

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Rajasekhar Mantha

And

The Hon'ble Justice Supratim Bhattacharya

F.A. No. 64 of 2021

With

I.A. No. CAN 3 of 2023

Mrs. Nidhi Kedia Nee Chokhani

Versus

Sri Abhyudaya Kedia

For the appellants : Mr. Mr. Dhiraj Trivedi,
Mr. Dwaipayan Basu Mallick,
Ms. Sweta Chakraborty.

For the respondents : Mr. Saptangsu Basu,
Mr. Pradip Sancheti,
Mr. Subhankar Nag,
Mr. Biswajit Chowdhury.

Heard On : 02.08.2023

Judgement Delivered On : 06.09.2023

Supratim Bhattacharya, J.:-

- 1.** The instant appeal has been preferred by the appellant /defendant/ wife, being aggrieved by and dissatisfied with the Judgment and Order passed by the Ld. 11th Additional District Court at Alipore, 24 Parganas South in the Matrimonial Suit No. 27 of 2010 (R. No. 1614 of 2016).
- 2.** By the aforementioned Judgment, the Ld. Trial Court has been pleased to pass a decree of divorce on contest against the appellant/defendant/wife.
- 3.** The appellant herein was the opposite party and the respondent herein was the petitioner respectively before the Learned Trial Court.
- 4.** Through the application under Section 13 (1a) of the Hindu Marriage Act, 1955, the respondent /plaintiff/husband had sought for divorce on the ground of cruelty.
- 5.** The appellant/defendant/wife entered appearance and contested the suit denying the contentions of the respondent/plaintiff/husband.
- 6.** The Ld. Counsel appearing on behalf of the appellant/defendant/wife during his elaborate submissions has argued on the following points:
 - i)** The impugned judgment has been passed on an erroneous legal conception. The Ld. Counsel has submitted that the marriage was solemnized on 27.01.2008 under Hindu rites and customs and was registered on 10.06.2008.
 - ii)** He has further submitted that the husband filed the petition for divorce during the month of July, 2009.

- iii)** The Ld. Counsel has also submitted that the appellant/wife has all along expressed her intention to live with the respondent/husband as his wife, on the contrary it is the respondent/husband who has always refused to live with the wife.
- iv)** He has further submitted that the appellant/wife still intends to continue the marital ties as she never got the chance to lead a proper married life with her husband.
- v)** The Ld. Counsel has also submitted that the appellant/wife had filed a complaint before the Karaya P.S. on 08.09.2009 against the respondent and his family members which has been registered as Karaya P.S. case No. 29 of 2009 under Sections 498A/406/307/34 of the Indian Penal Code and ultimately charge-sheet has been filed under Sections 498A/406/34 of the Indian Penal Code.
- vi)** Ld. Counsel has submitted that the Ld. Trial Court has erroneously decreed the matrimonial suit on the basis that the fact of lodging the case under Section 498A of the Indian Penal Code which ultimately did not lead to filing of charge-sheet against some of the family members of the respondent/husband and the dropping of charge under Section 307 of the Indian Penal Code, tantamounts to filing of a frivolous case against the respondent which has by itself inflicted mental cruelty upon the husband.
- vii)** He has further submitted that the said case under Section 498A is still pending and as such the Ld. Trial Court could not have

assumed that cruelty on the part of the respondent/husband stood disproved.

- viii)** He has further submitted that the appellant/wife has never treated the respondent/husband with cruelty.
- ix)** The Ld. Counsel has stressed upon the point that allegations of irretrievable breakdown of marriage levelled by one party cannot form the basis of grant of decree of divorce.
- x)** The Ld. Counsel for the appellant/wife has submitted that filing of complaint and eventual acquittal of the husband could not amount to mental cruelty.
- xi)** He has further stressed upon the point that marriage cannot be dissolved on the ground of continuous separation where it involves normal wear and tear of marital life. The Ld. Counsel stressing upon the aforesaid facts and circumstances has prayed for allowing the instant appeal by setting aside the impugned judgment.
- xii)** The Ld. Counsel has relied upon the following judicial authorities:
 - i) (2014) 1 SCC 225,
 - ii) 2010 SCC 636,
 - iii) (2012) 4 CHN (Cal) 773,
 - iv) (2012) 1 WBLR (Cal) 527,
 - v) AIR 2020 SC 1198.
 - vi) (2002) 2 SCC 73.

