

2025.PHHC:035889-DB



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

FAO-919-2025 (O&M)

Date of decision: 12.03.2025

VARINDER KAURAppellant

Versus

AMRITPAL SINGHRespondent

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

Present:- Mr. Shubham Goyal, Advocate for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 07.11.2024 passed by learned Additional Principal Judge, Family Court-I, Jalandhar (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 27.11.2005, according to Sikh rites and out of the said wedlock one child, namely, Joydeep Singh was born on 28.09.2006. It was further asserted that the status of the respondent-husband was clearly disclosed to the appellant-wife before the marriage. However, immediately after the marriage, the appellant-

wife started insulting the respondent-husband by saying that she had never intended to marry him, but it was so done under the pressure from her family. She created scenes and openly said that she did not want to live with her in-laws. Her behaviour was rude and insulting towards the parents of the respondent-husband. On 20.03.2006, she left the matrimonial home for her parental house, but she was brought back on 03.04.2006. On the occasion of *Rakhi*, she again went to her parental house, but refused to come back. A Panchayat was convened and the appellant-wife agreed to come back on the condition of living separately from the family of the respondent-husband. In order to save their marriage, the parties started living separately, but the appellant-wife pressurized the respondent-husband to live with her in her parental house. She filed a complaint to the Women Cell, Kapurthala on 08.09.2007 and gave in writing on 18.12.2007, that she did not want to reside with the respondent-husband. She had filed a petition against the respondent-husband and ultimately, a compromise was effected in the Lok Adalat on 05.06.2008 at Nakodar and the parties started residing separately in a rental accommodation. However, the appellant-wife did not allow the grandparents of the child to meet him. In December, 2016, the appellant-wife took the minor child with her to her parental house but came back only after a great persuasion. In January, 2017, the appellant-wife refused to have sexual intercourse with the respondent-husband on the ground that she would not allow him the marital bliss, unless he got separated from his family members. From the WhatsApp chat of the appellant-wife, the respondent-husband came to learn that she was talking to one

Sukhmander Singh, who was working as a clerk at Lohian School and the chatting with the said person was of an intricate and personal nature. When confronted, she admitted of her liking for said Sukhmander Singh. A Panchayat was convened on 08.05.2018 and she was allowed to take her articles from the matrimonial home and while collecting the said articles, she had threatened the respondent-husband to make his life hell and further told that in case the respondent-husband had filed divorce petition, she would involve him in a false case. The appellant-wife also filed a complaint on 08.03.2018. 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. However, it was alleged that the respondent-husband and his family members had taunted the appellant-wife for having brought insufficient dowry. At one point of time, the respondent-husband and his parents started demanding a car from her and her parents. Compelled by the circumstances, the appellant-wife submitted an application to the SSP, Kapurthala, which was sent to the Women Cell, Kapurthala, but as the respondent-husband was working as a typist in the Judicial Court Complex, Sultanpur, Lodhi, he managed with the Police authorities not to take any action against him. On 08.08.2006, when she was pregnant, the respondent-husband brought her to Lohian and left her at Bhagat Singh Chowk. The entire expenses of her delivery were borne by her parents and when the respondent-husband did not pay any maintenance to her or bring her

back to the matrimonial home, she had filed a petition under Section 125 Cr.P.C. It was further alleged that the respondent-husband had neglected the appellant-wife and the minor child. The allegations regarding cruelty were denied and it was rather pleaded that she had been subjected to mental torture, humiliation and cruelty at the hands of the respondent-husband and his family members. It was further alleged that the respondent-husband had levelled false and frivolous allegations against the character of the appellant-wife.

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

- “1. Whether respondent has treated the petitioner with cruelty? OPP
2. Whether petitioner is entitled to the dissolution of marriage by a decree of divorce on the ground of cruelty? OPP
3. Whether present petition is maintainable ?OPP
4. Whether the petitioner has not come to the Court with clean hands?OPR
5. Whether the petitioner is estopped by his own act and conduct from filing of present petition?OPR
6. Whether petitioner himself has withdrawn from the company of respondent and dissented her without any reasonable and probable cause?OPR
7. Relief.”

