

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 97 of 2014**

(Arising out of judgment dated 5.9.2014 in Case No. 30A/2011 of the learned 1st
Additional Principal Judge, Family Court, Raipur)

Judgment Reserved On : 11/10/2017

Judgment Delivered On : 29/01/2018

- Prabir Kumar Das, son of late Shri Vinod Bihari Das, aged about 44 years, resident of Kailash Nagar, Plat No.26, Industrial Area, Bhilai, District Durg (CG)

---- Appellant

Versus

- Smt. Papiya Das, wife of Shri Prabir Kumar Das, resident of Shri Madhavchandra Das, Laxmi Nagar, Near Gas Godown, Raipur (CG), Present Address presently working as Assistant Grade I, Government Girls Higher Secondary School, Rajim, District Raipur (CG)

---- Respondent

For Appellant : Shri Sunil Otwani, Advocate.

For Respondent : Shri Shivendu Pandya, 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. The appellant-husband would call in question the legality and validity of the impugned judgment passed by the Family Court

dismissing his application for grant of decree of divorce on the ground of cruelty under Section 13 (1)(i-a) of the Hindu Marriage Act, 1955 (for short 'the Act').

2. Facts of the case, briefly stated, are that the parties were married on 21.1.2002. Prayer for divorce is made on the pleadings that the parties resided together for a period till 5 months prior to the date of presentation of divorce petition. They have 2 daughters out of their wedlock. The respondent was misbehaving with the appellant and his family members soon after the marriage and is not willing to reside with him. Instead, she wishes to reside in her parental house as she is working as Shiksha Karmi. Because of her insistence they resided at Rajim for about 4 years but yet her cruel behaviour continued. During his absence in the house, the respondent tried to assault/slap his mother by using obscene language. When she was confronted with this incident, she started misbehaving, quarrelling and abusing the appellant. Due to this behaviour, the appellant came back to his ancestral house with his mother. The respondent threatened to implicate the appellant in a false case. She categorically and stoutly stated that she cannot live with the appellant and wants to be separate.
3. The respondent defended the suit on pleading that the appellant was indifferent towards her and both the daughters. He did not

bear the expenses at the time of delivery of the daughters. The appellant and his mother used to treat her well at the time of drawal of monthly salary by her. She was made to commute from Raipur to Rajim for about 3 years after the marriage. The appellant refused to join her company on the pretext that he has to take care of his mother and sisters. In para-10 of the written statement, she has stated that she is ready to reside with the appellant at the place of her posting. Since the appellant works at Raipur, it is not possible for him to commute from Bhilai to Rajim. In additional pleading, she has stated that her mother-in-law is a greedy woman, because of which the marital dispute has occurred between the parties. Her mother-in-law is also responsible for ruining the life of her 2 daughters (appellant's sisters) by separating them from their parents in law. When the respondent refused to maintain the children of the appellant's sister, the entire dispute began. She also alleges that her mother-in-law threw slippers on her. It is also stated that her elder daughter is the student of KPS School, Raipur.

4. The trial Court has refused to grant decree on the ground that the appellant has failed to prove commission of marital cruelty by the respondent. Therefore, the only question for determination in this appeal is whether in the state of evidence on record, the respondent has committed marital cruelty on the appellant.

5. Before proceeding to consider and appreciate the evidence to record finding on the issue of cruelty, one way or the other, it would be apt to refer to the principles laid down by the Supreme Court and the illustrative instances where inference of mental cruelty can be drawn.

6. In **Samar Ghosh Vs. Jaya Ghosh**¹, the Supreme Court has indicated illustrative cases where inference of mental cruelty can be drawn. They are reproduced as under:-

“**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

¹ (2007) 4 SCC 511

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 sterilisation 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."

7. The Supreme Court in **V. Bhagat v. D. Bhagat (Mrs.)**² held that mental cruelty in Section 13(1)(i-a) 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

² (1994) 1 SCC 337

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.

8. In **Naveen Kohli v. Neelu Kohli**³, 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

³ (2006) 4 SCC 558

lunatics and that a streak of insanity runs through his entire family is also an act of mental cruelty.

9. In **Narendra Vs. K. Meena**⁴ the Supreme Court has held that if the wife forces and exerts pressure on the husband to live separate from his old aged parents or from the joint family without any reasonable excuse/ground, the same would amount to cruelty. The Supreme Court would observe thus in paragraphs 12, 13 & 14 :-

12. The respondent wife wanted the appellant to get separated from his family. The evidence shows that the family was virtually maintained from the income of the appellant husband. It is not a common practice or desirable culture for a Hindu son in India to get separated from the parents upon getting married at the instance of the wife, especially when the son is the only earning member in the family. A son, brought up and given education by his parents, has a moral and legal obligation to take care and maintain the parents, when they become old and when they have either no income or have a meagre income. In India, generally people do not subscribe to the western thought, where, upon getting married or attaining majority, the son gets separated from the family. In normal circumstances, a wife is expected to be with the family of the husband after the marriage. She becomes integral to and forms part of the family of the husband and normally without any justifiable strong reason, she would never insist that her husband should get separated from the family and live only with her.

13. In the instant case, upon appreciation of the evidence, the trial court came to the conclusion that merely for monetary considerations, the respondent wife wanted to get her husband separated from his

⁴ (2016) 9 SCC 455

family. The averment of the respondent was to the effect that the income of the appellant was also spent for maintaining his family. The said grievance of the respondent is absolutely unjustified. A son maintaining his parents is absolutely normal in Indian culture and ethos. There is no other reason for which the respondent wanted the appellant to be separated from the family—the sole reason was to enjoy the income of the appellant. Unfortunately, the High Court considered this to be a justifiable reason.

14. In the opinion of the High Court, the wife had a legitimate expectation to see that the income of her husband is used for her and not for the family members of the respondent husband. We do not see any reason to justify the said view of the High Court. As stated hereinabove, in a Hindu society, it is a pious obligation of the son to maintain the parents. If a wife makes an attempt to deviate from the normal practice and normal custom of the society, she must have some justifiable reason for that and in this case, we do not find any justifiable reason, except monetary consideration of the respondent wife. In our opinion, normally, no husband would tolerate this and no son would like to be separated from his old parents and other family members, who are also dependent upon his income. The persistent effort of the respondent wife to constrain the appellant to be separated from the family would be tortuous for the husband and in our opinion, the trial court was right when it came to the conclusion that this constitutes an act of “cruelty”.

10. We shall now discuss the evidence to cull out whether the respondent has committed cruelty on the appellant.

11. While the appellant has examined himself as PW-1 and his mother Shefali Das as PW-2, the respondent has examined herself as DW-

1. The appellant has reiterated the plaint allegations and has

denied that his mother was torturing the respondent and has also made categorical statement that he cannot live separate from his mother nor is it possible to send her to old aged home (वृद्धाश्रम), as suggested by the respondent at one point of time. He has also denied that he does not take care of his daughters. The appellant's mother Shefali Das was aged about 65 years at the time of recording of her statement in November, 2013. Therefore, her present age would be about 68 years. She has denied that she has ill-treated the respondent at any point of time.

12. As against the evidence of the appellant and his mother, the respondent has admitted that she is not living with her husband since after July, 2010. She also admits that the appellant is the only son of his mother and that because of death of his father at an early age, his mother has brought him up. She admits that during the counseling, she has stated that she cannot live with the appellant's mother i.e. her mother-in-law. Significantly she admits that at one point of time she was transferred from Rajim to Bhilai but she did not join. She would explain that if she would have stayed at Bhilai, she would been saddled with the responsibility of maintaining twins of her Nanad, who were residing with her mother-in-law at Bhilai. In any case, it can be inferred that she wanted to stay at Rajim and not at Bhilai where the appellant

resides with his mother. She also admits that she refused to stay at Bhilai because even if they would have resided in a separate house, the appellant would bring his mother at subsequent point of time because the same has happened at Rajim. She admits that she has never lodged any report against the husband or his mother for commission of cruelty. In her written argument duly signed by her and not by the counsel, which is available in the paper book, she has stated in paras-8 & 9 that since the appellant cannot live separate from his mother, it is possible that he may live with his mother and the respondent lives with the daughters but decree of divorce may not be granted. Similar averment has been made by her in the application under Section 9 of the Guardian and Wards Act, which has been filed by the appellant along with an application under Order 41 Rule 27 of the CPC. The said application is considered and allowed because the document is not in dispute and would assist this Court in adjudicating the present dispute. A perusal of the reply filed by the respondent in the said proceedings under the Guardian and Wards Act would clearly indicate that as per the respondent herself the appellant's mother is suffering from cardiac problem and his sisters are also residing, therefore, he is more attached with mother and sisters rather than the respondent/wife.

13. Complete analysis of the statement of the respondent would clearly discern that the respondent is not willing to reside with the appellant/husband. She has also suggested that the mother-in-law should be sent to old aged home or that the parties may reside separate without obtaining divorce. The respondent appears to be indifferent and casual towards matrimonial obligations and institute of marriage itself which is sacrosanct and is required to be honoured by both the parties. Insisting upon the husband to live separate from his mother, who is aged about 68 years and is suffering from cardiac problem is by itself a cruelty, as held by the Supreme Court in **Narendra** (Supra), therefore, the Appeal deserves to be allowed.
14. In the result, the Appeal is allowed and the impugned judgment is set aside. The marriage solemnized between the parties on 21.1.2002 is dissolved by a decree of divorce.
15. The parties shall bear their own cost.
16. A decree be drawn accordingly.

Sd/-
Judge
(Prashant Kumar Mishra)

Sd/-
Judge
(Arvind Singh Chandel)

HEADLINES

Wife forcing the husband to get separated from his family which includes his old aged ailing parents. Commission of mental cruelty by the wife upon husband under Section 13 (1)(i-a) of the Hindu Marriage Act, 1955 proved. Divorce allowed.