

HIGH COURT OF CHHATTISGARH, BILASPUR**First Appeal No. 57 of 2006**

Nand Lal Dewangan S/o Shri Kunjbihari Dewangan,
Resident of Old Township Nandani, Road No. 2, Qtr. No. 5/
A, Police Station Nandani, Tahsil Nandani, District Durg,
Chhattisgarh

---- Appellant**Versus**

Smt. Shashi Dewangan Wife of Nandlal Dewangan D/o
Teemchand Dewangan, Resident of Pandar Dalli
(Dallirajhara), presently at through Ajuram Dewangan, Near
Chandrakar Hostel, Mahadeoghat Road Dangania, Post
Dangania, Tahsil & District Raipur, Chhattisgarh

----Respondent

For Appellant	:-	Mr. Sourabh Sharma, Advocate.
For Respondent	:-	Mr. Shashi Bhushan Tiwari, Advocate

Hon'ble Shri Justice P. Sam Koshy**Hon'ble Smt. Justice Rajani Dubey****Judgement On Board****(20. 10. 2021)****Per P. Sam Koshy, Judge**

1. This First Appeal has been filed assailing the judgment and decree dated 15.12.2005 passed by the Second Additional Principal Judge (Family Court), Durg in Civil Suit No. 78-A/2005.
2. The present is a matrimonial dispute which was raised in the year 1996 of which the First Appeal is being decided today. The present is an appeal by the husband challenging the order of the Court below whereby the application seeking for divorce under Section 13 of the

Hindu Marriage Act has been rejected.

3. The point to be noted at this juncture is that much before filing of the original Civil Suit on 30.10.1996, the respondent wife is said to have left the appellant and has been staying separately. Thus, for the last more than 25 years the appellant and the respondent have not cohabited together even for once.
4. Before we started final hearing in this appeal, we put a query to the counsel appearing on either side exploring the possibility of reuniting of both the parties. However, there was a spontaneous refusal on either side showing their unwillingness to stay together.
5. The facts of the case in brief are that the appellant and the respondent entered into a marriage under Hindu rites and customs in the year 1990. Out of the said wedlock a son was born in the very next year i.e. in 1991 namely Ayush who as of now should be more than 30 years of age. Down the line, after a couple of years of marriage, the relationship between the two got strained very badly and finally the husband preferred an application under Section 13 of the Hindu Marriage Act before the Court below on 30.10.1996. Initially the application for divorce was on the ground that the respondent was subjecting the appellant to cruelty and mental harassment. It was also alleged that the respondent had tried to poison the appellant by mixing poison in food. However, when the said food was given to a pet dog, it died instantly. Thereafter there was a constant threat to the life of the appellant. In addition, the appellant, pending the suit before the Court below, amended the plaint and took an additional ground of cruelty in the nature of the respondent filing false criminal case against the appellant as also the entire family of appellant and the family members being arrested and put to jail without any iota of evidence.

6. The respondent, however, entered appearance before the Court below and denied the entire allegations and highlighted the fact that the appellant and his family members were implicated in a criminal case where the entire family stood convicted for the offence under Section 498A of IPC vide judgment dated 03.03.2004. Subsequently, in a Criminal Appeal, all other family members except the appellant were acquitted of all the charges. That since the appellant stood convicted, in other words it proves cruelty on the part of the appellant towards the respondent. Thus, the finding of the Court below does not warrant any interference. It was the further contention of respondent that as regards the allegation of poisoning etc., there is no iota of evidence led by the appellant before the Court below to substantiate the said contention. Therefore, the said ground also stood disproved before the Court below and on this ground also the present appeal of the appellant deserves to be rejected.
7. From the pleadings which have come before the Court below as also in the present appeal, some of the admitted factual matrix are that the marriage between appellant and respondent took place on 05.06.1990. A son was born from the said wedlock in the year 1991. Immediately thereafter disputes seem to have crept in the relationship between the parties. Pleadings also reflect that somewhere in the year 1992 or immediately thereafter the respondent left the company of appellant and since then both are living separately. The child born from the said wedlock was in the custody of respondent and is still with the respondent. Undoubtedly, in the original plaint and also by way of amendment, there is a specific pleading of the respondent threatening to implicate the family members of appellant in a criminal case which she finally did by lodging a complaint against all the family

members including all the brothers of appellant and also the sister-in-law and all of whom were arrested and subsequently released on bail. All of whom were initially convicted vide judgment dated 03.03.2004 but were honourably acquitted in a criminal appeal vide judgment dated 08.12.2004.

8. Coupled with the aforesaid factual matrix it is also relevant to take note of the statement made by the two counsel appearing on either side today that under no circumstances are the disputing parties ready to reunite. The pleadings suggest that the two persons have been staying separately for the last about 3 decades i.e. 1992 onwards. From the date of suit if it is to be considered, even then it is more than 25 years. Under the circumstances what needs to be considered is whether it would be in any manner fruitful in the long run for either of the parties in dismissing the present appeal.
9. The appellant when he had filed the plaint reflected his age about 40 years and the respondent at the time of recording of her evidence had also reflected her age to be 37 years. Thus, by efflux of time, the two of them have crossed the prime time of their life and are either senior citizens or on the verge of becoming senior citizens. The finding of the appellate Court in respect of the criminal appeal that the appellant and his family members have preferred would clearly reflect that there was no evidence as regards the respondent being subjected to cruelty on the ground of demand of dowry. There is also a finding of fact by the appellate Court that there was no trace of any act, action or conduct on the part of the other family members which could be brought within the ambit of cruelty. The said judgment has by efflux of time attained finality. This in other words establishes the fact that the respondent seems to have with an ulterior motive of putting undue

pressure upon the appellant implicated other family members of the appellant in the criminal case who were all initially arrested and put to jail and subsequently were also convicted. However, it was only vide the judgment of the appellate Court that the conviction was set aside and the other family members were honourably acquitted.

10. Undoubtedly, the family members of the appellant having undergone arrest and custody for sometime would not be accepting the respondent wholeheartedly in spite of the humiliation of arrest and undergoing custody. Similar feelings would also be there on the part of the appellant as because of his strained relationship with his wife the other family members had to undergo humiliation of arrest and custody. He would also not be unconditionally and wholeheartedly accepting the respondent as his wife. As stated earlier the respondent also has expressed her unwillingness to stay with the appellant any more and efforts to resolve the dispute between the parties by way of mediation has also failed. In the given factual backdrop the question now is what is the solution next.

11. Keeping the appeal pending or rejecting the appeal would have the same fate of the two living separately and both of them being deprived of family life for the rest of their life particularly when both are not willing to reunite and stay together. Hence, we are of the considered opinion that the marriage has reached a stage where it has irretrievably failed.

12. Under the Hindu Marriage Act, Section 13 provides for either the husband or the wife getting marriage dissolved by a decree of divorce. Section 13(1)(ia) provides for a ground of cruelty for the purpose of seeking dissolution of marriage. Similarly Sub Section 1A of Section 13 provides for a ground of non-resumption of cohabitation between

the parties to the marriage for a period of one year or upwards from the date of the order of judicial separation or one year or upwards from the date of passing of the decree of restitution of conjugal rights.

13. In the instant case, though there is no proceeding drawn for judicial separation nor has there been any proceeding drawn for restitution of conjugal rights, in spite of that admittedly there has been no cohabitation between the parties at least for 25 years if not more.

14. In the case of **Samar Ghosh Vs. Jaya Ghosh**¹ the Hon'ble Supreme Court in paragraph 101 has laid down certain parameters and guidelines which should be borne in mind in the course of deciding the case of divorce particularly on the ground of mental cruelty. For ready reference the guidelines laid down in Para-101 of the said judgement is reproduced herein under:

“ **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) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language

¹ (2007) 4 SCC 511

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 and longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation 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.”

15. The said judgment has further been reiterated by the Supreme Court in the case of **K. Srinivas Rao Vs. D. A. Deepa**² wherein again in paragraphs 32 to 34 referring to two of its earlier decisions in the case of **V. Bhagat Vs. D. Bhagat**³ and **Naveen Kohli Vs. Neelu Kohli**⁴ the Hon’ble Supreme Court has again given certain situations and circumstances under which the Court can dissolve a marriage to relieve both sides of pain, anguish and anxiety. For ready reference, paragraphs 32 to 34 also are being reproduced hereinunder:

“32. In **V. Bhagat** this Court noted that divorce petition was pending for eight years and a good part of the lives of both the parties had been consumed in litigation, yet

² (2013) 5 SCC 226

³ (1994) 1 SCC 337

⁴ ((2006) 4 SCC 558

the end was not in sight. The facts were such that there was no question of reunion, the marriage having irretrievably broken down. While dissolving the marriage on the ground of mental cruelty this Court observed that: (SCC p.351, para 21)

“21. ... 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.”

