

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.481 of 2015

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Om Prakash Bhagat, son of Dharmnath Bhagat, Resident of Town Narpatganj,
P.S.- Narpatganj, District- Araria.

... .. Appellant/s

Versus

Smt. Gauri Devi, daughter of Birendra Bhagat, resident of Village and P.O.-
Jeewachhpur, P.S.- Bhimpur, District- Supaul, presently residing at Murliganj,
P.S. Murliganj, District- Madhepura.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Uma Shankar Prasad, Sr. Advocate Ms. Meera Kumari, Advocate Mr. Sunil Kumar, Advocate
For the Respondent/s	:	Ms. Anju Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN

SINGH

C.A.V. JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date : 16-08-2019

The appellant-husband has questioned the legality of the judgment and order dated 27.08.2015, passed by the learned Principal Judge, Family court, Araria in Matrimonial Suit No. 11 of 2002 whereby an application of the appellant seeking dissolution of his marriage with the respondent filed under Section 13 of the Hindu Marriage Act (hereinafter referred to as 'the Act') has been dismissed. The appellant had sought the decree of divorce on the grounds of cruelty and desertion.

2. The marriage between them was admittedly solemnised on 13.07.1994 at the parental home of the respondent



at Murliganj in the district of Madhepura. The appellant is a resident of Narpatganj in the district of Araria. The appellant's family has another residential establishment at village Jeebachhpur in the district of Supaul.

3. It has been the case of the appellant that nearly a fortnight, after the marriage, the respondent had gone back to her parental home with her brother and it was only on initiative and persuasion of the appellant that the respondent returned to the matrimonial home on 22.02.1995, after a ritual called 'Ruksadi' or 'Bidai' or 'second marriage'. Again, after short stay with the appellant, the respondent went back to her parental home with her brother on 15.03.1995, just before Holi festival, as per the customs. From March 1995 to April 1996, the respondent stayed at her parental home despite persuasion and request made by the appellant but the appellant always showed reluctance in joining the appellant's company. She, however, came to village Jeebachhpur in 1996 where the appellant and the respondent stayed together for some time and went thereafter to Narpatganj. The respondent became pregnant, whereafter she again went back to her parental home with her mother, according to the appellant, without his consent and to his annoyance. A female child was born to them when the respondent was at her parental home, whereafter



she came back to village Jeebachhpur. The appellant and the respondent lived together at Jeebachhpur and Narpatganj for nearly 9-10 months. The respondent again conceived. The mother of the respondent was insisting for the respondent being taken to the parental home for better care during pregnancy period despite all facilities made available to the respondent in the matrimonial home. The mother of the respondent, allegedly took her from Narpatganj to the parental home at Murliganj deceitfully, without the appellant's consent and to his grave annoyance and inconvenience. A second female child was born some time in 1998-99. It has been alleged in the application seeking divorce that during this period, when the respondent stayed with the appellant, the respondent's behaviour was abnormal and whimsical with the appellant. It is said that the respondent and her mother behaved with the appellant inappropriately and many a times the appellant was assaulted by the respondent, when the appellant approached her and demanded cohabitation. She declined to cook food 'at time'(sic) and she did not serve meal to the appellant and his parents and 'thus she misbehaved which caused serious difficulties in the family'. The appellant further alleged that the respondent's behaviour and habits were extremely unbearable and she used to go to Murliganj and come back to



matrimonial home with her henchman. Since the respondent had created an unhealthy atmosphere because of her conduct, a Panchayati was held on 19.05.1995 and a Panchnama was prepared. The respondent, however, continued with her behaviour, ignoring the terms of Panchnama and withdrew herself from the appellant's society. She was claiming separation by transfer of the property in the house situate in village Jeebachhpur and she, thus, caused mental torture to the appellant, the only son of his parents.

4. He further alleged that the respondent poured kerosene oil on a bundle of jute kept in a separate house and set it ablaze. She attempted to burn herself and committed suicide.

