

AFR

HIGH COURT OF CHHATTISGARH, BILASPURFAM No. 167 of 2019

[Arising out of judgment and decree dated 11-4-2019 passed by the First Additional Principal Judge, Family Court, Raipur, in H.M.A. No.366/15]

1. Rajeshwar Prasad Kaushal S/o Durga Prasad Aged About 32 Years R/o C/o Boriyakhurd, R.D.A. Colony, Quarter No. G-314, Raipur, Tahsil And District Raipur Chhattisgarh.

---- Appellant

Versus

1. Smt. Gayatri Kaushal W/o Rajeshwar Prasad Kaushal Aged About 27 Years R/o C/o Smt. Leela Bai (Near The House Of Dileshwar @ Bathalu), Vijay Nagar, Bhanpur, Near Chhatwa Talab, Police Station Khamtarai, Raipur District Raipur Chhattisgarh.

---- Respondent

For Appellant
For Respondent

Mr. D.N. Prajapati, Advocate
Mr. C.K. Sahu, Advocate

Hon'ble Mr. Prashant Kumar Mishra, J.
Hon'ble Mr. N.K. Chandravanshi, J.

Judgment on BoardByPrashant Kumar Mishra, J.31-03-2021

1. We have heard learned counsel for the parties at length and perused the record.
2. Appellant/husband is aggrieved by the impugned judgment and decree dated 11-4-2019 passed by the First Additional Principal Judge, Family Court, Raipur, in H.M.A. No.366/15 dismissing his application under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 [for brevity 'the Act'] for grant of divorce.

3. Facts of the case, briefly stated, are that the parties were married on 17-4-2009 as per Hindu rites and rituals. They have a daughter Baby Kusum residing with the respondent/wife. It was pleaded in the application that from the very next day of the marriage the respondent insisted to leave the matrimonial house, but on persuasion stayed for 5-6 days and called her mother to return to her parental house, but did not come back for 15-20 days. Thereafter, when she reached the matrimonial house she bolted the door of her bedroom and did not open, on which police was called for opening the door. After 3-4 days she left the house alone at about 8.00 pm in the night and was somehow persuaded to return to her house. Her mother informed the elderly persons of the society that she is a schizophrenic, which was not informed to the appellant before marriage. The respondent went back to her parental house and returned to the appellant's house after one month. During this time she was administered treatment by quack and Psychiatrist. However, her abnormal behaviour continued, therefore, she was taken to a Psychiatrist Dr. Arunanshu Parial. The respondent used to wear white saree without putting bangles and vermilion on her forehead, which are symbols of a married woman. Meeting of caste panchayat was convened, but the situation did not improve. She used to call elderly persons in the in-laws' family by their name and on one night she jumped to the neighbours house from the roof of appellant's house. She used to leave her matrimonial house every now and then without any rhyme or reason. When the appellant and other family members objected to her behaviour she used to filthily abuse them and locked the door from inside. Various other incidents of her abnormal behaviour have been mentioned in the plaint.
4. In her reply, the respondent denied the plaint allegations, however, she would not make any allegation of cruelty or demand of dowry against the appellant or his family members. She denies to have signed any letter of undertaking before the caste panchayat or

counseling. The written statement does not contain any specific pleading.

5. In course of trial, the appellant examined himself as PW-1; Shashibhushan Kshatriya as PW-2; and Rajeev Kishku as PW-3. The respondent examined herself as DW-1.
6. In the deposition the appellant reiterated the plaint averments and proved the documents. During cross-examination, respondent has not been able to elicit any material statement in support of respondent's defence. Appellant's witness namely; Shashibhushan Kshatriya (PW-2) has also supported the appellant's case by making specific submission that his wife has seen the respondent trying to kill her daughter as also her husband (appellant) by pressing their neck. In her deposition, respondent wife admits the fact of her treatment by Psychiatrist Dr. Arunanshu Parial. She also admits that her mother has lodged a report against herself and that quarrel used to take place with her husband. She also admits meeting of caste panchayat and counseling as well as documents (Ex.P/9 & Ex.P/10). At the end of deposition, she admits that she also wants to seek divorce, but immediately retracts the statement.
7. The documentary evidence (Exs.P/2, P/3 & P/6), the applications filed by the appellant before Mahila Police, Raipur, specifically speaks of respondent's abnormal behaviour and her treatment by Dr.Arunanshu Parial. Ex.P/7 is the minutes of counseling. In this document, duly signed by the respondent, she has undertaken that henceforth she will not try to commit suicide. The counseling records that the appellant was advised to facilitate respondent's treatment by a Psychiatrist. In the counseling held on 5-9-2014 respondent's mother made allegation against her daughter that she picks up quarrel and assaults her (mother) and her husband (appellant). Ex.P/8 is the treatment slip of the respondent issued