33. In **Naveen Kohli** where the husband and wife had been living separately for more than 10 years and a large number of criminal proceedings had been initiated by the wife against the husband, this Court observed that: (SCC p.582, para 86)

“86. ... The marriage has been wrecked beyond the hope of salvage [and] 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.”

It is important to note that in Naveen Kohli case this Court made a recommendation to the Union of India that the Hindu Marriage Act, 1955 be amended to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce.

34. In the ultimate analysis, we hold that the respondent wife has caused by her conduct mental cruelty to the appellant husband and the marriage has irretrievably broken down. Dissolution of marriage will relieve both sides of pain and anguish. In this Court the respondent wife expressed that she wants to go back to the appellant husband, but, that is not possible now. The appellant husband is not willing to take her back. Even if we refuse decree of divorce to the appellant husband, there are hardly any chances of the respondent wife leading a happy life with the appellant husband because a lot of bitterness is created by the conduct of the respondent wife.”

16. A wife knowingly and intentionally with an ulterior motive of

putting mental pressure upon the family members of the husband files a criminal case, complaint or false complaint on account of which the family members getting incarcerated undergoing arrest, custody and trauma of trial constitutes cruelty as envisaged in Section 13(1) (ia). This view has been taken by the Hon'ble Supreme Court in the case of K. Srinivas Vs. K. Sunita⁵.

17. In the light of the aforesaid legal positions as laid down by the Hon'ble Supreme Court time and again, this Bench examined the evidence that has come on record and also the statement of the parties to the dispute and also the fact that in spite of an attempt to reunite the parties by mediation which failed and further the categorical stand that both the parties have taken even today during the course of hearing that under no circumstances can the two parties reunite and stay together, we reach to the conclusion that the marriage between appellant and respondent has irretrievably failed.

18. From the pleadings it is clearly reflected that the family life between the parties or the cohabitation between the parties was only for a couple of years as compared to almost three decades of staying separately. Both the parties have crossed their middle age and have become a senior citizen or on the verge of becoming senior citizen. Therefore, it could not be in the interest of either of the parties to face further litigation which they have already faced for the last about 3 decades. To put an end to the irretrievably strained relationship and also to put an end to all the litigation between the parties and also with an intention of permitting both the parties to live a free life ahead without being under any sort of mental trauma, pressure, pain or anxiety in respect of the litigation which subsists for divorce or any

⁵ (2014) 16 SCC 34

other proceeding pending before this Court or before any other Court, between appellant and respondent, we are inclined to allow the appeal and set aside the impugned judgment and decree and instead grant a decree of divorce in favour of the appellant dissolving the marriage of the appellant with the respondent which was solemnized on 05.06.1990. It is ordered accordingly.

- 19.** Having gone through the entire factual matrix we are also of the considered opinion that to put an end of all further litigation including the claim of maintenance which is being awarded to the respondent, in the larger interest of justice particularly keeping the respondent in mind, we deem it proper to award permanent alimony to the tune of rupees ten lakhs (Rs.10,00,000/-) payable by the appellant to the respondent wife. The said amount arrived at is keeping in view the fact that the appellant admittedly was in the business of operating a Medical Shop. The said amount should be paid in 4 installments. The first installment of rupees 3 lakhs shall be paid within a period of 6 months from the date of this judgment. The second installment of rupees 3 lakhs shall be liable to be paid within one year from the date of the payment of first installment. The remaining amount of rupees 4 lakhs shall be payable by the appellant to the respondent in two equal installments of rupees 2 lakhs each within an interval of one year from the date the second installment is paid.

- 20.** The appeal stands allowed and disposed of.

Sd/-

(P. Sam Koshy)
JUDGE

Sd/-

(Rajani Dubey)
JUDGE