

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****FAM No. 78 of 2013**

(Arising out of judgment/order dated 14.8.2013 in Civil Suit No.70A/2011 of the learned 1<sup>st</sup> Additional Principal Judge, Family Court, Raipur)

Judgment Reserved On : 03/08/2017

Judgment Passed On : 05/09/2017

- Subodh Gupta S/o Dr. Harishanker Gupta Aged About 37 Years R/o Baijnath Para, P.S. City Kotwali, Tahsil, Civil & Revenue Distt. Raipur C.G.

---- Appellant

**Versus**

- Smt. Neetu Gupta W/o Subodh Gupta (Rauniyar) Aged About 30 Years Through Shivshanker Gupta, R/o Gupta Mohalla, Jashpur Nagar, P.S. City Kotwali, Civil & Revenue District Jashpur C.G.

---- Respondent

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For Appellant : Shri Palash Tiwari, Advocate.

For Respondent : Shri A.K. Prasad, Advocate.

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**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. This is an Appeal by the husband under Section 19 (1) of the

Family Court Act, 1984 (for short 'the Act, 1984') challenging the judgment and decree passed by the First Additional Principal Judge, Family Court, Raipur, dismissing his application for grant of divorce on the ground of cruelty and desertion enumerated under Section 13 (1)(i-a)(i-b) of the Hindu Marriage Act, 1955 (for short 'the Act').

2. The undisputed facts of the case are that the first marriage of the appellant was performed on 21.11.1990, out of which daughter Ku. Shreyakanchha was born some times in the year 1992. After the death of his first wife in the year 1997, the appellant married the respondent according to Hindu rites and rituals on 21.11.99. They have a son namely, (Master) Vivek from the second marriage who was born on 6.6.2001.
3. The present suit for divorce was filed on 9.3.2006 on averment that for the initial 2 years the relations between the parties were cordial, however, after the birth of son Vivek, the respondent started treating her stepdaughter Ku. Shreyakanchha with cruelty by harassing and exploiting her, which was opposed by the appellant. The respondent used to raise dispute with an object to separate daughter from the family and for this dispute, she eventually went to her parental house on 20.6.2002 without any lawful justification. It is further alleged that during her stay with the appellant, she used

to physically assault the husband in the presence of his father and brother. Even after leaving the matrimonial house by her, she threatened the appellant over telephone that if he does not separate daughter Shreyakanchha and get himself transferred to Jashpur, she shall eliminate Shreyakanchha. The husband further averred that she is staying at Jashpur Nagar for lodging false cases of demand of dowry and maintenance against the appellant whereas it is not possible for the appellant to leave his daughter Shreyakanchha alone. In para-9 of the plaint, it is averred that the suit is filed because the respondent/wife lodged criminal case against the appellant on 20.6.2002.

4. In her written statement filed on 4.1.2011, the respondent/wife would state that daughter Shreyakanchha is presently aged about 19 years and is residing with her grandparents whereas the appellant resides at a different place. She denied to have treated Shreyakanchha with cruelty or misbehaviour at any point of time, with further averment that Shreyakanchha is, in-fact, attached to her. According to the wife, the appellant always treated her with cruelty both mentally and physically, therefore, she had to lodge a police complaint against the appellant for commission of offence under Section 498-A of the IPC and at the same time, she also moved an application under Section 125 CrPC for grant of

maintenance. The appellant committed fraud with the respondent in order to get the proceeding withdrawn. She further averred that after the cases were compromised, she again went to reside with the appellant at his Baijnathpara, Raipur, residence, however, she was not allowed to enter the house and was manhandled and ousted by the appellant. She states to have chosen to reside at Jashpur on account of cruel behaviour of the appellant and not at her own volition. In her additional statement, she would state that the appellant wants to marry for the third time, therefore, the present petition has been preferred. In this petition, the appellant had obtained ex-parte decree by committing fraud and misrepresentation without disclosing at the time of compromising the criminal case and the maintenance proceeding that ex-parte divorce decree has already been obtained by him.

