

Latest HLJ 2025 (HP)(1) 79 In the High Court of Himachal Pradesh, Shimla.

FAO (FC) No. 24 of 2022

Hindu Marriage Act, 1955 Sections 13(1)(ia) & 13(1)(ib)—Divorce on Grounds of Cruelty & Desertion—Decree of Divorce Granted—Appeal— Appellant-wife lived with him for only a brief period after marriage and thereafter, left the matrimonial home without any justifiable cause— Despite several reconciliation attempts, the appellant refused to resume cohabitation—Appeal—Held—Desertion involves both the factum of separation and the animus deserendi (intention to abandon) —That, the

appellant's allegations of physical abuse, demand for money, and ill- treatment were found to be unsubstantiated—Additionally, serious

allegations of physical abuse against the respondent were not corroborated by any credible evidence, including testimony from their son—Findings of Family Court, affirming that the marriage had irretrievably broken down upheld – Appeal dismissed. (Paras 24 and 45) Cases referred:

(1) Samar Ghosh vs. Jaya Ghosh, (2007) 4 SCC 511.

(2) Vishwanath Agrawal vs. Sarla Vishwanath Agrawal, (2012) 7 SCC 288.

Parties represented by:

For the Appellant: Mr. K. B. Khajuria, Advocate. For the Respondents: Ms. Srishti Chauhan, Advocate. Justice Tarlok Singh Chauhan Judge:- The husband/respondent's petition seeking decree of divorce against wife/appellant on the ground of desertion and mental cruelty has been allowed by the learned Court below and aggrieved thereby, the wife/appellant has filed the instant appeal.

2. The respondent approached the learned Court below with a petition under Section 13(1) (ia) (ib) of the Hindu Marriage Act, 1955 (in short, the Act) seeking decree of divorce against the appellant. It was averred that marriage between the parties was solemnized on 19.02.1992 according to Hindu Rites. After the marriage, the parties co-habited as husband and wife and the marriage was duly consummated. Out of the wedlock, a son was born and at the time of filing the petition, he was residing with the appellant.

3. It was further averred that the appellant had lived with the respondent for hardly 15-20 days after the marriage, whereafter, she stated that she did not want to live in the house of the respondent. The respondent being employed with Armed Forces had to leave on account of the exigency of his job. However, when he was away, the brother of the appellant took her away to her parental house. The father of the respondent along with the members of Dhaned Panchayat had gone to the house of the appellant to bring her back but the appellant refused to return.

4. In October, 1992, the respondent came to his native village on leave and went to the parental house of the appellant and asked her to return to matrimonial home. Even though the appellant

did come to stay there, but for only 2-3 days and then left the company of the respondent and went back to live at parental house where she continued to live for five years. During this period, she did not come to matrimonial house or join the company of the respondent. When the respondent made efforts to bring back the appellant, he was threatened with dire consequences by the brother of the respondent and baseless complaints regarding demand of dowry, maltreatment etc. were filed by the appellant before the Panchayat, but on inquiry, the same were found to be false.

5. Despite all these humiliations, the respondent once again brought the appellant back to matrimonial home with intervention of the Gram Panchayat, Dhaned and thereafter, the appellant joined the course of Lab. Technician at Dharamshala, the expenses whereof were also borne by the respondent. Later, the appellant came to be appointed as Lab. Technician at PHC, Salauni, which was hardly at a distance of 6 kilometers from Dhaned. However, the appellant did not join the matrimonial house and preferred to commute to her work place from parental house. When the respondent asked her to continue her job while staying at matrimonial house, she refused and rented out an accommodation at Salauni itself. She also wrote false letter to the Army Authorities where the respondent though was employed stating therein that she was unemployed having no source of income.

6. It was further averred that the appellant had never performed matrimonial obligations and had been constantly teasing and taunting the respondent. Her behaviour had caused extreme agony and depression to the respondent who had been undergoing treatment for the same in various hospitals.

7. According to the respondent, he retired from Army on 30.04.2017 and held a retirement function at his village. Though, the appellant did come to the matrimonial home, but left soon after on 05.05.2017 to reside at her parental home at Hamirpur as she was then employed there at Hamirpur. The respondent had tried his level best to bring back the appellant to her matrimonial home, but all in vain. On the other hand, the appellant had been regularly proclaiming that she would not join the company of the respondent.

8. It was specifically pleaded that the appellant had been avoiding the company of the respondent ever since the marriage. Her behaviour had not changed despite the respondent showing patience for a long time. As such, it was alleged that the appellant had left the company of the respondent for more than 10 years and had been living separately from the latter ever since.

9. In addition to the above, it was also averred that marriage between the

parties had irretrievably broken down and that there were no chances of re- conciliation as the parties had no physical relations for more than 10 years. It was

on the basis of the aforesaid allegations that the respondent had sought divorce on the ground of mental cruelty and desertion.

10. The appellant contested the petition by filing reply, wherein she raised preliminary objection regarding maintainability of the petition on account of its not conforming to the provisions of the

law and rules applicable to the same. Furthermore, objections regarding estoppel, the petition being barred by act and conduct of the respondent etc. were raised. On merits, it was alleged that the petition contained false and scandalous allegations and was filed with the sole purpose of harassing the appellant to get rid of her.

11. It was pleaded that till the retirement of the respondent, most of the times, the appellant joined the company of the respondent whenever he came on leave. Even on the day of his retirement, she attended the function and stayed at matrimonial home till 27.05.2017. The respondent on the day of retirement had assaulted the son of the parties under the influence of liquor on a flimsy pretext and tried to strangle him and had thrown him from the roof of the house. Even after 4-5 days, when the appellant had come to the house of the respondent, she found that the respondent had been consuming liquor with one Subhash, resident of the same village, which made it difficult for her to stay in the matrimonial house.

12. It was averred that even prior to this incident, the respondent had harassed the appellant and would beat her on several occasions under intoxication and turn her out of the house and she had been forced to spend many nights in the house of their neighbours.

13. Another serious allegation was made against the respondent that that he had demanded ₹12,00,000/- from the appellant as a condition precedent for her residing in the matrimonial home. She also levelled allegations that whenever the appellant went on duty, he used to send his friend Subhash to the matrimonial home only with a motive to harass and defame the appellant in the society. It was denied that the parties were not having physical relations as alleged in the petition. However, it was stated that the appellant had not gone to the respondent since May, 2017 but that was owing to the act and conduct of the respondent himself.

14. It was further averred that the respondent had decided not to join the company of the appellant since she apprehended threat to her life and life of her son. It was denied that the appellant had left the company of the respondent without any rhyme or reason and stated that it was on account of cruelty that she was forced to leave the matrimonial home. It was also denied that she or her relatives had levelled false allegations of demand of dowry against the respondent.

15. Lastly, it was alleged that it was the respondent who denied due maintenance to the appellant as well as the son and only to get out of such obligation, the petition seeking divorce had been filed by the respondent.

16. From the pleadings of the parties, on 16.9.2020, the learned court below framed the following issues:-

1. Whether the respondent has deserted the petitioner without any reasonable cause? OPP.
2. Whether the respondent has treated the petitioner with cruelty? OPP.
3. Whether the petition is not maintainable? OPR.

4. Whether the petitioner is estopped to file the present petition by his act and conduct? OPR

5. Relief.

17. As observed above, the learned court below, after recording the evidence and evaluating the same, allowed the petition filed by the respondent, hence the instant appeal.

18. It has been vehemently contended by Mr. Kulbhushan Khajuria, Advocate that findings recorded by the learned court below are totally perverse and virtually amount to giving premium to the respondent for his own acts. The learned court below has failed to appreciate the statements of RW1 and RW2, which clearly suggests that that it was the appellant, who had been subjected to maltreatment by the respondent under the influence of liquor and therefore, there was no question of cruelty or desertion on the part of the appellant so as to grant decree of divorce in favour of the respondent.

19. On the other hand, Ms. Srishti Chauhan, learned Counsel for the respondent would argue that the findings recorded by the learned court below are in tune with the pleadings and averments made by the parties and, therefore, warrant no interference.

20. We have heard the learned counsels for the parties and have gone through the material on record.

21. "Desertion" means the intentional abandonment of one spouse by the other without consent of other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be animus deserendi on the part of deserting spouse. There must be absence of consent on the part of the deserted spouse and conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home.

22. The expression "desertion" in the context of matrimonial law represents a legal conception and is very difficult to define. The essence of desertion is the forsaking and abandonment of one spouse by the other without reasonable cause and without consent or against the wish of the other.

23. The reasons for a dispute between husband and wife are always very complex. Every matrimonial dispute is different from another. Whether a case of desertion or cruelty is established or not, the same will depend on the peculiar facts of each case. It is a matter of drawing an inference based on facts brought on record by way of evidence.

24. Some factors, which can be considered for determining whether a marriage is broken down irritably are :

i) duration of cohabitation after marriage;

(ii) last time the parties cohabited;

- (iii) nature of allegations made by the parties against each other;
- (iv) attempts to settle dispute between the parties; and
- (v) A sufficiently long period of separation.

25 The word “cruelty” under Section 13(1)(i-a) of the Act has got no fixed meaning and gives a very wide discretion to the court to apply it liberally and contextually. What is cruelty in one case may not be the same for another and it depends upon the attending circumstances.

26. In *Samar Ghosh versus Jaya Ghosh*, (2007) 4 SCC 511, the Hon’ble Supreme Court, while referring the concept of cruelty, which includes mental cruelty, in English, American, Canadian and Australian cases in paras 99 and 100, has observed that:-

“99... The human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in the other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances.....”

27. In *Vishwanath Agrawal versus Sarla Vishwanath Agrawal*, (2012) 7 SCC 288, the Hon’ble Supreme Court while dealing with the expression cruelty, has observed in paras No. 22 and 25.5 as under:-

22. The expression “cruelty” has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.

25.5..... when a spouse makes a complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatized as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance.”

28. We would like to emphasize that an element of subjectivity has to be applied, albeit, what constitutes cruelty is objective. Therefore, what is cruelty for a person in a given may not be cruelty for another person, a relatively more elastic and broad approach is required when we examine a case in which a spouse seeks divorce.

29. In order to prove requirement of cruelty, the spouse seeking divorce must prove that the opposite party had caused cruelty to her/him and hence, left the company.

30. Adverting to the facts of the present case, the respondent filed his affidavit by way of evidence, Ex.PW2/A, wherein he reiterated the contents of the petition.

31. On being cross-examined, he denied the suggestion that whenever the appellant was living with him or tried to live with him, he used to physically abuse her under the influence of intoxication and turn her out of the house. He also denied the suggestion that he wanted to extort ₹12,00,000/- from the appellant as a condition precedent for her to reside in the matrimonial house. He deposed that it was on his complaint that the police had called upon the appellant to stay in the matrimonial home, but she did not abide by the same. He also denied the suggestion that the appellant had been compelled to leave the matrimonial house due to his own act and conduct.

32. The case of the respondent that it was the appellant who had been keeping away from the company of the respondent was duly supported by PW-3 Subhash Chand, who had categorically deposed that despite repeated efforts of the respondent, the appellant had not joined his company.

33. Likewise, PW4 Nirmala Devi, deposed that she had remained Pardhan of Gram Panchayat, Ser Baloni for two terms and that the respondent was resident of the said gram Panchayat. She further deposed that the appellant usually stayed at her parental house and she also tried to make the appellant understand to live in matrimonial house, but the appellant refused to do so. This witness further deposed that she had issued certificate mark A2.

34. To counter the case of the appellant, the respondent examined herself as RW-2 and stated her defence as projected in the reply to the petition.

35. She also examined one Kamla Devi as RW1, who deposed that about three years ago, the appellant had come to her house and stated that she had squabble with the appellant and she intended to leave for her parental house that

night itself. She further deposed that it was on her insistence that the appellant had stayed in her house and thereafter left to her parental house.

36. From the pleadings of the parties as well as the evidence on record, it can be safely concluded that it is the appellant, who without any justifiable cause has refused to reside with the respondent.

37. The relations between the parties are bitter, which have not witnessed any moment of peace virtually since the time of their marriage. There has been a long separation between the parties and it is the appellant who conveniently can be said to be responsible for such situation.

38. The allegations levelled by the appellant regarding her being beaten up or physically abused by the respondent have not been proved on record

. 39. Further allegation that the respondent on the date of his retirement had mercilessly beaten up their son and tried to strangulate and thrown him from the terrace has also not been proved on record.

40. What is still worse for the appellant is that even the son was not examined to prove such a serious allegation.

41. In such circumstances, the learned court below was absolutely right in drawing an adverse inference against the appellant.

42. Here, it needs to be noticed that a suggestion had been given to the respondent during his cross-examination while appearing as PW2 that he had given ₹40,000/- to the appellant for the admission of the son of the parties and had also been regularly giving money to them for their maintenance. Such suggestion by itself shows that respondent was concerned with the welfare of the family.

43. We may at this juncture refer to certain documents that have come on record.

44. The respondent produced a copy of proceeding of the Gram Panchayat, Daroh, dated 13.07.1993, as Ex. PX in evidence, which was duly admitted by the appellant while appearing as RW2. She admitted that she had filed a complaint against the respondent regarding demand of dowry, which was decided and found to be false by the Panchayat vide the aforesaid document Ex. PX..

45. Surprisingly, the appellant again tried to invent a story by stating that it was the respondent who had admitted his fault before the Panchayat and had undertaken not to repeat his act(s) in future but then the document speaks to the contrary and goes to indicate that the Panchayat had recorded that the allegations of demand of dowry and physical violence levelled by appellant against the respondent were found to be false.

46. Here, at this stage, we may make note of the fact that the appellant while filing her reply to the petition under Section 13(1)(ia)(ib) of the Act had not levelled any allegations of demand of dowry.

47. Furthermore, it also needs to be notice that the appellant while appearing and being cross-examined admitted that the parties had appeared before the Gram Kalyan Mandal, Hamirpur on 16.02.1994 which had culminated in the passing of the order as contained in the annexure PX1. Even this document reveals that though the respondent was ready to take the appellant to the matrimonial house but the mother and brother of the appellant had refused to send her. It has also been recorded therein that the appellant had even refused to come before the coram despite having been called.

48. All these facts cumulatively go to show that it was the appellant who was never willing to join the company of the respondent and rather was leveling false and unfounded allegations against the respondent to justify her legal act of abandoning the company of the respondent.

49. In addition to the above, apart from deserting the respondent, the appellant is also guilty of

mental cruelty as the unsubstantiated allegations in the pleadings and evidence by itself sufficient to constitute mental cruelty.

50. Even if such unsubstantiated allegations are ignored, there is no denial of the fact that it is the appellant who had filed false complaint(s) not only before the Panchayat as aforesaid but also with the Army Authorities.

51. As held by the Hon'ble Supreme Court in Samar Ghosh's case (supra), 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.

52. Adverting to the facts of the instant case, it would be noticed that the appellant has failed to substantiate the serious allegations of physical abuse and dowry demand against the respondent and the same have not been proved during the trial of the case below.

53. In view of the aforesaid discussions and for the reasons stated hereinabove, we find no merit in the instant appeal and same is accordingly dismissed, so also the pending application(s), if any.