

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

% **Judgment reserved on: 20.02.2019**
Judgment pronounced on: 23 .04.2019

+ **MAT. APP (F.C.) 213/2017 & CM APPL. 45034/2017**

M S Appellant

Through: Mr.Ashok Gurnani, Advocate along
with Appellant in person.

versus

S D Respondent

Through: Ms.A.Banerji, Advocate (DHCLSC)
along with Respondent in person.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J.

1. The appellant by way of the present appeal challenges the judgment and decree dated 19.08.2017 passed by the Family Court in HMA No. 5861389/2016 whereby on a petition under Section 13 (1) (ia) and (iii) of the Hindu Marriage Act, 1955 (*hereinafter referred to as 'HMA'*) filed by the appellant/husband, the Family Court has passed a decree of judicial separation between the parties U/s 10 of the Act, which was an alternate prayer by the appellant.

2. The relevant facts necessary for the present appeal are that the parties got married on 21.06.1999 as per Hindu rites and ceremonies at Sahib Ganj, Bihar. After the marriage, both the parties cohabitated as husband and wife at Kotiyan, Bihar. Although the marriage was consummated but there is no issue from the said wedlock.

3. The case of the appellant as pleaded was that he was appointed as Air Men in the Indian Force at the age of 18 in November, 1995. As the mother of the appellant was seriously ill and was eager to see the marriage of her son, the appellant married the respondent at a very early age. It is claimed that the marriage was a simple marriage without any dowry. The respondent joined the matrimonial house but stayed there for 14 days only and returned to her parental house and came back only after one year. The appellant found that respondent was a lady of unusual temperament and was very harsh and cruel towards him and his family members. Most of the time she would live at her parental house and would join the matrimonial home only when the appellant came on leave. It is claimed that in the month of November, 2002 when the appellant was at his native village, on annual leave, both brothers of the respondent and her father along with several other people came to house of the appellant on 24.11.2002 and created a lot of scene at his house and even manhandled the appellant and his family members in public, causing acute agony and insult to them.

4. It is also claimed that during the month of January 2003 the respondent mixed glass powder from a bulb in the food of the appellant's mother and sister. Fortunately, this was detected on time and a dangerous accident was averted. Again on 15.04.2003 the respondent committed an act which caused immense humiliation to the appellant and his family. At about

09:30 AM when the appellant and his father were coming back from the saw mill, they saw the respondent running in the street, totally naked. With great difficulty, she was taken back home. However, a few hours later, in a fit of anger, the respondent broke the colour TV in the house, to pieces. The appellant claims that respondent was even taken to a neuro psychiatric for treatment on 15.04.2003 and then left at her parental home. While at her parental home, the respondent wrote a letter dated 16.04.2003 to the Air Force Authority and leveled false allegations of harassment for dowry against the appellant. In fact, on 17.04.2003 a panchayat was held and the issues were amicably resolved. From 07.07.2003 it is stated that the parties started living at Sirsa, outside the Air Force campus area. The respondent was treated at the Air Force Hospital at Sirsa and even referred to Army Hospital Jalandhar and Delhi for psychiatric treatment. On 07.07.2003, according to the appellant, the respondent had written a letter to the father of the appellant confessing her mistake and sought pardon and guidance. A letter was also written on 14.08.2003 to the Commanding Officer, Air Force Station with copy to Chief of Air Staff, undertaking that the respondent was withdrawing all her allegations leveled in the earlier letter dated 16.04.2003. However, the respondent had no remorse for her action and again made a complaint on 16.09.2003 to the Air Force Authority and on account of which charges were framed against the appellant and he was placed under “close arrest” for one day. This, is stated to have affected his promotion and future career, apart from defaming him amongst his friends and colleagues. The appellant also claimed that the respondent never performed her domestic duties such as cooking, washing and cleaning and very often on the slightest pretext would threaten to kill herself or the appellant.

