

## Sau. Jiya Vs Kuldeep

**Court:** Supreme Court Of India

**Date of Decision:** Jan. 31, 2025

**Acts Referred:** Code of Criminal Procedure, 1973 â€” Section 125

Hindu Marriage Act, 1955 â€” Section 12, 13

Family Courts Act, 1984 â€” Section 6, 9

Specific Relief Act, 1963 â€” Section 34

**Hon'ble Judges:** Vikram Nath, J; Prasanna B. Varale, J

**Bench:** Division Bench

**Advocate:** Dharmendra Kumar Sinha, Shakul R. Ghatole, Vishwadeep Mate, Vatsalya Vigya

**Final Decision:** Partly Allowed

### Judgement

Vikram Nath, J.

1. Leave granted.

2. The instant appeals arise out of the impugned order dated 25.04.2018 passed by the High Court of Judicature at Bombay Bench at Nagpur in

Family Court Appeal No. 37 of 2017 whereby the High Court dismissed the appellant's appeal challenging the decree of divorce granted by the

Family Court.

3. The brief facts of the matter are that the marriage between the appellant-wife and the respondent-husband was solemnized on 27.06.2012 at

Nagpur as per Hindu rights and customs after a courtship of about four years and the appellant started cohabiting with the respondent at the

matrimonial house. The respondent filed Petition No. A-943 of 2014 before the Family Court, Nagpur under Section 13 of the Hindu Marriage Act,

1955 seeking grant of divorce on the grounds of cruelty and desertion. It was alleged by the respondent in the divorce petition that soon

after the marriage, his father suffered some heart problem and was required to be hospitalized for about fifteen days during which the husband could

not devote enough time to the appellant which became the cause of her anguish and displeasure. Resultantly, the appellant left the company of the

respondent and went to her maternal home. It was further claimed by the respondent that he had made attempts to bring the appellant back to the

matrimonial home who exhibited reluctance to return as she did not want to cohabit with him in a joint family. Therefore, it was stated that the parties

stayed together for about only two months and there is no issue out of the wedlock.

4. It was also brought forth by the respondent that the appellant had earlier filed a Petition No. A-1065/12 before the Family Court under Section 6 of

the Family Courts Act, 1984 read with Section 34 of the Specific Relief Act, 1963 and Section 12 of the HMA seeking declaration of

marriage between the two as null and void on the ground that a fraud was played upon her and her family by the respondent and his family members

whose sole intention behind the marriage was to extract money from the appellant's parents. However, the said petition was dismissed by the

Family Court vide its judgment dated 01.08.2014. The appellant neither preferred any appeal against the order dated 01.08.2014 nor joined back the

company of the respondent-husband.

5. The allegations of cruelty levelled by the respondent against the appellant mainly revolved around her threatening the respondent and his family

members of filing false and malicious criminal proceedings against them. The said allegations were vehemently denied by the appellant in her written

statement before the Family Court wherein she stated that she treated her husband and his family members in a proper manner and always wished to

cohabit with the husband but was rather constrained to reside separately as she was being subjected to physical and verbal abuse by the husband. The

respondent also submitted that the appellant-wife has, during the cross-examination, suggested that he had an illicit relationship with the wife of his

friend Gaurav Chawla and such a suggestion in itself would lead to mental cruelty upon the husband.

6. As per the appellant, the respondent had obtained an ex-parte decree of divorce dated 09.01.2015 from the Family Court against which she

appealed before the High Court and the High Court had remanded the matter back to the Family Court for a fresh trial after hearing both the parties.

7. Thereafter, the Family Court, in view of the mandate of Section 9 of FCA, made attempts to bring about an amicable settlement between the

parties which failed. Subsequently, the Family Court after framing the issues, hearing the parties, examining the witnesses and perusing the record,

allowed the respondent's petition on the ground of cruelty and dissolved the marriage between the parties vide judgment dated 31.07.2017. The

Family Court held that even though a continuous separation of two years was not established and the ground of desertion could not be proven, the

ground of mental cruelty was sufficiently established by the respondent as the appellant had levelled false allegations of fraud, dowry demand,

harassment and assassinated the husband's character.

