

*** THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
&
*THE HONOURABLE SRI JUSTICE CHALLA
GUNARANJAN**

+ C.M.A.No.693 OF 2006

% 07.05.2025

#

.....Appellant

And:

\$

....Respondent.

!Counsel for the appellant : Sri Rama Rao Kochiri

^Counsel for the respondent : Sri Lakshminarayana Reddy

<Gist:

>Head Note:

? Cases referred:

¹ 2024 SCC OnLine Del 1607

2.2024 SCC OnLine AP 4883

3.2023 SC OnLine AP 1251

4.AIR 2005 Orissa 3

5.AIR 2002 Rajasthan 169

6.AIR 2003 Allahabad 214

7.AIR 2006 AP 65

8.AIR 1975 SC 1534

9.(2006) 4 SCC 558

10.(2020) 18 SCC 247

11.(2002) SCC 73

12.(2002) 2 SCC 85

13.(2014) 16 SCC 34

14.(2006) 4 SCC 558

15.(2002) 2 SCC 73

16.(2007) 4 SCC 511

17.(2002) 5 SCC 706

18. **(2014) 16 SCC 34**

19.2013 (3) ALD 11 (SC)

20. 2014 (6) ALD 187 (SC)

21. 2001(6) ALT 350 (D.B)

22.AIR 1975 SC 1534

HIGH COURT OF ANDHRA PRADESH

* * * *

C.M.A.No.693 OF 2006

DATE OF JUDGMENT PRONOUNCED:07.05.2025

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE SRI JUSTICE CHALLA GUNARANJAN

- | | |
|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI, J

CHALLA GUNARANJAN,J

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE CHALLA GUNARANJAN**

C.M.A.No.693 OF 2006

JUDGMENT: per the Hon'ble Sri Justice Ravi Nath Tilhari:-

1. Heard Sri Rama Rao Kochiri, learned counsel for the appellant and Sri Lakshminarayana Reddy, learned counsel for the respondent.
2. This appeal was filed by the wife challenging the decree of divorce dated 08.05.2006, in H.M.O.P.No.225 of 2001 (HMOP), passed by the Principal Senior Civil Judge, Guntur (the Trial court) under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955 (H.M.Act).

I. FACTS:

3. The respondent-husband filed the H.M.O.P pleading inter alia that the appellant is his legally wedded wife. The marriage was solemnized as per Hindu rites, caste and custom on 13.08.1994 at Bapatla in Arts and Science College Premises. He was working as Lecturer in Viswam Coaching Centre, Thirupati. The wife had completed

graduation and was staying with her parents. The marriage was without any dowry. Three days after the marriage, the wife told that the marriage was against her wish and will. She started behaving abnormally. After few days of marriage on the pretext to attend duty she went back to Tirupati. For short spells she stayed in the matrimonial home, but her behaviour caused frustration and mental agony to the husband. There was no cohabitation between them. The wife did not attend even the normal works as wife. The husband further narrated many incidents to point out his mental agony and the cruelty by the wife. The mediations, held by the elders failed, as she demanded huge amount of money. Consequently, he had no option but to take divorce for which H.M.O.P was filed.

4. The wife filed counter and contested the HMOP. She denied the averments of cruelty and any behaviour amounting to cruelty. She pleaded taking dowry by the husband and its more demand on number of occasions. She denied that the marriage was not consummated. She

submitted that they were leading matrimonial life as wife and husband. She was discharging her duties as house wife, besides doing job. She pleaded harassment and ill-treatment by the husband. She admitted that the mediations, took place and she also sent a letter/notice dated 01.01.2001, calling upon the husband to allow her to join to lead matrimonial life, which was replied by notice dated 02.03.2001 with false averments. She pleaded that the name of one Bobba Venkata Ramana was introduced with intention to assassinate her character and to make out a case of cruelty towards the husband. She submitted that she was always willing and ready to lead the matrimonial life and prayed for dismissal of the HMOP.

5. In support of their respective pleadings, the parties led evidences. The husband examined himself as P.W.1. Exs.A.1 to A.4 were marked on his behalf. The wife examined herself as R.W.1 and two other witnesses as R.Ws.2 and 3. Exs.B.1 and B.2 were marked on her behalf.

II. JUDGMENT OF THE LEARNED TRIAL COURT:-

6. The learned Trial Court framed the following points for determination:

- (i) “Whether the petitioner is entitled for divorce as prayed for?
- (ii) If so, what?”

7. The learned Trial Court recorded that the relationship between the parties was beyond melting point which could not be got down by any means. The husband levelled allegations of wife’s relationship with one B. Venkata Ramana, but failed to prove. So, even if the court directed the parties to live together and lead matrimonial life that would cause embarrassment to the parties. In view of the filing of the criminal case under Section 498-A IPC by the wife against the husband and his parents, in which there was arrest, and remand to the judicial custody and they had to obtain bail, there was no chance for the parties to live together happily. The acquittal of the husband and his parents as the prosecution failed to prove the charges,

amounted to mental cruelty. Thus, considered the learned Trial court granted divorce and allowed HMOP.

III. SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT:-

8. Learned counsel for the appellant submitted that the decree of divorce cannot be sustained. The grounds on which the divorce petition was filed under Section 13(1)(ia)(ib) of H.M Act, i.e cruelty and desertion, were not proved and so, the decree of divorce could not be legally granted. He submitted that the sole ground on which the decree of divorce has been passed is that, the wife filed C.C.No.228 of 2003 under Section 498-A IPC but failed to prove the charges. There was acquittal. He submitted that because of acquittal it could not be that filing of criminal case, amounted to mental cruelty, to afford a ground for divorce under Section 13(1)(ia) of the H.M Act, 1955.

9. Learned counsel for the appellant placed reliance in the following cases:

1. S.C Nuna vs. Anita Nuna¹
2. **G Vamsi Mohan vs. G Aparna**²
3. Kamana Venkata Suresh Kumar vs. Kamana Anusha³

IV. SUBMISSIONS OF THE LEARNED COUNSEL FOR THE RESPONDENT:-

10. Learned counsel for the respondent supported the decree of divorce. He submitted that the cruelty was established. It cannot be said that there was no ground to grant the divorce. He submitted that on the false allegations filing of criminal case under Section 498-A IPC and complaint under Sections 3 and 4 of Dowry Prohibition Act, implicating husband and his parents, which resulted in acquittal amounted to cruelty on which the divorce was rightly granted by the learned Trial Court.

11. Learned counsel for the respondent placed reliance on the following cases:

¹ 2024 SCC OnLine Del 1607

² 2024 SCC OnLine AP 4883

³ 2023 SC OnLine AP 1251

1. Usharani Lenka vs. Panigrahi Subhash Chandra Dash alia Sahoo⁴.
2. Narendra Kumar Gupta vs Indu⁵.
3. Dr. P.K. Tomar vs. Smt Archan⁶
4. Gajjala Shankar v. Anuradha⁷
5. Dr.N.G. Dastane vs. S. Dastane⁸
6. Naveen Kohli vs. Neelu Kohli⁹
7. Rani Narasimha Sastry vs. Rani Suneela Rani¹⁰
8. Savitri Pandey vs. Prem Chandra Pandey¹¹
9. Madhukar D. Shende vs. Tarabai Aba Shedage¹²
10. K. Srinivas vs. K. Sunita¹³

V. POINT FOR DETERMINATION:

12. We have considered the submissions of the learned counsels for the parties and perused the material on record.

13. The point which arises for our consideration and determination is formulated as under:-

A. Whether filing of C.C.No.229 of 2003 under Section 498-A IPC and Sections 3 and 4 of Dowry

⁴ AIR 2005 Orissa 3

⁵ AIR 2002 Rajasthan 169

⁶ AIR 2003 Allahabad 214

⁷ AIR 2006 AP 65

⁸ AIR 1975 SC 1534

⁹ (2006) 4 SCC 558

¹⁰ (2020) 18 SCC 247

¹¹ (2002) SCC 73

¹² (2002) 2 SCC 85

¹³ (2014) 16 SCC 34

Prohibition Act, against the husband and his parents, in which there was arrest, remand, bail and finally acquittal, amounted to cruelty, to husband, so as to furnish a ground for divorce under Section 13(1)(ia) of the Act, 1955?

B. Whether the decree of divorce under challenge calls for any interference?"

VI. ANALYSIS:

Point-A:

14. The learned Trial court has recorded specifically that the husband failed to prove all the allegations except the filing of the criminal case by the wife on the allegations which could not be proved by her. We find from the judgment under challenge that, the ground on which the divorce has been granted is that the wife filed C.C.No.229 of 2003 under Section 498-A IPC against the husband and his parents in which the allegations of demand of dowry, causing harassment etc. could not be proved. They were acquitted. So, that amounted to mental cruelty to the husband.

15. The learned Trial Court further recorded that the parties were living separately for the last about 29 years and

in view of the criminal proceedings there were no chances of living together by the parties to lead marital life.

16. Section 13(1)(ia) of H.M.Act:

“(1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

(i) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or

CRUELTY/MENTAL CRUELTY:

17. The word “cruelty” has not been defined in the H.M. Act, but it has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect

on the other spouse need not be enquired or considered. In such cases, cruelty will be established if the conduct itself is proved or admitted.

18. In **Naveen Kohli vs. Neelu Kohli**¹⁴, the Hon'ble Apex Court held that the word 'cruelty' has to be understood in the ordinary sense of the term in matrimonial affairs. The cruel treatment may also result from the cultural conflict between the parties. There may be instances of cruelty by unintentional but inexcusable conduct of any party. Mental cruelty can be caused by a party when the other spouse levels an allegation that the petitioner is a mental patient, or that he requires expert psychological treatment to restore his mental health. The case of **Savitri Pandey vs. Prem Chandra Pandey**¹⁵ was also referred in which it was held that mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other.

19. Paras 50 to 52 of **Naveen Kohli** (supra) are as under:

¹⁴ (2006) 4 SCC 558

¹⁵ (2002) 2 SCC 73

“50. In [V. Bhagat vs. D. Bhagat](#) reported in (1994) 1 SCC 337, this Court had occasion to examine the concept of “mental cruelty”. This Court observed as under:

"16. Mental cruelty in [Section 13\(1\)\(i-a\)](#) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be decided in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made."

51. The word 'cruelty' has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But

the absence of intention should not make any difference in the case. There may be instances of cruelty by unintentional but inexcusable conduct of any party. The cruel treatment may also result from the cultural conflict between the parties. Mental cruelty can be caused by a party when the other spouse levels an allegation that the petitioner is a mental patient, or that he requires expert psychological treatment to restore his mental health, that he is suffering from paranoid disorder and mental hallucinations, and to crown it all, to allege that he and all the members of his family are a bunch of lunatics. The allegation that members of the petitioner's family are lunatics and that a streak of insanity runs through his entire family is also an act of mental cruelty.

52. This Court in the case of [Savitri Pandey vs. Prem Chandra Pandey](#) reported in (2002) 2 SCC 73, stated that 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."

20. In **Vidhya Viswanathan vs. Kartik Balakrishnan**¹⁶, the Hon'ble Apex Court, referred **Vinita Saxena vs. Pankaj Pandit** (2006) 3 SCC 778 regarding legal proposition on the aspect of cruelty in which it was observed that mental cruelty can cause even more serious injury than the physical harm. It is to be determined on whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such wilful treatment of the party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case.

21. In **Samar Ghosh vs. Jaya Ghosh**¹⁷, on the point of mental cruelty, the Hon'ble Apex Court observed that no uniform standard can ever be laid down. For guidance, however, some instances of human behaviour relevant in dealing with the cases of 'mental cruelty', were illustratively mentioned.

22. Para 101 of **Samar Ghosh** (supra) reads as under:

¹⁶ 2014 (6) ALD 187 (SC)

¹⁷ (2007) 4 SCC 511

“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, discommodate 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.”

FILING OF CRIMINAL CASE WHETHER MENTAL CRUELTY:-

23. In **K. Srinivas vs. K. Sunita**¹⁸, with respect to the ground of cruelty on account of the filing of a criminal complaint by the wife against the husband and several members of his family under [Sections 498A](#) and [307](#) of the Indian Penal Code, the Hon'ble Apex Court concluded that the criminal complaint by the wife was ill advised. The husband and the members of his family were granted acquittal. The wife knowingly and intentionally filed a false complaint, calculated to embarrass and incarcerate the husband and members of his family. Such conduct unquestionably constituted cruelty as postulated in [Section 13\(1\)\(ia\)](#) of the Hindu Marriage Act.

