
(2025) 10 DH CK 0010

Delhi HC

Case No: Matrimonial Appeal.(F.C.) No.116, 117 Of 2019

Surender Kumar

APPELLANT

Vs

Manita

RESPONDENT

Date of Decision: Oct. 28, 2025

Acts Referred:

- Code of Criminal Procedure, 1973 — Section 107, 151
- Indian Penal Code, 1860 — Section 34, 323, 326, 451, 506
- Hindu Marriage Act, 1955 — Section 9, 13(1)(ia)

Citation: (2025) 10 DH CK 0010

Hon'ble Judges: Anil Kshetarpal, J; Harish Vaidyanathan Shankar, J

Bench: Division Bench

Advocate: Sharmistha Choudhury, Vijay Dalal, Dushyan Kumar, Swati Rathi, Chetishtha Malik, Prem Sood, Sachin, Sonam, Shivansh

Final Decision: Dismissed

Judgement

Anil Kshetarpal, J

1. Through the present Appeal, the Appellants assails the correctness of the judgment dated 11.01.2019 [hereinafter referred to as the "Impugned Judgment"TM] passed by the Family Court, whereby both the divorce petitions filed by the Appellants under Section 13(1)(ia) of the Hindu Marriage Act, 1955 [herein after referred to as "HMA"TM], seeking dissolution of marriage on the ground of cruelty, were dismissed.

2. With the consent of learned counsel representing the parties, since the present Appeals arising out of similar matrimonial disputes between two brothers and two sisters, are intertwined, the same shall stand disposed of by this common Judgment.

FACTUAL MATRIX

3. In order to comprehend issues involved in the present case, the relevant facts are required to be noticed.

4. A perusal of the record reflects that in MAT APP (FC) No. 116/2019, the Appellant/Mr. Surender Kumar was married to the Respondent/Ms. Manita on 26.11.2001 at Najafgarh, Delhi, in accordance with the Hindu rites and ceremonies. The couple was blessed with a son, Mr. Kunal, born on 16.10.2003.

5. Whereas in MAT APP (FC) No. 117/2019, the Appellant/Mr. Devender Kumar, who is the younger brother of Mr. Surender Kumar, was married to the Respondent/Ms. Sunita, who is the sister of Ms. Manita, on the same day, i.e., 26.11.2001, following the Hindu rites and ceremonies. Their marriage resulted in the birth of two sons, namely Mr. Jatin, born on 23.04.2003 and Mr. Arman, born on 04.06.2006.

6. Mr. Surender Kumar filed a petition under Section 9 of the HMA seeking restitution of conjugal rights against his wife, Ms. Manita, on 05.02.2005. However, during the same year, the parties reconciled and resumed cohabitation, leading to the dismissal of the said petition.

7. The Appellants, by way of Divorce Petitions dated 12.07.2011, alleged that the Respondents and their family members frequently quarreled, created domestic disharmony, and inflicted mental and physical cruelty upon them and their aged father. Both couples were residing together in a joint household. The Appellants allege that on 27.04.2011, both the Respondents assaulted their father, leading to registration of FIR No. 26/2011 under Sections 326/34 of the Indian Penal Code [hereinafter referred to as "IPC"]. Further, FIR No. 59/2011 under Sections 323/34 of the IPC and FIR No. 27/2011 under Sections 451/323/506 of the IPC were registered on 29.04.2011 and 04.05.2011 relating to subsequent quarrels. The Respondents allegedly left their matrimonial homes on the same day and have been residing with their parents since then.

8. Conversely, the respondents refuted the allegations and contended that they were harassed for dowry, humiliated, and eventually turned out of their matrimonial homes. They further asserted that the criminal cases relied upon by the appellants culminated in acquittals, and no credible or independent evidence of cruelty was ever established.

9. The Family Court, after considering pleadings and evidence, found that all the FIRs mentioned by the Appellants had resulted in acquittal, and no cogent evidence had been led to prove the allegations of cruelty by the respondents. The Family Court concluded that the allegations were general, vague, and reflected normal wear and tear of matrimonial life. Consequently, by the Impugned Judgment dated 11.01.2019, both divorce petitions were dismissed.

SUBMISSIONS BY THE APPELLANTS:

10. Learned counsel for the Appellants submits that the Family Court failed to properly appreciate the evidence adduced by the appellants, which was based on genuine facts and documented instances, and contemporaneous records of cruelty. Learned counsel submits that the Family Court overlooked the prior history of proceedings under Section 9 of the HMA and ignored the repeated

attempts of the Appellants to seek reconciliation before initiating proceedings under Section 13(1)(ia) of the HMA. The Appellants endured mental and physical suffering, humiliation, and distress, not only themselves but also their aged father, as a result of the Respondents' conduct, which included repeated incidents of harassment, interference with family property, and acts leading to registration of FIRs and police intervention.