by Dr.Arunanshu Parial. Albeit this Psychiatrist has not been examined, but the document itself has been admitted by the respondent in her cross-examination. In her written undertaking before the caste panchayat, she admits that she had assaulted son of her *Jeth* as also her mother-in-law, which she will not repeat.

8. We shall now advert to some of the judgments rendered by the Supreme Court wherein the concept of mental cruelty has been explained.
9. In ***Samar Ghosh v Jaya Ghosh***¹, the Supreme Court has indicated illustrative cases where inference of mental cruelty can be drawn. They are reproduced as 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, 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

1 (2007) 4 SCC 511

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 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.”

10. The Supreme Court in *V. Bhagat v D. Bhagat (Mrs.)*² held that mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.

2 (1994) 1 SCC 337

11. In *Naveen Kohli v Neelu Kohli*³, the Supreme Court held that the word “cruelty” has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case. There may be instances of cruelty by unintentional but inexcusable conduct of any party. The cruel treatment may also result from the cultural conflict between the parties. Mental cruelty can be caused by a party when the other spouse levels an allegation that the petitioner is a mental patient, or that he requires expert psychological treatment to restore his mental health, that he is suffering from paranoid disorder and mental hallucinations, and to crown it all, to allege that he and all the members of his family are a bunch of lunatics. The allegation that members of the petitioner’s family are lunatics and that a streak of insanity runs through his entire family is also an act of mental cruelty.
12. When the principles and standards of mental cruelty explained by the Supreme Court in the above mentioned cases are examined in the facts of the case in hand, it is to be seen that the respondent wife admits of attempting to commit suicide and assaulting her mother-in-law. Evidence available in the case further suggests that the respondent once jumped from the roof to fall in the neighbour's house and tried to strangle her daughter & husband. She has received treatment from a Psychiatrist, which is proved by Ex.P/8, as this document has been admitted by the respondent. She was in the habit of leaving the matrimonial house regularly and residing in her parental house. Although this by itself may not be a cruelty but there are instances when she left the house alone during night hours and used to wear white saree without putting bangles and vermilion on her forehead.

3 (2006) 4 SCC 558

13. When these instances are considered along with her treatment by a Psychiatrist, it is sufficient to prove that her conduct amounts to sustained reprehensible unjustifiable conduct affecting physical and mental health of the appellant. When she attempts to commit suicide, this singular act by itself amounts to causing such mental cruelty, which is beyond repair. It is not a case where the instances are isolated, but there is consistent irresponsible or abnormal behaviour of the respondent, therefore, when the entire married life is reviewed as a whole, an inference can easily be drawn that their relationship has deteriorated to such an extent that it is extremely difficult for the appellant-husband to live with the respondent-wife.
14. Thus, in our considered view the appellant/husband has proved that the respondent/wife is guilty of committing mental cruelty of such nature, which furnishes a ground for dissolution of marriage on the ground of mental cruelty. The trial Court has committed an error in not appreciating the evidence in its true perspective and has recorded a perverse finding that mental cruelty within the meaning of Section 13(1)(i-a) is not proved.
15. For the reasons stated hereinabove, the impugned judgment and decree is set aside and as a consequence, we allow the appellant's application under Section 13(1)(i-a) of the Act and the marriage solemnised between the appellant and respondent on 17-4-2009 is declared dissolved by a decree of divorce.
16. In the result, the instant appeal is allowed, leaving the parties to bear their own cost(s).
17. A decree be drawn accordingly.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(N.K. Chandravanshi)
Judge

Head Note

Wife attempting to commit suicide; assaulting her mother-in-law, son of her *Jeth* (brother-in-law); pressing neck of her daughter & husband; obtaining treatment from a Psychiatrist; and jumped to the neighbour's house from the roof of her marital house amounts to causing mental cruelty. Husband entitled for a decree of divorce.