



HIGH COURT OF CHHATTISGARH AT BILASPUR

First Appeal (M) No.89 of 2018

Ashwan Kumar Sahu S/o Shree Achhelal Sahu, aged about 31 years, R/o Village Urga, PO Kudurmal, PS Urga, Tehsil & District Korba, Chhattisgarh.

---- Appellant/Applicant

Versus

Smt. Savita Sahu W/o Ashwan Sahu, aged about 27 years, R/o village Urga, PS Kudurmal PS Urga, Tehsil and District Korba, Chhattisgarh. At present R/o village Jamnipali, Purani Basti, NTPC Korba, Tehsil Katghora, District Korba, Chhattisgarh.

---- Respondent

For Applicant	:	Shri Manoj Paranjpe and Shri Bharat Sharma, Advocates.
For Respondent	:	Shri Khulesh Sahu, Advocate along with respondent-Smt. Savita Sahu in person.

Hon'ble Shri Justice Ramesh Sinha, CJ

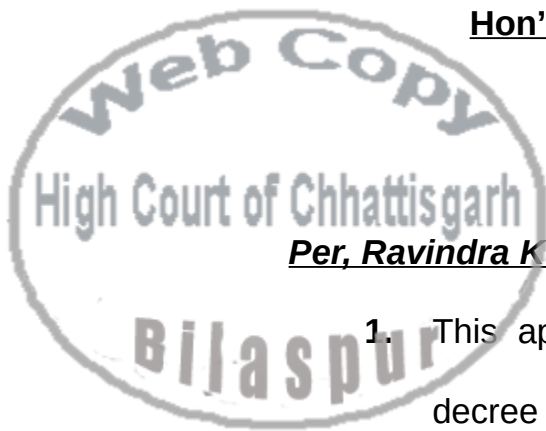
Hon'ble Shri Justice Ravindra Kumar Agrawal, J

Judgment Reserved on : 14.12.2023

Judgment Delivered on : 18.03.2024

Per, Ravindra Kumar Agrawal, J

1. This appeal is directed against the impugned judgement and decree dated 20-03-2018 passed by learned Family Court, Korba, District Korba, in Civil Suit No. 148-A/2014, Ashwan Kumar, Sahu Vs. Smt. Savita Sahu, whereby the application for grant of decree of divorce filed by the appellant/husband has been dismissed.
2. The appellant husband has filed an application under Section 13 of the Hindu Marriage Act, 1955, before the learned Family Court, Korba, for grant of decree of divorce from the respondent/wife on the ground of cruelty. In the application, it is pleaded that the marriage between the parties has been solemnized on 07-05-2008 as per Hindu rites and customs. At the time of marriage, the applicant was employed as General Mazdoor in South Eastern





coalfields Ltd. and was posted at Gevra project. After the marriage, the respondent/wife got admission in B.Sc. final year at Kamala Nehru College, Korba. On the next day after marriage i.e. on 08-05-2008, the applicant/husband had arranged the marriage reception at village Urga but the respondent/wife started quarreling on that day by saying that they had not called her parents in the reception. As per the customs of the family, until there was the meeting with the co-father (*Samdhi-Bhet*), the parents of the bride did not visit the house of the groom. Somehow, she has got pacified by the relatives of the applicant/husband. From the next day, the respondent/wife persisted to go to her parent's house and then she was left to her parent's house by the applicant/husband on 17-05-2008. Thereafter, she evaded to return to her matrimonial house despite repeated requests made by the applicant/husband. On 17-07-2008, the applicant's husband, along with his parents went to the house of the respondent/wife and tried to bring her back along with him but she was not willing to come with the applicant/husband and ultimately, she came along with the applicant/husband when she reassured. After returning, she started quarrelsome behaviour with the applicant/husband and in-laws on the grounds that they had given a cheap saree to her mother, no Safari Suit was given to her father, fewer crackers were explosion at the time of marriage and her family have got ashamed with the behaviour of the applicant/husband at the time of marriage. By the quarrelsome behaviour of the





respondent/wife, the applicant went through mental trauma. When she was admitted in B.Sc. final year, she insisted on going to college from Jamnipali and not from Urga, and regular takes to quarrel with the applicant/husband. She used to go to her parents' house from college regularly. It was also pleaded that while staying with the applicant/husband, the respondent/wife was not cooking food and not doing the domestic work. Her father has also threatened the applicant/husband that he has given his daughter a lavish life and if they do not accept it, he will detain them in a police case. The parents of the respondent/wife were pressured her husband to reside as *Ghar-Jamai*. On 20-02-2009, she went to her parent's house for giving examination and returned to her matrimonial house on 03-06-2009 after a repeated request made by the applicant/husband and as and when she came to her matrimonial house, she started persisting on residing separately from in-laws and started misbehaving with them. She was not taking care of her husband and threatened to be roped in a false case of dowry demand. On 08-10-2009, the applicant/husband made a police complaint against the respondent/wife. The applicant/husband took her for treatment at SECL Hospital when she was pregnant, but the respondent/wife insisted he to get her treatment from Dr. Rohit Banchhor (Gynecologist), at Korba. On 31-03-2010, the respondent/wife delivered a male child but due to her faulty treatment, she was suffering from gynecological problems. She was referred to Dr. Subodh Thawait and when he disclosed the complications, the





applicant/husband took her to Nehru Centenary Hospital, Korba, for her treatment where she was admitted on 07-04-2010. From Nehru Centenary Hospital, her parents have taken her to their house on 29-04-2010. On 18-05-2010, the 6th-day celebration after birth of the child was held in the house of the applicant/husband, but the respondent/wife had come on the same day at about 11.00 AM and the next day returned along with her parents. On the occasion of the marriage of the younger brother of the applicant/husband, the respondent/wife came to her matrimonial house on 26-05-2010 and returned on 28-05-2010 which shows that she does not want to live at her matrimonial house. She went to her parent's house from 11-08-2010 to 12-08-2010, 23-08-2010 to 29-08-2010 and 09-09-2010 to 29-09-2010 and ultimately said that if he will leave her parents then only, she would reside with him. It was further pleaded that on 08-12-2010, there was a community meeting in the house of the respondent/wife and the said meeting, the respectable persons of the community reassured her and then on 23-12-2010, the applicant/husband took her to his house. She showed her angerness at the holding of community meeting and threatened him to have taught them a lesson.

3. The applicant/husband took her to Christian Medical Hospital, Vallore, on 29-04-2011 for her treatment where she was being treated again, she underwent an operation and after recovering from it, they returned on 20-05-2011. Thereafter, her parents have taken her for 15-20 days for her recovery and rest. Even after 15-





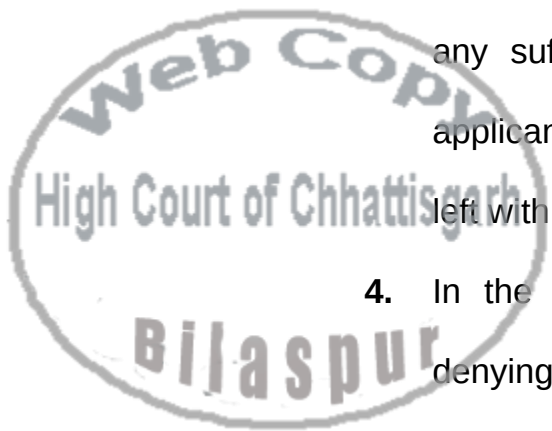
20 days she was not returned and said through mobile phone to the applicant/husband that she would come only if he was ready to reside separately from his parents. Thereafter, the applicant/husband took a house on rent at Dipka Basti and then the respondent/wife started residing with him from 07-10-2011. While staying at Dipka, the behaviour of the respondent/wife was furious and she regularly threatening that she would rope them in a police case. In the meantime, the departmental quarter was allotted to the applicant/husband, and they went there on 21-02-2012. The behaviour of the respondent/wife was not changed, and she continued in misbehaving the applicant/husband and in-laws. When the applicant/husband was ill and his father came to their house to take him to the hospital, the respondent/wife did not give any respect to him and raised quarrels. When the incident was complained to the father of the respondent/wife, he along with one Heera Lal and Mani Ram came there and assaulted the applicant/husband. On 11-04-2012, when the applicant/husband went to his duty, the father of the respondent/wife took her along with him and the keys to the house were left with his neighbour Vinod Rathore. On 11-04-2012, an application was given to the Community Panchayat and on 19-04-2012 he moved an application before Parivar Paramarsh Kendra. On the application of the applicant/husband, a community meeting was convened at J.R.C. Club, on 27-05-2013 and both parties were convinced by the community members and after their reassurance, they again started living





together from 29-05-2012. Thereafter, on 10-06-2012, when the applicant/husband went to his duty, the respondent/wife lodged a report to the police regarding the demand of dowry and threatening to the applicant/husband. On the report of the respondent/wife, the applicant was remained in jail from 11-06-2012 to 20-06-2012 and his parents were from 11-06-2012 to 18-06-2012 and faced agony. The applicant/husband tried his level best to keep the respondent/wife with him, but the respondent/wife has not stopped her quarrelsome behaviour and now, there is no chance of their reunion and cohabitation. She has deserted herself from the company of her husband without any sufficient reason ultimately led to a situation where the applicant/husband was subjected to extreme mental agony and left with no other option but to seek a decree of divorce.

