

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

FAO (FC) -2 of 2021
Reserved on: 11.09.2026
Decided on: 22.09.2026
Uploaded on: 22.09.2026

_____		Appellant
	Versus	
_____		 Respondent

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Hon'ble Mr. Justice Yogesh Jaswal, Judge

Whether approved for reporting?¹ Yes.

For the appellant : Ms. Seema Sood, Advocate

For the respondent : Mr. Naveen K. Bhardwaj, Advocate

Yogesh Jaswal, Judge

This is an appeal filed by the appellant, _____
(hereinafter referred to as "the respondent"), against the judgment and
decree dated 28.09.2020, passed by the learned Principal Judge,
Family Court, Kangra at Dharamsala, District Kangra, H.P., in RBT
HMA No. 400-D/III/2019/2013, titled as Sh. _____
_____ whereby the learned Court below allowed the petition filed
by the husband under Section 13(1)(i-a) and (i-b) of the Hindu
Marriage Act, 1955 (hereinafter referred to as "the Act"), dissolving the



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marriage on the ground of cruelty.

2. Brief facts necessary for the adjudication of the appeal are that the respondent herein, namely [REDACTED] (hereinafter referred to as "the petitioner"), filed a petition for dissolution of marriage against the appellant herein (hereinafter be referred as "the respondent"), alleging inter alia that their marriage was solemnized on 23.04.2002 according to Hindu rites and ceremonies. The parties cohabited and lived together intermittently over a nine-year's period until July 2011, after which, the respondent allegedly began subjecting the petitioner and his family members to mental cruelty and maltreatment on the pretext of false dowry allegations. Furthermore, whenever the petitioner returned home on leave, the respondent insisted that he should reside separately from his family. The petitioner and his family members tolerated her conduct with the hope that she would eventually mend her ways.

3. Subsequently, the respondent filed a false complaint before the Commanding Officer, [REDACTED], alleging that she suffered from chronic illness and incurred medical expenses amounting to ₹1,000/- per month. In doing so, she suppressed the material fact that she possessed a valid medical visit card for the



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Military Hospital, which entitled her to free medical care, treatment and medicines. She further alleged inability to maintain herself and the children, while deliberately concealing that the petitioner regularly remitted a sum of ₹5,000/- per month towards their maintenance. Following a thorough enquiry, the Commanding Officer duly submitted a response to the said complaint.

4. Thereafter, a false FIR was lodged against the petitioner, forcing him to spend a night in police lock-up. In the petitioner's absence, the respondent, in connivance with her mother and brothers, forcibly took possession of his house, as well as harvested and misappropriated his wheat crop. Consequently, the petitioner was compelled to live with relatives and friends, as the respondent and her family members threatened him with physical assault if he returned home. The respondent, with the active assistance of her family, further attempted to illegally grab the petitioner's property. Since May 2011, the respondent has deserted the petitioner and has been residing separately. Due to these persistent acts, the petitioner suffered immense mental and physical cruelty, rendering the continuation of cohabitation and the performance of conjugal rights entirely impossible.



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5. The respondent contested the petition by raising preliminary objections regarding maintainability, cause of action and *locus standi*. On merits, the respondent vehemently denied the material contents of the petition. It was asserted that while the parties ought to have ordinarily cohabited as husband and wife, it was the petitioner who subjected the respondent to cruelty. The respondent specifically denied that the petitioner ever intended to cohabit with her or perform his marital obligations; rather, it was the petitioner, who consistently sought to stay away from the respondent.

6. Based on the pleadings of the parties, the learned Trial Court framed the following issues on 29.11.2013:-

“1. Whether the respondent has treated the petitioner with cruelty? (OPP)

2. Whether the petition has not been filed in accordance with the Hindu Marriage Rules? (OPR)

3. Relief.”

7. Upon appreciation of the evidence led by the parties in respect of their respective cases, Issue No.1 was decided in the affirmative and Issue No.2 was decided in the negative and the petition was allowed on the ground of cruelty.



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8. The appellant/wife-respondent has assailed the impugned judgment and decree on the ground that it is a result of a gross mis-appreciation of the evidence on record. It was contended that the learned Trial Court completely overlooked the conduct of the petitioner, who persistently avoided cohabiting with the respondent. It was further submitted that the petitioner had sold the residential house to his brother, wherein the respondent and her children were residing, thereby depriving her and the children of a comfortable dwelling.

