

2025:PHHC:021460-DB



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

**FAO-780-2025 (O&M)  
Date of Decision: 06.02.2025**

**Seema Joon**

....Appellant

Versus

**Ashwani and another**

....Respondents

**CORAM:- HON'BLE MR. JUSTICE SUDHIR SINGH  
HON'BLE MR. JUSTICE HARSH BUNGER**

Present:- Mr. Anuj Balian, Advocate,  
for the appellant.

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**SUDHIR SINGH, J.(ORAL)**

Challenge in the present appeal is to the judgment and decree dated 09.12.2024 passed by the Principal Judge, Family Court, Sonipat (for short 'the Family Court'), whereby the petition under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') filed by respondent No.1-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 respondent No.1-husband, *inter-alia*, pleading therein that his marriage with the appellant-wife was solemnized on

05.02.2016 as per Hindu rites at Narendra Garden, Jhajjar Road, Bahadurgarh, District Jhajjar and no child was born out of the said wedlock. It was averred by respondent No.1-husband that after the marriage, the appellant-wife had pretended to suffer fits and thus, she did not allow respondent No.1-husband to consummate the marriage. However, neither appellant-wife nor her family members had disclosed about such disease prior to the marriage. It was further pleaded that on 01.03.2016, a friend of respondent No.1-husband, namely Gaurav Garg, told him that Parveen Kumar-respondent No.2 had been enquiring about respondent No.1-husband. On 05.03.2016, said Parveen Kumar informed respondent No.1-husband that there had been an affair between him (respondent No.2) and the appellant-wife for the last 4-5 years. He further informed that Parveen Kumar-respondent No.2 had spent huge amount on the education of the appellant-wife and had also got her employed as teacher in a private school at Asauda, District Jhajjar. It was further stated that before marriage, the appellant-wife used to visit the house of respondent No.2 and they wanted to solemnize marriage with each other. The relationship of the appellant-wife and respondent No.2 was well within the knowledge of their parents. It was further pleaded that a criminal case was also got registered by the appellant-wife against respondent No.2 few days before the marriage. Earlier, respondent No.1-husband had filed a petition under Section 12 of the

Act against the appellant-wife, which was dismissed vide order dated 26.04.2019 with liberty to respondent No.1-husband to file a petition under Section 13 of the Act.

3. Upon notice, the appellant-wife entered appearance and filed her written statement denying all the allegations levelled in the petition. It was pleaded that after dismissal of the petitioner under Section 12 of the Act, respondent No.1-husband cannot seek the remedy of filing of a petition under Section 13 of the Act. It was further pleaded that respondent No.1-husband had treated the appellant-wife with cruelty and she had suffered mental harassment on various occasions. It was further pleaded that the appellant-wife was not suffering from fits and she never remained in illicit relations with respondent No.2. It was the case of the appellant-wife that respondent No.1-husband had filed the divorce petition in collusion with respondent No.2 on false and fabricated grounds, as respondent No.2 wanted to take revenge from her for lodging criminal case against him.

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

1. Whether the petitioner is entitled to a decree of divorce under Section 13 of the Hindu Marriage Act, on the grounds mentioned in the petition? OPP
2. Relief.

5. In evidence, respondent No.1-husband himself appeared as PW-1 and examined PW-2 Rani and PW-3 Gaurav Garg, besides tendering documentary evidence from Ex.P1 to Ex.P3 and Mark A. On the other hand, the

appellant-wife failed to lead any evidence. However, respondent No.2 examined himself as RW-1 and had also tendered documents Mark-1 to Mark-12.

6. The learned Family Court after taking into consideration rival contentions of the parties and evidence on record allowed the petition filed by respondent No.1-husband, as noticed above.

7. Learned counsel for the appellant-wife has vehemently contended that the learned Family Court has wrongly concluded that the appellant-wife herself had left the matrimonial home without any reason and the marriage was never consummated. In fact, the appellant-wife had proved, by way of evidence, on record that respondent No.1-husband had treated her with cruelty. Learned counsel has further submitted that respondent No.1-husband could not prove, by leading any cogent and convincing evidence that it is appellant-wife, who had deserted him without any sufficient cause. Rather, she was subjected to cruelty at the hands of respondent No.1-husband and was forced to leave her matrimonial home.

8. We have heard learned counsel for the appellant and have also gone through the impugned judgment and decree passed by the learned trial 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. The learned Family Court has found that the marriage between the parties was not consummated and the appellant-wife had left the matrimonial home without any reason on 13.03.2016. It was also found that the appellant-wife was a patient of fits (disease) and she had not come to the Court with clean hands. The learned Family Court has yet further found that the appellant-wife had failed to step into the witness box to controvert the stand of respondent No.1-husband. It was further found that respondent No.1-husband had been able to prove the cruelty on the part of the appellant-wife. As regards desertion, it was found that the appellant-wife had deserted respondent No.1-husband without any reasonable cause or excuse.

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 behaviour 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”.

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. Thus, we find that the findings recorded by the learned Family Court, do not suffer from any illegality or perversity, warranting any interference by this Court.

15. No other point has been urged.

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

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

**(SUDHIR SINGH)  
JUDGE**

**(HARSH BUNGER)  
JUDGE**

06.02.2025

Ajay Prasher

<b><i>Whether speaking/reasoned</i></b>	<b><i>Yes/No</i></b>
<b><i>Whether reportable</i></b>	<b><i>Yes/No</i></b>