IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

FIRST APPEAL No.1082 of 2016

RAJESH

Versus

NEHA

FIRST APPEAL No.920 of 2024

NEHA AND ANOTHER

Versus

RAJESH

….....

Appearance:

Shri A.S.Rathore– Advocate for husband-Rajesh.
Shri Anshul Shrivastava -Advocate for wife-Neha.

….....

Reserved on : 06/11/2024

Pronounced on : 19/11/2024

J U D G M E N T

Per*: *Justice Binod Kumar Dwivedi

With the consent of the parties these appeals are being heard finally.

Regard being had to the similitude in the controversy involved and

commonality of parties, both the appeals are analogously heard and are being disposed of by common order.

2. In F.A.No.1082/2016 appellant is husband-Rajesh and in F.A.No.920/2024, appellant is wife-Neha and minor daughter divyanshi. F.A.No.1082/2016 has been preferred by the appellant/husband under Section 19 of the Family Courts Act, 1984 (hereinafter referred to as 'the Act, 1984') assailing the judgment dated 22.11.2016 passed by Principal Judge, Family Court, Mandsaur in HMA Case No.109/2015 whereby petition for divorce under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act, 1955') filed on behalf of the appellant/husband has been dismissed whereas F.A.No.920/2024 has been preferred by the respondent/wife assailing the judgment dated 01.03.2024 passed by Principal Judge, Family Court, Ratlam in HMA Case No.20-A/2017 whereby her petition filed under Section 9 of the Act, 1955 for restitution of conjugal rights has been dismissed.

3. It is not in dispute that appellant and the respondent have entered into wedlock on 02.12.2009 at village Bangrod, district Ratlam according to Hindu rites and customs and out of the wedlock on 12.04.2011 daughter Divyanshi was born.

4. The contentions raised in the petition filed by the husband under Section 13 of the Act, 1955 and petition filed by wife under Section 9 of the Act, 1955 as per husband are that from the beginning of marriage the behaviour of wife-Neha was derogatory towards him and members of his family. She neither accepted the appellant as her husband nor fulfilled marital obligations. On 04.12.2009 when appellant/husband fell sick and was admitted in the hospital of Dr.Gandhhi she never came even to visit him. She along with her brother and uncle went to her parents place. After strenuous efforts by the appellant/husband, she came to his place and lived merely for a short period of about one month. In that period also her behaviour towards her husband and his family members was very obnoxious. She on and off went to visit her parents place. She always kept herself busy in conversation on mobile phone. She never lived with appellant as caring wife and refused to cohabit. By the behaviour of respondent/wife he was feeling very much humiliated. After delivery of girl child he made several efforts to bring her to Mandsaur. She came there and lived only for very short period i.e. 07.07.2011 to 13.07.2011. After 13.07.2011 she has never contacted the appellant. Such act and behaviour of the respondent comes under physical and mental cruelty and also deserted

him. Therefore, on these allegations, the appellant/husband filed divorce petition.

5. Respondent/wife in her written statement has refuted all the allegations and in her petition under Section 9 of the Act, 1955 alleged that her husband/respondent has willfully deserted her and her daughter. She is willing to live with him but on 13.07.2011, when she came to her parents house after that he never made any efforts to bring her back or live with her.

6. The Principal Judge, Family Court in the case filed by the husband under Section 13 of the Act, 1955 framed necessary issues with regard to physical and mental cruelty as allegedly committed by the respondent/wife and also whether she has willfully deserted the appellant. In case of wife filed under Section 9 of the Act, 1955 issues with regard to withdrawal of husband from the company of wife without any sufficient reason was framed. The Court below after affording opportunity of hearing dismissed petitions of both the parties, which gave rise to filing these appeals before this Court.

7. The Counsel for the husband reiterating allegations in the divorce petition would submit that the respondent/wife never performed the duties of wife. She has willfully shied away in fulfilling marital obligations.

During the pendency of the appeal, she has filed domestic violence case against the appellant and his family members registered as MJC No.39/2017 which was dismissed by the trial Court vide order dated 26.09.2018 and the appellate Court vide judgment dated 04.07.2022, Annexure AE-1 in Cr.A.No.178/2018 affirmed the finding, which also gives rise to the appellant an entitlement to get decree of divorce on the ground of mental cruelty. Learned family Court also did not appreciate the point of desertion as ground of divorce in right perspective ignoring specific finding by learned family Court in judgment on petition of wife under Section 9 of the Act, 1955 in paragraph 36 that she is willfully living away from her husband. On these contentions learned counsel on behalf of husband urged this court for allowing the appeal No. 1082 of 2016 by setting aside the impugned judgment dated 22.11.2016 in HMA Case No.109/2015 and for dismissing F.A.No.920/2024 filed on behalf of the wife.

8. Per contra, learned counsel for the respondent/wife submits that the judgment dated 22.11.2016 passed by the Court below in HMA Case No.109/2015 dismissing the divorce petition filed by husband is based on proper appreciation of evidence. She has never committed cruelty to her husband nor shown any unacceptable/unusual behaviour towards the

appellant/husband and his family members. She has not deserted the appellant, rather she filed application under Section 9 of the Act, 1955 for restitution of conjugal rights which was wrongly dismissed by the learned Family Court vide judgment dated 01.03.2024 in HMA Case No.20-A/2017. On these contentions learned counsel prays for dismissal of the appeal filed on behalf of the husband i.e. F.A.No.1082/2016 and allowing her appeal F.A.No.920/2024 by setting aside judgment by learned family court Ratlam in HMA Case No. 20-A/2017.

9. Heard the rival contentions raised on behalf of the parties and perused the record.

10. The question before this Court is "whether learned Court below has committed legal and factual error in dismissing HMA Case No.109/2015 filed on behalf of the husband-Rajesh for decree of divorce under Section 13 of the Act, 1955 and also committed aforesaid error in dismissing the petition filed by wife under Section 9 of the Act, 1955 vide judgment dated 01.03.2024.

11. Before dwelling into the merits of the case, it is pertinent to dispose of the application filed under Order 41 Rule 27 of CPC on behalf of the appellant/husband for taking additional documents on record. The

documents filed along with I.A.No.4260/2024 are copy of Jaith Public School teachers list year 2016-17, copy of educational portal of guest lecturer, year 2017-18, copy of bank account of daughter Divyanshi dated 30.06.2016, copy of order dated 26.09.2018 passed in MJC No.39/2017, copy of order dated 29.12.2021 passed by office of Divisional Deputy Commissioner Scheduled Caste and Tribal Affiars, Ujjain Division, copy of order dated 04.07.2022 passed in Cr.A.No.178/2018, copy of order dated 30.03.2023 of respondent appointed as a higher secondary teacher, copy of electoral Roll 2023 S12 M.P. and copy of order dated 01.03.2024 passed in HMA Case No.20/2017.

12. Even though the application has been opposed by the respondent/wife but these documents have bearing on the case and based on subsequent events, therefore, application is allowed for just decision in the case and the documents are taken on record. We are of the view that these documents are not required to be proved by way of evidence. Hence, these appeals are not required to be remanded back to the learned Family Court. In the interest of justice, documents can be considered while going on merits of the case.

13. Before adverting to the facts of the case in hand, it is pertinent to

consider the legal provisions under HMA and also exposition of law as propounded by the Hon'ble Apext Court in catena of judgments relating to decree of divorce on the ground of mental cruelty.

14. Word “cruelty” has not been defined in the H.M.A. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. 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.

15. The cruelty simpliciter is now a ground for divorce under Section 13 of the HMA. Section 13 of the HMA provides, so far as it is material:

> “13.***Divorce***.—(1) Any marriage solemnized, 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-a*) has, after the solemnization of the marriage,treated the petitioner with cruelty; or”

16. In case of **Shobha Rani v. Madhukar Reddi, (1988) 1 SCC 105 : 1988 SCC (Cri) 60 at page 108** the Apex court has made some observations with regard to the term cruelty which may profitably be

reproduced here as they are still relevant :

> "4. Section 13(1)(*ia*) uses the words "treated the petitioner with cruelty". The word "cruelty" has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.
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> 5. It will be necessary to bear in mind that there has been a marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the judges and lawyers, therefore, should not import our own notions of life. We may not go in

> parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as Lord Denning said in *Sheldon* v. *Sheldon* [(1966) 2 All ER 257, 259] "the categories of cruelty are not closed". Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (*sic*) realm of cruelty."

17. In case of **Samar Ghosh Vs Jaya Ghosh[(2007) 4 SCC 511]** allowing the appeal, the Supreme Court in para 98 to 101 has held as under:-

> **"98.** On proper analysis and scrutiny of the judgments of this Court and other courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of "mental cruelty" within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.
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> **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.
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> **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 straitjacket 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.

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-today 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**."

18. In case of **Ramchander v. Ananta, [(2015) 11 SCC 539]** Supreme court in para 10 has held that cruelty can be inferred from the fact and circumstances which reads as under:-

> **"10.** The expression "cruelty" has not been defined in the Hindu Marriage Act. Cruelty for the purpose of Section 13(1)(*ia*) is to be taken as a behaviour by one spouse towards the other, which causes a reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Cruelty can be physical or mental. In the present case there is no allegation of physical cruelty alleged by the plaintiff. What is alleged is mental cruelty and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. *It is settled law that the instances of cruelty are not to be taken in isolation but to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the plaintiff has been subjected to mental cruelty due to conduct of the other spouse*. In the decision in *Samar Ghosh case* [*Samar Ghosh* v.*Jaya Ghosh*, (2007) 4 SCC 511] this Court set out illustrative cases where inference of "mental cruelty" can be drawn and they are only illustrative and not exhaustive."

19. In the light of the law propounded by the Apex Court in the aforementioned judgments, we would dwell upon factual matrix of the case in hand for assessing whether the appellant could make out a case for divorce on the ground of "cruelty" as given in Section 13(1)(*ia*) and desertion as provided under Section 13(1)(ib) of the Act, 1955 whether learned Family Court has

failed to appreciate the evidence adduced by the parties in right perspective as per the prevailing norms of law.

