



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

D.B. Civil Misc. Appeal No. 2773/2024

Savitri W/o Rajendra Kumar, Aged About 35 Years, D/o Hansraj,
R/o Village Lunasar, Tehsil Sardarshahar, District Churu. At
Present Posted At Unit No.7, B.n. Bsf Camp Paloura Jammu,
District Jammu And Kashmir (J And K)

----Appellant

Versus

Rajendra Kumar S/o Shri Phularam, R/o Billun Bas Rampura,
Tehsil Sardarshahar, District Churu.

----Respondent

For Appellant(s) : Mr. K.R. Saharan
For Respondent(s) : None.

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE SUNIL BENIWAL
Order(Oral)

Reportable

28/03/2026

Per: Arun Monga, J

1. Appellant-wife is before this Court assailing the judgment and decree dated 05.09.2024 passed by learned Family Court, Sardarshahar, District Churu vide which her petition under Section 13 of Hindu Marriage Act, 1955 (hereinafter referred to as the "Act of 1955") seeking dissolution of marriage was rejected.
2. Brief facts first. The marriage between the appellant and the respondent was solemnized on 25.12.2009 as per Hindu rites at Churu. From the wedlock, a female child, Abhilasha, now aged about 7 years, was born and is in the custody of the appellant.
 - 2.1 The appellant alleged that soon after marriage, she was subjected to cruelty by the respondent and his family members, who were dissatisfied with the dowry brought by her. She contended that she was harassed, physically assaulted and

humiliated on account of such demands. Being employed in the BSF, she was further pressurized to resign from her job and was subjected to false and baseless allegations of extramarital affairs. It was also alleged that the respondent used to take her salary and spend it on liquor and other vices, while additionally demanding a house in a posh locality and a sum of Rs.10,00,000/-.

2.2 It was further averred that the respondent was of criminal disposition and had remained in custody in connection with FIR No. 117/2013 registered at Police Station Bhanipura. The appellant alleged that on 26.03.2014, she was forcibly driven out of the matrimonial home by the respondent and his family members while reiterating their unlawful demands, and since then, she has been living separately. On these grounds, she filed a divorce petition seeking dissolution of marriage.

2.3 Upon notice, the respondent filed his reply denying the allegations and asserting that it was the appellant who had withdrawn from the matrimonial relationship without any reasonable cause. He alleged that after joining service in the BSF, the appellant became involved in extra-marital affair and levelled false accusations against him. The learned Family Court, after framing issues and appreciating the oral and documentary evidence on record, dismissed the divorce petition vide judgment and decree dated 05.09.2024.

2.4 Hence, this instant appeal.

3. Learned counsel for the appellant argues that the impugned judgment decree dated 05.09.2024 is wholly illegal, perverse, and contrary to settled principles of law, as the learned trial court failed to properly appreciate the material facts and evidence available on record. It is argued that despite clear pleadings and supporting evidence establishing respondent's cruelty and desertion, the trial court erroneously dismissed the petition, rendering the impugned judgment liable to be set aside.

3.1 Learned counsel for the appellant submits that the fact of continuous separation since 2014 stands admitted by both parties, and therefore the finding of the trial court negating desertion is manifestly erroneous, as such prolonged and unjustified separation clearly establishes desertion on the part of the respondent; it is further contended that the appellant has duly proved multiple instances of cruelty through oral as well as documentary evidence, including chats demonstrating harassment, dowry demands, and baseless allegations of extramarital affairs, and that such reckless and unsubstantiated allegations amount to mental cruelty, however, the trial court gravely erred in discarding this evidence on hypertechnical grounds such as non-mentioning of specific dates, despite settled law that cruelty is to be assessed from the overall conduct of the parties.

3.2 It is further submitted by the learned counsel that the respondent failed in his marital and parental obligations, having neglected both the appellant and the minor child, while

continuously subjecting the appellant to harassment and coercion, including demands for dowry and pressure to resign from her employment. The respondent's conduct, including misappropriation of the appellant's income and his criminal background, were significant factors which the trial court failed to duly consider, thereby vitiating the findings recorded in the impugned judgment.

3.3 Lastly, learned counsel submits that the parties have been living apart for over a decade, and the marital relationship is completely dead. In such circumstances, denial of divorce amounts to perpetuating injustice, and therefore, the appellant is entitled to a decree of divorce on grounds of cruelty and desertion.

4. Heard learned counsel for the appellant and perused the case file, while none appears for the respondent.

5. Learned Family Court vide impugned judgment returned the findings against the appellant holding that neither are allegation of cruelty nor desertion on the part of the respondent were proved.

5.1. The Family Court held that cruelty by the respondent was not proved from the evidence on record. On desertion, although the appellant alleged that she was assaulted and forced out on 26.03.2014, the Court found her version unreliable because she neither sought restitution of conjugal rights nor disclosed since when she had been serving in the BSF. The evidence showed that she had been in government service since 2013 and was residing at her place of posting. The respondent's statement that the appellant had voluntarily visited and stayed with him six months

before filing the petition remained unchallenged, and the fact that the minor daughter stayed with the respondent until May 2017 also weakened the plea of continuous desertion since 2014. Accordingly, the Court held that desertion for the statutory period was not established.

6. However, we are unable subscribe to the above view. Let us see how.

7. Form perusal of the judgment and the record available, we find that the learned Family Court fell into error in rejecting the appellant's substantive claim by overlooking that in matrimonial proceedings, substance must prevail over form, and technical defects, i.e., in drafting plaint or written statement, ought not to defeat substantial justice, particularly where evidence had been led on the issues of cruelty and desertion.

7.1. The appellant consistently pleaded and deposed that soon after marriage, the respondent and his family subjected her to physical and mental cruelty on account of dowry demands and pressure to abandon her government service. The Family Court erred in treating the appellant's inability to specify exact dates or months of every incident as fatal to her case. Acts of matrimonial cruelty ordinarily occur within the privacy of the matrimonial home, and insistence on mathematical precision in such testimony is unrealistic.

7.2. The appellant's testimony regarding physical assault, abusive conduct after intoxication, false imputations upon her character, and persistent pressure to leave service was natural, consistent,

and worthy of reliance. The absence of medical records or exact dates of assault cannot by itself discredit the appellant's sworn testimony, particularly when cruelty in matrimonial law includes sustained emotional humiliation and coercive conduct beyond visible physical injury.

7.3. The learned Family Court also erred in drawing an adverse inference from the appellant not having lodged a criminal complaint regarding dowry harassment or assault. It is well settled that failure to initiate criminal proceedings does not negate matrimonial cruelty. Many women, in order to preserve the marriage and avoid social stigma, refrain from approaching police authorities despite suffering harassment. Such restraint cannot be used to disbelieve their testimony.

7.4. The fact that the parties continued to reside together from 2009 to 2014 does not negate cruelty; rather, it demonstrates the appellant's bona fide efforts to preserve the marriage despite persistent mistreatment. Continuation of cohabitation in the hope of reconciliation is not a waiver of cruelty. The Family Court failed to appreciate that prolonged endurance of abuse is common in matrimonial relationships, especially where a child is involved.

7.5. The evidence regarding the Panchayat proceedings was also improperly appreciated. The very convening of a Panchayat to address marital discord corroborates the existence of serious disputes between the parties. Even if witnesses did not repeat every allegation made therein, the fact that elders had to

intervene supports the appellant's case that the marriage had become strained due to the respondent's conduct.

7.6. The learned Family Court further committed an error in minimizing the impact of the respondent's alcohol abuse. The appellant specifically deposed that the respondent used to consume alcohol and assault her. In matrimonial law, habitual drunkenness coupled with violent or abusive behavior constitutes mental cruelty. Merely because the respondent consumed alcohol even before, or because the appellant tolerated it initially, does not mean that the continued conduct ceased to be cruel. The appellant's tolerance cannot be turned against her.

7.7. The respondent's criminal antecedents and involvement in a serious criminal case were also relevant circumstances which the Family Court failed to properly appreciate. Even if the respondent was later acquitted, the appellant's apprehension, humiliation, and insecurity arising from her husband's arrest, incarceration, and criminal prosecution were genuine and had a direct bearing on her mental peace and marital life. The standard in matrimonial cases is not criminal conviction but the effect of conduct on the spouse.

7.8. The fact that the appellant continued to cohabit with the respondent for some time after registration of the criminal case cannot be treated as condonation. A spouse often continues in the relationship due to societal pressure, emotional dependence, concern for the child, and hope of reform. Such temporary continuation does not erase the trauma already caused nor bar relief when the marriage has irretrievably broken down.

7.9. On the issue of desertion, the learned Family Court failed to correctly apply the legal test. The appellant specifically pleaded that on 26.03.2014 she was assaulted and forced to leave, and that thereafter the respondent failed to resume cohabitation or discharge marital obligations. Her testimony clearly established that the respondent had withdrawn from the marital relationship without reasonable cause.

7.10. The appellant's employment in the BSF and residence at her place of posting could not be used to discredit her plea of desertion. A working wife is not disentitled from seeking matrimonial relief merely because her service requires her to reside elsewhere. On the contrary, the respondent's insistence that she abandon her career and his failure to support her professional obligations constitute an element of cruelty rather than a defence.

7.11. The respondent's plea that the appellant visited him six months before institution of proceedings was not sufficient to dislodge the case of desertion. Occasional visits, attempts at reconciliation, or temporary interaction do not amount to restoration of consortium or resumption of normal matrimonial life. Such efforts reflect the appellant's willingness to salvage the marriage rather than negate desertion.

7.12. Aside all above, in his written statement filed before the learned Family Court, the respondent-husband made reckless and defamatory allegations against the appellant-wife by imputing to her an illicit extramarital relationship and alleging that she was

living an adulterous life merely because she had secured a government job and was residing separately. In paragraph 13 of the reply, the respondent specifically alleged that the appellant had started considering herself superior after obtaining government employment, did not like him anymore, and was involved in a love affair with another person, due to which she was allegedly living an adulterous life and keeping the minor daughter away from him. These allegations were grave, stigmatic, and directly attacked the appellant's character, dignity, and chastity. Pertinently, the respondent did not even lead any evidence, whatsoever, to substantiate these serious imputations. The making of such false, scandalous, and unsubstantiated allegations against the wife's fidelity constitutes clear mental cruelty, as it causes deep emotional pain, humiliation, and injury to her reputation.

8. Thus, on a holistic appreciation of the pleadings, oral evidence, surrounding circumstances, and the admitted long separation between the parties, the material on record clearly established that the appellant was subjected to cruelty and that the marital bond had broken down beyond repair.

9. Moreover, a perusal of the order-sheet reveals that despite repeated and duly effected service of notice, the respondent has deliberately chosen not to appear or contest the present appeal. It is noteworthy that service was caused on two separate occasions, first at the stage of admission and thereafter upon admission of the appeal for final hearing, yet the respondent neither entered

appearance nor filed any reply, affidavit, or engaged counsel to defend the impugned judgment and decree dated 05.09.2024 passed in his favour. His continued non-appearance clearly indicates an unwillingness to contest the proceedings.

10. Absence is not a solitary or inadvertent lapse, but a continued and deliberate course of conduct. His persistent non-appearance, despite ample opportunity and, is nothing but indifference to the subsistence of the marital bond itself. Such conduct leaves little room for doubt that the respondent has no intention whatsoever to defend the impugned judgment or to controvert the assertions made by the appellant. His silence, in the face of ongoing litigation, operates as a tacit acquiescence. Moreover, respondent's continued abstaining lends substantial credence to the appellant's version and fortifies even our conclusion that the impugned judgment cannot be sustained.

11. In totality of the circumstances, it so transpires that the respondent is not inclined to defend the impugned judgment and decree, and his conduct clearly suggests that he has no objection to the present appeal being allowed.

12. Apart from the above, it is evident that the parties have been living separately since around May 2015, and more than ten years have elapsed without any resumption of matrimonial ties. This prolonged separation clearly indicates that the relationship has irretrievably broken down, and the circumstances reflect mutual completely which has not been condoned by either party.

13. Accordingly, the appeal is allowed.

14. Findings recorded by the learned Family Court qua the cruelty and desertion are reversed in favour of the appellant by setting aside the impugned judgment and decree and the petition filed by the appellant under Section 13 of the Act of 1955 is allowed. Marriage between the parties stands dissolved. Decree sheet be prepared accordingly.

15. Any pending application also stands disposed of.

(SUNIL BENIWAL),J

(ARUN MONGA),J

13-Devanshi/-