



**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA**

FAO (HMA) No. 304 of 2014

Reserved on: 26.5.2025

Date of decision: 23.9.2025

Desh Raj Gupta.

....Appellant.

Versus

Urmila Gupta.

....Respondent.

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Whether approved for reporting?¹ Yes.

***For the Appellant : Mr.G.C. Gupta, Senior Advocate,
alongwith Ms.Meera Devi, Advocate, vice
Mr.Deepak Gupta, Advocate.***

For the Respondent : Mr.Parmod Singh Thakur, Advocate.

Vivek Singh Thakur, Judge

Present appeal, preferred under Section 28 of the Hindu Marriage Act, 1955 (for short 'Act'), has been filed assailing order dated 19.6.2014, passed by District Judge, Shimla, H.P. in HMA RBT Case No. 41-S/3 of 2009/08, titled as Desh Raj Gupta Vs. Urmila Gupta, whereby petition preferred under Section 13(1) (ia) (ib) of the Act for dissolution of marriage between the parties, has been dismissed.

2. I have heard learned counsel for the parties and also gone through the record.

¹ ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

3. Petition for dissolution of marriage was preferred on the ground that after solemnization of marriage, respondent treated petitioner with cruelty and deserted him since January, 1994 till filing of the petition on 8.4.2008.

4. As per evidence on record, marriage between the parties was solemnized on 30.5.1993 according to Hindu rites and rituals at Shimla. Since January, 1994, both of them are residing separately.

5. According to appellant, respondent left his company without any reason as she could not adjust herself in a small town Tattapani, as she was brought up and had studied at Shimla and despite making visits to parental house of respondent alongwith relatives and Panchayat Office Bearers, respondent did not agree to accompany and cohabit with appellant. Whereas, according to respondent, it was appellant, who left her in her parental house at Shimla and thereafter never came back to take her and despite making all out efforts through relatives, her sister and brother-in-law, appellant did not allow her to stay at matrimonial house, and he has solemnized marriage with someone else.

6. On 27.11.2001, respondent submitted an application to Himachal Pradesh Women Commission, stating therein that appellant had left her in Shimla in 1994 for the reasons best known to him, and appellant had solemnized second marriage with another woman without any divorce/consent from her and after that neither he nor his family

members bothered about her life. It was further stated that her guardian was only her mother, who expired on 10.8.2001 and she was not having any source of income, and despite applying for various jobs at different times, she could not get any job, whereas appellant was having a very good business at Tattapani in the name and style of Des Raj General Merchant Tattapani. In the said application respondent had requested to give her relief by directing to give her jewellery, other household articles, utensils and maintenance charges as per rules. On 20.6.2002, parties had agreed that appellant shall return the articles of dowry mentioned in the list handed over by Harish Gupta, brother of respondent to appellant Desh Raj, and respondent shall receive these articles in protection of Police. However, it appears that neither respondent went to Tattapani nor appellant returned the articles.

7. On 3.7.2003, respondent filed a petition under Section 125 of the Code of Criminal Procedure before the Magistrate, which was allowed in the year 2006 and maintainable at the rate of ₹3,000/- per month was awarded, which was assailed by the appellant before the Sessions Judge and the said Revision was dismissed on 10.4.2007. Thereafter appellant preferred petition under Section 482 of the Code of Criminal Procedure in the High Court, assailing grant of maintenance in favour of respondent. Outcome of that petition has not been disclosed by either of the party.

8. At this stage, it is also apt to record that as per parivar register placed on record in evidence, one Kajal is daughter of appellant Des Raj who was born on 5.3.1996.

9. In aforesaid backdrop, appellant preferred a petition for dissolution of marriage, as referred supra, on 21.7.2008 before the Additional District Judge, Mandi camp at Karsog, District Mandi, H.P. This petition, in compliance of order dated 18.11.2009 passed in CMPMO No. 19 of 2009 by this High Court, was transferred to District Judge, Shimla and was taken up for consideration on 21.12.2009.

