CGHC010044772023 2026:CGHC:45313-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 29 of 2023

Dr. Vijeta Jha W/o Ashok Kumar Jha Aged About 40 Years R/o - Udyachal Prangan, Rajnandgaon, Tahsil And District- Rajnandgaon, Chhattisgarh

... Appellant (s)

versus

Ashok Kumar Jha S/o Rajendra Jha Aged About 42 Years R/o - Bandhwapara, Purani Basti , District - Raipur, Chhattisgarh

... Respondent(s)

For Appellant	:	Mr. Badruddin Khan, Advocate
For Respondent	:	Mr. Rakesh Kumar Thakur, Advocate

D.B. : Hon'ble Shri Justice Parth Prateem Sahu & Hon'ble Smt. Justice Sushma Sawant

Judgment on Board

27/10/2026

Per **Parth Prateem Sahu, J.**

1. This appeal under Section 19(1) of the Family Courts Act, 1984 is directed against the judgment and decree dated 30.11.2022 passed by learned Second Additional Principal Judge, Family Court, Raipur (CG) in Case No. HMA No. 475/2016 whereby application preferred by respondent/applicant

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(husband) under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (for short, "*the Act of 1955*"), seeking dissolution of marriage by a decree of divorce on the ground of cruelty has been allowed.

2. Facts necessary for the disposal of the present appeal are that the respondent/husband filed an application under Sections 13(1)(i-a) of the Act of 1955, before the Family Court, Raipur, seeking dissolution of his marriage with the appellant/wife on the pleading *inter alia* that their marriage was solemnized on 21.04.2014 at Durg in accordance with their customary rites and rituals, but they resided together for only about two months. According to applicant/husband, on 15.07.2014, non-applicant /wife went to Rajnandgaon with her mother and brother to celebrate the Madhur Shravani festival and thereafter refused to return to matrimonial home at Raipur to reside with him, citing her responsibility to support her parents and repay a loan. Despite his repeated requests, letters, and attempts to contact her, she continued to reside separately at Rajnandgaon. He further alleged that she had taken away the jewellery and certain household articles given at the time of marriage. He also alleged that the wife falsely accused him of being physically incapable of establishing marital relations, causing him mental cruelty. He claimed that she had deserted him without reasonable cause and that her conduct had made continuation of the marital relationship impossible. Accordingly, he issued a registered notice dated 16.11.2015, proposing dissolution of the marriage by mutual consent. As the wife did not act upon the notice, he sought a decree of divorce on the grounds of cruelty under Section 13(1)(i-a) of the Act of 1955.

3. In her written statement, non-applicant/wife denied the allegations made by the non-applicant/husband and pleaded that the parties resided together for approximately three to four months at different intervals. She stated that on 15.07.2014, she went to her parental home at Rajnandgaon to celebrate the Shravani festival in accordance with social customs and with the consent of the husband and his parents. Although the husband had assured her that he would come to take her back, but he never did so. She further pleaded that the husband and his family subjected her to mental and physical harassment through taunts and humiliating behaviour. She also stated that, following the death of husband's mother on 04.01.2016, she stayed at her matrimonial home for about 16–17 days and discharged her duties as a daughter-in-law. The wife denied having deserted the husband and alleged that he himself had deserted her without sufficient cause. She stated that she had taken a loan from Punjab National Bank in 2012 to establish a clinic at Rajnandgaon prior to marriage with the applicant. She further alleged that the husband had retained her gold and silver jewellery on the pretext of keeping it safe in his bank locker. According to her, the husband never established physical relations with her and, shortly after the marriage, sought a mutual divorce due to dissatisfaction with the dowry received. She also alleged that she was treated like a maid at her matrimonial home. Entire marriage expenses were borne by her parents. Her husband prepared false documents to obtain decree of divorce. Therefore, application filed by the applicant is baseless and liable to be dismissed.

4. On the basis of the pleadings made by the parties, learned Family Court framed following main issues for determination:

> “1. Whether the non-applicant subjected the applicant to physical and mental cruelty?
>
> 2. Whether the non-applicant deserted the applicant without reasonable cause for a continuous period of at least two years immediately preceding the filing of the divorce petition?
>
> 3. Whether the applicant is entitled to obtain a decree of divorce from the non-applicant? ”

5. Learned Family Court upon appreciation of the pleadings and oral as well as documentary evidence adduced by the parties, answered the aforesaid issues in affirmative and held that the applicant/plaintiff had proved the allegation of cruelty against the non-applicant/defendant. Consequently, the application filed under Section 13(1)(i-a) of the Act of 1955 was allowed by the impugned judgment granting decree of divorce to the applicant/plaintiff (respondent herein), which is the subject matter of challenge by non-applicant/wife (appellant herein) in the present appeal.

6. Assailing legality, validity, and correctness of the impugned judgment and decree, learned counsel for the appellant/wife (non-applicant), submits that learned Family Court committed manifest illegality and perversity in granting decree of divorce by not relying upon the evidence adduced by the appellant/non-applicant. It is contended that the appellant never deserted the respondent but went to her parental home on 15.07.2014 to celebrate the Shravani festival with the consent of the respondent and his family. Despite assuring her that he would take her back, the respondent failed to do so. It is further submitted that the

appellant was subjected to mental and physical harassment at the matrimonial home. She came back to her matrimonial home after death of the respondent's mother on 04.01.2016, stayed there for approximately 16–17 days, which negates any intention to desert the respondent. Learned counsel further contends that the allegations of cruelty are false and unsupported by cogent evidence. It is contended that proceeding under Section 125 Cr.P.C and Section 12 of the Domestic Violence Act have been instituted by non-applicant/wife after filing of application under Section 13 of the Act of 1955, therefore, learned Family Court should not have recorded finding that, it amounted to cruelty on the applicant. Learned Family Court failed to properly appreciate the pleadings and evidence, ignored the appellant's defence, and erroneously granted a decree of divorce in favour of the respondent/husband, therefore, this appeal be allowed and impugned judgment and decree be set aside.

7. Per contra, learned counsel for the respondent/husband would submit that the impugned judgment and decree passed by learned Family Court are based on a proper appreciation of the pleadings and evidence available on record and warrant no interference by this Court. It is contended that the parties resided together for only about two months after their marriage, whereafter the appellant/wife left the matrimonial home on 15.07.2014 and, despite repeated requests and efforts by the respondent to bring her back, refused to resume conjugal relationship. Learned counsel would further submit that the appellant made false and humiliating allegations regarding the respondent's physical incapacity to establish marital relations, thereby causing him mental cruelty. It is argued that the appellant voluntarily withdrew from the matrimonial relationship

without reasonable cause and continued to reside separately, despite the respondent's efforts to reconcile. Learned counsel would contend that the appellant's allegations of harassment, dowry-related dissatisfaction, and retention of jewellery are false, unsubstantiated, and intended to evade her own conduct. It is further submitted that the appellant's brief visit to the matrimonial home following the death of the respondent's mother does not, by itself, negate the established circumstances of separation.

8. We have considered the rival submissions made by learned counsel for the parties and have carefully perused the record of the Family Court.

9. The appellant/wife has challenged the impugned judgment and decree whereby learned Family Court allowed the application filed by respondent/husband under Section 13(1)(i-a) of the Act of 1955 granting decree of divorce to respondent/husband on the ground of cruelty. The factum of marriage is not in dispute. It is an admitted position that the marriage between the parties was solemnized on 21.04.2014 in accordance with their social customs.

10. Section 13 of the Act of 1955 provides for grant of decree of divorce in certain cases. It enacts that any marriage solemnized whether before or after the commencement of the Act may be dissolved on a petition presented either by the husband or by the wife on any of the grounds specified therein. Clause (i-a) of sub-section (1) of Section 13 envisages that a decree of divorce may be passed by a Court on the ground that after solemnization of marriage, opposite party has treated the petitioner with cruelty. Expression 'cruelty' includes both (i) physical cruelty; and (ii) mental cruelty. Cruelty is not defined in the Act of 1955. Physical cruelty

can be proved by oral and documentary evidence. As far as mental cruelty is concerned, the same has to be decided based on the facts and circumstances of each case taking into consideration the social standing of the parties.

11. In the present case, respondent/husband (applicant) has enumerated various acts of cruelty alleged to be committed by the appellant/non-applicant (wife). The law on a wife's cruelty against her husband is not as clear as the other way around. The concept of cruelty under matrimonial law has traditionally been discussed in the context of a husband's conduct towards his wife. There are instances where a wife may be found to have treated her husband with cruelty because cruelty is a matter of conduct, not gender. Matrimonial law does not presume that only one spouse is capable of committing cruelty. Whether the husband or the wife has been cruel depends on the facts and circumstances of each case.