9. It was further urged that the learned Trial Court placed unwarranted reliance upon documents Ext. PW3/A-2 as well as Mark-A, Mark-B and Mark-C. According to the respondent/wife, the petitioner miserably failed to discharge the burden of proving that the respondent had deserted him without any reasonable cause.

10. We have heard the learned counsel for the parties and have meticulously gone through the records of the case.

11. At the very outset, it is pertinent to record that during the pendency of the present appeal, this Court attempted an amicable reconciliation between the parties through mediation. Mr. G.D. Verma, learned Senior Counsel, was appointed as Mediator to



explore the possibility of a settlement between the parties. However, as evidenced by the report/order of the learned Mediator dated March 13, 2026, the mediation proceedings proved unsuccessful.

12. The law on cruelty is now well settled. This is now clear in view of the decision of the Hon'ble Supreme Court in case of **V. Bhagat vs. Mrs. D. Bhagat, AIR 1994 SC 710**. On a review of the earlier decisions right from the case of **Dr. N.G. Dastane vs. Mrs. S. Dastane, AIR 1975 SC 1534**, the Hon'ble Supreme Court has clarified the legal position, which now obtains after the amendment of 1976 to the Hindu Marriage Act. In **V. Bhagat vs. Mrs. D. Bhagat's** case (supra), the Hon'ble Supreme Court has observed as follows:-

“16. Mental cruelty in [Section 13\(1\)\(ia\)](#) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor



desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made."

13. The Hon'ble Supreme Court in case of **S. Hanumantha Rao vs. S. Ramani, AIR 1999 SC 1318**, laid down as to what would constitute cruelty. The Hon'ble Supreme Court again in case of **G.V.N. Kameswara Rao vs. G. Jabilli, AIR 2002 SC 576**, held that to constitute cruelty, it need not be an act of such nature as causing reasonable apprehension that it would be harmful to the party to live with each other. It was held that having regard to the sanctity and importance of marriage in a community life, the Court should consider whether the conduct of the counter-petitioner is such that it has become intolerable for the petitioner to continue with marriage any longer and to live together is impossible, and then only the Court can find that there is a cruelty of the counter-petitioner. The Hon'ble Supreme Court in another judgment in **Chetan Dass vs. Kamla Devi, AIR 2001 SC 1709**, has taken a view that to constitute cruelty, there must be evidence in support of the averments made in the petition.



14. Under Section 13 of the Act, cruelty is prescribed as one of the grounds for divorce. The relevant Section 13(1)(i-a) reads as under:—

“13. Divorce.

....

(i-a) has, after the solemnisation of the marriage, treated the petitioner with cruelty;”

15. “Cruelty” is not defined in the Act. The word appears to have been used in the Section in the context of human behaviour in relation to or in respect of matrimonial obligations or duties. Cruelty can be termed as behaviour or conduct of one spouse which adversely affects the other. Thus, broadly speaking “cruelty” as a ground for the purpose of divorce under Section 13(1)(i-a) can be taken as behaviour of one spouse towards the other which causes reasonable apprehension in his or her mind that it is not safe to continue the matrimonial relationship.

16. “Cruelty” is a relative term. Cruelty can be physical or mental, or even intentional or unintentional. It varies from person to person, and case to case. The allegation and conduct of one particular type may not amount to cruelty in all the cases. It depends upon the status of the spouses and the atmosphere in which they



live. That has to be understood by seeing neatly the background behind it and effect which is likely to be caused by such allegations and conduct. Cruelty implies and means harsh conduct and of such intensity and persistence, which would make it impossible for a spouse to operate the marriage. Cruelty though not defined in the Act, it is to be determined on the basis of proved facts and circumstances of the case. No fixed formula can be had for cruelty.

17. In the present case, the admitted facts are that the marriage between the parties was solemnized in the year 2002 and out of their wedlock, two children were born. It is also admitted that the parties are living separately.

18. To substantiate his allegations regarding cruelty, the petitioner examined himself as PW-1 and he also examined one Hans Raj as PW-5. PW-2 Constable Niku Ram only produced on record the copy of FIR Ext.PW2/A.

19. The petitioner, testifying as PW-1, deposed that whenever he returned home on leave, the respondent insisted that he should reside separately from his family. He stated that the parties lived together intermittently for approximately nine years, during which period, the respondent subjected him to harassment



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under the pretext of false dowry allegations. According to the petitioner, the respondent's conduct rendered it impossible for him to continue the marital relationship. Nevertheless, in the hope of reconciliation and to preserve the family's reputation, he and his parents made earnest efforts to resolve the matter, albeit to no avail. He further deposed that the respondent lodged a false complaint against him with his Unit Commander, alleging that she incurred medical expenses of ₹1,000/- per month, despite possessing a valid medical visiting card for the Military Hospital. Similarly, her allegation regarding financial distress was unfounded, as he regularly remitted ₹5,000/- per month towards maintenance for her and the children. Although, the Commanding Officer duly responded to her complaint after due verification, the respondent subsequently registered a false FIR against him, resulting in his incarceration in police lock-up overnight. The petitioner also alleged that the respondent, in connivance with her mother and brothers, forcibly took possession of his house, removed his wheat crop, and threatened him with physical assault, in case he attempted to re-enter the premises. He contended that such continuous harassment and cruel acts were intended to humiliate him. However, these factual allegations have been pleaded merely in generalized terms, which are insufficient to



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discharge the burden of proof resting upon the petitioner husband. Furthermore, his testimony remains uncorroborated by any family member or independent witness from the locality, as none were examined in support of his case.

20. [REDACTED] the only witness examined by the petitioner, though in his proof affidavit claimed that the respondent had been abusing the petitioner, but when cross-examined, he admitted that as he was not on frequent visiting terms to the house of the petitioner, he was not aware of the relationship between the husband and wife. He also categorically stated that the respondent had never picked up a quarrel in his presence nor had he ever seen the respondent abusing anyone. So, the testimony of this witness is of no help to the petitioner to establish on record that the petitioner had been subjected to cruelty at the hands of the respondent.

21. Even otherwise, if it is assumed for the sake of arguments that the respondent had been quarrelling with and abusing the petitioner and had been insisting on living separately from his parents, in that case also, the act of the respondent cannot be said to be of such a nature as it amounts to cruelty. It has been laid down by the Hon'ble Supreme Court in **Maya Devi vs. Jagdish**



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Prasad, AIR 2007 SC 1426, that to constitute cruelty, the conduct should be 'grave and weighty,' so as to come to the conclusion that the parties cannot reasonably be expected to live together. In the case in hand, the acts complained of by the petitioner are that the respondent had been picking up quarrels and abusing him. He has not given any particulars of the dates and manner, in which, the respondent had harassed and maltreated him. The details of disrespect have also not been given.

22. As discussed above, the sole witness examined by the petitioner regarding the picking up of quarrels and use of abusive language by the respondent against the petitioner has not corroborated and supported him, who in his cross-examination clearly admitted that at no point of time in his presence, the respondent had ever quarrelled with the petitioner or used abusive language against him (petitioner). Therefore, this plea of the petitioner is not proved.

23. A plea was also taken by the petitioner that an FIR under Section 498-A of IPC stood registered against him by the respondent, causing him to spend a night in police lock-up, and that a case under Section 354 of IPC also stood registered by her against



his brother. Constable Niku Ram (PW-2) placed and proved on record a copy of FIR Ext.PW2/A registered against the petitioner under Sections 498-A, 323, 325, and 506 of IPC.

24. Although, the respondent (RW-1) and her brother Desh Raj (RW-2) admitted during cross-examinations that the respondent had lodged an FIR under Section 498-A of IPC against her husband causing him to spend a night in the police lock-up and that a case under Section 354 of IPC also stood registered against her brother-in-law, but mere registration of an FIR in criminal cases *ipso facto* would not amount to cruelty, without a specific finding that such FIRs/complaints were found to be false, malicious, or lodged without justification. Except for the self-serving testimony of the petitioner, no cogent ocular or documentary evidence was produced on record by the petitioner to demonstrate that the said FIRs stood registered against him and his brother by the respondent maliciously and without justification. There is also no specific evidence to the effect that such FIRs culminated in the acquittal of the petitioner and his brother and that findings were rendered by the Criminal Court that such FIRs were false. No doubt, Hans Raj (PW-5) claimed in his examination-in-chief that false criminal complaints stood registered against the petitioner by the respondent, but as discussed above,



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his testimony is not confidence inspiring. Therefore, the ground of lodging of false complaints/FIRs against the petitioner and his brother by the respondent also fails.

