

HIGH COURT OF MADHYA PRADESH**Bench: Hon'ble Shri Justice Rohit Arya & Hon'ble Shri Justice Binod Kumar Dwivedi****Date of Decision: 13th February 2024**

FIRST APPEAL No. 558 of 2023

Xxx ...APPELLANT**VERSUS****Xxx ...RESPONDENT****Legislation:**

Section 19 of the Family Courts Act, 1984

Section 13 of the Hindu Marriage Act (HMA)

Subject: Matrimonial dispute involving the appellant's plea for divorce on the ground of mental and physical cruelty, initially dismissed by the Family Court, and the subsequent appeal.**Headnotes:**

Divorce on Grounds of Cruelty – Appellant (wife) appealed against Family Court's dismissal of her plea for divorce under Section 13 of HMA, citing mental and physical cruelty by the respondent (husband) – Conduct of the respondent, including physical assault, mental harassment, and unfounded allegations against the appellant's character, led to the appeal. [Paras 3, 3.1, 4, 7.13, 7.14, 7.23]

Evidence of Cruelty – Appellant's consistent testimony regarding physical assault and mental harassment, supported by a written police report and the respondent's conduct in previous legal proceedings – Respondent's allegations in his divorce suit substantiated claims of mental cruelty. [Paras 3, 3.1, 7.14, 7.15, 7.18, 7.23]

Unsubstantiated Claims of Stridhan – Appellant's claim for Stridhan (property and cash given at marriage) not supported by reliable evidence, leading to no order on this matter – Parties advised to seek legal recourse if necessary. [Para 7.26]

Legal Principles on Cruelty – Consideration of Apex Court judgments on mental cruelty in matrimonial matters – Definition of cruelty, its impact on mental health, and the inference of cruelty from circumstances. [Paras 7, 7.1-7.11]

Appeal Outcome – High Court set aside the judgment of the Family Court and decreed the suit in favor of the appellant, granting divorce on the ground of cruelty as per Section 13(1)(ia) of HMA – Marriage between parties dissolved. [Para 7.26]

Referred Cases:

- Shobha Rani v. Madhukar Reddi, (1988) 1 SCC 105 : 1988 SCC (Cri) 60
- V. Bhagat v. Mrs. D. Bhagat, (1994) 1 SCC 337 : AIR 1994 SC 710
- Ravi Kumar v. Julmidevi, (2010) 4 SCC 476
- K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226
- Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511
- Naveen Kohli v. Neelu Kohli, (2006) 4 SCC 558
- A Jayachandra v. Aneel Kaur, (2005) 2 SCC 22
- Ramchander v. Ananta, (2015) 11 SCC 539
- N.G. Dastane v. S. Dastane, (1975) 2 SCC 326 : AIR 1975 SC 1534

Representing Advocates:

Shri Prashant Sharma for the appellant

Shri Jitendra Sharma for the respondent

J U D G M E N T

The appellant/wife has preferred this appeal under Section 19 of the Family Courts Act, 1984 assailing the judgment and decree passed by the Principal Judge, Family Court, Sheopur in Case No. RCS/HM/19/2022 on 13.01.2023, whereby the suit filed by the appellant under Section 13 of the Hindu Marriage Act (for short hereinafter shall be referred as “HMA”) for the relief of divorce has been dismissed.

2. It is undisputed that appellant/wife Smt. Kalpana Jaat and respondent/husband Balveer Singh are husband and wife. Their marriage was solemnized as per Hindu traditions/customs on 31.05.2005. It is also undisputed that out of their wedlock, first daughter Nikita was born in 2007 and second daughter Divyanshi was born in 2014.

2.1 It is also an admitted fact that appellant/wife is in Government service on the post of Samvida Sikshak Grade-3 since 2006. It is also an admitted that due to the disputes and differences between appellant and respondent, they are residing separately since 01.04.2019. It is also admitted that appellant/wife Kalpana Jaat (AW-1) had lodged a written report at Police Station Kotwali District Sheopur on 29.09.2018 against the respondent/husband for physical and mental cruelty meted out to her. It is also not in dispute that respondent/husband had filed a civil suit under Section 13(a) (sic) of HMA on 27.08.2019 against appellant/wife for divorce on the ground of cruelty which was registered as Case No.70/2019 H.M.A., but after appearance and filing of written statement by appellant/wife Kalpana Jaat when issues were framed and the suit was fixed for evidence, the respondent/husband (applicant in that case) withdrew the case on 15.12.2021.

3. In nutshell, the facts as alleged by the appellant/wife in her plaint before the learned Family Court are that after her appointment as Samvida Sikshak Grade-3, behaviour of the respondent slowly changed. He started doubting and levelling unfounded allegations on her and also harassing her mentally & physically. When on 28.09.2018, some person passed by in front of house of their door, respondent started arguing and assaulted her with a *Mogri* (short thick wooden stick used for cleaning clothes) causing injury on several parts of her body. She also sustained fracture in her hand. She reported the incident in writing to the Police Station Kotwali District Sheopur on 29.09.2018, but due to pressure of the relatives and tendering of apology by the respondent, she did not press for action on that report.

3.1 After that incident, for some time behavior of the respondent remained normal, but thereafter he again started hurling filthy abuses on her and also started beating her. In the month of April 2019, the respondent, after beating her and her daughters, expelled them from matrimonial house. The appellant thereafter for some time resided in rented accommodation and with her parents. Now she has managed to construct a house on a plot in Vikas Nagar raising funds from loan taken from Bank and presently she is residing in that house along with her daughters. There has been no physical relations between the appellant and respondent since 01.04.2019.

3.2 She has further stated that the respondent in the suit filed by him under Section 13(a) of HMA levelled so many unfounded allegations against her including that she remained busy on whatsapp and facebook messenger with unknown persons. The respondent after collecting data of some mobile numbers through office of the Superintendent of Police, Sheopur, submitted the same in that case. Fed up with the allegations and unwanted activities of

the respondent, she gave her oral consent for divorce before the Court. On this, the respondent withdrew his case from the Court on 15.12.2021. Thus, being mentally and physically harassed from the unfounded allegations of the respondent, now she is unable to continue marital relationship with respondent/husband. She is also entitled to get back her stridhan: TV, fridge, Sofa, bed, mattress and other household items of Rs.3,00,000/-, jewellery of Rs.5,00,000/- along-with cash of Rs.3,00,000/- from the respondent, which were given by her father at the time of her marriage. On these premises, she has prayed for dissolving the marriage solemnized on 31.05.2005 with a direction to the respondent to return her Stridhan, jewellery and cash as mentioned herein above.

- 3.3** The respondent in his written statement has specifically stated that at the time of marriage, the appellant was studying in B.A. first year. He helped in pursuing her studies of B.A., M.A. and D.Ed. and after that in getting appointed her on the post of Samvida Sikshak Grade-3. He always encouraged and helped her by providing her physical and monetary aid in progression of her career. On 28th September, 2019 when he objected and stopped appellant from having conversation on mobile phone, in fit of anger, she scuffled with him, assaulted him by Mogri, damaged the washing machine and also attempted to get her injured by hitting her head. After this, the appellant called her father and brother who forcibly expelled the respondent from his house. For about 40 days he was on the road as she did not allow him to enter home.
- 3.4** It is further alleged by the respondent that when appellant had gone to her maternal uncle's house at Halgavdakhurd, she fell down from the scooty and sustained fracture in her hand. When he was taking her to doctor Lalit Sharma for treatment, purse of the appellant was with him. On perceiving vibrations, when he took out her mobile phone from the purse, the appellant got bewildered, suddenly snatched the mobile phone from him and also bitten him.
- 3.5** The plot situated at Vikas Nagar was purchased by him pledging the land of his brother. For raising construction on that plot, he also sold his car and took loan from the market, but due to paucity of funds when he told the appellant that further construction of the house may be carried out after harvesting season, she got annoyed. On 1.4.2019 she abused him and after calling her father and brother left matrimonial home along with her daughters and all Stridhan; jewellery and domestic items. He has not levelled any allegation on her character in the suit filed by him under Section 13(a) of the Hindu Marriage Act. The respondent always loved and till date loves her. He has

neither committed any cruelty nor has ever attempted to defame her. Due to some differences between them, she has filed the suit for divorce on false ground which deserves dismissal.

3.6 On the pleadings of the parties, learned Family Court framed issues, giving opportunity to the parties to adduce evidence in support of their pleadings and after affording reasonable opportunity of hearing, passed the impugned judgment and decree which gave rise to present appeal.

4. Learned counsel for the appellant submits that after appellant joined on the post of Samvida Sikshak Grade-3, the respondent started doubting on her character and on baseless allegations started harassing her physically and mentally. She has been off and on physically assaulted by the respondent. Compelled by the circumstances, she filed a written report on 29.9.2018 at police Station Kotwali Sheopur against the respondent but to save her matrimonial relations and under pressure of her family members and relatives she did not press that application, but even after that there was no behavioural change in respondent. On 1.4.2019 after physically assaulting the appellant and her daughters he expelled them from matrimonial house and since then she is residing with her daughters separately in the house got constructed by her. The respondent levelled so many unfounded allegations in the plaint filed under Section 13(a) of the HMA which was registered as 70/2019 H.M.A. When she appeared in the Court and controverted the allegations by filing written statement, the respondent having no evidence to prove his case withdrew it on 15.12.2021 and when the appellant filed the suit for divorce on the ground of mental and physical cruelty, the respondent desperately opposed it misusing his position as practising advocate at Civil Court, Sheopur. This is in itself an instance of cruelty against the appellant; therefore, she deserves for the relief of divorce as prayed for.

5. Per contra, learned counsel for the respondent submits that the respondent has always remained helpful to the appellant and after marriage he helped her in pursuing her studies and also in her career progression in teaching line and got her appointed as Samvida Sikshak Grade-3. He has never caused any mental or physical cruelty to the appellant. General wear and tear of family life has been exaggerated for encompassing it in the term “mental cruelty”. The appellant has filed this suit for divorce on baseless allegations. Learned trial Court duly appreciated the evidence on record and found that one and two instances of dispute and quarrel between the husband and wife does not constitute cruelty as mentioned in Section 13 of the Act for the decree of divorce, and therefore, dismissed the suit which is neither illegal nor perverse. The appellant does not deserve for any relief as prayed for by

her. The appeal filed by her has no substance and therefore may be dismissed.

6. Heard learned counsel for the parties at length and perused the record.

7. Before adverting to the facts of the case in hand, it is pertinent to consider the legal provisions under HMA and also exposition of law as propounded by the Hon'ble Apex Court in catena of judgments relating to decree of divorce on the ground of mental cruelty.

7.1 Word "cruelty" has not been defined in the H.M.A. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. 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

7.2 The cruelty simpliciter is now a ground for divorce under Section 13 of the HMA. Section 13 of the HMA provides, so far as it is material:

"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—

(i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty; or"

7.3 In case of **Shobha Rani v. Madhukar Reddi, (1988) 1 SCC 105 : 1988 SCC (Cri) 60 at page 108** the Apex court has made some observations with regard to the term cruelty which may profitably be reproduced here as they are still relevant :

"4. Section 13(1)(i-a) uses the words "treated the petitioner with cruelty". The word "cruelty" has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court will have no problem to determine it. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or

considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

5. It will be necessary to bear in mind that there has been a marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes 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. We, the judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as Lord Denning said in *Sheldon v. Sheldon* [(1966) 2 All ER 257, 259] “the categories of cruelty are not closed”. 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.”

7.4 In case of **V. Bhagat Mrs. D. Bhagat, (1994) 1 SCC 337:**

AIR 1994 SC 710, Supreme Court in para 16 has held as under:-

“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.”

7.5 Similarly in case of **Ravi Kumar v. Julmidevi, [(2010) 4 SCC 476]** the apex court reiterated that cruelty in matrimonial cases may be of so many forms. Para 19 to 21 may be reproduced to elucidate the concept of cruelty in matrimonial cases:

“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. That possibly explains why Lord Denning in *Sheldon v. Sheldon* [(1966) 2 WLR 993 : (1966) 2 All ER 257 (CA)] held that categories of cruelty in matrimonial cases are never closed.

21. This Court is reminded of what was said by Lord Reid in *Gollins v. Gollins* [1964 AC 644 : (1963) 3 WLR 176 : (1963) 2 All ER 966 (HL)] about judging cruelty in matrimonial cases. The pertinent observations are : (AC p. 660)

“... In matrimonial cases we are not concerned with the reasonable man as we are in cases of negligence. We are dealing with this man and this woman and the fewer a priori assumptions we make about them the better. In cruelty cases one can hardly ever even start with a presumption that the parties are reasonable people, because it is hard to imagine any cruelty case ever arising if both the spouses think and behave as reasonable people.”

The aforesaid passage was quoted with approval by this Court in *N.G. Dastane (Dr.) v. S. Dastane* [(1975) 2 SCC 326] ”.

7.6 The above observations are intended to emphasize 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* [(1963) 2 All ER 966, 972] : “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.”

7.7 Chandrachud, J. (as he then was) in *N.G. Dastane v. S. Dastane* [(1975) 2 SCC 326, 338 : AIR 1975 SC 1534 : (1975) 3 SCR 967, 978] in para 32 observed as:

“The court has to deal, not with an ideal husband and an ideal wife (assuming any such exist) but with the particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court for, even if they may not be able to drown their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures.”

7.8 In case of **Samar Ghosh Vs Jaya Ghosh**[(2007) 4 SCC 511] allowing the appeal, the Supreme Court in para 98 to 101 has held as under:

“**98.** On proper analysis and scrutiny of the judgments of this Court and other courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of “mental cruelty”

within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

99. 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 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 while taking aforementioned factors in consideration.

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) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(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) **Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of**

conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(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) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(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) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(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."**

7.9 It has also been held in **Samar Ghosh (supra)** where on facts there has been irretrievable breakdown of marriage, the party opposing the divorce and not letting go the other party free of the matrimonial bond, would be causing mental cruelty to the other party. This makes considerable sense in the Indian context where to reach finality by exhausting the remedy of appeals may take several years. In such situation the party opposing the grant of divorce may, in some cases, be doing so only out of spite, either to harass the other party or prevent it from remarrying or out of sheer cussedness. That may indeed also confirm the allegation that such party had been causing mental cruelty, and was now intent on causing further mental cruelty by opposing the divorce.

7.10 Relying upon judgment in **Shobha Rani (supra)** in **A JAYCHANDRA Vs. ANEEL KAUR** [(2005) 2 **SCC** 22] allowing the appeals, the Supreme Court in para 10 to 14 held as under:

“10.The expression “cruelty” has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

11. The expression “cruelty” has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. (See *Shobha Rani v. Madhukar Reddi* [(1988) 1 SCC 105 : 1988 SCC (Cri) 60 : AIR 1988 SC 121] .)

12. To constitute cruelty, the conduct complained of should be “grave and weighty” so as to come to the conclusion that the petitioner 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”. The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the court that the relationship between the

parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

13. The court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

14. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hypersensitive approach would be counterproductive to the institution of marriage. The courts do not have to deal with ideal husbands and ideal wives. It has to deal with a particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court. [See *N.G. Dastane (Dr.) v. S. Dastane* [(1975) 2 SCC 326 : AIR 1975 SC 1534] .]"

7.11 In case of **Ramchander v. Ananta**, [(2015) 11 SCC 539] Supreme court in para 10 has held that cruelty can be inferred from the fact and circumstances

“10. The expression “cruelty” has not been defined in the Hindu Marriage Act. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes a reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Cruelty can be physical or mental. In the present case there is no allegation of physical cruelty alleged by the plaintiff. What is alleged is mental cruelty and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. *It is settled law that the instances of cruelty are not to be taken in isolation but to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the plaintiff has been subjected to mental cruelty due to conduct of the other spouse.*

In the decision in *Samar Ghosh case* [*Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511] this Court set out illustrative cases where inference of “mental cruelty” can be drawn and they are only illustrative and not exhaustive.”

7.12 In the light of the law propounded by the Apex Court in the aforementioned judgments, we would dwell upon factual matrix of the case in hand for assessing whether the appellant could make out a case for divorce on the ground of “cruelty” as given in Section 13(1)(ia) of HMA and whether learned Family Court has failed to appreciate the evidence adduced by the parties in right perspective as per the prevailing norms of law.

