IN THE HIGH Court OF HIMACHAL PRADESH, SHIMLA

FAO (F.C.) No.06 of 2022
Reserved on:15.10.2026
Decided on: 30.10.2026

Shri Rajender Sen ... Appellant/petitioner.

Versus

Smt. Manju Devi ... Respondent

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge.
Hon'ble Mr. Justice Yogesh Jaswal, Judge.

Whether approved for reporting?[1]

For the appellant:	Mr. Atul G. Sood, Advocate.
For the respondent:	Mr. Rohan Thakur, Advocate, vice Mr. Maan Singh, Advocate.

Ajay Mohan Goel, Judge

By way of this appeal, the appellant herein (petitioner before the learned Court below) has assailed judgment dated 11.11.2021, passed by the learned Principal Judge, Family Court, Kullu, District Kullu, H.P., in HMP No.12/2019 (2017), titled Rajender Sen Versus Manju Devi, in terms whereof, the petition filed by the appellant herein under Section 13(1) (1a) (1b) of the Hindu Marriage Act, 1955, for dissolution of marriage, has been dismissed.

2. Brief facts necessary for the adjudication of this appeal are that the appellant filed a petition for dissolution of marriage. His case was that the marriage between the parties was solemnized as per Hindu Rites in the month of April, 2000 and two daughters were born out of the said wedlock, who were aged 12 years and 10 years at the time of filing of the petition. As per the appellant, the parties

[1] *Whether reporters of the local papers may be allowed to see the judgment?*

cohabited at Village Jobrang after their marriage and they last resided at the said place till the year 2008, when the respondent (Manju Devi) left the society of the appellant and shifted to Kullu without any reasonable cause and, thus, deserted the appellant. It was further his case that the respondent was pressing the appellant to shift to Kullu, for which, he was not ready, as he was not owning any house in District Kullu. The respondent deserted the appellant and shifted to Kullu and thereafter, filed an application for maintenance before the Army Court, which Court granted monthly maintenance of Rs.11,000/- per month, which was being regularly paid by the appellant to the respondent. Respondent levelled false allegations against the appellant in the complaint submitted by her to the Commanding Officer by alleging therein that the appellant was not paying the maintenance allowance with the motive to harass her and had thus filed a false application before the Commanding Officer. It was also the case of the appellant that the respondent had levelled false allegations against him as well as his parents by alleging that they wanted a male child, which allegation was not incorrect as the appellant had got himself sterilized in the year 2006, which fact was in the knowledge of the respondent and said act of the respondent amounted to cruelty. It was also mentioned in the petition filed by the appellant that whenever he used to come to Lahaul on leave, he used to reside with his old parents at Jobrang, as there was none to look after and maintain them and he tried to

bring the respondent home and requested her to live with his parents, but despite his efforts, he failed. It was also his case that the respondent did not allow him to have physical relations with her and as the marriage between the parties has irretrievably broken, there remained no purpose to retain the ties of marriage anymore and on this count, the appellant prayed for dissolution of marriage.

3. The petition was resisted by the respondent, who *inter alia* mentioned in her reply that it was incorrect that in the year 2008, the respondent left the society of the appellant and shifted to Kullu from village Jobrang without any reasonable cause. She mentioned in her reply that in the year 2011, the appellant himself shifted the respondent and their daughters to Manali and got them admitted in Saraswati Vidya Mandir School at Manali to provide them better education. Afterwards, the appellant got a two-room house constructed at Jatehar, Bihal (Katrain) and shifted the respondent and the daughters to the newly constructed house at Katrain on 05.01.2012. The daughters were also shifted to Saraswati Vidya Mandir, School Katrain from Manali. According to the respondent, she never deserted the appellant, but it was the appellant, who intentionally and deliberately, with the intention to raise a false plea, levelled false allegations of desertion against her. It was further her case in the reply that the appellant was harassing and torturing her by taking advantage of the fact that she was a simple and rustic lady, for not delivering a male child. He was

pressurizing her to allow him to solemnize another marriage so that he could have a male issue, for which the respondent was not ready. It was mentioned in the reply that the appellant had dragged her into litigation by filing a false petition and the appellant was committing domestic violence upon her and was not providing any maintenance to her and the minor daughters. The appellant was causing mental cruelty by calling her an illiterate and ugly lady and by stating that she was not a fit lady to be his wife, as she was not having manners to live in a civilized society. According to the respondent, on account of this act of the appellant, she was depressed, demoralized and upset. It was also her stand that the appellant wanted to get rid of his responsibility towards her and the daughters and the filing of the petition was with the said intent only. She also mentioned in the reply that the appellant was not paying her monthly maintenance, as was granted in her favour, as a result whereof, she and her daughters were facing starvation, as they were not having any source of income. She also mentioned in the reply that the appellant in the year 2010 had got himself re-sterilized at Command Hospital, Kolkata, in order to have a male issue and that he was living in adultery with one Dharm Bhakti alias Pinky, daughter of late Shri Ganesh Singh, resident of village Ribba, Tehsil Murang, District Kinnaur. This he was doing despite the protest of the respondent. She stated that she had written several letters to the senior officers of the appellant for the grant of maintenance as well

as against him for maltreating her, but everyone turned a deaf ear to her requests. She also mentioned in the reply that she had left no stone un-turned to provide a wholehearted and dedicated service to the parents of the appellant, but during her stay at the matrimonial house, the parents of the appellant kept on cursing and torturing her for not bringing them a male issue. It was also her stand in the reply that the father of the appellant was fit, hale and hearty and was serving as a Peon in a Government school in Lahaul Valley. She denied the allegation that she did not allow the appellant to have physical relations with her. She also denied that the marriage between them had irretrievably broken. She also denied the other allegations made in the petition by the appellant.

4. On the basis of the pleadings of the parties, the following Issues were framed by the learned Court below for determination: -

> "*1. Whether the respondent has deserted the petitioner without any reasonable cause, as a result of which, the marriage inter se the parties has irretrievably vanished/broken down, as alleged? OPP.*
>
> *2. Whether the petition is not maintainable? OPR.*
>
> *3. Whether the petitioner is estopped to file the present petition by his act and conduct? OPR.*
>
> *4. Whether the petitioner has not approached the Court with clean hands and has suppressed and concealed the true and material facts from the court, as alleged. If so, to what effect? OPR.*
>
> *5. Whether the petitioner has caused the respondent*

mental cruelty by calling her as an illiterate and ugly woman as alleged? OPR.

6. Whether the petitioner deserted, neglected and refused to maintain the respondent and her minor daughters, as alleged? OPR.

7. Relief."

5. In terms of the judgment under challenge, the Issues were answered by the learned Court below as under:-

"*Issue No.1: No.*

Issue No.2: No.

Issue No.3: No.

Issue No.4: No.

Issue No.5: No.

Issue No.6.Yes.

Relief: *Petition dismissed as per operative part of the judgment.*"

6. Feeling aggrieved by the dismissal of the petition, the appellant has approached this Court.

7. Learned Counsel for the appellant argued that the judgment passed by the learned Court below was not sustainable, as the learned Court below overlooked and ignored the evidence which proved that the respondent had deserted the husband. He submitted that the factum of the parents of the appellant being aged and suffering from ailment and they not being looked after by the respondent, who left the matrimonial house and started living at Kullu, were also ignored by the learned Court below, which rendered the judgment to be bad in law. He further argued that the learned

Court completely ignored and overlooked the conduct of the wife and it believed the statement of the wife without appreciating that there was no substance therein, which also renders the judgment to be bad. He further argued that the learned Court also ignored that the allegation of illicit relation levelled by the wife itself amounted to cruelty and the aspersion cast against the character of the appellant by the wife, not substantiated amounted to cruelty which dented his reputation, yet the learned Court ignored all these aspects of the matter and dismissed the petition. He argued that the findings returned by the learned Court below on the issues framed were perverse, not being borne out from the record of the case and therefore also, the judgment was liable to be set aside. No other point was urged.