5. The appellant claims that the respondent went to the extent of lodging a criminal complaint against him, spear headed by her brothers, particularly Ramji Prasad, who is a practicing advocate in Bihar. The criminal complaint was under Sections 323/342/354/307/504/498A/34 IPC read with Sections 3 & 4 of the Dowry Prohibition Act. The appellant was arrested and remained in judicial custody between 18.01.2006 to 08.05.2006 and finally was released on bail on 08.05.2006 on the orders of the High Court of Patna. The criminal case was decided by the court of Learned MM Delhi on 15.10.2014 and the appellant was acquitted. This according to the appellant has led to extreme agony and humiliation and his entire career has been jeopardized as he did not even get extension in his service in the Air Force. It is also the case of the appellant that this criminal complaint was a counter blast by the respondent on receipt of summons in the divorce petition filed by the appellant in the court of learned ADJ at Sirsa. He submits that this divorce petition filed by him was transferred from Sirsa to the Family Court at Muzaffar Pur vide order dated 18.11.2005 on a transfer petition filed by the respondent. He also states that the respondent left no stone unturned to ruin his career as even his household articles were attached and confiscated by the police on 11.01.2006 pursuant to the warrant of attachment U/s 83 Cr.P.C.

6. On a Transfer Petition moved by the appellant the Supreme Court vide order dated 28.01.2008 had transferred the divorce petition as well as petition u/s 498-A to Delhi. It is this divorce petition which is the subject matter of appeal in the present case.

7. The respondent had filed her written statement wherein she denied that the marriage was dowry less and stated that her parents had spent money

beyond their means to perform the marriage as clothes worth Rs.40,000/-, jewellery worth Rs.90,000/- and furniture worth 50,000/- were given, besides a sum of Rs.1,00,000/- in the nature of two FDRs in the sum of Rs.50,000/- each. It was stated that on insistence of the appellant, the fixed deposits were made in the joint names, instead of her name only. It is the case of the respondent that she went to her parental home only after seeking permission from the appellant and never misbehaved with him or his family members. It was denied in the written statement that on 15.04.2003 she ran in the street in a naked condition or broke the television. It is alleged that on 13.04.2003 she was beaten up by her in-laws and they attempted to burn her by pouring kerosene. When she raised her voice for help, the neighbours gathered and rescued her. She was taken to her parental home and treated for injuries. The panchayat got involved and finally resolved the matter. It is her further case in the written statement that she was not taken back to her matrimonial home and which is why she lodged a complaint with the department and on their intervention the appellant took her to his place of posting at Sirsa. She claims that she was medically treated at the Army Hospital and the Chairperson of the Air Force Wives Welfare Association herself monitored the medical treatment. She denied that she had any aversion to sexual intimacy. She also denied that there was any psychiatric problem with her and averred that even the medical documents did not support this allegation of the appellant. The case of the respondent was that she never wanted the appellant to go to jail. She always wanted to live with the appellant. However, in the society to which she belonged the men were dominant and she was forced to listen to her brothers in this patriarchal set up. Thus, she had no option but to go by their wishes as she was beaten up

when she wanted to pardon the appellant. It is claimed that she deliberately kept away and did not appear as the witness for prosecution in the criminal case and it is only on account of this, that the prosecution case remained unsubstantiated and the appellant was acquitted.

8. After the pleadings of the parties, the following issues were framed by the trial court on 20.05.2010 as under:

“i) Whether after the solemnization of marriage the respondent has treated the petitioner with cruelty ?OPP

ii) Whether the respondent has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent?OPP

iii) Whether the petitioner is entitled to the decree of Divorce as prayed for? OPP

iv) Whether the petitioner is entitled to alternate decree of judicial separation U/s 13A? OPP”

9. The appellant examined himself as a witness PW1 and filed his evidence by way of affidavit Ex.PW1/A. The appellant was initially cross examined by the advocate of respondent but the same remained inconclusive as the respondent stopped appearing and was proceeded *ex-parte* w.e.f. 09.10.2013. The respondent did not lead any evidence.

10. The learned Family Court after perusing the evidence and pleadings found that the appellant had retired in November, 2015 was gainfully employed and living a life of contentment. The respondent has been full of remorse and that both were cordial to each other during the conciliation proceedings. It came to a finding that the appellant had failed to prove and

substantiate the grounds for divorce u/s 13 (1) (ia) and (iii) of Act. The Family Court thus passed a decree of judicial separation by observing that the period of judicial separation would afford further opportunity to the parties to salvage something positive out of their wrecked relationship. It is this judgment and decree which is impugned by the appellant herein and he prays that decree of divorce be passed between the parties and impugned judgment be set aside. No appeal has been filed by the respondent. She is represented by a Legal Aid Counsel and also made some submissions in person.

