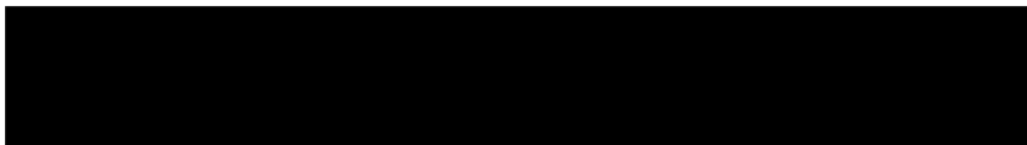


IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.205 of 2023



... .. Appellant/s

Versus



... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ankit Katriar, Advocate
Mr. Ankit Kumar Singh, Advocate
For the Respondent/s : Mr. Nikhil Kumar Agrawal, Advocate
Ms. Aditi Hansaria, Advocate

**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 18-12-2023

Present Miscellaneous Appeal No. 205 of 2023 is arising out of Matrimonial (Divorce) Case No. 105 of 2019, on the file of the learned Principal Judge, Family Court, Vaishali at Hajipur by which appellant's petition for divorce under Section 13 1(ia) 1(ib) of the Hindu Marriage Act, 1955 is declined.

2. Brief facts of the case are that appellant-husband and respondent-wife married in terms of Hindu rites and customs on 29.11.2012. Out of their wedlock, respondent-wife gave birth to a



male child on 09.11.2013. Till 04.06.2015/05.06.2015 they were living together. Appellant-husband at the relevant point of time was a Junior Engineer in the Maharashtra State Power Generation Company Limited.

3. Respondent was also living with her husband at Mumbai for sometime. There were certain domestic issues mainly respondent-wife was not willing to live in husband's matrimonial home at village called Neem chowk, Tajpur, P.S- Tajpur, District-Samastipur, Bihar. Whereas, appellant and his parents were insisting respondent to stay in the aforementioned village to look after her in-laws. Further there were allegation against the husband-appellant and his parents and ten others, who are related or well wishers of husband. In this regard, criminal proceedings were initiated under Section 498 A and allied Sections, Mahua P.S. Case No. 294 of 2016. During pendency of the criminal proceedings six names were dropped whereas, offences under Section 498 (A) and allied Sections is still pending against appellant and his parents. Case for grant of maintenance under Sections 125 of Cr.P.C proceeded against husband, it is still pending consideration before the various judicial forums.

4. Simultaneously, respondent filed domestic violence case by means of filing complaint and it is also pending



consideration. Further, she had filed complaint against her husband before his employer to take disciplinary action and remove him from service. She has also made serious allegations about the character of the husband and against his mother in the domestic violence complaint/petition.

5. In this backdrop appellant-husband filed matrimonial (divorce) case no. 105 of 2019, on the file of learned Family Principal Judge, Vaishali at Hajipur under Section 13 1(ia) 1(ib) of Hindu Marriage Act, 1955.

6. The learned Principal Judge, Family Court decline the appellant's petition of the matrimonial (divorce) case no. 105 of 2019 on 16.02.2023.

7. Learned counsel for the appellant vehemently contended that Family Court failed to appreciate cruelty meted out to the appellant. On this issue learned counsel for the appellant submitted that respondent was not willing to join her matrimonial home and stay in a joint family or stay in the in-law's house. Criminal proceedings were initiated under Section 498 (A) and other allied offences. It is also submitted that she had filed complaint before the employer to take disciplinary action and to remove him from service and domestic violence petition was filed



under various Sections like Section 12, 18(d)(e)(f), 19 (f), 20 I(b) (d), 22 and Section 23.

8. It is submitted that these three issues suffice to say that appellant is facing character assassination, humiliation and embarrassment in the family circle and in his work place and in over all in the society and these issues would fall under mental torture and leads to cruelty at the hands of the respondent-wife.

9. Learned counsel for the appellant further relied on documents, Exhibits P/1 to P/4 which are relating to communication, domestic petition rejection of Criminal Miscellaneous.

10. It is submitted that having regard to the aforementioned allegations of 498 (A) and lodged case of Domestic Violence Act (D.V. Act), case for grant of maintenance under Sections 125 of Cr.P.C domestic violence, and complaint before the employer would suffice to hold that appellant faced a cruelty at the hands of respondent. The same has not been appreciated by the Family Court. In support of the aforementioned contentions learned counsel for the appellant relied on Apex Court decision in the case of **K. Srinivas Rao vs D.A. Deepa (2013) 5 SCC Page No. 226 (Para-11,16,27,29 and 34)**. In the light of these facts and circumstances, learned counsel for the appellant



submitted that impugned order dated 16.02.2023 passed in matrimonial (divorce) case no. 105 of 2019 on the file of Principal Judge, Family Court, Vaishali at Hajipur, State of Bihar is liable to be set aside while allowing the matrimonial case no. 105 of 2019 and to award decree of divorce while dissolving marriage among appellant and respondent performed on 29.11.2012. No other contention is urged.

11. *Per contra*, learned counsel for the respondent resisted the aforementioned contentions submitted that isolated incidents does not amount to cruelty. The same has been appreciated by the Family Court. The respondent is prepare to join her husband with a rider that she will be withdrawing all pending litigation filed against the appellant husband and her in-laws.

12. Learned counsel for the respondent relied on Apex Court decision in the case of **Ashok Kumar Jain Vs Sumati Jain**, reported in **AIR 2013 SC 2916** (Para 13). In this case Apex Court has held that isolated certain incidents among the husband-wife does not amount to cruelty. In the present case isolated incidents are involved and respondent express that she would be withdrawing all criminal proceedings as well as domestic violence litigations in the event of refusal of decree of divorce. Further, it is addressed that there is no infirmity in the judgment of the Family



Court. It is also submitted that cited decision on behalf of the appellant **K. Srinivas Rao vs D.A. Deepa (2013) 5 SCC** has no application and it all depends on individual case with reference to allegations and those allegations amount to cruelty or not. Therefore respondent submitted that the present Miscellaneous Appeal is liable to be rejected while affirming the decision of the Family Court judgement dated 16.02.2023. No other contention is urged.

13. The Family Court while deciding the matrimonial divorce case 105 of 2019 relied on twenty six exhibits on behalf of the appellant and four on behalf of the respondent at the same time four witnesses have been examined on behalf of the appellant (including appellant) and on behalf of the respondent three witnesses (including respondent).

14. Heard learned counsels for the respective parties.

15. On the basis of contentions of the respective parties, the Family Court framed the following issues:

"I. Is this suit, as framed, maintainable?

II. Whether the petitioner has got valid cause of action and right to sue?

III. Whether the O.P. has deserted the petitioner continuously for a period of more than two years since preceding the presentation of the instance case?



IV. Whether the behaviour the O.P. is cruel towards the petitioner?

V. Whether the petitioner is entitled to get a decree of divorce against the O.P.?

VI. To what other relief or reliefs the petitioner is entitled?"

16. The Family Court while deciding the Matrimonial Divorce Case No. 105 of 2019 relied on 26 Exhibits on behalf of the appellant and 4 Exhibits on behalf of the respondent. Further, four and three witnesses on behalf of the appellant and the respondent were examined and cross-examined respectively.

17. The appellant and respondent married in terms of Hindu rites and custom on 29.11.2012. Out of their wedlock, respondent - wife gave birth to a male child on 09.11.2013. Till 04.06.2015, they were living together. Thereafter, they remained living separately due to various domestic issues. After marriage, respondent was staying in matrimonial home. It is learnt that appellant's parents were also living for some time in Mumbai. There were certain domestic issues among the family members like dislike among the respondent – wife and her husband's parents, in-laws resulted in demand of living separately on behalf of respondent - wife. On the other hand, appellant was insisting to stay in a joint family, since he was only son to his parents. In fact, for some time the parents of the respondents were also visited



appellant and respondent when they were in Mumbai. Respondent had gone to her parent's house and, thereafter, she was residing in Mumbai on her own and not staying with her husband. Similarly, she was staying in her brother's place at New Delhi. In this backdrop, respondent initiated criminal proceedings under Section 498 – A of the Penal Code, 1860 and Sections 3 and 4 of the Dowry Act, 1961 and allied offences against her husband and her in-laws and others who are well wishers to her husband in the year 2016. The appellant filed an anticipatory bail in which he had expressed that he shall look after the respondent and child, but it was rejected by her and she opposed anticipatory bail application. However, appellant had a benefit of anticipatory bail on 30.09.2016 before this Court.

18. Faced with aforementioned offences under section 498 A of the IPC and allied cases against respondent and the fact that appellant had a benefit of anticipatory bail, respondent proceeded to instigate appellant's employer while making wild allegations against appellant and so as to remove him from service. Thereafter, she has filed Domestic Violence Case No. 95 of 2016 at Patna against appellant of alleging adultery, fornication and further alleged that appellant and her mother-in-law are involved in soliciting prostitution. She fought tooth and nail in every reliefs



sought by the appellant in the Court of law. She was paid interim maintenance of Rs. 10,000/-.

19. Brief allegations levelled by the respondent are that filing of criminal case under Section 498 A of the IPC and other allied offences against appellant and his parents and well wishers of the appellant. During pendency of the aforementioned criminal case, six names were dropped while continuing with appellant and his parents. The second issue is relating to filing of a false complaint to the appellant's employer against appellant while making certain character assassination so as to impress the employer to take necessary steps to remove the appellant from service. The third issue is relating to filing of Domestic Violence Petition under Sections like Section 12, 18 (d) (e) (f), 19 (f), 20 (i) (b) (d), Sections 22 and 23. Perusal of Exhibit P1, which is a complaint on behalf of respondent - wife to the employer of the appellant, except alleged date of demand of dowry *i.e.* 29.11.2012 and in respect of other allegations stated in paragraph Nos. 3, 4 and 5, they are very vague in the absence of any particular date and time. Exhibit P2 is the order sheet maintained by the CJM, Vaishali at Hajipur in respect of recording of certain alleged incidents and further directing the respective parties to appear physically on 16.12.2016 and try to restore in their matrimonial



home. Exhibit P3 is the copy of petition filed in the Court of Chief Judicial Magistrate, Patna Civil Court *namely* Domestic Violence Case No. 95 of 2016. Exhibit P4 is a notice relating to Cr. Misc. No. 44135 of 2017 filed before this Court. From these documents, it is only factual aspect of the matter to the extent that respondent filed complaint and pendency of the litigations and material shown is relating to cruelty or not? Those cases were required to be adjudicated, hence, not much relevance in favour of the appellant.

20. Respondent - wife denied the alleged allegations levelled by her husband – appellant. However, she has admitted that at the instigation of her advocate she was compelled to make the aforementioned allegations in all the three issues. However, she has resisted insofar as offence under Section 498 A of the IPC and certain domestic violence, in other words, she was subjected to dowry demand and domestic violence, but she has admitted the allegations of character assassination against appellant and her mother-in-law are untrue. She had produced certain material information relating to domestic violence like injury and its subject matter of litigation.

21. Taking note of the allegations and counter allegations between the appellant and the respondent, the Trial Court while referring to decision in the case of **Shailendra**



Kumar Chandra Versus Smt. Bharti Chandra First Appeal (M) No. 124/2017 and K. Srinivas Rai versus D.A. Deepa Civil Appeal No. 1794/2013 and on behalf of respondent – **Shobha Rani versus Madhukar Reddi (1998) 1 Supreme Court Cases 105** proceeded to hold that the appellant has not made out cruelty with reference to the alleged allegations made by the respondent. Further, in the absence of pleading, Family Court proceeded to hold that the appellant has not made out a case of desertion against the respondent. Ultimately, the following order was passed.

“The petitioner has failed to prove desertion or cruelty as claimed. Therefore, the present case is dismissed. No order with respect to cost is being passed. The office is directed to hand over copy of the order to the parties of per law”

22. The law as to matrimonial offences by cruelty by one or the other spouse has been elucidated by the Supreme Court in number of rulings. The same are extracted as follows:

23. The Supreme Court in the case of ***V.Bhagat Vs. D. Bhagat***, reported in ***AIR 1994 SC 710***, has held that, 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 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.

24. Yet again the Supreme Court in *Parveen Mehta Vs. Inderjit Mehta*, reported in *AIR 2002 SC 2582*, has held thus :
“21. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behavior by one spouse towards the other, which 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 behaviour or behavioural pattern by the other.



Unlike the case of physical cruelty, 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 misbehaviour 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”.

25. In the case of *A. Jayachandra Vs. Aneel Kaur*, reported in *AIR 2005 SC 534*, the Supreme Court has held that, the expression ‘cruelty’ has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or



mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence, the



courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

26. In the case of *Naveen Kohli Vs. Neelu Kohli*, reported in *AIR 2006 SC 1675*, the Supreme Court has held that, 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 bund 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.



27. In the case of *Ramchander Vs. Ananta*, reported in (2015) 11 SCC 539, the Supreme Court has again held that instances of cruelty are not to be taken in isolation but cumulative effect of facts and circumstances emerging from evidence on record and then drawing a fair inference whether plaintiff has been subjected to mental cruelty due to conduct of other spouse has to be culled out.

28. The principle is, thus, settled that whether in the facts and circumstances of a given case, the petitioner has been able to make out a case of grant of divorce on the ground of cruelty would depend upon the nature of pleadings and evidence in that case and there can be no straitjacket formula nor an exhaustive list of instances can be prepared, where cruelty is said to have been committed by one or other party to the marriage. Cruelty can also not be inferred by applying any formula because the said question is to be determined keeping in view the social status of the parties, their financial and other conditions, the atmosphere and the kind of employment or vocation which they carry out would all be important to interfere whether on the given set of allegations it has become difficult for the petitioner to live with the other side and the behaviour of such degree which amounts to the cruelty.



29. Learned counsel for the appellant relied upon the judgment in the case of **K. Srinivas Rai** cited *supra*, in Paragraph Nos. 11, 16, 27, 29 and 34 held as under:

11. In Samar Ghosh [(2007) 4 SCC 511] this Court set out illustrative cases where inference of “mental cruelty” can be drawn. This list is obviously not exhaustive because each case presents its own peculiar factual matrix and existence or otherwise of mental cruelty will have to be judged after applying mind to it. We must quote the relevant paragraph of Samar Ghosh [(2007) 4 SCC 511] . We have reproduced only the instances which are relevant to the present case: (SCC pp. 546-47, para 101)

“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)****



(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

*(vii)-(ix)****

(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)-(xiii)****

(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.”



16. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh [(2007) 4 SCC 511] , we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.

27. We need to now see the effect of the above events. In our opinion, the first instance of mental cruelty is seen in the scurrilous, vulgar and defamatory statement made by the respondent wife in her complaint dated 4-10-1999 addressed to the Superintendent of Police, Women Protection Cell. The statement that the mother of the appellant husband asked her to sleep with his father is bound to anger him. It is his case that this humiliation of his parents caused great anguish to him. He and his family were traumatised by the false and indecent statement made in the complaint. His grievance appears to us to be justified. This complaint is a part of the record. It is a part of the pleadings. That this statement is false is evident from the evidence of the mother of the respondent wife, which we have already quoted. This statement cannot be explained away by stating that it was made because the respondent wife was anxious to go back to the appellant husband. This is not the way to win the husband back. It is well settled that such statements cause mental cruelty. By sending this



complaint the respondent wife has caused mental cruelty to the appellant husband.

29. 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 precondition 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.

34. 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.



He is also relying on Apex Court decision in the case of **Ashok Kumar Jain vs. Sumati Jain** reported in **AIR 2013 SC 2916**, Para 13 reads as under:

13. The High Court perused the divorce petition as was filed by the appellant against his first wife as well as the divorce petition filed by the appellant against the present respondent and noticed that they are almost identical in their content. The same sets of allegations were levelled against the first wife as levelled against the present respondent. This clearly shows the modus operandi of the appellant.

30. It is submitted that the aforementioned decisions have not been appreciated by the Family Court. Of course, it all depends on each individual case. Ultimately, how cruelty is meted out to a particular party is required to be examined with reference to the material available on record. In the present case, either of the parties should have invoked Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights before the jurisdictional forum. On the other hand, respondent, if she had meted out any domestic violence or dowry harassment, she should have resorted appropriate remedy with due care since her marital life was under threat. Initially, she should have resorted for *Panchayat* or filing of restitution of conjugal rights. On the other hand, she straightway initiated criminal proceedings under Section 498 A of the IPC and



allied Sections against appellant and his parents and his well wishers. Dropping of six names from the above proceedings, it is evident that unnecessarily she has dragged some of the parties to the *lis*. Further, taking note of complaint made by the respondent to the employer of the appellant while alleging character assassination and to see that he should be removed from service and further filing of domestic violence while alleging that appellant was in adultery, fornication and further alleging allegations against appellant and his mother that they are involved in soliciting prostitution, these are all serious allegations touching the character of respective persons and it would hurt mentally and their image in the society and family circle is tarnished. That apart, each individuals dignity/human dignity is to be valued. Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes right to be left alone. Privacy safeguards individual autonomy and recognizes the ability of individual to control vital aspects of his or her life. Personal choices governing way of life are intrinsic to privacy. Privacy protects heterogeneity and recognizes plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the



public arenas. It is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being.

31. Apex Court in the case of ***K.S. Puttaswamy vs. Union of India*** reported in (2017) 10 SCC 1 in paragraph Nos. 298, 299 and 323 held as under:

“298. Privacy of the individual is an essential aspect of dignity. Dignity has both an intrinsic and instrumental value. As an intrinsic value, human dignity is an entitlement or a constitutionally protected interest in itself. In its instrumental facet, dignity and freedom are inseparably intertwined, each being a facilitative tool to achieve the other. The ability of the individual to protect a zone of privacy enables the realisation of the full value of life and liberty. Liberty has a broader meaning of which privacy is a subset. All liberties may not be exercised in privacy. Yet others can be fulfilled only within a private space. Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life. Privacy has not been couched as an independent fundamental right. But that does not detract from the constitutional protection afforded to it, once the true nature of privacy and its relationship with those fundamental rights which are expressly protected is understood. Privacy lies across the spectrum of protected freedoms. The guarantee of equality is a guarantee against arbitrary State action. It prevents the



State from discriminating between individuals. The destruction by the State of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary State action. Privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognises an inviolable right to determine how freedom shall be exercised. An individual may perceive that the best form of expression is to remain silent. Silence postulates a realm of privacy. An artist finds reflection of the soul in a creative endeavour. A writer expresses the outcome of a process of thought. A musician contemplates upon notes which musically lead to silence. The silence, which lies within, reflects on the ability to choose how to convey thoughts and ideas or interact with others. These are crucial aspects of personhood. The freedoms under Article 19 can be fulfilled where the individual is entitled to decide upon his or her preferences. Read in conjunction with Article 21, liberty enables the individual to have a choice of preferences on various facets of life including what and how one will eat, the way one will dress, the faith one will espouse and a myriad other matters on which autonomy and self-determination require a choice to be made within the privacy of the mind. The constitutional



right to the freedom of religion under Article 25 has implicit within it the ability to choose a faith and the freedom to express or not express those choices to the world. These are some illustrations of the manner in which privacy facilitates freedom and is intrinsic to the exercise of liberty. The Constitution does not contain a separate article telling us that privacy has been declared to be a fundamental right. Nor have we tagged the provisions of Part III with an alpha-suffixed right to privacy : this is not an act of judicial redrafting. Dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the Constitution has recognised. Privacy is the ultimate expression of the sanctity of the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self-determination.

299. *Privacy represents the core of the human personality and recognises the ability of each individual to make choices and to take decisions governing matters intimate and personal. Yet, it is necessary to acknowledge that individuals live in communities and work in communities. Their personalities affect and, in turn are shaped by their social environment. The individual is not a hermit. The lives of individuals are as much a social phenomenon. In their interactions with others, individuals are constantly engaged in behavioural patterns and in relationships impacting on the rest of society. Equally, the life of the individual is being consistently shaped by cultural and social values imbibed from living in the community. This state of flux which represents a constant evolution of individual personhood in the relationship with the rest of*



society provides the rationale for reserving to the individual a zone of repose. The lives which individuals lead as members of society engender a reasonable expectation of privacy. The notion of a reasonable expectation of privacy has elements both of a subjective and objective nature. Privacy at a subjective level is a reflection of those areas where an individual desires to be left alone. On an objective plane, privacy is defined by those constitutional values which shape the content of the protected zone where the individual ought to be left alone. The notion that there must exist a reasonable expectation of privacy ensures that while on the one hand, the individual has a protected zone of privacy, yet on the other, the exercise of individual choices is subject to the rights of others to lead orderly lives. For instance, an individual who possesses a plot of land may decide to build upon it subject to zoning regulations. If the building bye-laws define the area upon which construction can be raised or the height of the boundary wall around the property, the right to privacy of the individual is conditioned by regulations designed to protect the interests of the community in planned spaces. Hence while the individual is entitled to a zone of privacy, its extent is based not only on the subjective expectation of the individual but on an objective principle which defines a reasonable expectation.

323. *Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a*



way of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being.”

The aforementioned observations of the Apex Court has some bearing on the present case to the extent that respondent - wife tarnished the character of the appellant - husband in the working place and so also in the society and it amounts to cruelty meted out to the appellant.

32. Due to the above allegations and initiation of cases against the appellant by the respondent would fall under the definition of cruelty meted out to the appellant. Nodoubt, respondent also suffered certain domestic issues like abuse and the fact that respondent got injured and so also her son when they were traveling in car, it is alleged that mother of the appellant stated to have pushed them from the car. However, appellant has approached Court of law alleging that he was subjected to cruelty.

33. The Family Court has failed to appreciate the aforementioned issues of initiation of criminal proceedings, domestic violence and giving complaint to appellant's employer



which has tarnished the image of the appellant at his working place. Character assassination of adultery, fornication and alleging that appellant and his mother are involved in soliciting prostitution. These are the elements of cruelty and it has hurt mentally to the appellant. The Family Court has not taken note of the fact that respondent's intention was not to join her husband in the light of three cases initiated against her husband and she has admitted certain allegations made in the litigations were at the instigation of her Advocate. If it is so, she should have immediately shown concern in withdrawing those allegations. Even to this day, she has not made any efforts to withdraw those allegations. In other words, she has adhered to the arm twisting method instead of resolving in a polite manner. Further it is to be noticed that they are living separately from 04.06.2015 and we are in the month of December, 2023. The appellant is not willing to condone the lapses or allegations levelled by the respondent, even though respondent is prepared to give up her allegations at this hour. The leveling of false allegation by one spouse to the other having alleged illicit relations with different persons outside the wedlock amounted to mental cruelty. In the present case, respondent – wife alleged allegations before the employer of appellant and in the domestic violence allegations of soliciting



prostitution by appellant and his mother and appellant involved in adultery and fornication etc. Respondent admitted those allegations are at the instigation of her advocate and they are not true. Social torture by anyone of the spouses to the other, found to be as the mental torture and cruelty. Respondent harassing appellant in filing false cases of domestic violence and she has admitted certain allegations are false and such behaviour amounts to cruelty. It is also sufficient that if the cruelty is of such type that it becomes impossible for spouses to live together. Therefore, it is a marriage irretrievably broken down during the period from 04.06.2015 to this day in the light of institution of criminal proceedings, domestic violence and complaint to the employer.

34. Recently Apex Court in the case of *Roopa Soni vs. Kamalnarayan Soni* reported in **2023 SCC Online SC 1127** decided on 06.09.2023 examined the Statement of objects and reasons for the Marriage Laws (Amendment) Bill, 1976, clauses (ia) and (ib) were added to Section 13 and Section 13 A while formulating the objectives which are as under:

“(1) to liberalize the provisions relating to divorce;

(2) to enable expeditious disposal of proceedings under the Act;

(3) to remove certain anomalies and handicaps that have come to light after the passing of the Acts.”



In the aforementioned case allegations and counter allegations by the respondent – wife and appellant - husband, both the parties are living separately for decade and half. Even in the aforementioned case marriage was solemnized in the year 2002, thereafter, a child was born, wife filed a petition under Section 498 A of the Penal Code, 1860 and Section 3 and 4 of the Dowry Act, 1961 and character assassination whereas in the present case also identical situation crept in. Therefore, the principle laid down in the aforementioned decision is aptly applicable to the case in hand.

35. Gist of allegations in all the three petitions, it is evident that they amount to cruelty. Therefore, the Family Court has committed error in dismissing the appellant's Matrimonial Divorce Case No. 105 of 2019. Thus, appellant has made out a *prima facie* case so as to grant decree of divorce on the ground of cruelty. Therefore, present appeal is allowed while accepting the Matrimonial Divorce Case No. 105 of 2019 and ordering dissolution of marriage between the appellant and respondent dated 29.11.2012. No order as to costs.

36. Considering the fact that appellant - husband is Deputy Executive Engineer, Maharashtra State Power Generation Corporation Limited, he may be holder of the post of Class I



Officer and he must be well paid and the respondent has to meet educational expenses of her son and so also maintain herself, we deem it fit and proper that he shall give an amount of Rs. 10,00,000/- (Rupees Ten Lakhs) to the respondent – wife as interim alimony subject to adjustment in the case of maintenance which is pending consideration before the jurisdictional Court. This amount of Rs. 10,00,000/- (Rupees Ten Lakhs) shall be deposited in the name of respondent within a period of three months from today with the Registry of this Court.

37. The decree of divorce shall be made effective only from the date of such deposit. In the event of such deposit, the Registry after verifying identity or credentials of the respondent - wife shall disburse the amount to the respondent – wife without further reference to this Court.

38. Registry is requested to draw decree in accordance with law.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	07.12.2023
Uploading Date	18.12.2023
Transmission Date	

