



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Civil Miscellaneous Appeal No. 5015/2018
CNR: RJHC020986012018 | URN: CMA / 7828U / 2018



-----Appellant

Versus

-----Respondent

For Appellant(s) : Mr. Samarth Sharma
For Respondent(s) : Mr. Rajneesh Gupta with
Mr. Rahul Sharma

**HON'BLE MR. JUSTICE INDERJEET SINGH
HON'BLE MR. JUSTICE SANDEEP TANEJA**

Order

01/09/2026

1. This appeal under Section 28 of the Hindu Marriage Act, 1955 (hereinafter to be referred as 'Act of 1955') has been filed by the appellant (hereinafter to be referred as "husband") against the judgment and decree dated 12.09.2018 passed by the learned Additional District Judge No.1, Kishangarhbas (Alwar) (hereinafter to be referred as "the learned Trial Court"), whereby the learned Trial Court dismissed the application under Section 13 of the Act of 1955 filed on behalf of the husband.
2. Brief facts of the case are that the husband filed an application under Section 13 of the Act of 1955 before the learned Trial Court stating therein that the marriage between husband and wife was solemnized on 29.04.2004 as per Hindu Rites and



Customs and out of their wedlock one daughter was born. It was further stated in the application by the husband that the behaviour of the wife from the very beginning of their marriage was cruel with the husband and his family members. It was further stated that the wife threatened the husband for committing suicide and involving him in false criminal case. It was further stated that the wife herself deserted the husband without any justifiable reason and also lodged a criminal case against the husband for the offences under Sections 498-A & 406 of IPC. It was further stated that the wife has denied co-habitation many a times, lastly, prayed for granting the decree of divorce.

3. The wife submitted reply to the said application before the learned Trial Court and denied the allegations levelled by the husband and stated in the reply that the husband was in the habit of beating her and the husband and his family members used to demand dowry from her. She further stated that the husband had thrown her out from the matrimonial home without any reason and she is ready and willing to live with the husband, lastly, prayed for dismissal of the application.

4. On the basis of the pleadings of the parties, the learned Trial Court framed the following issues:-

- "1- आया, विवाह के पश्चात् अप्रार्थिया का व्यवहार प्रार्थी व उसके परिजनों के प्रति क्रूरतापूर्ण रहने के आधार पर प्रार्थी, अप्रार्थिया के साथ दिनांक 29.04.2004 को ग्राम गोठड़ा तहसील रेवाड़ी (हरियाणा) में संपन्न हुए अपने विवाह को विघटित करवाकर अपने पक्ष में विवाह विच्छेद की डिक्री प्राप्त करने का अधिकारी है?
- 2- आया, अप्रार्थिया ने लगभग दो साल से अधिक समय से प्रार्थी का बिना किसी युक्तियुक्त कारण के परित्याग कर रखा है? यदि हाँ तो इसका प्रभाव?
- 3- अनुतोष?"



5. The husband in support of his case submitted his own evidence as AW-1 and of AW-2 to AW-4 and also submitted the documentary evidence as Ex.1 to Ex.10. On the other side, the wife submitted her own evidence as NAW-1 and of NAW-2 to NAW-4 and no documentary evidence was produced on behalf of the wife before the learned Trial Court.

6. The learned Trial Court after recording the evidence and hearing both the parties dismissed the application under Section 13 of the Act of 1955 filed by the husband vide its judgment and decree dated 12.09.2018. Being aggrieved by the judgment and decree dated 12.09.2018 passed by the learned Trial Court, the husband has filed the present appeal before this Court.

7. Learned counsel for the husband submits that the wife had denied co-habitation since the year 2005 and she had also lodged a false criminal case for the offences under Sections 498-A & 406 of IPC with regard to demand of dowry against the husband, in which, during pendency of the matter before the learned Trial Court, the husband was acquitted by the learned Judicial Magistrate, Rewari vide its judgment dated 02.09.2015. A copy of the said judgment dated 02.09.2015 was also produced before the learned Trial Court as Ex.4. He further submits that the wife in her statement recorded during the pendency of the proceedings under Section 125 Cr.P.C. admitted that there is no physical relationship between the husband and the wife since the year 2005. He further submits that both the husband and the wife are living separately since the year 2010 and there is no chance of their re-union. Lastly, prayed for allowing the appeal.



8. Learned counsel appearing on behalf of the wife has opposed the submissions made by the learned counsel for the husband and submits that the finding recorded by the learned Family Court is based on sound appreciation of evidence and the same does not require any interference by this Court. He further submits that the husband cannot argue the appeal beyond the grounds mentioned in the original application. He further submits that the wife is always ready for living with the husband and on account of ill-behaviour of the husband and demand of dowry, there was no option with the wife except to lodge a criminal case against the husband, lastly, prayed for dismissal of the appeal.

9. In support of his contention, learned counsel for the wife relied upon the judgment passed by the Hon'ble Supreme Court in the matter of **Bondar Singh and Ors. Vs. Nihal Singh & Ors. (Civil Appeal No.7579/1999)** decided on **04.03.2003**.

10. Heard learned counsel for the parties and perused the material available on record.

11. The point of cruelty has been considered by the Hon'ble Supreme Court at length in catena of judgments and in a recent judgment delivered in the matter of **Rakesh Raman Vs. Kavita** reported in **2023 17 SCC 433**, wherein in paras No.17 and 18, it was held as under:-

"17. Cruelty has not been defined under the Act. All the same, the context where it has been used, which is as a ground for dissolution of a marriage would show that it has to be seen as a 'human conduct' and 'behavior' in a matrimonial relationship. While dealing in the case of Samar Ghosh (supra) this Court opined that cruelty can be physical as well as mental:-





" 46...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.

Cruelty can be even unintentional:-

...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 wilful ill- treatment."

This Court though did ultimately give certain illustrations of mental cruelty. Some of these are as follows:

- (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.
- (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. (emphasis supplied)





18. We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1) (ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock."

12. The Hon'ble Supreme Court in the matter of **Narasimha Sastry Vs. Suneela Rani** reported in **2020 (18) SCC 247** wherein para No.13, it is held as under:-

"13. In the present case, the prosecution is launched by the respondent against the appellant 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? made the following observation in para 15: (Rani Narsimha Sastry case, 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."

13. The Hon'ble Supreme Court in the matter of **Parveen Mehta Vs. Inderjit Mehta** reported in **2002 (5) SCC 706** in para No.16, has held as under:-

"16. In the case of Savitri Pandey vs. Prem Chandra Pandey this Court construing the question of 'cruelty' as a ground of divorce under Section 13(1)(i-a) of the Act made the following observations :

"6. Treating the petitioner with cruelty is a ground for divorce under Section 13(1)(i-a) of the Act. Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. 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. In the instant case both the trial court as well as the High Court have found on facts that the wife had failed to prove the allegations of cruelty attributed to the respondent.

Concurrent findings of fact arrived at by the courts cannot be disturbed by this Court in exercise of powers under Article 136 of the Constitution of India. Otherwise also the averments made in the petition and the evidence led in support thereof clearly show that the allegations, even if held to have been proved, would only show the sensitivity of the appellant with respect to the conduct of the respondent which cannot be termed more than ordinary wear and tear of the family life."

15. We have gone through the judgment and decree dated 12.09.2018 passed by the learned Trial Court and the evidence submitted by the parties before it.

16. We have gone through the statement of the wife recorded before the learned Trial Court, where in her cross-examination, she has admitted that their marriage was solemnized in the year 2004 and after one year of their marriage, there was no co-habitation between them.

17. We have also considered the statement of the husband recorded before the learned Trial Court, in which, he has specifically stated that the wife has denied co-habitation with



him after the year 2005. In our considered view, denial of co-habitation by the wife amounts to cruelty with the husband.

18. We have also considered the document Ex.4 produced by the husband before the learned Trial Court i.e. judgment dated 02.09.2015 passed by the Court, whereby, the husband has been acquitted by the Court for the offences under Sections 498-A & 406 of IPC. In our considered view, lodging of false criminal case against the husband by the wife amounts to cruelty with the husband.

19. We have also considered the fact that the husband and the wife both are living separately since the year 2010 and there is no chance of their re-union at this point of time. In our considered view, asking both them to live together at this point of time amounts to cruelty to both of them, as there is no chance of their re-union.

20. In view of the above discussion, the finding recorded by the learned Trial Court on issue No.1 is perverse and the same is accordingly set-aside. Issue No.1 is decided in favour of the husband.

21. In that view of the matter, the appeal filed on behalf of the husband is accordingly allowed. The judgment and decree dated 12.09.2018 passed by the learned Trial Court is set aside. The marriage solemnized between the parties on 29.04.2004 stands dissolved. Office is directed to prepare the decree accordingly.

22. Record of the learned Court below be sent back.

(SANDEEP TANEJA),J

(INDERJEET SINGH),J

93/Upendra Pratap Singh

