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HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal (M) No. 187 of 2017

Shivani Gupta W/o Piyush Sugandhi, aged about 24 years, (D/o Jagdish Prasad Gupta), R/o Hospital Road, Krishnapura Dabra, District Gwalior (M.P.), At Present R/o B-60, Kavita Nagar, Raipur, Tahsil and District Raipur, Chhattisgarh.

----- Appellant/Non-applicant

Versus

Piyush Sugandhi S/o Rajendra Sugandhi, Aged About 31 Years R/o 50/3, Satyavilla, Sugandhi Garrage, Dewas Road, Ujjain (M.P.), At Present R/o Risaipara, Dhamtari, Police Station And Tahsil Dhamtari, District Dhamtari, Chhattisgarh.

----- Respondent/applicant

For the Appellant	: Mr. Anshuman Shrivastava, Advocate
For the Respondent	: None

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

Order on Board by Justice Manindra Mohan Shrivastava J.
10.07.2020

None for respondent though served.

2. Though the case was listed for orders on stay, learned counsel for the appellant has finally argued the matter.

3. This appeal is directed against impugned judgment and decree dated 19th July, 2017 passed in Civil Suit No.1-A/2016 by Family Court, Dhamtari whereby the learned Family Court has allowed respondent's/husband's application for grant of divorce on the ground of cruelty.

4. Respondent – Piyush Sugandhi filed an application under Section 13 of the Hindu Marriage Act for grant of decree of divorce on the pleadings that marriage of Piyush was solemnized

with Shivani on 13.07.2013 and soon after she reached matrimonial house at Baloda Bazar, she started subjecting the husband to torture by indulging in quarrel on every issue and showing no interest to discharge her household obligations. Wife was repeatedly engaged in insisting to visit house of her brother-in-law at Raipur and that was one of the main reason for quarrel between the parties. Aggrieved by quarrelsome behavior resulting in mental cruelty application was filed in the Police Station time and again which led to counselling also. An application for judicial separation was filed on 19.03.2014 at Baloda Bazar but thereafter, he was transferred to Village Chhati and therefore, the application could not be pursued and it was dismissed. It was further pleaded that while he was posted and working at Village Chhati, residing in a lodge therein during that period, wife reached there along with her sister and brother-in-law in his work place in the Bank and indulged in indecent behavior, abuses and threat of life to withdraw the case at Baloda Bazar. He was threatened that he would be involved in false case. In this manner, wife caused serious embarrassment and cruelty so much so that husband had to again report the matter to the Police Station. It was also pleaded that appellant's two wheeler was also forcefully taken away. Husband also filed a criminal complaint before the Magistrate on the allegation of commission of offence under Section 294 and 506 IPC. It was further pleaded that when husband's mother had come to Baloda Bazar to reside with his son, there also, wife misbehaved and manhandled which matter

was also reported in the Police Station. For all these reasons, the husband suffered cruelty. A false criminal case was registered against him alleging commission of offence under Section 498-A IPC which ended in acquittal vide judgment dated 24.07.2015. Because of the quarrelsome behavior of the wife, the respondent/husband was ousted from the lodge where he was residing and thereafter another house which was taken on rent, from there also, the landlord evicted the respondent because of the quarrelsome behavior of the wife. Lastly, it was pleaded that since 02.05.2014 the wife is residing separately and there has been no cohabitation also between the parties. On such pleadings decree of divorce was sought.

5. On the other hand, non-applicant/wife opposed the application and denied all the allegations levelled against her. She pleaded in her reply that the husband was subjecting her to physical and mental cruelty probably for the reason that he did not want to stay with her. It was also pleaded that though number of complaints were made in the Police Station against the wife by the husband, but no case was registered. It was pleaded that in the counselling, the husband was advised to take the wife back to the matrimonial house. It was further pleaded that aggrieved by cruel treatment, wife even attempted to commit suicide by consuming sulfuric acid on 12.12.2013, however, due to treatment she was saved. According to the wife, she was never accorded proper treatment as wife.

6. On the basis of the pleadings of the parties, learned Family Court framed following 3 issues :-

“1(अ). क्या प्रतिवादिनी ने बालौदाबाजार पहुंचकर दूसरे दिन ही उसके जीजा के घर रायपुर जाना है कि जिद कर वादी से बात-बात में लड़ाई-झगड़ा कर, घरेलू काम-धंधा ना कर उसे मानसिक रूप से परेशान किया ?

1(ब). क्या प्रतिवादिनी ने पुलिस थाना कुरुद में धारा 498(द) भा.दं.वि. दहेज प्रताड़ना का मुकदमा वादी के विरुद्ध कायम कर उसके साथ कुरतापूर्ण व्यवहार किया ?

2. क्या वादी, प्रतिवादिनी से उसके हुये विवाह को विघटित किये जाने की आज्ञा पाने का अधिकारी है ?

3. सहायता एवं व्यय ?”

7. After allowing the parties to lead oral and documentary evidence, learned Family Court recorded finding on each issue. It was held that by indulging in quarrel and lodging false criminal case which resulted in acquittal, the wife committed cruelty and thus a decree of divorce was granted on that ground. It is this decree which gave rise to present appeal.

8. Assailing correctness and validity of the impugned judgment and decree, learned counsel for the appellant/wife argued that the learned Family Court has recorded perverse finding that the wife committed cruelty whereas the evidence on record is ample in nature to prove other way around that it is the husband who subjected the wife to mental and physical cruelty. It has been specifically argued that finding of the learned Family Court that wife's assertion that because of the cruelty committed by husband she had even attempted to commit suicide has been

wrongly disbelieved by taking into consideration the findings recorded by the Criminal Court while granting acquittal to the husband. He would submit that as far as civil case is concerned, the wife clearly pleaded as also stated in her affidavit under Order 18 Rule 4 CPC that because of the cruelty meted out to her, she attempted to commit suicide by consuming acid. This fact has been admitted by the husband in his cross-examination, therefore, in that view of the evidence, the learned Family Court, in stead of relying upon the findings recorded by the Criminal Court, ought to have recorded its own finding, based on the evidence collected in the trial in the present case.

9. The next submission of learned Counsel for the appellant is that the finding that the wife committed cruelty by lodging a false criminal case is also illegal. Merely because the trial has ended in acquittal of the husband, it cannot be held in every case that the institution of criminal case was false. He would submit that the learned Criminal Court has not recorded any specific finding that on the basis of the evidence which has come on record that the case was false and fabricated but keeping in mind the legal requirement of proof beyond reasonable doubt, despite there being evidence on record that wife was subjected to cruelty, husband was acquitted by giving benefit of doubt.

10. As far as grant of permanent alimony is concerned it has been argued that the learned Court below while granting permanent alimony, has unduly restricted, the amount to which

the appellant/wife is entitled. It is argued that the wife has come out with the case that the husband is posted as Branch Manager in a Rural Bank and he receives Rs.60,000/- per month as salary. In the matter of grant of interim maintenance, the respondent/husband admitted that he gets Rs.45,000/- thousand per month as salary, after all deductions. Looking to the tender age of the appellant and also that if divorce would not have been granted, the appellant/wife would have lived with the husband for another 30 years, and that at this stage wife has been left in lurch without any source of income, appropriate permanent alimony to the tune of Rs.20 Lacs ought to be have been ordered.

11. We have heard learned counsel for the parties and perused the record.

12. The application for grant of decree of divorce was filed by respondent/husband alleging cruelty on two grounds. One is that right from the time the wife came to Baloda Bazar, she has been picking up quarrel on every issue with the husband, she has no interest in discharging household obligations and that time and again she used to insist to visit her brother-in-law at Raipur. In this respect the respondent/husband has led evidence also.

The second specific ground of cruelty is based on false implication of the husband in a criminal case leading to registration of offence under Section 498-A IPC and his prosecution. Relying upon the judgment of acquittal (Ex.P-1) plea of cruelty has been raised that because of false implication, the

husband suffered mental cruelty and therefore, entitled to grant of decree of divorce.

13. The learned Family Court recorded finding that the observations made in the community meeting by Yug Chetna Mandal, Baloda Bazar reflects that the behavior of the wife was found to be improper and it was specifically observed that if they are compelled to reside together, it may give rise to some big unprecedented event. The learned Family Court also relied upon the evidence led by the husband with regard to incident dated 08.05.2014 when the wife reached the work place/bank where the husband was working. The evidence that the wife reached there along with her sister and brother-in-law and indulged in misbehavior, abuse and threat has also been believed. For this purpose the learned Family Court has relied upon the evidence of Cashier - Arvind Kumar Ojha (AW-2) posted in the same bank who has supported the pleadings and evidence of the husband with regard to incident dated 08.05.2014. Further, learned Family Court has also taken into consideration the finding recorded by the Criminal Court that in her cross-examination, the wife admitted that she had gone to Rural Bank, Chhati and that her statement was also recorded in Police Station, Kurud. The evidence of her brother-in-law Rajiv Gupta has also been taken into consideration where he has admitted that he, along with wife and sister-in-law had gone to Bank at Village Chhati and from where vehicle Activa was removed.

14. In their pleadings and evidence both, the parties have admitted that there existed dispute between them and a counselling was also held at community level by Yug Chetna Mandal, Baloda Bazar. The observations made by the counsellor body definitely reveal that the behavior of the wife was not found to be proper.

As far as the incident in the Bank at Village Chhati is concerned, the husband has not only pleaded but has clearly stated regarding the said incident in his affidavit under Order 18 Rule 4 CPC. In his cross-examination, though various suggestions have been given but nothing could be elicited to controvert what was stated by him in the evidence with regard to the unpleasant incident which happened in the Bank. Therefore, as far as the incident dated 08.05.2014 is concerned, what has been stated by the husband in his affidavit under Order 18 Rule 4 CPC has remained uncontroverted. In the evidence, it has been stated that on 08.05.2014, wife had come to Bank along-with her sister and brother-in-law in Village Chhati where the respondent/husband was working and there, all of them misbehaved, hurled abuses and threatened to get the case withdrawn failing which, he would be falsely implicated in a criminal case. This specific evidence has not been controverted in the cross-examination.

Other witness namely Arvind Kumar Ojha (AW-2) – Cashier who was posted in the same Bank, has fully supported the case of

the respondent with regard to incident dated 08.05.2014. He has deposed that when he was sitting in the Bank, he saw the appellant/wife came along with two other persons and all of them started hurling abuses, assaulting and giving threat of life that if the husband doesn't withdraw case from Baloda Bazar Court, he would be taken to jail. He has also deposed that vehicle was also snatched away. In the cross-examination he has stated that he was informed that the three persons who came to the bank were appellant's wife Shivani, her brother-in-law and her sister Nitu Gupta. He has also stated that complaint regarding obstruction in the work of the Bank was also forwarded to Senior General Manager. There is no reason to disbelieve the evidence of the cashier of the Bank.

15. As far as cruelty on the ground of false implication is concern, we have perused the judgment dated 24.07.2015 (Ex. P-1) led in evidence by the husband. The learned Criminal Court examined the evidence of Shivani Gupta, Rajiv Gupta and other witnesses. The learned Criminal Court recorded in Para 23 of its judgment that the wife in her cross-examination has admitted that a counselling was held soon after her marriage and further in Paragraph 25 of her cross-examination she admitted that she was admitted in the hospital because of complaint relating to gas formation and acidity. Further finding has been recorded in said judgment regarding other disputes including the incident which had happened on 08.05.2014 in the Bank and the landlords

evicting the husband because of the dispute between husband and wife. Finally, after taking into consideration the entire evidence on record the Criminal Court has recorded specific finding in Paragraphs 41, 42 and 43 of its judgment that soon after the marriage, husband and wife used to quarrel on all trivial issues and that the husband was not comfortable with the habits and behavior of his wife. It has also taken into consideration that the husband had already instituted various cases against the wife, her sister, brother-in-law and the father and therefore, the criminal case was instituted by the wife to create pressure on the husband. A specific finding has been recorded by the Criminal Court that no evidence has come on record to prove that the husband has subjected his wife to mental and physical cruelty. The aforesaid finding contained in Paragraphs 41, 42 and 43 make out a clear case of false implication on the husband. True it is that at the end the learned Criminal Court has granted acquittal by giving benefit of doubt, specific findings which have been recorded in Paragraphs 41 and 42 clearly goes to show that these findings are to the effect that institution of criminal case was false, afterthought and calculated only to create pressure on the husband and to counter other cases instituted by the husband.