10. It is apt to record that the ground that respondent was brought up in capital city Shimla and, therefore, could not adjust herself with the appellant in his village and thus created circumstances for returning back to Shimla, were not pleaded in the original petition, which was amended in December, 2010 vide order dated 4.12.2010.

11. Appellant, including himself has examined three witnesses, i.e. PW-1 Des Raj Gupta, PW-2 Padam Raj and PW-3 Kesar Singh. Whereas respondent including herself has examined three witnesses, RW-1 Nokh Ram, RW-2 Kashmir Singh and RW-3 Urmila Gupta (respondent).

12. It is claim of the appellant that it was respondent who deserted petitioner without any cause and has treated him with cruelty by not joining his company and cohabiting with him in her matrimonial

village. To substantiate it, appellant has re-iterated the allegations leveled in the divorce petition.

13. PW-2 Padam Raj has supported the statement of PW-1 Desh Raj with further deposition that after 2-3 days of marriage, respondent started expressing that she was not able to live in village and thereafter she came to Shimla and never returned to matrimonial home. He is real brother of appellant.

14. PW-3 Kesar Singh is Pradhan of Gram Panchyat Tattapani. According to him respondent left the matrimonial house after 4-5 months of marriage and despite his visits to her house, alongwith relatives of appellant, she did not come back.

15. RW-1 has proved on record copy of Parivar Register Ex.RW-1/A with assertion that in red circle 'B' name of Kajal as daughter of Desh Raj, has been recorded.

16. RW-2 is brother-in-law of respondent and he has deposed re-iterating the stand of respondent.

17. The issue involved in present case is whether respondent deserted the appellant and treated the appellant with cruelty. The marriage between the parties was solemnized on 30.5.1993. The parties are residing separately since January, 1994. According to appellant, respondent left the company, whereas according to respondent appellant left her in her parental house at Shimla and never returned to take her

back to join his company. It is also case of the respondent that appellant has solemnized second marriage and, therefore, she has been deserted and now she is not residing in the company of appellant.

18. From the record, it is apparent that till 2001 both the parties remained silent. In November, 2001 respondent filed an application Ex. RX in Himachal Pradesh Women Commission. From the application, it is apparent that the said application was filed after death of mother of respondent and it was categorically alleged therein that appellant had solemnized second marriage, and on 20.6.2002 a settlement (Ex. RXX) had arrived between the parties, wherein it was nowhere indicated that appellant refuted the claim of solemnization of second marriage. It is also evident from Ex. PW-1/A that in pursuance to the settlement dated 20.6.2002, respondent did not take any action to receive the articles of dowry.

19. In application filed under Section 125 of the Cr.P.C. (Ex. RX), it was clearly stated in para 2 that on inquiry it was found that respondent had contracted second marriage with some other women without taking divorce from the respondent. In reply (Ex. RY) to this application, it was denied that the appellant had contracted second marriage as alleged, however allegation was leveled in para 1 of the reply that respondent had developed illicit relations at Shimla.

20. Allegation of illicit relation was not substantiated and resultantly it was found by the Court that respondent was not residing separately without any reason as maintenance of ₹3,000/- per month was awarded. The allegation leveled by the appellant alleging illicit relation of respondent, were sufficient to compel the respondent to live separately by leaving company of the appellant and for awarding maintenance by the Courts, it is substantiated that such allegation was false. Even otherwise, no evidence, to prove such allegation, has been produced rather it was claimed that appellant had not leveled such allegation, but Ex. RY belies the claim of the appellant.

21. It is also relevant to notice that in reply to the present Divorce Petition in para 5 of reply, it was stated that appellant was in habit of leveling unnecessary and baseless charges against the respondent and even in the reply to the petition under Section 125 of Cr.P.C. he had leveled the charges of illicit relations without any cause and only with intention to humiliate and causing cruelty to the respondent. In para 8 of the reply on merits, respondent had categorically stated that she came to know that the petitioner had contracted second marriage illegally.

