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FA-1283-2018

IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 5<sup>th</sup> OF AUGUST, 2025

FIRST APPEAL No. 1283 of 2018

*SANTOSH CHOUDHARY*

*Versus*

*SMT. SEEMA CHOUDHARY*

.....  
Appearance:

*Shri Sameer Verma, learned counsel for the appellant.*

*Shri Pramod C. Nair, learned counsel for the respondent.*  
.....

ORDER

*Per. Justice Binod Kumar Dwivedi*

Appellant/husband has preferred this appeal under Section 19 of the Family Courts Act, 1984 assailing legality of judgment and decree passed by 15th Additional District Judge, Indore in Hindu Marriage Case No. 12/2015, whereby the suit filed on behalf of the appellant under Section 13(1)(1-a)(1-b) of Hindu Marriage Act (hereinafter referred for short 'HMA') with further relief of divorce has been dismissed.

02. It is not disputed that the appellant/husband and respondent/wife are legally married couple. Marriage was solemnized as per Hindu rituals and customs on 10.11.1998 at Village Pipalada, Tehsil & Dist. Indore. Out of their wedlock, one son was born on 18.12.2002. It is also not in dispute that respondent/wife is living with her father-in-law, mother-in-law, brother-in-



law (*Devar*) and sister-in-law (*Devrani*) as a member of joint Hindu family. It is also not disputed that appellant/husband is Constable in S.A.F., posted at Police Headquarters, Jahangirabad, Bhopal.

03. Brief facts as unfolded in petition filed by the appellant are that at the time of marriage, appellant/husband was serving in military and after sometime of marriage, he has left military service. After marriage, respondent/wife has gone to her parents and after six months, she came back to live with the appellant/husband and after sometime, she went away to live with her maternal uncle-in-law (*Mama Sasur*). Respondent told to appellant that she did not like him as he consumes liquor. When he refuted the consumption of liquor, she again alleged that appellant/husband might have developed relationship with other women. She was not showing any interest in marital relationship. She was not showing any interest in feeling of attachment with the appellant/husband. Even she was not happy when she became pregnant. Due to this, appellant/husband also became uninterested in the respondent and after completing his M.A. examination, he joined police services. Respondent/wife lived in matrimonial house at Kampel and never enquired about the appellant/husband. After giving birth to male child on 18.12.2002, the appellant/husband went to meet respondent/wife in the hospital, but she had gone to parental house and after living for about 7 months came back to matrimonial house. Despite making efforts, respondent/wife did not contact appellant/husband. In the year 2004, appellant/husband posted at Neemuch and when he asked respondent/wife to live with him at Neemuch, she clearly refused to reside with him stating that



she did not like him. She was not ready to fulfill marital obligations. In the year 2006, appellant/husband came to Indore and taking a room on rent, started living with his uncle N.R. Choudhary. He also admitted his son in the school, but during this period, respondent/wife was picking quarrel with him alleging him of bad character and was pressurising him to live in her matrimonial or parental house. Despite repeated advice, she did not mend her ways, therefore, he was constrained to send her to matrimonial house. Since 2006 both of them are living separately. She has deserted her without sufficient reasons, therefore, petition under Section 13(1)(1-a)(1-b) of HMA was filed.

04. The allegations levelled against the respondent/wife has been refuted by her filing written statement. She has alleged that appellant has concocted false grounds to file divorce petition for getting rid of the appellant/husband. She has always been ready to fulfill her marital obligations. The appellant/husband has developed romantic relationship with a lady colleague and when she asked whereabouts of that lady, the appellant/husband has filed the divorce petition on false grounds.

05. On the pleadings of the parties raised in the plaint and W.S., learned Family Court framed relevant issues relating to dispute and after giving opportunity to adduce evidence in support of their pleadings, and also affording reasonable opportunity of hearing, passed the impugned judgment and decree which is subject matter of this appeal.

06. Learned counsel for the appellant/husband has vehemently submitted that respondent/wife herself has deserted the appellant and despite



his repeated and strenuous efforts, she did not resume co-habitation with him. She is living in the matrimonial house along with other members of the family. She has levelled false allegations of illicit relationship with his colleague, some other lady which is cruelty in itself.

