HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Miscellaneous Appeal No. 3506/2025

----Appellant

Versus

----Respondent

For Appellant(s)	:	Mr. DK Gaur
For Respondent(s)	:	Mr. Nitesh Mathur

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE SUNIL BENIWAL

Judgment

Reportable

10/04/2026

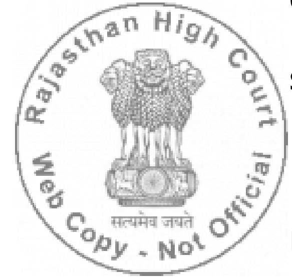
Per: Arun Monga, J.

1. Appeal herein is directed against the judgment and decree dated 24.09.2025, passed by the Family Court, Bikaner, whereby the divorce petition filed by the present appellant-wife under section 13 of Hindu Marriage Act, 1955 (hereinafter, “HMA”) against respondent-husband was dismissed.

2. Brief relevant facts first, as per appellant. The marriage between the parties was solemnized on 31.03.2016 at Bikaner as per Hindu rites and customs. It is alleged that despite sufficient dowry being given beyond the appellant’s father’s capacity, the respondent and his family subjected the applicant to continuous

(Uploaded on 21/04/2026 at 11:17:07 AM)
(Downloaded on 26/04/2026 at 08:38:42 AM)

shoneekapoor.com



harassment, physical assault, and unlawful demands for additional dowry, including a motorcycle and gold articles.

2.1 The appellant has further alleged that she was subjected to grave acts of cruelty, including physical violence, denial of stridhan, and sexual assault by her brother-in-law and father-in-law. Allegedly, on 19.03.2020, she was forcibly ousted from her matrimonial home along with her minor daughter, and subsequently deprived of the child's custody, which was later restored through police intervention. The applicant lodged FIR No. 87/2020, leading to filing of charge-sheet against the respondent and his father under Sections 498-A, 406, 323, and 34 of the IPC. Owing to the continued ill-treatment and threat to her safety, the applicant asserts that it is not possible for her to cohabit with the respondent.

2.2 The respondent, while admitting the marriage and birth of the daughter, has denied all allegations of cruelty and dowry demand. He has set up a defence that the marriage was performed under the "Aata-Sata[1]" custom, linking it with the marriage of his sister to the appellant's brother. It is stated that disputes arose due to refusal of his sister to perform 'muklawa[2]' on attaining majority, so as to continue her marital relationship, which led to pressure and interference by the appellant's family. The respondent has alleged that the appellant voluntarily left the matrimonial home under influence of her family members and has falsely implicated him and his relatives in criminal proceedings.

[1] A custom of exchange marriage or reciprocal marriage system where one family gives a daughter in marriage to another family and in return takes a daughter from same family for marriage with their own son.
[2] When bride is formally sent to live with her husband after the wedding.

(Uploaded on 21/04/2026 at 11:17:07 AM)
(Downloaded on 26/04/2026 at 08:38:42 AM)

2.3 Upon consideration of pleadings, the learned Family Court framed issues regarding cruelty and entitlement to relief. After evaluation of oral and documentary evidence, the learned Family Court, vide judgment dated 24.09.2025, dismissed the petition for divorce filed by the appellant.

Rajasthan High Court Web Copy - Not Official

2.4 Hence, the present appeal.

3. Learned counsel for the appellant argues that the learned Family Court has committed a grave error both in law and on facts in passing the impugned Judgment and Decree dated 24.09.2025, whereby the petition under Section 13 of the HMA has been dismissed. It is contended that the findings recorded by the learned Family court are wholly illegal, unjust, and perverse, being contrary to the settled position of law as well as the material available on record. The learned court has failed to appreciate the evidence in its correct perspective and has rendered the impugned judgment on mere conjectures and surmises, without proper analysis of the pleadings and evidence, thereby making the same unsustainable in the eyes of law and liable to be set aside.

3.1 Learned counsel further argues that the finding on Issue No. 1 with regard to cruelty is patently erroneous. It is submitted that the appellant has duly proved, by way of cogent and reliable evidence including her own testimony (A.W.1) and that of A.W.2 Savitri Devi, that she was subjected to continuous cruelty on account of unlawful demands of dowry. The institution of FIR No. 87/2020 at Mahila Thana, Bikaner, followed by filing of charge-sheet under Sections 498-A, 406, 323 and 34 IPC against the respondent and his father, clearly substantiates the allegations of cruelty. It is contended that the appellant was compelled to live

(Uploaded on 21/04/2026 at 11:17:07 AM)
(Downloaded on 26/04/2026 at 08:38:42 AM)

separately due to such ill-treatment, and therefore, the finding that she deserted the respondent is wholly misconceived and contrary to the evidence on record.

