IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (FC) No. 21 of 2026
Reserved on: 09.09.2026
Date of Decision: 16.09.2026
Uploaded on : 16.09.2026

Deepika Thapa **...Appellant**

Versus

Abhishek Thapa **...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 : **Mr. Suraj Kumar, Advocate, vice Ms. Anjali Soni Verma, Advocate.**

For the Respondent : **Mr. Suneel Awasthy, Advocate.**

Yogesh Jaswal, Judge

This appeal has been preferred by the appellant-wife against the judgment and decree dated 18.06.2025, passed by the learned Principal Judge, Family Court, Kangra at Dharamshala, District Kangra, Himachal Pradesh, in H.M.A. Petition No. 236-D/III/2024/22, whereby the petition filed by the husband for dissolution of marriage by a decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act,

---

Whether reporters of the local papers may be allowed to see the judgment?

High Court of H.P.

::: Downloaded on - 10/11/2026 09:31:32 :::CIS

1955 (hereinafter referred to as "the Act") was allowed on the ground of cruelty.

2. Brief facts necessary for the adjudication of the appeal are that the husband filed a petition for dissolution of marriage against the wife under Section 13(1)(i-a) of the Act, alleging *inter alia* that their marriage was solemnized on 21.06.2007 according to Hindu rites and ceremonies. The parties cohabited for about ten years, and two children were born out of the wedlock.

3. It was alleged by the husband that after the marriage, the behavior of the wife changed completely, as she acted on the advice of her parents and subjected the husband and his parents to verbal abuse. Following the birth of their first child, her behavior deteriorated further, and she began leaving the matrimonial home without the husband's consent, returning after two to three days. Upon being questioned, she threatened to implicate the husband and his family members in false dowry cases. Though the husband

High Court of H.P.

::: Downloaded on - 10/11/2026 09:31:32 :::CIS

requested her parents not to interfere in their marital affairs, her mother similarly threatened him with false litigation.

4. In April 2018, after a quarrel, the wife left for her matrimonial home. The husband, accompanied by his mother, visited her parental home to bring her back, but she refused and expressed a desire for a divorce. Subsequently, a complaint under the Protection of Women from Domestic Violence Act was filed against the husband, which was compromised in mediation with an agreement that the parties would reside separately in rented accommodation. The parties accordingly resided together at Mohli (Khaniyara) for two months, following which the rented accommodation was shifted to Patola, Khaniyara, near her mother's residence, at the wife's insistence. Owing to the alleged misconduct of the wife, their son was enrolled in a hostel at Thakurdwara (Palampur) as agreed in the Lok Adalat, with all fees and expenses being borne by the husband.

5. On 13.09.2019, while the husband was at his office, the wife left the home without informing him and failed

High Court of H.P.

::: Downloaded on - 10/11/2026 09:31:32 :::CIS

to answer his calls. Upon her return, she engaged in an argument with the husband and left the house again. The husband went to her parental home to bring her back, but to no avail. Further complaints were lodged against him by the wife in the Women Cell. The wife never returned thereafter and made no attempt to meet or communicate with her children since September 2019, even refusing to speak with them on the phone. On account of these acts, the husband claimed that he had been subjected to cruelty, that the wife had left his company with no intention to return, and that the marriage had broken down irretrievably.

6. The wife contested the petition by raising preliminary objections regarding its maintainability, alleging non-compliance with the Hindu Marriage and Divorce (Himachal Pradesh) Rules, 1982. On merits, she denied the allegations, asserting that she paid due respect to the husband and his relatives, but it was the husband who remained dissatisfied with her. She specifically denied threatening to register false cases or misbehaving with her mother-in-law. She admitted

High Court of H.P.

::: Downloaded on - 10/11/2026 09:31:32 :::CIS

the filing and subsequent withdrawal of the complaint under the Protection of Women from Domestic Violence Act. She further submitted that the husband is employed as a driver with the Municipal Corporation, Dharamshala, plies a taxi, and earns approximately ₹35,000/- per month from all sources, besides owning substantial ancestral property as the only son.

7. On the basis of the pleadings of the parties, the learned Trial Court framed the following issues::-

1. Whether the respondent has treated the petitioner with cruelty, as alleged ? OPP.

2. Whether the petition is not maintainable, as alleged ? OPR.

3. Whether the petitioner has neglected and treated the respondent with cruelty, as alleged ? OPR.

4. Relief.

8. Issue No. 1 was answered in the affirmative, whereas Issues No. 2 and 3 were answered in the negative. Consequently, the petition was allowed, and a decree of

High Court of H.P.

::: Downloaded on - 10/11/2026 09:31:32 :::CIS

divorce dissolving the marriage under Section 13(1)(i-a) of the Act was granted in favor of the husband.

9. The wife has assailed the impugned judgment and decree on the ground that it is the result of misappreciation of evidence. It is contended that the husband failed to prove Issue No. 1 by leading cogent evidence, and that the learned Trial Court failed to appreciate that it was the husband who forced her to leave the matrimonial home by subjecting her to physical abuse and verbal mistreatment. It is further submitted that the learned Trial Court failed to properly consider the provisions of Section 13(1) of the Act and overlooked the fact that it was the husband who had been demanding dowry and maltreating the wife.

10. We have heard learned counsel for the parties and have also gone through the records carefully.

11. The undisputed facts are that the marriage between the parties was solemnized on 21.06.2007 as per Hindu rites and customs. It is also undisputed that the parties lived together as husband and wife for about ten

High Court of H.P.

::: Downloaded on - 10/11/2026 09:31:32 :::CIS

years, and out of this wedlock, two children, a son and a daughter were born.

12 Before proceeding ahead of the matter, it would be pertinent to mention here that during the pendency of the present appeal, the matter was referred for mediation before Mr. Rajesh K. Sharma, learned Mediator, to explore the possibility of an amicable settlement between the parties. During the mediation proceedings, the parties have reached a stage of deadlock. The order of learned Mediator dated 07.08.2026 is reproduced as under:-

> *"Parties are present today, after having interacted with the parties for about more than one hour with the able assistance of their learned counsels, parties have reached a stage of deadlock after having discussed all possible proposals.*
>
> *In this background, I am also of the considered view that no useful purpose will be served by carrying mediation proceedings any further. As such, mediation is closed, having been failed.*
>
> *Registry of the Hon'ble Court is requested to place the main case alongwith mediation file before the Hon'ble Court for further appropriate orders, on the date already fixed."*

13 In order to prove his case, the husband (PW-1) filed his affidavit, wherein he reiterated the allegations made

High Court of H.P.

::: Downloaded on - 10/11/2026 09:31:32 :::CIS

in the petition. He stated that the marriage between the parties was solemnized on 21.06.2007 according to Hindu rites and customs. He deposed that after some time of marriage, the behavior of the wife changed towards him and his family members. She stopped listening to them and even failed to care for the children. When objected to, she used to hurl abuses and pick up quarrels, frequently misbehaving with him and other family members. She eventually left the matrimonial home in September 2019 and never returned. He stated that he and his family members tried to call her back, but without success. Notably, the testimony of the husband on these counts remained unchallenged. He was not cross-examined by the wife despite being afforded ample opportunities, and ultimately, her right to cross-examine him as well as his witnesses, was closed by the order of the learned Trial Court.

14 His witness, Meena Thapa (PW-2), who is the mother of the husband, stated that the behavior of the wife towards her and the husband was adverse. She deposed that

High Court of H.P.

::: Downloaded on - 10/11/2026 09:31:32 :::CIS

the wife did not care for her children and, when objected to, would pick up quarrels. She further stated that the wife left the matrimonial home of her own accord in the year 2019 and has not returned since then. Her statement likewise remained unchallenged, as she was not subjected to any cross-examination by the wife.

15 The wife (RW-1), in her examination-in-chief tendered by way of affidavit, stated that false allegations had been leveled against her by the husband. She deposed that she had never humiliated the husband or his parents, that her behavior towards them was good, and that she had faithfully discharged her matrimonial duties. She asserted that she was subjected to harassment on account of demands for dowry, that aspertions were cast against her character, and that she was subjected to beatings before being thrown out of her matrimonial home by the husband, following which she reported the matter to the police. However, in her cross-examination, she conceded that no dowry was demanded or taken at the time of marriage and clearly admitted that no

High Court of H.P.

::: Downloaded on - 10/11/2026 09:31:32 :::CIS

medical record had been produced on record to substantiate the allegation of beatings.

16 Statement of RW-2, Mamta Thapa, maternal aunt (*masi*) of the wife is not confidence inspiring, as she in her cross-examination specifically stated that she was not aware as to the behavior of the husband and his family members towards the wife. She has also stated in clear terms that at the time of marriage, no dowry was given. No doubt, she in her examination-in-chief claimed that the wife had been subjected to beatings by the husband, but she admitted that no medical evidence was there on record in support of these assertions. Then, she was also not aware of any complaint under Domestic Violence Act having ever been filed by the wife against the husband and his family members, but confirmed that a compromise was executed between the parties, following which they resided together in rented accommodation as per the directions of the Court. She further expressed ignorance as to whether the wife neglected her domestic duties by not cooking food for the husband,

High Court of H.P.

::: Downloaded on - 10/11/2026 09:31:32 :::CIS

whether she subjected the husband to physical beatings and verbal abuse, or whether she refused to communicate with her children.

17 RW-3, Saraswati Thapa, who is the sister of the wife, clearly admitted in her cross-examination that although the wife was allegedly beaten up in the year 2018, no medical examination was conducted. She conceded that no dowry was given at the time of marriage. She identified her signatures on Ext. RW-3/A. Crucially, she admitted that the wife used to leave the matrimonial home without informing the husband, and that the husband along with his mother had visited her parental home to bring her back. She further admitted that the children resided with the husband, who pays for their maintenance, and that following a compromise, the parties lived separately in a rented accommodation for four months. She also admitted that the wife did not cook food for the husband and frequently left the home without informing him.

18 This is in all the evidence adduced by the parties.

High Court of H.P.

::: Downloaded on - 10/11/2026 09:31:32 :::CIS

19 Against this background evidence, the first ground "desertion" needs to be examined.

20 If a spouse abandons the other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it would not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there:

(i) The factum of separation; and

(ii) The intention to bring cohabitation permanently to an end (animus deserendi)

21 Similarly, two elements are essential so far as the deserted spouse is concerned:

(i) Absence of consent; and

(ii) Absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention.

High Court of H.P.

::: Downloaded on - 10/11/2026 09:31:32 :::CIS

22 Desertion is a matter of inference to be drawn from the facts and circumstances of the case.

23 The inference may be drawn from certain facts which may not in another case be capable of leading to the same inference, that is to say, the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. If there had been a separation, the essential question always is whether that act could be attributable to an animus deserendi. The offence of desertion commences when the fact of separation and the animus deserendi co-exist. But, it is not necessary that they should commence at the same time. The defacto separation may have commenced without the necessary animus or it may be that the separation and the animus desrendi coincide in point of time.

24 The Hon'ble Supreme Court in ***Adhyatma Bhattar Alwar v. Adhyatma Bhattar Sri Devi (2002) 1***

High Court of H.P.

::: Downloaded on - 10/11/2026 09:31:32 :::CIS

SCC 308 while dealing with the concept of desertion in matrimonial law held as under:-

> *'Desertion' in the context of matrimonial law represents a legal conception. It is difficult to give a comprehensive definition of the term. The essential ingredients of this offence in order that it may furnish a ground for relief are :*
>
> *1. The factum of separation; 2. The intention to bring cohabitation permanently to an end animus deserndi; 3. The element of permanence which is a prime condition requires that both these essential ingredients should continue during the entire statutory period; The clause lays down the rule that desertion to amount to a matrimonial offence must be for a continuous period of not less than two years immediately preceding the presentation of the petition. This clause has to be read with the Explanation. The Explanation has widened the definition of desertion to include 'wilful neglect' of the petitioning spouse by the respondent. It states that to amount to a matrimonial offence desertion must be without reasonable cause and without the consent or against the wish of the petitioner. From the Explanation it is abundantly clear that the legislature intended to give to the expression a wide import which includes willful neglect of the petitioner by the other party to the marriage. Therefore, 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 and their continuance throughout the statutory period.*

High Court of H.P.

::: Downloaded on - 10/11/2026 09:31:32 :::CIS

25. Undisputedly, the burden of proving desertion-the "factum" as well as the "animus deserendi" is on the husband which is required to be proved beyond reasonable doubt, to the satisfaction of the Court. In other words, even if the wife, where she is the deserting spouse does not prove just cause for her living apart, the husband has still to satisfy the Court that the desertion was without just cause.

26. In the instant case, the separation in fact and animus deserendi, i.e. the desertion on the part of the wife with an intention of bringing cohabitation permanently to an end stands proved. Although, she was within her right to establish that she was subjected to beatings by the husband and demands of dowry were also raised, but her statement coupled with the statements of her witnesses is not worth inspiring confidence to prove this fact. Even in the reply, she did not specify the date(s), month and year in which she had been harassed and subjected to beatings by the husband. No doubt, it has come on record that a complaint under Domestic Violence Act has been filed by the wife and

High Court of H.P.

