

THE HON'BLE JUSTICE G.SRI DEVI

AND

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

F.C.A.NOs.458 and 472 of 2018

COMMON JUDGMENT (Per the Hon'ble Smt. Justice M.G.Priyadarsini)

The appellant in both the appeals is the husband and the respondent is his wife. He filed FCOP. No.22 of 2014 on the file of Principal Judge, Family Court, City Civil Court at Hyderabad against the respondent under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (for brevity hereinafter referred to as 'the Act') seeking a decree of divorce on the ground of 'cruelty'. The respondent – wife filed FCOP.No.634 of 2014 on the file of the same court under Section 9 of the Act seeking a decree for restitution of conjugal rights against the petitioner.

2. Vide common order and decree dated 19.06.2018, the Trial Court dismissed the FCOP.No.22 of 2014 filed by the husband for divorce, and allowed the FCOP.No.634 of 2014 filed by the respondent – wife for restitution of conjugal rights and directed the petitioner – husband to restore the conjugal rights to the respondent – wife by joining her within two months from the date of the order.

3. Assailing the above stated common order and decree, the husband filed the respective appeals. For the sake of convenience, parties will be referred to as arrayed in the original petitions.

4. ***Case of the petitioner – husband:*** That his marriage with the respondent was performed on 14.03.2012 as per Hindu customs and rights at Satya Sai Nigamagam, Sri Nagar Colony, Hyderabad and the marriage was consummated.

(i). That at the time of marriage, during pre-marriage talks, the respondent – wife agreed for getting transferred from Bengaluru, so as to join the petitioner at Hyderabad after marriage, and with the said understanding and assurance, the alliance was fixed, and they got married on 14.03.2012 after performing engagement on 08.02.2012.

(ii) That the respondent was asked to serve notice to her employer to resign to her job prior to the marriage, so as to get herself relieved within two or three months after the marriage for shifting to Hyderabad. But the respondent did not resign her job at Bengaluru as promised either prior to, or immediately after the marriage, and she only applied for two weeks leave, and after the marriage ceremony, she left to Bengaluru.

(iii) That there was no change in her attitude and behavior after the marriage, and she has given a vague reply to the petitioner when enquired about the status of her resignation.

(iv) That the respondent instead of resigning to her job, started pressurizing the petitioner to shift to Bengaluru, leaving his parents, and this indifferent attitude on the part of the respondent, created doubts and untold misery and mental agony to the petitioner and there appears to be a hidden conspiracy.

(v) That the respondent misrepresented the facts and tried to make false allegations without paying any heed to the advice of the petitioner, and his father, to relocate to Hyderabad.

(vi) That, later the respondent has been recording the private and family conversations as a regular habit since the early days after marriage itself, and manipulating the discussions to her advantage and putting them on e-mails. She has focused more on hidden agenda, and collecting documentation, rather than building a better relationship, causing breach of trust between them.

(vii) That in the month of June, 2012, the parents of the respondent enquired the parents of the petitioner about their intention to send “saare” (traditional farewell) to the respondent at Bengaluru, which shattered the dreams of the parents of the petitioner.

(viii) That the respondent rarely visited the matrimonial home for a day or two in different spells, totaling to 15 days from the date of her marriage till September, 2012, when she relocated to Hyderabad, and joined the petitioner.

(ix) That after the respondent joined the petitioner, his parents left to New Delhi in October, 2012, to provide privacy to them, and to improve their relationship. But the respondent continued to create the same atmosphere demanding to live separately from his parents, making false and scandalous allegations against them, creating unprecedented scenes like crying loudly, suicidal threats, psychic behavior. That she was making calls to her relations. She was crying loudly to attract the attention of passers-by, while she was going to her office along with the petitioner, causing mental agony to him.

(x) That the said cruel behavior of the respondent caused reasonable apprehension in his mind, that it would be harmful and injurious to live with her.

(xi) That the relationship between them worsened severely, when one Mr. K.L.Anantha Murthy came from Bengaluru to the house of her parents at Tirumalgiri, Hyderabad. The respondent was eager to meet him, as such, on her insistence, the petitioner escorted her to her parents' house. He was astonished to know that her parents have made arrangements to take her to Badrachalam along with

the said K.L.Anantha Murthy and the petitioner was taken aback and disapproved for going to Badrachalam along with the said person.

