

(2025) 11 MP CK 1927

In the Madhya Pradesh High Court, Jabalpur Bench

Case No : First Appeal No. 1750 Of 2024

Dr. Mahendra Kushwaha

APPELLANT

Vs

Pooja Kushwaha

RESPONDENT

Date of Decision : 25-11-2025

Acts Referred:

Family Courts Act, 1984 — Section 19

Hindu Marriage Act, 1955 — Section 10, 10(1), 13(1), 13(1)(ia), 28

Citation : (2025) 11 MP CK 1927

Hon'ble Judges : Vishal Dhagat, J; B. P. Sharma, J

Bench : Division Bench

Advocate : Amit Verma, Anubhav Singhal, Ghanshyam Sharma

Final Decision : Allowed

Judgement

Vishal Dhagat, J

1. Appellant had filed first appeal under Section 19 of the Family Courts Act, 1984 read with Section 28 of the Hindu Marriage Act, 1955 challenging judgment and decree dated 24.08.2024 passed by Principal Judge, Family Court, Mandla (MP) in RCSHM No.74/2022 by which application under Section 10 of the Hindu Marriage Act, 1955 filed by appellant for judicial separation was dismissed.

2. Learned counsel appearing for appellant submitted that respondent was suffering from epilepsy prior to her marriage with appellant and said fact was suppressed from him. Later on, when appellant/husband declared the said fact and filed a petition for divorce/judicial separation, incorrect and false allegations were made against him. It was stated by respondent that husband malafidely gave her food to eat which were too sweet due to which she suffered sickness/epilepsy. Husband and his mother were doing conspiracy against respondent and he wants to live separately. Aforesaid false allegations amount to mental cruelty against appellant and falls within ambit of Section 13(1) of the Hindu Marriage Act, 1955. It is submitted that respondent has specifically denied that she is

suffering from epilepsy in her written statement and also in oral statement given in Court. Over and above aforesaid fact she had made various false allegations of conspiracy and attempt to injure her by giving sweets. Counsel for appellant further submitted that respondent was suffering from epilepsy prior to her marriage with appellant. Said fact can be found out from various document which has been exhibited i.e. Ex.P/40 to Ex.P/44. In aforesaid document/prescriptions, it has been mentioned that respondent is suffering from seizures. She is being given medicine for seizures. Said documents reflect that she was having disease before her marriage. It is submitted that trial Court had committed an error in deciding the issues framed by it. Trial Court has also committed an error in holding that appellant had deserted respondent without any reasonable cause, therefore, respondent is entitled for decree of restitution of conjugal rights. It is submitted that pleadings of parties, evidence available on record and deposition of witnesses show that cruelty has been committed with appellant by respondent which is a ground for getting divorce under Section 13(1)(ia) of the Hindu Marriage Act and on basis of said ground appellant has prayed for grant of judicial separation under Section 10(1) of the Hindu Marriage Act, 1955.

3. Learned counsel appearing for respondent opposed the appeal and denied said facts. It is submitted by him that if judicial separation is permitted then it will enhance woes of respondent and it will amount to cruel treatment of respondent by appellant in her difficult times of sickness. Husband has to take care of wife and not to plead judicial separation in Court. Epilepsy is not disease which cannot be treated. It is further submitted that respondent was not suffering from Epilepsy prior to her marriage. Later, she had developed the said disease. Learned counsel appearing for respondent further submitted that trial Court has rightly decided issue No.4 wherein respondent has proved desertion by appellant without reasonable cause, therefore, no error has been committed by the trial Court in granting decree of conjugal rights in favour of respondent and dismissing petition for judicial separation between the parties. In these circumstances, first appeal may not be allowed on the sole ground raised by appellant.

4. Heard the counsel for the parties.

5. Trial Court has framed seven issues. Issue No.1, 3 and 4 are material in this case. All aforesaid issues are related to facts whether respondent was suffering from Epilepsy before her marriage and said fact was suppressed from appellant and later on, respondent made false allegation against appellant which amounted to cruelty. Appellant had no reason to desert respondent. Since, all of said issues are intertwined, therefore, issues No.1, 3 and 4 are considered together.

