

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-5800-2019 (O&M)
Date of decision: 18.08.2021

Nidhi

...Appellant

Vs.

Rajat Dudeja

...Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Saurabh Dalal, Advocate,
for the appellant.

Mr. Ajay Jain, Advocate,
for the respondent.

Ritu Bahri, J. (oral)

A petition under Section 13 of the Hindu Marriage Act, 1955 was filed by Rajat Dudeja-husband seeking dissolution of his marriage with Nidhi (appellant herein). The family Court, Hisar, allowed the petition vide judgment and decree dated 27.08.2019 and granted divorce to Rajat Dudeja on the ground of cruelty. Feeling aggrieved with the said judgment, Nidhi-wife has filed the instant appeal.

Brief facts of the case are that marriage between the parties was solemnized on 24.04.2012 as per Hindu rites and rituals at Hisar and after the marriage, they cohabited as husband and wife. Out of this wedlock, one female child was born. Presently, the child is staying in the custody of the father.

Case of Rajat Dudeja-husband was that appellant (wife) was a

the humble set up of his family. She refused to do any domestic work by saying that she was not meant for doing the household work. She used to treat him and his parents in a very derogatory manner. She used to pick up quarrels on petty matters due to which, he felt humiliated in the eyes of his parents and relatives, but kept silent with the hope that good sense would prevail upon the respondent in the near future, but her behaviour was never changed. Due to cruel behaviour of the respondent, his health had adversely been affected. At the time of marriage, weight of the husband (respondent herein) was 74 Kgs, however, after the marriage, his weight had drastically fallen down to 53 Kgs.

After the marriage, Rajat Dudeja along with appellant-wife went Kerala for honeymoon on 28.04.2012 and returned on 04.05.2012. Thereafter, on 05.05.2012, he along with his wife and parents went to Vrindavan and spent huge amount for her happiness. Prior to marriage, Nidhi was working as M.Sc. Teacher in a School, but she left her services in March, 2012. After marriage, she was continuously working since February, 2014. She had also completed her B.Ed. Presently, she is working as M.Sc., B.Ed. Teacher in Siddharth International School, Dabra Road, Hisar since April, 2016 and drawing salary of more than Rs.35,000/- per month. Despite this, she also demanded money and jewellery from him. Due to strained relations, her father is not residing with her mother for the last more than seven years. Her father never gave money to his wife or to his children, including the appellant. Marriage of the parties was solemnized in a very simple manner. There was no demand of dowry. Mother of Nidhi had strained relations with her relatives. She stated that she has no money to give dowry articles. She gave Rs.5 lakhs to the father of Rajat Dudeja for

making arrangements of the marriage at Hotel Grace. After marriage, amount of Rs.2,05,000/-, which was not spent, was duly returned by the father of Rajat Dudeja to the mother of Nidhi. Father of Rajat Dudeja is a retired Professor from C.C.S. Haryana Agriculture University, Hisar. Rajat Dudeja is physically handicapped with 50% hearing loss and using hearing aid. This fact was disclosed to the appellant (Nidhi) and thereafter, the marriage was settled. Nidhi and her mother had stated that her father was working as Engineer in JCT Mill, Faridabad. However, after marriage, they came to know that no such mill existed in Faridabad. In fact, Shri T.R. Dhawan, father of Nidhi, had been residing in Kirpal Ashram, Delhi after separation from his family members since long. Mother of Nidhi was not having good terms with him. The engagement ceremony was performed on 30.03.2012. Thereafter, mother of Nidhi pressurized them to perform early marriage by saying that she was suffering from cancer and might not survive, if they are not married. In this background, the marriage was solemnized in a very simple way and after the marriage, family members of Rajat Dudeja arranged reception in Gymkhana Club on 25.04.2012. In this reception, mother of Nidhi did not call any of her relatives due to fear that her fraud and attitude would be revealed. The daughter was born on 07.02.2013 and at that time, no *shagun* was given by mother of Nidhi to the little child. He further stated that Nidhi used to pick up frequent quarrels with him. She gave slaps, kicks and fist blows to him. She also used to give beatings to her daughter in a rage of anger. In the month of December, 2012, she created a scene when his father purchased a new car after getting loan from State Bank of India by saying that, why the car has not been purchased in his or her name. She left the matrimonial home 8/9 times

leaving her minor daughter with him without even informing him or his parents, who are living on the ground floor. Each and every time, she was brought back by him, but the mother and two sisters of Nidhi never taken any initiative to pacify her. On 13.04.2013, when his daughter was of two months, Nidhi, after quarreling with him, left her matrimonial home and got lodged a complaint in Police Post, Court Complex, Hisar. On enquiry, the said complaint was found false and was withdrawn by her on 14.04.2013. On 18.04.2013, Rajat Dudeja went to her parental home to see his daughter, but came to know that Nidhi had gone to Bhiwani with her mother. When he tried to contact her through telephone, she threatened him by saying that he was nobody to ask her as to why she had gone to Bhiwani alongwith the minor child. He said her that whenever she had to accompany the minor daughter, then she should take her in the car, upon this, she again threatened him by saying, *“whether he and his father have forgotten that she had taken them to the police station. Don't forget that he and his parents can be taken to the police station again on a single application to be given by her.”* After great persuasions, she was brought back. But, her behaviour never changed. She never cared for him and even her minor daughter. She even purchased a Scooty in her own name from the collections made by her while stealing money from his pocket and also using his ATM card. She always tried to insult him and his parents in front of the neighbours, who gathered near his house by hearing her loud voice, when she used to pick up quarrels on petty matters. She used to say that Rajat Dudeja was having illicit relations with a lady colleague. On 27.12.2013, a Panchayat was convened by his father, where it was settled that his parents should give Rs.5000/- per month and they may be separated from them after the construction of kitchen on the

first floor. A job for Nidhi was also got arranged by his father in a school. Thereafter, she had been changing the schools. Now, she is continuously serving as M.Sc., B.Ed. Teacher in Sidhharth International School, Dabra Road, Hisar since April, 2016 and is drawing salary of more than Rs.35,000/-.

On 31.12.2015, it was disclosed to Dr. Gulati, Mr. Hans Raj Sardana and Shri Surender Dhamija, Social Worker, who were the members of said Panchayat that after the last meeting, there was no change in the attitude of Nidhi even after living separately. Since, 20.05.2016, she started carrying heavy bags, full of her belongings, one by one from the separated house till 31.05.2016 pretending to be going to school early in the morning without disclosing the factum of carrying all the jewellery and other valuable articles even belonging to Rajat Dudeja, to her mother's house. On 02.06.2016, she also left her matrimonial home without any intimation to him, leaving her daughter in the matrimonial house. Efforts were made to get her back by convening several Panchayats, but all in vain. She openly disclosed that she could not continue to live with him and wanted to get separation through the Courts only. Her mother also refused to keep his minor daughter by saying that it was his duty to see and maintain her.

Upon notice, appellant-wife Nidhi (respondent therein) appeared and contested the petition by taking a stand that all the allegations levelled against her were false and frivolous. The petition was not maintainable. It was stated that she always performed her marital obligations with love and respect. It was the husband (Rajat Dudeja), who never treated her with love and affection. Rather, he always treated her with cruelty. She never misbehaved with her

mother-in-law. After six months of marriage, Rajat Dudeja and his family members started harassing and humiliating her for demand of car. When she expressed her inability to fulfill their demand, they gave beatings to her. On 07.02.2013, when she gave birth to a female child, her husband and his family members taunted by saying that she is a machine to give birth to female child. She is working as M.Sc., B.Ed. Teacher in Siddharth International School, Dabra Road, Hisar, but her entire salary was snatched by her husband and his family members. They did not give her even a single penny for her personal need and fare expenses etc. After the marriage, all the jewellery items were snatched from her by her mother-in-law. After eight months of delivery, her husband and his family members gave separate room to her on the first floor and the condition of said room was very critical. Her in-laws did not allow her minor daughter to meet her and threatened her to face dire consequences, if she came to meet her daughter in their room. They did not provide necessary facilities, including food, clothes etc. to her. On 13.04.2013, when her daughter was about three months old, she moved an application before the police against her husband (Rajat Dudeja) and his family members, where they felt their guilt and assured to keep her nicely. Therefore, the said application was withdrawn by her with a hope that everything would be all right, but nothing was changed. She never abused her husband and his family members. It is admitted that her father-in-law is a retired professor from CCS, H.A.U., Hisar. Her husband used to give her beatings under the influence of liquor and never used to come home in time. She tolerated all the cruelties of her husband and his family members with the hope that good sense might prevail upon them, but their behaviour never changed. In the month of

December, 2012, a car was purchased by her father-in-law, but it is denied that she ever created any scene by saying that the said car was to be purchased in her name or in the name of her husband. She denied the allegation that she ever torn the shirt of her husband or abused him in filthy language. On 13.04.2013, she was turned out of the matrimonial home and the matter was reported to the police, which was compromised. She denied that any Panchayat was convened by the father of Rajat Dudeja on 27.12.2013. In the month of October, 2016, she was shunted out of her matrimonial house by her husband and his family members after giving beatings to her for demand of dowry. They snatched her minor daughter. Thereafter, may Panchayats were convened, but her husband and his family members flatly refused to keep her until and unless their demand of dowry was fulfilled. Her mother expired on 13.09.2017.

From the pleadings of parties, following issues were framed by the trial Court:-

1. Whether the respondent has treated the petitioner with such degree of cruelty as would amount to a matrimonial offence and the marriage has irretrievably failed? OPP
2. Whether the respondent has deserted the petitioner? OPP
3. Whether the petitioner has no cause of action and locus standi to file the present petition? OPR
4. Whether the petitioner has not approached in this court with clean hands and has suppressed the true and material facts from this Court? OPR
5. Relief.

In support of their pleadings, both the parties led evidence. The

Family Court, Hisar, returned finding on issue No.1 in favour of petitioner-Rajat Dudeja (respondent herein) that respondent-wife had treated him with cruelty, which amounts to an offence and the marriage has irretrievably failed. The Family Court has examined the evidence and has come to a conclusion that as per photographs placed on file as Ex.P5 to Ex.P24, the couple was living happily after the marriage. They went to Kerala for honeymoon and also visited other different places i.e. Vrindavan and Golden Temple etc. along with their family members. It was held that respondent-wife was never treated with cruelty for want of more dowry and car etc. from the very beginning of the marriage. As per fee receipt Ex.P26, the respondent (wife) was also allowed by the husband and his family members for higher study upto Ph.D. After the birth of daughter, an application Ex.R1 was made by her to the police on 13.04.2013 against her husband and his family members. This complaint was, subsequently, filed by the police after investigation vide Ex.P27. The said conduct amounted to cruelty to the husband and his family members. On 02.06.2016, she left her matrimonial home. She also left her minor daughter at her matrimonial home. She never tried to meet her daughter either by filing an application during the pendency of the divorce petition or by filing a complaint to the police regarding snatching of the minor daughter. During cross-examination, she admitted that after June, 2016, her daughter was living with her father (husband of Nidhi) and since then, her husband was taking care of her daughter. The Family Court examined the statements of account Ex.P1 to Ex.P4, which were duly proved by Sh. Parduman Kumar, Associate, State Bank of India, Azad Nagar, Hisar (PW-1), Sh. RameshKumar Bhatia, Branch Manager, Oriental Bank of Commerce,

Sector-13, Hisar (PW-2) and Sh. Vijay Kumar, Senior Manager, Punjab National Bank, Dabra Chowk, Hisar (PW-3) and returned a finding that Nidhi was a qualified lady and was financially sound. She left her matrimonial home just to satisfy her own ego. She did not approach the police or higher authorities against her husband and his family members. In her written statement, she nowhere mentioned that she along with her mother had visited the Women Cell, Hisar and met Ms. Babita Chaudhary. It was only in the cross-examination that she mentioned this fact. After going through the evidence led by the parties, Family Court, Hisar, returned a finding that Rajat Dudeja had been subjected to mental cruelty by his wife, as she had left the matrimonial house twice and on account of temperamental differences, they could not pull on nicely in her matrimonial home. The wife had never bothered to file an application under Section 9 of the Hindu Marriage Act for taking the custody of her minor daughter. The ground of desertion was not made out as she had left the matrimonial home on 02.06.2016 and there was no cohabitation between the parties till filing of the petition on 03.07.2017. Period of desertion being less than two years, the finding on issue no.2 was given against the petitioner (husband). Findings on issue nos. 3 and 4 were given against the respondent-wife and ultimately, a decree of divorce was granted to the husband on the ground of cruelty.

We have heard learned counsel for the parties.

Appellant-Nidhi and respondent-Rajat dudeja along with his parents and minor child appeared in Court on 11.08.2021. An attempt was made to resolve the pending disputes between the parties. However, since the parties could not resolve their disputes, the main appeal was heard on

merit.

Learned counsel for the appellant has argued that the divorce could not have been granted to the respondent-husband on the ground of cruelty. The appellant had made a complaint on 13.04.2013 Ex.R1 to the police and she had withdrawn that complaint on the next day i.e. 14.04.2013 as a compromise had effected between the parties. After withdrawing the complaint, she continued staying in the matrimonial house. She left her matrimonial house in October, 2016 when she was again harassed and turned out by her husband and his family members. Despite numerous efforts made by the Panchayat, respondent and his family members refused to keep her.

Learned counsel for the respondent has argued that the appellant-wife had left her matrimonial house in the year 2016. She also left her daughter in the matrimonial house. Thereafter, she never made an effort to meet the minor child. She also made a complaint against her husband in the year 2019, which was found to be false as per report of the police Ex.P27. Said information was sought by filing an application Ex.P25 under the Right to Information Act, 2005. Learned counsel further argued that making of two criminal complaints; one in the year 2013 and another in the year 2019, which were found to be false as per reports Ex.R1 and Ex.P27, would amount to cruelty against the husband-respondent and the respondent-husband has been rightly granted divorce by the Family Court on the ground of cruelty.

In the present case, divorce has been granted to the husband on the ground of cruelty after examining the evidence led by both the parties.

However, issue no.2 has been decided against husband-Rajat Dudeja as

appellant-wife (Nidhi) had left the matrimonial home on 02.06.2016 and the divorce petition had been filed on 03.07.2017. A period of two years had not elapsed by that time, so as to make a case of desertion under Section 13 (1) (ib) of the Hindu Marriage Act, which requires that desertion should be of two years period immediately preceeding the presentation of the petition. Finding given by the Family Court on issue No.2 does not require any interference.

The Family Court has held that marriage of the parties took place on 27.04.2012. Out of this wedlock, one female child was born in the month of February, 2013. When the child was about two months old, appellant-wife left her matrimonial home and got a complaint lodged in Police Post, Court Complex, Hisar on 13.04.2013. After enquiry, she withdrew the complaint on 14.04.2013. In her cross-examination, the appellant had admitted that her husband Rajat Dudeja and his family members had never demanded car from her family after marriage. However, if any demand was made after the marriage, she did not give any details about the same. The appellant completed her Ph.D. after marriage and admitted the receipt of fee Ex.R26. However, this receipt was produced by her husband, who had made a statement that he had financed the education of his wife. The Family Court has given a correct finding that as per receipt Ex.R26, fee for completion of Ph.D. was deposited by respondent-husband.

Another fact, which needs to be highlighted is that after three months of the birth of minor child, a complaint Ex.R1 was made by appellant-wife with the police on 13.04.2013 against her husband. In the said complaint, she had stated that her husband did not allow her to go to her mother's house and did not allow her to eat whatever she liked. He did

not allow her to wear the clothes of her choice. It was also stated that her husband had demanded a car from her family. However, the said complaint was withdrawn on 14.04.2013. A perusal of this document shows that she has given a statement before the police that the matter has been compromised between them.

Later on, she made another complaint with the police on 05.01.2019 stating that her husband and his family members kept on harassing her and never gave her any money to spend. Her husband used to take her salary away from her. On 19.05.2016, she was beaten up by her in-laws. After seeing her condition, her parents purchased a small house in her name. However, in-laws insisted that the house should be in their name. Thereafter, she was turned out of the matrimonial house and her daughter was taken away by her in-laws. In her cross-examination, appellant-wife (Nidhi) stated that when she had left the matrimonial house in October, 2016, she did not move any application to the police or any other higher officer. She stated that she along with her mother had visited the Women Cell and met with Ms. Babita Chaudhary. In the criminal complaint made by her in the year 2019, a cancellation report was given on 04.03.2019 Ex.P27. Therefore, the husband had filed a petition under Section 13 of the Hindu Marriage Act, 1955 on 03.07.2017 and the complaint pertaining to the year 2019 was an after thought, which was filed after a gap of three years of leaving the matrimonial house in the year 2016. In the cancellation report dated 04.03.2019 Ex.P27, it is specifically mentioned that there was no evidence with regard to demand of dowry. This complaint was made on 05.01.2019 and in the proceedings initiated by her husband under Section 13 of the Hindu Marriage Act, the matter was referred for mediation. As per

report of Mr. A.K. Bansal, Advocate/Mediator dated 05.01.2018, efforts were made for conciliation for about two hours, but mediation could not succeed and the papers were sent back to the Court for the next date i.e. 30.01.2018. Even counsel for both the parties namely Mr. Mohit Arora, Advocate and Ms. Preeti Sharma, Advocate (who were representing them before the trial Court) had made an attempt for reconciliation and as per their report dated 19.05.2018, both petitioner and respondent, despite best efforts made by them, had stated that they were not willing to live together and they wanted divorce.

In the present case, after going through the reports of the mediator and the counsel for the parties; steps taken by the appellant-wife to file criminal complaint on 05.01.2019 and the cancellation report dated 04.03.2019, one thing has been clarified that the husband-respondent and his family members had not made any demand of dowry. They did not harass the wife on account of not bringing sufficient dowry. Both the parties being educated and financially secured, had made a statement that they want divorce. This fact is evident from the report of Mr. Mohit Arora, Advocate and Ms. Preeti Sharma, Advocate.

The respondent-husband had proved on record statement of account Ex.P1 to Ex.P4, a perusal of which shows that appellant-Nidhi is financially secured woman. The allegation that her husband used to take away her salary is also false. The ground of cruelty is to be examined keeping in view the evidence led by the parties and the finding given by the Family Court. Hon'ble the Supreme Court in **Raj Talreja vs. Kavita Talreja**, Civil Appeal No.10719 of 2013 (decided on 24.04.2017) was examining a case, where the wife had herself inflicted injuries on her person and filed a false

complaint against the husband. In criminal proceedings, the husband had been acquitted and thereafter, proceedings against the wife were launched under Section 182 IPC. In that case, the husband was held entitled to decree of divorce on the ground of cruelty. It was further observed as under:-

“9. This Court in Para 16 of [K. Srinivas Rao v. D.A. Deepa](#), 2013 (2) RCR (Civil) 232 has held as follows:

“16. Thus, to the instances illustrative of mental cruelty noted in [Samar Ghosh v. Jaya Ghosh](#), 2007 (4) SCC 511, 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.”

In [Ravi Kumar v. Julmidevi](#), 2010 (2) RCR (Civil) 178, this Court while dealing with the definition of cruelty held as follows:

“19. It may be true that there is no definition of cruelty under the said Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, sometime it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty.

20. Therefore, cruelty in matrimonial behaviour defies any definition and its categories can never be closed. Whether the husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any predetermined rigid formula. Cruelty in matrimonial cases can be of infinite variety—it may be subtle or even brutal and may be by gestures and words. That possibly explains why Lord Denning in **Sheldon v. Sheldon**, (1966) 2 WLR 993 held that categories of cruelty in matrimonial cases are never closed.

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 are 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.”

Recently, Hon'ble the Supreme Court had an occasion to examine another case in **Joydeep Majumdar vs. Bharti Jaiswal Majumdar**, Civil Appeal Nos.3789-3787 of 2020 (decided on 26.02.2021), where defamatory complaints had been made by wife to husband's superior officers. The husband was an Army Officer and the defamatory complaints made by the wife would affect the career progress of the husband. Hon'ble the Supreme Court held that it amounted to mental cruelty. The husband had suffered adverse consequences in his life and career on account of allegations made by wife. The Family Court, in that case, had granted divorce to the husband on the ground of cruelty. However, the High Court reversed the finding of the Family Court. Hon'ble the Supreme Court, while deciding the matter, referred to another judgment passed in **Samar Ghosh vs. Jaya Ghosh**, 2007 (4) SCC 511, in which it was observed that in order to make out a case of mental cruelty, no uniform standard can be laid down and each case will have to be decided on its own facts. In para nos.11, 12 and 13 of the judgment passed in **Joydeep Majumdar's** case (supra), it was

observed as under:-

“11. The materials in the present case reveal that the respondent had made several defamatory complaints to the appellant’s superiors in the Army for which, a Court of inquiry was held by the Army authorities against the appellant. Primarily for those, the appellant’s career progress got affected. The Respondent was also making complaints to other authorities, such as, the State Commission for Women and has posted defamatory materials on other platforms. The net outcome of above is that the appellant’s career and reputation had suffered.

12. When the appellant has suffered adverse consequences in his life and career on account of the allegations made by the respondent, the legal consequences must follow and those cannot be prevented only because, no Court has determined that the allegations were false. The High Court however felt that without any definite finding on the credibility of the wife’s allegation, the wronged spouse would be disentitled to relief. This is not found to be the correct way to deal with the issue.

13. Proceeding with the above understanding, the question which requires to be answered here is whether the conduct of the respondent would fall within the realm of mental cruelty. Here the allegations are levelled by a highly educated spouse and they do have the propensity to irreparably damage the character and reputation of the appellant. When the reputation of the spouse is sullied amongst his colleagues, his superiors and the society at large, it would be difficult to expect condonation of such conduct by the affected party.”

In the facts of the present case, the husband (Rajat Dudeja) was working as Assistant Bank Manager in Syndicate Bank and was physically handicapped with hearing impairment. The parties got married on 24.04.2012. Out of this wedlock, a daughter was born on 07.02.2013. The first complaint was made by the wife to the police on 13.04.2013, which was withdrawn on 14.04.2013 Ex.R1. In the said complaint, the wife had alleged that her husband was a weak minded person and was hard of hearing. It was also alleged that she was being harassed by her husband and his family members. After withdrawing the complaint, she continued to stay in the matrimonial home. Later on, she filed a second complaint against her

in-laws on 04.03.2019, which was found to be false as per report Ex.P27. The husband-respondent, who was suffering from hearing impairment, was looking after three year old daughter, when his wife (appellant) had left the matrimonial house on 02.06.2016. After leaving the matrimonial home, a second complaint was made by the wife in 2019, which was found to be false vide report Ex.P27. During these three years i.e. from 2016 to 2019, the minor daughter was brought up by the husband-respondent alone. As per statements of account Ex.P1 to P4, the appellant was financially independent and secured lady. She did her M.Sc. before marriage. After marriage, she completed her Ph.D., for which, her husband had supported her financially. She has a small house in her name, which was purchased by her parents. Keeping in view that the appellant was an educated lady, she was aware about the effects of criminal complaints, which she had made against her husband and his family members in the years 2013 and 2019. Making false complaints against the husband would have an adverse effect on his reputation and place in society, as he was working in a bank and was suffering from hearing impairment. Moreover, he was looking after his three-year-old daughter alone after his wife had left the matrimonial home in the year 2016. All this amounted to mental cruelty.

When the first complaint was made to the police in the year 2013, the minor child was only three months old. The appellant-wife had left the child in her matrimonial home in the year 2016. Even if, we accept that the husband and wife could not pull on together, the child was subjected to mental harassment as she was deprived of love and affection of the mother.

Under Section 6 (a) of the Hindu Minority and Guardianship

Act, 1956, custody of minor, who has not completed the age of five years, ordinarily is to be given to a mother. In the present case, appellant (mother of minor child) informed the Court that she had filed a case for the custody of her child. At this stage, reference can be made to the proceedings of mediation, which were initiated before the Family Court as per report of counsel for both the parties, which is part of the official record. Both the parties had stated that they did not want to stay together. Hence, keeping in view that both are educated and financially independent, the marriage has come to a stage where even the Court cannot give direction to the parties to stay together happily for welfare of the minor child. In a situation like this, the marriage becomes irretrievable. Hon'ble the Supreme Court in K. Srinivas vs. K. Sunita, 2014 (16) SCC 34 had examined this issue and held that irretrievable breakdown of marriage as a ground for divorce has not found statutory acceptance till date and only the Supreme Court under Article 142 of the Constitution of India, has plenary powers to pass such decree or make such order as is necessary for doing complete justice in any case or order pending before it. Hon'ble the Supreme Court was examining a case of divorce, which was being sought on the ground of cruelty. The appellant's family, in that case, had faced criminal trial under Section 498-A and 307 IPC. Appellant and seven members of his family were arrested and incarcerated. The wife had also filed a petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. The appellant and his family members were acquitted in the criminal trial and that order had attained finality. The Family Court granted divorce to the appellant on the ground of cruelty as also irretrievable breakdown of marriage. The wife filed an appeal against the said judgment. Vide order dated 07.11.2005, the

High Court allowed the appeal filed by the wife. The said order was challenged by the husband before Hon'ble the Supreme Court. The Apex Court observed that criminal complaint had been filed by the wife after the husband-appellant had filed a petition for divorce. On acquittal of the husband and his family members, the complaint was found to be false. It was all calculated to embarrass and incarcerate the appellant and seven members of his family. Ultimately, the appeal was allowed by giving a finding that the respondent-wife had filed a false criminal complaint and even one such complaint was sufficient to constitute matrimonial cruelty.

In **K. Srinivas Rao vs. D.A. Deepa**, 2013 (2) RCR (Civil) 232, Hon'ble the Supreme Court was examining a complaint, where the wife had raised allegation that mother of her husband had asked her to sleep with father of her husband. This allegation was found to be false and it amounted to extreme mental cruelty to the husband. In that case, the parties had been living separately for the last 10 years. Ultimately, divorce was granted to the husband. In para no. 28 of the judgment, Hon'ble the Supreme Court observed as undr:-

“28. 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.”

Applying the ratio of aforesaid judgments of Hon'ble the Supreme Court to the facts of the present case, the parties have been staying

separately since 2016, filing of two criminal complaints and cancellation reports Ex.R1 and Ex.P27 would definitely amount to mental cruelty on the husband, coupled with the fact that the husband was suffering from hearing impairment and had been looking after his three-year-old daughter alone since 2016.

In view of the above discussion, the decree of divorce has been rightly granted to the respondent-husband on the ground of cruelty. No illegality, much less perversity has been found in the impugned judgment.

Resultantly, the present appeal is dismissed.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

18.08.2021
ajp

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No