(xii) That the respondent subjected the petitioner to untold misery and humiliation from November, 2012 to January, 2013, and such behavior of the respondent caused reasonable apprehension in his mind that it would be unsafe for him to continue the marital relationship with her.

(xiii) That the petitioner made his efforts to restore back the relationship, but the respondent left to her parents house on 21-01-2013, when the petitioner left for Bengaluru, and later, she did not join the petitioner and she did not make any efforts for reconciliation. That he returned from Bengaluru. Respondent was making allegations and she did not show any interest to join him. Thus the attitude and behavior of the respondent caused severe trauma, mental agony and anguish in his mind.

(xiv) With these allegations he sought for a decree of divorce on the ground of 'cruelty'.

5. The case of the respondent – wife in the counter affidavit and in her petition seeking for restitution of conjugal rights: It is admitted that her marriage with the petitioner was performed on 14.03.2012, and she denied the allegations of the petitioner with regard to cruelty.

(i) Her case is that the petitioner and his parents and his sister used to degrade her causing mental agony and that the father of the petitioner was demanding her salary and other household articles and also to handover the papers of the house owned by her to him.

(ii) That the petitioner did not allow her to have water and food. That the respondent needed some time to relieve herself from Bengaluru. The allegations made in the petition are silly and they do not constitute 'cruelty'.

(iii) That she used to visit Hyderabad very often and lived with the petitioner to lead marital life, but owing to the procedural compliance and prior commitments, she had to tender resignation on 31.08.2012, with an intention to join the petitioner, but the petitioner under the ill-advice of his parents, is spoiling the marital bond.

(iv) That the petitioner as well as his parents started harassing her, rather than strengthening the marital bond. That the father of the petitioner wanted her to give costly gifts, articles and handover the salary of the respondent, in order to establish a clinic for his daughter Dr.C.Madhavi, which she protested, and though it was informed to the petitioner, he brushed aside without paying any heed. It is stated that she is interested to lead conjugal life forgetting the past events.

(v) That Mr. K.L.Anantha Murthy, was treating her as his daughter, and that when he came to Hyderabad, she wanted to accompany him to Badrachalam, which cannot be

found fault with, and the petitioner was viewing the same in a misconception, and taking the same as ground for seeking divorce.

(vi) That the petitioner did not make any attempt for re-union and he is under the influence of his parents and sister and that there is no intention on the part of the petitioner to take her back to lead marital life.

(vii) With these averments, the respondent sought the Trial court to dismiss the petition filed by the husband for divorce, and to allow her petition for restoration of conjugal rights.

6. Based on the above pleadings on record, the Trial Court framed the following issues for trial:

O.S.No.22 of 2014:

1. Whether the petitioner is entitled to the relief of decree of divorce as prayed for?
2. To what relief?

O.S.NO.634 OF 2014

1. Whether the petitioner is entitled to the relief of decree for restitution of conjugal rights as prayed for?
2. To what relief?

7. In support of the case of the petitioner – husband he got examined himself as P.W.1, and he also got examined his brother-in-law as P.W.2 and got marked Exs.P-1 to

P-17. On behalf of the respondent – wife, R.Ws.1 to 3 were examined as Exs.R-1 to R-12 were marked.

8. Appreciating the entire evidence, both oral and documentary, the Trial Court answered the issue No.1 in both the O.Ps. against the petitioner and in favour of the respondent, and accordingly, dismissed the petition filed by the husband for divorce, and allowed the petition filed by the wife for restitution of conjugal rights. Hence the present appeals by the husband.

9. This court while admitting FCA.No.458 of 2018 on 24.10.2018 granted interim suspension of the impugned common order and thereafter vide interim order dated 13.11.2018 extended the interim order until further orders. Subsequently, vide interim order dated 01.04.2022, this court finding that there is an element of compromise between the parties, referred the matter to Mediation Centre of the High Court of Telangana for amicable settlement. But as the matter could not be settled, this court has to eventually take up the appeals for hearing on merits.

10. Heard Sri J.Prabhakar, learned Senior Counsel on behalf of Smt. D. VenkataPadmaja, learned counsel for the appellant / petitioner – husband and Sri R.Govindu, learned counsel appearing for the respondent – wife.

