

2025:PHHC:039314-DB



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

FAO-M-95-2018 (O&M)

Date of decision: 04.03.2025

KULDEEP SINGH

...Appellant

Versus

DIPTI

...Respondent

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

Present:- Mr. Chetan Mittal, Senior Advocate
with Mr. Mohinder S. Nain, Advocate and
Mr. Himanshu Gupta, advocate for appellant

Mr. Karan Singh, Advocate for the respondent

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 22.03.2017 passed by the learned Additional District Judge, Yamuna Nagar at Jagadhri (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 27.02.2009 as per Hindu rites and out of the said wedlock, a male child was born. It was asserted by the appellant-husband that despite the financial constraints of the respondent-wife's family, the appellant-husband and his family agreed

to the marriage due to her beauty and their social status. Further, it was submitted that in October, 2009, the father of the respondent-wife demanded large sums of money from the appellant-husband, which led to tension and cruelty from her side. The respondent-wife also threatened the appellant-husband when he refused to meet these financial demands. Furthermore, it was pleaded that in May, 2010, the respondent-wife left with her family, taking jewellery and money from the matrimonial house. It was further alleged that efforts were made to contact the elder sister and brother-in-law of the respondent-wife, but all in vain. On 21.05.2010, it was learnt through the newspapers and national news channels that respondent-wife had got registered a criminal case bearing FIR No. 306 dated 21.05.2010 under Sections 406, 498A, 506, 341 IPC at Police Station, City Yamuna Nagar against the appellant-husband and his family members. The said matter was widely telecast bringing disrepute and causing the appellant-husband and family members mental torture and harassment. Terming the aforesaid acts on the part of the respondent-wife as cruelty, a decree of divorce had been sought for.

3. Upon notice, the respondent-wife appeared and filed her written statement, admitting the factum of marriage and birth of the child. However, it was asserted that the petition was not maintainable, as the appellant-husband lacked *locus* and that he had concealed the material facts from the Court. It was claimed that the parents of the respondent-wife spent a large sum on the marriage, providing substantial dowry and Istridhan. The respondent-wife further alleged that despite her father booking a Mercedes car for the ceremony, the

appellant-husband rejected it, claiming it not to be of his standard and rather demanded a BMW. The respondent-wife further asserted that in March, 2009, during a visit to Yamuna Nagar, the appellant-husband and his family demanded a BMW and cash. Despite the birth of their son in December, 2009, the appellant-husband and his family continued to maltreat the respondent-wife, demanding goods and articles from her parents. Furthermore, the respondent-wife alleged that she was forced to perform household chores like a servant and was not allowed to perform religious rituals. The appellant-husband had also issued threats of taking away the child. She was ousted from the matrimonial home. It was further alleged that the atrocious acts and conduct of the appellant-husband and his family members, had compelled her to lodge the aforesaid FIR against the appellant-husband and his family members.

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

- i) Whether the petitioner is entitled to a decree for divorce by dissolution of marriage, as prayed for? OPP
- ii) Whether the petition is not maintainable in the present form? OPR
- iii) Whether the petitioner has no locus standi to file the present petition? OPR
- iv) Whether the petitioner is estopped from filing the present petition because of his own act and conduct? OPR
- v) Whether the petitioner has no cause of action to file the present petition? OPR
- vi) Relief.

5. In evidence, the appellant-husband examined himself as PW6 besides examining Suresh Kumar as PW-1; Avneesh Bansal as PW2; Udayveer as PW3; Raghuveer Singh as PW4; Rustam Singh as PW5; and ASI Satish Kumar as PW7. On the other hand, the respondent-wife examined herself as RW1 and Roshan Lal as RW-2 besides tendering documents Ex. D2 to Ex. D7 and Mark F to Mark V.

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

7. Learned Senior counsel appearing for the appellant-husband has vehemently contended that the appellant-husband has suffered cruelty at the hands of the respondent-wife and he is still suffering it because of the protracted litigations. Still further, it is argued that it was the respondent-wife, who had deserted the appellant-husband without any reasonable cause. It is yet further submitted that in the FIR registered by the respondent-wife for various offences, including the offence under Section 498-A IPC, the police after having found the allegations contained therein baseless and false, had filed the cancellation report. It is further pointed out that the Protest Petition filed by the respondent-wife was dismissed by the Chief Judicial Magistrate, Yamuna Nagar, vide order dated 14.09.2018. Further, he submits that parties have been living separately since 2010 and there is nothing left in their marriage, and it has become a dead wood.

