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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Judgment reserved on: 23<sup>rd</sup> April, 2019*  
*Judgment pronounced on: 19 November, 2019*

+ **MAT.APP.(F.C.) 188/2017**

**RITA VASHISHTHA**

..... Appellant

Through: Mr.Vishesh Wadhwa, Mr.Saurabh  
Dhingra, Ms.Swadha Gupta and  
Mr.D.K.Sharma, Advocates

Versus

**ANIL KUMAR VASHISHTHA**

..... Respondent

Through: Mr.Anil Sharma, Mr.Arun Baali and  
Mr.Kunal Nath, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE G.S. SISTANI**

**HON'BLE MS. JUSTICE JYOTI SINGH**

**G.S. SISTANI, J.**

1. The present appeal has been filed under Section 19 of the Family Courts Act, 1984 against the judgment dated 16.09.2017 passed by the Family Court by which the petition filed by the respondent/husband seeking divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'HMA') was allowed and a decree of divorce has been granted.
2. The necessary facts to be noticed for the disposal of the present appeal are that the marriage between the parties was solemnized on 03.11.1995, at Hathras-Uttar Pradesh, as per Hindu rites and

ceremonies. Two children were born from the said wedlock, who are both major and are staying with their mother/appellant herein after separation. As per the appellant/wife, she is staying separately since 15.06.2001. On 09.07.2001, a petition seeking divorce under Section 13(1)(ia) of HMA was filed by the respondent/husband before District Court, Kanpur which was subsequently transferred to Delhi vide order dated 18.11.2002 passed by the Supreme Court of India.

3. Mr. Vishesh Wadhwa, learned counsel for the appellant/wife submits that the respondent/husband had infact failed to prove that the grounds of cruelty alleged in the petition. There are no pleadings or evidence which would establish the ground of cruelty. In fact, the main thrust of argument of the learned counsel for the appellant/wife is that the Family Court has simply relied upon the allegations made against the respondent/husband either in the written statement filed by her or during the course of her evidence. He submits that the only course available to the respondent/husband was to amend the plaint and lead additional evidence and the Family Court has thus erred in granting a decree of divorce based on the pleadings and evidence of the appellant/wife. He submits that his case would be squarely covered by a recent decision of the Supreme Court in the case of ***Suman Singh v. Sanjay Singh*** reported at (2017) 4 SCC 85. Reliance is placed on paras 18 to 21 which we reproduce below:

*“18. In our considered opinion, both the courts below failed to take note of this material aspect of the case and thus committed jurisdictional error in passing a decree for dissolution of marriage. We cannot, therefore, countenance the approach of the High Court because it did not, in the first instance, examine*

*the grounds taken in the petition to find out as to whether such grounds constitute mental cruelty or not? The finding, therefore, though concurrent does not bind this Court.*

*19. We are not impressed by the submission of the learned counsel for the respondent that an incident which occurred somewhere in 2010 when the appellant visited the office of the respondent and alleged to have misbehaved with the respondent in front of other officers would constitute an act of cruelty on the part of the appellant so as to enable the respondent to claim divorce. In the first place, no decree for divorce on one isolated incident can be passed. Secondly, there could be myriad reasons for causing such isolated incident. Merely because both exchanged some verbal conversation in presence of others would not be enough to constitute an act of cruelty unless it is further supported by some incidents of alike nature. It was not so.*

*20. We are also not impressed by the submission of the learned counsel for the respondent that since the appellant had made allegation against the respondent of his having extramarital relation and hence such allegation would also constitute an act of cruelty on the part of the appellant entitling the respondent to claim decree for dissolution of marriage. Similarly, we are also not impressed by the submission of the learned counsel for the respondent that since both have been living separately for quite some time and hence this may be considered a good ground to give divorce.*

*21. In the first place, the respondent did not seek a decree of dissolution of marriage on these grounds. Second, the ground of cruelty taken by the respondent in his petition does not include these grounds. Third, even if some stray allegations were made by the wife in her pleading/evidence as were relied upon by the learned counsel are of no relevance because, as mentioned above, these grounds were not pleaded in the petition by the respondent for seeking a decree of divorce and nor were put in issue; and lastly, the burden being on the respondent, the same could be discharged by the respondent by pleading and then proving. It was not so done. It is for these reasons, we cannot*

*accept the aforementioned two submissions for affirming the decree of divorce.”*