Rajasthan High Court Web Copy - Not Official

3.2 It is further argued that the appellant has specifically established a consistent pattern of harassment, physical assault, and dowry-related demands since the inception of marriage. Incidents including physical assault for demand of a motorcycle, taunts for bringing insufficient dowry, denial of her stridhan, and continuous mental cruelty have been duly proved. The learned counsel submits that merely because specific dates of each incident are not meticulously mentioned, the same cannot dilute the veracity of the allegations, particularly when the criminal proceedings culminating in a charge-sheet lend corroboration to the appellant’s case. The learned Family Court has failed to consider these material aspects, thereby rendering its findings perverse.

3.3 Learned counsel also argues that the appellant was subjected to extreme physical and mental cruelty, including grave allegations of sexual assault by her brother-in-law and father-in-law, followed by threats and physical violence when she disclosed the same. It is contended that the appellant was ultimately ousted from her matrimonial home along with her minor child and was even deprived of custody temporarily, compelling her to seek police intervention. Despite such grave circumstances, the respondent made no genuine effort to resume cohabitation, as evidenced by the absence of any proceedings for restitution of conjugal rights. It is thus, submitted that the impugned judgment, if allowed to stand, would result in grave miscarriage of justice

(Uploaded on 21/04/2026 at 11:17:07 AM)
(Downloaded on 26/04/2026 at 08:38:42 AM)

and defeat the very object of matrimonial relief, and therefore deserves to be quashed and set aside.

4. Per contra, learned counsel for the respondent strongly opposes the present appeal and submits that the same is devoid of merit and liable to be dismissed for the reasons already stated in the impugned judgment and findings returned therein warrant no interference by this Court.

5. Heard learned counsel for both the parties and perused material available on record.

6. Before we proceed to render our opinion on the merits of the impugned judgment, it is pertinent to note as to what transpired prominently in the mind of the learned Family Court Judge to reject the petition of the appellant seeking dissolution of marriage between parties herein. Qua that, the translated extract of the Family Court judgment, being apposite, is reproduced herein below:

> "*10. From the evidence available on record, it is an admitted position that on 31.03.2016, i.e., the very day of the marriage between the petitioner and the respondent, the marriage of the respondent's minor sister Suman was also solemnized with the petitioner's brother Ravindra under the custom of atta-satta. Both parties, in their evidence, have admitted that after attaining majority, Suman refused to accept the marriage solemnized during her minority and declined to go with the appellant's brother after the customary muklawa. The evidence on record reveals that this was the principal cause of the family dispute between the parties. The petitioner, in her cross-examination, admits that domestic discord began due to the failure of her brother Ravindra Bishnoi's marriage performed under the atta-satta arrangement. The evidence produced by the respondent appears comparatively more credible, wherein he has stated that the petitioner's father and brother attempted to forcibly take away his sister Suman. Although no documentary evidence has been produced by the respondent in this regard, it is stated in his affidavit that following the said incident, he and his father submitted an application at Police Station Nayashahar for registration of a case. Pursuant thereto, the petitioner's father and brother were bound down by the City Magistrate under Sections 107 and 116(3) of the Code of Criminal Procedure.*
>
> *Thus, from the evidence on record, it is evident that the primary reason for the petitioner leaving her parental home was not cruelty on account*

(Uploaded on 21/04/2026 at 11:17:07 AM)
(Downloaded on 26/04/2026 at 08:38:42 AM)

of dowry demands, but rather the dispute arising out of the atta-satta marriage.

11. Despite residing in her matrimonial home willingly from March 2016 till the year 2020, the petitioner filed an application under Section 125 of the Code of Criminal Procedure and a petition under Section 13 of the Hindu Marriage Act with the intent to exert undue pressure upon the respondent and his family. The apparent objective was to compel the respondent to send his sister Suman to reside with the petitioner's brother Ravindra as his wife, thereby settling her brother's matrimonial life. Such conduct on the part of the appellant falls within the ambit of cruelty towards the respondent. There is no evidence on record to establish that the respondent treated the petitioner with cruelty. The mere filing of a charge-sheet under Sections 406 and 498-A of the IPC against the respondent cannot, in matrimonial disputes, be treated as conclusive proof of cruelty by the husband towards the wife.

