



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

**F.A.O. (F.C.) No.3 of 2019**

**Reserved on: 22.09.2026**

**Date of Decision: 29.09.2026**

**Uploaded on: 29.09.2026**

██████████

.....Appellant

**Versus**

██████████

.....Respondent

*Coram*

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

*Hon'ble Mr. Justice Yogesh Jaswal, Judge*

*Whether approved for reporting?<sup>1</sup> Yes.*

**For the appellant:**

Mr. H.S. Rangra, Advocate.

**For the respondent:**

Mr. Yudhvair Singh Thakur, Advocate.

**Yogesh Jaswal, J.**

This is an appeal preferred by the appellant-husband, Sh.

██████████ (hereinafter referred to as "***the petitioner***"), against the

judgment and decree dated 08.08.2019, passed by the learned District

Judge, Family Court, Mandi, District Mandi, H.P., in Petition

No.60/19/2016 (Registration No.78/2016), titled as ██████████

*versus* ██████████, whereby the learned Court below dismissed the

petition filed by the petitioner under Section 13(1)(i-a) and Section

<sup>1</sup> *Whether reporters of Local Papers may be allowed to see the judgment? Yes.*

13(1)(i-b) of the Hindu Marriage Act, 1955 (*hereinafter referred to as "the Act"*) seeking dissolution of marriage on the grounds of cruelty and desertion.

**2.** Brief facts necessary for the adjudication of the present appeal are that the petitioner instituted a petition for dissolution of marriage against the respondent-wife, Smt. [REDACTED] (*hereinafter referred to as "the respondent"*), averring that their marriage was solemnized in the year 1990 according to Hindu rites and ceremonies. Out of their lawful wedlock, one son, namely, [REDACTED] was born, who has since attained majority. It was the case of the petitioner that the respondent lived separately for more than 23 years, had deserted and neglected him without any reasonable excuse, and had failed to discharge her marital obligations. The petitioner alleged that the respondent failed to prepare meals for him, his son, his aged widowed mother, and his visually impaired sister, and failed to wash their clothes. It was further alleged that the respondent led an uncontrolled life and would frequently leave the matrimonial home for weeks together without notice, which compelled him to lodge a missing report with Police Station Balh. The petitioner further averred that, instead of mending her ways, the respondent dragged him into false criminal litigation under Section 498-A IPC as well as proceedings under the

Protection of Women from Domestic Violence Act, 2005. Under these alleged compelling circumstances, the petitioner prayed for a decree of divorce.

**3.** The respondent contested the petition by filing a detailed reply raising preliminary objections with respect to maintainability, cause of action, and *locus standi*. On merits, she denied the allegations of cruelty and desertion, stating that the parties lived together peacefully for about two years after marriage, whereafter the petitioner, under the influence of liquor, began regularly quarreling with her and giving beatings to her. Despite tolerating his rude and violent behaviour in the hope that he would change, the petitioner's ill-treatment worsened. The matter was reported to the Gram Panchayat Balt, and on 03.09.2012, a compromise was effected wherein the petitioner gave an undertaking to treat the respondent properly and provide all necessities of life to her. The petitioner, however, did not abide by his undertaking, turned her out of the shared household, and forced her to live in an old cowshed/room without basic facilities of life. It was further stated that the respondent was compelled to file proceedings under the Protection of Women from Domestic Violence Act, 2005, wherein the learned Chief Judicial Magistrate, Mandi, granted maintenance and restrained the petitioner from committing domestic

violence or turning her out of the shared household. The respondent maintained that she never deserted the petitioner nor treated him with cruelty; rather, she was subjected to continuous harassment and ill-treatment at his hands.

**4.** The petitioner filed a rejoinder reiterating the contents of the divorce petition and denying the assertions made in the reply.

