

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on: 18.07.2017

Judgment Pronounced on: 31.08.2017

CORAM:

THE HON'BLE MR. JUSTICE R. SUBBIAH
and
THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Civil Miscellaneous Appeal No. 876 of 2014

S.Savitha .. Appellant/Respondent

Versus

Mr.Velmurugan .. Respondent/Petitioner

Appeal filed under Section 19 of the Family Courts Act, 1984 against the Order and Decreetal Order dated 28.09.2013 made in O.P. No. 1447 of 2007 passed by the II Additional Family Court, Chennai.

For Appellant : Mr. N. Manokaran

For Respondent : Mr. AR.L. Sundaresan, Senior Counsel
for Mr.R.Natesh Kumar

JUDGMENT

(Judgment of the Court was delivered by A.D.JAGADISH CHANDIRA, J)

The appellant is the wife, who has filed the appeal against the Order and Decreetal Order dated 28.09.2013 passed by the II Additional Family Court, Chennai in O.P. No. 1447 of 2007, granting decree of divorce under Section 13(1)(1-a) of the Hindu Marriage Act, 1955.

2. Brief facts leading to the filing of the Original Petition for divorce by the respondent/husband seeking divorce was that he and the appellant got married on 03.09.2004 at Sri Varalakshmi Ramachandra Tirumana Mandapam, Sevoor, Arani Taluk, according to Hindu rites and custom and that the marriage was arranged one; that he had given dollar chain worth about 5 sovereigns and also 7 rings worth about 5 sovereigns to the appellant/wife at the time of marriage and that 50% of the marriage expenses was borne by him and that no demand of dowry was made at the time of marriage; that the respondent/husband does not know what are the jewels and other articles given to

the appellant/wife at the time of marriage by way of Sridhana; that immediately after the marriage, both of them lived together happily in the respondent's sister's house, only for one week. Before the marriage the appellant's relative one Mr.R.Vinayagamoorthy who negotiated the marriage had informed him that the appellant is a graduate and belonged to a reputed family and only after marriage the respondent came to know that the appellant had studied only upto plus two and that the other details given before the marriage were false and that the appellant and her relatives had given a false and manipulated Jathagam to suit the respondent's Jathagam and only after the marriage and that the respondent came to know that the Jathagam given by the appellant and her relatives was a false one.

3. It was further alleged that the respondent was shocked to hear from the appellant's own relatives that she was having illegal contact with one Sembian even before marriage and that the respondent came to know that, even after marriage the said Sembian had come to the house when the respondent was in his office; that the appellant lived as a wife with the respondent only for a week and thereafter failed and neglected to do her matrimonial obligations; that one person by name Saravanan claiming himself to be the appellant's cousin brother came to Chennai and stayed in the house and that after a week from the date of the marriage, one afternoon when the respondent came from the office, he found the appellant and Saravanan in the bed room in compromising position and when he questioned about the same out of shock, the appellant coolly informed that she had contact with Saravanan even before the marriage and threatened the respondent that if he disclosed the same to anybody she would commit suicide and throw the blame on the respondent; that the appellant after solemnization of the marriage, voluntarily had sexual intercourse with Saravanan and that the appellant often picked up petty quarrels with the respondent and created a big scene and that even does not allow him to sleep and that she has also beaten the respondent on one or two occasions when she got angry; that the respondent could not tolerate the way she shouts at loud pitch using unparliamentary words and filthy language and that she pressurized him that he should not go to any of his relatives house.

4. It was further alleged that on 12.11.2006 when the respondent was having his dinner in his brother's house, the appellant barged into the house and started shouting at loud pitch for nothing and created a big scene as if the respondent's brother and sister-in-law beat her, however nothing untoward had happened on that day; that the respondent's relatives took the issue before the local councillor and the same was turned futile and that from 13.11.2006 the appellant deserted the respondent; that after that incident, he tried to negotiate with her to lead a smooth life, however he was informed that she was interested

to live with him; that during the month of January 2007, three persons came to the respondent's office and threatened him with dire consequences; that even when the respondent speaks with his cousin sisters, the appellant makes a big hue and cry and doubts the respondent's chastity; that the appellant has caused a lot of cruelty both mentally and physically and all his efforts to unite with the appellant turned futile and that he has not condoned the adulterous act committed by the appellant and that the appellant is residing alone since November 2006; that unable to bear the torture the respondent was forced to give a legal notice to the appellant on 03.05.2007 and that the appellant has refused to receive the notice and it has been returned with an endorsement 'refused'; that the marriage between the respondent and the appellant had irretrievably broken down owing to the wilful and deliberate mental torture and harassment rendered by the appellant towards the respondent. On the above grounds, he prayed for dissolution of the marriage.