5. Alleging desertion, he pleaded in the application that the respondent started living separately, refusing to live in the association of the appellant and did not allow him any opportunity to cohabit. The application seeking dissolution of marriage was filed in 2002, as according to the appellant, respondent had left the company of the appellant since 1998.

6. It is noteworthy that in the application seeking divorce, the appellant did not take any plea of adultery against the respondent, as a ground for dissolution of marriage.

7. Controverting the assertions made in the application seeking dissolution of marriage a written statement was filed. The



allegations of cruelty and intentionally leaving the company of the appellant were denied. She asserted that she had always been willing to be in company with the appellant and discharge her marital obligations. She asserted that, as a matter of act, she always attempted to be with the appellant but she was compelled to live at Jeebachhpur, because of ill-treatment meted out to her by her in-laws. She also asserted that she was very respectful to her in-laws and ready to remain in company with the appellant. She never left her matrimonial home at any point of time without the appellant's consent. She denied completely the allegation of her misbehaviour with her in-laws and demand of any separation in the joint family property. Since the respondent had given birth to two female children, her in-laws and the appellant were planning marriage of the appellant with another girl in Nepal, which was objected to by the respondent, leading to filing of the divorce case, with baseless allegations. Because the respondent was being ill-treated by her in-laws and the husband, she filed criminal case under Section 498-A of the IPC. She expressed her willingness to live with the appellant and discharge marital obligations, in her written statement.

8. Based on rival pleadings, the learned Principal Judge, Family Court, Araria framed the following issues for determination



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*“(i) Whether the case, as framed, is maintainable?
(ii) Whether the petitioner has got any cause of action sue this respondent?
(iii) Whether the abnormal behaviour of respondent cause mental and physical torture to the petitioner?
(iv) Whether the respondent voluntarily deserted the petitioner as such refused to spending life as husband and wife without any just reason?
(v) Whether the petitioner is entitled to a decree of divorce?
(vi) What other relief or reliefs, the petitioner is entitled to?”*

9. In the background of the issues so framed, the parties adduced evidence, oral and documentary. Eight (8) witnesses deposed for the appellant before the court below whereas three (3) witnesses deposed in favour of the respondent.

10. Dealing with Issue No. 3, as noted above, the learned Principal Judge recorded his findings that the pleadings of the appellant was vague and sketchy, inadequate to make out a case for grant of decree of divorce on the ground of cruelty. Learned Principal Judge also recorded his finding that the allegation of cruelty could not be substantiated, even on consideration of the depositions of the PWs.

11. Dealing with Issue No. 4 i.e. whether respondent



had voluntarily deserted the appellant, the learned Principal Judge opined that the onus was on the appellant to prove that respondent had deserted him without any reasonable cause and that despite genuine efforts made by the appellant to bring the respondent back, the respondent refused to live with the appellant, which he failed to discharge. Learned Principal Judge accordingly recorded that the allegation of desertion could not be proved. On the point of adultery, learned Principal Judge has recorded in paragraph 11 of the impugned judgment that the faint allegation of adultery has been levelled against the respondent in the pleadings and testimony of witnesses but in absence of the adulterer as party to the proceeding, the plea of adultery could not be dealt with.

12. After having decided the main issues No. 3 and 4, other issues, which were formal in nature, have been decided and considering the pleadings and oral and documentary evidence adduced, learned Principal Judge finally concluded in his impugned judgment that the appellant had failed to establish a case for issuance of decree of divorce on the ground of cruelty and desertion.

13. We have heard Mr. Uma Shankar Prasad, learned Senior Counsel assisted by Ms. Meera Kumari and Mr. Sunil Kumar for the appellant and Ms. Anju Mishra, learned Advocate



appearing on behalf of respondent.

14. Before we proceed to discuss the matter on merits, we must indicate that we made several serious efforts for amicable resolution of dispute between the contesting parties keeping in mind the welfare of the family and the two children born out of the marriage, who have now crossed 20 years of age and are yet to be married. Despite the fact that earlier, judgment was reserved in this case on 13.07.2018, noticing some hope of amicable resolution of the matrimonial dispute between the parties, when the matter was listed on 20.07.2018, the Court had desired the parties to meet in the Chambers of Dr. Uma Shankar Prasad, learned Senior Advocate. This matter was thereafter taken up on several dates. Following order, which was passed on 20.07.2018, needs to be noticed at this stage:

“The parties have been requested to explore the possibility of resolution amicably.

Let a meeting take place of the parties in the Chambers of Dr. Uma Shankar Prasad in between 28th to 30th of July, 2018 as regarding future course to be taken in the case of children.

Let the matter come up on 3rd of August, 2018 under the same heading allowing the parties to inform as to the outcome of the meeting.”

15. The lower court records have been received. We



have perused the records and we have given our anxious consideration to the pleadings of the parties, evidence adduced by them as well as the submissions made on their behalf.

16. Dr. Uma Shankar Prasad, learned Senior Counsel for the appellant has submitted that the court below has committed serious error of law by holding the allegations of cruelty made in the plaint to be a vague and on the basis of the depositions of the witnesses, a case for grant of decree of dissolution of marriage could not be made out on the ground of cruelty and desertion. He has submitted that the evidence adduced at the trial has not been appreciated by the learned Principal Judge in correct perspective and the findings recorded by him are totally erroneous. He has submitted that even if there was no specific pleading in the plaint to make out a case for dissolution of marriage on the ground of cruelty and desertion, if both the parties had led evidence on the issue, then the strict rule of specific pleading could not defeat the cause of the appellant. In support of his submission he has relied on Supreme Court's decision in case of Bhagwati Prasad vs. Chandramaul (AIR 1966 SC 735). He has submitted that it is evident from the pleadings and evidence on record that respondent had refused cohabitation with the appellant without any justification and, therefore, a case of mental cruelty has been



made out. According to him, the pleadings and evidence show that the appellant had to suffer acute pain and agony which made it impossible for the appellant to live with the respondent as husband and wife. He has relied on Supreme Court decision in case of Samar Ghosh vs. Jaya Ghosh reported in (2007) 4 SCC 511 and has contented that since there has been a long period of continuous separation between the parties, it can be easily concluded that the matrimonial bond between the two is beyond repair. He has submitted that the long separation between the appellant and the respondent ever since 1999 leads to a clear inference that there has been irretrievable breakdown of marriage. Relying on the said decision he has submitted that refusal by the respondent to cook food may also amount to mental cruelty and according to him, the court below erred in holding that no case of cruelty could be established on the basis of pleadings and evidence adduced on behalf of the appellant before the learned Principal Judge in the suit for divorce.

17. Reliance has also been placed on Supreme Court decision in case of Raj Talreja vs. Kavita Talreja (AIR 2017 SC 2138) to submit that the conduct of respondent should be held to be causing mental cruelty to the appellant.

18. On the basis of rival submissions made on behalf of



the parties and materials available on record, following are the points which have emerged for determination in the present appeal :-

- (i) Whether the appellant was able to establish a case of cruelty against the respondent, sufficient for grant of a decree for dissolution of marriage?*
- (ii) Whether on the basis of evidence adduced before the court below in the matrimonial suit the appellant could establish his case of desertion as ground for dissolution of the marriage?*
- (iii) Whether on the ground of irretrievable breakdown of marriage, a decree of divorce should be granted, in the facts and circumstances of the present case?*
- (iv) Whether the learned Principal Judge, Family Court erred in refusing to grant decree of divorce on the ground of cruelty and desertion.*

19. What amounts to mental cruelty has been extensively discussed by the Supreme Court in case of Samar Ghosh (supra), which has been followed and explained in subsequent judgment in case of Raj Talveja vs. Kavita Talveja (supra). In case of Raj Talreja (supra) the Supreme Court has opined and held that cruelty in matrimonial behaviour defies any definition and its categories can never be closed. Whether the husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts



and circumstances of the given case and not by any pre-determined rigid formula. Cruelty in matrimonial cases can be of infinite variety – it may be subtle or even brutal and may be by gesture and words, the Supreme Court observed.

20. The crucial aspect of the matter, which we need to consider in this matter, is as to whether the evidence adduced by the appellant before the court below was sufficient to establish a case of cruelty. For the said proposition we need to address the pleadings and evidence on record. We have carefully seen the application filed by the appellant under Section 13 of the Act. The application contains several allegations against the respondent blaming that the respondent did not behave ‘appropriately’ with the family members including the appellant and sometimes she withdrew her association and conjugal company from the husband. There is nothing, however, in the pleading as to in what manner and at what point of time and at what place the respondent did not behave with the appellant ‘appropriately’. Similarly, there is allegation against the respondent of pestering the appellant and his family members for partition in the family/ transfer of family property in her name.

21. We now need to refer to the evidence of witnesses who deposed before the court below.



22. The appellant, PW-8, filed his affidavited deposition before the court below stating that the behaviour of the respondent was not good with the appellant and his parents, because of which a Panchayati was held. He deposed that the respondent had not only set ablaze the jute bundles, she had attempted to burn herself. According to him, the respondent refused to live with the appellant since 1998. Because of her conduct, a criminal case was lodged for the offence punishable under Section 436 and 504 of the Indian Penal Code against the respondent and in retaliation the respondent filed a criminal case for the offence punishable under Section 498-A of the IPC. It is evident from the evidence of the appellant (PW-8) that it does not refer to any specific instance of alleged misbehaviour or cruelty on the part of the respondent. There is vague assertion that her behaviour was not proper with him and his family members. He has given emphasis on the incident when the respondent had put on fire the substantial quantity of jute and had attempted to burn herself which had led to lodging of case under Sections 435 and 504 of the IPC. PW-1 Ram Narayan Malakar has also not deposed anything specific on the point of cruelty. He has deposed that the respondent had disturbed family peace because of which her mother-in-law had died. There is nothing significant and specific in the deposition of



PW-1 with reference to any incident which can be said to be constituting act of cruelty committed by the respondent. In cross-examination, he had admitted that his father was a Bataidar of the appellant. Similarly, PW-2 has also vaguely stated that the behaviour of the respondent was not good with her in-laws and she had gone back to her parental home 5-7 days after the marriage. In his cross-examination, however, though he admitted that he had never gone to the house of the appellant, he deposed that because of the behaviour of the respondent, her mother-in-law (appellant's mother) died. In cross-examination, he admitted that she died in Nepal and was not knowing about her ailment leading to her death. Evidence of PW-3 is equally vague on the point of behaviour of the respondent. PW-4 is cousin of the appellant. His deposition is equally vague. According to him, behaviour of the respondent was not suitable with her in-laws and there used to be quarrel in the family, most of the time because of her. He further deposed that mother of the appellant died of heart attack because of improper behaviour of the respondent. PW-5 is another cousin of the appellant. According to him, since the respondent was quarrelsome and did not discharge her marital obligations, her mother-in-law had left for Viratnagar where she died of heart attack. He has vaguely commented upon 'conduct' of the



respondent and at same time has expressed his ignorance about the persons with whom the respondent was having illicit relationship. PW-6 is said to have been a party to the Panchayati and he has also vaguely deposed that respondent's behaviour was improper because of which the appellant's mother died. In cross-examination, however, he has said that he had no concern with the affairs of the family of the appellant. PW-7 is the father of the appellant. He has deposed that behaviour of the respondent with him and her husband was very poor. He further deposed that mother of the respondent used to guide her for getting the land belonging to the appellant's family transferred in her name. He is also not specific about any particular instance(s) for making out a case of cruelty.

23. Examination-in-chief of the respondent as DW-1 was filed on affidavit. She deposed that she had been dispossessed from her matrimonial home by the appellant without any reason. In her cross-examination, she denied the allegation of her improper behaviour. In response to a query in cross-examination with reference to acquittal of the persons named in the criminal case lodged by her for offence punishable under Section 498-A of the IPC, she deposed that she could not take any step against the judgment of acquittal because of her poor financial condition. It



was also pointed out to her that despite her knowledge about the illness of her husband, she did not even enquire about his well-being, the respondent expressed ignorance about any such ailment. She specifically deposed that she did not have any information about her husband's ailment, if any.

24. The daughters of the appellant and respondent also filed their examination-in-chief on affidavits supporting the case of the respondent. From their deposition in examination-in-chief and cross-examination, it appears that DW-2, the first daughter had attempted to contact the appellant on phone so as to persuade him to pacify the relationship between the appellant and respondent but the appellant did not respond properly. The evidence of 2nd daughter as DW-3 also supports the case of the respondent. According to her, they were forcibly ousted from the house of the appellant.

25. On close scrutiny and appreciation of the evidence of witnesses, it is easily evincible that the allegation of bad, improper, inappropriate behaviour of the respondent with the appellant and his family members is totally vague. It has been vaguely stated that she refused to cook food and misbehaved with her in-laws. It further transpires from the evidence that the in-laws of the respondent were not happy with the respondent's interest in



music which she was fond of and took interest, despite the objection of her in-laws. In this regard too, there is nothing specific either in the pleadings or in the evidence adduced on behalf of the appellant. There is a crucial aspect of the matter on which much emphasis has been given on the respondent's conduct of setting on fire the jute, by the respondent leading to lodging of complaint Case No. 137C of 2002 in the court of Sub-Divisional Officer, Birpur. The case was pending till disposal of the matrimonial case on 27.08.2015. The respondent was charged of commission of offence under Sections 435 and 504 of the IPC in which the respondent was finally convicted by judgment and order dated 18.06.2016, passed by the learned Judicial Magistrate, 1st Class-II, Supaul in Trial No. 173 of 2016, copy of which has been brought on record by way of an affidavit filed on behalf of the appellant.

26. Much emphasis has been given, in course of argument on behalf of the appellant, that this Court should consider the said proved conduct of the respondent amounting to mental cruelty for the purpose of Section 13(1)(i-a) of the Act.

27. The fact that the appellant and his family members have been acquitted of the charge of offence punishable under Section 498-A of the IPC by a judgment of Sub-Divisional



Magistrate, Madhepura dated 29.06.2011, passed in Trial No. 304 of 2011 has also been emphasised on behalf of the appellant to contend that the court below has failed to appreciate in proper perspective, the evidence adduced on behalf of the appellant to establish a case of mental cruelty.

28. So far as the plea and evidence of desertion as ground for dissolution of marriage is concerned, whereas it has been the stand of the appellant that the respondent had deserted the appellant by severing her company with the appellant without any reasonable cause, it has been the case of the respondent that though she was ready and willing to live with the appellant and lead a happy and purposeful conjugal life by discharging her all marital obligations. It is true that the parties have admittedly not lived together and led conjugal life for now nearly two decades. The question which emerges is as to who deserted whom, answer of which will have to be searched in the evidence at the trial. Great emphasis has, however, been laid by Mr. Uma Shankar Prasad that, in any event, since the parties are living separately for nearly two decades, they cannot be reasonably asked to continue to live together. The matrimonial bond, according to him, between the contesting parties is irreparable and in support of his contention he has placed heavy reliance on the Supreme Court's



decision in case of Samar Ghosh (supra).

29. In our considered view, apart from the conduct of the respondent of having set on fire, the jute kept in the court-yard of the house of the appellant by the respondent, there is no specific misconduct or wrong behaviour of the respondent amounting to cruelty, as is alleged. There is no denial that she has been held guilty of commission of offence under Section 435 of the IPC. The question is, whether the said conduct of the respondent, which finally resulted into a finding of her guilt in a judicial proceeding, can be said to be amounting to mental cruelty as valid ground for seeking dissolution of marriage? To answer this aspect, we need to take note of his own statement of the appellant in paragraph 10 of his application under Section 13(1) of the Act which reads thus :

“10-That the respondent is a selfish, whimsical and unscrupulous lady and does not want to live under the guardianship and command of the petitioner or his parents. Once, it so happened that the respondent was insisting her husband and inlaws to transfer the property of village Jeewachhpur in her name and the petitioner and his parents were making unheard of it, the respondent poured kerosene oil on the bundles of Jute kept in a separate house weighing about more than 50 quintals and also on her person and put fire by match stick on the jute, bundles and also tried to burn herself anyhow the people



assembled and put off the fire and saved her.”

30. If the said averment is to be taken into account, respondent cannot be said to have set the jute bundle on fire for damaging the said property of the appellant/ appellant's family. From his own showing of the appellant, respondent had attempted to injure herself and was subsequently saved by the people, somehow or the other, in the incident which had taken place in 1998. This is indicative of the fact that the respondent herself was in trauma and mental agony which had compelled her to take extreme step of making an attempt to commit suicide in course of which she sustained burn injuries. In any case, filing of Complaint Case No. 137/2002 is a development subsequent to filing of matrimonial suit, for it is apparent that the complaint case was filed by the appellant's father after filing of the matrimonial suit. In our view, the developments subsequent to filing of the matrimonial suit cannot be the basis to seek relief for dissolution of marriage in absence of necessary amendment in the application, inasmuch as, the respondent did not have opportunity to meet an allegation made in the complaint case, while opposing the plea for divorce on the grounds mentioned in the application seeking divorce. The acquittal of the appellant and his family members of the offence punishable under Section 498-A IPC in a trial arising



out of complaint case filed by the respondent, since the offence could not be established against them beyond all reasonable doubt, in itself can not be a determinative factor to reach a conclusion that the lodging of the complaint case itself was an act which would amount to mental cruelty. It can maximum be said on that basis that the respondent had failed to establish her case in the criminal trial.

31. In all fairness to learned Senior Counsel Mr. Uma Shankar Prasad we must refer to the Constitution Bench decision of the Supreme Court in case of Bhagwati Prasad (supra) which has been relied upon by him to canvass his point that where substantial matters relating to title of both the parties to a suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter is not expressly taken in the pleadings would be purely formal and technical which should not be allowed to succeed in the present case. The answer to the said submission lies in paragraph 10 of the decision in case of Bhagwati Prasad (supra) itself, portion of which read thus :

“10.-----What the Court has to consider in dealing with such an objection is: did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know



that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another.”

32. There can not be two opinions over the legal proposition lucidly enunciated in case of Bhagwati Prasad (supra) that the Court is required to consider as to whether the parties knew that the matter in question was involved in the trial and did further lead evidence about it. If it was not within the knowledge of the party that the matter was in issue at the trial and one of them had no opportunity to lead evidence in respect of that, it would certainly introduce consideration of prejudice and as the Supreme Court has held, ‘in doing justice to one party, the Court cannot do injustice to another’.

33. The alleged act of the respondent of causing fire in 2002, which was subject-matter of the complaint case filed by the appellant’s father subsequent to filing of the matrimonial case, was not a matter before the learned Principal Judge, Family Court. There was no pleading and the respondent was, thus, completely unaware that the said incident could be a ground for establishing



case of mental cruelty. The appellant had referred to an incident of 1998 in which, as has been noticed above, respondent had attempted to commit suicide and injured herself.

34. Coming now to the decision in case of Samar Ghosh (supra), in a quest for a correct definition of a mental cruelty, the Supreme Court has referred to not only the dictionary meaning of the said expression but has referred to a catena of decisions of the Supreme Court and of foreign Courts and has enumerated certain instances of human behaviour which may be relevant in dealing with cases of mental cruelty. However, enumerating the instances the Supreme Court observed that mental cruelty is a problem of human behaviour which exists all over the world. Human mind is extremely complex and human behaviour is extremely complicated and, therefore, to assimilate the entire human behaviour in one definition is almost impossible, the Supreme Court said and added that what is cruelty in one case may not amount to cruelty in another, as concept of cruelty differs from person to person, depending upon his upbringing level of sensitivity, educational, family and cultural background, social status, customs, traditions, religious beliefs, human values and their value system. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and



circumstances while taking so many factors in consideration, the Supreme Court has held in Samar Ghosh (supra). The instances of human behaviour relevant for dealing with cases of mental cruelty, as enumerated in paragraph 101 in case of Samar Ghosh (supra) are as follows :

“101. (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 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.”