4. In the written statement filed by the Respondent/wife, while denying all the adverse allegations, the respondent/wife has submitted that on the assurance given by the in-laws, the respondent/wife has continued her studies even after her marriage, meeting of co-father (*Samdhi-Bhet*) and *Gawna* was performed as per their rites and customs. After some time of marriage, her father-in-law started talking that they were under the impression that since the respondent/wife is the lonely daughter and therefore they will get more dowries including a Car because his son is employed in SECL. At the time of opening of gifts, they were taunting her and started demanding a dowry article and a Car. They started demanding money to construct the





house over the vacant land adjoining their existing house by saying that her father is an NTPC employee, and he has sufficient money with him. When she refused to do so, they started threatening to leave the house and directly demanding money from her father. Although, the respondent/wife was admitted to the college as a regular student she appeared only at the time of practical and written examination. The behaviour of her husband was rude and started beating her. She was doing all the domestic work in her house and when she was pregnant and went to the hospital for a check-up, he left her alone. The respondent/wife is not in knowledge of the police complaint made by the applicant/husband. When she was pregnant and feeling weak, she was taken to Gevra hospital where she was admitted in the hospital at that time her husband and in-laws left her alone. She was admitted at Gevra Hospital from 30-09-2009 to 04-10-2009. She was not provided proper treatment by her in-laws who have not taken her to hospital whenever she required treatment. At the time of delivery also, her condition was very serious and therefore she sustained a gynec problem. Her husband himself has taken her to Dr. Rohit Banchhor and was pressurized for normal delivery. On 31-03-2010 she delivered a male child at Dr. Rohit Banchhor's hospital. After the delivery, she was advised to complete rest and to avoid using of stairs, but the applicant/husband and her in-laws have kept her on upper floor of the house and pressured her to use the toilet either at the second floor or ground floor. Of the frequent use of stairs, she has





problem in her body, and she became unable to sit properly. She was again admitted at Gevra Hospital from 06-04-2010 to 29-04-2010 and after discharge from hospital, she went to Uрга. After discharge from the hospital, on the next day, she went to Jamnipali to her parent's house for 15 days but in the meantime, 6th day celebration after birth of her child and marriage of her brother-in-law were fixed by her in-laws. She was not recovered completely from her ailment and was not able to perform her routine work despite that she came to her matrimonial house to take part in the aforesaid ceremonies. At that time her mother also stayed with the respondent/wife who had been thrown out of her house in the night and her father had taken her along with him. After the marriage to her brother-in-law, her husband and in-laws have not permitted her to go to her parent's house for about 6 months and her husband beat her in between that period.

5 It is also pleaded that after about 6 months of previous surgery, she again required another surgery because the earlier surgery was not successful. She was in continuous ailment and required complete rest, but her husband and in-laws have not taken any care of her and taunt her that she is not doing any work. Again, her husband beat her and then her parents took her to hospital, and she was again admitted to the NTPC hospital from 07-12-2010 to 10-12-2010. She denied the allegation that she wanted to reside separately from her in-laws or ask her husband to reside separately from them. It was further pleaded that on the issue of milk feeding of her child, her in-laws have taunted her and asked





her to go from their house. They have not taken proper care of their child whenever he received injuries or required proper care. When her surgery went unsuccessful, she was taken to Vellore Hospital from where she returned to her matrimonial house and from where her parents took her alongwith them to Jamnipali. During their stay at Jamnipali, her husband regularly called her and asked her to return back and after about 15 days, she returned to her matrimonial house. Since the applicant/husband was facing difficulties in coming to Gevra from Urga in his workplace, he has taken a house on rent at Dipka Basti. After some time, the departmental quarter was allotted to him and started residing there. Whenever the applicant/husband went to her parents' house and returned from there, he used to beat her and often left her alone in the departmental quarter. He lodged a false complaint against her to the Sahu community and levelled false allegations where she was residing with him at that time. She was unaware about the complaint made against her. On being called by her husband, when her parents came to her house along with Mani Ram and Heera Lal, he threatened them to be roped in a police case and detained them in jail. With the intervention of the neighbours, the dispute was pacified but the next morning, her husband left her and went away from the house and said that he will not keep her with him. When her father asked him about the incident, he misbehaved with him. Thereafter, she came to her parents' house. She is unaware of the complaint made by her husband to the Panchayat or Parivar





Paramarsh Kendra. It was further pleaded that on 27-05-2012, the community meeting was convened at J.R.C. club in which the respondent/wife was pressurized to get divorce from her husband and upon various arguments, the decision to live together was taken and in furtherance thereof, she went to her matrimonial house on 29-05-2012. On the same day, again, her in-laws gave her threatening and ask her to live as per their whims or else she asked her to return along with her parents. The behaviour of her husband and in-laws became more furious because of the said community meeting and harassment was attaining to higher degree and now all of them started beating the respondent/wife. They regularly used to abuse her with filthy language. Various incidents of harassment and taunting are pleaded in her written statement. On 09-06-2012, she was brutally assaulted by her husband and in-laws which she received injuries all over her body and then on 10-06-2012, she lodged a police report. She was harassed by her husband and her in-laws, but she still wants to live with him because of her 5-year-old son. She does not want to divorce him and wants to live with him full of her dignity. She is being thrown out of his house by the applicant/husband after assaulting her. He is not taking any care of his son. Her father-in-law has performed a second marriage just after 2 months of the death of her mother-in-law and the applicant/husband also wants to get a second marriage after getting her divorce. He wants to get a divorce from her by making false allegation against her. Against the harassment given to her





by the applicant/husband, the criminal case under Section 498-A of I.P.C. is pending before the learned J.M.F.C., Korba. Therefore, the application of the applicant/ husband be dismissed.

6. From the pleadings of the parties, it was revealed that the husband was seeking a decree of divorce on the ground of cruelty and learned trial court framed an issue as to whether the appellant husband was subjected to cruelty by his wife after marriage.

7. The parties were allowed to lead oral as well as documentary evidence. Learned trial court, after recording evidence of the parties, came to the conclusion that none of the grounds as raised in the application alleging cruelty were made out and the suit of the applicant/husband is dismissed.

8. In the appeal, on 20-11-2019, the appellant filed application for taking additional evidence on record (**I.A. No. 01/2019**) by which the appellant/husband seeking permission to take the certified copy of the judgement dated 09-09-2019 passed in Cr.A. No. 28/2019 by Ist Addl. Sessions Judge, Korba, as additional evidence. On 17-03-2020, another application for taking additional evidence on record (**I.A. No. 2/2020**) is filed by the appellant/husband by which he seeks permission to take the copy of the complaint dated 08-10-2009 made by him to the Superintendent of Police, Korba, and police outpost Urga, Police Station Darri, complaint dated 11-04-2012 made to Sahu Community, Semipali, Urga, complaint dated 19-04-2012 made to Parivar Paramarsh Kendra, Korba, copy of the depositions of





Ram Prasad Sahu, Mani Ram Sahu and Savita Sahu, given in M.J.C. No. 88/2012 which was the proceeding under Section 125 Cr.P.C. as additional evidence on record. The third application of taking additional evidence on record (**I.A. No. 01/2021**) was filed by the appellant/husband on 19-02-2021 by which he seeks permission to take the certified copies of the judgement dated 11-04-2019 passed in Cr. Case No. 193/2015 by learned J.M.F.C., Korba, by which the father of the appellant/husband is acquitted from the charges but the appellant/husband was convicted under Section 498-A, 324 of I.P.C., the certified copy of the judgement dated 09-09-2019 passed in Cr.A. No. 31/2019 by the learned Ist Addl. Sessions Judge, Korba, by which the appeal of the respondent/wife against the judgement dated 11-04-2019 is dismissed. The fourth application of taking additional evidence on record is filed by the appellant/husband on 21-07-2022 (**I.A. No. 02/2022**) by which the appellant/husband seeks permission to take the copy of the order dated 11-02-2020 passed by this Court in Cr.R. No. 1233/2019 as additional evidence on record. By the order dated 11-02-2020, this court has partly allowed the Criminal Revision filed by the appellant/husband against his conviction under Section 324 of I.P.C. which is modified in conviction under Section 323 of I.P.C.

9. During the pendency of the appeal, on 04-07-2022, the respondent/wife has also applied to Section 24 of the Hindu Marriage Act, 1955, for grant of maintenance pendente lite and expenses of the proceedings along with the documents of order





dated 10-05-2019 passed in M.J.C. No. 88/2012 by the learned Family Court, Korba, Camp Katghora, which was the proceeding under Section 125 of Cr.P.C., copies of her medical treatment papers, salary slip of the appellant/husband.

10. On 18-07-2022, the appellant/husband filed his affidavit along with the documents of medical treatment papers of the appellant/husband, a copy of the order dated 10-05-2019 passed in M.J.C. No. 88/2012, a copy of the order dated 03-01-2022 passed by learned J.M.F.C., Katghora, Distt. Korba, in M.Cr.C. No. 107/2013 which was the proceeding under Section 12(1) of the Protection of Women from Domestic Violence Act, 2005, salary slip of the appellant/husband, investments/deposits details of the appellant/husband.

11. Assailing legality and validity of the judgement and decree passed by the learned family court, learned counsel for the appellant submits that, though the appellant had made very specific pleading about instances of cruelty, which were duly proved from the evidence led by the appellant/husband, the learned trial court did not appreciate in proper perspective and even though, on preponderance of probabilities, the appellant succeeded in proving various instances of cruelty, to which, he was subjected to, but, the suit was dismissed. Taking further his argument, learned counsel for the appellant submits that the wife had subjected the appellant/husband to cruelty in many ways. The respondent's wife had left her matrimonial house without informing her husband and in-laws. The respondent's wife





pressurized her husband to shift to another house, leaving her father-in-law and mother-in-law for no good reason. Her behaviour was quarrelsome with the appellant/husband and his parents from the very beginning. It is further argued that the attitude and behaviour of the respondent's wife towards her in-laws was extremely indifferent and disrespectful. Apart from many arguments, in support of the allegations of cruelty, one of the main arguments of the learned counsel for the appellant is that the case of cruelty is made out on the ground that the appellant and his parents were falsely implicated in a criminal case. It is argued that to take the upper hand in the pending dispute between the husband and wife, the respondent-wife lodged a false report at the police station, alleging the commission of offence of cruelty under section 498-A, 324 of IPC, which was completely false, motivated and concocted, due to which, the appellant and his parents had to face criminal proceedings, and at the initial stage, they were sent to jail also. He would further argue that later, the trial ended up in acquittal from the charge under section 498-A of IPC in favour of the appellant and the observations made by the learned trial court in various parts of the judgement of acquittal clearly show that the appellant was subjected to false, motivated and concocted allegations only to settle score. Relying upon the judgement of the Hon'ble Supreme Court in the case of **"K Srinivas versus K Sunita" 2014 (16) SCC 34**, and **"Smt. Mamta Srivastava versus Taresh Kumar Srivastava"**, 2009 L.T.C. 52, it has been argued that a false





accusation and institution of criminal case, which ultimately is found to be motivated, leading to acquittal, would itself constitute a basis of cruelty and decree of divorce was therefore, ought to be passed in favour of the appellant.

12. On the other hand, learned counsel for the respondent/wife as well as respondent/wife in person would support the impugned judgement and decree passed by the learned family court and argue that even though number of allegations have been levelled by the appellant, none of them are proved. He would argue that the learned family court has meticulously, examined every allegation of alleged cruelty and upon scrutiny of evidence, found that those allegations are not proved from reliable evidence. They would next argue that even the learned family court concluded that it is the wife, who has been subjected to cruelty by the husband. He would submit that the allegations that the wife had lodged a report as a measure of false accusation of the appellant/husband and his parents and that the complainant was concocted, is not reflected in the judgement passed by the learned trial court acquitting the appellant from the allegations of commission of offence under section 498-A of IPC, however, the appellant was ultimately convicted for the offence under section 323 of IPC by this court and thereby the alleged assault made by the appellant on his wife/respondent is proved. They would further argue that mere acquittal from section 498-A of IPC is not enough to say that the wife committed cruelty. He would further argue that the standard of proof required in a criminal case and a





civil case are different. He argued that, even though, in the criminal case, the allegations of cruelty were not found to be proved beyond a reasonable doubt, that would not mean that it was necessarily an act of false accusation to harass, therefore, it cannot be said that wife subjected the husband and his family members to cruelty. He would further submit that by the act of the appellant/husband, the respondent/wife has got ill, and her treatment is still continued and thereby she was subjected to cruelty by the appellant/husband. He has not taken any care of her or her son. In support of his submissions, learned counsel for the respondent has placed reliance on the case of “**K. Srinivas Rao versus D.A. Deepa 2013 (5) SCC 226**, “**Raj Talreja versus Kavita Talreja**” **AIR 2017 SC 2138**. Lastly, they would submit that whatever allegations have been levelled by the appellant/husband in the complaint and led in the evidence, are only like day-to-day dispute and ordinarily affairs of small and petty quarrel between the husband and wife, which could not be made a basis to grant decree of divorce, as held by the Hon’ble Supreme Court in case of “**Gurbux Singh, vs Harminder Kaur**”, **2010 (14) SCC 301**.

13. We have heard the learned counsel for the parties as well as the respondent in person and perused the record.
14. The coordinate bench of this court has considered the ground of cruelty for the grant of decree of divorce in **Vijay Kumar Gupta Vs. Smt. Kiran Bala**, decided on **29-11-2019** passed in **F.A.(M)**





No. 138/2012 and F.A. No. 116/2003. The relevant paras of the said judgement are as under:-

"21. We shall now examine the finding of the learned trial Court in the light of pleadings and evidence on record to find out whether the Court below has committed illegality in holding that the appellant-husband failed to prove cruelty. We have noted herein-above, number of small incidents have been pleaded by appellant-husband in the plaint which included respondent's insistence to reside with the husband at Bombay, her reluctance to reside with mother-in-law and brother-in-law, quarrelsome behaviour and tendency to frequently go to parental house and at times going to parental house after returning from place of posting of the husband, without attending mother-in-law and brother-in-law in the matrimonial house. In addition to the above, the appellant has strenuously put forth evidence that during the pendency of appeal against decree of restitution of conjugal rights, respondent- wife attempted to forcibly enter into the matrimonial house which led to disturbance of peace and the police arrived and then an unpleasant situation was created when husband was taken to police station, proceedings under Sections 107, 110 Cr.P.C. were drawn so much so that he had to remain in jail also. This particular incident and the conduct of the wife has been made the main basis by appellant- husband to make out a case of cruelty by submitting that by this conduct, respondent-wife harassed the appellant and all members of family, and thus committed cruelty. However, before adverting to the pleadings and evidence on record on the aspect of cruelty, we consider it apposite to refer to one of the celebrated decisions of the Supreme Court on what constitutes cruelty, in the case of Naveen Kohli (supra), wherein, a three-Judge Bench of the Supreme Court examined the concept of cruelty both in English and Indian law, in order to evaluate whether in the case in hand, a case of cruelty is made out or not. Cruelty as understand in the text and judicial pronouncement can be summarized as below :

"38...."Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such a 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."

39.... "Very slight fresh evidence is needed to show a resumption of the cruelty, for cruelty of character is bound to show itself in conduct and behaviour. Day in and day out, night in and night out."

40.... "It is true that the more serious the original offence, the less grave need be the subsequent acts to constitute a revival."

41.... "If the door of cruelty were opened too wide, we should soon find ourselves granting divorce for incompatibility of temperament. This is an easy path to tread, especially in undefended cases. The temptation must be resisted lest we slip into a state of affairs where the institution of marriage itself is imperiled."

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44..... "It is impossible to give a comprehensive definition of cruelty, but when reprehensible conduct or departure from the normal standards of conjugal kindness causes injury to health or an apprehension of it, it is, I think, cruelty if a reasonable person, after taking due account of the temperament and all the other particular circumstances would consider that the conduct complained of is such that this spouse should not be called on to endure it.

45...."No one has ever attempted to give a comprehensive definition of cruelty and I do not intend to try to do so. Much must depend on the knowledge and intention of the respondent, on the nature of his (or her) conduct, and on the character and physical or mental weaknesses of the spouses, and probably no general statement is equally applicable in all cases except the requirement that the party seeking relief must show actual or probable injury to life, limb or health. "

22.The Supreme Court also considered the principles of law crystallized by series of judgments of the Supreme Court rendered since 1964 onwards in para-46 to 65 (Naveen Kohili's case) upon survey of large number of decisions. The observations made in various judgments, referred to in the aforesaid decision may be summarized as below:-

"A. The concept of legal cruelty changes according to the changes and advancement of social concept and standards of living. With the advancement of our social conceptions, this feature has obtained legislative recognition. To establish legal cruelty, it is not necessary that physical violence should be used.

