

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

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE VINAY SARAF

FIRST APPEAL No. 712 of 2020

BETWEEN:-

**SHRI KARANDEEP SINGH CHAWLA S/O SATPAL
SINGH CHAWLA, AGED ABOUT 26 YEARS,
OCCUPATION: SELF EMPLOYED R/O SUKHMANI
NIWAS B-43/258 OPP. HOLY CHILD SCHOOL
GANDHI ROAD, THANE (MAHARASHTRA)**

.....APPELLANT

***(BY SHRI SANKALP KOCHAR – ADVOCATE ALONG WITH APPELLANT
PRESENT IN PERSON)***

AND

**SMT. GURSHISH KARANDEEP CHAWLA W/O SHRI
KARANDEEP SINGH CHAWLA, AGED ABOUT 26
YEARS, OCCUPATION: SELF EMPLOYED R/O 1342
GUPTESHWAR ROAD, NEAR DASHMESH DWAR,
MANDA MAHAL, JABALPUR (MADHYA PRADESH)**

.....RESPONDENT

***(BY SHRI RAJESH MAINDIRETTA – ADVOCATE ALONG WITH
RESPONDENT PRESENT IN PERSON)***

Reserved on : 17.02.2024

Pronounced on : 01.03.2024

*This appeal having been heard and reserved, coming on for
pronouncement this day, Justice Vinay Saraf passed the following:*

JUDGMENT

Appellant / husband seeking decree of divorce on the ground of mental cruelty and desertion had preferred petition under Section 13(i-a), 13(i-b) of Hindu Marriage Act, 1955 (in short ‘H M Act’) on 29.08.2018 before VIth Joint Civil Judge, Senior Division, Kalyan, District Thane (Maharashtra), which was transferred by Supreme Court vide order dated 13.09.2019 passed in T.C. (civil) no. 813/2019 to the court of Principal Judge, Family Court, Jabalpur and registered as case no. 1127/2019. After trial, Family Court dismissed petition by impugned judgment and decree dated 13.10.2020, which are assailed by appellant/husband in present appeal under section 19 of the Family Courts Act, 1985 r/w section 28 of the Hindu Marriage Act, 1955.

2. Marriage between parties was solemnized on 09.02.2014 according to Sikh Rights and Rituals at Ulhasnagar, District Thane (Maharashtra). They were blessed with a baby girl on 04.12.2014. It is admitted in present matter that they are living separately since 08.07.2014 and lived together for 5 months only.

3. For the sake of convenience, appellant hereinafter is referred to as “**husband**” and respondent as “**wife**”.

Husband’s pleading in divorce petition :

4. On 29.08.2018 husband filed petition for divorce on ground of cruelty and desertion and pleaded infra :

4.1 Husband stated in petition that during the tenure of wife’s stay at her matrimonial home after marriage, her behaviour was not good and polite towards husband and his family and she was disobedient, adamant and used to demand huge amount for her personal expenditure, without disclosing the need. Wife was very much attached with her parents and

used to talk to her mother daily on mobile and her parents visited her twice or thrice at her matrimonial home.

4.2 Husband further pleaded that since day one, nature of wife was arrogant and she never paid any heed towards him and did not bother about feelings of her husband. He further pleaded that when wife was pregnant, everyone was happy in the family of husband and Gynecologist advised wife to take rest and avoid travelling despite that she travelled by car many times unnecessarily.

4.3 According to husband parents of wife came to Ulhasnagar and on 08.07.2014 with the permission of parents of husband took wife to her parental home with an assurance that she will return on 23.07.2014, however, she never returned and on phone calls started demanding cash, document, certificate, gold ornaments, clothes etc. Thereafter, wife's father asked husband to prepare consent affidavit for breakup. Husband and his family members were not able to understand the reason of such a harsh decision, they pleaded with wife's father but to no avail.

4.4 Husband further pleaded that he tried his level best to save marriage, but wife never supported and she was not ready to live with him and filed false case under the provisions of Domestic Violence Act against husband and his family members in Jabalpur followed by false maintenance case. Husband was forced to file M.P. No.193/2015 for divorce against wife before Kalyan Court, which was transferred by Supreme Court to Family Court, Jabalpur. In the meantime, wife lodged false report against husband and his family members u/s 498-A of IPC, which was registered at Police Station Gorakhpur, Jabalpur.

4.5 It is stated by husband that wife also lodged false F.I.R. u/s 420 of IPC at Police Station Gorakhpur, Jabalpur against relatives of husband

and in all these cases, wife leveled false allegations against husband and his family members and caused mental cruelty to him.

4.6 When husband visited Jabalpur for attending hearing dates of M.P. No. 193/2015, which was transferred by Supreme Court to Family Court Jabalpur, he was threatened and harassed by goons in Jabalpur and under the threats of registration of fresh criminal case on each date of attending hearing at Jabalpur, he was constrained to withdraw said petition. Husband further stated in petition that wife had left matrimonial home on 08.07.2014 and since then she had willfully deserted husband and kept him deprived of his conjugal rights and filed various false and frivolous cases causing mental cruelty to husband.

4.7 When husband tried to meet his daughter Saanjh, wife prevented him from meeting the child and threatened to trap him in some more false cases. On the basis of above allegations, husband prayed for grant of decree of dissolution of marriage on the ground of cruelty and desertion.

Wife's pleading in divorce petition :

5. Wife in her written statement filed before Family Court, Jabalpur stated that at the time of marriage, she was just 20 years old and there was no opportunity for her to misbehave with her husband and in-laws because she was too young and alone in the family of her husband and was far away from her parents. She denied all allegations of misbehaviour and cruelty in toto. She further stated that husband and his family members misbehaved with her and committed atrocities due to which they are facing criminal consequence in Jabalpur and complaints lodged by wife are not false and frivolous.

5.1 She further stated that her husband and his family are big business tycoon of Mumbai and are renowned builders. It is stated that after marriage, house hold duties of entire family were shifted on shoulders of

young wife. She further stated that she was not permitted to take medicines prescribed by Doctor. Her gold ornaments are in possession of her mother-in-law. Her father suggested her husband and in-laws to refrain themselves from causing cruelty and to treat her like their own daughter, but Domestic Violence was continuously caused and she was harassed for demand of dowry.

5.2 She further stated that Bank Account was opened in her name, blank signed cheques were obtained and some of the cheques were misused for filing false cheque bounce complaint against her in Mumbai. She never prevented husband from meeting minor child but he never made any sincere efforts in this regard. It is further stated that there was all possibilities to save the marriage bond, but parents of her husband are dowry monger and they wanted remarriage of their son again, therefore no affords were made. She prayed for dismissal of divorce petition.

6. Husband examined himself as PW-1, Rahul Suresh Bhatia as PW-2 and wife examined herself as DW-1. Learned Family Court after considering oral and documentary evidence by judgment dated 13.10.2020 dismissed divorce petition filed by husband holding that allegation of cruelty as well desertion could not be proved by him. Judgment dated 13.10.2020 is under challenge in the present appeal.

7. Mr. Sankalp Kochar, learned counsel appeared on behalf of husband and Mr. Rajesh Maindiretta, learned counsel appeared on behalf of wife. With the consent of parties, appeal is heard finally.

Maintainability of present appeal

8. Mr. Rajesh Maindiretta, learned counsel appearing on behalf of respondent/wife raised question of maintainability of present appeal on the ground that earlier one divorce petition was filed by appellant/husband in the Court of Civil Judge, Senior Division, Kalyan, which was

registered as M.P. No.193/2015 and transferred to Family Court, Jabalpur by orders of Supreme Court passed in T.P. No.2109/2016 on 06.03.2018. Husband without seeking any liberty withdrew petition on 24.07.2018 and thereafter once again filed present petition for dissolution of marriage before Civil Judge, Senior Division, Kalyan registered as M.P. No. 1185/2018, which is not maintainable in view of the provisions of Order XXIII Rule 1(4) of C.P.C. however, this petition was also transferred to Family Court, Jabalpur by orders of Apex Court passed on 13.09.2019 in T.P. (Civil) No. 813/2019.

8.1 After appearance wife moved an application before Family Court, Jabalpur and submitted that since earlier petition for dissolution of marriage filed on the ground of cruelty was withdrawn without any liberty, husband is precluded from instituting any fresh petition on the same cause of action. Wife's objection was overruled by Family Court vide order dated 23.11.2019 by holding that both petitions are not identical and were filed in respect of different causes of action.

8.2 Learned counsel appearing for wife submits that interlocutory order passed by Family Court on 23.11.2019 was not challenged by preferring any appeal or revision or petition before this court and therefore, objection of maintainability of original divorce petition can be raised in present appeal. To bolster his submissions, Mr. Rajesh Maindiretta, learned counsel for respondent/wife relied on judgment of Apex Court delivered in the matter of **Hulas Rai Baij Nath vs. Firm K.B. Bass and Company, 1967 SCC Online SC 61**, wherein Apex Court has held that if a suit is withdrawn without seeking any liberty to file a fresh on the same cause of action, subsequent suit is barred in view of provisions of Order XXIII Rule 1(4) of CPC. He further relied on the judgment of Single Bench of Andhra Pradesh High Court reported in

2003 SCC Online A.P. 631 (Jonnala Sura Reddy and another vs. Tityyagura Srinivasa Reddy and others), wherein similar view was expressed by Andhra Pradesh High Court.

8.3 Mr. Sankalp Kochar, learned counsel appearing on behalf of appellant/husband submits that earlier petition was filed on different cause of action and present petition is filed on different cause of action, therefore, present petition was maintainable and Family Court rightly overruled objection raised by wife vide order dated 23.11.2019. In earlier petition divorce was not sought on the ground of desertion, whereas in fresh petition ground of desertion was also raised. He submits that provisions of Order XXIII Rule 1(4) of CPC are not applicable to present case.

8.4 It is not in dispute that first petition was filed for dissolution of marriage and second petition was filed for annulment of marriage on the ground of cruelty and these petitions were dismissed by learned Civil Judge, Senior Division, Kalyan on the ground of maintainability and these two petitions are not having any bearing on present case, however, third petition was filed for dissolution of marriage on the ground of cruelty on 20.02.2015, which was transferred to Family Court, Jabalpur and had withdrawn by husband on 24.07.2018 without seeking any liberty to file afresh on same cause of action. From bare perusal of fresh petition filed by husband, it appears that fresh petition was filed on different cause of action and dissolution of marriage was sought on the ground of desertion also.

8.5 Section 23 (1) (b) of H M Act prohibits grant of decree of divorce on the ground of cruelty, only if petitioner in any manner condoned the cruelty. Withdrawal of earlier petition without liberty does not amount to condonation of cruelty and effect of withdrawal of earlier petition without

any liberty would be to the extent of non-consideration of allegations of cruelty leveled by husband, committed during stay of wife in matrimonial home as alleged in earlier petition and in present petition/appeal only subsequent event of cruelty and desertion are considerable.

8.6 Resultantly, learned Family Court has not committed any error, irregularity or illegality in overruling the objection of maintainability raised by wife by order dated 23.11.2019.

Non-compliance of maintenance order :

9. Mr. Rajesh Maindiretta raised issue of noncompliance of maintenance order by husband and submits that no relief can be granted to husband and appeal is liable to be dismissed as he failed to comply order dated 04.03.2016, passed by Judicial Magistrate, First Class, Jabalpur directing husband to pay maintenance @ Rs. 15,000/- per month to wife and Rs. 5,000/- to daughter in complaint filed under Domestic Violence Act. Mr. Maindiretta further submits that Family Court also passed order to pay maintenance of Rs. 40,000/- per month on 04.11.2016 to wife and daughter in proceedings initiated by wife under Section 125 of Cr.P.C., however husband deliberately and willfully not complied orders and Rs. 14,40,000/- are arrears of maintenance till date.

9.1 Mr. Maindiretta relied on judgment of Apex Court delivered in the matter of *Rajnesh Vs. Neha & Another (2021) 2 SCC 324*, order passed on 06.09.2022 by learned single bench of this court in *M. P. no. 3017 of 2022 (Smt. Sangeeta Grover Vs. Ranjan Grover)* and judgment passed by learned single bench of this court on 07.02.2023 in *S. A. no. 466 of 2007 (Dwarika Prasad Patel Vs. Smt. Marri)*, wherein it is held that when husband is defendant in a case of dissolution of marriage and fails to comply order of interim maintenance, right to defend of such husband may be closed. He submits that applying same analogy, appeal for

dissolution of marriage by husband can be dismissed for noncompliance of orders of alimony. On the strength of above pronouncements, counsel for wife prays for dismissal of appeal.

9.2 *Per contra*, Mr. Sankalp Kochar submits that on 13.10.2023 this court issued directions for payment of arrears of maintenance and in compliance of order passed by this court, husband has already paid maintenance up-to-date till month of February, 2024 and no reason survives to dismiss present appeal due to nonpayment of maintenance.

9.3 Firstly, order of interim alimony has not been passed in present appeal, therefore this appeal cannot be dismissed on account of noncompliance of order passed in some other proceedings and Secondly, according to husband, he has already paid arrears of maintenance up-to-date till February, 2024, hence prayer for dismissal of appeal on this ground is rejected.

Submissions on behalf of husband :

10. Mr. Sankalp Kochar, learned counsel appearing on behalf of husband argued at length and submits *infra* :

10.1 After marriage, behavior of wife with husband and his family members was not cordial and she used to disobey wishes of family members. Wife was habitual to demand excessive amount for her personal expenses and contrary to advice of Doctor during pregnancy period, travelled for attending religious program. On 08.07.2014 in a pre-planned manner, she and her parents along with all jewelry, clothes and documents left her matrimonial home and went to Jabalpur from where she demanded money for her personal expenses and threatened that if husband will not provide money she will undergo for termination of pregnancy and will involve husband in false cases. Acting upon her threats later on, wife lodged various false reports against husband and his

family members causing great mental cruelty and in this way, wife treated husband in a cruel manner, therefore, husband is entitle for decree of divorce on the ground of cruelty.

10.2 Respondent-wife filed false complaint under provisions of Protection of Women from Domestic Violence Act, 2005 (in short “ **D.V. Act**”) against husband, father-in-law, mother-in-law, brothers-in-law and Uncles-in-law on 27.09.2014 in the Court of JMFC, Jabalpur, wherein, learned Magistrate by order dated 11.09.2015 dropped proceedings against brothers-in-law Harsimar Singh Chawla and Bhavjot Singh Chawla on the ground that they were minor and against Uncles-in-law namely Gulshan Singh Chawla and Charanjeet Singh Chawla on the ground that they do not reside jointly and no specific allegation of committing Domestic Violence was leveled against them, however, proceedings are pending against husband, father-in-law and mother-in-law. Mr. Kochar submits that filing of complaint against brothers-in-law and uncles-in-law also caused mental cruelty to husband.

10.3 Filing of false FIR amounts to cruelty and respondent-wife lodged false F.I.R. at Police Station Gorakhpur, Jabalpur on 21.4.2015 registered as Crime No.234/2015 u/s 498-A/34 of IPC against husband, father-in-law, mother-in-law and brother-in-law named Harsimar Singh Chawla, upon allegation that after marriage they subjected her with cruelty, harassed and tortured in connection with demand of dowry, despite her father gifted them Rs. 21.00 lacs in cash in marriage and had given ornaments valued Rs.25.00 lac. It is also alleged in the FIR that they demanded Rs.10.00 lacs in cash and harassed complainant. After investigation police has filed charge-sheet and case is pending in the Court of JMFC Jabalpur.

10.4 Wife lodged another F.I.R. at Police Station Gorakhpur, Jabalpur on 18.12.2017 registered as Crime No. 857/2017 u/s 294, 506 of IPC against husband upon allegations that he threatened her near Gorakhpur Gurudwara and abused in filthy language. Police filed charge-sheet after investigation and case is pending before JMFC Jabalpur.

10.5 Respondent-wife lodged one more F.I.R. at Police Station Gorakhpur, Jabalpur on 09.02.2018 registered as Crime No.114/2018 u/s 420/34 of IPC against father-in-law, mother-in-law, Uncles-in-law and Aunty-in-law upon allegation that they are Directors of Supreme Fabric Pvt. Ltd., which is a registered Company having its registered Office at Ludhiyana (Punjab). All of them offered respondent-wife to join the company as Director and demanded Rs.12.00 lacs for allotment of shares, which were paid by her, however, neither shares were allotted nor she was inducted as Director in Company. When she demanded money back, they stated that company has already been closed and in this way they cheated complaint-wife. Parents of husband and other relatives preferred M.Cr.C. No. 19763/2018 before this Court seeking quashment of FIR and after hearing parties, learned Single Bench of this Court by order dated 26.06.2018, partly allowed petition and quashed proceedings against Charanjeet Singh Chawla, Kawaljeet Singh Chawla (Uncles of husband) and Balvinder Kaur Chawla (Aunty of husband), however, declined to quash proceeding against parents of husband. Police has filed charge-sheet in the matter before JMFC Jabalpur on 14.12.2019. Mr. Kochar submits that by mere perusal of bank account statement of wife (EX. P/18 and P/19), it is apparent that amounts were firstly transferred from accounts of her husband and father-in-law to her account and thereafter said amount was transferred from her account to the account of Supreme Fabric Pvt. Ltd. therefore allegation of cheating is *per se* false and action

of wife amounts to cruelty. More so wife herself has admitted this fact in para 29 of her cross examination.

10.6 Respondent-wife once again lodged one F.I.R. on 27.08.2018 at Police Station Gorakhpur, Jabalpur registered as Crime No.569/2018 u/s 294, 452, 506/34 of IPC against her brothers-in-law, Harsimar Singh Chawla and Bhavjot Singh Chawla, those were discharged from the complaint of Domestic Violence and in FIR falsely alleged that on 03.08.2018 they forcefully entered into house of respondent-wife and abused her in filthy language and threatened to kill her. Police filed charge-sheet against both of them after investigation and matter is pending before JMFC Jabalpur. It is submitted on behalf of husband that FIR was lodged with intention to rope in the entire family members in criminal cases, which amounts to cruelty.

10.7 Filing of multiple FIRs and cases amounts to cruelty and wife has also filed application under section 125 of Cr.P.C. registered as MJC no. 343/2015, Complaint under section 31 of D.V. Act registered as RCT 10585/2021, MJC no. 454/2017, MJC no. 306/2020 before various courts in Jabalpur.

10.8 Husband filed Civil Suit No.17/2016 before Family Court, Jabalpur for custody of minor child, wherein Court issued direction on 18.05.2017 to permit husband to meet minor daughter, but wife did not comply with the order. In the present matter also, Family Court vide order dated 11.11.2019 permitted husband to meet his minor daughter, however, wife without complying the order preferred an application on 20.11.2019 for modification of order on the ground that same may affect mental status of minor child adversely.

10.9 Family Court by order dated 23.11.2019 recalled its earlier order dated 11.11.2019, whereby Court had ordered respondent to permit

appellant-husband to meet his minor daughter in the Court. Husband moved an application on 28.11.2019 with a prayer to permit husband to meet minor daughter, which was opposed by respondent on the ground that husband has already met his daughter on 28.11.2019 and there is no need to call minor daughter on each and every date of hearing. It is further stated by respondent that appellant forcibly tried to take custody of minor daughter near Madan Mahal Guruduwara, Jabalpur.

10.10 Family Court has observed that wife is not interested to comply with order passed by Family Court on 18.05.2017 in Case No. 17/2016 whereby she was ordered to keep the minor daughter present in the Court for purpose of meeting with husband once in a month. Despite assurance given by wife in Court that minor daughter will appear before Court on 08.01.2020, she did not brought minor daughter in Family Court and Court observed that wife is not interested to comply with order dated 11.12.2019 and she is not serious towards Court proceedings. Thereafter, on 16.1.2020, minor daughter appeared in Court, but became uncomfortable after seeing appellant/father and, therefore, was permitted to go back home. On 29.2.2020, minor daughter appeared before Court and met her father.

10.11 Learned Counsel for husband submits that wife poisoned mind of minor daughter against him and tutored her to speak against husband in Court. Wife through social media and website by uploading several videos tried to damage prestige and reputation of family of husband and defamed them and, therefore, he is entitled for decree of divorce.

10.12 He further submits that both of them have leveled serious allegations against each other, they are living separately since more than 9 years, several criminal cases are lodged by wife and now it is not

possible to settle the dispute and instant case is a case of irretrievable break down of marriage and there is no need to prolong the agony in the absence of any hope of cohabitation. He thus prayed for decree of divorce. Apex Court in the matter of *V.E.Maya Vs. K.S. Vetrivel SLP (civil) no. 11761-11762/2022 decided on 11.09.2023* has held that High Court has committed error of law by relying on the principle of irretrievable breakdown of marriage to dissolve the marriage between parties in a contested divorce proceedings without recording the finding of cruelty on the part of wife. In view of above this court cannot grant decree of solely on the ground of irretrievable breakdown of marriage.

10.13 Husband submits that wife spread 6 defamatory videos wherein face of wife was blurred in 5 of them, but in one of the video wife's face and voice were clear and her face and voice matched with rest of videos, which established on record that wife tries to tarnish image of husband and his family through social media platform "WhatsApp". This conduct of wife caused mental agony and amounts to cruelty. It is submitted that PW-2 Rahul Suresh Bhatia duly proved this conduct of wife by deposing in court. As husband did not amend his petition and incorporated pleading regarding spreading of videos y wife, statement of PW-2 Rahul is not helpful to husband. Evidence without pleading cannot be looked into.

11. To bolster the submissions, Mr. Kochar relied on following pronouncements of Apex Court and High Courts infra :

11.1 *Ravi Kumar v. Julmidevi, (2010) 4 SCC 476* the relied paras are extracted herein below :

"19. It may be true that there is no definition of cruelty under the said Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to

various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, sometime it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty.

20. Therefore, cruelty in matrimonial behaviour defies any definition and its categories can never be closed. Whether the husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any predetermined rigid formula. Cruelty in matrimonial cases can be of infinite variety—it may be subtle or even brutal and may be by gestures and words.”

11.2 ***Rajesh Bhoyale v. Mahadevi, 2022 SCC OnLine MP 553***, the relied paras are extracted herein below :

“13.From perusal of these documents and allegations as contained in appeal, divorce application and affidavit, it appears that for a considerable period of time appellant and respondent shared domestic incompatibility and conduct of the respondent wherein she constantly for more than fifteen years or since 2004, caused irritation, threat, intimidation and avoiding cohabitation on the pretext or the other collectively entitled the appellant to get the decree of divorce.

14.When appellant specifically pleaded about the behaviour of respondent for last more than 15 years and different stages of dispute, reconciliation and complaints from time to time were referred which indicate that both shared domestic incompatibility.”

11.3 In the case of ***Samar Ghosh v. Jaya Ghosh, (2010) 4 SCC 339***, Supreme Court has enumerated the illustrative instances of human behaviour which may be relevant for dealing with the cases of mental cruelty:

“No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of ‘mental cruelty’. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not

make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii)*****

(iii)*****

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty,

(vii) ** ** *

(viii) ** ** *

(ix) *****

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) ** ** *

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) ** ** *

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded 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. In such like situations, it may lead to mental cruelty.”

11.4 *Vinay Vs. Durga (2017) SCC online Bom 10009*, the relied para is extracted herein below :

“10. --- The husband has clearly pleaded and proved that the filing of the false complaint by the wife against him in respect of the offence punishable under section 498A of the Penal Code has caused mental and financial harassment to the husband and his family members. It appears that the husband and his family members were required to secure orders for bail after the wife lodged the false report against the husband and his family members. It is held by this Court time and again that filing of false complaints by the wife against the husband for the offence punishable under section 498A of the Penal Code, would tantamount to cruelty. Though the husband has stated in his cross-examination that in the mediation proceedings he was ready to take back the wife to the matrimonial home, he has stated in his examination in chief as also in his cross-examination that he was not ready to cohabit with the wife. The father of the husband has stated in his cross-examination that since the wife has caused great mental trauma to them in view of the filing of the false proceedings under section 498A of the Penal Code, the wife should not return to the matrimonial home. The father of the husband has expressed a fear that if the wife is permitted to return to the matrimonial-home, they would constantly be under fear that she would again lodge a false complaint against the husband the family members thereby putting them in serious difficulty. The Family Court did not consider the aspect in respect of filing of the false complaint by the wife in the right perspective while dismissing the petition filed by the husband. The husband is successful in proving that the wife had treated him with cruelty.”

11.5 *Nitin Ramesh Dhiwar v. Roopali Nitin Dhiwar, 2012 SCC*

OnLine Bom 1200, relied paras are extracted herein below :

“6. We have perused the judgement and order of the Judicial Magistrate, First Class, Pimpri at Pune-18 in C.C. No. 1175 of 2003. We are satisfied after reading the said judgement and order that the said complaint which was filed by the Respondent is a false complaint and that is the only inference which can be drawn from the judgement and order of the trial Court.

7. In our view, filing of a false criminal complaint itself amounts to cruelty within the meaning of section 13(i)(a) of the Hindu Marriage Act. A similar view was taken by the Division Bench of this Court in Family Court Appeal No. 158 of 2008. The Division Bench had taken into consideration the judgement and order passed by the trial Court of acquitting the Appellant therein for the offence punishable under section 498-A read with 34 of the Penal Code, 1860 and also the

deposition of the Appellant in the trial Court. Taking our overall view, the impugned judgement and order passed by the Family Court will have to be quashed and set aside and the appeal filed by the Appellant will have to be allowed.

8. The Family Court Appeal is, accordingly, allowed and the judgement and order passed by the District Court, Pune in Marriage Petition No. 12 of 2004 dated 7-9-2006 is quashed and set aside and a decree and divorce is granted to the Appellant as prayed by him in the Petition for Divorce filed by him in the Family Court. Family Court Appeal is disposed of.”

11.6 ***Raj Talreja v. Kavita Talreja, (2017) 14 SCC 194***, the relied para is extracted herein below :

“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.”

11.7 ***K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226***, relied para is extracted herein below :

“29. In our opinion, the High Court wrongly held that because the appellant husband and the respondent wife did not stay together there is no question of the parties causing cruelty to each other. Staying together under the same roof is not a precondition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. In a given case, while staying away, a spouse can cause mental cruelty to the other spouse by sending

vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse's life miserable. This is what has happened in this case.”

11.8 ***G.V.N. Kameswara Rao v. G. Jabilli, (2002) 2 SCC 296***, the relied para is extracted herein below :

“10. The omission of the words, which described “cruelty” in the unamended Section 10 of the Hindu Marriage Act, has some significance in the sense that it is not necessary to prove that the nature of the cruelty is such as to cause reasonable apprehension in the mind of the petitioner that it would be harmful for the petitioner to live with the other party. English courts in some of the earlier decisions had attempted to define “cruelty” as an act which involves conduct of such a nature as to have caused damage to life, limb or health or to give rise to reasonable apprehension of such danger. But we do not think that such a degree of cruelty is required to be proved by the petitioner for obtaining a decree for divorce. Cruelty can be said to be an act committed with the intention to cause sufferings to the opposite party. Austerity of temper, rudeness of language, occasional outburst of anger, may not amount to cruelty, though it may amount to misconduct.”

11.9 ***Naveen Kohli v. Neelu Kohli, (2006) 4 SCC 558***, the relied paras are extracted herein below :

“35. The petition for divorce was filed primarily on the ground of cruelty. It may be pertinent to note that, prior to the 1976 Amendment in the Hindu Marriage Act, 1955 cruelty was not a ground for claiming divorce under the Hindu Marriage Act. It was only a ground for claiming judicial separation under Section 10 of the Act. By the 1976 Amendment, cruelty was made a ground for divorce and the words which have been omitted from Section 10 are “as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party”. Therefore, it is not necessary for a party claiming divorce to prove that the cruel treatment is of such a nature as to cause an apprehension—a reasonable apprehension—that it will be harmful or injurious for him or her to live with the other party.

51. The word “cruelty” has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case. There may be instances of cruelty by

unintentional but inexcusable conduct of any party. The cruel treatment may also result from the cultural conflict between the parties. Mental cruelty can be caused by a party when the other spouse levels an allegation that the petitioner is a mental patient, or that he requires expert psychological treatment to restore his mental health, that he is suffering from paranoid disorder and mental hallucinations, and to crown it all, to allege that he and all the members of his family are a bunch of lunatics. The allegation that members of the petitioner's family are lunatics and that a streak of insanity runs through his entire family is also an act of mental cruelty.”

11.10 ***Sandhya Malik vs. Col. Satender Malik 2023 SCC Online Delhi 6099***, the relied paras are extracted herein below :

“35. Learned Principal Judge from all the circumstances as detailed above concluded that it makes it evident that the child had been totally and intentionally alienated from her father by the mother. The discord and the disputes were between the husband and wife and no matter how bitter the relationship between them had become, it was not appropriate to involve the child or embitter her against the father or to use her as a tool against him.

36. In the case of Prabin Gopal v. Meghna, 2021 SCC OnLine Ker 2193 in a similar situation, the Kerala High Court observed that the mother had intentionally distanced the child from the father and had deprived the child from the parental love and affection. It was a case of parental alienation where the child, who was in the custody of one parent, had been psychologically manipulated against the estranged parent. It was a strategy whereby one parent intentionally displayed to the child unjustified negativity aimed at the other parent, with the intent to damage the relationship between the child and the estranged parent and to turn the child emotionally against the parent. It was observed by Kerala High Court that the child has a right to love and affection of both the parents and likewise, the parents also have a right to receive love and affection of the child. Any act of any parent calculated to deny such affection to the other parent, amounts to alienating the child which amounts to mental cruelty. Since the child was in the custody of the mother, it was held that the mother had breached her duty which she owed as a custodian parent to instill love, affection and feelings in the child for the father. Nothing more can be more painful than experiencing one's own flesh and blood i.e., the child, rejecting him or her. Such willful alienation of the child amounts to mental cruelty.

37. In the present case as well, the child has not only been totally alienated, but has also been used as a weapon against the father. Nothing can be more painful for a parent to see the child drifting away and being totally against the father. This assumes some significance in the light that the father never failed to provide for the child either for her education or otherwise or to provide army facilities as were available. So much so, 10% of his salary was being paid to the child for her maintenance which was subsequently increased to 20%.

38. The learned Principal Judge, Family Courts has, therefore, rightly concluded that such child alienation is an extreme act of mental cruelty towards a father who has never shown any neglect for the child.”

11.11 **Prabin Gopal v. Meghna, 2021 SCC OnLine Ker 2193,**

the relied paras are extracted herein below :

“16. Yet another facet of mental cruelty on the part of the respondent canvassed by the learned counsel for the appellant is regarding the parental alienation. The learned counsel for the appellant submitted that the respondent intentionally alienated the child from the appellant depriving his parental right to be loved by the child. It amounts to nothing but mental cruelty, argued the counsel. We find some force in the said argument.

17. Parental alienation describes a process through which a child becomes estranged from a parent as the result of the psychological manipulation of another parent. It occurs when one parent undermines or prejudices the contact and relationship between the child and the other parent without well-founded reasons. It is a strategy whereby one parent intentionally displays to the child unjustified negativity aimed at the other parent. The purpose of this strategy is to damage the child's relationship with the other parent and to turn the child's emotions against the other parent. A child has right to the love and affection of both parents. Similarly, the parents have the right to receive the love and affection of the child. Any act on the part of the one parent calculated to deny the love and affection of the child to the other parent by alienating the child from him/her amounts to mental cruelty.

18. Coming to the merits, the appellant has given evidence that he and his parents were completely isolated from the child and the respondent even refused to send a photo of the child. Hence, his parents were forced to file a complaint before the District Legal Services Authority, Thrissur and it was only with intervention of the authority, they could see the child. He further gave evidence that the respondent did not even inform him about the delivery of the child and he came

to know of the birth of the child through his family friends on the date of delivery. Even though he rushed to the hospital, he was not permitted to see the child and forcefully obstructed from entering the hospital by the respondents' relatives and strangers on the instruction of the respondent and her parents, the appellant added. The appellant further deposed that the respondent did not inform him about the name laying ceremony of the child and never disclosed anything about the child including its health condition. The appellant also deposed that just two weeks after the said compromise, when he attempted to visit the respondent and the child in Bangalore to celebrate the birthday of the child, she refused to even open the door and kept him waiting, without giving him a chance to see the child. Finally, he had to leave the birthday gifts and cake in front of the flat and returned. He specifically stated that after the compromise, the respondent completely alienated the child from him. There is nothing on record to disbelieve this evidence. The respondent as a mother breached every duty she owed as the custodial parent to the non-custodial parent of instilling love, respect and feeling in the child for its father. Nothing can be more painful than experiencing one's children-one's own flesh and blood-rejecting him/her. The above acts of the respondent willfully alienating the child from the appellant, no doubt, constitute mental cruelty.”

11.12 ***Roopa Soni v. Kamalnarayan Soni, 2023 SCC OnLine SC 1127***, the relied para is extracted herein below :

“16. We have very little to say on facts, especially upon hearing the learned counsels at the Bar. They do speak for themselves. The marriage was solemnized in the year 2002. It fell into rough weather after the birth of their child. Disputes started between the parties from 2006 onwards. The appellant-Wife registered a complaint under Section 498-A of Penal Code, 1860 and Section 3 and 4 of the Dowry Prohibition Act, 1961. The respondent-Husband had questioned the character of the appellant-Wife. A plea was also taken in the counter affidavit filed in the petition for divorce. Incidentally, it was contended that it was she who had fled the matrimonial home. The respondent-Husband also demanded a medical examination of the appellant-Wife, alleging she was living in adultery and had given birth to a child during the period of non-cohabitation. The said request was nullified by the Order of the High Court”.

12. Counsel for husband further submits that wife was not interested to live with family members of husband and she offered husband to live at

Jabalpur, which was denied by husband, therefore for the purposes of creating pressure upon husband she lodged multiple criminal cases and FIRs against husband and his family. He submits that intention of wife can be gathered from A to A relief sought in first complaint lodged by her on 27.09.2014 (EX. P/9) under the provisions of D. V. Act, wherein she sought issuance of directions to husband for living with her at Jabalpur. These facts were admitted by wife in para 23 of her cross examination.

12.1 Husband has drawn attention of this court towards certain facts firstly marriage was solemnized on 09.02.2014, wife stayed with husband till 08.07.2014, there were no serious issues between them till 08.07.2014, when wife did not return in last week of July 2014, husband sent a notice on 28.08.2014 under section 9 as admitted in EX. P/9 by wife though copy of notice was not brought on record by any party, wife filed complaint under D.V. Act on 27.09.2014 with a relief to direct husband to live at Jabalpur with wife and thereafter FIR under 498-A/34 and other cases one by one. It proves that wife has deserted husband for continuous period of more than two years without any reason and she was not interested to live with husband at Ullasnagar. He submits under these circumstances, husband is entitled for decree of divorce on the ground of desertion also.

13. It is argued on behalf of husband that three sets of cruelty committed by wife were duly proved in the present matter i.e. (1) causing mental cruelty by lodging false cases (2) treating husband with mental cruelty by not allowing him to meet his minor daughter and (3) forced husband to reside separately from his parents. Husband prays for grant of decree of divorce on the ground of cruelty and desertion.

Submissions on behalf of wife :

14. Mr. Rajesh Maindiretta, learned counsel for respondent-wife supported judgment and decree passed by learned Family Court and submits that wife was treated with cruelty by her husband and in-laws when she was residing at Ullhas Nagar in furtherance of demand of dowry etc. Husband himself was not interested to continue the relation and therefore he filed a petition for divorce on 20.02.2015, which was dismissed for being premature. Thereafter second petition for divorce was filed by husband and one petition for annulment of marriage was also filed. This conduct of husband proves his intention from beginning to somehow get rid of his wife.

14.1 He further submits that learned family court has rightly disbelieved the allegations leveled by the husband against the wife in regard to her illbehaviour in the matrimonial home. He submits that the allegations of cruelty against wife in the matrimonial home are extremely vague and general. No specific instances are pleaded by husband in the petition to show that in what manner, the wife treated the husband and his family members with cruelty. Husband issued first notice to wife on 28.08.2014 for restitution, which proves that allegation of cruelty by wife are incorrect, otherwise husband would not have issue notice for restitution.

14.2 Wife relied on the judgment of co-ordinate bench delivered in the matter of **Hridesh Tiwari Vs. Smt. Sarita Tiwari First Appeal No. 93/2017 decided on 30.11.2019**, relied paras are extracted as under :

“7. The trial Court has observed in impugned judgment that the appellant has failed to prove that cruelty was inflicted by his wife. There is no sufficient evidence on record whereby such conclusion can be drawn that cruelty was performed by his wife as the statements given in examination-in-chief were rebutted in cross examination. It appears from the evidence that there were some disputes between the appellant and the respondent but the same cannot be said to be disputes amounting to cruelty.

8. Under Section 13(1) (ia) of the Hindu Marriage Act, 'mental cruelty' broadly means, when either party causes mental pain, agony or suffering of such a magnitude that it severs the bond between the wife and the husband and as a result of which it becomes impossible for the party who has suffered to live with the other party. In other words, the party who has committed wrong is not expected to live with the other party. It is in this background, it cannot be said that the act by the respondent comes within the meaning of 'mental agony'. Now-a-days use of face book is very common feature and dispute arising out of it, is not cruelty as is the case herein.”

