



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Misc. Appeal No. 1861/2022

Kusum W/o Jethmal, Aged About 28 Years, D/o Shri Chunnilal,
R/o Ganchiyo Ki Gali, Pokaran, Currently Residing At Lukdo Ki
Gali, Near Murli Manohar Mandir, Phalodi, Tehsil Phalodi, District
Jodhpur.

----Appellant

Versus

Jethmal S/o Shri Omprakash, Ganchiyon Ki Gali, Pokaran, Tehsil
Pokaran, District Jaisalmer.

----Respondent

For Appellant(s)	:	Mr. Pradeep Singh Khichi
For Respondent(s)	:	Mr. Falgun Buch

**HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE SUNIL BENIWAL**

Order(Oral)

Reportable

24/03/2026

Per :- Arun Monga, J.

1. The Appeal herein is directed against the judgment and decree dated 13.09.2022 passed by the learned Additional District Judge (Special Judge, Family Court), Phalodi, District Jodhpur, in Civil Case No. 32/2017, whereby the petition filed by the Appellant under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred as, 'HMA') seeking dissolution of marriage from respondent was dismissed.

2. Brief facts first. The appellant's marriage with respondent was solemnized on 15.02.2005. After the marriage, the appellant began residing with the respondent at Pokaran, District Jaisalmer,



and for the initial few months, the conduct of the respondent and his family members was cordial.

2.1. Subsequently, the respondent and his family members allegedly began harassing the appellant for dowry, demanding ₹2,00,000 in cash and a motorcycle. Upon her inability to meet these demands, she was subjected to continuous cruelty, including physical assault, forced household labour, deprivation of food, and threats to her life. Despite efforts made by her parents to resolve the dispute, the situation did not improve, and the respondent allegedly persisted in his conduct.

2.2. It is further alleged that the respondent attempted to kill the appellant by forcing her to inhale pesticide and, when she became semi-conscious, turned her out of the matrimonial home. Thereafter, she took shelter at her parental home, where she has been residing since. The respondent has neither made any effort to bring her back nor provided maintenance. The parties have been living separately for a considerable period without any resumption of matrimonial relations.

2.3. The appellant thus filed a petition for divorce under Section 13 of the Hindu Marriage Act before the learned Family Court. The respondent contested the petition by denying the allegations and asserting that the appellant left the matrimonial home voluntarily without justification, despite his willingness to resume cohabitation.

2.4. Both parties led evidence during trial. Based thereupon, the learned Family Court, vide judgment dated 13.09.2022 dismissed the petition for divorce under section 13 of the HMA filed by appellant wife.



2.5. Hence, the instant appeal.

3. Learned counsel for the appellant argues that the impugned judgment and decree dated 13.09.2022 is vitiated by manifest illegality, having been passed without proper appreciation of the material facts, evidence, and circumstances on record, thereby resulting in grave miscarriage of justice. It is contended that the learned Family Court erred in rejecting the petition for divorce despite sufficient evidence establishing cruelty.

3.1 He argues that learned Family Court failed to accord due weight to the uncontroverted testimony of the appellant regarding continuous mental and physical cruelty, including unlawful dowry demands. The respondent having failed to effectively rebut these material allegations, the same ought to have been accepted; however, the Court disbelieved the appellant's testimony without assigning cogent and convincing reasons.

3.2 Learned counsel also contends that the evidence on record was selectively appreciated. While the testimony of P.W.2 was partly relied upon, crucial aspects related to dowry were overlooked. Moreover, the respondent's admission of having tendered an apology to the appellant, indicative of prior misconduct, was not properly considered by the learned Court.

3.3 Lastly, learned counsel for the appellant argues that the parties have been living separately for a considerable period, and the matrimonial bond has become unsustainable by either side, which is a relevant circumstance that ought to have been taken into account while adjudicating the petition.



