

2025:PHHC:024656-DB



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

FAO-1010-2025 (O&M)

Date of decision: 14.02.2025

SUNITA @ DHANI

.....Appellant

Versus

SUDHIR KUMAR

.....Respondent

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

Present:- Mr. A.D.S. Sukhija, Advocate for the appellant.

SUDHIR SINGH, J.

CM-3009-CII-2025

For the reasons given in the application, the same is allowed and the delay of 57 days in re-filing the appeal is condoned.

FAO-1010-2025

Challenge in the present appeal is to the judgment and decree dated 05.08.2024 passed by learned Additional Principal Judge, Family Court, Sirsa (for short the 'Family Court'), whereby, the petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the respondent-husband, was allowed and the marriage between the parties was dissolved by a decree of divorce on the ground of cruelty.

2. The aforesaid petition had been filed by the respondent-husband, *inter alia*, pleading therein that his marriage with the appellant-wife was solemnized, according to Hindu rites and out of the said wedlock two children were born. The respondent-husband had earlier filed a divorce petition, but the same was dismissed in default on 10.04.2014. The appellant-wife was a quarrelsome lady and she would pick up fights with the respondent-husband and his family members on petty matters. She used to leave the matrimonial home for her parental house without the consent of the respondent-husband, but she was brought back by convening various Panchayats. At the insistence of the appellant-wife, the respondent-husband started living separately, but the behaviour of the appellant-wife did not change. She had lodged a criminal case bearing FIR No.124 dated 15.05.2013 under Sections 498-A, 406, 506 and 323 IPC at Police Station Bhattu Kalan, Fatehabad. In October, 2012, she had consumed poison in order to pressurize the respondent-husband, but she was saved by providing her a timely treatment. She had also filed a complaint under the Protection of Women from Domestic Violence Act, 2005. The respondent-husband had been acquitted in the aforesaid FIR. It was further alleged that the appellant-wife had been residing in her parental house for more than a decade.

3. Upon notice, the appellant-wife entered appearance and filed her written statement, admitting the factum of marriage and birth of the children. However, it was alleged that the respondent-husband and his family members were greedy persons and they were not happy with the dowry articles. They started harassing the appellant-wife to

bring motorcycle from her parents and had also put an evil eye upon the land owned by her in her parental property. She had been ousted from the matrimonial home on both the occasions of her pregnancy, but she was brought back on the condition of getting the land transferred in the name of the respondent-husband. On 19.07.2012 at about 03.00 a.m. her father-in-law had outraged her modesty. Similar acts were repeated by her father-in-law on 30.07.2012 at about 11.00 p.m., when she was sleeping in the Verandah of the house. It was further alleged by her that when she had brought these facts to the notice of her husband, he and his family members, rather abused her and they had even tried to kill her by administering her poison in October, 2012. It was further alleged that the respondent-husband had treated the appellant-wife with cruelty and had also physically and mentally tortured her by giving her severe merciless beatings and throwing her out of the matrimonial home. It was further asserted that the aforesaid criminal case had been registered against the respondent-husband and his family members for the said acts of harassment and giving beatings and demands of dowry.

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

- “1. Whether petitioner is entitled to a decree of divorce from the respondent on the grounds mentioned in the petition, as alleged? OPP
2. Whether the petition is not maintainable in the present form? OPR

3. Whether the petitioner has no cause of action and locus standi to file the present petition? OPR
4. Whether the petitioner has not come to the Court with clean hands and has suppressed the true and material facts from the Court? OPR
5. Relief.”

5. In evidence, the respondent-husband appeared as PW-1 and PW2-Ram Swaroop Jakhar, besides tendering documents Ex.P1 to P3. On the other hand, the appellant-wife examined herself as RW1 and RW2-Gomati and had also tendered documents Ex.R1 and Ex.R2; Mark-A to Mark-D.

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 argued that the impugned judgment and decree passed by the learned Family Court is based on conjectures and surmises. It is further argued that the allegations levelled by the respondent-husband were not proved by cogent and convincing evidence inasmuch as the respondent-husband and the witnesses produced by him could not give any specific dates or time regarding the alleged acts of cruelty. It is yet further argued that merely because the respondent-husband has been acquitted in the criminal case registered by the appellant-wife is no ground to hold that he had been treated with cruelty, especially

when the acquittal was not earned by the respondent-husband on merits and it was only because the prosecution had failed to prove its case against the respondent-husband beyond the shadow of reasonable doubt. It is further argued that the finding of the learned Family Court that no independent witness from the locality of the parental house or the matrimonial house had been examined by the appellant-wife, is not tenable in the eyes of law as evidence produced on record by her had clearly indicated the acts of cruelty on the part of the respondent-husband and his family members. It is, thus, argued that the respondent-husband could not have been allowed to take benefit of his own wrongs and the impugned judgment and decree passed by the learned Family Court has caused a manifest injustice to the appellant-wife.

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. A perusal of the impugned judgment and decree shows that the stand of the appellant-wife in her written statement that she had been harassed; given beatings and caused mental torture by the respondent-husband and his family members, could not be substantiated by her. It was further found that the criminal case registered by her for various offences, including the offence under Section 498-A IPC, resulted into the acquittal of the respondent-

husband, whereas qua the allegations against father-in-law, the police did not find any substance during the investigation itself. Still further, it was found that the allegations as regards the respondent-husband having performed the second marriage during the subsistence of the first marriage with the appellant-wife, could also not be corroborated and the evidence led in this regard by her was also not found to have any substance.

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 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.

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 drew a fair inference whether the plaintiff has been subjected to mental cruelty due to conduct of the other spouse. In the decision in Samar Ghosh case (Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511) this Court set out illustrative cases where inference of “mental cruelty” can be drawn and they are only illustrative and not exhaustive”.

12. If the findings recorded by the learned Family Court are examined in the light of the aforesaid judgments of the Hon’ble Apex Court, it would come out that the acts and conduct of the appellant-wife in levelling false allegations regarding outraging of her modesty by her father-in-law and registering an FIR for various offences, including the one under Section 498-A IPC, which had ultimately resulted into the acquittal of the respondent-husband, certainly amounts to cruelty. Though, the learned counsel for the appellant-wife has tried to build up a case of the appellant-wife by arguing that the acquittal had been earned by the respondent-husband as the prosecution was not able to prove its case beyond the shadow of reasonable doubt, yet we find that such acquittal cannot be lost sight of while examining the allegations levelled by the respondent-husband in his divorce petition. Not only this, in her written statement, the appellant-wife had given two specific dates i.e. 19.07.2012. 30.07.2012 when she claimed that her father-in-law had outraged her modesty. However, the fact remains that the Police during investigation did not find any substance in the said allegation. Apart from that, she had also produced on record certain photographs claiming that her husband had performed the second marriage as he was having extramarital relations with said lady, were also not found

to have any substance. The said plea of the appellant-wife was negated by the learned Family Court, by observing as under:-

“14. As far as her allegations with regard to performance of second marriage by the petitioner is concerned, the same are not at all proved from the photographs Mark-A to Mark-D. First of all, these photographs have not been properly proved as no affidavit under Section 65(B) of the Indian Evidence Act was ever furnished, at the time of producing these photographs, resulting into marking of those photographs rather than exhibiting the same. Moreover, bridegroom in the photographs is alleged to be the younger brother of the petitioner and, therefore, it is not the case of the respondent that these are the photographs of petitioner performing the second marriage. The allegations of the respondent is that the lady in the picture is performing the ceremony in the capacity of *Bhabhi* of the bridegroom, which argument is far stretched and farther still from proof. On the basis of these photographs, therefore, no presumption can be drawn that the petitioner had performed second marriage. The Court cannot also remain oblivious of the fact that the parties are living separately for more than a decade now. In the light of the above discussion, Issue No.1 is decided in favour of the petitioner.”

13. Apart from that, it was also found by the learned Family Court that the parties had been living separately for more than a

decade now. We, thus, find that the findings recorded by the learned Family Court, cannot be said to be suffering from any perversity or illegality. It could not be shown that any evidence has been misread or not taken into consideration.

13. No other point has been urged.

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

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

**[SUDHIR SINGH]
JUDGE**

**[SUKHVINDER KAUR]
JUDGE**

14.02.2025

himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No