

JUDGMENT RESERVED ON: 09.07.2026JUDGMENT DELIVERED ON: 17.09.2026**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL****THE HON'BLE CHIEF JUSTICE MR. MANOJ KUMAR GUPTA****AND****THE HON'BLE JUSTICE MR. SUBHASH UPADHYAY****First Appeal No.84 of 2024**

Jasleen Kaur Sidhu

----Appellant

Versus

Shikhar Kacker

----Respondent

Presence:-

Mr. Abhijay Negi, learned counsel for the appellant

Mr. Rajendra Dobhal, learned Senior Counsel with Mr. Akshay Pradhan and Ms. Devika Tiwrai, learned counsel for the respondent.

JUDGMENT: (per Mr. Subhash Upadhyay, J.)

1. The present first appeal has been preferred by the appellant/wife against the judgment dated 05.04.2024 and decree passed by Judge, Family Court, Dehradun in O.S. No.900 of 2016 Shikhar Kacker vs. Smt. Jasleen Kaur Sidhu, whereby the petition filed by the respondent/husband under Section 13(1)(i-a) of Hindu Marriage Act, 1955 was allowed against the appellant/wife and the marriage between the parties was dissolved by a decree of divorce.

2. The appellant and the respondent are Advocates by profession and at the time of filing of the divorce petition, the appellant was working as Assistant Advocate General at Chandigarh and the respondent was working in a Corporate



Law Firm. Their marriage was solemnized on 03.03.2014, and out of the wedlock, a female child named Kavya was born on 07.09.2015, who is in the custody of the appellant. The parties are living separately since 19.04.2016. The petition under section 13(1)(i-a) of Hindu Marriage Act, 1955 was filed by the respondent in the month of November, 2016 before the Family Court, Dehradun seeking dissolution of marriage on the ground of cruelty and desertion.

3. The broad instances/incidents which were pleaded in the suit for contending that the respondent was subjected to cruelty can be summarized as hereunder:-

a. At the time of 'vidai', a photographer was trying to have close shots and requested the appellant to look into the camera, however the appellant flared up and pushed the photographer violently, leaving the entire gathering shocked. The traditional ceremonies of the respondent's family at the time of 'vidai' were also not permitted to be performed.

b. On the next date of wedding, the appellant and the respondent were to travel to Khatauli, so the petitioner's mother requested the appellant and the respondent to get ready early in the morning to perform wedding ceremonies and pooja but when the appellant did not



came downstairs to commence the ceremonies, the respondent's mother requested daughter-in-law of their family friend to go upstairs and help the appellant get ready. The daughter-in-law of their family friend went upstairs and told the appellant that everyone is waiting and offered to help her get ready, the appellant refused her help stating – *"jaldi karoge toh abhi apna bahu-pana dikha doongi"*. Thereafter the appellant went with her brother without performing even bare minimum ceremonies because of which respondent's family had to face embarrassment on account of conduct of the appellant.

- c. After the marriage, the respondent was unwell and consulted Dr. Pankaj Arora, who opined that respondent may be suffering from spondylitis and prescribed MRI of neck. The respondent requested the appellant to stay at Dehradun so as to undergo the tests prescribed by doctor, however, the appellant flatly refused and asked the respondent to travel to Chandigarh where the appellant insisted that the respondent must see Dr. Santosh Agarwal, Orthopedic surgeon, who attributed the swelling to tuberculosis and advised further tests, including MRI. The respondent was also asked to consult



appellant's family doctor Dr. Purushottam Atter, who gave homeopathic pills without disclosing his diagnosis.

- d. After returning from Italy, the appellant again asked the respondent to meet Dr. Santosh Agarwal, who recommended FNAC test. The FNAC test results cited Reactive Lymphoid Hyperplasia thereby ruling out the lymph nodes being malignant. However, instead of any diagnosis, Dr. Agarwal further scared the respondent and recommended biopsy.
- e. The respondent's parents took appointment with doctors at New Delhi and Dehradun, and upon investigation, the doctors at New Delhi and Dehradun ruled out any serious ailment. In September, 2014, the appellant again asked the respondent to accompany her to Chandigarh where she was consulting a physician for her check up. There again, the appellant forced the respondent to get him examined by the said physician. The appellant and her father forced the respondent to undergo another round of blood tests and FNAC test as the doctor scared the respondent of potentially suffering from brain tuberculosis. Though the pathologist refused to carry out FNAC test but at the insistence of the doctor, the said test was again conducted and as was expected the report was normal. After the reports, the



doctor concluded that the respondent was suffering from irritable bowel syndrome and hypertension and prescribed medicines on the pretext of treating irritable bowel syndrome. In the hindsight, the respondent realized that this was one of the series of attempts of the appellant to force respondent to shift to Chandigarh.

f. The appellant and her family insisted that the respondent should leave his corporate practice and shift to Chandigarh. The appellant, who, at the said relevant time, was working as an Assistant Advocate General, suggested the respondent to transit from corporate to litigation practice and to consider shifting as an option. The appellant never had the intention to stay with the respondent in New Delhi and often stated that the road to the High Court judgeship goes through the Advocate General's office and stated that she is a smart worker and did not believe in '*gadha mazduri*'.

g. The appellant left no opportunity to spoil the reputation of the respondent at his workplace. The appellant intentionally embarrassed the respondent before his seniors and colleagues.

h. The respondent had detailed the said incident in para-37 of the petition, which can be summarized as hereunder:-



....Once the appellant was waiting outside the office of the respondent, so the respondent's immediate senior stepped out with the respondent to meet the appellant and politely mentioned that she had to request the respondent to stay back for a few minutes to discuss an important client matter. Instead of appreciating the effort made by the senior of the respondent, the appellant remarked – "I am glad you came out to mention this, else he would have had a lot of things to explain". Once at a social function, upon being introduced to the founder of the law firm of the respondent, the appellant remarked – "I must congratulate you for running a tight ship", leaving the founder of the law firm visibly upset. At another instance, when being introduced to a senior partner of the law firm, the senior partner congratulated her and remarked – "you have married a very nice and simple person", the appellant without paying heed to repeated requests from the respondent to watch out her words retorted "*sir, vakil bhi kabhi sharif hote hain?*".

- i. The appellant repeatedly misbehaved with the respondent, his parents and relatives on various instances and such misbehavior were detailed in the petition to contend that they wanted that the



respondent should leave his parents and settle at Chandigarh.

- j. Appellant and his family humiliated the respondent and his parents on various occasions. Even the child was kept away from the respondent's parents. The respondent contended that he has no access to the child and the appellant was using the baby to blackmail the respondent to sever his ties from his parents and shift to Chandigarh leaving his carrier in Corporate Law Firm.
- k. The appellant was given an offer to settle with the respondent in Mumbai but she refused and insisted on staying at Chandigarh.

4. On the basis of the above averments, the respondent claimed that he was subjected to mental cruelty. It was further contended that since 19.04.2014 the appellant deserted the company of respondent. The divorce was sought on the ground of cruelty and desertion.

5. Post filing of the divorce petition on 03.11.2016 and till its disposal on 05.04.2024, the events unfolded can be broadly summarized as under:-

03.11.2016 – Divorce petition was filed by the respondent in which notices were issued to the appellant



24.03.2017 – Application filed by the respondent for service of notice on appellant through paper publication was allowed as the respondent contended that though twice steps were taken through registered post to serve the appellant but she could not be served.

25.04.2017 – Appellant put in appearance through counsel and the matter was referred for mediation.

17.07.2017 – On a transfer application being Transfer Petition (s) (Civil) No(s).1070 of 2017 filed by the appellant to transfer the proceedings of the case pending at Dehradun to Chandigarh, Hon'ble Apex Court passed the following order:-

"ORDER

No ground for transfer is made out. The Transfer Petition is accordingly dismissed.

Pending applications, if any, shall stand disposed of.

However, in view of the decision rendered by this court on 9th March, 2017 in T.P. © No.1912 of 2014 titled Krishna Veni Nigam vs. Harish Nigam, it is open to the petitioner is at liberty to pray to the concerned court for participating in the proceedings by video conferencing, if available, and also to claim expenditure when petitioner (wife) is required to travel. In case she wants mediation, the court shall make endeavour in that direction too."

22.09.2017 – The matter was referred for mediation in pursuance of the order of the Hon'ble Apex Court.



30.10.2017 – An application was filed by the appellant to the Chairman, DLSA/District Judge, Dehradun for change of Mediator.

11.12.2017 – Shri Ajay Kumar Gaur submitted a report to the Family Court that mediation was unsuccessful. (page 607 of paper book)

20.03.2018 – Another transfer petition no.517/2018 was filed by the appellant before the Hon'ble Supreme Court for transfer of divorce petition from Family Court, Dehradun to Chandigarh.

11.04.2018 – Hon'ble Supreme Court declined the said transfer, however, notice was issued confined to mediation only. (page no.624 of paper book)

08.05.2018 – Shri Gunwant Dara, Mediator at Hon'ble Supreme Court, submitted a report that mediation was unsuccessful. (page no.627 of paper book)

01.06.2018 – An application paper no.44-A filed by the appellant under Order 11 Rule 13 r/w section 115 of CPC for issuing direction to the respondent to place on record income tax returns for assessment year 2011-12 to 2016-17 and other documents (page no.50-52 of paper book).

01.06.2018 – Application paper no.45-A u/s 24 of Hindu Marriage Act was filed by the appellant for grant of



maintenance pendete lite @ 1.00 lakh per month for herself and her daughter and ₹ 10,000/- per month for each visit w.e.f. July, 2017 i.e. from the date of order of Hon'ble Supreme Court passed in first transfer petition (page 53-56 of paper book).

09.07.2018 – Objection was filed by the respondent to the application filed by the appellant u/s 24 of Hindu Marriage Act (page 57-67 of paper book)

09.07.2018 – Objection was filed by the respondent to the application filed by the appellant under Order 11 Rule 12 of CPC (page 68-72 of paper book)

10.07.2018 – Objection filed by the appellant to the application filed by the respondent for closure of right of the appellant to file written statement. The appellant prayed that the time for filing the written statement be extended for 30 days after the disposal of the application filed under Hindu Marriage Act. (page 73-77 of paper book)

10.8.2018 – List of documents were filed by the respondents and a rejoinder affidavit was filed to the application filed by the appellant under Order 11 Rule 12 of CPC.

10.08.2018 – Application paper no.55C2 filed by the appellant for dismissal of suit till the disposal of the



transfer petition pending before the Hon'ble Supreme Court. The said prayer was rejected by the Court on the said date and the case was listed for disposal of application paper no.43C, 44A and 45A.

16.01.2019 – Parties informed the Court that counseling is in progress before the Hon'ble Supreme Court.

16.04.2019 – Appellant withdrew the transfer petition before the Hon'ble Supreme Court with liberty to pursue the mediation before the Family Court.

16.05.2019 – Parties were referred for mediation in view of order of Hon'ble Supreme Court dated 16.04.2019.

19.9.2019 – Family Court recorded that as per Mediator report, mediation has failed between the parties. The Court rejected the application of the appellant for maintenance, however, respondent was directed to pay expenses @ 5,000/- per visit to the appellant. Application filed by the respondent to close the opportunity of filing the written statement was rejected. The appellant was granted time to file written statement by 09.10.2019.

30.09.2019 – AO No.420/2019 was filed by the appellant before the High Court assailing the order dated 19.09.2019, whereby the application for maintenance *pendente lite* was rejected. Another writ



petition No.3106/2019 was filed by the appellant assailing the order dated 19.09.2019 whereby the application paper no.44A filed by her for issuing the direction to the respondent to file income tax return and other document was rejected.

10.10.2019 – An order was passed in AO No.420/2019 asking the parties to appear on 04.11.2019 and to make another attempt for mediation. Interim order was granted staying the effect and operation of the order dated 19.09.2019 till 10.11.2019.

14.11.2019 – Order passed by Coordinate Bench recording that the Court interacted with the parties in chamber. The appellant gave an undertaking that the child would be brought to Nainital to enable the respondent to interact with her.

02.12.2019 – Appellant submitted that she and the child interacted with the respondent and prayed that the matter be deferred for four weeks to enable her to make further attempts to reach out to the respondent and to have the difference amicably resolved.

07.01.2020 – Appellant informed the Court that the WPMS No.3106/2019 has also been filed and the Court directed that both the cases shall be heard together. Interim order granted earlier was extended.



31.08.2021 – Parties were directed to file affidavit of liabilities and assets in view of judgment of Hon'ble Supreme Court in Rajnesh vs. Neha.

11.11.2021 – Coordinate Bench in AO No.420/2019 heard the case in Chamber and tried to convince both the parties to amicably settle the dispute or to explore the possibility of seeking decree of divorce by mutual consent. The appellant showed her inability to accept the said proposal. The respondent was directed to clear the dues towards the expenses.

14.12.2021 – The Court appointed learned Senior Advocate Arvind Vashista as Amicus Curiae to argue the case on behalf of the appellant.

17.12.2021 – The proceedings of original suit no.900/2016 pending before the Family Court, Dehradun was stayed till the next date i.e. 28.12.2021.

14.03.2022 – A coordinate Bench recorded a finding that an effort for conciliation between the parties was made by the Court in chamber which had failed.

05.04.2022 – AO No.420/2019 was directed to be converted into first appeal and was registered as FA NO.80/2022.



12.04.2022 – In WPMS NO.735/2022 filed by the respondent, the High Court passed an order directing the Family Court to decide the case expeditiously.

16.04.2022 – An order was passed by the Family Court by which right to file written statement by the appellant was closed and case was listed for ex-parte evidence on 30.04.2022. On the same day, list of documents was also filed by the respondent. Subsequently, the appellant appeared before the Court and submitted an application for rejecting ex-parte evidence filed by the respondent.

31.05.2022 – An order was passed by the Family Court, Dehradun recalling the earlier order dated 16.4.2022 and the appellant was granted time to file written statement by 06.07.2022 subject to cost of Rs.5,000/-.

04.07.2022 – The High Court in FA No.80/2022 waived off the cost imposed on the appellant and time was granted to file written statement within two weeks from the date of order. The Family Court, Dehradun was directed to decide the matter within six months. However, it was directed that the final order shall not be pronounced.

19.07.2022 – Written statement was filed by the appellant before the Family Court, Dehradun.



29.07.2022 - Arguments were heard in FA No.80/2022 and WPMS No.3106/2019 and judgment was reserved.

04.08.2022 – The respondent filed rejoinder affidavit to the written statement filed by the appellant.

06.09.2022 – Additional written statement was filed under Order 8 Rule 9 CPC by the appellant. Issues were framed by the court on the said date.

09.09.2022 – FA No.80/2022 was partly allowed. The respondent was directed to pay an amount of ₹ 50,000/- per month by 10th of each month as maintenance *pendente lite*, over and above the traveling expenses. WPMS No.3106/2019 was delinked.

14.09.2022 - List of witnesses was filed by the respondent along with chief evidence of PW1 to PW4.

05.12.2012 – The appellant filed an application that till the order is passed in the application filed Section u/s 24 of Hindu Marriage Act, the proceedings of the case be deferred. It was contended that maintenance of ₹ 50,000/- per month was granted for her daughter only. The respondent objected to the said application. The appellant, however, stated that the respondent be directed to clear the arrears of maintenance.

15.12.2022 – Learned Court directed the respondent to pay arrears of maintenance.



21.12.2022 to 30.01.2023 – Evidence of PW1 to PW4/cross-examination of PW1 to PW4/evidence of DW1-appellant.

01.04.2023 – The High Court clarified the order dated 09.09.2022 in FA No.80/2022 and directed the respondent to pay the maintenance @ ₹ 50,000/- per month from the date of filing of the application i.e. 01.06.2018.

08.05.2023 – An order was passed in the SLP preferred by the respondent against the orders dated 09.09.2022 and 01.04.2023 passed in FA No.80/2022, which reads as under:-

“ORDER

Delay condoned.

Issue notice to the respondents.

In the meanwhile, subject to the current maintenance as ordered by the High Court being regularly paid and 25% of the arrears (inclusive of the sum of Rs. 5 lakhs which is said to have already deposited) being deposited within a period of six weeks from today, the matter shall not be precipitated any further.

It is made clear that the interim order passed herein is limited to the aspect of the maintenance and arrears of maintenance and the proceedings in any event can go ahead.”

28.06.2023 to 15.07.2023 – Cross-examination of DW1 appellant was held.



20.07.2023 – Learned Principal Judge, Family Court, Dehradun requested the High Court to issue directions so that judgment can be pronounced in the case.

02.08.2023 – Order was passed in FA No.80/2022 directing the Family Court, Dehradun to proceed and decide the case on merits in view of the order dated 08.05.2023 passed by the Hon'ble Apex Court.

04.08.2023 – An order was passed by Hon'ble Supreme Court in pending SLP preferred by the respondent by which matter was referred to Hon'ble Mr. Justice Kurian Joseph, Former Judge of Supreme Court, for mediation proceedings. The parties were directed to get the matter adjourned before the Family Court till the decision in mediation proceedings.

31.01.2024 – Report of the Mediators was circulated at the residence of Hon'ble Judges

02.02.2024 – An order was passed by Hon'ble Supreme Court, which reads as under:-

“ORDER

It is stated by the learned counsel for the parties and in view of the report of the learned Mediator, it appears that mediation between the parties has failed.

Let the matter be listed for hearing after two weeks on a non-miscellaneous day.”



05.04.2024 –Final order was passed by the Family Court, Dehradun, thereby granting decree of divorce in favour of the respondent.

6. Thus, the original suit filed in the year 2016 was ultimately decided in 2024 as parties had contested the suit not only before the Family Court and this High Court but also before the Supreme Court. The SLPs preferred by the appellant and the respondent against the order dated 09.09.2022 and 01.04.2023 in FA No.80/2022 were pending till the decision of the suit. The SLPs were subsequently decided during the pendency of the present first appeal, which was filed in the month of May, 2024.

7. Learned counsel for the parties have filed detail written submissions and list of judgments in support of their contentions. Learned counsel for the appellant contended that the appellant had denied the allegations made in the petition by filing a detail written statement and had examined herself as DW1. However, the learned Family Court erred in deciding the issue of cruelty against the appellant and in favour of the respondent. Learned counsel for the appellant made following submissions in support of the said contention:-



- (i) The allegations made in the petition, filed by the respondent, merely disclose the difference of opinion between the parties and the same does not meet the statutory ingredients for proving 'cruelty' or 'desertion'.
- (ii) The contention of the respondent that his career was adversely affected is belied from the fact that the respondent at present is a partner in one of the leading Firm.
- (iii) No independent witnesses were examined by the respondent except himself as PW1, his parents as PW2 and PW3 and an Advocate as PW4 with whom the respondent was working at Dehradun at the said relevant time.
- (iv) Mr. Shashank Pandey, Advocate was examined as PW4, however, the pleadings with respect to the incident wherein the appellant allegedly misbehaved at a restaurant was stated in the replica filed by the respondent against the written statement filed by the appellant and the same could not have been considered as a part of pleading.
- (v) Witnesses which were required to be examined to prove the allegations made in the pleadings viz. photographer, daughter of family friend, various



doctors and other material witnesses were not examined to prove the charge of cruelty as alleged by the respondent.

- (vi) An application u/s 24 of Hindu Marriage Act was to be mandatorily decided before deciding the divorce petition.
- (vii) Income affidavit was not called from the respondent and no maintenance has been awarded, thus, showing complete lack of application of mind exhibiting bias towards the respondent.

8. Per contra, learned counsel for the respondent contended that instances of cruelty to which the respondent was subjected to by the appellant and other family members were detailed in the petition. The respondent examined himself and other witnesses, however, the appellant examined herself as DW1 and even her parents did not come forward to record evidence in her favour. Learned counsel for the respondent has made the following submissions in support of his contentions:-

- (i) The appellant never had the genuine intention to treat the respondent's home as her matrimonial home.



- (ii) At no point did the appellant file any application before a competent court seeking restitution of conjugal rights, which clearly demonstrates her lack of *bona fide* intention to continue or restore the marital relationship.
- (iii) The consistent conduct of the appellant reveals that she always treated the marriage as a mere formality or “paper marriage”, without accepting the responsibilities, duties, and commitments attached thereto.
- (iv) While the respondent has examined himself, his parents and an independent witness PW4 Advocate Shashank Pandey in support of his case, the appellant failed to produce any witness, including her own parents.
- (v) The incident at a restaurant wherein the appellant after getting drunk misbehaved with Shri Shashank Pandey, Advocate (PW4), occurred in March, 2022, after the filing of the petition and the said fact was stated in the replica to the written statement filed by the appellant. The appellant filed an additional written statement rebutting the said stand taken in the rejoinder affidavit, as such the appellant was provided an opportunity to file rebuttal.



- (vi) The appellant consistently pressurised the respondent to sever the ties with his parents, abandon his flourishing career as a corporate lawyer, and relocate to Chandigarh.
- (vii) The appellant repeatedly misbehaved with the respondent, his parents and other relatives, thereby causing constant humiliation, distress, and disruption of peace in the matrimonial home.
- (viii) The ongoing litigation, without any genuine cause, is not only causing cruelty to the parties but also to their daughter.

9. Upon hearing the learned counsel for the parties at length and on perusal of the record, the following issues crops up for consideration before this Court:-

- i) Whether the respondent before the Family Court had made out a case for divorce on the ground of cruelty?
- ii) Whether the findings recorded by the learned Family Court are based on correct appreciation of facts and law or are perverse?
- iii) In case, issue nos.1 and 2 are decided against the appellant, then whether the appellant is entitled to receive any alimony, if so, then to what extent?



iv) Whether the parenting plan submitted by the respondent is proper for the welfare of the child?

10. Issue nos.1 and 2 are related to each other, therefore, the same are being considered and decided together.

11. To prove the various instances, which were detailed in the petition, the respondent filed the evidence affidavit of himself, his parents and Advocate Shashank Upadhyay. The respondent examined himself as PW1, his parents as PW2 and PW3 and Advocate Shashank Upadhyay as PW4. They were cross-examined by the appellant. On the other hand, the appellant examined herself as DW1.

12. The respondent (PW1) filed his evidence affidavit wherein he reiterated the facts stated in the petition and detailed various incidents from the date of marriage till the appellant left the respondent. The incident at Vidai where the appellant misbehaved with the photographer; misbehaviour of the appellant with the family friends; the incident wherein the respondent was forced to undergo various medical examinations; the insistence of the appellant pressuring the respondent to transit from corporate practice to litigation practice and to shift to Chandigarh; the embarrassment the



respondent had to face at the hands of the appellant in presence of his seniors and other colleagues; the incident of misbehaviour with an Advocate Shashank Pandey (PW4) at a restaurant at Dehradun; the complaints made to the parents of the appellant about the behaviour of the appellant and their inaction and the misbehaviour with the respondent and his parents were recorded. The respondent PW1 had also detailed the deliberate action of the appellant and her family to keep the newly born child away from the parents of the respondent. The parents of the respondent were examined as PW2 and PW3, who in their evidence affidavit, also detailed the various incidents to show that the appellant since inception i.e. from the date of marriage harassed the respondent and made efforts to strain the relationship between the respondent and his family. It was also recorded that how the respondent compelled the respondent to settle at Chandigarh either on medical grounds or on the pretext of practice at Chandigarh. The said action was taken by the appellant in order to sever the ties of the respondent with his parents. Shri Shashank Pandey, Advocate (PW4), in his evidence affidavit detailed the incident which occurred at restaurant at Dehradun wherein due to misbehaviour and rude conduct of the appellant, the respondent had to face embarrassment in public.



13. Though the incident where it was alleged that the appellant misbehaved in presence of PW4 was stated in replica to the written statement filed by the appellant, however, the perusal of the record reveals that the appellant was given time to file additional written statement and said additional written statement is part of record, as such an opportunity was provided to the appellant to rebut the submission made in the rejoinder affidavit. The replica was a part of pleading and PW4 in his evidence affidavit stated about the said incident. PW1 to PW4 were also cross-examined by the appellant. The appellant examined herself as DW1, and her parents or any other independent witness was not examined to controvert the case of the respondent. The appellant DW1 in her evidence affidavit reiterated the stand taken by her in the written statement. In her evidence affidavit with regard to the incident which took place at Vidai, the appellant stated that "no ugly incident as referred by the petitioner in the petition at the time of Vidai took place", however, in cross-examination to a query being made as to whether the appellant had pushed the photographer, it was stated that she does not know as at the said time she was crying and was too emotional. With regard to various incidents where the respondent was asked to examine himself



at Chandigarh, the appellant contended that same was done in good faith. It was further stated that the appellant and her family were kept in dark regarding the medical issues/problems of the respondent. The learned Judge, Family Court, looking into the totality of facts and evidence produced before it, concluded that the respondent was subjected to cruelty.

14. The contention of the learned counsel for the appellant that the allegations made in the petition were general in nature and merely discloses the difference of opinion of parties and that the finding recorded were perverse as no independent witness were examined is to be seen in the backdrop of the fact that in physical cruelty there can be tangible and direct evidence but in the case of mental cruelty there may not at the same time be direct evidence. The concept of proof beyond shadow of doubt, is to be applied to criminal trials and not to matrimonial matters. At this stage, we have also taken into consideration the various judgment on which reliance has been placed by the appellant to contend that the allegation in the plaint merely discloses the difference of opinion and the same does not meet the statutory ingredients for proving cruelty. We have also considered the judgments relied upon by the respondent to



contend that various instances narrated in the petition and the evidence led was sufficient to prove cruelty. The different judgments cited by learned counsel for the parties were decided in the backdrop of the peculiar facts of the case.

15. Hon'ble Apex court in "**Samar Ghosh vs. Jaya Ghosh**" (2007) 4 SCC 511 has elaborately dealt with the term 'mental cruelty' and has held that there can never be any straightjacket formula or fixed parameters for determining mental cruelty. It was further held that 'mental cruelty' is to be determined on the basis of evidence on record, social circumstances, upbringing, level of sensitivity, education, family and cultural background, financial position, social status, customs, traditions and their value system. In para 39 to 42 of the judgment, Hon'ble Apex Court held as hereunder:-

"39. Shorter Oxford Dictionary defines "cruelty" as "the quality of being cruel; disposition of inflicting suffering; delight in or indifference to another's pain; mercilessness; hard-heartedness".

40. The term "mental cruelty" has been defined in Black's Law Dictionary (8th Edn., 2004) as under:

"Mental cruelty.—As a ground for divorce, one spouse's course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse."

41. The concept of cruelty has been summarised in Halsbury's Laws of England (Vol. 13, 4th Edn., para 1269) as under:

"The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of



special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. In cases where no violence is averred, it is undesirable to consider judicial pronouncements with a view to creating certain categories of acts or conduct as having or lacking the nature or quality which renders them capable or incapable in all circumstances of amounting to cruelty; for it is the effect of the conduct rather than its nature which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the impact of the personality and conduct of one spouse on the mind of the other, weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complainant's capacity for endurance and the extent to which that capacity is known to the other spouse. Malevolent intention is not essential to cruelty but it is an important element where it exists."

42. *In 24 American Jurisprudence 2d, the term "mental cruelty" has been defined as under:*

"Mental cruelty as a course of unprovoked conduct toward one's spouse which causes embarrassment, humiliation, and anguish so as to render the spouse's life miserable and unendurable. The plaintiff must show a course of conduct on the part of the defendant which so endangers the physical or mental health of the plaintiff as to render continued cohabitation unsafe or improper, although the plaintiff need not establish actual instances of physical abuse."

16. Further, in para 101 of the said judgment, the Hon'ble Apex court indicated the instances of human behaviour, which may be relevant in dealing with the case of 'mental cruelty'.

"101. *No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental*



cruelty". The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the



acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

17. Hon'ble Apex Court in **"Naveen Kohli vs. Neelu Kohli"** (2006) 4 SCC 558 held in para 74 to 76 as hereunder:-

"74. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

75. Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be



maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

76. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied forever to a marriage that in fact has ceased to exist.”

18. Hon'ble Apex Court in **“Nayan Bhowmick vs. Aparna Chakraborty” (2025) SCC Online SC 2798** held that in matrimonial matters involving two individuals it is not for the society or for the Court to sit in judgment over which spouse is correct or not. It is their strongly held views and their refusal to accommodate each other that amounts to cruelty to one another.

19. When the evidence on record is examined in the light of the principles noted above, the instances relied upon by the respondent cannot be viewed in isolation. The evidence indicates a continuing course of conduct on the part of the appellant. The respondent has spoken of her misbehaviour towards him in the presence of his friends, colleagues and seniors including the incident at the restaurant at Dehradun; the embarrassment and humiliation caused to him on such occasion; repeated pressure upon him to leave his corporate practice and shift to Chandigarh; insistence upon medical examinations; her conduct towards his parents and the attempts to distance him as well as the newly born



child from them. These incidents have also been substantially supported by the evidence of PW2, PW3 and PW4 and nothing substantial has come out in their cross-examination.

It is true that every disagreement between spouses, occasional loss of temper and ordinary wear and tear of the matrimonial life cannot constitute mental cruelty. Nor can a desire by the spouse that the other should relocate or make adjustments in his profession by itself be regarded as cruelty. What assumes significance in the present case is not any such incident but the persistent pressure and cumulative effort of the conduct proved on record; the repeated humiliation of the respondent before others coupled with sustained pressure concerning his professional and personal choices and the persistent attempts to distance him from his parents were beyond ordinary matrimonial discord. Such conduct was reasonably capable of causing mental pain, humiliation and sense of insecurity to the respondent.

The matter has to be viewed in the context of the parties both of whom are Advocates by profession. Conduct resulting in repeated humiliation before professional colleagues and acquaintances would necessarily have a serious bearing upon the dignity and mental well-being of a spouse. The Court has no concern with determining which



spouse was more correct; the question is whether the conduct viewed as a whole, crossed a threshold from ordinary matrimonial differences to mental cruelty within the meaning of Section 13(1)(ia) of the Act. On consideration of the evidence on record, in our considered view, it did. We are, therefore, unable to accept the contention that the allegations merely disclose difference of opinion or normal wear and tear of married life. The cumulative effect of the conduct established on record satisfies the test laid down in **Samar Ghosh vs. Jaya Ghosh** (supra). The finding of the Family Court that the respondent was subjected to mental cruelty, therefore, cannot be said to be perverse or unsupported by the evidence.

20. Moreover, in the present case, the parties before the Court are Advocates and are litigating since 2016 at various forums and it cannot be said that it is a case of normal wear and tear in relationship. Admittedly, they are living separately since last more than 10 years and the facts detailed in the preceding paragraphs makes it evident that since the last 10 years several efforts were made for mediation not only before the Family Court but before this Court and the Supreme Court as well. Learned counsel for



the respondent has provided the details of the mediation held between the parties, which is as follows:-

Mediation Centre, Ld. District Court, Dehradun

1. Before Shri Ajay Gaur, Ld. Mediator, District Court, Dehradun
2. Before Shri Vijay Raina, Ld. Mediator, District Court, Dehradun
3. Before Shri S.D. Pant, Ld. Mediator, District Court, Dehradun

Hon'ble High Court (in chamber mediation)

4. Before the then Chief Justice Hon'ble Mr. Justice Ramesh Ranganathan and Hon'ble Mr. Justice Alok Kumar Verma
5. Before the then Chief Justice Hon'ble Mr. Justice R.S. Chauhan and Hon'ble Mr. Justice N.S. Dhanik
6. Before the then Acting Chief Justice Hon'ble Mr. Justice S.K. Mishra and Hon'ble Mr. Justice N.S. Dhanik
7. Before Hon'ble Mr. Justice Sharad Kumar Sharma and Hon'ble Mr. Justice Alok Kumar Verma

Hon'ble Supreme Court

8. Before Ms. Gunwant Dara, Ld. Mediator, SC Mediation Center
9. Before Mr. S.N. Bhat, Senior Advocate, Supreme Court



10. Before Hon'ble Mr. Justice Anjana Prakash, Judge, Patna High Court, Retd. (Now Sr. Advocate in the Hon'ble Supreme Court)
11. Before Hon'ble Mr. Justice Kurian Joseph (Retd.) with the assistant from Mrs. Shalini Sisodia, Mediator and Mr. Swati Shah, Counsellor.
21. This Court also made an attempt for mediation between the parties but the parties are not able to settle their disputes. The said fact is recorded in the order dated 20.03.2026, which reads as under:-
- "1. Ms. Jasleen Kaur Sidhu, appellant in-person.*
- 2. Mr. Shikhar Kacker, respondent in-person.*
- 3. The parties are present in-person and we have interacted with them at some length in our Chambers. Even after considerable persuasion, we observe that it is not possible to arrive at any amicable settlement and, therefore, the appeal has to be decided on merits.*
- 4. We require the respondent to share the parenting plan and how he would secure the interest of the minor daughter Kavya and the appellant, apart from the amount being paid right now by the respondent to the appellant.*
- 5. The same be brought on record by means of an affidavit by the respondent after sharing its advance copy with the other side.*
- 6. List for hearing on 07.04.2026.*



