2025:DHC:8280-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 04.09.2025
Judgment pronounced on: 19.09.2025

\+ MAT.APP.(F.C.) 8/2022 & CM APPL. 4523/2022 (Stay)

DHAN VATI @ DHANNO .....Appellant
Through: Mr. Sanjay Rathi, Advocate.

versus

SATISH KUMAR .....Respondent
Through: Mr. Sudhir Tewatia, Mr. Sahil Gandhi, Mr. Aman Gahlot, Ms. Himani Verma, Ms. Kavya and Mr. Vivek, Advocates.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

JUDGMENT

HARISH VAIDYANATHAN SHANKAR, J.

1. The present appeal is filed under Section 19 of the Family Courts Act, 1984 read with Section 28 of the **Hindu Marriage Act, 1955**[1], assailing **Judgment and Decree dated 30.09.2021**[2] passed by the learned **Principal Judge, Family Courts, Tis Hazari Courts (West), Delhi**[3], in the matter titled *"Sh. Satish Kumar vs. Smt. Dhan Vati @ Dhanno"*, arising out of HMA Petition No. 526/2009 (which was subsequently renumbered as 329/2014, and later 590661/2016).

[1] HMA
[2] Impugned Judgement
[3] Family Court

2. By the Impugned Judgment, the learned Family Court allowed the petition filed by the Respondent-Husband and granted a decree of divorce under Section 13(1)(ia) of the HMA, on the ground of cruelty, thereby dissolving the marriage as against the Appellant-Wife and in favour of the Respondent-Husband.

BRIEF FACTS:

3. Shorn of unnecessary details, the facts, as pleaded by the parties and relevant for the present Appeal, are as follows: -

a. The marriage between the Appellant and the Respondent was solemnized on 03.03.1990 according to Hindu rites and ceremonies. Out of wedlock, a son, Rahul, was born on 03.10.1997.

b. The Respondent-Husband alleged that the Appellant's conduct during the subsistence of marriage was persistently cruel. According to him, the Appellant was unwilling to reside in a joint family and would frequently leave the matrimonial home without his consent, staying at her parental house for prolonged periods. On several occasions, it became necessary to seek the intervention of *panchayats* to persuade her to return to the matrimonial home.

c. The Respondent further claimed that from the year 2008, particularly after *Karwa Chauth* of that year, the Appellant withdrew from marital relations, declined to cohabit as husband and wife, and subjected him to humiliation and indignity. It was alleged that the Appellant often misbehaved in an abusive and degrading manner, including throwing footwear at him,

compelling him to perform household chores, and once slapping his mother.

d. The Respondent-Husband also asserted that the Appellant pressurized him and his family to transfer property in her favour, and upon their refusal, she not only declined to discharge her conjugal obligations but also threatened to implicate them in false criminal cases. Additionally, she allegedly showed indifference towards his family, displaying no concern for the health and well-being of his parents and failing to maintain cordial relations with them.

e. On these allegations, the Respondent instituted a petition under Section 13(1)(ia) of the HMA, seeking dissolution of marriage on the ground of cruelty. He further highlighted that although the Appellant had not made any police complaints prior to 2008, she initiated multiple criminal proceedings after the filing of his divorce petition in 2009. Specifically, she lodged **First Information Reports**[4] - namely FIR No. 118/2010 (under Sections 323/354/506/34 of the **IPC**[5]), FIR No. 110/2011 (under Sections 498A/406/34 of the IPC), and FIR No. 89/2015 (under Sections 354A/506/509 of the IPC) against him and his family members.

f. According to the Respondent, these FIRs were retaliatory in nature, filed as a counterblast to the divorce proceedings, and intended solely to harass him and his family.

g. The learned Family Court, *vide* the Impugned Judgment, accepted the Respondent's version and held that the Appellant

[4] FIR
[5] Indian Penal Code

had withdrawn from marital relations since 2008 without any just cause, had frequently stayed away from the matrimonial home, and had filed multiple criminal complaints only after the institution of the divorce petition. The learned Family Court concluded that these circumstances, taken cumulatively, constituted cruelty within the meaning of Section 13(1)(ia) of the HMA, and accordingly granted a decree of divorce.

h. Aggrieved by the said decision, the Appellant-Wife has preferred the present appeal, contending, *inter alia*, that the learned Family Court erred in relying upon evidence beyond the scope of pleadings, that the allegations of cruelty and denial of sexual intercourse were unsubstantiated, and that the FIRs lodged by her were genuine complaints of harassment rather than retaliatory measures.

APPELLANT-WIFE'S SUBMISSIONS:

4. Learned Counsel for the Appellant would commence the submissions by contending that although several grounds have been raised in the appeal, the principal ground urged is that the decree of divorce has been granted by the learned Family Court on the basis of appreciation of evidence which travelled beyond the pleadings, and is therefore legally unsustainable. It would further be argued that even the pleadings indicated that it was the Respondent-Husband, and not the Appellant-Wife, who was less receptive in maintaining sexual relations, and hence the finding of cruelty returned against the Appellant is wholly misconceived.

5. Learned Counsel would further submit that it was the Respondent and his family who subjected the Appellant to acts of

cruelty, which led to estrangement between the parties and ultimately to the absence of physical relations; and that the learned Family Court failed to appreciate this crucial aspect and erroneously attributed the withdrawal of cohabitation to the Appellant.