4. The counsel for the appellant/wife further submits that the Supreme Court has held that allegations made in respect of extra-marital relationship would in fact not amount to an act of cruelty. While relying upon para 20 of the aforementioned judgment, learned counsel submits that merely because the parties have been residing separately since the year 2001 can not be a ground to uphold the order of the Family Court as the plea of irretrievable breakdown of marriage is not a plea available to either of the parties in view of the law of this country.
5. Additionally, it is submitted by the counsel for the appellant/wife that the respondent/husband had submitted a long list of witnesses, however, he only examined himself as PW-1. It is contended that an adverse inference should be drawn against the respondent/husband for listing ten witnesses and then not examining them.
6. *Per contra*, Mr. Anil Sharma, learned counsel for the respondent/husband submits that the respondent is a Judicial Officer, who has faced the brunt of repeated complaints being made to the Chief Justice of India, the Chief Justice of the Allahabad High Court and the concerned District Judges. The appellant/wife had indulged in every form of cruelty to browbeat the respondent/husband. Allegations pertaining to demand of dowry, complaint under Section 498-A of the Indian Penal Code (hereinafter referred to as ‘IPC’), allegations of illicit relations with many women, etc. have also been made by the appellant/wife. Various newspaper articles with the

photographs of the respondent/husband were got published by the appellant/wife. Interviews on Star news and Sahara T.V. were also given by the appellant/wife. He submits that all the aforesaid factors would amount to cruelty for the reason that all the allegations have not been proved in any Court of Law. The wild allegations were since made to lower the image of the respondent/husband. The allegations are false, frivolous, unfounded and baseless. Reliance is placed on the observations made by the Supreme Court in the case of **Dr. (Mrs.) Malathi Ravi, M.D. vs. Dr. B.V. Ravi, M.D.** reported at **AIR (2014) SC 2881**, more particularly paras 19, 23, 37 and 38. Reliance is also placed on **A. Jayachandra vs. Aneel Kaur** reported at **AIR (2005) SC 534** (head note B and paras 15 to 18), **K. Srinivas Rao vs. D.A. Deepa** reported at **AIR (2013) SC 2176** (head note A and B, paras 14, 22 and 23). Counsel further submits that the judgment of the Supreme Court sought to be relied upon by learned counsel for the appellant/wife will not apply to the facts of the present case for the reason that the consistent view of the Supreme Court in the judgment sought to be relied upon by him were not brought to the notice of the concerned Court.

7. Reliance has been placed on **Hiralal Moolchand Doshi vs. Barot Raman Lal Ranchhoddas (dead) by L.R.s** reported at **AIR 1993 SC 1449** to contend that admissions made by the parties stand on higher footing than the evidentiary admissions. Admissions, if clear, are the best proof of the facts admitted and they are fully binding on the party that makes them and constitute a waiver of proof. The counsel submitted that in the present case, the appellant/wife has admitted that

she had treated the respondent/husband with cruelty. Thus, the Family Court has rightly taken into account all the admissions made by the appellant/wife and on this basis granted a decree of divorce.

8. Mr. Sharma, submits while relying upon the case of *Naveen Kohli vs. Neelu Kohli* reported at *AIR (2006) SC 1675* and *V. Bhagat vs. D. Bhagat* reported at *(1994) 1 SCC 337* and also the Division Bench judgments of this Court that although irretrievable breakdown of marriage is not a ground available but a factor which has been consistently considered by the Courts along with the ground of cruelty where there is separation for a long period of time and there is no possibility at all for the parties to stay together. He submits that these judgments would also apply to the facts of the present case as highly scandalous allegations have been levelled against the respondent/husband, who is a Judicial Officer. Every effort has been made to tarnish his image and to ridicule him in the society by every method available including by way of writing letters to the Chief Justice of the concerned High Court, District Judges and by giving T.V. interviews and publishing articles with his photographs. In such extreme circumstances, besides allegations of being a man of easy virtue and alleging that the respondent/husband has been indulging in womanising with many women, coupled with the long separation of more than eighteen years, the present case would not fall in the category where there is possibility between the parties to reside together. Mr. Sharma also submits that both the children are grown up and the respondent/husband is looking after their needs including education fees, etc. which he continues to do and has also made a

statement before the Family Court that he will also provide the necessary expenses for them at the time of their marriage.

9. In rejoinder, learned counsel for the appellant/wife submits that the judgments sought to be relied upon by learned counsel for the respondent/husband would not apply to the facts of the present case.
10. We have heard learned counsel for the parties and considered their rival submissions and have given our thoughtful consideration to the matter.
11. We may note that the learned Family Court while granting decree of divorce under Section 13(1)(ia) of HMA has taken into account the allegations made by the appellant/wife and her father including demand of dowry, allegations of promiscuity and registration of FIR bearing No.231/01 under Section 498A/406 of IPC against the respondent/husband and his family members. The Family Court made following observations in paras 51 and 52 which read as under:

*“51. In the light of the said discussion, we reach the climax part in this unpalatable tale. A conjoint appreciation of the oral evidence of PW-1 petitioner husband, RW-1 S.D. Dixit and RW-2 respondent wife vis-a-vis the documentary evidence brought on the record amply demonstrate that a series of motivated complaints had been lodged by the respondent wife and her father inter alia alleging corrupt practices on the part of the petitioner husband in exercise of his judicial work, leveling wild and unsubstantiated charge of his illicit relationship with lady colleagues and other women, that tantamounted to causing extreme pain, anguish and discomfort to the petitioner husband. Such complaints resulted in calling of his comments by the High Court of Allahabad from the petitioner husband, subjecting him to face multiple inquiries, face loss in front of seniors,*

*colleagues, staff and subordinates clearly show that the such calibrated moves were orchestrated by the respondent wife and her father to seriously jeopardize the self esteem, reputation and professional standing of the petitioner husband. The respondent wife and her father strategically carried on the tirade against the petitioner husband in the print and the electronic media making him subject to public gossip, rumours and ridicule.*

*52. Without further ado, the acts and conduct attributed to the respondent wife, on her own or at the instigation or coaxing of her father (RW1) considered cumulatively during the entire history of this litigation certainly bring home that the petitioner husband has subjected to great deal of mental harassment, torture and cruelty. The acts or the conduct on the part of the respondent wife since the time litigation started, demonstrate that all through she acted out of sheer vengeance, leaving no scope of reconciliation that has led to a complete or irretrievable breakdown of marriage as well. As observed earlier by this Court, the petitioner husband too had his share of blemishes. Perhaps he was not an ideal husband and perhaps he could have acted more positively to work out the compatibility issues between the two of them, being a judicial officer, but then in matrimonial disputes, the Law does not look for perfection in the spouses. Had they been ideal couple, they would not have been litigating with each other. Unfortunate as it may look, what the respondent wife has done is not only to shut the door but also all windows of reconciliation and that rules out even a slightest prospect of resumption of marital union. Therefore, in the climax plot of the sordid saga, the petitioner husband is able to prove that the respondent wife has subjected him to great deal of mental cruelty within the ambit and scope of Section 13 (1)(ia) of the Act. The petitioner husband cannot be expected to put up with such behavior and resume cohabitation with the respondent wife.”*

12. The first question which arises for our consideration is as to whether Family Court has rightly granted a decree of divorce while relying

upon the pleadings and evidence of the appellant/wife and secondly; whether the appellant/wife has treated the respondent/husband with cruelty after solemnization of marriage.

13. We may note that the Family Court has rejected all the incidents of cruelty raised by the respondent/husband in the petition filed by him seeking divorce under Section 13(1)(ia) of HMA on the ground that they are mere assertions and the same have not been substantiated.
14. There is no doubt that subsequent events which emerged in the evidence of the parties and are admitted by the witnesses during Trial can be relied upon by the Courts. The Family Court has relied upon the case of **Malathi Ravi v. B.V. Ravi**, reported at (2014) 7 SCC 640, whereby the Hon'ble Supreme Court accepted the reasoning adopted by the High Court and held that subsequent events which are established on the basis of non-disputed material brought on record can be taken into consideration. The relevant para 23, 27 and 28 read as under:

*“23. First we intend to state the subsequent events. As has been narrated earlier, after the application of the wife was allowed granting restitution of conjugal rights, the husband communicated to her to join him, but she chose not to join him immediately and thereafter went to the matrimonial home along with a relative who is a police officer. After she stayed for a brief period at the matrimonial home, she left her husband and thereafter lodged FIR No. 401 of 2004 on 17-10-2004 for the offences under Sections 498-A and 506/34 of the Penal Code and the provisions under the Dowry Prohibition Act, 1961 against the husband, his mother and the sister. Because of the FIR the husband was arrested and remained in custody for a day. The ladies availed the benefit of anticipatory bail. The learned trial Magistrate, as we find, recorded a judgment of*

acquittal. Against the judgment of acquittal, the appellant preferred an appeal before the High Court after obtaining special leave which was ultimately dismissed as withdrawn since in the meantime the State had preferred an appeal before the Court of Session. At this juncture, we make it absolutely clear that we will not advert to the legal tenability of the judgment of acquittal as the appeal, as we have been apprised, is sub judice. However, we take note of certain aspects which have been taken note of by the High Court and also brought on record for a different purpose.

....

27. From the acceptance of the reasons of the High Court by this Court, it is quite clear that subsequent events which are established on the basis of non-disputed material brought on record can be taken into consideration. Having held that, the question would be whether a decree for divorce on the ground of mental cruelty can be granted. We have already opined that the ground of desertion has not been proved. Having not accepted the ground of desertion, the two issues that remain for consideration are whether the issue of mental cruelty deserves to be accepted in the obtaining factual matrix in the absence of a prayer in the relief clause, and further whether the situation has become such that it can be held that under the existing factual scenario it would not be proper to keep the marriage ties alive.

28. The learned counsel for the appellant has urged with vehemence that when dissolution of marriage was sought on the ground of desertion alone, the issue of mental cruelty can neither be raised nor can be addressed to. Regard being had to the said submission, we are constrained to pose the question whether in a case of the present nature we should require the respondent husband to amend the petition and direct the learned Family Judge to consider the issue of mental cruelty or should we ignore the fetter of technicality and consider the pleadings and evidence brought on record as well as the subsequent facts which are incontrovertible so that the lis is put to rest. In our considered opinion the issue of mental cruelty should be addressed to by this Court for the sake of doing

complete justice. We think, it is the bounden duty of this Court to do so and not to leave the parties to fight the battle afresh after expiry of thirteen years of litigation. Dealing with the plea of mental cruelty which is perceptible from the material on record would not affect any substantive right of the appellant. It would be only condoning a minor technical aspect. Administration of justice provokes our judicial conscience that it is a fit case where the plenitude of power conferred on this Court under Article 142 deserves to be invoked, more so, when the ground is statutorily permissible. By such exercise we are certain that it would neither be supplanting the substantive law nor would it be building a structure which does not exist. It would be logical to do so and illogical to refrain from doing so.”

(Emphasis Supplied)

15. The counsel for the appellant/wife has placed reliance on **Suman Singh** (*supra*) wherein the Hon’ble Supreme Court has allowed the appeal filed by the wife challenging decree of divorce granted under Section 13(1)(ia) of HMA on the ground that the allegations raised by the husband against the wife were stale and solitary incidents. It was held that both the Courts below have committed jurisdictional error in passing a decree of dissolution of marriage. We find that the facts of the present case are distinguishable for the reason that there is not a single but multiple complaints lodged by the appellant/wife against the respondent/husband. In the present case, the parties are living separately for about eighteen years. In this backdrop, we are of the view that there is no embargo in taking note of the pleadings and evidence and to grant a decree of divorce while relying upon the same.
16. To decide the second issue, it would be necessary to discuss the evidence available on record. After a careful reading of the material on

record, we find that the appellant/wife alongwith her father had made complaints dated 07.07.2001, 11.07.2001, 20.07.2001, 26.07.2001, 18.08.2001 and 20.08.2001 to the President of India, the Chief Justice of India, the Prime Minister of India, the Governor of Uttar Pradesh, the Chief Justice of High Court of Allahabad, the concerned District Judges and also to the Bar Associations. The details of which read as under:

- i) A complaint dated 18.08.2001 (Ex.RW1/DF) was lodged before the Allahabad High Court;
- ii) A writ petition bearing No.1105/2002 (Ex.PW1/14) was filed before Allahabad High Court by which allegations of corrupt practices and having illicit relationship with many women have been leveled by the appellant/wife against the respondent/husband;
- iii) Various complaints dated 11.07.2001, 20.07.2001, 20.08.2001 and 17.01.2003 (Ex.RW2/P15 to Ex.RW2/P19) were made to the Registrar General of High Court of Allahabad by which in addition to the previous allegations, it was further alleged that father of the appellant/wife had been receiving threats from the respondent/husband and she had also fear for her life;
- iv) A letter (Ex.RW2/19) addressed to the District Judge, Kanpur Nagar by which allegations of corrupt practices were raised against the respondent/husband;

- v) Various Interviews were given by the appellant/wife and her father to the reporters of daily Hindi Newspapers published in Agra Division and got published in the leading newspapers such as *Amar Ujala* (dated 19.11.2004), *Rahstriya Sahara* (dated 19.09.2004) and *Lokayukt* (dated 31.01.2005) that the respondent/husband being a judicial officer, trying to influence the outcome of trial pending against him;
- vi) Interviews were given by the appellant/wife to Star News and Sahara TV in which the allegations against the respondent/husband were reiterated;
- vii) Letters (Ex.RW2/P15 to Ex.RW2/P19) written by the appellant/wife by which she had alleged that respondent/husband was indulging in illicit relationship with various women;
- viii) Complaint dated 13.09.2004 (Ex.RW2/P13) made to the Chief Justice of India by which it was alleged that the respondent/husband has been tormenting and committing cruelty upon her by making demand of dowry from her parents and also the respondent/husband is trying to procure fake certificate from a doctor declaring her to be a lunatic;
- ix) One SLP bearing No.35/2003 (Ex.RW2/P6) was filed before Hon'ble Supreme Court of India highlighting the fact that the respondent/husband was trying to influence the investigation pending against him in FIR No.231/2001 under Section

498A/406 of IPC read with Sections 3 and 4 of the Dowry Prohibition Act.

17. Reading of the cross-examination of the appellant/wife would show that she had admitted that she had filed certain complaints against the respondent/husband. The appellant/wife also admitted that in the complaints, she had stated that the respondent/husband used to demand dowry articles and there are no other complaints except the dowry demand. The appellant/wife further admitted that she had not lodged any complaint against the respondent/husband at the Allahabad High Court and only her father had lodged complaint against the respondent/husband. The appellant/wife further stated that her father had instructed the lawyer to prepare the written statement in the matter and also instructed him to make allegations against the respondent/husband. She has not mentioned in the written statement filed by her that the respondent/husband is maintaining illicit relationship with any women.
18. As far as the news articles are concerned, we find that it was admitted by the appellant/wife in her cross-examination that they were published at the instance of the appellant/wife and she had supplied the photograph of their marriage to the newspaper reporters for publication. As a result of this, a vigilance inquiry was initiated against the respondent/husband and he was subjected to harassment. With regard to the complaint made by the appellant/wife, the appellant/wife had categorically admitted that since the respondent/husband had filed a petition seeking divorce from her and to teach him a lesson, she had filed all the complaints against him. We

may also note that it has emerged in the cross-examination of father of appellant/wife who was examined as RW-1 S.D.Dixit that he gave a bribe of Rs.3 lacs for getting the posting of his choice to the respondent/husband.

19. Applying the aforementioned law to the facts of the present case and after carefully examining the evidence on record, we are of the view that the appellant/wife has treated the respondent/husband with cruelty and made the life of the husband miserable by leveling false allegations against him. Four consecutive closure reports by four different Investigating Officers in favour of the respondent/husband also point towards the harassment faced by him. The matter was again re-investigated upon the directions of the High Court of Allahabad and yet again a closure report was filed by the Police officials. The conduct of the appellant/wife shows rift between the parties. Taking into account all the complaints made by the appellant/wife and her father against the respondent/husband, it can be inferred that the appellant/husband has been treated with mental cruelty and faced ignominy being a Judicial Officer. We are of the view that the decree of divorce granted by the Family Court deserves to be affirmed on the ground of mental cruelty.
20. As regards the irretrievable breakdown of marriage, we are of the view that there is no doubt that irretrievable breakdown of marriage by itself is not a ground under HMA, on which alone a decree of divorce can be passed. However, the irretrievable breakdown of marriage is a circumstance which the Court can take into account when cruelty is proved and blend them together. There is no doubt that irretrievable

breakdown of marriage has been blended with cruelty in recent judgments so as to dissolve the marriage between the parties, where the marriage is completely dead and beyond repair. In the present case, we find that the marriage is beyond salvage and the parties are living separately for the last more than 18 years. Thus, there is no possibility between the parties to reside together. Keeping in view that the respondent/husband is looking after the needs of the grown up children and undertook to pay all the necessary expenses at the time of their marriage. We do not find any infirmity in the view taken by the learned Family Court. Accordingly, the appeal is dismissed.

21. In view of the judgment passed, C.M. No.38860/2017 also stands dismissed.

**G.S.SISTANI, J.**

**JYOTI SINGH, J.**

**NOVEMBER 19, 2019**

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