4. Per contra, learned counsel for the respondent strongly opposes the present appeal and submits that the same is devoid of merit and liable to be dismissed for the reasons already stated in the impugned judgment and findings returned therein warrant no interference by this Hon'ble Court.
5. Heard learned counsels for the parties and perused the material available on record.
6. Before proceeding further, the impugned judgment is to be seen. The relevant portion of the same, translated in English is reproduced herein below:

“With respect to Issue No. 1, the burden of proof lies on the petitioner to establish that the respondent treated her with cruelty after marriage. The petitioner, Kusum (PW-1), stated in her petition and affidavit that her marriage took place on 15.02.2015 at Shivganj, Sirohi, in a community mass marriage ceremony. She alleged that after a few months of normal marital life, the respondent began demanding ₹2,00,000 and a motorcycle as dowry, harassed and assaulted her, made her do all household work, denied her food, stopped working, abused her, refused marital relations, and threatened to kill her. She further alleged that the respondent attempted to kill her by making her inhale pesticide and threw her out of the house in a semi-conscious condition, after which she went to her parental home and has been residing there since. She also stated that the respondent never came to take her back.

However, it is notable that the petitioner did not mention specific dates, months, or years for any of these alleged incidents. During cross-examination, she stated that she lived with her husband for about two and a half years after marriage and had been living in her parental home for about one year. Since the marriage was stated to have taken place on 15.02.2015, the period of two and a half years would complete around August 2017. The present petition was filed on 18.08.2017, shortly after she left her matrimonial home. The respondent stated in his reply that the petitioner had left the matrimonial home without informing him on 16.05.2017. Therefore, the petitioner's claim that they had been living separately for more than six months does not appear to be true.

Regarding the allegation of lack of physical relations, the petitioner stated that they had been living separately for more than six months and had not had any physical relations during that period. However, there is no specific or convincing evidence regarding physical assault or its seriousness. Her claim that she was denied food and made to do all household work while still living with the respondent for two and a half years appears implausible. With respect to dowry demands, she admitted during cross-examination that no such demand was made before marriage. She also admitted that on 04.04.2017 and 24.04.2017, her husband took her to a hospital in Jodhpur for medical check-ups.

Her father, PW-2 Chunnilal, gave inconsistent statements during cross-examination. He stated that he rarely visited Pokaran despite having



relatives there and could not recall specific dates of visits. He also admitted that he received ₹20,000 from the respondent through a third party during house construction, although he later claimed that the money belonged to his daughter. This weakens the allegation of dowry demand.

The petitioner also alleged that the respondent tried to kill her by administering pesticide. However, during cross-examination, she stated that she had come to her parental home by bus at around 5:30 PM and had not returned thereafter, and that she had come without informing her husband. Her father stated that the last time she returned, she came because the respondent had gone on a trip without taking her along. He further admitted that she stayed one night at her matrimonial home and returned the next day in the absence of her husband, and thereafter they did not send her back. These statements clearly contradict the allegation of an attempt to kill her and show it to be false and fabricated.

Thus, from the evidence of the petitioner and her father, it is not established that the respondent treated the petitioner with cruelty after marriage. On the contrary, it appears that the petition has been filed on false grounds. The Court observed that cruelty cannot be precisely defined and must be determined based on circumstances and human conduct. Judicial precedents also establish that minor day-to-day marital issues do not amount to cruelty and cannot be grounds for divorce.

Accordingly, the petitioner has failed to produce reliable and substantive evidence to prove cruelty, and there are material inconsistencies in the statements of the petitioner and her father. Therefore, Issue No. 1 is decided against the petitioner.

With respect to Issue No. 2, the burden again lies on the petitioner to prove that the respondent deserted her and failed to perform marital obligations. However, the evidence shows that the petitioner herself left the matrimonial home without informing the respondent, and she admitted this fact. She also admitted that the respondent took her for medical treatment in April 2017. Therefore, it is not proved that the respondent deserted her. Issue No. 2 is also decided against the petitioner."

7. The impugned judgment is thus premised on the reasoning that the burden of proof was on the appellant wife to establish that the respondent husband treated her with continuous cruelty after marriage. However, upon evaluation of the pleadings and evidence, the learned Family Court found material inconsistencies, lack of specific dates or particulars, and contradictions between their statements. Allegations of dowry demand, physical assault, denial of food, and attempt to kill by administering pesticide were not substantiated by reliable or cogent evidence and appeared exaggerated or fabricated. The appellant wife's own admissions during cross-examination, including that she left the matrimonial home without informing her husband and that the parties had



lived together for about two and a half years, further weakened her case. Also, the appellant wife failed to prove desertion, as evidence indicated that she voluntarily left the matrimonial home, and there was no continuous neglect or abandonment by the respondent husband. Accordingly, the learned Family Court held that the appellant wife did not approach with clean hands and failed to establish cruelty or desertion.

8. Upon perusal of the record *vis-a-vis* the impugned judgment, we find the learned Family Court failed to appreciate that in cases of matrimonial cruelty, the standard of proof is one of preponderance of probabilities and not proof beyond reasonable doubt. The findings of the Family Court are thus, perverse, contrary to the record, and unsustainable in law, liable to be set aside by allowing the appeal. Let us see how.

9. At the outset, there is considerable merit in the contention of the appellant that testimony regarding continuous mental and physical cruelty, including allegations of unlawful dowry demands, remained substantially uncontroverted. The respondent, despite opportunity, failed to effectively rebut these material assertions. In such circumstances, the learned Family Court was not justified in discarding the appellant's testimony without assigning cogent, convincing, and legally sustainable reasons. The approach adopted reflects a misdirection in law.

9.1. Further, the appreciation of evidence by the Court below appears to be selective and fragmented. While portions of the testimony of P.W.2 were noticed, crucial aspects, clarifying that certain transactions were dowry-related, were ignored. Equally significant is the admission on the part of the respondent



regarding having tendered an apology to the appellant, which, in the considered view of this Court, constitutes a relevant circumstance indicative of prior misconduct. The failure to take such an admission into account has materially vitiated the findings.

9.2. But all of above aside, we cannot overlook the fact that the parties have been living separately for a considerable period, and the matrimonial bond between them stands severely strained, if not completely ruptured. The learned Family Court, however, applied a standard akin to proof beyond reasonable doubt, which is wholly misplaced in matrimonial proceedings. It is trite that allegations of cruelty are to be adjudged on the touchstone of preponderance of probabilities, and not by adopting the rigour of criminal jurisprudence.

9.3. It appears that, the reasoning of the learned Family Court is premised on alleged inconsistencies, absence of specific dates, and certain admissions made during cross-examination. However, the same, even if taken on face value, do not persuade us to subscribe to the view taken by learned Family Court. Minor discrepancies are inherent in matrimonial disputes and cannot be magnified so as to discredit the core allegations, particularly when the overall evidence tilts in favour of the appellant. The conclusion that the appellant did not approach the Court with clean hands is not supported by any substantive material and appears to be based on conjectures.

9.4. Thus, we are of the opinion that the learned Family Court proceeded on an erroneous appreciation of both facts and law, resulting in a manifest miscarriage of justice. It is evident that the



Court below failed to properly evaluate the material available on record and rejected the appellant's claim for dissolution of marriage on grounds which are neither borne out from the evidence nor consistent with settled principles governing matrimonial disputes.

10. Moreover, the parties have remained separated for a considerable period and continue to be so, and the matrimonial relationship has clearly broken down beyond repair, with no real possibility of reconciliation. In such circumstances, compelling the parties to continue in a dead and embittered marriage would only perpetuate injustice. The cumulative effect of the evidence establishes matrimonial cruelty and complete breakdown of the marital bond.

11. In view of the foregoing discussion, we are of the considered opinion that the findings recorded by the learned Family Court are perverse, contrary to the evidence on record, and unsustainable in law.

12. As an upshot, the appeal is allowed. Findings returned by the learned Family Court are reversed in favor of the appellant and impugned judgment and decree dated 13.09.2022 passed by learned Family Court is set aside. Marriage between the parties is dissolved by accepting the petition under section 13 of the HMA. Fresh decree sheet be prepared accordingly.

13. All pending applications stand disposed of.

14. In the parting, we may hasten to add that qua permanent alimony payable to the appellant-wife, on a court query, learned counsel for the appellant states that he is under instructions not to press for the same. He states that the appellant would be rather



happy to move on in life and buy peace by waving her right to seek any alimony or past, present or future maintenance.

15. Appeal is allowed, accordingly, as above. All pending applications are also disposed of.

(SUNIL BENIWAL),J

(ARUN MONGA),J

65-suraj/-