

**Chief Justice's Court**

**Case :-** FIRST APPEAL No. - 181 of 2019

**Appellant :-** Vipin Kumar Agrawal

**Respondent :-** Smt. Manisha Agrawal

**Counsel for Appellant :-** Archit Mehrotra

**Counsel for Respondent :-** Harshul Bhatnagar

**Hon'ble Arun Bhansali, Chief Justice**

**Hon'ble Vikas Budhwar, J.**

*(Per : Arun Bhansali, CJ)*

1. Heard Sri Manish Goyal, learned Senior Advocate, assisted by Sri Archit Mehrotra, learned counsel appearing for the appellant and Sri Ashok Shankar Bhatnagar, learned Senior Advocate, assisted by Sri Harshul Bhatnagar, learned counsel for the respondent.
2. This appeal is directed against the judgment dated 01.09.2017 passed by Additional Principal Judge, Family Court, Gautambuddha Nagar whereby the petition filed by the appellant under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') seeking dissolution of the marriage has been rejected.
3. The proceedings under Section 13 of the Act were initiated on 03.10.2011 with the averments that parties entered into wedlock on 06.12.1994 and two sons, Vinamra and Chaitanya, were born to them at Farrukhabad District, U.P. At the time of marriage, the family used to reside at Farrukhabad and house of the respondent was at Noida where her family was staying. After the death of respondent's father on 26.11.1999, respondent's both brothers and mother stayed in the house at Noida. Her both the brothers were married, however, their marriages have been dissolved. The respondent was living with her mother and brothers for about four years. It was indicated that the

appellant is a partner in M/s. Narayan International and M/s. North International. The family shifted to Noida whereat House No. A-111, Sector 40, Noida, the family along with the children was living. The house in question was got registered in the name of the respondent on appellant making payment through an account payee cheque, which amount was paid from M/s. Narayan International. It was claimed that the family life of the parties was always disturbed because of which the respondent did not take care of her husband and children appropriately. Most of the time, she was staying at her parental home. It was then alleged that in the intervening night of 20<sup>th</sup> and 21<sup>st</sup> of August 2007, there was dispute between the parties for which respondent was responsible, based on which the respondent decided not to live with the appellant and without reasonable cause, she ousted the husband from the house. The respondent misbehaved along with her mother and brothers with him and started claiming herself to be the owner of the house situated at Sector-40, Noida. The appellant was forced to live with the family alone. Respondent filed Misc. Application No. 38 of 2008 under Section 7 of Guardians and Wards Act, 1960, Hindu Minority and Guardianship Act, 1956 before the District Judge, Gautambudh Nagar on 20, 21 November, 2008. False criminal case was registered with the Chief Judicial Magistrate, wherein allegations of domestic violence were made that the appellant had beaten her in August, 2007. In fact, the elder son, Vinamra, was made to give a statement for the purpose of creating false evidence. However, the case was dismissed for lack of evidence. Allegations were made that in September, 2010, attempt was made to usurp house at Sector-40, which failed, several false complaints were filed including at Mahila Police Station, which resulted in mental cruelty. A false affidavit was filed before the Court of Additional Sessions Judge that till such time that witnesses are given Police protection, they will not appear and that the appellant wants to compromise with the

respondent so that they can live together and he can murder her and give it a shape of suicide, which application was rejected. Other allegations were made regarding making of false applications before the Court and in the allegations made in the petitions, character assassination of the appellant was done. Further allegations were made pertaining to various kind of averments made in the proceedings amongst the parties including the fact that her father died on account of behaviour of the appellant. Further submissions were made that false allegations pertaining to abortion were made. It was indicated that a suit was filed on 05.05.2008 for restoration of conjugal rights. However, when the response was not filed, the same was withdrawn. Efforts were made to resolve the issue by A.D.J. Court also, however, the same also failed. Based on the said averments, relief was claimed for dissolution of marriage.

4. Reply to the petition was filed by the respondent, *inter alia*, contesting the averments made in the petition. It was claimed that despite suffering the torture for years, she made all the attempts to save her matrimonial life and was waiting for behaviour of the appellant to change. Submissions were made that the main reason for the matrimonial dispute was that as elder brother of the appellant had no son and the respondent refused to give her younger son in adoption to the elder brother of the appellant, the same resulted in the dispute between the parties. Further allegations were made that as the appellant has not approached the Court with clean hands, the petition was liable to be dismissed. It was denied that any allegations pertaining to adultery were made. Children have always indicated that they wanted to live with the mother. The property at Sector-40 is registered in her name and that the respondent was forced to take stand before the Courts on account of the behaviour meted out to her. It was submitted that the respondent was willing to live with the appellant subject to correction in his behaviour.

5. Based on the averments of the parties, the Family Court framed three issues. Issue No. 1 pertained to cruelty, Issue No. 2 related to cause of action and the Issue No. 3 pertained to relief.

6. On behalf of the appellant, three witnesses were produced and several documents were exhibited. On behalf of the respondent, six witnesses were examined and several documents were exhibited.

7. After hearing the parties, the Family Court came to the conclusion that in respect of the allegations pertaining to desertion on 20<sup>th</sup> and 21<sup>st</sup> of August 2007, though a dispute did arise between the parties, however, there was no material available on record to indicate that the appellant was thrown out of the house, besides the fact that no criminal case was lodged by him. The Family Court, thereafter dealt with the allegations made in each sub-para of Para-11 pertaining to cruelty and accepting the version of the respondent and came to the conclusion that the appellant failed to prove the cruelty. The Issue No. 2 pertaining to cause of action was decided on the basis of the admitted fact of marriage and Issue No. 3 pertaining to relief was decided against the appellant and the petition was dismissed. Feeling aggrieved, the present appeal has been filed.

8. Learned counsel for the appellant made submissions that parties are living separately since the year 2007, no mutual faith and trust is left between the parties, it is established from the evidence available on record that the respondent has failed to understand and accept the emotions and feelings of the appellant and cruel behaviour of the respondent is writ large on record and, therefore, the Family Court fell in grave error in refusing to pass a decree for divorce. Submissions have been made that the life of the appellant can be bifurcated in different stages. From, 06.12.1994, when they got married, to 19.08.1999, while they were residing at Farrukhabad away from Noida, from 1999 to 2001, when the family of the appellant was shifting from Farrukhabad to Noida and the appellant purchased

House at Sector-40 on 10.07.2000 in the name of respondent, and the last phase from 2001 to 2007, the turbulent phase, wherein the respondent under the influence of her mother and two brothers, both divorcee, committed cruelty against the appellant. All efforts were made by the appellant to save his marriage, however, failed. It is submitted that since 2007 till date, the married life has reached a dead end as there has been a series of litigations between the parties wherein criminal complaint was filed by the respondent-wife, proceedings under Guardians and Wards Act for custody of children was filed by her, the contempt of Court proceedings against the appellant was initiated, complaint was made to the Senior Superintendent of Police levelling charges of burglary against the appellant and threat to life. Proceedings were filed under Guardians and Wards Act and injunction suit was filed by the appellant and proceedings were initiated under Section 9 of the Act. Submissions have been made that a bare look at averments made in various proceedings would reveal that the same are sufficient to constitute mental cruelty wherein no stone was left untouched to assassinate the character of not only the appellant, but the entire family. Reference has been made to allegations contained in various pleadings and the statements recorded. Efforts have been made to indicate that the allegations contained therein were false resulting in mental cruelty.

9. Learned counsel for the appellant emphasized that the Family Court, instead of seeking to explain each and every allegation made in the petition regarding mental cruelty from the point of the view of the respondent, should have taken an over all view of what has happened in the life of the parties. The evidence adduced by the appellant was misread and wherever there has been clear evidence of cruelty, the Family Court has not even discussed the same which has resulted in perversity vitiating the judgment impugned.

10. Further submissions were made that the judgment impugned is perverse in not taking into the consideration the material available on record. Reliance was placed on **Samar Ghosh Vs. Jaya Ghosh : (2007) 4 SCC 511, V. Bhagat Vs. D. Bhagat (Mrs.) : (1994) 1 SCC 337, Raj Talreja Vs. Kavita Talreja : (2017) 14 SCC 194** and **Malathi Ravi M.D. Vs. B.V. Ravi M.D. : (2014) 7 SCC 640.**

11. Further submissions were made that present is a classic case of irretrievable break down of conjugal relations, wherein the parties are well qualified and understand the implications of the averments made by them in various pleadings and evidence recorded in the matter. The two children of the parties are now aged 25 and 27 years and are settled in U.K. and, therefore, there is no reason to drag the relationship. Submissions were also made that the respondent was already in possession of a valuable property purchased and owned by the appellant and the appellant, keeping in view the observations made by Hon'ble Supreme Court in the case of **Raj Talreja (supra)**, is prepared to pay a sum of Rs. 3 crore as permanent alimony so as to take care of her status post grant of decree of divorce. It is prayed that the appeal be allowed, judgment impugned be set aside and marriage between the parties be ordered to be dissolved.

12. Submissions made by counsel for the appellant were vehemently opposed by counsel for the respondent. Submissions were made that insofar as the respondent is concerned, she does not want dissolution of marriage but seeks the appellant not to indulge in violence. It was submitted that the house in question though was purchased by a cheque given by the appellant, the money was paid to him by respondent's father in cash in advance. Learned counsel for the respondent emphasized that even as per the case of the appellant, the dispute started with the birth of younger son on 19.09.1999, as the appellant wanted to give the said child in adoption to his elder brother. The appellant himself left the house after thrashing her in the

intervening night of 20<sup>th</sup> and 21<sup>st</sup> of August, 2007 and the respondent is being accused of desertion, which is baseless. Learned counsel made submissions that the appellant took away the children in March, 2008 and filed proceeding under Section 9 of the Act on 05.05.2008 which was later on withdrawn. A suit for injunction was filed by him for restraining the respondent from meeting the children wherein an ex-parte injunction was granted. The injunction was later on vacated and directions were given that the children would live with each parent for one month each. On 31.05.2008, the appellant did not hand over the children and as such a complaint under Section 156(3) Cr.P.C. was filed seeking return of children based on which the custody was handed over and the case was dismissed for want of prosecution. In the said proceedings, the son gave statement under Section 202 Cr.P.C. on 21.08.2008 whereafter the appellant initiated proceedings under Section 7 of Guardians and Wards Act wherein allegations and counter allegations were made. It was submitted that the nature of the allegations, which were made by the appellant in his examination-in-chief, amounts to cruelty and it was only on account of the allegations made that the respondent was forced to indicate the things in rejoinder which cannot be permitted to be used for alleging cruelty as the appellant cannot be permitted to take advantage of his own wrong. It was submitted that the indications made in the proceedings pertaining to custody of children had nothing to do with the matrimonial dispute and by making false allegations, the respondent was forced to make counter allegations. It was submitted that based on the averments contained in various pleadings, which were forced on the respondent, appellant cannot be permitted to seek dissolution of marriage. Reliance was placed on **Ravindra Kaur Vs. Manjit Singh : (2019) 8 SCC 308**, **Samar Ghosh Vs. Jaya Ghosh (supra)**, **Ashok Kumar Jain Vs. Sumati Jain : (2013) 14 SCC 123**

and **Smt. Shashi Bala Vs. Rajendra Pal Singh : First Appeal No. 231 of 2015**, decided on 10.12.2019 by Division Bench of this Court.

13. We have considered the submissions made by counsel for the parties and have perused the material available on record.

14. From a perusal of the pleadings of the parties as well as the statements recorded in support of respective versions, it is revealed that the petition seeking dissolution of marriage was filed by the appellant alleging desertion and cruelty.

15. The averments pertaining to desertion were made in para-10 of the plaint, which averments were denied by the respondent. However, surprisingly, the Family Court did not frame any issue on the aspect of desertion and even in the judgment impugned, there has been a lack of point for determination with regard to aspect of desertion though the evidence was adduced.

16. Under the provisions of Order XVIII Rule 4 C.P.C., as the examination-in-chief is by way of affidavit, the allegations, as contained in the plaint, were repeated and the cross-examination took place on the aspect of the desertion as well. Finding of the Family Court on the aspect of desertion is quite cursory and does not indicate in so many words as to whether the aspect of desertion has been proved or not. The duty of the Court in framing issues, as provided under Order XIV C.P.C., is not a mere formality, as the issues are the foundation on which the evidence is required to be led/modulated by the parties and failure to frame proper issues not only deprives the parties to lead evidence appropriately, the judgment delivered also lacks comprehension and, therefore, proper framing of the issues is a *sine qua non* for the purpose of a proper trial.

17. Be that as it may, the allegations in the plaint pertained to a quarrel between the parties in the intervening night of 20<sup>th</sup> and 21<sup>st</sup> of August, 2007, as a result of which the appellant claims to have been



forced to leave the matrimonial house and he started to live with his parents. The said allegations made in the plaint were specifically denied by the respondent insofar forcing the respondent to leave the house in question was concerned, on the other hand it was alleged that the appellant gave thrashing to the respondent and himself left the house. The circumstances, which have come on record, clearly reveal that since 20<sup>th</sup>/21<sup>st</sup> August, 2007 the parties are not living together. As to whether the respondent forced the appellant to leave the matrimonial house or the appellant left the house on his own; and, whether leaving house on his own would amount to desertion by the respondent of the appellant, requires determination.

18. Term “Desertion” has been defined in Explanation to Section 13(1) of the Act as under:

*“Explanation.- In this sub-section the expression “desertion” means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.”*

A perusal of the above explanation would reveal that “desertion” would mean leaving of the petitioner by the other party to the marriage without reasonable cause and without the consent and includes the wilful neglect of the petitioner by the other party to the marriage.

19. In the present case, since admittedly, the appellant left the matrimonial home for whatever reasons, including the fact that there was some altercation between him and the respondent on 20<sup>th</sup> August, 2007, it cannot apparently be alleged that the respondent had deserted the appellant. The allegations contained in para-10 of the petition seeking divorce read as under:

*“10. That in the night of 20/21.8.2007 there was a quarrel in between the parties and it was the defendant-respondent who was responsible for that and as a result thereof, she declared she would*

*not live with the plaintiff-petitioner any more, consequently, she deserted or turned the plaintiff-petitioner out of the house (A-111 Sector-40, Noida), without reasonable cause and against the wish of the petitioner, in complicity with her mother and brothers, that too after abusing him and his parental joint family members claiming that she is the sole owner of House No. A-111, Sector-40, Noida, hence, she shall alone stay there, as per her own Sweet Will. Consequently, the petitioner, husband has been compelled to reside at his Parental Joint Family house.”*

20. A perusal of the above would reveal that the appellant has relied on a single event whereby he himself left the matrimonial residence and started living with his parents. Except for making allegations that the respondent declared that she shall alone stay in the house, nothing has been indicated with regard to efforts made by the appellant to get back in the matrimonial home and in those circumstances, it cannot be said that there has been desertion on the part of respondent so as to bring the case within the ambit of Section 13(1)(i-b) of the Act.

21. In that view of the matter, so far as the plea pertaining to desertion is concerned, the same cannot be accepted and the finding recorded by the Family Court, though cursory, does not call for any interference.

22. The main focus of the petition seeking dissolution of marriage has been the alleged cruelty committed by the respondent, the allegations whereof are contained in various sub-paras of para-11 of the petition. The allegations essentially pertain to the nature of averments made in various proceedings between the parties on various aspects of matrimonial dispute including proceedings under the Guardians and Wards Act and the criminal complaint made by the respondent. Submissions made are that the allegations, which were made, are per se false, which caused great mental agony beyond all limits and that the same shocked the family. For the purpose of establishing cruelty, reliance is sought to be placed on the averments/allegations contained in various pleadings/papers

pertaining to filing of complaint in June, 2008 alleging that she was beaten up in August, 2007, complaint made pertaining to attempt to get back in the property, affidavit in guardianship case alleging threat to life issued by the appellant, purported attempt on the part of the appellant for reconciliation so as to ultimately murder her indicating the appellant being of deep ante-social, ante-family character, alleging adultery and it is submitted that the complaints made were dismissed causing great mental torture to the appellant.

23. It would be appropriate to quote the contents of the rejoinder filed by the respondent in the proceedings initiated by her under Section 7 of the Guardians and Wards Act, which read as under:

*“(e) Respondents family environment is characterised by being abusive, carrying arms and being generally and completely aggressive/violent/unsocial in nature. The Respondent and his family is engaged in upholstery manufacturing business and is dealing with illiterate/ semi-literate labourers where they use abusive aggressive language 12 hours a day. Such exposure has percolated in respondents familial psyche and he uses such abusive language and violent/unsocial manners even at home. His aggressive violent unsocial behaviour, habit of telling lies and interpreting situations in a twisted manner may work in his business but would certainly be a bad example for the minors at such tender age. In fact, Respondent constantly teaches children to lie and sets various completely immoral examples for them to follow.*

*Such an ugly exposure to children at such an early age would leave deep un-repairable psychological marks on them, permanently damaging their psyche and they will not develop into morally sound character.*

*(f) Due to respondent family’s possession of pistols/arms and their uncontrolled violent nature, minors are even at physical risk.”*

24. In the affidavit filed by the respondent in support of the proceedings under Section 7 of Guardians and Wards Act, it was, inter alia, stated as under:

*“9- That the respondent is a violent, inhuman, “revolver” totting, individual, who acts in a fit of rage has outrageously anti-social questionable individuality, repeatedly threatens and beats, throws*

*his wife and children out of his home and currently resides in a family where the other male child in the so-called joint family routinely fails in studies year after year because members cannot spend any time on child's development due to their single minded pursuit of business wealth, where other male child are sent to hostel, where men routinely come home late at night and are on frequent business tours and where abusive aggressive language and behaviour is order of the day."*

25. In the cross-examination as DW-1 in the present proceedings, the respondent admitted to have filed the rejoinder and further stated as under:

