

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 259 of 2018**

- Sunita Shrivastava, W/o Bhagwat Shrivastava, Aged About 30 Years, D/o Ramsai Shrivastava R/o At Present Village Kirari Police Station Baradwar Tahsil Sakti, District Janjgir Champa Chhattisgarh

---- Petitioner**Versus**

- Bhagwat Shrivastava, S/o Shri Shiyaram Shrivastava, Aged About 36 Years, R/o Police Colony Janjgir, Police Station Janjgir, District Janjgir Champa Chhattisgarh

---- Respondent

For Appellant
For Respondent

Shri Deepak Kumar Singh, Advocate
Shri Punit Ruparel, Advocate

Hon'ble Justice Mr. Prashant Kumar Mishra**Hon'ble Justice Mrs. Vimla Singh Kapoor****Order On Board****10/01/2019**

1. A short issue arising in this appeal is about validity of the impugned judgment and decree dissolving marriage between the parties on the ground of cruelty.
2. The parties were married on 09.05.2006. They have a son Yashwant out of the wedlock. Respondent is a Police Constable. He prayed for a decree of divorce on the ground that the appellant wife has committed cruelty by moving out of the matrimonial house without information and by lodging false FIR alleging demand of dowry.

3. The Trial Court has passed the decree mainly on the ground that on the FIR lodged by the appellant, the respondent was sent for trial before the CJM, Janjgir in Criminal Case No.141/2015, in which the respondent was acquitted by the judgment dated 02.03.2016 and the said judgment has been affirmed in appeal by the 1st ADJ (FTC), Janjgir in Criminal Appeal No.42/2016, decided on 09.01.2017.
4. In the FIR, the appellant alleged demand of dowry and commission of cruelty as well, however, the Trial Magistrate recorded finding that there is no evidence of demand of dowry. The only evidence putforth by the prosecution is regarding commission of other cruelty. Thus, having lodged the FIR alleging commission of cruelty, the appellant failed to substantiate the allegation. The record of the Trial Court also contains the statement of the appellant's father Ramsai Shrivastava recorded in course of criminal trial. In his examination-in-chief, he has only stated that her daughter was subjected to cruelty for demand of dowry but has not specifically stated as to what article or the amount of cash was demanded. In the statement of other witnesses also, omnibus allegations have been made.
5. In the matter of **K. Srinivas Rao vs D. A. Deepa**¹, the Supreme Court has held thus in paragraphs 11 & 12:-

“11. In Samar Ghosh² 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

1 (2013) 5 SCC 226

2 (2007) 4 SCC 511

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) - (ix)

(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)-(xiii)

(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.”

12. It is pertinent to note that in this case the husband and wife had lived separately for more than sixteen and a half years. This fact was taken into consideration along with other facts as leading to the conclusion that matrimonial bond had been ruptured beyond repair because of the mental cruelty caused by the wife. Similar view was taken in *Naveen Kohli*³.”

6. Similarly, in the matter of **K. Srinivas vs K. Sunita**⁴, it has been held thus in paragraph 5:-

“5. The Respondent-Wife has admitted in her cross-examination that she did not mention all the incidents on which her Complaint is predicated, in her statement under [Section 161](#) of the Cr.P.C. It is not her case that she had actually narrated all these facts to the Investigating Officer, but that he had neglected to mention them. This, it seems to us, is clearly indicative of the fact that the criminal complaint was a contrived afterthought. We affirm the view of the High Court that the criminal complaint was “ill advised”. Adding thereto is the factor that the High Court had been informed of the acquittal of the Appellant-Husband and members of his family. In these circumstances, the High Court ought to have concluded that the Respondent-Wife knowingly and intentionally filed a false complaint, calculated to embarrass and incarcerate the Appellant and seven members of his family and that such conduct unquestionably constitutes cruelty as postulated in [Section 13\(1\)\(ia\)](#) of the Hindu Marriage Act.”

7. In the case at hand also, the appellant lodged an FIR alleging demand of dowry, however, she has failed to prove any such demand by leading any cogent or convincing evidence. Omnibus statements have been made by her and other witnesses during

3 (2006) 4 SCC 558

4 (2014) 16 SCC 34

the criminal trial without specifically stating the nature of demand of dowry and the time and place of making such demand.

8. In our considered opinion, once it is found that the allegation of commission of cruelty by demanding dowry has not been established in the criminal trial and the acquittal is on the ground of lack of evidence rather on the ground of benefit of doubt, it would amount to cruelty on the husband.
9. In view of the law laid down by the Supreme Court in the matter of **D. A. Deepa** (supra) and **K. Sunita** (supra), the Trial Court has not committed any illegality in granting decree of divorce.
10. There is no substance in this appeal. It fails and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Sd/-
Vimla Singh Kapoor
Judge