

2025.PHHC.033529-DB



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

**FAO-671-2017 (O&M)**

**Date of decision: 20.02.2025**

KULDEEP SINGH

...Appellant

Versus

VEENA DEVI

...Respondent

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

Present:- Mr. S.S Swaich, Advocate for appellant

Mr. Ajay Ghangas, Advocate and  
Ms. Mehak Ghangas, Advocate for the respondent

**SUDHIR SINGH, J.**

Challenge in the present appeal is to the judgment and decree dated 13.10.2016 passed by the learned District Judge, (Family Court), Karnal (for short 'the Family 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 15.06.1981 as per Hindu rites and out of the said wedlock, a male child was born. It was contended that from the very beginning, the respondent-wife exhibited controlling and abusive behaviour, with her family frequently interfering in their lives. Further, the respondent-wife brother's was having criminal

background and the appellant-husband was having threats from them. The respondent-wife made false accusations, including accusing the appellant-husband of attempting to kill her which resulted in a protracted trial, wherein the appellant-husband was finally acquitted. It was further contended that the respondent-wife had been abusive, disrespectful and disruptive to the appellant-husband's professional and personal life, causing him significant mental distress. Also, since 1993, the respondent-wife deserted the appellant-husband and had repeatedly attempted to humiliate him with false complaints. Despite the appellant-husband's efforts to save the marriage, the respondent-wife continued her abusive behaviour and had shown no intention to reconcile. It was contended that given the prolonged separation and threats, the relations between the parties had become irreparable.

3. Upon notice, the respondent-wife appeared and filed her written statement alleging that the appellant-husband married one Neela without divorcing her and had concealed the material facts. The marriage took place in 1981, but soon thereafter, the appellant-husband began abusing and criticizing her. It was further asserted that the respondent-wife endured physical abuse at the hands of the appellant-husband and in 1993, the appellant-husband attempted to kill her by pouring kerosene oil on her. Although, the respondent-wife filed an FIR, yet the appellant-husband manipulated the police to dismiss the case. Further, in 2009, she discovered that the appellant-husband was living with Neela and their children. When confronted, the appellant-husband gave beatings to her and pressurised her to sign the divorce papers. The respondent-wife also accused him of illegally

transferring property to his son. Furthermore, the respondent-wife explicitly denied the accusations of the appellant-husband accusations about her family and behaviour, claiming that the appellant-husband was the one who abused and had ousted her from the matrimonial home.

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

- i) Whether the respondent has treated the petitioner with cruelty? OPP
- ii) Whether the respondent has deserted the petitioner continuously for a period of more than two years preceding the petition? OPP
- iii) Relief.

5. In evidence, the appellant-husband examined himself as PW-1 and had also examined Constable Ajay Singh as PW2 and HC Wazir as PW3. On the other hand, the respondent-wife examined herself as RW-5 and had also examined Pardeep Kumar, Civil Ahlmad as RW1; Sohrab Khurana as RW-2; Tirath Ram Koushesh as RW3; Rakesh Sharma, Assistant Accountant as RW4; and Virender as RW6.

6. The learned Family 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 counsel for the appellant-husband has vehemently contended that the appellant-husband was acquitted by the trial Court in a criminal case instituted against him by the respondent-wife, which clearly indicated that he was subjected to mental cruelty

and harassment. It is further submitted that the respondent-wife has never shown any respect or love towards him and his family as her behaviour was very rude irrespective of the efforts made by the appellant-husband on various occasions. It is yet further submitted that the appellant-husband had led sufficient evidence to prove the cruelty on the part of the respondent-wife, but the same has been totally ignored by the learned Family Court. It is also argued that the parties have been living separately since 2009 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 Family 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. It is further submitted that the appellant-husband got married to one Neela without obtaining divorce from the respondent-wife and did not come to the Court with clean hands. It is also submitted that the appellant-husband cannot be given benefit of his own wrongs in terms of Section 23 of the Act, which specifically bars to raise any plea, which would directly or indirectly be of any benefit to the person claiming the same. Thus, a prayer has been made for dismissal of the appeal.

9. We have heard learned counsel for the parties and have also gone through 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 Family Court has found that the appellant-husband, by his infidelity, subjected the respondent-wife to extreme cruelty and he could not be allowed to plead that the respondent-wife used to behave like a dictator and leave the matrimonial home without informing him. The allegations made in the petition for obtaining a decree for divorce, namely, cruelty and desertion on the part of the respondent-wife, did not find any fault with the learned Family Court. It was further found that the respondent-wife had a justified reason to live away from the appellant-husband after she became aware of his infidelity. Furthermore, the respondent-wife was not the deserting spouse. The appellant-husband neglected her, leaving her to live alone while he stayed with another family. The respondent-wife had a justified reason to separate from the appellant-husband due to the appellant-husband's conduct. The testimony of the witnesses, including the son of the parties, who appeared as RW-6, corroborated the stand of the respondent-wife that the appellant-husband secretly married another woman and threw the respondent-wife out when she discovered the truth. This established that the appellant-husband was the one who deserted her. The appellant-husband's claims of cruelty, abuse, and property disputes were not supported by credible evidence.

It has also been observed by the learned Family Court that allegations against the family of the respondent-wife were unfounded, as the appellant-husband failed to present evidence of intimidation or any related complaints.

11. Although the appellant-husband was unable to provide evidence of physical cruelty or desertion before the Family 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 vide order dated 04.07.2019 passed by the Co-ordinate Bench of this Court. Separate sessions were held vide reports dated 26.07.2019, 29.08.2019, 05.09.2019 and 30.09.2019. The report dated 30.09.2019 of the Mediator indicates that the settlement between the parties could not be reached. The said report reads as under:-

*“Mediation proceedings held at length. Despite best efforts, the parties could not reach to any amicable settlement. As such, the case file be sent back to the Hon’ble High Court.”*

13. Further, another effort was made for an amicable settlement vide order dated 22.04.2022 passed by the Co-ordinate Bench of this Court. The said order reads as under:

*“Mr. Sachin Jain, Advocate appointed Mediator for this case for mediation of the parties. After interaction with the parties, Mr. Sachin Jain, Mediator, submits that the mediation has not been successful today.*

*Learned counsel for the appellant submits that the appellant is offering 7 acres each to the respondent and her son out of his 20 acres land to resolve the dispute between the parties.*

*Adjourned to 27.05.2022.*

*The respondent along with her son is directed to be present in the Court on the next date of hearing.”*

14. However, despite the aforesaid efforts, the settlement between the parties could not reach and this Court has finally heard the arguments of the learned counsel for the parties, as noticed above.

15. Indisputably, the parties have been living separately since 2009. 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.

16. 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.

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 2009, 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 further be noticed that the learned counsel for the respondent-wife could not show that the finding of acquittal recorded

in the FIR lodged by the respondent-wife has been altered or modified in an appeal or revision. 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 Family 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. Further, the respondent-wife will be at liberty to move an application before the Family Court under Section 25 of the Act seeking permanent alimony. If any such application is filed by the respondent-wife, the same shall be considered and decided by the Family Court, in accordance with law, preferably within a period of 06 months from the date of filing thereof.

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

**[ SUDHIR SINGH ]  
JUDGE**

**[ SUKHVINDER KAUR ]  
JUDGE**

20.02.2025  
Himanshu

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No