

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

First Appeal No. 579/2016

Alok Sharma

Vs.

Smt. Nisha Chaubey

**Present : Hon'ble Shri Justice S.K.Gangele, Judge
Hon'ble Smt. Justice Anjuli Palo, Judge**

Shri Chandrahas Dubey, counsel for the appellant.
Shri Amit Mishra, counsel for the respondent

Whether approved for reporting : **Yes / No**

Law laid down :- -

Significant Paragraphs : - -

**JUDGMENT
(05.01.2018)**

Per : Smt. Anjuli Palo, J :-

1. This first appeal has been filed by the appellant/defendant (husband) under Section 19 of the Family Courts Act, 1984 being aggrieved by the judgment and decree dated 18.07.2016 passed by the Second Additional Principal Judge, Family Court, Bhopal under Section 13(1) of the Hindu Marriage Act, 1955 whereby the decree of divorce has been granted in favour

of the respondent/plaintiff (wife).

2. It is not disputed that, the appellant and respondent are husband and wife. Their marriage was solemnized on 29.10.2009 in accordance with Hindu rites and customs. The respondent (wife) is residing at Bhopal and is working at BSNL, Bhopal. The appellant-husband is posted as Junior Engineer in Railway at Jaipur (Rajasthan).

3. The factual matrix of the case is that respondent-wife filed a suit under Section 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act, 1955, for divorce against the appellant. It was alleged that after the marriage, appellant and his parents demanded gold ornaments worth Rs. 2,50,000/- along with her salary from the respondent. They harassed her. The appellant left the respondent at her maternal house. He did not come to take her to reside with him. Hence, the respondent approached the police parivar paramarsh kendra. The appellant imposed some condition on the respondent to live with him and threatened her. Therefore, the respondent filed a case under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights against the appellant but she withdrew the same. Thereafter, she filed a complaint under Section 498-A of the Indian Penal Code against the appellant and his parents. The appellant filed a complaint case against the respondent and

her relatives at Jaipur Court under Section 406, 420, 120-B, 384 and 497 of IPC wherein it was alleged that the respondent was living in adultery. The appellant has posted face of the respondent on nude photographs of other females and declared that the respondent had physical relationship with other persons to degrade the status of respondent. He also collected personal information of the respondent with ulterior motives. It was claimed by the respondent that this leads to defamation and mental agony of the respondent. Above allegation was denied by the appellant but the Trial Court allowed the petition filed by the respondent and granted decree of divorce under Section 13(1)(ia) and Section 13(1)(ib) of the Hindu Marriage Act in favour of the respondent which, as per the appellant, deserves to be set aside.

4. We have heard learned counsel for the parties. Perused the record.

5. The counsel for the respondent vehemently opposed the prayer of the appellant. He submits that the learned Trial Court has rightly granted the decree against the appellant.

6. The point for consideration before us is whether the findings of the learned Trial Court is perverse and illegal?

7. It is not in dispute that their marriage was solemnized on

29.10.2009. After the marriage, the appellant left the respondent at her maternal house situated at Bhopal on 29.11.2009. Thereafter, the appellant did not make any attempt to bring her back. Respondent herself initiated a proceeding before the police paramarsh kendra. Later, the respondent filed a petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. Further, the appellant/husband tried to defame her through internet and on social media by posting her objectionable photographs by imposing her face in the nude female photographs. The respondent and her mother Keshkumari (AW-2) broadly stated about the above incidents.

8. As per the appellant, the respondent was not interested to live with him at Jaipur. On the other hand, in his cross-examination at paragraph 15, he has admitted that he alleged the respondent of adultery and also with regard to porn website. Those things happened after registration of offence under Section 498-A of the Indian Penal Code against the appellant and his family members. On the ground of adultery, a decree can be passed only on the proof of fact when the opposite party, after solemnization of marriage had voluntary sexual intercourse with any person other than his or her spouse. The appellant also admitted that a complaint case has been filed thereafter by him against the respondent and her family

members. In paragraph 19, he again admitted that his wife is a woman of questionable character. To defame her he also proceeded through CBI. He filed a complaint against his wife that she was a member of the gang which performed illegal marriages to extort money. But he failed to establish the aforesaid charges against the respondent before the learned Trial Court.

9. Hindu marriage is a sacred and holy union of husband and wife by virtue of which the wife is completely transplanted in the household of her husband. To a Hindu wife her husband is her God and her life become one of the selfless service and profound dedication to her husband. She not only shares the life and love, but the joys and sorrows, the troubles and tribulation of her husband and becomes an integral part of her husband's life and activities. Cole Brooke in his book "Digest of Hindu Law" Volume 11 quoted the Mahabharat at page 121 thus :

"Where female are honoured, there the deities are pleased; but where they are unhonoured there all religious acts become fruitless."

This clearly illustrates the high position which is bestowed on Hindu women by the Shastric law.

10. Learned Trial Court further held that the above facts are

important in support of the allegations of appellant but those facts are not pleaded by the appellant in his written statement and affidavit.

11. In view of the aforesaid, we come to the conclusion that the learned Trial Court rightly held that such type of baseless allegations are covered under the definition of “mental cruelty”.

12. In case of **Nimrat Preet Singh Bhullar vs. Kamaljeet Singh Bhullar [(1990) 2 CLJ 497]**, it has been held that “mental cruelty” can only be adjudged by having regard to the facts of the case. It can only be perceived and not defined. It will depend on the facts of each case. In action or omission or series of such acts of a spouse may cause injury to the other spouse which may further cause mental agony amounting to “mental cruelty”.

13. In such circumstances, it would be difficult for the respondent-wife to continue her married relationship with the appellant-husband. She is working in telecom sector. The activities of the appellant clearly indicate that the appellant wanted to defame her in the society. He did not make any effort to live with the respondent. Hence, the respondent has rightly refused to reside with the appellant and perform her

duties as a wife.

14. In case of **Amarendranath vs/ Krishna [(1993) 1 CHN 213]**, it was held that it is now well settled that false allegation against the character of any spouse made by the other spouse constitutes “mental cruelty” and such mental cruelty will be valid ground for passing a decree of divorce under the provision of Section 13(1)(ia) of the Hindu Marriage Act, 1955.

15. We do not find any perversity or illegality in the impugned judgment and decree passed by the learned Trial Court. Accordingly, this appeal is dismissed.

16. No order as to costs.

(S.K.GANGELE)
JUDGE

(SMT. ANJULI PALO)
JUDGE

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