B. The word "cruelty" has not been defined in the Hindu Marriage Act. It has been used in Section 13 (1) (i-a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the others. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to 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, 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 inquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or willful ill-treatment.

C. Cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions and their culture and human values to which they





attach importance. Each case has to be decided on its own merits.

D. They are of varying degrees from house to house or person to person. 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 stigmatized as cruelty in one case may not be so in another case. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners and less depend upon precedents as they have to deal with conduct of human beings who are not generally similar. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of.

E. Mental cruelty in Section 13 (1) (i-a) of the Hindu Marriage Act can be broadly 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 and 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 fact 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.

F. The word "cruelty" has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case. There may be instances of cruelty by unintentional but inexcusable conduct of any party. The cruel treatment may also result from the cultural conflict between the parties. Mental cruelty can be caused by a party when the other spouse levels an allegation that the petitioner is a mental patient, or that he requires expert psychological treatment to restore his mental health, that he is suffering from paranoid disorder and mental hallucinations, and to crown it all, to allege that he and all the members of his family are a bunch of lunatics. The allegations that members of the petitioner's family are lunatics and that a streak of insanity runs through his entire family is also an act of mental cruelty.

G. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty" therefore, postulates a treatment of the





petitioner with such cruelty as to cause a reasonable apprehension in the mind of other spouse that it would be harmful or injurious for him or her to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the aggrieved spouse and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other.

H. The concept of cruelty and its effect varies from individual to individual, also depending upon the social and economic status to which such person belongs. 'Cruelty' for the purposes of constituting the offence under the aforesaid section need not be physical. Even mental torture or abnormal behaviour may amount to cruelty and harassment in a given case.

I. Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of "irretrievably broken marriage" as a straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case.

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 willful 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 his 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.

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.

J. 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.

K. 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.





L. 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 hyper-sensitive 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 particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court.

23. In a subsequent authoritative pronouncement of the law with regard to cruelty in the case of Samar Ghosh (supra) in concluding para-101, reiterating that no uniform standard can ever be laid down for guidance, yet the Supreme Court thought it proper to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". Those instances, not meant to be exhaustive but only illustrative, as observed in the aforesaid decision, are as below:

"101. x x x x x

- (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 sterilization 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. "

24. In another subsequent decision in the case of Vishwanath Agrawal (supra), Their Lordships in the Supreme Court dealt with the case where decree of divorce was sought on the ground of cruelty. While relying upon earlier decision including the decision in the case of Samar Ghosh (supra), it was observed thus:

"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.

x x x x x

27.To put it differently, the 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 was further observed, while arriving at such conclusion, that 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. What is cruelty in one case may not amount to cruelty in another case and it has to be determined in each case keeping in view the facts and circumstances of that case. That apart, the accusations and allegations have to be





scrutinized in the context in which they are made. Be it noted, in the said case, this Court quoted extensively from the allegations made in the written statement and the evidence brought on record and came to hold that the said allegations and counter allegations were not in the realm of ordinary plea of defence and did amount to mental cruelty."

25. In yet another decision in the case of K. Srinivas Rao (supra), the Supreme Court relying upon earlier decision rendered in the case of Naveen Kohli (supra) as also Samar Ghosh (supra), added some more illustrative instances to what was observed in the case of Samar Ghosh (supra) as below:-

"16. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh, 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."

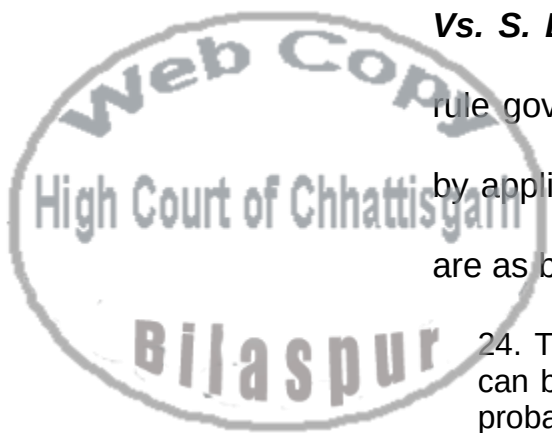
15. The Hon'ble Supreme Court in the matter of *N.G. Dastane (Dr.)*

Vs. S. Dastane, 1975 (2) SCC 326, has considered the normal

rule governing the civil proceeding in the matter of proof of facts

by application of principles of preponderance of probability which are as below :-

24. The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, Section 3, a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact-situation will act on the supposition that the fact exists, if on weighing the various probabilities he links that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. Important issues like those which affect the status of parties demand a closer scrutiny than those like the loan on a promissory note : "the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue" Per Dixon, J. in *Wright v. Wright* (1948) 77 C.L.R. 191 at p. 210; or as said by Lord Denning, "the degree of probability depends on the subject-





matter. In proportion as the offence is grave, so ought the proof to be clear" Blyth v. Blyth [1966] 1 A.E.R. 534 at 536. But whether the issue is one of cruelty or of a loan on a pronote, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases this, normally, is the standard of proof to apply for finding whether the burden of proof is discharged.

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."

16. In the present case, the application for grant of decree of divorce is based on the pleadings of cruelty. The main instances of cruelty as pleaded in the plaint, and which was sought to be proved by leading evidence by the appellant/applicant are summarized as under-

- ✓ on the very next day of marriage, the respondent started quarreling with her husband and in-laws that they have not called her parents to marriage reception.
- ✓ she raises a sarcastic comment as to gifting the cheap articles in the marriage to her parents and thereby they feel ashamed in her society.
- ✓ she regularly used to go to her parent's house directly from the college.
- ✓ she pressured the appellant/applicant to reside separately from his parents at his workplace and misbehaved with the parents of the applicant.





- ✓ on 11-04-2012, she left his house in the absence of the applicant and when he tried to contact her by telephone, she did not answer the mobile call.
- ✓ she got more injurious on the issue of calling the community meeting on 27-05-2013.
- ✓ on 10-06-2012, a false report was lodged by the respondent against the applicant and his parents at police out post-Urga, in which he remained in jail for about 9 days and his parents remained in jail for about 7 days. By which they have defamed in their society.

17. On instances as mentioned earlier of cruelty which has been pleaded in the plaint, it has been pleaded that the above instances of mental cruelty to the husband also reflect that she is not interested in continuing her marital relationship as she is not listening to the advice of her husband, frequently visiting her parent's house, not paying respect to the parents of the applicant and therefore, he prayed for grant of decree of divorce.

18. The appellant/applicant, to prove his pleading, examined himself as A.W. 1, Sri Ram Sahu A.W. 2 (Secretary of the Sahu community), and Acchelal Sahu A.W. 3 (father of the applicant).

19. On the other hand, the respondent/wife has examined herself as D.W. 1, Mani Ram Sahu D.W. 2 and Ram Prasad Sahu D.W. 3.

20. The main question, for consideration in the instant case is whether the allegations of cruelty levelled by the respondent/wife against the applicant/husband and lodging of the FIR and subjected her husband and in-laws to a criminal case were based on patently false allegations and accusation and thus amounting to cruelty.





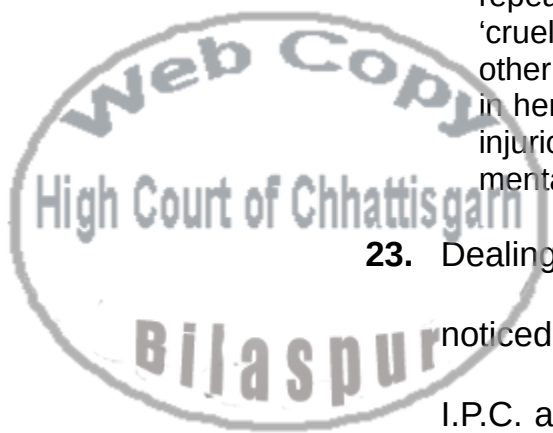
21. Before examining the matter on record, we consider it apposite to refer to some of the decisions dealing with the issue as to whether false accusation of criminal case and subsequent acquittal of her husband and in-laws, would give rise to a case of cruelty by the way against the husband.

22. In the case of ***K. Srinivas Rao Vs. D. A. Deepa, 2013 (5) SCC 226***, the Hon'ble Supreme Court has dealt with the scope of "Cruelty". In para 10, it was observed as under:-

"10. Under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, a marriage can be dissolved by a decree of divorce on a petition presented either by the husband or the wife on the ground that the other party has, after solemnization of the marriage, treated the petitioner with cruelty. In a series of judgments, this Court has repeatedly stated the meaning and outlined the scope of the term 'cruelty'. Cruelty is evident where one spouse has so treated the other and manifested such feelings towards her or him as to cause in her or his mind reasonable apprehension that it will be harmful or injurious to live with the other spouse. Cruelty may be physical or mental."

