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FA-2235-2025

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH

ON THE 15th OF JULY, 2026FIRST APPEAL No. 2235 of 2025

P K

Versus

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Appearance:

Shri Somesh Shukla - Advocate for the appellant.

Shri Aneesh Trivedi, learned counsel for the respondent.

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ORDER

Per. Justice Vivek Agarwal

This appeal is filed by the husband of the respondent being aggrieved of the judgment and decree dated 3.12.2025 passed by learned Principal Judge, Family Court, Khandwa in Hindu Marriage Act Case No. 122 of 2023.

2. Brief facts of the present case are that the respondent herein Wife had filed an application before the Family Court, Khandwa on 14.6.2023 under Section 13 of the Hindu Marriage Act seeking a decree of dissolution of marriage which was performed on 21.6.2017 at Arya Samaj Mandir.

3. It is an admitted fact that the marriage between the appellant and respondent wife was love marriage. It was performed against the wishes of



two families. It is also not in dispute that appellant had sought some time to convince his family members about the factum of marriage and to get acceptance for the respondent wife in her matrimonial home. Allegation is that wife was deserted though she tried her level best to adjust but parents of the appellant did not accept her and in the second instance when respondent wife was taken to her matrimonial home appellant started misbehaving with her and started consuming alcohol.

4. It is alleged that there were frequent instances of abuse and maarpeet. Allegation is that appellant used to try to perform unnatural sex with the wife and, therefore, allegations were made against each other. It is submitted that the decree of divorce has been granted on the ground of cruelty whereas two grounds were taken,. viz., that of desertion and cruelty but the trial Court has not accepted the ground of desertion and has granted decree only on the ground of cruelty. It is also submitted by Shri Somesh Shukla, Advocate for the appellant that this ground of cruelty is not made out from the evidence available on record and, therefore, decree of divorce be set aside. It is also submitted that learned trial Court has interestingly taken one of the circumstances of not getting executed the decree under Section 9 of the Hindu Marriage Act which was granted in favour of the present appellant XXX by the trial Court, of his intention reflecting cruelty and irretrievable breakdown of marriage. It is submitted that non-execution of a decree of restitution of conjugal rights as was obtained by the husband cannot be construed as a circumstance pointing out towards cruelty and, therefore, trial Court erred in granting a decree of divorce on such



insignificant instance.

5. Shri Aneesh Trivedi, learned counsel for the wife submits that after marriage victim wife was subjected to rape. A criminal case was registered. She sought help from her husband, i.e., the appellant but no help was extended. She was literally dumped probably because she belongs to different community.

6. It is submitted that respondent wife was forced to live with her parents at her parental house and during that period no attention was paid by the appellant husband. Thus, it is submitted that appellant husband by not taking care of the interest of the wife and leaving her in the parental house is an instance of cruelty apart from she being subjected to constant abuses and maarpit.

7. After hearing learned counsel for the parties and on going through the scanned Lower Court record available on E.R.P. respondent wife examined herself as P.W.-1. She stated that her marriage was performed on 21.6.2017 at Arya Samaj Mandir, Bhagirathpura, Indore. Since the parents of the appellant were not agreeable to marriage, they stayed at a rented house for about a week on the ground that the parents of the appellant were not aggregable to the marriage but later on also he could not convince his parents as a result of which she was forced to live in her parental house. After her one week stay at her parental house appellant had taken her but she was again kept in a rented house where appellant used to come drunk, abused and beat her. He used to repent that after marrying the respondent wife he had lost touch with his family. These instances of



abusing and beating continued on day to day basis when respondent Wife XXX had called her brother who came and took her to her parental house. There was no change in the attitude of the appellant and in the meanwhile victim was subjected to rape. She faced unnecessary allegations in the hands of the appellant causing physical and mental deterioration and mental depression. It has also come on record in the evidence that dowry items like T.V., Fridge, Cooler, Almirah, Bullet Motorcycle and jewelry items were demanded by the appellant. It has also come on record that appellant had illicit relationship with another woman for which photographs were produced before the trial Court but they have not been accepted. It has also come on record that wife was residing separately since 2017. In cross-examination counsel for the appellant accepted in admission that he was already married to one R and no documents were produced to show that there was judicial separation or divorce obtained by the appellant from R. Though it has come on record that no report was lodged in regard to demand of dowry but it is also not disputed that appellant was in relationship with another woman and it is also not denied through any part of cross-examination that wife levelled false allegation in regard to her harassment in the form of constant abuses and maarpeet. It is also not in dispute that no helping hand was extended to the victim wife when she was subjected to rape. It is also come on record as recorded by the trial Court that despite an application under Section 9 of Hindu Marriage Act being allowed by the trial Court appellant husband never made any attempt to keep his wife with him. Thus, it is evident that aspect of cruelty both mental as



well as physical stands proved and that being proved through the evidence of prosecution witnesses.

8. Wife has also examined P.W.-2 her father and P.W.-3 her uncle who have all proved the aspect of cruelty and demand of dowry which has remained unrebutted in cross-examination and in their cross-examination it has come on record that husband had married R as per customs of their community and that part has not been rebutted. This part of the evidence of P.W.-3 has remained unrebutted and in fact in cross-examination there is a suggestion to this effect by the learned counsel for the appellant, it has been accepted by this witness. Therefore, trial Court erred in fact in not accepting the fact of desertion and cruelty because after having a valid and subsisting marriage marrying another woman as admitted by the appellant also amounts to cruelty and desertion.

9. It has also come on record that the appellant has examined himself and did not produce any independent witnesses or family members to corroborate or rebut the evidence produced by the side of the applicant Wife XXX.

10. In **Samar Ghosh v. Jaya Ghosh** [(2007) 4 SCC 511] Hon'ble Supreme Court has held that "S.13(1)(i-a) - "Mental cruelty" as ground of divorce - Nature and scope - Non-susceptibility to comprehensive definition - Approach to be followed by court in determining question of mental cruelty - Held, there cannot be any comprehensive definition of "mental cruelty" within which all kinds of cases of mental cruelty can be covered - No court



should even attempt to give a comprehensive definition of mental cruelty - Reasons therefor, discussed - 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 the various factors mentioned herein into consideration.

11. It is evident that applicant Wife XXX has proved her case beyond reasonable doubt by adducing cogent evidence and in fact counsel for appellant gave such suggestions in cross-examination which amounted to acceptance of the factum of marriage performed by the appellant (husband) with R and in view of such tardy cross-examination, we are not left with any option but to accept that not only the wife was subjected to cruelty but was also subjected to desertion and, therefore, when tested impugned judgment and decree of divorce cannot be faulted with.

12. Appeal fails and is hereby dismissed.

(VIVEK AGARWAL)
JUDGE

(AVANINDRA KUMAR SINGH)
JUDGE

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