

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR**

Case No	F.A.54-2001
Parties Name	Hirdayshay Vs. Nutanbai
Date of order	09/12/2021
Bench Constituted	Division Bench : Justice Sheel Nagu & Justice Purushaindra Kumar Kaurav
Judgment delivered by	Justice Purushaindra Kumar Kaurav
Whether approved for reporting	Yes
Name of counsel for parties	For Appellant: Shri Sanjay Kumar Saini Advocate For Respondent :None present.
Law laid down	Held : 1. The husband and wife lived together only for about two years intermittently, since February, 1988 and thereafter, the husband had to either serve the notice or to take the recourse of issuance of search warrant through S.D.M. Despite making persistent efforts to persuade wife to return, she did not join the company of husband and she filed two cases against the husband, both resulted in dismissal. Thus, the intention of wife is clear i.e to bring the cohabitation to an end without reasonable cause and, therefore, the ground for divorce under section 13(1)(i)-b of the Hindu Marriage Act, 1955 is made out. 2. Irretrievable breakdown of marriage is not a ground for divorce under section 13 of the Act of 1955. However, the circumstances such as parties being living separately for a considerable long time, like, for three decades (in the present case). Such separation has created

	unbridgeable distance between the two and such marriage is beyond repair on account of bitterness created by the acts of the parties and, therefore, such weighty circumstances can always be taken into consideration while deciding the case of divorce between the parties. 3. Filing of a case for maintenance or a private complaint for offences punishable under Section 498-A and 294 of the I.P.C in itself would not amount to cruelty.
Significant paragraph Nos.	para- 7.

J U D G M E N T
(09/12/2021)

This is an appeal filed by the appellant/husband under Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred to as the “Act”) against the judgment and decree dated 19.12.2000 passed by Second Additional District Judge, Balaghat in Hindu Marriage Case No. 2-A/99, whereby his case filed under Section 13 of the Act, has been dismissed.

2. The brief facts of the case necessary for the adjudication of this appeal are as under:-

(i) The marriage of appellant/husband with the respondent/wife was solemnized in the month of February, 1988 as per Hindu rites and Customs at village Bagholi Tehsil-Baihar, District-Balaghat (M.P.). Out of their wedlock a male child, namely, Pawan Kumar was born in December, 1988 who continued to live with the appellant/husband. On 15.05.1991, their second child, namely, Ved Prakash was born, who continued to live with the respondent/wife since his birth.

(ii) Since 1991-92, the respondent/wife is living separately from her husband/appellant at her parental village Bagholi Tehsil-Baihar, District-Balaghat in an independent house.

(iii) On 30.04.1992, appellant/husband sent a notice to respondent/wife calling her to live together. After about 11 days from the said notice, she

came back to the house of respondent/husband. However, without any reason or intimation, she left him again. Therefore, on 09.07.1992 another registered notice was sent by the appellant/husband to the respondent/wife. However, neither the said notice was replied nor did she come back to appellant/husband. On 05.08.1992, the respondent/wife lodged a report against the appellant/husband and his family members, at Police Station Paraswada, District-Balaghat alleging that she had been subjected to cruelty by the appellant/husband and her in-laws on account of non-fulfilment of demand of dowry. In absence of any substance, the police did not register the case against anyone of them.

(iv) On 14.07.1995, the respondent/wife filed a Case No. 72/95, under Section 125 of Cr.P.C. against the appellant/husband for grant of maintenance, before the Court of JMFC, who vide order dated 24.09.1998 directed the appellant/husband to pay maintenance of Rs. 200/- to respondent/wife and Rs. 150/- to his son, namely, Ved Prakash.

(v) On 05.07.1999, the respondent/wife filed a private complaint under Section 200 of Cr.P.C. for offence punishable under Section 498-A and 494 of IPC which was registered as Case No. 129/2003. The same was dismissed by the concerned court vide order dated 07.11.2008.

(3) The case of the appellant/husband is that without any reasonable cause, his wife has deserted him since 1991-92. He further states that the respondent/wife tried to falsely implicate him and his parents, and with an oblique motive, she lodged a report at the Police Station so also filed a private complaint. According to the appellant/husband, in order to rope the appellant and his parents into a false criminal case, the respondent/wife jumped into the well whereas there was no marital relationship between them for more than 9 months before the birth of second child. Therefore, the appellant prayed for decree of divorce on the ground of adultery, cruelty and desertion under Section 13(1)(i), 13(1)(i-a) and 13 (1) (i-b) of the Act respectively.

(4) The respondents-wife's case is that on account of perpetrated cruelty, she was compelled to live separately and, therefore, it cannot be said that she had ever deserted the appellant without any reason. She alleged that no false case was registered against the appellant/husband. She further stated that when the grandmother of the appellant/husband died in the year 1992, she stayed with husband for few days, therefore, the birth of the second child is out of the same wedlock.

(5) The learned trial court framed the issues, recorded evidence of both the parties and after considering the material available before it, dismissed the petition.

(6) We have heard the learned counsel appearing for the appellant/husband, however, no one appeared on behalf of the respondent/wife, despite service of notice.

(7) We have carefully perused the record and the evidence therein. We now proceed to analyse the evidence as under :-

Desertion-

(i) The appellant/husband examined (P.W.1) Chintaman who is his neighbour. In his deposition, he has stated that after marriage of the appellant with the respondent, the respondent stayed peacefully with the appellant only for about two months. Thereafter, she used to leave the house of appellant frequently without any reason or intimation. This witness further states that the father of respondent/wife took the respondent with him without intimation and, therefore, the father of the appellant/husband reported the matter to the police. The appellant/husband appeared as (PW-2) and has reiterated the facts mentioned in his petition under Section 13 of the Act. Another witness Nanak Ram Chouhan (P.W.3) appeared on behalf of the appellant and has also supported the case of the appellant/husband. PW-2-Appellant and PW-3-Nanak Ram Chouhan have stated that when the respondent-wife left the house of the appellant, the appellant had to approach the Sub Divisional Magistrate for issuance of the search warrant. It

is only thereafter, the respondent-wife was searched.

(ii) The respondent/wife appeared as DW-1 and has stated that she was subjected to mental and physical cruelty not only by the appellant but also by his parents. They forcefully asked her to leave the house of her husband and to stay with her parents. She also stated that when the grand mother of the appellant/husband died, she went to her husband and stayed with him for about 4 months. During the said period, she became pregnant and gave birth to the second child, namely, Ved Prakash. Pursuant to search warrant issued by the Sub Divisional Magistrate-Baihar, she appeared before the said authority and, thereafter, she stayed with her husband for some time. On behalf of the respondent-wife her father Gopal Prasad also appeared as DW-2 and he has supported the case of the respondent-wife.

(iii) The Supreme Court in the case of ***Rohini Kumari Vs. Narendra Singh***¹ has held that *desertion means an intentional permanent forsaking and abandonment of one spouse by the other without the consent of the other with no reasonable cause. It is a total repudiation of the obligation of the marriage.*

If the evidence of the present case is examined on the anvil of the aforesaid legal pronouncement, it is seen that the husband and wife have lived separately for about 30 years. The marriage was solemnized in the year 1988. It is only for about 2 years they remained together intermittently, and during initial years of their marriage also the appellant had either to sent a notice for calling the wife or sent a search warrant through Sub Divisional Magistrate. From the evidence of Chintaman (PW-1), it is clear that, not only by the appellant but by village people also, persistent efforts were made to convince the respondent and her father to send the respondent for discharge of her marital relationship with the appellant/husband. It appears that to avoid the company of the husband/appellant, the respondent/wife filed two cases against her husband which appears to be an afterthought and both have

1 AIR 1972 SC 459

resulted in dismissal. Thus, it appears that the intention of respondent/wife to bring the cohabitation to an end without reasonable cause.

(iv) On the basis of aforesaid analysis, this court is of the opinion that the appellant/husband has successfully proved his case of desertion by his spouse without any reasonable cause. If that be so, the appellant is entitled to get the decree. Hence, the suit is decreed under section 13(1) (i-b) of the Act on the ground of desertion. Moreso, at this stage, it is seen that now it is not possible for the parties to live together and the best course would be to dissolve their marriage by passing a decree of divorce so that they may live their remaining life peacefully as per their will. It is a case where the husband has been able to prove that a wife has not turned-up in spite of the attempts made by the husband, his parents and relatives.

(v) Although, in this case, we have granted the decree of divorce on the basis of facts and material available on record but at the same time we have also kept in mind that husband and wife are living separately for about three decades. This separation has created unbridgeable distance between the two. The marriage has irretrievably broken-down which, of course is not a ground for divorce under the Act but where marriage is beyond repair on account of bitterness created by the acts of the parties, the Court can always take into consideration the said fact as a very weighty circumstance amongst other. A marriage which is dealt for all purposes cannot be revived by the courts if the parties are not willing. While scrutinizing the evidence on record and to determine whether the ground for divorce are made out and the relief can be granted, the fact of irretrievable breakdown of marriage can certainly be borne in mind. (*See B. Bhagat Vs. D. Bhagat*²).

8. So far as, the grounds with respect to cruelty and adultery are concerned, we have examined the pleadings and evidence of both the parties and have also considered the reasons given by the learned trial court. Filing of a case for maintenance or a private complaint for offence punishable under Section

2 (1994) 1 SCC 337

498-A and 294 of IPC in itself would not amount to cruelty. There is no evidence with respect to adultery also. The respondent-wife had stated that she went to live with appellant/husband when the grandmother of the appellant died and it is during the said period, she became pregnant and gave birth to the second child, namely, Ved Prakash. In view of aforesaid and in absence of any evidence regarding adultery, no decree on the ground of adultery can be granted.

9. In view of the aforesaid, the appeal is **allowed in part** the judgement and decree passed by the trial Court is partly set aside. The suit is decreed only on the ground of desertion under Section 13(1) (i-b) of the Act.

10. Parties to bear their own costs.

(SHEEL NAGU)
JUDGE

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

Akanksha/mkl