7.13 Appellant Kalpana Jat (AW-1) reiterating the facts alleged in the plaint has stated in her statement before the Court that after her appointment on the post of Samvida Shikshak Grade III when she started going school for her duties, the behaviour of her husband/respondent changed and he started doubting her. He was frequently questioning as to why she talks to anyone, as to why she looks towards anyone. On 28.9.2018 when she was cutting vegetables on her house for cooking food, some person passed by in front of their house, the respondent enquired from her about that person. When she replied that she did not know him, he started quarreling with her. He locked her elder daughter Nikita in the bathroom and assaulted her with *Mogri* due to which her hand got fractured and she also suffered injuries on her head and legs. She reported the incident by filing complaint at police Station, Kotwali, Sheopur. After that, her family members came there and on their advice and persuasions, she did not press that report, but even after that incident, the cruel behaviour of the respondent/husband towards her continued. He was repeatedly raising disputes and harassing her. On 1.4.2019 her husband after beating her and her daughters expelled them from matrimonial house. Thereafter she started living in rented accommodation and when she managed to get constructed a house at Vikas Nagar taking loan from the bank, she along with her daughters moved there for residing.

7.14 Substantiating the pleadings in the plaint, she has further stated that respondent had filed a suit for divorce levelling unfounded allegations against her and after some time he withdrew that case. Documents relating to the suit filed by the respondent are Ex.P/2 to Ex.P/4. He has scandalized her levelling unfounded allegations on her character. She has been continuously harassed by the respondent which brought unbearable ignominy to her, therefore, she is unable to live with the respondent/husband and under such compelling circumstances she filed the suit.

7.15 In cross-examination, her testimony could not be shaken so as to make her statement unbelievable. The written report (Ex.P/1) filed by the appellant

is on record which itself is proof of her pain which she was suffering at the hand of the respondent. She has given a natural explanation for not pressing that report just to save her family life. She has specifically stated in cross-examination that just after marriage her husband started doubting on her character. She has controverted the suggestion that her husband was giving her due respect and never harassed her. She has also refuted the suggestion that she was not expelled from the matrimonial house by the respondent on 1.4.2019.

7.16 The respondent/husband Balveer Jat (NAW-1) in unsuccessful attempt to belie the testimony of appellant has stated before the Court that he always treated the appellant/wife with due respect and till 2018 there was no dispute between them and if at all there was any dispute, it was in the nature of routine domestic affair which happens in each and every family. He has further stated that in August, 2018 when the appellant had gone to her parental house on the occasion of Raksha Bandhan festival, she fell down from the Scooty and her hand got fractured and from that day disputes started between them. When respondent was taking appellant for the treatment of fracture to Dr. Lalit Sharma purse of the appellant was with him. When he tried to take out mobile of the appellant on perceiving vibrations, the appellant caught hold of her left hand and bitten him. Appellant herself started disputes and after calling her father left matrimonial house along with domestic items, Stridhan and her daughters and since then she is residing separately without sufficient reason. On 1.4.2019 neither he assaulted appellant or her daughters nor expelled them from the house. He has also stated that he did not level any allegation on her character in the suit for the relief of divorce filed by him. To show his *bone fide*, he has further stated that he helped the appellant in pursuing her studies and getting her appointed as Savida Shiksha Grade III. He was also taking her to the school and bringing her back till 2012.

7.17 If we peruse in totality, the plaint filed by respondent/husband for the relief of divorce in HMA case no.70/2019, it is amply clear that he was having vigil eye over her and raising objections when she was talking to anyone on mobile phone stifling her privacy which gave rise to frequent disputes and quarrel between them. In paragraph 3 of the plaint, the respondent/husband has alleged that she was keeping herself busy on mobile, Whatsapp, Facebook messenger for hours with unknown persons and was hurling abuses on him when he was objecting. These allegations clearly indicate that respondent/husband was having serious doubt on her character. This type of allegation give clear cut inference that respondent/husband has levelled allegations against her character in the plaint Ex.P/2 as alleged by the

appellant/wife which constitutes cruelty in itself. The Apex Court in the case of **K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226** in para 16 in regard to mental cruelty has held as under :

“**16.** Thus, to the instances illustrative of mental cruelty noted in *Samar Ghosh [(2007) 4 SCC 511]*, we could add a few more. *Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.*” **7.18** It has been vehemently contended from the side of the respondent that words used in the plaint (Ex.P/2) *per se* does not reveal that respondent has made any allegation on the character of appellant/wife, however, this contention does not find approval of this Court in the light of the decision of the Apex in the case of **Ramchander (supra)** where in paragraph 10 quoted here in above it has been held that it is settled law that the instances of cruelty are not to be taken in isolation but to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the plaintiff has been subjected to mental cruelty due to conduct of the other spouse.

7.19 It is also pertinent to mention here that once respondent himself filed a suit for divorce before the Family Court and in mid way withdrew it sniffing his failure in the case and when the appellant filed this case for divorce against him, he is vehemently resisting it just to get engaged the appellant in litigation for life long which is not uncommon in this type of cases. Here the observation by the Apex Court in **Naveen Kohli v. Neelu Kohli, (2006) 4 SCC 558** can profitably be referred where the Supreme Court on p. 582 in para 83 was constrained to conclude:

"Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our minds that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again."

7.20 Learned Family Court in paragraphs 24 to 26 of the impugned judgment has failed to appreciate the allegations in the plaint (Ex.P/2) in right perspective. It has not considered the pleadings in totality to reach the right conclusion.

7.21 Respondent/husband Balveer Singh (NAW-1) has stated in paragraph 5 of his examination-in-chief that there was no dispute between them till 2018. The dispute arose in the month of August, 2018 when appellant had gone to her parental house where she met with an accident and sustained fracture in

her hand. In paragraph 8 he has stated that when he was taking the appellant to Dr. Lalit Sharma for the treatment of fracture, on perceiving vibration in the mobile phone of appellant, when he tried to take out the mobile phone, the appellant caught hold of his left hand and also bitten him. From that day, serious disputes started between them. The respondent has not adduced even iota of evidence that he ever reported this incident to his relatives or convened any Panchayat for conciliation.

7.22 It is undisputed that respondent had filed a suit for divorce against appellant on 27.8.2019. In plaint (Ex.P/2) paragraph 3 he has stated that after one year of joining of the appellant on the post of Samvida Shikak Grade III, she started treating him with cruelty stating that he is not earning anything and is depended on her. She was also hurling abuses on him before his guests. It is also undisputed fact that appellant/wife had joined her services as Samvida Shikshak Grade III in the year 2006. As such, the statement of the respondent in para 5 of his examination-in-chief that after marriage upto 2018 there was no dispute between them clearly appears to be false. If there were no differences and disputes between them, then why respondent had filed the suit for divorce against the appellant on 27.8.2019 has not been explained by the respondent.

7.23 Filing of the suit by the respondent for divorce with several allegations of misbehaviour and unwanted intimacy with unknown person amply proves the case of appellant that from the year 2006 when the appellant joined on the post of Samvida Shikshak Grade III and was going to school for her duties, respondent started doubting on her character, as alleged and substantiated by her. which is also supported by the pleadings made by the respondent in para 3 of the plaint filed by him. Thus, statement of the respondent in this regard is not reliable. It is also a common knowledge that for normal instances of cruelty, no Indian wife of the society to which appellant belongs would have filed a suit for divorce. These facts have not been properly analyzed by the Family Court, therefore, conclusion of learned Family Court in para 26 of the impugned judgment that there were mere general quarrel and dispute between the appellant and respondent which is only common wear and tear in life and it does not make out a ground for divorce under H.M.A, is not sustainable being not based on proper appreciation of evidence.

7.24 That apart, as mentioned hereinabove from 1.4.2019 the parties are living separately and there has been no physical relation between them for the last four and half years. All the efforts of mediation between the parties for living together as husband and wife have gone in vain which itself proves

that love is lost, emotions are dried up, their marriage has broken irretrievably and it has reduced to a mere fiction which is not the spirit of marriage. It has been held in **Samar Ghosh (supra)** that Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an Endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld.

7.25 From the discussion as aforesaid, we are of the considered view that learned Family Court has failed to appreciate the evidence adduced by the parties in right perspective, and therefore, the findings returned by the learned Family Court that appellant could not make out a case for divorce on the ground of cruelty cannot be approved.

7.26 Accordingly, while setting aside the judgment & decree passed by the learned Family Court, the suit for the relief of divorce on the ground of cruelty, as mentioned in Section 13(1)(ia) of the HMA is decreed in favour of the appellant. The marriage between the parties stands dissolved. So far as Stridhan in the form of jewellery, goods and cash allegedly given by the parents of the appellant are concerned, no reliable evidence has been adduced in this regard, therefore, no order is passed in this regard and parties if so wish can take recourse to law before appropriate forum.

The appeal stands allowed as indicated above.

Parties shall bear their own costs.

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