

2025.PHHC:042044-DB



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

FAO-1185-2025 (O&M)

Date of Decision: 26.03.2025

Sonia

...Appellant

Versus

Divesh Khullar

...Respondent

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

Present:- Mr. Rajesh Bhatheja, Advocate
for the appellant.

SUDHIR SINGH, J.

Challenge in the present appeal is to the judgment and decree dated 16.11.2024 passed by the Additional Principal Judge, Family Court, Ludhiana (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 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 22.10.2017 as per Hindu rites. No child was born out of the said wedlock. It was further alleged that after the marriage, the appellant-wife refused to cohabit with the respondent-husband and told that her marriage with him was performed against her wishes. Her behaviour was also not good with the family of the respondent-husband and she used to quarrel with them on petty issues. She would remain busy in chatting and talking on mobile phone with her family members, who used to instigate her against the respondent-husband and his family members. It was further alleged that she had also started raising the demand of living separately and to get the ownership of the property transferred in her name. It was further alleged that on 04.11.2017, the appellant-wife quarreled with the respondent-husband and his family members and called her brother, who took her with him on 05.11.2017. The brother of the appellant-wife misbehaved with the family members of the respondent-husband and threatened to implicate them in false cases. She left with her brother without bothering

about the medical condition of the respondent-husband, who had suffered multiple injuries due to an accidental fall. She was brought back on 19.11.2017, but she used to remain in her bedroom on the first floor. She was requested to mend her ways, but to no avail. On 24.03.2018, she quarreled with the respondent-husband and his family members. She had pressurized the respondent-husband for giving her divorce and told him that in case, he did not do so, she would commit suicide and involve them in a false case. On 07.05.2018, she again picked-up a quarrel and broke the mobile phone of the respondent-husband and also called her parents. On 08.05.2018, her parents took her along with them saying that they would teach the respondent-husband a lesson. Efforts were made to bring her back, but the same did not yield any result. On 23.10.2018, 15-20 persons came to the office of the respondent-husband and had misbehaved with them. The respondent-husband had submitted an application dated 23.10.2028 to the Police Station, City-II, Khanna, but the police did not take any action thereon. The appellant-wife, in connivance with her family members, moved a false application at Dharamkot, where the respondent-husband and his family members were called and they were assured that the matter would be pacified, but after some days, the

authorities of the Women Cell, Moga, called them and told that the appellant-wife had moved an application against him and his family members. Terming the aforesaid acts as cruelty on the part of the appellant-wife, a decree of divorce has been sought for.

3. Upon notice, the appellant-wife entered appearance and filed her written statement admitting the factum of marriage. However, it was alleged that the allegations contained in the divorce petition were false and frivolous. It was further pleaded that the sister of the respondent-husband was a divorcee and she was living in her parental house. They all taunted, harassed and humiliated the appellant-wife for bringing insufficient dowry. She was not allowed to go outside the house. A demand of Rs.5 Lakhs along with a car was also raised and when she expressed her inability to meet the said illegal demand, she had been given beatings. The respondent-husband used to consume liquor daily and under the influence thereof, he used to beat her. On 08.05.2018, the respondent-husband and his family members compelled her to make a call to her parents, whereupon her mother, brother and sister-in-law came and took her along with them. She tried to contact the respondent-husband on phone, but to no avail. She along with her family members and relatives also visited

his office on 23.10.2018, where he had assured them that he would come to take her, but he never brought her to the matrimonial home. The allegations regarding cruelty were denied.

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 for dissolution of marriage by decree of divorce?
OPP
2. Whether the petition is not maintainable in the present form? OPR
3. Whether the petitioner has not come to the Court with clean hands and suppressed the material facts from this Court? OPR
4. Relief.

5. In evidence, the respondent-husband himself appeared as PW-1 and examined PW-2 Manu Markan, PW-3 Smt. Parvinder Kaur, Principal of Guru Nanak Public Senior Secondary School, Dharamkot, District Moga and PW-4 Constable Supinder Singh. On the other hand, the appellant-wife examined herself as RW-1.

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 appearing for the appellant-wife has vehemently argued that the impugned judgment and decree passed by the learned Family Court is based on conjectures and surmises, inasmuch as the one sided

evidence led by the respondent-husband has been taken into consideration, whereas that of the appellant-wife was totally ignored. It is further argued that vide document Ex.C2, it was proved on record that a compromise had been effected between the parties and the said fact was also admitted by both the parties, but no weightage was given to the factum of the said compromise by the learned Family Court. It is also argued that the appellant-wife had specifically pleaded the atrocities committed towards her by the respondent-husband and his family members, including his divorcee sister, but the said aspect has been completely brushed aside by the learned Family Court. It is further argued that the learned Family Court has wrongly held that there was no cohabitation between the parties, whereas the fact remains that the respondent-husband had nowhere pleaded in his petition that he did not have any physical relation or sexual intercourse with the appellant-wife. Still further, the finding that no allegation regarding demand of Rs.5 Lakhs was levelled in the FIR got registered by the appellant-wife against the respondent-husband and his family members, is also factually incorrect, as it was clearly alleged in the FIR that the respondent-husband and his family members had raised demands of dowry, which included the

demand of the said amount of Rs.5 Lakhs as well. Learned counsel for the appellant-wife has further argued that merely because in her cross-examination, she had deposed that she had never complained to the neighbours about the demand of dowry and the atrocious conduct of her husband and in-laws, is no ground to hold that no harassment, humiliation or mental torture was caused to her. It is also argued that the factum of parties living separately for the last six years, could not have been made the basis for outweighing the effect of compromise Ex.C2.

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

10. A perusal of the findings recorded by the learned Family Court would show that the case of the respondent-husband was that on the second day of the marriage itself, the appellant-wife had refused to cohabit with him and in his cross-examination, the respondent-husband deposed that they did not have any physical

relations and he had brought this fact to the notice of his father as also his counsel. Thus, it was held that merely non mentioning of the words “physical relations” and “sex” in the divorce petition, would be no ground to presume otherwise, when it was specifically pleaded that there was no cohabitation between the parties. Learned Family Court has placed reliance upon the judgment passed by the Hon’ble Supreme Court in **Samar Ghosh vs. Jaya Ghosh**, (2007) 4 SCC 511 to hold that unilateral decision of refusal to have intercourse for considerable period of time without there being any physical incapacity or valid reason amounts to mental cruelty. Similarly, it was found by the learned Family Court that though the appellant-wife had alleged that demands of dowry and car were raised by the respondent-husband and his family members, but the fact remained that the allegations regarding the demand of car did not find mention in the FIR Ex.C3 got lodged by the appellant-wife. In respect of the allegations regarding the beatings given by the respondent-husband and his family members, it was found by the learned Family Court that in her own testimony, the appellant-wife deposed that she did not complain in this regard to any of her neighbours or move any complaint to the police. It was also found that she did not disclose this fact even to her

parents. Thus, the said conduct of the appellant-wife was held to be causing serious doubt about the pleas taken by her in the written statement.

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 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 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 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”.

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.”

13. If the findings recorded by the learned Family Court are examined in the light of the aforesaid judgments of the Hon’ble Supreme Court, it would come out that the acts and conduct of the appellant-wife in denying the access of matrimonial bliss to the respondent-husband and further levelling false allegations regarding demand of dowry would certainly amount to cruelty. As per the facts on record, the parties have been living separately since 2018. There is nothing on record that the appellant-wife had made any effort to either file an application under Section 9 of the Act or to rejoin the company of the respondent-husband. Rather, she could not rebut the stand of the respondent-husband that she did not allow him to have cohabitation with her. This fact clearly shows that the respondent-husband had

been treated with cruelty by the appellant-wife. Another fact, which finds mention in the finding of the learned Family Court is the registration of the FIR. In her written statement, the appellant-wife had specifically taken the plea that the respondent-husband had demanded a car from her parents, whereas no such fact was ever mentioned in the FIR got registered by her for the matrimonial offences. Thus, we find that the findings recorded by the learned Family Court are plausible ones based on the evidence led by the parties. It could not be shown that any evidence has been misread or not taken into consideration. Therefore, the findings recorded by the learned Family Court do not require any interference.

14. No other point has been urged.

15. In view of the above discussion, finding no merit in the present appeal, the same is hereby dismissed.

16. 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.

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

**[SUDHIR SINGH]
JUDGE**

**[SUKHVINDER KAUR]
JUDGE**

26.03.2025

Ajay Prasher

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No