

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No.3 of 2015**

- Anjan Bhattacharya S/o P.K. Bhattacharya Aged About 31 Years R/o Gudhiyari, Raipur, P.S. Gudhiyari, Distt. Raipur C.G., Chhattisgarh

---- Petitioner**Versus**

- Smt. Latika Arpita Bhattacharya W/o Anjan Bhattacharya Aged About 28 Years R/o Purvi Borgaon, Post- Farasgaon, Behind Jeevan Dhaba, Borgaon, Distt. Bastar C.G., Chhattisgarh

---- Respondent

For Appellant	:	Shri Shikhar Sharma, Advocate
For Respondent	:	Shri Ravindra Agrawal, Advocate

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor
Order on Board

Per Manindra Mohan Shrivastava, J.**30/07/2019**

1. This appeal is directed against the impugned judgment and decree dated 11-12-2014 passed by the First Additional Principal Judge, Family Court, Raipur in Civil Suit No.116-A/2011, whereby appellant's application for grant of decree of divorce on the ground of cruelty and desertion has been dismissed.

2. Appellant-husband moved an application seeking decree of divorce from respondent-wife on the allegations of cruelty and desertion. In the application, it was pleaded that after the marriage, though respondent-wife resided peacefully for sometime, in course of time, respondent-wife started creating pressure on the appellant to get the house situated in Sahu Para, Gudiyari, Raipur, recorded in her name. The respondent-wife refused to discharge ordinary family obligations and started insulting the husband and his parents. It was further pleaded that later on, the wife started threatening that she would get the

appellant-husband and his parents falsely implicated in a dowry case and she was not even properly taking care of infant child. She used to insist the appellant-husband to live separately from his parents, due to which, the appellant-husband had to take another house at Gulab Nagar, Gudiyaari, Raipur where resided with his wife separately from his parents. Even when the appellant-husband used to visit his ailing and aged parents and disabled brother to take care, the respondent-wife used to pick up quarrel with him. On 28-12-2008, the respondent-wife, without informing the appellant-husband and leaving behind the infant child, left the matrimonial house and later on, got a false report of commission of offence under Section 498-A of IPC lodged in Mahila Thana, Raipur, due to which, a criminal case was registered and the appellant-husband was also arrested and kept in jail. On 30-12-2008, the appellant sent a notice to the respondent-wife to resume co-habitation by coming back to matrimonial house, to which, she did not respond and finally, the appellant-husband has filed application for grant of decree of divorce.

3. On the other hand, the respondent-wife denied all the allegations and stated that all the allegations are false and afterthought and she neither insisted the appellant-husband for residing separately nor lodged any false report. The respondent-wife further pleaded that she was subjected to cruelty by her in-laws in the matter of demand of Rs.5 Lakh cash and other articles i.e.Cycle, Fridge, Cooler and finally, she was unceremoniously shunted out from her matrimonial house on 14-12-2008. She was taken to new house situated at Gulab Nagar, Gudiyaari, Raipur, where there was no proper facility and the appellant-husband used to abuse and assault her, but looking to the future of her daughter, she kept on tolerating, but on 27-12-2008, she was beaten up and thrown away from the matrimonial house, due to which, the matter was reported in the police station.

4. Learned Trial Court framed as many as four issues, which included issues as to whether the appellant-husband committed cruelty and also whether the respondent-wife had left the matrimonial house without just and proper cause.

5. Learned Trial Court, after recording evidence of the parties, came to the conclusion that the appellant-husband has failed to prove the case of desertion and cruelty and the allegations that respondent-wife committed cruelty are not made out and what has been stated by the respondent-wife that she was subjected to cruelty, appears to be proper.

6. As far as acquittal of the appellant-husband from the allegations of commission of offence under Section 498-A of IPC is concerned, learned Family Court recorded a finding that mere acquittal from criminal case, would not make out a case in favour the appellant-husband, but, he is required to establish his case of cruelty and desertion independently in these proceedings, which he has failed to do, therefore, no decree could be granted in his favour.

7. Assailing legality and validity of the impugned judgment and decree passed by the Family Court, learned counsel for the appellant would argue that even though, the appellant had very specifically pleaded and led evidence of reliable nature to prove that in many ways, the appellant and his parents were subjected to cruelty by the respondent-wife, trial Court disbelieved, relying upon trivial discrepancies, which were not so material as to completely dislodge the evidence in that regard. Apart from many arguments in support of the allegations of cruelty, one of the main argument of learned counsel for the appellant is that the case of cruelty is clearly made out on the ground that the appellant and his mother were falsely implicated in a criminal case. It is argued that in order to take upper hand in a pending dispute between the husband and wife, the respondent-wife lodged a false report in the Police Station alleging commission of offence of cruelty under Section 498-A of IPC, which was

completely false, motivated and concocted, due to which, the appellant and his mother had to face criminal proceedings and at the initial stage, they were sent to jail also. He would further argue that later on, the trial ended up in acquittal in favour of the appellant and observations made by the learned trial Court in various parts of judgment of acquittal clearly shows that the appellant was subjected to false, motivated and concocted allegations only in order to settle scores. Relying upon the judgments of the Supreme Court in the case of ***K. Srinivas vs. K. Sunita***¹ and ***Smt. Mamta Shrivastava vs. Taresh Kumar Shrivastava***², it has been argued that a false accusation and institution of criminal case, which ultimately is found to be motivated, leading to acquittal, would itself constitute a basis of cruelty and decree of divorce was therefore, ought to be passed in favour of the appellant.

8. On the other hand, learned counsel for the respondent-wife would support the impugned judgment and decree passed by the learned Family Court and argue that even though, number of allegations have been levelled by the appellant, none of them have been found to be proved. He would argue that the learned Family Court has meticulously examined each and every allegations of alleged cruelty and upon scrutiny of evidence, found that those allegations are not proved from reliable evidence. He would next argue that even the learned Family Court came to conclusion that it is the wife, who has been subjected to cruelty by the husband. He would submit that the allegations that the wife had lodged a report as a measure of false accusation of appellant-husband and his family members and that the complaint was concocted, is not reflected from the judgment passed by the learned trial Court acquitting the appellant from the allegation of commission of offence under Section 498-A of IPC. He would argue that mere acquittal is not enough to say that the wife committed cruelty.

1 2014 (16) SCC 34

2 2009 L.T.C. 52

He would argue that the acquittal of the appellant is not clear and clean and only based on benefit of doubt. He would further argue that standard of proof required in a criminal case and the civil case are different. He argued that even though, in the criminal case, the allegations of cruelty were not found to proved beyond reasonable doubt, that would not mean that it was necessarily an act of false accusation with a view to harass therefore, it cannot be said that wife subjected the husband and his family members to cruelty. In support of his submissions, learned counsel for the respondent has placed reliance in the case of ***K. Srinivas Rao vs. D. A. Deepa***³, ***Raj Talreja vs. Kavita Talreja***⁴ as also the judgment of this Court in the case of ***Gopal Verma vs. Poona Bai***⁵. Lastly, he would submit that whatever allegations have been levelled by the appellant-husband in the complaint and led in the evidence, are only in the nature of day to day dispute and ordinary affairs of small and petty quarrel between the husband and wife, which could not be made a basis to grant decree of divorce, as held by the Supreme Court in the case of ***Gurbux Singh vs. Harminder Kaur***⁶.

9. We have heard learned counsel for the parties and perused the records.

10. Appellant-husband filed application seeking decree of divorce on the ground of cruelty and desertion both. The main allegations, on the basis of which, the appellant sought decree of divorce, were that the appellant was being insisted by the respondent-wife to get one of the property belonging to them, recorded in her name; she was not inclined to discharge household obligations and engaged in insulting the appellant and his parents; not taking proper care of infant child; insisting the appellant to reside separately; objecting the appellant to visit his parents and disabled brother; hurling abuses to her

3 (2013) 5 SCC 226

4 AIR 2017 SC 2138

5 FAM No.42/2008, decided on 06-09-2017

6 (2010) 14 SCC 301

husband; leaving husband and infant child on 28-12-2008 and lodging a false report of commission of offence under Section 498-A of IPC read with Section 34 of IPC against the appellant and his mother, due to which, the appellant had to remain in jail. It was also pleaded that the respondent-wife had deserted the appellant and despite notice given to her on 30-12-2008, she did not come back to matrimonial house towards restitution of conjugal rights. All these allegations were denied. The learned trial Court, while considering the aforesaid allegations, held that the evidence led by the appellant and his witnesses on the alleged ground of cruelty is not reliable. As far as the allegations of false accusation by lodging criminal case, which ultimately ended up in acquittal vide judgment of the learned trial Court dated 05-02-2013 is concerned, the learned Court below recorded a finding that mere acquittal by itself, would not lead to conclusion that the allegations, which were made by the wife against the husband were patently false accusation of motivated nature, intended to harass the appellant or his family members.

11. The main question, which arises for consideration in this present case, whether it can be said that the allegations of cruelty levelled by the wife against the husband and lodging of FIR and subjecting her husband to criminal case, was based on patently false allegations and accusation and thus amounting to cruelty.

12. Before examining the material on record, we consider it apposite to refer to some of the decisions dealing with the issue as to whether false accusation of criminal case and subsequent acquittal of the husband, would give rise to a case of cruelty by the wife against the husband.

13. In the case of **K. Srinivas Rao** (supra), Their Lordships in the Supreme Court outlined the scope of term "Cruelty". In para 10 of the aforesaid decision, it was observed as under:-

10. “Under [Section 13\(1\)\(i-a\)](#) of the [Hindu Marriage Act](#), 1955, a marriage can be dissolved by a decree of divorce on a petition presented either by the husband or the wife on the ground that the other party has, after solemnization of the marriage, treated the petitioner with cruelty. In a series of judgments this Court has repeatedly stated the meaning and outlined the scope of the term ‘cruelty’. Cruelty is evident where one spouse has so treated the other and manifested such feelings towards her or him as to cause in her or his mind reasonable apprehension that it will be harmful or injurious to live with the other spouse. Cruelty may be physical or mental.”

14. In illustrative cases, inference of “mental cruelty” can be drawn, was considered in the case of ***Samar Ghosh vs. Jaya Ghosh***⁷, which was referred to in the aforesaid decision in the case of ***K. Srinivas Rao*** (supra), as below:-

11. In *Samar Ghosh* this Court set out illustrative cases where inference of ‘mental cruelty’ can be drawn. This list is obviously not exhaustive because each case presents its own peculiar factual matrix and existence or otherwise of mental cruelty will have to be judged after applying mind to it. We must quote the relevant paragraph of *Samar Ghosh*. We have reproduced only the instances which are relevant to the present case.

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) xxx xxx xxx

(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) xxx xxx xxx

(viii) xxx xxx xxx

(ix) xxx xxx xxx

(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) xxx xxx xxx

(xii) xxx xxx xxx

(xiii) xxx xxx xxx

(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.”

15. Their Lordships also added more instances of mental cruelty in addition to what was noted in the case of **Samar Ghosh** (supra), as below:-

16. “Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items 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 causing mental cruelty to the other spouse.”

16. Dealing with the case in hand, Their Lordships noticed that the wife had

lodged a report under Section 498-A of IPC against the husband and his parents and finally there was an acquittal. The conduct of the wife in filing a complaint and making unfounded allegations coupled with other conduct and keeping in view the ultimate result of acquittal, it was held that such a conduct on the part of the wife was mental cruelty on the husband, it was held:-

