

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

**ON THE 3<sup>rd</sup> OF JANUARY, 2022**

**BEFORE**

**HON'BLE SHRI JUSTICE RAVI MALIMATH,**

**CHIEF JUSTICE**

**&**

**HON'BLE SHRI JUSTICE PURUSHAINDR KUMAR KAURAV**

**FIRST APPEAL No. 547 of 2019**

**Between:-**

**VIBHA SHUKLA DAUGHTER OF SHRI  
LALMANI SHUKLA, WIFE OF KAILASH  
DWIVEDI, HOUSE WIFE, RESIDENT OF  
VILLAGE, PAIPKHARA 386, MANTOLWA,  
POLICE STATION, CHOREHATA, DISTRICT  
REWA (MP)**

**....APPELLANT**

***(BY SHRI PUSHPRAJ SINGH GAHARWAR, ADVOCATE FOR  
APPELLANT)***

**AND**

**KAILASH DWIVEDI SON OF SHRI SHYAM  
KARAN DWIVEDI, AGED ABOUT 35 YEARS,  
RESIDENT OF VILLAGE AUKAURI POST  
RAMPUR POLICE STATION NAIGARHI  
DISTRICT REWA (MADHYA PRADESH)**

**.....RESPONDENT**

***(BY SHRI OM PRAKASH DWIVEDI, ADVOCATE FOR  
RESPONDENT)***

---

*This appeal coming on for Admission this day, Hon'ble Shri Justice  
Purushaindra Kumar Kaurav passed the following:*

## **J U D G M E N T**

This is wife's appeal under Section 28 of the Hindu Marriage Act, 1955 (hereinafter referred to "the Act of 1955"), directed against the impugned judgment and decree dated 14.03.2019, passed by IVth Additional District Judge, Rewa in HMA Case No.21-A/2017, dissolving the marriage between the parties under Section 13(1) (i a) & 13(1) (i b) of the Act of 1955 on the ground of cruelty and desertion, respectively.

2. Brief facts for adjudication of the present appeal are as under:-

(i) The marriage between the parties was solemnized as per Hindu rites and custom on 09.05.2004 at village Paipkhara, Police Station Chorhata, District Rewa.

(ii) After marriage, there was no "Gouna" ceremony. The appellant-wife neither went to respondent-husband to discharge her marital obligations nor there has been any cohabitation between them till date.

(iii) The appellant-wife has taken the plea that since the demand of dowry of Rs.1,50,000/- was not fully met by her father, therefore, the respondent-husband did not take her to matrimonial home. She also states that with great difficulty in the year 2009 her father could only fulfill part demand of Rs.50,000/-. She also filed petition under Section 125 of Cr.P.C., for grant of maintenance. The directions for payment of Rs.2500/- per month were given by the concerned court, however, such order has not been obeyed by the respondent-husband.

(iv) The respondent-husband stated that he made efforts to bring the appellant-wife for cohabitation, however, all his efforts failed. On apprehension of

his false implication in the case of demand of dowry at the instance of his wife, he made complaint in the year 2010 to Mahila Police Station Rewa (Ex-P-5) and also sent the same to the M.P. Human Rights Commission vide (Ex-P-8) on 31.07.2010.

3. The case of the appellant-wife is that there is sufficient cause for her to live separately and when she has not lived with the respondent-husband; there is no question of causing any cruelty. According to her, the learned Court below has miserably failed to appreciate the evidence in right perspective. Neither the ground of cruelty nor of desertion is proved.

4. The respondent-husband's case is that for last about 17 years, there is no cohabitation between the parties. He further stated that despite all his efforts, the appellant-wife never joined his company. Had there been any demand of dowry, appropriate proceedings could have been initiated. However, in the instant case, nothing has been done, which shows that the allegation of demand of dowry is an afterthought.

5. The learned trial Court framed the issues; recorded the evidence of the parties and after considering the entire material before it, dissolved the marriage between the parties.

6. We have heard learned counsel appearing for both the parties and perused the record.

7. The respondent-husband appeared as PW-1 before the court below and stated that after the marriage was solemnized on 09.05.2004, the "*Gouna*" ceremony was not performed by his in-laws on the ground that the appellant-wife was studying. In the year 2005, he went to his in-laws and requested for "*Gouna*" ceremony, however, the appellant-wife bluntly refused to come to matrimonial home. Thereafter, in the year 2010, he

made certain complaints to the Police Station and Human Rights Commission.

8. The appellant-wife appeared as DW-1 and reiterated the averments made by her in the written statement regarding the demand of dowry by the respondent-husband, his mother and other relatives. According to her, since the said demand was not fulfilled, therefore, the respondent-husband refused to take her to the matrimonial house. She also stated that she had filed a petition under Section 125 Cr.P.C., where the competent court granted maintenance of Rs.2500/- which has also not been paid to her. In support of her case her brother Virendra Shukla appeared as DW-2 and his father Lalmani Shukla appeared as DW-3. They also supported the case of the appellant-wife.

9. The learned Court below in paragraph 16 of the impugned judgment clearly recorded a finding that from the date of marriage the appellant-wife neither lived with the respondent-husband nor made any effort to join the company of the respondent-husband. In para-18 of the impugned judgment, the learned trial Court has taken into consideration of the fact that the appellant-wife had filed a false case under Section 12 of the Protection of Woman from Domestic Violence Act 2005, not only against the respondent-husband, but also against his mother which was rejected vide order dated 03.08.2018. That apart, a case under Section 125 Cr.P.C. filed by the appellant-wife was also dismissed for want of prosecution. The learned trial Court has taken into consideration the law laid down by the Hon'ble Supreme Court in the case of ***K Srinivas Rao vs. D.A. Deepa***<sup>1</sup> and has come to the conclusion that filing of false

---

1 (2013) 5 SCC 226

complaints and cases in the court against the spouse would in fact, amounting to causing mental agony.

10. Cruelty is a course of conduct of one which adversely affects the others. It can be physical or mental or both. Mental cruelty is difficult to establish by direct evidence unlike in the case of physical cruelty. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case taken cumulatively. See *Dinesh Nagda vs. Shantibai*<sup>2</sup>. Filing of case alone of course would not amount to causing cruelty, however, if the allegations are false and with a view to cause mental harassment, then such an act amounts to cruelty as has been held in the case of *Anuradha Prafull Vaidh vs. Prafull Vaidh*<sup>3</sup>

11. In the instant case, we are constrained to observe that for all practical purposes, the marriage has become dead. Undisputedly, the parties are living separately since last almost 17 years. It is unfortunate that parties after marriage have not lived together even for once. It would serve no useful purpose to continue with such ceremonial relationship which has no life. It is true that the marriage is irretrievably broken down is not a ground for divorce. However, this fact can always be taken into consideration while deciding such cases.

12. Having perused the entire material available on record, we are of the view that the learned Court below has considered the evidence and legal position in right perspective hence, we do not find any ground to interfere with the well-reasoned judgment passed by the court below. Hence, we see no reason to interfere with the impugned judgment and dismiss this appeal.

---

<sup>2</sup> 2012 (1) M.P.H.T. 490 (DB)

<sup>3</sup> 2007 (4) MPLJ 123

**13.** While we affirm the judgment and decree passed by the Court below, we deem it appropriate to consider the prayer of appellant-wife for grant of permanent alimony in terms of Section 25 of the Act of 1955, to which the respondent-husband, who is present in-person, has no objection. The respondent-husband is admittedly working as an Agent in Life Insurance Corporation. There is, however, no material regarding earnings of the appellant-wife.

**14.** Having considered the totality of circumstances, we deem it appropriate for payment of a Rs.3,00,000/- (Rupees Three lakhs Only) as permanent alimony in favour of the appellant-wife to which the respondent-husband who is present in the court has acceded to. Hence, it is directed that the respondent-husband shall pay a sum of Rs.3,00,000/- (Rupees Three lakhs Only) to the appellant-wife by way of demand draft within two months from the date of this judgment. If the said amount is not paid by respondent-husband to the appellant-wife within the specified time, the same shall carry simple interest at the rate of 6% till the date of actual payment.

**15.** With the aforesaid directions to the respondent-husband, the present appeal is dismissed leaving the parties to bear their respective costs.

**(RAVI MALIMATH)**  
**CHIEF JUSTICE**

**(PURUSHAINDRA KUMAR KAURAV )**  
**JUDGE**