**5.** On the basis of the pleadings of the parties, the learned Trial Court framed the following issues on 11.08.2017:

- “1. Whether the respondent has subjected the petitioner to cruelty, as alleged? OPP*
- 2. Whether the respondent has deserted the petitioner, as alleged? OPP*
- 3. Whether the petitioner has no cause of action to file the present petition? OPR*
- 4. Relief.”*

**6.** Upon appreciation of the oral and documentary evidence adduced by the respective parties, the learned Trial Court answered Issues No.1 and 2 in the negative, Issue No.3 in the affirmative, and consequently dismissed the divorce petition with costs vide the impugned judgment and decree dated 08.08.2019.

**7.** The appellant-petitioner has assailed the impugned judgment and decree on the ground that the learned Trial Court failed to appreciate the evidence on record in its correct perspective. It has been averred that the learned Court below completely overlooked the

admitted position that the respondent had been residing separately for the last more than 20 years and that there existed no marital relationship between the parties. It was further averred that the petitioner had even constructed a separate latrine and bathroom for the use of the respondent near the structure where she was residing, yet the learned Court below failed to consider this aspect. The petitioner further contended that the respondent had been hurling repeated threats to commit suicide as well as to rope in the petitioner in false criminal cases, which caused immense mental cruelty to him. It was thus urged that the findings recorded by the learned Court below on the issues of cruelty and desertion are perverse and contrary to the record, being the result of complete misreading and misappreciation of the evidence.

**8.** Assailing the impugned judgment and decree, learned counsel for the appellant-husband argued that the learned Trial Court fell into error by failing to appreciate that the marital relationship between the parties has ceased to exist for more than two decades. It was contended that the respondent had subjected the petitioner to cruelty by instituting criminal proceedings under Section 498-A IPC and the Domestic Violence Act, and had abandoned all matrimonial obligations.

9. On the contrary, learned counsel for the respondent-wife supported the findings recorded by the learned Trial Court, submitting that the petitioner could not be permitted to take advantage of his own wrong. It was urged that the respondent never left the matrimonial home voluntarily, but was forced to live in an old structure within the premises and was denied even basic facilities such as toilet and bathroom.

10. We have heard learned counsel for the parties and have meticulously examined the record of the learned Court below.

11. Under Section 13 of the Act, cruelty and desertion are distinct statutory grounds for seeking dissolution of marriage. The relevant provisions of Section 13(1)(i-a) and Section 13(1)(i-b) read as follows:

**“13. Divorce.**

*(1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party*

*(i) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or*

*(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or*

*(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or”*

**12.** It is well-settled that a spouse seeking dissolution of marriage cannot rest his or her case on vague, ambiguous, and generalized allegations. Matrimonial relief on the ground of cruelty requires specific, clear, and reliable proof of conduct of such a nature that the other spouse cannot reasonably be expected to put up with it. In the present case, while the petitioner alleged in generalized terms that the respondent neglected family members, failed to cook meals, and disappeared for weeks, he failed to furnish precise dates, occasions, or substantive particulars of the alleged misbehaviour. His self-serving statement as PW-1 remained unsupported on material points by any independent evidence.

**13.** On the contrary, vital documentary evidence admitted on record dismantles the petitioner's claim of cruelty. During his cross-examination, the petitioner (PW-1) categorically admitted his signatures on the carbon copies of two compromise deeds executed before the police authorities, marked as Ext.R-1 and Ext.R-3.

**14.** It is a settled principle of law that where a document bears the signature of a party against whom it is sought to be relied upon, the execution and contents thereof stand admitted by that party, dispensing with the necessity of further formal proof. The Hon'ble Supreme Court in **Bharat Singh v. Bhagirathi, AIR 1966 SC 405**,

held that an admission is substantive evidence of the fact admitted and constitutes the best evidence against the maker. Similarly, in ***Nagindas Ramdas v. Dalpatram Ichharam, (1974) 1 SCC 242***, it was reaffirmed that admissions, if true and clear, are the best proof of the facts admitted and bind the maker unless successfully withdrawn or explained.

**15.** A perusal of the compromise deed Ext.R-1, executed on 03.09.2012, reveals that upon a complaint lodged by the respondent with Police Station Balh regarding physical beatings, the petitioner furnished a clear undertaking that he would not ill-treat his wife in future and would provide her with all the basic amenities and necessities of life, pursuant to which the respondent withdrew her complaint. Subsequently, upon another complaint lodged by the respondent in December 2014, a further compromise deed Ext.R-3 was entered into on 07.12.2014, wherein the petitioner admitted his signature at point 'A'. In Ext.R-3, the petitioner once again undertook not to raise disputes and specifically agreed to allow the respondent to use the toilet and washroom (latrine and bathroom) of the house.

**16.** The execution of Ext.R-3 demonstrates an extraordinary and distressing state of affairs. The petitioner had actively barred his own wife from accessing the toilet and washroom facilities in the

matrimonial house. The record demonstrates that both parties reside within the very same premises. While the petitioner resides in a newly constructed house comprising four rooms on the ground floor and four rooms on the first floor, as admitted by his own witness and relative, Murari Lal (PW-2), the respondent has been forced to live in an old single room/cowshed, lacking even elementary sanitary facilities. By not allowing the respondent access to the washroom and toilet of the house, particularly when she was residing in an adjacent room within the same premises, the petitioner denied her the most fundamental amenities indispensable to human dignity. Such conduct amounts to clear cruelty committed by the petitioner-husband against the respondent-wife, and not the other way round.

**17.** Learned counsel for the petitioner next contended that the respondent had subjected the petitioner to mental cruelty by initiating criminal proceedings under Section 498-A and Section 506 IPC, as well as an application under the Protection of Women from Domestic Violence Act, 2005. This argument is entirely devoid of merit. Mere filing of a legal complaint or initiation of criminal proceedings by a spouse does not *ipso facto* constitute mental cruelty. It is only when such complaints are proved to be false, frivolous, or malicious that an inference of cruelty can be drawn. The contention raised on behalf of

the petitioner that the respondent subjected him to cruelty by initiating legal proceedings and complaints before the police is equally untenable.

**18.** As held by the Hon'ble Supreme Court in ***Ravi Kumar v. Julmi Devi, (2010) 4 SCC 476***, cruelty in matrimonial behavior cannot be assessed in a vacuum through rigid formulas, but must be judged in light of the entire facts and circumstances of the case. Where the record establishes that the husband himself was guilty of physical violence and ill-treatment, the wife has justifiable reason to stay apart and seek legal protection, and she cannot be held guilty of cruelty or desertion. Furthermore, in ***Suman Singh v. Sanjay Singh, (2017) 4 SCC 85***, the Hon'ble Supreme Court reiterated that isolated, stale, or general allegations cannot furnish a ground for divorce, and the burden lies strictly on the spouse alleging cruelty to substantiate the averments by cogent evidence. In the absence of any finding by a competent Court that the respondent's recourse to law was malicious or fabricated, the mere defense of her statutory rights against documented domestic abuse cannot constitute mental cruelty against the petitioner.

**19.** In the present case, the criminal case under Section 498-A and Section 506 IPC was permitted to be withdrawn vide order dated

27.10.1998 (Ext. P-8) passed by the learned Chief Judicial Magistrate, Mandi, upon an application under Section 321 Cr.P.C., as the parties had compromised the matter to live together happily in the matrimonial home. There was never any finding by the Criminal Court that the complaint was false or fabricated. Interestingly, the petitioner, who is a Physical Education Teacher serving in the Education Department and drawing a monthly salary of approximately ₹70,000/-, feigned complete ignorance in his deposition as to whether he was an accused in the Section 498-A case, though he admitted that he had attended the Court proceedings. Such false denial shows that his statement cannot be trusted.

**20.** Furthermore, in the proceedings under Section 12 read with Section 23 of the Protection of Women from Domestic Violence Act, 2005, the learned Chief Judicial Magistrate, Mandi, vide order dated 21.09.2015 (Ext. P-1), adjudicated the matter on merits and held the respondent entitled to reliefs. By way of the said order, the learned Magistrate awarded monetary relief of ₹5,000/- per month to the respondent, explicitly restrained the petitioner from committing any acts of domestic violence, and further restrained him from dispossessing the respondent from the shared household while directing him to secure an equivalent alternate accommodation. Far

from establishing cruelty on the part of the wife, these judicial orders substantiate the fact that the respondent was the victim of domestic abuse and forcible deprivation. The complaints lodged by the respondent were a *bona fide* resort to statutory remedies against persistent ill-treatment and ouster. Consequently, the petitioner has completely failed to establish the ground of cruelty under Section 13(1)(i-a) of the Act.

**21.** Addressing the ground of desertion under Section 13(1)(i-b) of the Act, the statutory provision mandates proof that the other spouse has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition, without reasonable cause and without the consent or against the wish of such party.

**22.** The foundational principles governing the ground of desertion were enunciated by the Hon'ble Supreme Court in ***Bipin Chander Jaisinghbhai Shah v. Prabhawati*, AIR 1957 SC 176**, wherein it was authoritatively held that desertion requires the co-existence of two essential elements, i.e. the *factum of separation* and the *animus deserendi* (the intention to bring cohabitation permanently to an end). It was further laid down that the spouse seeking divorce must establish absence of conduct giving reasonable cause to the other

spouse to leave or remain away. In Para No.17 of the judgment, the Hon'ble Supreme Court observed as under:-

*"17. Thus the quality of permanence is one of the essential elements which differentiates desertion from wilful separation. If a spouse abandon the other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned : (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively....."*

**23.** It is equally well-settled that the spouse who creates an intolerable domestic environment, forcing the other to reside apart, cannot plead desertion. The doctrine of 'constructive desertion' applies to the spouse whose wrongful conduct forces the other to live separately. As recognized by the Hon'ble Supreme Court in *Bipin Chander Jaisinghbhai Shah* (supra) and reaffirmed in ***Lachman Utamchand Kirpalani v. Meena, AIR 1964 SC 40***, desertion is not merely the physical withdrawal from a place, but the repudiation of the obligations of marriage. Where a wife is driven out of the shared household or relegated to an uninhabitable structure by the husband's

cruelty, she cannot be held guilty of desertion; if anything, it is the husband who is guilty of constructive desertion.

**24.** In the case at hand, the petitioner's claim that the respondent deserted him for over 23 years stands completely contrary to the record. The parties continued to reside within the same premises. The respondent did not leave the company of the petitioner voluntarily or with an intention to bring the marriage to an end; she was turned out of the main house and forced to live in an adjacent cowshed/room without basic facilities. A husband who treats his wife with continuous cruelty, excludes her from the main house, and denies her access to essential sanitary amenities cannot be heard to contend that she has deserted him. Section 23(1)(a) of the Act clearly provides that no person can be permitted to take advantage of his or her own wrong. Since the respondent's separate living within the premises was compelled entirely by the wrongful and cruel conduct of the petitioner, the vital ingredient of *animus deserendi* is completely absent.

**25.** In view of the above discussion, the petitioner has miserably failed to substantiate either cruelty or desertion against the respondent. We find no infirmity, perversity, or illegality in the well-reasoned findings recorded by the learned District Judge, Family Court, Mandi.

**26.** Accordingly, the appeal, being devoid of any merit, is dismissed and the judgment and decree dated 08.08.2019 passed by the learned Court below is affirmed and upheld. Pending application(s), if any, shall also stand disposed of.

Record of the learned Court below be sent back forthwith.

**(Ajay Mohan Goel)**  
Judge

**(Yogesh Jaswal)**  
Judge

**September 29, 2026**  
*Rajeev Raturi*