

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No.21 of 2015

Judgment Reserved on : 16.5.2018

Judgment Delivered on : 14.8.2018

Smt. Deepa Raikwar, W/o Gaurav Raikwar, aged about 26 years, R/o Pendra Road, Tahsil Pendra Road, District Bilaspur, Chhattisgarh

---- Appellant

versus

Gaurav Raikwar, S/o Madan Lal Raikwar, aged about 29 years, R/o Patel Ward, Near Chhoti Bakhar, Shyam Talkies Road, Kandeli, Narsinghpur (M.P.)

--- Respondent

For Appellant	:	Smt. Indira Tripathi, Advocate
For Respondent	:	Shri Sunil Pillai, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. JUDGMENT

1. This is wife's first appeal under Section 28 of the Hindu Marriage Act, 1955 (henceforth 'the Act of 1955') assailing the legality and validity of the judgment dated 4.12.2014 rendered by the Additional District Judge, Pendra Road, District Bilaspur in Civil Suit No.2A of 2013 dismissing her application under Section 13 of the Act of 1955 for grant of divorce on the ground of cruelty.
2. The wife moved the subject application with the averment that she was married with the Respondent at Narsinghpur (Madhya Pradesh) by performing all the rituals on 22.6.2011. After the marriage, she started residing with the Respondent/husband at Narsinghpur. There, the mother and the sister of the Respondent/husband started demanding dowry of cash of Rupees Two Lakhs and a motorcycle from her. For fulfillment of their

demand, they used to pressurise her that she has to bring the above dowry from her parents. On non-fulfillment of the above demand of dowry, they used to ill-treat her and also commit marpeet with her. They were not giving her food and the husband used to say very specifically that she has to call her father and the demand of dowry must be fulfilled. The husband also used to pressurised her for doing a private job and hand over salary to him and for her appearing for examination of a Government job of Shiksha Karmi and hand over him salary of the job. It was further pleaded that before the marriage, it was told that the Respondent was working in a networking software company and his salary was Rs.18,000/- per month and he had also no bad habits in his personal life. But, after the marriage, she came to know about the real facts that the husband used to drink daily and is also in the bad habit of smoking and he is jobless too. She was tortured and subjected to physical and mental cruelty and ultimately on 4.1.2012, she was kicked out by the husband from his house saying that when she will bring cash of Rupees Two Lakhs and a motorcycle then she will be allowed to return to his house.

3. The husband contested the application moved by the wife and denied all the facts stated against him and pleaded that he or his family members never demanded any cash or motorcycle. At the time of marriage also, father of the wife had told them that they were very poor, they were unable to arrange ceremony of the marriage at Pendra Road (Chhattisgarh), they will arrange the marriage ceremony at Narsinghpur (Madhya Pradesh) and that too the expenditure of the marriage ceremony will have to be borne by the husband and his family members. Since the wife was liked by

the husband and his family members, the husband and his family members carried out the whole expenditure of the marriage ceremony. It was further pleaded by the husband that the wife is of free will and thoughts. She bears no responsibility towards the family. On her being asked, he started residing along with her separately from his mother. Even thereafter, she left him and went away along with her jewellery, clothes and other personal articles. He has always been willing to keep her with him. He has also moved an application under Section 9 of the Act of 1955 at Narsinghpur for restitution of conjugal rights. Thereafter, the wife moved the application for divorce.

4. Both the parties have got their witnesses examined. The Appellant/wife examined herself. She also got examined her father Premlal Sondhia, her brother Rakesh Sondhia, her brother-in-law (Jija) Raju Berman and one Narayan Mishra, who had performed pooja in their marriage ceremony at Narsinghpur. The Respondent/husband examined himself only.
5. The Trial Court has found that the wife has failed to prove the ground of cruelty and has, therefore, dismissed her application for grant of divorce.
6. The Supreme Court in **(1994) 1 SCC 337 [V. Bhagat v. D. Bhagat (Mrs.)]** held that mental cruelty in Section 13(1)(i-a) of the Act of 1955 can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the

wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.