11. Learned counsel for the appellant has urged before us that the marriage between the parties has irretrievable broken down and therefore, the Family Court ought to have passed decree of divorce instead of a decree of judicial separation. The argument is that the courts have recognized irretrievable break down of marriage as a ground of divorce although it is not a ground under the Hindu Marriage Act. In support of this submission, reliance is placed on the judgment of the Apex Court in the case of **Naveen Kohli vs. Neelu Kohli** (2006) 3 Scale 252 and the judgment of a coordinate bench of this court in the case of **Rajiv Chikara vs. Sandhya Mathur** 2017 161 DRJ 8080 (DB). It is submitted that the law as laid down in these judgments is that irretrievable break down of marriage can be blended with cruelty and a decree of divorce can be passed. It is further contended that the Family Court has erred in holding that the appellant has not substantiated the cruelty alleged. It is submitted that the respondent had filed a criminal case against the appellant under Sections 323/342/354/504/307 and 498-A of the Indian Penal Code, 1860 ('IPC') and on account of this the appellant had remained in jail for 111 days. This had caused immense mental and physical

trauma to the appellant, apart from suffering humiliation amongst his family and colleagues in the Armed Forces. The incarceration also led to his non-promotion and consequent non-extension of his service in the Indian Air Force. This according to the learned counsel for the appellant was a matter of record and undisputed by the respondent and was sufficient to show that respondent had meted out cruelty to him and therefore, blending this with the fact that the parties were living separately from 2004 and the marriage had broken down, a decree of divorce ought to have been passed.

12. Without prejudice to above contentions, learned Counsel further argued that the respondent is a lady of unusual temperament, was harsh and cruel towards him and his family. He drew the attention of the court to some of the incidences which were averred in the petition and reiterated in the affidavit leading evidence, such as, attempting to kill his mother and sister by mixing glass powder in their food; complaining to the Air Force Authorities, resulting in humiliation amongst the Air Force personnel as well as undergoing a 'close arrest' on one occasion; found roaming around in a street naked on 15.04.2003, accusing him and his family members for demanding dowry. He, thus, submitted that despite testifying on these aspects and the testimony remaining unchallenged and unimpeached the Family Court should have granted a decree of divorce.

13. Learned Counsel for the respondent made a limited submission that the respondent belonged to a conservative family in Bihar and was a victim of patriarchal set up. Respondent always wanted to reside with the appellant and had consistently requested the appellant to take her back. Her complaints to the Air Force Authorities were only to seek help to resolve her conjugal life. It was contended that it was never the intent of the respondent

to implicate the appellant in any criminal case and that is the reason why she did not even appear as a prosecution witness and it was on account of this that the prosecution case remained unsubstantiated and the appellant was acquitted. Learned Counsel has denied that marriage had broken down irretrievably. She submitted that the respondent has always been ready and willing to go back to the matrimonial home and even at this stage she wants to join the company of the appellant. Respondent who is present in person, also expressed her desire to join the matrimonial home. No other grounds were urged before us.

14. We have heard the learned counsels for the parties and examined their rival submissions.

15. The appellant had filed his evidence by way of affidavit and the contents of the same are a verbatim copy of divorce petition. The respondent had begun to cross-examine the appellant, but the same was not completed. Family Court, after the perusal of evidence and pleadings found that the appellant had almost abandoned the respondent and was never interested in keeping her with him at the place of his postings. Even the short period for which the respondent stayed with him at Sirsa Air Force Station was after the respondent had complained to the Air Force Authority and with their intervention the parties were brought together. The Family Court has also observed that respondent belongs to a traditional Hindu conservative society with a patriarchal set up and her continuous neglect by the husband had actually driven her to a stage where she was suffering from depression and was fearful of everything. As regards certain incidences which were averred and testified by the appellant the Family Court has found that neither of those instances have been substantiated by any evidence by the appellant.