8. Aggrieved by the decree of divorce granted by the Family Court in the favour of the respondent-husband, the appellant preferred an appeal before

the High Court. The High Court, vide the impugned order, dismissed the appellant's appeal and upheld the order of the Family Court, thereby

affirming the divorce decree. It was held that the appellant could not substantiate her claims against the husband with regard to marrying her with a

view to extract money from her parents, which had also led to dismissal of her petition seeking annulment of marriage, and thus conclusively proves

that she had levied false and baseless allegation of fraud against the husband and his family members. Further, it was held that the appellant-

wife's conduct in pestering the husband to leave his old family members and reside separately with the wife would tantamount to cruelty. Lastly, it

was also held that the wife has treated the husband with cruelty by casting aspersions on his character during the cross-examination by making

suggestions of an illicit relationship between the husband and his friend's wife without any specific pleadings in this regard.

9. Aggrieved by the impugned order dated 25.04.2018, the appellant is before us.

10. During the course of the proceedings in the matter before us, on 15.03.2024, Learned counsel for the respondent-husband stated that his client has

re-married in the year 2019 and suggested that in view of the changed circumstances, the parties may be referred to mediation for arriving at a one-

time lump sum amount which may be paid by the respondent-husband to the appellant-wife. Learned counsel for the appellant-wife was not averse to

the said suggestion. Accordingly, without prejudice to the rights and contentions of the parties, they were referred to the Supreme Court Mediation

Centre. However, on 02.08.2024, we were apprised by the counsel for the parties that they have not been able to reach a settlement and hence, the

matter was decided to be taken up on merits.

11. In the meanwhile, the respondent-husband was also directed to pay a sum of Rs. 50,000/- to the appellant-wife in pursuance of I.A. No.208023 of

2024 filed by the wife seeking the amount on account of expenses borne for physical attendance during the mediation proceedings.

12. During the contentions before us on 01.10.2024 with regard to the maintenance amount, Counsel for the appellant stated that the monthly income

of the respondent is more than Rs.1,30,000/- (Rupees one lakh thirty thousand only) per month, as he is getting about Rs.80,000/- (Rupees eight

thousand only) from Gym where he works and Rs.50,000/- (Rupees fifty thousand only) from SPANCO. It was also submitted that the respondent

has two houses in his name and also has three wives. Whereas the Counsel for the respondent submitted that the respondent is a daily-wage labourer

as he works on contract basis as Electrician, and therefore, he gets a very nominal amount only for the days on which he gets work.

13. In pursuance of the said submissions, we had directed the parties to place all such facts on record by way of an affidavit because we found that

only a meagre amount of Rs. 3,000/- (Rupees three thousand only) per month was awarded as maintenance in proceedings under Section 125 of the

Criminal Procedure Code, 1973 Cr.P.C., which had also been challenged by the respondent by way of revision, which shows that the

respondent does not want to support his wife at all, even though he got a divorce decree from the Family Court and also confirmed by the High Court.

Accordingly, the respondent was also directed to file his affidavit of assets/income within four weeks.

14. We have heard the learned counsel for the parties as also both the parties in-person and perused the material on record.

15. Firstly, with regard to the divorce decree, as noted above, the respondent has submitted that he has already re-married in the year 2019 and the

mediation proceedings as well as the submissions before us were only aimed at reaching a consensus on one-time settlement amount. Even in the

signing off paragraph of the impugned order, the High Court had also observed that even on the said day, the wife was ready for a divorce but she

was claiming a huge amount. Hence, it is evident that the subsisting dispute between the parties remains only concerning the maintenance amount and

both the parties have agreed to the grant of divorce, therefore, we do not find it fitting to unnecessarily delve into the veracity of allegations of cruelty

levelled by the respondent against the appellant. Considering the fact that the husband has already remarried, the present parties stayed together for

only about two months after the marriage, have no intention to continue their marital relationship, the marriage between the appellant-wife and the

respondent-husband has evidently broken down irretrievably as such we are not inclined to interfere with the decree of divorce granted by the Family

Court and confirmed by the High Court.

16. Now moving ahead to the contention with regard to the maintenance amount in favour of the appellant-wife, both the parties have agreed that a

one-time settlement amount maybe awarded to the appellant but failed to reach a consensus on the said amount due to a non-agreement on the

financial position of the respondent. On the question of permanent alimony and relevant factors for consideration, this Court has laid out the factors in

detail in *Rajnish v. Neha* (2021) 2 SCC 324 which have been reiterated time and again in various judgments and were also detailed in the recent case

of *Kiran Jyot Maini v. Anish Pramod Patel* 2024 SCC OnLine SC 17824 in the following terms:

25. A two-judge bench of this Court in *Rajesh v. Neha* (supra), elaborated upon the broad criteria and the factors to be considered for determining the

quantum of maintenance. This judgment lays down a comprehensive framework for determining the quantum of maintenance in matrimonial disputes, particularly

focusing on permanent alimony. The primary objective is to prevent the dependent spouse from being reduced to destitution or vagrancy due to the failure of the

marriage, rather than punishing the other spouse. The court emphasizes that there is no fixed formula for calculating maintenance amount; instead, it should be

based on a balanced consideration of various factors. These factors include but are not limited to: i. Status of the parties, social and financial.

ii. Reasonable needs of the wife and dependent children.

iii. Qualifications and employment status of the parties.

iv. Independent income or assets owned by the parties.

v. Maintain standard of living as in the matrimonial home.

vi. Any employment sacrifices made for family responsibilities.

vii. Reasonable litigation costs for a non-working wife.

viii. Financial capacity of husband, his income, maintenance obligations, and liabilities.

The status of the parties is a significant factor, encompassing their social standing, lifestyle, and financial background. The reasonable needs of the wife and

dependent children must be assessed, including costs for food, clothing, shelter, education, and medical expenses. The applicant's educational and professional

qualifications, as well as their employment history, play a crucial role in evaluating their potential for self-sufficiency. If the applicant has any independent

source of income or owns property, this will also be taken into account to determine if it is sufficient to maintain the same standard of living experienced during

the marriage. Additionally, the court considers whether the applicant had to sacrifice employment opportunities for family responsibilities, such as child-rearing

or caring for elderly family members, which may have impacted their career prospects.

26. Furthermore, the financial capacity of the husband is a critical factor in determining permanent alimony. The Court shall examine the husband's actual

income, reasonable expenses for his own maintenance, and any dependents he is legally obligated to support. His liabilities and financial commitments are also

to be considered to ensure a balanced and fair maintenance award. The court must consider the husband's standard of living and the impact of inflation and high

living costs. Even if the husband claims to have no source of income, his ability to earn, given his education and qualifications, is to be taken into account. The

courts shall ensure that the relief granted is fair, reasonable, and consistent with the standard of living to which the aggrieved party was accustomed. The court's

approach should be to balance all relevant factors to avoid maintenance amounts that are either excessively high or unduly low, ensuring that the dependent

spouse can live with reasonable comfort post-separation.

27. Additionally, the judgment addresses specific scenarios such as the right of residence under the PWDV Act, the impact of the wife's income on maintenance,

and the needs of minor children. Even if the wife is earning, it does not bar her from receiving maintenance; the Court should assess whether her income suffices to

maintain a lifestyle similar to that in the matrimonial home. The judgment also considers the expenses associated with the care of minor children, including

educational expenses and reasonable amounts for extracurricular activities. Serious disability or illness of a spouse, child, or dependent family member,

requiring constant care and recurrent expenditure, is also a significant consideration. Key precedents cited to reach this broad framework include *Manish Jain v.*

*Akanksha Jain* [(2017) 15 SCC 801], *Shailja v. Khobbanna* [(2018) 12 SCC 199], and *Sunita Kachwaha v. Anil Kachwaha* [(2014) 16 SCC 715], which

reinforce these principles and provide a sound, reasonable and fair basis for determining maintenance in subsequent cases. ¶

17. Coming to the instant case, an affidavit dated 04.11.2024 was filed by the respondent-husband detailing his assets, income and expenditure. In the

said affidavit, the respondent has stated that he is working as an Outsource Operator at one G.A. Digital Web World Pvt. Ltd. earning a monthly

income of Rs. 16,612/- (Rupees Sixteen Thousand Six Hundred Twelve only). He stated his personal monthly expenses to be around Rs. 24,000/-

(Rupees Twenty Four Thousand only). He also stated that he has four dependent family members, i.e. his father, mother, brother and the second-wife

and incurs an expense of around Rs. 5,000/- (Rupees Five Thousand only) per month on account of the dependent persons. Other than this, the

respondent stated that he does not own any immovable property and does not have any other source of income, and had to obtain a personal loan from

the Bank to clear the amount of arrears of maintenance as also to bear medical

expenses of the dependents. The husband, in his affidavit, also stated that the appellant is running a unisex salon in Nagpur and earning an amount of

Rs. 2,00,000/- (Rupees Two Lakhs only) per month from the said business but has failed to furnish any document to substantiate such claim.

18. On the other hand, the appellant-wife also filed an affidavit before us in terms of the order dated 01.10.2024 and stated that the respondent is

running a gym in Nagpur since January, 2014 and is earning more than Rs. 80,000 (Rupees Eighty Thousand only) per month from the said gym. It

was also stated that the respondent is working with SPANCO on salaried basis as an electrical engineer. Further, it was submitted that the respondent

is also earning around Rs. 30,000/- (Rupees Thirty thousand only) per month from the tenanted premises and his total monthly income is more than Rs.

1,30,000/- (Rupees One lakh Thirty Thousand only). The appellant has annexed the photographs of the said gym, advertisements made by the

respondent pertaining to the gym displaying the membership fees and photographs of the tenanted premises in order to buttress her claim in the

affidavit. Lastly, with regard to the number of dependents on the respondent, it was submitted by the appellant that the father of the respondent has

retired from Maharashtra State Electricity Board and receives pension. Further, the respondent's brother has an independent income and is living

separately.

19. A bare perusal of the affidavits submitted by both the parties makes it evident that the husband has not been forthright in disclosure of his income

and assets and is clearly attempting to escape his liability to support the appellant post-divorce. This Court shall not acquiesce to such conduct of the

respondent-husband. In pursuance of the affidavit filed by the appellant, it can be plainly inferred that the respondent has multiple sources of income

including the rental income from tenanted premises. At the same time, it seems exaggerated to assess the appellant's income from a salon at

Nagpur to be an amount of Rs.2,00,000/- (Rupees Two Lakhs only) per month and the respondent's submission in this regard does not sound

credible. Further, it is an admitted fact that there is no issue out of the wedlock.

20. Therefore, considering the total facts and circumstances of the case, the financial status of the parties, their standards of living, the fact that the

respondent has already remarried and also bears the financial responsibility of his new family, we find that awarding an amount of Rs. 10,00,000/-

(Rupees Ten Lakhs only) as a one-time settlement in favour of the appellant-wife shall serve the purpose of equity and meet the ends of justice. As

such, this amount shall fairly protect the interest of the appellant without imposing any punitive or unreasonable financial burden on the respondent,

thus aiming to safeguard the interest of both the parties. This amount shall cover all the pending and future claims of the appellant against the husband.

The respondent is, therefore, directed to pay the said amount as permanent alimony to the appellant within a period of three months.

21. Accordingly, the instant appeal is partially allowed in terms of the above directions, the impugned order dated 25.04.2018 is upheld to the extent of

finalising the grant of divorce decree to the parties.

22. No order as to costs.

23. Pending Applications, if any, shall stand disposed of.