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HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 166 of 2024

{Arising out of judgment and decree dated 30.04.2024 passed in Civil Suit No.06-A/2023 by the Family Court, Mungeli, District Mungeli}

Ganesh Mrichande, S/o. Kapil Das Mrichande, Aged About 39 Years, R/o. Village Hardi, Nawagarh, District- Bemetara (C.G.) At Present R/o. New Police Line, District- Kabirdham, Chhattisgarh.

... Appellant

versus

Smt. Nileshwari, W/o. Ganesh Mrichande, Aged About 35 Years, R/o. New Police Line, District- Kabirdham (C.G.) At Present R/o. Lilwakapa, Tahsil And District- Mungeli, Chhattisgarh.

... Respondent

For Appellant	:	Mr. Anil S. Pandey, Advocate
For Respondent	:	Mr. Sumit Shrivastava, Advocate

Division Bench: -

Hon'ble Shri Parth Prateem Sahu and
Hon'ble Smt. Sushma Sawant, JJ.

Judgment On Board
(28/10/2026)

Sushma Sawant, J.

1. Invoking the appellate jurisdiction of this Court under Section 19 of the Family Courts Act, 1984, the **appellant/plaintiff husband Ganesh Mrichande** has preferred this appeal challenging the judgment & decree **dated 30.04.2024** passed by the Judge, Family Court, Mungeli in **Civil Suit No.06-A/2023** ***(Ganesh Mrichande v. Smt. Nileshwari)***, by which his application for grant of decree of divorce against respondent/defendant wife **Smt. Nileshwari**, has been rejected finding no merit.

2. The aforesaid challenge has been made on the following factual backdrop: -

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the civil suit before the Family Court.)

Factual Matrix

-:Admitted facts:-

3. It is undisputed fact and admitted on record that the marriage of the **appellant/plaintiff husband Ganesh Mrichande** with the **respondent/ defendant wife Smt. Nileshwari** was solemnized **on May, 2007** at Village- Lilwakapa, District Mungeli, in accordance with Hindu rites and customs.

-:Case of the Appellant/Plaintiff Husband before the Family Court:-

4. The case of the **appellant/plaintiff husband Ganesh Mrichande**, in brief, was that at the time of marriage, the appellant was serving in the Police Department as a Constable (Driver). When the respondent/defendant wife expressed her desire to pursue further studies, he borne the expenses of the respondent's education up to B.A. and P.G.D.C.A. It was further pleaded that, after obtaining higher education, she began refusing to perform household chores, underwent an abortion without his consent, starting going out wearing fashionable clothes and threatened to implicate him in false cases when he tried to persuade her to attend to household responsibilities. He further pleaded that the respondent/defendant-wife without informing him, would frequently leave the matrimonial home and go to her parental house and she had been living separately from him for approximately two years. He further pleaded that, despite his efforts to bring her back and resume matrimonial life, the respondent refused to return to the matrimonial home. On these allegations, the appellant sought dissolution of the marriage by a decree of divorce.

-:Written Statement of Respondent/Defendant- Wife before the Family Court:-

5. On the other hand, the **respondent/defendant wife Smt. Nileshwari** contested the suit by filing her written statement and

denied the allegations levelled against her. She contended that, shortly after the marriage, the appellant began subjecting her to physical and mental cruelty over trivial matters. She further alleged that the appellant used to beat her, threaten to kill her and, on one occasion, stopped speaking to her for approximately one and a half months. The respondent/defendant-wife pleaded that on 24.04.2019, while quarreling, the appellant/plaintiff-husband took her to her parental house at village, Lilawakapa, and left her there. She further averred that she was willing to reside with the appellant/plaintiff-husband and resume their matrimonial life, however, the appellant/plaintiff-husband subjected her to physical and mental cruelty and drove her out of the matrimonial home. On these grounds, the respondent/defendant-wife prayed for dismissal of the application filed by the appellant/plaintiff-husband seeking a decree of divorce.

