

2025.PHHC:033551-DB



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

FAO-5982-2024 (O&M)

Date of decision: 25.02.2025

VIRENDER SINGH

.....Appellant

Versus

URMILA

.....Respondent

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

Present:- Mr. Jaiveer Singh Malik, Advocate for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 10.10.2024 passed by learned Principal Judge, Family Court, Bhiwani (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-wife, was allowed, and the marriage between the parties was dissolved by a decree of divorce on the ground of cruelty.

2. The aforesaid petition had been filed by the respondent-wife, *inter alia*, alleging therein that her marriage with the appellant-husband was solemnized on 15.05.2010, according to Hindu rites, and out of the said wedlock, a daughter was born. It was further pleaded that the appellant-husband and his family members were not satisfied

with the dowry given in the marriage and they had raised demands for a car and a buffalo. They started harassing and humiliating her for bringing inadequate dowry. Under the compelling circumstances, she started residing at Tosham, where she was appointed as an Instructor on temporary basis in ITI, Tosham. The appellant-husband and his mother used to taunt her for not giving birth to a male child. The appellant-husband used to doubt her character when she would go to ITI and other places. It was further alleged that on 07.09.2019, the appellant-husband and his mother after hatching a criminal conspiracy, poured some poisonous substance in her mouth, but somehow she was got saved. The appellant-husband also used to issue threats to kill her. In the first week of November, 2019, the appellant-husband and his mother ousted the respondent-husband from the rented house at Tosham after giving her beatings and usurping the entire *Istridhan*. She was compelled to lodge a criminal case bearing FIR No.75 dated 27.02.2020 under Sections 323, 498-A and 506 IPC at Police Station Siwani, against the appellant-husband and his mother. It was further alleged that the marriage between the parties had broken down irretrievably. Thus, a decree of divorce had been sought for.

3. Upon notice, the appellant-husband entered appearance and filed her written statement, admitting the factum of marriage and birth of the daughter. It was, however, alleged that the respondent-wife never remained sincere towards her matrimonial obligations and she would use a filthy language against the appellant-husband and his family members. She had insulted him in the presence of his relatives

and friends and would further pick up quarrels with him. She would pressurize him to reside separately from his family. She left the company of the appellant-husband and started residing at her parental home. A Panchayat was convened but it did not yield any result. It was further alleged that the appellant-husband had joined the company of the respondent-wife at Tosham, but despite that she did not change her behaviour. On 25.11.2018, the family members of the respondent-wife visited the house of the appellant-husband and raised a demand of Rs.2 lakh and when the family members of the appellant-husband showed their inability, the father of the respondent-wife had picked up quarrels with him and forcibly took away the respondent-wife. It was further alleged that the appellant-husband had filed a petition under Section 9 of the Act for Restitution of Conjugal Rights, whereas the respondent-wife had initiated the proceedings under Section 125 Cr.P.C., against the appellant-husband. It was further alleged that the respondent-wife could not be allowed to take benefits of her own wrongs. Accordingly, a prayer was made for dismissal of the divorce petition.

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

- “1. Whether petitioner is entitled to a decree of divorce from the respondent on the grounds incorporated in the petition? OPP
2. Whether the petitioner has no locus-standi and cause of action to file present petition? OPR

3. Whether the petitioner is stopped from filing the present petition by his own act and conduct?OPR
4. Whether the present petition is not maintainable?OPR
5. Relief.”

5. In evidence, the respondent-wife appeared as PW-1 and had also examined PW2-Umed Singh. On the other hand, the appellant-husband examined himself as RW1 and had also examined RW2-Balbir and RW3-Hawa Singh, Ex-Sarpanch of Village Obra.

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 allegations levelled by the respondent-wife in her petition were totally false, vague and general in nature. It is further argued that the appellant-husband had every intention to rehabilitate the respondent-wife in the matrimonial home and for that matter he had also filed a petition under Section 9 of the Act, but the respondent-wife had clearly refused from joining the company of the appellant-husband, which had resulted into the dismissal of the said petition. It is also argued that in the criminal case initiated by the respondent-wife against the appellant-husband and his mother, during investigation, the police had found his mother innocent and the same amounted to cruelty. It is also argued that the appellant-husband is handicapped to the extent of 62% and, thus, the allegations of the

respondent-wife regarding torture; giving beatings and pouring poisonous substance in her mouth by the appellant-husband, is not believable. However, it is argued that all the aforesaid material aspects have totally been ignored by the learned Family Court, while passing the impugned judgment and decree. It is also argued that in respect of the alleged cruelty committed to the respondent-wife, she did not examine any witness, and, thus, the allegations levelled by her remained uncorroborated. Accordingly, it is argued that the impugned judgment and decree passed by the learned Family Court is liable to be set aside.

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. On the basis of the evidence led by the parties, the learned Family Court has come to the conclusion that the respondent-wife was able to prove that she had been subjected to cruelty for bringing insufficient dowry and the allegations levelled by her in the divorce petition proved by her by way of evidence, could not be shaken during her cross-examination by the appellant-husband. It was also found that the appellant-husband though had levelled counter allegations in his written statement, yet he had failed to rebut the same. It was also found that PW2-Umed Singh had also corroborated the allegations of cruelty against the respondent-wife by the appellant-

husband and his mother. Apart from that it was also noticed by the learned Family Court that the marriage between the parties was solemnized on 15.05.2010 and they got separated in November, 2019 and that the respondent-wife had made a good ground for decree of dissolution of her marriage with the appellant-husband on the ground of cruelty and their relations had deteriorated to such an extent that it had become impossible for her to reside with him.

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”.

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 findings recorded by the learned Family Court are perfectly legal. The respondent-wife had proved on record the cruelty committed to her by the appellant-husband and his mother. The argument of the learned counsel for the appellant-husband that he had filed a petition under Section 9 of the Act, but the respondent-wife refused to live in his company is of no help to him particularly when, he could not produce on record any cogent and convincing evidence, which could disapprove or rebut the evidence led by the respondent-wife regarding the cruelty committed to her. Still further, a perusal of the file would

show that a petition filed by the appellant-husband for the custody of the minor child is stated to be pending before the Court concerned and in the FIR got registered by the respondent-wife, the trial is yet pending. As the trial in the said FIR is yet pending, it cannot be said that the appellant-husband has been treated with cruelty by the respondent-wife. Still further, merely because the police during investigation had declared the mother of the appellant-husband as innocent, is no ground to hold that the appellant-husband has been treated with cruelty by the respondent-wife.

13. We find that the findings recorded by the learned Family Court, do not suffer from any illegality or perversity. It could not be pointed out that any evidence has been misread or not taken into consideration.

14. No other point has been urged.

15. Finding no merit in the present appeal, the same is hereby dismissed.

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

[SUDHIR SINGH]
JUDGE

[SUKHVINDER KAUR]
JUDGE

25.02.2025
himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No