7. Yet again, the Supreme Court in **(2002) 5 SCC 706 (Parveen Mehta v. Inderjit Mehta)**, has held thus:

"21. Cruelty for the purpose of Section 13(1) (i-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be

drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other."

8. In **(2006) 4 SCC 558 (Naveen Kohli v. Neelu Kohli)**, the Supreme Court held that the word "cruelty" has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case. There may be instances of cruelty by unintentional but inexcusable conduct of any party. The cruel treatment may also result from the cultural conflict between the parties. Mental cruelty can be caused by a party when the other spouse levels an allegation that the petitioner is a mental patient, or that he requires expert psychological treatment to restore his mental health, that he is suffering from paranoid disorder and mental hallucinations, and to crown it all, to allege that he and all the members of his family are a bunch of lunatics. The allegation that members of the petitioner's family are lunatics and that a streak of insanity runs through his entire family is also an act of mental cruelty.
9. Thus, it is settled that whether in the facts and circumstances of a given case, the plaintiff has been able to make out a case of grant of divorce on the ground of cruelty would depend upon the nature

of pleadings and evidence in that case and there can be no straitjacket formula nor an exhaustive list of instances can be prepared, where cruelty is said to have been committed by one or other party to the marriage. Cruelty can also not be inferred by applying any formula because the said question is to be determined keeping in view the social status of the parties, their financial and other conditions, the atmosphere and the kind of employment or vocation which they carry out would all be important to interfere whether on the given set of allegations it has become difficult for the plaintiff to live with the other side and the behavior of such degree which amounts to cruelty.

10. In the case in hand, the Appellant/wife, in her affidavit under Order 18 Rule 4 of the Code of Civil Procedure, has stated that after the marriage, her husband/Respondent and nanad (sister-in-law) were torturing her for demand of dowry and the mother-in-law was committing marpeet with her. She has admitted the fact that she has not lodged any report in this regard at any time. Her father and other witnesses have also admitted this fact that no report was made regarding demand of dowry or any harassment. It was also admitted that the marriage was performed at Narsinghpur and from the evidence adduced by the parties, it is also apparent that the expenditure of the marriage ceremony was borne by both the parties in equal ratio. Father of the Appellant/wife Premlal, in paragraph 4 of his cross-examination, has also admitted the fact that the Respondent/husband and his family members were in their relation and acquaintance from before. 2 years prior to the marriage of the parties, their family members got acquainted with each other. He has not stated anything that at the time of marriage

there was any demand for dowry made by the husband or his family members. This witness has further admitted in paragraph 7 of his cross-examination that for the problems of his daughter (the Appellant/wife), he never called any social meeting.

11. Another allegation made by the Appellant/wife against the Respondent/husband and his family members is that they used to force her to do a job in a private company, apply for the post of Shiksha Karmi and they also used to ask her for handing over them salary earned by her. In paragraph 12 of her cross-examination, the Appellant/wife herself has stated that she did not want to do any job. Even if it is considered for the sake of argument that she was being asked to do a job and she was not interested to do any job, there is nothing on record to show that she was being tortured for doing any job and if she had been asked to do a job, this does not amount to a cruelty. Moreover, when she was not in any job, question of handing over her salary to the Respondent/husband or his family members does not arise.
12. From the above discussion, it is clear that the Appellant/wife has not been able to establish that the Respondent/husband or his family members had been subjecting her to any cruelty or harassment. Contrary to this, the husband had filed an application under Section 9 of the Act of 1955 for restitution of conjugal rights. Though the said application was dismissed, the finding recorded in the judgment of dismissal dated 20.12.2013 reveals that the reason for dismissal was refusal of the wife to live with the husband. Thus, it is established that the wife has been clearly unable to prove the ground of cruelty taken for divorce and,

therefore, the finding arrived at by the Trial Court regarding failure of the wife to prove the ground of cruelty is flawless.

13. Consequently, I find no merit in the instant appeal preferred by the Appellant/wife. It is, therefore, dismissed.
14. A decree be drawn-up accordingly.
15. Record of the Court below be sent back along with copies of the instant judgment and decree forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE