

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
DB :- HON'BLE JUSTICE ANAND PATHAK &
HON'BLE JUSTICE HIRDESH, JJ**

**FIRST APPEAL NO. 1915 of 2022
RAMCHARAN RAGHUVANSHI
Versus
SMT. UJALA**

Appearance:

Shri F. A. Shah- learned Counsel for appellants- husband.

Shri Vibhor Kumar Sahu- learned Counsel for respondent-wife.

**Reserved on : 05-11-2024
Pronounced on : 14 -11-2024**

This appeal having been heard and reserved for judgment, coming on for pronouncement this day, Justice Hirdesh pronounced the following:-

J U D G M E N T

The present appeal is against the judgment and decree dated 16-11-2022 passed in Case No.61-A of 2017 (HMA) by Principal Judge, Family Court, Ashok Nagar whereby the petition under Section 13 of the Hindu Marriage Act, 1955 [in brevity " the HM Act"] filed by husband seeking divorce on the ground of "cruelty and desertion" was dismissed.

(2) The averments as made by appellants are that on 26th of April, 2014 his marriage was solemnized with respondent as per Hindu rites and rituals without any dowry. After a few days of marriage i.e. on 25-06-2014 for the first time, when respondent came to her in-laws house, she told him that she wanted to marry a boy of her choice but under pressure of her relatives, she married him against her will and did not like him. She stayed at her in-laws house for only three days and during this period, there was no physical relationship between them. When respondent came to her in-laws house for the second time, her behaviour and attitude was not good towards him and his family and she used to

say that she is in job and does not know how to do household work. She stayed at her in-laws house for nearly 13-14 days and during this period, she created a discord by fighting and during this period, respondent did not allow him to establish physical relationship with her. After 14 days, on 25-06-2014 when respondent's father came to take her, respondent left matrimonial home with all jewellery, clothes and other essential documents viz. PAN Card, registration of tractor and motorcycle, bank passbook, his gold chain etc. He and his relatives made a lot of efforts to bring the respondent back, but respondent did not come saying that she does not like him and threatened that if appellant and his family members come to take her back, she will ruin their lives by implicating them in a false case.

Thereafter, respondent registered a false case on 25/05/2017 at Police Station Sadhora for offence punishable under Sections 324, 323 and 506 of IPC. On 17/06/2017, a case was also registered against him and family members for offence punishable under Section 498-A of IPC and Section 3/4 of the Dowry Prohibition Act.

It is further alleged that father of respondent is a very quarrelsome person and came to his house many times with weapons along-with other persons and threatened to sell his land and buy a house in Ashok Nagar in the name of respondent, otherwise he and his family would be killed. His wife never wanted to come and stay in the company of in-laws and refused to discharge matrimonial obligations. Due to mental as well as physical behaviour of the respondent towards him and his parents, it is not possible to live together as husband and wife. On these grounds, he sought a divorce decree.

(3) The wife, in reply, denied the allegations levelled against her. On the contrary, it is pleaded that her father had given Rs.12-13 lac and all household goods. Respondent took back her all belongings when she went to her in-laws house for the first time. She denied the allegation of respondent that respondent does not like appellant and also denied that she refused to establish physical relations with appellant. When she came to her in-laws house for the second

time, behaviour and attitude of respondent and his parents remain changed. Appellant does not want respondent's talking with her parents and deliberately deprived her of marital happiness. Appellant used to tell her that he will never accept her as his wife as he does not like her. It is further pleaded that she had stayed at the house of appellant for the second time for one and a half month and during this period, appellant fought with her and did not establish physical relationship with her. She expressed that she performed her duties like an ideal wife, rather appellant deserted her and started for not living a married life together. She further pleaded that she is ready and willing to go to her in-laws house and live with her husband. It is further pleaded that she was subjected to cruelty by depriving her of marital bliss by not establishing the physical relationship with her and insulting by behaving indecently and abusing her in public. The behaviour and attitude of respondent and his parents towards her are not good.

(4) Appellant in support of his case examined himself as AW-1, Hamir Singh as AW-2, Jaswant Singh as AW-3 and documents Ex.P-1 to Ex.P-16 were produced whereas respondent in support of her case examined herself as NAW-1, Raju *alias* Rajaram as NAW-2, Ankit as NAW-3 and Vinod as NAW-4.

(5) On the basis of arguments of both the parties, the learned Family Judge framed issues and *vide* impugned judgment and decree, held that the appellant has failed to prove the ground of cruelty against respondent and appellant is also barred from getting relief of divorce on the ground of cruelty under the provisions of Section 23(1)(b) of the HM Act. Appellant has also failed to prove the ground of desertion against respondent for a continuous period of at least two years before filing of petition under Section 13(1)(1-b) of the HM Act. Under these circumstances, appellant is not liable to obtain a decree of divorce on the ground of cruelty against respondent as he has failed to prove the ground of cruelty under Section 13(1)(i-a) and desertion under Section 13(1)(i-b) of the HM Act. Hence, divorce petition filed by appellant has been dismissed.