7. The Ld. Counsel appearing on behalf of the respondent/petitioner/husband has submitted the following:

- i)** The Ld. Trial Court has passed the decree of divorce after considering the fact that the wife has inflicted cruelty not only upon the husband but also upon the relatives of her husband.
- ii)** He has further submitted that the appellant/ wife had been inflicting cruelty upon her husband and her in-laws since the inception of the marriage.
- iii)** Ld. Counsel has further submitted that the husband had to continuously bear the torture and could not disclose the said fact to anybody else.
- iv)** The Ld. Counsel has stressed upon the point that the appellant/wife has filed the complaint before the Karaya P.S. on 8th September, 2009. On the basis of the said complaint Karaya P.S. Case No. 29 of 2009 under Sections 498A/406/307/34 of the Indian Penal Code was initiated against the husband and his relatives.
- v)** Ld. Counsel has also submitted that all the persons including the aged parents of the husband had to obtain bail in the said case. He has stressed upon the point that some of the relatives have been discharged from the said case as no evidence could be collected by the police authority against them, which leads to infliction of cruelty upon the relatives of the husband, including the husband.

- vi)** The Ld. Counsel has further stressed upon the issue that charge sheet has been filed in the aforesaid case only under Sections 498A/406/34 of the Indian Penal Code and there being no ingredient under Section 307 of the Indian Penal Code, the said section has not been incorporated in the charge-sheet.
- vii)** The Ld. Counsel has stressed upon the point that the complaint lodged by the appellant/ wife against the respondent /husband and his relatives have been lodged after the institution of the matrimonial suit by the husband.
- viii)** Ld. Counsel has stressed upon the point that lodging of the complaint before the Karaya P.S. is nothing but a counterblast which has been made out of vengeance.
- ix)** The Ld. Counsel has further submitted that lodging of the complaint against the husband and his relatives after the institution of the matrimonial suit proves the fact that the facts which have been made the basis of the complaint are not correct, instead they are all an afterthought and only to save the face of the wife these allegations have been incorporated falsely out of revenge in the said complaint lodged before the Karaya P.S. The Ld. Counsel has relied upon the following judicial authorities:
 - i) 2023 SCC Online SC 497,
 - ii) 2021 SCC Online CAL 173,
 - iii) (2013) 5 SCC 226, (2007) 4 SCC 511.

8. The crux of the instant *lis* is as to whether the appellant/wife has inflicted cruelty upon the respondent/husband or not and, if so committed, is it to the extent sufficient in law for a grant of divorce.
9. From the facts of the instant *lis* it is apparent that the marriage between the parties was registered under the Hindu Marriage Act, 1955 on the 10th day of June 2008 and the parties resided together till 12th of January 2009. Thus, till date since the date of marriage both the parties resided together as husband and wife for a maximum period of 7 months. Apart from that the appellant and the respondent have been at loggerheads for more than 14 years.
10. It also reveals that during the meagre span of 7 months when it is expected that a duly married couple are expected to share their bonds, instead the husband and wife had fought among themselves in each and every matter, which included the relatives of both the sides. It cannot be said from any corner that the period of staying together was amicable for the parties. Even during honeymoon when the couple had gone to a foreign country, even then there was discontent between them.
11. There have been allegations and counter allegations from both ends, even the relatives have been dragged into the said quarrel between the parties. From the evidence on record it reveals that even a FIR was lodged by the appellant/wife on 8th of September 2009 before the Karaya P.S. bearing several allegations against the husband and his family members. On the basis of the aforesaid FIR Karaya PS Case No.

29 of 2009 was started under Sections 498A/406/307/34 of the Indian Penal Code which is now *sub judice*. In the said case even the aged persons had to obtain bail and ultimately few have been discharged being not named in the charge-sheet. Section 307 of the Indian Penal Code has also not been incorporated in the charge-sheet.

12. From the evidence on record it reveals that the respondent /husband has deposed that the appellant/wife suspected him of having an extra marital affair. He has also deposed that the appellant/wife is a mean minded lady. The wife has even stated that when she had gone for shopping she had seen her husband with a woman and the said woman is said to be one Rashika Gupta. There is severe misunderstanding between the couple involving this woman namely, Rashika Gupta. Even the question of physical relationship between the husband and the said Rashika Gupta has surfaced which does not bring together the warring parties, instead it forms a gulf of difference between the two.

13. None of the parties has restrained himself or herself from bringing allegations against the other. The appellant/wife has stated that a sum of Rs. 60 lakhs was demanded by her father-in-law just two days prior to their marriage. She has also stated that she had been subjected to mental and physical torture by her in-laws. The appellant/wife has named a female person, being Rashika Gupta and has stated that her husband has physical relationship with her and according to her the husband has confessed to the same.

- 14.** The relatives of both the parties have intervened and have tried to broker peace but their efforts have not yielded any fruitful result. From the evidence of both the parties it is apparent that the allegations have been multifarious. From the aspect of consumption of food and liquor to the aspect of extra marital affair and torture both physical and mental, pressurising for dowry prior to marriage and pressurising for money after marriage have all come into the forefront.
- 15.** In the view of this Court both the parties have not even for few days resided together peacefully. To the contrary the parties have allegations against the other from the period starting prior to the marriage and which is still now continuing. The FIR lodged by the appellant/wife in the nature of a counterblast as because the same has been filed after the initiation of the matrimonial suit for divorce.
- 16.** This Court has considered in detail the evidence placed before it. The acts of cruelty alleged by the husband against the wife have not been condoned by the former. This Court is *ad idem* with the Ld. Trial Court that mere claims for restoration of marital rights by the wife without regard to withdrawal of her vexatious criminal complaint containing allegations which could not find their place in the charge-sheet, have not mitigated the element of cruelty suffered by the husband.
- 17.** This Court cannot also lose sight of the fact that elderly members of the husband's family stood discharged from the criminal proceeding

having regard to the frivolity of the charges brought against them. It needs no repetition that the criminal complaint was a counterblast to the matrimonial suit filed by the husband. It needs no iteration either that the parties are continuing with their corrosive and divergent courses without any whisper of reconciliation.

- 18.** In view of the facts as made out above, this Court is firmly of the view that the ratio laid down in the case between *Shilpa Sailesh Versus Varun Sreenivasan* published in 2023 SCC OnLine SC 544 squarely applies to the present *lis*. The following paragraphs of the Report (*supra*) demonstrate such applicability:

“33. ... Thus, there is a distinction between intention to commit cruelty and the actual act of cruelty, as absence of intention may not, in a given case, make any difference if the act complained of is otherwise regarded as cruel. Deliberate and wilful intention, therefore, may not matter. Paragraph 16 of the judgment in V. Bhagat (supra) reads as under:

16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status,

educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.

35. *In Ashok Hurra v. Rupa Bipin Zaveri*, decided in 1997, this Court was confronted with a situation where the marriage had fallen apart and the couple had separated in 1983. They did not have any specific issue, but difference of opinion had cropped up between the parties. Further, even after residing separately for thirteen years, the parties were not agreeable to a divorce by mutual consent. This was in spite of the fact that the husband had remarried and had a child. This Court was of the view that considering the cumulative effect of various factors and the marriage being dead, no useful purpose, both emotionally and practically, would be served in postponing the inevitability and prolonging the agony of the parties or their marriage and, therefore, the curtain should be rung down.

36. *In Naveen Kohli v. Neelu Kohli*, a three judges' bench of this Court referred to the opinion of Lord Denning, L.J. in *Kaslefsky v. Kaslefsky* that if the door of cruelty were opened too wide, the courts would be granting divorce for incompatibility of temperament, but this temptation must be resisted, lest the institution of marriage is imperiled ...

...Moreover, mental cruelty is difficult to establish by direct evidence and is to be deciphered by attending to the facts and circumstances in which the two partners in matrimony had been living. On the question of irretrievable breakdown of marriage,

which is not a ground for divorce under the Hindu Marriage Act, reference was made to the fault theory, which is hinged on an accusatorial principle of divorce. Excessive reliance on fault as a ground for divorce, the judges' opined, encourages matrimonial offences, increases bitterness and widens the ongoing rift between the parties. Once serious endeavours for reconciliation have been made, but it is found that the separation is inevitable and the damage is irreparable, divorce should not be withheld. An unworkable marriage, which has ceased to be effective, is futile and bound to be a source of greater misery for the parties.

41. ...That the marriage has irretrievably broken down is to be factually determined and firmly established. For this, several factors are to be considered such as the period of time the parties had cohabited after marriage; when the parties had last cohabited; the nature of allegations made by the parties against each other and their family members; the orders passed in the legal proceedings from time to time, cumulative impact on the personal relationship; whether, and how many attempts were made to settle the disputes by intervention of the court or through mediation, and when the last attempt was made, etc. The period of separation should be sufficiently long, and anything above six years or more will be a relevant factor. But these facts have to be evaluated keeping in view the economic and social status of the parties, including their educational qualifications, whether the parties have any children, their age, educational qualification, and whether the other spouse and children are dependent, in which event how and in what manner the party seeking divorce intends to take care and provide for the spouse or the children."

19. Further reliance may be usefully placed on the Judgment passed by the Hon'ble Apex Court in the case between Savitri Pandey Vs. Prem Chandra Pandey, published in (2002) 2 SCC 73 wherein Paragraphs 6 and 16 read as follows:

“6. Treating the petitioner with cruelty is a ground for divorce under Section 13(1)(i-a) of the Act. Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. “Cruelty”, therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other. In the instant case both the trial court as well as the High Court have found on facts that the wife had failed to prove the allegations of cruelty attributed to the respondent. Concurrent findings of fact arrived at by the courts cannot be disturbed by this Court in exercise of powers under Article 136 of the Constitution of India. Otherwise also the averments made in the petition and the evidence led in support thereof clearly show that the allegations, even if held to have been proved, would only show the sensitivity of the appellant with respect to the conduct of the respondent which cannot be termed more than ordinary wear and tear of the family life.

16. This Court in Jorden Diengdeh v. S.S. Chopra [(1985) 3 SCC 62 : AIR 1985 SC 935] suggested for a complete reform of law of

marriage and to make a uniform law applicable to all people irrespective of religion or caste. The Court observed: (SCC pp. 71-72, para 7)

It appears to be necessary to introduce irretrievable breakdown of marriage and mutual consent as grounds of divorce in all cases. ... There is no point or purpose to be served by the continuance of a marriage which has so completely and signally broken down. We suggest that the time has come for the intervention of legislature in these matters to provide for a uniform code of marriage and divorce and to provide by law for a way out of the unhappy situations in which couples like the present have found themselves in.”

20. In the backdrop of the above discussion, the appeal fails. This Court finds no reason to interfere with the Judgment and Order passed by the Ld. Trial Court. **F.A. No. 64 of 2021** with **I.A. No. CAN 3 of 2023** stand accordingly **dismissed**.

21. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

22. Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree,

(Supratim Bhattacharya, J.)

(Rajasekhar Mantha, J.)