

2025:PHHC:028894-DB



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

FAO-1255-2025 (O&M)

Date of decision: 21.02.2025

HARJINDER KAURAppellant
Versus
PARMINDER SINGHRespondent

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

Present:- Ms. Anisha Sharma, Advocate and
Mr. Lakhan Rana, Advocate for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 18.01.2025 passed by learned Principal Judge, Family Court, Tarn Taran (for short the 'Family Court'), whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the respondent-husband, 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-husband, *inter alia*, alleging therein that his marriage with the appellant-wife was solemnized on 21.02.2016, according to Sikh rites and out of the said wedlock, a male child was born on 22.09.2017, who was living with the appellant-wife against the wishes of the respondent-husband. It was further alleged that right from the beginning of the marriage, the appellant-wife used to pick-up the quarrels with the respondent-husband on petty issues and she also threatened him that in case he did not start living separately, she

would commit suicide. The respondent-husband was serving in the Indian Army and whenever he would come on leave, the appellant-wife created disturbance at home and had openly refused to perform her matrimonial obligations. She was under the influence of her mother and family members and would act under their ill-advice. She had also threatened to implicate the respondent-husband and his family members in a false dowry case. She had left the matrimonial house a number of times, but every time she was brought back and that lastly she left the matrimonial home on 22.03.2021 while taking along gold ornaments and valuable clothes against the wishes of the respondent-husband. All efforts to reconcile the matter remained unsuccessful. Terming the aforesaid acts and conduct of the appellant-wife as cruelty, a decree of divorce had been sought for.

3. Upon notice, the appellant-wife entered appearance and filed her written statement, admitting the factum of marriage and birth of the child. It was, however, alleged that the respondent-husband and his family members started taunting the appellant-wife for having brought insufficient dowry, whereas, the fact remained that sufficient dowry, including the cash amount, was given in the marriage. The respondent-husband used to misbehave with the appellant-wife on phone raising the illegal demands of a Bullet Motorcycle and cash amount of Rs.5 Lakhs. It was further alleged that at the time of the birth of the male child, the family members of the appellant-wife had given one gold ring and a valuable wrist watch to the respondent-husband, besides other valuables. Apart from that, an activa scooter 4G was also given, but the respondent-husband and his family

members still remained unsatisfied. In May, 2020, the mother, brother and sister-in-law of the appellant-husband gave merciless beatings to the appellant-wife. In order to save her matrimonial alliance, the family of the appellant-wife had given Rs.2 lakh to the appellant-husband and his family members, but after sometimes they again started raising the demands for dowry. It was further alleged that the brother and sister-in-law of the respondent-husband used to instigate the respondent-husband on phone asking the respondent to put pressure upon her to fulfil their illegal demands. It was yet further alleged that on 06.02.2020, the respondent-husband and his family members in connivance with each other, turned her out of the matrimonial home. With the efforts of her mother, brother and maternal uncle and other relatives, she was rehabilitated in the matrimonial home but again on 20.03.2021, she was given merciless beatings and turned out of the matrimonial home. It was further alleged that the respondent-husband and his family members had misappropriated her Istridhan and due to their acts and conduct, she had been compelled to file a petition under Section 125 Cr.P.C. as well as under the Protection of Women from Domestic Violence Act, 2005.

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

- “1. Whether the petitioner is entitled on the ground of cruelty? OPP
2. Whether the petition is not maintainable? OPR

3. Relief.”

5. In evidence, the respondent-husband appeared as PW-1 and had also examined PW2-Jatinder Singh; PW3-Bachittar Singh and PW4-Gagandeep Singh. On the other hand, the appellant-wife examined herself as RW1 besides examining RW2-Gurjinder Singh; RW3-Satpal Singh and RW4- Tarun Kumar, Junior Associate SBI.

6. The learned Family Court after taking into consideration the rival contentions and evidence on record, allowed the petition filed by the respondent-husband, as noticed above.