11. Learned counsel for the appellant / petitioner, while reiterating the averments made in the petition seeking for divorce, further submits that without any

reasonable cause and justification, the respondent – wife filed domestic violence case in DVC. No.175 of 2016 and she also filed suit for defamation against the petitioner and his family members in O.S.No.569 of 2016. Learned counsel submits that the respondent by filing number of cases with false allegations, subjected the petitioner and his family members to ‘mental cruelty’, and the cases filed by her also affected the marital life of the sister of the petitioner. Therefore, in view of these facts and circumstances, the learned counsel sought to set aside the impugned common order, and to decree the petition filed by the husband for divorce on the ground of ‘cruelty’, and to dismiss the petition filed by the respondent for restitution of conjugal rights.

12. In support of the above contentions, learned counsel relied on the judgments reported in VISHWANATH AGRAWAL v. SARLA VISHWANATH AGRAWAL¹, K.SRINIVAS v. K.SUNITA², MALATHI RAVI v. B.V.RAVI³ and DR. ANEEL KAUR v. DR. A.JAYA CHANDRA⁴.

13. On the other hand learned counsel for the respondent – wife supporting the impugned common order, submitted that as the petitioner – husband failed to prove his allegations with regard to ‘cruelty’, and as it is found that the respondent – wife has made *bona fide* efforts to join the husband, the Trial Court by recording cogent and convincing reasons, allowed the claim of the wife, and rejected the prayer of the husband, and hence, the impugned common order passed by the learned Trial Court

¹(2012)7 SCC 288

²(2014) 16 SCC 34

³(2014)7 SCC 640

⁴2015(1) ALD 478 (DB)

may not be interfered with. He further submitted that the allegations made by the petitioner are in the nature of ordinary wear and tear in married life and that filing of cases by the wife against the petitioner cannot constitute 'mental cruelty'. Accordingly he sought to dismiss the appeals. In support of his contentions, learned counsel for the respondent – wife relied on the judgments reported in MANGAYAKARASI v. M.YUVARAJ⁵, SAJAL DAS vs. CHAMPA DAS⁶, SUSMITA SAHA MAZUMDER vs. SUSANTA SAHA⁷, GURBUX SINGH v. HARMINDER KAUR⁸, P.SRINIVASULU v. HEMALATHA⁹, P.MALLESWARAMMA v. P.PRATAP REDDY¹⁰, CHIRANJEEVI v. SMT. LAVANAYA¹¹, NAVEEN KOHLI v. NEELU KOHLI¹², M.PUSHPALATHA v. M.VENKATESWARLU¹³, RAMCHANDER vs. ANANTA¹⁴, V.VENKATESHWARLU v. SMT. V.MAMATHA¹⁵, KAMLESHWARI BAI v. PEELURAM LATKHOR SAHU¹⁶, NABAKUMAR BANIK v. SMT. AMITA DATTA¹⁷, NAVAL KISHORE SOMANI v. POONAM SOMANI¹⁸ and SMT. PIYASA GHOSH v. SOMNATH GHOSH¹⁹,

⁵ I(2020)DMC 687(SC)

⁶ II (2020) DMC 100 (DB)

⁷ III(2020)DMC 130(DB) (Cal.)

⁸ AIR 2011 SC 114

⁹ AIR 2010 A.P. 185

¹⁰ AIR 2006 AP 4

¹¹ AIR 2006 AP 269

¹² AIR 2006 SC 1675

¹³ 2010(3) ALD 217 (DB)

¹⁴ LAWS (SC)2015 2 89

¹⁵ AIR 2014 A.P. 24

¹⁶ AIR 2010 CHHATTISGARH 16

¹⁷ AIR 2009 GAUHATI 103

¹⁸ AIR 1999 AP 1

¹⁹ AIR 2009 CALCUTTA 90

14. Having regard to the averments made by the respective parties, and in view of the rival contentions of both the counsel, the issue that arises for consideration is whether the impugned common order is required to be interfered with?

15. For receiving additional documents pertaining to the cases filed by the respondent – wife, petitioner filed I.A.No.1 of 2022 in FCA.No.472 of 2018. Petitioner also filed another application in I.A.No.2 of 2022 in FCA.No.472 of 2018 to receive the affidavit stating the subsequent events and facts. The respondent also filed counter affidavits denying the allegations made by the petitioner in I.A.Nos.1 and 2 of 2022 and sought to dismiss the applications.

16. The documents filed by the petitioner are pertaining to the photocopies of the complaints filed by the respondent – wife herself. In the affidavit sought to be received by the husband, he made allegations against the respondent – wife, and also referred to the documents pertaining to criminal cases filed by the respondent-wife against the petitioner, his parents, and his sister and brother-in-law. Since they are the documents pertaining to the cases filed by the respondent, which are the subsequent events, this court is inclined to allow the application. The Apex Court in the decision reported in *VISHWANATH AGARWAL v. SARLA VISHWANATH AGRAWAL* (1 supra), held that subsequent events can be considered. Accordingly, I.A.No.1 of 2021 is allowed and the documents filed along with the application are marked as per the serial in 'p' series on behalf of the petitioner. However, I.A.No.2 of 2021 pertaining to the prayer of

the petitioner to receive affidavit containing the allegations made by him, is rejected, as they are in the nature of disputed questions of facts, which can only be proved by leading evidence and by allowing rebuttal evidence. At this stage, we are not inclined to remand the matter, and we are inclined to decide the appeals on merits.

17. There is no dispute that marriage between the parties was performed on 14.03.2012, and the petitioner also admitted that it was consummated.

18. At the time of marriage respondent was working at Bengaluru and it is stated that in the pre-marriage talks, she has accepted to relocate from Bengaluru to Hyderabad, so as to join the petitioner at Hyderabad, and on that assurance only, the marriage proposal was accepted.

19. The petitioner was examined as P.W.1, and in his evidence he reiterated the averments made in the petition.

20. The main grievance of the petitioner is that the respondent did not immediately resign her job at Bengaluru to relocate to Hyderabad to join the petitioner and that from the date of marriage on 14.03.2012, till she joined the petitioner at Hyderabad in the month of September, 2012, after resigning her job at Bengaluru on 31.08.2012, she rarely visited the petitioner for a day or two, and hardly spent 10 or 15 days with the petitioner in a span of six months. The further grievance of the petitioner is that she is insisting him to get separated from his parents and to shift to Bengaluru. It

is also stated that one Mr. K.L.Anantha Murthy, has come to the parents' house of the respondent, and though he is not willing, the respondent accompanied him to Badrachalam. The further case of the petitioner is that immediately after the marriage, the respondent started recording the conversations of the petitioner and his family members, which is not expected in the normal course, and further, the willingness shown by her to rejoin the petitioner is not *bona fide*, and it is only a ruse to get-over the claim for divorce. Further the wife filed defamation suit claiming damages of Rs.1,00,00,000/-, and she has given legal notice for Rs.2,00,00,000/-. These circumstances show that she is not interested to rejoin the husband.

21. The further case of the petitioner is that subsequent to the impugned common order in FCOP, the respondent – wife barged into the house of the petitioner on 13.10.2018 and created big ruckus, and made drama that she wanted to join the petitioner. It is to be seen that if really the respondent - wife intended for execution of the impugned common order, she could have followed the due process of law. The case of the petitioner is that with great difficulty, they could send the respondent and his parents away informing them about the appeals filed by them and the interim order granted by this court. The further case of the petitioner is that the respondent with an evil intention to trouble the petitioners and his aged and ailing parents lodged false complaint with Police Station Nallakunta on 13.10.2018, and the police have referred her to DurgaBaiDeshMukh hospital, where the doctor examined her, and found that

she did not suffer any injury, however based on her report, police registered a petty case and filed charge sheet in STC.No.4211 of 2019 on the file of Special VIII Metropolitan Magistrate, Hyderabad for the offence under Sections 323 IPC and 70B of the City Police Act. Assailing the charge sheet, petitioner filed Crl.P.No.5381 of 2019 on the file of this court under Section 482 Cr.P.C. seeking to quash the proceedings and initially this court on 17.10.2019 stayed the proceedings, and the respondent filed counter affidavit. Thus the intention and attitude of the respondent is only to harass the petitioner and his parents, and there is no iota of truth in her intention to rejoin the petitioner. Further she also filed defamation case against the petitioner, his parents, his sister and his brother-in-law in O.S.No.569 of 2016 on the file of X Additional Chief Judge, City Civil Court, Hyderabad and claiming an amount of Rs.1,00,00,000,- as damages. The petitioner also filed interlocutory application therein seeking to reject the plaint and the respondent filed counter, and the matter is pending adjudication. The respondent also filed DVC.No.175 of 2016 against the petitioner and his parents, and also against his sister and his brother-in-law. Further, the respondent also lodged complaint, based on which, FIR.No.217 of 2021 was registered on the file of Police Station, Alwal against the petitioner, his parents, his sister and his brother-in-law for the offence under Sections 498-A, 506 IPC read with Sections 3 and 4 of the Dowry Prohibition Act, and the police have filed charge sheet on the file of XXIII Metropolitan Magistrate Cyberabad at Medchal. It is further stated that respondent left their house

on 21.01.2013 when he went to Bengaluru, and later she did not return, and she also did not make any efforts for reconciliation.