16. Institution of the false criminal case has been consistently held to be an act of mental cruelty. Learned Family Court is absolutely correct in holding that institution of criminal case alleging commission of offence under Section 498-A IPC was an

act of false implication, calculated to embarrass and harm the husband in his reputation which constituted cruelty. In this regard, we consider it appropriate to refer to the observations made by the Supreme Court in some of the decisions which were observed by this Court in order dated 30th of July, 2019 passed in **FAM No.03 of 2015 (*Anjan Bhattacharya Vs. Smt. Latika Arpita Bhattacharya*)**.

“13. In the case of **K. Srinivas Rao Vs. D.A. Deepa (2013) 5 SCC 226**, Their Lordships in the Supreme Court outlined the scope of term “Cruelty”. In para 10 of the aforesaid decision, it was observed as under:-

“10. “Under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, a marriage can be dissolved by a decree of divorce on a petition presented either by the husband or the wife on the ground that the other party has, after solemnization of the marriage, treated the petitioner with cruelty. In a series of judgments this Court has repeatedly stated the meaning and outlined the scope of the term ‘cruelty’. Cruelty is evident where one spouse has so treated the other and manifested such feelings towards her or him as to cause in her or his mind reasonable apprehension that it will be harmful or injurious to live with the other spouse. Cruelty may be physical or mental.”

14. In illustrative cases, inference of “mental cruelty” can be drawn, was considered in the case of **Samar Ghosh vs. Jaya Ghosh (2007) 4 SCC 511**, which was referred to in the aforesaid decision in the case of **K. Srinivas Rao** (supra), as below:-

11. In **Samar Ghosh** this Court set out illustrative cases where inference of ‘mental cruelty’ can be drawn. This list is obviously not exhaustive because each case presents its own peculiar factual matrix and existence or otherwise of mental cruelty will have to be judged after applying mind to it. We must quote the relevant paragraph of **Samar Ghosh**.

We have reproduced only the instances which are relevant to the present case.

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) xxx xxx xxx

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) xxx xxx xxx

(viii) xxx xxx xxx

(ix) xxx xxx xxx

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years

will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) xxx xxx xxx

(xii) xxx xxx xxx

(xiii) xxx xxx xxx

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

15. Their Lordships also added more instances of mental cruelty in addition to what was noted in the case of **Samar Ghosh** (supra), as below:-

“16. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse”

16. Dealing with the case in hand, Their Lordships noticed that the wife had lodged a report under Section 498-A of IPC against the husband and his parents and finally there was an acquittal. The conduct of the wife in filing a complaint and making unfounded allegations coupled with other conduct and keeping in view the ultimate result of acquittal, it was held that such a conduct on the part of the wife was mental cruelty on the husband, it was held:-

28. “Pursuant to this complaint, the police registered a case under Section 498-A of the IPC. The appellant-husband and his parents had to apply for anticipatory bail, which was granted to them. Later, the respondent-wife withdrew the complaint. Pursuant to the withdrawal, the police filed a closure report. Thereafter, the respondent-wife filed a protest petition. The trial court took cognizance of the case against the appellant-husband and his parents (CC No. 62/2002). What is pertinent to note is that the respondent-wife filed criminal appeal in the High Court challenging the acquittal of the appellant-husband and his parents of the offences under the Dowry Prohibition Act and also the acquittal of his parents of the offence punishable under Section 498-A of the IPC. She filed criminal revision seeking enhancement of the punishment awarded to the appellant-husband for the offence under Section 498-A of the IPC in the High Court which is still pending. When the criminal appeal filed by the appellant-husband challenging his conviction for the offence under Section 498-A of the IPC was allowed and he was acquitted, the respondent-wife filed criminal appeal in the High Court challenging the said acquittal. During this period respondent-wife and members of her family have also filed complaints in the High Court complaining about the appellant-husband so that he would be removed from the job. The conduct of the respondent- wife in filing a complaint making unfounded, indecent and defamatory allegation against her mother-in-law, in filing revision seeking enhancement of the sentence awarded to the appellant-husband, in filing appeal questioning the acquittal of the appellant-husband and acquittal of his parents indicates that she made all attempts to ensure that he and his parents are put in jail and he is removed from his job. We have no manner of doubt that this conduct has caused mental cruelty to the appellant- husband.”

