

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

HEARD ON THE 29th OF MARCH, 2022

JUDGMENT PASSED ON THE 12th OF APRIL, 2022

FIRST APPEAL No. 905 of 2014

Between:-

PARAG PANDIT

.....APPELLANT

(BY SHRI VINAY PURANIK, LEARNED COUNSEL FOR THE APPELLANT(HUSBAND)).

AND

SMT.SADHANA

.....RESPONDENTS

(BY SHRI VIBHASH KHEDEKAR, LEARNED COUNSEL FOR THE RESPONDENT (WIFE)).

PER :- JUSTICE VIVEK RUISA

J U D G M E N T

The appellant / 'Husband' filed this appeal under Section 19 of the Family court Act, 1984 against the judgment and decree dated 07.05.2014 passed in H.M.A. No.622/2012, whereby the learned Family Court declined to grant the decree of divorce.

The facts of the case in short are as under: -

(1) The marriage of appellant/husband and respondent/ ' Wife' was solemnized on 19.11.1999 under the Hindu ritual and customs. Out of the said wedlock, the respondent/wife gave birth to a son on 04.05.2001 named Sujal, who is at present aged about 21 years and residing with the respondent/wife.

(2) After the marriage, they started living in Indore for 5-6 months

and during this period differences arose between them, she went to her parent's house in Ujjain. The appellant/husband jumped to Family Court by filing a petition under Section 13 (1) (1-A) of Hindu Marriage Act on 13.10.2000 seeking divorce and the said case was registered as HMA No.414/2000. The respondent/wife applied Section 125 of Cr.P.C. on 09.12.2000 and lodged an FIR for the offence punishable under Section 498-A of I.P.C. on 17.11.2000. She also filed an application under section 9 of the Hindu Marriage Act, 1955 seeking restitution of conjugal rights on 13.12.2000. Vide judgment dated 30.11.2001, the appellant/husband has been acquitted for the offence punishable under Section 498-A of I.P.C.

(3) During the pendency of the aforesaid proceedings, a compromise arrived between the parties on 03.01.2002, the appellant/husband brought the respondent/wife into his house in Indore. They lived together for some time. Thereafter, the respondent/wife went back to her parents' house. The appellant/husband again approached the Family court on 23.06.2008 by filing a petition under Section 13 of the Hindu Marriage Act which was registered as HMA No.445/2008. Again on 19.05.2010, a compromise arrived between them and they decided to live together.

(4) They lived together for some time, then again respondent/wife went back to Ujjain as her son wanted to live in Ujjain and thereafter, she got admitted him to school in Ujjain. In the month of March 2011, again the appellant/husband brought back to respondent/wife in his house. According to the husband, the behaviour of his wife towards his father-in-law and mother-in-law was not good, he had to take a rented house in Vaibhav Nagar and started living with her there in November 2011. He made all efforts to keep her happy but no improvement was shown which caused mental cruelty to him. He lost his mental imbalance and had to leave his Job too in the Month of December 2011. Finally, on 05.04.2012, the respondent/wife called her father, mother and brother and went back to Ujjain along with luggage and son. The husband wrote a letter dated 22.04.2012 and requested her to

come back and discharge the marital obligation. She gave a reply dated 05.05.2012 and put a condition which was not possible to fulfill. Due to losing employment, the appellant/husband suffered financial crunches in his life. He has suffered mental agony and cruelly meted him to his wife and had no option but to approach Family court again by filing the present petition under Section 13 of the Hindu Marriage Act on 14.07.2012.

(5) Notices were issued. The respondent/wife has appeared in the proceedings. Both were sent to *Paramarsh Kendra* for mediation but the appellant/husband declined to keep her as respondent/ wife. The respondent/wife filed a reply denying the allegations made in the petition and made counter-allegations against the husband. According to the respondent/wife, on 05.04.2012, they both shifted to the house situated Sarvasampan Nagar where all other flats were vacant, there was no guard, therefore under the fear to live alone, she went back to her parents' house. She has never misbehaved or committed any cruelty to the appellant/husband. The Father of the appellant has got published in the Newspaper that his daughter-in-law is a mentally sick lady due to which she suffered lots of embracement. Even then she is ready to forgive and still ready to live with him after completion of academic session 2012-13. On the basis of pleading, the Family Court framed the following issue:-

वाद विषय	
आज दिनांक 20/02/2013 को निर्मित किये गये	
1:-	क्या अनावेदिका द्वारा आवेदक के साथ विवाह के बाद शारीरिक एवं मानसिक रूप से प्रताड़ित कर कुरतापूर्ण व्यवहार किया।
2:-	अनुतोष एवं व्यय?

(6) In support of his claim, the appellant/husband examined himself as PW-1. The husband has also examined neighbours Ravi Saxena (PW-2) and Arun Kumar Mishra (PW-3) and got exhibited six documents. The wife examined herself as DW-1, her father Jaynarayan (DW-2) mother Shakuntala (PW-3) and son Sujal (DW-4).

(7) After evaluating the evidence that came on record, the learned Family Court has held that the matrimonial dispute between

appellant/husband and respondent/wife was on petty issues, cannot be termed as cruelty, hence, appellant/husband is not entitled to dissolution of marriage. Hence, present first appeal before this Court.

(8) In order to make efforts to resolve the dispute between the parties by way of counselling, vide order dated 24.03.2022, this Court has directed both the parties to remain present before this Court. The respondent/wife is present with her son and has shown her willingness to live with the appellant/husband. The appellant/husband has shown his adamant attitude and straightway declined to take her back. Hence, we heard the learned counsel of the parties finally.

Submissions of the appellant/ Husband....

(9) Learned counsel for the appellant/husband argued that apart from the merit of the case, the appellant/husband and respondent/wife are living separately since 2012 i.e. almost 10 years and there is no cohabitation between them during this year. Despite all efforts, they could not live together for a longer period. The appellant/husband twice compromised with the respondent/wife but she did not change her behaviour towards the husband, father-in-law and mother-in-law, therefore, there is no possibility rather there is no hope for their living together for the rest of their life. Hence, the appellant/husband is entitled to a decree of divorce. It is further submitted by the learned counsel that the appellant was subjected to mental cruelty due to the behavior of the respondent/wife. She tried to implicate the appellant falsely for the offence punishable under Section 498-A of I.P.C. in which he has been acquitted. The appellant/husband twice compromised with the respondent/wife. In support of his contention, he has placed reliance on the judgment passed by this Court as well as the Apex Court in the case of *Vibha Shukla Vs. Kailash Dwivedi (F.A. No.547/2019 decided on 03.01.2022)*, *Jawaharlal Vs.Smt. Preeti (FA No.23/2010 dated 03.02.2022)*, *Samar Ghose V. Jaya Ghosh (Civil Appeal No.151/2004 dated 26.03.2007)*, *Anuradha PrafullVaidh Vs. Prafull Vaidh (FA No.490/2005 dated 27.06.2007)*, *K. Shrinivas Rao Vs.D.A. Deepa reported (2013) 5 SCC 226*, *Reena Jaggi Vs. Randeep*

Jaggi I (2018) DMC 102 (DB) (MP), A Jayachandra Vs. Aneel Kaur (Criminal Appeal Nos.7763-7764 of 2004 dated 02.12.2004), Vishwanath Vs. Sau Sarla Vishwanath Agrawal (Civil Appeal No.4905/2012).

Submissions of the respondent/ wife....

(10) Learned counsel for the respondent/wife submits that decree of divorce cannot be granted merely by asking by husband or wife as the case may be. The appellant/husband approached the Family Court seeking decree of divorce, therefore, the burden was upon him to prove allegations levelled against his wife within the scope of Section 13(1) of the Hindu Marriage Act to get a decree of divorce. The appellant/husband has failed to establish physical or mental cruelty by leading cogent evidence, therefore, the Family Court has rightly declined the decree of divorce. Now the appellant/husband and respondent/wife reached the advanced age of life, they need a companion for the remaining of their life. The appellant/husband, who is the father of a son aged about 22 years cannot run away from liability to settle his son in the life. The respondent/wife has taken all the care and educated him alone being a single mother. The divorce, at this stage, will keep the future of the son in dark. Merely long separation cannot be solely ground for divorce when there is hope they can come together.

We have heard learned counsel for the parties and perused the record.

Findings

(11) The main grievance of the appellant/husband is that whenever the respondent/wife lived in the matrimonial house, she used to pressurize to live with him separately from his parents. For 13 years of marriage, she lived only one and a half month with him. During this period, her behaviour was cruel, she was not interested in cooking the food and used to address them by using filthy language. She was not interested in serving his 81 years father and 72 years of the mother. They used to cook for themselves. He changed the house in the month

November, 2011 where they lived for some period but without any reason, she called her parents and brother and went back to Ujjain. In cross-examination, he has admitted that in 2010, after the compromise, he has forgiven all her mistakes. He has also admitted that the reasons for the quarrel between them are only domestic issues. He was not permitted to meet his son. He has also admitted that he got published in the newspaper that the mental condition of his wife does not sound that was done on the advice of his counsel to make a ground for divorce. He is maintaining a car. The appellant has examined his neighbours viz Ravi Saxena (PW-2) who has stated that he was a neighbour, this couple was living at 11-A Residency D, Shiv Shakti Nagar. The respondent/wife was in habit of shouting and abusing her father-in-law and mother-in-law but he was not aware of the cause of the actual dispute. In cross-examination, he has admitted that he has only heard the raised voice during the period from April 2010 to March 2011. Likewise, Arun Kumar Mishra (PW-3) has said that he used to hear the voices of the respondent/wife but never seen fighting them physically.