23. Dealing with the case in hand, the Hon'ble Supreme Court noticed that the wife had lodged a report under Section 498-A of I.P.C. against the husband and his parents and finally, there was an acquittal. The conduct of the wife in filing a complaint and making unfounded allegations coupled with other conduct and keeping in view the ultimate result of acquittal, it was held that such conduct on the part of the wife was mental cruelty on the husband, it was held:-

"28. Pursuant to this complaint, the police registered a case under Section 498-A of the IPC. The appellant-husband and his parents had to apply for anticipatory bail, which was granted to them. Later, the respondent-wife withdrew the complaint. Pursuant to the withdrawal, the police filed a closure report. Thereafter, the respondent-wife filed a protest petition. The trial court took cognizance of the case against the appellant-husband and his parents (CC No. 62/2002). What is pertinent to note is that the respondent-wife filed criminal appeal in the High Court challenging the acquittal of the appellant-husband and his parents of the





offences under the Dowry Prohibition Act and also the acquittal of his parents of the offence punishable under Section 498-A of the IPC. She filed criminal revision seeking enhancement of the punishment awarded to the appellant-husband for the offence under Section 498-A of the IPC in the High Court which is still pending. When the criminal appeal filed by the appellant-husband challenging his conviction for the offence under Section 498-A of the IPC was allowed and he was acquitted, the respondent-wife filed criminal appeal in the High Court challenging the said acquittal. During this period respondent-wife and members of her family have also filed complaints in the High Court complaining about the appellant-husband so that he would be removed from the job. The conduct of the respondent- wife in filing a complaint making unfounded, indecent and defamatory allegation against her mother-in-law, in filing revision seeking enhancement of the sentence awarded to the appellant-husband, in filing appeal questioning the acquittal of the appellant-husband and acquittal of his parents indicates that she made all attempts to ensure that he and his parents are put in jail and he is removed from his job. We have no manner of doubt that this conduct has caused mental cruelty to the appellant- husband.”

24. In the case of ***K Srinivas Vs. Sunita, 2014 (16) SCC 34***, relying

upon the decision in the case of “K Srinivas Rao (Supra), held :-

“1. In this Appeal, counsel for the Appellant has sought to draw our attention to all the arguments that had been addressed before the High Court on behalf of the Appellant-Husband in support of his claim for dissolution of his marriage to the Respondent by a decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955. We have, however, restricted him to the ground of alleged cruelty on account of the filing of a criminal complaint by the Respondent against the Appellant and several members of his family under Sections 498A and 307 of the Indian Penal Code (IPC). We did this for the reason that if this ground is successfully substantiated by the Petitioner, we need not delve any further i.e. whether a marriage can be dissolved by the Trial Court or the High Court on the premise that the marriage has irretrievably broken down. This nature of cruelty, in the wake of filing of a false criminal case by either of the spouses, has been agitated frequently before this Court, and has been discussed so comprehensively and thoroughly that yet another Judgment on this well-settled question of law, would be merely a waste of time. A complete discourse and analysis on this issue is available in a well- reasoned judgment in K. Srinivas Rao vs. D.A. Deepa, 2013(5) SCC 226, in which numerous decisions have been cited and discussed. It is now beyond cavil that if a false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce.”

25. In the matter of ***Raj Talreja Vs. Kavita Talreja, AIR 2017 SC***

2138, the Hon’ble supreme Court has examined the legal





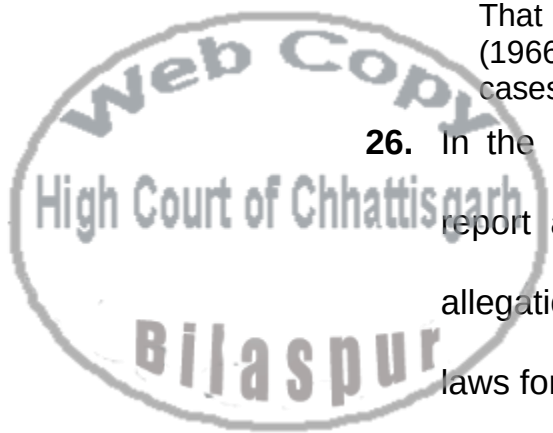
position as to when a false complaint would amount to cruelty which are as below :-

“10. In Ravi Kumar v. Julmidevi, this Court while dealing with the definition of cruelty held as follows:

“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 held that categories of cruelty in matrimonial cases are never closed.”

26. In the present case, the respondent wife has lodged a police report against the applicant/husband and her in-laws with an allegation that she was being harassed by her husband and in-laws for not bringing sufficient dowry, demanding a Car, and used to abuse and assault her. On 20-05-2015 her parents had called a community meeting at the JRC club, Korba, and tried to convince them but they became more aggressive on the ground that by the community meeting, they became defamed in the society and on 09-06-2012 in the night her husband Ashwan Sahu, her father in law Achhelal Sahu and her mother in law Shanta Bai have assaulted her by hand and fist by which she received injuries. She was medically examined and after investigation, a charge-sheet was filed against the applicant/husband and his parents, for the offences under





Sections 498-A, 324, 323, 34 of I.P.C. before the learned Chief Judicial Magistrate, Korba. During the pendency of the criminal case, Shanta Bai was expired. The trial court has framed charges against the applicant/husband under Section 498-A, 324 of I.P.C. whereas Achhelal was charged for the offence under Section 498-A of I.P.C. After trial of the case, the learned Trial court has acquitted Achhelal from the charge of Section 498-A I.P.C. whereas the applicant/husband has convicted and sentenced for the offence under Section 498-A and 324 of I.P.C. In the appeal filed by the applicant/husband, his conviction under Section 498-A of I.P.C. is set aside however, his conviction under Section 324 of I.P.C. was maintained. Thereafter, he challenged his conviction under Section 324 of I.P.C. before this court by filing a Criminal Revision which was partly allowed and his conviction under Section 324 was altered to under Section 323 of I.P.C.

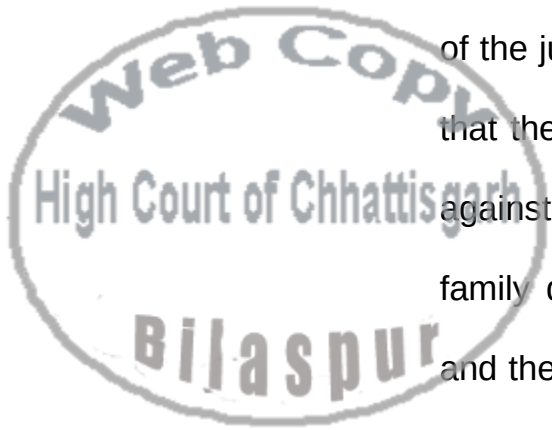
27. At this stage, it would be appropriate to consider the applications filed by the appellant/husband along with the documents that relate to the certified copies of the judgements passed by the learned Trial Court as well as the learned appellate court. **I.A. No. 01/2021** has been filed by the appellant/husband on 19-02-2021 by which he is seeking permission to take the certified copy of the judgement dated 11-04-2019 passed by the learned Judicial Magistrate First Class, Korba, in Criminal Case No. 193/2015, by which the appellant has been convicted under Section 498-A, 324 of I.P.C. From perusal of the said judgement, it appears that the respondent/wife was subjected to assault by





her husband/applicant on 09-06-2012 and the FIR has been lodged on 10-06-2012. On medical examination, certain injuries including head injury have been found on the body of the respondent/wife which was considered in para 19 of the judgement. The case of the respondent/wife was duly supported by P.W. 2 Mani Ram Sahu, P.W. 3 Bharat Ram Sahu and her father Ram Prasad Sahu (P.W.4). The trial Court has considered the evidence of the respondent-wife, investigating officer of the criminal case and the evidence of the parents of the respondent/wife and have convicted the applicant/husband for the offence under Sections 498-A and 324 IPC. In paragraph 37 of the judgment passed by the trial court, it has been considered that the evidence of the complainant as well as other witnesses against the father of the applicant/husband was concerning family dispute which does not inculcate him in criminal liability and therefore he has been acquitted in the criminal case, but the applicant husband has been convicted in the criminal case.

- 28.** The judgment of acquittal of the father of the applicant's husband passed by the trial Court was challenged by the respondent's wife by filing an appeal before the First Additional Sessions Judge, Korba vide Criminal Appeal No. 31/2019. Vide order dated 09.09.2019 the Criminal Appeal was dismissed holding that the alleged offence has not been proved against the accused Achhe Lal Sahu beyond reasonable doubt.
- 29.** The judgment of conviction and sentence was passed on 11.04.2019 by the trial Court whereas, the judgment and decree





were passed in the present case on 20.03.2018, therefore, the applicant's husband could not bring the copy of the judgment passed by the Judicial Magistrate First Class, Korba on the record of the present case. Since the issue of acquittal from the offence under Section 498-A IPC was raised by the applicant's husband therefore, the judgment dated 11.04.2019 passed by the Judicial Magistrate First Class, Korba and the judgment dated 09.09.2019 passed by the First Additional Sessions Judge Korba is relevant for just decision of the case.

- 30. IA No.1/2019** is another application filed by the applicant's husband under Order 41 Rule 27 CPC for taking additional evidence on record by which he sought to file additional evidence which is the copy of judgment dated 09.09.2019 passed in Criminal Appeal No.28/2019 by which the appeal filed by the applicant husband against his conviction under Section 498-A and 324 IPC was partly allowed by the First Additional Sessions Judge and the applicant was acquitted from the charge under Section 498-A IPC whereas, his conviction under Section 324 IPC was maintained. The First Appellate court while considering the appeal filed by the applicant's husband has considered that since 2008 i.e. from the time of marriage till the lodging of FIR Ex.P/1, there was no document filed by the respondent wife concerning harassment on account of demand of dowry and therefore, it cannot be considered that she was being harassed or assaulted on account of demand of dowry. It was further considered that from documents Ex.D/1 to D/7 filed by the





accused (applicant-husband), the evidence of PW-2, PW-3 and PW-6 was supported and considered that from the overall facts situation, the evidence of the prosecution witnesses could not be fully reliable. The First Additional Session Judge has further considered that the prosecution has failed to prove its case that the complainant/victim was harassed and treated with cruelty for the demand of dowry by her husband or his relatives, but has considered that the assaulted made by the accused Ashwan Sahu, she received injuries and therefore while acquitting the applicant husband from the offence of Section 498-AIPC, his conviction under Section 324 IPC was maintained. Since this judgment of First Additional Sessions Judge Korba also relates to proceedings under Section 498-A IPC which was decided on 09.09.2019 which is the later point of time of the judgment passed by the trial Court in the present case, the applicant husband did not have to file copy of this judgment before the trial court while leading evidence.

- 31.** The applicant-husband has further filed another application **IA No.2/2022** by which he sought permission to take additional evidence on record which is a copy of the order dated 11.02.2020 passed by this court in Criminal Revision No.1233 of 2019. This Criminal Revision was filed by the applicant's husband against his conviction under Section 324 IPC. In the said Criminal Revision, this court has considered the allegation of assault made by the applicant's husband upon his wife, but given the nature of the injuries, the court has considered that the





applicant's husband is liable to be convicted for the offence under Section 323 IPC instead of Section 324 IPC. Para 10 to 12 of the order dated 11.02.2020 passed by this court in Criminal Revision No.1233 of 2019 is reproduced hereinbelow-

“10. On perusing and appreciating the evidence present in the record of the trial Court, it is found that there is no statement or allegation of the complainant herself that she was assaulted with any sharp weapon or by any pointed weapon. Her statement is only to this extent that she was assaulted by the use of hands, fists and kicks. The opinion of the examining doctor that one of the injury may have been caused by a pointed object, has to be corroborated with the other evidence brought on the facts of the case and that part is missing. Therefore, there is no evidence that this injury was caused by the applicant to the victim.

11. The scratch injury may be caused by various other objects in various other manners, therefore, I am of this view that this kind of evidence was not sufficient against the applicant under Section 324 of the IPC, however, it is enough under Section 323 of the IPC. Hence, on the basis of these observations and the discussions made herein-above, it is held that the conviction against the applicant under Section 324 of the IPC is not well founded, therefore, it needs to be interfered with.

12. Accordingly, the petition is allowed at the motion stage and the conviction of the applicant under Section 324 of the IPC is set aside, instead thereof now he stands convicted for the offence under Section 323 of the IPC. However, the sentence imposed by the trial Court and upheld by the Appellate Court is now made as the sentence for which he is now convicted.”

32. All these are the copies of the judgments passed by the trial court, appellate court as also by High Court, which are very relevant for effective and just decision of the case. The parties are also well aware about these judgments.

33. The Supreme Court in **Wadi Vs. Amilal & Others, 2015 (1) 677** in paragraph 5 held as under :

“5. Now it is clear that Rule 27 deals with production of additional evidence in the appellate court. The general principle incorporated in Sub-rule (1) is that the parties to an appeal are not entitled to produce additional evidence (oral or documentary) in the appellate court to cure a lacuna or fill up a gap in a case. The exceptions to that principle are enumerated thereunder in Clauses (a), (a) and (b). We are concerned here with Clause (b) which is an enabling provision. It says that if the appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, it may allow such document to be produced or





witness to be examined. The requirement or need is that of the appellate court bearing in mind that the interest of justice is paramount. If it feels that pronouncing a judgment in the absence of such evidence would result in a defective decision and to pronounce an effective judgment admission of such evidence is necessary, Clause (b) enables it to adopt that course. Invocation of Clause (b) does not depend upon the vigilance or negligence of the parties for it is not meant for them. It is for the appellant to resort to it when on a consideration of material on record it feels that admission of additional evidence is necessary to pronounce a satisfactory judgment in the case.”

- 34.** Although Order 41 Rule 28 CPC provides for mode of taking additional evidence that wherever additional evidence is allowed to be produced, the appellate court may either take such evidence, or direct the court from whose decree the appeal is preferred, or any other subordinate court, to take such evidence and to send it when taken to the appellate court. The document of the judgments passed by the trial court as well as by first appellate court and by this court are not in dispute and even if the same is directed to be taken on record, there is no need to take further evidence concerning said certified copies of the judgments and findings of the courts. There is no objection from the other side also. They have not disputed its character. Therefore, sending the matter back or directing the trial court to take such additional evidence would be a futile exercise.

- 35.** Section 14 of the Family Courts Act, 1984, provides for the application of the Evidence Act which reads as under:

“A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it in dealing effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872”.

- 36.** From the aforesaid provisions of Section 14 of the Family Courts Act, 1984, the court is empowered to consider the document filed





by the parties without there being any formal proof and the present one is the certified copies of the judgments passed by the courts and its authenticity cannot be doubted. The Division Bench of this court has held in para 9, 10 and 11 in the case of **Dr. Ramkeshwar Singh Vs. Smt. Sheela singh @ Madhu Singh, F.A.M. 94/2013 decided on 13-07-2022**, which is as under :-

“9.The Court accepted the contention of the husband in a finding that after the notice of divorce was received, wife Sheela Singh fabricated the letters and falsely inculpated the husband and other family members and eventually it was held that no offence u/s 498-A of IPC is made out. Therefore, after evaluating the evidence, the learned Judicial Magistrate acquitted the husband and all the family members by order dated 28.02.2006. At para 20 of the judgment, the learned trial Court has recorded the finding of acquittal. Therefore, it is not in dispute that the said acquittal order passed on 28.02.2006 was filed before the learned Family Court. Though such document was not exhibited, yet it is a judicial pronouncement.

10. The M.P. High Court (Indore Bench) in Second Appeal No.303 of 1958 (Jadi Bai Versus Harsingh) decided on 08th March, 1961 reported in 1963 J LJ 842 had reiterated the view taken by Their Lordships of Privy Council in Tulshi Ram v. Kamla Prasad Balam Das, 1937 AIR (Pat) 222 and held that where the documents are duly produced without objection and being certified copies of public documents can be taken to be proved and where after such production the opposite party had fair opportunity to rebut that material, it cannot be said that the documents should be left out of consideration on account of non-compliance with what may be called a mere formality of making an endorsement as to their admission.

11. Here, in the instant case, it has not been disputed about the issuance of the document i.e., certified copy of the judgment of acquittal. Therefore, in exercise of power under Order 41 Rule 27 of CPC, the discretion of Court would lean in favour of the appellant by inferring the fact that a criminal trial was held which resulted into acquittal. It being certified copy of judgment is accepted in evidence. This Court In Abhishek S/o Narayan versus Seema W/o Abhishek 2021 LawSuit (Chh) 869 while allowing the application under Order 41 Rule 27 of CPC, held that certified copy of the judgment is accepted as evidence being a relevant fact.”

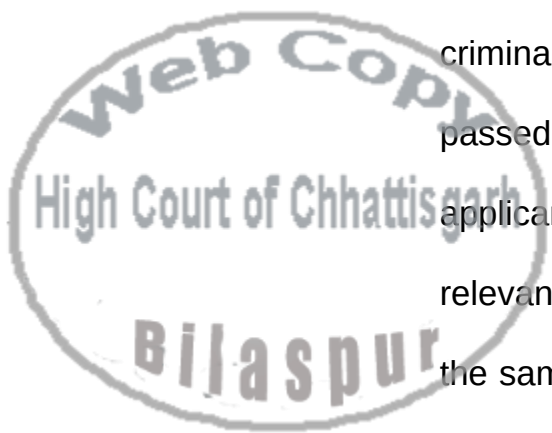
37. Therefore, the documents are being taken on record as evidence and the applications filed by the applicant husband i.e. IA Nos. **01/2019, 01/2021 and 02/2022 are allowed.**





38. So far as **IA No.02/2020** is concerned, the applicant husband seeks permission to take additional evidence which are the complaint dated 08.10.2009 made by him to the Superintendent of Police, outpost Urga, P.S. Darri, complaint dated 11.04.2012 made to Sahu Community, complaint dated 19.04.2012 and the deposition of Ram Prasad Sahu, Mani Ram Sahu and Savita Sahu given in MJC No.88/2012 which was the proceeding under Section 125 CrPC. Since the complaints made to various authorities was of the year, 2009 and 2012 and the copy of deposition was also very much available to the applicant husband at the time when he cross-examined the witnesses in criminal case and after due cross-examination the judgment was passed by the trial court, therefore, the documents filed by the applicant husband along with IA No.02/2020 is not very much relevant which would affect the merits of the case, and therefore, the same cannot be taken into consideration and as such **IA No. 02/2020 is rejected.**

39. In the present case, it is proved that on 09.06.2012 the respondent's wife was assaulted by her husband and meted her with cruelty for which he has been convicted. It cannot be said that there was a false allegation made by the respondent's wife against her husband or in-laws. Although, they have been acquitted of the offence under Section 498-A IPC, it was not a clean acquittal and it was not that the complainant/victim has not deposed anything against the accused persons, but the acquittal was on the ground of benefit of doubt. From the conviction under





Section 323 IPC, it has been established that the complainant/victim was subjected to cruelty by her husband and therefore, he cannot take advantage of that since he has been acquitted of the offence under Section 498-A IPC, he is entitled for grant of decree of divorce on the ground of acquittal from the charge under Section 498-A IPC given the aforesaid judgments passed by the Supreme Court.

40. Now reverting to the facts of the present case, the trial Court has framed the issue as to whether the applicant's husband is subjected to mental and physical harassment by the respondent's wife from her behavior. The applicant's husband examined himself as AW-1 and in his examination in chief he reiterated the contents of his plaint averment in cross-examination, he stated that after 8-10 days of marriage, she returned to her parent's house and after repeated calls she came back to her matrimonial house. He denied that they were harassing the wife for the demand of Car. He also denied that he was not providing proper treatment to his wife. She was being taken to Gevra Hospital for her checkup and he has taken care of her during her entire treatment. He admits that at the time of her delivery, she was admitted to Dr. Banchhor's hospital. He has further stated that he is residing in a two-floor house and his wife was taken to the first floor of his house. He denied that the wife was compelled to go to answer the call of nature and washroom on second floor of his house on account of which operation stitches were opened and she faced complications. He denied





suggestions from the doctor that she required complete bed rest. He further stated that from the hospital of Dr. Banchhor, she was referred to Dr. Thawait who is a surgeon. He denied that he had taken Rs.70,000/- from Dr. Banchhor on account of wrong treatment by him to his wife. He has taken his wife to Gevra Hospital for her treatment. After discharge from Gevra Hospital on 29.04.2010 she went to her parent's house. He fixed 6th-day celebration after the birth of his child on 18.05.2010 and on that very day, she came to her matrimonial house and the next day she returned to her parent's house assuring that at the time of the marriage function of his brother, she will come back. He denied that at the time of the marriage of his brother she was in difficulty due to her ailment. He denied that he and his parents had abused her and has not taken care of her. He was not in the knowledge that his wife was admitted from 07.12.2010 to 10.12.2010 at NTPC Hospital. He states that on 08.12.2010 he called a community meeting and at that time his wife was in her parent's house. The meeting was called by him and not by his wife or her parents. He denied that he had not taken care of his son. He admits that after delivery, his wife underwent another surgery at SECL Gevra which was not successful and thereafter he took her for higher treatment to CMC Hospital, Vellore. At that time, his in-laws were accompanied by them. From Vellore, they returned to Uрга after 2-3 days the respondent's wife again returned to her parent's house. He admits that he along with his wife were residing at Dipka in a tenanted house. He denied the





suggestion that at Dipka he has assaulted his wife saying that due to her attitude, he was compelled to leave his parents. He admits that on 27.05.2012 another community meeting was held which was called by him. He denied that on 09.06.2012 he and his family members assaulted his wife which she received injuries on her body. He admits that on 10.06.2012 a police report was lodged by the respondent's wife against him. He denied the suggestion that the respondent's wife is willing to reside with him, but he has thrown her from his house.

41. AW-2 Shriram Sahu, who is the Secretary of the Sahu community, has also stated the fact that after the marriage function, the respondent's wife was not willing to come to the house of her husband, she refused to cook food and regularly raised quarrel with her husband. He has also stated the fact that she has undergone treatment at the Hospital of Dr. Banchhor, suffering from various complications and also about the fact that the respondent wife was not paying any respect to her husband and in-laws. In cross-examination he has admitted that he has not witnessed any incident in the house of the applicant or for that matter the respondent-wife. He is the witness of the community meeting held on 08.12.2010. He also states no minutes of the community meeting were prepared in writing. From the cross-examination of this witness, it appears that he has stated whatever he gathered information from other sources.
42. AW-3, the father of Ashwan Kumar, has also stated in the same line as AW-1 that Ashwan Kumar has stated. However, except for





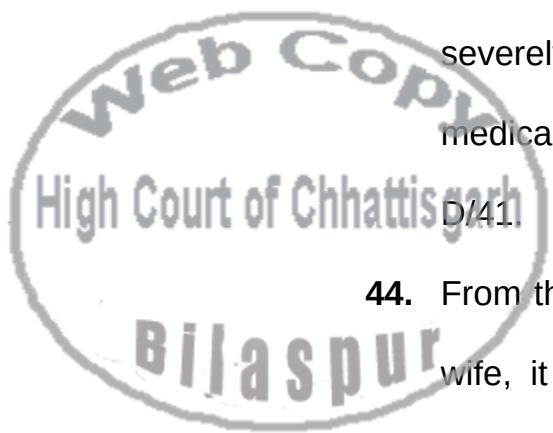
day-to-day affairs of daily routine life, nothing specific act has been narrated by the applicant side to hold that the respondent/wife is guilty of any act of cruelty against her husband.

43. The respondent's wife also examined herself as DW-1 and stated about all the instances which she faced after the marriage while residing with her husband. She has also stated how the applicant husband has treated her which claimed to have caused her physical and mental cruelty. She has stated that due to the negligent behaviour of her husband and not providing proper treatment, she is suffering from her gynecological ailment severely and still she is undergoing treatment. In support of her medical treatment, she has annexed the documents Ex. D/1 to

D/41.

44. From the perusal of the document submitted by the respondent-wife, it appears that she had undergone various surgeries at various places and suffered prolonged treatment. There were allegation and counter allegations with respect to the behaviour of both parties against each other in daily routine life.

45. In ***Gurbux Singh Vs. Harminder Kaur, 2010(14) SCC 301***, the Supreme Court has reiterated certain guidelines framed in Samar Ghosh (Supra) while considering Section 13(1)(i-a) of the Hindu Marriage Act, and held that 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. While dealing with the aspect of cruelty, the Supreme Court has further observed:

“14. Cruelty has not been defined under the Act. It is quite possible that a particular conduct may amount to cruelty in one case but the same conduct necessarily may not amount to cruelty due to changes in various factors, in different set of circumstances. Therefore, it is essential for the appellant, who claims relief, to prove that a particular/part of conduct or behaviour resulted in cruelty to him. No prior assumptions can be made in such matters. Meaning thereby that it cannot be assumed that a particular conduct will, under all circumstances, amount to cruelty, vis-à-vis the other party. The aggrieved party has to make a specific case that the conduct of which exception is taken amounts to cruelty.”

46. What is cruelty for a man in a given case may not be cruelty for a woman. More elastic and broad approach is required when the husband seeks divorce. Word “Cruelty” under Section 13(1)(a) of the Hindu marriage Act, 1955, has got no fixed meaning, and therefore, gives a wide discretion to court to apply it liberally and contextually. Due to 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.

47. Another aspect of the case is that the applicant/husband has called a community meeting on 27-05-2012 at JRC club, Korba. In that community meeting, after various arguments, both the parties have convinced and decided to reside together. From 29-05-2012, they started residing together. All that is mean to say that the applicant/husband has condoned all the previous act of the respondent/wife and decided to reside with her. When he condoned the earlier act of his wife prior to 27-05-2012, if any, then he must explain the instances of cruelty after 27-05-2012. The applicant husband could succeed only on the strength of cruelty after 27-05-2012 if he would be able to establish the





same. In the case of **Dr. N.G. Dastane vs. Mrs. S. Dastane** (Supra), the Hon'ble Supreme Court has held in paras 54, 55, 56, 57 and 58 that :-

"54. Before us, the question of condonation was argued by both the sides. It is urged on behalf of the appellant that there is no evidence of condonation while the argument of the respondent is that condonation is implicit in the act of co-habitation and is proved by the fact that on February 27, 1961 when the spouses parted, the respondent was about 3 months pregnant. Even though condonation was not pleaded as a defence by the respondent it is our duty, in view of the provisions of Section 23(1)(b), to find whether the cruelty was condoned by the appellant. That section casts an obligation on the court to consider the question of condonation, an obligation which has to be discharged even in undefended cases. The relief prayed for can be decreed only if we are satisfied "but not otherwise", that the petitioner has not in any manner condoned the cruelty. It is, of course, necessary that there should be evidence on the record of the case to show that the appellant had condoned the cruelty.

55. Condonation means forgiveness of the matrimonial offence and the restoration of offending spouse to the same position as he or she occupied before the offence was committed. To constitute condonation there must be, therefore, two things : forgiveness and restoration. The Law and Practice of Divorce and Matrimonial Causes by D. Tolstoy Sixth Ed., p. 75. The evidence of condonation in this case is, in our opinion, as strong and satisfactory as the evidence of cruelty. But that evidence does not consist in the mere fact that the spouses continued to share a common home during or for some time after the spell of cruelty. Cruelty, generally, does not consist of a single, isolated act but consists in most cases of a series of acts spread over a period of time. Law does not require that at the first appearance of accrual act, the other spouse must leave the matrimonial home lest the continued co-habitation be construed as condonation. Such a construction will hinder reconciliation and thereby frustrate the benign purpose of marriage laws.

56. The evidence of condonation consists here in the fact that the spouses led a normal sexual life despite the respondent's acts of cruelty. This is not a case where the spouses, after separation, indulged in a stray act of sexual intercourse, in which case the necessary intent to forgive and restore may be said to be lacking. Such stray acts may bear more than one explanation. But if during co-habitation the spouses, uninfluenced by the conduct of the offending spouse, lead a life of intimacy which characterises normal matrimonial relationship, the intent to forgive and restore the offending spouse to the original status may reasonably be inferred. There is then no scope for imagining that the conception of the child could be the result of a single act of sexual intercourse and that such an act could be a stark animal act unaccompanied by the nobler graces of marital life. One might then as well imagine that the sexual act was undertaken just in order to kill boredom or even in a spirit of revenge. Such speculation is impermissible. Sex" plays an important role in marital life and cannot be separated from other





factors which lend to matrimony a sense of fruition and fulfilment. Therefore, evidence showing that the spouses led a normal sexual life even after a series of acts of cruelty by one spouse is proof that the other spouse condoned that cruelty. Intercourse, of course, is not a necessary ingredient of condonation because there may be evidence otherwise to show that the offending spouse has been forgiven and has been received back into the position previously occupied in the home. But intercourse in circumstances as obtain here would raise a strong inference of condonation with its dual requirement, forgiveness and restoration. That inference stands uncontradicted, the appellant not having explained the circumstances in which he came to lead and live a normal sexual life with the respondent, even after a series of acts of cruelty on her part.

57. But condonation of a matrimonial offence is not to be likened to a full Presidential Pardon under Article 72 of the Constitution which, once granted, wipes out the guilt beyond the possibility of revival. Condonation is always subject to the implied condition that the offending spouse will not commit a fresh matrimonial offence, either of the same variety as the one condoned or of any other variety. "No matrimonial offence is erased by condonation. It is obscured but not obliterated" See Words and Phrases Legally Defined (Butterworths) 1969 Ed., Vol I, p. 305, ("Condonation") Since the condition of forgiveness is that no further matrimonial offence shall occur, it is not necessary that the fresh offence should be ejusdem generis with the original offence See Halsbury's Laws of England, 3rd Ed., Vol. 12, p. 3061. Condoned cruelty can therefore be revived, say, by desertion or adultery."

58. Section 23(1)(b) of the Act, it may be urged, speaks of condonation but not of its revival and therefore the English doctrine of revival should not be imported into matters arising under the Act. Apparently, this argument may seem to receive some support from the circumstances that under the English law, until the passing of the Divorce Reform Act, 1969 which while abolishing the traditional bars to relief introduces defences in the nature of bars, at least one matrimonial offence, namely, adultery could not be revived if once condoned See Rayden on Divorce, 11th Ed. (1971) pp. 11, 12, 23, 68, 2403. But a closer examination of such an argument would reveal its weakness. The doctrine of condonation was established by the old ecclesiastical courts in Great Britain and was adopted by the English Courts from the canon law. 'Condonation' is a technical word which means and implies a conditional waiver of the right of the injured spouse to take matrimonial proceedings. It is not 'forgiveness' as commonly understood See Words and Phrases Legally Defined (Butterworths) 1969 Ed., p. 306 and the Cases cited therein. In England condoned adultery could not be revived because of the express provision contained in Section 3 of the Matrimonial Causes Act, 1963 which was, later incorporated into Section 42(3) of the Matrimonial Causes Act, 1973. In the absence of any such provision in the Act governing the charge of cruelty, the word 'condonation' must receive the meaning which it has borne for centuries in the world of law See *Ferrers v. Ferrers* (1791) 1 Hag. Con. 130 at pp. 130, 131. 'Condonation under Section 23(1)(b) therefore means conditional forgiveness, the implied condition being that no further matrimonial offence shall be committed.'

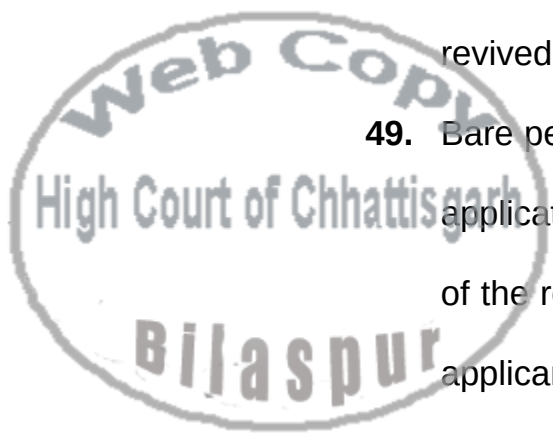




48. In the present case on 27-05-2012, the applicant/husband was agreeing to reside with his wife after condoning her earlier act, if any, which may amount to cruelty, and from 29-05-2012, they started residing together. On 09-06-2012, i.e. after about 10 days of their reunion, she was being assaulted by the applicant/husband which is found proved by his conviction under Section 323 of I.P.C. there is no allegation against the respondent/wife that, from 29-05-2012, when they reunite, she in any manner have treated her husband with cruelty but it is the wife who has proved that the applicant/husband has assaulted her and treated her with cruelty. Condoned cruelty, if any, can be revived but not by the party who is not at any fault.

49. Bare perusal of allegations made by the applicant/husband in the application and his evidence, as also from the written statement of the respondent wife and her evidence, this court finds that the applicant-husband could not satisfy this court, required under the law, for grant of divorce on the ground of cruelty against him by his wife. Although certain allegations and counter allegations have been made by either of the parties, but that itself are not sufficient to constitute physical or mental cruelty against him.

50. Having thus examined the pleadings and the evidence led by the parties and the judgement passed by the learned Trial Court, we do not find that the appellant has been able to prove the incident, which caused cruelty, judged by well settled standards referred to hereinabove by this court, after considering the various decisions of Hon'ble supreme Court. We are unable to hold that the





conduct of the respondent/wife would constitute cruelty so as to entitle the appellant/husband to seek decree of divorce. In the decisions, which we referred hereinabove, it is consistently held that the cruelty must be something more than “ordinary wear and tear of the married life”. It cannot be decided on the basis of hypersensitivity of the spouse, but it has to be judged on the basis of course of conduct. Furthermore, to constitute cruelty, the conduct complained of should be grave and weighty so as to come to the conclusion that the appellant/spouse cannot be reasonably expected to live with the other spouse. It also appears that the evidence produced by the applicant’s husband does not satisfy the requirement of Section 13 of the Hindu Marriage Act, 1955, to dissolve marriage on the grounds of cruelty.

51. From the above discussions, we are unable to differ with the findings arrived at by the Family Court vide its judgment and decree dated 20.03.2018, and to accept the claim of the applicant/husband seeking a divorce.

52. As a result, the appeal fails and is hereby dismissed. Parties to bear their own cost. A decree be drawn accordingly.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice