

2025:PHHC:020682-DB



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

FAO-403-2025 (O&M)

Date of Decision: 03.02.2025

Kiran

...Appellant

Versus

Sachin

...Respondent

**CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH
HON'BLE MR. JUSTICE SUMEET GOEL**

Present:- Mr. Sushil Bhardwaj, Advocate
for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 18.11.2024 passed by the Principal Judge, Family Court, Karnal (for short 'the Family Court'), whereby the petition under Section 13(i)(a) 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 on 28.01.2019 as per Hindu rites. Out of this wedlock, one

male child was born on 17.03.2020. It was averred by the respondent-husband that from the very inception of marriage, the behaviour of the appellant-wife towards him and his family members had been rude, arrogant and cruel and she used to quarrel with him on petty matters. The respondent-husband further pleaded that the appellant-wife did not perform the household chores. She used to leave the matrimonial home abruptly without any prior permission of the respondent-husband or his family members and stay at her parental home for many days. The respondent-husband brought her back to the matrimonial home so many times after great persuasion. It was further pleaded that the appellant-wife and her parents pressurized the respondent-husband to transfer the house as well as the shop in her name. When the respondent-husband refused to do so, they threatened him to face the dire consequences. The appellant-wife also threatened to kill the respondent-husband and his family members by giving them poison. It was further pleaded that the respondent-husband was attacked by the family members and uncle (Dinesh) of the appellant-wife. It was further pleaded that on 08.08.2020, at the instance of appellant-wife and her uncle, Dinesh, some persons had kidnapped the respondent-husband from his house. In that regard, FIR No.456 dated 09.08.2020

was got registered at Police Station, City, Karnal. It was further pleaded that on 27.01.2022, a *Panchayati* compromise was effected between the parties, whereupon, the parties had filed a petition under Section 13-B of the Act before the Court at Karnal and at the time of first motion statement, the respondent-husband had paid an amount of Rs.2 Lakhs to the respondent-wife on 28.01.2022. However, the appellant-wife did not get her statement recorded at the time of second motion and later on, withdrew the said petition. It was further pleaded that the appellant-wife got registered FIR No.55 dated 20.12.2020, under Section 498-A IPC against the respondent-husband on false averments.

3. Upon notice, the appellant-wife entered appearance and filed her written statement denying all the allegations levelled in the petition. It was further pleaded that the respondent-husband and his family members treated the appellant-wife with cruelty. It was pleaded by the appellant-wife that after the marriage, the respondent-husband and his family members were not happy with the appellant-wife on account of insufficient dowry. She was harassed, humiliated and pressurized to bring more dowry. It was further pleaded that on 14.03.2020, the respondent-husband and his family members had given merciless beatings to the appellant-

wife. The matter was reported to the police by the appellant-wife, whereupon the respondent-husband and his family members apologized and assured that they would keep her peacefully in future. It was further pleaded that at the time of birth of the minor child, all the expenses were borne by the parents of the appellant-wife. Again on 09.08.2020, the respondent-husband, under the influence of liquor, gave beatings to the appellant-wife and turned her out of the matrimonial home. She got herself medico legally examined and moved an application to the police, whereupon FIR No.55 dated 20.08.2020, under Sections 323, 498-A, 506 IPC was registered at Police Station, Women, Karnal. Since then, the appellant-wife was residing at her parental house. Accordingly, a prayer was made for dismissal of the petition.

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

1. Whether the petitioner is entitled to a decree of divorce from the respondent on the grounds of cruelty as prayed for? OPP
2. Whether the petition is legally maintainable? OPP
3. Whether the petition is false and frivolous and liable to be dismissed as such? OPR
4. Relief.

5. In evidence, the respondent-husband himself appeared as PW-1 and examined PW-2 Subhash, PW-3

Dr. Arvind Kumar and PW-4 Mahender Sardana, besides tendering documentary evidence from Ex.P1 to Ex.P9. On the other hand, the appellant-wife examined herself as RW-1 and had also examined Mahinder Saini as RW2. The appellant-wife also tendered into evidence documents Ex.R1 to R5 and Mark-A and Mark-B.

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 contended that the appellant-wife had proved on record that the respondent-husband and his family members had treated her with cruelty. Learned counsel has further submitted that the respondent-husband could not prove, by leading any cogent and convincing evidence that it is appellant-wife, who had treated the respondent-husband with cruelty. Rather, she was subjected to cruelty at the hands of the respondent-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 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. The learned Family Court has found that initially, the parties had filed a petition under Section 13-B of the Act for dissolution of marriage by way of decree of divorce with mutual consent. At the time of recording of first motion statements, an amount of Rs.2 Lakhs was received by the appellant-wife and it was settled that the appellant-wife shall not claim the custody of the minor child in future. Later on, the said petition was withdrawn, but the appellant-wife did not return the said amount of Rs.2 Lakhs to the respondent-husband. The learned Family Court has yet further found that the respondent-husband had been able to prove the cruelty on the part of the appellant-wife.

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 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. After hearing learned counsel for the appellant-wife and going through the impugned judgment, 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. 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**

**[SUMEET GOEL]
JUDGE**

03.02.2025

Ajay Prasher

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No