

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 80 of 2019

- Abhishek S/o Shri Narayan Kashyap, Aged About 30 Years, R/o Village Kandai, Post Ninwa, Tahsil Saja, District Bemetara, Chhattisgarh.

---- Appellant

Versus

- Smt. Seema W/o Abhishek Kashyap Aged About 33 Years, Occupation - Shiksha Karmi Grade - III, Presently R/o Village And Post Parasbod, Tahsil And Police Station Saja, District Bemetara, Chhattisgarh.

---- Respondent

For Appellant : Shri H.B. Agrawal, Senior Advocate
Assisted by Smt. Swati Agrawal, Adv.
For Respondent : Shri Viprasen Agrawal, Adv.

**Hon'ble Shri Justice Goutam Bhaduri &
Hon'ble Smt. Justice Rajani Dubey**

Judgment on Board by Goutam Bhaduri, J.

15/12/2021

Heard.

1. The instant appeal has been preferred by the appellant (husband) against the judgment and decree dated 01.02.2019 passed by the Family Court, Bemetara, District-Bemetara (C.G.), in Misc. Civil Case No. 11A/2018, whereby the divorce claimed by the husband was dismissed.
2. The marriage between the parties was solemnized on 21.06.2010 and at the time of marriage the respondent (wife) was posted as Shiksha Karmi Grade-III at Mohabhattha, who was transferred to village Motesara which was about 2 km. from the in-law's place. The respondent (wife) came to her maternal

home in April 2011. Thereafter, the report was lodged against the appellant and his family members for demand of dowry for which a criminal case was instituted. The husband pleaded that a false complaint was made for demand of dowry, whereas they have not demanded any dowry at any point of time from the respondent (wife) or her family members. It was further pleaded that some matrimonial dispute took place at a time and the appellant (husband) was attacked and wife tried to throttle the husband which was intervened by few of the family members and thereby his life was saved. Thereafter, the wife started living separately for 7-8 years and it was not possible for the husband to live along with the wife. He was mentally disturbed and was treated by the doctor and the cause was attributed to the wife. Therefore, it was pleaded that the marriage dated 21.06.2010 be declared void and the decree of divorce be passed.

3. The respondent (wife), on the contrary, denied the allegation and it was pleaded that the ornaments which were given to her (wife) have been taken back during Diwali festival and was not returned and subsequently she was subjected to harassment for demand of dowry for which a report was lodged.
4. The learned trial Court framed the issues on the ground of cruelty whether husband was implicated in the false case and whether the mental cause resulted in dis-balance. After evaluating the evidence, the trial Court dismissed the petition for divorce.
5. Learned Senior counsel Shri H.B. Agrawal assisted by Smt. Swati Agrawal, for the appellant (husband) would submit that primarily, in this appeal, one ground is being raised leaving

apart other grounds. It is stated that on the basis of the false report made by the respondent, the appellant and his family members were convicted under Section 498-A, 506-B of IPC r/w Section 4 of the Dowry Prohibition Act by an order dated 23.02.2017 of the Judicial Magistrate First Class, Bemetara. The said judgment of conviction having been challenged before the Sessions Court, Bemetara, wherein the husband and the family members were acquitted of the charges and conviction dated 23.02.2017 was set aside. So false report was lodged by the wife. In support of submission, he placed his reliance on the judgment of Hon'ble Supreme Court in the matters of **K. Srinivas Rao vs. D.A. Deepa**¹ and **G.V.N. Kameswara Rao vs. G. Jabilli**² and would submit that according to law laid down by the Supreme Court, if the husband and his family members have been falsely implicated in the case and if in such case eventual result is acquittal, it would be a cruelty within the Matrimonial Act and, therefore, on this ground alone the decree of divorce is required to be passed. He would submit that the application under Order 41 Rule 27 of C.P.C have been filed before this Court wherein, both the judgment of conviction and the acquittal, have been filed, which should be admitted as an additional evidence on the record and the judgment of the trial Court may be set aside.

6. Per contra, learned counsel Shri Viprasen Agrawal, would submit that the plaint of the appellant was so vague, no relief can be granted. He referred to the relief clause and would submit that it was specifically pleaded that the marriage be declared as null

1 (2013) 5 SCC 226

2 (2002) 2 SCC 296

and void and decree of divorce be passed. Referring to Order 7 Rule 7 and Rule 8 of Civil Procedure Code, the submission is made that relief is required to be specifically stated which cannot be vague and if the relief of nullity is claimed then it cannot go along with relief claiming divorce under Section 13 and Section 11 of the Hindu Marriage Act.

7. It is stated, Section 11 of the Hindu Marriage Act covers the void marriages and Section 13 provides the grounds for divorce on which the relief can be claimed. He would further submit that though the cruelty is one of the ground and it is argued before this Court that on the basis of the judgment of the Chief Judicial Magistrate for the offence under Sections 498-A, 506-B of IPC r/w Section 4 of the Dowry Prohibition Act, the same cannot be accepted in evidence considering the language of Order 41 Rule 27 of C.P.C. He would submit that according to admission of the appellant itself, the judgments which were placed on record, the appellant was in hold of it but were not filed, therefore, this could not be allowed and was required the parties to claim relief by placing them under Order 41 Rule 27 of C.P.C. Reliance is placed upon the decision rendered by the Hon'ble Supreme Court in the matter of **Union of India vs. Ibrahim Uddin & Another**³. To lament his argument to submit that relief cannot be granted and submits that the decision of the case cannot be based on ground outside the pleading of the parties, he would further submit that even the application moved under Order 41 Rule 27 of C.P.C. which enable the appellate Court to take additional evidence is to be sparingly exercised in exceptional cases and, the kind of admission, which is made in this case,

3 (2012) 8 SCC 148

would not allow the appellant to fall back on the judgment of the acquittal passed by the Sessions Court.

8. We have heard the learned counsel for the parties and perused material on record.
9. Before this Court, the appellant has only raised one ground that a false report under Section 498-A, 506-B of IPC r/w Section 4 of the Dowry Prohibition Act was lodged by the wife, which eventually resulted into acquittal by the order of the Sessions Court, therefore it would constitute a cruelty. Perusal of the record would show that an application under Order 41 Rule 27 of C.P.C. along with the affidavit is filed where the initial judgment of conviction dated 23.02.2017 by the Chief Judicial Magistrate, Bemetara, and subsequent acquittal order by the Sessions Court on 02.08.2017 are on record. Both are certified copy of the judgment.
10. From perusal of the plaint filed by the husband, at para 4, the pleading was made that wife has lodged a false report at Police Station, Bemetara, about demand of dowry and a case was registered against them. The wife in reply has made omnibus denial. The certified copy of the order of the conviction by the Chief Judicial Magistrate would show that offence Under Section 498-A, 506-B of IPC r/w Section 4 of the Dowry Prohibition Act was registered pursuant to the Crime No. 511 of 2011, wherein the arrest of husband and family members were made in the year 2011. The respondent (wife) Seema Kashyap was examined as PW-1 in the said criminal case, meaning thereby the wife had appeared to prosecute in furtherance of her report which resulted into initial conviction by the Court of Chief Judicial Magistrate. Subsequent order which is placed on record

would show that the said judgment and conviction was subject of challenge before the Sessions Court in Criminal Appeal No. 22 of 2017, wherein the Sessions Court, vide its order dated 02.08.2017, acquitted the appellant of the charges and set aside the conviction.

11. It being a judgment of a criminal Court, it would be relevant to show that the trial took place upon a report resulting into initial conviction and then acquittal. It being the certified copy of the judgment, the Court would be able to take a Judicial notice of it to draw inference of corroboration of the fact that the report was made by wife which eventually resulted into acquittal. Order 41 Rule 27 of C.P.C. enables the appellate Court to take additional evidence in exceptional circumstances. In the instant case, it is not in dispute upon a report of the wife, a criminal case was instituted for which trial took place. It is an admitted fact. Therefore, in our considered view, discretion of Court would be lean in favour to accept the said document i.e. certified copies of conviction and acquittal in evidence to advance the cause of justice and merely it cannot be sidelined. Therefore, it being the certified copy of the judgment are accepted as evidence in record being a relevant fact, as a result the application under Order 41 Rule 27 of C.P.C is allowed.

12. With respect to the plea raised by the wife that the relief cannot be granted as two contradictory reliefs have been claimed about nullity of marriage and divorce. The relief clause of the petition is perused. In the relief clause, the primary relief which was claimed would show that the relief of divorce is claimed by declaring the marriage as nullity. It would be too technical to interpret the fact to say that the husband has claimed the

decree of nullity as also the divorce. The primary intention as it appears would show that the claim for dissolution of marriage (Talaq) (Vivah Vichhed) decree was claimed as such the submission of the respondent that the relief was beyond the pleading, prima facie, cannot be accepted.

13. Now coming back to the question of mental cruelty, in respect of the cases wherein reports have been made by the wife eventually resulted into acquittal. The law laid down by the Supreme Court in the matters of **G.V.N. Kameswara Rao vs. G. Jabilli**⁴ and **K. Srinivas Rao vs. D.A. Deepa**⁵ would be relevant.

14. In case of **G.V. N. Kameswara Rao vs. G. Jabilli**⁶, the Supreme Court held as under :-

12. ... whether the acts committed by the counter-petitioner amount to cruelty, and it is to be assessed having regard to the status of the parties in social life, their customs, traditions and other similar circumstances. Having regard to the sanctity and importance of marriages in a community life, the Court should consider whether the conduct of the counter-petitioner is such that it has become intolerable for the petitioner to suffer any longer and to live together is impossible, and then only the court can find that there is cruelty on the part of the counter-petitioner. This is to be judged not from a solitary incident, but on an overall consideration of all relevant circumstances.

15. The cruelty further can be said as an act committed with an intention to suffering by the opposite party. It further held that the false police complaint and consequent loss of reputation and stand

4 (2002) 2 SCC 296

5 (2013) 5 SCC 226

6 (2002) 2 SCC 296

in the society at the instance of one spouse would also amount to cruelty.

16. Further the Supreme Court in the case of **K. Shrinivas Rao vs. D.A. Deepa**, has laid down the parameter of mental cruelty, which reads as under:-

11. In **Samar Ghosh**⁷ this Court set out illustrative cases where inference of “*mental cruelty*” can be drawn. This list is obviously not exhaustive because each case presents its own peculiar factual matrix and existence or otherwise of mental cruelty will have to be judged after applying mind to it. We must quote the relevant paragraph of **Samar Ghosh**⁷. We have reproduced only the instances which are relevant to the present case (SCC pp. 546-47, para 101)

“**101.** 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) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) * * *

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one

⁷ Samar Ghosh V. Jaya Ghosh, (2007) 4 SCC 511

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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 miserably 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)-(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 and longer, may amount to mental cruelty.

(xi)-(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.”

17. The examination of the facts of this case would show that the wife has lodged a complaint under Section 498-A, 506-B of IPC r/w Section 4 of the Dowry Prohibition Act. The husband and the family members of the husband passed through the trial and suffered a

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conviction by the Court of Chief Judicial Magistrate. Subsequently, having challenged the same in the appeal, the Sessions Court acquitted them of the charges. The existing fact suggest that there are no chances of settlement and because of the report and the counter report of the allegations of each other, and there is an irretrievable break down of the marriage. It is obvious when the husband and the family members passed through the trial, the mental agony and the damage caused to their reputation in the society cannot be compensated and in appropriate cases the parties may lose their healthy way of life for all the time and to come.

18. Under these circumstances and in view of the discussions herein above, the appeal is liable to be and is hereby allowed.

19. Accordingly, judgment dated 01.02.2019 passed by the Family Court is set aside. The marriage between the parties solemnized on 21.06.2010 is dissolved by a decree of divorce. In facts of the case to avoid the multiplicity of proceedings and repetition of litigation time and again it is directed that the appellant/husband shall pay Rs. 10,000,00/- (Ten Lac) a permanent alimony as one time settlement for all future claim including the claim for Stridhan by wife. No order as to cost.

20. Decree be drawn accordingly.

Sd/-
(Goutam Bhaduri)
Judge

Sd/-
(Rajani Dubey)
Judge

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