



2025:DHC:3468-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 22.04.2025
Pronounced on: 09.05.2025

+ MAT.APP.(F.C.) 120/2025 AND CM.APPL. 17568/2025

MS. SHARANJIT KAUR KOHLIAppellant

Through: Mr. Ashok Kumar, Dr. Ram
Avtar Sharma, Advs.

versus

RAMANDEEP SINGH KOHLIRespondent

Through: Mr. Ramakant Sharma, Mr.
Ravi Avasthi and Mr. Prateek
Avasthi, Advs. along with
respondent in person.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

RENU BHATNAGAR, J.

1. This appeal has been filed by the appellant under Section 19 of the Family Courts Act, 1984, challenging the Judgment dated 07.12.2024 passed by the learned Judge, Family Court-01, South District, Saket Courts, New Delhi (hereinafter referred to as, 'Family Court') in HMA No. 333/2018, titled ***Ramandeep Singh Kohli v. Smt. Sharanjit Kaur Kohli***, whereby the divorce petition filed by the



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respondent-husband under Section 13 (1) (ia) and (ib) of the Hindu Marriage Act, 1955 (hereinafter referred to as, 'HMA') was allowed, and the marriage between the parties was dissolved.

2. The factual matrix of the instant appeal pertains to the marriage between the respondent and the appellant, which was solemnized on 28.03.2011 according to the Sikh Rites and ceremonies in Delhi. It was the second marriage of both the parties and was love-cum-arranged. No child was born out of the said wedlock.

3. Subsequently, the respondent filed the divorce petition in question, on 14.12.2016, alleging grounds of cruelty and desertion, primarily alleging therein that the appellant married him only to obtain Australian citizenship and thereafter, subjected him to continuous mental harassment. Further, it is alleged that she concealed her depression and fertility issues before the marriage, as a result of which, she later exhibited violent behaviour, including physically assaulting the respondent on multiple occasions.

4. In addition to the aforesaid, the plea taken by the respondent before the learned Family Court is that the appellant deserted him, refused to participate in conjugal life, and instead demanded that she be taken to Australia. The respondent further alleged that the appellant threatened to implicate him and his family in false and frivolous cases if he did not fulfil her monetary demands, thereby causing him severe mental distress and forcing him to leave his own home.

5. To support his arguments, the respondent referred to various incidents of alleged cruelty before the learned Family Court. He primarily highlighted an incident in the month of April, 2012, when



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the appellant allegedly began fighting with him, and threatened him either to give her money or she would slit her hand, and even took a knife on that day. He further mentioned an incident that allegedly took place on 31.12.2012, when the appellant allegedly pushed the respondent out of the house, stating that she was no longer interested in staying with him. One other incident occurred on 05.01.2013 in Faridabad, Haryana, when she allegedly threw a glass at him in the state of sudden anger. He also referred to an incident that took place in the month of October, 2013, when she started throwing things at the respondent including her mobile phone, which hit the respondent on the face. He also narrated several other incidents, including her allegedly using abusive language against the respondent which was claimed to reflect the constant cruel behaviour of the appellant towards him.

6. The respondent further contended that on 22.10.2016, the appellant left the matrimonial home without informing anyone and, upon returning later that night, was found to be intoxicated and started behaving absurdly, prompting the respondent to call the police.

7. The respondent further alleged that the appellant frequently used abusive language against him and that he was receiving fake threatening calls.

8. He stated that for the past few years, the parties have been living separately, with no conjugal relation between them. The respondent also referred to the police complaints made by him on 14.11.2016 and 01.12.2016.

9. On the other hand, in the written statement filed by the



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appellant before the learned Family Court, she denied each and every allegation levelled against her by the respondent, stating that they shared a cordial relationship and celebrated many occasions together. In her version, she stated that before their marriage, she had been residing in Canberra, Australia, and had acquired Australian citizenship and a passport. She further stated that due to certain gynaecological issues, she was taken by her mother-in-law to a Gynaecologist, namely, Dr. Vineeta, who diagnosed that the appellant had a cyst that had increased in size and required surgical removal. It was further stated that on account of some arguments, the father of the respondent advised the couple to leave the matrimonial home, after which they began residing in Faridabad. She mentioned that although the respondent took her to a psychiatrist on 08.08.2013, she was unable to attend the counselling sessions due to paucity of time.

10. It is the case of the appellant that the respondent was non-cooperative insofar as her medical illness was concerned. It is stated that on the night of 06-07.11.2016, it was the respondent who came home intoxicated and began vomiting, and when she requested him not to drink excessively, he scolded her.

11. Based on the above-mentioned pleadings of the parties, the learned Family Court framed the following issues:-

"1. Whether the respondent after the solemnization of the marriage has treated the petitioner with cruelty within the meaning of Section 13(1)(i-a) of Hindu Marriage Act.? OPP

2. Whether the petitioner is entitled to decree of divorce, as prayed for?



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OPP

3. *Relief.*”

12. The learned Family Court decided the issue nos. 1 and 2 in favour of the respondent-husband and against the appellant. With respect to the issue no. 3, that is the relief, the learned Family Court allowed the petition under Section 13(1)(ia) of the HMA and granted a decree of divorce.

13. Being aggrieved thereof, the appellant-wife has approached this Court by way of the present appeal. The learned counsel for the appellant, in support of the appeal, has raised three contentions. The first and foremost contention raised by the learned counsel for the appellant is that the learned Family Court has erred in treating the mere pleadings of the respondent, which were not supported by any corroborating evidence, as proof of cruelty. The learned counsel for the appellant submits that the respondent has failed to provide any documentary evidence in support of his allegations of cruelty against the appellant. The learned counsel for the appellant secondly submits that the learned Family Court has disregarded the medical condition of the appellant and the respondent's unsupportive conduct during her treatment. Despite the appellant undergoing the cyst operation in the month of November, 2011, the learned Family Court failed to appreciate the respondent's repeated refusal to accompany her for IVF treatments between the period 2011-2015. As a result, the learned Family Court incorrectly found cruelty on the part of the appellant, rather than recognizing the respondent's neglect of his matrimonial obligations. Thirdly, the learned counsel for the appellant submits that



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the learned Family Court has erroneously dissolved the marriage on the ground of irretrievable breakdown, which is not a statutory ground for divorce under the provisions of the HMA. The learned counsel for the appellant further submits that though the parties have been living separately for eight years, the learned Family Court has exceeded its jurisdiction by observing that "their marriage has been irretrievably broken down" as a basis for the dissolution of the marriage. In this regard, the learned counsel for the appellant has placed reliance on the Judgment of this Court passed in *Deepti v. Anil Kumar*, 2023 SCC OnLine Del 5829.

14. On the other hand, the contention of the learned counsel for the respondent before us is that the appellant-wife married the respondent solely because he is an Australian citizen, and with an intention to settle abroad. The learned counsel for the respondent submits that the appellant applied for an Australian visa, both before and after the marriage, and her inconsistent statements regarding the visa applications during her cross-examination, clearly establishes the fact that she entered into the marriage with ulterior motives to attain a visa through the respondent, thus, causing mental cruelty to him.

15. The learned counsel for the respondent further submits that the appellant concealed her pre-existing cyst problem and her inability to conceive, which also constitutes cruelty. The learned counsel for the respondent also submits that despite the appellant's claim that she underwent a cyst surgery in the year 2011, the documentary evidence reveals that she was under treatment for the said problem since the year 2008, and her contradictory statements during cross-examination



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regarding the timeline of her medical issues, duly prove on record the intention to conceal this relevant fact from the respondent.

16. The learned counsel for the respondent further contends that the appellant committed several acts of physical and mental cruelty, including incidents of threatening the respondent with a knife in April 2012, throwing a glass at him on 05.01.2013, breaking a flower vase and throwing a mobile phone at his face in October 2013, and slapping him on 13.09.2014. The learned counsel for the respondent submits that the appellant failed to effectively cross-examine the respondent on these specific incidents. Therefore, it is the case of the respondent herein that the learned Family Court, after considering the evidence adduced before it, which proves that the appellant-wife subjected the respondent-husband to mental and physical cruelty, has rightly granted the decree of divorce by way of the Impugned Judgment.

17. We have considered the contentions raised by the learned counsels for the parties and have perused the material placed on record.

18. At the outset, we may refer to the definition of cruelty. Cruelty under Section 13(1) (ia) of the HMA can be physical or mental. It is a settled position of law that the instances of cruelty are not to be taken in isolation, instead, a cumulative effect of the facts and circumstances emerging from the evidence on record is to be taken into consideration, based whereon, a fair inference as to whether the petitioner has been subjected to mental cruelty or not due to the conduct of the other spouse, is to be drawn. Reference may be drawn



to the decisions passed by the Supreme Court in *Dr. N. G. Dastane v. Mrs. S. Dastane*, (1975) 2 SCC 326; *V. Bhagat v. D. Bhagat*, (1994) 1 SCC 337; *Parveen Mehta v. Inderjit Mehta*, (2002) 5 SCC 706 and *A. Jayachandra v Aneel Kaur*, (2005) 2 SCC 22.

19. In *N.G. Dastane*, (supra), the Supreme Court observed as under:

"30 The inquiry, therefore has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent. ..."

20. The above principle was reiterated in *V. Bhagat*, (supra).

21. In *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*, (2012) 7 SCC 288, while dealing with the concept of mental cruelty, it was opined 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."

22. Similarly, in the case of *Parveen Mehta*, (supra), the attributes of mental cruelty were discussed, and it was observed as under:-

"21.....Mental cruelty is a state of mind and feeling with one of the spouse due to the behaviour or behavioural pattern by the other. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated an assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The



inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other".

23. Now coming to the facts of this case, insofar as the concealment of the appellant regarding her pre-existing cyst problem and the inability to conceive, is concerned, from the cross-examination of the appellant coupled with the documents, that is, the ultrasound report dated 26.06.2010, we find that the learned Family Court rightly came to the conclusion that the denial of the appellant that she was not suffering from a cyst prior to her marriage is incorrect. We quote from the impugned order as under:-

"79. From the ultrasound report dated 26.06.2010 which is part of the medical papers of the respondent Ex.PW1/7(Colly), it is established that the respondent was having cyst in her left ovary and there was normal vascularity in periphery of the cyst. Therefore, the denial of the respondent that she was not suffering from cyst prior to her marriage is incorrect. During her cross-examination RW1 admitted that she had undergone for IVF treatment for about 6-8 months under Dr. Nalni Mahajan. From this it is further established that the respondent has some medical issue to conceive and due to which she had started taking IVF treatment under Dr. Nalni Mahajan and the treatment continued around 6-8 months. Hence, from the medical



papers of the respondent and her testimony in cross-examination it is established that the respondent had cyst problem before her marriage to the petitioner. The respondent did not disclose this fact to the petitioner before their marriage. The respondent was also unable to conceive. The respondent hid these facts from the petitioner and it amounts to mental cruelty to the petitioner. The case would have been different if it was the first marriage of the respondent because before first marriage hardly any woman knows whether she can conceive or not but it is the second marriage of the respondent and an inference is drawn that she deliberately hide these facts from the petitioner otherwise the petitioner would not have married her.”

24. So far as the allegations of cruelty by the appellant in the form of throwing a glass and a mobile phone, and taking out a knife, are concerned, there was no cross-examination conducted on these aspects to controvert the testimony of the respondent.

25. In addition to the above, based on the cross-examination of the appellant, the learned Family Court rightly disregarded the claims of the appellant that it is the non-providing the sponsorship papers by the respondent, that led to rejection of her visa application to Australia.

26. On the basis of the evidence adduced by the appellant, the defence of the appellant was not made out, whereas the respondent by his testimony was able to prove the allegations made by him against the appellant.

27. The appellant has admitted before the learned Family Court that since 2014-15, there had been no conjugal relations between the parties, and the parties have been contesting the divorce petition since 2016.



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28. The contention of the learned counsel for the appellant that the learned Family Court decided the case only on the basis of the pleading, does not find favour with us, as the averments of the appellant regarding her medical condition had been dispelled on the basis of the medical documents only.

29. Further, when there are oral accounts of the incidents of cruelty, the burden of proof undoubtedly lies upon the respondent, however, the standard of proof required is the preponderance of probability and the allegations are not required to be proved beyond reasonable doubt such as in criminal proceedings. Before appreciating the evidence of the parties, the court is required to keep in mind that the petitioner is required to prove that the respondent deviated from the normal standards of conjugal relationship and that the misconduct attributed to the respondent was such that it tantamount to making the life of the petitioner miserable. More so, the entire genesis of the quarrel leading to the escalated acrimonious relationship between the parties must show that the petitioner carries a reasonable apprehension in his mind in continuing the relationship with the respondent. The cumulative conduct of the parties and the happenings over a period of time are to be assessed as a whole so as to determine whether the conduct complained of goes beyond the ordinary wear and tear of married life.

30. At this stage, it is pertinent to note that the Supreme Court, in the case of *Chetan Dass v. Kamla Devi*, (2001) 4 SCC 250, held that “*matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient for reasonable adjustment with the spouse*”.



31. In the case of ***Rakesh Raman v. Smt. Kavita.***, (2023) 17 SCC 433, the Court observed that irretrievable breakdown of marriage may not be a ground for dissolving the marriage, but cruelty is. The Court further observed that the marital relationship, which has become more bitter and acrimonious over the years, is nothing but cruelty. The relevant paragraphs are extracted below:

“22. Irretrievable breakdown of a marriage may not be a ground for dissolution of marriage, under the Hindu Marriage Act, but cruelty is. A marriage can be dissolved by a decree of divorce, inter alia, on the ground when the other party “has, after the solemnisation of the marriage treated the petitioner with cruelty”.

23. In our considered opinion, a marital relationship which has only become more bitter and acrimonious over the years, does nothing but inflict cruelty on both the sides. To keep the façade of this broken marriage alive would be doing injustice to both the parties. A marriage which has broken down irretrievably, in our opinion spells cruelty to both the parties, as in such a relationship each party is treating the other with cruelty. It is therefore a ground for dissolution of marriage under Section 13(1)(i-a) of the Act.”

32. In ***Vandana Singh v. Satish Kumar***, 2022 SCC OnLine Del 19, it was held as herein below:

“17. The period of separation and the deciduous meetings of the parties are enough to show that their matrimonial bond has broken and is beyond repair. After the marriage, which is now 11 years old, the parties lived together only for a few days together in Lucknow, Agra, Delhi, Nanital and Mumbai, when the respondent came back from



Canada on vacation. In the present case, there is neither a matrimonial home, nor the possibility of ever having one. The damage to the marriage is evident. These instances do not amount to ordinary wear and tear of day to day life. The parties in the present appeal are at an age, where they may start a new life, if given a chance. However, keeping them tied to a legal bond would only means snatching away from them the chance to ever lead a fulfilling life. Continuation of this matrimonial bond, itself, is sufficient to cause immense mental cruelty to the appellant, at least, if not to both the parties. In the facts of the said case, the divorce was granted by the Hon'ble High Court of Delhi."

33. In **Ritesh Babbar v. Kiran Babbar**, 2022 SCC OnLine Del 726, it was held that the parties had been living separately for 12 years now and there was no chance of reconciliation. It was observed that no useful purpose would be served by maintaining the matrimonial bond, and hence, divorce was granted.

34. In view of the law laid down in the Judgments mentioned hereinabove, we find that the learned Family Court has rightly dissolved the marriage of the parties by holding that the allegations of cruelty being proved on the evidence adduced by the parties before it. The series of incidents of physical cruelty besides mental cruelty duly prove the escalated acrimonious and bitter relations between the parties. Furthermore, the factum of the parties living separately for a long time period of time, that is around ten years now, without any resumption of marital cohabitation between the parties, can also be considered as an added ground while deciding the divorce petition.

35. In view of the aforesaid discussion of facts and law, we find no



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infirmity in the Impugned Judgment passed by the learned Family Court.

36. The appeal is, accordingly, dismissed. The pending application also stands disposed of.

RENU BHATNAGAR, J.

NAVIN CHAWLA, J.

MAY 9, 2025

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