14.3 Wife further replied on judgments of Apex Court delivered in **(2004) 7 SCC 747 (Shyam Sundar Kohli vs. Sushma Kohli @ Satya Devi)**, relied para is extracted as under :

“12. On the ground of irretrievable breakdown of marriage, the court must not lightly dissolve a marriage. It is only in extreme circumstances that the court may use this ground for dissolving a marriage. In this case, the respondent, at all stages and even before us, has been ready to go back to the appellant. It is the appellant who has refused to take the respondent back. The appellant has made baseless allegations against the respondent. He even went to the extent of filing a complaint of bigamy, under Section 494 IPC against the respondent. That complaint came to be dismissed. As stated above, the evidence shows that the respondent was forced to leave the matrimonial home. It is the appellant who has been at fault. It can hardly lie in the mouth of a party who has been at fault and who has not allowed the marriage to work to claim that the marriage should be dissolved on the ground of irretrievable breakdown. We, thus, see no substance in this contention”.

14.4 In **(2001) 4 SCC 250 (Chetan Dass vs. Kamla Devi)**, relied para is extracted as under :

“14. Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to

apply any submission of “irretrievably broken marriage” as a straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case”.

14.5 In **AIR 2018 Bombay 178 (Vishnu vs. Nalini)**, relied paras 17 and 18 are extracted as under:

“17. Though the Appellant has produced on record copies of the complaints filed by him in the police station making allegations against the Respondent, on perusal of the contents of the said complaints, it appears that such complaints were filed by the Appellant only to create record against the Respondent.

18. From the perusal of entire evidence placed on record, we are of the considered view that the allegations made by the Appellant against Respondent regarding cruelty are too vague and general. A decree of divorce on the ground of cruelty cannot be granted on the basis of general allegations levelled by the husband against the wife, without clearly mentioning the manner in which the wife has ill-treated the husband. General allegations that the wife used to avoid the husband and his family members and that she used to often visit her parental house and was not preparing food for the husband, was not opening the door of the house after his return to home, cannot constitute cruelty”.

14.6 In **AIR 2019 P & H 100 (Jitendra Soni vs. Manisha Verma)** relied paras 15 and 16 are extracted as under:

“15. As far as the other allegations of cruelty are concerned, the appellant has made vague and general allegations that the respondent-wife was not performing her matrimonial duties and was rude and used to misbehave with him and his family members. No specific instance has been given by the appellant and the assertions made by him were not corroborated by oral, documentary or medical evidence. There is no evidence on record that the appellant-husband has ever made any complaint or called the relatives to show that he was passing through the abnormal behaviour of his wife. In the present case, the wife has shown her readiness and willingness to go to her matrimonial home. There is no suicidal action or other violent behaviour which could be found from the record of this case. The multiple litigation between the parties cannot be raised as a ground of cruelty, rather it is the legal right of any of the parties to seek redressal from the competent authority. Resorting to litigation by itself is no reason to infer cruelty unless it can be shown that it was malafide or false. It is not the case in the present proceedings.

16. To constitute cruelty, the conduct complained of should be “grave and weighty” so as to come to the conclusion that one spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than “ordinary wear and tear” of married life. Cruelty is also a course or conduct of one, which can adversely effect the other spouse. But expression ‘cruelty’ has not been defined in the Act. None of the ingredients has been pointed out by the appellant/husband in the present case against respondent/wife. But before the conduct can be called cruelty, it must touch a certain pitch of severity which we do not find it in the case in hand”.

14.7 It is pointed out by wife that husband himself accepted in para 28 of his statement that he had no objection for intimacy between respondent and her parents as well as for talking on telephone frequently. According to husband, parents of wife visited Ulhasnagar twice or thrice and he himself welcomed them and went to see them off and during their stay accompanied them. They even stayed with the family of husband comfortably. In para 34, he accepted that wife offered to live with him but clarified that wife asked to live separately from his parents. In para 43, he accepted that he has not been acquitted in criminal cases lodged by wife, however, clarified that he has been released on bail in all the cases.

14.8 Further pointed out by wife that she stated in para 45 of her cross-examination that she is ready to live with appellant if appellant stops committing cruelty and all the cases are disposed of through mediation. Upon asking, she stated that after resolution of all the cases, she is ready to go to Ulhasnagar with her daughter to live with appellant. It is submitted on behalf of wife that learned Family Court rightly observed that if behaviour of wife was cruel with husband and his family members, he would have not suggested her in cross-examination to live with him at Ulhasnagar. It is also rightly observed by Family court that wife has not denied to go with husband but simply stated that she is ready to go to Ulhasnagar to live with him forever in case of resolution of all the

disputes through mediation and husband stops treating her with cruelty. It is also pointed out by Shri Maindiretta that husband in para 27 of his statement stated that during period of five months, when wife was living with him in her matrimonial house, there were minor incidents of dispute and Family Court rightly observed that disputes between husband and wife were not severe and there was no such circumstance that they could not live together in future.

14.9 He further submits that Family Court rightly observed that cases registered upon the reports of respondent are still pending and appellant himself has accepted in para 43 of statement that he has not been acquitted in any case. Though he obtained bail but as the cases are still pending it cannot be accepted that wife has lodged false report against husband and his family members.

14.10 It is argued on behalf of wife that Family Court further observed that husband filed petition for annulment of marriage, which provides that intention of husband was not to seek restitution of conjugal rights but to obtain decree of divorce on any ground. Family Court also observed that in the petition filed for annulment, no allegations of cruelty were leveled against wife, however, the same was filed after wife left matrimonial home. Family Court observed that husband has not produced any evidence to prove the allegations regarding threat of wife to terminate her pregnancy but to the contrary in para 11 of petition M.P. No.71/2015 filed before Kalyan Court, it was pleaded by husband that when he asked wife regarding pregnancy, she said that she has already aborted the fetus and, therefore, there is a material contradiction in the allegations.

14.11. Mr. Maindiretta submits that husband did not examine any family member to prove the allegations of cruelty and or treating the

family with cruelty by wife during the period when she was residing at her matrimonial home. Family Court has not found any substance in the allegations of cruelty. On the contrary, Family court has observed that wife was ready to live with husband and husband was also interested to cohabit with her. Family Court has observed that husband has not pleaded that when wife went to Jabalpur on 8.7.2024, what efforts were made by husband to bring her back and no petition for Restoration of Conjugal Rights was filed by husband. On the contrary, petition for annulment was filed which proves that husband was not interested to truly live with wife and continue their relations. Family Court observed that wife has lodged various reports against husband and his family members due to cruelty committed by them. Family Court observed that husband failed to prove the allegations of desertion by wife, without any reason continuously since two years before filing the petition.

14.12 Wife submits that learned Family court vide judgment dated 13.10.2020 has rightly held that husband failed to prove the allegations of treating him with cruelty by wife and decided issue No.1 against husband. Similarly rightly decided issue No.2 in favour of wife by holding that wife has not committed any cruelty with husband by lodging various reports. Family Court also rightly decided issue no.3 in favour of wife whereby it was decided that husband failed to prove ground of desertion that wife deserted him since more than 2 years before filing present petition, without any reason. Learned Family Court rightly dismissed the petition. Wife prays for dismissal of present petition.

Consideration :

15. The allegations levelled by husband against wife in regard to her illbehaviour in matrimonial home that she did not perform her duties, are extremely vague and general. No specific instances are pleaded by

husband in petition to show that in what manner, wife was treating husband and his family members with cruelty. If wife committed cruelty, what was the reason for husband to issue notice for restitution on 28.08.2014, which was first written communication between parties. Learned Family Court has not committed any error in reaching to a conclusion that husband failed to prove act of cruelty committed by wife during the period of stay at his residence. The evidence produced by husband to prove instances cruelty when parties were living together, are not sufficient, cogent and convincing for reaching to any conclusion of commission of cruelty by wife and, therefore, allegation of husband that wife committed cruelty with husband and his family members during her stay at Ulhasnagar is rejected. More so, as husband had withdrawn earlier petition of divorce without seeking any liberty, allegation of cruelty committed by wife during period of living together with husband cannot be looked into and husband is precluded from raising those allegations.

16. So far as lodging of FIRs and filing of various criminal cases are concerned, all cases are still pending and any comment on merits of pending cases may prejudice interest of parties and create obstacle in just disposal of cases by competent courts, therefore this court refrains from giving any finding touching the merits of pending criminal cases. However, this Court may examine factum of exoneration of brothers and Uncles of husband by JMFC Jabalpur in complaint lodged by wife under provisions of D.V. Act and quashment of F.I.R. against Uncles and Aunty of husband by High Court. Wife tried to rope all family members and close relatives of husband and lodged FIRs against them and filed complaint under D.V. Act, wherein younger brothers, uncles and aunty of

husband were discharged by courts. Roping of family members definitely caused mental cruelty to husband.

17. Learned Family Court lost sight of crucial fact that F.I.R. registered against Uncles and Aunty of husband was quashed by High Court on the ground that they were impleaded in matter only being Directors of company. Meaning thereby, they were involved without any substance. Family court fail to consider that complaint under D.V. Act was filed not only against husband and his parents but against his minor brothers and uncles and later on JMFC Jabalpur dropped proceeding against minor brothers and uncles, which prove that they were implicated wrongly. Learned Family Court held that all criminal cases are pending and husband has not been acquitted in any case, therefore, allegation of husband that wife lodged false report and complaints cannot be considered. Learned Family Court has not considered the situation of exoneration of family members of husband from complaint of D.V. Act and quashment of F.I.R. against uncle and aunty of husband. If any family member is roped in criminal litigation, without any basis and later on exonerated by competent court or case is quashed against him, it amounts to malicious prosecution and can become cause for mental cruelty to husband and his family members.

18. Cruelty can never be defined with exactitude. What is cruelty will depend upon facts and circumstances of each case. In present case, from facts, it is apparent that wife made certain reckless, defamatory accusations against her husband and his family members, which would definitely have effect of lowering his reputation in society. In present case, some of the allegations were found to be apparently defamatory viz. (1) in first hand written complaint of domestic violence (EX. P/9) wife levelled allegation of pouring kerosene oil on her by husband and his

family members on 03.07.2014 tried to put her on fire, whereas this allegation is missing from 11 pages written complaint (EX. P/7) filed subsequently before JMFC under Section 12 of D. V. Act and from FIR (EX. P/12) lodged under Section 498-A of I.P.C. as well as from written statement filed in present matter.

18.1 Wife leveled allegation against her husband in her affidavit of chief examination in para 8, that “the plaintiff is not only depraved, but leading a life of a playboy and he is in close proximity with loose character girls and used to frequent brothels at Mumbai.” This allegation is serious in nature and without any pleading and evidence wife leveled this allegation recklessly in affidavit of chief examination.

18.2 Wife leveled allegations of character against her minor brother-in-law in petition of D.V. Act and proceedings were dropped against him. Allegations against minor brother-in-law regarding his character assassination must have caused mental agony not only to minor brother-in-law but to all family members including husband.

18.3 These are some examples, in fact wife has leveled all types of allegations against husband and his family members in cases. She has improved upon these allegations in each subsequent pleading or complaint. As cases are pending, it is not just and proper to point out *per se* defamatory and reckless allegations because this court does not want to prejudice competent courts to decide cases on merits. However, there is no hesitation in observing that wife crossed all barriers in levelling allegations against husband and his family members and in this manner has committed mental cruelty to husband. Learned Family Court has not considered this aspect of case and, therefore, findings of learned Family Court in respect of issue No.1 and 2 are incorrect and hereby set aside.

18.4 In present matter, when wife left matrimonial home, she was pregnant and later on gave birth to a baby girl on 4.12.2014. Minor daughter is residing with wife. Husband tried to meet his minor daughter, however, it was alleged that he tried to take custody of daughter forcibly from wife near Madan Mahal Gurudwara, Jabalpur. Husband filed a civil suit No.17/2016 before Family Court Jabalpur for custody of minor child wherein Family Court issued direction on 18.5.2017 and permitted husband to meet minor daughter but same was not complied with. In divorce petition, Family Court time and again, passed orders to present minor daughter in Court for the purpose of meeting her father but directions were not complied with and Family Court itself observed in proceeding dated 8.1.2020 that wife is not interested to comply with orders to keep present minor daughter in Court for the purpose of meeting with husband. In this way, wife has tried to keep the minor daughter away from her father i.e. appellant.

18.5. Delhi High Court in the matter of **Sandhya Malik vs. Col. Satender Malik, 2023 SCC Online Delhi 6099** has observed that, if mother had intentionally distanced child from father and had deprived child from parental love and affection, it is a case of parental alienation where child, who is in custody of one parent, had been psychologically manipulated against estranged parent. It is a strategy whereby one parent intentionally displayed to child unjustified negativity aimed at other parent, with intent to damage relationship between child and estranged parent and to turn child emotionally against estranged parent. It was observed by Kerala High Court that child has a right to love and affection of both the parents and likewise, parents also have a right to receive love and affection of child. Any act of any parent calculated to deny such affection to other parent, amounts to alienating the child which amounts

to mental cruelty. Since child was in the custody of mother, it was held that mother had breached her duty which she owed as a custodian parent to instil love, affection and feelings in child for father. Nothing can be more painful than experiencing one's own flesh and blood i.e., the child, rejecting him or her. Such willful alienation of child amounts to mental cruelty. Kerala High Court has also observed same view in the matter of **Prabin Gopal vs. Meghna, 2021 SCC Online 2193**.

18.6 In view of above, pronouncement of Delhi and Kerala High Courts and in the facts and circumstances of present case, it can be safely observed that in present case also wife has tried to keep away husband from minor daughter and tutored her to speak against her own father. This is serious matter and definitely caused mental cruelty to husband.

18.7. In the present matter, wife is living separately since 8.7.2014, when wife left matrimonial home with an expectation of husband and his family members that she will return back till end of the month but she never returned and since then there was no cohabitation. All the possibilities of mediation among them failed. At the time of enumerating illustrative instances of human behaviour, which may be relevant for deciding cases of mental cruelty, Supreme Court in the case of **Samar Ghosh vs. Jaya Ghosh, (2010) 4 Vol SCC 309** enumerated one example that, where there has been a long period of continues separation, it may fairly be concluded that matrimonial bond is beyond repair and marriage becomes affliction though supported by a legal tie. By refusing to save that tie, law in such cases does not serve sanctity of marriage. On the contrary, it shows scant regard for feelings and emotions of parties. In such like situations, it may linked to mental cruelty. The present case is squarely covered under the aforesaid illustrative of mental cruelty. As for more than 9 years, parties are living separately.

18.8 In view of above analysis, this court holds that respondent wife has caused by her conduct mental cruelty to appellant husband and marriage has irretrievably broken down due to multiple FIRs and complaints lodged by wife. Dissolution of marriage will relieve both sides of pain and anguish. Before Family Court respondent wife expressed that she wants to go back to appellant husband, if all the cases are settled, but, that is not possible now. Appellant husband is not willing to take her back. Even if this court refuses decree of divorce to appellant husband, there are hardly any chances of respondent wife leading a happy life with appellant husband because a lot of bitterness created by conduct of respondent wife, which amounts to cruelty. This Court is aware that High Court cannot grant decree for dissolution of marriage on the ground of irretrievable break down of marriage but as stated above, Apex Court in matter of Samar Ghosh (supra) has incorporated situation of long period of continuous separation as an example of mental cruelty. Thus, this may be considered as a cause for reaching to the conclusion of mental cruelty.

18.9 From above discussion, it appears that husband has proved allegation of commission of mental cruelty by wife and he is entitled for decree of dissolution of marriage on the ground of mental cruelty. His petition is liable to be allowed under Section 13(1)(i-a) of Hindu Marriage Act.

19. Wife has deserted husband after just 5 months of marriage only for living in Jabalpur and lodged the complaint under D.V. Act, whereas husband issued notice for restitution. Wife did not react on notice and filed cases one after another. It is observed by family court itself that there was no serious dispute between husband and wife when she left matrimonial home, but despite going back wife started litigation with a

prayer for issuance of direction to husband to live in Jabalpur with her. Husband has filed first petition before Kalyan court after receipt of notice of D. V. Act complaint and application filed under section 125 of Cr.P.C. by wife. Meaning thereby wife left matrimonial home without there being any reasonable cause.

19.1 The Apex Court in the matter of **Dr. Nirmal Singh Panesar vs. Paramjit Kaur Panesar, 2023 SCC Online SC 1297**, considering the essential conditions of ground of desertion has held as under:-

11. Similarly, the law is also well settled as to what could be said to be “Desertion” in the divorce proceedings filed under Section 13 of the said Act. The expression “Desertion” had come up under the judicial scrutiny of this Court in Bipin Chandra Jai Singh Bai Shah v. Prabhavati, which was again considered in case of Lachman Utamchand Kirpalani v. Meena alias Mota. This Court collating the observations made in the earlier decisions, stated its view as under:

—
 “Collating the aforesaid observations, the view of this Court may be stated thus : Heavy burden lies upon a petitioner who seeks divorce on the ground of desertion to prove four essential conditions, namely, (1) the factum of separation; (2) animus deserendi; (3) absence of his or her consent; and (4) absence of his or her conduct giving reasonable cause to the deserting spouse to leave the matrimonial home.”

12. Recently, in Debananda Tamuli v. Kakumoni Katakya, the Court referring the decision in case of Lachman Utamchand Kirpalani (supra) observed as under:—

“7. We have given careful consideration to her submissions. Firstly, we deal with the issue of desertion. The learned counsel appearing for the appellant relied upon the decision of this Court in Lachman Utamchand Kirpalani [Lachman Utamchand Kirpalani v. Meena, (1964) 4 SCR 331 : AIR 1964 SC 40] which has been consistently followed in several decisions of this Court. The law consistently laid down by this Court is that desertion means the intentional abandonment of one spouse by the other without the consent of the other and without a reasonable cause. The deserted spouse must prove that there is a factum of separation and there is an intention on the part of deserting spouse to bring the cohabitation to a permanent end. In other words, there should be animus deserendi on the part of the deserting spouse. There must be an absence of consent on the part of the deserted spouse and the conduct of the deserted spouse should not give a reasonable cause to the deserting spouse to leave the matrimonial home. The view taken by this Court has been incorporated in the Explanation added

to subsection (1) of Section 13 by Act 68 of 1976. The said Explanation reads thus:

“13. Divorce. — (1) * * *

Explanation. —In this sub-section, the expression “desertion” means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.”

“8. The reasons for a dispute between husband and wife are always very complex. Every matrimonial dispute is different from another. Whether a case of desertion is established or not will depend on the peculiar facts of each case. It is a matter of drawing an inference based on the facts brought on record by way of evidence.”

19.2 The Apex Court in the matter of **Adhyatma Bhattar Alwar vs. Adhyatma Bhattar Sri Devi, (2002) 1 SCC 308** has held as under:

7. “Desertion” in the context of matrimonial law represents a legal conception. It is difficult to give a comprehensive definition of the term. The essential ingredients of this offence in order that it may furnish a ground for relief are:

1. the factum of separation;
2. the intention to bring cohabitation permanently to an end — *animus deserendi*;
3. the element of permanence which is a prime condition requires that both these essential ingredients should continue during the entire statutory period;

The clause lays down the rule that desertion to amount to a matrimonial offence must be for a continuous period of not less than two years immediately preceding the presentation of the petition. This clause has to be read with the Explanation. The Explanation has widened the definition of desertion to include “wilful neglect” of the petitioning spouse by the respondent. It states that to amount to a matrimonial offence desertion must be without reasonable cause and without the consent or against the wish of the petitioner. From the Explanation it is abundantly clear that the legislature intended to give to the expression a wide import which includes wilful neglect of the petitioner by the other party to the marriage. Therefore, for the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*). Similarly, two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The

petition for divorce bears the burden of proving those elements in the two spouses respectively and their continuance throughout the statutory period.

19.3 In the present matter, factum of separation is undisputed. The parties are residing separately since 8.7.2014. *Animus Deserendi* is apparent from fact that wife despite returning back to matrimonial home lodged a complaint (Ex.P/9) under D.V. Act wherein she prayed for issuance of a direction to husband to live with her separately in Jabalpur, which proves that there was no intention of wife to go back to her matrimonial home though husband issued notice for restitution. The act of separation was without any consent of husband and according to finding of learned Family Court itself, there was no such reasonable cause for leaving home permanently. In this way, all the essential elements required to prove desertion are available in the present matter. Wife has left the matrimonial home without reasonable cause and without consent of her husband or against will of her spouse and living separately since last more than 9 years. Wife has not filed any application for Restitution of Conjugal Rights and straight way filed complaint under D.V. Act with relief to issue direction to husband for bringing him at Jabalpur, which shows the intention of wife. Learned Family court has observed that husband has not filed any petition for Restitution but at the same time, learned Family Court omitted to consider that first written communication between the parties was notice issued by husband on 28.4.2014 for restitution and in turn wife filed complaint under D.V. Act, case under Section 125 of Cr.P.C. and started litigation, therefore, there was no occasion for husband to file any petition for restitution and he cannot be held liable for the same. The allegation is not against husband that he has deserted his wife but the allegation is against wife that she has deserted her husband. Therefore, the initial burden was on husband to

prove that they are living separately since long period of more than two years before filing the petition, and separation is without his consent and wife has left home with a firm decision that she will not return to matrimonial home. In the present matter, these conditions were proved by husband and thereafter burden shifted to the wife to prove that act could not be attributable to an *animus deserendi* and she is living separately due to reasonable cause. However, wife failed to prove the same and consequently husband is entitled for decree of divorce on the ground of desertion also. The findings of Family Court in respect of issue No.3 is hereby set aside. The husband is found entitle for decree of dissolution of marriage under Section 13(1)(i-b) of Hindu Marriage Act.

20. In the above conspectus, the appeal stands allowed and following reliefs granted to appellant husband :

20.1 Impugned judgment and decree passed by Principal Judge, Family Court, Jabalpur in RCS case no. 1127/2019 dated 13.10.2020 are hereby set aside.

20.2 Petition filed by appellant husband under section 13(1)(i-a) and 13(1)(i-b) is allowed and the marriage solemnized between Karanjeet Singh Chawla and Gurshish Kaur on 09.02.2014 is hereby dissolved on the ground of cruelty and desertion.

20.3 No orders as to costs.

20.4 Decree be drawn up accordingly. Record of Family Court be returned along with copy of judgment and decree.

(SHEEL NAGU)

JUDGE

(VINAY SARAF)

JUDGE

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