



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

FAO-1262-2025 (O&M)

Date of Decision: February 21, 2025

Pinki

.....Appellant

versus

Gurdeep Singh

.... Respondent

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

Present:- Mr. Munish Kumar Garg, Advocate,
Mr. Rakesh Kumar Jangra, Advocate and
Mr. Tanuj Goyal Tohana, Advocate for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 28.01.2025 passed by learned Principal Judge, Family Court, Hisar (for short 'Family Court'), whereby, the petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (for short 'the Act') filed by the respondent-husband was allowed, and the marriage between the parties has been dissolved by way of 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 on 19.02.2017 according to Hindu rites, and out of the said wedlock, a female child, was born on 27.06.2018. It was further alleged that

from the very beginning of the marriage, the appellant/wife started quarrelling, or becoming aggressive and out of control, on petty matters and she was having extreme mood swings. She had threatened the respondent/husband and his family members to implicate them in a police case even at the cost of her own life. On 15/16.05.2018, she tried to jump from the roof of the house at around 11:00 p.m. in order to cause social embarrassment to the respondent/husband and his family members. On 25.08.2018, she tried to jump into a well situated in the fields in order to commit suicide, but she was somehow rescued. On 07/08.09.2018, she again tried to put her head and hand in a running fan of dessert cooler and when she was being rescued, she had pulled live wire of the said cooler with the intention to commit suicide. On 02/03.05.2019, she tried to drink insecticide herself and had also administered it to her daughter. It was further alleged that the appellant/wife was lacking the normal understanding of the daily life and general health hygiene and she used to blindly follow the dictates of her family members. It was further alleged that she had accused the respondent/husband of having illicit relations with his own sisters and maternal and parental aunts. She had physically assaulted him and his family. It was yet further asserted that father of the appellant/wife took her along with daughter of the parties in July, 2019 and since then, the respondent/husband was not allowed to meet them, which had caused mental cruelty to him.

3. Upon notice, the appellant/wife entered appearance and filed her written statement. It was pleaded by her that the respondent/husband had no respect towards her and he had shirked from his responsibilities towards the institution of marriage and the betterment of the appellant/wife and their

daughter. He was not providing them with basic necessities. The allegations of causing any cruelty or extending any threat to implicate the respondent/husband and his family members in false cases were denied. All the allegations regarding her alleged act of attempting to commit suicide were denied. It was further alleged that when she was not able to fulfill the demand of Rs.3.50 lakh raised by the respondent/husband and his family members, she had been given severe merciless beatings. The respondent/husband and his family members were not happy with the birth of a female child. In the month of March/April, 2019, father of the appellant/wife convened a *panchayat*, in which respondent/husband and his family members felt sorry and took the appellant to her matrimonial home, but there was no change in the behaviour of the respondent/husband and his family members as they had again started raising demand of an Alto car. It was further asserted that ultimately on 14.07.2019, the appellant/wife was thrown out of the matrimonial home.

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

- “1. *Whether the respondent has treated the petitioner with such a degree of cruelty as alleged in the petition? OPP*
2. *Whether the respondent has deserted the petitioner? OPP*
3. *Relief.”*

5. In evidence, the respondent-husband appeared as PW1 besides examining PW2-Dalbir and had also tendered documents Exhibits P1 to P3. On the other hand, the appellant/wife stepped into the witness box as RW1 and had also examined RW2-Munni Devi.

6. Learned Family Court, after considering rival contentions of the parties and evidence on record, allowed the petition filed by the respondent-husband, as noticed above.

7. Learned counsel appearing on behalf of the appellant-wife has vehemently contended that the findings recorded by learned Family Court are totally illegal, inasmuch as it has totally ignored that the respondent/husband had failed to prove on record the alleged cruelty on the part of the appellant/wife. It is further argued that the finding of the learned Family Court that the parties had been living separately since July, 2019 and there was no love left between them to sustain the said marriage, is not tenable as the appellant/wife was always and is still ready to live in the company of the respondent/husband. It is further argued that the appellant/wife while appearing as RW1 had specifically deposed that a *panchayat* was convened 3-4 times, but no positive response was received from the respondent/husband. It is further argued that it was the respondent/husband who had no intention to rehabilitate the appellant/wife. While referring to the judgment of the Hon'ble Supreme Court in **Dr. Nirmal Singh Panesar versus Mrs. Paramjit Kaur Panesar @ Ajinder Kaur Panesar** reported as **2023 (4) RCR (Civil) 539**, it is argued that the institution of marriage occupies an important place and an important role in the society and therefore, it would not be desirable to accept the formula of irretrievable breakdown of marriage. It is, thus, argued that the impugned judgment and decree passed by learned Family Court is contrary to the aforesaid law laid down by the Hon'ble Supreme Court. It is further argued that from the evidence of respondent/husband, while appearing as PW1, and PW2-Dalbir, it could not be proved that the appellant/wife had

treated him with cruelty. Still further, it is argued that while passing the impugned judgment and decree, the learned Family Court has totally misread the evidence on record.

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

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

10. A perusal of the findings recorded by learned Family Court would show that the efforts for reconciliation and mediation between the parties had failed. It was also found that initiation of criminal proceedings by way of FIR No.105 dated 05.07.2020, under Sections 323/406/498-A and 506 read with Section 34 IPC against the respondent/husband and his family members had further worsened the relations between the parties. It was further found that the parties had been living separately since July, 2019 and there was total lack of any effort on the part of either of them to stay together. It was further found that the threats extended by the appellant/wife to eliminate herself and then involve the respondent/husband and his family members in criminal cases, also amounted to cruelty. It was thus, found that the relations between the parties had reached the point of no return and accordingly, a decree of divorce was granted in favour of the respondent/husband.

11. We may consider the matter from the point of view whether a long separation between the parties can be considered a ground to grant them a decree of divorce.

12. Indisputably, the parties have been living separately since July, 2019. 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, 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.

13. 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.

14. 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 (Chhattisgarh) 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. There 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.”

15. If the findings recorded by the learned Family Court are examined in 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 July, 2019, if compelled to live together would become a fiction supported by a legal tie and it would show scant regard for the feelings and emotion of the parties. This, in itself, would amount to mental cruelty to both of them.

16. As noticed by learned Family Court, the efforts for reconciliation and mediation between the parties remained unsuccessful.

17. In view of the above and considering the totality of the facts and circumstances of the case, we find that the findings recorded by the learned Family Court are based on the evidence on record and the said findings cannot be said to be suffering from any patent illegality or perversity warranting any interference by this Court in the present appeal. It could not be shown that any evidence was misread or not taken into consideration. Hence, the same is hereby dismissed.

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

19. At this stage, we may notice that while passing the impugned judgment and decree, no permanent alimony was granted to the appellant-wife by learned Family Court. Therefore, 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.

(SUDHIR SINGH)
JUDGE

(SUKHVINDER KAUR)
JUDGE

February 21, 2025

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No