35. In case of Raj Talreja(supra) the Supreme Court again reiterated that cruelty can never be defined with exactitude and what is cruelty will depend upon the facts of each case. Mere filing of complaint is not cruelty. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to such accusation of the wife as cruelty within the meaning of the Act, the Supreme Court held in case of Raj Talreja(supra). The Supreme Court, however, made the following observation in paragraph 10 in case of Raj Talreja (supra) :

“10.....However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said



conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty. In the present case, all the allegations were found to be false. Later, she filed another complaint alleging that her husband along with some other persons had trespassed into her house and assaulted her. The police found, on investigation, that not only was the complaint false but also the injuries were self inflicted by the wife. Thereafter, proceedings were launched against the wife under Section 182 of IPC.”

36. It may be noted here that in case of K. Srinivas Rao vs. D.A. Deepa reported in (2013) 5 SCC 226 the Supreme Court held that making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to mental cruelty.

37. Facts of a case would determine whether a particular act amounts to cruelty or mental cruelty as ground for dissolution of marriage under Section 13(1)(i-a) of the Act. The categories of cruelty in matrimonial cases are never closed, observed Lord Denning in Sheldon vs. Sheldon (1966) 2 WLR 993 which has been referred to with approval in case of Raj Talreja (supra) while



observing that cruelty in matrimonial behaviour defies any definition. Whether the husband is cruel to his wife or the wife is cruel to her husband will have to be ascertained and adjudged by looking into the entire facts and circumstances of the given case and not by any pre-determined rigid formula.

38. In the background of enunciation of law by the Supreme Court in case of Samar Ghosh (supra) and Raj Talreja (supra) and Ravi Kumar vs. Julmidevi [(2010) 4 SCC 476] we need to examine the correctness of finding recorded by the learned Principal Judge, Family court in the impugned judgment and order who had the opportunity to watch the demeanour of the parties while deposing their evidence.

39. We have extensively noted the pleadings of the parties before the court below in the matrimonial case and the evidence adduced in the proceedings before the learned Principal Judge, Family Court. In our opinion, the appellant miserably failed to establish a case of mental cruelty which can be said to be sufficient for grant of a decree for dissolution of marriage. This finding is in the background of vagueness of allegations made in the application seeking dissolution of marriage and the evidence adduced by the parties. We are also of the view that the finding recorded by the trial court that the appellant failed to make out his



case of desertion by the respondent as a ground for dissolution of marriage, in our opinion, does not suffer from any legal or factual infirmity. We answer points no. 1 and 2, set out for determination in the present appeal accordingly, and we, thus, concur with the findings recorded by the court below.

40. The next question, thus, takes us to the 3rd point framed for determination i.e. as to whether on the ground of irretrievable breakdown of marriage a decree of divorce should be granted, in the facts and circumstances of the present case or not. For the said purpose, we may refer the observation made by the Supreme Court in case of Samar Ghosh (supra), paragraph 102 of which reads thus :

“102. When we take into consideration aforementioned factors along with an important circumstance that the parties are admittedly living separately for more than sixteen-and-a-half years (since 27-8-1990) the irresistible conclusion would be that matrimonial bond has been ruptured beyond repair because of the mental cruelty caused by the respondent.”(emphasis added)

41. In case of Samar Ghosh (supra) the Supreme Court had reached an irresistible conclusion that matrimonial bond had ruptured beyond repair ‘because of mental cruelty caused by the respondent’ in that case.



42. Since, in our view, the appellant alleged but failed to prove mental cruelty against the respondent, he cannot take advantage of long separation between them, to make out a case that matrimonial bond has been ruptured beyond repair, because of mental cruelty caused by the respondent.

43. It has been aptly observed by the Supreme Court in case of Samar Ghosh (supra) in paragraph-99 that the concept of cruelty would differ from person to person depending upon his/her upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

44. In course of interactions, which we had with the appellant and the respondent, we noticed that the respondent was opposed to dissolution of marriage not only on the ground that the appellant had failed to establish his case of mental cruelty and desertion but more because it would cast serious stigma on her, considering the social status and cultural background of the parties, which would seriously jeopardise her living in the society with dignity and marriage of the daughters. We take note of the fact that the appellant did offer some piece of land to the respondent in course of the present proceeding, in the matrimonial village, for sustenance of the respondent and the two daughters.



The respondent appeared to be justified in her stand that she could not stay in her matrimonial home in a village as a divorcee of the appellant. In our opinion, considering the social status of the parties and their cultural background, decree for dissolution of marriage cannot be granted to the appellant in the special facts and circumstances of the case particularly when the appellant has failed to make out a case of mental cruelty. We answer 3rd and 4th points of determination accordingly.

45. This appeal is, thus, dismissed.

46. While dismissing the appeal, we cannot lose sight of the fact that the respondent is residing with her two daughters at her parental home presently. Maintenance has been allowed in favour of the respondent @ Rs. 10,000=00 per month by the court below, in payment of which the appellant has been irregular. When this appeal was taken up on 03.08.2019, we had noticed that arrears of maintenance to the tune of nearly Rs. 3 lakhs was due for payment. Taking note of this fact, we had directed the appellant to clear the arrears by making payment in installments of Rs. 20,000=00 per month in addition to the monthly maintenance amount @ Rs. 10,000=00 per month.

47. During our attempt to explore possibility of resolution of the dispute, we had asked the appellant to come out



with the details of his movable and immovable properties. The appellant by way of supplementary affidavit filed on 31.10.2018 has given the details of the properties held by him. According to the appellant, after partition in the family with his sisters he got 3.67 and ½ acres of land and residential houses at Narpatganj and Jeebachpur. It has also been stated that certain part of land was acquired for construction of NH-57, consequent upon which an amount of Rs. 27,28,591=00 has been paid to him by way of compensation. The said amount has also been partitioned among the appellant and his three sisters. Initially, an amount of Rs. 27,28,591=00 was found payable and he had received total sum of Rs. 24,20,260=00 after adjusting TDS. There is yet another portion of land, which is under acquisition. During the last interaction, which we had with the parties on 03.07.2019, the appellant had offered to pay a sum of Rs. 15 lakhs for marriage of the two daughters and 3 bighas of land to the respondent for her sustenance. He also offered that he would transfer 1 katha of land to the respondent as well as daughters with absolute right, title, interest and possession out of his share over the homestead land, for residential purpose.

48. It has also transpired that the appellant is likely to receive shortly, another amount of compensation against



acquisition of his land.

49. In the background of the above, and in order to protect the interest of the respondent and her daughters, after having dismissed the appeal, we pass following order :-

(i) The appellant shall deposit a sum of Rs. 15 lakhs in the account of the respondent within three months from today which amount shall be utilised for the purpose of marriage and education of the two daughters.

(ii) The appellant shall not deal with any of his immovable properties without leave of this Court nor shall appropriate any amount, which he receives in future on acquisition of land, by way of compensation.

(iii) The appellant shall keep on paying the amount of maintenance with arrears in installment as already directed.

(iv) The respondent shall be at liberty to apply for enhancement of the amount of maintenance by making application before the family court, which, if filed, shall be decided by the family court within two months from the date of filing of such application.

(Chakradhari Sharan Singh, J)

Jyoti Saran, J : I agree.

Rajesh/-

AFR/NAFR	AFR
CAV DATE	03.07.2019
Uploading Date	20.08.2019
Transmission Date	NA

(Jyoti Saran, J)