6. It would also be contended by the learned Counsel for the Appellant that the allegations relied upon by the Respondent, such as the Appellant's unwillingness to live in a joint family or occasional quarrels with in-laws, even if assumed to be true, do not in law amount to cruelty but fall within the ordinary wear and tear of matrimonial life; and on the contrary, the Appellant was at all times willing to continue with the marriage, and indeed she continued to reside in the matrimonial home with her son even after the filing of the divorce petition, which clearly belies the allegation of desertion or voluntary withdrawal from marital relations.

7. Learned Counsel would further argue that the Respondent examined only himself, whereas the Appellant examined three witnesses and produced documentary evidence. It would further be emphasized that the Respondent's family members, who were alleged to have been assaulted, were not examined, nor was any independent corroboration produced, which omission warrants an adverse inference against the Respondent.

8. It would also be submitted that the finding regarding denial of conjugal relationship is based on a misreading of the Respondent's own testimony, wherein he admitted that the parties had been residing separately since 2008, and therefore, attributing the absence of marital relations solely to the Appellant's voluntary conduct was wholly untenable.

9. Learned Counsel for the Appellant, while concluding the arguments, would pray to set aside the Impugned Judgment, as the allegations of cruelty stand unsubstantiated and the findings of the learned Family Court are perverse and contrary to settled principles of law. It would then be urged that the Appellant, who herself has been the victim of false, exaggerated, and uncorroborated accusations, has been unjustly condemned.

RESPONDENT-HUSBAND'S SUBMISSIONS:

10. *Per contra*, learned Counsel for the Respondent would support the Impugned Judgment and contend that no infirmity or illegality is made out in the decree of divorce granted by the learned Family Court, and therefore, the findings recorded therein merit affirmation.

11. Learned Counsel would emphasize the admitted position that the Appellant voluntarily and without any justifiable cause withdrew from maintaining physical relations with the Respondent since 2008, particularly after *Karwa Chauth* of that year, and such prolonged refusal of conjugal cohabitation amounts to mental cruelty, as recognized in law and judicial precedent.

12. It would further be urged that the Appellant not only withdrew from marital intimacy but also persistently pressurized the Respondent and his family members to transfer property in her favour, and when these demands were not accepted, she resorted to threats of false implication in criminal cases, thereby aggravating the cruelty.

13. Learned Counsel would also highlight that the criminal complaints and FIRs instituted by the Appellant were all lodged after the filing of the Respondent's divorce petition, and were, therefore, a clear counterblast intended to harass the Respondent and his family.

14. It would further be submitted by the learned Counsel for the Respondent that the Appellant frequently absented herself from the matrimonial home and had on several occasions to be persuaded to return through the intervention of *panchayats*, and her persistent indifference towards the Respondent's family, including her lack of concern for their health and well-being, caused them deep anguish and demonstrated her disregard for marital obligations.

15. Learned Counsel would lastly urge that the testimony of the Respondent was consistent, credible, and unrebutted on all material particulars, and therefore, the cumulative effect of the Appellant's conduct clearly established cruelty under Section 13(1)(ia) of the HMA, justifying the decree of divorce granted by the learned Family Court.

ANALYSIS:

16. We have, with the able assistance of the learned Counsels for the parties, carefully perused the pleadings, examined the evidence, and considered in detail the contents of the Impugned Judgment.

17. In our considered view, it would be apposite to reproduce the relevant factual findings recorded by the learned Family Court in the Impugned Judgement while granting the decree of divorce, so as to duly appreciate the reasoning that formed the basis thereof, which read as under:

> "***CONCLUSION*: -**
> ***51.*** I have heard the submission of both the sides and perused the record. My issue wise findings are as under: -
> ***52. Issue No. 1.***
> ***Whether the petitioner is entitled to a decree of divorce on the ground of cruelty u/s.13(1)(ia) of HMA, 1955? OPP.***
> *****
>
> **59.** Bearing in mind, the above principles of law, it is imperative to

appreciate the cumulative effect of the conduct of the parties and the happenings that occurred over a period of time in their matrimonial life to ascertain the ground of cruelty. Accordingly, it is required to be assessed that the conduct complained of must be serious and drawing more firmness that it would be more tragic for the petitioner to live with the respondent rather it was the ordinary wear and tear of married life which is perceived by the petitioner to be catastrophic.

60. It would be trite to mention that the entire case of the petitioner/husband hinges upon the allegations of cruelty and proof of the same. The burden of proof undoubtedly lies upon him and he must show that he was treated with cruelty. The standard of proof required is "pre-ponderance of probabilities" and not "beyond reasonable doubt" as in the criminal proceedings.

61. In the present case, the petitioner has filed this petition for grant of divorce on the ground of cruelty on the following grounds:

> (i) that after about one year of marriage, respondent wanted to reside separately from the joint family and insisted upon the petitioner to live separately from the joint family and was giving threats to commit suicide. She was giving abuses to the petitioner and his parents even in the presence of the others. Later, she started to pressurize the petitioner and his parents to transfer the share of the petitioner in the property house as well as plots in the name of respondent and her son. On the refusal of old parents of the petitioner, she started insulting them and banned the meeting of the child with petitioner and his parents and refused to have sex with the petitioner till the property is transferred. There is no relationship of husband and wife between them since the day of Karva Chauth in the year 2008 and she also stopped keeping Karwa Chauth fast after 2008.
> (ii) She was sexually hot but the petitioner was not so and was not able to satisfy her at every time as per her wishes and that is why she used to go her parental house at village Samaspur, District Gurgaon Haryana against the wishes of petitioner and his parents and after the birth of the child Rahul on 03.10.1997, she left with the newly born child to her parental house and gave beatings to petitioner and his mother and also threw 'Chappal' on petitioner. She also declared the petitioner as impotent and unable to procure any child in the presence of entire family and neighbours.
> (iii) One day during a quarrel at the time of taking dinner between the petitioner and respondent on a petty issue, she became furious and threw eating plates on the face of petitioner which hurt him on his nose.

(iv) In order to pressurize the petitioner and his parents to transfer the property in her name she filed a false complaint against his parents in police post Tikri border, P.S. Nangloi in February, 2000. Petitioner was forced to clean toilets, floors of the house, utensils by the respondent, which is a shame for a man. The respondent was not serving food to the petitioner who was forced to eat with his parents and some time at a Dhaba.

(v) In October, 2000 in the night at about 11:00pm she came in the bedroom of the petitioner and threatened that if the property is not transferred in their name, they all will be implicated in false case or given poison in the food. In pursuance to her threats, she filed FIR No.118/10 under Section 323/354/506/34 IPC against his family members and also a petition under DV Act and also lodged an FIR No.110/11 under Section 498-A/406/34 IPC. She manhandled mother of the petitioner many times.

62. On the other hand, respondent has taken the defence on the following grounds that: -

(i) she was being tortured for dowry demands and forced by petitioner and his family members to arrange Rs. 5 lakh for construction of the house.

(ii) She was not looked after properly at the time of delivery. The hospital bills the time of birth of the child were even arranged by her parents.

(iii) Petitioner used to pass sarcastic remarks on the skin colour of the respondent.

(iv) Petitioner and his father and his brothers are habitual drunkard and used to indulge in drinking up to late in the night in her bedroom which is without any door. The family members used to pickup quarrel on one pretext to other and used to abuse her and her parents and on her objection she was subjected to physical assault.

(v) In March, 2009 she gave Rs.5 lakh to petitioner and his family members for two months and after two months when she asked for the return of the said amount, they refused to return the money and threatened for dire consequences.

(vi) On 03.10.2008, on the occasion of birthday of her son petitioner, his father, brothers and Jija started drinking in the bedroom of the respondent at about 12:00 midnight and on her objection she was beaten by petitioner and her family members and was tried to be thrown out of the house and due to the intervention of the neighbours she could remain in the house.

(vii) On 21.12.2008, petitioner his parents, brothers, Bhabhi's, sister and his husband entered her bedroom and

they tried to molest her, beaten her mercilessly and threatened to throw her out. She made complaint at police Chowki Tikri, medically examined but no action was taken by police.

(viii) On 30.08.2009 they again entered in her portion and started throwing her articles and due to the interventions of the labour they could not dispossess her. She made complaints in Panchayat 7 to 8 times and every time they felt sorry and after sometime they started behaving in the same manner.

(ix) On 15.11.2009, petitioner and her family assaulted her badly. Her father, came and a made a complaint at police chowki, Tikari Kalan but no action was taken.

(x) On 09.12.2009 at about 09-90:30 am father of petitioner, brother of petitioners, his mother, Bhabhis started beating her with fist, blow and wooden sticks. They assaulted her, torn her clothes with intention to outrage her modesty. She managed to escape, make police call at 100 number, was medically examined but no action was taken. Thereafter, she filed police complaint under Section 156 Cr.P.C. on which as per the directions of the Court, FIR was registered.

63. As per the allegations of the petitioner, the respondent pressurized him and his parents for transfer of the property in her name and name of her son and when his parents refused, she stopped keeping physical relations with him since the year 2008 and has also stopped keeping Karwa Chauth fast for him. During cross-examination, the respondent has admitted that

"I and the respondent are not having physical relations as husband and wife with each other since 2008"

She further deposed:

"it is correct that since last more than 10 years, I have no relationship with my husband."

She also deposed

"the karva Chauth fast was performed lastly in the year 2008".

She has also deposed that

"she is not residing at her matrimonial house since year 2016".

64. Hence from the testimony of respondent and petitioner, it emerged that though petitioner and respondent stayed in the matrimonial house together but there was no cohabitation between them since the year 2008 till 2016 uptil which time, the respondent was living in matrimonial house. The respondent has failed to disclose any plausible reason as to why she was not having any physical relations with the petitioner and had stopped keeping the fast for him. She could not mention the reason as to why she

stopped considering him as her husband. She has taken the plea of torture at the hands of petitioner and his family on account of dowry demands and in that context she has referred to only one dowry demand of Rs.5 lacs by the petitioner and his brother for the construction of the house. However, during her cross-examination, she has admitted that when she was married, the matrimonial house was already constructed. As per her own case, she had given Rs. 5 lacs to the petitioner as a loan and not towards the dowry demand, which amount was later on claimed by her but the petitioner refused to return. She has not referred to any other dowry demand in her WS.

65. The petitioner's case is that since after one year of marriage, the respondent wanted to separate him from his family and on his refusal, she used to maltreat him and he was made to do household work. She was also living with her parents for 7-8 months in a year against the wishes and consent of petitioner and his family members and every time, she used to be brought back after convening panchayat. During cross-examination, the respondent has admitted that several panchayats were held between them. Though, the respondent has taken the defence in written statement that the petitioner and his family used to apologize for their conduct in each Panchayat but in her cross-examination, she herself had controverted the same and deposed that

> ***"the last Panchayat was held on 15.11.2009".***
> She further deposed that
> **"it is correct that in Panchayat petitioner and his family never apologized or felt sorry."**

66. As per the admission of the respondent, the acrimony between both the side raised to such an extent that there was physical violence during the Panchayat between the family members of the parties. Hence, the testimony of the respondent goes to show that several times the respondent was to be brought back to the matrimonial house from her parental house after holding panchayats. Hence, this proves that the respondent was leaving for her parental home off and on.

67. Admittedly, the parties got married in the year 1990 and till the year 2008 they lived together whereafter they separated as husband and wife while living in the same house. The present petition for divorce was filed in November 2009 by the petitioner. As per the deposition of the respondent, she stayed in the matrimonial house up to 2016. Till the filing of this divorce petition, there is no complaint by the respondent to the police. The respondent could not produce any alleged complaint made by her to Police Chowki Tikri on 21.12.2008 nor she could produce the alleged medical examination got conducted upon her in respect of the said incident.

68. The respondent has stated that she was molested by her father-in-law, brother-in-law and she was treated with cruelty and her stridhan was not returned despite her demand for which she has lodged complaints with the police. Admittedly, all the FIRs of molestation bearing no. 118/2010 under Section 323, 354, 506, 34 IPC PS Nangloi Ex. PW2/1, FIR No. 110/11, PS Mundka under Section 498-A/406/34 IPC Ex.RW3/1 and the FIR No. 89/2015 under Section 354-A/506/509 IPC PS Mundka Ex.RW3/2 filed by the respondent against the petitioner and his family members are pending trial and cannot form the basis of deciding this case. Moreover, they were filed after the filing of the present petition for divorce. The petitioner has claimed that all these molestation cases and dowry cases against him and his family are a counter blast to the present divorce petition.

69. The petitioner has deposed that the respondent was pressurizing his parents to transfer the properties in her name and the name of the child otherwise they will be falsely implicated. The petitioner has deposed that on the refusal of his parents to transfer the property, the respondent started humiliating, insulting him and his parents, banned the child to meet the petitioner and his parents and stop the relationship of husband and wife after the day of Karwa Chauth of the year 2008. The petitioner's deposition is that she was adamant for having no sex till the transfer of the property in her name and in the name of the child Rahul. During cross-examination the petitioner has deposed that from 1992 the respondent started pressuring him to transfer the property in her name. He has deposed that in order to buy peace in the house the petitioner always counselled the respondent and do the household work by sacrificing his own dignity. He has claimed that the respondent has filed molestation cases and dowry cases against his family as a counterblast to the present petition. As already observed, even the respondent has admitted that there is no relationship of husband and wife between them since 2008 and the Karwa Chauth of the year 2008 was lastly performed. The petitioner has deposed that once the respondent has slapped his mother and even thrown Chappal at him and once she had thrown an eating plate on his face. Though during the cross-examination the petitioner has admitted that he has not mentioned the specific date of incident but it is also a common knowledge that it is very difficult to remember the specific date of each and every incident of life and merely because of non-mentioning of the date, the testimony of the petitioner cannot be discarded.

70. The petitioner has given specific incidents of cruelty. He has deposed that the respondent was not serving food to her whenever he returned from the office and he was make to do the household chores like washing of utensils, cleaning of floors, toilet mixing of

flour etc. The acrimonious relationship between the parties led to holding various of Panchayats between the parties whereafter they had reconciled for a shorter time but again disputes erupted.

71. The stand of the petitioner is that due to humiliation and insult by the respondent his father partitioned the property vide Family Settlement dated 15.12.2012, where after the petitioner started residing at House no. 68 Panna Kalan, Village Tikri Kala which house came to be his share exclusively whereas House No. 73 had come to the share of other family member. He has also deposed that his father has filed a suit for possession and permanent injunction bearing no. 68/13 against the him and the respondent to take the possession of the house no. 73, Panna Kalan, which is pending adjudication in the Court of Sh. Nipun Awasthi, Civil Judge, Delhi. This statement is not controverted by the respondent.

72. Admittedly, the parties were married on 03.03.1990 and till the year 2008-2009, the respondent has not filed any complaint against the petitioner and his family regarding dowry demands, beatings, cruelty, maltreatment, consuming of liquor etc and misbehaving with her. Nothing adverse come out in the cross-examination of the petitioner. There is nothing on record to disbelieve the testimony of the petitioner. The testimony of petitioner appears to be more convincing, trustworthy and reliable. From the above testimony of the petitioner and the respondent, it is proved that the petitioner was denied the pleasure of marital life by the respondent without any justifiable cause.

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79. The allegations of cruelty show that the respondent deviated from the normal standards of conjugal relationship and the misconduct attributed to the respondent was such that it tantamount to making the life of petitioner miserable. From the evidence which has emerged on the record, the cumulative effect of the instances of cruelty lead to the fair inference that the petitioner was subjected to mental cruelty and there is reasonable apprehension in the mind of petitioner that it would be harmful to her mental and psychological well-being to continue with the marital life with the respondent, regard being had to the social strata to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status. The conduct alleged certainly amounts to cruelty and is more than the ordinary wear and tear of married life.

80. Accordingly, the petitioner is able to prove his case that he was treated with cruelty by the respondent after the solemnization of his marriage. Hence, this issue is decided in favour of the petitioner and against the respondent.

81. ISSUE No.2: RELIEF

82. Accordingly, a decree of divorce is passed under Section 13(1) (ia) & (ib) of Hindu Marriage Act, 1955, in favour of petitioner and against the respondent on the ground of cruelty thereby dissolving the marriage of the petitioner Satish Kumar with the respondent Dhanwati."

18. At the outset, we deem it appropriate to refer to the judgment of the Hon'ble Supreme Court in ***Samar Ghosh vs. Jaya Ghosh***[6], wherein the Apex Court elaborated upon the concept of 'mental cruelty' and, upon examining judicial precedents across various jurisdictions, held that the withdrawal by one spouse from maintaining emotional or physical relations with the other would squarely fall within the ambit of mental cruelty and constitute a valid ground for seeking dissolution of marriage. The relevant excerpts of the said judgment are reproduced hereinbelow:

"**99.** Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

[6] 2007 4 SSC 511

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."
>
> ***(emphasis added)***

19. The Hon'ble Supreme Court in ***V. Bhagat v. D. Bhagat***[7] held that 'mental cruelty' is conduct which causes such mental pain and suffering that it becomes impossible for the aggrieved spouse to reasonably be expected to live with the other. The determination of cruelty must depend on the social and educational background of the parties, their manner of life, and the context of the allegations made. The relevant portion of the judgment is reproduced hereinbelow:

> "**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

[7] (1994) 1 SCC 337

> 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."
>
> ***(emphasis supplied)***

20. Similarly, in ***Ravi Kumar v. Julmidevi***[8], the Hon'ble Supreme Court, while dealing with the definition of "cruelty" held that the notion of cruelty is incapable of precise definition and its determination must necessarily depend upon the facts and circumstances of each case. The relevant paragraphs of the judgment are reproduced hereinbelow:

> "**19.** It may be true that there is no definition of cruelty under the said Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometimes cruelty in a matrimonial relationship may take the form of violence, sometimes it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty.
>
> **20.** Therefore, cruelty in matrimonial behaviour defies any definition and its categories can never be closed. Whether the husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any predetermined rigid formula. Cruelty in matrimonial cases can be of infinite variety—it may be subtle or even brutal and may be by gestures and words. That possibly explains why Lord Denning in *Sheldon* v. *Sheldon* [*Sheldon* v. *Sheldon*, 1966 P 62: (1966) 2 WLR 993 (CA)] held that categories of cruelty in matrimonial cases are never closed."
>
> ***(emphasis supplied)***

[8] (2010) 4 SCC 476.

21. Having regard to the prefatory judgments referred to above, we proceed to examine the Impugned Judgment under challenge.

22. Learned Counsel for the Appellant has placed reliance upon a specific paragraph of the Respondent's divorce petition to contend that the requisite pleadings necessary to support the evidence were absent, and in fact, the said paragraph was inconsistent with the evidence subsequently led. Particular reliance was placed on paragraph 8 of the divorce petition, which reads as follows:

> "**8.** That the respondent was/is very hot sexually as well as temperamentally but the petitioner was/is not so much hot sexually to satisfy the respondent at every time as per her wishes and that is why, the respondent used to go to her parental house at Village Samaspur, Distt. Gurgaon, Haryana frequently against the wishes of the petitioner and his parents and without their consent. The respondent used to go to her parental house as per her wishes and sweet will without caring her social and matrimonial responsibility and obligations and used to stay there 7-8 months. a year. It was a routine life for the respondent upto the month 05 June/July, 1995."

23. However, this Court also takes note of paragraph 17 of the divorce petition, wherein the Respondent specifically alleged denial of physical relations by the Appellant, thereby setting out pleadings consistent with the evidence led. The said paragraph reads as follows:

> "**17.** That under the compelling circumstances, social pressure and for the sake of personal reputation, the petitioner brought the respondent back to her matrimonial home alongwith Master Rahul in the year -2008 at Tikri Kalan Village, Delhi and Master Rahul was admitted at Sainik Public School, Bahadurgarh, Distt. Jhajjar (Haryana) in the 5th class and till date, he is in the said school. The studying thinking/hoping that he may lead his future with the respondent and Master Rahul smoothly but it was not in the fate of the petitioner. After about one month, the respondent started to put - an pressure on the petitioner to hand over complete salary in her hands and not to visit his old parents for giving them mental and financial support. The petitioner accepted her said demands in order to save his married life by keeping stone on his heart but the respondent could not started to pressurize be satisfied and she further the petitioner and his old parents to transfer the share of the

> petitioner in the property i.e. house as well as plots etc. in her name or in the name of her son Rahul immediately but the old parents of the petitioner flatly refused to transfer the property in her name or in the name of her son Rahul till their death. On this, the respondent became more adamant, furious and cruel to the petitioner and his old parents. Her conduct and behaviour became more cruel, insulting, paining and harassing towards the petitioner and his other family members. The respondent also banned the petitioner and his old parents to meet/talk with master Rahul. In this way, the petitioner has become a stranger in his own house. It is pertinent to mention here that there is no relationship like a husband and wife between the petitioner and the respondent after the day of Karva Chauth of the year 2008. Since the said day, the petitioner and the respondent are sleeping in separate rooms and the respondent is adamant for having no sex with the petitioner till the transfer of the properties in her name or in the name of her son Rahul. The respondent also use abusive and filthy Language against the petitioner and his other family members. The respondent always passes insulting and indignified taunts/unwarranted remarks on the petitioner in respect of his manly powers even before the neighbours especially before the ladies. The respondent has addressed the petitioner as brother/sister many a times openly in the presence of others. The conduct and behaviour of the respondent is very paining, harmful, insulting and injurious to the physical and mental health of the petitioner".
>
> **(emphasis supplied)**

24. In the present case, it stands admitted that the Appellant withdrew from all forms of physical intimacy with the Respondent since 2008. Even prior thereto, she frequently absented herself from the matrimonial home and had to be persuaded through family and *panchayats* to return.

25. From the Karwa Chauth of 2008 onwards, her refusal to engage in marital relations became absolute, marking a clear abandonment of conjugal obligations. The learned Family Court rightly relied upon her own cross-examination, wherein she candidly admitted, *"I and the respondent are not having physical relations as husband and wife with each other since 2008"*, and further, *"it is correct that since last more than 10 years, I have no relationship with my husband"*. She also

admitted that the last Karwa Chauth was observed in 2008 and that she has not resided in the matrimonial home since 2016. These unequivocal admissions fortify the Respondent's case and leave little room for doubt.

26. We are mindful that such conduct cannot be viewed in isolation but must be tested against established judicial precedent. A Co-ordinate Bench of this Court in ***Mrs. Rita Nijhawan* v. *Mr. Bal Kishan Nijhawan***[9] categorically held that cohabitation is the very essence of marriage, without which the marital bond cannot endure. The Hon'ble Supreme Court in ***Vinita Saxena* v. *Pankaj Pandit***[10] went even further to underscore that *"marriage without sexual relations is an anathema"*. The Apex Court observed that the absence of harmonious intimacy not only undermines the marriage but also inflicts emotional harm, often resulting in depression and frustration. These pronouncements directly resonate with the facts before us. The observation made in ***Vinita Saxena*** (*supra*) reads as under:

> "Marriage without sex is an anathema. Sex is the foundation of marriage and without a vigorous and harmonious sexual activity it would be impossible for any marriage to continue for long. It cannot be denied that the sexual activity in marriage has an extremely favourable influence on a woman's mind and body. The result being that if she does not get proper sexual satisfaction it will lead to depression and frustration. It has been said that the sexual relations when happy and harmonious vivifies woman's brain, develops her character and trebles her vitality. It must be recognised that nothing is more fatal to marriage than disappointments in sexual intercourse."
>
> (***emphasis supplied***)

27. The principle was further crystallized by the Hon'ble Supreme Court in ***Vidhya Viswanathan* v. *Kartik Balakrishnan***[11], wherein it

[9] AIR 1973 Del 200.
[10] (2006) 3 SCC 778
[11] AIR 2015 SC 285

was held in no uncertain terms that persistent denial of sexual relations by one spouse to the other, without justifiable cause, itself constitutes mental cruelty. The relevant portion of the judgment in ***Vidhya Viswanathan*** (*supra*) reads as under:

> "Undoubtedly, not allowing a spouse for a long time to have sexual intercourse by his or her partner, without sufficient reason, itself amounts to mental cruelty to such spouse."
>
> (***emphasis supplied***)

28. In light of the above principles, we are of the considered view that the parties before us, by the Respondent's assertion and the Appellant's admission, have scarcely cohabited or sustained their matrimonial relationship. The Appellant repeatedly absented herself from the matrimonial responsibilities without consent and denied marital intimacy since 2008. Such persistent deprivation of conjugal companionship constitutes an extreme form of cruelty, as consistently recognized by the Hon'ble Supreme Court. It is axiomatic that cohabitation and discharge of marital duties form the bedrock of marriage; their persistent denial not only demonstrates an irretrievable breakdown of the union but also amounts to cruelty warranting judicial intervention.

29. While it is well recognized that the mere absence of physical intimacy, by itself, may not constitute sufficient ground for granting a decree of divorce, the Court must necessarily evaluate this factor in conjunction with other attendant circumstances. The overall conduct of the parties, the cumulative impact on the marital relationship, and whether such conduct has crossed the threshold of cruelty envisaged under Section 13(1)(ia) of the HMA, must be carefully assessed. The judicial inquiry, therefore, is not confined to a single incident or omission but extends to examining whether the quality of marital life

has been so eroded that the matrimonial bond is rendered unsustainable.

30. In this context, we take note of the specific submission advanced by learned Counsel for the Respondent that the allegations of molestation against the father-in-law and brother-in-law, cruelty by the Respondent, and non-return of *stridhan*, as raised by the Appellant, must be viewed with circumspection.

31. Significantly, all the FIRs in this regard were lodged only after the institution of the Respondent's divorce petition. These include:

(i). FIR No. 118/2010 under Sections 323, 354, 506, 34 IPC at PS - Nangloi, Delhi,

(ii). FIR No. 10/2011 under Sections 498-A, 406, 34 IPC at PS - Mundka, Delhi; and

(iii). FIR No. 89/2015 under Sections 354-A, 506, 509 IPC at PS - Mundka, Delhi.

