

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.12.2017

Pronounced on : 05.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.Nos.522 and 523 of 2009 and
M.P.No.1 of 2009 and
Caveat No.388 of 2009

M.Laxman .. Appellant/Petitioner in both the CMAs

Vs.

L.Annapurani .. Respondent/Respondent
in both the CMAs

Common Prayer:- Civil Miscellaneous Appeals filed under Section 19 of the Family Courts Act 1984, against the decreetal order and fair order made by the learned Principal Judge, Family Court, Chennai in O.P.Nos.2418 and 958 of 2003 dated 30.12.2008 and pray for setting aside the same.

(In both the CMAs)

For Appellant : Mrs.Hema Sampath, Senior Counsel
for M/s.P.V.Rajeswari

For Respondent : Mr.Sivakami Shanmugam Pillai

COMMON JUDGMENT

[Judgment of the Court was delivered by M.V.MURALIDARAN,J.]

These two Civil Miscellaneous Appeals are filed as against the Common Order dated 30.12.2008 passed in F.C.O.P.Nos.958 of 2003 and 2418 of 2003 by the Learned Principal Family Court Judge, at Chennai.

2.The F.C.O.P.No.958 of 2003 is filed by the husband, who is the Appellant herein as against his wife who is the respondent herein for the Relief of dissolution of marriage under Section 13(1)(ia) and 13(1)(iii) of the Hindu Marriage Act. Further, the F.C.O.P.No.2418 of 2003 was filed by the Respondent/wife for the restitution of her marital life and for custody of children under Sections 9 and 26 of the Hindu Marriage Act, 1955.

3.As the parties in the aforesaid two cases are one and the same, the Learned Principal Family Court, Chennai, jointly tried the matter based on the Joint memo filed by the parties concerned. Further, in the course of the joint trial, evidence was recorded in F.C.O.P.No.958 of 2003, However, the Petitioner in F.C.O.P.No. 958 of 2003 was examined as PW1 and Exs.P1 to P19 were marked. At the same time the Respondent in the F.C.O.P.No.958 of 2003 was examined as RW-1 and through her Exs.R1 to R54 were marked.

4.Considering the Petition filed by the parties concerned and also the counter affidavit filed by the parties the Learned Trial Court Judge framed the following points for consideration, they are:

1. Whether the Respondent/Wife has treated the petitioner with cruelty?
2. Whether the Respondent /Wife suffering from any mental disorder, so that the Petitioner/Husband cannot be expected to live with Respondent/ Wife?
3. Whether the Petitioner/Husband has got reasonable excuse for withdrawal from society of his wife?
4. Whether Petitioner/Husband is entitled to divorce as prayed for?
5. Whether Respondent/Wife is entitled to the relief of restitution of her conjugal rights as prayed for?
6. To what other relief?

5.After considering all the materials and evidence, the Learned Trial Court Judge answered Point Nos.1, 2 and 3 in favour of the Respondent/Wife. Further, Point No.4 was also answered against the Appellant/Husband and Point No.5 was ordered in favour of the Respondent/Wife and finally the application for divorce in F.C.O.P.No. 958 of 2003 was dismissed and the F.C.O.P.No.1418 of 2003 was allowed.

6.Felling aggrieved over the order passed in the aforesaid F.C.O.P.s, the Husband has preferred these two Civil Miscellaneous Appeals. Since the issue involved in these two Civil Miscellaneous Appeal is related with each other, it has been jointly heard on consent and the common order is passed.

7.The case of the Appellant is that the Court below has erred in disbelieving the evidence of PW1 and failed to consider the oral evidence of the Appellant. Hence, he prays this Court to allow the Civil Miscellaneous Appeal.

8.Per contra, the case of the Respondent/Wife according to the learned counsel for the wife is that the finding of the Learned Trial Judge need not be interfered as it is supported by cogent evidence and the alleged cruelty was not proved by the appellant. So, he prays for the dismissal of the appeals.

9.We heard Mrs.Hema Sampath, learned Senior Counsel for M/s.P.V.Rajeswari, learned counsel for the appellant and M/s.Sivakami Shanmugam Pillai, learned counsel for the respondent in both the Civil Miscellaneous Appeals and all the records available are perused.

10. For the sake of convenience, the parties are hereby called as their capacity having in F.C.O.P.No.958 of 2003 before the trial Court.

11.It is the case that the husband filed a petition for divorce on the ground of cruelty and wife has filed a petition for restitution of conjugal rights. The date of marriage and the birth of the children are admitted. It is seen from the records that subsequent to the marriage the spouses went to honeymoon trip to foreign country during March, 1990. At the same time even after a short span of marriage life some differences were arisen, and according to the Appellant / Husband, the Respondent/ Wife insisted for living separately. So, the place of residence was shifted from Chennai to Madurai. But even after the shifting of the residence, under the pretext of suspicion, the petitioner was ill treated and he was not treated as human being by the respondent. Even after the birth of two children, the Respondent did not mend her character, but her cruel attitude attained extreme level which was intolerable. Further in an occasion, the petitioner was physically prevented even to attend the betrothal, marriage function of his own brother. Only

at the intervention of the father of the Respondent, the Petitioner was allowed to participate in those functions. Further, after the marriage of the brother of the Petitioner, when he came to the resident of the Petitioner along with his newly wedded wife for a dinner, the respondent refused to invite them and thereby the attitude of the Respondent was to be intolerable in Madurai. Apart from that the children were also affected due to the unpredictable attitude of the respondent. So, the Petitioner was constrained to shift his residence from Madurai to Neelangarai, Chennai in January, 1995.

12. Even thereafter the Respondent did not mend her behavior, so again the Petitioner shifted the residence to Barathidhasan Salai, Chennai during 1995 itself. At the same time the change of residence was also for the studies of the children. The further submission of the learned counsel for the petitioner would be that the Respondent often quarreled with the Petitioner to purchase property in the name of the Respondent accordingly, properties were purchased in her name in Kodaikanal and Tirunelveli and the arrangement was constrained to be made due to the suicidal threat of the Respondent. In addition to that the Petitioner also purchased a property in Padapai Village, Madurai District jointly in the name of the Petitioner and Respondent. Moreover, the Petitioner also purchased nearly 170 sovereign of gold jewels and diamond jewels worth about Rs.25 lakhs for the respondent. At the same time, the Respondent used to make unnecessary phone calls to the office of the petitioner in Chennai and Madurai and made imputations and wild allegations against the women staffs in the office. In addition to that the Respondent used to spread allegation against the Petitioner with an intention to degrade the moral character of the Appellant.

13. The Learned Counsel for the Appellant would further submit that on 10.10.2000 the respondent again consumed a sleeping tablets and was taken to a Hospital at Alwarpet where a Doctor namely Jeyalakshmi gave treatment to the Respondent by admitting her as in-patient for two days. Thereafter she was taken to Madurai by her parents by giving assurance to the Petitioner that they would advice her properly. Instead, shockingly and abruptly, the Respondent lodged a complaint before the All Woman Police Station, Madurai. But on the intervention of the elders of the family members, the said complaint was withdrawn.

14. Apart from that from 2000 onwards the Respondent denied conjugal relationship and not even allowed the petitioner even to interact with his family members. Further, in the early 2001,

the Respondent again attempted to commit suicide by consumed sleeping pills, this time also the Respondent was taken to a Hospital and her life was secured. However, in November, 2002 when the Appellant left to Singapore as business trip, the Respondent spread wild allegations among the friends and relatives as if the petitioner took a lady staff along with him to Singapore. This unwarranted act of the respondent left a scar in the mind of the petitioner. Earlier, in the year, 1999 a burn injury was inflicted upon the petitioner on his left wrist by the Respondent through a heated iron rod. Apart from that the Respondent also threatened the petitioner that she would commit suicide by leaving a suicidal note implicating the petitioner, so having left with no other option the petitioner caused a legal notice informing the Respondent not to indulge with in any illegal Acts. Though the said notice was received, the respondent instead of properly replied the notice, in an uncivilized manner abused the father of the Petitioner in the presence of her relatives and unexpectedly the Respondent made a gruesome allegation as if the father of the Appellant sexually tried to abuse the daughter of the Appellant and left the matrimonial home by challenging the Appellant. As the respondent made uncivilized and unexpected allegation against the father of the Appellant, his health condition was suddenly collapsed and on 08.03.2003 he died, but even in the funeral rites, the Respondent did not attend and all these act of the Respondent caused physical and mental cruelty in the matrimonial life of the petitioner which made him to feel that his marital relationship with the Respondent has completely and irretrievably broken down and he has filed the petition for divorce on the ground of cruelty.

15.To support the case, the petitioner was examined himself as PW1 and marked Exs.P1 to P19. This Court has perused the oral evidence of the petitioner and the exhibits marked on the side of the appellant. The learned senior counsel for the petitioner has contended that the total appreciation of the evidence of the petitioner has supported his case, and prays for the relief sought for may be granted.

16.However, the appreciation of the evidence let in by either side would show that wealth alone will not construct the matrimonial life, but it must be an intuition and will be on a spontaneous feel based on love. The bond between the husband and wife could not be based on any mutual expectation except love, security and togetherness. In the arranged marriage, the couples started to understand the needs of each other subsequent to the marriage. At the same time it was the system in the Hindu marriage, even in all other religion too that there will be a gap between the betrothal and marriage and this could provide a

chance to facilitate the couples to share their views and ideas even prior to the marriage for better understanding. Because, as for as in our country, conventionally, the marriage is a life time bond between a man and woman not only physical, but mentally too. In the marital life the spouses are expected each other to satisfy and get satisfied the need of each other with individual self respect. Almost they visualize the surrounding with two eyes alone though they are heaving each two. The healthy relationship between the husband and wife would definitely create a healthy family and same would generate a healthy citizen to the nation. In our past experience up to this extent we understand the marital relationship of a husband and wife.

17. Now, let us appraise the cross examination of the petitioner by the respondent that would show that several allegations made in the petition are not denied by way of suggestion. Apart from that the Respondent was particular in the business affairs of the petitioner, at the same time it is to be noted that though the Respondent has filed petition for restitution of conjugal relationship, no suggestion was put forth whether she was ready to resume the marital relationship with the petitioner. This would have a bearing on the case of the Respondent.

18. Let us now take up the case of the Respondent for appreciation. The Respondent has denied all the averments of the petition of the petitioner and stoutly denied that she had quarrelsome attitude and shown disregard towards the petitioner and his family members. The honeymoon trip was admitted, however, it is stated that during the honeymoon trip the brother-in-law of the petitioner also accompanied, but during the cross examination the allegation was denied by the petitioner but this aspect was not proved by the Respondent as to whether the brother-in-law of the Appellant had accompany with the spouse to Singapore. However, it is stated by the Respondent that only because of the arrangement of the father of the petitioner, the spouses were sent to Madurai to look after the Madurai branch, but not on the compulsion of the Respondent as alleged by the petitioner. Further, it is stated that the Respondent never prevented the Appellant to attend the betrothal and marriage of his brother. The reason behind that is that the brother of the Petitioner fall in love with the cousin of the Respondent but, the parents of the petitioner had hesitation to give consent to the brother of the petitioner to marry the cousin of the respondent. But their marriage was solemnized only after compulsion on the said bride and thereafter, the parents of the petitioner agreed for marriage. As the petitioner wanted to satisfy his mother, he did not want to attend the function,

but his father advised him to attend and accordingly the ceremonies were solemnized.

19. Further, all other allegations leveled against the Respondent are stoutly denied and according to the learned counsel for the Respondent, the petitioner has not proved any of the allegations made against the respondent. It is specifically noted in the counter affidavit that on 10.12.2002 the Petitioner had his morning tiffin and left for work at about 09.30 a.m., thereafter all of a sudden at about 10.30. a.m., the Petitioner called the Respondent and asked her to leave the matrimonial home with instructions that as per the advice of the astrologers; it was the tough time for the Petitioner and the Respondent. So, the petitioner instructed the respondent to leave the matrimonial home. However, the respondent was not ready to leave from the matrimonial home and denied. Since the instructions given by the Petitioner were not followed by the Respondent, the Petitioner did not return back to home. In this regard as the Petitioner had not come back to the home continuously for about four days, the Respondent was constrained to seek the assistance of her father-in-law, but it was ended in vain and on the compulsion of the Petitioner alone the Respondent left the Matrimonial home. Further, the children were also left with the husband and during the Christmas vacation the children were sent to Madurai and they stayed along with the Respondent. After the completion of the Christmas vacation, the father of the Petitioner instructed the Respondent to send back the children alone to Chennai though the Respondent tried to go to the matrimonial home, it was not properly responded. However, without providing any breathing time the Petitioner caused the legal notice. Moreover, when the notice issued by the Petitioner, the respondent at that time was staying at a Thapovanam in Vilupuram District. However, when she came to know about the legal notice sent by the Petitioner, immediately, she came down to Chennai on 14.02.2003 along with her family members.

20. Unfortunately, when the respondent reached the home, the Petitioner refused even to talk with the Respondent and the children were not in the home. However, the Petitioner informed through some other relatives of the respondent that the children would be sent to Madurai immediately after the exams are over. Further, it was also assured that the Petitioner will come and take back the respondent to the home at the earliest. At the same time, the Respondent went to the school and met the children. Apart from that several other factors were also given in the counter affidavit and the learned counsel for the Respondent would submit that the Respondent also file the petition for Restitution of Conjugal right and she is all along

ready to live with the Petitioner. According to the Learned Counsel for the Respondent that the Respondent having vital evidence to show that she never think about separation, but all along was sincerely trying to join with the Petitioner. Moreover, only because of the intentional attitude of the Petitioner she has been deserted without any valid reason. The counsel for the Respondent has drawn the attention of this Court that the Petitioner though made allegation in respect of the mental health of the Respondent, no evidence is produced about the mental health of the Respondent. This Court finds that the petition is filed by invoking the provision under Section 13(1) (iii) of Hindu Marriage Act, 1955 also. The said provision would read as follows:

"Divorce - (1) (iii) Any marriage solemnized, whether before or after the commencement of this act, may on a petition presented by either the husband or the wife, be dissolved by a decree on the ground that the other party - (iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent."

21. That the learned counsel for the respondent has relied on the following judgment to support his contention that the alleged acts as stated by the petitioner would not amount to unsound mind and thereby he is not entitled the relief sought for.

22. In (2014) 1 Supreme Court cases 225, in the case of Kollam Chandra Sekhar -Versus- Kollam Padma Latha it is held that

"A. Family and Personal Laws - Hindu Law - Hindu Marriage Act, 1955 - S. 13(1)(iii) Expln. and S. 9 - Divorce on grounds of "unsoundness of mind" and "mental disorder" including schizophrenia - When may not be granted - Mere existence of mental disorder insufficient to justify dissolution of marriage - Need for existence of serious mental disorder - Further held, one spouse cannot simply abandon the other spouse because the latter is suffering from sickness -

In the instant case, medical report failed to support the case of appellant/ husband that respondent was suffering from serious case of schizophrenia - Rather, report indicated that although respondent was suffering from "illness of schizophrenic type" but did not show symptoms of psychotic illness, had responded well to treatment from acute phases and her symptoms

were fairly under control with medication and further that if there was good compliance with treatment coupled with good family and social support, a schizophrenic patient could continue normal conjugal and marital relationship....

B.

C. Family and Personal Laws - Divorce - Welfare of child prime consideration

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The High Court by the impugned judgment allowed the appeal filed by respondent wife holding that there was no positive evidence to show that the respondent suffered from schizophrenia, and even if she did suffer it was not of such seriousness as would attract Section 13(1)(iii), Hindu Marriage Act, 1955 for grant of divorce.

Hence, instant appeal by appellant husband.

The issue for consideration was whether the marriage between the parties can be dissolved by granting a decree of divorce on the basis of mere existence of one spouse's mental illness which includes schizophrenia under Section 13(1)(iii) of the Hindu Marriage Act, 1955.

Dismissing the appeal, the Supreme Court

Held:

The High Court relied on the evidence of RW2 Superintendent, Institute of Mental Health who had stated that schizophrenia can be put on a par with diseases like hypertension and diabetes, and by constant medication it can be controlled. Reliance was also placed on the testimony of PW 4, Professor and Head of Department of Psychiatry at NIMHANS, Bangalore who had deposed that there was no contra-indication in leading a normal conjugal life. The High Court has rightly examined the evidence on record and correctly found fault with the findings recorded by the trial court with regard to the ailment attributed to the respondent for seeking dissolution of marriage under the ground of "unsound mind" which is a non-existent fact. It was also justified in holding that a husband cannot simply abandon his wife because she is suffering from mental sickness. Section 13(1)(iii) of HMA, 1955 does not make a mere existence of a mental disorder of any degree sufficient in law to justify the dissolution of marriage.

.....

Under Hindu law, marriage is an institution, a meeting of two hearts and minds and is something that cannot be taken lightly. In the Vedic period, the sacredness of the marriage tie was repeatedly declared; the family ideal was decidedly high and it was often realised. Marriage is highly revered in India and we are a nation that prides itself on the strong foundation of our marriages, come hell or high water, rain or sunshine. Life is made up of good times and bad, and the bad times can bring with it terrible illnesses and extreme hardships. The partners in a marriage must weather these storms and embrace the sunshine with equanimity. Any person may have bad health, this is not their fault and most times, it is not within their control, as in the present case, the respondent was unwell and was taking treatment for the same. The illness had its fair share of problems. But, this cannot be a reason for the appellant to abandon her and seek dissolution of marriage after the child is born from their union. The welfare of the child must be the prime consideration for both the parties. (Paras 41 and 42)

41. Under Hindu law, marriage is an institution, a meeting of two hearts and minds and is something that cannot be taken lightly. In the Vedic period, the sacredness of the marriage tie was repeatedly declared; the family ideal was decidedly high and it was often realised. In Vedic Index I it is stated that "the high value placed on the marriage is shown by the long and striking hymn". In Rig Veda, X, 85; "be, thou, mother of heroic children, devoted to the Gods; be, thou, Queen in thy father-in-law's household. May all the Gods unite the hearts of us 'two into one'", as stated in Justice Ranganath Misra's Mayne's Treatise on Hindu Law and Usage.

42. Marriage is highly revered in India and we are a nation that prides itself on the strong foundation of our marriages, come hell or high water, rain or sunshine. Life is made up of good times and bad, and the bad times can bring with it terrible illnesses and extreme hardships. The partners in a marriage must weather these storms and embrace the sunshine with equanimity.

43. In view of the foregoing reasons, we are of the opinion that the two parties in this case must reconcile and if the appellant so feels that the respondent is still suffering, then she must be given the right treatment. The respondent must stick to her treatment plan and make the best attempts to get

better. It is not in the best interest of either the respondent or her daughter who is said to be of adolescent age for grant of a decree of dissolution of marriage as prayed for by the appellant. Hence, the appeal is liable to be dismissed.

44. Accordingly, we dismiss the appeal and uphold the judgment of the High Court in not granting a decree of divorce and allowing the petition for restitution of conjugal rights. Therefore, we grant a decree for restitution of conjugal rights under Section 9 of the Act in favour of the respondent."

23. In (2013) 9 Supreme Court Cases 1, Darshan Gupta -Vs- Radhika Gupta, it is held as follows:

"Family and Personal Laws - Hindu Law - Hindu Marriage Act, 1955 - Ss. 13(1)(i-a) & (iii) - Divorce - Grounds of cruelty and unsound mind/mental disorder of wife alleged by husband - Allegation if made out.

... No evidence to show wife's alleged intemperate/aggressive/erratic behaviour such as shouting and screaming without provocation or cause, getting up at midnight and not allowing husband to sleep, etc. as alleged - Held, grounds under Ss. 13(1)(i-a) & (iii) not made out - Hence, plea for divorce, rejected - Evidence Act, 1872, S. 45.

B. Family and Personal Laws - Hindu Law - Hindu Marriage Act, 1955 - S. 13(1) - Divorce petition - Petitioner must approach court with clean hands - Grounds of divorce under S. 13(1) are based on matrimonial offence or fault theory - It is only commission of matrimonial offence by one spouse that entitles the other spouse to seek divorce - Hence if petitioner himself/herself is guilty or at fault, he/she would be disentitled to seek divorce - Held, petitioner husband was disentitled to seek divorce on alleged grounds as he himself was responsible therefor - Divorce - Bases for - Fault basis under Hindu Marriage Act, 1955.

... Even though as a result of therapeutic and neuropsychological rehabilitation measures she recovered to a considerable extent and was able to discharge her matrimonial obligations, the appellant husband filed a divorce petition in the Family Court under Sections 13(1)(i-a) and (iii) of the Hindu Marriage Act on the grounds that he had been subjected to cruelty on account of the intemperate behaviour of his wife and that his wife is of incurable unsound mind

and suffers from such a mental disorder, that the appellant cannot be reasonably expected to live with her. It was inter alia submitted on behalf of the respondent that in actuality the appellant is making out a claim for a decree of divorce on the basis of allegations for which he himself is singularly responsible and that on the said allegations, it was the appellant who deserves to be castigated. Therefore, he cannot be allowed to seek dissolution of marriage.

Dismissing the appeals of the husband, the Supreme Court

Held:

The appellant had taken recourse to cumulatively project the factual position for both the grounds, on the basis whereof annulment of marriage was sought i.e. on account of intemperate behaviour, as well as, on account of the alleged mental condition of the wife.

On the basis of the evidence of the case it is not possible to record that the respondent wife suffers from any incurable unsoundness of mind. It is also not possible to hold that she suffers from such mental disorder that it cannot be reasonably expected of her husband to live with her. The evidence produced before the Family Court leaves no room but to conclude that the respondent meely suffers from mild to moderate cognitive deficiencies. She is categorised by the medical experts as an individual of moderate intelligence. The material on the record of the case reveals that she would further benefit from neuropsychological rehabilitation measures, which are available at NIMHANS. Even though the said deficiencies could influence her day-to-day functioning, but the expert opinion is unanimous that the same would not come in her way to discharge her matrimonial obligations. It cannot also be overlooked that experts have clearly expressed that the respondent exhibits normal and adequate emotional responses. She has, right from the beginning, fervently expressed the desire to restore her relationship with her husband, and to live a normal life, in a matrimonial relationship with him. In the aforesaid view of the matter, it is not possible that the mental condition of the respondent is such as would persuade the Court to accept the husband's appeal under Section 13(1)(iii) of the Act.

.....

