



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

FAO-1633-2025 (O&M)

Date of Decision: 12.03.2025

Palwinder Kaur

...Appellant

Versus

Gurpreet Singh

...Respondent

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

Present:- Mr. Deepak Arora, Advocate
for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 21.11.2024 passed by the Additional Principal Judge, Family Court, Gurdaspur (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 grounds of cruelty and desertion.

2. The aforesaid petition had been filed by the respondent-husband, *inter-alia*, pleading therein that his marriage with the appellant-wife was solemnized on 07.03.2016 as per Sikh rites. No child was born out of this wedlock. It was further alleged that the parties had

resided together only for 23 days. The behaviour of the appellant-wife was not good and she refused to accept the respondent as her husband. She used to insult him in the presence of relatives and had never allowed him to establish marital relationship with her. On 30.03.2016, she started raising alarm and then called her parents and went away with them. While leaving, she took along with her gold ornaments. She had also made a complaint to the police at Tibber, where a compromise was effected, but despite that she failed to join his company. She had also moved an application to the Senior Superintendent of Police, Gurdaspur, regarding the demand of dowry. Multiple enquiries were conducted on the complaints submitted by her, but no substance was found therein. The appellant-wife had also filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005. She got her statement recorded regarding her willingness to join the company of the respondent-husband. It was also alleged that the respondent-husband had filed a petition under Section 9 of the Act, but the same was dismissed on 23.09.2019. She had deserted the respondent-husband for more than five years as on the date of filing of the divorce petition. Terming the aforesaid acts of the appellant-wife as

cruelty and desertion, a decree of divorce has been sought for.

3. Upon notice, the appellant-wife entered appearance and filed her written statement admitting the factum of marriage. It was further asserted by her that the respondent-husband had never approached her for establishing relations with her, as he was an addicted person. He had concealed the factum of him remaining under the influence of intoxication and had played fraud upon the appellant-wife. On 30.03.2013, the respondent-husband along with his family members, gave beatings to the appellant-wife with iron rod and also tried to kill her, but the appellant-wife had saved herself somehow. He had raised demands of dowry and had also abused her, which led her making a complaint on Police Helpline No. 181. Moving of applications on 18.05.2016 and 07.07.2017 to the SSP, Gurdaspur, was admitted.

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

1. Whether respondent has treated the petitioner with cruelty? OPP
2. Whether the respondent has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of petition? OPP
3. Whether the petitioner is entitled for the dissolution of the marriage as prayed for? OPP
4. Relief.

5. In evidence, the respondent-husband himself appeared as PW-1 and examined PW-2 Dhian Singh, PW-3 Karnail Singh and PW-4 Balwinder Singh, besides tendering documentary evidence from Ex.P1 to Ex.P6. On the other hand, the appellant-wife examined herself as RW-1 and had also examined her father Sukhchain Singh as RW2. The appellant-wife also tendered into evidence documents Ex.R1 to Ex.R12 and Mark-A.

6. The learned Family Court after taking into consideration rival contentions of the parties 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 judgment and decree passed by the learned Family Court is based on conjectures and surmises inasmuch as it has wrongly been recorded that the appellant-wife did not lead any evidence in respect of the demand of dowry. It is further argued that the appellant-wife had to resort to the filing of complaints to the police authorities due to the atrocious acts on the part of the respondent-husband and his family members and mere exercise of the said right cannot be held to be an act of cruelty towards him. It is also argued that the learned Family Court has wrongly recorded a finding that as the appellant-wife had stayed only for 21 days at the

matrimonial house, it was for her to establish as to why she had started residing separately from the respondent-husband. It is also argued that the move of the respondent-husband in filing a petition under Section 9 of the Act was only with a view to create evidence in his favour, so as to justify the allegations levelled in the divorce petition. It is further argued that the evidence led by the respondent-husband nowhere showed that any cruelty had been committed to him and rather, it was him, who had committed cruelty towards the appellant-wife.

8. We have heard learned counsel for the appellant and have also gone through the impugned judgment and decree passed by the learned Family Court.

9. The issue that requires consideration by this Court is whether the impugned judgment and decree passed by learned Family Court, requires any interference.

10. A perusal of the findings recorded by the learned Family Court would show that the parties resided together only for 21 days and they have been living separately since 29.03.2016. The marriage between the parties did not consummate. It was further found that though the appellant-wife had pleaded that the

respondent-husband was an addicted person, yet she did not lead any evidence to corroborate the said plea. Learned Family Court has also observed that the appellant-wife had failed to bring on record any medical evidence regarding the alleged beatings given by the respondent-husband. On the face of the complaints moved by the appellant-wife since 2016 till 2021, it was observed that the said conduct clearly amounted to cruelty.

11. 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...”

12. 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”.

13. Still further in **Malathi Ravi v. B.V. Ravi**, (2014) 7 SCC 640, it has been held by the Hon'ble Supreme Court that desertion in its essence means the intentional permanent forsaking and abandonment of one spouse by the other without the consent of the other spouse. It was held as under:-

“ 20. In the said Savitri Pandey's case (2002) 2 SCC 73, reference was also made to Lachman Utamchand Kirpalani case (AIR 1964 SC 40) wherein it has been held that desertion in its essence means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. For the offence of desertion so far as separation, and (2) the intention to bring cohabitation permanently to an end (animus deserandi). Similarly two elements are essential so far as the deserted spouse is concerned.: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation.”

14. If the findings recorded by the learned Family Court are examined in the light of the aforesaid judgments of the Hon'ble Supreme Court, it would come

out that the acts and conduct of the appellant-wife in moving various false complaints to the police against the respondent-husband and his family members and expressing her unwillingness to reside with the respondent-husband and further leaving his company without any justified cause, clearly amount to cruelty. Apart from that, we may also notice that the marriage between the parties was solemnized on 07.03.2016; the divorce petition was filed in the year 2021 and the impugned judgment and decree was passed on 21.11.2024. Indisputably, the parties had lived together only for 21 days and they have been living separately since 29.03.2016. In view of the plethora of judgments of the Hon'ble Supreme Court, we find that any direction to the parties to live together after such a long separation, would amount to cruelty to both of them and, therefore, the findings recorded by the learned Family Court do not require any interference.

15. No other point has been urged.

16. In view of the above discussion, finding no merit in the present appeal, the same is hereby dismissed.

17. However, 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.

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

**[SUDHIR SINGH]
JUDGE**

**[SUKHVINDER KAUR]
JUDGE**

12.03.2025

Ajay Prasher

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No