The incident of mixing glass powder in the food of the mother and sister has not been proved and neither could the appellant prove that the respondent was roaming around on the street naked. It is relevant to point out, that at the fag end of the trial, the appellant brought on record certain documents, which though were objected to by the respondent, but were allowed to be exhibited by the Family Court. The Family Court has looked into these documents and in fact, came to a conclusion that these were only pointer to the fact that the respondent was an innocent lady from a conservative background and in fact her endeavor was to join the company of her husband and to keep him happy. Some of the contents of the letter have been referred to in the judgment by the Family Court and all that they reveal is that the respondent did apologize for some mistakes which she may have done but she wanted to keep the family together, help in the marriage of her sister-in-law and serve her in-laws. The Family Court found that these documents did not in any manner help the appellant to substantiate the allegations of cruelty.

16. Having gone through the pleadings and the documents, we are in agreement with the findings of the learned Family Court. The appellant had led his evidence by way of an affidavit, which was a repetition of the contents of the divorce petition. Insofar as the period from the date of solemnization of marriage to October 2002 is concerned, the appellant has stated in his examination-in-chief that the respondent was of unusual temperament and harsh and cruel towards him and his parents. However, no details, time or incidences have been narrated or proved to substantiate this. The petition for divorce also lacks any material particulars on this account. Rule 7 of Hindu Marriage Rules, 1979 prescribes as to what should be the

contents of a petition filed under the Act. Rule 7 is extracted hereunder for ready reference:

"In addition to the particulars required to be given under Order VII, Rule 1 of the Code of Civil Procedure and Section 20(1) of the Act, all petitions under Section 9 to 13 of the Act shall state:

(a to f) XXX XXX

(g) the matrimonial offence or offences alleged or other grounds, upon which the relief is sought, setting out with sufficient particulars the time and places of the acts alleged, and other facts relied upon, but not the evidence by which they are intended to be proved e.g.;

XXX XXX (i to iii)

(iv) in the case of cruelty, the specific acts of cruelty with the occasion when the place where such acts were committed."

17. The above provision has been referred to recently by this Court in **O.V.S. vs. R.S.** 2019 SCC Online Del 7447. The relevant paragraph of this case is produced below:

"18. The Family Court, while considering various facts, had rightly rejected the petition seeking grant of divorce as the same lacks material particulars. Besides, no dates of the incidents, sought to be relied upon for cruelty, have been detailed in the petition seeking divorce. The appellant has also failed to provide necessary particulars in terms of Rule 7 of the Hindu Marriage Rules, 1979....."

18. When the pleadings coupled with the evidence lead by the appellant is examined, we find no specific incidents, dates or particulars of cruelty, harshness or unusual temperament have been detailed in the petition seeking

divorce. The appellant has failed to provide necessary particulars in terms of Rule 7 as extracted above. Mere sweeping allegations are made in the pleadings and in the affidavit leading evidence. Thus, on this aspect, the appellant has been unsuccessful in proving cruelty. In the case of ***Dharam Kaur vs. Narender***, reported as (2016) 230 DLT 539 (DB), the Division Bench of this Court observed as follows:

“13. It is also well settled that a party can lead evidence only with regard to allegations of fact clearly set out in the pleadings. In the present case, completely vague and general allegations have been made in the pleadings in his petition by the respondent-husband without any reference of date, time or place. The husband has used expression as “whenever” and “often” without giving any dates, place or time. It is noteworthy that in the entire petition, there is not a single specification of the date and time with regard to either the statements attributed to the appellant-wife or her father or with regard to any of the alleged incidents.”

19. The appellant has testified that on 24.11.2002, that the respondent had left the matrimonial home and went to her parental home and on the same day, her brothers with several other persons, came to his house and created a scene. Again, this testimony lacks particulars as to what time the respondent left the matrimonial home and what time the brothers came to his house; who were the other persons accompanying the brothers and what exactly transpired. The deposition also seems unbelievable inasmuch as if so many people had entered his house and created a scene as alleged, surely the appellant who was an Airmen would have made some complaint to the police and taken some action. It is deposed that in January 2003, an attempt was made by the respondent to finish his mother and sister by mixing glass

powder of the bulb in their food. However, the same was detected in time and the incident was brought to the notice of the parents of the respondent. While this is sought to be portrayed as one of the major incidences of cruelty, we find that the same has not been proved by the appellant as rightly found by the Family Court. It is not testified as to how the mother detected that any powder was mixed in the food. It is not stated whether the powder was such that it was visible with the naked eye or someone tasted the food or any test was done which led to the detection of the powder. More importantly, neither the mother nor the sister were brought into the witness box to prove the alleged incident, especially when the respondent had clearly denied the said incident in her written statement.

20. Another incident, which was sought to be emphasized by the learned counsel for the appellant was that the respondent on 15.04.2003 was found running in the street in a naked position when the appellant along with his father was coming back from the saw mill. The incident was completely denied by the respondent in her written statement. The appellant has not brought any evidence to prove the said incident. Surely, an incident of this nature and that too in a village environment would have been witnessed by a few people, if not many, but the appellant took no trouble to examine any witness on this aspect to support the alleged incident. Similarly, even the incident of the respondent breaking the colour TV has not been proved by any evidence.

21. We thus agree with the Family Court that in the absence of any cogent and independent evidence by the appellant, the allegations levelled by him cannot be held to have been proved and therefore, the appellant has not been able to make out his case that the respondent had treated him with cruelty on

account of these allegations. It has been held in several judgments that even if the respondent in its cross-examination has not been able to impeach the testimony that it by itself would not lead to a conclusion that the cruelty stands proved. Having filed the petition for divorce, the onus to prove the same was on the appellant by cogent evidence. In the case of **Subinoy Dey vs. Rina Hawalder**, reported as 2019 SCC Online Cal 297, the Division Bench of Calcutta High Court observed as follows:

“9. It is elementary law that the plaintiff/petitioner has to establish his case to be entitled to the reliefs prayed for in a suit. The plaintiff must allege with sufficient clarity and details his cause of action and must adduce cogent evidence, oral and/or documentary, to establish his cause of action. The plaintiff cannot get a decree only on the basis of weakness or loopholes in the defendant's case. Even if the suit is not contested by the defendant, the plaintiff's claim is liable to be rejected if the same cannot be proved with proper evidence. In the present case, the learned Judge found that the petitioner has not been able to prove his case of desertion or mental cruelty. Apart from a bald statement in the divorce petition that the respondent has caused much mental agony and pain to the petitioner, no other particulars of mental cruelty has been pleaded. Hence, the question of establishing the factum of mental cruelty by adducing evidence did not arise. No evidence can be looked into in support of a case which has not been pleaded. As observed by the Hon'ble Apex Court in the case of Savitri Pandey, (supra), mental cruelty is conduct of the other spouse which causes mental suffering or fear to the matrimonial life of the other. “Cruelty” postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty has to be distinguished from the ordinary wear and tear of family life.”

22. As regards the contention that even assuming that these incidents are not substantiated, yet the filing of criminal complaint on account of which the appellant had suffered incarceration for 111 days was an undisputed fact and this was sufficient to constitute 'cruelty', the Family Court has noticed this ground but has not agreed with the appellant on this aspect. Family Court has observed that for long years the respondent was abandoned by the appellant. She had married at a young age and all her dreams of good marital life had been crushed and she was left in an unsavory condition. In her parental home also, she had no say. Her brothers were completely dominant and she had no option but to go by what they advised her to do. The filing of the complaint was at the behest of her brothers more particularly Sh. Ram Ji Prasad, who was a practicing advocate in Muzaffarpur, Bihar. However, the respondent never wanted to take any action against the appellant, and thus she did not appear during trial, resulting in the acquittal of the appellant. In this background the Family Court was of the view that mere lodging of the complaint did not amount to 'cruelty' so as to grant a decree of divorce.

23. Having traversed the law on the subject and looking at the facts of this case, we do not endorse the view of the Family Court on this aspect. It is undisputed that on account of the criminal complaint filed by the respondent, the appellant underwent incarceration for a period of 111 days. It cannot be doubted that this would have resulted in immense humiliation and mental agony not only to the appellant but to his entire family. Spending 111 days in judicial custody can be a matter of great agony to any individual and this becomes a more serious issue, when we are dealing with a class of people who are employed in the Armed Forces. It goes without saying that for a

person employed in the Armed Forces, his performance and his reputation are of great importance. This episode, as rightly argued by the appellant, would have definitely adversely affected the reputation of the appellant in the Air Force apart from the fact that his career was also jeopardized since he did not get further extension in the service due to the criminal case. The plea of the respondent that she had no intent to implicate the appellant and so she did not appear in the criminal case as a prosecution witness, can be of no avail to the respondent and can hardly give any solace to the appellant. Once he has been incarcerated and his reputation and career have been damaged the acquittal cannot undo the harm caused.

24. We thus have no doubt in our mind that the action of the respondent in filing the criminal complaint, resulting in the appellant undergoing judicial custody has caused mental cruelty to him and this in itself is a sufficient reason to dissolve the marriage between the parties on the ground of cruelty. We are fortified, in our view, by a judgment of this Court in ***Shakuntala Kumari vs. Om Prakash Ghai*** 19) 1981 DLT 64 wherein it was held that a false complaint by the wife to the husband's employer would amount to mental cruelty as this would bring down the employee in the eyes of his employer and would reflect on his career and promotional opportunities. We quote the relevant paragraph hereinunder:

“A false complaint of this nature to an employer would certainly amount to mental cruelty. It would bring down the employee, in the eyes of his employer, and would reflect on his career and promotional opportunities. This would certainly play on his mind and affect his mental peace.

A Government servant is expected to maintain a reasonable and decent standard of conduct in his private

life and not bring discredit to his service by his misdemeanours.....”

25. The Hon’ble Supreme Court in the case of ***K. Srinivas Rao vs. D.A. Deepa*** (2013) 5 SCC 226 has held that making unfounded allegations against the spouse or his relatives in the pleadings, filing of complaints etc. which may have adverse impact on the job of the spouse in the facts of a case amounts to causing mental cruelty to the other spouse. The same view was expressed by the Hon’ble Supreme Court in the case of ***K. Srinivas vs. K. Suneetha*** (2014) 16 SCC 34. This was a case where the criminal complaint filed by the wife against the husband and his family members had resulted in their acquittal, although at the initial stages, they were arrested and incarcerated. The Family Court had granted a divorce to the husband on the ground of cruelty, however, the High Court had set aside the said order. The Apex Court set aside the order of the High Court holding that since the wife had filed a false criminal complaint, even one such complaint was sufficient to constitute matrimonial cruelty and accordingly passed an order dissolving the marriage between the parties under Section 13(1)(ia) of the Hindu Marriage Act. It observed that once the High Court had been informed of the acquittal of the husband and its family members, it ought to have concluded that the wife knowingly and intentionally filed a false complaint, calculated to embarrass and incarcerate the appellant and his family members, and that such conduct unquestionably constitutes cruelty.

26. We cannot also lose sight of the fact that even on earlier occasions the respondent had filed complaints against the appellant before the Air Force authorities and in fact one of them had culminated into “close arrest” of the appellant, for a day. Needless to say that this too had the effect of lowering

down his reputation in the eyes of the Air Force authorities. Being a member of the Indian Air Force, the appellant was expected to maintain a decent conduct even in his personal life so as not to discredit the elite Force of which he is a member. Surely, these complaints and his undergoing the close arrest would have affected his peace of mind and caused mental agony to a large extent. In the case of *Avinash Maan vs. Sanjana Maan* 234 (2016) DLT 130, a coordinate Bench of this Court, while dealing with a situation where the husband was in the Air Force and his wife made complaints against him, had treated the filing of such complaints to be an act of cruelty and had granted a decree of divorce in favour of the husband.

