

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE MADHURESH PRASAD

FAT 193 of 2020
CAN 2 of 2023

Poulomi Biswas
Vs.
Shamik Bisws

Appearance:

For the Appellant : **Mr. Chandi Charan De, Adv.**
Mr. Sadhan Kr. Haldar, Adv.
Mr. Ashok Kr. Sarkar, Adv.

For the Respondent : **Mr. Ritendra Banerjee, Adv.**
Mr. Shibasis Chatterjee, Adv.
Mr. Sandip Kundu, Adv.
Mr. A. Roy Chowdhury, Adv.

Judgment On : **18.12.2023**

Harish Tandon, J.:

To define "Cruelty" in relation to a matrimonial dispute is an arduous task and the complex issue which the Court often face as in a matrimonial law, the cruelty has not been defined nor given a definite or precise meaning. Albeit, such complex issue, the Courts have attempted to define "cruelty" in relation to a matrimonial cause in pursuit of dispensation of justice and providing a reliefs under in the matrimonial laws. Upon codification of the Hindu law, the first step which the legislatures took is to

enact Hindu Marriage Act in the year 1955 encapsulating the remedies to the spouse in detaching the association or coming out of the matrimonial institution by virtue of a dissolution of marriage. In the formative year of promulgation of the Hindu Marriage Act, the dissolution of marriage was restricted to the grounds provided in Section 13 of the said Act but subsequently, the legislatures being conscious of the fact that compelling the spouse to remain in matrimonial institution may have a cascading effect not only in relation to their life but the society at large and incorporated Section 13B of the said Act whereunder the parties without assigning any ground and proving the same before the Court of law may decide to disassociate themselves from the said institution. The respective decision of the spouses if they feel that remaining in the institution is not possible because of the various reasons, such freedom was duly recognised by bringing the suitable amendments in the legislation in the form of a dissolution of marriage by mutual consent.

The complexity of defining the cruelty in a litigation at the behest of one of the spouses against the others is most difficult task of the Court of law as one incident or the series of incidents may not come within the ambit thereof to one of spouses but may come in relation to the other and, therefore, it is an ardent duty of the Court to decide a matter taking into account the conduct, the behaviour, the social aspect of the persons in matrimonial institution. The series of judgments have defined cruelty to be such which would cause injury and harm to the other thereby inculcating a sense of insecurity not only of their life, body or a person but a mental

status as well rendering it impossible to remain together. It would somewhat be an easier task to understand the concept of cruelty if cause to a body or a person physically but it is more complicated when the cruelty is in relation to a mental status of the parties and, therefore, it is an onerous duty of the Court to arrive at the conclusion whether the solitary act or the series of act constitute mental cruelty.

Even the Apex Court in case of ***Raj Talreja vs. Kavita Talreja***, reported in **2017 (4) ICC 329 (S.C.)** held that the cruelty in a matrimonial behaviour defies any definition and its categories can never be closed. It is further held that the cruelty can never be defined with exactitude nor can be given a restrictive meaning but has to be understood in relation to the attending facts and circumstances involved in the proceedings.

In ***Vishwanath Agrawal vs. Sarla Vishwanath Agrawal***, reported in **(2012) 7 SCC 288**, the Apex Court also highlighted the complexity of bringing the definition of a cruelty within a limited contour as it has an inseparable nexus with the human conduct or the human behaviour which varies because of the disparity under the social strata or milieu. In ***Samar Ghosh vs. Jaya Ghosh***, reported in **(2007) 4 SCC 511**, the Apex Court succinctly highlighted the human behaviour, human mind and the complexity of understanding the same by observing that the human mind is extremely complex and the human behaviour is equally complicated in the following:

“99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the

entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. 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 aforementioned factors in consideration.”

In ***Roopa Soni vs. Kamalnarayan Soni***, reported in **(2023) SCC Online SC 1127** the Apex Court highlighted the concept of the social justice adjudication in a matrimonial case in the following:

*“9. This Bench of “social justice adjudication” has been elaborately dealt with by this Court in ***Badshah v. Urmila Badshah Godse***, (2014) 1 SCC 188:*

“14. Of late, in this very direction, it is emphasised that the courts have to adopt different approaches in “social justice adjudication”, which is also known as “social known adjudication” as mere “adversarial approach” may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:

“It is, therefore, respectfully submitted that ‘social context judging’ is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before

courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication.”

15. The provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from “adversarial” litigation to social context adjudication is the need of the hour.

16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society’s changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.

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18. The court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonies results with justice through a method of free decision – libre recherché scientifique i.e. “free scientific research”. We are of the opinion that there is a non-rebuttable presumption that the legislature while making a provision like Section 125 CrPC, to fulfil its constitutional duty in good faith, had always intended to give relief to the woman becoming “wife” under such circumstances. This approach is particularly needed while deciding the issues relating to gender justice. We already have examples of exemplary efforts in this regard. Journey from Shah Bano [Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556 ; 1989 SCC (Cri) 245: AIR 1985 SC 945] to Shabana Bano [Shabana Bano v. Imran Khan, (2010) 1 SCC 666: (2010) 1 SCC (civ) 216 : (2010) 1 SCC (Cri) 873 : AIR 2010 SC 305] guaranteeing maintenance rights to Muslim women is a classical example.”

The Division Bench of the Karnataka High Court in **S. Shyamala @ Kathayani vs. B. N. Mallikarjunaiah** reported in **2022 (3) Indian Civil Cases 199 (Karn.)** defined the cruelty in the following:

“18. It cannot be said that the wife had no valid reason to leave the company of the husband, having regard to the nature of the allegations made by her in the complaint filed against him for the offences punishable under Sections 498-A, 323, 504 506 read with Section 34 of IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961, in Crime No. 61/2007. It has been the specific defence of the husband in the criminal case that after filing of the criminal complaint, his wife has been sending him messages conveying her willingness to join him. In that event, it cannot be said that the wife had deserted the husband to put an end to the marital relation and cohabitation.”

It is manifest from the aforesaid decision that the cruelty cannot be given a definite, specific and precise meaning in relation to a matrimonial dispute as it largely depends upon the perception of the litigating spouses which may defer in case of other on the basis of the different social strata or milieu. The normal wear and tear of the conjugal life cannot be brought within the meaning of the word “cruelty” as it largely depends upon the conduct and the behaviour of the spouses and their perception in this regard. The obvious reason can be seen that the legislation mandated the Court to make an attempt to reconcile or restore the relationship between the spouses and granting the dissolution of marriage should be the last resort.

The cruelty has a varied form more particularly, when the allegation as to mental cruelty is made by either of the spouse and, therefore, has to be determined on the basis of the attending facts and circumstances. The cruelty being one of the grounds for dissolution of marriage envisaged under Section 13 of the Hindu Marriage Act, 1955, the Court should determine the same on the basis of the quality of the evidence adduced by the respective parties and its implication on the mental status of a party when mental cruelty is alleged in the pleading. It is no longer *res integra* that the cruelty should not be squeezed to such act happened at pre-litigation stage but the Court may take note of the perpetration of cruelty during the currency of the litigation also.

It has been held by the Supreme Court in ***Rani Narasimha Sastry vs. Rani Suneela Rani***, reported in **(2020)18 SCC 247** that the launching

of a criminal proceeding under Section 498A of the Indian Penal Code against the husband which resulted into an acquittal may also tantamount to a cruelty upon the husband in the following:

“13. In the present case, the prosecution is launched by the respondent against the appellant under Section 498A-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.”

It is pertinent to record that the husband has filed an application being **CAN 2 of 2019** for taking note of the subsequent event annexing the certified copy of the judgment passed by the Judicial Magistrate, 1st Court, Behrampore dismissing the said Criminal Proceeding. Reverting back to the facts of the instant case, the husband filed a suit for dissolution of marriage alleging the ground of cruelty and desertion alleging that the wife was quarrelsome and in fact demanding money to be given to her and even continued a persistent demand of gifting the property owned by the father of the respondent in her name. It is further alleged that she was not doing the household works nor took care of the ailing mother-in-law who is suffering from various ailments but after giving birth to a child left the matrimonial house without any reasonable cause and, therefore, deserted the respondent. Various incidents have been narrated as a ground of cruelty including the one that her cousin brother assaulted the respondent and the family members for which the complaint was lodged with the local police station. On the other hand, the wife took the stand that the husband never took care of her and even during the pregnancy and giving birth to the male child, all the expenditure was borne by her father. She has further alleged that even after the birth of the male child, the husband never visited to see her and the child either in the nursing home or in her father's house. In the evidence she has admitted that the parents-in-law as well as the husband visited the nursing home and on the basis of such statement the Court below found that the wife is not a trustworthy and, therefore, the credence to her evidence is doubtful. She brought the cousin brother against whom the husband lodged the complaint as a witness but there appears to be

disparity in the statement of the wife as well as the said witness which is noticed by the learned Judge in the said judgment in the following:

“Here, husband claimed that he along with one Bapan Saha went to bring her back in his life but she refused to come and wife made a rival claim that she along with the her child came in her house but husband did not allow her to enter in his house. Here, admittedly, husband did not produce Bapan Saha. Here, wife produced OPW-2 has stated that he, respondent and respondent’s mother went to petitioner’s house to keep the respondent and her child therein. But, if cross-examination of this witness is carefully looked into, it will appear that the same has been shaken. He stated that just after two months, he went to the house of the petitioner to settle the dispute which is not the case of either of the parties hereto. Here, wife stated that no outsider was aware of the fact that she went to petitioner’s house to resume conjugal life but OPW-2 stated that many persons from the surrounding locality were present at that time. Hence, such evidence are mutually destructive and cannot be based.”

It has come up from the evidence of the husband that not only they provided all the monetary support to the wife for pursuing her studies as they wanted her to be more educated but also attended while she was admitted in the nursing home for giving birth to a male child and, therefore, the allegation of the wife that the husband did not take a reasonable care while giving birth to a child is unacceptable.

Without further going into the veracity of the elements of cruelty pleaded and proved in the evidence, we can gainfully placed reliance upon a subsequent event happened during the pendency of the instant appeal. Interestingly, the wife in her evidence categorically deposed that she initiated the proceeding under Section 498A/406 of the IPC on the advice of

the learned Advocate. It is apparent from the evidence that not only the husband but their parents have to take a bail from the Court after surrender and were subjected to a trial before the Judicial Magistrate. The said proceeding ended in an acquittal of all the accused named therein including the husband and such subsequent event can be taken note of in the instant appeal having occurred during the currency thereof. There is no fetter on the part of the Court to take note of the subsequent event in an appeal provided such event has an impact on the determination thereof. As indicated above, lodging a false criminal case under Section 498A/406 of the IPC is also one of the element of cruelty and, therefore, the Court cannot ignore the same while considering the appeal on merit. We, thus, find that the husband has been able to prove the cruelty and, therefore, the ultimate decision of the Trial Court in dissolving the marriage cannot be impinged.

The appeal *sans* merit and is, therefore, dismissed.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

(Harish Tandon, J.)

I agree.

(Madhuresh Prasad, J.)