

2025:PHHC:048310-DB



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

Decided on: 24.03.2025

1. FAO-M-103-2016 (O&M)

Rajesh Yadav

...Appellant

Versus

Smt. Asha Devi

...Respondent

2. FAO-M-204-2016 (O&M)

Smt. Asha Devi

...Appellant

Versus

Rajesh Yadav

...Respondent

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

Present:- Mr. Rajat Mor, Advocate,
for appellant-husband.

Ms. Ruchi Sekhri, Advocate,
for respondent-wife.

SUDHIR SINGH, J.

This order shall dispose of above noted two appeals, as the same have arisen out of a common judgment and decree dated 10.12.2015 passed by the learned Additional District Judge, Rewari (for short 'the trial Court'), whereby while deciding the petition under Section

13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the husband (Rajesh Yadav), a decree of judicial separation was passed under Section 13-A of the Act (as described under Section 10 (2) of the Act).

2. FAO-M-103-2016 has been preferred by the husband (Rajesh Yadav) challenging the said decree on the ground that instead of passing a decree for judicial separation, the learned trial Court ought to have granted the decree of divorce, whereas FAO-M-204-2016 has been filed by the wife (Asha Devi) challenging the grant of decree of judicial separation. The facts are taken from FAO-M-103-2016.

3. The aforesaid petition had been filed by the husband (hereinafter referred to as 'the appellant-husband') before the trial Court, *inter-alia*, pleading therein that his marriage with the respondent-wife was solemnized on 13.02.2015 as per Hindu rites and out of the said wedlock, a son, namely, Parteek, was born. The appellant-husband further pleaded that at the time of marriage, he was employed with a firm of Chartered Accountant as Field Assistant at Delhi. After the marriage, the respondent-wife pressurized him either to quit the job or to take her along with him at Delhi. It was further pleaded that the respondent-wife, under the influence of her mother, started levelling false allegations against the appellant-husband

and his family members. Her behaviour towards the appellant-husband and his family members was not good and she used to insult and humiliate them. She threatened the appellant and his parents to implicate them in false case. She also threatened to commit suicide. Earlier, on 23.01.2007, the appellant-husband filed a petition for divorce in a Court at Rewari, but the same was withdrawn on the assurance of the respondent-wife that she would mend her ways. The appellant-husband again filed a divorce petition on 27.08.2010, but the same was also withdrawn on 23.08.2011. It was pleaded that on 01.08.2010, the respondent-wife had stolen the key of her mother-in-law with an ulterior motive and in that regard, the matter was reported to the police by the father of the appellant-husband, whereupon DDR No.358 dated 02.08.2010 was registered against the respondent-wife. On 11.08.2010, the father of respondent-wife took her to her parental home and thereafter, she never came back to the matrimonial home.

4. Upon notice, the respondent-wife entered appearance and filed her written statement denying the allegations in the petition. It was specifically denied that the behaviour of the respondent-wife was not good towards the appellant-husband. Rather, it was pleaded that she had suffered harassment, taunting, teasing and mental cruelty at the hands of the appellant-husband and his family

members. It was further pleaded that she was given beating by the appellant-husband on account of bringing insufficient dowry. Due to this reason, she had filed a complaint under Sections 498-A/406/34 IPC against the appellant-husband and his family members. In fact, the appellant-husband had deserted her for bringing inadequate dowry. Accordingly, a prayer for dismissal of the petition was made

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

- 1) *Whether the petitioner has been treated with cruelty at the hands of the respondent? If so, its effect? OPP*
- 2) *Whether the petitioner is entitled for decree of divorce under Section 13 (1) (ia) of HM Act on the ground alleged in the petition? OPP*
- 3) *Whether the petition of the petitioner is not maintainable in the present form? OPR*
- 4) *Whether the petitioner has no cause of action to file the present petition? OPR*
5. *Whether the petitioner has concealed the true and material facts from the Court? OPR*
6. *Relief.”*

6. In evidence, the appellant-husband himself stepped into the witness box as PW-1 and examined PW-2 Ram Kishan (his father). On the other hand, the respondent-wife herself appeared as RW-1 and examined her father Birender Singh as RW-2.

7. The learned trial Court, after taking into consideration rival contentions of the parties and evidence

on record, partly allowed the petition filed by the appellant-husband, as noticed above.

