

2025.PHHC.047853-DB



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

FAO-M-220-2016 (O&M)

Date of decision: 19.03.2025

RAM KIRTI

...Appellant

Versus

BACHAN CHAND

...Respondent

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

Present:- Mr. Harsh Aggarwal, Advocate and
Mr. Sudarshan Moudgil, Advocate for the appellant.

Mr. Mandeep S. Bedi, Senior Advocate with
Mr. Abhishek Thakur, Advocate and
Mr. Navrajdeep Singh, Advocate for the respondent

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 09.03.2016 passed by the learned Additional District Judge, Gurdaspur (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, has been allowed and the marriage between the parties has been dissolved by a decree of divorce on the grounds of cruelty and desertion.

2. The aforesaid petition had been filed by the respondent-husband, *inter alia*, asserting therein that his marriage with the appellant-wife was solemnized on 29.06.1995, according to Hindu

rites and out of the said wedlock, one female child was born. It was further alleged that the appellant-wife was unhappy with the marriage from the very beginning and disrespected the respondent-husband and his family members. The appellant-wife pressurized the respondent-husband to live separately from his family and insisted to live as a 'Ghar Jawai' at her parental home. When the respondent-husband refused, the appellant-wife became hostile; insulted him publicly, and left the matrimonial home along with her brother on 15.04.1996, taking all her belongings. Despite several efforts by the respondent-husband and his family to reconcile, the appellant-wife remained adamant about her demand. It was further alleged that in the year 1997, respondent-husband again requested appellant-wife to join his company but she refused. Consequently, respondent-husband filed a petition for divorce on 10.08.1998 on the grounds of cruelty and desertion, but the same was dismissed on 22.04.2002. An appeal there-against was also dismissed on 13.12.2006. It was yet further asserted that the appellant-wife also made false allegations against the respondent-husband and his family members by filing a complaint with the SSP Gurdaspur on 27.09.2005, accusing them of dowry demands; bigamy, and misappropriation of dowry articles. In an inquiry conducted into the matter by the DSP Gurdaspur, the allegations were found to be false. However, the appellant-wife sought reinvestigation of the matter, which led to the registration of an FIR under Sections 494 and 406 IPC. As a result, the respondent-husband and his elderly mother were arrested, causing them public humiliation. The respondent-husband was also suspended from his

government job. Ultimately, the respondent-husband and his mother were acquitted of the charges under Sections 494 and 406 IPC, but they were convicted under Section 498-A IPC by the Court of learned Judicial Magistrate Ist Class, Gurdaspur vide judgment dated 22.01.2023. It was asserted that the respondent-husband and his mother had filed an appeal against the aforesaid judgment, which was accepted by learned Additional Sessions Judge vide judgment dated 17.07.2013, whereby they were also acquitted of the charge under Section 498-A IPC. It was further alleged that the respondent-husband had been deserted by the appellant-wife since 15.04.1996 without any reasonable cause and excuse. Terming the aforesaid acts and conduct of the appellant-wife as cruelty and desertion, a decree of divorce had been sought for.

3. Upon notice, the appellant-wife entered appearance and filed her written statement, admitting the factum of marriage and birth of the child but denied the allegations of cruelty and desertion made by the respondent-husband. The appellant-wife claimed that the petition was not maintainable as the earlier divorce petition on the similar grounds filed by the respondent-husband was dismissed uptill the High Court. It was further alleged that the appellant-wife always fulfilled her marital duties and never left the matrimonial home without consent. The appellant-wife further asserted that after getting a government job, the behaviour of the respondent-husband and his family members got changed towards her. It was further asserted that the respondent-husband performed second marriage and was having three children from the said marriage. It was yet further alleged that

the appellant-wife was ready to resume marital life and fulfill her obligations.

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

- “1. Whether the respondent treated the petitioner with cruelty? OPP
2. Whether the respondent deserted the petitioner without any reasonable cause? OPP
3. Whether the petition is maintainable in the present form? OPR
4. Relief.”

5. In evidence, the respondent-husband appeared as PW1 and had also examined PW2-Sohan Devi alias Sona; PW3-Rashpal Singh (his maternal uncle); PW4-Karan Singh; PW5-Johar Singh; and PW6-Narinder Bhalla, besides tendering Ex.P1 to Ex.P28 and Mark A and Mark B. On the other hand, the appellant-wife examined herself as RW1 and also examined RW2-Balwinder Singh (her brother); RW3-Tarsem Chand, Sarpanch; RW4-Kuldeep Raj; RW5-Baljit Singh; RW6-Charanjit Singh, besides tendering documents Ex.R1 to Ex.R16 and Mark B to Mark F.

