

**First Appeal No.139 of 2017**

Sheenu Mahendru ..... Appellant

Versus

Sangeeta @ Soniya ....Respondent

Mr. Tapan Singh, Advocate for the appellant.  
Mr. Syed Kashif Jafri, Advocate for the respondent.

*Reserved on: May 10, 2019*  
*Date of Pronouncement: May 23, 2019*

**Coram: - Hon'ble Sudhanshu Dhulia, J.**  
**Hon'ble R. C. Khulbe, J.**

**Per: Hon'ble R. C. Khulbe, J.**

This appeal has been filed against the impugned judgment and order dated 03.11.2017 and its decree passed by the learned Judge, Family Court, Haridwar in Original Suit No.314 of 2015 "Sheenu Mahendru Vs. Sangeeta @ Soniya", whereby the petition filed by the appellant/ under Section 13 of the Hindu Marriage Act, 1955 has been dismissed.

2. The brief facts of the case are that the marriage of the parties was solemnized on 10.12.2010 as per Hindu rites and rituals. After the marriage the respondent stayed with the appellant's house in Khankhal at Haridwar. Out of the wedlock of the parties a son was born on 03.10.2011. The father of the appellant had died before the marriage of the appellant. The appellant has six sisters and all of them were married before the marriage of the appellant. The only old and infirm mother of the appellant was living with the appellant. After the marriage, the respondent started pressuring the appellant to reside separately at Delhi. She also started pressuring the petitioner to sell out his parental house. The appellant tried to convince the respondent that he has a private job and is not able to quit the job but the respondent became adamant on the

demand that the appellant should sell his parental house. The respondent is comparatively less educated and always abides by the instructions of her elder sister Nisha Kocher and brother-in-law Chandra Prakash Kocher, it is alleged. Thereafter, the respondent again started threatening the appellant that if the appellant will not accede to her demand, then she would commit suicide and kill her son as well. At times, the respondent used to take out a knife and threatened to kill herself or to drown herself in Ganga, or to take any other suicidal step. She also started misbehaving, and even physically torturing the old and infirm mother of the appellant. The respondent frequently started taunting the appellant that she was ill-fated to marry an idiot like the appellant. The appellant tried to convince the respondent but she refused to fulfill her marital duties, and on 13.05.2012 in the absence of the appellant, she left her matrimonial home and took all the ornaments with her.

3. The appellant then filed an application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights against the respondent. In that case the respondent appeared before the Court. During the proceedings, the appellant came to know that the respondent has filed an F.I.R. No.147 of 2013 under Sections 406 and 498-A IPC read with Section 34 IPC against the appellant and his family members with false allegations. During that case filed under Section 9 of the Hindu Marriage Act, the respondent also appeared before the Court and made a statement before the Court that he is ready to reside with her husband. On the request of the respondent the appellant took a rented house at Haridwar but the respondent did not come to reside with the appellant in the rented accommodation. Later on as per the direction of the Court, the appellant handed over all the household goods to the respondent in presence of the police

personnel at Police Station Motinagar on 12.08.2013. Subsequently, on the direction of the Court the appellant took the respondent to his rented house at Haridwar, where they even celebrated the birthday of their son. The parties stayed together for some time at Haridwar as per the compromised reached between the parties but even then, the respondent refused to consummate marital relations. However, again the respondent started pressurising the appellant to settle down at Delhi. The respondent had become so violent that she would put a knife on the neck of her child and started threatening that if the appellant does not accede to her demand then she would kill the child and herself. When the appellant refused to fulfill her demand then the respondent told him that now she would not reside with him and told that she wants divorce and started demanding Rs.10 lakh. Many times, the respondent used abusive language for appellant in front of all his relatives. No physical relations were established between the parties since 17.09.2014 and she is living separately from the appellant since then. The appellant Sheenu Mahendra has filed the divorce petition under Section 13(1) (i-a) (i-b) of the Hindu Marriage Act for dissolution of marriage. As per the evidence, after marriage respondent Sangeeta started torturing the appellant as well as his old and infirm mother. She also compelled him to settle with her at Delhi. The respondent did not want to reside with her in-laws, since the mother of the appellant is an old and infirm woman. When the appellant did not agree to settle in Delhi, then the respondent refused to consummate the marriage. Ultimately on 13.05.2012, she left her matrimonial home and took all the ornaments along with her. With these averments the divorce petition was filed.

4. The respondent filed her written statement and factum of marriage was admitted. It is also admitted that

out of the wedlock of the parties, a son was born. She also admitted that she filed a criminal case, F.I.R. No.147 of 2013, under Sections 406 and 498-A IPC read with Section 34 IPC against the appellant and his family members at Delhi. It is also stated that on the basis of mutual agreement, both the parties filed a divorce petition before the Family Court, Haridwar but the parties could not reach an agreement, therefore the case was dismissed. The appellant filed a case against the respondent under Section 9 of the Hindu Marriage Act. The respondent appeared before the Court and stated that she is still ready and willing to live with the petitioner in a separate rented accommodation at Haridwar. She also stated that she never pressurized the appellant to settle at Delhi. She never committed *marpeet* with the appellant. The marital relations between the parties remained in existence till 2014. The appellant committed *marpeet* with the respondent on 15.09.2014 at his residence. It is also stated that all the expenses pertaining to education and maintenance of the child are being incurred by the respondent.

5. On exchange of the pleadings, the learned Family Court framed the following issues as under:-

- 1) Whether the respondent has treated the petitioner with cruelty after the marriage?
- 2) Whether the respondent has deserted the petitioner for more than two years without any reason?
- 3) Whether the petitioner is entitled for any relief?
- 4) Whether the petitioner has deserted his wife without any reason?

5) Whether the respondent is entitled for the relief of restoration of conjugal rights?

6. In oral evidence, the appellant examined himself as PW1 while the witnesses produced by him are PW2 Prem Lata Mahendra (appellant's mother) and PW3 Ms. Babita.

7. Respondent-Sangeeta appeared as DW1. She produced DW2 Swati, DW3, Kamal Kumar and DW4, Chandra Prakash.

8. After considering the evidences on record, the learned Family Court, Haridwar dismissed the divorce petition filed by the appellant as well the petition filed by the respondent under Section 26 of the Hindu Marriage Act.

9. We have heard learned counsel for the parties and perused the entire material on record.

10. Appellant Sheenu Mahendra filed an affidavit in support of his evidence on 18.5.2016 in which he has admitted that the parties have been living separately since 17.9.2014. While the petition u/s 13 of the Hindu Marriage Act was filed on 3.8.2015, which shows that the appellant filed this petition seeking divorce within a span of one year from the date of the alleged desertion. While as per Section 13(1)(ib) of the Hindu Marriage Act, for seeking divorce on the ground of desertion, it is necessary to prove that the respondent has deserted the appellant for a continuous period of not less than two years immediately preceding the presentation of petition. Since as per the affidavit filed by the appellant, the respondent has left the matrimonial home on 17.9.2014. In such circumstances, the appellant is not entitled for divorce on the ground of desertion.

11. So far as the cruelty is concerned, although any party to the marriage can file a petition for dissolution of marriage on the ground of cruelty.

12. The term 'cruelty' is not defined in the Act. Cruelty may be mental or physical. The expression cruelty has been used in relation to human conduct or human behaviour.

13. The Hon'ble Supreme Court of India, in **Samar Ghosh v. Jaya Ghosh (2007) 4 SCC, 511**, has laid down the following instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty": -

*(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, 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.”*

14. The word “cruelty” appears to have been used in the Section in context of human behaviour in relation to or in respect of matrimonial obligations or duties. Cruelty can be termed as behaviour or conduct of one spouse which adversely affects the other. Thus broadly speaking ‘cruelty’ as a ground for the purpose of divorce under Section 13(1(i-a)) can also be taken as a behaviour of one spouse towards the other which causes reasonable apprehension in his or her mind that it is not safe to continue matrimonial relationship. Cruelty can be physical or mental or even intentional or unintentional. The mental cruelty is difficult to establish by direct evidence. It is a matter of inference to be drawn from acts and circumstances of the case. A feeling of anguish and frustration in one spouse caused by the conduct of other can be appreciated on the assessment of facts and circumstances in which the two of them have been living. The inference has to be drawn from overall facts and circumstances considered cumulatively.

15. Mental cruelty and its effect cannot be stated with arithmetical accuracy. It varies from individual to individual, from society to society and also depends on the status of the persons. What would be mental cruelty in the life of two individuals belonging to a particular stratum of the society may not amount to mental cruelty in respect of another couple belonging to a different stratum of society.

16. The burden lies upon the respondent to establish the charge of cruelty. The question is as to what is the standard of proof to be applied in order to judge whether the burden has been discharged or not. The rule which governs matrimonial cases is, that a fact could be established, if it is proved by a preponderance of probabilities. Proof beyond a reasonable doubt is a proof of a higher standard, which generally governs criminal trials or trials involving inquiry into issues of a quasi criminal nature. Such proof beyond a reasonable doubt could not be imported in matters of pure civil nature especially matrimonial matters.

17. From the evidence it is clear that when the respondent has left the matrimonial home in the year 2012, the appellant filed a petition no.408 of 2012 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights against the respondent, the respondent appeared before the Court and after that, she filed an F.I.R. No.147 of 2013 under Sections 406 and 498-A IPC read with Section 34 IPC against the appellant and his family members with false allegations at Delhi.

18. It is the allegation of the appellant that after marriage the respondent started pressurizing him to reside separately from his old aged mother. The respondent also started to pressurize the appellant to sell out his parental house. It is the contention of the appellant also that the respondent has forced him to quit his job so that he may



settle at Delhi with the respondent. The respondent never wanted to live with her mother-in-law. The respondent also filed an F.I.R. No.147 of 2013 under Sections 406 and 498-A IPC read with Section 34 IPC at Delhi. In this regard Premlata Mahendra, who is the mother of the appellant, appears as DW-2. In her statement she also proved the allegations as alleged by the appellant against the respondent. She also stated that the respondent tortured her and abused her on many occasions. She also stated that the respondent filed a false criminal case against the appellant and his relatives.

19. Respondent Sangeeta admitted in her evidence that her mother-in-law Premlata is a 76 years old lady. She also admitted that she filed a case under Section 498A IPC against the appellant and other family members at Delhi. She also admitted that she is residing at Delhi with her sister.

20. The appellant stated in his evidence that on the request of the respondent, he took a house on rent at Haridwar where the respondent resided with him and where they celebrated the birthday of their son. It is also an admitted fact that respondent lodged an F.I.R. against the appellant as well as his relatives. The respondent admitted in her statement that she wants to continue to reside at Delhi with her child. These facts are also proved by PW2, Premlata Mahendra, who also proved that the respondent always tortured her and used abusive language. She also stated that the respondent lodged a false complaint against the appellant and other relatives with false allegations at Delhi.

21. In the present case, it is clear from the evidence that the respondent had started torturing the appellant as well as his infirm and old mother after the marriage. It is

also clear that on the request of the respondent, the appellant took a separate house on rent at Haridwar where the respondent resided with her son but again she started torturing the appellant and forced him to settle down at Delhi. From the evidence, it is also proved that the respondent went to Delhi along with all the ornaments to settle there. When the appellant filed an application under Section 9 of Hindu Marriage Act for the restitution of conjugal rights against the respondent, the respondent filed a criminal case Section 498A IPC at Delhi not only against the appellant but also against other relatives of the appellant-husband with false allegations. The respondent also admitted in her statement that a compromise took place between the parties earlier, and on the basis of the compromise, the divorce suit was filed before the Family Court at Haridwar in which the appellant was ready to give Rs.10 lakh as one time settlement, and was also ready to give custody of his child to the respondent, but due to some reasons, it could not be materialized.

22. It is proved that the parties are living separately since 2014 and this Court also tried for settlement which could not bring any fruit. It is also clear that the respondent has filed false criminal case not only against the appellant but also against the relatives of the appellant. She is not willing to live with the appellant-husband, rather willing to settle down at Delhi with her son. The respondent does not want to see the face of the old and infirm mother of the appellant. Many times after the marriage, she tortured the old and infirm mother of the appellant. It is also clear that the respondent-wife wanted the appellant to get separated from his old and infirm mother. The evidence shows that the family was virtually maintained from the income of the appellant-husband. It is not a common practice, desirable and acceptable norm for a son to leave

his old mother when there is no one else to take care of her in order to settle with his wife, particularly when he is the only earning member in the family. After being brought up and educated by his mother, the son has a moral and legal obligation to take care and maintain her when she becomes old and has no other source of income to maintain her. In normal circumstances, the wife is expected to be with the family of the husband after marriage because she becomes an integral a part of the family of the husband, and without any justifiable reason, she may not insist that her husband stays separately from her old mother, and to live with his wife in a separate and rented accommodation. If a wife makes such a demand, then she must have some justifiable reason for the same. In this case, we do not find any justifiable reasons. In our opinion, normally, no husband would tolerate this nor would any son like to be separated from his old mother, who is dependent upon her son. The persistent efforts of the respondent-wife to compel the appellant to get separated from his mother would be torturous for the husband, and in our opinion this act of respondent certainly constitutes an act of cruelty. However, these allegations were not touched by the Family Court. It is also evident that the respondent has lodged a complaint against her husband and his relatives. Such type of behaviour must come with the definition of 'cruelty'.

23. We have also carefully gone through the evidences adduced by the parties before the Trial Court. The constant persuasion by the respondent for getting separated from the mother of the appellant and constraining the appellant to live separately only with her, was also not considered to be of any importance by the Trial Court. Even no importance was given to the incident with regard to the statement made by the respondent to commit suicide and to kill her son. The mere idea with

regard to facing illegal consequences would put a husband under tremendous stress. The thought itself is distressing. Such a mental cruelty should not have been taken lightly by the learned Family Court. It is needless to add that such threats or statements constitute cruelty.

24. In the present case, living separately of the parties for a long time, public insult, embarrassment to the appellant, agony and humiliation suffered by the appellant, charging the appellant with false allegations amounts to cruelty by the respondent towards her husband. The respondent wife is living separately for the last five years and presently staying at Delhi with a son born out of the wedlock of the parties.

25. From the perusal of the entire material on records, the following facts are proved which constitute cruelty:-

- a) Disrespectful and disparaging remarks by the respondent wife against the appellant-husband would amount to cruelty under Section 13(1) (i-a) of the Act as laid down in **Smt. Santana Banerjee Vs. Sachindra Nath Banerjee AIR 1990 (Calcutta) 367.**
- b) The respondent-wife created a pressure on appellant-husband by alleging that she will commit suicide and kill her son and entangle the appellant in a false case would amount to be a cruelty as laid down in ***Harbhajan Singh Monga Vs. Amarjeet Kaur AIR 1986 MP 41.***
- c) The attitude of respondent-wife abusing the mother in law and making sarcastic remark against the husband before the relatives of husband would amount to be a cruelty as laid down in **Rajinder**

**Bhardwaj Vs. Mrs. Anita Sharma AIR 1993 Delhi  
135.**

- d) If the wife physically assaults the mother-in-law and abuses her will amount to be a cruelty.
- e) The respondent has compelled the appellant to abandon his 75 years old and infirm mother.
- f) The respondent has compelled the appellant to live separately in a rented house.
- g) The respondent had compelled the appellant to live with her at Delhi after selling off his ancestral house.
- h) The behaviour of the respondent-wife made the life of the appellant-husband miserable and it became impossible for the appellant to stay with the respondent for the aforesaid reasons. Moreover, the respondent wanted the appellant to leave his own mother and get separated from his mother so that the respondent can live independently, and in that event it would become more torturous for the appellant to stay only with the respondent-wife to tolerate such nature and behaviour of the respondent.

26. On the basis of above discussion and considering the facts and circumstances of the case, it appears that the relationship between the parties has deteriorated to the extent that there is no possibility of any reconciliation. Their relationship has reached to the point from where there appears no possibility of harmonious conjugal relationships or their being living together as husband and wife and discharging the matrimonial duties. This itself amounts to a cruelty, if allowed to continue. In these circumstances, the appeal is liable to be allowed.

27. However, before parting, we are also conscious of the interest of the minor son born out of the wedlock of the parties. It, would, therefore, be just to award an amount of Rs.14 lakh to the respondent-wife for maintenance and education etc. of her son Master Yash Mahendra under Section 25 of the Hindu Marriage Act as one time alimony.

28. For the aforesaid reasons, the appeal is allowed. The marriage solemnized between the parties on 10.12.2010 is hereby dissolved. The appellant is directed to pay Rs.14 lakh (fourteen lakh only) to the respondent-wife as one time alimony under Section 25 of the Hindu Marriage Act. Out of this amount a sum of Rs.10 lakh will be paid by him within one month from today, out of which Rs.5.00 lakh would be a fixed deposit for five years in the name of his son, with his wife as nominee. The remaining amount will be paid by him within a span of two years in four equal half yearly installments.

**(R.C. Khulbe, J.)**

**(Sudhanshu Dhulia, J.)**

23.05.2019