



110 (1st case)

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

FAO-5022-2024 (O&M)

Date of Decision: February 18, 2025

Neena Rani

.....Appellant

versus

Suba Singh

.... Respondent

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

Present:- Ms. Gurdeep Kaur, Advocate for
Mr. P.K. Ganga, Advocate for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 26.09.2024 passed by learned Additional Principal Judge, Family Court, Sirsa (Camp at Dabwali) [for short '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 marriage between the parties has been dissolved by way of a decree of divorce on the grounds of cruelty and desertion.

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 21.04.1998 according to Hindu rites, and out of the said wedlock, a female child, namely, Sneha was born. Respondent-wife expressed her unwillingness to reside in a joint family and pressurized the appellant-husband to take her to his posting stations, which used to vary given the nature of his job.

The respondent used to leave the matrimonial home and it was only after convening *panchayats*, she came back. The respondent was a short tempered lady and used to misbehave with the appellant and his family members, and often would not do household chores. Finally on 14.02.2003, the matrimonial ties between the parties were severed and they had executed their respective affidavits in respect of the full and final settlement between them, and since then, the parties had been living separately. In order to grab money, the respondent filed a petition under Section 125 of the Code of Criminal Procedure, 1973 (for short 'the Cr. P.C.')

and another petition under the Hindu Adoptions and Maintenance Act, 1956 (for short 'the 1956 Act') for maintenance. The respondent had been spending money on the clothing, medicines etc. of his daughter despite the fact that she was living with her mother (appellant).

3. Upon notice, the appellant/wife entered appearance and filed her written statement admitting the factum of marriage and birth of the child. However, it was denied that she ever pressurized the respondent to take her with him to his places of posting or that she had misbehaved with the family of the respondent. It was asserted that the parents of the respondent used to ill-treat the appellant on account of demand of dowry. It was further averred that on 14.02.2003, the affidavit was got executed from her under pressure, and the *panchayati* divorce, if any, was not binding on her rights.

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

- “1. Whether petitioner is entitled for a decree of divorce on the ground of cruelty? OPP
2. Whether petitioner is entitled for a decree of divorce on the ground of desertion? OPP
3. Whether the petition is not maintainable in the present form? OPR
4. Whether petitioner has no cause of action and no locus standi to file the present petition? OPR

5. *Whether the petitioner has concealed true and material facts from this Court, if so to what effect? OPR*
6. *Relief.”*

5. In evidence, the respondent-husband appeared as PW1 and tendered Mark-PA to Mark-PC along with certain other documents i.e. Exhibits P1 to P3, and also examined Jasvir Singh (PW2). On the other hand, the appellant-wife examined herself as RW1 and Veena Rani (RW2) and tendered some documents.

6. Learned Family Court, after considering rival contentions of the parties and evidence on record, allowed the petition filed by the respondent-husband, as noticed above.

7. Learned counsel appearing on behalf of the appellant-wife has vehemently contended that the learned Family Court has erred in law while drawing inference from the *panchayati* settlement between the parties arrived at in 2003. It is further argued that even if the parties had severed their ties in 2003, the same could not be a ground to grant divorce to the respondent-husband especially when, it was not proved on record that there was any custom governing the parties to abide by such *panchayati* settlement. It is further argued that the finding of the learned Family Court that the appellant-wife had never claimed anything from the respondent-husband, is legally incorrect as the appellant-wife had filed the petition under Section 125 of the Cr. P.C. for grant of maintenance to her, besides filing another petition under the provisions of the 1956 Act, claiming maintenance for herself and the minor daughter. It is further argued that the finding of learned Family Court that the conduct of the appellant-wife in backtracking from the aforesaid settlement amounts to cruelty, is legally untenable. Thus, a prayer has been made for setting aside the impugned judgment and decree.

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

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

10. It is not disputed by the parties that they had executed their respective affidavits in 2003 snapping their ties. It was found by the Family Court that both the parties had acted upon the said settlement for nearly two decades and there was no possibility of their residing together as husband and wife. The relevant finding of learned Family Court, as contained in para-12 of its judgment, would read as under: -

“12. Having considered the rival submissions, this Court is of the view that it is most significant that the parties have been living separately ever since they executed their respective affidavits on 14.02.2003. No doubt, a panchayati divorce is no divorce in the eyes of law and cannot conclusively put an end to the marital relationship between the parties. However, it is significant that the parties acted upon that settlement for a period of about two decades before the respondent filed litigation against the petitioner seeking maintenance from him. It is not disputed between the parties that there has been no resumption of marital relations between them ever since they severed their ties in the year 2003. Thus, the parties not only severed their ties in a panchayati settlement but also acted upon it for this long period. It is also significant that the respondent herself admitted in her cross-examination that it is not possible for both of them to now reside together and that their divorce should be finalized after settling their maintenance rights. Not only this, her elder sister, who appeared as RW2, also stated in like terms and averred that the parties should get divorced as it is not possible for them to live together. At this juncture, it would not be out of place that though the respondent has admitted executing the affidavit dated 14.02.2003 and has used the same for getting allowances from the government for herself and her daughter, but she has tried to disown it in her pleadings by stating that she was under pressure at the time of its execution. In fact, she has changed her stance with regard to this affidavit at all places in various litigation. However, what emerges from the perusal of its contents and from the conduct of the parties is that the marital ties between the parties were severed altogether after this settlement and all their respective articles were exchanged and the respondent was given Rs.20,000/-

towards her claim of maintenance. In fact, she never claimed anything from the petitioner for a long period of 15-16 years. The parties had specifically undertaken at the time of settlement that they would not file any litigation against each other in future. That being the case, indulging in litigation again with the petitioner and backing out of the terms of the settlement is also a kind of cruelty. Be that as it may, considering the fact that the parties have severed all their marital ties since more than two decades now and in view of the above discussion, both these issues are decided in favour of the petitioner.”

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.

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 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 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”.

In **Samar Ghosh v. Jaya Ghosh**, (2007) 4 SCC 511, it was held by the Hon’ble Supreme 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, discommodate 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.”

12. If the facts of the present case and the findings of learned Family Court are examined in light of the law laid down by the Hon’ble Supreme Court in the aforesaid judgments, it would come out that in view of the undisputed position on record that the parties had settled their dispute by executing their respective affidavits in 2003 as regards snapping of their ties and obtaining alimony and all the articles, the conduct of the appellant-wife in backtracking from the said terms of settlement, has rightly been termed to be a ground for grant of divorce. Though in strict sense, the said conduct cannot be said to be a pure act of cruelty, yet keeping in view the fact that the parties have been living separately for nearly two decades, we find that marriage between the parties has become totally unworkable and it is not possible for them to reunite and accordingly, no indulgence can be granted to the appellant-wife in the present appeal.

13. We find that the findings recorded by the learned Family Court are based on the evidence on record and the said findings cannot be said to be suffering from any patent illegality or perversity warranting interference by this

Court in the present appeal. It could not be shown that any evidence was misread or not taken into consideration. Hence, the same is hereby dismissed.

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

15. At this stage, we may notice that while passing the impugned judgment and decree, no permanent alimony was granted to the appellant-wife by learned Family Court. Therefore, we grant liberty to the appellant-wife to move an appropriate application, if not already filed, 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.

(SUDHIR SINGH)
JUDGE

(SUKHVINDER KAUR)
JUDGE

February 18, 2025
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No