



110

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

FAO-4988-2024 (O&M)

Date of Decision: February 20, 2025

Sunita

.....Appellant

versus

Vikas

....Respondent

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

Present:- Mr. Ravinder Phogat, Advocate for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 23.08.2024 passed by learned Principal Judge, Family Court, Rohtak (for short 'Family Court'), whereby, the petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the respondent-husband had been allowed, and the marriage between the parties was dissolved by way of a decree of divorce on the ground of cruelty.

2. The aforesaid petition had been filed by the respondent-husband, *inter alia*, pleading therein that his marriage with the appellant-wife was solemnized on 01.04.2007 according to Hindu rites, and out of the said wedlock, a female child was born on 28.07.2008. The behaviour of the appellant/wife was cruel and she had never adjusted in the family of the respondent/husband. She used to leave the matrimonial home without prior

permission of the respondent/husband. She would insult the respondent/husband and his family members by abusing them in front of the relatives and neighbours. She would pressurize the respondent/husband to live separately from his family and also get his property partitioned. A few days after the marriage, when the respondent/husband went to parental home of the appellant/wife to bring her back, her parents insisted that he will have to live separately at Sonapat. He was also asked to sell his ancestral properties and purchase a house at Sonapat. She had also forced the respondent/husband to provide a financial help to her younger brother and when he refused, she threatened to commit suicide and implicate him and his family members in a false case of dowry death. The respondent/husband had moved an application before the Superintendent of Police, Rohtak on 22.06.2016 and as the appellant/wife had apologized for her behaviour, a compromise was effected. It was further alleged that on 20/21.07.2018, the appellant/wife assaulted the respondent/husband with her nails, gave him bite on his private parts and pressed pillow on his mouth while he was sleeping, with an intention to kill him. The respondent/husband had moved an application before the police and he was admitted in the Civil Hospital, Rohtak and during the same night, the appellant/wife had also left the matrimonial home with her ornaments and valuable clothes while leaving the minor child behind. Several efforts to bring her back proved futile and she had registered FIR No.336 dated 21.07.2018, under Sections 323, 34, 354-A, 376, 506 and 511 IPC, against the respondent/husband and his family members. A *panchayat* was convened, but still the appellant/wife was adamant in not joining the company of the respondent/husband. It was further asserted that she had been living

separately from the respondent/husband since 21.07.2018 without any reasonable cause.

3. Upon notice, the appellant/wife entered appearance and filed her written statement admitting the factum of marriage and birth of the child. However, it was alleged that the respondent/husband was guilty of committing cruelty to her and therefore, he should not be allowed to take benefit of his own wrongs. The allegations regarding cruelty on her part were denied and rather, it was pleaded that the entire dowry articles including gold ornaments and valuable clothes were in illegal possession of the respondent/husband and his family members. It was further alleged that the aforesaid FIR had been got registered by her against the respondent/husband and his family members due to the cruel acts done by them. She was given beatings by the respondent/husband at the instance of his family members, but the appellant/wife kept tolerating the same, as she wanted to save her matrimonial alliance. It was further alleged that the father and brother of the respondent/husband had evil intentions towards the appellant/wife and when the respondent/husband was working as a J.E. at a Thermal Plant at Panipat and had been away, they used to come to the room of the appellant/wife and try to outrage her modesty. On 21.07.2018, the respondent/husband and his family members gave merciless beatings to her and caused her multiple injuries and they turned the appellant/wife out of the matrimonial home, and since then, she had been living with her parents.

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

“1. *Whether, after solemnization of marriage the petitioner was treated with cruelty by the respondent? OPP*

2. *Whether the petitioner has no cause of action or locus standi to maintain this petition in its present form? OPR*
3. *Relief.”*

5. In evidence, the respondent-husband appeared as PW1 and also examined Sandeep Kumar, MRO/Clerk, Civil Hospital, Rohtak (PW2), Manjeet, Complaint Branch, S.P. Office, Rohtak(PW3) and Jasbir (PW4) besides tendering certain documents i.e., Exhibit P1, Exhibits PW2/1 and 2/2, Exhibits PW3/1 and 3/2 and Mark-A to K. On the other hand, the appellant-wife examined herself as RW1 and also examined HC Anita (RW2) and Vishavraj MRO Civil Hospital, Rohtak (RW3) besides tendering documents, Exhibits R1 and Exhibit RW3/A.

6. Learned Family Court, after considering rival contentions of the parties and evidence on record, allowed the petition filed by the respondent-husband, as noticed above.

7. Learned counsel appearing on behalf of the appellant-wife has vehemently contended that the impugned judgment and decree passed by the learned Family Court is against facts and evidence on record. It is argued that while appearing as RW1, the appellant/wife had reiterated her version contained in the written statement. It is also argued that the findings of the learned Family Court that the appellant/wife could not explain the dates and instances of the alleged sexual assault by the brother and father of the respondent/husband, is not tenable in the eyes of law as she had specifically mentioned that when her husband had been away to her duties, she had been subjected to the aforesaid sexual assault. It is also argued that when an FIR had been registered regarding the aforesaid allegations, there was no occasion for the learned Family Court to written the impugned findings. It is also

argued that the finding of the learned Family Court that the appellant/wife could not prove cruel behaviour of the respondent/husband and his family members, is not sustainable as it had been the consistent stand of the appellant/wife that she had been subjected to such treatment by the respondent/husband and his family members and the same was also corroborated by the evidence led by her. Accordingly, a prayer has been made for setting aside the impugned judgment and decree.

8. We have heard learned counsel for the appellant and have also gone through the impugned judgment/decree.

9. The only issue that requires consideration by this Court is whether the impugned judgment and decree passed by learned Family Court requires any interference by this Court.

10. A perusal of the findings recorded by the learned Family Court would show that the allegations levelled by the respondent/wife in her written statement regarding the alleged molestation by the father and brother of the respondent/husband were not proved on record. It was also found that in her cross-examination, the appellant/wife had deposed that from 2007 till 2017, her father-in-law had never tried to molest her. It was further found that if the father-in-law of the appellant/wife had not tried to molest her till the year 2017, then the allegations regarding her molestation on 23.08.2011 and 17.12.2014 were false. The relevant extract from the judgment of the learned Family Court would read as under:-

“18. Further, the respondent has stated that she had not made any written complaint regarding incidents dated 23.08.2011, 17.12.2014, 13.03.2017, 26.11.2017, 18.07.2017 and 18.09.2017 and had only orally informed the police regarding incident dated 18.09.2017 and all other incidents. The failure of the respondent in not reporting her alleged molestation

by the father of the petitioner and attempt to rape her by the brother of the petitioner and her levelling these allegations after such a long time makes these allegations doubtful. Since she did not shy away from making complaint against the petitioner and his family members before the police on 21.07.2018 resulting in lodging of FIR No.336 dated 21.07.2018 under Section 323, 34, 354-A, 376, 506, 511 IPC. The explanation given by the respondent that she had not reported the incident to the police on 13.03.2017 because her husband had told her that their reputation would be ruined and also because he had threatened to beat her is again not believable specially since she has further stated in her cross-examination that from 2007 till 2017 her father-in-law had never tried to molest her and had only commented. If the father of the petitioner had not tried to molest the respondent till the year 2017 then her allegations regarding her molestation on 23.8.2011 and 17.12.2014 are false.

19. *It is also pertinent to mention here that as per admission of the respondent in her cross-examination she was joined in investigation of FIR No.336 dated 21.07.2018 by the police but it had dropped sections 354-A, 376, 506, 511 IPC during investigation as these offences were not found to be made out. Since Sections 354-A, 376, 506, 511 IPC were dropped during the investigation of FIR No.336 lodged on the complaint made by the respondent against the petitioner and his family members, therefore, it is again proved that the allegations which are being levelled by the respondent qua said offences are false. The respondent has failed to prove the complaint dated 21.07.2018 which was made by her to the police or FIR No.336 lodged on her complaint whereas the petitioner has proved copies of the complaints made by him and his mother against the respondent i.e. complaint dated 22.6.2016 Ex.PW3/1, complaint made by his mother dated 22.09.2017 Ex.PW3/2 and the compromise effected between the parties which includes statement of the respondent dated 10.10.2017 to the effect that a compromise was effected in Women Police Station between her and her mother-in-law and in future she would not commit any mistake. The respondent has admitted her signature and handwriting regarding statement dated 10.10.2017.”*

11. Besides that, it was also found by the learned Family Court that it was unbelievable that any woman would want to live in a matrimonial home where her modesty was in danger. Such observation was made by the learned Family Court in view of the fact that in her cross-examination, the appellant/wife had deposed that despite all the atrocities, she still wanted to

live in the matrimonial home. Still further, on the basis of medical evidence, it was found that in the incident which took place on 21.07.2018, the respondent/husband was injured and took the treatment from the Hospital. The said version of the respondent/husband had found due corroboration from the testimony of PW4.

12. 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 behaviour 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 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”.

13. If the facts of the present case and the findings of learned Family Court are examined in light of the law laid down by the Hon'ble Supreme Court in the aforesaid judgments, it would come out that acts and conduct of the appellant/wife whereby she had levelled allegations of rape and molestation against her father-in-law and brother-in-law certainly amount to cruelty. It is so observed in view of the fact that during investigation of FIR No.336 *ibid*, the police had dropped offences under Sections 354-A, 376, 506 and 511 of IPC. It is settled law that when false accusations of sexual violence are levelled by the wife against the close relatives of the husband and when such allegations are found to be false, the same amounts to cruelty to the husband. Still further as noticed above, the defence taken by the appellant/wife was not found to be believable by the learned Family Court. Her explanation in not lodging the FIR in respect of the alleged sexual violence in the year 2017 itself for saving the reputation of her husband was not believed by the learned Family Court. Still further, it was also found that if she had been subjected to such cruelty and physical assault by the respondent/husband and his family members, there was no justification for her to stay in the matrimonial home even after such repeated acts.

14. In view of the above, we find that the findings recorded by the learned Family Court are based on the evidence on record and the said findings cannot be said to be suffering from any patent illegality or perversity which may warrant interference by this Court in the present appeal. It could not be shown that any evidence was misread or not taken into consideration. Hence, the same is hereby dismissed.

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

16. At this stage, we may notice that while passing the impugned judgment and decree, no permanent alimony was granted to the appellant/wife by learned Family Court. Therefore, 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

February 20, 2025

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No