

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No. 978 of 2018

=====

Bharat Prasad Gupta, Son of Baidyanath Prasad Gupta, Resident of Mohalla –
Ilamaram Chauk, Bettiah, (near Jamunaram Dharamshala), Post Office +
Police Station – Bettiah (Town), District – West Champaran.

... .. Appellant/s

Versus

Asha Devi , D/o Jhulan Prasad Gupta, Resident of Village - + Post Office –
Pohara Lachanuta, Police Station – Gaunaha,, District- West Champaran.

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Akhileshwar Kumar Shrivastva, Advocate

For the Respondent/s : Mr. Shashank Chaudhary, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : - 09/08/2023



The present appeal has been filed impugning the Judgment dated 20.09.2018 passed by Ld. Principal Judge, Family Court, West Champaran at Bettiah in Divorce Petition No. 117 of 2018 / CIS No 78 of 2013 whereby the petition of the appellant filed under Section 13 of the Hindu Marriage Act has been dismissed on contest.

2.1 The case of the Appellant/Plaintiff as per the pleading is that the marriage between the Appellant/Plaintiff and the Respondent-Wife was solemnized on 28.05.2005 as per Hindu rites and customs and out of the wedlock two female children Khusi Kumari and Anchal Kumari are born, who were, at the time of presentation of the petition, five years and three years of age respectively.

2.2 It is alleged that right from the beginning the behaviour of the Respondent-Wife was cruel towards Appellant/Husband and his family members. As per further allegation, the Respondent-Wife used even to behave with the Appellant schizophrenically. The family members of the Appellant could not tolerate the behaviour of the Respondent-Wife and hence, they separated themselves from the Appellant in the year 2008. But, even after separation, the behaviour of the Respondent-Wife did not change. She used to quarrel with the



Appellant/Husband and in the odd hours of night, she used to stage dramatic action for committing suicide either by hanging or by setting her to fire to her body or by taking poison. It is further claimed by the Appellant/Husband in the pleading that he tried his best to pacify the aggressive cruel and schizophrenic action of the Respondent-Wife but in vain and the matrimonial life of the Appellant became hell.

2.3 On 10.01.2010, the Appellant called the father-in-law and narrated the entire acts of the Respondent-Wife to him but the Respondent-Wife became more violent and left the matrimonial home with her belongings extending threat to the Petitioner.

2.4 It is further alleged that in the month of June 2010, when the Appellant went to *Maike* of the Respondent-Wife to meet her and to know her desire to live with him, the Respondent-Wife and her parents became more violent and extended threat to kill him. They did not allow him to stay there. The Appellant waited for three years for good message regarding return of the Respondent-Wife to the matrimonial home but neither Respondent-Wife nor her parents communicated any message about restoration of the matrimonial life and hence, there has not been cohabitation



between the Appellant and the Respondent-Wife for three years.

2.5 It is further alleged that on account of misbehavior, ill treatment, cruelty and schizophrenic act of the Respondent-Wife, the Appellant feels danger to his life and hence, he has been advised for divorce.

3. On notice, the Respondent-Wife, who was Defendant before the Family Court, appeared and filed her written statement denying the allegation as made by the Appellant against her. Instead, she claimed that after birth of two female children, the Appellant/Husband and his family members became inimical to her and began committing cruelty against her for motorcycle in dowry and on 01.06.2012, she was ousted from her matrimonial home and since then she has been living at her *Maike* and her life has become hell. It is also claimed by the Respondent-Wife that the Appellant/Husband never tried to pacify the matter and never visited her *Maike*. She further claimed that false allegations have been leveled against her to get divorced. It is also claimed by the Respondent-Wife that her relative tried to pacify the matter on several occasions but all went in vain.

4. On the basis of pleadings, Ld. Family Court framed the following issues:



- i) Is the case as framed maintainable ?
- ii) Has the petitioner got valid cause of action for the Case?
- iii) Is the petitioner entitled for a decree of divorce u/s 13 of the Hindu Marriage Act declaring the matrimonial relation between the parties as dissolved?
- iv) Any other relief the petitioner is entitled to ?

5. During trial, the Appellant/Plaintiff examined the following witnesses in support of his petition :

- i) **P.W.- 1-** Baidyanath Prasad Gupta
- ii) **P.W.- 2-** Kanhaiya Prasad
- iii) **P. W.- 3-** Prithvi Chandra Jaishwal
- iv) **P.W.-4-** Bharat Prasad Gupta, who is Appellant/Plaintiff himself.

6. During Trial, the Appellant/Plaintiff also exhibited the following documents :

- i) **Exhibit-1** - web copy of the Order dated 10.11.2014 passed in Criminal Miscellaneous Case No. 15957 of 2014.
- ii) **Exhibit -2** - Web copy of the Order dated 14.10.2014 passed in Criminal Miscellaneous Case No. 13707 of 2014.



iii) **Exhibit-3** - Photocopy of the certified copy of the Case No. 1319M of 2010.

7. The Respondent/Wife was was Defendant before the Family Court, examined the following witnesses in support of her defense :

i) **O.P.W-1-** Jhulan Prasad

ii) **O.P.W.-2-** Asha Devi, who is the Respondent/Wife herself.

iii) **O.P.W.-3** - Vijay Patel

iv) **O.P.W.-4** -Mahendra Kumar

v) **O.P.W. -5** - Gendu Sah

8.1. On perusal of the deposition made on behalf of the Appellant/Plaintiff/husband, we find that PW-1, Baijnath Prasad is the father of the Appellant and he has in the examination-in-chief reiterated the allegation as made in the divorce petition. During the cross-examination, he has deposed that the Appellant/Husband used to visit his sasural to bring the Respondent back to the matrimonial home, but the Respondent did not join him there. He has further deposed that the Respondent/Defendant is not suffering from any illness and that is why she was never treated. He has further deposed that information to the police was given in regard to attempt of the



Respondent to commit suicide and copy of such information will be filed in the Court when available. A panchayati was also held at his home. However, panchnama is not available. Further, he has admitted that his son has not filed any petition before the Court to bring the Respondent to his matrimonial home. He has also deposed that partition between him and his son-Appellant had taken place. However, no document was prepared regarding Partition.

8.2 PW-2, Kanhaiya Prasad is brother of the Appellant and in his examination-in-chief, he has supported the allegation as made by the Appellant against his wife. During his cross examination, he has deposed that he is the blood-brother of the Appellant and he has further deposed that for unnatural behaviour, the Respondent/Defendant was treated by Dr. Divakar Prasad. However, he has further deposed that she has not been treated for mental illness. On account of the Respondent's attempt to commit suicide, Panchayati was held and information was given to the police also. However, no case was lodged. It is further deposed that the disease of insanity of the Respondent is since prior to the marriage.

8.3 PW-3, Prithvi Chandra Jaishwal in his examination-in-chief deposed that Appellant/Plaintiff works at



his readymade cloth shop. He has also supported the allegation as made by the Appellant against his wife. During his cross examination, he has deposed that the Appellant has been working at his shop for the last eight years. He has also deposed that he had visited the house of the Appellant to resolve the disputes between the parties and one Panchnama was prepared but the same was not signed by the Panchas. However, he was unable to name Panchas who participated in the Panchayati. He has further deposed that he has seen the Respondent abusing the Appellant but he never saw the Respondent beating him. However, he is not able to give the date of the incident. He, however, deposed that on medical ground, he cannot say that the Respondent is insane but she is half insane. An attempt was made to treat her in Gorakhpur but she did not go there.

8.4 P.W-4, Bharat Prasad Gupta, who is the Appellant himself, in his examination in chief, he has reiterated the allegation as made against the Respondent-wife in his pleadings. In his cross-examination, he deposed that for three days of the marriage, the Respondent behaved well. Thereafter, she started raising noise during the night. She was treated by Dr. Vijay Mangal and Dr. Divakar Prasad. However, there is no prescription of the treatment and both the aforesaid doctors are



physicians. He has further deposed that during her stay at the matrimonial home, she used to beat his parents on the interval of two days and for that Panchayati was held. However, no case was lodged. He has admitted that he does not remember the date of the Panchayati and he can show signatures of the Respondent and her father on the Panchnama by filing the Panchnama. He also admitted that he does not remember the date on which the Respondent attempted to commit suicide and there was no Panchayati held in this regard. He has clearly deposed that the Respondent was not treated for mental illness. She was treated by physician, Dr. Vijay Mangal Dev. However, medical prescription is not available. He has further deposed that he made an attempt to take the Respondent/Wife to his matrimonial home. But he does not remember the date. He also deposed that no Panchayati was held in this regard. He has also deposed that he has been paying maintenance to the Respondent since prior to the Maintenance Order passed by the Court.

8.5 The appellant/plaintiff has also exhibited three documents – Exhibit – 1, Exhibit – 2 and Exhibit -3

i) **Exhibit-1** is web copy of the Order dated 10.11.2014 passed in Criminal Miscellaneous Case No. 15957 of 2014, whereby cognizance order dated 31.01.2014 passed by



Ld. S.D.J.M, West Champaran in Complaint Case No. C1805 of 2013, lodged by Respondent/Wife against the Appellant/Husband, has been quashed without contest in the absence of the Respondent-Wife.

ii) **Exhibit -2** is web copy of the Order dated 14.10.2014 passed in Criminal Miscellaneous Case No. 13707 of 2014, whereby cognizance Order dated 31.01.2014, passed by Ld. S.D.J.M, West Champaran in Complaint Case No. C-1805 of 2013, lodged by the Respondent/Wife against the family members of the appellant, has been quashed without contest in the absence of the Respondent-Wife.

iii) **Exhibit-3** is informatory application lodged by the Appellant before Ld. SDJM, Bettiah, West-Champaran regarding alleged misconduct committed by the Respondent/Wife against the Appellant and his family members.

9.1. After perusal of the witnesses examined by the Respondent/Defendant, we find that OPW-1, Jhulan Prasad, who is father of the Respondent in his examination in chief, has reiterated the statement as made in the written statement of the Respondent. During his cross examination, he deposed that a case filed under Section 498(A) IPC by the Respondent has been dismissed. It has further been deposed that the allegation



of insanity and quarrel is made against his daughter. However, he has denied that she is of dull intellect. He has further deposed that she was ousted from the matrimonial home. He also deposed that the Appellant/Plaintiff has visited his house last time in the year 2011.

9.2. PW-2, Asha Devi, who is the Respondent herself, in her examination-in-chief, she has reiterated her statement as made in her Written Statement. In her cross examination, she has deposed that she is not aware whether her case filed under 498 (A) IPC has been dismissed. She further deposed that in her evidence, she has not got written that both children live with her. She has further deposed that one daughter is living with the Appellant and she has been living at her *Maike* for the last 6 years and Panchayati was held to resolve the dispute.

9.3 OPW-3, Vijay Patel, who is one of the villagers of the *Maike* of the Respondent, in his examination-in-chief, he has deposed in support of the Statement as made in the written statement. In his cross-examination, he has deposed that the Respondent is the sister on account of her being a villager, lives in the neighborhood of her house and his house is two or three houses away from the house of the Respondent. He has never



visited the house of the Appellant. He does not know for what purpose a petition has been filed. There is no any Panchnama, prepared by the parties. He has further deposed that two cases have been filed by the Respondent, one for the maintenance and the other case is going on because the Appellant has deserted the Respondent and both the parties are living separately for the last 6 years and they are having two children, one of them is living with the Appellant.

9. 4. OPW 4 - Mahendra kumar, who is the uncle of the Respondent, in his examination-in-chief, he has supported the statement as made in the written statement. In his cross-examination, he has deposed that he is a trader of clothes and nothing further significant has been deposed in his cross examination.

9.5 OPW 5 Gendu Sah, who is a villager of the father of the Respondent, in his examination-in-chief, he has supported the claim made by the Respondent in her written statement. During his cross-examination, he has deposed that 6-7 cases are going on between the parties in regard to marriage. He has further deposed that the Respondent has no illness. A Panchayati was held in his presence, but Panchnama was not prepared. He further deposed that Jhoolan Prasad, Sujeet and



others were Panchas and no result had come out from the Panchayati.

10. After hearing the rival submissions of the parties and consideration of evidence on record, Ld. Family Court found that the divorce petition as filed by the Appellant/Plaintiff was maintainable and he had also cause of action to file the same. However, Ld. Family Court held that no ground for divorce was proved by the Appellant/Plaintiff against the Respondent/Wife to get divorce under Section 13 of the Hindu Marriage Act.

11. Ld. Counsel for the Appellant/Husband however submits that Ld. Family Court failed to properly appreciate the evidence on record and erroneously found that no ground for divorce was proved by the Appellant/Husband whereas as per the evidence on record the Appellant has clearly proved cruelty and desertion to get decree of divorce against the Respondent/Wife. He also submits that the Appellant/Husband has also proved that the Respondent/Wife was suffering from mental disorder like schizophrenia. He refers to evidence in regard to ill treatment of the Respondent/Wife to Appellant as well as his family members. He also refers to attempt to commit suicide for implicating the Appellant and his family



members in criminal case. In regard to desertion, he refers to evidence showing that the Respondent/Wife left the matrimonial home and she did not join the matrimonial home of the Appellant/Husband for three years on the date of presentation of the divorce petition. He also refers to evidence to show mental disorder amounting to schizophrenia of the Respondent/Wife.

12. Per contra, Ld. Counsel for the Respondent vehemently submits that no ground whether cruelty, desertion or schizophrenia has been proved by the Appellant/Husband before the Family Court. He submits that there is neither specific pleading nor evidence with reference to date, place and nature of the cruelty. No date of any alleged cruelty has been given either in pleadings or evidence. Allegation regarding cruelty is omnibus and general in nature. Regarding desertion, he submits that there is no desertion on the part of the Respondent/Wife. In fact, it is husband/Appellant who has deserted the wife/Respondent, who was ousted from the matrimonial home and no legal step was taken by the husband/Appellant for restitution of conjugal rights by filing petition under Section 9 of the Hindu Marriage Act. He further submits that the Respondent/Wife is also getting maintenance by order of Court. He also submits that no cogent evidence has been adduced by



the Appellant/Husband to show that the Respondent/Wife is suffering from schizophrenia or any other mental disorder. She was never treated for such mental disorder as per the evidence of the Appellant/Husband himself. He further submits that the whole allegation against the Respondent/Wife is false and baseless and the same has been made with intent to get divorce. The fact is that after birth of two female children, the Appellant/Husband became cruel towards the Respondent/Wife and wanted to get rid of her. The whole allegation or evidence of the Appellant regarding cruelty, desertion or schizophrenia falls on the ground in view of the fact that she lived with the Appellant/Husband for about five years after the marriage solemnized on 28.05.2005 and gave birth to two children out of the wedlock, though the Appellant has alleged that she became cruel towards the Appellant and his family members just after three days of the marriage. No man of prudence can believe such allegation or evidence of the Appellant/Husband that wife was cruel and schizophrenic and the Appellant/Husband could have lived with her for about five years giving birth to two children. There may be some wear & tear in married life but that cannot be treated as cruelty and after birth of two female children, no wife would like to desert her husband. In fact, in



her evidence, she has clearly deposed that she was ousted from the matrimonial home and no step was taken on the part of the appellant/husband to take her back to the matrimonial home and she still wants to live with him.

13. In view of the aforesaid facts and circumstances and submissions on behalf of both the parties, the following points arise for consideration of this Court :

i) Whether the Respondent/Wife has committed cruelty against the Appellant ?

ii) Whether she has deserted the Appellant/Husband for more than two years ?

iii) Whether the Respondent/Wife was suffering from schizophrenia or any mental disorder ?

14. Before we proceed to discuss the points arising for consideration, it is imperative to see case laws or authoritative Judicial Pronouncements regarding Burden of Proof and Standard of Proof in matrimonial cases.

15. Hon'ble Supreme Court has elaborately discussed the nature of **burden of proof** in matrimonial cases in **Dr. Narayan Ganesh Dastane Vs. Sucheta Narayan Dastane** as reported in **1975 (2) SCC 326** and law laid down herein is still holding the field. In para 23 of the case, **the Hon'ble Apex**



Court has observed that, doubtless, the burden must lie on the petitioner to establish his or her case for, ordinarily, the burden lies on the party which affirms a fact, not on the party which denies it. This principle accords with commonsense as it is so much easier to prove a positive than a negative. The petitioner must therefore prove that the respondent has treated him with cruelty.

16. Coming to the **Standard of Proof**, we find that some misconception had arisen on account of the use of the words “Matrimonial Offences” to describe the misconducts of Defendants under the Hindu Marriage Act. That is why before authoritative decision of **Hon'ble Full Bench of the Supreme Court** in **Dr. Narayan Ganesh Dastane Vs. Sucheta Narayan Dastane** as reported in **1975 (2) SCC 326**, there were conflicting views. As per one view, matrimonial cases are of civil nature and hence standard of proof in such cases would be preponderance of probabilities whereas, as per the another view, proof beyond reasonable doubt should be standard of proof in matrimonial cases in view of the use of word “matrimonial offences” in Hindu Marriage Act. However, in **Dr. Narayan Ganesh Dastane case** (supra), **Hon'ble Full Bench of the Supreme Court** clearly held that matrimonial



cases are civil in nature and preponderance of probabilities will be standard of proof in trial of Matrimonial cases under the Hindu Marriage Act, and not proof beyond reasonable doubt which is applicable in criminal trials. **Hon'ble Supreme Court**, in para 24 of **Dr. Narayan Ganesh Dastane case** (supra) observed that the normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, Section 3, a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact-situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first



stage, the improbable at the second. Within the wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. But whether the issue is one of cruelty or of a loan on a pronote, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases this, normally, is the standard of proof to apply for finding whether the burden of proof is discharged.

17. Ruling out application of “proof beyond reasonable doubt” in matrimonial cases, **Hon’ble Supreme Court**, in para 25 of **Dr. Narayan Ganesh Dastane case** (supra) has observed that the proof beyond reasonable doubt is proof by a higher standard which generally governs criminal trials or trials involving inquiry into issues of a quasi-criminal nature. A criminal trial involves the liberty of the subject which may not be taken away on a mere preponderance of probabilities. If the probabilities are so nicely balanced that a reasonable, not a vacillating, mind cannot find where the preponderance lies, a doubt arises regarding the existence of the fact to be proved and the benefit of such reasonable doubt goes to the accused. It is wrong to import such considerations in trials of a purely civil nature. In para 26 of **Dr. Narayan Ganesh**



Dastane case (supra), **Hon'ble Apex Court** has further observed that under the Hindu Marriage Act, nowhere it is required that the petitioner must prove his case beyond reasonable doubt. Section 23 confers on the court the power to pass a decree if it is "satisfied" on matters mentioned in clauses (a) to (e) of its sub-section of (1). Considering that proceedings under the Act are essentially of a civil nature, the word "satisfied" must mean "satisfied on a preponderance of probabilities" and not "satisfied beyond a reasonable doubt". Section 23 does not alter the standard of proof in civil cases.

18. Hon'ble Supreme Court, in para 27 of **Dr. Narayan Ganesh Dastane case** (supra) has further observed that the misconception regarding the standard of proof in matrimonial cases arises perhaps from a loose description of the respondent's conduct in such cases as constituting a "matrimonial offence". Acts of a spouse which are calculated to impair the integrity of a marital union have a social significance. To marry or not to marry and if so whom, may well be a private affair but the freedom to break a matrimonial tie is not. The society has a stake in the institution of marriage and therefore the erring spouse is treated not as a mere defaulter but as an offender. But this social philosophy, though it may have a



bearing on the need to have the clearest proof of an allegation before it is accepted as a ground for the dissolution of a marriage, has no bearing on the standard of proof in matrimonial cases.

19. Hon'ble Apex Court in para 10 of **Shobha Rani Vs. Madhukar Reddi** as reported in **AIR 1988 SC 121** has also observed that considering that proceedings under the Hindu Marriage Act is essentially of a civil nature, the word 'satisfied' must mean 'satisfied on a preponderance of probabilities' and not 'satisfied beyond a reasonable doubt'. Section 23 of the Act does not alter the standard of proof in civil cases.

20. Hon'ble Supreme Court in para 10 of **A. Jayachandra Vs. Aneel Kaur** as reported in **2005(2) SCC 22** has observed that in a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the



complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

21. Hon'ble Kerala High Court, after referring to **A. Jayachandra case** (supra), in para 19 of **Mohandas Panicker Vs. Dakshayani** as reported in **2013 SCC Online Ker 24493** has observed that the principles laid down in the above decisions reiterate that in civil cases, preponderance of probabilities is the standard to be adopted to prove the case. No doubt, matrimonial cases are civil proceedings and the Court can act upon preponderance of probabilities, especially in adultery cases, since it is difficult to get direct evidence.

Point No.1

22. Before considering whether the Respondent/Wife has committed cruelty against the Appellant or not, it would be imperative to see what is the statutory



provisions and case laws on the subject.

23. Cruelty has been provided as one of the grounds for divorce under Section 13(1)(i-a) of Hindu Marriage Act. As per the provisions, the marriage can be dissolved by decree of divorce on a petition presented by either of the parties, if the other party has treated the petitioner with cruelty.

24. However, the word 'cruelty' used in Section 13(1)(i-a) of Hindu Marriage Act has not been defined under the Hindu Marriage Act. But the word has been interpreted by **Hon'ble Supreme Court** on several occasions.

25. The **Hon'ble Supreme Court**, in para 4 of **Sobha Rani Vs. Madhukar Reddi** as reported in **AIR 1988 SC 121**, has observed that the word 'cruelty' has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such



treatment in the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

26. The Hon'ble Apex Court in para 5 of **Shobha Rani case** (supra) has further observed that it will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon



their culture and human values to which they attach importance. The Judges and lawyers, therefore, should not import their own notions of life. They may not go in parallel with them. There may be a generation gap between them and the parties. It would be better if they keep aside their customs and manners. It would be also better if they less depend upon precedents. Each case may be different. They deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful realm of cruelty.

27. The Hon'ble Supreme Court, in para 17 of the **Shobha Rani case** (supra) has also observed that the context and the set up in which the word 'cruelty' has been used in the section, it appears that intention is not a necessary element in cruelty. That word 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, if by ordinary sense in human affairs, that act complained of



could otherwise be regarded as cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment.

28. The Hon'ble Apex Court in Gananath Pattnaik Vs. State of Orissa as reported in **2002(2) SCC 619** has observed that the concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. "Cruelty" for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty and harassment in a given case.

29. The Hon'ble Supreme Court in para 10 of **A. Jayachandra Vs. Aneel Kaur** as reported in **2005(2) SCC 22** has observed that cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, includes



mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of his spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty.

30. The Supreme Court in para 12 of **A. Jayachandra case** (supra) has further observed that to constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct, taking into consideration the circumstances and background, has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the court that the relationship



between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

31. The Supreme Court in para 13 of **A. Jayachandra case** (supra) has further observed that the court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would



tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

32. In Harbhajan Singh Monga Vs. Amarjeet Kaur as reported in **1985 SCC OnLine MP 83**, **Hon'ble Madhya Pradesh High Court** has held that even threat to commit suicide to falsely implicate the other spouse and his/her family members in criminal case also amounts to cruelty.

33. In Smt. Uma Wanti v. Arjan Dev as reported in **1995 SCC OnLine P & H 56**, **Hon'ble Punjab and Haryana High Court** has held that even peculiar behaviour of spouse on account of unsoundness of mind or otherwise also amounts to cruelty. **Hon'ble Court** had held that day to day behaviour of the appellant was such as to disturb the mental peace and harmony of the respondent which definitely



amounted to legal cruelty. She may not be of the unsound mind, but her peculiar ways of behaviour proved by the respondent are sufficient to constitute that legal cruelty. The husband could not live with peace in the company of the appellant. Peace was always disturbed due to her peculiar ways of behaviour, and thus he cannot be disbelieved that her behaviour was cruel to him.

34. In Mrs. Rita Nijhawan Vs. Mr. Bal Krishna Nijhawan as reported in **ILR (1973) I Delhi 944** , **Hon'ble Delhi High Court** has held that denial of sexual intercourse either on account of impotence or otherwise amounts to cruelty to the aggrieved spouse. **Hon'ble Court** also observed that sex is the foundation of marriage and without a vigorous and harmonious sexual activity it would be impossible for any marriage to continue for long. It cannot be denied that the sexual activity in marriage has an extremely favourable influence on a woman's mind and body. The result being that if she does not get proper sexual satisfaction it will lead to depression and frustration. It has been said that the sexual relations when happy and harmonious vivifies woman's brain, develops her character and trebles her vitality. It must be recognised that nothing is more fatal to marriage than



disappointments in sexual intercourse.

35. Hon'ble Court in Mrs. Rita Nijhawan case (supra) further observed that the law is well settled that if either of the party to a marriage being of healthy physical capacity refuse to have sexual intercourse, the same would amount to cruelty entitling the other party to a decree. In our opinion it would not make any difference in law whether denial of sexual intercourse is the result of sexual weakness of the respondent disabling him from having a sexual union with the appellant, or it is because of any wilful refusal by the respondent; this is because in either case the result is the same namely frustration and misery to the appellant due to denial of normal sexual life and hence cruelty.

36. The Hon'ble Supreme Court, in para 99 of the **Samar Ghosh Vs. Jaya Ghosh** as reported in **(2007) 4 SCC 511**, has observed, after referring to and discussing several judgments on the point of cruelty, that human mind is extremely complex and human behaviour is equally complicated. Similarly, human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty



differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

37. The Hon'ble Supreme Court has further observed in **Samar Ghosh case** (supra) that there cannot be any comprehensive definition of the concept of mental cruelty within which all kinds of cases of mental cruelty can be covered. **The Hon'ble Court** in para 100 has further observed that the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

38. It has been further observed by **Hon'ble Supreme Court** in para 101 of the **Samar Ghosh case** (supra) that no uniform standard can ever be laid down for guidance.



However, Hon'ble Court thought it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty" with caution that such instances are only illustrative and not exhaustive. The instances enumerated by **Hon'ble Apex Court** are as follows :

“ (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 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.”

39. The Hon'ble Supreme Court, in para 18 of **Ravi Kumar Vs. Jumla Devi** as reported in **2010 SCCR 265**, observed that 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. Therefore, cruelty in matrimonial behaviour defies any definition and its category can never be closed. Whether 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 pre-determined 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.

40. In para 10 of Ramchander Vs. Ananta as reported in **2015(11)SCC 539**, **Hon'ble Supreme Court** has



observed that cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes a reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Cruelty can be physical or mental.

41. It has further been observed by **Hon'ble Apex Court** in **Ramchander case** (Supra) that instances of cruelty are not to be taken in isolation. It is the cumulative effect of the facts and circumstances emerging from the evidence on record which should be taken into consideration to draw a fair inference whether the plaintiff has been subjected to mental cruelty due to conduct of the other spouse.

42. In **Vinita Saxena v. Pankaj Pandit**, as reported in **(2006) 3 SCC 778** **Hon'ble Supreme Court** has observed in para 31 that it is settled by a catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the section. It is to be determined on the whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such wilful treatment of the party which caused suffering in body or mind either as an actual fact or by way of apprehension



in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case.

43. Hon'ble Supreme Court has further observed in Para-32 of **Vinita Saxena case** (supra) that the word "cruelty" has not been defined and it has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

44. Hon'ble Supreme Court has further observed in Para-36 of the **Vinita Saxena case** (supra) that the legal concept of cruelty which is not defined by the statute is generally described as conduct of such character as to have caused danger to life, limb or health (bodily and mental) or to give rise to reasonable apprehension of such danger. The general



rule in all questions of cruelty is that the whole matrimonial relation must be considered, that rule is of a special value when the cruelty consists not of violent act but of injurious reproaches, complaints, accusations or taunts. It may be mental such as indifference and frigidity towards the wife, denial of a company to her, hatred and abhorrence for the wife, or physical, like acts of violence and abstinence from sexual intercourse without reasonable cause. It must be proved that one partner in the marriage, however mindless of the consequences, has behaved in a way which the other spouse could not in the circumstances be called upon to endure, and that misconduct has caused injury to health or a reasonable apprehension of such injury. There are two sides to be considered in case of cruelty. From the appellant's side, ought this appellant to be called on to endure the conduct? From the respondent's side, was this conduct excusable? The court has then to decide whether the sum total of the reprehensible conduct was cruel. That depends on whether the cumulative conduct was sufficiently serious to say that from a reasonable person's point of view after a consideration of any excuse which the respondent might have in the circumstances, the conduct is such that the petitioner ought not be called upon to endure.



45. Hon'ble Supreme Court has further observed in Para-37 of the **Vinita Saxena case** (supra) what constitutes the required mental cruelty for the purposes of the said provision, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct but really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home.

46. Hon'ble Supreme Court has further observed in Para-38 of the **Vinita Saxena case** (supra) that if the taunts, complaints and reproaches are of ordinary nature only, the court perhaps need consider the further question as to whether their continuance or persistence over a period of time render, what normally would, otherwise, not be so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonably conclude that the maintenance of matrimonial home is not possible any longer.

47. Now coming to the case at hand, we find that after marriage on 28.05.2005, the Respondent/Wife joined the matrimonial home of the Appellant and as per the allegation she started committing cruelty against the husband and his family



members just after 3-4 days of the marriage. But, we find that the husband has not filed divorce petition immediately thereafter or within few days or months of such marriage but he has filed this divorce petition after five years of marriage and that too after living with the Respondent/wife for about five years and after birth of two female children. Such pleading or evidence on the part of the Appellant/Husband regarding cruelty does not appear to be reliable. Moreover, there is no specific pleading or evidence showing date, place and nature of alleged behavioural misconduct of the Respondent wife including attempt to commit suicide. On the other hand, the Respondent/Wife has pleaded and deposed that she was never cruel towards Appellant/Husband. In fact, after the birth of two daughters, the Appellant/Husband became inimical to her and ultimately ousted her on 01.06.2012. And thereafter, he never tried to get her back at the matrimonial home despite her willingness to join the matrimonial home. She has also denied any attempt to commit suicide.

48. As such, in view of the totality of the pleading and evidence on record, we find that the Appellant/Husband has not proved any alleged misconduct of the Respondent/Wife which could be considered as something more serious than



ordinary “wear and tear of married life” or “grave and weighty” which could have caused any danger to his life, limb or health, bodily or mental, giving rise to a reasonable apprehension to him of such a danger which could make it unsafe for him to continue the matrimonial life with the Respondent/Wife. As such, we find that no legal cruelty has been committed by the Respondent/Wife to him entitling the Appellant-Husband to the decree of divorce.

49. Hence, this point is decided in favour of the Respondent/Wife and against the Appellant/Husband.

Point No. 2

50. Before considering Point No. 2 in regard to Desertion, it would be again imperative to see what is the statutory provisions and case laws on the subject.

51. Desertion has been provided as a ground for divorce under Section 13(1)(ib) of Hindu Marriage Act. As per the provisions, marriage may be dissolved by decree of divorce on a petition presented by either the husband or the wife if the other party has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. As per the Explanation, the expression “desertion” means the desertion of the petitioner by the other



party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

52. In Bipinchandra Jaisinghbai Shah v. Prabhavati as reported in **AIR 1957 SC 176**, **Hon'ble Supreme Court** has observed that the quality of permanence is one of the essential elements which differentiates desertion from wilful separation. If a spouse abandons the other spouse in a state of temporary passion, for example, anger or disgust, without intending permanently to cease cohabitation, it will not amount to desertion. For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*). Similarly two elements are essential so far as the deserted spouse is concerned : (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively. In the same



paragrpah **Hon'ble Supreme Court** has further observed that Desertion is a matter of inference to be drawn from the facts and circumstances of each case. The inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say, the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. If, in fact, there has been a separation, the essential question always is whether that act could be attributable to an *animus deserendi*. The offence of desertion commences when the fact of separation and the *animus deserendi* co-exist. But it is not necessary that they should commence at the same time. The *de facto* separation may have commenced without the necessary animus or it may be that the separation and the *animus deserendi* coincide in point of time; for example, when the separating spouse abandons the marital home with the intention, express or implied, of bringing cohabitation permanently to a close.

53. Following **Bipinchandra Jaisinghbai Shah** case (supra), **Hon'ble Supreme Court** in **Lachman Utamchand Kirpalani Vs. Meena** as reported in **AIR 1964 SC 40** held that in its essence desertion means the intentional



permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*). Similarly two elements are essential so far as the deserted spouse is concerned : (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation.

54. Hon'ble Apex Court in para 8 of **Savitri Pandey Vs. Prem Chandra Pandey** as reported in **2002(2) SCC 73**, has observed that "desertion", for the purpose of seeking divorce under the Act, means intentional permanent forsaking and abandonment of one spouse by the other without other's consent and without reasonable cause. In other words it



is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations i.e. not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case.

55. Hon'ble Supreme Court, in para 7 of **Debananda Tamuli Vs. Kakumoni Katakya** as reported in **(2022) 5 SCC 459** has observed that the law consistently laid down by this Court is that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be *animus deserendi* on the part of the deserting spouse. There



must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home. The view taken by this Court has been incorporated in the Explanation added to sub-section (1) of Section 13 by Act 68 of 1976.

56. Coming to the case at hand, we find that after the marriage, the Respondent-Wife, lived for about five years with Appellant/Husband, giving birth to two female children and thereafter, there appears to be no reason for the Respondent/Wife to desert the husband at that stage of life. As per the evidence on record, she was ousted from the matrimonial home by the Appellant/Husband. Such finding is fortified by the evidence that admittedly Appellant/Husband has not taken any legal step by filing petition under Section 9 of the Hindu Marriage Act to take the Respondent/Wife to his matrimonial home. Even the Ld. Family Court has awarded maintenance to the Respondent/Wife. Maintenance Order is granted to the Respondent/Wife, if she has valid reason to live separately. Living separately by the wife without any rhyme and reason disentitles her to get maintenance. So, even the Ld. Family Court has found that she has not deserted but she has



been ousted from the matrimonial home and that is why Ld. Family Court has awarded maintenance in favour of the Respondent/Wife. Moreover, in the evidence, we find that the Respondent/Wife has deposed that she still wants to live with the Appellant/Husband. As such, we find that it is not the Respondent/Wife, who has deserted the husband but it is the other way around.

57. Hence, Point No. 2 is also decided against the Appellant/Husband and in favour of the Respondent Wife.

Point No.3

58. Before considering Point No. 3 in regard to unsoundness of mind/mental disorder/schizophrenia, it would be again imperative to see what is the statutory provisions and case laws on the subject.

59. **Section 13 of the Hindu Marriage Act, 1955** provides for divorce.

Section 13 (1) reads as follows:-

“13. (1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

.....
.....

(iii) has been incurably of unsound mind, or has been suffering continuously or intemittently from mental disorder of such a



kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation-In this clause,-

(a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any disorder of disability of mind and includes schizophrenia;

(b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment,”

60. In Ram Narain Gupta Vs. Shrimati Rameshwari Gupta as reported in (1988)4 SCC 247, Hon’ble **Supreme Court** in Para 20 has observed that the context in which the ideas of unsoundness of 'mind' and 'mental disorder' occur in the section as grounds for dissolution of a marriage, require the assessment of the degree of the 'mental disorder'. Its degree must be such that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognised as grounds for grant of decree. If the mere existence of any degree of mental abnormality could justify dissolution of a marriage few marriages would, indeed, survive in law.



61. Hon'ble Supreme Court in Kollam Chandra Sekhar Vs. Kollam Padma Latha as reported in **(2014)1 SCC 225** has observed in Para 41 that under Hindu law, marriage is an institution, a meeting of two hearts and minds and is something that cannot be taken lightly. In the Vedic period, the sacredness of the marriage tie was repeatedly declared; the family ideal was decidedly high and it was often realised. In Para 42 of **Kollam Chandra Sekhar case** (supra) **Hon'ble Supreme Court** has further observed that Marriage is highly revered in India and we are a nation that prides itself on the strong foundation of our marriages, come hell or high water, rain or sunshine. Life is made up of good times and bad, and the bad times can bring with it terrible illnesses and extreme hardships. The partners in a marriage must weather these storms and embrace the sunshine with equanimity. Any person may have bad health, this is not their fault and most times, it is not within their control, as in the present case, the respondent was unwell and was taking treatment for the same. The illness had its fair share of problems. Can this be a reason for the appellant to abandon her and seek dissolution of marriage after the child is born from their union?



62. Hon'ble Calcutta High Court in Pramatha Kumar Maity Vs. Ashima Maity as reported in **1990 SCC Online Cal 177** has observed in Para 3 that sound health, in these days of pollution of air and water, adulteration of foodstuff and drugs and all that is a rare species. So is sound mind, as a result of all the stress and strain, anxiety and tension of the modern age. The legislature has not made unsoundness of mind or mental disorder, by itself, a matrimonial fault unless the unsoundness is incurable or the disorder is such as to disable the person to become a reasonably tolerable matrimonial partner.

63. Hon'ble Andhra Pradesh High Court in Tallam Suresh Babu Vs. T. Swetha Rani as reported in **2018 SCC Online Hyd 4** has observed in Para 54 that the context in which the idea of unsoundness of mind as “mental disorder” occur in matrimonial law as grounds for dissolution of a marriage, requires the assessment of the degree of the “mental disorder”. Its degree must be such that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognised as ground for the grant of divorce.



64. Coming to the case at hand, we find that as per the allegation of the Appellant/Husband, the Respondent/Wife was schizophrenic right from the beginning. But such allegation falls on the ground in view of the evidence that the Appellant has continuously cohabited with the Respondent-Wife for five years since marriage and there is birth of two children out of the wedlock, but there is no complaint regarding upbringing of these children by the allegedly schizophrenic wife. All of a sudden, the divorce petition has been filed after about five years on the ground of such mental disorder. Moreover, the Appellant/Husband himself has deposed that Respondent/Wife was never treated for mental illness and she was treated only by physicians and even medical prescription of such treatment was not available with him. Even, other witnesses examined on behalf of the Appellant/Husband, there is no any cogent evidence to show that the Respondent was suffering from any mental disorder. Moreover, it is also pertinent to note that as per statutory requirement as provided in Section 13 (1) of the Hindu Marriage Act, the petitioner is also required to prove that such unsoundness of mind is incurable and is of such a degree that the Petitioner for divorce cannot be



reasonably expected to live with his her spouse. But we find no evidence adduced by Appellant to fulfil such requirement. As such, we find that the Appellant/Husband had failed to prove that the Respondent/Wife was suffering from schizophrenia or any mental disorder of any degree entitling the Appellant-Husband to the decree of divorce.

65. Hence, Point No. 3 is also decided against the Appellant/Husband and in favour of the Respondent Wife.

66. As such, we find that there is no merit in the present appeal warranting any interference in the impugned judgment. The Family Court has rightly dismissed the matrimonial case of the appellant seeking divorce. The present appeal is dismissed, accordingly, upholding the impugned judgment. Both the parties shall bear their own costs.

(Jitendra Kumar, J)

(P. B. Bajanthri, J)

skm/chandan/-

AFR/NAFR	AFR
CAV DATE	14.07.2023
Uploading Date	09.08.2023
Transmission Date	NA

