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HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 94 of 2024

1. Banmali Joshi S/o Late Jeevannath Joshi Aged About 44 Years R/o Karanji, Post Muli, Tahsil Bakawand, District : Bastar(Jagdalpur), Chhattisgarh

... Appellant

versus

1. Smt. Rita Joshi W/o Shri Banmali Joshi Aged About 40 Years Presently Residing At Kalipur, Near Atal Awas, Dhobipara, Jagdalpur, District Bastar, C.G.
   Permanent Address-Through Father Shri Partheswar Prasad Pandey, Village Gufni, Post Retawand, District : Bastar (CG)
2. Vinod Panigrahi S/o Shri Poorna Chandra Panigrahi Aged About 40 Years R/o Village School Para, Aasna, District : Bastar(CG)

... Respondents

For Appellant	:	Mr. Praveen K Tulsiyan, Advocate with Mr. Vikas Patel, Advocate
For Respondents	:	Mr. Keshav Dewangan, Advocate

DB: Hon'ble Mr. Justice Parth Prateem Sahu, J
& Hon'ble Mrs. Justice Sushma Sawant, J

Order on Board

Per Parth Prateem Sahu, J

28.10.2026

1. Challenge in this first appeal (matrimonial) is to the judgment dated 10.6.2025 passed in Civil Suit No.98A/2024 by which learned Judge, Family Court, Manendragarh, District Manendragarh-Chirmiri-Koriya has dismissed the application filed by plaintiff/appellant under Section 11 of the Hindu Marriage Act, 1955 (henceforth 'the Act of 1955') seeking dissolution of the marriage solemnized between appellant and respondent by way of a decree of divorce.

2. Facts of the case, in brief, are that appellant filed a petition under Section 13(A) of the Act of 1955 seeking decree of divorce against the wife / respondent No.1 herein on the ground of cruelty and adultery, on the pleadings that marriage of appellant and respondent No.1 was solemnized on 20.4.2007 according to Hindu rites and ceremonies. After the marriage, the couple begot two children. On 7.5.2014, respondent No.1 and children had gone to village Aasna to attend a family function where she met respondent No.2, who is her cousin. During said function, the conduct of respondent No.1 towards respondent No.2 was unbecoming. Upon returning home, when appellant had asked respondent No.1 about her conduct in function, she initially pleaded innocence, but subsequently admitted her mistake and assured that she would not repeat such conduct in future. It was further pleaded that whenever appellant tried to establish physical relation with respondent No.1, she used to avoid on the

ground of pooja or her menstruation. On 18.10.2018, after returning from her parental home, respondent No.1 had quarrelled with appellant. She had called her brother, sister and respondent No.2 at the residence and all of them have treated him with cruelty. On 24.9.2019, respondent No.1 again called her family members, broke her mangalsutra and ousted the appellant from the house and since then he is residing in the house of his elder brother. When elder brother of appellant tried to intervene, she abused him also and threatened him for life and sending him to jail. Thereafter, when appellant went to meet his children, respondent No.1 did not allow him to meet. Even after service of legal notice by appellant, respondent No.1 did not allow him to meet the children. Therefore, appellant has been left with no option but to seek dissolution of marriage because respondent No.1 despite married is living in adultery.

3. Respondent No.1-wife filed written statement denying the allegations made against her. It was denied that respondent No.1 was having love affair with respondent No.2 prior to her marriage which was suppressed from appellant and for this reason, land recorded in her name was given to appellant. It was also denied that on 24.9.2019, she had abused and threatened appellant to send jail and ousted him from house. In fact, on that day, the appellant had assaulted respondent No.1 in presence of his mother, sisters and brothers-in-law, which was not objected by

anyone. If appellant was having suspicion in his mind regarding extra-marital affair of respondent No.1, as to why he did not inform her family members earlier. After cohabiting with her for more than 12 years, appellant had instituted the divorce proceeding based on baseless allegations. Appellant is a person of suspicious nature, he never took her in public places, his friends' residences or marriage functions, and would even reprimand her for opening doors or windows at home. Appellant has a narrow-minded attitude and was suspicious of her character. He did not like his wife pursuing employment. He repeatedly suspected her of having extramarital affairs without any reasonable basis and, on certain occasions, used to suspect that she was having an extramarital affair with the doctor working with her. She has further denied that in absence of appellant, respondent No.2 used to come to home to meet her. Suspicious nature of appellant made life of respondent No.1 miserable. She also denied allegation that she had refused to have sexual intercourse with the appellant on the pretext of menstruation etc. On 24.9.2019 the appellant came home in drunken condition, insisted to take children with him, but children refused to go with him. Thereafter, appellant had abused and assaulted respondent No.1 in presence of his friends and also threatened saying that if she would come to village, he will beat her in village after undressing her.

4. By way of special submissions, it was contended that in the registered notice sent by appellant dated 03.1.2020 there was no allegation pertaining to her character of having an extra-marital affair with respondent No.1, however, appellant has filed divorce petition leveling such a grievous allegation which reflects his cheap mentality. Earlier also appellant had submitted an application before Sakhi One-stop centre but after filing of application, he did not appear there. Thereafter, he submitted a complaint in Police Station Karpawand on false grounds which was also rejected.

5. Respondent No.2 herein also filed written statement denying the allegations made against him in the divorce petition.

6. On the pleadings of the parties, learned family Court has framed four issues and upon appreciation of submission of learned counsel for the parties and the evidence, oral and documentary, brought on record by the parties, dismissed the application by the judgment impugned recording that appellant failed to prove cruelty as well as adultery on the part of respondent No.1. Being dissatisfied with the impugned judgment and decree, the appellant has knocked the door of this Court by way of instant first appeal.

7. Learned counsel for appellant-husband would argue that learned family Court has adopted an unreasonable and unrealistic approach in appreciating the evidence on record and recorded

incorrect finding that appellant failed to prove the grounds of cruelty and adultery. Appellant has clearly pleaded and proved that respondent No.1 was neglecting him, she was not willing to perform her martial obligations and as such committed cruelty upon him. Respondent No.1 had developed intimacy with respondent No.2, the appellant tried to pacify and convince her to stop talking to respondent No.2 and when he confronted her regarding her behavior, she called her family members, abused him, threatened him of sending jail and ousted him from the house without any justifiable reason. All these circumstance clearly establish the grounds urged in divorce petition. However, learned Family Court failed to appreciate the evidence produced by appellant, which are sufficient to establish his case, and rejected divorce application of appellant.

8. He further submits that learned family Court failed to see that the appellant and respondent No.1 have been living separately from 24.9.2019, and matrimonial relationship between them has deteriorated to such an extent that there appears to be no reasonable possibility of reconciliation or resumption of cohabitation. When the marriage of appellant with respondent No.1 had completely broken down with no hope of revival, the marriage between them should have been dissolved by learned family Court on the ground of long period of continuous separation. In these circumstances, the judgment and decree

passed by learned family Court may be set aside and marriage between parties may be dissolved by granting a decree of divorce.

9. On the other hand, learned counsel for respondent No.1-wife would submit that appellant and respondent No.1 not only lived together as husband and wife but also cohabited and blessed with two children. Appellant sought divorce on the ground that behaviour of respondent-wife towards appellant is torturous and she has extramarital affairs and therefore, appellant cannot reasonably be expected to live with respondent No.1, but learned Family Court, after taking into consideration the evidence, oral and documentary, has held that the appellant- husband has not succeeded to prove and establish the ground of cruelty as also failed to prove that the respondent had any illicit relation and has rightly dismissed the suit. He submits that allegation against respondent No.1 as to her illicit relation with respondent No.2 is also based on mere suspicion of appellant because except the generalized statement made about illicit relation of respondent-wife, appellant has not adduced any evidence substantiating the same or any witness who has deposed/claimed that he has ever seen any specific incident of adulterous/sexual act between her and respondent No.2. Hence, learned family court has rightly held that the appellant is not entitled for the decree of divorce on the ground of cruelty, adultery because the appellant has

miserably failed to prove his case even to the extent of preponderance of probabilities. On the aforesaid grounds, he submitted that the impugned judgment requires no interference by this Court.

10. We have heard learned counsel for the parties and perused the record of the family Court as also the impugned judgment, the testimonies of witnesses and the documents exhibited therein.

11. It is trite that the relief of divorce under the Act of 1955 is governed entirely by the statute. Either spouse may seek dissolution of the marriage by invoking Section 13 of the Act, but such relief can be granted only upon establishing one or more of the grounds specifically enumerated therein. A decree of divorce cannot be founded on mere allegations, suspicion, conjectures, or the subjective dissatisfaction of either party. The ordinary wear and tear of matrimonial life, normal differences, trivial irritations, and day-to-day discord, which are inherent in every marital relationship, do not by themselves constitute a ground for dissolution of marriage. The statutory ground pleaded must be established by cogent, credible, and convincing evidence. It is, therefore, the duty of the Court to carefully scrutinize the pleadings and evidence on record to ascertain whether the petitioner has successfully discharged the burden of proving the ground relied upon for seeking dissolution of the marriage.

12. Appellant-husband’s petition for divorce is on the ground of his wife's adultery with respondent No.2 coupled with cruelty and desertion without reasonable excuse. Appellant, in order to establish the aforementioned grounds, has examined three witnesses including himself. Besides oral evidence, copies of written complaint submitted to Station House In-charge Police Station Karpawand (Ex.P-1), information of police regarding non-cognizable offence (Ex.P-2), application dated 09.12.2021 forwarded to the Superintendent of Police District Bastar (Ex.P-3), application dated 07.03.2023 for providing chat record (Ex.P-4), sale deed dated 15.07.2014 (Ex.P-5) sale deed dated 11.08.2017 (Ex.P-6), certificate copy of sale deed dated 13.07.2017 (Ex.P-7), statement of account issued by State Bank of India (Ex.P-8).

13. Whereas, defence of respondent No.1-wife is that, allegations of adultery were based merely on suspicion, without any specific instance of illicit relations being proved. Mere general and unsubstantiated allegations, without cogent evidence, cannot constitute a ground for dissolution of marriage. In support of her case, respondent No.1 examined herself as DW-1 and two witnesses on her behalf as DW-2 and DW-3.

14. Appellant was examined as AW-1 and he submitted his examination-in-chief in the shape of an affidavit under Order 18 Rule 4 of Code of Civil Procedure and deposed on the lines of

divorce petition. In Para-14 of cross-examination, he has admitted that in the notice dated 03.1.2020 he has not mentioned about extra-marital affair of respondent No.1. He had not made any complaint in police station regarding the incident dated 18.10.2018 and he had physical relation with respondent No.1 after 18.10.2018. He has denied the suggestion of having extra-marital affair with divorcee Meenakshi Baghel.

15. Vishwanath Joshi (AW-2), brother of appellant, has also submitted his examination-in-chief in the shape of an affidavit under Order 18 Rule 4 CPC and made a similar statement as was made by appellant herein. In the cross-examination, this witness has stated that appellant is residing separately from respondent No.1 from 24.9.2019. He has denied that appellant is having extra-marital affair with divorcee Meenakshi Baghel, who is pressuring him for marriage and for this reason appellant has filed divorce petition against respondent No.1.

16. Noornesh Panigrahi (AW-3) has also made similar statement in his examination-in-chief as also cross-examination.

17. DW-1 respondent No.1-wife stated in her examination-in-chief on affidavit has deposed on the same lines as stated in the written statement. She has deposed that her marriage with appellant was solemnized on 20.04.2007 and from their marriage, they are having two sons. She along with her children residing in village Kalipur where appellant used to come often. Appellant had

developed extra-marital affair with a tribal Shiksha Karmi Meenakshi Baghel, When she became pregnant and started putting pressure upon appellant to marry her else she will send her jail. Owing to such pressure and threats, frequent quarrel started taken place between them. On 24.9.2019 appellant came along with his brother and started pressurizing her to agree for divorce. Thereafter, appellant had assaulted respondent in presence of his family members and brother of respondent. In the cross-examination, she has denied the suggestion that she and respondent No.2 liked each other and wanted to marry each other. She has denied that respondent No.2 used to come to meet her after her marriage while she was living in village Sanwara. She denied that any such incident, as alleged, had occurred on 24.09.19.

18. Smt. Babbi Joshi (DW-2) and Santosh Prasad Pandey (DW-3) have deposed on similar lines as deposed by DW-1.

19. From the above discussed pleadings and evidence brought on record by the parties, it is appearing that allegations regarding cruelty and desertion, on the face of it, were levelled in a generalized manner, which is done in most of the cases by the spouse seeking divorce. Appellant wanted to hinge his case on the ground of adultery of respondent No.1 with respondent No.2.

20. The expression ‘adultery’ may be defined as the act of a married person having illicit intimacy with a person of opposite gender

other than the wife or husband of the person. Burden of proving ‘adultery’ lies upon the spouse who makes such an allegation. Adultery, being an act which ordinarily takes place in secrecy, may be established by circumstantial evidence. However, the circumstances relied upon must be such as to reasonably lead to the conclusion that the alleged adulterous relationship existed. Mere fact that husband considers the conduct of the wife open to suspicion is not sufficient to prove adultery. The pleading with regard to adultery should be specific and clear so that the opponent can defend the case. In other words, it is not available for a party concerned that by merely making submission of adultery, the adultery will be said to be proved, rather, the issue of adultery since belongs to the character assassination of a party, is to substantiate with the cogent and valid evidence. The standard of proof in matrimonial proceedings is that of preponderance of probabilities and not proof beyond reasonable doubt.

21. In the present case, allegation of adultery levelled by appellant against respondent No.1 is primarily founded upon the allegations that in a family function in village Aasna appellant had noticed indecent behaviour of respondent No.1 towards respondent No.2; she has admitted to have illicit relationship with respondent No.2; appellant has found respondent No.1 and 2 lying in his bedroom and on seeing him, respondent No.2 went

away and on 19.09.2019, appellant caught respondent No.1 engaged in WhatsApp chat with respondent No.2, which resulted in a quarrel between them. Whereas, it is evident from the written statement filed by respondent No.1-wife wherein specific denial has been made of the allegation of adultery taken as a ground for divorce. Appellant has not examined any person present in the family function to prove that respondents were present there and were behaving in a manner as would show that they were involved in undue intimacy, nor he produced any person from the neighbourhood, who had seen respondent No.1 entering or going out of the house of appellant to corroborate his version of seeing respondents together in the house. Vishwanath Joshi (AW-2), brother of appellant, has not stated about having personally witnessed any act or circumstance establishing an adulterous relationship between respondent No.1 and respondent No. 2. Noornesh Panigrahi (DW-3), an independent witness, has only stated that he was informed by brother of appellant that respondent No.1 is having extra-marital affair with respondent No.2. His evidence is a hearsay and does not prove the allegation of adultery. Neither of the two witnesses examined by appellant stated anything about they having seen the respondents together so as to raise a suspicion about their relationship. Appellant has also not brought on record actual WhatsApp conversation or any other reliable electronic evidence

demonstrating the nature and contents of such communication. It may be noticed here that appellant, in his cross-examination, admitted that he had not made any mention of alleged extra-marital relationship of respondent No.1 in the notice dated 03.01.2020, which was issued prior to filing of divorce petition.

22. Another important circumstance emerging from the cross-examination of appellant is his admission that he continued to have physical relations with respondent No.1. This conduct is required to be considered while appreciating the appellant's version regarding the alleged discovery of his wife's adulterous relationship. It is difficult to comprehend, and it is inconsistent with natural human conduct, that a husband would maintain cordial relations with his wife when it has come to his knowledge that his wife is involved in an extramarital relationship. Therefore, continuation of normal marital relations even after alleged discovery of illicit relationship between respondents, casts doubt on the credibility of the appellant's allegation of illicit intimacy between them. Such conduct on the part of appellant further assumes significance from the perspective of condonation under Section 23(1) (b) of the Act of 1955. Where a spouse, with full knowledge of the alleged matrimonial misconduct, voluntarily resumes or continues marital relations, such conduct amount to condonation of alleged cruelty. It is, therefore, necessary for the Appellant to explain the circumstances in which he continued to

maintain physical relations with respondent No.1 despite having allegedly discovered her adulterous relationship. In the absence of any satisfactory explanation, the said conduct is a relevant circumstance not only for assessing credibility of appellant's allegations but also for examining whether alleged matrimonial misconduct stood condoned by his subsequent conduct.

23. The documentary evidence exhibited by the appellant, namely, the written complaint submitted to the Station House In-charge, Police Station Karpawand (Ex.P-1), information regarding a non-cognizable offence (Ex.P-2), application dated 09.12.2021 forwarded to the Superintendent of Police, District Bastar (Ex.P-3), and application dated 07.03.2023 seeking chat records (Ex.P-4), also does not establish the allegation of adultery. These documents may demonstrate that the appellant had approached the police authorities or sought certain information; however, mere submission of complaints or applications cannot be treated as proof of the truth of the allegations contained therein. Further, the actual WhatsApp chat records, which could have thrown light upon the nature of communication between respondent No. 1 and respondent No. 2, have not been brought on record.

24. Mere allegations by appellant that he had noticed unbecoming behaviour of his wife towards respondent No.2; appellant’s wife has admitted to have illicit relationship with respondent No.2;wife

was chatting with respondent No.2 on Whatsapp or phone; appellant has found respondent No.1 and 2 lying in his bedroom, are not enough to draw an inference of adultery in absence of any corroborative evidence substantiating these allegations.

25. On the contrary, respondent No. 1 has specifically denied the allegation of adultery and has put forth a different version of the matrimonial discord. According to her, the appellant had developed an extra-marital relationship with Meenakshi Baghel, a Shiksha Karmi, and owing to the pressure allegedly exerted upon him by the said lady to marry her, frequent quarrels started taking place between the parties. She has further stated that on 24.09.2019, the appellant, accompanied by his brother, came to the matrimonial home and pressurized her to agree to a divorce. She has also alleged that she was assaulted by the appellant in the presence of family members and her brother. There was nothing in the cross-examination of respondent No.1 by way of any admission or otherwise to show that any part of averments/allegation of the appellant was admitted. She rather stuck to her stand that she had nothing to do with respondent No.2 and further that appellant is having an affair with a divorced lady. Lengthy cross-examination was conducted with surely a large part consisting of irrelevant questions, but the veracity of the witnesses could not be shaken.

26. Allegation of extramarital affair of appellant with one divorced lady namely Meenakshi Baghel was set-up by respondent No.1 in her written statement and then reiterated in her statement recorded before the learned Family Court. However, no evidence was led in support of the allegation and the same remained unsubstantiated.

27. Upon an overall appreciation of the oral and documentary evidence, we find that the appellant has not brought on record any proof to show that respondent No.1 was having illicit relationship with respondent No.2 nor he has proved that they were living in adultery and only in order to make a valid ground in the divorce petition, these allegations were levelled against the respondent No.1 without any supporting material evidence. Thus, the evidence adduced by appellant is perfunctory and on that evidence no Court can come to a conclusion that the respondent No.1-wife is living in adultery.

28. So far as the ground raised by appellant that he is living separately from respondent No.1-wife for more than two years prior to the institution of petition, is concerned, mediation proceeding between the parties held on 13.9.2026 in the High Court Mediation Centre but the same was failed for the reason that appellant-husband is not ready to conditions of respondent wife. Further, appellant has levelled serious unsubstantiated aspersions against his wife assassinating her character to the

hilt. These circumstances create suspicion about bona fides of appellant as to whether he wants to live with respondent No.1. This apart, perusal of the pleadings in plaint and evidence of appeal indicates that due to allegation of extra-marital affair of respondent No.1 with respondent No.2, appellant was ousted by respondent No.2 from the house on 24.9.2019 and thereby deserted him. Section 13 (1) (i-b) of the Act of 1955 envisages that a decree of divorce can be granted on the ground that other party has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. Language used under Section 13 of the Act of 1955 is clear and unambiguous that before filing an application for divorce on the ground of desertion, period of desertion by either spouse should not be less than two years. From the pleadings made in plaint by appellant himself, it is evident that application for grant of divorce is filed within two years of desertion by respondent. Thus, in view of the statutory requirement contained in Section 13(1)(ib) of the Act, 1955, which mandates that desertion must have continued for a period of not less than two years immediately preceding the presentation of the petition, and in the facts and circumstances of the case, the ground of desertion was not available to the appellant for seeking a decree of divorce.

29. Coming to ground of ‘cruelty’ urged by appeal. Cruelty has not been defined under the Act of 1955. It is quite possible that a particular conduct may amount to cruelty in one case, but the same conduct necessarily may not amount to cruelty due to changes in various factors and circumstances. Therefore, it is essential for the appellant, who claims relief, to prove that a particular conduct or part of such conduct or behaviour resulted in cruelty to him/her. No prior assumptions can be made in such matters. This means that it cannot be assumed that a particular conduct will, under all circumstances, amount to cruelty, vis-a-vis the other party.

30. The "cruelty" has been interpreted by the Hon'ble Supreme Court in the case of **Dr. N.G. Dastane vs. Mrs. S. Dastana**, reported in **(1975) 2 SCC 326** wherein it has been laid down that the Court has to enquire, as to whether, the conduct charge as cruelty, is of such a character, as to cause in the mind of the petitioner, a reasonable apprehension that, it will be harmful or injurious for him to live with the respondent.

31. Hon’ble Supreme Court in its celebrated decision in case of Samar Ghosh vs Jaya Ghosh, reportedin (2007) 4 SCC 511, on the point of cruelty as a ground for a decree of divorce has dealt with the meaning of cruelty in contrast to some instances of human behavior which are relevant in dealing with cases of

cruelty and they shed light across a wide spectrum for guidance. Relevant portion of the judgment reads as under:-

> “38.Before we critically examine both the judgments in the light of settled law, it has become imperative to understand and comprehend the concept of cruelty.
>
> 39.Shorter Oxford Dictionary defines cruelty as the quality of being cruel; disposition of inflicting suffering; delight in or indifference to another's pain; mercilessness; hard-heartedness.

40.The term mental cruelty has been defined inBlack's Law Dictionary(8th Edn., 2004) as under:

> Mental cruelty. As a ground for divorce, one spouse's course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse.

41.The concept of cruelty has been summarised inHalsbury's Laws of England(Vol. 13, 4th Edn., para 1269) as under:

> The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. In cases where no violence is averred, it is undesirable to consider judicial pronouncements

> with a view to creating certain categories of acts or conduct as having or lacking the nature or quality which renders them capable or incapable in all circumstances of amounting to cruelty; for it is the effect of the conduct rather than its nature which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the impact of the personality and conduct of one spouse on the mind of the other, weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complainant's capacity for endurance and the extent to which that capacity is known to the other spouse. Malevolent intention is not essential to cruelty but it is an important element where it exists.

44.This Court has had an occasion to examine in detail the position of mental cruelty inN.G. Dastane (Dr.)v.S. Dastane[(1975) 2 SCC 326] , SCC at p. 337, para 30 and observed as under:

> The inquiry therefore has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent.

46.In Shobha Raniv.Madhukar Reddi[(1988) 1 SCC 105 : 1988 SCC (Cri) 60] this Court had an occasion to examine the concept of cruelty. The word cruelty has not been defined in the Hindu Marriage Act. It has been used in Section 13(1)(i-a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or 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, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, 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. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or willful ill-treatment.

99. 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.

100. Apart from this, 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. 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."

32. The Hon"ble Apex Court in **Joydeep Majumdar v. Bharti Jaiswal Majumdar, (2021) 3 SCC 742**, has been pleased to observe that while judging whether the conduct is cruel or not, what has to be seen is whether that conduct, which is sustained over a period of time, renders the life of the spouse so miserable as to make it unreasonable to make one live with the other. The conduct may take the form of abusive or humiliating treatment, causing mental pain and anguish, torturing the spouse, etc. The conduct complained of must be "grave" and "weighty" and trivial irritations and normal wear and tear of marriage would not constitute mental cruelty as a ground for divorce.

33. It is, thus, evident that while judging whether the conduct is cruel or not, what has to be seen is whether that conduct, which is sustained over a period of time, renders the life of the spouse so miserable as to make it unreasonable to make one live with the other. The conduct may take the form of abusive or humiliating treatment, causing mental pain and anguish, torturing the spouse, etc.

34. In case at hand, it is evident from pleadings in divorce petition that respondent No.1used to avoid establishing physical relations with him on the pretext of performing pooja or on account of her menstruation and further she used to threaten him with false implication in criminal cases. However, in his cross-examination, the appellant himself admitted that he continued to have physical relations with respondent No.1-wife even after alleged incident dated 18.10.2018, thereby indicating that they had physical relations both before and after the said incident. Such admission belies the appellant's allegation that respondent No.1-wife denied him conjugal relationship and thereby subjected him to mental cruelty The allegation of appellant with regard to threats etc. from his wife respondent No.1 remain unsubstantiated by cogent material. Although there is mention of same in a complaint submitted to the police, but it appears to have been devised to support the averments made in the complaint. In this

view of the matter, even the ground of cruelty is not available to the appellant.

35. Making unsubstantiated allegations of adultery against the spouse in the pleadings amounts to causing mental cruelty to the other spouse. In Vijaykumar Ramchandra Bhate v. Neela Vijay Kumar Bhate, (2003) 6 SCC 334, Hon‟ble Apex Court has observed by taking into consideration the allegations levelled by the husband in his written statement that his wife was "unchaste" and had indecent familiarity with a person outside wedlock and that his wife was having an extramarital affair. These allegations, given the context of an educated Indian woman, were held to constitute "cruelty" itself.

36. In case at hand, the appellant has failed to prove the allegation of alleged adultery between respondent Nos.1 & 2 as alleged in the petition and as such, it amounts to cruelty against respondent No.1. It is well settled principle that, the marriage is the trust between the male and female partner, if irresponsible allegations are leveled by the spouse against each other, it will be held that the unsubstantiated allegations of adultery amounts to cruelty.

37. Furthermore, a perusal of the record reveals that both the parties have levelled allegations of adultery against each other. Appellant has alleged that the respondent No.1 is involved in an extramarital affair with respondent No.2, whereas, respondent No.1 has alleged that the appellant had an affair with one

divorced lady namely Meenakshi Baghel who belongs to tribe community and working as a Shiksha Karmi.

38. It is a settled position of law that an appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves a re-hearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the trial court are open for re-consideration. Therefore, the first appellate court is required to address itself to all the issues and decide the case by giving reasons. The court of first appeal must record its findings only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. In case of J**agdish Singh vs Madhuri Devi** reported in **(2008) 10 SCC 497**, Hon'ble Supreme Court has observed thus:-

> "27. It is no doubt true that the High Court was exercising power as first appellate court and hence it was open to the Court to enter into not only questions of law but questions of fact as well. It is settled law that an appeal is a continuation of suit. An appeal thus is a re-hearing of the main matter and the appellate court can re-appraise, re- appreciate and review the entire evidence oral as well as documentary and can come to its own conclusion."

39. Learned family court on the basis of meticulous appreciation of evidence on record has recorded the finding that the appellant has failed to prove the grounds urged by him seeking dissolution of marriage. On re-examination/ re-appreciation and re-consideration of entire evidence on record, we do not find any illegality / infirmity in the impugned judgment and decree passed by the learned Family Court. We do not find any ground to differ with the conclusion arrived at by the family court.

40. So far as application filed under Order XLI Rule 27 of the Code of Civil Procedure is concerned, by way of this application filed before this Court appellant seeks to bring on record copy of FIR lodged by respondent No.1 on 13.12.2024 against appellant for the offences punishable under Sections 296, 351(2) and 3(5) of the Bharatiya Nyaya Sanhita, 2023, along with final report dated 17.12.2024; copy of order passed in CRMP No. 995 of 2025, whereby FIR lodged by respondent wife and consequential criminal proceedings were quashed, including the order of cognizance dated 24.12.2024.

41. From perusal of the above documents it is evident that FIR dated 13.12.2024 is registered with the allegations that appellant herein went to the house of respondent, abused her with filthy language and threatened her to vacate the house in which she is residing. Registration of FIR and consequent criminal proceedings was put to challenge by appellant and others by filing CrMP

No.995/2025 which was allowed by the Division Bench of this High Court and criminal proceedings including FIR was quashed on the ground that the dispute arises out of matrimonial discord and ownership/possession of immovable property and further considering that a civil suit in respect of said property is already pending consideration.

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

> "13…. It is true that it is open for anyone to file complaint or lodge prosecution for redressal for 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 of IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has meted on the husband….."

43. Admittedly, the appellant or any of the persons arrayed as accused in FIR registered on the complaint of respondent had not undergone criminal trial nor was there any adjudication resulting in their acquittal. Further, the allegations levelled by respondent-wife in the complaint were not adjudicated upon or found to be false by the High Court while passing the order of quashing criminal proceedings dated 13.02.2026. Criminal proceedings were quashed by the High Court having regard to the nature of the dispute, which arose out of matrimonial discord

and issues relating to ownership and possession of immovable property, particularly in view of pendency of a civil suit concerning the property involved in complaint case. Therefore, in view of decision of Hon'ble Supreme Court in case of **Narasimha Sastry (supra)**, merely because the respondent has lodged complaint based on which FIR was registered against the appellant, which was quashed at initial stage by the High Court, it cannot be said to be a valid ground for holding that such an act on the part of respondent-wife amounts to cruelty entitling the appellant for grant of decree of divorce.

44. Therefore, the documents sought to be brought on record by way of application under Order 41 Rule 27 of CPC are of no help to the appellant for establishing the ground of cruelty against respondent wife.

45. For the foregoing, the appeal being sans merit is liable to be and is hereby dismissed. No order as to costs. A decree be drawn-up accordingly.

Sd/-
(Parth Prateem Sahu)
Judge

Sd/-
(Sushma Sawant)
Judge

roshan/-