

**HON'BLE SMT. JUSTICE MOUSHUMI BHATTACHARYA
AND
HON'BLE SMT JUSTICE M.G.PRIYADARSINI**

C.M.A. No.68 OF 2022

JUDGMENT: (Per Hon'ble. Justice Moushumi Bhattacharya)

The appeal arises out of an order dated 02.11.2021 passed by the learned Principal Senior Civil Judge at Mahabubnagar, in H.M.O.P.No.20 of 2018. The appellant's petition for divorce under Section 13 (1) (i-a) and (i-b) of the Hindu Marriage Act, 1955 (for cruelty and desertion) was dismissed by the Trial Court.

2. A brief factual background to the present appeal follows:

2.1 The appellant and the respondent were married on 01.12.2010 as per Hindu Rites and Customs at Chinna Gollapally Village, Shamshabad Mandal, Ranga Reddy District. The appellant and the respondent experienced difficulties in their marriage from 04.12.2010. The respondent left the appellant for her parents' house on 01.11.2011. The appellant and the respondent had a child on 13.09.2011. The appellant and the respondent continued to have differences and the respondent filed a complaint to the Station House Officer, Shamshabad, on

11.07.2012. The appellant and his family members obtained anticipatory bail from the Court of the Metropolitan Sessions Judge at Cyberabad on 25.08.2012. The appellant filed a case for divorce *vide* O.P.No.1353 of 2012 in the Family Court at Ranga Reddy District but did not pursue the case.

2.2 The respondent filed a total of 5 criminal cases against the appellant being Crime Nos.219 of 2012, 918 of 2013, 164 of 2013, 290 of 2015 and 156 of 2021 and D.V.C.No.11 of 2016 and D.V.C. Appeal No.862 of 2019. The appellant suffered imprisonment in C.C.No.14 of 2014 and C.C.No.517 of 2014 which were registered under Section 498-A of The Indian Penal Code, 1860 on the basis of the complaint lodged by the respondent. The respondent came to live with the appellant for a few days in May, 2015 but left the appellant's home soon thereafter and filed more criminal cases against the appellant. The Principal Junior Civil Judge-cum-XIV Additional Chief Metropolitan Magistrate at Cyberabad *vide* order dated 16.11.2021 dismissed C.C.No.227 of 2016 filed by the respondent against the appellant.

3. The learned Trial Court *vide* the impugned order dated 02.11.2021 dismissed the appellant's petition for divorce on the ground that the appellant had failed to establish a case of cruelty for grant of divorce. The Trial Court was also of the view that there was insufficient material to prove the fact of desertion or any intention on the part of the respondent to bring the cohabitation to an end. The Trial Court laid emphasis on the respondent coming to live with the appellant for a few days which according to the Trial Court was found to be reason enough for discounting the earlier criminal cases filed by the respondent against the appellant.

4. The impugned order, however, specifically records that the parties need to be protected from unending litigation and that the respondent had filed multiple criminal cases against the appellant.

5. Counsel appearing for the appellant submits that the respondent has caused physical and mental cruelty to the appellant by filing one criminal case after another against the appellant. Counsel further submits that the respondent deserted

the appellant by leaving the matrimonial home in 2011 and that the respondent subsequently came to live with the appellant in May, 2015 only for a few days after which the respondent filed two more criminal cases. Counsel submits that the Trial Court ought to have allowed the appellant's petition for divorce.

6. Counsel appearing for the respondent does not dispute the fact of the respondent filing 5 criminal complaints against the appellant. The only point raised by counsel is that the appellant will not maintain the respondent if the appellant is granted a decree of divorce.

7. It is important to see the law relevant to the issue at hand since scores of cases are being filed nowadays under Section 13(1) of the Act on one or more of the grounds under the said provision i.e., dissolution of marriage by a decree of divorce.

8. The most common grounds for divorce are of "cruelty" or "desertion". These are found under Clauses (i-a) and (i-b) of Section 13 (1) of the Act and are set out below:

“Section 13:

(1) Any marriage solemnized, 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 solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(i-b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition”.

9. The expression “cruelty” in Section 13(1)(i-a) of the Act has not been defined in the Act but has received judicial interpretation to mean human conduct or human behaviour within the contours of marital duties and obligations where such conduct adversely affects the other party and includes mental and physical cruelty which is both intentional and unintentional: *Vinita Saxena v. Pankaj Pandit*¹. A long period of continuous separation and scant regard for the feelings and emotions of the other party has been interpreted by the Supreme Court as mental cruelty: *Samar Ghosh v. Jaya Ghosh*².

¹ (2006) 3 SCC 778

² (2007) 4 SCC 511

10. The meaning of cruelty has however undergone a more inclusive definition with the passage of years. Cruelty has an inseparable nexus with human conduct and hinges on the social milieu to which the parties belong, their way of life and temperament and emotions which determine not only the benchmark but also the gradation of cruel conduct. Any treatment which causes a reasonable apprehension in the mind of the other spouse that it would be harmful to reside with the other spouse would amount to cruelty as a ground for divorce: *Vishwanath Agarwal v. Sarla Vishwanath Agarwal*³. Refusing to sever ties can also constitute mental cruelty where there has already been a long period of separation between the husband and wife: *K. Srinivas Rao v. D.A. Deepa*⁴.