8. On the other hand, learned Counsel for the respondent argued that there was no infirmity with the judgment under challenge, as the appellant had failed to prove the allegations, levelled by him against the respondent. He submitted that the allegations of desertion and cruelty were not substantiated by the appellant by leading any cogent evidence and in light of the fact that the appellant was not able to demonstrate that the respondent had deserted him without any reasonable cause and that the marriage had irretrievably broken down, the petition was rightly dismissed by the learned Court below.

9. Learned Principal Judge, Family Court, Kullu, rejected

the petition of the appellant by *inter alia* holding that the appellant-husband had failed to prove that the wife had deserted him without any reasonable cause, as a result whereof the marriage *inter se* the parties had irretrievably broken down. Learned Judge, after referring to the pleadings and evidence led by the parties, observed that the evidence led by the husband was not sufficient and convincing to establish that respondent was guilty of deserting him. Learned Court held that the bald testimony of the petitioner was not sufficient to prove this allegation. Learned Court held that the allegation of the husband that in the year 2008, respondent deserted him and shifted to Kullu from village Jobrang with her minor children was not established on record. Learned Court held that the husband did not examine any witness from the locality where the respondent was purportedly residing in Kullu. whereas on the other hand, the testimony of respondent was sufficient to suggest that the husband was guilty of deserting her. Learned Court observed that the respondent had categorically stated that it was the husband who had shifted her and children initially to Manali for better education and thereafter, to Jatehar Bihal in Katrain, where he had constructed a two-room house. Learned Court observed that whereas the husband in his cross-examination denied the aforesaid version of the respondent, but at the same time it was surprising to note that he expressed his ignorance where actually his wife and children were residing. Learned Court observed that though it was

alleged by the petitioner in the petition that the respondent along with minor children were residing at Kullu, but in his testimony, the husband did not state at which place in Kullu the respondent and minor daughters were residing. Learned Court also observed that the respondent deposed that she had filed complaints against the husband that he was not maintaining her and the daughters and that the Army Court had granted monthly maintenance to the tune of Rs.11,000/- to her. Learned Court also held that though it was the case of the husband that the wife had filed false complaints against him, but as it was a matter of record that the Army Court had granted maintenance allowance of Rs.11,000/- to the respondent, same was sufficient to establish that the husband was guilty of neglecting the respondent as also the minor daughters. Learned Court also held that in her testimony the wife had categorically deposed that the husband was living in adultery with one Dharam Bhakti and it was for this reason that he had shunted her out of the matrimonial house and in his cross-examination, the husband admitted the fact that Dharm Bhakti was a friend of his and also admitted the photographs where he was sitting besides Dharam Bhakti. Learned Court held that perusal of the photographs revealed that the posture of both the husband and Dharam Bhakti was suggestive of the fact that they were quite close and intimate to each other. Learned Court also held that this demonstrated that the husband was having some intimacy with another lady and same was

sufficient for the respondent not to live with the husband as it was the husband who had caused mental cruelty to the respondent. On these counts, learned Court held that as the husband had failed to prove that the wife had deserted him without sufficient cause, as evidence was demonstrative that he was guilty of neglecting and deserting the respondent, it dismissed the petition.

10. As we have already observed hereinabove, to prove his case, the husband entered the witness box and examined two witnesses. A perusal of the statement of petitioner demonstrates that in his affidavit, he reiterated what was mentioned in the petition. However, in cross-examination, he admitted that his brother resided at Manali and his father was serving as a Peon in a school and his mother was a housewife. He also stated that between the years 2008 to 2010, he was posted at Kolkata. Further, in his cross-examination, while denying that he had initially shifted his family to Kolkata, then to Manali and thereafter, to a small house constructed near Katrain, he feigned ignorance that his children were studying at SVM School, Manali and residing with his mother. He stated in his cross-examination that he was not aware where his children and wife were living, nor could he recollect when his wife denied having physical relations with him. He stated in his cross-examination that Dharam Bhakti was his friend, whom he had known for three or four years. He stated that he was not aware what she was doing or how many children she was having. He admitted his photograph with

Dharam Bhakti, i.e. Ex.DX. He denied that Dharam Bhakti was his girlfriend. He stated that she was Birju's girlfriend. He stated that he was not aware about the address of Birju and that Birju was just a casual friend. He was also not aware that Dharam Bhakti was resident of which place.

11. Fact of the matter remains that except for the bald assertions of the husband which were not substantiated by any material on record or by any independent witness that the respondent had deserted him in the year 2008 without reasonable cause and shifted to Kullu along with his children nothing was placed by him before the learned Court below to prove these allegations. Nothing prevented the husband from examining either his parents, brother, or close relatives of his to demonstrate that the respondent had in fact deserted him or that she was treating the parents of the husband with cruelty as was alleged in the petition. Similarly, the contention of the husband that the respondent deserted him without any willful cause in the year 2008 and shifted to Kullu, has not been proved by him by placing any iota of evidence on record to demonstrate that indeed the respondent along with her minor children was residing at Kullu. The husband did not place any material on record to demonstrate that where she was residing at Kullu and if indeed, the wife was residing at Kullu with the minor children, then where were those minor children receiving their education etc. He could have proved all these facts by examining the

landlords of the property where the wife was purportedly staying at Kullu and in case if she was putting up with some relatives, then he could have summoned those relatives as his witnesses. Similarly, the allegation of cruelty against the parents has not been substantiated either by examining his parents, brother or any of his close relatives. The stand of the husband that his parents were old and helpless is negated by the fact that he himself admitted in his cross-examination that his father was serving as a Peon in a school. It is not understood as to how the father of the petitioner could have been serving in a school if he was old and helpless, because obviously, none who has crossed the age of superannuation can serve in a school against any post.

12. All the above facts demonstrate that the appellant was not able to prove before the learned Court below that his wife had deserted him without any substantial reason in the year 2008, as alleged and had shifted to Kullu along with her children. The appellant also failed to demonstrate before the learned Court below by leading any cogent evidence that either he or his parents were subjected to cruelty by the wife, as was alleged by him in his petition.

13. Therefore, in the absence of the appellant having been able to substantiate his allegations made against the wife before the learned Court below, by leading cogent evidence, the findings returned while deciding Issue No.1 against the appellant by the

learned Court below call for no interference. In fact, we have also carefully gone through the statement of the respondent and factum of the husband having been called upon by the Army Court to pay maintenance of Rs.11,000/- per month to the wife and children, of course, is demonstrative of the fact that as the appellant was not looking after his wife and children, it is in these circumstances that the said order was passed by the Army Court. This in fact, demonstrates that cruelty, if any, was on the part of the appellant herein towards his wife and children and not *vice versa*. The cross-examination of the husband otherwise also leaves much to desire. It is very strange that the husband who alleged that his wife had deserted him in the year 2008 and had shifted to Kullu with their children, was not even aware as to where the wife was residing with their children since the year 2008. He was not able to tell the Court the name of the place where the wife and the children were actually residing as per him. This demonstrates that the averments made by him in the petition that in the year 2008 his wife had deserted him and started residing at Kullu, were not only incorrect averments, but false averments. We have also perused Ex. DX, which is a photograph of the present appellant with the lady Dharam Bhakti and we concur with the conclusions arrived at by the learned Court below that the pose in which said picture has been clicked is suggestive of close intimacy between them, as ordinarily no lady would be sitting in such a pose with a man who is

neither her husband or a close relative like brother etc., but just happens to be a casual friend of her boyfriend, because the husband has deposed in his cross-examination that Dharam Bhakti was the girlfriend of his friend Birju, whose residence etc. was not known to him and who, according to him, happened to be just a casual friend.

14. From the above discussions, as we are convinced that the learned Court below rightly rejected the petition preferred by the present appellant, as he was not able to substantiate the allegation of desertion and cruelty levelled against the wife, this appeal is dismissed with costs assessed at Rs.10,000/-.

15. Pending miscellaneous application(s), if any, also stand disposed of.

(Ajay Mohan Goel)
Judge

(Yogesh Jaswal)
Judge

October 30, 2026
(Rishi)