

2025:PHHC:047095-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-1954-2025 (O&M)

Reserved on: 27.03.2025

Pronounced on: 04.04.2025

AJAY KUMAR

.....Appellant

Versus

POONAM DEVI

.....Respondent

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

Present:- Mr. S.S Sahu, Advocate for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 15.02.2025 passed by the learned Principal Judge, Family Court, Fatehabad (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-wife, inter alia, asserting therein that her marriage with the appellant-husband was solemnized on 03.01.2017 as per Hindu rites. The parties had filed a joint petition for dissolution of their marriage by way of a mutual consent under Section 13-B of the Act, in 2018. On the date fixed for the second motion statement i.e., 21.01.2019, the appellant-husband did not appear and accordingly, the petition was dismissed on that day itself. It was further mentioned that the respondent-wife was a

divorcee and was having a daughter aged 14 years from her previous marriage, at the time of her marriage with the appellant-husband. It was further maintained by her that the appellant-husband was having an evil eye upon the daughter of the respondent-wife and he used to touch her inappropriately. When her daughter told her about the said acts of the appellant-husband, the respondent-wife had strongly protested and that the said fact became the born of contention between the parties. It was asserted by her that it was not safe for her as also for her daughter to live in the company of the appellant-husband. She had been living separately since January, 2017, and there was no chance of re-union of the parties due to the aforesaid acts and conduct of the appellant-husband. Terming the aforesaid acts and conduct of the appellant-husband as cruelty, a decree of divorce had been sought for.

3. Upon notice, the appellant-husband entered appearance and filed his written statement, admitting the factum of marriage and also admitting that earlier a petition for divorce by way of mutual consent had been filed. However, it was alleged by him that he was compelled to file the said petition by the respondent-wife and since the filing of the said petition was not with a free will and consent of the appellant-husband, he made his statement before the Court on 21.01.2019 that he did not want any divorce by mutual consent. The allegations regarding him having an evil eye upon the daughter of the respondent-wife were denied. It was also pleaded that the respondent-wife had left the company of the appellant-husband of her own in

October, 2017. Accordingly, a prayer has been made for the dismissal of the divorce petition.

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

- “1. Whether the petitioner is entitled to decree of divorce under Section 13 of the Hindu Marriage Act, 1955 on the ground of cruelty? OPP
2. Whether the petitioner has no cause of action to file the present petition? OPR
3. Whether the petitioner has no locus standi to file the present petition?OPR
4. Whether the present petition is not maintainable in the present form?OPR
5. Whether the petitioner has suppressed material facts from the Court and has not approached the Court with clean hands and if so to what effect?OPR
6. Whether this Court does not have territorial jurisdiction to deal with the present case?OPR
7. Relief.”

5. In evidence, the respondent-wife examined herself as PW-1, besides tendering documents Ex.P1 to Ex.P5. On the other hand, the appellant-husband examined himself as RW1.

6. The learned Family Court, after taking into consideration the rival contentions and evidence on record, allowed the petition filed by the respondent-wife, as noticed above.

7. Learned counsel for the appellant-husband has vehemently argued that the learned Family Court has wrongly held that the appellant-husband had played a sympathy card to plead that he had been disadvantaged by the respondent-wife due to her job in the Police. It is also argued that it is an admitted fact on record that the respondent-wife is serving in Police and she had made her all out efforts to put the appellant-husband into a fear so as to execute any document and agree to any design of hers. It is further argued that the learned Family Court fell in error of law in believing the one sided version of the respondent-wife that the appellant-husband was having an evil eye upon her daughter, whereas the fact remains that the appellant- husband had treated the said child as his own daughter and co-operated with the respondent-wife for the overall welfare of the said child. It is further argued that the finding of the learned Family Court that the appellant- husband did not lodge any complaint against the respondent-wife for having played any fraud or exercising any coercion or duress is legally untenable as the said acts of the respondent-wife were the reason for him to withdraw from the proceedings of divorce by mutual consent. It is also argued that once, he had withdrawn from the divorce proceedings by mutual consent, the same was sufficient ground to hold that the respondent-wife had treated him with cruelty. It is further argued that the findings recorded

by the learned Family Court are based on misreading of evidence and hence, the impugned judgment and decree passed by the learned Family Court, is liable to be set aside.

