

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on: 23.07.2018

Judgment delivered on : 30.08.2018

First Appeal No. 44 of 2002

- Khir Das, S/o Shri Ram Prasad Aged about 25 years, R/o Village Murra, Teh Ahiwara, Distt Durg (CG)

---- Appellant

Versus

- Smt Vinna, S/o Hredylal Gilhare, aged about 24 years, R/o through Hredylal Gilhare Principal Girl High School, Village Bare Urla Post Abhanpur Distt Raipur

---- Respondent

For Appellant	: Shri Vikram Dixit, Advocate
For Respondent	: Shri SS Baghel, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

CAV Judgment

1. The appellant challenged impugned judgement and decree dated 31.01.2002 passed by the learned third Additional District Judge, Durg in Civil Suit No. 169-A of 1999, whereby the learned Court below dismissed the application under Section 13 of the Hindu Marriage Act, 1955 (for short, 'the Act of 1955') filed by the appellant/husband.

2. Brief facts of the case are that marriage of appellant with respondent took place on 05.05.1992. From their wedlock, birth of one child took place. After birth of the second child a criminal complaint was lodged by the respondent/wife in the year 1995 for offence under Section 498 A of the IPC. As appellant/husband was not maintaining respondent/wife,

proceeding under Section 125 CrPC was also filed before competent Court in which by way of interim order, learned Court awarded interim maintenance of Rs.1,000/- per month. During pendency of aforementioned proceedings, compromise took place between the parties. In the garb of that compromise, criminal case under Section 498A was concluded after recording statement of respondent/ wife and proceedings under Section 125 of the CrPC was consequently withdrawn. Thereafter, appellant and respondent started living together and birth of third child took place. During the pregnancy of fourth child, respondent/ wife was selected as Shiksha Karmi Gr-III and was posted at village- Nandini Khundni, Bhilai.

3. After appointment as Shiksha Karmi, as per agreement between the parties, appellant/ husband started living with respondent/ wife at her place of posting. After sometime, some dispute arose between the parties. The appellant/ husband left the house of respondent/ wife and returned to his parents' house on 10.03.1999. Thereafter, a Panchayat meeting took place in which no settlement arrived at between the parties. Subsequently, appellant filed an application under Section 13 of the Act of 1955 for grant of divorce on the ground of cruelty by respondent/ wife on 15.09.1999.

4. The appellant in his application filed under Section 13 of the Act of 1955 took plea that respondent lodged false and frivolous complaint under Section 498A of IPC against him and subsequently withdrew the same after realising the mistake on her part. It has been further pleaded that after selection as Shiksha Karmi Gr-III, respondent/ wife started ill treating him by asking him for doing all household work, preparing food, taking

care of small child and also quarrelled with him. It has also been pleaded that on 10.03.1999 on a dispute between them, respondent/wife assaulted him and since then, he is residing in his parents' house. It has been further stated that on 15.08.1999, a meeting was also organized in presence of the persons of the community but respondent and her parents have lodged false complaint in Police Station mentioning therein that appellant came there to quarrel and respondent also refused to live with appellant before Panchayat meeting.

5. Respondent/ wife, after notice submitted reply and denied all the allegations mentioned in the application under Section 13 of the Act of 1955. She further stated that as appellant and his family members used to harass her and therefore, she lodged complaint under Section 498A IPC. She also filed application under Section 125 CrPC in which interim maintenance was also awarded. During course of trial of the said case, appellant and his parents have entered into compromise and took her back to her matrimonial home. She further pleaded that appellant was not discharging liability of marital life and not maintaining her properly though appellant was having agriculture land of about 7 acres and his father being a government servant earning Rs.7-10 thousand per month. She further pleaded that she still wants to continue and maintain her matrimonial life with appellant and denied all other allegations. She further submitted that if application is allowed, life of her four children will be spoiled.

6. On the basis of pleadings, learned trial Court framed issues with regard to cruelty by respondent on account of abusing appellant and his

parents, thereby causing mental harassment to appellant and also that whether respondent after quarrelling, ousted appellant on 10.03.1999.

7. Learned trial Court on the basis of pleadings and considering documentary and oral evidence available on record, dismissed the application filed under Section 13 of the Act of 1955 on the ground that appellant/husband failed to prove his case in accordance with law.

8. Learned counsel appearing for the appellant submits that as respondent made false and frivolous complaint against appellant and his parents in the year 1995 due to which all of them were arrested and sent to jail for a period of 4-5 days and subsequently, the criminal case was withdrawn. He submitted that by aforementioned Act, the appellant and other family members were treated with cruelty. He further submits that respondent also used to abuse him and his parents. She also threatened the family members, ill treated him (appellant) when they are residing at village Nandini, Kundini (place of service of respondent). He lastly submitted that after receipt of the notice of Section 13 of the Act of 1955, respondent again made criminal complaint against him and therefore, the application filed by him under Section 13(1) (ia) of the Act of 1955 be allowed.

9. Per contra learned counsel for respondent submitted that it is the appellant and his family members who ill treated her after sometime of the marriage on which she made complaint to concerned police station on the basis of which a criminal case under Section 498 A IPC was registered against them. It is further been argued that when learned Family Court had awarded an amount of Rs.1,000/- per month in proceedings under

Section 125 CrPC, appellant proposed for compromise and only to save matrimonial life of respondent and considering future of the small children she entered into compromise and had made statement that no such incident took place and on the basis of which the criminal case and the proceedings under Section 125 CrPC., have come to an end. Thereafter, respondent again started living with appellant/husband.

10. Learned counsel appearing for respondent further submitted that while staying in her matrimonial house, respondent continued her studies and passed her matriculation. She was also selected for the post of Shiksha Karmi Gr-III. The activities of appellant did not change and on trivial issues, he used to quarrel with respondent and subsequently appellant left the house of respondent/wife and within few months, he filed application under Section 13 of the Act of 1955.

11. In light of the aforementioned submissions, learned counsel appearing for respondent supported the judgment and decree passed by the learned trial Court.

12. I have heard learned counsel for the parties. Perused the record carefully. From perusal of the pleadings made in the application it is evident that after marriage, parties were blessed with two children and thereafter, criminal complaint was filed by respondent- wife against family members of the appellant in the year 1995 on the basis of which criminal case under Section 498A was registered and final report /charge-sheet was also filed before competent Court. During the pendency of criminal proceedings for offences under Section 498A, respondent/wife filed an application under Section 125 CrPC., for grant of maintenance along with

an interim application and the learned Court while considering the application for grant of interim maintenance, awarded Rs.1,000/- per month vide order 25.01.1997 which finds place in the evidence of respondent/wife (DW-1). It is only after the said date the compromise between the parties took place.

13. In view of the settlement arrived at between the parties, ie appellant and respondent, it appears that respondent changed her statement before the Court, as in the criminal proceedings for offence under Section 498A IPC, application under Section 320 was not maintainable and therefore, respondent had stated in her evidence that no incident as reported took place.

14. In the facts and circumstances of the case and the law prevailing in settlement of criminal case, it could not be said that the statement made by respondent was voluntarily made that there was no incident as reported by her, but it can be inferred from the facts of the case that respondent/wife made such statement only to restart her matrimonial life again and to save future of her children.

15. Appellant (AW-1) in his evidence not stated any act or incident showing any act of ill-treatment or cruelty. He submitted one '*Sahmati Patra*' (Ex.P/1) which is executed by respondent that she will live happily with her husband. In para- 4 of his evidence, it is stated that looking to her past conduct, Ex.P/1 was obtained. The content of Ex.P/1 only shows that it is an undertaking obtained by appellant indicating that respondent will reside with him happily. The said document was executed on 07.09.1998.

16. That after entering into settlement/ compromise, appellant and respondent again lived together and from their marital life, they were blessed with another two children till the subsequent dispute arose between them which shows that the earlier adverse conduct if any of respondent was condoned by appellant/husband.

17. So far as subsequent incident of cruelty alleged to be committed by respondent/wife is concerned, from the material available on record, as per the evidence of Khirdas (AW-1) it is stated that cruelty has been committed by respondent/wife after coming into employment as Shiksha Karmi Gr-III.

18. He also admits that they started living separately and also stated in para-6 that till the respondent not received her payment, his father Ramprasad (AW-2) maintained the family and use to give money for rent and food which also shows that there was no act of grievous nature causing cruelty on the appellant. The last instance of cruelty which has been narrated in his evidence was of 09.03.1999 in which it has been alleged that respondent abused him and his parents saying that he does not work, illiterate etc., and assaulted him on his back with broom and thereafter, he left the house. Appellant in his evidence also admitted that respondent not misbehaved with his father.

19. From considering the entire statement of Khirdas (AW-1), no specific nature of allegations at particular date and time with regard to ill treatment, and cruel treatment was stated by Khirdas in his statement and there was no averments in statement for ill-treating appellant/husband on any reason for a long time. It is also evident that on 09.03.1999 there was

quarrel between appellant and respondent. She also assaulted him on that day. As per allegation and within a period of six months ie on 15.09.1999 application under Section 13 of the Act of 1955 was filed.

20. The other witness of the appellant is Ramprasad (AW-2), father of the appellant. Apart from repetition with regard to the dispute took place, in 1995 compromise arrived after registration of case before the competent judicial Magistrate First Class under Section 498A IPC and passing an order of interim maintenance to the tune of Rs.1,000/- per month. He also stated that during stay of respondent after compromise, she quarrelled with them and also burnt herself once. He further stated that dispute took place as appellant and respondent demanded money for livelihood expenses and he paid only Rs.100/- and the appellant did not accompany respondent on that respondent came with other person and thereafter appellant again went with respondent.

21. He also stated that before Panchayat respondent/wife refused to live with the husband and stated that the dispute will be resolved before the Court and not by Panchayat. He further stated that after receipt of notice of appellant, respondent again lodged criminal complaint before Police Station Nandini, district Raipur. Ramsingh Sahu (AW-3) in his evidence in paras 5 and 6 stated that he had not heard about quarrel or ill treatment with father-in-law, mother-in-law and appellant. He is only aware with regard to the criminal case lodged by respondent in 1995 because he went to take bail and surety of the appellant. In para-9, the witness further admits that it is the appellant, who entered into compromise and stated

that the appellant will not commit the mistake in future and will keep the respondent properly.

22. The evidence of AW-2 further shows that there was no dispute by respondent with him further (after compromise). Ramsingh Sahu (AW-3) and Ghanshyam (AW-4) stated in their evidence that they are not aware of any dispute or ill-treatment or misbehaviour by respondent. The evidence of AW-4 also shows that AW-1 and AW-2 were forcing respondent to live in the matrimonial house at Khursipar village, which is 20 km far from Nandini Khundini, her place of posting. On perusal of statement of AW- 1 and AW-2, it would show that they started living separately after service of respondent since September 1998 and within a period of only five months, appellant left the house after quarrel. No specific grave act of respondent was stated except one instance of assault on quarrel, which took place on 10.03.1999, when he left the house. The evidence of Appellant and his witnesses do not state that since long respondent was ill treating appellant and the cruelty was of such grave nature that it was not possible for him to live together.

23. Ghanshyam (AW-4) stated in his evidence that he did not know anything about ill-treatment or any dispute. In fact, he further stated that the Panchayat Meeting was called by father of respondent and also stated that father of appellant wanted her to reside in Khursipara, instead of Nandini Khundini, her place of posting where respondent was posted as Shiksha Karmi. The appellant and his father mounted pressure to leave village Nandini Khundini where respondent was posting.

24. Respondent/ wife (DW-1) also stated with regard to the filing of the criminal case, but she admitted that the criminal case was compromised as the appellant came to her and stated that he will not commit any such mistake in future. She further stated that till residing at village in the house of the appellant, there was no dispute but when she along with appellant started residing separately from her in laws in her place of service, then the appellant used to quarrel on account of serving him food and money. The appellant makes demand of money from her regularly. Her income was very less and she somehow was managing her expenses and monthly requirements hardly, as well as maintaining her small child.

25. From perusal of evidences of the plaintiff witnesses and also the evidence of defendant-1 ie DW-1, it is evident that the criminal case lodged in the year 1995 was withdrawn along with the proceedings under Section 125 of the CrPC under compromise and both appellant and respondent started living together due to which while residing unitedly, they were again blessed with two children. This shows that the act of filing Criminal case if adverse was condoned by the appellant and he again cannot take that ground for filing divorce petition. From considering the entire material, there was no any severe allegation made by the appellant with regard to the commission of any cruel act, but it only shows some trivial disputes between the parties with respect of manage the family affairs.

26. The word 'cruelty' with respect to matrimonial disputes has been considered by the Hon'ble Supreme Court in the matter of **S Hanumantha**

Rao Vs S Ramani, reported in **AIR 1999 SC1318** wherein their Lordships have held that:

"mental cruelty means mental pain, agony, or suffering, caused by either spouse, of such magnitude that it severs the bond between the husband and wife and makes it impossible for the party that has suffered to live with the other party"

27. In the instant case apart from the trivial disputes between the parties with regard to management of family affairs, there was no such allegation of grievous nature made by the appellant till 09.03.1999 when he left the company of respondent and no specific instance of continuous nature was pleaded.

28. In another judgment of Hon'ble Supreme Court in the matter of **GVN Kumar Rao Vs G Jabili** reported in **(2002) 2 SCC 296**, their Lordships have held that :

"cruelty does not necessarily involve life-threatening conduct or conduct resulting in bodily injury or damage to health or conduct which gives rise to a reasonable apprehension of danger to life, limb or health. Their Lordships have further held that solitary incidents or occasional outbursts of anger or rudeness would not amount to cruelty. The Court on overall consideration of all relevant circumstances has to consider whether the conduct of the respondent is such that it has become intolerable for the petitioner to suffer any longer and to live together has become impossible. Their Lordships have further held that the mental cruelty is to be assessed bearing in mind the social status of the parties, their

customs and traditions, their educational level and environment in which they live.

29. Their Lordships of Hon'ble Supreme Court in **A. Jayachandra vs. Aneel Kaur** reported in **(2005) 2 SCC 22** have held that:

"mental cruelty has to be considered in the light of the social status of parties, their education, physical and mental conditions, customs and traditions. The Court has to draw inference and decide on the basis of probabilities of the case having regard to the effect on the mind of the complainant spouse because of the acts or omissions of the other spouse. However, where the conduct complained of itself is bad enough and *per se* unlawful or illegal, the impact or injurious effect on the other spouse need not be considered."

30. Their Lordships of Hon'ble Supreme Court in **Samar Ghosh Vs Jaya Ghosh** reported in **(2007) 4 SCC 511** have held that:

"there cannot be any comprehensive definition of "mental cruelty" within which all kinds of cases of mental cruelty can be covered. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking the various factors mentioned herein into consideration. Their Lordships have further held that there can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters."

31. In the aforementioned case, their Lordships further held in paragraph-101 that:

"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)xxxx

(ii)xxxx

(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."

32. Their Lordships of Hon'ble Supreme Court in **Gurbux Singh Vs Harminder Kaur** reported in **AIR 2011 SC 114** have held that onus to prove that particular conduct or behaviour resulted in cruelty is on the person who claims relief.

33. In paragraph-14 of aforementioned judgment, their Lordships have held as under:

"14.Cruelty has not been defined under the Act. It is quite possible that a particular conduct may amount to cruelty in one case but the same conduct necessarily may not amount to cruelty due to change of various factors, in different set of circumstances. Therefore, it is essential for the appellant, who claims relief, to prove that a particular / part of conduct or behaviour resulted in cruelty to him. No prior assumptions

can be made in such matters. Meaning thereby that it cannot be assumed that a particular conduct will, under all circumstances, amount to cruelty, vis-a-vis the other party. The aggrieved party has to make a specific case that the conduct of which exception is taken amounts to cruelty."

34. Learned counsel for the appellant relied on the judgment passed by the Hon'ble Supreme Court in the matter of **Malathi Ravi MD Vs BV Ravi MD** reported in **(2014) 7 SCC 640**. It is a case between two highly qualified doctors wherein the husband was working as Associate Professor in Medical College, Kadugondanahalli, Bangalore and wife was also a doctor. It is in that fact their Lordship considered the term 'cruelty' considering the social strata or the milieu to which the parties belong, their ways of life and relationship.

35. The facts of the case are not identical to the case referred by learned counsel for the appellant to the case in hand. The appellant and the respondent were very less qualified at the time of marriage. They have not even passed their high school and during marital life, it is respondent/wife who passed higher secondary school examination and was selected for the post of Shiksha Karmi Gr-III.

36. From the aforementioned discussion, considering the facts of the case in light of the judgment as mentioned above is considered, it appears that the dispute between the parties is of trivial nature. There was no severity and gravity in the act of respondent as complained by the appellant, whereas at that relevant time ie on 09.03.1999 when she was having a small child and was also going to school for performing duties but the appellant/ husband was not helping her in maintaining and taking care of the small child in her absence. But was causing dispute by making an

issue that he was being humiliated by asking to take care and attending to the need of the child in her absence (as pleaded in para-5 of application filed by the appellant).

37. Any act, if committed without intention to cause suffering to the party by austerity, temper, rudeness of any, occasionally outburst of anger does not amount to cruelty. The appellant failed to prove that the conduct complained was so grave and that it was not possible for the appellant to reside with his wife/respondent. The allegation as alleged by the appellant was not of serious nature. It was also not proved that the cruelty if any, is continuing for a long time by giving specific time and instances. But, from the pleadings and evidence it is evident that the act and conduct of respondent were the outcome of the ordinary wear and tear of married life. The appellant was not doing any work and was un-employed, which was admitted by his witnesses and therefore, respondent asking him to help her in doing household work cannot be said to be a cruel act.

38. In the case in hand, the last allegation due to which appellant left the house was that the respondent /wife asked him to maintain and take care of the children in her absence which cannot be said to be cruel act committed by respondent/ wife.

39. The appellant /husband in view of the aforementioned discussion, failed to prove the allegation of cruelty by respondent/wife, whereas the respondent/ wife before the Court also stated that she wants to live in the company of her husband.

40. Learned trial Court while dismissing the application under Section 13 of Act of 1955, also considered that the appellant /husband performed

second marriage within a short period after leaving the company of respondent/wife by considering the evidence of Ramvilas (DW-2), father of second wife, who specifically stated in his evidence that the appellant kept his daughter as wife and in his cross-examination, the said averments of the witness remained un-corroborated.

41. In view of the aforesaid facts and circumstances of the case and the law laid down by the Hon'ble Supreme Court and as discussed above, learned trial Court has rightly dismissed the application for divorce filed by the appellant/ husband under Section 13 of the Act of 1955, after close scrutiny of evidence which do not call for any interference and the appeal is liable to be dismissed and it is hereby dismissed.

42. No order as to costs.

Sd/-
(Parth Prateem Sahu)
JUDGE