

2025:PHHC:026671-DB



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

FAO-7211-2019(O&M)

Date of decision: 18.02.2025

POOJA

...Appellant

Versus

VINOD KUMAR PANCHAL

...Respondent

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

Present:- Mr. APS Shergill, Amicus Curiae Advocate with
Ms. Navkiran Bajwa, Advocate
Ms. Shagun Goyal, Advocate
Mr. Robin Bawa, Advocate and
Mr. Jitender Nara, Advocate for the appellant

Mr. Ishnoor Singh, Advocate
with Mr. Virat Rana, Advocate for the respondent.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 16.10.2019 passed by the learned Principal Judge, Family Court, Jhajjar (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 16.04.2006, according to Hindu rites and two children were born out of the said wedlock. It was further alleged that the appellant-wife was abnormal due to her short-tempered nature. Further, it was alleged that in the year 2006, the appellant-wife used foul language towards the respondent-husband and physically assaulted him and his mother. The appellant-wife further threatened him to consume poison. It has also been alleged that the appellant-wife used to demand to live separately from the in-laws and pressurized the respondent-husband to purchase a flat in Delhi, however, the respondent-husband continuously made her understand the financial burdens upon him but she was not willing to mend her ways. Furthermore, in July 2012, the appellant-wife left the matrimonial home, taking valuable jewellery with her. Upon learning this, the respondent-husband went to her parental home and requested her to return, but she refused. On October 9, 2012, he again pleaded her to come back, but she insulted both him and his mother. Despite his best efforts, including seeking help from respectable relatives and friends, the appellant-wife withdrew from the respondent-husband's life without any reasonable cause. The respondent-husband subsequently filed a petition under Section 9 of the Act wherein she blatantly refused to return with him.

3. Upon notice, the appellant-wife entered appearance and filed her written statement, admitting the factum of marriage and denied the rest of the allegations in toto. The appellant-wife submitted

that the respondent-husband himself was at fault, having subjected her to cruelty and domestic violence, making her life miserable due to his demand for dowry. She further alleged that the respondent-husband and his family continuously sought cash payments from her family. Resultantly, she argued that the respondent-husband cannot take benefit from his own wrong doings.

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

- “1. Whether the petitioner is entitled to a decree of divorce on the grounds of cruelty and desertion as alleged in the petition? OPP
2. Relief.”

5. In evidence, the respondent-husband appeared as PW1 and also examined PW2-Ramphal (his father) and PW3- Meena Kumari (his mother) besides tendering documentary evidence as PW1/B. On the other hand, the appellant-wife examined herself as RW1 and also got examined RW2-Kulwant Kumar (her father) besides tendering documentary evidence Ex RA and Ex RB.

6. The learned Family Court after taking into consideration the rival contentions and findings 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. The appellant-wife claims that the respondent-husband harassed her, and

despite initially agreeing to set up their matrimonial home in Delhi, she was subjected to cruel treatment by the respondent-husband and his mother. Further, the learned counsel submits that after the birth of their first child, the appellant-wife was thrown out of the matrimonial home, and her dowry articles were kept by the respondent-husband and his mother. The learned counsel further submits that the learned Family Court has not taken into consideration that the respondent-husband was a habitual drunkard and vagabond, and he should not be rewarded for his own faults.

8. On the other hand, the learned counsel for the respondent-husband while supporting the findings recorded by the learned Family Court submits that the appellant-wife herself refused to live with the respondent-husband at their matrimonial home and made false accusations about the alcohol consumption of the respondent-husband and dowry demands. The learned counsel for the respondent-husband further submits that they have been living separately since 2013 and more that, thirteen years has passed since then. The marriage has unworkable and it will not be possible for the respondent-husband to cohabit with the appellant-wife and vice-versa.

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 questions that requires consideration by this Court are:-

“1. Whether a long separation between the parties, rendering the marital bond as unworkable and its having been ruptured beyond repair, amounts to mental cruelty?

2. Whether the impugned judgment and decree passed by the learned Family Court, requires any interference?”

11. The learned Family Court has found that the allegations levelled by the appellant-wife regarding demands of dowry could not be substantiated by her and further, no evidence of physical violence or alcohol consumption was led by the appellant-wife and no independent witness was examined. The learned Family Court has further observed that the appellant-wife explicitly stated before the Presiding Officer in the proceedings under Section 9 of the Act on 11.02.2015 and on 08.09.2015 that she was not willing to reside and cohabit with the respondent-wife nor was she willing to give him divorce. The learned Family Court after reviewing of the counseling sessions, concluded that the appellant-wife deserted the respondent-husband without reasonable cause since 2012 and the prolonged separation and refusal to cohabit amounts to cruelty and comes within the ambit of mental cruelty.

12. Although the respondent-husband was able to provide evidence of cruelty and desertion before the Family Court, we must examine whether the marital relationship between the husband and wife has ruptured beyond repair, especially when the parties have been living separately for more than thirteen years and during this period, there has been no resumption of their relationship and rather

on account of protracted litigation, the same has got worsened day by day.

13. In the present case, efforts have been made firstly to resolve the matrimonial dispute through the process of mediation, which is one of the effective modes of alternative mechanism in resolving the personal dispute but the mediation between the parties failed. The parties were directed to be present before the Mediation Centre vide order dated 09.03.2021 passed by the Co-ordinate Bench of this Court. However, vide order dated 27.01.2023 passed by the Co-ordinate Bench of the Court, the mediation failed between the parties. The said order reads as under:-

“Mediation between the parties has failed. At request of learned counsel for the parties, adjourned to 02.05.2023 for arguments.”

14. Indisputably, the parties have been living separately since 2012. In the absence of any resumption of matrimonial obligation and cohabitation between the parties for a long period, there is no possibility of their reunion. The mediation proceedings before this Court, for an amicable settlement of the dispute between the parties, remained unsuccessful. This further speaks of the bitterness of their relationship. Undoubtedly, it is an obligation on the part of the Court that matrimonial bond should as far as possible, be maintained, but when the marriage has become unworkable and it has become totally dead, no purpose would be served by ordering the reunion of the parties.

15. It is well settled that in order to constitute a 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.

16. 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”.

17. 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 the parties who have been living separately since 2012, if compelled to live together, would become a fiction supported by a legal tie and it would show scant regard for the feelings and emotions of the parties. This, in itself would amount to mental cruelty to both the parties.

18. Still further, there is nothing on record to indicate that the appellant-wife had made any effort to join the company of the respondent-husband or came back to the matrimonial home and/or had filed any petition under Section 9 of the Act for restitution of conjugal rights. In fact, it would be pertinent to mention here that the appellant-wife has categorically stated before the Presiding Officer in a petition under Section 9 of the Act, filed by the respondent-husband, that she did not agree to resume cohabitation with the respondent-husband. The only aim of the appellant-wife appears to be to frustrate the respondent-husband's claim and further keep him engaged in the protracted litigation.

19. In view of the above, considering the totality of the facts and circumstances of the case, we hold that the marriage between the parties has become unworkable and has reached the stage of beyond repair and if the parties are called upon to stay together, it may lead to mental cruelty to both of them. Question No.1 is answered in affirmative.

20. Consequently, the present appeal is dismissed. The impugned judgment and decree passed by the learned Family Court, is upheld. Question No.2 is answered, accordingly.

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

**[SUDHIR SINGH]
JUDGE**

**[SUKHVINDER KAUR]
JUDGE**

18.02.2025
Himanshu

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No