6. On going through the pleadings and evidence available on record, it is found that respondent had admitted in paragraph-13 of her cross-examination that she is suffering from seizures even prior to her marriage and said fact was not disclosed to appellant even though there was three meetings before marriage. Fact about Thyroid disease of respondent was only disclosed. However, in her

written statement as well as in examination, it is denied by respondent that she is suffering from Epilepsy, on the contrary allegations were made against husband and his mother that they were doing conspiracy to make her sick by giving her sweet food. She deposed that on eating sweets, she suffered dizziness. Said allegations were without any basis and were not proved in the trial Court as nothing has been stated in deposition. Pleadings regarding said fact has been made in written statement filed by respondent and supported by an affidavit and later on, during final argument. Dr. Muddasar Kharadi (PW-6) was examined in Court and he has stated that respondent suffered from seizures. She was medically examined by him. Her condition was described as "secondary generalization" in prescription (Ex.P/23) but he submits that "secondary generalization" means Epilepsy. Appellant has stated that she suffers seizures prior to marriage and even after marriage she suffered seizure before appellant in June, 2022 and July, 2022. He has seen the condition of respondent and was very tensed after seeing her. Respondent has suppressed fact of her disease from appellant. Document which is placed on record i.e. Ex.P/40 to Ex.P/44 also show that respondent was taking treatment for her disease prior to her marriage and even after her marriage. Aforesaid facts establish that disease of Epilepsy was suppressed from appellant and his family member.

7. Whether suppression of disease at the time of marriage and subsequently making baseless allegation of conspiracy on appellant and mother-in-law amounts to cruelty?

8. Every person has choice to choose marital partner. They exercise their option and marry each other after seeing Biodata and meeting each other and talking with family members and friends. In arrange marriage these are source by which a person can learn about other person and exercise their option to marry. If appellant was told about the disease of seizures/Epilepsy he may not have exercised his option to marry respondent. Things would have been different if respondent had contracted the disease after marriage. In such condition, it was duty of husband to take care of wife. In this case, deception is played upon the appellant and he was made to exercise option of marriage by suppression of fact and later on, false allegation of conspiracy was levelled on him. He has to face financial and emotional consequences. He will be in tension in respect of health of his wife and would remain worried rest of his life. Not only suppression was done but when case was filed in Court stand was taken that appellant and his mother was doing conspiracy to make her sick. Aforesaid conduct of respondent amounts to cruelty which will fall within the ambit of cruelty under Section 13(1) (ia) of the Hindu Marriage Act, 1955. Since, cruelty is one of the grounds for getting divorce, therefore, on said ground appellant can seek judicial separation.

9. Trial Court had committed an error of fact and law in deciding Issue No.1 and Issue No.2. Respondent herself admitted that she did not disclose to her husband about seizures and Dr. Muddasar Kharadi (PW-6) has stated that disease which was described by him in prescription is Epilepsy, therefore, trial Court ought to

have held that respondent was suffering from Epilepsy. Disease has been suppressed from appellant and false allegations were made which amount to cruelty, therefore, Issue No.1 and Issue No . 3 are answered in "Positive". Since, aforesaid issues are answered in "Positive", therefore, it cannot be said that appellant was not having any cause for deserting respondent. Due to aforesaid reason, appellant had deserted the respondent and trial Court had committed an error in holding that appellant deserted respondent without any cause. Issue No.4 has also been decided wrongly by the trial Court. Issue No.4 is answered in "Negative". Issue No. 2 was not challenged before this Court neither Issue Nos.5 and 6 were challenged by appellant as same were in favour of appellant. No argument has been raised by the respondent over said issues, therefore, no interference is called for in finding given by the trial Court in respect of Issue Nos.2, 5 and 6.

10. In view of aforesaid findings, judgment and decree dated 24.08.2024 passed in RCSHM No.74/2022 by Principal Judge, Family Court, District-Mandla (MP), is set aside. Appellant is granted decree of judicial separation from respondent under Section 10(1) of the Hindu Marriage Act, 1955 and decree passed by trial Court for restitution of conjugal rights is set aside.

11. First appeal is allowed.

12. Decree be drawn accordingly.