24. In **K. Srinivas Rao vs. D.A. Deepa**¹⁹, pursuant to the complaint by the wife, a case under Section 498-A IPC was registered against the husband and his parents. They had to apply for anticipatory bail, which was granted. They were acquitted. The wife filed appeal and some complaints were also

¹⁸ (2014) 16 SCC 34

¹⁹ 2013 (3) ALD 11 (SC)

filed by the wife for removal of the husband from the job. The Hon'ble Apex Court observed that the conduct of the wife in filing a complaint making unfounded, indecent and defamatory allegation etc. caused mental cruelty to the husband. The Hon'ble Apex Court further observed that staying together under the same roof is not a pre-condition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. In a given case, while staying away, a spouse can cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse's life miserable. The Hon'ble Apex Court observed that when the wife by her conduct caused mental cruelty to the husband the marriage was irretrievably broken down and granted divorce.

25 Paras 24, 25, 26 and 28 of **K. Srinivasa Rao** (supra) read as under:

“24. In our opinion, the High Court wrongly held that because the appellant-husband and the respondent-wife did not stay together there is no question of the parties causing cruelty to each other. Staying together under the same roof

is not a pre-condition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. In a given case, while staying away, a spouse can cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse's life miserable. This is what has happened in this case.

25. It is also to be noted that the appellant-husband and the respondent- wife are staying apart from 27/4/1999. Thus, they are living separately for more than ten years. This separation has created an unbridgeable distance between the two. As held in Samar Ghosh, if we refuse to sever the tie, it may lead to mental cruelty.

26. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the [Hindu Marriage Act, 1955](#). But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree.

27.....

28. In the ultimate analysis, we hold that the respondent-wife has caused by her conduct mental cruelty to the appellant-husband and the marriage has irretrievably broken down. Dissolution of marriage will relieve both sides of pain and anguish. In this Court the respondent-wife expressed that she wants to go back to the appellant-husband, but, that is not possible now. The appellant-husband is not willing to take her back. Even if we refuse decree of divorce to the appellant-husband, there are hardly any chances of the respondent-wife leading a happy life with the appellant-husband because a lot of bitterness is created by the conduct of the respondent-wife.”

26. In **Gajjala Shankar** (supra), this Court observed that “in normal course, mere filing a case for the offence u/s 498-A I.P.C. by itself may not be a ground sufficient to hold that the said act amounted to cruelty, but the criminal case was lodged against not only the husband but also his parents and sister. As a result of which, they suffered imprisonment for sometime. That would, naturally, prevail upon the social status of anybody, including the persons who were not really guilty of the offence. The Court had acquitted all the accused of the offence u/s 498-A I.P.C. The trauma and the sense of diffidence suffered by the husband, his

parents and sister, from the date of filing the criminal case till it ended in acquittal could easily be imagined.

27. In **Dr. P.K. Tomar** (supra), the Allahabad High Court, on 'cruelty' observed that "the lodging of the false F.I.R for offences under Sections.498-A, 323, 506 I.P.C without any reasonable cause and maliciously amounted to the mental cruelty.

28. In **Narendra Kumar Gupta** (supra), the wife instituted a report against the husband under Section 498-A IPC, in which he was arrested; released on bail and after investigation, the final report was filed. The Rajasthan High Court held that it amounted to 'cruelty' and furnished a ground for divorce under Section 13(1)(ia) of the H.M.Act.

29. In **Usharani Lenka** (supra), the wife filed the criminal cases against the husband. The husband had to defend for a considerable time. The Orissa High Court observed that the act and conduct of the wife must have traumatic experience and very humiliating in the social circle for the husband and clearly amounted to mental cruelty contemplated under [Section 13\(1\)\(ia\)](#) of the Hindu Marriage Act.

30. In **K. Radha Raju vs. K. Seetharama Raju**²⁰, the High Court of Judicature at Hyderabad, recorded that the wife took the steps to implead the husband and his in criminal proceedings to malign the husband. It was held that the conduct of the wife amounted to mental cruelty within the meaning of [Section 13\(1\)\(ia\)](#) of the Hindu Marriage Act. The decree of divorce granted by the learned trial court for dissolution of marriage on the ground of cruelty was upheld.

BURDEN OF PROOF:

31. In **Dr. N.G. Dastane vs. Mrs. S. Dastane**²¹, the Hon'ble Apex Court held that the burden of proof lies on the petitioner to establish his or her case, for, ordinarily, the burden lies on the party which affirms a fact, not on the party which denies it. This principle accords with common-sense as it is so much easier to prove a positive than a negative. The petitioner must therefore prove that the respondent treated him/her with cruelty. The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. Proof beyond reasonable doubt is

²⁰ 2001(6) ALT 350 (D.B)

²¹ AIR 1975 SC 1534

proof by a higher standard which generally governs criminal trials or trials involving inquiry into issues of a quasi-criminal nature. Considering that, proceedings under the H.M.Act are essentially of a civil nature, the satisfaction must be on a preponderance of probabilities and not beyond a reasonable doubt.

32. In **Parveen Mehta vs. Inderjit Mehta**²², the Hon'ble Apex Court observed that the mental cruelty is a state of mind and feeling with one of the spouses due to the behavior or behavioral pattern by the other. Unlike the case of physical cruelty the mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living.

33. Paras 21 and 22 of **Praveen Mehta** (supra) are as under:

“21. Cruelty for the purpose of [Section 13\(1\)\(ia\)](#) is to be taken as a behavior by one spouse towards the other which

²² (2002) 5 SCC 706

causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behavior or behavioral pattern by the other. Unlike the case of physical cruelty the mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehavior in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.

22. Judged in the light of the principles discussed above what we find is that right from the beginning the matrimonial relationship between the parties was not normal; the spouses stayed together at the matrimonial home for a short period of about six months; the respondent had been trying to persuade the appellant and her parents to agree to go for proper medical treatment to improve her health so that the parties may lead a normal sexual life; all such attempts proved futile. The appellant even refused to subject herself to medical test as advised by the doctor. After 21st June, 1987 she stayed away from the matrimonial home and the respondent was deprived of her company. In such circumstances, the respondent who was

enjoying normal health was likely to feel a sense of anguish and frustration in being deprived of normal cohabitation that every married person expects to enjoy and also social embarrassment due to the behavior of the appellant. Further, the conduct of the appellant in approaching the police complaining against her husband and his parents and in not accepting the advice of the superior judicial officer Mr.S.K.Jain and taking a false plea in the case that she had conceived but unfortunately there was miscarriage are bound to cause a sense of mental depression in the respondent. The cumulative effect of all these on the mind of the respondent, in our considered view, amounts to mental cruelty caused due to the stubborn attitude and inexplicably unreasonable conduct of the appellant.”

34. The aforesaid judgments make it a settled position in law that the mental cruelty is a state of mind, the feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other. 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. Mental cruelty cause much serious injury than physical harm. The criminal cases filed by wife to embarrass and incarcerate the husband and his family members cause persistent trauma, humiliation in social circle which amount to mental cruelty under Section 13(1)(ia) of H.M.Act, and particularly

when in reality they are not guilty and so acquitted. Such can only be imagined by others. Its difficult to prove mental cruelty and therefore the normal rule which governs the criminal proceedings is that it is proved by a preponderance of probabilities and not beyond reasonable doubt.

35. In **S.C. Nuna** (supra), upon which the learned counsel for the appellant placed reliance, the Delhi High Court held that mere acquittal in a criminal case cannot be a ground to grant divorce. The said judgment is to be considered in the facts and circumstances of that case. It is evident from the reading of that judgment, that the acquittal was subsequent to the rejection of divorce and consequently it was held that it could not be a ground to say that any kind of cruelty had been committed merely because there was an acquittal by a Criminal Court, which did not wash away the cruelty committed by the husband of being involved with a young girl during the subsistence of his marriage with the respondent wife and so mere acquittal in a criminal case could not be a ground to grant divorce.

36. In **S.C. Nuna** (supra) the husband had filed the petition for divorce on the ground of cruelty, which was rejected. The plea

taken by the wife was that in fact the husband was guilty of cruelty and by filing the divorce petition, the husband was seeking to take advantage of his own wrong. The wife asserted that their relationship was cordial but still the husband got into an ill-treatment relationship with his colleague and when the wife came to know about it there arose differences between them and because of that the husband was living separately and making the life of the wife miserable. In the said case, the finding was recorded that the wife was not cruel towards the husband. It was the own conduct of the husband that caused humility to the wife. The petition was dismissed. After the dismissal of the divorce petition, in Criminal Case under Sections 498-A, 406 IPC, registered against the husband there was acquittal. In the said circumstances, it was held that subsequent acquittal could not be a ground to grant divorce. The acquittal of the husband, did not wash away the cruelty committed by the husband. The judgment in **S.C. Nuna** (supra) is distinguishable and based thereon the appellant is not entitled to any benefit.

37. Learned counsel for the appellant placed reliance in **G. Vamsi Mohan** (supra). In the said case, a Coordinate Bench of

this Court held that until and unless the husband proves by adducing evidence that the allegation of a criminal case is false, the mere acquittal would not automatically give a right to the husband to claim that he has been able to prove the allegation of cruelty in H.M.O.P. In the said case as is evident a Coordinate Bench observed that the appellant should not take advantage of his own wrong. In the circumstances of that case the court found that the marriage between the parties could not be held to become dead. In the said case, the trial court had dismissed the divorce petition and had allowed the petition for restitution of conjugal rights filed by the wife. In that said case after the judgment of the trial court i.e dismissing the petition of the husband for divorce, the criminal case was instituted, in which the husband and his family members were acquitted. So, based thereon i.e subsequent fact, the dismissal of the petition for divorce was not reversed. The said judgment is to be considered in the correct perspective.

38. We are of the considered view that the act and conduct of the wife in filing the criminal complaint in C.C.No.228 of 2003 under Section 498-A IPC against the husband and his

parents in which they had to obtain bail and were finally acquitted as the allegations were not proved was a conduct causing mental cruelty, and agony to the husband. It amounted to mental cruelty and furnished a ground for divorce under Section 13(1)(ia) of the H.M.Act.

LONG SEPARATION:

39. Additionally, the parties are living for the last 29 years separately and before that they lived together for short period as is clear from the pleadings of the parties.

40. Though the wife has expressed her willingness by filing affidavit dated 10.09.2024 pursuant to the order dated 31.07.2024 that she is willing to live with the husband but the husband has also filed the affidavit that the appellant harassed him and his parents by lodging a false complaint in which, there was acquittal, but that caused the mental agony to him and to the entire family. The parties are living separately for last 29 years and there is no chance for reunion. In his evidence also as P.W.1, the husband

deposed to that effect that in view of false implication in criminal case, reunion is not possible. Considering the facts and circumstances of the case and also the period of long separation coupled with the affidavit of the husband. We are in agreement with the view taken by the learned trial court that now it is not possible for the parties to lead a matrimonial life together.

41. In **K. Srinivasa Rao** (supra), the wife also expressed that she wanted to go back to the husband, but it was observed that it would not be possible. The husband was not willing to take her back. The Apex Court observed that even if the decree of divorce to the husband was refused, there were hardly any chances of the wife leading a happy life with the husband because a lot of bitterness was created by the conduct of the wife.

POINT-B:

42. We do not find it a case to reverse the decree of divorce granted by the learned trial court. When the ground for divorce on cruelty was made out, reversal of the decree

would add agony to the parties. The relationship is beyond repair. The marriage has become a fiction.

VII. CONCLUSION:

43. In view of the above considerations, we hold on **Point-A** that the ground of 'cruelty' under Section 13(1)(ia) of H.M.Act was established to grant divorce. We hold on **Point No.B** that there is no illegality in the decree of divorce granted by the learned Trial Court. The same calls for no interference and is affirmed.

VIII. RESULT:

44. In the result, the appeal is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI, J

CHALLA GUNARANJAN, J

Dated:07.05.2025

Note:

L.R copy to be marked.

B/o.

Gk

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE SRI JUSTICE CHALLA GUNARANJAN

C.M.A.No.693 OF 2006

Date:07.05.2025.

Gk.