22. In rejoinder to para 5, it was denied that appellant, in reply to petition under Section 125 of Cr.P.C, had levelled charges of illicit relations. In rejoinder to para 8, there was no denial, much less specific

denial to the plea of respondent that appellant had solemnized second marriage.

23. From the aforesaid material on record, it is apparent that veracity of plea of appellant is doubtful. From the date of events, it appears that maintenance was awarded under Section 125 Cr.P.C. and that was upheld by Sessions Judge and no relief was given by the High Court till 2008, and in the year 2008 petition for dissolution of marriage was filed by the appellant. From the conduct of the appellant, it is apparent that in the proceedings before the Commission also, he did not press to take the respondent with him to her matrimonial house, but tried to end the relation by agreeing to handover the articles of dowry to the respondent.

24. It has also been contended on behalf of appellant that in cross-examination, respondent had categorically stated that she was not willing to live with appellant and there is no possibility of settlement in future, to claim that it is respondent, who is responsible for separation, amounting to desertion and cruelty to the appellant.

25. The statement of respondent is to be read as a whole but not by picking and choosing a portion thereof. It is true that respondent has stated that she was not ready to live with the appellant with further assertion that there was no possibility of compromise in future, however, she has categorically stated that as on date (आज की तारीख) it was not

possible with self statement that appellant had solemnized second marriage. Therefore, statement of respondent that she was not ready to live with the appellant is not a proof that she was not willing to live in the company of appellant in his village, but is is a statement made in view of subsequent events, i.e. solemnization of marriage by the appellant with another lady, which stands proved from the facts that a daughter was born on 5.3.1996 out of second marriage of Des Raj. Since January, 1994 parties are living separately and birth of daughter of Desh Raj on 5.3.1996 clearly depicts that either appellant was already in relationship with someone or developed relations thereafter and even if he has not solemnized marriage, he is living in live in relationship since, at least, 1995. The allegation of illicit relation of respondent leveled in reply to application filed under Section 125 of the Cr.P.C. in the year, 2003 i.e. after solemnization of marriage or starting living in live-in-relationship. Birth of a daughter out of such relationship in the year 1996 indicates that appellant is in such relationship at least since 1995 and it was and is sufficient ground for the respondent to leave the company of the appellant, which, at any stretch of imagination, cannot be treated as desertion or cruelty on behalf of respondent to the appellant, rather it is appellant on account of whose cruelty, respondent has been compelled to live separately.

26. Learned counsel for the appellant to substantiate plea of appellant has relied upon ***Kamaljit Bhullar Vs. Nimrat Preet Singh Bhullar, 1991 (1) Shimla Law Cases 156; Rishikesh Sharma Vs. Saroj Sharma, (2006) 3 Shimla LC 389 (SC); Vinod Kumar Subbiah Vs. Saraswathi Palaniappan, (2015) 8 SCC 336; Monika Sharma Vs. Kuldeep Kumar Dogra Latest HLJ 2015 (2) (HP) 941; Samar Ghosh Vs. Jaya Ghosh (2007) 4 SCC 511; Parveen Mehta Vs. Inderjit Mehta, (2002) 5 SCC 706; Vinita Sexena Vs. Pankaj Pandit (2006) 3 SCC 778; Narendra Vs. K. Meena, 2016(4) CCC 414; Vijaykumar Ramchandra Bhate Vs. Neela Vijaykumar Bhate, AIR 2003 SC 2462; AIR 2001 SC 1709.***

27. In the given facts and circumstances of the present case, as discussed supra, the aforesaid judgments are of no help to the petitioner.

28. In view of above, no interference is warranted in the impugned judgment and accordingly appeal is dismissed.

23rd September, 2025
(Keshav)

(Vivek Singh Thakur),
Judge.