5. The appellant has filed a counter alleging that her family alone had incurred the entire marriage expenses to the tune of Rs.4 lakhs; that after the marriage there was constant torture and harassment demanding dowry of Rs.1,00,000/- and a motor cycle; that the respondent's family had well before marriage demanded 20 sovereigns of jewel which was given to the respondent and 5 sovereigns to be gifted to the respondent; that after marriage the respondent's sister very often used to come home and directed the appellant to buy fridge, washing machine and a motor bike from her paternal uncle.

6. Further in the counter the appellant denied the allegations that she is in possession of 7 rings belongs to the respondent and that after the marriage both the appellant and the respondent lived in the sister's house and that a false horoscope was given to fix the marriage and that she represented that she was a graduate; that all the stories about horoscope manipulation is nothing but the figment of respondent's imagination. The appellant had denied the allegation that she was having illegal contact with Sembian and that the said Sembian is none other than the husband of her sister Sangeetha, who lives in Chengalpet and that her sister came twice to the respondent's matrimonial home and advised the respondent to lead a happy married life; that the allegation of the respondent that Sembian's visit to their residence in his absence is baseless; that the appellant denied the allegation that the appellant and the respondent lived together only for a week as husband and wife and that she neglected to do her matrimonial obligations and that it is the respondent on the other hand who failed to maintain the household and always stayed in his brother's house; that the respondent did not take food regularly from the matrimonial house; that only to avoid the legal impediment in numbering the petition on the ground of adultery after a lapse

of nearly 2-1/2 years since the event of witnessing the adulterous living of the appellant were falsely averred by the respondent; that the address of the said Saravanan is stated by the respondent as unknown and that the respondent himself alleges that Saravanan is a brother of appellant; that the entire allegation is a cooked up story only for filing this O.P.

7. It was further alleged that the respondent did not come home at night hours and he used to come in the morning at 7 "0 Clock only for a shave and bath and go to office; that the appellant patiently waited for the respondent to mend his ways and went to his brother's house only on the look out of the respondent, several panchayats were also held by the appellant's uncle so that the respondent would change his mind and lead a happy married life; that the appellant pleaded with him to come along with her to the matrimonial residence, but the appellant was beaten severely and when the issue was taken up before the local councillor by the respondent and they advised the respondent only; that it is the respondent who deserted the appellant; that the relatives of the appellant had gone to meet the respondent and his brother only to sort out the problems and mend the strained relationship and since he is the elder brother, his relatives had requested him to settle the problem and advice his younger brother; that the appellant suspected the respondent that he had illicit relationship with his brother's wife and that only to cover up his illicit relationship the respondent is making such wild allegations of adultery on the appellant; that the respondent had very close relationship with another women colleague about whom the appellant came to know after these problems; that inspite of all the cruelties, tortures meted out by the respondent, the appellant is willing to live with him as a dutiful wife and that it is not the appellant who wanted to live alone; that the respondent stopped coming to the matrimonial home and that only on the fond hope of reunion the appellant never persuaded the criminal complaint and in all the conciliation held in the mediation in the anticipatory bail petition filed by the respondent the appellant had expressed her eagerness for reunion; that it is only the respondent who refused for the reunion; that a legal notice was sent by the respondent and the same was refused by her only in the fond hope of reunion and that the respondent was not aware of the contents of the notice; that there is no iota of truth in the pleadings of the respondent; that it is the respondent who treated the appellant cruelly for want of more dowry and deserted her and that the petition filed by the respondent is devoid of any truth and no merits. Hence she had prayed for dismissal of the petition.

8. Before the trial Court, on the side of the respondent/ husband he examined himself as PW1 and his father and brother were examined as PW2 and PW3 and Ex.P1 to Ex.P5 were marked. On

the side of the appellant/wife, she examined herself as RW1 and her uncle Vinayagam, her Sister Sangeetha and her friend one G.Vengatakrishnan were examined as RW2 to RW4 and Ex.R1 to R4 were marked. The Family court though framed issues in respect of adultery and cruelty, disbelieved the husband in respect of allegations of adultery. However, allowed the petition for divorce on the ground of cruelty. The Family Court had taken into consideration that the appellant used to shout at him, suspecting him and further getting angry and hurling vessels at him and not allowing him to sleep which amounted cruelty. Further a contention was also raised that the appellant had preferred a false complaint under Section 498A of IPC and the said complaint was not proceeded by the police after enquiry and that the false complaint under Section 498A caused cruelty. The Family Court took into consideration the admission of the appellant in her evidence that she had preferred a complaint against the respondent under Protection of Women from Domestic Violence Act and for maintenance and had also taken into consideration the contention of the appellant in her counter that the husband alone treated her with cruelty for want of more dowry and deserted her. The Family Court also took into consideration the submission of the wife in her proof affidavit that she had strong reason to suspect that her husband had illicit relationship with his brother's wife and that she had also stated that her husband had close relationship with another woman colleague in the office and that she came to know after the problems. The Family Court also relied on the deposition of the appellant/wife which is extracted hereunder:-

9. In the proof affidavit filed by the appellant before the Family Court she has stated as follows:

"I had strong reasons to suspect that the petitioner had illicit relationship with his brother's wife. Only to cover up his illicit relationship the petitioner is making such wild allegation of adultery on me. The petitioner had very close relationship with another woman colleague about whom I came to know after these problems. The mediator who arranged the marriage had openly told me that they got the petitioner married in the fond hope of bringing a change in him. In spite of all the cruelties, tortures, and immoral incidents and unfaithfulness the respondent is willing to condone all his mistakes and willing to live with him as a dutiful wife. It is not me who wanted to live alone. The petitioner only stopped coming to the matrimonial residence. Only on the fond hope of reunion I never persuaded the criminal complaint and in all the conciliation held in the mediation in the Anticipatory Bail Application filed by the petitioner I expressed

eagerness for reunion. It is only the petitioner who refused for the reunion.”
Whereas, in the cross-examination, the respondent/appellant has deposed as follows:-

“.....திருமணம் ஆகி நானும் மனுதாரரும்? நன்கும்பாக்கம்? காமராஜ் மூரம் என்ற விலாசத்தில் தனிக் குதெத்தனம் இருந்ததாம்,திருமணம் ஆகி 1 வாரம் கடித்து இருவருக்கும் பிரச்சனை வந்ததினால்? மனுதாரர் காலை சூநரத்தில் குளித்துவிட்டு அலுவலகம் சேல்வதற்காக மட்டும் வருவார்,மனுதாரர் வரதட்சணை சூகட்டு கோடுமை சேய்த்தாக வடிக் கறி னூர் அறிவிப்பு இரண்டு நாட்களுக்கு முன்பு காவல் நிலையத்தில் முகர் கோடுத்தன. வடிக் கறி னூர் அறிவிப்பு கோடுக்கப்பட்ட விவரம் எனக்கு தெரியும். அந்த வடிக் கறி னூர் அறிவிப்பை வாங்க மறுத்துவிட்குடன் என்றால் சரிதான், நான் வடிக் கறி னூர் அறிவிப்புக்கு பதில் கோடுக்கவில்லை.....”

“ 2007 முதல் நாங்கள் இருவரும் பிரிந்து இருக்கிறோம், குமகூல குறிப்பிட்டுள்ள இடைக்கால மனுவில் மனுதாரர் 3 மாதங்கள் என்னிடம் அன்பாக இருந்தார் என்றும் அதற்கு பிறகுதான் பிரச்சினை செய்தார் என்று சோல்லி ருள் குளன் என்றால் சரிதான், 3 மாதங்கள் சந்தாதாசமாக இருந்ததாம் ஆனால் குபான விசாரணையில் 3 வருடம் சந்தாதாசமாக இருந்ததாம் என்று சோல்லி ருள் குளன் என்றும் அதில் எது உண்மை என்றால் 3 மாதம் மிகவும் சந்தாதாசமாக இருந்ததாம், அதன் பிறகு எங்களுக்கிடையே சிறு சிறு பிரச்சினைகள் இருந்தன, 2007/ல் மனுதாரர் என்னைவிட்டு பிரிந்து சேன்றுவிட்டார்,”

10. The Family Court thus came to the conclusion from the evidence of R.W.1 that there were disputes between the appellant/wife and respondent/husband within a week of marriage and the Family Court had further concluded that it is the categorical evidence of the appellant/wife that the respondent/husband had stopped coming to the matrimonial home for sometime and he did not come home at night hours and used to come in the morning at 7 'O' clock only for a shave and bath and go to the office. Further the Family Court took note of the counter and deposition of the of the appellant/wife in which she had stated that she and her husband lived happily for three months and though she has deposed that there was a dispute within a week and the husband never used to take any food at home and the reason for the attitude of the husband has not been disclosed. The Family Court also came to the conclusion that it is not the case of the appellant/wife that the respondent/husband ill-treated her and caused cruelty but she had suspected that he was having illegal contact with his colleague in the office or that he might be having illicit intimacy with his brother's wife and ultimately came to the conclusion that it was the appellant/wife who committed cruelty and granted divorce on the ground of cruelty and dismissed the said petition regarding the ground of adultery. Aggrieved against the said order and decretal order, the respondent/wife has preferred this present appeal.

11. The learned counsel for the appellant Mr.N.Manoharan vehemently contended that the Family Court had wrongly interpreted the evidence of the appellant/wife and in the absence of any proof for the cruelty, wrongly arrived at a

conclusion that the appellant had subjected the respondent to mental cruelty. Further it was contended that the order has been passed by the Family Court Judge basing his findings on assumptions and presumptions and the Family Court ought not to have granted divorce on the ground that the shouting of the appellant at the respondent caused mental cruelty when especially there was no evidence for the same and he further contended that the husband has to prove his case by cogent evidence. Whereas the Family Court has allowed the case based on the answers elicited from the appellant/wife during the cross-examination.

12. Per contra, it was contended by the Mr. AR. L. Sundaresan, learned Senior Counsel for the respondent that the Family Court had rightly taken into consideration the evidence of the appellant/wife and the respondent/husband. In the present case the appellant has stated that herself and the respondent were happy for 3 months and admitted that there was a dispute within a week of the marriage. Whereas the case of the respondent is that the appellant used to shout and suspect the respondent and that the appellant ought to have denied the allegation specifically or she should have taken efforts to prove before the Family Court on what circumstances she behaved in that manner or the reason for the respondent to come home at night left in the morning and subsequently stop coming home completely. Further the vague denial of the appellant and her inconsistent pleas regarding the demand of dowry, her suspicion of illegal intimacy of respondent with his brother's wife and his office colleague prove the case of the respondent that he was subjected to mental cruelty by the appellant.

13. Further, it was also contended by Mr. AR. L. Sundaresan, learned Senior Counsel for the respondent that the parties have been living separately for the past 10 years and the marriage has virtually lost its meaning for them and that they have reached the point of no return and that she had also not filed any petition for restitution of conjugal rights so as to express her inclination to join the respondent at any point of time and as such there was no life in the marriage bond and that it should be dissolved for this reason. It was further submitted by the counsel for the respondent that due to the long date of separation and since the appeal was not earnestly followed in time, the respondent had meanwhile married for the second time and has got two children born out of the wedlock and submitted that he is prepared to pay substantial amount towards permanent alimony. He also brought to the notice of this Court that in view of the interim orders passed by this Court, he had already paid an amount of Rs. 2,31,000/- to the appellant/wife. It was further submitted that both of them have lived together for a period of six months and thereafter they have been living separately throughout.

14. We have carefully gone through the submissions made by both the counsels and also gone through the records of the lower court. In view of the submissions made on either side the only question that has to be seen is as to whether the finding of the Family Court that the act of the appellant/wife would amount to cruelty so as to concur with the finding of the lower court.