54. In the context of doing justice it was suggested, that the appellant would be ready and willing to pay the respondent, whatever was considered

appropriate by this Court. We are informed, that the appellant is financially well-to-do. We shall, therefore, keep in our mind the appellant's offer while examining the instant issue. We would, in our endeavour to determine the issue in hand, examine the matter, by reversing the roles of the parties. We will examine the matter as if, the wife had approached the Family Court seeking divorce, on the ground that her husband had suffered brain damage leading to cognitive deficiencies. Yet, despite the said deficiencies, his working memory had returned to "near normal" after treatment. And his mental condition was such that it would not have any effect on his matrimonial obligations. And the wife's family is agreeable to pay an amount to be determined by this Court (just as the husband-Darshan Gupta, has offered), so as to enable their daughter to break away, and find a more suitable match. Should she have been granted freedom from her matrimonial ties, in the given facts, in order to do complete justice to the parties? We would ask ourselves, whether the husband would have accepted such a plea, in the facts denoted above? In such situation, if this Court had, in exercise of its jurisdiction under Article 142 of the Constitution of India, granted compensation to the husband, and had dissolved his marriage on the pretext of doing complete justice between the parties, would the same be acceptable to the husband? We have no doubt in our mind, that on a reversal of roles, the husband, without any fault of his own, would have never accepted as just, the dissolution of his matrimonial ties, even if the couple had been separated for a duration, as is the case in hand. Especially, if the husband had, right from the beginning, fervently expressed the desire to restore his matrimonial relationship with his wife, and to live a normal life with her."

24. These two judgments would have no application at all to the facts and circumstances of the instant case and this Court does not find any material to hold that the petitioner is entitled to get the relief under Section 13(1)(iii) of the Hindu Marriage Act, 1955.

25. In (2010) 14 Supreme Court Cases 301, in the case of Gurbux Singh v. Harminder Kaur, it is held that

"Hindu Marriage Act, 1955 - S.13(1)(i-a) - Divorce - Grounds - Cruelty - A few instances of abuse whether amounts to cruelty - Appellant husband only mentioned

one stray incident of respondent wife abusing his parents in divorce petition - Held, though even a single act of violence which is of grievous and inexcusable nature satisfies test of cruelty, married life should be assessed as a whole - A few isolated instances over certain period do not amount to cruelty - On facts, held, marriage cannot be dissolved on such instances.

...The married life should be assessed as a whole and a few isolated instances over certain period will not amount to cruelty. The ill conduct must be precedent for a fairly lengthy period where the relationship has deteriorated to an extent that because of the acts and behavior of a spouse, one party finds it extremely difficult to live with the other party no longer may amount to mental cruelty. Making certain statements on the spur of the moment and expressing certain displeasure about the behavior of elders may not be characterized as cruelty. Mere trivial irritations, quarrels, normal wear and tear of married life which happens in day to day life in all families would not be adequate for grant of divorce on the ground of cruelty. Sustained unjustifiable and reprehensible conduct affecting physical and mental health of the other spouse may lead to mental cruelty. Both the appellant and the respondent being highly qualified persons, the appellant being Principal in ITI college, the respondent working as a Librarian in a government institute, as isolated friction on some occasion life festival of lohri even in the presence of others cannot be a valid ground for dissolving the marriage.

15. There is no such complaint by the appellant. In the case no hand, as stated earlier, the appellant has projected few instances in which, according to him, the respondent abused his parents. We have verified all the averments in the petitions, reply statement, written submissions as well as the evidence of both parties. We are satisfied that on the basis of such instances, marriage cannot be dissolved.

16.The married life should be assessed as a whole and a few isolated instances over certain period will not amount to cruelty. The ill conduct must be precedent for a fairly lengthy period where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, one party finds it extremely difficult to live with the other party no longer may amount to mental cruelty. Making certain statements on the spur of the moment and expressing certain displeasure about the behaviour of elders may not be characterised as cruelty. Mere trivial irritations,

quarrels, normal wear and tear of married life which happens in day to day life in all families would not be adequate for grant of divorce on the ground of cruelty. Sustained unjustifiable and reprehensible conduct affecting physical and mental health of the other spouse may lead to mental cruelty. Both the appellant and the respondent being highly qualified persons, the appellant being Principal in ITI College, the respondent working as a Librarian in a government institute, an isolated friction on some occasion like festival of lohri even in the presence of others cannot be a valid ground for dissolving the marriage.

20. Finally, a feeble argument was made that both the appellant and the respondent were living separately from 2002 and it would be impossible for their reunion, hence this Court exercising its jurisdiction under Article 142 of the Constitution, their marriage may be dissolved in the interest of both parties. Though, on a rare occasion, this Court has granted the extraordinary relief dehors the grounds mentioned in Section 13 in view of the fact that the issue has been referred to a larger Bench about permissibility of such course at present, we are not inclined to accede to the request of the appellant. If there is any change of law or additional ground included in Section 13 by the Act of Parliament, the appellant is free to avail the same at the appropriate time."

26. In (1988) 1 Supreme Court Cases 105, in the case of Shobha Rani -Versus- Madhukar Reddi, it is held as follows:

"Hindu Marriage Act, 1955 - Section 13(1)(i-a) - 'Cruelty' - Meaning and proof of - Continuous demands of dowry made on wife in her matrimonial house with the connivance of husband, held on facts, constituted cruelty on the wife entitling her to decree for divorce - Court would draw inference and decide on the basis of preponderance of probabilities having regard to the nature of conduct of the other spouse and its impact on the complaining spouse in the context of their standard of life - Penal Code, 1860, Section 498-A - Dowry Prohibition Act, 1961 - Dowry Prohibition (Amendment) Act, 1984.

The demand for dowry is prohibited under law. That by itself is bad enough. That amounts to cruelty entitling the wife to get a decree for dissolution of marriage in the facts and circumstances of the case. The evidence of harassment to the wife to meet any unlawful demand for money is necessary to constitute

cruelty in criminal law but not under Section 13(1)(i-a). The evidence of the appellant wife that her mother-in-law used to make repeated demands of money from her with the support of the respondent-husband cannot be brushed aside merely because the appellant's father had not been examined. The evidence of the appellant's father was not material as the dowry was not directly demanded from him. It is also not proper to discredit the wife as hypersensitive or prone to exaggeration. That would be judging the wife by the style of manners and standard of life of the Judges. That cannot be done. Court must try to understand her feelings and then search for the nugget of truth in the entire evidence.

Cruelty under Section 13(1)(i-a) if not admitted requires to be proved on the preponderance of probabilities as in civil cases and not beyond a reasonable doubt as in criminal cases. The facts and circumstances brought out by the appellant in this case do justify an inference that there was demand for dowry which constituted cruelty under Section 13(1)(i-a)."

27. In (2015) 11 Supreme Court Cases 539, in the case of Ramchander v. Ananta, wherein it is held that

"Family and Personal laws - Hindu Marriage Act, 1955 - Ss. 13(1)(i-a) & 13(1)(i-b) - Divorce - Grounds - Cruelty and Desertion - Instances of - Change of residence, abuse and neglect of husband and son, case filed by wife under S. 498-A IPC, extramarital affair, desertion - Cumulative effect of - Whether convincing enough to lead to a conclusion as to irretrievable breakdown of marriage.

Family and Personal Laws - Hindu Law - Hindu Marriage, Act, 1955 - S. 13(1)(i-a) - Cruelty - Scope of - Held, expression "cruelty" has not been defined in Hindu Marriage act- In cases of S.13(1)(i-a) "cruelty" is to be taken as such physical or mental behavior by one spouse towards another which causes a reasonable apprehension that it is not safe for him or her to continue matrimonial relationship - Mental cruelty is necessarily a matter of inference to be drawn from the facts and circumstances of the case.

It is settled law that instances of cruelty are not to be taken in isolation but cumulative effect of facts and circumstances emerging from evidence on record and then drawing a fair inference whether plaintiff has been subjected to mental cruelty due to conduct of the other spouse - Instances of "mental

cruelty" asset out in Samar Ghosh, (2007) 4 SCC 511 are only illustrative and not exhaustive - Words and Phrases - "Cruelty"

Dismissing the appeal, the Supreme Court

Held:

The expression "cruelty" has not been defined in the Hindu Marriage Act. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behavior by one spouse towards the other, which causes a 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. Cruelty can be physical or mental. In the present case, there is no allegation of physical cruelty alleged by the plaintiff. What is alleged is mental cruelty and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. It is settled law that the instances of cruelty are not to be taken in isolation but to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the plaintiff has been subjected to mental cruelty due to conduct of the other spouse. Illustrative cases of instances of "mental cruelty" as set out in Samar Ghosh case are only illustrative and not exhaustive.

Appeal dismissed

8. It is further submitted that the wife was compelled to live separately on account of the conduct of the husband. The further submission was that the impugned judgment does not suffer from any legal infirmity warranting interference.

10. The expression "cruelty" has not been defined in the Hindu Marriage Act. 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 a 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. Cruelty can be physical or mental. In the present case there is no allegation of physical cruelty alleged by the plaintiff. What is alleged is mental cruelty and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. It is settled law that the instances of cruelty are not to be taken in isolation but to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the plaintiff has been subjected to mental cruelty due to conduct of the

other spouse. In the decision in Samar Ghosh case this Court set out illustrative cases where inference of "mental cruelty" can be drawn and they are only illustrative and not exhaustive.

12.The next instance alleged by the plaintiff husband is that the defendant wife used to abuse him as "dhobi" and the son as "dhobi's son" and such utterances had adverse effect on them. PW1 plaintiff and PW2 the son have stated so in their testimonies.

13.It is further alleged that the defendant wife was reluctant to do any household work and was not cooking food for the plaintiff and the child which necessitated the bringing of food from outside, amounting to mental cruelty. Being a working mother, she could not spare enough time to be with the child resulting in the feeling of not being cared for. In this context it is relevant to point out that the child was residing with his father since the alleged separation in 2003.

14.The next instance is the allegation made by the wife in the case filed by her under Section 498-A IPC against the husband. Admittedly, the case was withdrawn by the wife and she continued to live with the husband. In fact the High Court has observed in the impugned judgment that though the date of filing of the criminal complaint is not mentioned in the plaint, from the sequence of narration of events therein it appears to have been filed prior to the birth of the child. The aberration on the part of the wife has been condoned by the husband by resuming cohabitation and they continued to live together till the date of alleged separation in 2003.

15.The last instance of cruelty alleged by the husband is the allegation made by the wife that he has been involved in an extramarital affair with the daily-rated mazdoor lady working under him. It is true that the defendant wife has named the said lady with whom her husband allegedly was having an affair. The plaintiff husband though admitted that the said lady was working under him, has specifically denied the said allegation. The courts below have concurrently found that the wife has not substantiated the said allegation. Mere failure to prove such allegation would not entitle the husband to a decree of divorce as rightly held by the High Court. The conduct of the wife that had been complained of appears to be not so grave and weighty that it can be treated to be more serious than ordinary wear and tear of married life.

16. ... The High Court on going through their testimonies has concluded that it does not find their evidence unworthy of credence. We are in agreement with the said view expressed by the High Court. Resultantly, the ground of desertion alleged is also not established.

18. In the result there is no merit in the appeal and the same is dismissed. No costs."

28. In II (2017) DMC 28 (SC), in the case of Suman Singh -Versus- Sanjay Singh, it is held that

"(i) Hindu Marriage Act, 1955 - Section 13(1)(ia) - Cruelty - Isolated incidents - Incidents alleged should be recurring nature or continuing one and they should be in near proximity with filing of petition - Few isolated incidents of long past and that too found to have been condoned due to compromising behavior of parties cannot constitute an act of cruelty within meaning of Section 13(1)(ia) of Act - Petition seeking divorce on some isolated incidents alleged to have occurred 8-10 years prior to filing of date of petition cannot furnish a subsisting cause of action to seek divorce after 10 years or so of occurrence of such incidents.

... Acts complained of were condoned by parties due to their subsequent conduct inasmuch as both lived together till 2006 and appellant gave birth to their second daughter in 2006 - Incidents which occurred prior to 2006 could not be relied on to prove instances of cruelty because they were deemed to have been condoned by acts of parties...

... There could be myriad reasons for causing such isolated incident...

... It was respondent-husband and who withdrew from company of appellant-wife without reasonable cause and not vice versa - Appellant-wife is entitled for decree for restitution of conjugal rights against respondent - Impugned judgment set aside and decree for restitution of conjugal right passed against respondent-husband.

7.... However, the year was not mentioned.

9. The fourth ground of cruelty was again about the indecent behavior of the appellant towards the respondent's family members. However, no details were pleaded except making general averments (Para 12).

10.... instead that the couple should live separately from the respondent's parents (Para 13).

26.This we hold for more than one reason. First, almost all the grounds taken by the respondent in his petition were stale or/and isolated and did not subsist to enable the respondent to seek a decree for dissolution of marriage. In other words, the incidents of cruelty alleged had taken place even, according to the respondent, immediately after marriage. They were solitary incidents relating to the behavior of the appellant. Second, assuming that one or more grounds constituted an act of cruelty, yet we find that the acts complained of were condoned by the parties due to their subsequent conduct inasmuch as admittedly both lived together till 2006 and the appellant gave birth to their second daughter in 2006. Third, most of the incidents of alleged cruelty pertained to the period prior to 2006 and some were alleged to have occurred after 2006. Those pertained to period after 2006 were founded on general allegations with no details pleaded such as when such incident occurred (year, month, date etc.), what was its background, who witnessed, what the appellant actually said etc.

27.In our view, the incidents which occurred prior to 2006 could not be relied on to prove the instances of cruelty because they were deemed to have been condoned by the acts of the parties. So far as the instances alleged after 2006 were concerned, they being isolated instances, did not constitute an act of cruelty.

35. ...the burden being on the respondent, the same could be discharged by the respondent by pleading and then proving.

39. ...As a result, the petition filed by the respondent (husband) under Section 13(1) of the Act seeking dissolution of marriage is dismissed. As a consequence thereof, the marriage between the parties is held to subsist whereas the petition filed by the appellant against the respondent under Section 9 of the Act seeking restitution of conjugal right is allowed. A decree for restitution of conjugal right is, accordingly, passed against the respondent.

40.We hope and trust that the parties would now realize their duties and obligations against each other as also would realize their joint obligations as mother and father towards their grown up daughters. Both should, therefore, give quite burial to their past

deeds/acts and bitter experiences and start living together and see that their daughters are well settled in their respective lives. Such reunion, we feel, would be in the interest of all family members in the long run and will bring peace, harmony and happiness. We find that the respondent is working as a "Caretaker" in the Government Department (see Para 4 of his petition). He must, therefore, be the "Caretaker" of his own family that being his first obligation and at the same time attend to his Government duties to maintain his family."

29. However, this Court does not find any evidence to substantiate the case of the Petitioner under Section 13(1) (iii) of Hindu Marriage Act, 1955. Further, there is no cross examination materially on that point that is by touching the mental health of the Respondent. So, in the considered opinion of this Court, the Petitioner has not proved his case with regard to the mental ill health of the Respondent as defined under Section 13(1) (iii) of Hindu Marriage Act, 1955. So, in this regard the finding of the Learned Trial Judge with regard to the second point for consideration that is the petitioner has not proved about the alleged mental ill-health of the respondent is confirmed. So, this Court has no hesitation to reject the case of the petitioner for divorce under Section 13(1) (iii) of Hindu Marriage Act, 1955.

30. At the same time the grounds raised by the Petitioner by invoking Section 13(1) (ia) of Hindu Marriage Act are to be taken up for consideration.

31. It is seen from the records that admittedly the Respondent left the matrimonial home at the fag end of December, 2002. On the side of the petitioner, it is contended that the Respondent left matrimonial home on her own volition with an intention to desert the petitioner. At the same time, it is contended by the learned Counsel for the Respondent that the respondent left the matrimonial home with a bonafide belief that she would be taken back to the matrimonial home at the earliest. However, it is to be noted here that when the Respondent left matrimonial home to her parental home, instead of initiated steps for re-union, she went to a Thapovanam in Villupuram District for her mental rest. This Court is put its anxious consideration that the two children were also not accompanied with the Respondent but forgetting their welfare and their longing for the nearness of mother, the respondent went and sit in a Thapovanam. This particular incident is having significance as thereafter the spouses did not live together.

32. That apart it is the case of the Petitioner that the Respondent used to take sleeping pills in order to threaten the Petitioner that she would commit suicide and on some occasion, the respondent took treatment as inpatient. These incidents, according to the learned senior counsel for the Petitioner would constitute the act of cruelty, since the petitioner being a business man cannot concentrate his work as the Respondent often attempt to commit suicide. Being an educated woman, the Respondent cannot be expected that she would get good things in the matrimonial life by way of suicide attempt. Absolutely there is no explanation on the side of the Respondent as to why and how even without think about the children, the respondent attempted to commit suicide. As far as cruelty is concerned the onus to prove the particular conduct or behavior resulted in cruelty is on person who claims the relief on the basis of cruelty. The perusal of the evidence would show that no denial on the part of the Respondent during the cross examination that she had not attempted to commit suicide, then the same would show the respondent attempted to commit suicide.

33. Apart from that she also used to lodge a complaint against the Petitioner more than one occasion, however for the reasons best known to her only, the police complaints were not pursued, this would also show the petitioner meets out cruelty at the hands of the Respondent. So, in the considered view of this Court, the judgments relied on by the learned Counsel for the respondent is supporting the case of the petitioner only.

34. At this juncture, it is to be ascertained that the Respondent was mainly made wild allegations against the petitioner which in the opinion of this Court amounting to cruelty as the Respondent did not initiate legal action on her allegations against the petitioner. Further, it is also seen from the records that the respondent also spread wild allegations with an intention to destroy the social reputation of the Petitioner and the same would cause irreparable injury on the mind of the petitioner. The term cruelty has not been defined in the Hindu Marriage Act, 1955. However, according to Section 13 of the Hindu Marriage Act, it is stated that

(1) "any marriage solemnized whether before or after the commencement of the Act, may, on a petition presented either the husband or the wife be dissolved by a decree on the ground that the other party -

(i) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or]

(i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent."

35. At the same time cruelty can be ascertained or inferred with in relation to matrimonial matters. It is contemplated as a conduct of such time which endangers of the living with the petitioner with the respondent. Further, cruelty consists of acts which are dangerous to life, limb or health. Cruelty may be by physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering in the matrimonial life of other. Mental cruelty also is a state of mind and feelings and therefore necessary a matter or inference to drawn from the facts and circumstances of the case where once spouse succeeded in proving the attitude of other spouse was not cordial and co-operative and their marriage life was never happy for long period then the Court is bound to consider the relief for divorce. However, in this case allegations are made by the spouses against each other.

36. But, the factor which directly relating with the security of life which has to be viewed constitutionally. In a case reported in AIR 1993 Delhi -135, Rajinder Bharatwaj Vs Anitha Sharma, it is held that throwing foot-wear on the respondent in the presence of his or her parents is cruelty and sufficient ground for granting divorce. In the instant case though the respondent made wild allegations against her father-in-law as if he misbehaved with her daughter, without any justification she left the matrimonial home by left the children with the custody of the petitioner. This Particular incident is to be viewed seriously. If at all the allegations made against the father-in-law are true, in the opinion of this Court, the respondent would not have left the children with the custody of the petitioner. On the other hand, without worrying about the children the respondent went to a Thapovanam in search of peace. As far as Hindu women is concerned and in general the mother will have much affection with the child as according to the natural phenomenon women is the creature to give birth and child is in the womb of the mother for nearly about 9 months. The respondent, on the one hand making wild allegation against the petitioner and his father, but she left the children with their custody. So it is understandable that the allegations made against the father-in-law of the respondent are untrue. Moreover, though imputations tarnishing the moral character of the petitioner and his father were made by the respondent, no

attempt was shown by the respondent to prove the same, but in the opinion of this Court these unproved wild allegation would definitely affect the mental equilibrium of the petitioner.

37. Apart from that the death of the father-in-law of the respondent is to be analyzed. According to the petitioner, his father was died after two weeks of the wild allegations made against him by intentionally tarnishing his social and moral character. So the death assumes some importance. When the petitioner specifically pleaded that his father was died on account of the accusation of the respondent, suggestion must be put forth by denying the reason for death of the petitioner's father. No oral evidence was let in by the respondent that the petitioner's father was not died on account of accusation and he was died followed by sickness or on account of some other physical ailment. In the absence of any such suggestion this Court has no option other than to believe the version of the petitioner. Moreover, the respondent did not even attend the funeral rites, which in the mind of the Court that the respondent was not at all willing for reunion. In such a disturbed state of mind it cannot be expected that the petitioner would live happily with the respondent but the same would amount to cruelty. At the same time, her act of making wild imputations which claimed the life of an elderly person would definitely come under the purview of cruelty. At this juncture, this Court is helpless to hold that the respondent is making out any case that her acts does not come under the purview of causing any mental cruelty upon the petitioner.

38. Further, it is not the case of the respondent that because of any of the alleged act of the petitioner she was forced to commit suicide, at the same time it is the specific averment of the petitioner that with an intention to disturb the mental peacefulness of the petitioner, the respondent attempted to commit the suicide. When an allegation is pleaded that must be specifically denied under order VIII, Rule 5 and 6 of C.P.C. Here the perusal of the records would show that the pleadings of the petitioner with regard to the attempts of the respondent to commit suicide are not specifically denied by the respondent. Once the respondent has failed to deny the averments of the petitioner then the same is to be taken as proved. However, as the attempt of the respondent to commit suicide has not been denied by her, then it is to be construed as the said act of attempt of commit suicide would cause cruelty upon the mind of the petitioner.

39. At the same time on either side prior to the filing of the case, there were no circumstances for proper guidance and mediation by the elders and the same is reflected even after the

filing of the petition also. Apart from that another allegation is made that the respondent did not permit the petitioner to have conjugal relationship for quiet considerable period prior to the filing of the case. The perusal of the evidence available would show that the same has not been denied by the respondent. Between the spouses sex is the binding force that is not only mean the physical contact or satisfaction, but the mental peacefulness too. In such a background the expectation of a healthy husband having conjugal relationship with his healthy wife is reasonable. So the denial of conjugal relationship without any valid cause would also amount to cruelty.

40. At this juncture, it is to be taken into account that the respondent made allegations as the petitioner was having affairs with a woman namely, Muthu and they were wandering in car on several occasions. But, on the side of the respondent, no effort was taken to prove the same except by putting suggestion. When having relationship with a paramour is an offence as well as the same would deeply affect the marital relationship between the spouses, the standard and degree of proof of the particular factor would be definitely high but that was done by the respondent before the trial Court. At the same time making bald allegation that too assassinate the character of other that would cause cruelty upon the person who received the wild but bald allegation.

41. In the result, for the forgoing discussion, both the Civil Miscellaneous Appeals are partly allowed. A decree of divorce is granted under Section 13(1)(ia) of the Hindu Marriage Act 1955. However, the respondent wife is entitled to initiate separate proceedings for the visitation of the children keeping note of the fact that both the children have attained majority. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs

To

The Principal Judge, Family Court, Chennai.

C.M.A.Nos.522 and 523 of 2009 and
M.P.No.1 of 2009 and
Caveat No.388 of 2009

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aa25/06/2018