(6) Challenging the impugned judgment and decree, it is contended on behalf

of appellant-husband that the findings recorded by learned Family Court are contrary to law. It is further contended that soon after marriage, respondent told her that marriage was solemnized against her own will and volition. Her conduct and behaviour towards the appellant and his family were not good and she did not consummate the marriage. In her short living at in-laws house i.e. 03 days for the first time and during living of short span of time near about 13-14 days for the second time, respondent used to misbehave with appellant and his family members and did not perform day-to-day household work. Respondent has left the matrimonial home without any rhyme or reason and deserted him without any lawful cause. The evidence of witnesses demonstrate the fact that the wife deserted him which would amount to cruelty and no cogent reasons have been assigned that as to why she had left her matrimonial home. This aspect has not been considered by learned Family Court while rejecting the divorce petition, which is totally perverse and contrary to the evidence available on record.

(7) It is further contended that two criminal cases; one against him for offence punishable under Sections 324, 323 and 506 of IPC in connection with Crime No.126 of 2017 and another against him and his family members for offence punishable under Section 498-A of IPC in connection with Crime No. 134 of 2017 were falsely lodged by respondent which resulted into acquittal by the competent Court of criminal jurisdiction. Due to this, appellant's emotion towards his wife has been dried, love has been lost and chances of living together have been completely vanished. Therefore, conduct as well as behaviour of respondent amounts to cruelty and she is living separately for a long time i.e. since 25th of June, 2014 till date on the ground of cruelty and desertion and the period of separation i.e. more than 10 years is the relevant factor, which amounts to an irretrievable breakdown of marriage. Relying on the judgment of Hon'ble Apex Court in the matter of **Shri Rakesh Raman Vs. Smt. Kavita 2023 Live Law (SC) 353**, learned Counsel for the appellant submits that long separation, in absence of cohabitation and complete breakdown of all meaningful bonds and existing bitterness between the husband and wife, has to

be read as "cruelty" under Section 13(1)(1-a) of the HM Act. Also, relying on the judgment of Hon'ble Apex Court in the matter of **Rani Narasimha Sastry vs. Rani Suneela Rani** reported in **(2020)18 SCC 247**, learned Counsel for appellant further contends that it is true that it is open for anyone to file complaint or lodge prosecution for redressal of his/her grievance. An FIR for an offence *ipso facto* be read as "cruelty" but when a period undergoes a trial in which he is acquitted of allegation levelled by the wife, then it cannot be accepted that no cruelty has meted out on the husband. Once application under Section 9 of the HM Act for restitution of conjugal rights has been rejected by learned Family Court, then the finding recorded by learned Family Court while rejecting divorce petition on the ground of cruelty and desertion not being proved, is unsustainable in the eyes of law. Under these circumstances, the appellant is entitled to get a decree of divorce.

(8) On the contrary, learned Counsel for respondent-wife while supporting the impugned judgment and decree, submits that the cruelty and desertion was at the behest of the husband not that of wife. Wife wanted to stay with husband, however, husband never wanted to keep the wife with him. Husband used to tell her that he will never accept respondent as his wife as he does not like her. Wife was subjected to cruelty by depriving her of marital bliss by not establishing the physical relationship with her and insulting by behaving indecently and abusing her in public. Under these circumstances, the impugned judgment and decree is well-justified which does not call for any interference.

(9) Heard learned Counsel for parties and perused the record.

(10) The Hon'ble Supreme Court in **Rani Narsimha Sastry (supra)** has observed that when a persecution launched against the husband on a complaint made by the wife under Section 498-A of IPC making serious allegations wherein husband is constrained undergo trial which eventually resulted into acquittal, then in such case, it cannot be accepted that no cruelty was meted out on the husband, and he can make a ground for grant of decree of dissolution of marriage under Section 13(1)(1-a) of the HM Act.

(11) The concept of "mental cruelty" has been discussed in catena of decisions by Hon'ble Supreme Court in AIR 2002 SC 2582 (**Praveen Mehta Vs. Inderjit Mehta**), (2007) 4 SCC 511 {**Samar Ghosh Vs. Jaya Ghosh**}, (2010) 4 SCC 339 {**Manisha Tyagi Vs. Deepak Kumar**}, (2012) 7 SCC 288 {**Vishwanath Agrawal Vs. Sarla Vishwanath Agrawal**}, (2013) 2 SCC 114 {**U. Sree Vs. U. Srinivas**} and AIR 1975 SC 1534 {**Dr. N. G. Dastane vs. Mrs. S. Dastane**}. In the matter of **Samar Ghosh (supra)**, the Hon'ble Apex Court has enumerated the illustrative instances of human behaviour which may be relevant for dealing with the cases of "mental cruelty":-

“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) ** ** *

(iii) ** ** *

(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) ** ** *

(viii) ** ** *

(ix) ** ** *

(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) ** ** *

(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) ** ** *

(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.

It is equally well-settled in law that lodging of false complaint amounts to cruelty {*See: (2014) 7 SCC Malathi Vs. B.B. Ravi, (2013) 5 SCC 226 K. Shrinivas Rao Vs. D.A. Deepa, (2014) 16 SCC 34 K. Shrinivas Vs. Ku. Sunita and AIR 2003 MP 271 Johnson M. Joseph alias Shajoo Vs. Smt. Aneeta Jhonson*)}.

(12) So far as the legal principles with regard to "desertion" is concerned, the Hon'ble Apex Court in **AIR 1957 SC 176 (Bipinchandra Jaisinghbai Shah Vs. Prabhavati)**, has explained that 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. Desertion is a matter of inference to be drawn from the facts and circumstances of each case. 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, in fact, there has been a separation, the essential question always is whether that act could be attributable to an *animus deserendi*.

[*See:- AIR 1964 SC 40 (Lachman Utamchand Kirpalani Vs. Meena*

alias Mota), (2002) 1 SCC 308 {Adhyatma Bhattar Alwar Vs. Adhyatma Bhattar Sri Devi} to (2006) 4 SCC 558 {Naveen Kohli Vs. Neelu Kohli}

(13) In the case at hand, on perusal of evidence of both husband and wife and their witnesses, it is apparent that marriage of appellant and respondent was solemnized on 26th of April, 2014. Wife was living at her matrimonial home with her husband for a short span of time i.e. for 13-14 days, that too in different intervals and since 25th of June, 2014, she is living separately and left matrimonial home without any rhyme or reason. It also seems that wife refused to live at her in-laws house with husband and discharge her matrimonial obligations. On discussion by this Court with husband as well as wife, it transpires that husband is not ready to live with his wife because of apprehension of backlash as he had already suffered two aforesaid criminal cases at the hands of his wife.

(14) So far as allegations of wife that she was subjected to harassment for demand of dowry and assault was made for which, she had prosecuted offence under Sections 498-A, 323, 324 and 506 of IPC and because of behaviour and attitude of her husband and her in-laws, she is unable to discharge her matrimonial obligation is concerned, it appears that husband and his family members were subjected to torture physically and mentally at the behest of wife, not that of husband and his family members and subsequently, two criminal cases prosecuted against her husband as well as against her in-laws, which resulted into acquittal, as the wife has utterly failed to prove the ingredients of either Section 498-A of IPC or Sections 323, 324 and 506 of IPC. Even otherwise, during pendency of this appeal, no useful purpose could be served through conciliation proceedings. Therefore, the husband was able to prove the fact that he was subjected to cruelty and the wife further deserted him without any lawful cause. Thus, cruelty by way of false litigation is duly established. From the admission of both husband and wife in their evidence clearly shows that no physical relationship was established between them.

(15) It is not in dispute that both husband and wife are in Government job and

working as primary School Teacher in respective schools of District Ashok Nagar and both are on the same status. No child has been blessed from nuptial bliss. Therefore, the wife has no right to receive any permanent alimony as contemplated under Section 25 of the HM Act. They are living separately for the last more than 10 years. The matrimonial bond is completely broken and is beyond repair. Long separation of husband and wife and in absence of cohabitation and irretrievable breakdown of all meaningful bonds as well as marital relationship and the existing bitterness between husband and wife, with multiple litigation between the parties in which the husband and his family members have been acquitted, then continuation of such married life would only mean giving sanction to cruelty and desertion.

(16) Considering the facts and circumstances of the case and the law laid down by the Hon'ble Apex Court, in view of above discussion, this appeal deserves to be allowed. As a consequence thereof, this first appeal is **allowed** to the extent indicated above, leaving the parties to bear their own costs. The impugned judgment and decree dated 16-11-2022 passed in Case No.61-A of 2017(HMA) by Principal Judge, Family Court, Ashok Nagar whereby the petition under Section 13 of the Hindu Marriage Act, 1955 [in brevity " the HM Act"]filed by husband seeking divorce on the ground of "cruelty and desertion" is hereby **allowed**. Appellant is entitled to get a decree of divorce. A decree be drawn accordingly.

(ANAND PATHAK)
JUDGE

(HIRDESH)
JUDGE