32. The timing of these above-mentioned complaints, filed subsequent to the divorce proceedings, cannot be ignored in evaluating their credibility and context. It is further pertinent that copies of these FIRs were themselves brought on record by the Appellant, who examined witnesses also in support thereof. In this backdrop, the Appellant's contention that the learned Family Court exceeded the pleadings by considering these materials is untenable, as the record itself establishes that the Appellant introduced and relied upon these documents during trial before the learned Family Court.

33. Viewed in light of this chronology, it becomes evident that the criminal complaints and allegations were initiated only after the divorce petition had been filed. This sequence lends support to the Respondent's argument that such complaints were, in essence, a

counterblast, aimed at exerting pressure in the matrimonial dispute rather than reflecting genuine, contemporaneous grievances. Equally significant is the absence of any record indicating that the Appellant lodged similar complaints at any point prior to the initiation of the divorce proceedings.

34. At the same time, it is equally well settled that events occurring subsequent to the filing of a divorce petition are not irrelevant and may be taken into account to discern a continuing pattern of cruelty. The Hon'ble Supreme Court in ***A. Jayachandra v. Aneel Kaur***[12] authoritatively enunciated this principle, holding as follows:

> "If acts subsequent to the filing of the divorce petition can be looked into to infer condonation of the aberrations, acts subsequent to the filing of the petition can be taken note of to show a pattern in the behaviour and conduct."
>
> ***(emphasis added)***

35. At the same time, to augment, it is apposite to refer to the judgment by the Co-Ordinate Bench of this court in ***Preeti v. Vikas***[13] wherein it has been held that mere lodging of an FIR, in the absence of substantive proof, cannot by itself establish allegations of cruelty or dowry harassment. The court further emphasized that such allegations must be supported by cogent and reliable evidence. Where complaints are filed immediately after the institution of divorce proceedings, such conduct has often been regarded as a counter-blast to the petition, reflecting their use as a weapon against the opposite party and his family. The relevant portions of the said judgment are reproduced hereinbelow:

> "**32.** It is also pertinent to note that the complaint has been filed on 07.06.2019, i.e., one day after the respondent has filed the divorce petition. Thus, it appears that such complaints were merely a

[12] (2005) 2 SCC 22
[13] 2023 DHC 6387 DB

> counter-blast to the said petition for divorce and is being used as a weapon against the respondent and his family.
> 33. To conclude, not only criminal case under Section 498-A has been filed against the respondent and his family members on the ground of dowry demand, but also allegations of molestation have been made against the brother-in-law Ashish, which have not been substantiated in the present case.
> **34.** While the term "cruelty" as used in Section 13(1)(ia) of the Act, 1955 cannot be defined in given parameters, there cannot be a comprehensive definition of "cruelty" within which all kinds of cases of cruelty can be covered and each case has to be considered depending upon its own unique factual circumstances. In the case of ***K. Srinivas vs. K. Sunita X (2014) SLT 126***, the Hon'ble Supreme Court held that filing of the false complaint against the husband and his family members also constitutes mental cruelty for the purpose of Section 13 (1)(ia) of the Hindu Marriage Act.
> **35.** Similarly, it has been held by the Supreme Court in ***Mangayakarasi v. M. Yuvaraj (2020) 3 SCC 786***, that an unsubstantiated allegation of dowry demand or such other allegations made against the husband and his family members exposed them to criminal litigation. Ultimately, if it is found that such allegations were unwarranted and without basis, the husband can allege that mental cruelty has been inflicted on him and claim a divorce on such a ground.
> **36.** This Court in the case of ***Nishi Vs. Jagdish Ram 233 (2016) DLT 50*** held that the filing of false complaint against the husband and his family members constitutes mental cruelty. Similar observations were made by a coordinate bench of this court in the case of Rita v. Jai Solanki 2017 SCC OnLine Del 9078.
> **37.** Thus, such complaints which are not substantiated by evidence, and remain unproved are acts of cruelty against the respondent.**"**
>
> ***(emphasis added)***

36. In the present case, the Appellant's conducts, which include her prolonged refusal to cohabit, persistent denial of conjugal relations, repeated absences from the matrimonial home, and subsequent institution of multiple complaints, taken together, reflect a continuous and deliberate pattern of behavior causing mental suffering to the Respondent, thereby satisfying the requirements of "cruelty" under Section 13(1)(ia) of the HMA. Such sustained neglect of marital obligations, coupled with acts designed to exacerbate discord, eroded the very foundation of the matrimonial bond.

37. To further appreciate the extent of matrimonial discord, this Court finds it relevant to refer to the Respondent's cross-examination dated 12.04.2018, wherein he detailed his failed attempts to maintain contact with the minor child, Rahul, despite visitation orders. The Respondent testified as follows:

> "We are residing separately since 2009 and our child namely Rahul is residing with the respondent. I moved an application in the Rohini Court to meet my child namely Rahul in the year 2010/2011 and the Rohini Court grant me permission to meet with my child namely Rahul. As per order of the Hon'ble Court I used to go to meet with my child but he did not talk to me. After that I tried to meet my child 4-5 times but he did not talk to me and therefore, I stopped to meet with my child as it was useless and expensive as I had to pay Rs.500/- for each meeting. After the year 2011, I tried to talk my child but he did not talk to me."
>
> ***(emphasis added)***

38. In the context of parental alienation, guidance may be drawn from the judgment of this Court in ***Sandhya Malik v. Col. Satender Malik***[14], where it was held that the deliberate alienation of a child from one parent, thereby depriving the parent of love and affection, constitutes mental cruelty. Parental alienation occurs when one parent psychologically manipulates a child against the other, often by unjustified negativity, thereby damaging the child's relationship with the estranged parent. A child has a right to the love and affection of both parents, and any act intended to deprive a parent of such affection amounts to cruelty. The custodial parent owes a duty to foster respect and affection for the non-custodial parent, and deliberate failure to do so constitutes an egregious breach of that duty. Nothing is more painful than seeing one's own child alienated, which amounts to

[14] 2023 SCC OnLine Del 6099.

mental cruelty of the gravest kind. The relevant observations made in the said judgment are extracted hereinbelow:

> **"35.** Learned Principal Judge from all the circumstances as detailed above concluded that it makes it evident that the child had been totally and intentionally alienated from her father by the mother. The discord and the disputes were between the husband and wife and no matter how bitter the relationship between them had become, it was not appropriate to involve the child or embitter her against the father or to use her as a tool against him.
>
> **36.** In the case of ***Prabin Gopal v. Meghna, 2021 SCC OnLine Ker 2193*** in a similar situation, the Kerala High Court observed that the mother had intentionally distanced the child from the father and had deprived the child from the parental love and affection. It was a case of parental alienation where the child, who was in the custody of one parent, had been psychologically manipulated against the estranged parent. It was a strategy whereby one parent intentionally displayed to the child unjustified negativity aimed at the other parent, with the intent to damage the relationship between the child and the estranged parent and to turn the child emotionally against the parent. It was observed by Kerala High Court that the child has a right to love and affection of both the parents and likewise, the parents also have a right to receive love and affection of the child. Any act of any parent calculated to deny such affection to the other parent, amounts to alienating the child which amounts to mental cruelty. Since the child was in the custody of the mother, it was held that the mother had breached her duty which she owed as a custodian parent to instil love, affection and feelings in the child for the father. Nothing more can be more painful than experiencing one's own flesh and blood i.e., the child, rejecting him or her. Such wilful alienation of the child amounts to mental cruelty.
>
> **37.** In the present case as well, the child has not only been totally alienated, but has also been used as a weapon against the father. Nothing can be more painful for a parent to see the child drifting away and being totally against the father. This assumes some significance in the light that the father never failed to provide for the child either for her education or otherwise or to provide army facilities as were available. So much so, 10% of his salary was

> being paid to the child for her maintenance which was subsequently increased to 20%.
>
> **38.** The learned Principal Judge, Family Courts has, therefore, rightly concluded that such child alienation is an extreme act of mental cruelty towards a father who has never shown any neglect for the child."
>
> ***(emphasis added)***

39. In the present case, as per the record, the Respondent's access to his son was systematically frustrated by the Appellant, despite his continued endeavors. This deliberate alienation of the minor child from the Respondent is a serious form of psychological cruelty. The use of a child as a tool in matrimonial conflict not only injures the affected parent but also corrodes the child's emotional well-being, striking at the very root of familial harmony.

40. Further, this Court cannot ignore the Appellant's categorical admissions in her cross-examination dated 06.12.2019, wherein she professed complete ignorance regarding the age and health of her mother-in-law, including her inability to walk and the fact of having undergone hip replacement surgery in 2012. She deposed on that day as follows:

> "I can not admit or deny due to want of knowledge if my mother-in-law is around 75 years of age at present or if she is unable to walk. I do not know if my mother-in-law got hip replacement surgery in 2012."

41. Given the facts and circumstances of the present matter, such indifference towards the Respondent's aged parents, who are an integral part of the Joint Hindu Family, unmistakably reflects disregard for the essential obligations of marriage in the Indian familial context. It is a natural and legitimate expectation that a spouse, upon entering matrimony, would demonstrate care and

concern for the health and dignity of the elders in the household. The studied apathy and want of sensitivity displayed by the Appellant towards her in-laws, particularly when their advanced age and health conditions required compassion, cannot be treated as trivial. This conduct inflicted avoidable anguish on the Respondent and his family, thereby amounting to another facet of cruelty within the scope of matrimonial law.

42. While this Court does not concur with certain observations of the learned Family Court regarding alleged cruelty arising from the Respondent being compelled to perform household chores, the cumulative effect of the Appellant's behaviour cannot be ignored. The prolonged denial of marital intimacy, the series of complaints instituted against the Respondent, the deliberate alienation of the minor child, and the indifference towards the Respondent's parents collectively demonstrate a sustained neglect of marital responsibilities. These actions have caused the Respondent and his family considerable emotional suffering, thereby constituting cruelty of such gravity as to justify dissolution of the marriage under Section 13(1)(ia) of the HMA.

CONCLUSION:

43. For the reasons elaborated hereinabove, this Court finds itself substantially in agreement with the conclusion reached by the learned Family Court. No infirmity, perversity, or error of law has been demonstrated so as to warrant interference by this Court in appellate jurisdiction.

44. Accordingly, the decree of divorce granted by the learned Family Court *vide* the Impugned Judgment and Decree dated 30.09.2021 is affirmed, and the present appeal stands dismissed.

45. The present appeal, along with pending application(s), if any, is disposed of in the above terms.

46. No order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

SEPTEMBER 19, 2025/ν**/**sm/kr/rn