

2025:PHHC:024219-DB



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

FAO-1037-2025 (O&M)

Date of Decision: 15.02.2025

Prabhjot Kaur

...Appellant

Versus

Sunil Kumar

...Respondent

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

Present:- Ms. Harmeet Kaur Chanan, Advocate
for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 10.12.2024 passed by the Additional Principal Judge, Family Court, Gurdaspur (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*, pleading therein that his marriage with the appellant-wife was solemnized on 11.10.2019, but no child was born out of this wedlock. It

was pleaded that the respondent-husband was working as Multi Tasking Staff for the Post Office, whereas the appellant-wife was serving as ETT Teacher at village Naushehra, Tehsil Dinanagar, District Gurdaspur. It was averred by the respondent-husband that the said marriage had not been consummated, as the appellant-wife denied having any physical relations with the respondent-husband. After a few days of marriage, the appellant-wife had left the matrimonial home and started residing with her parents. It was further pleaded that the appellant-wife told the respondent-husband that she wanted to marry another boy, with whom she was having a love affair and she never wanted to perform marriage with respondent-husband. She had threatened the respondent-husband to implicate him in a false criminal case, if he had compelled her to maintain physical relations with her. In the month of January, 2020, the appellant-wife left the matrimonial home in a car belonging to an unknown boy and came at night, without informing the respondent-husband. It was further pleaded that in the month of March, 2020, the appellant-wife again left her matrimonial home without the consent of the respondent-husband and never joined his company thereafter.

3. Upon notice, the appellant-wife entered appearance and filed her written statement denying all the allegations levelled in the petition. It was further pleaded that the respondent-husband treated the appellant-wife with cruelty. It was pleaded by the appellant-wife that after the marriage, the respondent-husband had told her that he was having love affair with some other girl and he had to solemnize marriage with her against his wishes. The respondent-husband used to taunt her by saying that he was a Government employee, whereas she was only an ETT Teacher and was getting a salary of Rs.4,000/- per month. She was harassed, humiliated and pressurized to bring Rs.2 lakh and a motorcycle from her parents. Accordingly, a prayer was made for dismissal of the petition.

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

1. Whether respondent has committed cruelty upon the petitioner? OPP
2. Whether petitioner is entitled for the dissolution of the marriage as prayed for? OPP
3. Relief.

5. In evidence, the respondent-husband himself appeared as PW-1 and examined PW-2 Madan Gopal, PW-3 Sawaran Singh, Stamp Vendor and PW-4 Som Raj, besides tendering documents Ex.P1 to Ex.P6, Ex.PX and Ex.PY. On the other hand, the appellant-wife examined

herself as RW-1 and had also examined Joga Singh as RW-2.

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 she had proved on record that the respondent-husband had treated her with cruelty and harassment for bringing Rs.2 lakh and a motorcycle from her parents. Learned counsel has further submitted that the respondent-husband could not prove, by leading any cogent and convincing evidence that it is appellant-wife, who had refused to maintain physical relations with him. Learned counsel for the appellant-wife further argued that in the petition under Section 13 of the Act, the respondent-husband had sought a decree of divorce on the ground that the appellant-wife had refused to have physical relations with him and therefore, the marriage could not be consummated. It is, thus, argued that this plea could be raised by filing a petition under Section 12 of the Act and not under Section 13 of the Act. It is asserted that the very petition filed by the respondent-husband was not maintainable.

8. We have heard learned counsel for the appellant and have also gone through the impugned judgment and decree passed by the learned Family Court.

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

10. The learned Family Court has found that the appellant-wife had made bald allegations against the respondent-husband that he was having an extra marital relations with other girl/woman and she could not produce any evidence in that regard, which had caused great mental cruelty to the respondent-husband. Learned Family Court has further found that the plea of the appellant-wife that the respondent-husband used to demand money from her or motorcycle in dowry, was false assertion, especially when she had already received her entire *istridhan* and dowry articles before filing of the written statement itself. The learned Family Court has yet further found that the appellant-wife had not allowed the respondent-husband to establish sexual relationship with her and as such, the marriage of the parties was never consummated, which amounted to mental cruelty to the respondent-husband.

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 findings recorded by the learned Family Court are examined in the light of the aforesaid judgments of the Hon’ble Supreme Court, it would come out that it was established on record that the marriage between the parties did not consummate as the appellant-wife did not allow any access to the respondent-husband for sexual inter-course with her. It was also proved on record that the respondent-husband had submitted an application to the Police (Ex.P6), and another application (Ex.P4) in this regard. The allegations of demand of dowry were also found to be without any

substance and rather it was found that the appellant-wife had already received her entire *Istri dhan* at the time of her separation from the respondent-husband in the year 2020. Thus, we find that the findings of the learned Family Court, which are based on the evidence on record cannot be said to be suffering from any illegality or perversity. It could not be pointed out that any evidence has been misread or not taken into consideration.

13. No other point has been urged.

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

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

**[SUDHIR SINGH]
JUDGE**

**[SUKHVINDER KAUR]
JUDGE**

15.02.2025

Ajay Prasher

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No