5. In evidence, the respondent-husband appeared as PW-1 and had also examined PW2-Sharanjit Singh and PW3-Jaininder Kumar Jain, besides tendering certain documents Ex.PA, Ex.PA/1. On the other hand, the appellant-wife examined herself as RW1.

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 finding recorded by the learned Family Court as regards telephonic talks between the appellant-wife and said Sukhmander Singh is totally perverse as the respondent-husband had never pleaded in his petition that the appellant-wife was having any extra marital relations with said Sukhmander Singh. It is further argued that mere telephonic conversation or WhatsApp chatting cannot be said to be a ground to infer that there was any adulterous relationship between the appellant-wife and said Sukhmander Singh. It is further argued that Ex.P6 and/or Ex.P-8, being electronic evidence was not proved on record as per the provisions of Indian Evidence Act, inasmuch as the laptop of the respondent-husband (alleged original source of the WhatsApp chat and conversation) was never produced in Court and, therefore, the same could not have been made basis for recording the finding of cruelty against the appellant-wife. It is further argued that the finding of learned Family Court that in terms of Section 119 of Bharatiya Sakshya Adhinyam (BSA), the Court might presume the existence of any fact which is deemed likely

to have happened, is not tenable in the eyes of law as the presumption cannot substitute the mandate of law, which provides proof of electronic evidence in a specific manner. The learned counsel further submits that moving of application(s) by the appellant-wife to the Police authorities, was in exercise of her legal right as against the cruelty committed upon her by the respondent-husband and his family members and, thus, the same could not have been treated as the basis of cruelty by her against the respondent-husband and/or his family members. Thus, it is contended that the impugned judgment and decree 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. It may be noticed that it was the specific case of the respondent-husband that the appellant-wife had been chatting and conversing with said Sukhmander Singh. He had produced on record Ex.P6 and also produced Ex.P9. Though, the appellant-wife had resisted production of such evidence as regards its admissibility in evidence, yet the learned Family Court has found that the certificate given by the respondent-husband related to the correctness of WhatsApp chat, conversation and call details record having been downloaded by him without any alteration or addition. It was further

found that the laptop from which said data had been downloaded, was duly produced by the respondent-husband in the Court during his deposition. The technical objections raised by the counsel for the appellant-wife during the course of hearing did not find any favour with the learned Family Court. It was further observed that in her cross-examination, the appellant-wife admitted that the matter between the parties was compromised on 05.06.2008 and they had started living separately. It was further found that even in the matrimonial home, the parties had resided separately on the first floor. In her cross-examination, she had admitted the factum of having known said Sukhmander Singh and her chatting with him, besides the telephonic conversation. It was further found that the denial of the appellant-wife as regards WhatsApp chatting, conversation, messages and manuscripts of call details was halfhearted. It was further observed that it was improbable that the appellant-wife did not know as to whether she had ever sent her personal photographs to Sukhmander Singh from her mobile number. On the basis of the WhatsApp chat between the appellant-wife and said Sukhmander Singh, it was concluded by the learned Family Court that the same could not be treated to be general in nature.

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 facts of the present case and 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 in venturing outside the matrimonial alliance by maintaining her contact in the form of WhatsApp chat, private conversation, sending him her personal photographs and the nature of conversation being intimate, cannot be said to be insufficient to hold that she had treated the respondent-

husband with cruelty. As has been found by the learned Family Court, the appellant-wife could not contradict the evidence led by the respondent-husband as regards the aforesaid conduct of the appellant-wife and rather, it was found that the same was halfhearted in nature. It may be noticed that when the CD (Ex.P8) containing the conversation between the appellant-wife and said Sukhmander Singh was played in the Court, the appellant-wife had denied that it was her voice, but when called upon to give the voice sample, she had flatly refused from doing so. The learned Family Court has rightly found that refusal of the appellant-wife from giving her voice sample could not be treated as substantial evidence, but on the face of the availability of ocular and documentary evidence against her, such denial further fortified the stand of the respondent-husband qua the acts of cruelty committed by the appellant-wife. We find that the findings recorded by the learned Family Court are based on evidence led by the parties. 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. 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.

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

**[SUDHIR SINGH]
JUDGE**

**[SUKHVINDER KAUR]
JUDGE**

12.03.2025

himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No