

2025:PHHC:039388-DB



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

FAO-M-184-2011 (O&M)

Date of decision: 03.03.2025

JITENDER SINGH

...Appellant

Versus

VEENA RANI

...Respondent

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

Present:- Mr. Onkar Singh Batalvi, Advocate with
Mr. Nitin Rathee, Advocate; and
Mr. Daman Batalvi, Advocate for the appellant.

Mr. Himmat Singh, Advocate for respondent.

SUDHIR SINGH, J.

CM-3226-CII-2025

Heard.

For the reasons given in the application, the same is allowed and the main case is taken up on the Board today itself for final disposal.

Main Case

Challenge in the present appeal is to the judgment and decree dated 18.03.2011, passed by the learned Additional District Judge, Sonapat (for short 'the trial Court'), whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the appellant-husband, was dismissed.

2. The aforesaid petition had been filed by the appellant-husband, *inter alia*, pleading therein that his marriage with the respondent-wife was solemnized on 21.06.1998 according to Hindu rites but no child was born out of the said wedlock. It was further

pleaded that the appellant-husband belonged to a prominent political family. His father and grandfather were Legislators and Ministers in Haryana and Punjab. The appellant-husband himself was an MLA and later, became an MP in 2009. It was further asserted that from the beginning, the respondent-wife displayed a cruel attitude, and had refused to adjust with the family of the appellant-husband. She had exhibited schizophrenic tendencies and constantly belittled the appellant-husband. Despite efforts to maintain the marriage, the respondent-wife was dissatisfied and she had flaunted superiority and opposed the political career of the appellant-husband. The respondent-wife frequently left the matrimonial home without the consent of the appellant-husband. Eventually, she deserted him in July, 2000, taking along her belongings/valuables and thereafter, had never joined the company of the appellant-husband. It was yet further asserted that the appellant-husband filed a divorce petition on 21.09.2001 on the grounds of cruelty and desertion, but the said petition was dismissed in 2004. An appeal there-against was also dismissed. Subsequently, on 30.08.2004, the respondent-wife staged a protest outside the house of the mother of the appellant-husband and had also used an offensive language against her. It was further asserted that the respondent-wife filed a petition under Section 125 Cr.P.C., levelling false allegations of demand of dowry, harassment and maltreatment. The respondent-wife continued to humiliate the appellant-husband publically, including during the 2005 Haryana Assembly elections. Terming the aforesaid acts and conduct of the respondent-wife as cruelty and desertion, a decree of divorce had been sought for.

3. Upon notice, the respondent-wife entered appearance and filed her written statement, admitting the factum of marriage. However, it was alleged that her family had given cash, gold ornaments, and other valuables in the ring ceremony and wedding, but the family of the appellant-husband was dissatisfied with the same. They used to taunt her about her lower social status. She refuted the allegations of being high-headed or schizophrenic and pleaded that she had tried to adjust in her matrimonial home, but the appellant-husband and his family members constantly maltreated her and sought ways to get rid of her. The respondent-wife claimed that she was forcibly ousted from the matrimonial home on 04.09.2004 with the help of the police, and no efforts were made by the appellant-husband to bring her back. It was further asserted that it was the appellant-husband, who had deserted her without any reason. The respondent-wife further asserted that three months after the marriage, the appellant-husband and his mother demanded Rs.5 lakhs, of which her father had paid Rs.4 lakhs. Furthermore, the appellant-husband and his brother had coerced her to sign two cheques and thereafter, they had withdrawn Rs.1 lakh and Rs. 99,000/- respectively. The factum of the dismissal of the divorce petition and appeal there-against, filed by the appellant-husband was not disputed. The respondent-wife admitted the factum of filing for maintenance under Section 125 Cr.P.C., but denied the allegations about her staging a dharna, as alleged by the appellant-husband.

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

- “1. Whether the respondent has treated the petitioner with such degree of cruelty as would amount to a matrimonial offence and the marriage has irretrievably failed? OPP
2. Whether the respondent has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition? OPP
3. Whether the petition has been filed without a valid cause of action and the claim for dissolution of marriage is not maintainable, as alleged? OPR.
- 3-A. Whether the petition is barred by the principle of resjudicata? OPR
4. Relief”

5. In evidence, the appellant-husband himself appeared as PW-1 and examined PW2-Jai Singh and PW3-Smt. Dhanpati. On the other hand, the respondent-wife examined herself as RW1 and RW2-Dariyao Singh (her father).

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

7. Learned counsel for the appellant-husband has vehemently argued that the impugned judgment and decree passed by the learned trial Court is based on conjectures and surmises. It is further argued that the appellant-husband had led sufficient evidence on record to prove the cruelty and desertion on the part of the respondent-wife, but the same has totally been ignored by the learned Family Court. It is further argued that the Family Court has totally

misread the evidence, as the respondent-wife did not make any genuine effort to resume cohabitation with the appellant-husband. It is further argued that the respondent-wife had made no effort to rejoin the matrimonial home after July, 2000. Even a Panchayat convened by the appellant-husband and his family to resolve the dispute did not yield any result. It is further argued that the parties have been living separately since 2000, and since then, there has been no resumption of the matrimonial ties between them. Thus, it is argued that the marriage between the parties has become unworkable and the appellant-husband is entitled to a decree of divorce on the ground of long separation.

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 findings recorded by the learned Family Court are based on the evidence on record and that it was rightly found that the appellant-husband could not prove on record the alleged desertion against the respondent-wife. It is further argued that it was for the appellant-husband to lead cogent and convincing evidence in respect of the allegations contained in the divorce petition, which he had failed to do so and, therefore, no indulgence is required to be granted to the appellant-husband. It is further argued that merely because the parties have been living separately for a long period, is no ground to grant the decree of divorce, especially when, the respondent-wife has every desire to live in the company of the appellant-husband.

9. We have heard learned counsel for the parties and have also gone through the records of the case, including the impugned judgment and decree. In our opinion, the following questions would arise for adjudication in the present appeal:-

“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 Family Court, requires any interference?

10. The learned trial Court has dismissed the divorce petition filed by the appellant-husband holding that he was not able to prove the desertion. The learned trial Court further observed that the appellant-husband had sought divorce in 2001, on the grounds of cruelty and desertion, but the Court dismissed the case in 2004, finding that the allegations of cruelty were not serious enough and that the couple had resumed cohabitation in April, 2004, whereas the claim of desertion was also dismissed as two years had not elapsed before filing the petition. It was further found that the appellant-husband failed to show any new acts of cruelty after December, 2004, when the earlier petition was dismissed. It was yet further found that there were contradictions in the pleadings and statements of the witnesses of the appellant-husband. It was further found that the efforts to reconcile the dispute were mostly initiated by the father of the respondent-wife, which had contradicted the claim of the appellant-husband that he had tried convening the Panchayats. It was, thus, concluded that the

appellant-husband failed to prove that the respondent-wife had deserted him.

11. Although the appellant-husband was not able to prove the allegations of desertion by way of evidence, 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 nearly 25 years and during this period, there has been no resumption of their relationship and rather, on account of the protracted litigation, the same has got worsened day by day. We may further notice that the parties have been living separately for the last 25 years and there is no resumption of matrimonial ties between the parties since then.

12. In the present case, efforts have been made firstly to resolve the matrimonial dispute through the process of mediation, which is one of the effective modes of alternative mechanism in resolving the personal dispute but the mediation between the parties failed. The parties were directed to be present before the Mediator vide order dated 30.05.2012 passed by a Co-ordinate Bench of this Court. The report of the Mediator dated 31.08.2012 reads as under :-

“Despite the best efforts, the parties could not settle their dispute. Hence, the case is being sent to the Hon’ble Court for adjudication.”

The Coordinate Bench of this Court has repeatedly directed the parties to appear in Court in order to find out the amicable

settlement of the dispute, but to no avail. The order dated 06.09.2023 passed by a Co-ordinate Bench of this Court reads as under:-

“On 18.04.2023, readiness on behalf of the respondent was recorded that she is ready for no other settlement but restitution of matrimonial ties.

Learned counsel for the respondent submits that restitution of matrimonial ties is not possible at this stage and the appellant is ready to part ways on certain terms and conditions.

It appears that amicable settlement is not possible.

Let the main case be set down for final hearing on 06.12.2023.”

13. Indisputably, the parties have been living separately since 2000. In the absence of any resumption of matrimonial obligations and cohabitation between the parties for a long period, there is no possibility of their reunion. The mediation proceedings before this Court, for an amicable settlement of the dispute between the parties, remained unsuccessful. This further speaks of the bitterness of their relationship. 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.

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 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.

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 behaviour 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 behaviour 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.”

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...”

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 2000, 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, there is nothing on record to indicate that since the date of filing of the divorce petition, the respondent-wife had made any effort to join the company of the appellant-husband and/or

had filed any petition under Section 9 of the Act for restitution of conjugal rights.

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

22. We grant liberty to the respondent-wife to move an appropriate application before learned 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.

[SUDHIR SINGH]
JUDGE

[SUKHVINDER KAUR]
JUDGE

03.03.2025
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No