::: Downloaded on - 10/11/2026 09:31:32 :::CIS

similarly, the matter stood reported before the Women Cell, but admittedly, the same were withdrawn by the parties having been compromised. Her allegations that she was subjected to muscular beatings and thereafter turned out of matrimonial home have not been proved on record for the reason that no medical expert or medical record was produced. Even from the evidence adduced before the learned Trial Court by the wife, it is not made out that it was the husband and his parents, who had turned the wife out of the matrimonial home after subjecting her to beatings. The sole testimony of the wife in this regard cannot be taken as a gospel truth, particularly when both the witnesses examined by her in the case, as discussed above, are not confidence inspiring. Whereas, on the other hand, the husband has been able to prove that the parties have factually separated. The wife right from the year 2019 had deserted him and did not resume the marital ties. There has been no cohabitation since the year 2019 and the wife had intended to permanently end the cohabitation.

High Court of H.P.

::: Downloaded on - 10/11/2026 09:31:32 :::CIS

27. From the evidence on record including the statement of wife itself, it is apparent that the husband and wife are living separately since September, 2019. The wife has not given any cogent explanation as to why she was living separately. Her case that she had been harassed and subjected to beatings and thereafter turned out of the matrimonial home, has already been held above to be not confidence inspiring. Once she has not given any explanation for living separately, it is clear that she has deserted her husband. Faced with this situation, it was vociferously argued by the learned counsel for the wife that it was the husband who was at fault, as he was not ready and willing to take the wife back. This cannot be accepted, as it has been clearly held above that the wife herself had deserted the husband.

28. In so far as the ground 'cruelty' is concerned, doubtless, the burden is on the husband to establish his case. Ordinarily, the burden lies on the party which denies it. The principle accords with commonsense as it is so much

High Court of H.P.

::: Downloaded on - 10/11/2026 09:31:32 :::CIS

easier to prove a positive than a negative. The husband, therefore, must prove that the wife had treated him with cruelty. Cruelty is of two types, physical cruelty and mental cruelty. Then, as per the above findings, it has been held that the wife without any rhyme or reason has refused to cohabit with her husband for about two years prior to the filing of the petition, this amounts to cruelty. For taking this view, we are guided by the judgment rendered by this Court in case titled as ***Bhikam Ram v Satya Devi, 2011(2) Shim.L.C.342,*** wherein it has been held that when a wife without any rhyme and reason refused to cohabit with her husband for more than five years, this itself amounts to cruelty.

29. In the case at hand, from the facts which are established, it is evident that the parties are living separately since September, 2019. They have not cohabited with each other. The marriage appears to have been irretrievably broken down and there seems to be no chance of the parties reconciling or living together.

High Court of H.P.

::: Downloaded on - 10/11/2026 09:31:32 :::CIS

30. It was laid down by the Hon'ble Supreme Court in ***Durga Prasanna Tripathy vs Arundhati Tripathi AIR 2005 SC 3297*** that where there is an irretrievable breakdown of marriage, with a view to put a quietus to litigation inter se and bitterness between the parties, decree of divorce on the ground of desertion can be passed. The wife has not given cogent and reasonable explanation as to why she is living separately. She deserted the husband for more than five years and has not given any cogent explanation why she is not living with her husband. Furthermore, her allegations regarding harassment and demands of dowry have not been proved on record.

31. The wife having left her matrimonial home without any justifiable cause, coupled with her conduct of not even communicating with her children, certainly amounts to mental cruelty towards the husband and his family members. The assertions of the husband that the wife used to abuse and misbehave with him and his parents, and continuously threatened to implicate them in false criminal cases, have

High Court of H.P.

::: Downloaded on - 10/11/2026 09:31:32 :::CIS

remained unchallenged on record due to the lack of cross-examination. Consequently, the ground of cruelty under Section 13(1)(i-a) of the Act stands duly proved.

32. In the light of above discussion, we find no merit in the appeal and the same is accordingly dismissed.

Pending application(s), if any, shall also stand disposed of.

(Ajay Mohan Goel)
Judge

(Yogesh Jaswal)
Judge

16th September, 2026 (mamta)

High Court of H.P.

::: Downloaded on - 10/11/2026 09:31:32 :::CIS