-: Proceedings before the learned Family Court :-

6. The Family Court after appreciating oral and documentary evidence available on record, framed following issues and answered the issues as under:-

क्र.	वाद प्रश्न	निष्कर्ष
1.	क्या विवाह के अनुष्ठापन के पश्चात अनावेदिका ने, आवेदक के प्रति क्रूरता कारित किया ?	"प्रमाणित नहीं"

2.	क्या आवेदक, अनावेदिका के विरूद्ध विवाह-विच्छेद की डिकी प्राप्त करने का हकदार है ?	“नहीं"
3.	अन्य सहायता एवं व्यय ?	" आवेदन निरस्त कंडिका 26 के आदेशानुसार"

-:Details of evidence and documents available before the Family Court:-

-:Evidence led by the Appellant/Plaintiff- Ganesh Mrichande :-

7. Before the Family Court, the appellant/plaintiff- husband examined himself Ganesh Mrichande **(A.W.-1)** and also examined Naresh Kumar **(A.W.-.2)** and Narendra Dhritlahre **(A.W.-3)** as witnesses in support of his pleadings. The appellant/plaintiff husband has exhibited the documents **Ex.A-1 to Ex.A-6**.

Evidence led by the Respondent/Defendant- Smt. Nileshwari :-

8. The respondent/defendant-wife herself Smt. Nileshwari examined as **(N.A.W.-1)** and also examined Padan Kumar **(N.A.W.-2)**. The respondent/defendant- wife has produced documents **Ex.N.A.-1 to Ex.N.A.-13** in support of her case.

-:Judgment of the trial Court:-

9. Upon completion of the trial, the learned Family Court, by its **judgment and decree dated 30.04.2024**, dismissed the

appellant/plaintiff's suit. Being aggrieved by the same, the present appeal has been preferred on the following grounds:-

(i) That, the impugned judgment dated 30.04.2024 is perverse, illegal, erroneous and contrary to the facts and circumstances of the case as well as evidence available on record, therefore, it is liable to be quashed to the extent of rejecting prayer for decree of divorce.

(ii). That, while examining himself, the appellant has reiterated the plaint allegations and has made categorical statement that the respondent subjected him to cruelty.

(iii) That, the learned Family Court has failed to appreciate that the respondent has deserted the appellant without any reasonable cause and deprived him from conjugal relationship since more than 4 years.

(iv) That, during pendency of divorce petition, the learned Family Court conducted counseling between the appellant and respondent and during course of counseling, the appellant was agreed to take back the respondent, but the respondent has refused to live with the appellant.

(v) That, the learned Family Court has failed to appreciate that the respondent was torturing the appellant both mentally and physically.

(vi) That, the learned Family Court has failed to appreciate that the appellant and respondent are living separately since long and there is

no physical relation between them since long, therefore, the decree of divorce ought to have been given in favour of the appellant.

(vii) That, the learned Family Court has failed to appreciate that there is no cohabitation between the parties, as the respondent has deserted the appellant and living separately without any reasonable cause, therefore, the learned Family Court ought to have granted decree of divorce in favour of the appellant.

(viii) That, the learned Family Court has failed to appreciate that the appellant has made efforts to his level best, but the respondent did not return into his house.

(ix) That, the learned Family Court has failed to appreciate that the respondent has prosecuted the appellant and his family members in false case.

(x) That, the learned Family Court failed to appreciate that there is no chance of reconciliation between the appellant and the respondent and only after resorting to all choices and making all efforts, the appellant had filed the application for grant of divorce.

(xi) That, the learned Family Court failed to appreciate that the appellant is continuously being harassed, tortured and subjected to cruelty by the respondent.

-:Proceedings before the Appellate Court:-

10. Both the parties were heard on this appeal. The evidence and documents available in the record of the trial Court have been perused.

-:Questions to be considered in this Appeal:-

11. In order to dispose of this First Appeal, the following questions are to be considered:-

(i) Whether the Family Court is justified in rejecting the application filed by the Appellant/plaintiff Husband for grant of decree of divorce on the ground of cruelty and desertion ?

(ii) Whether the Appellant/plaintiff husband is entitled for decree of divorce as claimed?

-:Argument of the Appellant/Plaintiff- Husband Ganesh Mrichande:-

12. Learned counsel for the appellant/plaintiff husband submits that the learned Family Court has erred in dismissing the petition under Section 13 of the Hindu Marriage Act, 1955, without properly appreciating the pleadings and evidence adduced by the appellant/ plaintiff husband. He further submits that the testimonies of the appellant/plaintiff husband **(A.W.-1)** and witnesses Naresh Kumar **(A.W.-2)** and Narendra Dhritlahre **(A.W.-3)** are consistent with the

pleadings and establishes the alleged cruelty committed by the respondent/defendant wife.

13. Learned counsel for the appellant/plaintiff-husband also relied upon the principles laid down by the Hon'ble Supreme Court in Samar **Ghosh v. Jaya Ghosh (2007) 4 SCC 511, V. Bhagat v. D. Bhagat (Mrs.) (1994)1 SCC 337** and **Naveen Kohli v. Neelu Kohli (2006)4 SCC 5588** regarding the determination of **"cruelty"** in matrimonial proceeding. Accordingly, he prays that the impugned judgment dated 30.04.2024 be set aside and the appeal be allowed.

-:Argument of the Respondent/Defendant-
Smt. Nileshwari:-

14. Learned counsel for the **respondent/defendant wife** submits that the impugned judgment does not suffer from any illegality or perversity. The learned Family Court, after appreciating the pleadings and evidence on record, has rightly dismissed the petition for divorce, as the appellant/plaintiff husband failed to establish the grounds of cruelty and desertion. Accordingly, he prays for dismissal of the appeal.

-:Analysis of the Appellate Court:-

Points for determination No (i) and (ii).

15. To avoid repetition of the evidence, both the questions are taken up together for consideration.

16. The appellant/plaintiff husband has instituted the proceeding on the ground of **"cruelty"**. Accordingly, it would be appropriate to refer the relevant provision of Section 13(1)(ia) of the Hindu Marriage Act, 1955, which reads as follows :-

> " **13 Divorce.** --(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party--
>
> (i) xxx.....xxx..... xxx.....
>
> (i-a) has, after the solemnization of the marriage, treated the petitioner with **cruelty**"

17. The Hon'ble Supreme Court, having considered the principles laid down in **V. Bhagat v. D. Bhagat, (1994) 1 SCC 337** and **Naveen Kohli v. Neelu Kohli, (2006) 4 SCC 558**, elaborated upon the concept of "mental cruelty" in **Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511**. In paragraph 101 of the said judgment, the Supreme Court enumerated certain illustrative instances of human behaviour which may be relevant in determining whether a case of mental cruelty is made out. The relevant observations made therein are reproduced as under:

> "**101.** No uniform standard can ever be laid down for guidance, yet it is deemed 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; but 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 sterilization 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."

18. The Hon'ble Supreme Court in the matter of **V.Bhagat v. D. Bhagat (Mrs.), (1994) 1 SCC 337,** held in paragraph 16 as under :

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

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

19. Similarly, in the matter of **Naveen Kohli v. Neelu Kohli, (2006) 4 SCC 558**, while explaining the concept of cruelty in matrimonial relations, Hon'ble Supreme Court observed in **paragraphs 51 and 52** that cruelty has to be understood in its ordinary sense and that even unintentional but inexcusable conduct may constitute cruelty. The Court further held that cruelty must be distinguished from the ordinary wear and tear of family life and cannot be determined merely on the basis of the sensitivity of the complaining spouse. The nature, gravity and cumulative effect of the conduct complained of have to be assessed in the context of the matrimonial relationship. Para 51 & 52 reads as under :

> "**51.** The word "cruelty" has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case. There may be instances of cruelty by unintentional but inexcusable conduct of any party. The cruel treatment may also result from the cultural conflict between the parties. Mental

> cruelty can be caused by a party when the other spouse levels an allegation that the petitioner is a mental patient, or that he requires expert psychological treatment to restore his mental health, that he is suffering from paranoid disorder and mental hallucinations, and to crown it all, to allege that he and all the members of his family are a bunch of lunatics. The allegation that members of the petitioner's family are lunatics and that a streak of insanity runs through his entire family is also an act of mental cruelty.
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> **52.** This Court in *Savitri Pandey* v. *Prem Chandra Pandey* [(2002) 2 SCC 73] stated that mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other.

