

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 109 of 2010**

(Arising out of judgment dated 19.7.2010 in Case No. 40-A/2008 of the learned Judge, Family Court, Rajnandgaon)

Judgment Reserved On : 25/09/2017

Judgment Delivered On : 13/12/2017

- Rakesh Kumar S/o Shyam Lal Thakur, aged about 42 years, R/o Old Civil Line, Rajnandgaon, Tahsil & District Rajnandgaon (CG)

---- Appellant

Versus

- Smt. Sarswati Thakur, W/o Rakesh Thakur, R/o Quarter No.10F, Street No.86, in front of Durga Platform, Sector -6, Bhilai, District Durg (CG)

---- Respondent

For Appellant : Shri B.P. Gupta, Advocate.

For Respondent : Shri Saurabh Dangi, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Arvind Singh Chandel

C A V JUDGMENT

The following judgment of the Court was passed by **Prashant Kumar Mishra, J.**

1. In this Appeal under Section 19(1) of the Family Courts Act, 1984 the appellant is aggrieved by the dismissal of his suit for grant of

divorce under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act').

2. The suit was preferred on the ground that the parties were married at Rajnandgaon on 11.5.1994. After 5-6 months of the marriage, the respondent/wife joined the service as Nurse in the Department of Health without consent of the appellant. In June, 1996, she lodged a false criminal complaint case before the JMFC, Durg against the husband and his relatives for offence under Sections 498-A, 493, 494, 495 and 496 of the IPC. She also indulged in making false and reckless allegations of performing second marriage by the appellant. She has deserted the appellant for more than 2 years and they have not cohabited since after February, 1995. By amending and inserting para-4A and 4B in the plaint, it was stated that at about 5.30 pm on 9.9.2009 the respondent with two of his nephews namely, Samir Rajput and Sanju Rajput misbehaved, manhandled, abused and assaulted the appellant causing injuries over his head and arm. The incident having occurred at a public place, the appellant's reputation suffered severe jolt.
3. It was also pleaded that the respondent/wife made a false and concocted complaint before the Human Rights Commission, Raipur on 15.9.2009 alleging that it was the appellant who

manhandled her on 9.9.2009 threatening that he would abduct and prepare blue film of her daughter. She also alleged that her two nephews were arrested and severely beaten in the jail under the instructions from the appellant to the other jail inmates. According to the appellant, the above allegations were indecent, vulgar, false and defamatory. The appellant being a tax practitioner does not know any criminal so as to pass on instructions and that he cannot even dream of uttering words which are mentioned in the complaint in respect of his own daughter. These allegations by the respondent in the complaint before the Human Rights Commission amounts to cruelty.

4. The respondent denied the plaint allegations on pleading inter alia that it was the appellant who arranged job for the respondent and criminal complaint was lodged because she was subjected to mental and physical cruelty by the appellant and his parents. She stated that the appellant has performed second marriage with one Nisha Thakur of Chhuria, District Rajnandgaon on 24th May, 1996 and has two children out of the said second marriage. She reiterated the contents of the complaint made by her to the Human Rights Commission. She denied that she has deserted the appellant by stating that after her joining the service at Mungeli in February, 1995, the appellant used to meet her at Mungeli. She would also

state in her additional pleading that on demand made by the appellant's father, scooter was purchased for the appellant. She also stated that at the time of death of her father on 15.12.1995 neither the appellant nor his family members attended the funeral and other rituals.

5. The trial Court proceeded to consider two issues as to whether the respondent/wife has treated the husband with cruelty and has deserted him and further as to whether the appellant has performed second marriage. The trial Court has held that the respondent has not committed cruelty or desertion but the appellant has performed second marriage.
6. In course of recording of evidence, the appellant was examined as AW-1 denying in cross-examination that he has performed second marriage. He also denied that he or his family members were subjecting the respondent to cruelty. His witness (AW-2) Ashwini Singh speaks about the effort made by the appellant to bring back his wife, however, she denied to come back to her marital home.
7. On the other hand, the respondent examined herself as NAW-1 reiterating that the appellant has performed second marriage. She has produced the birth certificate of Rohit allegedly born out of the wedlock between the appellant and his second wife. However, the

said certificate was obtained by one Parwati Yadav with whom the respondent/wife met for the first time in the office of Municipal Corporation where the register of deaths and births is maintained. She admitted that Parwati Yadav handed over certificate to her but the application was made by her, however, the said fact is not proved. The document (Ex.-D/3) records the name of Smt. Parwati Yadav as the person who informed the Municipal Corporation about the birth of Rohit out of the relation between Rakesh Yadav and Nisha. The said Parwati is the daily wage employee of the Municipal Corporation, Rajnandgaon. She claims to be the former tenant of the appellant and has stated about the relations of Nisha and appellant Rakesh. As per her statement in the examination-in-chief, she obtained the certificate on request made by Nisha Thakur. She admits that the entries concerning birth of Rohit was made by her in the record of the Municipal Corporation. However, he admits that the original certificate was handed over to the respondent/wife instead of handing over the same to Nisha at whose instance the certificate was obtained. She has not filed any document or any other proof to substantiate that she was tenant of the appellant. This lady was also residing separate from her husband on account of differences between them.