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. On the basis of the evidence led by the parties, the learned Family Court has found that the respondent-wife had led sufficient evidence on record in support of the averments made in the divorce petition. It was further found that the mother is the best guardian of the female child and once she had found that the very honour of her minor daughter was in danger, she had moved out of the company of the appellant-husband. It was further found that the acts and conduct of the appellant-husband were not free of blemish as the defence taken by him did not inspire any confidence. It was also found that if his will had been obtained by fraud or coercion, he ought to have filed a complaint against the respondent-wife, who according to him had allegedly exerted her influence being in the Police, but nothing of the sort was done. It was concluded as under:-

“ 33. A collective perusal of the oral and documentary evidence on record in the backdrop of factual matrix of the case coupled with the attending circumstances led to an irresistible

conclusion that the act & conduct of the respondent was not free of blemish. The respondent made a denial simpliciter to the acts of cruelty as alleged by the petitioner and did not lead any cogent, convincing evidence in support of his own case and to demolish the case of the petitioner. Whereas, the version of the petitioner stood the test of veracity and her credibility was not shaken by the adversary. It was the cosmic truth that the 'mother' was the 'best person' to resonate with the mental trauma faced by her daughter, roving in the tender years of age, as caused by the 'touch' of an alien man trying to have physical proximity with the child by misusing the position of a step-father. In such an eventuality, the petitioner had to safeguard her interest and the interest of her daughter, mentally & physically, while safeguarding her finances so that she was not robbed of the hard-earned money by the respondent and as such, the only antidote to the catastrophe was to nail the evil by way of dissolution of marriage, though stigmatic after having lost the first innings. What a travesty of life of a woman who became a Cop to check the lawlessness and herself became a victim of casualty!

34. Furthermore, the filing of joint petition for dissolution of marriage by way of mutual consent and making statement dated 16.07.2018 (Ex.P4) on the first motion in pursuance to the Separation Agreement (Ex.P1) and thereafter, back-tracking by the respondent in not making the statement on second motion also fortified the version of petitioner that the respondent was a cruel person person who played mind-games with the ulterior motive to harass & humiliate the petitioner one way or the other. Lame excuses had been raised by the respondent who pleaded to have been pressurized to execute the Separation Agreement or make statements in the petition under Section 13B of the Hindu Marriage Act. If such was the case, then the respondent might have been pressurized & terrorized even at the time of marriage with the petitioner who adorned the police uniform but there were no such averments and amazingly, the respondent was faced with the havoc from the petitioner's side only when they agreed to get the marriage dissolved by way of mutual consent and that too when the petitioner had not claimed even a singly penny towards her maintenance from the respondent, as eloquent from their statement of first motion (Ex.P4). The

story propounded by the respondent did not hold any ground and very conveniently, he stated during his cross-examination that he did not receive any threat from petitioner's side since after the month of October' 2017. If the threat had ceased to operate by that time then also no reasonable explanation came forth for his keeping silent and not lodging a complaint against the petitioner regarding the alleged fraud, coercion or duress. This aspect raised a brow at the veracity of the respondent, who appeared to be a mischief-monger."

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 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”.

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-husband, as noticed above by the learned Family Court, certainly amount to cruelty. Admittedly, the respondent-wife was a divorcee at the time of her marriage with the appellant-husband. She was also having a daughter of 14 years of age from her previous marriage. It was her pleaded case that the appellant-husband used to have an evil eye over her daughter being her step-father and also used to touch her inappropriately. Still further, in the petition for divorce by mutual consent, the appellant-husband despite having got recorded the first motion statement, had backtracked from the second motion statement and the only reason given for that was a fraud and influence committed/exerted by the respondent-wife. The learned Family Court has found that the decision of the respondent-wife in moving out of

the company of the appellant-husband was perfectly justified to save the honour of her daughter, who was facing imminent mental & physical harassment and torture from the appellant-husband. The defence put forth by the appellant-husband in backtracking from the second motion statement in the proceedings for divorce by mutual consent, was also not believed by the learned Family Court. We find that the reasoning given by the learned Family Court cannot be found fault with. If there was any fraud played upon the appellant-husband, there was no occasion for him to go for the first motion statement. Still further, the stand of the appellant-husband that the respondent-wife being in Police had exercised her influence, is also untenable for the fact that he had married her with open eyes knowing fully well that she was serving in the Police and was also having a daughter of 14 years from her previous marriage.

13. We find that the findings recorded by the learned Family Court, which are based on evidence, do not suffer from any illegality or perversity. It could not be pointed out that any evidence has been misread or not taken into consideration.

14. No other point has been urged.

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

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

[SUDHIR SINGH]
JUDGE

[SUKHVINDER KAUR]
JUDGE