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FA-1126-2023

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

&

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

ON THE 3rd OF JULY, 2025

FIRST APPEAL No. 1126 of 2023

YOGESH

Versus

SMT. PREETI SONI

.....
Appearance:

Shri Abhishek Gupta, learned counsel for the appellant.

Shri Sudeel Yadav, learned counsel for the respondent.

.....
WITH

FIRST APPEAL No. 1594 of 2023

SMT. PREETI

Versus

YOGESH

.....
Appearance:

Shri Sudeel Yadav, learned counsel for the appellant.

Shri Abhishek Gupta, learned counsel for the respondent.

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ORDER

Per. Justice Vijay Kumar Shukla

Both the appeals are filed under section 19 of the Family Court Act, being aggrieved by the judgment and decree passed by the First Additional Principal Judge, Family Court, Indore in HMA Case No.1666/2017 dated 04.03.2023 whereby, the petition for divorce filed by the wife Smt.Preeti was partly allowed, and a decree for judicial separation was passed instead of a decree for divorce.



2. The other connected appeal has been filed by the husband being aggrieved by the said judgment and decree on the ground that on a single act of cruelty, the Family Court could not have passed the decree for judicial separation and the petition filed by wife for divorce under section 13 of Hindu Marriage Act (hereinafter referred as "Act") ought to have been dismissed in *toto*.

3. Since both the appeals are arising out of the same judgment, therefore, they are being decided by this common order.

4. The facts of the case are that the marriage between the parties was solemnised on 04.12.2005 as per Hindu rites and customs. From the said wedlock, a girl child was born on 07.11.2007 and another child was born on 30.04.2008. It was alleged in the divorce petition that right from the marriage, the behaviour of the husband was inhuman, cruel, and they were also demanding dowry and cash amount of Rs.10,00,000/-. His misbehaviour got aggravated with the passage of time, and there was no improvement in his behaviour. He used to beat the appellant and threaten her to death. His valuables, ornaments, and *stree dhan* were sold by the husband. She was also physically tortured and this behaviour was disclosed by the neighbours to her father. A police report was also lodged by her father in police station Talia Bhopal. However, with the intervention of the police, she went to Indore alongwith the children. After one day, the husband came to Indore and persuaded her to go with him. On refusal, she was subjected to physical torture. Since then, she is living separately in her parents' house.

5. The aforesaid allegations were denied by the husband in WS that she had gone to Indore herself and had taken all valuable ornaments, clothes etc. She



threatened him to implicate in a false criminal case. She herself does not want to live with him. She is taking tuition classes and is earning about Rs.10,000/- per month and also earns from beauty parlour and other makeup work.

6. The court below, after considering the entire evidence and testimony of wife PW No.1 and daughter PW No.2 held that though the cruelty of subjecting her to physical torture on 22.07.2017 is proved but the nature of the cruelty is not sufficient to grant a decree for divorce. The Family Court partly allowed the petition for divorce by granting order of judicial separation instead of divorce.

7. Learned counsel for the wife argued that the Family Court has erred while declining decree for divorce and granting decree for judicial separation. Once the court has found that the cruelty is proved then the court ought to have granted a decree for divorce. He further argued that the parties are residing separately for last 8 years. The application for mutual divorce was also filed under section 13-B of the Hindu Marriage Act, but the husband did not participate in the proceedings; therefore, ultimately, petition for divorce by mutual consent was dismissed. However, the submission of joint petition for divorce under section 13-B of the Act is sufficient to prove that both the appellant and the respondent are not willing to live together.

8. Learned counsel for the wife further argued that the wife does not want any maintenance or alimony from the husband. They are living separately for last about 8 years and the reconciliation between the parties could not be materialised, and there is no possibility that the parties will cohabit together, and continuation of the formerly legal relationship would be unjustified. There is a complete breakdown of marriage. Hence, the decree



may be granted on the ground of irretrievable breakdown of marriage.

9. Learned counsel for the husband opposed the prayer and submits that the husband has also filed the connected first appeal challenging the order of judicial separation passed by the Family Court. He argued that on the basis of an isolated incident, the order of judicial separation could not have been passed; therefore, the impugned decree for judicial separation is also erroneous. He relied on the judgment passed in the case of *K. Srinivas Rao vs D.A. Deepa reported in (2013) 5 SCC 226*.

10. We have heard learned counsel for the parties.

11. The Family Court has recorded a finding that the cruelty has been found to be proved. It is apposite to consider the meaning of cruelty in a matrimonial matter. 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 rebuilt. Cruelty was not a ground for divorce prior to 1976. It was only a ground to seek judicial separation. Cruelty was made a ground for seeking a divorce by the 1976 Amendment Act under Section 13(1)(i-a). According to the Oxford Dictionary, the term "cruelty" has been defined as the disposition to inflict suffering, it's been used to describe human behaviour or conduct in general. In matters of matrimony, It is how you behave with the spouse and includes a person's conduct towards the matrimonial obligation. It is a term that is subjective and can be interpreted as per the facts of each case. Cruelty can be mental or physical, and it can be purposeful or inadvertent. Cruelty can take many



forms, including physical and emotional abuse. Physically abusing or injuring one's spouse qualifies as physical cruelty. It is difficult to decide as to what constitutes mental cruelty. Cruelty is also an offence under Section 498A of the Indian Penal Code, 1860.

12. While deciding the case of **Savitri Pandey vs Prem Chandra Pandey (2002) 2 SCC 73**, the Apex Court observed that cruelty has not been defined under the Hindu Marriage Act, 1955, but it is considered in marital problems as conduct that endangers the petitioner's life with the respondent. Cruelty is defined as an act that endangers a person's life, limb, or health. Cruelty, for the act, is that one spouse has handled the other and expressed such emotions against her or him as to have inflicted bodily damage, or to have created cheap anxiety of bodily injury, suffering, or to have wounded health. Cruelty may be both physical and emotional. Another spouse's behaviour that creates mental agony or anxiety about the opposite spouse's marital situation is referred to as mental cruelty.

13. In the present case, the wife has clearly deposed that right from the beginning, she was being subjected to physical and mental torture. The husband used to quarrel with her and also to torture her physically and also demanding dowry. She had no option but to leave the house. The police report was also lodged by the father of the wife. PW No.2 Gauri, daughter of the parties, have also supported the case of the wife, stating that she had seen since childhood that her father used to come in a drunken condition and beat her mother. Maternal grandfather (Nana) had taken them to Bhopal to their



house. The cruelty has been found to be proved.

14. In view of the aforesaid, the act of the husband of physical and mental torture cannot be held to be a single act. The cruelty by the husband was alleged right from the marriage. The judgment in the case of K. Shrinivas Rao (*supra*) would not apply in the present case, and in view of the facts of the case. Thus, the Family Court has committed an error while dismissing the petition for divorce on the ground of cruelty and granting order of judicial separation. Thus, we find no force on behalf of the husband in the connected appeal that in single act of incident the decree of divorce cannot be granted. The evidence available on record clearly indicated that the wife was being subjected to physical and mental torture since marriage. Sometimes, the police reports were made. This shows that the act of husband was not a single act. There is another aspect for granting a decree of divorce in the present case that, admittedly, both wife and husband are living separately for about 8 years. All efforts for reconciliation have failed. This Court repeatedly asked both parties whether they can arrive at some settlement but they were not agreeable. The period of 8 years living separately and submission of a petition for divorce by mutual consent under section 13-B of the Hindu Marriage Act also proved the fact that there is no possibility that the parties will cohabit together. Thus, there is an irretrievable breakdown of marriage.

15. The Constitution Bench in the case of *Shilpa Sailesh Vs. Varun Shreenivasan reported in 2023 livelaw (SC) 375*, held that in the cases of irretrievable breakdown of marriage, considering the period of separation,



nature of allegations made by the parties, may grant a decree for dissolution of marriage. The Apex Court in the case of *Rajib Kumar Roy vs. Sushmita Saha reported in 2023 SCC Online SC 1221* held that a decree for divorce can be granted considering the continued bitterness, dead emotions and long separation in the given facts and circumstances of the case tantamount to irretrievable breakdown of marriage.

16. In light of the aforesaid judgments, we have carefully examined the evidence led by both the parties and considering the period of long separation and failure of reconciliation, we are of the considered view that the wife is entitled for decree of divorce on the ground of cruelty as well as irretrievable breakdown of marriage.

17. Accordingly, the appeal filed by the wife is allowed.

18. The impugned judgment and decree dated 04.03.2023 is set aside and the petition for divorce filed by the wife Preeti is allowed. The marriage between the appellant and respondent is dissolved.

19. Considering the submission made by learned counsel for the wife that the wife does not want any maintenance or alimony from the husband, no order of maintenance to the wife and children and alimony is awarded.

20. As a consequence, the FA No.1126/2023 filed by husband Yogesh also stands dismissed.

No order as to cost.



(VIJAY KUMAR SHUKLA)
JUDGE

Sourabh

(PREM NARAYAN SINGH)
JUDGE