25. Be that as it may, vital admissions were made by the respondent and her brother during their cross-examinations, which suffice to sustain a decree of divorce. Specifically, the respondent leveled grave allegations against the petitioner, accusing him of maintaining an illicit relationship with his sister-in-law (*Bhabhi*). Furthermore, it is an admitted position that numerous complaints to this effect were addressed to the petitioner's superior officers in the Army.

26. In her cross-examination, [REDACTED] (RW-1) categorically admitted of having lodged complaints against her husband with the Army authorities. To the same effect was the admission made by her brother, [REDACTED] (RW-2), confirming that his sister had filed complaints against the petitioner before his military superiors. Copies of these complaints were placed on record by the petitioner as Mark A and Mark B, and were relied upon by the learned Trial Court as evidence of cruelty. Although, it was contended that these documents could not be taken into



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consideration for want of formal proof and exhibition on record by the petitioner, this contention cannot be accepted. The respondent candidly admitted her signatures on both complaints (Mark A and Mark B). It is a settled position of law that where a document bears the signature of the party against whom it is sought to be relied upon, the execution and contents thereof stand admitted, dispensing with the requirement of further formal proof.

27. It was laid down by the Hon'ble Supreme Court in ***Bharat Singh vs. Bhagirathi, AIR 1966 SC 405***, that an admission is substantive evidence of the fact admitted and is the best evidence against the party making it, though not conclusive, it shifts the burden onto that party to explain it away.

28. A similar view was taken by the Hon'ble Supreme Court in ***Nagindas Ramdas vs. Dalpatram Ichharam, (1974) 1 SCC 242***, that admissions, if true and clear, are the best proof of the facts admitted and bind the maker unless withdrawn or explained.

29. A plain reading of the documents Mark A and Mark B would reveal that the respondent had levelled serious allegations against the petitioner of having illicit relations with his sister-in-law (*Bhabhi*). Such allegations affect the character and reputation of the



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husband. Though, the respondent denied that she had levelled such allegations against her husband in the complaints, the same are clearly borne out from the contents of the documents themselves. Then, the respondent volunteered to state that her husband (petitioner) was having illicit relations with his sister-in-law (*Bhabhi*). Her brother Desh Raj (RW-2) was also categorical when cross-examined that it was written in the complaints filed by his sister that the petitioner was having illicit relations with his sister-in-law (*Bhabhi*).

30. There can be no dispute that the allegations leveled by the wife regarding an alleged relationship between her husband and his sister-in-law (*Bhabhi*) directly impinge upon his character, honour, and reputation. These unsubstantiated accusations imputing unchastity, marital infidelity, and an extra-marital affair constitute a grave assault on the character and standing of the petitioner-husband. The respondent-wife completely failed to substantiate or establish these allegations on record.

31. In our view, making unproven or false allegations by the wife against her husband, accusing him of maintaining illicit relationships (such as with his sister-in-law) and broadcasting these



complaints to his superior officers in the Army, amount to grave mental cruelty under matrimonial law.

32. The armed forces operate on a strict code of conduct, discipline, and high moral standards. Where a spouse writes formal complaints to superior officers, alleging illicit or immoral behaviour, it directly targets the official's professional standing and credibility within the force. Such allegations are not ordinary domestic squabbles. They are calculated actions that deeply humiliate the official in front of his colleagues, superiors, and subordinates, making it impossible for him to maintain his dignity or command respect at his workplace.

33. In the judgment reported as **Joydeep Majumdar v. Bharti Jaiswal Majumdar, (2021) 3 SCC 742**, it was held by the Hon'ble Supreme Court that when a wife makes continuous, malicious, and unproven allegations of adultery and misconduct to the husband's superiors in the Army and other authorities, adversely affecting his career, dignity, and reputation, such conduct amounts to mental cruelty, entitling the husband to divorce. It was also observed that sullyng a spouse's reputation among colleagues and



superiors destroys the foundation of their marriage, and the affected party cannot reasonably be expected to condone such conduct.

34. Faced with the situation, it was urged that the complaints were made to protect the matrimonial tie. This cannot be accepted. In **Joydeep Majumdar** 's case (supra), the Hon'ble Supreme Court has observed that such an explanation made by the wife does not justify a persistent effort to undermine the dignity and reputation of the husband.

35. Similarly, **in Narendra v. K. Meena, 2016 (4) Civil Court Cases 414 (S.C.)**, it has been observed by the Hon'ble Supreme Court that a false allegation by the wife of the husband's extra-marital affairs in itself causes mental cruelty to the husband, warranting divorce.

36. The allegations of having an illicit relationship and extra-marital affairs made by the wife against the petitioner-husband in the complaints addressed by her to the superiors in the Army of the petitioner-husband, which remained unsubstantiated by any cogent ocular or documentary evidence, in our view, cannot but constitute mental cruelty of such a nature that the petitioner-husband cannot reasonably be asked to live with the respondent-wife, who had



claimed in her pleadings and evidence her intention to live with the petitioner as his wife.

37. Here, it would be appropriate to note the view taken by the Hon'ble Supreme Court in the case titled **K. Srinivas Rao vs. D.A. Deepa, (2013) 5 SCC 226**. The said decision refers to another well-known decision of the Hon'ble Supreme Court in the case of **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511**, wherein the Hon'ble Supreme Court, by way of illustration, had set out several grounds of cruelty on which a decree of divorce can be passed. By the said decision in the case of **K. Srinivas Rao** (supra), the Hon'ble Supreme Court has added one more illustration. Paragraph 16 of the said decision reads thus:—

“16. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh [(2007) 4 SCC 511], we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.”

38. It was contended by the learned counsel for the respondent-wife that it is not established that the allegations made



by the wife are false. The submission is that it was for the petitioner-husband to prove that the said allegations are false. This cannot be accepted. In matrimonial matters, one cannot apply the standard of strict evidence. Nothing prevented the respondent-wife from establishing her allegations. The petitioner-husband could not have established the negative. The petitioner, in his sworn testimony before the learned Trial Court has clearly claimed that the complaints lodged by the respondent-wife against him before his superior officers were false. The respondent-wife had made allegations in the complaints persistently made by her to the husband's superiors in the Army and the burden to prove the same was on her. In the present case, the respondent-wife has made no attempt to prove the allegations made by her against the petitioner affecting his character. Therefore, this is a case where there is a complete failure on the part of the respondent-wife to prove the said allegations. The allegations levelled against the petitioner-husband by the respondent-wife had caused mental agony and cruelty to him.

39. Once, the respondent-wife failed to prove those allegations and if those allegations are not in consonance with matrimonial relationship, the inference that they constitute cruelty has to follow. Since, the unsubstantiated allegations made by the



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respondent-wife against the petitioner-husband affected his character and reputation, which caused mental agony and cruelty to him, therefore, the petitioner was entitled to a decree of divorce on this ground alone.

40. As regards the plea of desertion, Section 13(1)(1-b) of the Act provides that a husband or wife may present a petition for divorce on the ground that the other party has deserted the petitioner for a continuous period of two years immediately preceding the presentation of the petition. Thus, it is apparent that the ground of desertion is available to the husband or wife if he or she has been deserted for a continuous period of two years before filing a petition without any reasonable cause. In the present case, the petitioner has asserted in para 3 of the petition that they lived together as husband and wife till July, 2011. The petition was presented before the learned Trial Court on 21.05.2013, which means that the period of two years had not completed from the month of alleged desertion till the filing of the petition. Hence, the plea that the respondent has withdrawn from the society of the petitioner, which amounts to desertion, is not available to the petitioner.



41. In light of the above discussion, there is no merit in the appeal and the same is dismissed. Pending application(s), if any, shall stand disposed of accordingly.

CMP No. 18858 of 2024

42. By way of this application preferred under Section 151 of the Code of Civil Procedure, the applicant seeks the enhancement and realization of maintenance in terms of the order dated 30.06.2022 passed by the learned Principal Judge, Family Court, Kangra at Dharamshala. However, upon due consideration, such an application filed directly before this Court without first exhausting the statutory remedy before the Family Court is not maintainable, as inherent powers under procedural provisions like Section 151 of the Code of Civil Procedure cannot override or supplant summary proceedings governed by the Code of Criminal Procedure. The legislature has explicitly provided a specific, self-contained statutory mechanism under Section 127 of the Code of Criminal Procedure for the alteration or enhancement of maintenance based on a change of circumstances, which must be invoked before the Family Court of first instance rather than being bypassed by directly approaching the superior Court. Furthermore, even if this application



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were to be construed as one filed under Section 24 of the Act, as observed by the Hon'ble Division Bench vide order dated 16.08.2024, the same has been rendered infructuous, particularly in light of the fact that the main appeal itself stands disposed of.

(Ajay Mohan Goel)
Judge

(Yogesh Jaswal)
Judge

September 22, 2026 (meera)