8. On the other hand, learned counsel for the respondent-wife, while defending the findings recorded by the learned trial Court, submits that the allegations levelled by the appellant-husband in the divorce petition, were general and vague in nature and the same could not be proved by way of any cogent and convincing evidence. Further, the learned counsel for the respondent-wife submits that the respondent-wife was only availing the legal remedies available to her, and this act does not amount to cruelty. It is, thus, argued that the learned trial Court has rightly concluded that the appellant-husband could not prove the allegations levelled in the divorce petition by way of any cogent and convincing evidence. Accordingly, it is prayed that appeal be dismissed.

9. We have heard learned counsel for the parties and have also gone through the impugned judgment. 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 trial Court, requires any interference?

10. The learned trial Court has found that the appellant-husband, has miserably failed to specify instances to substantiate the claim that the respondent-wife's family used to demand money from

him or any other form of cruelty. Further, it was found that the appellant-husband's allegations about payments made to the father of the respondent-wife lacked proof and his claims of financial demands were unverified. It was further found that the legal actions, including the registration of the FIR by the respondent-wife could not be considered as cruelty as the same was done by her being her legal rights. Still further, it was found that the action of the appellant-husband in lodging a missing report and alleging theft by the respondent-wife, seemed to be an attempt to cover up the marital issues.

11. Although the appellant-husband was unable to provide evidence of physical cruelty or desertion before the trial Court, 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 more than fifteen years and during this period, there has been no resumption of their relationship and rather, on account of protracted litigation, the same has got worsened day by day.

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 Mediation Centre, firstly, vide order dated 04.09.2018 passed by the Co-ordinate Bench of this Court. Separate sessions were held on 26.09.2018, 15.10.2018, 29.10.2018 and 30.11.2018. The report dated 05.12.2018

of the Mediator mentioned that the settlement could not be reached.

The said report reads as under:-

“As per report dated 05.12.2018 (Flag-A) of Mr. V.K. Kapoor, Mediator, inspite of the best efforts, the parties could not reach at any amicable settlement. Hence, the cases, which are fixed for 11.12.2018, be sent to the Branch concerned for listing the same before the Hon’ble Bench.”

13. Further, another effort was made for an amicable settlement vide order dated 27.05.2022 passed by the Co-ordinate Bench of this Court. Separate sessions were held with the parties on 01.06.2022 and 14.07.2022. However, no amicable settlement was arrived at. The report of the Mediator dated 14.07.2022 reads as under:

“Joint and separate sessions were held with both the parties. Parties could not arrive at an amicable settlement. The case is fixed for 24.08.2022 before the Hon’ble High Court. Therefore, the case file be sent back to the Hon’ble High Court for further adjudication.”

14. Indisputably, the parties have been living separately since 2010. In the absence of any resumption of matrimonial obligation 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.

15. 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.

16. 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.

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.”

Still further, in **K. Srinivas Rao v. D.A. Deepa, 2013 (5) SCC 226** has observed that when a marriage is dead for all purposes, it cannot be revived by Court's verdict, if the parties are not willing since marriage involves human sentiments and emotions and if they have dried up, there is hardly any chance of their springing back to life on account of artificial reunion created by the Court's decree.

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.”

17. It may further be noticed that during the hearing of the arguments, learned counsel for the appellant-husband has produced on record a copy of the order dated 14.09.2018, passed by the Chief Judicial Magistrate, Yamuna Nagar at Jagadhari, whereby the protest petition filed by the respondent-wife has been dismissed. It has been observed by the Chief Judicial Magistrate that all the allegations

seemed to be baseless. The complainant in her complaint had put blanket allegation over her husband and family members and that there was no prime evidence against the accused to disbelieve the police report and to summon the accused. The learned counsel appearing for the respondent-wife could not point out that the said order has been altered or modified by any higher Court in an appeal or revision.

18. 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 2010, 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.

19. It may also be noticed that in **Rani Narasimha Sastry vs. Rani Suneela Rani, 2019 (Suppl.) Civil Court Cases 201**, it has been held by the Hon'ble Supreme court that if the wife initiates criminal proceedings against the husband and his family members and if ultimately they are acquitted of the charges framed against them, the same amounts to cruelty and divorce can very well be granted on the said ground.

20. Still further, there is nothing on record to indicate that since the date of filing of the divorce petition by the appellant-husband, the respondent-wife had made any effort to join his company or come back to the matrimonial home and/or had filed any petition under Section 9 of the Act for restitution of conjugal rights.

21. 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. Question No.1 is answered in affirmative.

22. 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.

23. Decree sheet be prepared accordingly.

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

25. Further, the respondent–wife will also be at liberty to make an application under Section 25 of the Hindu Marriage Act seeking 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**

04.03.2025
Himanshu/A

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No