(12) So far as the respondent/wife is concerned, in her deposition, she has stated that the father and mother of the appellant/husband used to taunt her that she is not a good cook and came with less dowry. On 14.08.2000, her brother Rajesh came and took her to her parents' house. She received a call from a neighbour that the appellant/husband wants to divorce her. She was shocked to read the news published in Agniwan newspaper on 06.10.2000 that she suffering from a mental disorder. The said news was got published by her father-in-law. Despite the aforesaid, she did compromise with the appellant and started living with them but their behaviour towards her did not change. She used to try to console the appellant/husband by writing letters that everything would be fine and don't think to commit suicide, therefore, it is clear from the aforesaid, there was no serious dispute between the appellant/husband and respondent/wife which could be termed as mental cruelty with the appellant. Whatever dispute was

there that was very normal between appellant/husband and respondent/wife and in all the matrimonial houses in this country.

(13) Twice, the appellant/husband filed a petition and a compromise arrived with the wife and they lived together. The father and mother of the respondent/wife have not made any allegation against the appellant/husband and wanted that they should live together. The son Sujal has also stated that this appellant/husband never came to Ujjain to meet him. He wanted to come and live with his father.

(14) Letters exchanged between the appellant/husband and wife are available in the record and the conversation between the parties reflects that there was no serious dispute between them and both were polite to each other. They both tried to mollify each other so that they can live together with little adjustment in life. Letter Ex.P/1 is a letter written by the appellant/husband to the respondent/wife. It appears that there was only one incident, she shouted and the neighbors heard the raised voice of the wife but after that appellant/husband compromised the matter and brought her twice. In reply to the aforesaid, she has stated that she does not like to live with her parents in Ujjain. Since she was not feeling safe in the new society where they shifted, therefore, she came back to Ujjain and requested to take the house to a safe place. She has also written that do not think about suicide. The contents of the letter are reproduced below:

"आप दिमाग में यह बात नहीं लाए कि मैं आपके साथ आकर रहने को तैयार नहीं हूँ। मैं तत्काल आकर आपके साथ रहने को तैयार हूँ केवल अन्य स्थान पर सुरक्षित मकान देख ले। मकान ढुंढने में भी आपकी मदद करने को तैयार हूँ। आत्महत्या करने जैसा निर्णय लेने की बात मन से निकाल दे। आपकी जिंदगी मेरे व पुत्र सुजल के लिए बेहद कीमती है।"

(15) She appears to be a sensible lady, therefore some incident that took place 10-12 years back, which is normal between husband and wife, cannot be a ground for divorce. Their son reached the age of 22 years. The appellant/husband being a husband and father cannot run away from the responsibility towards his son by simply taking divorce on the ground that he wants to serve his mother and father for

remaining his life. His son must be the same feeling to serve his father. The appellant has a responsibility toward his son and wife also, he cannot leave them alone at this stage of life.

(16) We are of the affirm view that the appellant has failed to establish his case to get the decree of divorce. The decree of divorce cannot be granted merely on the ground that husband and wife are living separately since last so many years. The appellant has failed to establish the allegation levelled in the petition by leading evidence. Based on Hindu law, marriage is a sacred tie and the last of ten sacraments that can never be broken. Also, it is a relationship that is established by birth to birth. Also, it is not only considered as sacred but it is also a holy union. The main objective of marriage is to enable a woman and a man to perform their religious duties. Along with this, they also have to beget progeny. Based on ancient writings, a woman is considered half of her husband and thus completes him. While a man is also considered incomplete without a woman.

In view of the above, we pass the following order:-

(I) The judgment dated 07.05.2014 passed in HMA No.622/2012 is hereby affirmed.

(II) First Appeal filed by the appellant/husband is hereby dismissed.

Let the record of the trial court be sent back along with this judgment.

Certified copy as per Rules.

(VIVEK RUSIA)
JUDGE

(AMAR NATH (KESHARWANI)
JUDGE

praveen/-