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Smt. Roopa Soni v. Kamalnarayan Soni (SC)
(2023) Law Today Live Doc. Id. 18498
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SUPREME COURT OF INDIA

Before: Sanjiv Khanna & M. M. Sundresh, JJ.

SLP (C) No.15793 of 2014

Decided on: 06.09.2023

Smt. Roopa Soni - Appellant

Versus

Kamalnarayan Soni - Respondent

For Petitioner(s):

Mr. Dushyant Parashar, AOR, Mr. Dinesh Pandey, Adv., Mr. Manu Parashar, Adv., Mrs. Neha Shenker, Adv.

For Respondent(s):

Mr. Shantanu Sagar, AOR, Mr. Smarhar Singh, Adv.

A. Hindu Marriage Act, 1955 (25 of 1955), Section 13 -- Divorce petition -- Burdon of proof – Nature of evidence -- Degree of probability is not one beyond reasonable doubt, but of preponderance.

(Para 10)

B. Hindu Marriage Act, 1955 (25 of 1955), Section 13 – Divorce -- Cruelty – Long separation – Allegation of adultery -- Marriage solemnized in the year 2002 -- Disputes started between the parties from 2006 onwards -- Appellant–Wife registered a complaint u/s 498A of IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961 -- Respondent-Husband had questioned the character of the appellant-Wife -- 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 -- Said request was nullified by the Order of the High Court – For a decade and half, the parties have been living separately -- Marriage does not survive any longer, and the relationship was terminated otherwise except by a formal decree of divorce – S*tatus quo* continues, awaiting an approval from the Court – Decree of divorce allowed.

(Para 16-20)

Cases referred:

1. Vishwanath Agrawal v. Sarla Vishwanath Agrawal, (2012) 7 SCC 288.

2. Reynold Rajamani and Another v. Union of India and Another, (1982) 2 SCC 474.

3. Badshah v. Urmila Badshah Godse and Another, (2014) 1 SCC 188.

4. Dr. N.G. Dastane v. Mrs. S. Dastane, (1975) 2 SCC 326.

5. Bipin Chander Jaisinghbhai Shah v. Prabhawati, 1956 SCR 838.

6. Sivasankaran v. Santhimeenal, 2021 (10) SCALE 477.

7. Thrity Hoshie Dolikuka v. Hoshiam Shavaksha Dolikuka, (1982) 2 SCC 544.

8. Shilpa Sailesh v. Varun Sreenivasan, 2023 (6) SCALE 402 = 2023(2) L.A.R. 15 = (2023) Law Today Live Doc. Id. 17959.

JUDGMENT

M.M. SUNDRESH, J. –

Leave granted.

2. Section 13(1) and 13(1A) of the Hindu Marriage Act, 1955 (hereinafter referred to as Act of 1955) provide for various grounds for granting divorce:

> "*13.* **Divorce**.—(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—
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> *(i)* has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or
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> (*ia*) has, after the solemnization of the marriage, treated the petitioner with cruelty; or
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> (*ib*) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or
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> (*ii*) has ceased to be a Hindu by conversion to another religion; or
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> (*iii*) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.
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> *Explanation*.—In this clause,—
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> (*a*) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;
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> (*b*) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or
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> (*v*) has been suffering from venereal disease in a communicable form; or
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> (*vi*) has renounced the world by entering any religious order; or

(*vii*) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive;

[*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].

(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground—

(*i*) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(*ii*) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties."

3. The Amending Act of 1976 (Act 68 of 1976) had introduced clauses (ia) and (ib) to Section 13 and Section 13A etc. to liberalize grant of divorce. The Statement of Objects and Reasons, when the Bill was introduced, clearly spells out the reasons in the following words:

"Statement of Objects and Reasons for the Marriage Laws (Amendment) Bill, 1976:

"(1) To liberalise the provisions relating to divorce;

(2) to enable expeditious disposal of proceedings under the Act; and

(3) to remove certain anomalies and handicaps that have come to light after the passing of the Acts."

4. Preceding the Bill, the Minister of Law and Justice and Company Affairs addressed a communication to the Chairman of the Law Commission of India on 17.01.1974, seeking his view towards liberalizing divorce proceedings, which resulted in the 59th Report of the Law Commission of India. The Amending Act of 1976 substantially amended Section 13 of the Act of 1955, while adding some more clauses. Suffice to state that the intendment of the Parliament is very clear, which is to liberalize the provision of divorce, while being conscious of the protection required for the estranged wife. While applying the sub-clauses to Section 13(1) of the Act of 1955, one needs to have a proper understanding of the position of the spouse opposing the petition for grant of divorce as the consequences and impact may differ from person to person, based upon factors such as social setting, educational qualification(s), financial status, employment, caste, community, age and place.

5. The word 'cruelty' under Section 13(1)(ia) of the Act of 1955 has got no fixed meaning, and therefore, gives a very wide discretion to the Court to apply it liberally and contextually. What is cruelty in one case may not be the same for another. As stated, it has to be applied from person to person while taking note of the attending circumstances.

6. In ***Vishwanath Agrawal*** v. ***Sarla Vishwanath Agrawal,*** **(2012) 7 SCC 288** this Court sufficiently sets out:

"22 . The expression "cruelty" has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.

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25. After so stating, this Court observed in *Shobha Rani case* [(1988) 1 SCC 105 : 1988 SCC (Cri) 60] about the marked change in life in modern times and the sea change in matrimonial duties and responsibilities. It has been observed that: (SCC p. 108, para 5)

> "*5*. … when a spouse makes a complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance."

26. Their Lordships in *Shobha Rani case* [(1988) 1 SCC 105 : 1988 SCC (Cri) 60] referred to the observations made in *Sheldon* v. *Sheldon* [1966 P 62 : (1966) 2 WLR 993 : (1966) 2 All ER 257 (CA)] wherein Lord Denning stated, "the categories of cruelty are not closed". Thereafter, the Bench proceeded to state thus: (*Shobha Rani case* [(1988) 1 SCC 105 : 1988 SCC (Cri) 60] , SCC p. 109, paras 5-6)

> "*5* . … Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty.
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> *6*. These preliminary observations are intended to emphasise that the court in matrimonial cases is not concerned with ideals in family life. The court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord Reid observed in *Gollins* v. *Gollins* [1964 AC 644 : (1963) 3 WLR 176: (1963) 2 All ER 966 (HL)] : (All ER p. 972 G-H)
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> > '… In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with *this* man or *this* woman.' "
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32. In *Samar Ghosh* v. *Jaya Ghosh* [(2007) 4 SCC 511], this Court, after surveying the previous decisions and referring to the concept of cruelty, which includes mental cruelty, in English, American, Canadian and Australian cases, has observed that: (SCC pp. 545-46, paras 99-100)

> "*99* . … The human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in the other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

> *100* . Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances…."

(emphasis supplied)

7. We would like to emphasize that an element of subjectivity has to be applied *albeit*, what constitutes cruelty is objective. Therefore, what is cruelty for a woman in a given case may not be cruelty for a man, and a relatively more elastic and broad approach is required when we examine a case in which a wife seeks divorce. Section 13(1) of the Act of 1955 sets contours and rigours for grant of divorce at the instance of both the parties. Historically, the law of divorce was predominantly built on a conservative canvas based on the fault theory. Preservation of marital sanctity from a societal perspective was considered a prevailing factor. With the adoption of a libertarian attitude, the grounds for separation or dissolution of marriage have been construed with latitudinarianism.

8. Even with such a liberal construction of matrimonial legislations, the socio-economic stigma and issues attached to a woman due to divorce or separation are raised. Justice O.Chinnappa Reddy, in his concurring opinion in ***Reynold Rajamani and Another* v. *Union of India and Another*, (1982) 2 SCC 474** (see paragraph 14), took note of the position of women in a marital relationship and the consequent social and economic inequalities faced by the female spouse in view of divorce. The resultant stigmatization hinders societal reintegration, making a woman divorcee socially and economically dependent. Courts must adopt a holistic approach and endeavor to secure some measure of socio-economic independence, considering the situation, case and persons involved. An empathetic and contextual construction of the facts may be adopted, to avert the possibilities of perpetuating trauma - mental and sometimes even physical - on the vulnerable party. It is needless to say that the courts will be guided by the principles of equity and may consider balancing the rights of the parties. The Court, while applying these provisions, must adopt 'social-context thinking', cognisant of the social and economic realities, as well as the status and background of the parties.

9. This concept of "social justice adjudication" has been elaborately dealt with by this Court in ***Badshah* v. *Urmila Badshah Godse and Another*, (2014) 1 SCC 188:**

> "14 . Of late, in this very direction, it is emphasised that the courts have to adopt different approaches in "social justice adjudication", which is also known as "social context adjudication" as mere "adversarial approach" may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:
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> > "It is, therefore, respectfully submitted that 'social context judging' is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the Judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication." [Keynote address on "Legal Education in Social Context" delivered at National

Law University, Jodhpur on October 12, 2005, available on http://web.archive.org/web/20061210031743/ http:/www.nlujodhpur.ac .in/ceireports.htm [last visited on 25-12-2013]]

15. The provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from "adversarial" litigation to social context adjudication is the need of the hour.

16. The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law.

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18. The court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision — *libre recherché scientifique* i.e. "free scientific research". We are of the opinion that there is a non-rebuttable presumption that the legislature while making a provision like Section 125 CrPC, to fulfil its constitutional duty in good faith, had always intended to give relief to the woman becoming "wife" under such circumstances. This approach is particularly needed while deciding the issues relating to gender justice. We already have examples of exemplary efforts in this regard. Journey from *Shah Bano* [*Mohd. Ahmed Khan* v. *Shah Bano Begum*, (1985) 2 SCC 556 : 1985 SCC (Cri) 245 : AIR 1985 SC 945] to *Shabana Bano* [*Shabana Bano* v. *Imran Khan*, (2010) 1 SCC 666 : (2010) 1 SCC (Civ) 216 : (2010) 1 SCC (Cri) 873 : AIR 2010 SC 305] guaranteeing maintenance rights to Muslim women is a classical example."

(Emphasis supplied)

10. On the question of burden in a petition for divorce, burden of proof lies on the petitioner. However, the degree of probability is not one beyond reasonable doubt, but of preponderance.

11. In ***Dr. N.G. Dastane* v. *Mrs. S. Dastane*, (1975) 2 SCC 326,** it was held**:**

"25. Proof beyond reasonable doubt is proof by a higher standard which generally governs criminal trials or trials involving inquiry into issues of a quasi-criminal nature. A criminal trial involves the liberty of the subject which may not be taken away on a mere preponderance of probabilities. If the probabilities are so nicely balanced that a reasonable, not a vacillating, mind cannot find where the preponderance lies, a doubt arises regarding the existence of the fact to be proved and the benefit of such reasonable doubt goes to the accused. It is wrong to import such considerations in trials of a purely civil nature.

26. Neither Section 10 of the Act which enumerates the grounds on which a petition for judicial separation may be presented nor Section 23 which governs the jurisdiction of the court to pass a decree in any proceeding under the Act requires that the petitioner must prove his case

beyond a reasonable doubt. Section 23 confers on the court the power to pass a decree if it is "satisfied" on matters mentioned in clauses (*a*) to (*e*) of the section. Considering that proceedings under the Act are essentially of a civil nature, the word "satisfied" must mean "satisfied on a preponderance of probabilities" and not "satisfied beyond a reasonable doubt". Section 23 does not alter the standard of proof in civil cases.

27. The misconception regarding the standard of proof in matrimonial cases arises perhaps from a loose description of the respondent's conduct in such cases as constituting a "matrimonial offence". Acts of a spouse which are calculated to impair the integrity of a marital union have a social significance. To marry or not to marry and if so whom, may well be a private affair but the freedom to break a matrimonial tie is not. The society has a stake in the institution of marriage and therefore the erring spouse is treated not as a mere defaulter but as an offender. But this social philosophy, though it may have a bearing on the need to have the clearest proof of an allegation before it is accepted as a ground for the dissolution of a marriage, has no bearing on the standard of proof in matrimonial cases."

12. While quoting the aforesaid decision with respectful approval, we would like to clarify that the decision rendered in ***Bipin Chander Jaisinghbhai Shah* v. *Prabhawati*[1], 1956 SCR 838,** is not a proposition to hold that the proof required from a petitioner in a matrimonial case alleging cruelty is of beyond reasonable doubt, and not of preponderance of probability. The Court in ***Bipin Chander*** (supra) was dealing with a case of desertion, and therefore, more onus was fixed on the person who asserts it. The Court is not deciding and adjudicating an offence, when a petition for divorce is a civil remedy.

*[1 This judgment has been quoted with approval by a five Judge Bench of this Court in **Lachman Utamchand Kirpalani** v. **Meena alias Mota**, (1964) 4 SCR 331, which relates to 'desertion', whereas the present case involves 'cruelty'.]*

13. Though Section 23(1)[2] of the Act of 1955 speaks of condonation of cruelty by the petitioner in a divorce petition filed on the ground of cruelty, and thus non-suiting a decree of divorce, it has to be seen in context with the position of a man and woman in a marital relationship. In other words, Section 23(1) of the Act of 1955 is a word of caution to check cases of abuse and misuse of law to get relief. To elaborate, due to her unenviable position, a wife may not be in a state to raise her voice and express her dissent, which cannot be construed as a passive consent.

*[2 23. **Decree in proceedings. –** (1) In any proceeding under this Act, whether defended or not, if the court is satisfied that –*

(a) any of the grounds for granting relief exists and the petitioner except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5 is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and

(b) where the ground of the petition is the ground specified in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and

(bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and

(c) the petition (not being a petition presented under section 11) is not presented or prosecuted in collusion with the respondent, and

(d) there has not been any unnecessary or improper delay in instituting the proceeding, and

(e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly.]

14. Section 23(2)[3] of the Act of 1955 postulates that the court before granting any relief under the Act shall, in the first instance, where it is possible in the nature and circumstances of the case, make every endeavour to bring about reconciliation between the parties. The proviso carves out certain exceptions with which we are not concerned. This aspect is also referred to in sub-section (3)[4] of Section 23. The object and purpose of these provisions is to check any party taking advantage of social and economic inequalities between the sexes given the fact that on many occasions a divorce may solve one problem, but create another when the woman is separated both socially and economically. Keeping these aspects in mind, recently this Court in ***Sivasankaran* v. *Santhimeenal*, 2021 (10) SCALE 477,** while exercising the power under Article 142 of the Constitution of India, had highlighted various facets which have to be kept in mind while granting divorce:

[3S.23(2) – Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties:

Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.]

[4S.23(3) – For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.]

"6. The ground which is often taken to oppose such a decree of divorce, apart from the absence of legislative mandate, is that the very institution of marriage is distinctly understood in different countries. Under the Hindu Law, it is sacramental in character and is supposed to be an eternal union of two people - society at large does not accept divorce, given the heightened importance of marriage as a social institution in India. Or at least, it is far more difficult for women to retain social acceptance after a decree of divorce. This, coupled with the law's failure to guarantee economic and financial security to women in the event of a breakdown of marriage; is stated to be the reason for the legislature's reluctance to introduce irretrievable breakdown as a ground for divorce - even though there may have been a change in social norms over a period of time. Not all persons come from the same social background, and having a uniform legislative enactment is thus, stated to be difficult. It is in these circumstances that this court has been exercising its jurisdiction, despite such reservations, under Article 142 of the Constitution of India.

7. A marriage is more than a seemingly simple union between two individuals. As a social institution, all marriages have legal, economic, cultural, and religious ramifications. The norms of a marriage and the varying degrees of legitimacy it may acquire are dictated by factors such as marriage and divorce laws, prevailing social norms, and religious dictates. Functionally, marriages are seen as a site for the propagation of social and cultural capital as they help in identifying kinship ties, regulating sexual behaviour, and consolidating property and social prestige. Families are arranged on the idea of a mutual expectation of support and amity which is meant to be experienced and acknowledged amongst its members. Once this amity breaks apart, the results can be highly devastating and stigmatizing. The primary effects of such breakdown are felt especially by women, who may find it hard to guarantee the same degree of social adjustment and support that they enjoyed while they were married."

15. Secondly, the court must also keep in mind that the home which is meant to be a happy and loveable place to live, becomes a source of misery and agony where the partners fight. When there are children they become direct victims of the said fights, though they may practically have no role in the breakdown of marriage. They suffer irreparable harm especially when the couple at loggerheads, remain unmindful and unconcerned about the psychological and mental impact it has on her/him. Way back in 1982, this Court in ***Thrity Hoshie Dolikuka* v. *Hoshiam Shavaksha Dolikuka*, (1982) 2 SCC 544,** observed:

"29…. A broken home, however, has a different tale to tell for the children. When parents fall out and start fighting, the peace and happiness of home life are gone and the children become the worst sufferers. It is indeed sad and unfortunate that parents do not realise the incalculable harm they may do to their children by fighting amongst themselves. The husband and the wife are the persons primarily responsible for bringing the children into this world and the innocent children become the worst victims of any dispute between their father and the mother. Human beings with frailties common to human nature, may not be in a position to rise above passion, prejudice and weakness. Mind is, indeed, a peculiar place and the working of human mind is often inscrutable. For very many reasons it may unfortunately be not possible for the husband and wife to live together and they may be forced to part company. Any husband and wife who have irreconcilable differences, forcing them to part company, should, however, have sense enough to understand and appreciate that they have their duties towards their children. In the interest of the children whom they have brought into existence and who are innocent, every husband and wife should try to compose their differences. Even when any husband and wife are not in a position to reconcile their differences and are compelled to part, they should part in a way as will cause least possible mischief to the children.

(emphasis supplied)

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 498A of Indian Penal Code, 1860 and Sections 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.

17. For a decade and half, the parties have been living separately. As fairly stated at the Bar, the marriage does not survive any longer, and the relationship was terminated otherwise except by a formal decree of divorce. The *status quo* continues, awaiting an approval from this Court.

18. The aforesaid facts would certainly make out a case for divorce and thus, the ratio laid down by a Constitution Bench of this Court in ***Shilpa Sailesh* v. *Varun Sreenivasan,* 2023 (6) SCALE 402 = 2023(2) L.A.R. 15 = (2023) Law Today Live Doc. Id. 17959** would be applicable on all fours:

> "26. *V. Bhagat* v. *D. Bhagat* [(1994) 1 SCC 337], which was pronounced in 1993, 18 years after the decision in *N.G. Dastane* [(1975) 2 SCC 326], gives a life-like expansion to the term 'cruelty'. This case was between a husband who was practicing as an Advocate, aged about 55 years, and the wife, who was the Vice President in a public sector undertaking, aged about 50 years, having two adult children - a doctor by profession and an MBA degree holder working abroad, respectively. Allegations of an adulterous course of life, lack of mental equilibrium and pathologically suspicious character were made against each other. This Court noticed that the divorce petition had remained pending for more than eight years, and in spite of the directions given by this Court, not much progress had been made. It was highlighted that cruelty contemplated under Section 13(1)(i-a) of the Hindu Marriage Act is both mental and physical, *albeit* a comprehensive definition of what constitutes cruelty would be most difficult. Much depends upon the knowledge and intention of the defending spouse, the nature of their conduct, the character and physical or mental weakness of the spouses, etc. The sum total of the reprehensible conduct or departure from normal standards of conjugal kindness that causes injury to health, or an apprehension of it, constitutes cruelty. But these factors must take into account the temperament and all other specific circumstances in order to decide that the conduct complained of is such that a petitioner should not be called to endure it. It was further elaborated that cruelty, mental or physical, may be both intentional or unintentional. Matrimonial obligations and responsibilities vary in degrees. They differ in each household and to each person, and the cruelty alleged depends upon the nature of life the parties are accustomed to, or their social and economic conditions. They may also depend upon the culture and human values to which the spouses assign significance. There may be instances of cruelty by unintentional but inexcusable conduct of the other spouse. Thus, there is a distinction between intention to commit cruelty and the actual act of cruelty, as absence of intention may not, in a given case, make any difference if the act complained of is otherwise regarded as cruel. Deliberate and wilful intention, therefore, may not matter. Paragraph 16 of the judgment in *V. Bhagat* (supra) reads as under:
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> > "16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made."
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33. Having said so, we wish to clearly state that grant of divorce on the ground of irretrievable breakdown of marriage by this Court is not a matter of right, but a discretion which is to be exercised with great care and caution, keeping in mind several factors ensuring that 'complete justice' is done to both parties. It is obvious that this Court should be fully convinced and satisfied that the marriage is totally unworkable, emotionally dead and beyond salvation and, therefore, dissolution of marriage is the right solution and the only way forward. That the marriage has irretrievably broken down is to be factually determined and firmly established. For this, several factors are to be considered such as the period of time the parties had cohabited after marriage; when the parties had last cohabited; the nature of allegations made by the parties against each other and their family members; the orders passed in the legal proceedings from time to time, cumulative impact on the personal relationship; whether, and how many attempts were made to settle the disputes by intervention of the court or through mediation, and when the last attempt was made, etc. The period of separation should be sufficiently long, and anything above six years or more will be a relevant factor. But these facts have to be evaluated keeping in view the economic and social status of the parties, including their educational qualifications, whether the parties have any children, their age, educational qualification, and whether the other spouse and children are dependent, in which event how and in what manner the party seeking divorce intends to take care and provide for the spouse or the children. Question of custody and welfare of minor children, provision for fair and adequate alimony for the wife, and economic rights of the children and other pending matters, if any, are relevant considerations. We would not like to codify the factors so as to curtail exercise of jurisdiction under Article 142(1) of the Constitution of India, which is situation specific. Some of the factors mentioned can be taken as illustrative, and worthy of consideration."

19. The Trial Court and the High Court adopted a hyper-technical and pedantic approach in declining the decree of divorce. It is not as if the respondent-Husband is willing to live with the appellant–Wife. The allegations made by him against her are as serious as the allegations made by her against him. Both the parties have moved away and settled in their respective lives. There is no need to continue the agony of a mere status without them living together.

20. For the reasons aforesaid, we are inclined to set aside the judgment of the Trial Court as confirmed by the High Court of Chhattisgarh in F.A. (M) No. 115 of 2011. Accordingly, they are set aside and the appeal stands allowed by granting a decree of divorce.

21. No costs.

Appeal allowed.

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