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

7. Learned counsel for the appellant-wife has vehemently contended that while passing the impugned judgment and decree, the learned Family Court did not appreciate the evidence on record. It is due to the atrocious acts of the respondent-husband and his family members that the appellant-wife lodged an FIR under Section 494, 406 and 498-A IPC against them. It is further argued that merely because the respondent-husband and his family members were acquitted in the aforesaid FIR, is not ground to hold the appellant-wife had treated the respondent-husband with cruelty. It is further argued that the findings recorded by the learned Family Court are based on conjectures and surmises and the same are liable to be set aside by this Court.

8. On the other hand, the learned counsel for the respondent-husband, while supporting the findings recorded by the learned Family Court submits that sufficient evidence has been produced on record proving the cruelty committed by the appellant-wife. It is further argued that the parties have been living separately since 2005 and no cohabitation has taken place since then which itself establishes mental cruelty towards the respondent-husband. Thus, it is argued that the marriage between the parties has become unworkable and at this stage, no useful purpose would be served by directing there re-union.

9. We have heard learned counsel for the parties and have also gone through the impugned judgment and decree passed by the learned Family Court.

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

11. The learned Family Court has found that both parties had admitted that the respondent-husband's earlier divorce petition was dismissed and an appeal thereagainst was also dismissed. The Family Court has found that second divorce petition could be maintained provided the same arose out of different cause of action and grounds. It was further found that the appellant-wife had been living separately from the respondent-husband since 2005. It was further found that appellant-wife had not filed any petition under Section 9 of the Act for restitution of conjugal rights. During the pendency of the earlier divorce petition, the appellant-wife filed a criminal case against the respondent-husband and his mother under Sections 494, 406 and 498-A IPC, wherein they were only convicted of the offence under Section 498-A IPC but in appeal they were acquitted of the said offence. The Family Court has further observed that the appellant-wife had failed to prove her allegations that the respondent-husband had solemnized a second marriage with one Ranjana Devi. It was further observed that the prolonged separation and the levelling of false allegations, which resulted in criminal prosecution, were the acts of mental cruelty. As there had been no cohabitation between the parties since 2005, it was, concluded by the learned Family Court that the marriage had irretrievably broken down.

12. 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.

13. 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.”

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”.

14. 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 respondent-husband was able to prove through cogent and convincing evidence that the appellant-wife had treated him with cruelty and deserted him without any reasonable cause. Additionally, taking into consideration that the parties have

been living separately since 2005, it would itself amount to mental cruelty to both of them if they are forced to cohabit together.

15. It may further be noticed that the learned counsel for the appellant-wife could not show that the finding of acquittal recorded in the FIR lodged by the appellant-wife, has been altered or modified in an appeal or revision. Thus, the fact remains that the only defence of the appellant-wife before the learned Family Court that she had been tortured or humiliated on the ground of demands of dowry did not find any favour and rather the FIR lodged by her culminated in the acquittal of the appellant-husband and his family members.

In **Rani Narasimha Sastry vs. Rani Suneela Rani, 2019 (Suppl.) Civil Court Cases 201**, it has been held by the Hon'ble Supreme Court that if the wife initiates criminal proceedings against the husband and his family members and if ultimately they are acquitted of the charges framed against them, the same amounts to cruelty and divorce can very well be granted on the said ground.

16. Still further, there is nothing on record to indicate that since the date of filing of the divorce petition that the appellant-wife had made any effort to join the company of the respondent-husband and/or had filed any petition under Section 9 of the Act for restitution of conjugal rights.

17. In view of the above, we do not find any illegality or perversity in the impugned judgment and decree passed by the learned Family Court. It could not be pointed out that any evidence has been misread or not taken into consideration.

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

19. We grant liberty to the appellant-wife to move an appropriate application, before learned Family Court for grant of permanent alimony. Is any such application is filed by the appellant-wife, he same shall be considered and decided by the Court concerned, in accordance with law, preferable within a period of 06 months from the date of filing thereof.

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

**[SUDHIR SINGH]
JUDGE**

**[SUKHVINDER KAUR]
JUDGE**

19.03.2025
Himanshu/S

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No