17. In the case of **K. Srinivas (2014) 16 SCC 34** also, relying upon the decisions in the case of K. Srinivas Rao (supra), held that if a false criminal complaint is preferred by either spouse, it would constitute matrimonial cruelty and entitle the other spouse to claim a divorce, as below:-

“1. In this Appeal, counsel for the Appellant has sought to draw our attention to all the arguments that had been addressed before the High Court on

behalf of the Appellant-Husband in support of his claim for dissolution of his marriage to the Respondent by a decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955. We have, however, restricted him to the ground of alleged cruelty on account of the filing of a criminal complaint by the Respondent against the Appellant and several members of his family under Sections 498A and 307 of the Indian Penal Code (IPC). We did this for the reason that if this ground is successfully substantiated by the Petitioner, we need not delve any further i.e. whether a marriage can be dissolved by the Trial Court or the High Court on the premise that the marriage has irretrievably broken down. This nature of cruelty, in the wake of filing of a false criminal case by either of the spouses, has been agitated frequently before this Court, and has been discussed so comprehensively and thoroughly that yet another Judgment on this well-settled question of law, would be merely a waste of time. A complete discourse and analysis on this issue is available in a well reasoned judgment in *K. Srinivas Rao vs. D.A. Deepa*, 2013(5) SCC 226, in which numerous decisions have been cited and discussed. It is now beyond cavil that if a false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce.”

18. In a mere recent decision in the case of *Raj Talreja* (AIR 2017 SC 2138), the legal position as to when a false complaint would amount to cruelty was also examined, as below:-

10. “Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there were justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act 1955 (for short ‘the Act’). However, if it is found that the allegations are patently false,

then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty. In the present case, all the allegations were found to be false. Later, she filed another complaint alleging that her husband along with some other persons had trespassed into her house and assaulted her. The police found, on investigation, that not only was the complaint false but also the injuries were self inflicted by the wife. Thereafter, proceedings were launched against the wife under Section 182 of IPC.”

17. If we apply the aforesaid principles laid down by the Supreme Court, in the present case, in the light of specific findings recorded in Paragraphs 41 and 42 by the Criminal Court, while acquitting the husband, there is no doubt that the respondent/husband was implicated in a false case to harass and embarrass, calculated to damage his reputation and all this was done to create pressure on him and to have an upper hand in all pending disputes between the parties. Therefore, the findings recorded by learned Family Court that the appellant/wife, by instituting false criminal case and subjecting her husband to agony of trial in such cases, subjected him to mental cruelty, does not warrant any interference and the decree of divorce granted on the ground of cruelty deserves to be upheld.

18. The argument raised with regard to grant of permanent alimony also does not merit acceptance because we find that though the appellant/wife moved separate application for grant of permanent alimony before the Family Court on 23.06.2017, she did not lead any specific evidence as to how she is entitled to

Rs.20 Lacs. In fact, the order sheet shows that on that very date, the appellant/wife closed her evidence. The learned Family Court, taking into consideration overall circumstances, has awarded Rs. 5 Lacs as permanent alimony. Despite our repeated enquiry, learned counsel for the appellant could not point out any evidence led by the appellant during course of trial which could justify claim of award of permanent alimony to the extent of Rs.20 Lacs. Therefore, we do not find any ground to enhance the amount of permanent alimony.

19. In the result, appeal is without any merit and is therefore, dismissed. No order as to cost. Appellate decree be drawn accordingly.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Vimla Singh Kapoor)
Judge

Ajay