20. In the light of the principles laid down in the aforesaid judicial precedents, it would now be appropriate to examine the facts and evidence available on record to determine whether the conduct of the respondent/wife amounts to mental cruelty. A perusal of the documents exhibited by the appellant/plaintiff as **Ex.N.-1** to **Ex.N.-6** and by the respondent/defendant as **Ex.N.A.-1** to **Ex.N.A.-13**

indicates that both parties had been making complaints against each other before the Police Station as well as the Superintendent of Police. Proceedings under **Section 125** of the **Cr.P.C**. were also initiated, wherein an order for maintenance was passed. Further, on the basis of a report lodged by the respondent/defendant, a criminal case bearing **Crime No.46/2020** was registered at Police Station **Kawardha**, in which the appellant/plaintiff though was acquitted u/s. 498-A of I.P.C. but was convicted u/s. 323 of I.P.C. and sentenced to undergo imprisonment Till Rising Court and pay a fine of Rs.1,000/-. Thus, the aforesaid material does indicate that disputes and differences existed between the parties and their matrimonial relationship was not cordial.

21. However, the mere existence of such disputes, complaints and legal proceedings, by itself, would not be sufficient to establish mental cruelty. The specific allegations made by the appellant/plaintiff in his oral evidence, as well as the evidence adduced in support thereof, therefore, require consideration.

22. The appellant/plaintiff **Ganesh Mrichande (A.W.-1)**, his brother **Naresh (A.W.-2)** and his brother-in-law **Narendra (A.W.-3)** have mainly alleged that, after becoming educated, the respondent/ defendant became wayward, started refusing to perform household work, got her hair cut and adopted a particular hairstyle, and began wearing fashionable clothes. However, the respondent/ defendant **Nileshwari (N.A.W.-1)** and her father **Padam Kumar (N.A.W.-2)** have denied these allegations.

23. On an overall appreciation of the evidence, the version of the respondent/defendant appears more worthy of acceptance than that of the appellant/plaintiff. The very nature of the allegations indicates that the appellant/plaintiff was objecting to the respondent's hairstyle, choice of clothes and manner of dressing. It appears that differences arose between the parties on these issues, which eventually led to their living separately. In the circumstances, the conduct attributed to the respondent/defendant does not appear to be such as would constitute mental cruelty. Rather, the appellant/plaintiff appears to have been more responsible for aggravating the differences between the parties. It is also relevant that, in the criminal proceedings arising out of the incident of assault upon the respondent/defendant, the appellant/plaintiff was convicted.

24. Another important aspect of the matter is that the learned Family Court also considered the possibility of the parties resuming their matrimonial relationship. In the concluding paragraphs of his cross-examination, the appellant/plaintiff himself stated that he was ready to take the respondent/defendant back and live with her. Thus, no error or infirmity is found in the conclusion drawn by the learned Family Court in this regard.

25. Although it has been contended that, at present, there is no possibility of the parties living together, the Court is required to examine the evidence available on record within the parameters of

Section 13(1)(ia) of the Hindu Marriage Act. A decision independently taken by the parties that they can no longer reside together cannot, by itself, be treated as proof of cruelty. Even the appellant/plaintiff's own witness, **Narendra (A.W.-3)**, has referred to quarrels and differences **"Nok Jhonk"** between the parties.

26. However, upon consideration of the entire evidence, there is no material on record to establish that the conduct of the respondent/defendant towards the appellant/plaintiff was of such a nature or degree as to constitute mental cruelty within the meaning explained by the Hon'ble Supreme Court in **Samar Ghosh v. Jaya Ghosh (supra)**, or that it rendered it unreasonable to expect the appellant/plaintiff to continue the matrimonial relationship. Consequently, the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act is not established.

27. In view of the foregoing discussion, this Court finds that the **appellant/plaintiff husband Ganesh Mrichande** has failed to establish the ground of "cruelty" pleaded by him. The learned Family Court has properly appreciated the evidence on record, and no illegality or perversity is found in its conclusion warranting interference by this Court.

-:Final Conclusion:-

28. In view of the foregoing discussion, this Court finds that the appellant/plaintiff husband **Ganesh Mrichande** has failed to

establish the ground of **"cruelty"** as contemplated under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

29. The learned Family Court has properly appreciated the pleadings and evidence on record, and the impugned judgment and decree do not suffer from any illegality or perversity warranting interference by this Court. Consequently, the appeal, being devoid of merit, is hereby **dismissed**.

30. The impugned judgment and decree passed by the learned Family Court are affirmed. The appellant/plaintiff husband shall bear the costs of the appeal. A decree be drawn up accordingly.

Sd/-
(Parth Prateem Sahu)
Judge

Sd/-
(Sushma Sawant)
Judge

Ashok