7. Learned counsel for the appellant-wife has vehemently contended that the learned Family Court has gravely erred in law in ignoring that it was the respondent-husband and his family members, who had caused cruelty to the appellant-wife. It is further argued that she had been compelled to initiate various proceedings against the respondent-husband. It is further argued that the testimony of the respondent-husband suffers from contradictions, but the said fact has not been taken into consideration by the learned Family Court. It is also argued that merely because the appellant-wife had initiated various proceedings, including the registration of the FIR against the respondent-husband and/or his family members, the same does not *ipso facto* amounts to cruelty. It is further argued that the findings of the learned Family Court that most of the times, the appellant-wife used to stay at her matrimonial home and even when she had stayed at her matrimonial home, she was cooking her food in a different kitchen and, thus, there was no evidence of cruelty committed against her, is

patently illegal. It is, thus, argued that the impugned judgment and decree passed by the learned Family Court being based on conjectures and surmises, 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. A perusal of the findings recorded by the learned Family Court would show that while appearing as RW1, the appellant-wife in her cross-examination had admitted the factum of registration of FIR No. 180 dated 02.10.2021, under Sections 498-A and 406 of IPC at Police Station Sadar, Tarn Taran, but deposed that she did not produce on record the bills of gold ornaments or other dowry articles; that she had also not produced on record the original source/original negative/memory card of the photographs (Mark-B to Mark-P). It was further deposed by her that she had not got conducted any medical examination regarding the alleged maltreatment given to her by the respondent-husband or his family members. It was further deposed by her that she had not filed any petition under Section 9 of the Act. It was, thus, found that she had moved an application to the SSP, Tarn Taran against the respondent-husband and his family members only after receiving the notice of the divorce petition. During investigation of the aforesaid FIR, the allegations made by the appellant-wife against the family members of the respondent-husband were found to

be false, whereas the FIR was only registered against the respondent-husband under Sections 498-A and 406 IPC. The testimony of the appellant-wife as regards the allegations of entrustment and misappropriation against the respondent-husband and his family members were found to be contradictory. It was also found that when after registration of the criminal case, the police had taken the alleged *Istridhan* into its possession, there was no question of misappropriation of the dowry articles as alleged by the appellant-wife. It was further found that during her stay at the matrimonial home, the appellant-wife had never moved any application regarding the alleged harassment or maltreatment by the respondent-husband or his family members. After noticing the filing of the petition under Section 125 Cr.P.C. and another petition under the Protection of Women from Domestic Violence Act, 2005 and further the fact that the latter petition had been dismissed in default, it was observed that the appellant-wife had failed to explain as to why such proceedings were not initiated earlier.

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 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.

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 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 acts and conduct of the appellant-wife had resulted into cruelty towards the respondent-husband. The acts of the appellant-wife have rightly been termed to be cruelty against the respondent-husband. As has been noticed above, the appellant-wife had submitted an application to the police and got registered the aforesaid FIR against the respondent-husband and his family members only after receipt of the notice of the divorce petition. It has been observed by the learned Family Court that the parties got

married on 21.02.2016 and they started living separately since 2021. Thus, for nearly four years when she remained at the matrimonial home, she did not initiate any proceedings, including any complaint to the police authorities regarding the alleged harassment or maltreatment at the hands of the respondent-husband or his family members. The allegations levelled by the appellant-wife were found to be uncorroborated, vague and evasive. Such fact coupled with the fact of the exoneration of the family members of the respondent-husband by the police during investigation of the FIR lodged by the appellant-wife and the factum of the petition under the Domestic Violence Act having been dismissed in default, would clearly show that the acts and conduct of the appellant-wife certainly amounts to cruelty.

13. In view of the above, we do not find that the findings recorded by the learned Family Court suffers from any patent illegality or perversity. It could not be shown that any evidence has been misread or not taken into consideration.

14. No other point has been urged.

15. In view of the above, 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

21.02.2025

himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No