

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

121



FAO No.284 of 2025 (O&M)
Date of decision:21.01.2025

Rohit

....Appellant

Versus

Charu

....Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR SINGH.

HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Harshit Singla, Advocate for appellant.

SUDHIR SINGH, J.

C.M. No. 976-CII of 2025

This is an application for condonation of delay of 34 days in filing the present appeal.

For the reasons stated in the application, same is allowed and delay of 34 days in filing the present appeal is condoned.

FAO No. 284 of 2025

Challenge in the present appeal is to the judgment and decree dated 09.09.2024 passed by the learned Principal Judge, Family Court, Faridabad (for short 'the Family Court') whereby the petition under Section 13 (1)(ia) of the Hindu Marriage Act, 1955, (for short 'the Act') filed by the appellant-husband ,has been dismissed.

2. The aforesaid petition had been filed by the appellant-husband, *inter-alia*, pleading therein that his marriage with the respondent-wife was solemnized on 12.11.2017 according to Hindu rites and out of the said wedlock, a male child, namely, Rishan Kaushik, was

born, who was in the custody of the respondent-wife. It was further alleged that from the very beginning of the marriage, the respondent-wife had pressurized the appellant-husband to live separately from his parents. It was further alleged that she was a habitual drunkard and she would bring liquor from her parental home and keep it in the safe of her cupboard. It was further the case of the appellant-husband that the respondent-wife had alleged that the appellant-husband was having an illicit relationship with his own mother. She used to remain in a shabby condition and would not take bath for weeks together. She was not only aggressive in her behaviour, but she had also filed a complaint against the appellant-husband on 21.07.2018, wherein a compromise was reached between the parties at the Police Station. On 04.11.2018, when the respondent-wife was speaking on phone with her sister, she had used an abusive language and said that she would take divorce from the appellant-husband. She had always demanded foreign tour from the appellant-husband and threatened him that if he did not take her on such tour, she would drown the child in a water tub. On 09.04.2019, when the mother of the appellant-husband was preparing and packing the food for him, the respondent-wife came to the kitchen and threw upon herself the boiled vegetables. Thereafter she started banging her hand with pipe and took the bangles in her hand and started injuring her hand and neck. She took the child in her hand and started dipping him in the tub filled with water but the child was rescued by the mother of the appellant-husband. The mother of the appellant-husband went to the Police Station and lodged a complaint against the respondent-wife. On the same very day i.e. 09.04.2019, the respondent-wife went to Old Faridabad Police Station

and lodged a false and fabricated complaint with the police against the appellant-husband and his family members. They called him in the Police Station. Relatives of the respondent-wife came to her matrimonial home and used filthy and abusive language in front of the mother of the appellant-husband and also gave beatings to his mother. The father of the respondent-wife gave a written complaint to the Police when he was taking his daughter along with the minor son of the parties, to her parental house at Delhi and since then she had been residing at her parental house. On 20.04.2019, the police officials called the appellant in Old Faridabad Police Station and the respondent-wife along with her parents had created violence and used an abusive and filthy language in front of police officials and accused that the appellant-husband was a transgender. Terming the aforesaid acts and conduct of the respondent-wife as cruelty, a decree of divorce was sought for.

3. Upon notice, the respondent-wife entered appearance and filed her written statement admitting the factum of marriage and birth of the child. It was further alleged that a huge amount of Rs.50 lakh had been spent in the marriage, out of which Rs.40 lakh had been given in the sweet packets. Apart from that, a sum of Rs. 41 lakh in cash, gold jewellery and other expensive gifts were given to the appellant-husband. However, after the marriage, the behaviour of the appellant-husband and his family members was cruel and they were not satisfied with the dowry given in the marriage. The mother-in-law of the respondent-wife had termed her elder daughter-in-law as a prostitute besides calling her mother as prostitute as well. The respondent-wife was not allowed to go outside the matrimonial house and was confined to her room only. Her

mother-in-law used to shout on her without any reasons and would throw utensils upon her. The elder brother of the appellant-husband came to the room of the respondent-wife 3-4 times and had forcibly committed immoral acts with her and when she resisted, he had misbehaved with her. When the respondent-wife had raised alarm about the said incident, the appellant-husband and his parents came to her room and threw him (her brother-in-law) out of the room by telling the respondent-wife that he was not conscious and requested her not to tell her parents about it. It was further alleged that when she was seven months pregnant, she had been pushed by her mother-in-law from the stairs. The matter was reported to the police, but upon the assurance of her mother-in-law not to repeat such acts in future, the complaint was closed. On two occasions, the respondent-wife along with the minor child was thrown out of the matrimonial home. On 09.04.2019, when the respondent-wife was preparing milk for her son in the kitchen, her mother-in-law came there and poured upon her boiled vegetables and started slapping her and told her that she would kill her. However, when she resisted, her mother-in-law told the appellant-husband that the respondent-wife was going to kill her whereupon she had been given beatings by the appellant-husband and his father. The matter was reported to the police. The police got conducted the medico legal examination of the respondent-wife wherein, several injuries were found on her person. On 20.04.2019, the respondent-wife and her parents went to Old Faridabad Police Station, where the appellant-husband and his parents had been called and they had flatly refused to rehabilitate the respondent-wife. Efforts for reconciliation, thus, remained futile. Against the atrocious acts and

conduct of the appellant-husband and his family members, the respondent-wife had filed a complaint under Sections 498-A, 406 read with Section 34 IPC, which was marked to the Women Cell for further investigation. It was further alleged that she had also filed a complaint in Tis Hazari Court, Delhi, which was pending.

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

1. Whether the petitioner is entitled to decree of divorce on the grounds mentioned in the petition? OPP.

2. Whether petitioner has no cause of action to file the present petition? OPR

3. Relief

5. In evidence, the appellant-husband had examined himself as PW1 besides examining Gopi Chand Kaushik as PW2 and had also tendered documents Ex. PW1/1 to Ex.PW1/7, Ex.PZ and Mark 'A'. On the other hand, respondent-wife appeared as RW1 and had also examined RW2 Raj Mohan Sharma, besides tendering documents Ex.R1 to R3, Ex.RW1/1 to Ex.RW1/16 and Mark 'A' To Mark 'E'.

6. The learned Family Court after considering the rival contentions and the evidence led by the parties has dismissed the divorce petition filed by the appellant-husband, as noticed above.

7. Learned counsel appearing for the appellant-husband has vehemently argued that while passing the impugned judgment and decree, the learned Family Court has totally ignored the evidence led by the appellant-husband. It is further argued that the respondent-wife had filed a totally false case under Sections 498-A and 406 read with Section 34 IPC, against the appellant-husband and his family members which

itself amounts to cruelty. It is further argued that not only in the pleadings raised by the appellant-husband, the instances of cruelty had been specifically mentioned but the same were also substantiated by way of evidence. It is yet, further argued that such allegations of the appellant-husband had been merely denied by the respondent-wife which clearly indicates that there was admission on her part regarding cruelty committed by her. It is yet further argued that the respondent-wife had falsely alleged that the brother of the appellant-husband had tried to commit rape upon her but no evidence in this regard had been led by her and that levelling such serious allegations against any family member of the appellant-husband, amounts to cruelty. Accordingly, a prayer has been made for setting aside the impugned judgment and decree passed by the learned Family Court.

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

9. The only question that arises for consideration in the present appeal is whether the impugned judgment and decree requires any interference by this Court.

10. A perusal of the impugned judgment and decree would show that the learned Family Court has specifically found that the appellant-husband could not be allowed to take benefits of his own wrongs. The appellant-husband could not prove that the respondent-wife had committed cruelty upon him. It was further found that there was no independent corroborating evidence from the side of the appellant-husband as regards the allegations of cruelty, including him being termed as a transgender by the respondent-wife. Rather, it was found that on the

basis of evidence on record, it was established that the appellant-husband had never taken care of the respondent-wife and had not provided her with emotional mental security, love and affection etc. Learned Family Court had found the behaviour of the appellant-husband as provocative. It was further noticed that during arguments when family Court had interacted with the parties, the respondent-wife had reiterated that she did not want to obtain divorce from the appellant-husband and she wanted to save her own life and life of the minor child.

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 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.

12. 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”.

13. If the findings recorded by the learned Family Court are examined in the lights of the aforesaid judgments of the Hon’ble Supreme Court, it comes out that the appellant-husband was not able to prove any cruelty on the part of the respondent-wife. It was the appellant-husband who had sought divorce from the respondent-wife, and, therefore, it was the bounden duty of the appellant-husband to prove his case by way of cogent and convincing evidence. The findings of the learned Family Court that the appellant-husband had not been able to produce any independent evidence to corroborate the allegations of the cruelty including the factum of him being called as transgender by the respondent-wife, cannot be found fault with, especially when nothing could be pointed out by learned counsel for the appellant-husband that there was any evidence on record to hold otherwise. Rather on the basis of the evidence on record, it was found that it was the appellant-husband, who had committed cruelty and had neglected his matrimonial obligations.

14. We find that the findings recorded by the learned Family Court are based on evidence on record. It could not be pointed out that any evidence has been mislead or not taken into consideration.

15. Thus, we find that the findings recorded by the learned Family Court did not suffer from any illegality or perversity which may warrant interference by this Court in the present appeal.

16. In view of above, 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

21st January, 2025.

reema

(SUKHVINDER KAUR)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*