

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE SHEEL NAGU,
ACTING CHIEF JUSTICE**

&

**HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)
FIRST APPEAL No.618 OF 2021**

BETWEEN:-

**SMT. SANCHITA VISHWAKARMA, D/O SHRI BAIJNATH
VISHWAKARMA, W/O SHRI YOGENDRA PRASAD
VISHWAKARMA, AGED ABOUT 26 YEARS, OCCUPATION
SERVICE, R/O VILLAGE PADAINIYA PAWAI, TEHSIL
GOPADBANAS, DISTRICT SIDHI (M.P.)**

.....APPELLANT

(BY ASHOK KUMAR JAIN – ADVOCATE)

AND

**YOGENDRA PRASAD VISHWAKARMA S/O SHRI
MOTILAL VISHWAKARMA, AGED ABOUT 33 YEARS,
OCCUPATION SERVICE, R/O VILLAGE POST BIHRA
NO.1, TEHSIL KOTAR, DISTRICT SATNA (M.P.)**

.....RESPONDENT

(SHRI BRIJENDRA KUMAR VAISHYA – ADVOCATE)

Heard on : 10/05/2024

Passed on : 30/05/2024

This First appeal having been heard and reserved for judgment, coming on for pronouncement on this day, Justice Amar Nath (Kesharwani) passed the following:

J U D G M E N T

This first appeal under Section 28 of the Hindu Marriage Act, 1955 read with Section 19 of the Family Courts Act, 1984, has been filed by appellant/wife being aggrieved by judgment and decree dated 17/08/2021 passed by Principal Judge, Family Court, Satna (M.P.) in Hindu Marriage Case No.45/2018, whereby the application filed by respondent/husband for divorce under Section 13-1 (i-a) & (i-b) of the Hindu Marriage Act, 1955, (which shall be here-in-after referred to as the “H.M. Act”) has been allowed.

2. Brief facts of the case are that on 15/01/2018 respondent-husband filed a divorce petition under Section 13-1 (i-a) & (i-b) of the H.M. Act before the learned Principal Judge, Family Court, Satna on the ground of cruelty and desertion by the appellant/wife, averring that his marriage was solemnized with appellant on 26/05/2013 as per Hindu customs and rites but on the first night itself appellant-wife refused to establish physical relations with him and also told that she does not like him and she got married under the pressure of her parents. Thereafter, on 29/05/2013 brother Sandeep and cousin brother of appellant-wife came to the house of respondent-husband and took the appellant-wife with them for making her appear in final exams, which was allegedly scheduled for 30/05/2013. On 31/05/2013 when family members of respondent-husband went to the house of appellant-wife to take her to matrimonial home, her parents denied to send the appellant-wife with him and ever since appellant did not return to her matrimonial home. It was also alleged in the petition that appellant-wife also lodged a report at Mahila Thana, Sidhi with regard to demand of dowry and in lieu of that on 19/06/2013 respondent-husband and his family members went to Mahila Thana, Sidhi, where even upon

insistence of respondent-husband, appellant-wife refused to go with him. Thereafter, on 18/07/2013 respondent-husband returned the house hold articles and jewellery to the appellant-wife which he got at the time of marriage. On the same day, the appellant gave an affidavit to the effect that she is voluntarily divorcing the respondent. There is no relationship of husband and wife between her and the respondent and neither will she have any right in the property of the respondent. The respondent is free to marry whoever he wants and she will not take any legal action against the respondent in future and she also wrote that she does not want to take any action in the report relating to demand of dowry lodged on 13/06/2013 before the Mahila Police and in pursuance of that the respondent and his father also executed their affidavits. Sometime later on 21/04/2014 appellant/wife lodged a case against the respondent/husband under the Domestic Violence Act before the Court of Chief Judicial Magistrate, Sidhi (M.P.). Such conduct of the appellant/wife persuaded the respondent-husband to file application under Section 13 of the “H.M. Act” for dissolution of marriage on the ground that marriage of the parties was solemnized on 26/05/2013 and wife has deserted him on 29/05/2013 without any cogent reason and there was no cohabitation ever since between the parties and also on the ground of cruelty caused by the appellant-wife and her family members towards the respondent-husband and his family members and prayed for decree of divorce in favour of respondent-husband.

3. By way of filing written statement, appellant/wife refuted the averments mentioned in the application and pleaded that the marital relations between them as husband and wife was maintained since their marriage till 28/05/2013. After that respondent-husband and his family

members started to harass her by demanding Rs.1,50,000/- (One lakh fifty thousand) and a Alto car as dowry, though her parents gave cash Rs.1,05,011/- (One lakh five thousand eleven), motorcycle and ornaments to the respondent-husband as per their financial conditions. It was also averred that since her exam was scheduled till June, 2013, therefore she could not go with the respondent and his father to her matrimonial home and due to this, her in-laws got angry and again started making demand of dowry and after that respondent-husband never came to take her back to her matrimonial home. It was also stated that counselling was also done to the respondent-husband and his family members by Mahila Thana, Sidhi, on which respondent-husband assured that he will not harass her and will not demand any dowry. It was also stated that she is ready to live with her husband at her matrimonial home, but due to the demand of dowry she has been separated from marital relations. On these grounds prayed for dismissal of divorce petition filed by the husband.

4. Learned Principal Judge, Family Court, Satna framed the issues on the pleadings of the parties and recorded the statements adduced by parties and after appreciating the oral as well as documentary evidence led by parties, vide impugned judgment dated 17/08/2021 allowed the application filed by the respondent/husband and passed the decree of divorce under Section 13(1)(i-a), (i-b) of the "H.M. Act". Being aggrieved by impugned judgment and decree of divorce, the appellant/wife has preferred this appeal.

5. Learned counsel for the appellant/wife submitted that as long as the appellant stayed at her in-law's house the relationship of husband and wife was established between them and after that as the appellant wanted to appear in her exam, she went to her parental house. It is further

submitted that because of dowry demand, which could not be fulfilled, respondent-husband took a decision not to bring back the appellant-wife from her parental house. It is submitted that on account of pressure of dowry demand and ill-treatment by the respondent-husband and his family members towards the appellant-wife, she joined the company of her parents and thus, it is clear that the appellant-wife did not leave the company of the respondent-husband voluntarily. Learned counsel further submitted that the respondent-husband himself caused cruelty to the appellant-wife and created a false ground of cruelty and desertion for divorce. It is further submitted that the marriage of appellant was solemnized on 26/05/2013 and within a short span of 03 days, respondent-husband and his family members started to harass her by demanding additional dowry though her parents already gave dowry as per their financial conditions. It is further submitted that the appellant is though willing to live with her husband at her matrimonial home, but due to cruel behaviour of her husband and in-laws, she is compelled to live separately from her husband and in-laws. Learned Family Court has not properly appreciated the evidence adduced by the parties and arrived at wrong conclusion against appellant and passed the divorce decree in favour of respondent-husband, which could not be sustained in the eyes of law and prays for setting aside of impugned judgment and decree. In support of his contention learned counsel placed reliance on the judgment passed coordinate Division Bench of this Court in the case of ***Bijendra Vs. Smt. Rekha, 2013 (2) JLLJ 280.***

6. *Per contra*, learned counsel for respondent/husband submitted that the appellant/wife lodged false dowry case against him. It is also submitted that after the marriage, appellant/wife resided at her

matrimonial home for only three days and thereafter, she left her matrimonial home without any cogent reason and since then, they are living separately. It is further submitted that after due appreciation of evidence adduced by the parties and material placed on record the learned Principal Judge, Family Court, Satna has passed the impugned judgment and decree, which requires no interference, hence prays for dismissal of the appeal.

7. We have considered the rival contentions of learned counsel for the parties and perused the impugned judgment & decree.

8. In Support of his pleadings Respondent/Husband has examined himself as AW-1 and witnesses Bhopal Vishwakarma (AW-2), Dayanand Vishwakarma (AW-3) and Motilal Vishwakarma (AW-4). Similarly, Appellant/Wife has examined herself as NAW-1.

9. Appellant Smt. Sanchita Vishwakarma (NAW-1) has admitted in para 11 of her cross-examination that on 29/05/2013, her brother Sandeep and Cousin came to her in-laws house for taking her to parental house for appearing in M.Com final examination. She has also admitted in this para that on 31/05/2013, her father-in-law, elder brother of father-in-law, brother-in-law and some other persons came to her parental house for taking her to her matrimonial home. She has also admitted in para No.12 of her cross-examination that on 31-May-2013 when her father-in-law came to her parental house for taking her to her matrimonial home at that time her father told the respondent/husband that now the examination of her daughter are going on, therefore, you may come in the month of June, 2013 for taking her. It is also admitted in para 13 of her cross-examination by NAW-1 that on 31/05/2013 when her father-in-law alongwith other relatives came to her parental house to take her, she did

not go with them due to her examination. NAW-1 has also stated that after 29/05/2013 she never went to her in-laws house although, because her in-laws did not come to take her from parental house. She has also admitted in para 13 of her cross-examination that on 19/06/2013, when her family members, her husband, her father-in-law and some other relatives went to the police station, then she refused to go to her in-laws house. She has also admitted in para 15 of her cross-examination that she has lodged the report (Ex. P/2) at Police Station Kotwali and read out and signed the same. She has also admitted in this para that she has also lodged a case against her husband under Domestic Violence Act and she has not filed any appeal against order dated 01/09/2016 (Ex. P/22) passed by the Court of Chief Judicial Magistrate, Sidhi (M.P.). She has also admitted that in her statement (Ex. P/28) recorded before the court of Chief Judicial Magistrate, Sidhi (M.P.) in para No.4, it is mentioned that she stayed for 2 days in her in-laws house and during that period no physical relations were established between the appellant/wife and respondent/husband.

10. Hence, from the admission of appellant/wife, it is proved that after solemnization of marriage on 26/05/2013, she went to her in-laws house and stayed there till 28/05/2013 and thereafter, on 29/05/2013, she came back to her parental house with her brother for appearing in M.Com. final examination and when her father-in-law alongwith other relatives came to her parental house for taking her back to her in-laws house, then she did not go with them. It is also proved from para 4 of her statement recorded before the Court of Chief Judicial Magistrate, Sidhi (M.P.) that no physical relation was established between the appellant and respondents. Hence, averments of the respondent that on the first night,

appellant/wife refused to make physical relationship with respondent/husband is proved.

11. The denial of the appellant/wife for making physical relationship with respondent/husband amounts to cruelty with respondent. It is also proved that on 31/05/2013, when father of respondent and other relatives came to parental house of appellant/wife for taking her to matrimonial home, she refused to go with them and on 13/06/2013, she lodged a written complaint (Ex. P/2) before Police Station Kotwali. Thus, it is proved in the case that the appellant/wife and respondent/husband are residing separately from 29/05/2013 and it is also proved that on 31/05/2013, when father-in-law and other relatives of appellant went to her parental house for taking her back to matrimonial home, appellant refused to go with them and since then appellant/wife is living at her parental house and has lodged a report against respondent and his family members for demand of dowry and after that she has executed an affidavit alleging that she has given divorce to the respondent with her consent and she has no objection if after getting the divorce, the respondent chooses to remarry and nothing remains in their relations. She also stated in the affidavit that she will not be claiming any right over the movable or immovable property of respondent in future and she has also averred that she does not want any action on her written complaint dated 13/06/2013 (Ex.P-2). Appellant Sanchita Vishwakarma (NAW-1) has admitted her signature on the affidavit (Ex.P-4) in Para-14 of her cross-examination.

12. As discussed above, appellant/wife resided in her in-laws house for only 3 days and during this period there was no co-habitation between the parties and after since then the appellant/wife and respondent/husband have resided separately for last more than 11 years.

13. In the case of *Naveen Kohli Vs. Neelu Kohli, (2006) 4 SCC 558*, Hon'ble Apex Court has held that once the parties have separated and the separation has continued for sufficient length of time and one of them has filed petition for divorce, it can well be presumed that the marriage has broken down. Para Nos.-72 to 76 of the said judgment are reproduced as under:-

- “72. *Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.*
73. *A law of divorce based mainly on fault is inadequate to deal with a broken marriage. Under the fault theory, guilt has to be proved; divorce courts are presented with concrete instances of human behaviour as they bring the institution of marriage into disrepute.*
74. *We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised 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.*
75. *Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.*
76. *Since there is no acceptable way in which a spouse can*

be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied forever to a marriage that in fact has ceased to exist.”

(Emphasis Supplied)

14. Looking to the aforesaid facts and circumstances of the case and in the light of judgment pronounced by Hon'ble Apex Court in the case of ***Praveen Mehta Vs. Indrajit Mehta, (2002) AIR (SC) 2582*** and in the case of ***Naveen Kohli Vs. Neelu Kohli, AIR 2006 SC 1675***, we are of the view that no illegality or impropriety is found in the impugned judgment and decree which requires any interference by this Court.

15. As regards the judgment relied upon by learned counsel for appellant in the case of ***Bijendra (supra)*** being distinguishable on facts is of no help to the appellant.

16. Hence the appeal being devoid of any merits, deserves to be and is hereby dismissed and judgment and decree dated 17/08/2021 passed by Principal Judge, Family Court, Satna (M.P.) in HMA Case No.45/2018 is hereby affirmed.

17. Looking to the facts and circumstances of the case, parties will bear their own costs.

18. Decree be drawn accordingly.

19. Let a copy of this judgment alongwith record be sent back to the Court concerned.

(SHEEL NAGU)
ACTING CHIEF JUSTICE

(AMAR NATH (KESHARWANI))
JUDGE

as/skt