

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 135 of 2014**

(Arising out of judgment dated 27.11.2014 in Civil Suit No. 42A/2011 of the learned
1st Additional Principal Judge, Family Court, Raipur)

Judgment Reserved On : 10/10/2017

Judgment Delivered On : 19/01/2018

- Pankaj Rao Shambharkar S/o Shri Krishna Rao Shambharkar Aged About 36 Years R/o Ganesh Ram Nagar, Near Gopinath Mandir, Raipur, Distt. Raipur, Chhattisgarh

---- Appellant

Versus

- Smt. Amita Shambharkar W/o Pankaj Rao Shambharkar Aged About 28 Years D/o Dayaram Medhe, R/o H.No. B/5, Type-2, Doorshanchar Colony, Shanker Nagar, Khamhardih, Raipur, Distt. Raipur C.G., Presently R/o Chota Ashok Nagar, Gudhiyari, Raipur, Distt. Raipur, Chhattisgarh

---- Respondent

For Appellant : Shri Kasif Shakeel, Advocate.

For Respondent : Shri Manoj Mishra, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

Hon'ble Shri Justice Arvind Singh Chandel

C A V JUDGMENT

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

1. In this Appeal under Section 19(1) of the Family Courts Act, 1984, the appellant/husband would call in question the legality and

validity of the impugned judgment and decree whereby the family Court has dismissed his suit for grant of divorce on the ground of cruelty under Section 13 (1)(i-a) of the Hindu Marriage Act, 1955 (henceforth 'the Act').

2. Facts of the case, briefly stated, are that the parties were married on 30.11.2007. According to the husband, the respondent's behaviour was not normal from the very beginning. In the first night itself, she started asking about the movable and immovable property of the family and threatened that if the appellant's family would not treat her properly, she would start misbehaving with them. However, the appellant ignored the utterances. The respondent used to climb terrace for speaking on mobile phone and on asking, she would inform that she had called the members of her family. After some time, she informed the appellant that she was compelled to marry the appellant, therefore, she does not want to procreate the child and that she would prefer to join any service. On 2.12.2007, she went to her parental house and was supposed to come back on the next day but she returned after about 4-5 days.
3. After her return from the parental house, she started behaving abnormally and indecently. She used to misbehave with the appellant's younger brother Shashank who had joined the service at Raigarh. Despite being ignored, she did not improve her

behaviour. She kept on playing with small children, opening and making hairs every now and then, changing clothes time and again. At times, she insisted to visit temple at about 1-1.30 am in the mid night. She used to constantly stare a particular article and confine herself inside the room for hours together. Her mental state and behaviour was of a child aged about 8-10 years. On 8.1.2008, she went to her parental house without informing the appellant or any member of the house and stayed there till 14.4.2008. On that day, the respondent, her brother Manoj and her father came to the appellant's shop and stated that after the marriage, it was for him to take care of his wife and they are not concerned about her. They dropped the respondent in the shop and immediately went back. The respondent reached the house and started behaving abnormally and called the members of her parental house on which her parents, brother, brother-in-law (जीजा) came to the appellant's house and started abusing him and his parents. The matter was reported to the Gol Bazar Police and Mahila Police, Raipur where counseling took place and the parties were directed to reside in a separate house, however, the respondent refused. The appellant moved an application under Section 9 of the Act. On the other hand, the respondent lodged false FIR against the appellant, his parents and his brother. The appellant withdrew Section 9 proceeding on 21.7.2008. In the criminal case, the appellant and other accused

persons were acquitted on 12.10.2010 (Ex.-P/11). Criminal Appeal preferred by the State was also dismissed by the 7th ASJ, Raipur on 21.12.2011 (Ex.-P/12).

4. The respondent contested the suit and denied all the allegations. She stated that she was treated with cruelty for demand of dowry. She was dragged out of the house. The appellant and his family members ill-treated, abused and manhandled herself and her parents. The appellant lodged a false report, thereafter she lodged a report against the appellant and his family members.
5. The trial Court found that the respondent has not committed cruelty with the appellant and in the criminal case, the appellant was given benefit of doubt and it is not a case of clean acquittal, therefore, no inference can be drawn that the report lodged by the respondent was false.
6. In the matter of **K. Srinivas Rao Vs. D.A. Deepa**¹, the Supreme Court held thus in paras-29, 30 & 38:-

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 precondition 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

¹ (2013) 5 SCC 226

vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse's life miserable. 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.

38. Before parting, we wish to touch upon an issue which needs to be discussed in the interest of victims of the matrimonial disputes. Though in this case, we have recorded a finding that by her conduct, the respondent wife has caused mental cruelty to the appellant husband, we may not be understood, however, to have said that the fault lies only with the respondent wife. In matrimonial disputes there is hardly any case where one spouse is entirely at fault. But, then, before the dispute assumes alarming proportions, someone must make efforts to make parties see reason. In this case, if at the earliest stage, before the respondent wife filed the complaint making indecent allegations against her mother-in-law, she were to be counselled by an independent and sensible elder or if the parties were sent to a mediation centre or if they had access to a pre-litigation clinic, perhaps the bitterness would not have escalated. Things would not have come to such a pass if, at the earliest, somebody had mediated between the two. It is possible that the respondent wife was desperate to save the marriage. Perhaps, in desperation, she lost balance and went on filing complaints. It is possible that she was misguided. Perhaps, the appellant husband should have forgiven her indiscretion in filing complaints in the larger interest of matrimony. But, the way the respondent wife approached the problem was wrong. It portrays a vindictive mind. She caused extreme mental cruelty to the appellant husband. Now the marriage is beyond repair."

7. Yet again, in the matter of **K. Srinivas Vs. K. Sunita**², the

Supreme Court observed thus in paras- 4 & 5 :-

² (2014) 16 SCC 34

- “4. In the case in hand, the learned counsel for the respondent wife has vehemently contended that it is not possible to label the wife’s criminal complaint detailed above as a false or a vindictive action. In other words, the acquittal of the appellant and his family members in the criminal complaint does not by itself, automatically and justifiably, lead to the conclusion that the complaint was false; that only one complaint was preferred by the respondent wife, whereas, in contradistinction, in *K. Srinivas Rao* a series of complaints by the wife had been preferred. The argument was premised on the averment that the investigation may have been faulty or the prosecution may have been so careless as to lead to the acquittal, but the acquittal would not always indicate that the complainant had intentionally filed a false case. What should be kept in perspective, it is reasonably argued, that the complainant is not the controlling conductor in this orchestra, but only one of the musicians who must deliver her rendition as and when and how she is called upon to do. Secondly, according to the learned counsel, the position would have been appreciably different if a specific finding regarding the falsity of the criminal complaint was returned, or if the complainant or a witness on her behalf had committed perjury or had recorded a contradictory or incredible testimony. The learned counsel for the respondent wife states that neither possibility has manifested itself here and, therefore, it would be unfair to the respondent wife to conclude that she had exhibited such cruelty towards the appellant and her in-laws that would justify the dissolution of her marriage.
5. The respondent wife has admitted in her cross-examination that she did not mention all the incidents on which her complaint is predicated in her statement under Section 161 CrPC. It is not her case that she had actually narrated all these facts to the investigating officer, but that he had neglected to mention them. This, it seems to us, is clearly indicative of the fact that the criminal complaint was a contrived afterthought. We affirm the view of the High Court that the criminal complaint was “ill advised”. Adding thereto is the factor that the High Court had been informed of the acquittal of the appellant husband and members of his family. In these circumstances, the High Court ought to have concluded that the respondent wife knowingly and intentionally filed a false complaint, calculated to

embarrass and incarcerate the appellant and seven members of his family and that such conduct unquestionably constitutes cruelty as postulated in Section 13(1)(i-a) of the Hindu Marriage Act.”

8. Recently in the matter of **Raj Talreja vs. Kavita Talreja** {Civil Appeal No.10719/2013, decided on 24th April, 2017}, the Supreme Court referred to its earlier judgment in the matter of **D.A. Deepa** (Supra) and thereafter held thus in para-10:-

“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.”

9. In the light of above judgment, we shall now proceed to consider the finding recorded by the criminal Court while acquitting the appellant.

10. In the trial Court judgment (Ex.-P/11), it is observed on more than one occasion that the respondent and her parents have made exaggerated allegations and the statements of relatives of the respondent are contradictory. Therefore, the prosecution has not proved its case beyond all reasonable doubt. It was also observed that the prosecution did not examine any independent witness, therefore, the prosecution case is rendered doubtful and the accused is entitled to benefit of doubt.
11. In the appellate Court judgment (Ex.-P/12), it has been found that the FIR was taken down by one Rathore, Inspector, whereas the said witness has stated that the respondent had brought a written complaint with her. Thus the respondent could not explain as to who had authored the written report (Ex.-P/1) on the basis of which the FIR was written by the Sub Inspector. As per her statement, she had not filed any written report but the Sub Inspector had taken down the report as per her information on which she was made to sign. It was also found in para-28 that none of the witnesses have stated as to what articles or what is the exact amount demanded in dowry. Therefore, ingredient of the offence under Section 498-A of the IPC is not proved.
12. Reading of both the judgments would establish that even if the word benefit of doubt is mentioned in the trial Court's judgment,

the respondent failed to establish the charges in the criminal case. Therefore, as a consequence, it will be treated that the report had no substance.

13. In view of the above, if the criminal case was wrongly filed or the respondent failed to establish the charges because witnesses made contradictory statements and neither the name of article or cash demanded as dowry could be specifically stated before the criminal Court, it is a case where the respondent was guilty of filing a false case which itself would amount to commission of cruelty as held by the Supreme Court in the matters of **D.A. Deepa, K. Sunita and Raj Talreja** (Supra). Therefore, the appellant is entitled for decree of divorce on the ground of cruelty upon him by the respondent under Section 13 (1)(i-a) of the Act.

14. In the result, the Appeal is allowed and the impugned judgment is set aside. The marriage solemnized between the parties on 30.11.2007 is declared dissolved by a decree of divorce.

15. A decree be drawn accordingly.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Arvind Singh Chandel)