8. Learned counsel for the appellant-husband has vehemently argued that the learned trial Court has returned a finding that the Court could not lose sight of the fact that the wife had raised finger towards her father-in-law stating that he was having an evil eye upon her and that both the parties had lost faith in their relationship and they were committing cruelty towards each other by levelling allegations of one kind or the other. It is, thus, argued that in such circumstances, it was incumbent upon the learned trial Court to grant a decree of divorce instead of judicial separation. It is also argued that the decree for judicial separation is nothing, but a step in aid to the decree of divorce. It is further argued that the marriage between the parties was solemnized on 13.02.2005 and the divorce petition was filed on 23.07.2013. The parties have been living separately since 2010 and thus, keeping in view the long separation between them, the marriage has become a dead wood for all purposes. It is also argued that during the aforesaid period of separation, no effort was made by the respondent-wife to join the company of the appellant-husband or move an application under Section 9 of the Act. It is further argued that in the FIR got registered by the respondent-wife under Sections 498-A, 323, 325, 354, 406,

506 IPC, the appellant-husband and his family members, were acquitted by the trial Court vide judgment dated 03.10.2015 and the said finding has not been altered or modified in an appeal or revision, as the case may be, by any higher Court.

9. On the other hand, the learned counsel for the respondent-wife has vehemently contended that the learned trial Court has wrongly held that the respondent-wife had caused cruelty towards the appellant-husband and his family members. Even otherwise, it is contended that if, the findings recorded by the trial Court are admitted to be true at their face value, then also it would be apparent that the appellant-husband has also been held guilty of committing cruelty towards the respondent-wife. Learned counsel for the respondent-wife has further contended that when the appellant-husband himself has been held guilty of committing cruelty towards the respondent-wife, he could not have been held entitled to the decree of judicial separation. It is also argued that acquittal of the appellant-husband and his family members in an FIR got registered for various offences, including the matrimonial offences, is no ground to hold that she had committed any cruelty to her husband or in-laws. Learned counsel for the respondent-wife has further argued that merely because the parties have been living separately for a long time, is no

ground to grant the decree of divorce, especially when the respondent-wife is still ready and willing to live in the company of the appellant-husband.

10. We have heard learned counsel for the parties and have also gone through the records of the case.

11. In our opinion, the following questions would arise for adjudication in the present appeal:-

- “1. Whether, in view of a long separation between the parties, a decree for judicial separation could be converted into that of divorce?
2. If the answer of question No.1 is in affirmative, whether the decree of judicial separation is required to be converted into a decree of divorce?”

12. Now, 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 14 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.

13. 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 disputes, but the mediation between the parties failed. The parties were directed to be present before the Mediator vide order dated 06.09.2016 passed by a Co-ordinate Bench of this Court.

The report dated 04.11.2016 of the Mediator, reads as under:-

“Single session took place. Respondent wife never joined mediation proceedings despite notices. Hence, the case file is sent back to the Hon’ble High Court.”

14. Thereafter, vide order dated 22.02.2017, parties were again directed to appear before the Mediation and Conciliation Centre of this Court. Report dated 16.03.2017 of the Mediator reads as under:-

“Single as well as separate sessions held with the parties. However, the parties could not reconcile the matter. Therefore, the case is sent back to the Hon’ble High Court.”

15. 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.

16. It is well settled that in order to constitute a 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.

17. 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."

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.”

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, it itself would amount to mental cruelty to both the parties.

19. As would appear from the impugned judgment and decree passed by the learned trial Court, the appellant-husband and his family members stood acquitted in the FIR got registered by the respondent-wife. The said FIR was in respect of various offences, including the offence under Section 498-A IPC. There is no material on record that the finding of acquittal in the said FIR recorded by the learned trial Court vide judgment dated 03.10.2015 has been altered, modified or set aside by any higher Court. 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. Another fact, which needs to be noticed is that the learned trial Court has also found that the respondent-wife had levelled allegations against the character of her father-in-law saying that he was having an evil eye upon her, but she could not substantiate the said plea by leading any cogent or convincing evidence.

21. 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 her company or bring her back to the matrimonial home and/or had filed any petition under Section 9 of the Act for restitution of conjugal rights.

22. 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.

23. As a consequence to the decision of Question No.1, the decree of judicial separation dated 10.12.2015 passed by the learned trial Court is converted into a decree of divorce. The impugned judgment and decree passed by the learned trial Court, is modified and the marriage between the parties is dissolved by a decree of divorce. Question No.2 is answered, accordingly. Consequently, the appeal i.e.FAO-M-103-2016 filed by the husband is allowed, whereas FAO-M-204-2016 filed by the respondent-wife is dismissed.

24. Decree sheet be prepared accordingly.

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

26. However, the respondent-wife will be at liberty to move an appropriate application for grant of permanent alimony before the learned Family Court. We make it clear that if any such application is moved, the same shall be decided by the learned Family Court in accordance with law, preferably within a period of six months.

[SUDHIR SINGH]
JUDGE

[SUKHVINDER KAUR]
JUDGE

24.03.2025

Ajay Prasher

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No