

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 58 of 2015

Santosh Kumar Vastrakar S/o Shri Shivcharan Lal Vastrakar Aged About 34 Years R/o Village-Kuli, Police Station - Seepat, Tahsil-Seepat, District-Bilaspur, Chhattisgarh, Chhattisgarh

---- Appellant

Versus

Smt. Dhaneshwari Vastrakar D/o Late Ramkhilawan Aged About 28 Years R/o W/o Santosh Kumar Vastrakar, R/o Village-Charauda, Bhilai, Tulsi Niwas, Adarsh Nagar, Police Station-Old Bhilai-03, Tahsil-Patan, Disttrect-Durg, Chhattisgarh, Chhattisgarh

---- Respondent

For Appellant : Shri Rishi Sahu, Advocate

For Respondent : Smt. Anju Ahuja, Advocate

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

Judgment On Board

27/09/2019

Per Manindra Mohan Shrivastava, J.

1. This appeal under Section 19 of the Family Courts Act, 1984, is preferred against judgment and decree dated 4.3.2015 passed in Civil Suit No.457-A/2012 by which the learned Family Court, Bilaspur, has rejected appellant's application for grant of divorce on the ground of cruelty as well as desertion.
2. Appellant filed an application under Section 13 of the Hindu Marriage Act, 1955 seeking a decree of divorce against his wife-respondent on the pleadings, inter alia, that parties were married on 25.2.2006 according to Hindu rights and rituals and, thereafter, respondent-wife, after having stayed with the husband for about a week in the matrimonial house along

with the family members of the appellant, went along with the appellant-husband to his work place and thereafter on 29.11.2006, they were blessed with a girl child. According to the appellant, during the period of pregnancy, respondent-wife left the house of the appellant, went to her parental house and gave birth to a girl child and thereafter, she stayed there for about one year and then returned to matrimonial house in village – Kuli. Thereafter, she lived in the matrimonial house for a short period from March 2008 to March 2010 and suddenly left the matrimonial house on 7.3.2010 along with her father and thereafter, immediately she lodged a false report in the police station alleging cruelty in connection with demand of dowry against the appellant- husband and his parents, sisters, in which case, later on, vide order dated 22.11.2011, appellant and other family members were acquitted. Further pleading was that after 7.3.2010, respondent is continuing to reside only in her parental house and is not prepared to come back. In this manner, she has deserted the appellant for all times to come and there is nothing left between the parties and, therefore, in these circumstances, a decree of divorce be granted.

3. Denying all the allegation made in the application, respondent- wife made allegation of cruelty against the appellant by stating that when she conceived child, her husband acted cruelly stating that he was not inclined to have the child and she was insisted for an abortion. She was threatened so much so and thereafter, her parents were called and then she was sent back to he parental house against her wishes. No arrangements were made for her maintenance during the period of pregnancy and thereafter, when she delivered child, the appellant did not come even to see the child. It was also alleged that the appellant had developed illicit relation with his own cousin and when respondent-wife objected to this illicit relation, she was threatened. There were allegations of cruelty made against the husband. Despite all efforts by her, the appellant is not willing to take her back to matrimonial house, whereas she is still willing to go back to her matrimonial house and live along with the appellant.
4. On the basis of pleadings of the parties, learned Family Court has framed issue as to whether the appellant was entitled to grant a decree of divorce on the ground of cruelty and desertion and allowing the parties to lead oral

and documentary evidence came to the conclusion that the appellant-husband failed to prove cruelty as well as desertion both and thereby dismissed the application.

5. Assailing legality and validity of the impugned judgment passed by learned Family Court, learned counsel for the appellant would contend that the appellant not only specifically pleaded but led clinching evidence that the behaviour of the respondent-wife amounted to cruelty as she left matrimonial house against the wishes of the appellant, stayed in her parental house for long period of about one year, was not prepared to come back and finally when she came back, she again left matrimonial house and got a false criminal case registered against the appellant in which, the appellant and his family members were later on acquitted. In his submission, the aforesaid proved facts particularly acquittal of the appellant from the accusation of commission of offence of cruelty, proves that the appellant was subjected to false accusation and allegation which resulted in harassment, agony of being subjected to criminal trial. In support of his submission learned counsel for the appellant has placed reliance upon **K. Srinivas Rao Vs. D.A. Deepa** (2013) 5 SCC 226 and **K.Srinivas Vs. K. Sunita** (2014) 16 SCC 34.
6. Per contra, learned counsel for the respondent- wife would argue that the allegations of cruelty have neither been specifically pleaded nor proved from any clinching evidence. Learned counsel for the respondent-wife would submit that even if the entire pleadings and evidence, particularly that of the appellant are taken as it is, no case of cruelty is made out and on the other hand, it is clear that time and again, the respondent was thrown out of the matrimonial house for no good reason and the appellant completely abdicated his marital obligation and the pious obligation of taking care of his pregnant wife. It is also submitted that even after the respondent delivered child, neither the appellant nor his family members came to even see the child for long time and respondent was never provided any support moral, financial or otherwise. Learned counsel for the respondent further argues that there is nothing in the order passed by the criminal Court to even remotely suggest that accusations were false to the knowledge of respondent and were made only to embarrass the

appellant or calculated to humiliate him and his family members.

It is contended that the evidence on record proves that it is the appellant who subjected his wife and even the newly born child to all kind of cruelty, therefore, the order does not warrant any interference.

7. We have heard learned counsel for the parties and perused the records of the Court below.
8. In the application filed by the appellant-husband seeking decree of divorce, while pleading that appellant were married on 25.2.2006, it has been stated that after marriage, the respondent-wife resided in the matrimonial house in village- Kuli for about a week and thereafter, she shifted along with the appellant to his work place at Janjgir-Champa and there, they resided together. It has also been pleaded that on 29.11.2006, girl child was born. Further pleading is that while respondent was pregnant, she went to her parental house, resided there for one year and then again came back in March 2008 and resided till March 2010. In para-5 and 6 of the plaint, it has been pleaded that on 7.3.2010, she went back to her maternal house and then a report lodged in the police station alleging commission of offence punishable under Section 498-A IPC, which, however, led to acquittal. These pleadings contained in para 1 to 6 of the application are basis for seeking decree of divorce on the ground of cruelty. The only instance of cruelty stated in the application are that she left the matrimonial house while she was pregnant and secondly in March 2010, she went back to her parental house along with his father that she lodged a fake criminal case in which the appellant was acquitted. In his evidence, the appellant while repeating the aforesaid statement in his affidavit under order 18 Rule 4 CPC, has admitted in his cross-examination that after one month of delivery of child, his wife had come back to matrimonial house. He has also admitted that despite notice being given to him on as many as three occasions from Mahila Paramarsh Kendra, he never appeared. In para-17 of his cross-examination, he admits that the respondent is still willing to reside with him but he is not willing to keep her. He also admits that community meeting was held in village- Kuli i.e. his own village. The other witness Shivcharan Lal Vastrakar, the father of the appellant, has made similar statement in his affidavit under Order 18 Rule 4 CPC. In his cross-

examination, he admits that after marriage, his daughter-in-law was residing with his son. He admits that child was born at Bhilai and further admits that after birth of the child, he and his son, the appellant, did not go to Bhilai. He also states that after the respondent gave birth to a girl child, he went to see the child after about 5-6 months. He further admits in the cross-examination that after the child was born, the family members of respondent- wife had come to the matrimonial house along with the child and since then, the respondent was residing in the house. He further states that as respondent lodged criminal case against the appellant, now the appellant and his family members are no longer interested in allowing respondent to reside in the matrimonial house.

9. The aforesaid pleadings and evidence are not only blissfully vague but hardly constitute an allegation of cruelty much less proof of the same by reliable evidence. From the evidence, it is clear that the wife was left in the parental house when she was undergoing pregnancy and even after birth of child, the appellant never went to see his own daughter. Further allegation in the pleading that after respondent went to parental house and gave birth to child, she did not return for about one year, stands falsified from the evidence of the appellant wherein it has been stated in cross-examination that after one month she was brought to the matrimonial house along with child. What happened during March 2008 to March 2010 has not been stated. There is no whisper in the evidence that during this period, the respondent-wife did something which could even remotely suggest an act amounting to cruelty. In fact, the evidence taken as it is, clearly shows that during these two years after birth of child, there was absolutely no allegation against the respondent wife that she committed any cruelty.
10. We shall now advert to the aspect as to whether acquittal of the appellant, without anything, should be interpreted to draw a presumption that it was a case of false implication, calculated to embarrass and harm his reputation and to constitute cruelty. Before we advert to the order passed by the Family Court and other material on record, we consider it appropriate to refer to observations made by the Supreme Court in some of the decisions which were observed by this Court in its order dated

30.7.2019 passed in FAM No.3 of 2015 (*Anjan Bhattacharya Vs. Smt. Latika Arpita Bhattacharya*)

“13. In the case of *K. Srinivas Rao Vs. D.A. Deepa* (2013) 5 SCC 226, 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*¹, 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

¹(2007) 4 SCC 511

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."

SCC 34 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** (AIR 2017 SC 2138), 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."

11. In the light of the aforesaid decision, if we look into the order passed by the Criminal Court by which the appellant was acquitted of criminal charges, we do not find that there was any observation made by the criminal Court that institution of criminal case by the respondent-wife and allegation leveled on the appellant was an act of calculated design to falsely implicate the appellant and his family with any ulterior motive to harass him and to harm his reputation or to settle any score or even to use such allegation of bargaining with the husband in pending matrimonial dispute. We find that in the aforesaid decision, learned Court below has found that the respondent-wife had stated regarding cruelty committed on her by the appellant. The facts relating to respondent-wife conceiving the child, leaving matrimonial house, giving birth to child in the parental house and thereafter again reaching matrimonial house have also been stated in the order. However, the learned Court below granted benefit of doubt taking into consideration the allegation that she was unceremoniously shunted out of the matrimonial house on 7.3.2010 which according to her was reported immediately in the police station is not supported from evidence and further that in the intervening night, she had to stay back in house of another person could not be proved. Further, learned criminal Court has also taken into consideration that the respondent-wife had not lodged any report from the period from 2007-2010. The Court has also taken into consideration that the report was lodged at the juncture when the appellant was about to leave India and was worried as to what happened

and she was found weeping in the matrimonial house. Thus, learned criminal Court granted benefit of doubt because it found that there were no sufficient corroboration to the allegation.

12. Applying the principles which have been laid down in the aforesaid decision and also the view which have been taken by this Court in the case of **Anjan Bhattacharya** (supra), we find it difficult to hold that the respondent- wife had lodged a false report against the husband as a contrived thought vindictive and calculated to embarrass and incarcerate the appellant.

13. As far as the prayer for grant of decree of divorce on the ground of desertion is concerned, the evidence of both the parties clearly show that the respondent- wife was willing to reside with her husband but, firstly at the time of her pregnancy and thereafter in the month of March 2010, her father had come and she had gone to paternal house on account of harassment. We find that the evidence on record also shows that while respondent-wife was ready and willing to reside with her husband, the appellant-husband is not prepared to take her back to the matrimonial house and the reason for this, as stated by appellant's father Shivcharan Lal Vastrakar (AW2), is that as she lodged criminal report because of which the appellant could not proceed to America, now they are not inclined to keep the respondent in the matrimonial house and allow her to live in matrimonial house with her husband. Respondent -wife in her evidence has clearly expressed her willingness to settle all their dispute and reside with her husband. In para-9 of her statement, she has clearly stated that, though, she is residing with her parents, at present, she is willing to reside with her husband. An independent witness -Jeetram Sahu (NAW2) has clearly stated that father of the respondent-wife was abused stating that the appellant was not willing to have child and was insisting to go for abortion. He states that when he had gone respondent's matrimonial house along with her father, there also, they were harassed, abused and shunted out.

14. In the light of the aforesaid evidence, it is clear that it is not the respondent-wife but the appellant who deserted his wife and despite all efforts made and willingness on the part of respondent-wife, the appellant-

husband was not ready to lead along with matrimonial life along with the wife.

15. In the result, we do not find any merit in the appeal. The appeal is therefore dismissed. Let appellate decree be accordingly drawn.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge

Praveen