

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****FAM No. 167 of 2016**

- Pravin Kumar Jain S/o Shri Prakash Chand Jain, Aged About 43 Years R/o H.No.34, Behind Jain Mandir, Vardhman Nagar, New Rajendra Nagar, Raipur, Chhattisgarh

**---- Petitioner****Versus**

- Smt. Anjali Jain W/o Shri Pravin Kumar Jain, D/o Shri Ashok Kumar Vaishya, R/o M. I. G.-16, Indravati Colony, P.S. Civil Lines, Raipur, Chhattisgarh

**---- Respondent**

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For Appellant  
For Respondent

Mr. Adhiraj Surana, Advocate  
Mr. Sabyasachi Bhaduri, Advocate

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**DB: Hon'ble Mr. Justice Prashant Kumar Mishra &**  
**Hon'ble Mrs. Justice Rajani Dubey**

**Order On Board by Prashant Kumar Mishra, J.**

**8/2/2021**

1. Heard.
2. This appeal is directed against the trial Court's judgment dated 24.6.2016 passed in H.M.A. No.134 A/2011, dismissing the

appellant's suit for dissolution of marriage and grant of divorce under Section 13(1) (i-a) of the Hindu Marriage Act, 1955 (for short "the Act, 1955").

3. At the very outset, it is pertinent to mention that the appellant has filed an application under Order 41 Rule 27 of the CPC for bringing additional evidence in form of a letter handed over to the Police Station, New Rajendra Nagar, Raipur, informing the Police that the respondent is willing to reside separate and obtain divorce from the appellant.
4. The contents of the communication is not connected with any of the grounds pleaded in the plaint. It may furnish an independent ground in any suit filed under Section 13-B of the Act, 1955 for grant of divorce by mutual consent but the same may not amount to 'cruelty'. Therefore, the application filed under Order 41 Rule 27 of the CPC, is rejected.
5. The parties were married at Arya Samaj Temple, Baijnathpara, Raipur on 27.4.2005. It was the second marriage for both the parties after getting divorce from their previous marriages. Out of the present wedlock, the respondent gave birth to daughter Divyasha on 7.7.2007. The suit for divorce was filed mainly on the ground of adultery and consequent cruelty on the allegation that the respondent-wife was found involved in sexual intercourse with their servant Daulat Sidar on 30.8.2010 and 3.9.2010 respectively. Thereafter, on 14.9.2010, respondent-wife lodged a report against the appellant for an offence

under Section 498-A of the IPC, in which, the parties entered into a compromise on 4.10.2010 and the FIR was withdrawn by the respondent. She eventually left the marital house on 10.3.2011.

6. Indisputably, on all the occasions, when the incidents of adultery and thereafter, the FIR was lodged by the respondent, the appellant condoned her cruelty or the conduct of adultery by continuing to live with her and thus, after the incidents of adultery as also after the report was lodged by the respondent for offence under Section 498-A of the IPC, the parties entered into a compromise and started residing together.
7. In the entire plaint, there is no allegation that the respondent-wife committed any cruelty after 3.9.2010. Even if the act of lodging FIR for offence under Section 498-A of the IPC may be taken to be a false report and the consequent cruelty on the husband, the fact remains that the said report was not proceeded further and eventually, the same was withdrawn on 4.10.2010 and the parties started residing together by entering into a compromise and thus, the cruelty, if any, was also condoned.
8. The trial Court has dismissed the suit mainly on the ground(s) that after the alleged incidents of cruelty, the parties having resided together and the appellant having specifically admitted in his deposition that after the act of adultery, in which, the respondent-wife was involved, he pardoned her and they

started residing together, and the cruelty having been condoned, the ground for grant of divorce on account of cruelty is not made out.

9. It is settled by the Hon'ble Supreme Court in the matter of **Dr. N.G. Dastane Vs. Mrs. S. Dastane**<sup>1</sup>, that if the cruelty is condoned, the same cannot be pressed as a ground for grant of divorce under Section 13(1) (i-a) of the Act, 1955. The following has been held in para 54, 55, 71 and 72 in **Dr. N.G. Dastane (supra)** :

**“54.** Before us, the question of condonation was argued by both the sides. It is urged on behalf of the appellant that there is no evidence of condonation while the argument of the respondent is that condonation is implicit in the act of cohabitation and is proved by the fact that on February 27, 1961 when the spouses parted, the respondent was about 3 months pregnant. Even though condonation was not pleaded as a defence by the respondent it is our duty, in view of the provisions of Section 23(1)(b), to find whether the cruelty was condoned by the appellant. That section casts an obligation on the court to consider the question of condonation, an obligation which has to be discharged even in undefended cases. The relief prayed for can be decreed only if we are satisfied “but not otherwise”, that the petitioner has not in any manner condoned the cruelty. It is, of course, necessary that there should be evidence on the record of the case to show that the appellant had condoned the cruelty.

**55.** Condonation means forgiveness of the matrimonial offence and the restoration of offending spouse to the same position as he or she occupied before the offence was committed. To constitute condonation there must be, therefore, two things: forgiveness and restoration. The evidence of condonation in this case is, in our opinion, as strong and satisfactory as the evidence of cruelty. But that evidence does not consist in the mere fact that the spouses continued to share a common home during or for some time after the spell of cruelty. Cruelty, generally, does not consist of a single, isolated act but consists in most cases of a series of acts spread over a period of time.

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1 (1975) 2 SCC 326

Law does not require that at the first appearance of a cruel act, the other spouse must leave the matrimonial home lest the continued cohabitation be construed as condonation. Such a construction will hinder reconciliation and thereby frustrate the benign purpose of marriage laws.

**71.** Considered in this context, the allegations made by the respondent in her letter Ex. 318 cannot revive the original cause of action. These allegations were provoked by the appellant by his persistent and purposeful accusation, repeated times without number, that the respondent was of unsound mind. He snatched every chance and wasted no opportunity to describe her as a mad woman which, for the purposes of this appeal, we must assume to be wrong and unfounded. He has been denied leave to appeal to this Court from the finding of the High Court that his allegation that the respondent was of unsound mind is baseless. He also protested that he was not liable to maintain the respondent. It is difficult in these circumstances to accept the appellant's argument either that the respondent deserted him or that she treated him with cruelty after her earlier conduct was condoned by him.

**72.** It is true that the more serious the original offence, the less grave need be the subsequent acts to constitute a revival and in cases of cruelty, "very slight fresh evidence is needed to show a resumption of the cruelty, for cruelty of character is bound to show itself in conduct and behaviour, day in and day out, night in and night out". But the conduct of the respondent after condonation cannot be viewed apart from the conduct of the appellant after condonation. Condonation is conditional forgiveness but the grant of such forgiveness does not give to the condoning spouse a charter to malign the other spouse. If this were so, the condoned spouse would be required mutely to submit to the cruelty of the other spouse without relief or remedy. The respondent ought not to have described the appellant's parents as "wicked" but that perhaps is the only allegation in the letter Ex. 318 to which exception may be taken. We find ourselves unable to rely on that solitary circumstance to allow the revival of condoned cruelty."

10. Learned counsel for the appellant would submit that the marriage between the parties, which is now 15 years old, has irretrievably broken down, therefore, the appellant be allowed decree for divorce on this ground alone .

11. Though the parties are residing separate since 2011 onwards and there has been no effort by either of them to reside together, however, Section 13 of the Act, 1955 does not contemplate issuance of decree of divorce on the ground that marriage has irretrievably broken down, as a statutory ground under the Act. Hon'ble the Supreme Court grants divorce on such ground in exercise of powers under Article 141 of the Constitution of India, but as an Appellate Court under Section 28 of the Act, 1955, we cannot travel beyond the scope of Section 13 of the Act, 1955, wherein, a decree of divorce cannot be granted on the ground of irretrievable break down of marriage {see **Vishnu Dutt Sharma Vs. Manju Sharma<sup>2</sup>**}.

12. Having seen the material available on record, the findings arrived at by the trial Court, as discussed, above, are borne out from the record and there is no perversity in recording such finding.

13. The appeal has no substance, it fails and is hereby dismissed.

Sd/-

**( Prashant Kumar Mishra)**  
Judge

Sd/-

**(Rajani Dubey)**  
Judge

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2. (2009) 6 SCC 379