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**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE VIVEK RUSIA
&
HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI
ON THE 14th OF MAY, 2024
FIRST APPEAL No. 2409 of 2023**

BETWEEN:-

SMT. DEEPA TOMAR

.....APPELLANT

(SHRI SURESH AGRAWAL - ADVOCATE FOR THE APPELLANT)

AND

AJAY @ LEELADHAR SINGH TOMAR

.....RESPONDENT

(SHRI RAJMANI BANSAL - ADVOCATE FOR THE RESPONDENT)

This appeal coming on for order this day, Justice Vivek Rusia passed the following:

ORDER

1. The appellant/wife has filed this First Appeal under Section 19 of the Family Courts Act 1984 challenging the impugned judgment and decree dated 29.11.2023 passed by the Principal Judge, Family Court, Gwalior in case No.10697/2020 RCSHM, whereby the petition filed by the appellant/wife under Section 13 (1) of the Hindu Marriage Act seeking dissolution of marriage between appellant and respondent solemnized on 21.11.2011 has been

dismissed.

2. The facts of the case in short are as under :-

(i) The marriage of the appellant/wife and the respondent/ husband was solemnized on 21.11.2011 under the Hindu custom and rituals at Gwalior. Due to the said wedlock, the appellant/wife gave birth to a baby girl namely Bhumi on 30.07.2012. At the time of marriage, the parents of the appellant/wife gave Rs.2,51,000/- cash along with household articles to the parents of the husband but they were not satisfied, hence, she had to live in the house of her matrimonial uncle-in-law . After compromise, she lived in the house of her in-laws at Deen Dayal Nagar from November 2011 to May 2012. Thereafter, again they shifted to the rented house at Adityapuram, Gwalior. According to the appellant/wife, the nature and behaviour of the respondent/husband towards her was very cruel, aggressive and short tempered. He used to torture her physically and mentally by using filthy language. Therefore, he made her life measurable and she has started living in depression. Because of his bad habits and association with the criminal, a criminal case at Crime No.19/2014 was registered against him under Section 364A, 307, 147, 148 and 149 of IPC at Police station, Kurwai, District Vidisha. After release on bail, there was no improvement in his nature. Thereafter, another criminal case was registered on 23.05.2017 at Police Station Maharajpura at Crime No.252/2017 under Section 302, 307 and 323 of IPC and Section 25 and 27 of the Arms Act for murdering his own father late Hanuman Singh Tomar. He has been convicted vide judgment dt.30.09.2019 and languishing in jail till date. In such premises, the appellant/wife filed a petition before the Family Court seeking divorce on the grounds of cruelty and desertion.

(ii) The respondent/husband appeared and filed a

written statement admitting most of the facts but denied allegations of cruelty. He has specifically denied any cruelty towards the wife. However, he admitted in a written statement that since May 2012, the appellant/wife has lived with in-laws and residing in a rented house and he has very much love and affection with the wife and daughter and in any circumstances he would not give divorce to her.

(iii) Learned Family Court framed two issues for examination. The appellant/wife examined herself as P.W.1 and exhibited documents. In rebuttal, respondent/husband examined himself as D.W.1 and deposed that up to 23.05.2017 she lived as wife with him and there was no dispute between them. He has never tortured her for demand of dowry.

(iv) After appreciating the evidence came on record, learned Family Judge vide impugned judgment dt.29.11.2023 dismissed the petition holding therein that conviction in a criminal case does not amount to cruelty and the criminal case was registered only on 23.05.2017 and before that there is no evidence that respondent used to commit any cruelty with the wife. Hence, this appeal.

3. The sole issue which is liable to be considered by us in this appeal is as to whether conviction in a criminal case under Section 302 of IPC and sentenced to undergo life imprisonment amounts to “mental cruelty” to wife? In this case to the conviction of the husband in the criminal case, the appellant/wife did not file a petition under Section 13 (1) of the Hindu Marriage Act seeking dissolution of marriage.

4. According to the appellant/wife, the nature of the respondent/ husband has been very cruel, aggressive and short-tempered and because of which two

criminal cases were registered against him. He committed murder of his father by firing a gun shots. Now the respondent/husband has been convicted under Section 302 of IPC and sentenced to undergo life imprisonment. Although there is provision for releasing him on bail by way of suspension of sentence, but it would be very difficult for a wife to live with a person who is facing trial under Section 307 of IPC and has been convicted under Section 302 of IPC for committing murder of his father it would certainly cause mental cruelty to her. As per the prosecution story, in Crime No.252/2017, the respondent/ husband murdered his father because of a property dispute with him. Therefore, no wife can live in the matrimonial relationship with the person who is so short-tampered and impulsive turned criminal.

5. Even otherwise, it is not a case of a wife living with a convicted husband but it would not be better for her daughter to live with her father, who has a criminal background. If she lives with the respondent at the age of 6 years it will not be advisable for her mental wellbeing. Therefore, the learned Family Court has wrongly dismissed the case relying on the condition prior to the registration of a criminal case and conviction when a wife can not live with her husband in future because of the uncertainty of releasing him on bail.

6. Even otherwise, this is a case of desertion of more than two years. The respondent/husband was arrested on 23.05.2017 and since last more than six years, the appellant and respondent have not living as husband and wife. Therefore, this is the situational desertion of wife by the respondent/husband. On this ground also, she is entitled for divorce.

7. Apex Court in the case of **Sivasankaran Vs. Santhimeenal (2022) 15 SCC 742** has held as under :-

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

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

8. In the case of Savitri Pandey Vs. Prem Chandra Pandey (2002) 2

SCC 73, the Apex Court has explained the meaning of 'desertion' for the

purpose of seeking divorce under Hindu Marriage Act and held as under :-

8. "Desertion", for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations, i.e., not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. After referring to host of authorities and the views of various authors, this Court in *Bipinchandra Jaisinghbhai Shah v. Prabhavati* [AIR 1957 SC 176] held that if a spouse abandons the other in a state of temporary passions, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion."

9. In this judgment, Apex Court has observed that there may be cases where on facts it is found that the marriage has become dead on account of contributory acts of commission and omission of the parties, no useful purpose would be served by keeping such marriage alive.

The Apex Court, in this judgment, has examined the cruelty for grant of divorce under Section 13 (1) (i-a) of the Act and held as under:-

"6. Treating the petitioner with cruelty is a ground for divorce under Section 13(1)(i-a) of the Act. Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or

health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. 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 his or her mind that it would be harmful or injurious for the petitioner 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 petitioner 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. In the instant case both the trial court as well as the High Court have found on facts that the wife had failed to prove the allegations of cruelty attributed to the respondent. Concurrent findings of fact arrived at by the courts cannot be disturbed by this Court in exercise of powers under Article 136 of the Constitution of India. Otherwise also the averments made in the petition and the evidence led in support thereof clearly shows that the allegations, even if held to have been proved, would only show the sensitivity of the appellant with respect to the conduct of the respondent which cannot be termed more than ordinary wear and tear of the family life."

10. As held above, because of the aggressive nature of the respondent/husband, while facing trial under Section 307 of IPC and thereafter he murdered his father, now he is convicted under Section 302 of IPC. Therefore, it would cause constant fear about the safety of herself and her minor daughter in the mind while living with him.

11. In similar facts and circumstances, the High Court of Delhi in the case of **Swati Vs. Arvind Mudgal (MAT.APP.5/2013)** granted a decree of divorce on the grounds of the conviction of the husband under the provisions of IPC. Therefore, although under the Hindu Marriage Act, there is no such

provision for the grant of divorce on account of conviction of wife or husband, as the case may be, for life imprisonment, there is the provision of grant of divorce on the ground of mental cruelty. Therefore, the conviction of the husband under Section 302 of IPC and sentence of life imprisonment amounts to mental cruelty towards the wife which entails her getting the divorce from her husband.

12. Accordingly, this First Appeal is **allowed**. The impugned judgment and decree dt.29.11.2023 passed by the learned Family Court is set aside. The marriage between the appellant/wife and respondent/husband solemnized on 21.11.2011 is dissolved.

A decree be drawn up accordingly.

(VIVEK RUSIA)
JUDGE

SP

(RAJENDRA KUMAR VANI)
JUDGE



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