7. The parties shall be at liberty to appear in-person or through video conferencing or through counsel.”

22. The Hon’ble Apex court in the case of **“Sonal Talpada vs. Veerbhan Singh” 2026 SCC Online SC 1063** held that in situations where parties have been living separately for a considerable time without any hope for reconciliation amounts to cruelty for both the parties. In para 25 and 26 Hon’ble Apex Court held as under:-

“25. In the light of the above, it can be said that the High Court has rightly assessed that where parties have been living separately for several years and at this stage asking them to live together after a prolonged duration would amount to cruelty to both the parties and divorce can be granted on this ground as provided under section 13 (1)(ia) of HMA. It may be added here that desertion as a ground requires an initial period as mentioned under the statute but if such desertion continues for a long period of time without any effort on the part of the parties to restore cohabitation would itself be a ground to be considered by the Appellate Court. This we say in the light of the fact that human relations are dynamic and once the initial mandate under the statute stands satisfied, continuation thereof during the litigation would aggravate the said agony which could be confirmational in substantiating the basis and pleaded ground for divorce. The same can be taken into consideration for formation of an opinion to accept the prayer by the Appellate Court. Appeal is the continuation of a suit and therefore, the Appellate Court would be entitled and justified to consider the conduct of the parties during the pendency of litigation. The same can also be looked into to support or reject an opinion on the ground in question.

26. An Appellate Court, while carefully ensuring that a party does not profit from their own manifest wrong or unilateral desertion, may legitimately treat a prolonged period of separation as an indicator of mental cruelty within the meaning of Section 13(1)(ia) of the HMA. The Appellate Court is not precluded from examining whether continuous separation over a substantial period, coupled with absence of any



genuine effort at reconciliation, complete cessation of cohabitation and emotional alienation has resulted in mental cruelty. Subsequent events occurring during pendency of proceedings may legitimately be taken into consideration while undertaking such assessment. In such circumstances, the confirmation of a decree of divorce by an Appellate Court is not an invocation of extraordinary constitutional jurisdiction under Article 142 of the Constitution of India, but a lawful and realistic application of the statutory ground of cruelty to the facts of the case.

23. We have also considered the contention of learned counsel for the appellant that the application u/s 24 of Hindu Marriage Act was pending and, in absence of payment of arrears of maintenance, decree of divorce should not have been passed but we are of the view that said contention is bereft of merit. Hon'ble Apex Court in SLP filed by the appellant against the final judgment dated 09.09.2022 and order dated 01.04.2023 passed in FA No.80/2022 had passed an order dated 08.05.2023 to the following effect:-

"ORDER

Delay condoned.

Issue notice to the respondents.

In the meanwhile, subject to the current maintenance as ordered by the High Order being regularly paid and 25% of the arrears (inclusive of the sum of Rs.5 lakhs which is said to have already deposited) being deposited within a period of six weeks from today, the matter shall not be precipitated any further.

It is made clear that the interim order passed herein is limited to the aspect of the maintenance and arrears of maintenance and the proceedings in any event can go ahead."

24. On the basis of the said order, a Coordinate Bench of this Court on 02.08.2023 passed an order in FA



No.80/2022 directing the Family Court to decide the suit. The appellant had never challenged the said order dated 02.08.2023 and the Family Court had decided the suit on 05.04.2024 in pursuance of the order passed by the Court on 02.08.2023. Thus, the issue nos.1 and 2 are decided against the appellant and in favour of the respondent.

25. Issue nos.3 and 4 are related to each other and therefore they are considered jointly. This Court, vide order dated 20.03.2026, had directed the respondent to share a parenting plan. The parenting plan submitted by the respondent reads as under:-

"Part I – Financial Plan for the Minor Daughter

Option I - In case the minor daughter continues to reside with the Appellant in Chandigarh

1. The Respondent is presently paying a sum of Rs. 50,000/- per month for the benefit of the minor daughter. Instead of continuing the current monthly arrangement, and in order to create a more secure and structured financial framework for their minor daughter, the Respondent undertakes to pay a sum of Rs. 70,00,000/- (Rs. Seventy Lakhs) as a one-time amount to be earmarked and utilised for the welfare, education and future needs of the minor daughter. The said amount may be placed in a safe and secure investment instrument, 'so that the income generated therefrom may be utilised towards her ongoing expenses, while the principal amount remains available for her higher education and post-schooling needs, including college education.

Option II - Bearing all education expenses in case the minor daughter opts to study in a boarding school

1. Alternatively, in the event the minor daughter opts to study in a boarding school mutually agreeable to the Parties, the Respondent undertakes to bear all her educational expenses, including tuition,



boarding, lodging, books, school-related travel and other institutional expenses.

2. In such a scenario, the Respondent further undertakes to pay an upfront amount of Rs. 50,00,000/- (Rupees Fifty Lakhs), which may be placed in safe and secure investments, to meet the minor daughter's post-schooling expenses, including higher education and college education.

Option III-Willingness to take complete custody of their minor daughter

1. The Respondent is ready and willing to take over the custody of the minor daughter from the Appellant, if so considered appropriate by this Hon'ble Court. The Respondent, with the support of his parents, who are the grandparents of Kavya, is in a position to provide the care, time, attention, love and affection necessary for her emotional, educational and physical well-being.

2 In all of the Options above, the Respondent further undertake to bear the premium for the medical insurance policy of the minor child. In the event of any major illness, hospitalization, surgery or significant medical expenditure not covered under insurance, the Respondent undertake to bear the same. Routine and minor day-to-day medical expenses may be met by the parent with whom the child is residing.

3. Also, the Respondent undertakes to discharge all his parental obligation towards the well being of their minor daughter, as and when required.

Part II - Proposed Residential and Parenting Arrangement

Option I - If the minor daughter's residential custody continues with the Appellant

1. In the event the minor daughter continues to ordinarily reside with the Appellant, the Respondent respectfully seeks the following parenting and participation rights for himself:

- a. the right to speak with and/or video call the minor daughter at least twice a week at reasonable and mutually workable times;
- b. the right to meet the minor daughter at least once every month, including one weekend access, or such other schedule as this Hon'ble Court may consider appropriate;
- c. the right to have the minor daughter stay with the Respondent and her grandparents during part of the school vacations,



including at least one week during longer holidays, subject to the school schedule;

d. the right to take the minor daughter on reasonable holidays not exceeding two occasions in a year, subject to prior intimation, itinerary sharing and return schedule;

e. the right to compensatory access in the event any scheduled contact is missed for reasons not attributable, to the Respondent,

f. the right to attend school functions, parent-teacher meetings, performances, competitions and other milestone events concerning the minor daughter; and

g. the right to be consulted in major educational, medical and developmental decisions concerning the minor daughter.

Option II - In the event the minor daughter opts to study in a boarding school

1. In the event the minor daughter opts to study in a boarding school, the Respondent respectfully seeks the following rights for himself:

a. visitation and access rights on the same lines as set out in paragraph 10 above, with such modification as may be necessary having regard to the boarding-school calendar and schedule;

b. all such rights as are ordinarily available to a parent/guardian of a child studying in a boarding school, including access to school records, progress reports, school communications, parent-teacher interactions and other information concerning the welfare, education and development of the minor daughter.

Option III - In the event custody of the minor daughter is granted to the Respondent

1. In the event custody of the minor daughter is granted to the Respondent, the Appellant shall be entitled to corresponding rights on the same lines as those sought by the Respondent in paragraph 10 above, so as to ensure that the minor daughter continues to enjoy a meaningful and continuing relationship with both parents.

Part III - Joint Parental Decision-Making

1. The Respondent respectfully seeks that, regardless of the question of residential custody, the following matters should ordinarily require prior consultation between both parents:

a. change of school, board, subjects, courses, tuition or coaching.

b. school trips outside the local area;

c. major extra-curricular commitments;



- d. hospitalisation, surgery, long-term medical treatment. psychiatric or psychological treatment;*
- e. passport, visa and travel outside the State or country.*
- f. relocation of the child's ordinary residence;*
- g. major decisions concerning higher education, and*
- h. religious instruction or major ceremonial decisions affecting the child.*

Part IV - Position Regarding the Financial Capacity of Both Parents and Financial Security of the Appellant

- 1. The Respondent respectfully submits that this Hon'ble Court has also sought a proposal regarding the financial future and security of the Appellant.*
- 2. In this regard, it is respectfully submitted that the Appellant is a qualified legal professional, having studied law at a National Law University, and has served for more than 13 years as an Advocate for the State of Punjab, including in the capacity of Deputy Advocate General. It is further submitted that, as per her own affidavit(s) on record, she has disclosed movable as well as immovable assets. Also, it is a matter of record that the Appellant has hitherto neither sought alimony nor moved any application under Section 25 of the Hindu Marriage Act, 1955.*
- 3. The Respondent submits that he shall comply with such financial directions as may be considered appropriate by this Hon'ble Court in relation to the financial security of the Appellant. At the same time, it is respectfully submitted that, while considering any arrangement relating to the Appellant's financial security, this Hon'ble Court may also take into account the qualifications, earning capacity, financial means and asset position of both parties, in light of the guidelines laid down by the Hon'ble Supreme Court in Rajnesh v. Neha."*

26. We have considered the parenting plan and are of the view that the custody of the minor daughter should be granted to the appellant. However, the respondent shall have the visitation rights of the child. Respondent was directed to pay ₹ 50,000/- per month towards maintenance to the appellant and her daughter. Respondent has given an undertaking of



payment of ₹ 70.00 Lakhs as one-time amount to be used exclusively for the welfare and education of the minor daughter. The respondent has also undertaken to comply with any further directions as may be considered appropriate by this Court in relation to the financial security of the appellant. Taking into consideration the entire facts of the case, we are of the opinion that respondent is liable to pay ₹ 70.00 lakhs as one-time measure to the minor daughter.

27. Though the appellant had contended that she wants to live with the respondent but as the issue nos.1 and 2 have been decided against the appellant and we find no infirmity in the decision of the Family Court, as such the said contention cannot be accepted. However, we are of the considered view that the respondent is liable to pay permanent alimony to the appellant.

28. We have considered the affidavits filed by the parties in compliance of judgment passed by the Hon'ble Apex Court in the case of "Rajnesh vs. Neha". On due consideration of the details enumerated in the said affidavits and taking into consideration the fact that the appellant is professionally qualified and had also worked as Additional Advocate General and can maintain herself, an amount of ₹ 40.00 lakhs as permanent alimony would be appropriate.



Accordingly, the respondent is liable to pay ₹ 40.00 lakhs as permanent alimony to the appellant.

29. The first appeal is, accordingly, disposed of with the following directions:-

- i) The judgment and decree passed by learned Judge, Family Court, Dehradun in O.S. No.900/2016 “Shikhar Kacker vs. Smt. Jasleen Kaur Sidhu”, is upheld.
- ii) The respondent is directed to pay ₹ 70.00 lakhs as one-time measure for the welfare and education of the minor daughter.
- iii) The respondent is directed to pay ₹ 40.00 lakhs as permanent alimony to the appellant.

(MANOJ KUMAR GUPTA, C. J.)

(SUBHASH UPADHYAY, J.)

Dated: 17.09.2026

Rajni