28. “Pursuant to this complaint, the police registered a case under [Section 498-A](#) of the IPC. The appellant-husband and his parents had to apply for anticipatory bail, which was granted to them. Later, the respondent-wife withdrew the complaint. Pursuant to the withdrawal, the police filed a closure report. Thereafter, the respondent-wife filed a protest petition. The trial court took cognizance of the case against the appellant-husband and his parents (CC No. 62/2002). What is pertinent to note is that the respondent-wife filed criminal appeal in the High Court challenging the acquittal of the appellant-husband and his parents of the offences under the [Dowry Prohibition Act](#) and also the acquittal of his parents of the offence punishable under [Section 498-A](#) of the IPC. She filed criminal revision seeking enhancement of the punishment awarded to the appellant-husband for the offence under [Section 498-A](#) of the IPC in the High Court which is still pending. When the criminal appeal filed by the appellant-husband challenging his conviction for the offence under [Section 498-A](#) of the IPC was allowed and he was acquitted, the respondent-wife filed criminal appeal in the High Court challenging the said acquittal. During this period respondent-wife and members of her family have also filed complaints in the High Court complaining about the appellant-husband so that he would be removed from the job. The conduct of the respondent-wife in filing a complaint making unfounded, indecent and defamatory allegation against her mother-in-law, in filing revision seeking enhancement of the sentence awarded to the appellant-husband, in filing appeal questioning the acquittal of the appellant-husband and acquittal of his parents indicates that she made all attempts to ensure that he and his parents are put in jail and he is removed from his job. We have no manner of doubt that this conduct has caused mental cruelty to the appellant-husband.”

17. In the case of **K. Srinivas** (supra) also, relying upon the decisions in the

case of **K. Srinivas Rao** (supra), held that if a false criminal complaint is preferred by either spouse, it would constitute matrimonial cruelty and entitle the other spouse to claim a divorce, as below:-

1. “In this Appeal, counsel for the Appellant has sought to draw our attention to all the arguments that had been addressed before the High Court on behalf of the Appellant-Husband in support of his claim for dissolution of his marriage to the Respondent by a decree of divorce under [Section 13\(1\)\(ia\)](#) of the Hindu Marriage Act, 1955. We have, however, restricted him to the ground of alleged cruelty on account of the filing of a criminal complaint by the Respondent against the Appellant and several members of his family under [Sections 498A](#) and [307](#) of the Indian Penal Code (IPC). We did this for the reason that if this ground is successfully substantiated by the Petitioner, we need not delve any further i.e. whether a marriage can be dissolved by the Trial Court or the High Court on the premise that the marriage has irretrievably broken down. This nature of cruelty, in the wake of filing of a false criminal case by either of the spouses, has been agitated frequently before this Court, and has been discussed so comprehensively and thoroughly that yet another Judgment on this well-settled question of law, would be merely a waste of time. A complete discourse and analysis on this issue is available in a well- reasoned judgment in [K. Srinivas Rao vs. D.A. Deepa](#), 2013(5) SCC 226, in which numerous decisions have been cited and discussed. It is now beyond cavil that if a false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce.”

18. In a mere recent decision in the case of **Raj Talreja** (supra), the legal position as to when a false complaint would amount to cruelty was also examined, as below:-

10. “Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of

lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there were justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the [Hindu Marriage Act](#) 1955 (for short 'the Act'). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty. In the present case, all the allegations were found to be false. Later, she filed another complaint alleging that her husband along with some other persons had trespassed into her house and assaulted her. The police found, on investigation, that not only was the complaint false but also the injuries were self inflicted by the wife. Thereafter, proceedings were launched against the wife under [Section 182](#) of IPC."

19. In the present case, it is not in dispute that the criminal case ended up in acquittal of the appellant and his mother Smt. Jamuna Bhattacharya vide judgment dated 05-02-2013. While acquitting the appellant and his mother, the learned trial Court made several observations with regard to the allegations made by the respondent-wife, which are as below:-

(A) The allegations in the report Ex.P-1 were found to be patently false. In para 18 of the judgment, the learned Criminal Court recorded a finding that the allegations of pouring kerosene and made an attempt to set ablaze appears to be unreliable, because this incident was not reported for almost three years nor it was informed to anybody including members of the matrimonial house, neighbours or other relatives and that such matters were reported in the complaint only on 27-12-2008.

(B) In para 19 of the judgment of the Criminal Court, it has been held that the allegations regarding day to day cruelty were of trivial nature and the evidence of the father does not show that such incident of day to day were disclosed by the respondent-wife to her father and disputes were ordinarily familiar disputes and not in connection with demand of dowry.

(C) The allegations of wife against the mother-in-law are false i.e. on 27-12-2008, alleged date of incident, the mother-in-law was present at Korba in connection with her treatment.

(D) In para 21 of the judgment of the learned Criminal Court has recorded a finding that in the cross-examination, the complainant-wife has admitted that the report was prepared on the advise of the Lawyer and it was intended to bring about the settlement and she had also admitted that as earlier dispute could not be settled, therefore, report was lodged and on this basis, the learned Criminal Court has reached to conclusion that false accusation were made to create pressure on the husband.

Each and every allegation made by the wife against the husband were found to be doubtful and the finding of Criminal Court was that though there were certain day to day disputes between the husband and wife, converting the dispute into allegation of cruelty in the name of demand of dowry was completely unreliable.

20. From the judgment of the Criminal Court, by which, the appellant was acquitted, it is reflected that the finding of the Criminal Court has been that the allegations and accusation made by the respondent-wife against the appellant-husband were patently false, motivated and an act of false implication only to pressurize the husband to reach to a settlement. The cumulative effect of the aforesaid finding recorded by the Criminal Court, while granting acquittal to husband, leave no manner of doubt that the present is a case of allegations of cruelty in connection with demand of dowry made by the respondent-wife against the appellant-husband, which were found to be false, motivated and calculatively intended to bring about a settlement. If that be so, in view of the settled legal position, as discussed hereinabove, that by itself, would constitute cruelty against the appellant husband. It is not a case that only because there were some doubt that the benefit of doubt has been given to the appellant-husband. The present is a case, where on facts, we find that there are categoric findings of the Criminal Court that the present is a case of false and motivated allegations having no legs to stand. True it is that merely because, there was an

acquittal giving benefit of doubt, it cannot invariably be concocted that the allegations of cruelty against the husband were patently false, motivated and calculated attempt to harass the husband. However, on peculiar facts of the case, particularly taking into consideration the sharp observations made by the learned trial Court, we have come to the conclusion that the present is a case of patently false allegation against the appellant-husband by the respondent-wife alleging cruelty in connection with demand of dowry, due to which, the husband and his mother had not only to face criminal prosecution, they were jailed also and were released only after getting bail. Therefore, on the aforesaid consideration, we are of the view that the appellant-husband is entitled to decree of divorce on the ground of cruelty and desertion.

21. In view of above, the appellant is entitled to grant of decree of divorce under Section 13 of the Hindu Marriage Act on the ground of cruelty.

22. After having gone through the material on record, particularly taking into consideration that the respondent-wife is not proved to be working or earning anything and further that the trial Court has awarded maintenance and even this Court had passed an order for grant of maintenance of Rs.3,000/- per month on 28-03-2018, the age of the respondent-wife, we deem it proper to award permanent alimony to the tune of Rs.10 Lakhs payable by the appellant to the respondent-wife in four installments. First installment of Rs.3 Lakh shall be payable within a period of six months from the date of this judgment. The second installment of Rs.3 Lakh shall be liable to be paid within one year from the date of expiry of six months as aforesaid. Two equal installments each of Rs.2 Lakh shall be payable by the appellant to the respondent-wife with a interval of one year.

23. Accordingly, this appeal is finally disposed off, granting decree of divorce as also permanent alimony to the wife, as ordered above. Let appellate decree

be drawn accordingly. We also make it clear that this Court had passed an order on 28-03-2018 for payment of maintenance of Rs.3,000/- in favour of respondent-wife. Learned counsel for the respondent-wife submits that this amount has not been paid. However, there is nothing on record by way of an affidavit to that effect, the amount of interim maintenance @ Rs.3,000/- per month shall also be payable by the appellant-husband to the respondent-wife with effect from 28-03-2018. The amount, if any, was not paid, shall also be deposited by the appellant with the Family Court within a period of three months and the Family Court shall allow the respondent-wife to receive the said amount.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor_)
Judge