

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 70 of 2015

Smt. Monika W/o Sanjay Chandel Aged About 29 Years R/o Village- Gandai,
Ward No. 7, Tahsil- Chhuikhadan, Distt. Rajnandgaon Chhattisgarh,
Chhattisgarh

---- Appellant

Versus

Shri Sanjay Chandel S/o Late Jaganu Ram Chandel Aged About 36 Years R/o
Village- Hiretara, Patralaya Pendrawan, Tahsil- Dhamdha, Distt. Durg
Chhattisgarh, Chhattisgarh

---- Respondent

For Appellant	:	Shri Vishnu Koshta, Advocate
For Respondent	:	Shri Abhishek Sharma, Advocate

**D.B. : Hon'ble Mr. Justice Manindra Mohan Shrivastava &
Hon'ble Mrs. Justice Vimla Singh Kapoor**

Judgment on Board

02/08/2018

Per Manindra Mohan Shrivastava, J.

1. This appeal is directed against the judgment dated 6.4.2015 passed by learned Family Court, Rajnandgaon, Link Court- Khairagarh in Civil Suit No.26-A of 2013 whereby the plaintiff's/appellant's application under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 for grant of decree of divorce on the ground of cruelty has been dismissed.
2. The appellant/plaintiff filed a suit seeking decree of divorce on the ground of cruelty on the pleadings, inter alia, that the appellant and the defendant were married on 22.5.2010 and they resided together till July 2012 and were also blessed with a daughter. The defendant, during his service as Music Teacher, worked at Dhamtari and Raigarh and both of them resided together. It was also pleaded that during the time when the plaintiff was

pregnant, she was subjected to physical and mental cruelty by her husband in her matrimonial house at Village – Hiretara, where she was left by her husband. It was pleaded that her husband borrowed Rs.50,000/- from plaintiff's father and went to Jammu & Kashmir, Delhi and Maldives and then again demanded Rs.1.5 lakh in connection with job at Maldives and when money was not provided, respondent-husband stopped talking to her and left her behind. It was also alleged that even at the time of birth of child, defendant did not come and the entire expenditure of delivery was to be incurred by the plaintiff's father. Further, pleading was that because of domestic violence, the plaintiff had to file an application before the Magistrate at Chhuikhadan and though her own application was rejected, the Magistrate granted maintenance to minor daughter and against that order, the appellant preferred an appeal which is pending. Further pleading was that after posting of the plaintiff as Shikshakarmi Grade-III at Manpur, respondent did not make any attempt to know her whereabouts and welfare and she was not allowed to enter the matrimonial house. In this manner, there is no cohabitation between the parties since 2012.

3. The respondent-husband denied the pleadings, stating that he never subjected his wife to cruelty. He never insisted for abortion. According to him, as there was no one to look after his wife at Raigarh, wife was left in the care of parents at Village Hiretara. It was also denied that he demanded any money. Defendant's defence was that though he was willing to take the wife to Maldives but, as the child was infant, he was advised by the parents not to take the wife and child. After wife was employed as Shikshakarmi Grade-III at Manpur, the parents and the defendant resided with her and took care of the infant child but the plaintiff filed application before the Magistrate making allegation of domestic violence. It was also pleaded that the plaintiff indulged in making unwarranted comments and insulting husband. She was also not inclined to discharge household works and domestic obligation. Further it was pleaded that the plaintiff herself is not interested in residing with defendant at Manpur. He stated that he is still willing to keep his wife with him and therefore prayed that the suit be dismissed.

4. After allowing parties to lead oral and documentary evidence, learned Family Court dismissed the suit holding that the plaintiff has failed to prove that she was subjected to cruelty by compelling her to undergo abortion and other grounds. It was also held that the plaintiff of her own is residing at Manpur.
5. Learned counsel for the appellant contends that the learned trial Court has grossly erred in law as well as on fact in holding that the plaintiff failed to prove the allegation of cruelty inasmuch as the plaintiff has not only specifically pleaded but also proved not only from her own evidence but the evidence of her father also that the respondent insisted for abortion when she was pregnant; he was not inclined to keep the wife with him; he went to Maldives and other places and refused to take his wife and child with him and he harassed her father by making repeated demands and that the husband has not cared and deserted her.
6. Learned counsel for the respondent submits that the pleadings of cruelty are quite vague and the plaintiff failed to prove by leading any clinching and reliable evidence and mere ipse dixit of domestic difficulty and other practical difficulties in keeping the wife at a distant place of job, by itself, without anything more, could not constitute cruelty. This Court find that earlier during the pendency of instant appeal, the parties moved an application for grant of mutual divorce under Section 13-B of the Hindu Marriage Act. The parties appeared before the Court on more than one occasions. However, there were raised various issues with regard to terms and condition on which mutual divorce was acceptable to the parties and finally, it was recorded by this Court, in the presence of the parties, on 4.9.2017 that the wife is not willing for divorce on mutual ground. From the said order, it is inferred that the appellant was demanding monetary benefit which was not acceptable to the respondent to the extent of her demand due to which this Court did not proceed to pass any order on the application of the parties for grant of decree of divorce by mutual consent. Hence, the occasion to decide the appeal on merits.

7. After going through the pleadings, we find that the plaintiff, in sum and substance, seeks a decree of divorce on the ground of cruelty. In order to establish cruelty, the plaintiff has pleaded and averred in the plaint that the husband insisted for abortion when she was undergoing pregnancy; that the husband did not come at the time when child was born; that the husband repeatedly made demands from the father-in-law in connection with his job at Maldives; that the husband did not take the appellant along with him during time he worked at different places like Maldives, Delhi etc.
8. In order to prove the allegation of cruelty, the plaintiff examined herself as PW1 and her father Saheb Lal as PW2.
9. While in the affidavit under Order XVIII Rule 4 CPC, the plaintiff repeats the allegation which have been made in the plaint, in her cross-examination, she admits that when she was pregnant, she was left in the matrimonial house at Village- Hiretara by her husband and during that period, she was in her matrimonial house. She has also stated that during that period, she used to go to her maternal house quite often and finally she was taken to Sector -9 Hospital Bhilai for delivery. She further states that after delivery, she came to her maternal house with her maternal grandmother and one month thereafter, she went to her matrimonial house. This evidence of plaintiff shows that when she became pregnant, she was left in her matrimonial house and she remained there for a long period and the story that appellant insisted for abortion appears to be wholly improbable. In fact, there is no evidence of reliable in nature led by the plaintiff that the plaintiff raised some complaint before any authority or before some other person in the family regarding alleged act of the respondent in insisting for abortion.
10. She admits that at the time of celebration of birthday of the daughter, the relations from matrimonial and parental side both had gathered which only shows that there existed a cordial relation. She admits that after the birth of the child, her husband had come to village Hiretara. She further admits that at the time when her husband proceeded to Maldives in search of job, the child was barely 4 to 5 months old. A suggestion has been given,

though, denied that because of the tender age, she was advised not to go a distant place along with the child. She states that the respondent told her that when he will get a house and job, she would be taken. From the evidence of this witness, it is also found proved that while the respondent was working and posted at Dhamtari and Raigarh, the appellant was residing with her but when he went to distant place at Maldives, because of infant child of 4-5 months and that there was problem of job, plaintiff was not taken by her husband. Moreover, in the pleading and evidence, it is her case that she had moved an application before the Magistrate, alleging domestic violence but order was not in her favour though, maintenance was granted to the child. She admits that she filed an appeal which is pending. The perusal of that order shows that the Magistrate also did not find that it was a case of any cruelty but there existed dispute between the parties with regard to the employment aspect. She had admitted in her evidence that after getting job also, she visited her matrimonial house more than 2-3 occasions which means that she is residing at the place of her job at Manpur, whereas the husband's job is elsewhere and native place of the husband is at Village Hiretara. In her evidence, she has expressed that she is inclined to live along with her husband if he comes to Manpur and resides with her. Thus, her evidence, taken in its totality, shows that the dispute is mainly with the place of job and that her husband is at some other station in connection with his job whereas the appellant is insisting that her husband should live along with her at Manpur where she is working as Shikshakarmi Grade-III. The evidence of Saheb Lal (PW2), father of the appellant, does not prove the allegation of cruelty of such a grave nature as to warrant a decree of divorce in favour of the plaintiff. In his cross-examination, he has admitted that dispute between his daughter and son-in-law was in connection with job and his son-in-law was insisting on education of his daughter in an English medium school. This, however, was not the case of the plaintiff herself either in the plaint or in the evidence. He further admits that when his son-in-law went to Maldives leaving behind his wife/plaintiff, for that reason, he did not send the daughter to her matrimonial house. He further admits that if the daughter

would have been taken by son-in-law at Maldives, present situation would not have emerged. From the evidence of this witness, it is clear that there is hardly any case of cruelty established but existence of a dispute between the husband and wife more because of the place of the job.

11.The defendant-husband in his affidavit under Order 18 Rule 4 CPC has stated that he always kept his wife with him wherever he was posted. He stated that, though he was willing to take his wife at Maldives but as the child was very young and therefore on the advice of parents, he did not take them. He stated that he is not willing to take divorce. The father of respondent in his affidavit under Order XVIII Rule 4 CPC has also stated that his son is presently working as Music Teacher in a private school at Bhopal and that he could not take the wife and child to Maldives as the child was too young. He states that attempts were made to bring about reunion and that son is not willing to give divorce.

12.On the aforesaid consideration of the evidence on records, we are of the opinion that the plaintiff has failed to make out a case of cruelty so as to grant a decree of divorce. At this juncture, we wish to reiterate the law laid down by their Lordships in the Supreme Court in the case of **Smt. Mayadevi Vs. Jagdish Prasad** (AIR 2007 SC 1426), wherein it was held thus:

“9.The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty

need not be physical. If from the conduct of his spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, a proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

10. The expression 'cruelty' has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the

enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted (See *Shobha Rani v. Madhukar Reddi*, AIR 1988 SC 121 and *A. Jayachandra v. Aneel Kaur* 2005 (2) SCC 22).

11. To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent

due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

12. The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

13. The foundation of a sound marriage is tolerance,

adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court. (See *Dastane v. Dastane*, AIR 1975 SC 1534)."

13. Decree of divorce cannot be granted on mere asking though there may be various issues between husband and wife as in the present case. Those disputes may arise because the husband and wife find it difficult to live together at one place because they are posted and working at different places in connection with their respective jobs. But then such a dispute cannot be treated as cruelty so as to grant a decree of divorce.
14. In the result, we are not inclined to interfere with the impugned decree and therefore dismiss the appeal.
15. Before parting with the case, we must observe that the parties had moved an application under Section 13-B of the Hindu Marriage Act for grant of divorce on mutual consent, though finally could not come to settlement and it did not materialize. Further, settlement through mediation was also explored and despite parties having come to terms through mediation, finally it did not materialize in the Court because the parties differed on certain aspect. Considering that the parties are not living together since

quite some time, we leave it for the parties to work out their remedy for grant of decree of divorce on the basis of mutual consent and by filing fresh application before the Family Court. In that eventuality, it will be open for the Family Court to consider and take appropriate decision in accordance with law.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge