

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Miscellaneous Appeal No. 460/2021

Pulkit Nigam S/o Shri Naresh Chand Nigam, Aged About 35 Years, R/o 1867, Nigam House, Ghee Walo Ka Rasta, Jaipur At Present R/o Flat No. 25, Shaniwar Pet Puna 30

----Appellant

Versus

Smt. Garima Shrivastav W/o Shri Pulkit Nigam D/o Shri Asvini Shrivastav, Aged About 31 Years, R/o 117/4, Block Radha Kishan Society, Sharda Nagar, Kanpur (U.p) 208025

----Respondent

For Appellant(s)	:	Mr. J.P. Gupta. Mr. Rahul Sharma.
For Respondent(s)	:	

HON'BLE MR. JUSTICE INDERJEET SINGH
HON'BLE MRS. JUSTICE SHUBHA MEHTA

Order

03/11/2025

1. This appeal has been filed on behalf of the appellant (hereinafter to be referred as 'husband') under Section 19 of the Family Courts Act, 1984 (hereinafter to be referred as 'Act of 1984') against the judgment and decree dated 30.01.2021 passed by the learned Family Court, No.3, Jaipur Metro-I, whereby the application filed on behalf of the husband under Section 13 of the Hindu Marriage Act, 1955 (hereinafter to be referred as Act of 1955) was dismissed.
2. The husband has invoked magnanimity of this Court to set aside the judgment impugned dated 30.01.2021, allow his application under Section 13 of the Act of 1955 and pass a decree of divorce accordingly.

3. Brief facts of the case are that the husband filed an application under Section 13 of the Hindu Marriage Act, 1955 against the respondent (hereinafter referred to as the 'wife') before the learned Family Court, stating that the marriage between the parties was solemnized on 07.12.2014 as per Hindu rites and customs. It was further stated by the husband that the behavior of the wife was cruel towards him and his family members and the wife insisted that the husband to take her for a honeymoon abroad; however, the husband arranged the honeymoon at Manali. It was further stated that the wife was in the habit of abusing and insulting the husband in the presence of his family members and she also refused to cohabit with him. It was further stated that the wife repeatedly pressured him to live separately from his parents and on one occasion, the wife locked herself in a room and attempted to harm herself, due to which the husband had to take leave from his bank and after repeated requests, she eventually opened the door. It was further stated that the wife was mentally unstable and during the husband's absence from home, she attempted to commit suicide, for which the husband's father had to inform the police. It was further stated that during the pendency of the divorce proceedings, the wife lodged a false criminal case against the husband and his family members under Sections 498A, 323, 504, 506, 313, 377, 354, and 511 of the IPC as well as under Sections 3 & 4 of the Dowry Prohibition Act, 1961. However, after due investigation, the police submitted a negative final report and lastly, prayed for allowing the petition for divorce.

4. In reply, the wife denied all the allegations made by the husband and stated that the husband and his family members were consistently demanding dowry and used to ill-treat and abuse her. It was further stated that when the husband was transferred to another city, he refused to take her along. The wife also alleged that the husband influenced his brother's wife by saying that he wanted to divorce her. Hence, the wife prayed for dismissal of the divorce petition.

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

- "1- आया अप्रार्थिया ने प्रार्थी के साथ विवाह के पश्चात् याचिका में वर्णित तथ्यों के परिप्रेक्ष्य में क्रूरतापूर्ण व्यवहार किया?
2- अनुतोष।"

6. The husband in support of his case submitted his own evidence before the learned Family Court as AD-1 and also submitted the evidence of AD-2 (Nareshchand Nigam), AD-3 (Alok Jain) & AD-4 (Devang Patel) as well as the husband also submitted the documentary evidence marked as Ex.A-1 to Ex.A-25.

7. On the other side, the wife submitted her own evidence as NAD-1 and also submitted the evidence of NAD-2 (Sushma Shrivastav) as well as the wife also submitted the documentary evidence marked as Ex.1 to Ex.34.

8. The learned Family Court after recording the evidence and hearing both the parties dismissed the application under Section 13 of the Act of 1955 filed by the husband vide judgment and decree dated 30.01.2021. Being aggrieved by the judgment and

decree dated 30.01.2021 passed by the learned Family Court, the husband has filed the present appeal before this Court.

9. In support of the above facts, learned counsel for the husband argued that the learned Family Court has erred in passing the impugned judgment and decree. He further argued that the wife had misbehaved with the husband and his family members on several occasions and had refused to cohabit with the husband. He further argued that the wife repeatedly pressurized the husband to live separately from his parents. He further argued that the wife is mentally unstable and had attempted to commit suicide, due to which the husband's father was constrained to lodge a complaint against her. He further argued that the wife had lodged a false criminal case against the husband and his family members under Sections 498A, 323, 504, 506, 313, 377, 354, and 511 of the IPC as well as under Sections 3 & 4 of the Dowry Prohibition Act, 1961, in which after investigation, the police submitted a negative final report. Lastly, counsel prayed that the appeal be allowed and the impugned judgment and decree passed by the learned Family Court be set aside.

10. This Court on 01.02.2023 passed the following order:-

"Heard.

A copy of paper publication "Amar Ujala" Kanpur edition dated 15.09.2022 has been placed on record.

After going through the same, we are satisfied that the service on notice by substitute mode on respondent is complete. As neither the respondent appears, nor the respondent has engaged any counsel, the respondent is proceeded ex-parte.

Record is received.

List this case for final hearing."

11. Despite service of notice upon the wife through paper publication, as recorded in this Court's order dated 01.02.2023, none has appeared on her behalf to argue the matter.

12. Heard counsel for the husband and perused the impugned judgment as well as material available on record.

13. Under Section 13 (1) (ia) of the Hindu Marriage Act, a marriage can be dissolved by a decree of divorce on a petition presented either by the husband or wife on the ground that the other party has, after solemnisation of the marriage, treated the petitioner with cruelty. The cruelty may be physical or mental.

14. The point of cruelty has been considered by the Hon'ble Supreme Court at length & depth in catena of judgments and in a recent judgment delivered in the matter of **Rakesh Raman Vs. Kavita** reported in **2023 17 SCC 433**, in para No.17 has held as under:-

“17. Cruelty has not been defined under the Act. All the same, the context where it has been used, which is as a ground for dissolution of a marriage would show that it has to be seen as a ‘human conduct’ and ‘behavior’ in a matrimonial relationship. While dealing in the case of Samar Ghosh (supra) this Court opined that cruelty can be physical as well as mental:-

“ 46...If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse.

Cruelty can be even unintentional:-

...The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill- treatment."

This Court though did ultimately give certain illustrations of mental cruelty. Some of these are as follows:

(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.

(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. (emphasis supplied)

18. We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the

wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1) (ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock."

15. The Hon'ble Supreme Court in the matter of **Sivasankaran Vs. Santhimeenal** reported in **2022 (15) SCC 742** wherein para No.25, it is held as under:-

"25. In view of the legal position which we have referred to aforesaid, these continuing acts of the respondent would amount to cruelty even if the same had not arisen as a cause prior to the institution of the petition, as was found by the trial court. This conduct shows disintegration of marital unity and thus disintegration of the marriage. In fact, there was no initial integration itself which would allow disintegration afterwards. The fact that there have been continued allegations and litigative proceedings and that can amount to cruelty is an aspect taken note of by this Court. The marriage having not taken off from its inception and 5 years having been spent in the trial court, it is difficult to accept that the marriage soon after the decree of divorce, within 6 days, albeit 6 years after the initial inception of

marriage, amounts to conduct which can be held against the appellant.”

16. The Hon’ble Supreme Court in the matter of **Savitri Pandey Vs Prem Chandra Pandey** reported in **2002 (2) SCC 73**, wherein para No.11 has held as under-

“11. There is another aspect of the matter which dis-entitles the appellant from seeking the relief of divorce on the ground of desertion in this case. As desertion in matrimonial cases means the withdrawal of one party from a state of things i.e the marital status of the party, no party to the marriage can be permitted to allege desertion unless he or she admits that after the formal ceremonies of the marriage, the parties had recognised and discharged the common obligation of the married life which essentially requires the cohabitation be-tween the parties for the purpose of consummating the marriage. Cohabitation by the parties is an essential of a valid marriage as the object of the marriage is to further the perpetuation of the race by permitting lawful indulgence in passions for procreation of children. In other words, there can be no desertion without previous cohabitation by the parties. The basis for this theory is built upon the recognised position of law in matrimonial matters that no one can desert who does not actively or willfully bring to an end the existing state of cohabitation. However, such a rule is subject to just exceptions which may be found in a case on the ground of mental or physical incapacity or other peculiar circumstances of the case. However, the party seeking divorce on the ground of desertion is required to show that he or she was not taking the advantage of his or her own wrong. In the instant case the appellant herself pleaded that there had not been cohabitation be-tween the parties after the marriage. She neither assigned any reason nor attributed the non-resumption of cohabitation to the respondent. From the pleadings and

evidence led in the case, it is apparent that the appellant did not permit the respondent to have cohabitation for consummating the marriage. In the absence of cohabitation between the parties, a particular state of matrimonial position was never permitted by the appellant to come into existence. In the present case, in the absence of cohabitation and consummation of marriage, the appellant was dis-entitled to claim divorce on the ground of desertion”

17. We have carefully examined the judgment and decree passed by the learned Family Court as well as the evidence recorded during the proceedings. According to the statement of the husband (AW-1), the wife was in the habit of using abusive language towards the husband and his family members. In our considered view, such conduct on the part of the wife amounts to mental cruelty towards the husband.

18. We have also taken note of the fact that the wife had levelled false allegations against the husband and his family members under Sections 498A, 323, 504, 506, 313, 377, 354, and 511 of IPC, as well as under Sections 3 and 4 of the Dowry Prohibition Act, 1961, in which the police, after due investigation, submitted a negative final report. In our considered opinion, the act of levelling false and baseless allegations against the husband and his family members amounts to mental cruelty towards the husband.

19. We have also considered the fact that the wife had levelled allegations against the husband of doing unnatural sex with her without her consent and in this regard, lodged an FIR against him under Section 377 of the IPC. However, such allegations were

found to be false during police investigation. In our considered view, levelling such false and serious allegations amounts to mental cruelty towards the husband.

20. We have also considered the evidence that the wife had attempted to commit suicide, on account of which the father of the husband had to lodge a police complaint. In our opinion, such conduct of the wife also causes immense mental agony to the husband and, therefore, amounts to cruelty.

21. We have also considered the evidence that the wife repeatedly pressurized the husband to live separately from his parents. In our considered view, compelling the husband to sever his relationship and live apart from his parents against his wishes also amounts to cruelty.

22. We have also considered the fact that the husband and wife have been living separately for more than seven years. At this stage, asking both of them to live together at this point amounts to cruelty to both of them.

23. In view of the above discussion, the findings recorded by the learned Court below on Issue No. 1 is held to be perverse and therefore deserve to be set aside. The issue of cruelty is accordingly decided in favour of the husband.

24. Accordingly, the appeal filed on behalf of the husband is allowed. The judgment and decree dated 30.01.2021 passed by the learned Court below is set aside, and the marriage solemnized between the parties on 07.12.2014 stands dissolved by a decree of divorce.

25. Office is directed to prepare the decree accordingly.
26. Record of the learned Court below be sent back.
27. All the pending applications stand disposed of.

(SHUBHA MEHTA),J

(INDERJEET SINGH),J

MG/56