11. Further, learned counsel for the Appellants submits that the Family Court erred in disregarding the fact that the Respondents' acquittals in the said criminal cases resulted from compromise between the parties rather than a categorical judicial finding negating acts of cruelty. It is submitted that the Family Court wrongly applied an unduly strict standard of proof, treating Section 13(1)(ia) of the HMA as requiring proof beyond reasonable doubt. In fact, cruelty is to be established on the preponderance of probabilities

12. Learned counsel for the Appellants seeks to rely upon the judgment passed by the Supreme Court in *Samar Ghosh v. Jaya Ghosh* (2007) 4 SCC 511 to submit that the prolonged separation of more than 13 years between the parties, in itself, amounts to mental cruelty and demonstrates an irretrievable breakdown of marriage. Learned counsel further submits that the cumulative effect of these incidents, the prolonged separation, and the Respondents' repeated refusals to act in a conciliatory manner and reinforces the entitlement of the Appellants to relief under the HMA.

SUBMISSIONS BY THE RESPONDENTS

13. Per Contra, learned counsel for the Respondents submit that the Appellants have failed to establish any specific instance of cruelty, whether mental or physical, as mandated under Section 13(1)(ia) of the HMA. It is further submitted that the allegations made by the Appellants are vague, non-specific, and unsupported by dates, witnesses, or corroborative material and thus mere general assertions of ill-treatment cannot satisfy the statutory requirement for proving cruelty.

14. Learned counsel further submit that all criminal cases relied upon by the Appellants, namely FIR Nos. 26/2011, 59/2011, and 27/2011, culminated in acquittals by the Competent Courts and no appeal was preferred against those judgments. Hence, the said acquittals have attained finality, and no adverse inference can be drawn against the Respondents merely on the basis of registration of those FIRs. Learned counsel for the Respondents submitted that these cases were falsely instituted by the appellants to create a defence and to evict the respondents from their matrimonial homes.

15. Learned counsel for the Respondents also submit that it was, in fact, the Appellants who subjected the respondents to dowry-related harassment and ultimately ousted them from their matrimonial homes on 27.04.2011. Despite such treatment, the Respondents have consistently expressed their willingness to resume cohabitation, whereas the Appellants have categorically refused to live with them, as admitted in cross-examination.

16. Further, it was also urged by the learned counsel for the Respondents that the Appellants failed to examine any independent witness or produce convincing documentary evidence to substantiate their allegations of cruelty.

17. In light of the above, learned counsel for the Respondents submit that the present Appeals are wholly devoid of merit and deserve to be dismissed and further submits that the Appellants cannot be permitted to take advantage of their own wrongful acts and allegations, particularly where evidence and law do not support their claims.

FINDINGS AND ANALYSIS:

18. This Court has heard the submissions advanced by learned counsel for the parties at length and with their able assistance, perused the paperbook.

19. The Appellants have sought dissolution of their respective marriages by decree of divorce on the ground of cruelty alone, alleging that they were subjected to sustained harassment, humiliation, and mental agony at the hands of the Respondents. The allegations primarily revolve around some sets of incidents as enumerated below:-

- i. initiation of preventive proceedings under Sections 107/151 of the Code of Criminal Procedure, 1973 [hereinafter referred to as "Cr.P.C."] by the Respondents against Appellants and their father;
- ii. quarrelsome behavior of the Respondents on trivial matter and consumption of poison by Respondent/Ms. Sunita at one instance;
- iii. Non-attendance of the Respondents and their family members in Appellants' Mother's last rites; and
- iv. Multiple physical assaults, viz. on the Appellant, his father and his uncle, relying on consequent FIRs registered vide FIR No. 59/2011, 26/2011, and 27/2011 respectively.

20. This Court deems it appropriate to consider the abovementioned incidents individually along with the observations given by the Family Court to analyze whether these constitute cruelty as per Section 13(1)(ia) of the HMA.

21. This court finds that the Appellants claimed that they and their father were falsely implicated under Sections 107/151 of the Cr.P.C., and that the Respondent/Ms. Sunita consumed poison at one instance and was taken to hospital by the Appellant/Mr. Devender Kumar. This Court sustains the Family Court's finding that the Appellants failed to prove any such Kalendra proceedings and did not produce any documentary record of admission in hospital or medical evidence regarding poisoning. It is pertinent to note that the Appellant/PW-1 in his cross-examination has also deposed in this respect as under:-

"I do not remember whether I filed the copy of alleged Kalendra. I do not remember when the alleged Kalendra U/s 107/151 Cr. P. C. was lodged against me. I do not remember the DD No. of the said Kalendra. It is wrong to suggest that no such Kalendra was lodged against me, my brother or my father or that therefore I do not remember

In view of the aforesaid observations, this Court observes that these allegations are general, vague, and unsubstantiated, and thus cannot constitute cruelty under Section 13(1)(ia) of the HMA.

22. Additionally, regarding absence of the Respondents at the last rites of the Appellantâ€™s mother and the claim that the Respondent was quarrelsome, this Court sustains the Family Courtâ€™s appraisal. The respondentâ€™s evidence indicates she was unaware of the death and no independent witness corroborated the claim of quarrelsome behavior. The Respondent/RW-1 even in her cross-examination by the learned counsel for the Petitioner [Appellant herein] is also found to have deposed regarding this aspect as under: -

"I do not know the date, month and year when my mother in law was expired. The distance between my matrimonial home and parental home where I am presently residing is at a distance of 10-15 kilometer. None of my family member had attended the last rites of my mother in law as we were not aware of her death. We were not informed about last rites of my mother in law. It is wrong to suggest that the petitioner had informed me about the death of my mother in law".

The Appellant/PW-1, in his cross-examination, is found to have deposed as under: -

"I am not ready to live with the respondent."

In view of the aforementioned statements this Court finds that general allegations, unsupported by credible evidence, do not amount to mental cruelty, especially when the Appellant himself is not ready to live with the Respondent as he has deposed.

23. This Court notes that the Appellants relied upon FIR No. 26/2011 u/s 325/34 of the IPC dated 04.05.2011, alleging that the Respondents assaulted the father of the Appellant on 27.04.2011. On careful perusal of the certified order dated 21.01.2017 passed by Ld. MM, Dwarka, copy of which is Ex. RW-I/A, this Court sustains the Family Courtâ€™s finding that both accused [Respondents herein] were acquitted as the offence was compounded and settled. It is evident that mere registration of the FIR, without corroborative evidence, cannot constitute cruelty. Accordingly, this Court concurs with the Family Court that no adverse inference can be drawn against the Respondent in this regard.

24. Furthermore, the factum regarding the acquittal of the Respondent in the case bearing FIR No. 27/2011 u/s 451/323/506 of the IPC dated 04.05.2011, alleging that the Respondent damaged household articles at the house of Sh. Vir Bhan on 27.04.2011, leads this Court to uphold the Family Courtâ€™s appraisal. The Respondent was duly acquitted in this FIR. The Court finds that the unsubstantiated allegation of property damage, without independent verification or evidence, cannot be equated with mental cruelty. The Appellants have failed to produce any corroboration to show that this incident, as alleged, ever took place.

25. With regard to FIR No. 59/2011 U/s 325/34 IPC dated 29.04.2011, alleging injury to the palm of the Appellant/Mr. Devender Kumar by the Respondents, this Court sustains the Family

Court's finding of acquittal giving benefit of doubt to the Respondents vide judgment dated 06.12.2016, copy of which is Ex. RW-I/B. The Family Court rightly observed that the FIR was delayed by almost three months from the date of assault, evidence was lacking, and reasonable doubts existed regarding the prosecution case. Consequently, this Court concurs that no adverse inference of cruelty can be drawn from this FIR, as the allegations remain unsupported by medical records or independent testimony.

26. To summarize, this court deems it appropriate to observe that the criminal cases forming the substratum of the Appellants' allegations ended in their acquittal, which have attained finality. This Court finds that the Appellants neither have produced any corroborative evidence beyond these incidents nor any independent testimony, proved any medical record, nor has submitted any contemporaneous documentation establishing sustained cruelty.

27. This Court finds that it is settled law, as held in *Samar Ghosh* (supra) that mental cruelty must be of such magnitude that it renders cohabitation impossible. General domestic quarrels or incompatibility do not qualify as legal cruelty. Furthermore, in *Naveen Kohli v. Neelu Kohli* (2006) 4 SCC 558, the Supreme Court has observed that to constitute cruelty as a ground for granting divorce, it must be grave rendering the continued cohabitation impossible.

28. This Court is of the considered view that the reliance placed by the learned counsel for the Appellants on *Samar Ghosh* (supra) and *Naveen Kohli* (supra) is misplaced as in those cases, evidence of sustained abusive conduct and irretrievable breakdown was established, unlike in the present case. In the present case, there is no evidence of sustained abusive behavior or intent to make cohabitation impossible; the separation appears to be largely a result of mutual differences and lack of reconciliation efforts. Therefore, the mere fact of long separation, when caused by the Appellants' own unwillingness to reconcile, cannot be a ground to dissolve the marriage.

CONCLUSION:

29. In view of the aforesaid observations, this Court finds no reason to interfere with the Impugned Judgment, while observing that the Family Court has rightly dismissed the Divorce Petitions. The Family Court correctly held that mere quarrels, differences, or isolated police involvement, without corroborative evidence, cannot be equated with mental cruelty as envisaged under Section 13(1)(ia) of the HMA.

30. In view of the afore-stated, the present Appeals are dismissed.