IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE VIRENDER SINGH

FIRST APPEAL No. 1797 of 2019

BETWEEN:-

[redacted]

APPELLANT

(BY MS. RUCHIKA GOHIL - ADVOCATE)

AND

[redacted]

RESPONDENT

(BY SHRI RAHUL DIWAKAR – ADVOCATE)

Reserved on : 20.01.2023

Pronounced on : 20.03.2023

This appeal having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

JUDGMENT

This appeal has been presented by the appellant-wife against her being aggrieved by the decree of divorce granted on August 31, 2019 by the First Additional Principal Judge, Family Court, Bhopal, in RCS HM No.166/2015.

2. The relevant facts are that the appellant and the respondent married on 31.01.2009 at Alwar as per the customs prevalent in their society. On 12.04.2011, they blessed with a son. Their marriage could not work. As per averments of the wife, behaviour of the respondent-husband towards her was very cruel, rude, disrespectful and disgraceful. Perturbed and distressed by his behaviour, she along with her minor son left his house situated in Mumbai on 13.08.2013 and came to her father's place in Bhopal. The matrimonial litigations then flared up between both of them. On 06.02.2014, as per the customs prevailing in their society, the respondent/husband presented an application for divorce before the Pachas (arbitrators) of the society. He made several allegations against her, but the 'Panch' of the society refused to give any order in his favour. He then filed a petition seeking divorce at Jaipur; which was subsequently transferred to Bhopal by the Supreme Court. The appellant/wife also filed a complaint under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act against the respondent/husband, and his family members in the Mahila Police Station, Bhopal, but the police did not take any action on it. Aggrieved by this, she filed a complaint before

the Court of Judicial Magistrate First Class, Bhopal under Section 200 of the Code of Criminal Procedure.

3. The appellant also filed a domestic violence petition against the respondent and his family members. She also filed a petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights, which was subsequently withdrawn. The respondent filed a petition for declaring him guardian of their son and seeking his custody. On 28.02.2015, after hearing of this petition, the respondent got agitated and started abusing her. He along with his two associates assaulted her and caused severe injuries. He also threatened her to kill. The appellant immediately filed an FIR No.143/2015 under Sections 294, 323, 506, 34 of the IPC complaining about the aforesaid incident and the injury caused to her. The respondent also lodged cross FIR bearing number 144/2015 against the appellant under Section 363 of the IPC alleging that she had kidnapped her own son. The appellant preferred a petition being CRR No. 3794/2017 against this FIR before the High Court; which was allowed vide order dated 16.05.2018 holding that the appellant is a natural guardian and mother of the child, therefore, the charge of kidnapping cannot be framed against her. On challenge by the respondent, the Supreme Court upheld the order of the High Court vide order dated 03.12.2018.

4. The divorce was sought on the ground of cruelty and desertion. The learned Family Court found both the grounds proved but holding that statutory period of 2 years of desertion is not completed by the time of filing of the petition by the husband and, therefore, decree

cannot be granted on that ground of desertion, allowed the petition on the ground of 'cruelty' and dissolved their marriage by a decree of divorce. This decree is the subject matter of the present appeal.

5. The appellant has assailed the decree of divorce on the grounds that while passing the decree of divorce, the learned Court below has only considered the aspects and contentions of the respondent. Despite contradictions, the trial Court wrongly believed the evidence produced by the respondent-husband. The learned Family Court misjudged the conduct of the respondent. It completely ignored that he was denied divorce by the 'Panchas' of the society and that it were only the actions of the respondent; which led to the separation of the parties. The conduct of the husband was not just and fair towards the appellant. He lodged several frivolous complaints against her just to harass her and to give away the custody of the child. While granting divorce, the learned Family Court ignored the material contradictions appeared in the statements of the respondent and the witnesses examined by him and erred in relying upon the statements of the witnesses of the respondent. It further ignored the fact of pendency of her petition under Section 498A of the IPC. Therefore, the appellant prayed for setting aside the decree of divorce granted vide impugned judgment.

6. The respondent-husband has opposed the prayer of the appellant and has supported the impugned judgment and decree.

7. We have heard the rival parties at length and have gone through the record.

8. From the record, it is seen that in support of his contention, the plaintiff "husband" examined himself as PW1 and five witnesses namely Mayank Sharma (PW2), Ajatashatru (PW3), Mradul Mohan Singh (PW4), Vijay Kumar Meena (PW5) and Indar Solanki (PW6) and exhibited a number of documents (Ex.P/1 to Ex.18) and a compact disk (Article 'A') whereas the appellant "wife" examined herself as DW1 and her sister Dr. Girja Meena as DW2 and exhibited a number of documents (Ex.D/1 to Ex.D/62).

9. In case of **V. Bhagat v. D. Bhagat** reported in **(1994) 1 SCC 337**, the Hon'ble Supreme Court held that mental cruelty in Section 13(1)(i-a) of the Act 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 determined 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.

10. In order to find out the cruelty apart from a physical cruelty, mental cruelty has been defined by the Supreme Court in case of **Samar Ghosh v. Jaya Ghosh** reported in **(2007) 4 SCC 511**, which are reproduced herein below :

> "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.
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> (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.
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> (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."

11. In **Vishwanath Agrawal vs. Sarla Vishwanath Agrawal** reported in **(2012) 7 SCC 288** has held that the expression 'cruelty' has an inseparable nexus with human conduct or human behaviour. It is always dependent upon social strata or the milieu to which the parties belong, their ways of life, relationship, temperament and emotions that conditioned by their social status. The facts and circumstances are to be assessed emerging from the evidence on record and thereafter, a fair inference has to be drawn whether the petitioner in the divorce petition has been subjected to mental cruelty due to the conduct of others.

12. In case of **Narendra v. K. Meena** reported in **(2016) 9 SCC 455**, the respondent-wife wanted the appellant-husband to get separated from his family. The evidence of that case shows that the family was virtually maintained from the income of the appellant-husband. In that circumstances, Hon'ble Supreme Court has observed that :-

> "..... It is not a common practice or desirable culture for a Hindu son in India to get separated from the parents upon getting married at the instance of the wife, especially when the son is the only earning member in the family. A son, brought up and given education by his parents, has a moral and legal obligation to take care and maintain the parents, when they become old and when they have either no income or have a meagre income. In India, generally people do not subscribe to the western thought, where, upon getting married or attaining majority, the son gets separated from

> the family. In normal circumstances, a wife is expected to be with the family of the husband after the marriage. She becomes integral to and forms part of the family of the husband and normally without any justifiable strong reason, she would never insist that her husband should get separated from the family and live only with her.
> ..... As stated hereinabove, in a Hindu society, it is a pious obligation of the son to maintain the parents. If a wife makes an attempt to deviate from the normal practice and normal custom of the society, she must have some justifiable reason for that and in this case, we do not find any justifiable reason, except monetary consideration of the respondent wife. In our opinion, normally, no husband would tolerate this and no son would like to be separated from his old parents and other family members, who are also dependent upon his income. The persistent effort of the respondent wife to constrain the appellant to be separated from the family would be tortuous for the husband and in our opinion, the trial court was right when it came to the conclusion that this constitutes an act of "cruelty"."

13. In the case on hand, the plaintiff/respondent Siddharth Meena (Husband) (PW1) has deposed in his examination-in-chief that his wife/defendant is a very proud, arrogant, stubborn, short tempered and pretentious lady. She has a complex that she is a beloved daughter of an IPS officer. Since the day she entered in her matrimonial house, she started disobeying everyone stating that she is a progressive girl and neither likes nor follows the orthodox traditions. On her arrival in the matrimonial house after the marriage, when their relatives and people of their community came to greet her and her mother call her for a tradition of face unveiling (*Muh Dikhai*), she very rudely refused to come out of the room. When his mother tried to exhort her stating that this is an age old tradition, she started shouting that she doesn't believe

in such idiotic traditions and that she is not an article to be demonstrated before the people. From the day one, her behaviour with the elders of the family and the society was disrespectful and disgraceful. She used to insult his family member on one or the other issues. She was not cordial even with him and immediately after marriage started abusing and torturing him mentally, emotionally and even physically. She used to fight with him on petty issues and whenever he tried to pacify her, she often become even more furious. She used to misbehave and abuse him as well as his family members. He also deposed that she stayed at his parental house in Jaipur only for 15 days and even during these days, her behaviour was indecent, impolite and very rude towards him and his family members. She did not respect his family members nor talked to them. She went to her parental home saying that she will be back after 10-12 days but did not come back. When he tried to bring her back, she initially refused but later on persuasion by the family and eminent persons, she came back with great difficulty on the occasion of *Gan Gour Pooja* with the condition that she will not stay in joint family and will live her life the way she wants.

14. He further alleged that the appellant/wife had got a case of demand of dowry registered against him. After the inquiry, the police found the case not proved and filed a closure report (Ex.P/1). His mother had made a complaint against the appellant and her father for harassing her by making false complaints (Ex.P/2). He was granted interim custody of his minor son on 20.02.2015 but she forcibly

snatched him and left the place, therefore, he lodged an FIR under Section 363 of IPC (Ex.P/3). She (the appellant wife) implicated his entire family by again filing a case for cruelty on account of demand of dowry (Ex/P/5). All this shows that the wife was harassing and torturing him and his entire family. His statement remained intact in cross-examination. His witnesses including his younger brother Ajatashatru (PW3) stood firm with him.

15. On the other hand, the appellant-wife has examined herself and her sister Dr. Girja Meena before the ld. Family Court. In their statements, both the sisters have made counter allegations of physical and mental cruelty. They both have deposed that the husband as well as his parents and other family members were taunting, insulting and harassing her for not bringing adequate dowry. On many of the occasions, husband went physical. Her mother-in-law was pressurizing her to drop to pursue her PG course. The husband was not assisting her to bear household expenses and her daily needs. She was surviving only on the stipend she was getting for pursuing PG course. They further alleged that in Mumbai once she had undergone a surgery of a cyst in the abdomen; but none of the family members of the husband helped her. When she conceived, the mother and sister of the husband started pressurizing her to get it aborted. When she didn't agree for the same, the husband beat and pushed her so she slipped in the bathroom. During regular check-up of pregnancy, the Doctor suggested her to get the baby deliver in Mumbai else may be dangerous to its (baby in womb) as well as her own life, but even then her parents-in-law

insisted upon delivery in Jaipur. When her father talked to her in-laws, they abused them. The wife has further alleged that whenever she visited her in-laws house in Jaipur, her sisters-in-law (Nanad) Kiran and Sujata and brother-in-law (Dewar) Ajatashatru (PW3) used to beat and tortured her. They were also ill-treating her new born baby Arihant. They often tried to keep him away from the mother. She was not familiar with the medical facilities available in Jaipur. Whenever her son fell ill in Jaipur and needed to consult a doctor, they (in-laws) never helped or supported him and with great difficulty; somehow she could manage those days. On 12.08.2013 when her parents came to Mumbai to get operation of her mother's leg, the respondent/husband misbehaved with them. He refused to have food with them. On next date i.e. 13.08.2013, when she asked for permission to go with her parent to celebrate upcoming festival of *Rakhi*, the husband didn't reply properly. He only pointed his finger towards the door going out of the house. He didn't take pains to drop them to airport, even when she was travelling with their infant son. On the occasion of her sister-in-law Kiran's marriage going to be solemnized on 13.11.2013, she did everything with respect to pre-wedding preparation, shopping etc. but they didn't even bother to invite her or her parents to the marriage. They even refused to accept the traditional gifts sent by her parents for *Kanyadaan*. The husband did not bother to take her back after 13.08.2013. He didn't even come to meet his son. He sent her and her son's belongings by courier from Mumbai but still did not return the *Stridhan*. Despite all the odds, she was pulling ties to somehow save

her marriage but when water started flowing over her head and she was left with no other option, she decided to stay with her parents along with her minor son.

16. The appellant further deposed that whenever she wanted to call her family members, the husband used to say that this is his house and if she will call her family members, he will drive them out. When her mother's health deteriorated, he herself called her to Mumbai and got her treated at Tata Memorial Hospital at his own expense. The husband neither gave any cooperation nor even gave any respect to her parents during their stay in Mumbai for the said treatment.

17. On appreciation of this entire evidence, in its very lengthy judgment categorically touching each and every aspect, the ld. Family Court arrived at a conclusion that the statements of the husband and his witnesses are reliable. It further found that in cross examination, both the sisters did not withstand on their allegations. She could not produce any evidence supporting her allegations. She has not denied the fact that even prior to her marriage; her elder sister-in-law was married and was living with her husband at her in-laws place. She didn't produce any evidence which shows that any time her husband went physical or that at any of the occasion she made any complaint to anyone of the ordeal she faced. She has also admitted that at the time of her marriage, her younger sister-in-law was staying in Delhi to pursue her academics. She has admitted that at the time of marriage of her sister-in-law, she stayed at her in-laws house in Jaipur. She further admitted that after the marriage, whenever she required travelling anywhere she travelled by

air. She has also not denied that all the expenses of her PG course had been borne by her husband. She could not point out any of the incident indicating that the husband was not cordial or was not affectionate or had ever neglected their minor son. She has not denied existence of documents relied upon by the respondent-husband.

18. We have also carefully gone through the depositions of all these witnesses examined by both the parties. Keeping in view the principles of preponderance of probability, on the scrutiny of this entire evidence, we find ourselves in consensus with the conclusions arrived at by the ld. Family Court.

19. Here, we would like to add one more fact that while considering this appeal against divorce granted by the Family Court, we also had the occasion to go through the proceedings initiated by the respondent "husband" under the Guardians and Wards Act, 1890 for custody of their son and also the proceedings initiated by him for contumuous attitude of the appellant 'wife' towards the direction of the Court to periodic handing over their son to the respondent/husband. She was held guilty for non-compliance of that direction for about 60 times and has been punished under Section 45 of the said Act.

20. On careful reading of statements of the witnesses examined by the respondent/husband before the Family Court, we do not find anything to consider them untrustworthy or doubtful on any of the material aspect. These statements are further corroborated by relevant documents which could not have been rebutted by the appellant/wife; while on the other hand, keeping in mind the traditions, the most of the

allegations of the appellant regarding post wedding ceremonies or delivery of the baby in Jaipur etc. are usual conduct and expectations of the respondent and his family.

21. Dr. Girja Meena (DW2) has stated that since 2013, her sister Smt. Santosh Meena has not been living with her husband. In cross-examination, she has admitted that her sister is not interested to live with her husband and that there has been so much bitterness between them and also between the families of both of them that it has become impossible to maintain kinship and relations between them. The appellant has admitted that she has not filed any application for restoration of her marital life in any Court.

22. The Hon'ble Supreme Court in case of **K. Srinivasa Rao v. D.A. Deepa** reported in **(2013) 5 SCC 226** wherein it has been held at paragraphs 30 and 31, which read as under :

> "30. 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 (supra), if we refuse to sever the tie, it may lead to mental cruelty.
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> 31. 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."

23. Further, in case of **Smt. Vijaya Laxmi Soni v. Raj Kuma Soni** reported in **2009 (2) CGLJ 72 (DB)**, the Chhattisgarh High Court held that when re-union or restitution of conjugal rights becomes impossible between the parties, dissolution of marriage by a decree of divorce is the only effective remedy for the welfare of the parties, rejected the appeal and marriage between the parties dissolved by a decree of divorce.

24. The learned Family Court has discussed the entire evidence and has reached to the finding that the husband has proved the cruelty. The evidence available on record and as discussed above would suggest in definite terms that the behaviour of the appellant-wife was not respectful towards the respondent or his family member. The same would construe as a cruelty towards the husband. The evidence also goes to show that reason assigned by the appellant to leave her matrimonial house is not satisfactory and also that without any just and reasonable cause, she is residing separately from the husband. Both the parties are living separately since 13.08.2013 and no cohabitation took place between them since then. The wife is not much willing to stay with the husband. Under these circumstances, in our considered view, the learned Family Court rightly has granted decree of divorce on the ground of cruelty.

25. Keeping in view the principles of law laid down by the Hon'ble Supreme Court in the aforesaid cases, the facts and circumstances of

the case as well as the evidence available on record, we cannot say that there is any much less clinching material to show that the impugned judgment and decree calls for no interference. On appreciation of evidence, we do not find any perversity in the findings recorded by the Family Court. The impugned judgment and decree is just and proper warranting no interference of this Court.

26. In the result, the appeal, *sans substratum*, is liable to be and is hereby **dismissed**, leaving the parties to bear their own cost(s).

27. Let a decree be drawn accordingly.

(SHEEL NAGU)
JUDGE

(VIRENDER SINGH)
JUDGE

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