20. The appellant/husband had reiterated his allegations before the Family Court by way of his evidence stating that respondent/wife never ever treated him as husband and nor fulfilled marital obligations. Her behaviour towards the appellant and his family members was always contentious. She never visited him when due to sickness he was admitted in the hospital of Dr.Gandhi. She was always engaged on phone. She has also lodged a false complaint with the Magisterial court under the Prevention of women from domestic violence Act, 2005 against his and members of his family and the same has been dismissed by the courts below finding allegations to be false.

21. These allegations have been refuted by the respondent/wife with further allegations that her husband was suspecting her character saying that the daughter born is not his daughter. Even after making efforts, appellant did not took her to live with him. Even during pregnancy she was maltreated. Shri Sanjay Vyas (NAW-2) and Kanhaiyalal (NAW-3) have also made unsuccessful attempt to support the respondent/wife in their statements.

22. Learned Court below on the basis of evidence on record came to the conclusion that cruelty on the ground of divorce has not been proved. When we scrutinize the additional evidence filed on behalf of the appellant it is found that during the pendency of the appeal which is continuation of suit, she has filed domestic violence case against the appellant and his family members registered as MJC No.39/2017 which was dismissed by the trial Court vide order dated 26.09.2018 finding allegations of domestic violence raised by the respondent/wife against the appellant/husband Rajesh, his mother Gayatridevi, Hemlata and sister Karuna false and affirmed by the appellate Court vide judgment dated 04.07.2022, Annexure AE-1 in Cr.A.No.178/2018 which in itself gives rise to the appellant an entitlement to get decree of divorce on the ground of mental cruelty.

23. In the case of **K.Srinivas Rao vs. D.A.Deepa (2013) 5 SCC 226** the Apex Court has held as under:-

> "***16.*** Thus, to the instances illustrative of mental cruelty noted in *Samar Ghosh [(2007) 4 SCC 511], we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other*

spouse."

24. The allegations in her petition under Section 9 of the Act, 1955 against the husband that he is suspecting her character and not accepting the daughter as his daughter has also not been found reliable by the learned Court below. Wife-Neha in her cross examination in paragraph 30 admitted giving statement in Ex.P-19 in Ratlam Court wherein it is not mentioned that the husband Rajesh tried to strangulate her daughter Divyanshi questioning her paternity which in itself falsifies allegation of wife in this regard. These false allegations are sufficient enough to cause mental cruelty to the husband.

25. Learned Family Court has also failed to appreciate the ground of desertion as ground of divorce enshrined under Section 13(1 (*ib*) of the Act, 1955.

26. It is undisputed that appellant and respondent are living separately since 13.07.2011 which in itself manifests the love is lost and emotions have dried up between the parties. Even though wife, appellant in appeal F.A.No.920/2024 filed this petition under Section 9 of the Act, 1955 for restitution of conjugal rights, but the same has been dismissed with as specific finding that she has failed to prove that husband has withdrawn

himself from her Company without sufficient reasons. In the impugned judgment dated 01.03.2024 passed in HMA Case No.20-A/2017 and also otherwise from the evidence on record, it is undisputedly proved that respondent/wife herself after solemnization of marriage did not live with her husband for more than three months in total which in itself proves that the proceedings filed under Section 9 of the Act, 1955 are eye wash.

27. Learned Principal Judge, Family Court has failed to appreciate the ground of desertion which is well proved from the evidence on record. It is also proved that by leveling false allegations of cruelty against the husband and towards his family members by way of petition under domestic violence Act has also been found false which in itself gives ground of mental cruelty sufficient to grant decree of divorce.

28. In view of above, we are of the view that appellant/husband has been able to prove that he is entitled for decree of divorce not only on the ground under Section 13(1)(*ia*), but also under Section 13(1)(*ib*) of the Act, 1955. Learned Family Court has committed legal and factual error in dismissing the petition of appellant/husband for divorce which is not sustainable in law, hence the findings are set aside.

29. As far as the finding recorded by the learned Family Court on

application filed under Section 9 of the Act, 1955 vide order dated 01.03.2024 in HMA Case No.20-A/2017 is concerned, we find no factual or legal error in the impugned order. Therefore, the impugned order dated 01.03.2024 is hereby upheld.

30. Since the judgment dated 22.11.2016 passed by the Family Court in HMA Case No.109/2015 dismissing the divorce petition of the appellant is vulnerable, therefore, the judgment and decree passed by the Family Court against the appellant/husband is set aside by allowing the appeal (F.A.No.1082/2016) of appellant/husband. Decree of divorce is granted in favour of the appellant on the ground enumerated under Section 13(1)(*ia*) and (*ib*) of the Act, 1955. Marriage between the husband and wife is hereby dissolved. The appeal (F.A.No.920/2024) of wife-Neha is hereby dismissed.

31. The appeals stand disposed off as indicated herein above.

32. Let a copy of this judgment be kept in the record of F.A.No.920/2024.

(VIVEK RUSIA)
JUDGE

(BINOD KUMAR DWIVEDI)
JUDGE

RJ