12. This Court has considered the judicial precedents cited by the learned counsel for the respondent. The Court has already reached the conclusion that the appellant, Kiran Bishnoi, abandoned the respondent despite living with him willingly for several years, due to family pressure arising from the refusal of the respondent's sister Suman to accept her child marriage with the appellant's brother Ravindra. In the case of Sameer Ghosh vs. Jaya Ghosh (Civil Appeal No. 151 of 2004, decided on 26 March 2007), the Hon'ble Supreme Court elaborated the concept of mental cruelty in matrimonial matters. It was held that while determining mental cruelty, the Court must consider the entire span of matrimonial life and the period during which the parties lived together. Mere separation of the spouses for a few years, on a particular ground, cannot by itself be construed as an act amounting to mental cruelty against either party.

13. In view of the foregoing discussion and the evidence available on record, it is established that the petitioner, without any reasonable cause, voluntarily deserted her matrimonial home and her husband (the respondent), thereby subjecting the respondent to cruelty. The petitioner has failed to prove the alleged mental and physical cruelty inflicted upon her. Accordingly, the issue in question is decided against the petitioner and in favour of the respondent."

7. From the perusal of the impugned judgment, we feel that the learned Family court seems to have got rather over swayed on the basis of appellant's alleged "voluntary desertion" stemming from a collateral family dispute caused by 'atta satta' custom/tradition, instead of focusing purely on the merits of cruelty within her own matrimonial relationship.

8. The fundamental error committed by the learned Family Court is the failure to recognize and properly distinguish between

(Uploaded on 21/04/2026 at 11:17:07 AM)
(Downloaded on 26/04/2026 at 08:38:42 AM)

two separate spheres, i.e., first, the dispute arising out of 'atta-satta', a customary practice; and; second, the independent statutory standard for determining matrimonial cruelty and desertion. By conflating these issues, the learned family court has arrived at a conclusion that appears to be logically unsound. Learned Family Court improperly assumed,in absolute terms,that an external family disagreement (atta satta) can unilaterally be treated as the cause of marital dispute between the appellant and the respondent. At the same time one cannot be unmindful of the consequences flowing from that refusal to perform 'muklawa'. If the same is deliberately weaponized by appellant against her husband, no doubt, it could then be construed as matrimonial cruelty. This distinction is critical before arriving at any finding. More of it later in the succeeding part.

9. The evidence regarding refusal to accept her child marriage must, therefore, be viewed solely through the lens of law permitting o not perform 'muklawa' with brother of the appellant. refusal was a lawful and justified personal choice. The said conflict cannot thus legally or ethically be projected to constitute constant mental cruelty inflicted upon the respondent by appellant, nor can it serve as the single, overwhelming proximate cause for appellant's own matrimonial discord with the respondent.

10. Learned Family court held that appellant in response to refusal for muklawa, resorted to retaliatory hostile conduct, inter alia, manipulating various litigations of alleged cruelty inflicted on her by her husband. And, that is where, in our opinion, it fell in grave error. In fact, we find ourselves in

(Uploaded on 21/04/2026 at 11:17:07 AM)
(Downloaded on 26/04/2026 at 08:38:42 AM)

agreement with Family Court to the limited extent that the trigger may be atta satta (the reciprocal marriage structure)which had placed all parties in the family on a collision path. In an 'atta-satta' framework, families often treat both marriages as interconnected. In that scenario, the child marriage dispute became the trigger but not the only cause, if at all.

11. We are of the mind, the Family Court erred in its determination that the primary reason for separation was voluntary desertion by appellant. To label her departure as 'voluntary' is to ignore the profound concept of duress that rendered cohabitation impossible for the appellant. A woman cannot be expected to maintain marital normalcy when she has endured years of sustained emotional isolation and psychological pressure in the matrimony. Mere shared physical residence does not always equate to harmonious cohabitation; rather, at times, it represents a period of forced endurance under adverse conditions.

12. The breakdown in marriage was not due to a one-sided "desertion," but rather due to a state of extreme emotional and familial strain caused by circumstances beyond the Appellant's control, forcing her to seek safety or clarity away from the matrimonial home. It was not an abandonment by a unilateral act, but separation due to irreconcilable differences. To prove voluntary desertion, the Respondent ought to have adduced evidence that the Appellant left without any reasonable cause. The record shows genuine discord between parties stemming from irreconcilable differences and mental cruelty caused to the appellant and her being forced out of the matrimonial home.

(Uploaded on 21/04/2026 at 11:17:07 AM)
(Downloaded on 26/04/2026 at 08:38:42 AM)

13. We are of the view that the learned Family Court wrongly deprecated the appellant's legal actions, including filing petition under Section 125 CrPC and other proceedings arising from matrimonial discord, as mere attempts to exert "undue pressure", since appellant had instituted some of the proceedings while living together at the matrimonial home. The mere fact that spouses continued to live together for some years does not automatically negate cruelty. Many women remain in difficult marriages because of economic dependence, social pressure, children, lack of shelter, fear of stigma, or absence of parental support. Continued residence under compulsion of circumstances is not the same thing as voluntary, harmonious cohabitation. A wife staying because she has "nowhere else to go" cannot be treated as proof that no cruelty existed. Endurance is often mistaken for consent and/or condonation.

14. The learned Family Court fell in error to have misconstrued and missed the very purpose of invoking judicial remedies by the wife against her husband. Such filings were not acts of malice, but rather necessary defensive measures taken by the Appellant to secure her basic rights of maintenance and residence when those rights were otherwise being denied by the respondent. Such proceedings are instituted following the breakdown in marital relations. These actions are to be seen as a symptom of an abusive environment that necessitated legal intervention, and not as a proof of willful marital misconduct.

15. Therefore, the finding that the appellant abandoned her husband is flawed because it fails to consider the cumulative effect of the sustained emotional stress suffered over time by appellant.

(Uploaded on 21/04/2026 at 11:17:07 AM)
(Downloaded on 26/04/2026 at 08:38:42 AM)

Rajasthan High Court Web Copy - Not Official

Cruelty, particularly mental cruelty, is not confined to dramatic physical acts; it encompasses all forms of conduct, subtle or overt, which make continued cohabitation unbearable. The learned Family court has given undue weight to the fact of co-residence, rather appears to have maximized its import against the appellant, while minimizing the psychological damage inflicted upon the appellant by the refusal of her basic rights within the matrimonial home.

16. Adverting once again to 'atta satta' that weighed on the mind Family Judge, arguendo, even if appellant's behavior, due to non performance of obligation ('muklawa') by her sister in law, is held to be not acceptable by her husband, even then it would be unjust to hold her alone responsible. The family Court treats a dispute concerning a third party ( ) as if it were the root cause of dispute in the Appellant's own marriage. No doubt, the evidence presented by the respondent (and accepted by the court) establishes a dispute involving muklawa. However, this dispute is collateral to the Appellant's marriage. The Respondent ought to have established that the 'Atta Satta' conflict directly caused the breakdown of conjugal life at the instance of the Appellant. He failed to discharge that burden.

17. Moreover, other than atta satta, there is nothing on record, to establish that any action by the Appellant legally amounted to cruelty towards the Respondent. Thus, the learned Family Court fell in grave error on presuming appellant's malicious intent without any direct or reliable evidence.

18. The learned Family Court also misdirected itself in not appreciating the evidence properly. It minimized, if not dismissed

shoneekapoor.com

(Uploaded on 21/04/2026 at 11:17:07 AM)
(Downloaded on 26/04/2026 at 08:38:42 AM)

altogether, the appellant's evidence and focus disproportionately on the respondent's affidavit concerning the Police Station application, following the Suman incident (para 10 of the impugned judgment). The Family court heavily relied on admitted facts concerning the atta satta without adequately examining if the counter-evidence on other aspects of the Appellant. This led to a wrong conclusion based on selective reading thereof.

19. Taking a wholesome view, we are of the opinion that the impugned judgment is not tenable on settled principles governing matrimonial adjudication, inasmuch as, it fails to appreciate that in cases of matrimonial cruelty, the standard of proof is one of preponderance of probabilities and not proof beyond reasonable doubt. In matrimonial disputes, where allegations are within the exclusive knowledge of the parties, the absence of a cogent rebuttal ought to have tilted the evidentiary balance in favour of the appellant.

20. The long and continuous separation since last 5 years, without any bonafide effort at restitution by the respondent, establishes not only desertion but also reinforces the inference of cruelty. The marital bond, in such circumstances, stands fractured to such an extent that insistence on its continuance would itself amount to perpetuating cruelty.

21. Having gone through the Family Court record and given the nature of cross-allegations, it does appear to be a case where there is no possibility of any reconciliation. In any case, the parties tried to find out a way by joining the mediation proceedings before the Family Court at Bikaner but the same was an exercise in futility.

(Uploaded on 21/04/2026 at 11:17:07 AM)
(Downloaded on 26/04/2026 at 08:38:42 AM)

22. To be also noted that, in course of hearing, on a Court query, qua the alimony and maintenance, learned counsel for the appellant candidly stated that he had already sought instructions in respect thereof, and the appellant would rather give up her claim both of alimony as well as past, present or future maintenance and rather buy peace for posterity. In view of the said stand taken by appellant, it is accordingly held that she would not be entitled to make any such claim against the respondent after passing of the instant order.

23. In totality of circumstances, the appeal is allowed. Impugned judgment and decree dated 24.09.2025 is set aside and findings returned by the learned Family Court are reversed in favour of the appellant. Marriage between the parties stand dissolved under Section 13 of the HMA by accepting the petition of the appellant. Fresh decree-sheet be accordingly prepared.

24. We also make it clear that the observation made by this Court, herein above, are only for the purposes of adjudication of dispute under Section 13 of HMA and the same would not have any bearing on the on-going criminal proceedings between the parties and/or custody proceedings which are already going on.

25. All pending application(s) stand disposed of.

26. Though we have already rendered our judgment, as above, but before parting, we feel compelled to address a social practice, viz, involving a minor girl in the custom or tradition of '*atta satta*', which, upon her attaining majority, is treated as conversion into a marriage upon performance of another ritual called '*muklawa*'.

27. Under the Hindu Marriage Act, 1955 and the statutory framework prohibiting child marriage in India, matrimonial law is

(Uploaded on 21/04/2026 at 11:17:07 AM)
(Downloaded on 26/04/2026 at 08:38:42 AM)

Rajasthan High Court Web Copy - Not Official

built on the principles of consent, adulthood, free will, and dignity. The Prohibition of Child Marriage Act, 2006 was enacted precisely because child marriage destroys education, health, liberty, and future life choices. Communities cannot invoke custom to override statute. No social practice can legitimize what the law prohibits and condemns.

28. In the case in hand, on the very day the appellant and respondent were married, the respondent's minor sister Suman was also married to the appellant's brother under this 'atta satta' arrangement. A girl child, lacking maturity and legal capacity, was thus tied to a marital bond not because of her free will, but because adults around her chose to settle family arrangements about her life. This fact alone is enough to reveal the moral and legal bankruptcy of the practice.

29. This case strips away the romanticized defense of "tradition." What is presented as a community custom is, in substance, an exchange transaction in human lives. When marriages are arranged as reciprocal exchanges between families, where one of the siblings is a minor, in such a situation, the custom becomes a coercive social mechanism in which children, particularly girls, are used as matrimonial barter. It is nothing more than a reciprocal exchange in which minors are treated as bargaining instruments between families.

30. The very idea that a minor (her or his), who has attained majority can be compelled to go to a spouse chosen for his/her in childhood reflects a mindset in which children. We may though like to observe that as it turns out, it is mostly girls, are seen as transferable obligations rather than rights-bearing individuals. This

(Uploaded on 21/04/2026 at 11:17:07 AM)
(Downloaded on 26/04/2026 at 08:38:42 AM)

is the cruel essence of 'atta-satta' i.e. one daughter's life is made dependent on another daughter's submission. What is equally tragic is that in this marriage trade off, instead of each marriage standing on its own footing, the fate of one marriage frequently gets tied to the compliance of another. If one refuses, another is pressured. If one marriage breaks down, retaliation follows in the other household. Such a structure is fundamentally unjust because it denies individuality and turns marriage into mutual hostage-taking between families. Seen from this context, the atta-satta system seems to have also become corrosive in the society. It is fraught with the potential either to collapse separate marriages or alternatively, force the parties into a coercive arrangement.

31. Any custom that requires a girl to marry because another marriage occurred is per se morally bankrupt. Much worse is the practice that binds a minor to such an arrangement. Such a custom is completely indefensible. Dressing exploitation in cultural language does not sanitize it. A girl child is not consideration in a reciprocal bargain. A daughter is not security for another son's marriage. Consent given on attaining majority, after coercive childhood conditioning, is not be a free consent.

32. To sum up, atta-satta involving a minor is not a benign cultural practice. It commodifies children, suppresses consent, entrenches patriarchy, and breeds future conflict. The right of refusal of a minor, on attaining majority, to accept such a marriage is not enough. The problem is the system that presumes that a child could be bound in the first place. 'Atta Satta' involving a minor is a system of gender coercion, child-rights violation, and

(Uploaded on 21/04/2026 at 11:17:07 AM)
(Downloaded on 26/04/2026 at 08:38:42 AM)

familial extortion disguised as custom. In a constitutional democracy governed by Rule of law, such practices deserve unequivocal social and legal repudiation. With these observations, appeal stands disposed of.

(SUNIL BENIWAL),J **(ARUN MONGA),J**

76-amar/-

Rajasthan High Court Web Copy - Not Official

shoneekapoor.com

(Uploaded on 21/04/2026 at 11:17:07 AM)
(Downloaded on 26/04/2026 at 08:38:42 AM)