12. In order to examine the act of cruelty, the principles laid down by the Hon'ble Supreme Court in **Samar Ghosh v. Jaya Ghosh** reported in **(2007) 4 SCC 511,** would be a relevant guideline wherein the Court has indicated certain illustrative instances at para 101 whereby the inference of mental cruelty can be drawn. Para 101 reads as under :-

> **"101.** No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(*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."

13. The burden of proving the issues framed by the learned Family Court squarely rested upon the respondent/applicant-husband. In order to discharge the said burden, respondent/applicant Ashok Kumar Jha, entered the witness box as AW-1 and produced various documents including the documents with regard to proceedings initiated by appellant-wife under Section 125 of Cr.P.C., Section 12 of the Domestic Violence Act against the respondent/husband and report lodged by non-applicant to the concerned police station showing her unwillingness to reside with the applicant.

14. With regard to the allegation of cruelty against him by the non-applicant/wife, the applicant, Ashok Kumar Jha (PW-1), has primarily deposed that, as per social custom, the parents of the non-applicant were required to invite him to participate in the celebration of the Madhushravani festival; however, no such invitation was extended to him. He has further stated that he made several attempts to persuade the non-applicant to resume cohabitation by writing letters to her and contacting her through mobile phone, but she refused to join his company. According to him, such conduct on the part of the non-applicant amounts to cruelty. He has also alleged that the non-applicant falsely accused him of being

physically disabled. He further stated that, although he was physically fit and willing to establish a physical relationship with the non-applicant, she avoided establishing such a relationship on the pretext of suffering from stomach pain, which caused him mental agony. He was subjected to an extensive cross-examination by the non-applicant. In paragraph 18 of his cross-examination, the applicant, Ashok Kumar Jha (PW-1), denied the suggestion that he had subjected the non-applicant to harassment after marriage on account of her failure to bring dowry.

15. On the other hand, non-applicant (NAW-1), in paragraph 31 of her cross-examination, admitted that she had never lodged any complaint alleging harassment against the applicant during her stay in matrimonial home at Raipur. Further, in paragraph 28 of her cross-examination, she admitted that, after the applicant filed an application seeking dissolution of marriage, she instituted proceedings under Section 125 of the Code of Criminal Procedure before the competent Court, which was dismissed on 23.10.2018. She further deposed that, after the dismissal of the proceedings under Section 125 Cr.P.C., she instituted a case under the Domestic Violence Act against the applicant. In paragraph 33 of her cross-examination, she reiterated that the proceedings under the Domestic Violence Act were instituted before the Court of the Judicial Magistrate First Class, Rajnandgaon, after dismissal of her application under Section 125 Cr.P.C. The said proceedings were also dismissed on 25.01.2022, and the certified copy of the order of dismissal has been exhibited as Ex. P-29.

16. In paragraph 24 of her cross-examination, non-applicant Dr. Vijeta Jha, admitted that she had come to Rajnandgaon on 14th June 2017 to celebrate the Madhurshravani festival. Further, in paragraph 36 of her cross-examination, she admitted that she had also come to her parental home on 15th July 2014 to celebrate the Madhushravani festival and had been residing there since then. In this regard, the applicant-husband was also subjected to cross-examination by the learned counsel for the non-applicant. In paragraph-16 of his cross-examination, applicant-husband admitted that the non-applicant-wife went to her parental home on 15th July 2014 to celebrate the Madhushravani festival. Thus, in view of the categorical admissions made by both parties in their respective cross-examinations, it stands established that the non-applicant-wife went to Rajnandgaon on 15th July 2014 to celebrate the Madhushravani festival and had been residing at her parental home since then.

17. Thus, from the said evidence itself, it is clearly appearing that the non-applicant had come to her parents' house on 15.07.2014 to celebrate Madhurshravani festival, after that she did not return to her in-laws' house, she has been staying at her parents' house since coming to her parents' house to celebrate Madhurshraavni festival.

18. It is further evident from the record that the non-applicant-wife instituted proceedings against the applicant-husband under Section 125 of the Code of Criminal Procedure before the Family Court, Rajnandgaon, and also initiated proceedings under the Protection of Women from Domestic Violence Act, 2005, before the Court of the Judicial Magistrate First Class, Rajnandgaon. Both proceedings were instituted on substantially similar allegations against the applicant-husband. However, both cases came to

be dismissed, as the non-applicant-wife failed to establish the allegations levelled by her.

19. At this stage, it is relevant to refer to the documents filed by the applicant-husband, marked as Ex. P-16 and Ex. P-17. Ex. P-16 is a copy of the application submitted by the non-applicant-wife to the Officer-in-Charge, Police Station Kotwali, Rajnandgaon, obtained under the Right to Information Act, whereas Ex. P-17 is a copy of another application submitted by her to the said police station. Both applications are dated 08.09.2014. A perusal of these documents reveals that the non-applicant-wife had specifically stated therein that she was not submitting the applications with a view to initiating any action against her husband or his other family members. She further expressed that, at that stage, she did not wish to take any action against them and voluntarily desired to reside at her parental home. She also requested that she be permitted to live peacefully at her parental home. In her evidence, non-applicant has accepted her signature which makes it clear that both the reports have been given by herself in the police station of Rajnandgaon.

20. A perusal of Ex. P-18, which contains the counselling proceedings conducted by the Women's Cell, Rajnandgaon, further reveals that the non-applicant-wife had categorically stated therein that she did not wish to undergo counselling or pursue any further proceedings before the Women's Cell.

21. From the evidence on record and the pleadings made above, it is concluded that the non-applicant has been voluntarily residing at her parents' home without sufficient cause.

22. Hon'ble Supreme Court in case of **Raj Talreja Vs. Kavita Talreja** reported in **(2017) 14 SCC 194** while allowing the appeal filed by appellant/husband seeking decree of divorce on the ground of cruelty meted out to him by the wife, held as under :

> **"11.** Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act 1955 (for short 'the Act'). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty. In the present case, all the allegations were found to be false. Later, she filed another complaint alleging that her husband along with some other persons had trespassed into her house and assaulted her. The police found, on investigation, that not only was the complaint false but also the injuries were self inflicted by the wife. Thereafter, proceedings were launched against the wife under Section 182 of IPC. "

23. In case of **K. Srinivas Rao Vs. D.A. Deepa** reported in **(2013) 5 SCC 226**, Hon'ble Supreme Court observed thus :

> **“34.** In the ultimate analysis, we hold that the respondent-wife has caused by her conduct mental cruelty to the appellant-husband and the marriage has irretrievably broken down. Dissolution of marriage will relieve both sides of pain and anguish. In this Court the respondent-wife expressed that she wants to go back to the appellant-husband, but, that is not possible now. The appellant-husband is not willing to take her back. Even if we refuse decree of divorce to the appellant-husband, there are hardly any chances of the respondent-wife leading a happy life with the appellant-husband because a lot of bitterness is created by the conduct of the respondent-wife.”

24. In the cast as hand, it is the case of applicant/husband that his wife/non-applicant left the matrimonial home with her own freewill on the ground that she does not want to reside in the company of her husband. After leaving matrimonial home, she also gave written intimation to concerned police station through information letter filed as Ex.P-16 and Ex.P-17 to this effect. Submission of application/information to concerned police station (Ex.P-16 and Ex.P-17) is in fact admitted by non-applicant in her evidence as discussed above.

25. In the counselling proceeding recorded by police also non-applicant/wife had made statement that she did not want to reside with applicant/husband and such proceeding recorded is also signed by her which is also accepted and admitted by her.

26. Cohabitation is one of the essential foundations of a successful matrimonial relationship. While examining the ground of cruelty pleaded in the petition, the Court is required to consider the overall conduct of the

parties and the manner in which they have discharged their respective matrimonial obligations. Depriving one spouse of the opportunity to enjoy normal matrimonial life, including the companionship and conjugal relationship of the other spouse, without reasonable justification, may amount to mental cruelty.

27. Hon'ble Supreme Court in case of in case of **Sonal Talpada Vs. Veerbhan Singh** [Civil Appeal No.8391 of 2026 arising out of SLP (C) No.10422 of 2025, decided on 2nd June 2026] observed thus:

> "**22**. Marriage, in its legal and constitutional dimension, can never be reduced to a mere contractual intersection of individual rights, nor can it be viewed strictly through the narrow lens of a petition for conjugal rights. It is a deeply personal and social partnership built on mutual respect, shared expectations and equal responsibility. When two parties enter into matrimony, they weave a tapestry of interdependence that demands a continuous balancing of interests. Conjugal rights do not exist in a vacuum; they are the structural counterparts to conjugal duties. To demand the fulfillment of the former while willfully abandoning the sanctity of the latter is to undermine the very essence of the institution. Matrimony, therefore, is not a one-sided right to be enforced, but a shared covenant of emotional support, fidelity, responsibility and care, where the rights of one are always tied to the duties they owe to the other. Persistent withdrawal from the foundational aspects of marriage may have legal consequences while evaluating allegations of mental cruelty. "

28. In case of **Vidhya Viswanathan vs Kartik Balakrishnan** reported in **(2014) 15 SCC 21**, Hon'ble Supreme Court has held that no allowing a

spouse to establish a spouse to establish physical relationship for a long time amounts to mental cruelty to other spouse.

29. Apart from above act of mental cruelty committed by appellant-wife upon the respondent/husband another act of her which also amounts to mental cruelty is that she made absolutely false allegation upon him. In para-5 of her written statement, it is pleaded that respondent/husband was not permitting the appellant/wife to enjoy the conjugal relationship, and further that for not getting sufficient dowry mounted pressured to get mutual divorce. In application filed under Section 125 Cr.PC. it is pleaded that her husband levelled allegation of theft and on her character, thereby harassed her. Copy of application is Ex.P-5. Such allegation is not made in application under Section 13 of the Act of 1955. Filing of false case one under Section 125 of Cr.P.C. and another case under Domestic Violence Act also amounts to mental cruelty.

30. In case of **Narasimha Sastry Vs. Suneela Rani** reported in **(2020) 18 SCC 247**, Hon'ble Supreme Court observed as under:

> **"13.** In the present case, the prosecution is launched by the respondent against the appellant under Section 498-A IPC making serious allegations in which the appellant had to undergo trial which ultimately resulted in his acquittal. In the prosecution under Section 498-A IPC not only acquittal has been recorded but observations have been made that allegations of serious nature are levelled against each other. The case set up by the appellant seeking decree of divorce on the ground of cruelty has been established. With regard to proceeding initiated by the respondent under Section 498-A IPC, the High Court

[*Narsimha Sastry* v. *Suneela Rani*, 2017 SCC OnLine Hyd 714] made the following observation in para 15 : (*Rani Narsimha Sastry case* [*Narsimha Sastry* v. *Suneela Rani*, 2017 SCC OnLine Hyd 714] , SCC OnLine Hyd)

> "*15*. … Merely because the respondent has sought for maintenance or has filed a complaint against the petitioner for the offence punishable under Section 498-A IPC, they cannot be said to be valid grounds for holding that such a recourse adopted by the respondent amounts to cruelty."

The above observation of the High Court cannot be approved. It is true that it is open for anyone to file complaint or lodge prosecution for redressal of his or her grievances and lodge a first information report for an offence also and mere lodging of complaint or FIR cannot ipso facto be treated as cruelty. But, when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498-A IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has been meted out on the husband. As per the pleadings before us, after parties having been married on 14-8-2005, they lived together only 18 months and, thereafter, they are separately living for more than a decade now."

31. Hon'ble Supreme Court in case of **Rakesh Raman Vs. Kavita** reported in (**2023) 17 SCC 433** observed thus:

> **"9.** The High Court in appeal, came to the conclusion that the mere fact that the respondent did not allow her husband to enter his house on 29-11-1998, would not prove that it was her intention to bring cohabitation permanently to an end and therefore the ground of dissolution of marriage on desertion was

not made out. As far as filing of various complaints under Sections 323, 324 and 498-AIPC are concerned, the High Court was of the view that mere filing of such complaints, or their result in acquittal would not amount to cruelty, as the wife was only exercising her options available to her under the law. Moreover, what has to be seen are also the circumstances under which these complaints were filed.

x x x

x x x

15. The High Court has taken a view that mere filing of criminal cases against the appellant husband would not constitute cruelty. All the same, the number of criminal cases filed by the respondent wife against the appellant husband are far too many which have been discussed above. All these cases have either resulted in discharge or acquittal of the appellant husband, if not before the pronouncement of the judgment of the Delhi High Court but definitely after the pronouncement of the judgment [*Kavita* v. *Rakesh Raman*, 2011 SCC OnLine Del 1768] of the Delhi High Court. Moreover, a three-Judge Bench of this Court in *Naveen Kohli* v. *Neelu Kohli* [*Naveen Kohli* v. *Neelu Kohli*, (2006) 4 SCC 558] held that repeatedly filing of criminal cases by one party against the other in a matrimonial matter would amount to cruelty and the same was reiterated by a Division Bench of this Court in *K. Srinivas Rao* v. *D.A. Deepa* [*K. Srinivas Rao* v. *D.A. Deepa*, (2013) 5 SCC 226 : (2013) 2 SCC (Civ) 775 : (2013) 2 SCC (Cri) 963] .

x x x

x x x

> **21.** The view [*Kavita* v. *Rakesh Raman*, 2011 SCC OnLine Del 1768] taken by the Delhi High Court in the present case that mere filing of criminal cases by the wife does not constitute cruelty as what has also to be seen are the circumstances under which cases were filed, is a finding we do not wish to disregard totally, in fact as a pure proposition of law it may be correct, but then we must also closely examine the entire facts of the case which are now before us. When we take into consideration the facts as they exist today, we are convinced that continuation of this marriage would mean continuation of cruelty, which each now inflicts on the other."

32. In case of **K. Srinivas Vs. K. Sunita** reported in **(2014) 16 SCC 34,** Hon'ble Supreme Court observed as under:

> **"5.** The respondent wife has admitted in her cross-examination that she did not mention all the incidents on which her complaint is predicated in her statement under Section 161 CrPC. It is not her case that she had actually narrated all these facts to the investigating officer, but that he had neglected to mention them. This, it seems to us, is clearly indicative of the fact that the criminal complaint was a contrived afterthought. We affirm the view of the High Court that the criminal complaint was "ill advised". Adding thereto is the factor that the High Court had been informed of the acquittal of the appellant husband and members of his family. In these circumstances, the High Court ought to have concluded that the respondent wife knowingly and intentionally filed a false complaint, calculated to

> embarrass and incarcerate the appellant and seven members of his family and that such conduct unquestionably constitutes cruelty as postulated in Section 13(1)(*i-a*) of the Hindu Marriage Act."

33. Reverting to the facts of the present case, upon a careful and comprehensive appreciation of the oral and documentary evidence available on record, we are of the considered opinion that the respondent/husband has successfully established that the conduct of the appellant/wife constituted mental cruelty within the meaning of Section 13(1)(i-a) of the Hindu Marriage Act, 1955. The evidence on record, particularly the admissions made by the appellant/wife in her cross-examination and the documents exhibited as Ex. P-16, Ex. P-17 and Ex. P-18, establishes that she had voluntarily withdrawn from the matrimonial home and expressed her unwillingness to resume cohabitation with the respondent/husband. Further, the proceedings initiated by the appellant/wife under Section 125 of the Code of Criminal Procedure and the Protection of Women from Domestic Violence Act, 2005, were instituted subsequent to the filing of the divorce petition by the respondent/husband. Therefore, the contention advanced on behalf of the appellant/wife that the learned Family Court erroneously relied upon the dismissal of the said proceedings, which had not been pleaded as a ground for seeking divorce, does not materially affect the findings recorded on the basis of the other independent oral and documentary evidence available on record. The aforesaid evidence, when considered cumulatively and in the backdrop of the entire matrimonial relationship, sufficiently establishes the respondent/husband's case of mental cruelty.

34. The appellant/wife has failed to demonstrate any illegality, perversity, or error of law in the judgment and decree passed by the learned Family Court warranting interference by this Court in exercise of its appellate jurisdiction. The evidence on record clearly establishes that appellant/wife treated the respondent/husband and his family members with mental cruelty and also withdrew from his society without any reasonable cause for the statutory period prescribed under the Act of 1955. Despite sincere efforts made by the respondent/husband to restore the matrimonial relationship, the parties have failed to resume cohabitation, and there appears to be no reasonable possibility of reconciliation between them. They have been living separately for a considerable period and the material on record indicates that mutual trust and confidence, which constitute the very foundation of a matrimonial relationship, have completely eroded. In the facts and circumstances of the present case, there appears to be no reasonable possibility of the parties resuming conjugal relationship or leading a peaceful matrimonial life.

35. In view of the foregoing discussions and in the light of the principles laid down by the Hon'ble Supreme Court in the decisions referred to herein-above, we are of the considered opinion that the findings recorded by the learned Family Court are based on a proper appreciation of the oral and documentary evidence available on record. The impugned judgment neither suffers from any perversity nor discloses any error of law or fact warranting interference by this Court in exercise of its appellate jurisdiction.

36. Consequently, the appeal, being devoid of merit, deserves to be and is accordingly **dismissed.** The judgment and decree dated 30.11.2022

passed in Case No. HMA No. 475/2016, whereby application filed by the respondent/husband under Section 13(1)(i-a) seeking dissolution of marriage on the ground of cruelty has been allowed and a decree of divorce has been granted, are hereby affirmed.

37. Let a decree be drawn accordingly.

Sd/-
(Parth Prateem Sahu)
Judge

Sd/-
(Sushma Sawant)
Judge

Praveen