

HIGH COURT OF CHHATTISGARH, BILASPUR

FA (M) No. 128 of 2014

Smt. Mamta Ayyar, W/o G. Subramanyam Ramchandran Ayyar, aged about 34 years, R/o Purani Basti, Khokhopara, Raipur, Tahsil and District Raipur, Civil and Revenue District Raipur (CG) ----- **Appellant**

Versus

G. Subramanyam Ramchandran Ayyar, S/o Late Subramanyam Ayyar, aged about 42 years, R/o Qtr. No.516, Block 22, R.D.A. 3rd Floor, Kachna Road, Raipur (CG). New Address – Qtr. No.516, Block 22, RDA 3rd Floor, Near Purnendra General Stores, Kachna Road, Khamhardih, Raipur, Tahsil and District Raipur, Civil and Revenue District Raipur (CG) ----- **Respondent**

For the Appellant :- Mr. H.B. Agrawal, Senior Advocate with
Mr. Pankaj Agrawal, Advocate.
For the Respondent :- Mr. Manish Nigam, Advocate.

Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Vimla Singh Kapoor,

Order on Board by Vimla Singh Kapoor, J.

26.05.2020

The appellant/wife has assailed the legality, validity and propriety of the judgment and decree dated 26.11.2014 passed by First Additional Principal Judge, Family Court, Raipur in Civil Suit No.3-A/2012 whereby the application filed by her under Section 13(1) (ia) of Hindu Marriage Act, has been dismissed.

2. Facts leading to the disposal of the instant appeal, in narrow compass, are that the appellant and the respondent herein first enjoyed the love affair for about a year or two, and subsequently tied a nuptial knot on 24.01.1999 as per the Hindu rites and rituals. Out of their wedlock, on 05.03.2000 they were also blessed with a daughter namely Kritika (NAW-2). The record shows that having lived together for a longer period of about 11 years, appellant/wife

filed a petition for divorce against the respondent/husband *inter alia* alleging as under:-

- (i) that just 5 months after marriage, on three different occasions he had borrowed Rs.35,000, Rs.51,000 and Rs.1,50,000 (totaling to Rs.2,35,000/-) from her father for purchasing a flat at Raipur, and while returning the same he had picked up quarrel with her;
- (ii) that on trivial matters he used to abuse her and displayed violent disposition towards her;
- (iii) that in the year 2009 he had driven her out of his house which made her take shelter in the house of her parents;
- (iv) that in December, 2009 also he had badly misbehaved with her parents saying that he would not keep the appellant/wife with him even for a minute as foul smell emanated from her body;
- (v) that on 01.08.2010 he stopped her on the way, started roughing her up and also put her under threat of being cut into pieces;
- (vi) that on 14.05.2011 also he waylaid her in presence of her nephew Shubham and persistently asking her of giving divorce, he hurled filthy abuses at her.

3. Controverting the allegations made by appellant/wife, the respondent/husband has filed the written statement stating as under:-

(i) that he never ill treated the appellant/wife nor did he subjected her to beating at any point of time as alleged. On the contrary, he has stated that he always kept her by taking care of all her wishes, and that no sort of acrimony ever found a place in between them;

(ii) that out of her affection towards the appellant/wife he fulfilled all possible wishes of the appellant/wife by ensuring higher education to her and making available a new two wheeler for making to and fro visit. He even got her enrolled in a music school by respecting her desire;

(iii) that he never borrowed the amount of Rs.2,35,000/- from her father as has been alleged by the appellant/wife, and that he was having sufficient resources with him to carry out his responsibilities towards his family;

(iv) that he still expresses his preparedness to keep the appellant with him by ignoring the previous attitude displayed by her;

(v) that he never drove her out of his house, but it is she herself who left his house without thinking over the well being of their minor daughter.

4. To substantiate their respective pleadings, appellant/wife has examined herself as AW-1 and her mother namely Indu Tai as AW-2 whereas respondent/husband has examined himself as NAW-1 as also his 14 years old daughter namely Kritika Ramchandran as NAW-2.

5. Learned Family Court, after considering the rival submissions of the parties did not find the ingredients of cruelty in the act of the respondent/husband as pleaded by appellant/wife, such as her subjection to abuses, beating and ousting out of the house, and thus dismissed the petition filed by her seeking dissolution of marriage, by judgment under challenge in this appeal.

6. Learned counsel for the appellant/wife submits that though number of specific allegations regarding beating and driving the appellant out of his house have been made against the respondent/husband, learned Family Court has not considered the same in its proper perspective, and dismissed the petition of appellant/wife filed under Section 13 (1) (ia) of Hindu Marriage Act. He further submits that though the mother of appellant/wife namely Indu Tai (AW-2) has also supported the version of the appellant regarding beating, the same has also been overlooked by the Family Court. He further submits that the appellant borrowed Rs.2,35,000/- on three different occasions from the father of the appellant/wife and at the time of returning the same to him he picked up quarrel with her and thus created a nuisance which also amounts to cruelty, but the Court below has erroneously turned down the pleadings of the

appellant/wife and by the impugned judgment and decree dismissed the divorce petition filed by her, which is contrary to the provisions of law.

7. On the other hand, counsel for the respondent/husband supports the impugned judgment and decree and submits that the marriage of the appellant and the respondent was solemnized on 24.01.1999 and thereafter up-to the year 2010 they lived a happy married life without any grudge from each other. He further submits that the respondent always took due care of the appellant/wife and tried to the best of his ability to make available all possible things desired by her. He further submits that the appellant was got admitted in a music school as per her wishes and was also provided a two wheeled vehicle so that she could not undergo any difficulty in attending her classes and getting back home. According to him the entire dissension came in between them only after she started attending music classes on being influenced by her colleagues. Thus the over all submission of the counsel for the respondent/husband is that judgment and decree passed by the Family Court is strictly based on the material available on record and being so, no interference with the same is called for.

8. Heard counsel for the parties at length and gone through the material on record including the evidence of the witnesses minutely.

9. Before dealing with the factual aspect of the matter in the light of evidence of the witnesses, this Court feels it apposite to look

into certain instances of human behavior which may be relevant in deciding the 'mental cruelty' as has been determined by the Apex Court in the matter of **Samar Ghosh Vs. Jaya Ghosh** reported in (2007) 4 SCC 511 which reads as under:-

“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) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(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) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(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) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(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.”

The aforesaid guidelines laid down by the Apex Court have further been followed in the case of **Suman Singh Vs. Sanjay Singh** reported in **(2017) 4 SCC 85**.

10. Now as far as the facts of the case in hand are concerned, it is manifest from the pleadings and the evidence on record that before their marriage which took place on 24.01.1999, the parties were enjoying love affair and lived a happy post marriage life up-till 2010 and in the meanwhile a daughter namely Kritika was also born out of the wedlock. Though the appellant/wife has alleged that an amount of Rs.2,35,000/- was borrowed by the respondent/husband from her father on three different occasions and while returning the same he picked up quarrel with her, yet none of the witnesses has supported this version by testifying in the Court. Even the father of the appellant/wife who is said to have lent the aforesaid amount to the respondent/husband, has not been examined to prove this fact. As far as respondent/husband is concerned, he has categorically denied the factum of borrowing money from the father of the appellant/wife at any point of time. Mother of appellant/wife namely Indu Tai has been examined as NAW-2 but she has also chosen to keep quite on this aspect of the matter. She has merely stated that the respondent/husband beat her daughter in her presence, but she

has not given the date and time as to when the respondent/husband did so. Not even the matter was reported to the police either by the appellant/wife or her mother. Of course, in connection with another stray instance of beating, a report was lodged by the wife on 27.08.2013 but subsequently the matter was settled between them amicably. If the stand of the appellant/wife regarding her being subjected to abuses and beating is taken into consideration, this Court feels it a bit difficult to rely upon the same because had she really been meted out such treatment from the husband, she would have definitely sustained some injuries and taken treatment for the same, but no medical evidence to this effect has been adduced by her in this respect. She has also made an allegation that once in the presence of her nephew Shubham the respondent/husband stopped her on the way, hurled filthy abuses at her, took out the key of her moped and also misbehaved with her asking her to give divorce to him, yet placing implicit reliance on this version of the wife seems to be a bitter pill to swallow for the reason that the nephew Shubham who is said to be with her at the relevant time has not been examined in the Court. Likewise, the factum of appellant/wife being insulted by the respondent/husband in her maternal home in presence of number of people, also appears to be a fabricated one because not even a single witness has come forward to support this version of the appellant. All this apart, the appellant/wife has also made a clumsy allegation that her husband was not ready to keep her on account of odor coming out from her body. In the opinion of

this Court, this allegation also appears to be a baseless one because after spending a long period of 11 years and being blessed with a daughter out of their conjugal relations, no man of common prudence is supposed to make such a senseless allegation against his own wife. Even one Shakun in whose house the appellant/wife went to stay for a day or two after being allegedly ousted by the respondent/husband, has also not been examined. The most impartial witness in this case appears to be the 14 year old daughter of the appellant and the respondent namely Kritika (NAW-2) but she too has not stated anything against the respondent/husband. She however has stated that on two occasions it is the appellant/wife who herself created a nuisance by entering in quarrelsome activities with her father (the respondent/husband) when he asked her not to go the music classes on account of sudden arrival of some guests.

Thus if over all factual position is taken into consideration, none of the afore-stated guidelines for making out cruelty are attracted in this case on the part of the respondent/husband. One thing which *prima facie* comes to the judicial mind of this Court seems to be that after seeing the outside atmosphere by going to the job and then to the music classes this clumsy episode made a place in between the couple putting at stake their conjugal bliss. What is more important in this case is that right from the beginning the respondent/husband has been expressing his willingness to keep the appellant with him as wife by forgetting all the previous unbecoming instances erupting between them. Thus on comprehen-

sive appraisal of the entire matrimonial life of the parties, this Court is of the considered opinion that merely the afore-stated trivial irritations, quarrels, normal wear and tear of the married life which happened in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

11. Consequently, in view of the aforesaid factual and legal position, the judgment and decree dated 26.11.2014 passed by First Additional Principal Judge, Family Court, Raipur in Civil Suit No.3-A/2012 dismissing the application filed by the appellant/wife under Section 13(1) (ia) of Hindu Marriage Act seeking dissolution of marriage, is just and proper and based on thoughtful consideration of the material brought on record. Being so, this appeal being devoid of any substance is hereby dismissed. Let a decree be drawn accordingly.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge