



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Civil Miscellaneous Appeal No. 1135/2022

Smt. Manisha W/o Shri Sumit Kuamr D/o Shri Suraj Bhan, Aged
About 30 Years, Resident Of Nalpur, Tehsil Khetri, District
Jhunjhunu, Rajasthan.

-----Appellant

Versus

Sumit Kumar S/o Shri Mahendra, Aged About 27 Years, Resident
Of Ward No. 25, Chirawa District Jhunjhunu, Rajasthan.

-----Respondent

For Appellant(s) : Mr. R.N. Mathur, Sr. Advocate assisted
by Mr. Shovit Jhajharia
For Respondent(s) : Mr. Vijayant Nirwan

**HON'BLE MR. JUSTICE INDERJEET SINGH
HON'BLE MR. JUSTICE BHUWAN GOYAL**

JUDGMENT RESERVED ON : 14/08/2025
JUDGMENT PRONOUNCED ON : 21/08/2025

PER BHUWAN GOYAL J. :

1. This civil misc. Appeal under Section 19 of the Family Courts Act, 1984 has been preferred by the appellant-wife challenging Judgment and Decree dated 26.04.2022 passed by the Additional District Judge, Khetri in Civil Misc. Case No.125/2018 (CIS/Family Main CAsE No. 125/2018) titled as "Sumit Kumar vs. Smt. Manisha", whereby application under Section 13(1)(II)(1A)(1B) of the Hindu Marriage Act, 1955 filed by the respondent-husband seeking decree of dissolution of marriage solemnized between the parties, was allowed.



2. Facts of the case which are relevant for adjudication of the appeal are that respondent-husband moved an application under Section 13(1)(II)(1A)(1B) of the Hindu Marriage Act, 1955 (hereinafter referred to as "Act of 1955") against the appellant-wife before the court of Additional District Judge, Khetri (hereinafter referred to as "trial court") seeking dissolution of marriage solemnized between the parties on 19.08.2015 on the ground of cruelty. It was mainly pleaded in the divorce petition that relationship between respondent-husband and appellant-wife started through social media in the month of July, 2014 and they remained contact with each other till marriage. The respondent-husband was recruited in the Army on 20.06.2013. The telephonic contact between the parties changed into physical relationship. The appellant-wife instituted FIR No. 430/2015 at Police Station DLF Phase Second Gurgaon for the offences under Sections 376 & 120-B of I.P.C. against respondent-husband. Later, both of them solemnized marriage at Arya Samaj Mandir, Noida on 19.08.2015 and a certificate of marriage came to be issued by said institution which was got registered before the Registrar, Hindu Marriages, Sub District Gaziabad on 19.08.2015. But despite that appellant-wife continued to pursue proceedings in aforesaid FIR against respondent-husband. While narrating certain incidents which occurred during subsistence of marriage, it was pleaded that both of them lastly resided as husband and wife till 13.01.2016. Thereafter, statements of respondent-husband and appellant-wife were recorded in the court at Gurgaon, in which appellant-wife gave statement against respondent-husband.



The appellant-wife went with her brother on 14.01.2016. But despite that she did not hold back in harassing the respondent-husband and his family. On 19.02.2016, appellant-wife instituted F.I.R. No. 71/2016 at Police Station Khetri for the offences under Sections 498-A and 406 of I.P.C., in which the police found the story of the appellant-wife to be false and found commission of offence under Section 504 of I.P.C. only. The case pertaining to F.I.R. No. 430/2015, father of the respondent-husband was discharged and respondent-husband was acquitted by the court on 02.04.2018. Further, it was also pleaded that in the meantime, appellant-wife developed illicit relations with one Ronak alias Hemant Rungata. It was also pleaded that appellant-wife played fraud upon her cousin brother Sukhvir and grabbed Rs. 6 lakhs on the pretext of getting him a job, in respect of which FIR No. 171/2016 was registered at Police Station Buhana on 22.10.2016. The appellant-wife also grabbed Rs.1,50,000/- from one Virendra of her village on the pretext of getting him a job. Sukhbir also registered another F.I.R. No.203/2016 at Police Station Khetri.

3. The divorce petition was contested by the appellant-wife by way of filing reply, wherein she while admitting factum of marriage, denied rest of the averments. It was pleaded that respondent-husband forcefully established physical relations with her against her wishes, for which FIR No. 430/2015 was registered. The respondent-husband forcefully committed rape upon appellant-wife before marriage. In that case, appeal was pending before the Hon'ble Punjab and Haryana High Court. The respondent-husband in order to play cheating and save himself in



the case of Section 376 IPC, made forgery in his mark-sheet and solemnized marriage. The report lodged by Sukhvir was also found false and he did not receive any money from Virendra and nor she was having illicit relations with Ronak alias Hemant Rungata.

4. On the basis of pleadings of the parties, following three issues were framed by the trial court as under :-

“1. आया प्रार्थना पत्र में वर्णितानुसार अयाची ने याची के साथ शारीरिक व मानसिक क्रूरता का व्यवहार किया ?

—भार याची

2. आया याची का अयाची के साथ रहना संभव नहीं रहा ?

—भार याची

3. अनुतोष ?”

5. The respondent-husband submitted affidavits of his father and himself in evidence as A.W. 1 – Mahendra and A.W. 2 - Sumit Kumar and also submitted documentary evidence as Ex.1 to Ex.16. Both of them were cross-examined by the appellant-wife.

6. The appellant-wife submitted affidavits of her brother and herself in evidence as N.A.W. 1 – Ankit and N.A.W. 2 - Manisha but no documentary evidence was produced by her in rebuttal. Both of them were cross-examined by the respondent-husband.

7. After hearing arguments of the parties, the trial court decided Issue Nos. 1 and 2 in favour of the respondent-husband and against appellant-wife and passed the Judgment and Decree dated 26.04.2022 allowing application for dissolution of marriage filed by the respondent-husband. Hence, this appeal.

8. Heard learned counsel for the parties.





9. Learned counsel for the appellant-wife has submitted that the trial court has erred in not appreciating evidence available on record and reached to a wrong conclusion in allowing the divorce petition. He has also submitted that the trial court proceeded to grant divorce on the ground of registration of number of criminal cases by appellant-wife against the respondent-husband. He has also submitted that FIR No. 430/2015 was registered before marriage and in that case, respondent-husband was acquitted only for the reason that favourable statement was given by appellant-wife. But when it was found that she was cheated by the respondent-husband, she choose to file application for Leave to Appeal, which is also pending before the High Court. He has also submitted that it was held by the trial court that appellant-wife did not have any extra marital relations, therefore, finding of mental cruelty only on the basis of registration of cases could not have been given. He has therefore, prayed that this appeal may be allowed and judgment and decree dissolving marriage of the parties passed by the trial court may be set aside.

10. Per contra, learned counsel for the respondent-husband has submitted that the trial court after appreciating the evidence available on record has rightly decided both issues in favour of the respondent-husband and passed the judgment and decree impugned herein, which is perfectly just and valid. He has therefore, prayed that appeal of the appellant-wife may be rejected.



11. We have given our thoughtful consideration to the arguments advanced at the Bar and have gone through impugned judgment and minutely sifted through the record.

12. It is settled that the term 'mental cruelty' has not been defined under the Hindu Marriage Act, 1955. It varies from fact to fact and depends upon nature of allegations, background of respective families of husband and wife, their education, their place of residence, regional and cultural background, number and nature of litigations took place and other relevant factors which are necessary to infer that such conduct in manifest and apparent manner could lead to a situation, where it is not possible for either of the spouse to lead peaceful and meaningful marital life with the other spouse.

13. In the case in hand, it is an admitted position that marriage between the parties was solemnized on 19.08.2015 and there was no issue born from the wedlock between the parties. Further, from perusal of the judgment dated 02.04.2018 (Ex.1), charge-sheet (Ex.2) and the written report (Ex.3), it reveals that appellant-wife has instituted F.I.R. No.430/2015 against respondent-husband and his father for the offences under Sections 376 & 120-B of I.P.C. However, in that criminal case, father of the respondent-husband Mahendra was discharged of allegations levelled against him and the respondent-husband stood acquitted of charges levelled against him by the appellant-wife after holding due trial by the court of competent criminal jurisdiction. It is also pertinent to note that though, FIR No. 430/2015 was registered prior to marriage of the parties but N.A.W. 2 - Manisha in her cross-



examination has admitted that she gave statement against Sumit after marriage. She has also admitted that she gave statement against Sumit to get him convicted. She has also admitted that father of the respondent-husband was discharged of allegations. She has also admitted that she was pursuing said case before the Haryana High Court to get him convicted in the case.

14. It is also noteworthy that appellant-wife also instituted F.I.R. No. 71/2016 (Ex.12) for the offences under Section 498-A and 406 of I.P.C. against respondent-husband. From the evidence available on record, it reveals that in that case, police after investigation did not find commission of offence of cruelty for demand of dowry proved against respondent-husband and submitted charge-sheet for the offence under Section 504 of I.P.C. against respondent-husband. There is no evidence available on record to establish that respondent-husband was convicted by the court in the said criminal case.

15. It is also pertinent to note that in the instant case, the trial court considered close proximity of female i.e. appellant shown in Ex.17 to Ex.22 photographs with another man as emotional cruelty. It is also pertinent to mention here that a perusal of Ex.13 - FIR No.171/2016 reveals that one Sukhvir, who is stated to be cousin brother of the appellant-wife, has lodged criminal prosecution against her for the offences under Sections 420, 406, 120-B, 467, 468 & 471 of I.P.C. and he has also registered another F.I.R. No.203/2016 at Police Station Khetri against appellant-wife, which shows conduct of the appellant-wife. Thus, from the evidence on record, it has been established that



respondent-husband was subjected to cruelty at the hands of the appellant-wife due to registration of false criminal case.

16. In the case of **Rani Narasimha Sastry vs. Rani Suneela Rani** reported in **2020 (18) SCC 247**, the Hon'ble Supreme Court has held that mere lodging of FIR may not amount to cruelty yet after undergoing trial under Section 498-A IPC, if the husband is acquitted from the charges, the presumption would be that he has faced cruelty at the hands of the wife. The relevant observations in the judgment are as under ;-

"13. In the present case the prosecution is launched by the respondent against the appellant under Section 498-A of IPC making serious allegations in which the appellant had to undergo trial which ultimately resulted in his acquittal. In the prosecution under Section 498-A of IPC not only acquittal has been recorded but observations have been made that allegations of serious nature are levelled against each other. The case set up by the appellant seeking decree of divorce on the ground of cruelty has been established. With regard to proceeding initiated by respondent under Section 498-A of IPC, the High Court made following observation in paragraph 15:

15.Merely because the respondent has sought for maintenance or has filed a complaint against the petitioner for the offence punishable under Section 498-A of IPC, they cannot be said to be valid grounds for holding that such a recourse adopted by the respondent amounts to cruelty."

The above observation of the High Court cannot be approved. It is true that it is open for anyone to file complaint or lodge prosecution for redressal for his or her grievances and lodge a first information report for an offence also and mere lodging of complaint or FIR cannot ipso facto be treated as cruelty. But when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498-A of IPC, levelled by the wife against the husband, it cannot be accepted that no



cruelty has meted on the husband. As per pleadings before us, after parties having been married on 14.08.2005, they lived together only 18 months and thereafter they are separately living for more than a decade now."

17. Similarly, in the case of **Raj Talreja vs. Kavita Talreja** reported in **2017 (14) SCC 194**, the Hon'ble Supreme Court has held 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 of IPC."

18. In the case of **Shivasankaran vs. Santhimeenal** reported in **2022 (15) SCC 742**, the Hon'ble Supreme Court has reiterated the principle that filing of criminal case against the husband



amounts to cruelty. The relevant portion of the judgment is reproduced as under :-

"25. In view of the legal position which we have referred to aforesaid, these continuing acts of the respondent would amount to cruelty even if the same had not arisen as a cause prior to the institution of the petition, as was found by the Trial Court. This conduct shows disintegration of marital unity and thus disintegration of the marriage. [A.Jayachandra v. Aneel Kaur, (2005) 2 SCC 22]. In fact, there was no initial integration itself which would allow disintegration afterwards. The fact that there have been continued allegations and litigative proceedings and that can amount to cruelty is an aspect taken note of by this court. [Malathi Ravi v. B.V. Ravi, (2014) 7 SCC 640 : (2014) 3 SCC (Civ) 774]. The marriage having not taken off from its inception and 5 years having been spent in the Trial Court, it is difficult to accept that the marriage soon after the decree of divorce, within 6 days, albeit 6 years after the initial inception of marriage, amounts to conduct which can be held against the appellant."

19. In the case of **K. Srinivas Rao vs. D.A. Deepa** reported in **2013 (5) SCC 226**, the Hon'ble Supreme Court has held that false and indecent allegations would cause mental cruelty to the husband. The relevant portion of judgment is reproduced as under :-

"22. According to the respondent-wife, on 17/9/2007 when she, along with her mother, came out of the court after a case filed by her against the appellant-husband was adjourned, the appellant-husband beat her mother and kicked her on her stomach. Both of them received injuries. She, therefore, filed complaint for the offence punishable under Section 324 of the IPC against the appellant-husband (C.C.No. 79/2009). It may be stated here that on 19/10/2009 the appellant-husband was acquitted in this case.

XX ... XXX XX





31. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree."

20. It is pertinent to mention here that as per appellant-wife, she lived with respondent-husband for around ten days after marriage. The respondent-husband has also averred that appellant-wife deserted him and was residing separately since 14.01.2016 i.e. for last almost ten years. The appellant-wife has admitted in her cross-examination that much time had passed since their marriage; they were not in touch with each other and their marriage was at the verge of broken down; she and her family did not go to mediate or hold any meeting and nor she filed a case under Section 9 of the HM Act. In the present case, divorce petition was filed on 20.09.2018, which establishes that both appellant-wife and respondent-husband were not residing together as husband and wife for a period of more than two years. A period of more than three years has passed since passing of the decree of dissolution of marriage also. At this stage, there is no chance of reunion of the parties and as of now asking both of



them to live together at this point of time would amount to cruelty with both of them.

21. The Hon'ble Supreme Court in the case of "**Samar Ghosh vs. Jaya Ghosh**" reported in **2007 (4) SCC 511** has held as under :-

"(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."

22. In the case of "**Naveen Kohli vs. Neelu Kohli**" reported in **(2006) 4 SCC 558**, the Hon'ble Supreme Court has observed as under :-

"....(32) Both the parties have levelled allegations against each other for not maintaining the sanctity of marriage and involvement with another person. According to the respondent, the appellant is separately living with another woman, 'Shivanagi'. According to the appellant, the respondent was seen indulging in an indecent manner and was found in compromising position with one Biswas Rout. According to the findings of the Trial Court both the parties failed to prove the allegations against each other. The High Court has of course reached the conclusion that the appellant was living with one 'Shivanagi' for a considerable number of years. The fact of the matter is that both the parties have been living separately for more than 10 years. Number of cases including criminal complaints have been filed by the respondent against the appellant and every effort has been made to harass and torture him and even to put the appellant behind the bars by the respondent. The appellant has also filed cases against the respondent.



(33) We would like to examine the facts of the case in the light of the settled position of law which has been crystallized by a series of judgments.”

23. In view of the above discussion, we find that the findings recorded by the trial court on Issue Nos. 1 and 2 do not warrant any interference.

24. Accordingly, present appeal is dismissed and the judgment and decree dated 26.04.2022 passed by the Additional District Judge, Khetri is affirmed.

25. A copy of this order along with original record be sent to the trial court forthwith.

(BHUWAN GOYAL),J

(INDERJEET SINGH),J

INDER