27. We also note that the appellant husband and the respondent wife are staying apart from June 2004, which means that they are living separately for 15 years. This separation has created a distance between the two which cannot be bridged. In the case of *Samar Ghosh vs. Jaya Ghosh* 2007 (4) SCC 511, the Apex Court had set out an illustrative list of cases which would constitute cruelty. One of the illustrative cases was where there has been a long period of continuous separation. In such a case, it could well be concluded that the matrimonial bond was beyond repair and the marriage became a fiction, though supported by a legal tie. The Apex Court held that by refusing to sever that tie, the law will not be serving the sanctity of marriage but showing scant regard for the feelings of the parties leading to mental cruelty. In our view, in the present case, the marriage has irretrievably broken down. While this may not be a ground for divorce under the Hindu Marriage Act, 1955 but in cases where the marriage is seen to be beyond repair, the Courts have taken this as an important circumstance amongst other grounds including cruelty to sever the marital tie. Marriage

is an institution which is based on love, faith and trust and sentiments and emotions for each other. But if the parties have lost these virtues for each other, an artificial reunion is of no consequence. The Apex Court in the case of *V. Bhagat vs. D. Bhagat* 1994 (1) SCC 337 and *Naveen Kohli* (supra), has dissolved the marriage between the parties where they had lived apart for several years and the marriage had been wrecked beyond the hope of salvage.

28. Due to the criminal cases, the appellant was not granted extension in the Air Force and he now stands employed in some private institution and has apparently moved on in life. The respondent has been living apart from the appellant for over 15 years and although suffers from a remorse and regret for her follies but seems undecided on what she wants in life. Even though, she might want to go back, the husband is not willing to take her back at all. After having interacted with the parties at great length, we find that there is no common ground between the two even today. They do not want to come to a settlement of any kind. The appellant feels very strongly against the respondent for having spoilt his life and career. Even if we dismiss the appeal, there are hardly any chances that the parties will lead a happy life as there is lot of bitterness in the mind of the husband due to the conduct of the wife. Maybe that the respondent/wife took certain actions in her desperation to save the marriage, out of frustration or under the dictates of her brother, but the fact of the matter is that her approach to the whole problem was incorrect. By her conduct of making complaints against the husband, she has brought the marriage to a stage, where it is beyond salvage.

29. The Family Court in its wisdom granted a decree of judicial separation with a view to give time to the parties to salvage their relationship. In our

view, this was not the correct approach in the facts and circumstances of this case. Thus, following the law laid down by various judicial pronouncements (supra), we feel that the appellant has proved mental cruelty on account of his incarceration. Blended with the irretrievable breakdown of marriage between the parties, as mentioned above, we find that the marriage between the parties should be dissolved.

30. In order to come to this conclusion, we have drawn strength from certain judicial pronouncements, as referred to above, wherein the Courts have held that marriages which are dead and there has been long separation with no chance of retrieving the bonds between the parties, could be dissolved on grounds of irretrievable breakdown of marriage. In this context, it is relevant to quote certain paragraphs from the judgments of the Apex Court and this Court.

31. In the case of **V. Bhagat** (supra) the Apex Court had dissolved the marriage between the parties on the ground that the marriage had broken down irretrievably and was dead for all purposes. There was no chance of the parties coming together and while irretrievable breakdown of marriage was not a ground by itself for divorce under Section 13(1) of the HMA, yet the unusual step was being taken to clear the insoluble mess between the parties. The relevant paragraph is as under:

“20.The husband in the position of the petitioner herein would be justified in saying that it is not possible for him to live with the wife in view of the said allegations. Even otherwise the peculiar facts of this case show that the respondent is deliberately feigning a posture which is wholly unnatural and beyond the comprehension of a reasonable person. She has been dubbed as an incorrigible adulteress. She is fully aware that the marriage is long dead and over. It

is her case that the petitioner is genetically insane. Despite all that, she says that she wants to live with the petitioner. The obvious conclusion is that she has resolved to live in agony only to make life a miserable hell for the petitioner as well. This type of callous attitude in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the petitioner with mental cruelty. It is abundantly clear that the marriage between the parties has broken down irretrievably and there is no chance of their coming together, or living together again. Having regard to the peculiar features of this case, we are of the opinion that the marriage between the parties should be dissolved under Section 13(1)(i-a) of Hindu Marriage Act and we do so accordingly. Having regard to the peculiar facts and circumstances of this case and its progress over the last eight years — detailed hereinbefore — we are of the opinion that it is a fit case for cutting across the procedural objections to give a quietus to the matter.

21. Before parting with this case, we think it necessary to append a clarification. Merely because there are allegations and counter-allegations, a decree of divorce cannot follow. Nor is mere delay in disposal of the divorce proceedings by itself a ground. There must be really some extraordinary features to warrant grant of divorce on the basis of pleadings (and other admitted material) without a full trial. Irretrievable breakdown of the marriage is not a ground by itself. But while scrutinising the evidence on record to determine whether the ground(s) alleged is/are made out and in determining the relief to be granted, the said circumstance can certainly be borne in mind. The unusual step as the one taken by us herein can be resorted to only to clear up an insoluble mess, when the court finds it in the interest of both the parties.

32. In the case of *Naveen Kohli vs. Neeru Kohli* (2006) 4 SCC 558 the Apex Court had set aside the order of the High Court which had reversed the judgment of the Trial Court, dissolving the marriage between the parties. The Apex Court, relying on the judgment of *V. Bhagat* (supra) and certain other judgments, directed that the marriage between the parties should be dissolved. It observed that from the entire evidence it was clear that the wife had resolved to live in agony only to make life a miserable hell for the husband as well. The marriage had broken down irretrievably and there was no way in which the parties could be compelled to resume life with the consort. The Apex Court further observed that it was the obligation of the court and all concerned, that marriage status should as far as possible be maintained, but when the marriage is totally dead, nothing would be gained by trying to keep the parties tied forever to such a marriage. The court found that there was a total disappearance of emotional substratum in the marriage. The parties had lived separately for more than 10 years with large number of litigations against each other and the matrimonial bond was beyond repair. The marriage was only for name sake and was beyond salvage. The relevant portions of the judgment are as under:

“83. Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our minds that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again.

84. The High Court ought to have appreciated that there is no acceptable way in which the parties can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied forever to a marriage that in fact has ceased to exist.

85. Undoubtedly, it is the obligation of the court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. In the instant case, there has been total disappearance of emotional substratum in the marriage. The course which has been adopted by the High Court would encourage continuous bickering, perpetual bitterness and may lead to immorality.

86. In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.

87. The High Court ought to have visualised that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.

88. The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.

89. In our considered view, looking to the peculiar facts of the case, the High Court was not justified in setting aside the order of the trial court. In our opinion, wisdom lies in accepting the pragmatic reality of life and take a decision which would ultimately be conducive in the interest of both the parties.

90. Consequently, we set aside the impugned judgment of the High Court and direct that the marriage between the parties should be dissolved according to the provisions of the Hindu Marriage Act, 1955.”

33. In yet another case, a coordinate Bench of this Court has upheld the judgment of the Family Court granting divorce, by observing that the parties were living separately since the year 2009 and considering their conduct there was no possibility of their joining together. To insist on retaining the matrimonial bond would be putting the party under intense mental cruelty. The Division Bench in this case titled **Rajiv Chikara** (supra) placed reliance on the judgments in the case of **Ramesh Dudani vs. Ramesh K. Dudani** and **Shrikumar V. Unnithan vs. Manju Nair** to hold that the concept of cruelty can be blended with irretrievable breakdown of marriage and the marriage can be dissolved. Reliance was also placed on another Division Bench judgment of this Court in MAT. APP.(FC) 36/2014 titled **Sandhya Kumari vs. Manish Kumar**, wherein it was held that if it is not possible for the husband and wife to live together, except by indulgence in mutual bickering,

targeting each other mentally, insistence by one to retain the matrimonial bond would be a relevant factor to decide the issue of cruelty, for the reason that the obvious intention of the said spouse to continue with the marriage is not to enjoy the bliss thereof, but to torment and traumatize each other.

34. We thus find merit in the present appeal, which is hereby allowed. The impugned judgment of the Family Court is set aside. Marriage between the appellant and the respondent is dissolved by a decree of divorce. Let a decree sheet be drawn up accordingly.

35. While reserving the judgment on 20.02.2019, we had recorded that certified copy of the judgment will be sent by the Delhi High Court Legal Services Committee to the respondent through post as she had expressed her inability to obtain a copy being a resident of Bihar and not acquainted with the procedures of this Court. Let a certified copy of the judgment be sent by the Delhi High Court Legal Services Committee to the respondent by post at her address mentioned in the Memo of Parties.

36. Pending application also stands disposed of accordingly.

JYOTI SINGH, J.

G.S. SISTANI, J.

APRIL 23, 2019

ssc/rd