

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

**HON'BLE SHRI JUSTICE ANAND PATHAK
&
HON'BLE SHRI JUSTICE PUSHPENDRA YADAV**

FIRST APPEAL NO. 737 of 2024

**SMT. PRIYANKA SAHU
Vs.
RAJIV KUMAR SHAKYA**

APPEARANCE:

*Shri Ashok Kumar Dwivedi and Shri Vikash Singhal – Advocates
for the appellant.*

Respondent present in person.

JUDGMENT

{Delivered on 28th day of October, 2025}

Per: Justice Anand Pathak,

1. The present appeal under Section 19 of the Family Courts Act 1984 is preferred by the appellant/wife being crestfallen by the judgment dated 20-03-2024 passed by the Principal Judge, Family Court, Gwalior in RCSHM No.10789/2018 whereby the divorce petition preferred by the appellant under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as “the Act of 1955”) has been dismissed.
2. Precisely stated facts of the case are that marriage of appellant and respondent was solemnized on 30-11-2005 in Arya Samaj Mandir, Neendad Vaya Vishwakarma, Jaipur. The marriage of appellant and respondent was love marriage, therefore, marriage of couple was performed at Jaipur. Out of the wedlock of the parties, birth of Srishti took place who is at present 19 years old. After marriage, behaviour

of respondent/husband and his family members was changed and they started taunting the appellant on the issue that because of her, they faced the criminal case of kidnapping. Not only this, respondent and his family members started demanding dowry of Rs.2 lacs and one motorcycle. Since the demand of dowry was not fulfilled by the father of appellant, therefore, on 17-01-2009 respondent and his family members assaulted the appellant and thrown her out along with her daughter from the house. On the complaint made by the appellant, a case for offence under Section 498-A of IPC and Section 3/4 of Dowry Prohibition Act was registered against the respondent and his family members in which they were convicted vide judgment dated 28-02-2015 for 2-2 years' RI.

3. Domestic incompatibility continued between the parties despite lapse of four years. As a result of domestic incompatibility, in the year 2009, appellant/wife left the matrimonial house along with her daughter Srishti and started residing at her maternal home. Thereafter, appellant preferred a divorce petition which was dismissed by the Family Court, Gwalior vide judgment dated 07-10-2013 while the application preferred by the respondent/husband under Section 9 of the Act of 1955 for restitution of conjugal rights was allowed. Both the judgments were challenged by the appellant by preferring First Appeal No.249/2013 and First Appeal No.250/2013.
4. During pendency of these first appeals, conciliation talks took place between the parties under the aegis of their elders and after discussion, they decided to part their ways and want to give peace a chance, therefore, both the parties preferred compromise application in Criminal Appeal No. 146/2015 (preferred by the respondent and his family members against his conviction before appellate Court) but

the said application was dismissed, therefore, they preferred a petition under Section 482 of Cr.P.C. bearing M.Cr.C.No.12651/2016 to compound the offence under Section 498-A of IPC and Section 3/4 of the Dowry Prohibition Act. The said petition was dismissed as not maintainable on the ground that after conviction, compromise cannot be permitted to be arrived at but the Appellate Court was requested to be lenient while awarding sentence to the accused persons in appeal.

5. Thereafter, an agreement dated 06-09-2017 was executed between the parties whereby it was agreed that parties will withdraw all the cases against each other and part their ways peacefully and respondent/husband will give divorce to the appellant/wife mutually. Thereafter, Appellate Court recorded acquittal in favour of accused persons vide judgment dated 08-01-2018 but respondent in order to harass the appellant refused to give divorce to the appellant mutually. Therefore, under compelled circumstances, appellant again preferred divorce petition before the Family Court, Gwalior but the said divorce application was dismissed by the Family Court on the ground that this Court has no right to review the earlier judgment of rejection of divorce application.
6. Respondent filed reply to divorce application and denied all the allegations levelled by the appellant. It is submitted that on 10-09-2017, conciliation talks took place between the father of appellant and father of respondent and it was decided that appellant and respondent will part their ways and live separately, therefore, respondent given the statement before Principal Registrar of this Court in relation to living separately. However, respondent never told the appellant to withdraw both the First Appeals because he is still ready to take the appellant in his family fold. It was the respondent

who preferred application under Section 9 of the Act of 1955 for restitution of conjugal rights before the Family Court, Gwalior which was decided in favour of respondent. It appears that appellant neglected her responsibilities and never discharged her obligations as wife. Hence, prayed for dismissal of divorce application.

7. Proceedings started before the Family Court and after conducting trial in the matter and considering all the rival submissions of parties and the evidence produced before it, learned Family Court dismissed the divorce petition of the appellant/wife, therefore, appellant is before this Court.
8. It is the submission of learned counsel for the appellant that the Family Court, Gwalior failed to consider the material aspects of the matter and the evidence produced before it and erred in not granting the decree of divorce in favour appellant. Parties are living separately since 17-01-2009 (which is period more than 16 years). The domestic incompatibility resulted into separation of ways of parties. Respondent and his family members have levelled false and frivolous allegations against the appellant and they want to enjoy their status of being Scheduled Caste. It was the behaviour of respondent and his family members because of which the love marriage of couple could not succeed. Before the Principal Registrar of this Court, respondent given his consent to grant divorce to the appellant and agreement dated 06-09-2017 was also executed between the parties to this effect but as soon respondent and his family members were acquitted by the Sessions Court vide judgment dated 08-01-2018, he refused to give divorce to the appellant so that he can harass her. The intention of respondent of flouting his own statement given before this Court is illegal and not sustainable in the eyes of law. Because of behaviour of

respondent and his family members, appellant suffered mental cruelty for a long period and she is suffering desertion also since 17-01-2009. Therefore, it is submitted that under these circumstances, appellant is entitled for a decree of divorce on the grounds of cruelty and desertion.

9. On the other hand, respondent in person appeared before this Court and by supporting the impugned judgment opposed the contentions of appellant and submitted that he still wants to live with appellant and wants to fulfill his duties as husband by maintaining conjugal life. Hence, prayed for dismissal of this appeal.
10. Heard learned counsel for the appellant and respondent in person and perused the record.
11. This is a case where appellant/wife wants decree of divorce on the ground of cruelty and desertion with specific averment that instead of living with respondent she will prefer to commit suicide. The grounds of cruelty and desertion as put forth by the appellant were declined by the Family Court in earlier round of litigation vide judgment dated 07-10-2013 and the divorce petition preferred by the appellant was dismissed. Thereafter, again the divorce petition preferred by the appellant was dismissed. It is an admitted fact that marriage of couple was performed on 30-11-2005 and since then they are not happy in their married life. Appellant/wife is living at her maternal home since 2009 and 16 years period have lapsed and appellant is not ready to live with respondent/husband, therefore, the marriage between the couple is virtually dead.
12. The term "cruelty" as used in Section 13(1)(i-a) of the Act, cannot be defined in given parameters and there cannot be a comprehensive definition of "cruelty" within which all kinds of cases of cruelty can

be covered and each case has to be considered depending upon its own unique factual circumstances. In the case of **Gurbux Singh vs. Harminder Kaur (2010) 14 SCC 301**, the Hon'ble Apex Court observed that the matrimonial life should be assessed as a whole and persistent ill-conduct over a fairly long of time would amount to cruelty and further held that the ill-conduct must be precedent for a fairly lengthy period where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, one party finds its extremely difficult to live with the other party no longer may amount to mental cruelty.

13. The Hon'ble Apex Court in the case of ***V. Bhagat Vs. D. Bhagat (Mrs) (1994) 1 SCC 33*** 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 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.

14. So far as the legal principles with regard to "desertion" is concerned, the Hon'ble Apex Court in *AIR 1957 SC 176 (Bipinchandra Jaisinghbai Shah Vs. Prabhavati)*, has explained that for the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there., namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. Desertion is a matter of inference to be drawn from the facts and circumstances of each case. The inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say, the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. If, in fact, there has been a separation, the essential question always is whether that act could be attributable to an animus deserendi. [See:- *AIR 1964 SC 40 (Lachman Utamchand Kirpalani Vs. Meena alias Mota)*, (2002) 1 SCC 308 {*Adhyatma Bhattar Alwar Vs. Adhyatma Bhattar Sri Devi*} to (2006) 4 SCC 558 {*Naveen Kohli Vs. Neelu Kohli*}].
15. From the record it appears that, when respondent/husband and his family members were convicted by the trial Court for offence under Section 498-A of IPC read with Section 3/4 of Dowry Prohibition Act and sentenced to suffer 2-2 years' RI, at that time respondent

consented for mutual divorce between the parties and for that purpose statements were also recorded before the Principal Registrar of this Court in M.Cr.C.No.12651/2016 and an agreement was also arrived at between the parties but as soon, respondent and his family members got acquitted then respondent refused to give consent for mutual divorce just to harass the appellant only. Thus, the approach of respondent is not tainted with malice as he and his family members want to harass the appellant for whole of her life. Respondent is not looking after his daughter who is aged 19 years at all while it is the appellant who is taking care of her daughter all the way alone.

16. Respondent/husband although moved an application under Section 9 of the Act of 1955 for restitution of conjugal rights but he was not sincere to maintain the marital relationship, which is evident from the record because earlier he acceded to the proposal of appellant/wife for divorce on mutual consent because conviction was recorded against him for offence under Section 498 of IPC and Section 3/4 of the Dowry Prohibition Act, 1961. First respondent/ husband agreed for separation on mutual basis and got criminal case settled through compromise and thereafter, he changed his stand. Thus, it shows that his commitment to marital relationship lacks bonafide and credibility. Therefore, by merely filing application under Section 9 of the Act of 1955, it cannot be inferred that respondent/ husband was keen to keep his wife in the family fold that too with peace and domestic compatibility.
17. So far as the allegation of respondent regarding demand of dowry is concerned, respondent and his family members were convicted by the trial Court and thereafter when factum of compromise was recorded before this Court and this Court requested the Sessions Court to take

lenient view in relation to conviction of respondent and his family members and as a result whereof respondent and his family members were acquitted by the Sessions Court. Thus, the allegation of demand of dowry of appellant was found proved by the trial Court. Further, case of appellant in relation to grant of decree of divorce is concerned, it is true that earlier when appellant sought divorce decree, the same was declined by the Family Court, Gwalior but the fact remains that the marriage is dead between the parties since 17-01-2009 and they are living separately. The domestic incompatibility between the parties resulted into desertion and deprivation of marital bliss to both the parties.

18. The marriage was solemnized in the year 2005 and since 2009 parties are living separately on the small issues and fighting against each other since then. Thus, by efflux of time, hope of reunion of couple appears to be eclipsed. The concept of “*irretrievable breakdown of marriage*” has been discussed by the Hon'ble Supreme Court in the cases of ***R. Srinivas Kumar V. R. Shametha, 2019 (4) SCC 409, Munish Kakkar Vs Nidhi Kakkar, AIR 2020 SC 111 and Neha Tyagi Vs Lieutenant Colonel Deepak Tyagi (2022) 3 SCC 86***, and held that an irretrievable breakdown of marriage is a marriage where husband and wife have been living separately for a considerable period and there is absolutely no chance of their living together again.
19. On examining the case at the touchstone of principles of law laid down by Hon'ble Apex Court in the above-cited cases, it is clear that marriage was solemnized on 30-11-2005 and parties are living separately since 2009 i.e. period for more than 16 years. Due to rapture of marital cord, hope of reunion eclipsed. Matrimonial bond is completely broken and is beyond repair. Under such circumstances,

this Court left with no other option, but think it appropriate that since relationship of both the parties must end as its continuation is causing cruelty either on the parties, therefore, the long separation, absence of cohabitation, the complete breakdown of all meaningful bonds and existing bitterness between the two, has to be read as "cruelty". Where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation, then continuation of such marriage would only mean giving sanction to cruelty which is inflicting on the other.

20. In the conspectus of facts and circumstances of the case and the rival submissions advanced by learned counsel for the parties, this Court is of the concerned view that the marital relationship between the parties has broken down irretrievably, therefore, it deserves to be dissolved. Accordingly, the judgment passed by the Family Court is set aside and the marriage between the parties is declared as **dissolved**. A decree be drawn accordingly.
21. Pending application(s), if any, shall stand closed.
22. Appeal stands **disposed of and allowed**.

(ANAND PATHAK)
JUDGE

(PUSHPENDRA YADAV)
JUDGE