22. As per the evidence on record both the parties have leveled allegations against each other in their respective affidavits. The case of the respondent – wife is that she intends to join the husband unconditionally, but the fact remains that she filed cases against the petitioner, his parents, his sister, and brother-in-law, which will be referred to in the course of judgment. The marriage was performed between the parties on 14.03.2012 and the wife left the company of the husband and went to her parents' house on 21.01.2013 and since then they have been living separately. The filing of above referred cases with false allegations, have caused deep mental pain, agony, suffering and frustration to the petitioner – husband and they amounts to 'cruelty' and though filing of criminal case is a subsequent event, it can be taken into consideration, and it definitely constitutes 'cruelty'. He submits that respondent left to her parents house without any reason on 21.01.2013, and she did not make any efforts for reconciliation and since then both the parties are living separately for about past nine years, and further it clearly shows that the respondent has filed the above stated cases only to harass the petitioner and family members, and in these circumstances, it has to be taken that the respondent is subjecting the petitioner to 'mental cruelty', and hence he is entitled to seek for a decree of divorce, but the trial court without

considering these facts and circumstances of the case in a proper perspective, refused to grant divorce.

23. It is to be seen that this court is not inclined to make any observations with regard to the merits of the above cases filed by the respondent, and the truth or otherwise of the same, are subject to trial. However, it is to be conspicuously noticed that when wife is intending to join the husband, filing the above cases, would mean that that she is acting quite contrary to her intention. Based on the complaint of the respondent, petty case in STC. No.4211 of 2019 was registered against the petitioner and his parents. Filing of the cases even for trivial issues would definitely aggravate the situation, and cannot be appreciated.

24. It is to be further seen that when the trial court has allowed her petition for restitution of conjugal rights and that when the husband is not inclined to comply, the respondent can seek for execution of same in accordance with law by filing an application under Order 21, Rule 32 CPC., but it is alleged that she along with her parents went to the residence of the petitioner, and according to the petitioner, she created some galata in front of the house of the petitioner and thereafter filed false criminal case against the petitioner and his parents, which shows the oblique intention of the respondent.

25. Further, it could be seen that subsequent to the filing of the present appeals by the petitioner, based on the complaint lodged by the respondent, FIR. No.217 of 2021 was registered against the petitioner, his parents, sister and brother-in-law for the offence punishable under Sections 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act. This is after a long gap of more than eight years. These allegations, in principle, are absent in her petition filed under Section 9 of the Act, for restitution of conjugal rights. Earlier she also filed OS.No.569 of 2016 for defamation, and is seeking damages of Rs.1,00,00,000/-. It is an admitted fact that the respondent left the matrimonial house on 21.3.2013 and thereafter, she never attempted to join the society of the petitioner, or gone to the matrimonial house.

26. The petitioner and the respondent are software engineers and they come from well to do families, and unfortunately within short period of marriage, differences arose, which led to the filing of the cases.

27. From the above facts and circumstances, and the cases filed by the respondent, it could be seen that the respondent – wife is taking every opportunity to file cases against the petitioner and his parents, and also against the sister of the petitioner and his brother-in-law. As noted above, her case is that she is willing to join the petitioner unconditionally. If she was really intending to join the husband unconditionally, as stated by her, she would not have ventured to file such complaints, even involving the sister of the petitioner and his brother – in – law, who are not living

with the petitioner. This kind of attitude of the respondent towards her husband, in unequivocal terms has to be held as 'cruelty' falling under Section 13(1)(i-a) of the Act.

28. In the decision reported in *NAVEEN KOHILI vs. NEELU KOHILI*²⁰, somewhat similar facts came up for consideration before the Apex Court. The facts therein disclose that the respondent who is the wife of the appellant, has initiated criminal and civil proceedings and the both are living separately for the past ten years and the marital bond between them was beyond repair, and still the wife is not inclined for divorce. In these facts and circumstances, the Apex Court held that the matrimonial bond between the parties is beyond repair and not to grant a decree of divorce would be disastrous for the parties. Accordingly the order and decree of the trial court in denying the decree of divorce was set aside and the appeal filed by the appellant – husband for a decree of divorce was allowed. The relevant portion of the order is as under:

“Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again.

The High Court ought to have appreciated that there is no acceptable way in which the parties can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied forever to a marriage that in fact has ceased to exist.

Undoubtedly, it is the obligation of the Court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. In the instant case, there has been total disappearance of emotional

²⁰Appeal (Civil) 812 of 2004 dated 21.03.2006

substratum in the marriage. The course which has been adopted by the High Court would encourage continuous bickering, perpetual bitterness and may lead to immorality.

In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, 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. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.

The High Court ought to have visualized that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.

The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.

In our considered view, looking to the peculiar facts of the case, the High Court was not justified in setting aside the order of the Trial Court. In our opinion, wisdom lies in accepting the pragmatic reality of life and take a decision which would ultimately be conducive in the interest of both the parties.

Consequently, we set aside the impugned judgment of the High Court and direct that the marriage between the parties should be dissolved according to the provisions of the [Hindu Marriage Act, 1955](#).

29. In another decision, the Apex Court in **RAJ TALREJA v. V. KAVITA TALREJA**²¹, held that *“This Court in Para 16 of K.Srinivas Rao v. D.A.Deepa 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*

²¹(2017)14 SCC 194

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 the case, amount to causing mental cruelty to the other spouse.”

30. A Division Bench of this court in **P.PADMA v. P. CHENNAIAH**²², held that false, scandalous, malicious and baseless charges made against husband by wife, *prima facie* amountsto ‘cruelty’, and on the basis of the same, husband is entitled to decree of divorce. Similar is the view expressed by the Apex Court in the judgments relied on by the learned counsel for the petitioner.

31. As already noted above, the respondent – wife through her legal notice dated 16.08.2016 claimed damages of Rs.2,00,00,000/-. Further, as already noted above, she also filed defamation case claiming damages of Rs.1,00,00,000/-. Subsequent to the divorce petition moved by the husband, the respondent – wife filed STC.No.4211 of 2019 and Cr.No.217 of 2021.

32. If really, the respondent – wife is interested to rejoin the husband, as already noted above, she would not have indulged in the above litigation. Filing of number of cases, and especially, the defamation case claiming damages of Rs.1,00,00,000/- and also issuing legal notice demanding Rs.2,00,00,000/-, cannot be considered as mere trivial irritations, or quarrels, or normal wear and tear of married life. They are of

²²2022(1) ALD 103 (TS)(DB)

serious in nature, and can be taken as subjecting the petitioner and his family members to 'mental cruelty'.

33. As per the material on record, the respondent left the company of the petitioner on 21.01.2013 and since then, both have been living separately, and wife also filed number of cases, and however her claim is that she is intending to join the petitioner unconditionally. As noted above, this court has also made attempt to reconcile the matter, but it yielded no results.

34. From the above facts and circumstances, this court is of the considered view, that the respondent – wife by filing number of cases, frustrated the life of the petitioner, his parents, and further affected the marital life of the sister of the petitioner. As noted above, all these acts constitute subjecting the petitioner to 'cruelty'. The facts and circumstances in the judgments relied on by the learned counsel for the respondent are different, and they cannot be made applicable to the facts of the present case on all fours.

35. Thus, having regard to the facts and circumstances of the case and in the light of the decisions of the Apex Court referred to above, the husband is entitled to seek for divorce under Section 13(1)(i-a) of the Act, and accordingly the impugned common order is set aside and the FCOP.No.22 of 2014 filed by the husband for divorce is allowed, and consequently, the marriage between the petitioner and the respondent,

which was performed on 14.03.2012, is dissolved. FCOP.No.634 of 2014 filed by the respondent for restitution of conjugal rights is dismissed. Thus both the appeals are accordingly allowed.

36. Interlocutory Applications pending, if any, shall stand closed. No order as to costs.

G.SRI DEVI,J

M.G.PRIYADARSINI,J

DATE: 21--09—2022/AVS