15. In respect of cruelty the Full Bench of the Apex Court in *Samar Ghosh v. Jaya Ghosh* reported in 2007 4 SCC 511 has held as follows:- (paragraphs 97 to 102)

"97. This Court in *Naveen Kohli v. Neelu Kohli* reported in (2006) 4 SCC 558 dealt with the similar issues in detail. Those observations incorporated in paragraphs 74 to 79 are reiterated in the succeeding paragraphs.

"74. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised 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.

75. Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

76. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist."

77. Some jurists have also expressed their apprehension for introduction of irretrievable breakdown of marriage as a ground for grant of the decree of divorce. In their opinion, such an amendment in the Act would put human ingenuity at a premium and throw wide open the doors to litigation, and will create more problems than are sought to be solved.

78. The other majority view, which is shared by most jurists, according to the Law Commission Report, is that human life has a short span and

situations causing misery cannot be allowed to continue indefinitely. A halt has to be called at some stage. Law cannot turn a blind eye to such situations, nor can it decline to give adequate response to the necessities arising therefrom.

79. When we carefully evaluate the judgment of the High Court and scrutinize its findings in the background of the facts and circumstances of this case, it becomes obvious that the approach adopted by the High Court in deciding this matter is far from satisfactory."

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.

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.

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 strait-jacket 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 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 sterilization 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.

102. When we take into consideration aforementioned factors along with an important circumstance that the parties are admittedly living separately for more than sixteen and half years (since 27.8.1990) the irresistible conclusion would be that matrimonial bond has been ruptured beyond repair because of the mental cruelty caused by the respondent."

16. In 2012 (2) MLJ 833 (U.Sree vs. U.Srinivas), at paragraph 88, it has been held as follows:-

"88. In short, it would be difficult for the parties to bury the past and to begin a new relationship of Husband and Wife. For the past 15 years both parties have remained separately. During these years, they developed their own life style, remained in isolation and grown in their own thoughts. Marriage tie between the parties has become emotionally dead and the same is beyond repair because of the emotionally dead relationship which is a positive act of oppressive mental cruelty, in our considered opinion. There is no chance for both parties to live together in future. In such a context, the decree of Divorce is the

only remedy to be passed, so that the parties may choose their life of their own way, when there has been no scope for their reunion."

17. The ratio in the above judgments had been further fortified by the later judgment of the Hon'ble Apex Court reported in (2013) 5 SCC 226 (K.Srinivasa Rao vs. D.A.Deepa), wherein it had been held as follows:- (paragraphs 29 to 36)

"29. In our opinion, the High Court wrongly held that because the appellant-husband and the respondent-wife did not stay together there is no question of the parties causing cruelty to each other. Staying together under the same roof is not a pre-condition for mental cruelty. 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 spouses life miserable. This is what has happened in this case.

30. It is also to be noted that the appellant-husband and the respondent- wife are staying apart from 27/4/1999. Thus, they are living separately for more than ten years. This separation has created an unbridgeable distance between the two. As held in Samar Ghosh, if we refuse to sever the tie, it may lead to mental cruelty.

31. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the courts verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the courts decree.

32. In V. Bhagat 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 of mental cruelty this Court observed that irretrievable breakdown of marriage is not a ground by itself, but, while scrutinizing the evidence on record to determine whether the grounds alleged are made out and in determining the relief to be granted the said circumstance can certainly be borne in mind.

33. In Naveen Kohli, where 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 the marriage had 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 this 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.

35. In Vijay Kumar, it was submitted that if the decree of divorce is set aside, there may be fresh avenues and scope for reconciliation between parties. This court observed that judged in the background of all surrounding circumstances, the claim appeared to be too desolate, merely born out of despair rather than based upon any real, concrete or genuine purpose or aim. In the facts of this case we feel the same. 36. While we are of the opinion that decree of divorce must be granted, we are alive to the plight of the respondent-wife. The appellant-husband is working as an Assistant Registrar in the Andhra Pradesh High Court. He is getting a good salary. The respondent-wife fought the litigation for more than 10 years. She appears

to be entirely dependent on her parents and on her brother, therefore, her future must be secured by directing the appellant-husband to give her permanent alimony. In the facts and circumstance of this case, we are of the opinion that the appellant-husband should be directed to pay a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) to the respondent-wife as and by way of permanent alimony."

18. In the recent judgment relied on by the counsel for the Appellant reported in AIR 2017 SC 2138 (Raj Talreja vs. Kavita Talreja), the three Judges Bench of the Apex Court has held as follows:-

"10. Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. 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 (for short 'the Act'). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty. In the present case, all the allegations were found to be false. Later, she filed another complaint alleging that her husband along with some other persons had trespassed into her house and assaulted her. The police found, on investigation, that not only was the complaint false but also the injuries were self inflicted by the wife. Thereafter, proceedings were launched against the wife under Section 182 of IPC.

In the above judgment the Hon'ble Apex Court had held that wife made reckless, defamatory and false accusation against her husband, his family members and colleagues which would definitely have the effect of lowering his reputation in the eyes of his peers and when it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusation against the other spouse would be an act of cruelty.

19. In the above judgment referred to in the foregoing paragraph the Hon'ble Apex Court had held that though the acts of the wife for filing false case against her husband amount to cruelty, had also stated that they are not oblivious to the requirements of the wife to have a decent living and directed the husband to pay substantial amount towards permanent alimony. Taking into consideration the ratio laid down by the Apex Court in the above referred judgment and applying the above principle to the present case we see that in this case also the wife had not only preferred a complaint alleging demand of dowry which she had not pursued further but had also alleged illicit intimacy of her husband with his own brother's wife and with his office colleague.

20. Though the court below has held that there is no proof of adultery and had rejected the claim of the husband on that ground had at the same time not believed the allegations of the wife that her husband had illegal relationship with his brother's wife and also one another office colleague. However, the Family Court had rightly held that the wife's reckless and false allegations against her husband and his family members and colleague, lowering his reputation which allegations later found to be patently false held that the conduct of the wife levelling false accusation against the husband amounts to cruelty and had stated that the husband is entitled to decree of divorce.

21. Further it is to be seen that the parties have been living separately for more than 10 years. On a perusal of the records and deposition of the appellant as well as the respondent coupled with the fact that the marriage between the appellant and the respondent took place on 03.09.2004 dispute arose between them within three months of marriage, the divorce petition was filed on 11.05.2007 after four years of marriage and after completion of trial the Family Court has granted divorce on 28.11.2013 and the appeal has been filed on 14.02.2014 and till today the parties are living separately. Moreover, the appeal had not been earnestly followed up and after the lapse of time for preferring the appeal it is understood that the respondent had also married again and he has got two children out of the marriage. The appellant has contested the case for about 10 years.

22. Taking into consideration the above facts we are of the opinion that the judgment of the Family Court granting decree of divorce is to be confirmed on the ground of cruelty. However, we are also alive to the plight of the Appellant wife who appears to be dependant on her relatives. It has been stated by the appellant that the respondent is gainfully engaged in a profitable travel business and that recently he has also purchased a property worth several lakhs and that he is capable of maintaining her and that she is dependent on her relatives

for survival. The Appellant and the respondent have been separated for more than 10 years and the appellant has fought the legal battle for more than 10 years, and she is dependant on her relatives, therefore her future has to be secured by directing the respondent/husband to provide her permanent alimony under Section 25 of the Hindu Marriage Act. We have also taken note of the submissions made by the learned Senior Counsel for the respondent with regard to the willingness of the respondent to pay permanent alimony. Taking into consideration the submissions of the learned Senior Counsel and also the facts and circumstances of the case that the respondent/husband has already paid Rs.2,31,000/- towards interim alimony pursuant to order of this Court, we are of the opinion that the respondent/husband should be directed to pay a further sum of Rs.12,00,000/- (Rupees Twelve Lakhs only) as and by way of permanent alimony within a period of six weeks from the date of receipt of the copy of the order.

23. With the above observations this appeal is dismissed. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

gr.

To

1. The II Additional Judge
Family Court, Chennai.

+1 Cc to Mr.N. Manokaran, advocate sr 63121

+1 CC to Mr.R. Naresh Kumar, Advocate sr 63231.

KGK(CO)
sp(31/10/2017)

CMA No. 876 of 2014

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