5. It is important to notice that ex-parte decree was passed in favour of the appellant on 27.11.2006, which was set aside by the Family Court vide order dated 3.9.2010 in MJC No.23/2010.
6. In his affidavit under Order 18 Rule 4 CPC, the appellant has stated that the respondent used to hate Shreyakanchha and was always pressurizing the appellant to send her to some hostel or to her grandparents. She also used to engage Shreyakanchha in household work, which was affecting her studies. He has further

stated that during her stay at Raipur, she mixed some foreign material in their meals to play some kind of sorcery to hypnotize him and his daughter so that they may act as per her wishes. In para-10 of the affidavit, he has stated that one day when he came back from the office, the door was locked from inside. On opening the door he found one Sunil Soni of Jashpur Nagar inside the toilet. On being questioned, the respondent informed that Shri Soni was in toilet and she was in kitchen, therefore, she had locked the door from inside. On further questioning, she became irritated and raised a fight with him by threatening that he would be falsely implicated in criminal case concerning demand of dowry. Such report was filed by her in April, 2006. In his cross-examination, he admits that their relations have become cordial and they have agreed to lead a happy and peaceful married life once again. He also admits that in the compromise proceeding before the criminal Court as well as in 125 CrPC proceeding, he did not disclose that ex-parte decree of divorce has already been granted in his favour. He also admits that after the compromise, the respondent had come to his house on 9.2.2009 but denies that she was manhandled and dragged out from the house, but later on, also admits that on the report lodged by the respondent he was called by Mahila Thana, Raipur.

7. Daughter Shreyakanchha was also examined as AW-2. In her affidavit under Order 18 Rule 4 CPC, she speaks about routine incidents that the respondent used to ask her to clean the toilet, wash basin, etc; not providing fresh meals in the school tiffin and further that the respondent was not attached to her. She would make passing reference of frequent visit by Sunil Soni and some other persons from Jashpur. During cross-examination, she admits that in the marriage ceremony of her stepmother's brother, she and her grandparents (दादा-दादी) had gone to Jashpur.
8. The maid Shakunkumari has been examined as AW-3. She speaks about the respondent's indifferent behaviour towards Shreya, however, she admits that she had not come to the Court for dictating affidavit, but denies that she has signed over the affidavit without reading it. The more important admission has been made in para-11 where she admits that whenever she used to work in the house, the respondent/wife was not available in the house and further that she had gone to Mahila Thana, Raipur along with the respondent for lodging the report against the husband.
9. We may now turn to examine the documentary evidence. Ex.-P/1 is the report made by the appellant to City Kotwali, Jashpur Nagar on 12.2.2009 informing that even after compromise on 9.2.2009 the respondent/wife is not accompanying him to join the

matrimonial chord at Raipur. Ex.-P/2 is the complaint lodged with PS City Kotwali, Raipur at about 2 am (mid night) on 15.3.2009 alleging that one Pawan Gupta of Jashpur along with two of his friends forcibly entered his house at 1 am and tried to take away TV, VCD etc.

10. On the other hand, the respondent filed copy of compromise application dated 2.12.2008 which was filed before the CJM, Jashpur Nagar stating that both the parties have entered into out of Court settlement, according to which, the appellant has agreed to bring back his wife to Raipur and the wife has agreed to reside with him. Ex.-D/2 is the order sheet of the said criminal proceeding recorded by the CJM, Jashpur Nagar mentioning therein that the respondent/complainant and her father have deposed before the Court that on account of compromise between the parties they want to get the criminal case closed. The DPO also made statement that on account of compromise between the parties he would not examine other prosecution witnesses. The appellant was acquitted in the criminal case in the above background vide Ex.-D/3 which is the judgment of acquittal delivered on 9.2.2009. Ex.-D/4 is the compromise application filed before the CJM, Jashpur Nagar in a proceeding under Section 125 CrPC. In this application, the appellant has stated that he wants to live with the

wife in every situation and that no other dispute remains subsisting between them. It is also categorically stated that the relations between the respondent and his daughter Shreya are cordial and that the respondent/wife is not interested in obtaining the amount of maintenance. Ex.-D/5 is the letter written by Shreya @ Anku to Master Vivek during Rakhi festival. The contents of this letter nowhere indicate that her relations with the respondent was not cordial or that she used to be cruel with the daughter during her stay at Raipur.

11. The appellant has referred to the judgments rendered in the matters of **Alka Agnihotri Vs. Rajeev Agnihotri<sup>1</sup>, Amit Mandal Vs. Cynthia Mandal<sup>2</sup>, Mira Mondal (Nee Biswas) Vs. Jyotirmoy Mondal<sup>3</sup>, Samar Ghosh Vs. Jaya Ghosh<sup>4</sup> and Narendra Vs. K. Meena<sup>5</sup>.**
12. Per contra, Shri Prasad, learned counsel for the respondent has referred to the judgments in the matters of **Dr. N.G. Dastane Vs. Mrs. S. Dastane<sup>6</sup>, Ravi Kumar Vs. Julmidevi<sup>7</sup>, Neelam Kumar Vs. Dayarani<sup>8</sup> and R. Balasubramanian Vs. Vijayalakshmi**

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1 2014 Lawsuit (MP) 2107

2 2012 Lawsuit (Chh) 399

3 2015 LawSuit (Cal) 152

4 (2007) 4 SCC 511

5 (2016) 9 SCC 455

6 (1975) 2 SCC 326

7 (2010) 4 SCC 476

8 (2010) 13 SCC 298

**Balasubramanian (Smt)<sup>9</sup>.**

13. The main thrust of the appellant's argument is on the respondent's cruel or indifferent or harassing behaviour towards her stepdaughter (daughter from appellant's first marriage) and irretrievable breakdown of marriage because the parties are living separately from 20.6.2002 i.e. for more than 15 years and there being no possibility of their re-union, a decree for divorce deserves to be allowed.
14. The main focus of the respondent's argument is on the point that cruelty or desertion has not been proved; on account of subsequent compromise between the parties on 9.2.2009, cruelty, if any, has been condoned and in any case, the husband cannot be allowed to take advantage of his own wrongful and fraudulent conduct.
15. The evidence discussed by us in the preceding paragraphs would indicate that the appellant/husband has quoted instances of the respondent's cruel or harassing behaviour towards his daughter, however, it is nowhere pleaded or deposed that because of such behaviour of the respondents towards his daughter, it is difficult to live with the respondent. The emphasis appears to be more on the plea of desertion which is pleaded in half portion of para-4 and para-5 to 7 of the plaint whereas the allegation of cruelty qua his

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9 (1999) 7 SCC 311

daughter (stepdaughter of the respondent) is only in the first part of para-4. It is also to bear in mind that when the daughter was examined in 2012, she was aged about 19 years. Thus her present age would be about 24 years. In her deposition, the daughter has mentioned about the instances of dispute or differences with her stepmother without mentioning that because of such instances, it was difficult for them to live with the respondent.

16. There is one more glaring feature in the appellant's deposition wherein he proceeds to make reference of one Sunil Soni to suggest as if his wife had some relations with that person, however, the plaint is conspicuously silent over this aspect of the matter. If the appellant was not sure about adulterous relations of the respondent with Sunil Soni, he should not have raised finger over the character of his wife by quoting the instances concerning Sunil Soni without trying to prove the same or seeking divorce on the ground that his wife's adulterous conduct has caused mental cruelty. If the appellant had no evidence to substantiate allegation, he should not have raised the issue but having once raised in his deposition, the same highlights his intention and mentality towards his wife.
17. In **Dr. N.G. Dastane** (Supra), the Supreme Court has held thus in para-34:-

“34. We do not propose to spend time on the trifles of their married life. Numerous incidents have been cited by the appellant as constituting cruelty but the simple trivialities which can truly be described as the reasonable wear and tear of married life have to be ignored. It is in the context of such trivialities that one says that spouses take each other for better or worse. In many marriages each party can, if it so wills, discover many a cause for complaint but such grievances arise mostly from temperamental disharmony. Such disharmony or incompatibility is not cruelty and will not furnish a cause for the dissolution of marriage. We will therefore have regard only to grave and weighty incidents and consider these to find what place they occupy on the marriage canvas.”

18. The above observation has been reiterated and quoted by the Supreme Court, time and again, in a catena of decisions holding that normal wear and tear of married life does not amount to cruelty.
19. In the case at hand, the appellant has not alleged cruelty qua his own matrimonial life with the respondent, but the allegation of cruelty centres around the respondent's conduct and behaviour towards his daughter Shreyakanchha. Even those allegations have been made without any expression that because of the said conduct, it is difficult to reside under one roof with the respondent. The parties were married on 21.11.99. The appellant claims that the respondent is residing separately since 20.6.2002. Criminal complaint and proceeding under Section 125 CrPC were initiated by the respondent/wife against the husband sometimes in the year

2006. The present suit for divorce was also filed on 9.3.2006. Ex-parte decree was granted in favour of the appellant on 27.11.2006, which was set aside on 3.9.2010. After grant of ex-parte decree, the appellant did not disclose existence of such decree to the respondent/wife and entered into compromise in the criminal case and in proceeding under Section 125 CrPC as well, in which the orders were passed on 9.2.2009. If the appellant had entered into compromise stating in the compromise petition in categorical terms that there has been an out of Court settlement between them and both of them want to begin happy and peaceful married life once again, the question which falls for consideration is whether such averment in the compromise petition and the consequent orders of acquittal and disposal of 125 CrPC proceeding in favour of the husband making him beneficiary thereof would amount to condonation of cruelty, if the respondent's conduct at all amounts to cruelty.

20. In **Dr. N.G. Dastane** (Supra), the Supreme Court found that the wife had treated the husband with cruelty and thereafter proceeded to examine whether the husband has condoned the cruelty. Answering the issue in favour of the wife, the Supreme Court noticed that under Section 23 (1)(b) of the Act, in any proceeding under the Act, the relief prayed for can be decreed only and only if

“where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty.” The Supreme Court thereafter proceeded to observe thus in paras- 54, 55, 71 & 72:-

“54. Before us, the question of condonation was argued by both the sides. It is urged on behalf of the appellant that there is no evidence of condonation while the argument of the respondent is that condonation is implicit in the act of cohabitation and is proved by the fact that on February 27, 1961 when the spouses parted, the respondent was about 3 months pregnant. Even though condonation was not pleaded as a defence by the respondent it is our duty, in view of the provisions of Section 23(1)(b), to find whether the cruelty was condoned by the appellant. That section casts an obligation on the court to consider the question of condonation, an obligation which has to be discharged even in undefended cases. The relief prayed for can be decreed only if we are satisfied “but not otherwise”, that the petitioner has not in any manner condoned the cruelty. It is, of course, necessary that there should be evidence on the record of the case to show that the appellant had condoned the cruelty.

55. Condonation means forgiveness of the matrimonial offence and the restoration of offending spouse to the same position as he or she occupied before the offence was committed. To constitute condonation there must be, therefore, two things: forgiveness and restoration. The evidence of condonation in this case is, in our opinion, as strong and satisfactory as the evidence of cruelty. But that evidence does not consist in the mere fact that the spouses continued to share a common home during or for some time after the spell of cruelty. Cruelty, generally, does not consist of a single, isolated act but consists in most cases of a series of acts spread over a period of time. Law does not require that at the first appearance of a

cruel act, the other spouse must leave the matrimonial home lest the continued cohabitation be construed as condonation. Such a construction will hinder reconciliation and thereby frustrate the benign purpose of marriage laws.

71. Considered in this context, the allegations made by the respondent in her letter Ex. 318 cannot revive the original cause of action. These allegations were provoked by the appellant by his persistent and purposeful accusation, repeated times without number, that the respondent was of unsound mind. He snatched every chance and wasted no opportunity to describe her as a mad woman which, for the purposes of this appeal, we must assume to be wrong and unfounded. He has been denied leave to appeal to this Court from the finding of the High Court that his allegation that the respondent was of unsound mind is baseless. He also protested that he was not liable to maintain the respondent. It is difficult in these circumstances to accept the appellant's argument either that the respondent deserted him or that she treated him with cruelty after her earlier conduct was condoned by him.

72. It is true that the more serious the original offence, the less grave need be the subsequent acts to constitute a revival and in cases of cruelty, "very slight fresh evidence is needed to show a resumption of the cruelty, for cruelty of character is bound to show itself in conduct and behaviour, day in and day out, night in and night out". But the conduct of the respondent after condonation cannot be viewed apart from the conduct of the appellant after condonation. Condonation is conditional forgiveness but the grant of such forgiveness does not give to the condoning spouse a charter to malign the other spouse. If this were so, the condoned spouse would be required mutely to submit to the cruelty of the other spouse without relief or remedy. The respondent ought not to have described the appellant's parents as "wicked" but that perhaps is the only allegation in the letter Ex. 318 to which exception may be taken. We find

ourselves unable to rely on that solitary circumstance to allow the revival of condoned cruelty.”

21. True it is that in the case at hand, there is no resumption of matrimonial life or cohabitation between the parties after the compromise entered into on 9.2.2009, however, that may not come to the rescue of the appellant, rather it would strengthen the respondent's case because the appellant himself was responsible in ousting the respondent from the house when she approached the appellant on 15.3.2009 to resume matrimonial life but was dragged out of the house by the appellant for which a report has been lodged. Lodging of this report has been supported by the maid who has deposed in her cross-examination that she has accompanied the respondent when she had visited Mahila Thana, Raipur in the mid night of 15<sup>th</sup> March, 2009.
22. The law is fairly well settled that a party cannot be allowed to take advantage of its own wrongful conduct, therefore, the appellant having compromised the matter by solemn compromise to resume marital life but instead of honouring, ousted the wife out of the house when she tried to resume marital life. The appellant having derived the benefit from the compromise, cannot be granted another undeserving advantage or benefit by granting decree of divorce on the ground of cruelty which he condoned by entering

into a compromise. We may not be misunderstood to have found that the appellant has proved cruelty. Our ground of condonation of cruelty is on assumption that even if the respondent has allegedly roughly treated the stepdaughter, the same stands condoned.

23. Insofar as decree on the ground of desertion is concerned, for constituting such ground, element of *animus deserendi* should always remain present.

24. In **Bipinchandra Jaisinghbai Shah Vs. Prabhavati** {AIR 1957 SC 176}, history and development of a concept of “desertion” as a cause of action for grant of decree of divorce has been spelt out. Quoting English authors and Halsbury's Laws of England, the Supreme Court observed thus in para-10:-

“(10) What is desertion? “Rayden on Divorce” which is a standard work on the subject at p.128 (6<sup>th</sup> Edn.) has summarised the case-law on the subject in these terms:-

*“Desertion is the separation of one spouse from the other, with an intention on the part of the deserting spouse of bringing cohabitation permanently to an end without reasonable cause and without the consent of the other spouse; but the physical act of departure by one spouse does not necessarily make that spouse the deserting party”.*

The legal position has been admirably summarised in paras 453 and 454 at pp. 241 to 243 of Halsbury's Laws of England (3<sup>rd</sup> Edn.), Vol.12, in the following words:-

*“In its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. It is a total repudiation of the obligations of marriage. In view of the large variety of circumstances and of modes of life involved, the Court has discouraged attempts at defining desertion, there being no general principle applicable to all cases.*

Desertion is not the withdrawal from a place but from a state of things, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state; the state of things may usually be termed, for short, 'the home'. There can be desertion without previous cohabitation by the parties, or without the marriage having been consummated.

The person who actually withdraws from cohabitation is not necessarily the deserting party. The fact that a husband makes an allowance to a wife whom he has abandoned is no answer to a charge of desertion.

The offence of desertion is a course of conduct which exists independently of its duration, but as a ground for divorce it must exist for a period of at least three years immediately preceding the presentation of the petition or where the offence appears as a cross-charge, of the answer. Desertion as a ground of divorce differs from the statutory grounds of adultery and cruelty in that the offence founding the cause of action of desertion is not complete, but is inchoate, until the suit is constituted. Desertion is a continuing offence”.

The Supreme Court thereafter in the same paragraph held that the quality of permanence is one of the essential elements which differentiates desertion from willful separation. 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 will not amount to desertion. 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.

It was further observed that the 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 the 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 *de facto* separation may have commenced without the necessary animus or it may be that the

separation and the *animus deserendi* coincide in point of time; for example, when the separating spouse abandons the marital home with the intention, express or implied, of bringing cohabitation permanently to a close. If a deserting spouse takes advantage of the *locus poenitentiae* thus provided by law and decides to come back to the deserted spouse by a *bona fide* offer of resuming the matrimonial home with all the implications of marital life, before the statutory period is out or even after the lapse of that period, unless proceedings for divorce have been commenced, desertion comes to an end and if the deserted spouse unreasonably refuses to offer, the latter may be in desertion and not the former. Hence it is necessary that during all the period that there has been a desertion, the deserted spouse must affirm the marriage and be ready and willing to resume married life on such conditions as may be reasonable. It is also well settled that in proceedings for divorce the plaintiff must prove the offence of desertion, like and other matrimonial offence, beyond all reasonable doubt. Hence, though corroboration is not required as an absolute rule of law, the courts insist upon corroborative evidence, unless its absence is accounted for to the satisfaction of the court.

25. In **Lachman Utamchand Kirpalani Vs. Meena @ Mota** {AIR 1964 SC 40}, the Supreme Court has held that desertion in its essence means the intentional permanent forsaking and

abandonment of one spouse by the other without that other's consent and without reasonable cause.

26. In **Smt. Rohini Kumari Vs. Narendra Singh** {AIR 1972 SC 459}, the Supreme Court yet again held that desertion does not imply only a separate residence and separate living. It is also necessary that there must be a determination to put an end to marital relation and cohabitation.
27. In **Geeta Jagdish Mangtani Vs. Jagdish Mangtani** {AIR 2005 SC 3508}, the Supreme Court, after narrating the evidence available in the case, held that the conclusion is inevitable, that there was never any attempt on the part of the wife to go to husband's house, therefore, from this fact alone *animus deserendi* on the part of the wife is clearly established. She has chosen to adopt a course of conduct which proves desertion on her part and that it was without a reasonable cause. Such a course of conduct over a long period indicates total abandonment of marriage. It also amounts to willful neglect of the husband by the wife.
28. In a more recent judgment in the matter of **Malathi Ravi, M.D. Vs. B.V. Ravi, M.D.** {(2014) 7 SCC 640}, the Supreme Court has approved its earlier judgment on the point in the matter of **Savitri Pandey Vs. Prem Chandra Pandey** {(2002) 2 SCC 73} and has

reiterated the same view regarding desertion and the nature of proof required in law to establish the marital offence.

29. The evidence available in the case suggests in definite terms that the respondent had just and reasonable cause to reside separate from the appellant as the appellant was suspecting on her character and was also treating her with cruelty for which she lodged FIR leading to filing of charge sheet against the appellant before the CJM, Jashpur Nagar for offence under Section 498A IPC which was eventually disposed of on the basis of settlement between the parties. Since there is no finding that FIR was false but the parties entered into compromise, it is implied that there was just and reasonable ground with the respondent to reside at her parental house. The element of *animus deserendi* is thus absent as the respondent had no intention to abandon the husband because otherwise the parties would not have compromised expressing their intention to re-unite and lead peaceful and happy married life once again. This itself negates the plea of desertion.

30. There is one more aspect of the case on which the appellant has pressed for decree of divorce on the ground of irretrievable breakdown of marriage. However, suffice it would be to refer to the Supreme Court's decision in the matter of **Neelam Kumar** (Supra) wherein it is held that if the party to marriage, by his own

conduct brings the relationship to the point of irretrievable breakdown, he/she cannot be allowed to seek divorce on the ground of breakdown of marriage. That would simply mean giving someone the benefit of his/her own mistake. The Supreme Court also referred to its earlier decision in the matter of **Vishnu Dutt Sharma Vs. Manju Sharma** {(2009) 6 SCC 379} wherein it is observed that irretrievable breakdown of marriage is not a ground for divorce as it is not contemplated under Section 13 and granting divorce on this ground alone would amount to adding a clause therein by a judicial verdict, which would amount to legislation by Court. Even otherwise, in some cases, the Supreme Court has allowed decree on the ground of irretrievable breakdown of marriage by exercising power under Article 142 of the Constitution of India and not as a ground for divorce under Section 13.

31. For all the above-stated reasons, this Court does not find any substance in this appeal, the same fails and is hereby dismissed.

Sd/-  
**Judge**  
 (Prashant Kumar Mishra)

Sd/-  
**Judge**  
 (Arvind Singh Chandel)

**HEADLINES**

During pendency of the divorce proceeding in which ex-parte decree of divorce was set aside, parties compromised the criminal case under Section 498A IPC and maintenance proceeding under Section 125 CrPC. Cruelty alleged in the divorce petition gets condoned on account of compromise. For the same reasoning desertion as ground of divorce also not proved because there was no intention to abandon the spouse. Plea of irretrievable breakdown of marriage is not available to a party to the marriage who is guilty of suppression of facts.