07. To buttress his point, learned counsel for the appellant has placed reliance on the judgment passed by Delhi High Court in the case of *Akash Alias Anjali vs. Vijay Choudhary, 2021 Supreme (Del) 1708*.

08. Learned counsel further submits that learned Court below has failed to appreciate the evidence in right perspective and discarded the instances of cruelty committed by the respondent/wife against the appellant/husband, therefore, the impugned order suffers from grave legal and factual error. Therefore, he urges the Court to allow the appeal by setting aside the impugned order and granting the decree of divorce as prayed for by the appellant/husband.

09. *Per contra*, learned counsel for the respondent/wife supporting the impugned judgment and decree submits that respondent/wife has always remained helpful and respectful to the appellant/husband. It is the appellant/husband himself who has not taken her to reside with him. Giving birth to male child born out of the wedlock is itself a proof that she has fulfilled her marital obligations. Despite altogether in different attitude of the appellant/husband, respondent/wife has not left matrimonial house. She is living in the matrimonial house along with her father-in-law, mother-in-law, brother-in-law and sister-in-law. Has she been of petulant nature or a lady not respectful towards her in-laws, she might not have adjusted in the



matrimonial family. Members of the appellant/husband knowing fully well that appellant/husband is at fault, did not come to support him in course of this family dispute. No ground for grant of divorce has been made out on the basis of evidence available on record. Hence, learned Court below appreciating the evidence in right perspective has refused to grant decree of divorce. The impugned judgment and decree is not suffering from any factual and legal error. No interference is warranted in this appeal. Appeal is devoid of any substance. Appellant cannot be allowed to get benefit of his own neglect and disrespectful behaviour towards his legally wedded wife, who is still living in the matrimonial home in hope that one day good sense will prevail over the appellant/husband and he will resume co-habitation with her. On these grounds, learned counsel for the respondent prays for dismissal of the appeal.

10. Heard and considered the rival submissions raised at bar and perused the record.

11. Before advertng to the facts of the case in hand, it is pertinent to consider the legal provisions under HMA and also exposition of law as propounded by the Hon'ble Apex Court in catena of judgments relating to decree of divorce on the ground of mental cruelty.

12. Word “cruelty” has not been defined in the H.M.A. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical,



intentional or unintentional. 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.

13. The cruelty simpliciter is now a ground for divorce under Section 13 of the HMA. Section 13 of the HMA provides, so far as it is material:

“13.Divorce.—(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-a) has, after the solemnization of the marriage, treated the petitioner with cruelty; or”

14. In case of *V. Bhagat Mrs. D. Bhagat, (1994) 1 SCC 337: AIR 1994 SC 710*, Supreme Court in para 16 has held as under:-

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

15. Similarly in case of *Ravi Kumar v. Julmidevi*, [(2010) 4 SCC 476] the apex court reiterated that cruelty in matrimonial cases may be of so many forms. Para 19 to 21 may be reproduced to elucidate the concept of cruelty in matrimonial cases:

“19. It may be true that there is no definition of cruelty under the said Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, sometime it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty.

20. Therefore, cruelty in matrimonial behaviour defies any definition and its categories can never be closed. Whether the husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any predetermined rigid formula. Cruelty in matrimonial cases can be of infinite variety—it may be subtle or even brutal and may be by gestures and words. That possibly explains why Lord Denning in *Sheldon v. Sheldon* [(1966) 2 WLR 993 : (1966) 2 All ER 257 (CA)] held that categories of cruelty in matrimonial cases are never closed.

21. This Court is reminded of what was said by Lord Reid in *Gollins v. Gollins* [1964 AC 644 : (1963) 3 WLR 176 : (1963) 2 All ER 966 (HL)] about judging cruelty in matrimonial cases. The pertinent observations are : (AC p. 660)

“... In matrimonial cases we are not concerned with the reasonable man as we are in cases of negligence. We are dealing with this man and this woman and the fewer a prior assumptions we make about them the better. In





cruelty cases one can hardly ever even start with a presumption that the parties are reasonable people, because it is hard to imagine any cruelty case ever arising if both the spouses think and behave as reasonable people.

The aforesaid passage was quoted with approval by this Court in *N.G. Dastane (Dr.) v. S. Dastane* [(1975) 2 SCC 326] ”.

16. The above observations are intended to emphasize that the Court in matrimonial cases is not concerned with ideals in family life. The Court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord Reid observed in *Gollins v. Gollins* [(1963) 2 All ER 966, 972] :

“In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with this man or this woman.”

17. Chandrachud, J. (as he then was) in *N.G. Dastane v. S. Dastane* [(1975) 2 SCC 326, 338 : AIR 1975 SC 1534 : (1975) 3 SCR 967, 978] in para 32 observed as:

“The court has to deal, not with an ideal husband and an ideal wife (assuming any such exist) but with the particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court for, even if they may not be able to drown their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures.”

18. In case of *Samar Ghosh Vs Jaya Ghosh* [(2007) 4 SCC 511] allowing the appeal, the Supreme Court in para 98 to 101 has held as under:

“98. On proper analysis and scrutiny of the judgments of this Court and other courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of “mental





cruelty” within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such



conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

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

(v) A sustained course of abusive and humiliating treatment calculated to torture, 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 sterilisation 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.”

19. In case of *Ramchander v. Ananta*, [(2015) 11 SCC 539] Supreme court in para 10 has held that cruelty can be inferred from the fact and circumstances:

“10. The expression “cruelty” has not been defined in the Hindu Marriage Act. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes a 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. Cruelty can be physical or mental. In the present case there is no allegation of physical cruelty alleged by the plaintiff. What is alleged is mental cruelty and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. It is settled law that the instances of cruelty are not to be taken in isolation but to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the plaintiff has been subjected to mental cruelty due to conduct of the



other spouse. In the decision in *Samar Ghosh case* [*Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511] this Court set out illustrative cases where inference of “mental cruelty” can be drawn and they are only illustrative and not exhaustive.”

20. In the light of the law propounded by the Apex Court in the aforementioned judgments, we would dwell upon factual matrix of the case in hand for assessing whether the appellant/husband could make out a case for divorce on the ground of “cruelty” or desertion as given in Section 13(1) (ia) and 13(1)(1-a)(1-b) of HMA and whether learned Family Court has failed to appreciate the evidence adduced by the parties in right perspective as per the prevailing norms of law.

21. Instant case is unique in the sense that respondent/wife even being deserted by her husband in hope that one day good sense will prevail over the appellant/husband has not left her matrimonial house and she is undisputedly residing with members of family of the appellant i.e. father, mother, brother and *Bhabhi*. It is a case depicting the loyalty of the respondent/wife as typical Indian woman, who puts all her efforts to save her family life.

22. As per Hindu concept, marriage is a sacred, eternal and indissoluble union, an ideal Indian wife, even when deserted by her husband, continues to embody strength, dignity and virtue. Her conduct is rooted in **dharma**, cultural values and sanctity of marital bond.

23. Despite the pain of abandonment, she remains rooted in her dharma as a wife. She does not allow bitterness or despair to erode her sense of responsibility towards the marriage and the family, she has become a part



of, therefore, respondent/wife in the instant case has not left her matrimonial home, living with her in-laws, she uphold her self-respect and dignity. She neither begs for her husband's return nor maligns him, but lets her quiet endurance and noble conduct speak up for her strength. She has ensured that on or of both her *Maika* (natal family) and *Sasural* (in-laws) is never tarnished by her deeds, words or actions. Despite the absence of her husband, she remained committed to her in-laws. She is serving them with care and affection, as she would have, if her husband was present, thereby reinforcing her moral stature. She does not use her sufferings for gain of sympathy, instead she channeled it inward, reflecting the *Hindu ideal* of the woman as *Shakti* - not weak, but submissive and powerful in her endurance and grace. Even when she left alone, she does not forsake, the Mangalsutra, the Sindoor or the symbols of her marriage status as her marriage to her is not a contract, but a Sanskara - an indelible sacrament.

24. In the instant case, unusually respondent/wife has not left the matrimonial home despite her constant agony of living alone, away from her husband. Otherwise usually it is seen in the family disputes that wife after levelling several allegations against the husband and in-laws leaves matrimonial house to live separately or along with her parents which is not the case in the instant case. The grounds which have been advanced for getting divorce from the respondent are very shallow and hollow in nature and supported by evidence which could inspire confidence. Specific grounds taken by the appellant/husband that respondent/wife has never been ready and willing to fulfill her marital obligation is falsified by the fact itself that



out of their wedlock son is born, who as of now has become major and living along with other members of family where respondent/wife herself is living. The other allegations levelled against the respondent/wife for making out a case of cruelty is that she has levelled allegation of illicit relation that appellant/husband has developed with some other lady colleague, but in the peculiar factual matrix of the case, this cannot be taken as a fact creating a cruelty as mentioned in Section 13(1)(ia) of HMA because respondent/wife, who has not been taken by the appellant/husband to live with her since last near about 19 years. In sheer frustration she is constrained to think and in utter frustration entertained apprehension, alleged that husband is having some romantic relationship with other woman, therefore, he was not taking her to live with him. This allegation has not been made publicly against the appellant/husband on her own may be result of ill advice, but this fact has been mentioned in written statement to refute the allegations levelled by the appellant/husband against the respondent/wife.

25. In the considered view of this Court this is not a case where of and on unsubstantiated allegations are levelled against the husband for his character assassination which may constitute mental cruelty under HMA. In the case of *Akash Alias Anjali* (supra), the facts were that appellant was continuously pressurising the respondent/husband for living separately and when the husband went and lived at parental home of the wife on her insistence, but even in parental house, he alleged that husband is having illicit relations with her *Bhabhi* and also other women of the locality with the result it became very embarrassing and humiliating for him to live in the



parental home of the respondent along with her. But in the instant case, despite appellant/husband had made a distance from respondent/wife for a long time, she did not relinquish her obligations as Indian *Bahu*, but preferred to live in the matrimonial house not only to preserve her dignity, but also to serve her father-in-law and mother-in-law, therefore, the case relied upon by the appellant/husband did not help him in any way. The instances cited by the appellant are false and concocted which do not come to his rescue. He cannot be allowed to reap fruits of his own faults and misdeeds. Latin maxim "*nullus commodum capere potest de injuria sua propria*" translates to "no one can take advantage of their own wrong" will come into play. It is also noteworthy in the instant case that except appellant and his friends Krushnamohan Yadav and Sunil Chhadiya, none of appellant's family members have come before the Court to support him in this family dispute which amply proves that the allegations levelled against the respondent/wife are false which have been refuted by respondent as well as her witnesses. In the case of *Shobha Rani vs. Madhukar Reddi (1988) 1 SCC 105 : 1988 SCC (Cri) 60 at page 108*, the Apex Court has elaborately dealt with the expressions cruelty by holding that to constitute cruelty as a ground of divorce, the conduct complained should be "grave and weighty" so far as come to the conclusion that petitioner's spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the





matrimonial law. Conduct has to be considered as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It has further been held by the Apex Court that the foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court.

26. In the instant case even after deserted by husband neither the respondent/wife has chosen to leave the matrimonial home nor she has filed any criminal case against the appellant/husband making allegations which might have ruined career and life of the appellant, in itself proves the level of tolerance, respectful and helpful attitude of respondent/wife towards his husband/appellant. Respondent/wife has revealed her strong determination and character which a typical Indian woman/wife has.

27. From perusal of the evidence on record, we are of the considered view that nothing has come out which could form a basis for inferring cruelty on the part of the respondent/wife, rather it is the appellant/husband, who by



deserting the respondent/wife has meted out cruelty of false degree against her. Appellant could not make out any case for grant of decree of divorce, which has been considered by the Court below in right perspective. Court below has not committed any error of law or fact in holding that appellant/husband is not entitled for decree of divorce under Section 13(1)(1-a)(1-b) of HMA. The well reasoned impugned order passed by the learned Family Court needs no interference by way of this appeal.

28. *Ex-consequenti*, this appeal which is devoid of any substance, fails and is hereby dismissed upholding the judgment passed by the Court below.

Parties shall bear their own costs.

(VIVEK RUSIA)  
JUDGE

(BINOD KUMAR DWIVEDI)  
JUDGE

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