

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

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

FIRST APPEAL No. 1985 OF 2019

BETWEEN:-

**SANDHYA DWIVEDI W/O SHRI RAMKRISHNA DWIVEDI,
AGED ABOUT 27 YEARS, OCCUPATION-HOUSE WIFE,
R/O WARD NO. 9, NIRALA NAGAR, POLICE STATION
UNIVERSITY, REWA, DISTRICT REWA (M.P.)**

.....APPELLANT

(BY MANOJ KUMAR MISHRA – ADVOCATE)

AND

**RAMKRISHNA DWIVEDI S/O SHRI YAGYANARAYAN
DWIVEDI, AGED ABOUT 30 YEARS, R/O WARD NO.10,
JANTA COLLEGE ROAD, NEAR CHILDREN
ACADEMY, ANANTPUR, POLICE STATION
UNIVERSITY, REWA, DISTRICT REWA (M.P.)**

.....RESPONDENT

(SHRI PUSHPENDRA KUMAR DUBEY – ADVOCATE)

Heard on : 26/04/2024

Passed on : 08/05/2024

*This First appeal having been heard and reserved for judgment,
coming on for pronouncement on this day, Justice Amar Nath (Kesharwani)
passed the following:*

J U D G M E N T

This first appeal under Section 28 of the Hindu Marriage Act, 1955, which will be here-in-after referred to as the “H.M. Act”, has been filed by appellant/wife being aggrieved by judgment and decree dated 31/10/2019 passed in RCS HM No.1-A/2016 by Principal Judge, Family Court, Rewa (M.P.), whereby the application filed under Section 13 of “H.M. Act” by respondent/husband for divorce has been allowed and also directed the respondent/husband to pay of Rs.3,00,000/- (Three Lakhs) in lump sum as permanent alimony to the appellant/wife.

2. Brief facts of the case are that the appellant and respondent got married on 25/05/2015 as per Hindu customs and rites but no child was born from their wedlock. It was averred that on the very first night of their marriage, appellant told respondent that she loves some other person and she married him under pressure of her parents and thereafter, she never allowed the respondent to consummate the said marriage. It was further averred that she used to talk to some other person on mobile and on protest by husband, she left her matrimonial home on 12/06/2015. Thereafter, respondent tried to bring her back but it was all in vain. Thereafter, appellant/wife lodged various cases against the respondent/husband under Domestic Violence Act. Consequently, the respondent/husband filed an application under Section 10 of the “H.M. Act” for judicial separation, alternatively under Section 13 of the “H.M. Act” for dissolution of marriage on the ground that the wife has deserted him since 12/06/2015 without any cogent reason and there was no cohabitation between the parties since then, and on the ground of cruelty caused by the appellant and her family members towards the respondent and his family members.

3. Appellant/wife refuted the averments mentioned in the application and pleaded that respondent made illegal demand of dowry of Rs.5,00,000/-(Five Lakh) and Safari Vehicle at the time of “*second vida*” on 27/11/2015 and respondent used to ill-treat her with regard to demand of dowry, however, in order to save her marriage, she beared all things and did not inform anyone in this regard. On 01/12/2015, she came back to her parental house with her father and she stayed there for about 10 days. Thereafter, she returned back to her matrimonial home, wherein respondent/husband, mother-in-law, father-in-law and sister-in-law used to harass her with regard to demand of dowry of Rs.5,00,000/- (Five Lakh) and Safari vehicle and they also used to assault her in this regard and ultimately, ousted the appellant from her matrimonial home and also kept the ornaments of the appellant/wife, which were given by her parents at the time of marriage. Thereafter, appellant lodged a written compliant at Mahila Thana on 25/05/2016 against the respondent and his family members. After returning to her parental house, she narrated the incident to her parents and brother and when they reached her matrimonial home to pacify the matter, they were abused and assaulted by respondent and his family members with intent to commit their murder and the matter was reported to Police Station-University. It was also contended that her relatives were assaulted by respondent on 01/08/2016, in this situation, she filed a written complaint against the respondent at the Office of S.P. Rewa on 04/08/2016 and she lodged a case under domestic violence act too. It is further pleaded that even today, she wants to live with respondent/husband in her matrimonial home and prayed for dismissal of the petition.

4. Learned Family Judge has framed the issues on the pleadings of

the parties and recorded the statements adduced by parties and after appreciating the oral as well as documentary evidence lead by parties, vide impugned judgment allowed the application filed by the respondent/husband under Section 13 of the "H.M. Act". Being aggrieved by impugned judgment and decree of divorce, the appellant/wife has preferred this appeal.

5. Learned counsel for the appellant/wife submits that her marriage was solemnized on 25/05/2015 and within seven months of marriage, respondent has filed petition under Section 10 of the "H.M. Act" for judicial separation and he has not filed any application under Section 9 for restitution of conjugal rights and after 1 year of the marriage, respondent has amended the petition for seeking divorce under Section 13 of the H.M. Act. Learned counsel for the appellant also submitted that the respondent/husband deserted the appellant/wife on 01/12/2015 and thereafter within 15 days, he has filed a petition for judicial separation, which shows ulterior motive of respondent/husband. Hence, it is clear that the respondent himself deserted the appellant/wife with ulterior motive. Learned counsel for the appellant also submitted that the learned Family Court has wrongly arrived at the conclusion that the appellant/wife has deserted the respondent. It is also submitted that appellant/wife was compelled to lodge the report against the respondent and her in-laws due to harassment caused by them. Hence, lodging of report against the respondent and his family members could not be said to be a genuine ground for grant of decree of divorce in favour of respondent/husband. It is also submitted that criminal case filed by the appellant/wife under Section 498-A of IPC is still pending against the respondent and his family members, hence, it could not be said that she

has lodged false report against them. It is submitted that the findings recorded by the learned Family Court is perverse and could not be sustained in the eye of law, therefore, he prays for setting aside of impugned judgment and decree.

6. Per contra, learned counsel for respondent/husband submits that appellant/wife lodged false dowry case and various cases under Domestic Violence Act against him and his family members. It is also submitted that after the marriage, appellant/wife resided at her matrimonial home for about 15 days and thereafter, she left her matrimonial home without any cogent reason and since then, they are living separately for about 9 years. Learned counsel for respondent/husband submits that he wants to live with the appellant/wife and he has made several efforts in this regard; whereas, the appellant/wife did not file any petition for restitution of conjugal rights. In this regard, learned counsel for the respondent/husband drew the attention of this Court towards the documentary evidence i.e. certified copy of F.I.R. (Ex. D/2), Final Report (Ex. D/3) and copy of written complaint (Ex. D/4) lodged by appellant/wife . Learned counsel for the respondent also drew the attention of this Court towards para 12 of chief-examination of N.A.W.-1 -Ram Krishna Dwivedi and submits that the appellant/wife refused to establish physical relationship with the respondent/husband, when she was residing at her matrimonial home, which amounts to cruelty against the respondent/husband. In support of his contentions, learned counsel for the respondent/husband placed reliance on the judgment of Hon'ble Apex Court in the case of **Raj Talreja Vs. Kavita Talreja, (2017) 14 SCC 194.**

7. We have considered the rival contentions of learned counsel for

the parties, perused the impugned judgment & decree and gone through the citations relied on by learned counsel for respondent/husband.

8. In support of his pleadings respondent/husband has examined himself as AW-1, his father as AW-2 and his sister as AW-3. He has not examined any independent witness in support of his pleadings. Similarly, appellant/wife has examined herself as N.A.W.-1 and her father as N.A.W.-2 and she has also not examined any independent witness in support of her pleadings.

9. Instances of cruelty caused by wife against husband and his family members are pleaded in para Nos. 2(i) to 2(vi) and para No.5(i) to 5 (vii), which are summarised as follows:-

(i) To create unnecessary pressure on respondent/husband and his family members including his sister by filing false, baseless and fabricated cases regarding demand of dowry, domestic violence at Police Station-University, Rewa. As a result of which respondent and his family members were arrested by Police, due to which their image got tarnished in society.

(ii) Appellant has filed objection before the Court of Second Additional District Judge as well as before the Court of Judicial Magistrate during the hearing of bail application.

(iii) Appellant and her family members insulted the respondent and his family members, due to said act of the appellant, the image of the family members of the respondent in society got tarnished. On 01/08/2016, appellant's brother and relatives assaulted the respondent, due to which he sustained various injuries and in that regard Crime No. 203/2016 has been registered at Police Station-University.

(iv) Between 10/01/2017 to 14/01/2017, at the instance of appellant, her brother made uncalled for advances against the sister of respondent with that regard report No. 15/2017 lodged at Police Station-University, Rewa by the respondent's sister.

(v) After solemnization of marriage, appellant did not make any physical relations with the respondent.

(vi) Due to extra-marital relations with other person, appellant did not accept the respondent as her husband and after the marriage, she is continued her relation with other man.

(vii) Appellant has resided at her parental house for last more than six months without any cogent reasons.

(viii) Appellant along with her father has not only abused the respondent but also assaulted him and misbehaved with his uncle (Tau) at her parental house.

(ix) On 12/06/2015, after picking up all her ornaments and clothes etc., appellant left her matrimonial home and went to her parental house without intimating anyone, and since then she resides in her parental house.

(x) Looking to the conduct of appellant, father of the respondent expelled him from his house, due to which he got deprived from love and affection of his family members.

10. Respondent/husband A.W.-1 has supported his pleadings in his examination-in-chief filed on affidavit under Order 18 Rule 4 of C.P.C. and exhibited documentary evidences Ex.P/1 to Ex.P/20.

11. Though criminal case was instituted under Section 498(A) of Indian Penal Code among other provisions against the husband and her in-laws were not concluded till date, hence, it cannot not be said at this stage that the allegations regarding demand of dowry is false or baseless. Also, only because the appellant/wife has lodged a criminal case under Section 498-A of IPC against the respondent/husband and his family members, it cannot be presumed that appellant/wife inflicted cruelty against them, as held by the Hon'ble Apex Court in the case of ***Raj Talreja Vs. Kavita Talreja, (2017) SCC 194.*** Para No. 11 of the said judgment, is reproduced herein as under:-

*“11. Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. **Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act, 1955 (for short “the Act”).** However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty. In the present case, all the allegations were found to be false. Later, she filed another complaint alleging that her husband along with some other persons had trespassed into her house and assaulted her. The police found, on investigation, that not only was the complaint false but also the injuries were self-inflicted by the wife. Thereafter, proceedings were launched against the wife under Section 182 IPC.”*

12. Appellant/wife (N.A.W.-1) has admitted in para-14 of her cross-examination that her sister-in-law Laxmi is unmarried and that she has lodged a report under Section 498-A of I.P.C. against her sister-in-law also. Appellant/wife (N.A.W.1) also admitted that she has opposed the anticipatory bail application of the respondent/husband and his family members before the Court, this conduct of the appellant/wife shows that she wanted to see the respondent/husband and his family members behind the bars, and wreak vengeance.

13. It is pleaded in para-5 of the divorce petition that the appellant is residing at her parental house for last more than six months. It is

pertinent to mention here that the petition was filed on 17/12/2015. In para-5(vi) of the petition, it is also mentioned that on 12/06/2015, after picking up all her ornaments and clothes etc., appellant/wife has left her matrimonial house without intimating anyone and since then she is residing at her parental house; whereas appellant in para-2 of her written statement pleaded that her "Gamna" was solemnized on 27/11/2015 and after that it was second time she came to her matrimonial house, where respondent/husband, her mother-in-law, father-in-law and sister-in-law (*Nanad*) used to harass her with regard to demand of Rs.5,00,000/- (Five Lakh) and one Safari Vehicle, but in order to save her marriage, she beared all things and did not complained to anyone in this regard. On 01/12/2015, her father came to her matrimonial home to take her, then she came to her parental house and resided there for 10 days and during that period, she narrated the incident to her family members.

14. Hence, as per the appellant/wife, first time she came to her matrimonial home on 26/05/2015 after her marriage and second time on 27.11.2015, when her "Gamna" was solemnized. Whereas, as per respondent/husband, appellant/wife first time stayed at her matrimonial home for 15 days and then returned back to her parental house and after one month, when appellant/wife returned to her matrimonial home and some dispute arose, then she returned back to her parental house on 12/06/2015 and since then she is residing at her parental house.

15. Appellant/wife (N.A.W. 1) in para-10 of her cross-examination has admitted that first time she has lodged a complaint against her husband before the Mahila Thana, Rewa (M.P.) on 25/05/2016. She also admitted that she is residing at her parental house from last more than one year, hence, as per aforesaid admission of the appellant/wife (N.A.W.1), she

was residing at her parental house since 25/05/2015, which could not be possible as it is an admitted fact that the marriage of appellant and respondent was solemnized on 25/05/2015. Though the respondent/husband has not denied the pleading of appellant/wife through consequential amendment that "Gamna" was solemnized on 27/11/2015, but only on that basis it could not be assumed as true, but other materials which are on record will also have to be seen.

16. It reveals from the written complaint (Ex.D/5), which was placed before Superintendent of Police, Rewa on 30/08/2016 by the appellant/wife, that she was residing at her parental house since last one year, which shows that the appellant/wife was residing at her parental house from August, 2015. Hence, pleadings of respondent/husband that after marriage, appellant came to her matrimonial house and stayed there for 15 days and after that she returned to her parental house and stayed there for one month, and returned back to her matrimonial house, where some dispute arose and thereafter, she returned to her parental house and since then she did not come back seems true, which is supported by the documentary evidence i.e. Ex.D-5. Hence, it is proved that the appellant/wife is residing at her parental house since August 2015.

17. Appellant/wife (N.A.W.1) has admitted in para-12 of her cross-examination that first time she has lodged report against respondent/husband was on 25/05/2016 before Mahila Thana, Rewa (M.P.). It is also admitted by her that in the said report she has not made any allegation against respondent/husband and his family members regarding demand of dowry. Hence, it is clear that in the first report lodged by appellant/wife on 25/05/2016, the factum of demand of dowry and harassment was not mentioned and that it is an afterthought.

18. It is pertinent to mention here that none of the parties i.e. neither appellant nor respondent has filed petition for restitution of conjugal rights. Though suggestion was given to the respondent/husband (A.W. 1) in para-18 of his cross-examination on behalf of appellant that appellant/wife was willing to reside with him when they were called at Police Station-University but he (husband) refused to take her with him, to which he denied. In para-20 of her cross-examination, A.W.-1 has stated that if the appellant/wife is ready to go with him today, he will not take her along with him because cruelty has increased to such an extent. Similarly, appellant/wife (N.A.W. 1) in para-14 of her cross-examination deposed that she feels unsafe living with her husband at her in-law's house. It is also revealed from the record of the family court that the mediation proceedings were arranged and as per the mediators report dated 16.11.2017, which is enclosed in the record of Family Court, it is mentioned that the parties did not agreed to live together in any condition. It is also pertinent to mention here that the mediation proceedings were also arranged during the pendency of appeal before this Court and as per mediation report, the parties are not interested to enter into compromise in the matter, therefore, conciliation is not possible.

19. It is revealed from the documentary evidence, which has been filed before the family Courts by rival parties during the proceedings that various complaints/F.I.R. were lodged against each other and family members, which is not only lodged against them but also against their family members, which shows that no harmony survives between their family members and their marriage has arrived at the irreparable stage.

20. As discussed above, it is found proved that appellant and

respondent are residing separately since August 2015 and appellant/wife feels unsafe to reside with her husband as she has stated in her cross-examination and respondent/husband is also not ready to reside with appellant/wife due to alleged cruelty as he has stated in his cross-examination. Hence, in this case, there is no emotion alive between the appellant and respondent and fire of quarrel between appellant and wife has also been extended to the family members of the wife and husband. Hence, looking to the 9 years of continuous separation, it may be concluded that the marriage has broken down beyond repair.

21. *In the case of Naveen Kohli Vs. Neelu Kohli, (2006) 4 SCC 558*, Hon'ble Apex Court has held that once the parties have separated and the separation has continued for sufficient length of time and one of them has filed petition for divorce, it can well be presumed that the marriage has broken down. Para Nos.-72 to 76 of the said judgment are reproduced as under:-

“72. Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.

73. A law of divorce based mainly on fault is inadequate to deal with a broken marriage. Under the fault theory, guilt has to be proved; divorce courts are presented with concrete instances of human behaviour as they bring the institution of marriage into disrepute.

74. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would

be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised 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.

75. Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

76. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied forever to a marriage that in fact has ceased to exist.”

(Emphasis Supplied)

22. Hence, keeping in view the principle laid down by Hon’ble Apex Court in the case of **Naveen Kohli (supra)** and looking to the facts and circumstances of the case as well as evidence available on record, no case is made out for interference. Resultantly, appeal sans merit and deserves to be and is hereby dismissed and judgment and decree dated 31/10/2019 passed by Principal Judge, Family Court, Rewa (M.P.) in R.C.S.H.M. No.1-A/2016 is hereby affirmed.

23. It is made clear that the observation made by Family Court in this case regarding cruelty will not come in the way in any manner in criminal proceedings, which are pending before the Criminal Court between the parties and criminal cases should be decided on its own merit.

24. Looking to the facts and circumstances of the case, parties will

bear their own costs.

25. Let decree be drawn accordingly.

(SHEEL NAGU)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE

skt