

**HIGH COURT OF CHHATTISGARH, BILASPUR****FA(MAT) No. 4 of 2022**

For Appellant : Shri Barun Kumar Chakrabarty,
Advocate
For Respondent : None, though served

Hon'ble Shri Justice Goutam Bhaduri**Hon'ble Shri Justice Sanjay S. Agrawal****Judgment on Board****Per Goutam Bhaduri, J.****26/07/2023**

Heard.

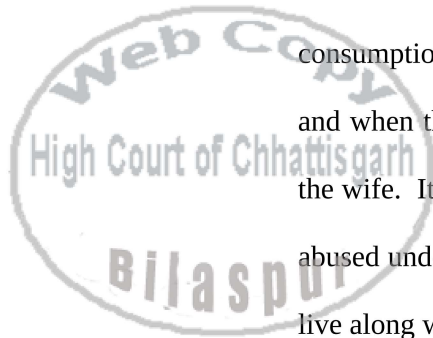
1. The present appeal is against the judgment and decree dated 30/10/2021 (ANNEXURE A/1) passed by the learned Family Court, Raigarh, District Raigarh, C.G. in Civil Suit No.31-A/2020 whereby the application filed by the wife seeking divorce on the ground of cruelty was dismissed. Being aggrieved by such judgment and decree, the instant appeal is by the wife/appellant.
2. The respondent was ex-parte before the family Court. Here before this Court too despite service of the notice, the respondent/husband has not made any representation.





3. The brief facts of the case are that the parties were married on 02/02/2006 and out of such marital relation one son and one daughter were born, who at the time of filing of the petition were stated to be 10 years and 13 years of age. Wife contended that the dispute occurred because of the excessive drinking of liquor-whisky which resulted into severe intoxication and consequently the husband used to beat the wife and used to sell the entire household goods. It is stated that the brother of the appellant/wife used to cater the daily needs of family including the payment of the school fees of the children. It was also stated that the husband was not doing anything and because of such habit of consumption of liquor, the condition of the entire family deteriorated and when the husband was advised to work, in counter he used to beat the wife. It was further stated that on 26/05/2016 she was assaulted and abused under intoxicated state by the husband as such she was forced to live along with her two children at her parental home.

4. It was further stated that initially an application seeking divorce was filed on similar grounds and during such proceeding, the husband promised that he would leave the drinking habit and would mend his behaviour and will not torture the appellant/wife. On such promise made by the husband, the earlier proceedings for seeking divorce was withdrawn by the wife. After sometime of the withdrawal of the earlier divorce petition, again the behaviour of the husband aggravated to cause torture and after consumption of liquor, he used to abuse and assault the





wife and children. The wife further contended that when she demanded educational fees of the children, the husband refused to pay the same instead assaulted and abused the wife. Such incident was reported to the police and after preliminary enquiry, the parties arrived at a settlement thereafter the wife was staying at her parental home till the husband mend his way but that did not improve eventually the application for divorce was filed for second time.

5. The husband did not enter his appearance instead sent a written statement and denied the plaint allegations. He stated that because of the behaviour of wife he was constrained to stay apart and the wife used to extend threat as also mental cruelty was committed on him. It was stated that the husband wanted to restore the marriage but because of the behaviour of the wife it all went in vain. The husband also contended that he was assaulted by the wife as such he also made a report to the police, therefore, the cruelty was done by the wife instead of the husband and, therefore, she is not entitled for a decree of divorce.
6. Perusal of the record would show that the husband did not appear to adduce evidence. The appellant/wife herself examined as PW-1 and her brother Abhinav Sharma (PW-2) was also examined.
7. In order to examine the cruelty, the principles laid down by the Supreme Court in *Samar Ghosh v Jaya Ghosh*¹ would be a relevant guideline wherein the Court has indicated certain illustrative instances at para 101

1 (2007) 4 SCC 511



whereby the inference of mental cruelty can be drawn. Para 101 reads

as under :-

101. No uniform standard can ever be laid down for guidance, yet we deem it 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, 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, discomode 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

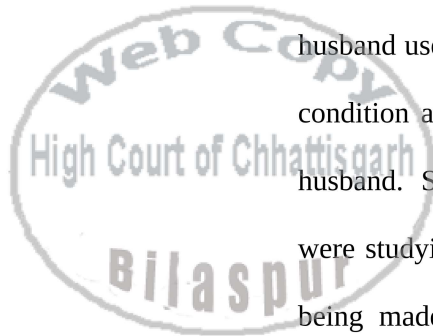




wife after marriage not to have child from the marriage may amount to cruelty.

(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.

8. The statement of the wife would show that many allegations of cruelty arose because of the excessive drinking habits of the husband. It is alleged that after consumption of the liquor in intoxicated state, the husband used to abuse and assault the wife. She further alleges that the condition aggravated and even the household goods were sold by the husband. She further stated that since two children were born and they were studying, the husband never paid the school fees and on demand being made for the fees and other necessary household goods, the husband used to abuse and assault the wife, which resulted into deterioration of the condition of the entire family.
9. Perusal of the record shows that a report was made by the wife to the police which is filed as Ex. P/1, wherein she stated that the husband refused to pay the school fees of the children and on being demanded the same, threat was extended, however, the police found it to be non-cognizable offence and did not take any cognizance. The behaviour of husband demonstrates the state of mind that even for necessary

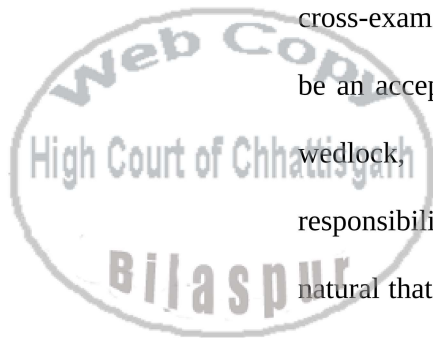




obligation and duty which was cast upon the father to take care of the education of the children, was not fulfilled by him. Perusal of the record would further show that the wife on the earlier occasion filed a suit on the ground of cruelty and similar allegations have been made that because of the excessive drinking, the husband used to abuse and assault and even refused to cater the needs of the children, however, the said application seeking divorce by the wife was withdrawn. Copy of the same is filed as Ex. P/2, P/3, P/4 etc.

10. There is no cross-examination to the aforesaid facts. In absence of any cross-examination, the averments made by the wife would be deemed to be an acceptance. Even otherwise, if the children are born out of the wedlock, the respondent being the father cannot shirk his responsibilities specially when the wife is a non-working. It is very natural that the wife would depend upon the husband for her household need and to upbringing her children to give a good education and life. If the husband instead of discharging of his obligation indulges himself in excessive drinking habit, which deteriorates the family condition, it would naturally lead to a mental cruelty to the wife and the entire family including children.

11. Having not done so the husband/respondent can be safely be stated that he has caused mental cruelty to the wife. The conduct of the wife would show that she tried to save the marriage as otherwise in the earlier occasion the application seeking divorce on the similar ground of

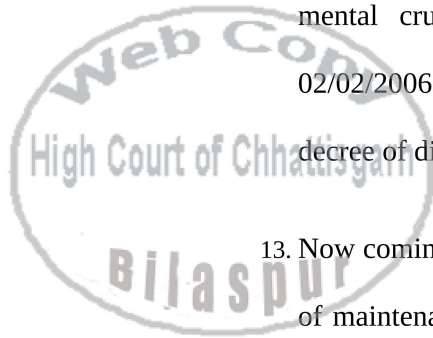




excessive drinking would not have been withdrawn on the promise of the husband that he would mend his behaviour.

12. In consequence of the aforesaid facts, we are of the view that the judgment and decree passed by the learned Family Court cannot be allowed to sustain. Accordingly, in view of the law laid down by the Supreme Court, we hold that the wife was able to prove the mental cruelty by the husband, as such is entitled for a decree of divorce. Therefore, the order of the learned Family Court requires inference and the appellant/wife is entitled to get a decree of divorce on the ground of mental cruelty. Accordingly, we order that the marriage dated 02/02/2006 solemnized in between the parties shall be dissolved by a decree of divorce.

13. Now coming to the grant of alimony to the appellant-wife. The concept of maintenance grant is to ensure that the wife and the children of the husband are not left in a state of destitution after the divorce. The Supreme Court has consistently held that in order to ameliorate the financial position of a woman who had left her matrimonial home; grant of maintenance is a means to secure the woman's sustenance, along with that of the children, if any. The statutory provision entails that if the husband has sufficient means, he is obligated to maintain his wife and children, and he cannot escape from his moral and familial responsibilities even after divorce. No affidavits are placed on record by the parties to show the details of property/income except the oral





submission for maintenance. In the instant case, since no alimony has been fixed by the learned family Court and the perusal of the record would show that the wife is not working at present and she has no source of income and taking into consideration the fact that two children were born out of the wedlock, and in such circumstances to avoid the multiplicity of proceedings, we are inclined to hold that the wife is entitled to get Rs.15,000/- per month from the appellant towards maintenance which would be deducted at source from the salary of the appellant, if any received by the husband or otherwise the amount would be treated to be a charge over the property held by the husband.

14. In the result, we allow the appeal and set aside the judgment and decree of the court below. Consequently the marriage held between the parties on dated 02/02/2006 is dissolved. There shall be no order as to cost(s).

15. A decree be drawn to the above extent.

Sd/-

(Goutam Bhaduri)

Judge

Sd/-

(Sanjay S. Agrawal)

Judge

Ashu