11. In essence, whether the conduct inflicted by one party on the other clears the threshold of cruelty under Section 13(1)(i-a) of the Act is wholly fact-dependent. In fact, there is no threshold test at all. The concept of cruelty is social milieu-dependent where the upbringing, level of education, sensitivity, financial

³ (2012) 7 SCC 288

⁴ (2013) 5 SCC 226

position, social status, religious beliefs and cultural backgrounds of the parties would set the standard of whether the conduct complained of would be unmitigated cruel behaviour. The degree of tolerance to the conduct complained of would also depend on the outlook, experience and exposure of the complainant as well as the perpetrator. Any act of damage to reputation, social standing or work prospects by one spouse to the other would fall within the term "cruelty". It may not be too far-fetched to say-hesitantly-that depriving a spouse from being on Facebook and Instagram may also amount to cruelty!

12. The absence of a specific definition of 'cruelty' encourages a revisit of the requirement to prove cruel treatment as a ground for divorce under Section 13(1)(i-a) of the Act. The concept of marital duties and obligations has changed at every level with changes in social structures. Family set-ups have been transformed with financial independence and greater equality in relationships. A marriage is more of a voluntary bond these days and less of a social compulsion. The law must move with the times.

13. In *Joydeep Majumdar v. Bharti Jaiswal Majumdar*⁵, the respondent made defamatory complaints to the appellant's superiors in the Army which resulted in a Court of Enquiry being held by the Army against the appellant. In *Rani Narasimha Sastry v. Rani Suneela Rani*⁶, the respondent filed proceedings under Section 498-A of the I.P.C. for which the appellant had to undergo trial. In *Mangayakarasi v. M. Yuvaraj*⁷, the husband was exposed to criminal litigation and the couple had also been living separately for a long period of time. In *Raj Talreja v. Kavita Talreja*⁸, the wife filed several complaints against the husband for assault and wrongful restraint. In *Narendra v. K. Meena*⁹, the respondent cast serious aspersions against the character of the appellant with regard to the appellant having an extramarital affair. In *K. Srinivas v. K.Sunitha*¹⁰, the respondent filed a criminal complaint against the appellant and his family members for attempt to murder. In *Sivasankaran v. Santhimeenal*¹¹, the respondent made representations to the college authorities

⁵ (2021) 3 SCC 742

⁶ (2020) 18 SCC 247

⁷ (2020) 3 SCC 786

⁸ (2017) 14 SCC 194

⁹ (2016) 9 SCC 455

¹⁰ (2014) 16 SCC 34

¹¹ (2022) 15 SCC 742

seeking initiation of disciplinary proceedings against the appellant. In *K. Srinivas Rao v. D.A. Deepa*¹², the Supreme Court held that repeated filing of cases would amount to mental cruelty. The Supreme Court found cruelty in all these cases.

14. The above instances show that mental cruelty cannot be defined within a straightjacket formula. What may be seen as mental cruelty by one may be well perceived as behaviour which is irritating or unwelcome, but not cruel. The fact that two persons cannot imagine a life together any more should be seen as sufficient ground to dissolve the marriage and grant a decree of divorce. A party being held to the stranglehold of Section 13(1) of the Act is a dated approach and one that is no longer in sync with the times. A petition for divorce should not only be tethered to the grounds under Section 13(1) of the Act. Section 13(1) of the Act may be seen as supplementing a case for divorce where the marriage has otherwise become unworkable.

15. The bottomline is that marital ties cannot be forced on persons who are unwilling to make the marriage work. The

¹² (2013) 5 SCC 226

Court must however be convinced that the rupture of matrimonial ties is complete and irreversible and is not an unilateral move on the part of one of the partners for collateral motives. The distinction between Section 13(1) - 'Divorce' and Section 13-B - 'Divorce by mutual consent' needs to be borne in mind. While the former contemplates either the wife or the husband seeking divorce, Section 13-B of the Act is by mutual consent. However, there may be cases where a case under Section 13(1) of the Act becomes one under Section 13-B of the Act where both parties evince an intention to live apart from the other. Forcing the parties to cohabit may result in greater injustice to the respondent in a petition under Section 13(1) of the Act.

16. The obliteration of marital ties is entirely for the persons in the marriage and upon them to assess and resolve in the best way they think fit. The Court has a limited role in the whole affair and should not act as an executioner (in the sense of a hangman) or a counsellor to compel the parties to continue living as wife and husband, particularly where the meeting of minds between

them has irrevocably ended. It is certainly not the Court's work to ferret out faultlines in the evidence in negation of cruelty in an altruistic zeal for preserving the marriage. This kind of exercise is unwarranted and pointless.

17. It is relevant to state that the Trial Court also held that the brief "reunion" of the parties in May, 2015 precluded the appellant from re-agitating events prior to the respondent coming to live with the appellant as it indicated forgiveness on the part of the appellant. We are unable to agree with the reasoning and the presumption.

18. Condonation and forgiveness means restoration of the offending spouse to the same position as he/she was before the offence was committed. The evidence must also point to this direction: *Dr.N.G. Dastane v. Mrs. S. Dastane*¹³. Forgiveness would be a misnomer in a case where the wife stays with the husband for 2 months and then leaves the matrimonial home and lodges an F.I.R. against the husband and his family members for offences punishable under Section 498-A of the I.P.C. and the

¹³ (1975) 2 SCC 326

Dowry Prohibition Act: *Malathi Ravi, M.D v. B.V. Ravi, M.D.*¹⁴.

The Supreme Court in that case held that the husband had been treated with mental cruelty and affirmed the decree of divorce granted by the High Court.

19. Marriage is much more than an exchange of vows or a single ceremony. It requires building of a shared home brick-by-brick cemented by a continuing wish to live a life together. Every marriage has a core and a foundation holding the union of two persons together. The bedrock of the union disintegrates when the married persons intend to break away from the union. It would be unnatural to reject a petition for divorce where the evidence led by both the parties show that the core of the marriage has crumbled beyond restoration. What is evident from the decisions cited is that cruelty is just one of the splinters of a collapsing structure where the substratum of the marriage has broken down in a way in which the structure cannot be preserved or re-built. Cruelty, desertion, insanity are but a few of the grounds which may form the reason for a step in that direction. The Courts should put a quietus to such matters.

¹⁴ (2014) 7 Supreme Court Cases 640

20. In the present case, it is undisputed that the respondent has initiated 7 proceedings against the appellant including 5 criminal cases under Section 498-A of the I.P.C. and The Dowry Prohibition Act, 1961. It is also undisputed that S.T.C.No.5 of 2014 filed by the respondent against the appellant and his family members was dismissed on 16.07.2014 and C.C.No.14 of 2014 filed under Section 498-A of the I.P.C. was also dismissed on 25.08.2015. Further, the Family Court at Mahabubnagar dismissed the complaint filed by the petitioner arising from F.I.R. No.136 of 2021 on 16.03.2021. Finally, C.C.No.227 of 2016 was also dismissed by the Principal Junior Civil Judge-cum-XIV Additional Metropolitan Magistrate, Cyberabad at Rajendranagar on 16.11.2021.

21. The Metropolitan Magistrate Court at Cyberabad, Rajendra Nagar, specifically found that there was no evidence given by the appellant using physical/mental cruelty or harassing the respondent. The Court also came to the finding that the prosecution was unable to prove the main ingredient under Section 498-A of the I.P.C. and that none of the relevant witnesses

were able to give evidence on the issue of taking of dowry between the parties. Further, the Metropolitan Magistrate found that the complainant (respondent herein) was in the habit of lodging criminal complaints before the Police Station of petty issues which made a mockery of the law.

22. It is also admitted by both the parties that the local village elders held panchayat meetings several times for a reconciliation between the appellant and the respondent, which however did not succeed. The appellant also suffered imprisonment for 15 days as a result of C.C.No.517 of 2014 before he was released on bail. The criminal case was finally dismissed and the appellant was acquitted of the charges by the order dated 30.06.2015. This however did not deter the respondent from filing more criminal cases against the appellant.

23. Unfortunately, the acquittal of the appellant was subsequent to the impugned judgment dated 02.11.2021. The acquittal assumes significance in light of the allegations made by the respondent against the appellant. The acquittal casts a shadow on the truth of the allegations made by the respondent.

Further, the consequences of the criminal cases cannot be discounted. The appellant lost his job as a teacher and is unable to find a new job by reason of the criminal cases registered against him. There is no evidence filed before the Court to show that the appellant and the respondent intend to continue living as a married couple or are looking forward to a life together.

24. Moreover, the respondent-wife has admitted that the parties lived together as husband and wife only for 3 months and that she is living apart from the appellant for 7 years immediately preceding the date of the cross-examination which was on 16.03.2021. The records also show that the respondent is drawing pension from the authorities in the category of a married woman who has been separated from her husband for more than 1 year.

25. The only point urged by the counsel for the respondent is of maintenance and that the appellant should take the responsibility of the respondent's financial needs. The respondent can certainly exercise this right in independent proceedings. We do not wish to express any view on the same since those proceedings are not before us.

26. The above reasons persuade us to allow the appeal. We have no doubt that the appellant is entitled to a decree of divorce on the ground of cruelty and of the marriage having broken down beyond repair. There is no chance of the parties resuming their matrimonial life. The parties have also not expressed any intention to do so by way of their respective submissions or by documentary evidence. Since the very foundation of the marriage has fallen apart, the Court cannot force the parties to reconcile and live together as husband and wife.

27. The impugned order dated 02.11.2021 is set aside. C.M.A.No.68 of 2024 is accordingly allowed and disposed of along with all connected Interlocutory Applications. There shall be no order as to costs.

MOUSHUMI BHATTACHARYA, J

M.G.PRIYADARSINI, J

Date: 21.06.2024

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