

**IN THE HIGH COURT AT CALCUTTA
(Civil Appellate Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

F.A. 42 of 2021

**Abantika Acharya.
Versus
Chanchal Acharya**

For the Appellant : Mr. Nilanjan Bhattacharya
 Mr. Saikat Dey

For the Respondent: Mr. Abhishek Banerjee

Heard On : 01.08.2024

Judgement Delivered On : 07.10.2024

Supratim Bhattacharya, J.:

1. This instant appeal has been preferred by the appellant/petitioner/wife against the respondent/husband, being aggrieved by and dissatisfied with the judgment dated 16.08.2019 passed by the Court of the Ld. District Judge at Howrah in MAT Suit No. 463 of 2013.
2. Through the impugned judgment, the Ld. Trial Court has dismissed the Matrimonial Suit on contest without any cost holding that the petitioner/wife has been unable to substantiate

the fact of cruelty on which basis she had filed the suit praying for divorce.

3. The appellant herein was the petitioner /wife before the Ld. Trial Court and the respondent herein was the respondent /husband.

4. Facts of the instant *lis* as pleaded in the averments

The petitioner/wife had initially filed the Matrimonial Suit under Section 13 of the Hindu Marriage Act, 1955 stating that the marriage between the petitioner and the respondent was solemnized on 08.07.2000, according to Hindu rites and customs.

Thereafter, the petition was amended and the petition praying for divorce under the Hindu Marriage Act was converted to be one under Section 27 of the Special Marriage Act, 1954 wherein the petitioner/wife has stated that their marriage was solemnized on 24.04.2000 as per the Special Marriage Act.

Thereafter, once again the petition for divorce was amended seeking divorce under Section 27 of the Special Marriage Act, 1954 wherein the marriage has been said to be solemnized, not on 24.04.2000 under the Special Marriage Act as earlier stated, but on 08.07.2000 according to Hindu rites and customs.

5. Through the petition seeking divorce the petitioner has stated that a male child was born on 21.08.2003.

6. It has also been stated that as per demand of the family of the bridegroom, cash, 20 bhoris of gold ornaments, furnitures, fixtures, utensils , dress materials and gifts for the members of the family of the bridegroom were provided.

7.It has further been stated that thereafter once again Rs, 1,50,000/- had been demanded by the respondent /husband and the same was met by the father of the wife.

8.It has been also contended that the family members of the respondent tortured the petitioner by using abusive and provocative words and the same was coupled with physical assault.

9.It has been stated that during the month of January, 2009, once again money was demanded which could not be met by the father of the wife and as a consequence thereof, on 09.02.2009 the petitioner /wife along with her child were driven out of their matrimonial home and since then the petitioner /wife along with her son has been residing in her father's house.

Relying upon the aforementioned facts and circumstances the wife has prayed for divorce.

10. *Per contra*, the respondent/husband contested the said Matrimonial Suit and controverted all the allegations placed by the wife.

11. The husband has stated that the marriage between the parties was solemnized as per the Special Marriage Act. It has further been stated that the marriage was registered on 23.05.2000 as per the Special Marriage Act and the social marriage was solemnized on 24.07.2000.

12. The husband contends that as the marriage was held not by way of negotiation, so the question of any demand did not arise at all.

13. It has also been stated that during the years between 2003 to 2013, both the parties resided in the house of the father of the wife.

14. It is contended that since no incident of torture upon her has ever been reported by the wife against the husband, so the allegations levelled against the husband are not at all correct and hence untenable in law.

15. It has also been contended that as the parties to the suit have been residing together in the house of the parents of the wife, any incident of torture or any other untoward incident occurring with the wife would have been obviously reported by the wife to her parents. Since no evidence of such report has been ever brought by the wife before Court, such allegations of torture are motivated and concocted for the purpose of simply prejudicing the mind of this Court.

Relying upon the aforesaid facts and circumstances, the husband has prayed for dismissal of the Matrimonial Suit.

16. Considering the aforementioned pleadings, the Ld. Trial Court framed the following issues:

1. Is the present case maintainable in its present form and prayer?

2. Did the husband/respondent use to subject the wife/petitioner to cruelty since solemnization of their marriage?

3. Did the husband/respondent drive her out from her matrimonial home with her son on 09.02.2009?

4. Is the petitioner entitled to the relief as prayed for?

5. To what relief, if any, the petitioner is entitled?

17. On behalf of the petitioner /wife she herself has deposed as *PW1*. On behalf of the respondent /husband, the husband has deposed as *DW1* and one Kalyan Acharya, who is the brother of the husband, has deposed as *DW2*.

All the witnesses were cross-examined.

18. The Ld. Trial Court, upon perusal of the evidence presented, has reached the conclusion that the petitioner/wife has failed to substantiate her case that she was subjected to cruelty at her matrimonial home and/or, that the petitioner/wife has also failed

to prove that she was driven out from her matrimonial home on 09.02.2009. In the above view of the matter, the Ld. Trial Court has dismissed the suit for divorce filed by the petitioner/wife.

19. Against the said dismissal of her suit for divorce, the petitioner/wife has preferred the instant appeal.

20. Heard the Ld. Counsel representing the appellant/wife at length.

i) The Ld. Counsel for the petitioner has submitted that the wife had to face torture since the days of her marriage as because just after a month her gold ornaments were taken away by her husband on the pretext of keeping the same safe and secure, which the petitioner/wife could not understand initially.

ii) Ld. Counsel for the petitioner/wife has further submitted that the petitioner/wife used to be tortured mentally during the initial stages of the marriage and thereafter she has been tortured both physically and mentally.

iii) The petitioner /wife has even been driven out of her matrimonial home along with her minor child which is an instance of extreme matrimonial cruelty.

iv) The child is now being looked after and brought up by the petitioner with the help of her elderly mother and there is no contribution to this effect by the respondent/father.

v) Ld. Counsel for the petitioner/wife has stressed upon the point that since long the petitioner /wife and the respondent /husband are residing separately and there is no chance of reunion between the two .

vi) It is submitted that the petitioner/wife has been rendered senseless on occasions because of the physical torture inflicted upon her by the respondent.

vii) Ld. Counsel has submitted that the facts presented above when cumulatively assessed would disclose an irretrievable breakdown of the marriage.

Per contra, Ld. Counsel, Mr. Abhisek Banerjee representing the respondent/husband, has submitted that :-

i) The version of facts and circumstances as raised by the appellant/wife is a blatant lie. It is argued that the appellant/wife has not come with clean hands and has concealed the truth.

ii) Ld. Counsel has submitted that the appellant/wife had initially instituted the Matrimonial Suit under Section 13 of the Hindu Marriage Act concealing the fact of registration of marriage which took place prior to the rituals which had taken place as per Hindu rites and customs.

iii) It is alleged that the appellant/wife has not come with clean hands as she has concealed the real facts by trying to mislead the Court on the basis of a false narrative.

iv) It is submitted that the appellant/wife has not produced an *iota* of evidence in support of her contention of inflicting both mental and physical torture upon her by her husband or any family member of her husband.

v) The Ld. Counsel has pointed out that considering the entire gamut of evidence and there being no proof as regards to torture, the Ld. Trial Court has correctly dismissed the suit. Ld. Counsel has thus prayed for dismissal of the instant appeal.

21. This Court notices that at the time of adducing evidence the petitioner/wife has deposed that their marriage was solemnized on 08.07.2000 according to Hindu rites and customs at the house of her father and, after marriage they resided together at the house of her husband as husband and wife. The marriage was consummated and one male child was born on the 31st day of August 2003.

22. She has further deposed that at the time of the marriage the parents of the respondent demanded cash, 20 bhoris of gold ornaments, furniture, fixtures, utensils and dress materials which were provided by her parents. She has also deposed that after few

days of marriage the respondent asked her to give him all the gold ornaments so that the said ornaments could be kept in a locker as because at any point of time those ornaments could be snatched or stolen from the house during a temporary absence of the family members and, on good faith, she gave all her ornaments.

23. However, after about a month when she requested the respondent to bring those ornaments so that she may attend a marriage ceremony, the respondent denied to handover the ornaments. She has further deposed that she had intimated everything to the concerned family members but her parents had requested her to keep patience.

24. She has further deposed that thereafter once again Rs. 1,50,000/- was demanded and her father somehow met the said demand. She has further deposed that she used to stay at her in-laws' house just like a maidservant and she was not provided with proper food, medicine and clothing. She has further deposed that the respondent and his family members started to torture her by using abusive and provocative words which was coupled with physical assault, which she silently tolerated with the hope that one day the respondent will behave following the norms attached with the holy bonding of matrimony. However, the said torture increased day by day and she was confined within the four walls of her room and her freedom was snatched away.

25. When she protested against such torture, the respondent and his family members jointly tortured her both mentally and physically and the said physical torture reached to such a height that she was rendered senseless on occasions.

26. She had deposed that on 03.01.2009 the respondent and his parents once again demanded further cash and for non-payment the respondent mercilessly tortured her both physically and mentally. She has further deposed that when the respondent understood that he will not be provided with the money, then on 09.02.2009 she was driven out of the matrimonial home along with her son by the husband and since then having no alternative she is residing at her father's house since 09.02.2009.

27. Thereafter, on each and every night over telephone the respondent/husband abused her and threatened to divorce her. She has deposed that since marriage her husband never took care of her and has behaved inhumanly and has misappropriated all her *stridhan* articles. She has deposed that the respondent /husband has tortured her mentally leading to her physical and mental breakdown. Being terrified by the nature of cruelty meted out to her she takes the legal stand that the marriage has irretrievably broken down and there is no chance of reconciliation.

28. Running a comb through the threads of the deposition tendered by the petitioner/wife, this Court notices that during

cross-examination the petitioner /wife has deposed that she has not filed any document as regards to registration of her marriage. She has further stated that neither in the petition for divorce nor in her examination-in-chief on affidavit, she has disclosed the fact of registration of marriage. She has further stated that it is not correct to say that her husband was her private tutor prior to her marriage and has also stated that prior to her marriage she had no introduction with her husband and both of them had met only once or twice prior to their marriage.

29. She has further stated that she had verbally intimidated the relatives of her parents that she was being treated like a maid servant in her matrimonial home and nothing had been stated to them in writing. She has further deposed that she had not intimidated in writing to anybody that she was not being provided with sufficient food, clothing and medicine in her matrimonial home. She has further deposed that she has not filed any document to show her physical condition as she had neither consulted any doctor nor any nutritionist.

30. She has further deposed that she did not consult any doctor as regards to the physical and mental torture inflicted upon her. She has stated that she did not inform any authority in writing, stating that since 09.02.2009 during each and every night her husband over telephone abused her and threatened to divorce

her. She has also deposed that she did not lodge any complaint in writing before any authority disclosing the fact of such torture upon her at the instance of her husband. She has also deposed that she has not lodged any written complaint against the family members of her husband alleging torture. She has stated that she is not willing to lead matrimonial life with her husband even for the sake of her child.

31. Now against the backdrop of the above evidence presented by the wife, this Court is required to examine the counter evidence of the respondent/husband. The respondent /husband has deposed that after institution of a case under Section 498A IPC against him by his wife, he could not join his work place and as a result he was dismissed from service. Prior to his dismissal he was an employee under an agent of Life Insurance Corporation. He has further deposed that his wife has herself inflicted mental cruelty on him by lodging a false complaint against him under Section 498A of the Indian Penal Code as a consequence thereof he lost his employment.

32. The husband has denied keeping the ornaments in the locker of a bank. He has also denied the allegation of further demand of Rs. 1,50,000/- and that such amount was paid by his father-in-law to him. The husband has denied that proper food was not served to his wife in her matrimonial home and she was

not maintained in her matrimonial home. He has further denied that his wife was being tortured physically and mentally. The husband has denied that on 3rd January, 2009 he had again demanded dowry and being unable to get the amount of dowry, he had assaulted his wife physically.

33. The husband has also denied the fact that his son and wife were driven out from the matrimonial home on 09.02.2009. The husband has further deposed that after 2003 till 2011 he used to reside along with his wife and son in the father's house of his wife. The husband has further stated that on 16.08.2010 he has purchased a plot of land in the name of his wife and had started construction of a *kachha* room on the said plot of land. The husband has also denied the fact of abusing the wife over telephone since 09.02.2009. He has further deposed that he had issued a letter in the year 2015 to his wife requesting her to live with him. He has further deposed that it is still possible for them to lead a marital life.

34. To the mind of this Court, the statement of the Respondent/Husband to the effect that on 16th August, 2010 he has purchased a plot of land in the name of his wife, also starting the construction of a *kaccha* room over the said plot of land, raises serious doubts with regard to the claim of continuous physical and mental torture as levelled by the petitioner/wife

against her husband. To the further mind of this Court, the statement of the husband connected to purchase of a plot of land in the name of his wife on 16th August, 2010 stands in alignment with the statement also made by him that from 2003 till 2011, the husband used to lead a matrimonial life with his wife and son in the house of his in-laws, i.e. the father's house of the wife.

35. Thus from the evidence of the petitioner/wife it is apparent that she has raised the issue of both mental and physical torture upon her by her husband and the family members of her husband but has admitted at the same time, that she has never ever lodged any complaint before either the police authority or before any other authority/forum. She has further deposed that she had verbally intimidated her relatives who belong to the side of her parents, but from the evidence it transpires that not even a single relative has lodged any complaint or raised the issue of alleged torture upon the petitioner by her husband or by any relative of her husband before any family member, the Police or any other authority. Thus, apart from raising verbal allegations only there is no document in support of the contention of the alleged physical or mental torture upon the petitioner. It also transpires that the petitioner has not visited any medical practitioner after the alleged physical torture upon her by her husband or relatives of her husband and even after being rendered senseless because of

the torture upon her she had not got herself checked by any medical practitioner. Thus, there is no document in support of the contentions of the alleged torture upon the petitioner by her husband or relatives of her husband.

36. In the Judgment passed by the Hon'ble Apex Court in the case between Samar Ghosh and Jaya Ghosh reported in (2007) 4 SCC 511 it has been laid down some instances of human behavior are enumerated which may be relevant in dealing with cases of mental cruelty.

37. This Court notices the point that decree of divorce may be delivered on charge of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955 and the amendment petition filed by the wife in the present Matrimonial Suit is under Section 27 of the Special Marriage Act, 1954, the charge levelled by the wife against the husband as regards to cruelty has remained the same and hence deserving *pari materia* legal treatment.

For the benefit of this discussion the provisions of Sections 27(1) and 27(1)(d) of the Special Marriage Act are reproduced hereinbelow:-

“(1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court either by the husband or the wife on the ground that the respondent –

(a)

(b)

(c)

*(d) has since the solemnization of the marriage treated the petitioner with cruelty; or
(e)”*

As already discussed earlier in this Judgement, the wife has been unable to produce any material before this Court in support of her allegations of cruelty except making bald statements.

38. It is also noticed that the oral evidence of the wife is contradictory and unworthy of credence, considering the lack of disclaimer on her part in response to the specific statements made by the husband with regard to their joint matrimonial living at her parents’ house between 2003 and 2011 as well as the purchase of a plot of land in the name of his wife in 2015, all of which have been also discussed above. In this connection, the Court is therefore compelled to notice that the only specific charge levelled by the wife that she had to leave her matrimonial home along with her son on 9th February, 2009, stands doubtful in the context of the specific statements made by the husband with regard to their joint living between 2003 to 2011 and the purchase of a plot of land in her name all of which have not been disclaimed by the wife. This Court also notices that at no point of time the wife had come forward before any family member,

police authority or any other authority raising the issue of physical and mental torture.

39. On the aspect of 'cruelty' as understood by law against a spouse by another, this Court usefully refers to the discussion in *Jyotish Chandra Guha vs. Smt. Meera Guha* reported in AIR 1970 Cal 266 wherein and whereunder at Paragraphs 29,30 and 31 the Hon'ble Court has, *inter alia*, laid down the test for determining 'cruelty' in law. Paragraph 31 being of particular relevance to the principle which also applies to this appeal reads as follows:

"31. Further "Assuming that Injury or apprehended injury to health is found, 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 this respondent might have in the circumstances, the conduct is such that the petitioner ought not to be called upon to endure it."

40. From the facts presented by the wife and contested by the husband in the present case, this Court is of the considered view that the cumulative conduct complained of by the wife without corroboration by hard evidence, not to be of a nature

that is incapable of endurance. Accordingly, this Court finds no persuasive value in the prayer for divorce made by the wife on the ground of Cruelty.

41. This Court also refers to the authority of the Hon'ble Five Judge Bench of the Hon'ble Apex Court *In Re: Shilpa Sailesh Vs. Varun Sreenivasan* reported in 2023 SccOnline SC 544, has passed an order of divorce on the ground of irretrievable breakdown of marriage following the inherent power reposed in the Hon'ble Apex Court under Article 142 of the Constitution of India. At Paragraph 50 of the said Judgment the following has been stated.

“50. In view of the aforesaid discussion, we decide this reference by answering the questions framed in the following manner:

(i) The scope and ambit of power and jurisdiction of this Court under Article 142(1) of the Constitution of India.

This question as to the power and jurisdiction of this Court under Article 142(1) of the Constitution of India is answered in terms of paragraphs 8 to 13, inter alia, holding that this Court can depart from the procedure as well as the substantive laws, as long as the decision is exercised based on considerations of fundamental general and specific public policy. While deciding whether to exercise discretion, this Court must consider the substantive provisions as enacted

and not ignore the same, albeit this Court acts as a problem solver by balancing out equities between the conflicting claims. This power is to be exercised in a 'cause or matter'.

(ii) In view of, and depending upon the findings of this bench on the first question, whether this Court, while hearing a transfer petition, or in any other proceedings, can exercise power under Article 142(1) of the Constitution, in view of the settlement between the parties, and grant a decree of divorce by mutual consent dispensing with the period and the procedure prescribed under Section 13-B of the Hindu Marriage Act, and also quash and dispose of other/connected proceedings under the Domestic Violence Act, Section 125 of the Cr. P.C., or criminal prosecution primarily under Section 498-A and other provisions of the I.P.C. If the answer to this question is in the affirmative, in which cases and under what circumstances should this Court exercise jurisdiction under Article 142 of the Constitution of India is an ancillary issue to be decided.

In view of our findings on the first question, this question has to be answered in the affirmative, inter alia, holding that this Court, in view of settlement between the parties, has the discretion to dissolve the marriage by passing a decree of divorce by mutual consent, without being bound by the

procedural requirement to move the second motion. This power should be exercised with care and caution, keeping in mind the factors stated in Amardeep Singh (supra) and Amit Kumar (supra). This Court can also, in exercise of power under Article 142(1) of the Constitution of India, quash and set aside other proceedings and orders, including criminal proceedings.

(iii) Whether this Court can grant divorce in exercise of power under Article 142(1) of the Constitution of India when there is complete and irretrievable breakdown of marriage in spite of the other spouses opposing the prayer?

This question is also answered in the affirmative, inter alia, holding that this Court, in exercise of power under Article 142(1) of the Constitution of India, has the discretion to dissolve the marriage on the ground of its irretrievable breakdown. This discretionary power is to be exercised to do ‘complete justice’ to the parties, wherein this Court is satisfied that the facts established show that the marriage has completely failed and there is no possibility that the parties will cohabit together, and continuation of the formal legal relationship is unjustified. The Court, as a court of equity, is required to also balance the circumstances and the

background in which the party opposing the dissolution is placed.”

42. The petitioner/wife while deposing has also stated that their marriage has been solemnized on 08.07.2000 according to Hindu rites and customs at the house of her father. Thus, there is some discrepancy as regards to the nomenclature of the petition and the contents of the petition seeking divorce.

43. Thus, from the above discussion it is clear that the appellant/petitioner/wife has not been capable of substantiating her case. She has not been able to prove with material evidence that she has been tortured either mentally or physically. In addition there is contradiction as regards to the nomenclature and contents of the petition.

As regards to irretrievable breakdown of marriage, though the appellant/wife has said so, but the respondent/husband has not agreed and the parties are not *ad idem* in respect of the said issue.

44. It is also trite in law that this Court does not have the inherent power which is reposed with the Hon'ble Apex Court under Article 142(1) of the Constitution of India, in exercise of which only the Hon'ble Apex Court can pass an order of divorce on the ground of irretrievable breakdown of marriage.

45. Considering the pleadings and oral evidence, the Ld. Trial Court has rightly reached the conclusion that the petitioner has not been able to prove her case for divorce.

46. On the basis of the above reasoning, this Court also finds that the appellant/petitioner /wife is not entitled to divorce as prayed for.

47. Accordingly, this Court finds no reason to interfere with the Judgment passed by the Ld. Trial Court

48. Thus, the instant appeal being **F.A. 42 of 2021**, also stands **dismissed.**

49. 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.

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

I Agree,

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)