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FA-527-2006

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL DHAGAT

&

HON'BLE SHRI JUSTICE RAMKUMAR CHOUBEY

FIRST APPEAL No. 527 of 2006

[REDACTED] [REDACTED]

Versus

[REDACTED] [REDACTED]

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Appearance:

Shri Avinash Zargar - Advocate for the appellant.

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Reserved on 07.08.2025

Pronounced on : 03.09.2025

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JUDGMENT

Per. Justice Vishal Dhagat

Appellant has preferred first appeal under Section 28 of Hindu Marriage Act against judgment and decree dated 19.04.2006 passed in Matrimonial Case No.73-A/2003 by District Judge, Tikamgarh.

2. Appellant was plaintiff and respondent was defendant before the Trial Court. Marriage between appellant and respondent was performed on 31.05.1998 at Tikamgarh according to Hindu Rites and Rituals. Family members of respondent suppressed the fact of mental illness of respondent. When respondent arrived at house after marriage, her behavior was abnormal, she remained ignorant and unaware of works of married woman in the house. She continuously used to move her legs forgetting modesty of woman. She did not share household work with other family members. She used to laugh



and cry without reasons. When she was questioned for her behavior, she used to deny that she laughed or cried. She used to treat her son cruelly and used to beat him and throw him on ground and also treated appellant's mother cruelly. She did not use to cook food in house. If she has started jet pump, used to forget to switch off the same and she acted similarly while cooking food and used to burn the food. All the time, appellant was living under mental harassment and tension. Respondent did not have any love and affection for appellant and always used to do strange works in the house and there was always possibility of some serious accident in the house due to her behavior. Respondent was treated at Delhi, Lalitpur, Gaziabad and doctors diagnosed her to be suffering from psychiatric problem. Her presence in house was threat to mother and children of appellant. Appellant was facing great hardship and trouble in living with 24 hours mental tension. In these circumstances, appellant had filed a case for dissolution of marriage on grounds of cruelty under Section 13(1)(i-a) and 13(1)(iii) of Hindu Marriage Act, 1955.

3. Counsel appearing for appellant submitted that he examined himself, his neighbor Bhagwandas Gupta (PW/2), one Prithish Jain (PW/3) who were acquainted with behavior of respondent and also examined Dr. Sudha Gupta (PW/4) & Dr. Anil Dohre (PW/5), who treated the respondent. Learned trial Court had committed an error of law in not considering aforesaid evidence available on record. Provisions of law was misconstrued and judgment and decree was passed in cryptic and arbitrary manner without analyzing evidence available on record. Trial Court ought to have granted



decree of divorce on grounds of cruelty and on fact that respondent is suffering from incurable mental disease. Appellant makes a prayer for allowing the appeal and dissolution of marriage on aforesaid grounds.

4. None appears for respondent. Respondent was served with a notice and Shri Rakesh Jain - counsel was appearing for respondent. Respondent was also paid maintenance pendente lite on 28.03.2011. Thereafter, case was listed for final hearing. None appeared for respondent in proceedings of the Court, therefore, S.P.C was issued to respondent on 24.02.2025. Even after issuance of S.P.C, none appeared for respondent, therefore, respondent is proceeded *ex parte*.

5. Respondent defended the case averring false grounds of cruelty were raised in the petition and real motive of appellant is to do second marriage. Appellant and his family members were cruel and used to harass the respondent for dowry. She was manhandled by mother of appellant and she banged her head against the wall which resulted in uneasiness, numbness and depression to respondent. She is not suffering from any mental disease. Appellant and his family members demanded Rs.2 Lacs. Due to said reason, her father died of heart attack on 05.11.2000. Trial Court, after considering pleadings of parties and evidence available on record, came to a finding that appellant failed to put suggestions to mother of respondent-Vedwati that respondent's mental illness was suppressed for getting her married to appellant. Appellant also failed to prove that respondent was suffering from mental illness, which cannot be treated. Doctors have not stated that respondent was suffering from incurable mental disease. Her behavior was so



abnormal that appellant cannot live with her. On aforesaid basis, suit for dissolution of marriage was dismissed.

6. Heard learned counsel for appellant. Perused pleadings, evidence available on record and judgment passed by the trial Court.

7. Counsel appearing for the appellant submitted before this Court that there is irretrievable breakdown of marriage between the parties, therefore, divorce may be granted to appellant. He relied upon the various judgment passed by the High Courts and Apex Courts. It is submitted that High Court of Patna in Miscellaneous Petition No. 624/2018 vide its judgment dated 9.1.2025 had granted decree of divorce on the ground of irretrievable breakdown of marriage. Special Leave to Appeal No.18931/2025 was preferred before Apex Court against said judgment and decree. Apex Court has refused to interfere in judgment and decree. Since Apex Court has refused to interfere in judgment and decree passed by the High Court, therefore, Apex Court approved the judgment and decree of divorce on the grounds of irretrievable breakdown of marriage.

8. Appellant and respondent were married with each other on 31.5.1998. Within very short period of time i.e. from 5.6.2003, appellant and respondent started living separately. There is long period of separation between appellant and respondent. There is no possibility of resumption of married life between appellant and respondent. There is break down of marriage between appellant and respondent beyond repair. Appellant and respondent are living separately since last 22 years. Respondent has also lost interest to prosecute the appeal and she is not appearing before the Court.



Breakdown of marriage is complete between the parties and now it is only a legal formality to pass a decree of divorce dissolving the marriage. Irretrievable break down of marriage is not a ground available to High Court for granting decree of divorce. Apex Court in various cases has allowed appeals granting decree of divorce on the ground of irretrievable break down of marriage. Such relief was granted by Apex Court exercising its power under Article 142 (1) of the Constitution of India. Apex Court in case of *Shilpa Shailesh Vs. Varun Shreenivasan* reported in *Transfer Petition (Civil) No. 1118/2014* has held that there is distinction between constitutional power exercisable by Supreme Court under Article 142(1) of the Constitution of India and inherent power of Civil Court recognized by Section 151 of the Code of Civil Procedure and inherent power of High Court under Section 482 of the Code of Criminal Procedure. Section 151 of the CPC and Section 482 of the Cr.P.C., empowers civil court and High Court to pass orders as may be necessary to meet the ends of justice and to prevent abuse the process of Court. Expression ends of justice refers to the best interest of the public within the four corners of the law. Courts are not empowered to act contrary to procedure on a particular aspect of law provided in Code of Civil Procedure and Code of Criminal Procedure. Where Code of Civil Procedure and Code of Criminal Procedure are silent, the Civil Court or the High Court can pass orders in the interest of public for simple reason that no legislation is capable of contemplating all possible circumstances that may arise in future litigation and consequently provide a procedure for them. Provision of Code of Civil Procedure and Code of Criminal Procedure are



not to be read as to limit or otherwise affect inherent power of the civil court or High Court respectively to make such orders as is necessary for ends of justice and to prevent abuse process of Court. Powers under Article 142(1) of the Constitution of India is to be exercised by Apex Court when it is satisfied that departure from procedure or law is necessary to do complete justice between parties. In the aforesaid decision, Apex Court had given references of cases i.e. *B. S. Joshi and others Vs. State of Haryana and another* reported in (2003) 4 SCC 675 wherein despite no provision for compounding under Section 320 of the Code of Criminal Procedure for offences committed under Section 498A of the Indian Penal Code, Apex Court permitted compounding of offences and held that High Court exercising powers under Section 482 of the Code of Criminal Procedure may quash proceeding even in non compoundable offences where ends of justice so required. Similarly references i.e. in case of *Gyan Singh Vs. State of Punjab and another* reported in (2012) 10 SCC 303, wherein departure is made from law permitting compounding in non compoundable cases. Apex Court in case of *V. Bhagat Vs. D. Bhagat* reported in (1994) 1 SCC 337 held that cruelty is conduct of a party of husband and wife to another to inflict mental pain and suffering which would make it impossible for party to live together. Cruelty must be of such a nature that parties cannot reasonably be expected to live together. Cruelty is subjective to each case and has to be decided on case to case basis. In the said case, it was also observed that retrievably breakdown of marriage is not a ground for divorce under Hindu Marriage Act, 1955. In case of *Ashok Hurra Vs. Rupa Bipin Zaveri* reported



in *(1997) 4 SCC 226*, Apex Court held that cases where husband and wife are residing separately for 22 years and parties are not agreeable to divorce with each other and in spite of said fact husband had remarried and had a child. In such circumstances, no useful purpose both emotionally and practically would be served in postponing the inevitability and prolonging the agony of the parties or their marriage and therefore, curtain should be drawn on the marriage and Court exercised power under Article 142 (1) of the Constitution of India to grant decree of divorce. Similarly, in case of *Naveen Kohli Vs. Neelu Kohli* reported in *(2006) 4 SCC 558* divorce was granted on the ground of unworkable marriage. Damage was irreparable and separation was held to be inevitable. It was held that public interest lies in recognition of real facts and not merely to rely upon fault theory and grant divorce where fault of one or other party is proved. Apex Court in case of *Poonam Vs. Sumit Tanwar* reported in *(2010) 4 SCC 460* held that party should not be allowed to file writ petitions under Article 32 or Article 226 of the Constitution of India to seek divorce on the ground of irretrievable breakdown of marriage as person is having competent judicial forum to approach Court or Tribunal for redressal of the grievance.

9. On going through aforesaid case laws laid down by the Apex Court, it is clear that High Court has inherent power under Section 482 of the Code of Criminal Procedure to pass necessary order to give effect to orders of the Court or to prevent abuse of process of any Court or to secure the ends of justice. Similarly, section 151 of the Code of Civil Procedure gives inherent powers on Civil Courts to make such orders as may be necessary for



ends of justice and to prevent abuse of process of Court. When there is complete breakdown of marriage and there is impossibility of resumption of married life between the parties then Court cannot close its eyes to said fact and enhance the pain of parties in not granting them divorce. Not granting divorce to a party will mean that they are stopped at a particular stage of life and are not permitted to proceed further to settle themselves in their life in pursuit of peace and happiness. They are forced to live life denying marital happiness to them or to deny them to live their life solitarily in peace and happiness. Husband or wife often adopts to sadistic approach towards their partner and gets enjoyment and happiness from pain and sufferings of others side. They intentionally resist granting of divorce to other party to harass them and not allowing them to settle in life though they vividly know that marriage between them has been broken and marital ties cannot be resumed.

Aforesaid conduct of parties also amounts to cruelty under Section 13(1)(a) of the Hindu Marriage Act, 1955. If divorce is granted Court is not departing from substantive law but only acting within four corners of law to subserve interest of justice.

10. In view of the aforesaid laws and facts of the case, it is found that there is complete breakdown of marriage. Respondent is no longer interested to prosecute appeal as none appears for her. There is long separation between the parties i.e. for 22 years and no purpose will be served overlooking the said fact and sticking to fact that parties have failed to establish their case on basis of fault theory.

11. Accordingly, appeal is **allowed**. Marriage dated 31.5.1998



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between appellant and respondent is dissolved and divorce is granted.

(VISHAL DHAGAT)
JUDGE

(RAMKUMAR CHOUBEY)
JUDGE

AD/