8. The family Court has also considered the statement of NAW-3

Sangita Thakur, who is the daughter of the appellant and the respondent. She states that when she had gone to the appellant's house while she was studying in 3rd standard, Nisha Thakur was introduced as her second mother and her grandparents were calling Nisha as “बहु”. When the police came to Khairagarh, she, Nisha Thakur and daughter Sanskar were asked to hide under the bed. However, in para-7, she would state that her father is not married to Nisha Thakur. She also stated that her father had taken her, Sanskar and Nisha to Bilaspur where her father, Nisha and Sanskar used to sleep on the same bed. During this visit, the appellant used to tutor this witness that if she is asked in the Court about Surbhi and Nisha, she should feign ignorance about them. She denies that she is making statement according to her mother's desire but admits that she follows what her mother directs and she has come to the Court at the request of her mother. She would further explain that since her father and Nisha used to sleep on the same bed, she presumes that they were married.

9. One Anil Bajpayee has been produced as NAW-4. This witness is the Principal of the Kasturbad School, Rajnandgaon, where at the time of admission of Surbhi, the alleged daughter of appellant and Nisha, her mother's name is mentioned as Jaya and father's name is mentioned as R. Rajput.

10. Criminal complaint case preferred by the respondent/wife against the husband and his family members ended in their acquittal vide order dated 30.8.2011 in complaint case No.489/10, decided by the JMFC, Durg, inter alia, finding that the marriage between the appellant and Nisha Thakur is not proved. The birth certificate of Rohit procured through Parwati Yadav, a daily wage/muster roll employee of the Municipal Corporation was not believed. Even if the said judgment of the criminal Court is not binding on the civil Court, it has its own persuasive value because it concerns the same allegations between the parties which was the subject matter in both the proceedings.
11. Challenging the order of acquittal, the respondent/wife preferred Cr.A. No.257/12, which was dismissed by the first ASJ, Durg on 11.1.2013. In the appellate judgment also, there is categorical finding in para-35 that the respondent/wife has miserably failed to prove the appellant's second marriage with Nisha or that there was any demand of dowry or any other kind of cruelty upon her by her husband and his family members. The appellate Court further observed that there are material contradictions in the evidence of complainant's witnesses and that, had the allegations been true, the wife would have made allegation of demand of dowry and commission of cruelty from the very beginning when other

proceedings were instituted. In the record of the present case also, certified copy of the order passed by the first ADJ, Rajnandgaon in MJC No.34/97 decided on 11th May, 2000 is available deciding a proceeding under Section 6 of the Hindu Minority and Guardianship Act preferred by the appellant seeking custody of his daughter Sangita. Perusal of the judgment does not indicate that the respondent/wife made any allegation of demand of dowry on the appellant or his family members. In para-8 of the said judgment also, there is finding that she has failed to prove that the appellant has performed second marriage.

12. Admittedly, the parties started living separate after about 6 months of the marriage, however, there is no evidence that the respondent/wife lodged any FIR against the appellant and his family members alleging demand of dowry, commission of cruelty and performance of second marriage. Instead of choosing to file a police report in relation to cognizable offence, she chose to prefer a private criminal complaint (Ex.-P/1). The respondent/wife has also preferred written argument under her own signatures reiterating the allegations in relation to the incident dated 9.9.2009 where the appellant allegedly threatened to prepare blue film of his own daughter. He also admitted to have moved an application before the State Human Rights Commission, however, despite this

incident of such a serious act committed by the appellant, the respondent/wife did not lodge any FIR pertaining to the incident dated 9.9.2009 nor did she prefer any private criminal complaint or an application under Section 156 (3) of the CrPC, if her report was not taken down by the concerned police.

13. We shall now consider as to when lodging of a false criminal case by the wife against the husband and his family members would amount to cruelty.

14. In **Samar Ghosh Vs. Jaya Ghosh**¹, the Supreme Court has indicated illustrative cases where inference of mental cruelty can be drawn. Such instances are reproduced as under:-

“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

¹ (2007) 4 SCC 511

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-to-day 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.”

15. In **K. Srinivas Rao Vs. D.A. Deepa**², the Supreme Court referred to its earlier decisions in paras-32 to 34 and observed thus:

“32. In **V. Bhagat**³ this Court noted that divorce petition was pending for eight years and a good part of the lives of both the parties had been consumed in litigation, yet the end was not in sight. The facts were such that there was no question of reunion, the marriage having irretrievably broken down. While dissolving the marriage on the ground

² (2013) 5 SCC 226

³ V. Bhagat Vs. D. Bhagat, (1994) 1 SCC 337

of mental cruelty this Court observed that: (SCC p. 351, para 21)

“21. ... Irretrievable breakdown of the marriage is not a ground by itself. But, while scrutinising the evidence on record to determine whether the ground(s) alleged is/are made out and in determining the relief to be granted, the said circumstance can certainly be borne in mind.”

33. In **Naveen Kohli**⁴ where the husband and wife had been living separately for more than 10 years and a large number of criminal proceedings had been initiated by the wife against the husband, this Court observed that: (SCC p. 582, para 86)

“86. ... The marriage has been wrecked beyond the hope of salvage [and] public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto.”

It is important to note that in *Naveen Kohli case* this Court made a recommendation to the Union of India that the Hindu Marriage Act, 1955 be amended to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce.

34. In the ultimate analysis, we hold that the respondent wife has caused by her conduct mental cruelty to the appellant husband and the marriage has irretrievably broken down. Dissolution of marriage will relieve both sides of pain and anguish. In this Court the respondent wife expressed that she wants to go back to the appellant husband, but, that is not possible now. The appellant husband is not willing to take her back. Even if we refuse decree of divorce to the appellant husband, there are hardly any chances of the respondent wife leading a happy life with the appellant husband because a lot of bitterness is created by the conduct of the respondent wife.”

16. In para-29 of the said judgment, the Supreme Court observed that

⁴ Naveen Kohli Vs. Neelu Kohli, (2006) 4 SCC 558

spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. In a given case, while staying away, a spouse can cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or **filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse's life miserable.** The Supreme Court thereafter referred to its earlier judgments in the matters of **V. Bhagat** and **Naveen Kohli** (Supra) to highlight the issue of irretrievable breakdown of marriage and the impossibility of reunion of the parties and further observed that even if we refuse decree of divorce to the appellant husband, there are hardly any chances of the respondent wife leading a happy life with the appellant husband because a lot of bitterness is created by the conduct of the respondent wife.

17. Yet again in the matter of **K. Srinivas Vs. K. Sunita**⁵ the Supreme Court observed that the respondent wife knowingly and intentionally filed a false complaint, calculated to embarrass and incarcerate the appellant and seven members of his family, therefore, such conduct unquestionably constitutes cruelty as postulated in Section 13 (1)(i-a) of the Hindu Marriage Act.

18. In an extremely recent judgment in the matter of **Raj Talreja Vs.**

⁵ (2014) 16 SCC 34

Kavita Talreja {2017 SCC Online SC 462}, the Supreme Court has observed that mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act, 1955.

19. Upon conjoint reading of the observations made by the Supreme Court in the above 3 decisions, it appears, mere filing of complaint may not by itself amount to cruelty, however, when there is finding that the criminal case is afterthought and the wife has made reckless, indecent, vulgar and unsubstantiated allegations against the husband and his family members, it would definitely amount to cruelty.
20. In the case at hand, the respondent wife did not lodge any FIR or application under Section 156 (3) of the CrPC immediately after her separation from the husband. Instead she chose to file a private complaint making allegation of demand of dowry and performance of second marriage, which has not been found proved by the trial Magistrate as well as by the appellate Sessions Court.
21. We have also examined the evidence and are satisfied that the finding recorded by the trial Court that the appellant has performed

second marriage is utterly perverse, as there is absolutely no proof of his marriage with Nisha. The birth certificate of his so called son Rohit from second marriage was obtained through daily wage/muster roll employee who is not authorized in law to obtain such certificate. While Parwati says that the application for obtaining certificate was moved by or on behalf of Nisha, the respondent wife has stated that the certificate was obtained by her through Parwati. Any responsible officer of the Municipal Corporation has not been examined to prove that the certificate has been issued in due course of official business and after due enquiry pertaining to recording of birth and death in the Municipal Corporation. If such certificate is believed, any person can obtain a certificate in relation to third person giving parentage to any XYZ to defame him in the society. This is apart from the fact that in the criminal case as well as the proceeding under Section 6 of the Hindu Minority and Guardianship Act, the ADJ has found that the second marriage of the appellant with Nisha is not proved. Thus the second marriage having not been proved and the criminal complaint alleging commission of cruelty and demand of dowry having also been dismissed and moreover, the respondent wife having lodged a complaint in relation to the incident dated 9.9.2009 alleging vulgar and indecent act committed by the

appellant in relation to his own daughter has also not been taken to its logical end nor there is any effort to prove the same by examining any independent witness in the present case, the respondent wife has committed mental cruelty on the appellant.

22. It is also to be seen that the marriage had taken place on 11.5.1994 and the parties are residing separate since February, 1995 i.e. for about 22 years and there appears no possibility of their reunion, therefore, keeping in view the entirety of the circumstances, we are of the considered opinion that the trial Court should have allowed the appellant's prayer for grant of decree of divorce on the grounds enumerated under Section 13 (1)(i-a) of the Hindu Marriage Act, 1955.

23. Accordingly, we allow the Appeal and set aside the impugned judgment and decree and instead grant a decree of divorce in favour of the appellant dissolving his marriage with the respondent solemnized on 11.5.1994.

24. Parties to bear their respective cost.

25. A decree be drawn accordingly.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Arvind Singh Chandel)