family members had been rude, arrogant and hostile and she had insulted him many a times and in this way had caused mental cruelty to him. It was further stated that after few days of marriage, the respondent-wife refused to do the household work and avoided her marital duties. When the appellant-husband asked her in this regard, she replied that she had not performed marriage with him for doing the household work. It was further stated that the respondent-wife used to taunt and humiliate the appellant-husband for being less qualified than her. It was further pleaded that after six months of marriage, the respondent-wife and her parents started pressurizing the appellant-husband to reside separately from his parents, as she did not want to live with her parents-in-law and when the appellant-husband showed his inability to do, they started quarreling with him. It was the pleaded case of the appellant-husband that finding no alternative, the parents of the appellant-husband constructed a separate portion on the first floor of the house, where the appellant-husband and the respondent-wife started residing separately, but the behaviour of the respondent-wife did not change and she used to quarrel with the appellant-husband on petty matters. She used to humiliate the appellant-husband and also refused to have physical relations with him. It was also

the case of the appellant-husband that the respondent-wife used to go to her duty after locking the rooms of the first floor and thereby, refused the entry of the appellant-husband in the house. It was further pleaded that before marriage, the parents of the respondent-wife had told that her date of birth was 28.07.1983, whereas her actual date of birth was 18.07.1981. Terming the aforesaid acts on the part of the respondent-wife a decree of divorce was sought for.

3. Upon notice, the respondent-wife entered appearance and filed her written statement admitting the factum of marriage between the parties. However, she denied all other allegations levelled in the petition. Rather, it was pleaded that she had suffered harassment, taunting, teasing and mental cruelty at the hands of the appellant-husband and his family members. It was pleaded that at the time of marriage, besides customary items, cash amount was also given by the parents of the respondent-wife to the appellant-husband and his family members for purchasing dowry articles, as per their choice. It was further pleaded that the appellant-husband and her family members were treating the respondent-wife as earning servant and watchman of the house without pay. It was further the case of the respondent-wife that her married life was going smoothly till 03.07.2013, so long as her in-laws

were getting her salary, but when she refused to give her salary to her in-laws, they started giving abuses and beatings to her. It was further pleaded that on 15.08.2014, mother-in-law of the respondent-wife gave beatings to her and in that regard, the matter was reported to the police. Again on 20.04.2015, she was given beatings by the appellant-husband, whereupon she got herself medically examined at Civil Hospital, Jagadhri and filed a complaint with the police. It was denied that the respondent-wife had refused to reside in her matrimonial house. Accordingly, a prayer for dismissal of the petition was made.

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

1. Whether the petitioner is entitled to a decree for divorce by dissolution of marriage, as prayed for? OPP.
2. Whether petition is not maintainable in the present form? OPR
3. Whether the petitioner is estopped by his own act and conduct from filing the present petition? OPR
4. Relief.

5. In evidence, the appellant-husband himself appeared in the witness box as PW-1 and examined Atul Goel, as PW-2. On the other hand, the respondent-wife herself appeared as RW-2 and examined Parveen Kumar, her father in law, as RW-1.

6. After hearing the contentions of both the parties and considering the evidence brought on record, the learned trial Court dismissed the petition, as noticed above.

7. Learned counsel for the appellant-husband has vehemently argued that the averments contained in the divorce petition, which are duly corroborated by the evidence led by the appellant, have totally been ignored by the learned trial Court. It is further argued that the appellant-husband has duly proved before the trial Court by leading cogent and convincing evidence that the respondent-wife and her family was having *malafide* intention from the very beginning, as they had given wrong date of birth of respondent-wife, but the said fact has totally been ignored by the learned trial Court. It is further argued that the respondent-wife got registered a false criminal case i.e. FIR No.488 dated 18.08.2015, under Sections 323, 406, 498-A and 506 IPC, at Police Station, City, Jagadhri, against the appellant-husband. However, the appellant-husband has been acquitted in the said case vide judgment dated 10.01.2023, passed by the Additional Chief Judicial Magistrate, Yamuna Nagar at Jagadhri. He further argued that registration of false criminal case against the appellant-husband amounts to cruelty on the part of the respondent-wife and only on this ground, the appellant-husband is entitled to seek divorce from the respondent-wife. It is,

lastly, argued that the parties have been living separately since 2013 and during this period, there has been no resumption of marital relations or cohabitation between them and, thus, their marriage has become unworkable.

8. On the other hand, learned counsel appearing for the respondent-wife, while defending the impugned judgment and decree passed by the learned trial Court, has argued that the allegations levelled by the appellant-husband were general and vague in nature and that he could not prove the same by leading any cogent and convincing evidence. Thus, it is contended that the findings recorded by the learned trial Court, do not require any interference by this Court.

9. We have heard learned counsel for the parties and have also gone through the records of the case. In our opinion, the following questions would arise for consideration:-

“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 trial Court, requires any interference?

10. The learned trial Court, has found that the appellant-husband was not able to prove that the respondent-wife had treated him with cruelty. Still further, it was found that the appellant-husband could not prove on record that the respondent-wife had deserted him without any

sufficient reason. It was further found that since the respondent-wife had been living on the first floor in the matrimonial home, therefore, she had not deserted the appellant-husband.

11. Though, the divorce petition filed by the appellant-husband was dismissed, yet we must examine whether the marital relationship between the husband and wife has ruptured beyond repair, especially when the parties have been living separately for more than 11 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. Indisputably, the parties have been living separately since 2013. 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. 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.

13. It may be noticed here that during the pendency of this appeal, the matter was settled between the parties vide agreement dated 26.09.2019 and in view of the said agreement/settlement arrived between them, the present

appeal was disposed of vide order dated 04.02.2020. However, subsequently, the said order was recalled vide order dated 04.02.2022, as the parties failed to comply with the terms of the compromise/agreement dated 26.09.2019 and the appeal was revived for regular hearing.

14. 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.

15. 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 beha-

viour 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 be-

haviour 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.

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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.

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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 re-union. 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.”

16. 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 2013, 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.

17. Still further, as noticed above, vide judgment dated 10.01.2023, passed by the learned Additional Chief Judicial Magistrate, Yamuna Nagar at Jagaadhri, the appellant-husband has been acquitted of the charges framed against him in the criminal case registered by the respondent-wife for various offences including the offence under Section 498-A IPC.

18. 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.

19. 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.

20. Decree sheet be prepared accordingly.

21. However, we grant liberty to the respondent-wife to move an appropriate application before learned trial/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.

22. All pending applications(s), if any, shall also stand disposed of.

**(SUDHIR SINGH)
JUDGE**

**(SUKHVINDER KAUR)
JUDGE**

31.01.2025

Ajay Prasher

- *Whether speaking/reasoned:* Yes/No
- *Whether reportable:* Yes/No