*"उक्त रिज्वाइन्डर में मेरे द्वारा विपिन जी को violent, Introman, revolver totting, indivudal, outrageously, anti social, questionable विपक्षी के लिखी गई है। Anti Social का मतलब जो social न हो। जब मारते पीटते गये। violent का मतलब कि मारते पीटते है। inhuman का मतलब है जो दूसरे की इज्जत न करे। Revolver totting मतलब है कि जो बन्दूक अपने पास रखते हो। और डराते घमकाते हो। indivudal का मतलब इंसान। मैने 17 साल में विपिन जी के अन्दर यह खूबी देखी कि वे अपने आफिस में मेहनत से कार्य करते हैं। वे अपने कार्य में इतने व्यस्त रहते हैं कि अपने बीबी बच्चों को भूल जाते हैं। उनकी जरूरत, दर्द का कोई ध्यान नहीं करते। विपिन जी अपने माता पिता भाई भाभी के साथ इतना चलते है कि वे मेरी, मेरे बच्चों की तथा मेरे परिवार वालो की इज्जत रखना भूल जाते हैं और बेइज्जती करते हैं। लोगों को पैसा दिखाते हैं और शान समझते हैं। मेरी एवं बच्चों की जरूरतों को भूल जाते हैं। इसके अलावा मुझे इस समय याद नहीं कि विपिन जी में क्या खूबियाँ हैं।"*

26. The respondent, in her affidavit in the proceedings under Guardians and Wards Act, also alleged as under:

*"32- That due to cruelties and atrocities committed by respondent and his other family members the deponent twice suffered miscarriage. That the endeavour of the respondent was to inflict so much pressure upon the deponent, both mental and physical, as would render her incapacitated in some manner as that would further his designs. That this fact shows that the respondent does not have abiding love and affection towards minors and wife, which is otherwise natural to a father and a husband. All the time he is just after money."*

27. During the course of the proceedings under the Guardians and Wards Act, she filed an application (Paper No. 135Ga/2) indicating that a burglary took place in her house on 27.08.2010, wherein several

valuables were stolen and went on to allege that “जिसमें सम्पूर्ण हाथ प्रार्थिनी के पति विपिन अग्रवाल का ही था।”

28. In the said application, she further alleged that the witnesses of the respondent have danger to the life from the appellant and his men and further went on to allege as under:

“फिर उसे बाद सूत्रों से यह भी पता चला है कि अब विपक्षी सुलह का ढोंग करके प्रार्थिनी को ए-111, सेक्टर-40 में साथ रखकर प्रार्थिनी को जान से मारकर चालाकी से आत्महत्या का केस बनाने की योजना बना रहा है। प्रार्थिनी मनीषा अग्रवाल को विपिन अग्रवाल से जान का खतरा फिर से हो गया है।”

29. The respondent also filed complaint under Section 156(3) Cr.P.C. against the appellant alleging offences under Sections 323, 406, 504 and 506 I.P.C. and sought action. The complaint remained pending from 03.06.2008 till 11.09.2009 and came to be dismissed for non prosecution on 11.09.2009. The Court passed the following order:

“11-09-09

वाद पुकारा गया परिवादिनी अनुपस्थित। पत्रावली के अवलोकन से विदित होता है कि परिवादी लम्बे समय से अनुपस्थित चल रहा है ऐसा प्रतीत होता है कि उसे अब इस वाद में कोई रुचि नहीं है। विपक्षी को तलब करने हेतु पर्याप्त साक्ष्य नहीं है।

अतः परिवाद अन्तर्गत धारा 203 द0प्र0सं0 खारिज किया जाता है। पत्रावली दाखिल दफ्तर हो।”

30. Another complaint was made to the Senior Superintendent of Police, Gautambudh Nagar on 14.11.2020, wherein a report, after investigation, was given regarding the allegations being incorrect and mainly outcome of the pending proceedings *inter-se* parties.

31. In the lengthy examination-in-chief and cross-examination conducted before the Family Court, the parties and their counsel, apparently, went beyond the pleadings of the parties and indulged in wholly irrelevant and uncalled for cross-examination of the parties. On the part of the Family Court also, no control was exercised during the course of the cross-examination and, in fact, the stipulations of Rule 30 of the U.P. Family Courts Rules, 2006 were violated. The provisions of Rule 30 of the Rules, *inter alia*, read as under:

*“30. The Court may record only the substance of what the witness deposes in his examination by Court, and cross examination by respondent if the court so permits, and shall prepare only a memorandum of substance of what the witness deposes as prescribed under Section 15 of the Family Courts Act, 1984. The memorandum shall be read and explained to the witness, signed by witness and the Presiding Officer of the Court and shall form part of the record. The Court may in the matter of interim relief take evidence on affidavit, if any, which shall also form part of the record of the court.”*

32. A perusal of the above would reveal that the Rule provides that the Court may record only the substance of what the witness deposes in his examination and cross-examination and shall prepare only a memorandum of substance of what the witness deposes in terms of Section 15 of the Family Courts Act, 1984.

33. However, it would be seen that the affidavit, filed in lieu of the examination-in-chief of PW-1, runs in 55 pages (page 187 to 242 of the paper-book of the appellant) and he has been cross-examined on seven dates between 25.08.2014 and 21.01.2015 and the same runs in 28 pages. Similarly, affidavit of respondent as DW-1 runs in 114 pages and she was cross-examined between 22.07.2015 to 18.12.2015 on 17 dates and her cross-examination runs in 59 pages. Such nature of conduct of the proceedings by the parties and the Family Court permitting conduct of proceedings in the above manner in violation of provisions of Rule 30 of Rules, 2006 and Section 15 of the Act cannot be appreciated. The permission to file such lengthy affidavits and permitting cross-examination to such an extent, as noticed hereinbefore, goes against the very spirit of the enactments so as to ensure expeditious disposal of the matrimonial matters.

34. In the cross-examination of the respondent, as noticed hereinbefore, there is no denial of the various allegations made against the appellant in the pleadings, affidavit and complaints. However, the same have been sought to be justified on account of the alleged conduct of the appellant. During the course of the submissions,

counsel for the respondent sought to justify the contents of the rejoinder and affidavit filed in the proceedings under Guardians and Wards Act on account of the purported allegations made in the reply to the proceedings initiated by the respondent under Guardians and Wards Act. However, the said response filed by the appellant has not been produced/exhibited in the proceedings despite the fact that the appellant heavily relied on the allegations made in the rejoinder amounting to cruelty. The nature of allegations, which have been made in the proceedings, may be on account of the anxiety to ensure the custody of the children, cannot be justified and unless the same are proved to be correct and/or have the foundation, would clearly amount to cruelty by the respondent against the appellant.

35. The respondent made allegations regarding the burglary conspired by the appellant in a complaint to the Police and alleged that her witnesses' life has been threatened by the appellant and also made serious allegations that appellant was hatching conspiracy to kill the respondent by keeping her with him in the name of conciliation and give it a colour of suicide. The said averments made are sought to be brushed away by learned counsel for the respondent by indicating that the allegations about the plan to murder the respondent and give it a colour of suicide has been based on the information and the same cannot form the basis for alleging cruelty. The said submissions made cannot be accepted under any circumstance, as making the allegations of such serious nature by attributing the same based on some information without disclosing the same even during the course of examination and cross-examination, consequences of which are serious insofar as the other side is concerned against whom the allegations have been made and also show the mindset of the party involved in seeking to make fantastic allegations for the purpose of achieving the desired result against the other side and would clearly amount to committing cruelty to the other side.

36. As noticed hereinbefore, the allegations were made regarding the respondent suffering two miscarriages on account of the alleged cruelty/atrocities committed by the appellant. However, no material worth the name was produced to support the said allegation. Even the fact of miscarriage itself has not been proved by way of producing any medical evidence in this regard. It cannot be said that in case the miscarriage had taken place, in a well educated family there would be no medical evidence available in this regard. Even the manner of making allegations, as noticed hereinbefore, is wholly casual in nature and apparently an attempt to somehow paint the appellant herein as a person, who was committing cruelty against the respondent without producing any material in this regard. The Family Court, while dealing with the said aspect, has only noticed the fact that the appellant and the respondent had resided together after the birth of the second child and has assumed the possibility of the respondent conceiving and consequential miscarriage, as alleged by her, which determination cannot be sustained under any circumstance.

37. Strong reliance has been placed by the respondent on the statement of Vinamra Agrawal, son of appellant and respondent, recorded under Section 202 Cr.P.C. to allege that as the appellant has been committing physical violence against the respondent and has been committing cruelty all along to her, he cannot take advantage of his own wrong so as to allege cruelty against the respondent, which at the best, can be by way of reaction to the cruelty committed by the appellant.

38. The said statement under Section 202 Cr.P.C. was recorded by the child, who was 11 years of age, in the complaint made under Section 156(3) Cr.P.C. by the respondent and without any precursor contains the allegations regarding appellant ill treating/giving beating to the respondent, which allegations essentially are totally beyond the allegations contained in the complaint (Exhibit-12Ga/1).



39. Section 203 Cr.P.C. reads as under:

*“203. Dismissal of complaint- If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.”*

40. The above provision provides that if after considering the statement of the complainant and the witnesses, the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint. In the case in hand, as noticed hereinbefore, the Magistrate in his order dated 11.09.2009, (quoted at para 29 hereinbefore), on coming to the conclusion, based on the material available, including the statement recorded under Section 202 Cr.P.C. that there was no sufficient evidence to summon the respondent, rejected the application and, therefore, in those circumstances, placing heavy reliance on the statement of minor in the said complaint cannot be countenanced.

41. From the material available, which has come on record, as noticed hereinbefore, it is apparent that though the parties are living separately since the year 2007, while the appellant is seeking dissolution of marriage, the respondent, though, admittedly, living separately and not having taken any apparent steps for restitution of conjugal rights despite alleging desertion by the appellant, is insisting that she wants to continue with matrimonial relationship with the appellant and seeks assurance that he should not indulge in violence, apparently without establishing the violence having been committed by the appellant. It also appears from the material, which has come on record, that though the parties have been daggers drawn against each other and the children, apparently, under the direction of the Court were in the custody of the respondent, the appellant has

undertaken/met with the required expenditure pertaining to the education of the children and the children have come out with flying colours whereby both the sons, now 27 and 25 years of age, are Engineers and serving in U.K., yet they have failed to persuade the parents to bury the hatchet.

42. Hon'ble Supreme Court in the case of **Raj Talreja (supra)**, after referring to the fact that the complaints made by the wife against the husband to the Police were found false and the fact that the allegations were levelled on account of filing of the divorce petition, came to the following conclusion:

*“8. As noted above, these findings of the police have attained finality and as on date there is no criminal case pending against the husband. It is more than obvious that the allegations levelled by the wife are false. It may be true that these allegations were levelled after the divorce petition had been filed and the wife may have been in an agitated state of mind. However, that did not give her a right to make defamatory statements against the husband. The falseness of the allegations is borne out from the fact that the police did not even find it a fit case to be tried. After the police filed its cancellation report, the wife kept silent and after 11 years she filed a protest petition.”*

*“11. Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act, 1955 (for short 'the Act'). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty. In the present case, all the allegations were found to be false. Later, she filed another complaint alleging that her husband along with some other persons had trespassed into her house and assaulted her. The police found, on investigation, that not only was*

*the complaint false but also the injuries were self inflicted by the wife. Thereafter, proceedings were launched against the wife under Section 182 of IPC.”*

*“13. Though we have held that the acts of the wife in filing false complaints against the husband amounts to cruelty, we are, however, not oblivious to the requirements of the wife to have a decent house where she can live. Her son and daughter-in-law may not continue to live with her forever. Therefore, some permanent arrangement has to be made for her alimony and residence. Keeping in view the status of the parties, we direct that the husband shall pay to the wife a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) as one time permanent alimony and she will not claim any further amount at any later stage. This amount be paid within three months from today. We further direct that the wife shall continue to live in the house which belongs to the mother of the husband till the husband provides her a flat of similar size in a similar locality. For this purpose, the husband is directed to ensure that a flat of the value up to Rs.1,00,00,000/- (Rupees One Crore Only) be transferred in the name of his wife and till it is provided, she shall continue to live in the house in which she is residing at present.”*

43. In the above judgment, it has been laid down that if the wife makes reckless, defamatory and false accusations against her husband, the same would be an act of cruelty and merely because some proceedings have been initiated by the other party, it does not give her right to make defamatory allegations against the husband, which ratio applies to the present circumstances as well.

44. Similarly, in the case of **Malathi Ravi (supra)**, Hon’ble Supreme court, after referring to various judgments on the aspect, came to the following conclusion:

*“42. For the present, we shall restrict our delineation to the issue whether the aforesaid acts would constitute mental cruelty. We have already referred to few authorities to indicate what the concept of mental cruelty means. Mental cruelty and its effect cannot be stated with arithmetical exactitude. It varies from individual to individual, from society to society and also depends on the status of the persons. What would be a mental cruelty in the life of two individuals belonging to a particular strata of the society may not amount to mental cruelty in respect of another couple belonging to a different stratum of society. The agonised feeling or for that matter a sense of*

*disappointment can take place by certain acts causing a grievous dent at the mental level. The inference has to be drawn from the attending circumstances.*

*43. As we have enumerated the incidents, we are disposed to think that the husband has reasons to feel that he has been humiliated, for allegations have been made against him which are not correct; his relatives have been dragged into the matrimonial controversy, the assertions in the written statement depict him as if he had tacitly conceded to have harboured notions of gender insensitivity or some kind of male chauvinism, his parents and he are ignored in the naming ceremony of the son, and he comes to learn from others that the wife had gone to Gulbarga to prosecute her studies. That apart, the communications, after the decree for restitution of conjugal rights, indicate the attitude of the wife as if she is playing a game of Chess. The launching of criminal prosecution can be perceived from the spectrum of conduct. The learned Magistrate has recorded the judgment of acquittal. The wife had preferred an appeal before the High Court after obtaining leave. After the State Government prefers an appeal in the Court of Session, she chooses to withdraw the appeal. But she intends, as the pleadings would show, that the case should reach the logical conclusion. This conduct manifestly shows the widening of the rift between the parties. It has only increased the bitterness. In such a situation, the husband is likely to lament in every breath and the vibrancy of life melts to give way to sad story of life.*

*44. From this kind of attitude and treatment it can be inferred that the husband has been treated with mental cruelty and definitely he has faced ignominy being an Associate Professor in a Government Medical College. When one enjoys social status working in a Government hospital, this humiliation affects the reputation. That apart, it can be well imagined the slight he might be facing. In fact, the chain of events might have compelled him to go through the whole gamut of emotions. It certainly must have hurt his self-respect and human sensibility. The sanguine concept of marriage presumably has become illusory and it would not be inapposite to say that the wife has shown anaemic emotional disposition to the husband. Therefore, the decree of divorce granted by the High Court deserves to be affirmed singularly on the ground of mental cruelty.”*

45. Hon'ble Supreme Court laid down that mental cruelty and its effect cannot be stated with arithmetical exactitude. It varies from individual to individual, from society to society and also depends on the status of the persons and, in case, the husband has reasons to feel

that he has been humiliated, for allegations made against him are not correct; or the assertions made in the pleading are incorrect, the same manifestly shows the widening of the rift between the parties and the same increases bitterness and affirmed the decree granted by the High Court on the ground of mental cruelty.

46. Recently, a Division Bench of this Court in the case of **Col. Manoj Kumar Gupta Vs. Sangeeta : First Appeal No. 819 of 2019**, decided on 29.02.2024, after referring to the circumstances of the case wherein the parties were living separately for over 18 years, came to the following conclusion:

*“38. In so many cases, the matrimonial life between the parties is only for the namesake, whereas factually the marriage has become totally unworkable and emotionally dead, even if respondent is insisting upon carrying on with such emotionally dead relationship. It is only for this reason recognizing ground realities of such dead relationship, it is being consistently felt by the Hon’ble Apex Court that continuance of such unworkable matrimonial ties is nothing but mental cruelty on the parties and atleast on the petitioner, even when the divorce petition is being opposed by the other side. To our mind, irretrievable break down is an assessment of circumstances prevailing in lives of the parties to the marriage and if proved, would amount to mental cruelty.*

*39. Reverting back to the facts of the case and the discussion made hereinabove, we find that the marriage has irretrievably been broken down. Hence, as held by the Apex Court, certainly this case has to be construed as a case of ‘mental cruelty’ on the appellant as the marriage is totally unworkable and emotionally dead. On that note, divorce can be granted.”*

47. In the case of **Ravindra Kaur (supra)**, cited on behalf of the respondent, it has been laid as under:

*“11. Insofar as the action taken by the appellant herein to file a police complaint and the proceedings initiated under Section 107/151 of Cr.PC it is the natural legal course adopted by respondent to protect her right and possession of the property. It is not in dispute that at the point when a complaint was filed and a suit was also stated to have been filed by the appellant herein on 05.09.1995 there was misunderstanding brewing in the marital life of the parties and in that circumstance the appellant herein had*

*adopted the legal course to protect her rights. Such action taken in accordance with law cannot, in any event, be considered as inflicting cruelty as the legal proceedings was used only as a shield against the assault. In this regard the decision of this Court in the case of Ramchander vs. Ananta (2015) 11 SCC 539 relied on by the learned counsel for the appellant would be relevant, wherein while taking note of similar instances this Court has held that the same would not amount to cruelty and such instances would not be convincing enough to lead to a conclusion that the marriage is irretrievably broken down.”*

48. Hon’ble Supreme Court laid down that the action taken in accordance with law for the purpose of protecting rights cannot by itself be considered as inflicting cruelty on the other side. However, the said judgment does not lay down that for the purpose of protecting one’s right, absolutely false and frivolous allegations can be made against the other side and in case false and frivolous allegations have been made, the same would not amount to cruelty.

49. In the case of **Samar Ghosh (supra)**, Hon’ble Supreme Court laid down the instances of mental cruelty and also indicated that the same were illustrative and not exhaustive and laid down as under:

*“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behavior which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.*

*(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.*

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

*(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree*

*that it makes the married life for the other spouse absolutely intolerable.*

*(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.*

*(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.*

*(vi) Sustained unjustifiable conduct and behavior 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 behavior 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.”*

50. Both the sides have relied on various illustrations given by Hon’ble Supreme Court for supporting their cause, however, apparently the circumstances of the case appear to be covered by clauses (v) and (vi), as enumerated by Hon’ble Supreme Court.

51. So far as judgment in the case of **Ashok Kumar Jain (supra)** is concerned, the Hon’ble Supreme Court came to the following conclusion:

*“14. In the present case, both the Courts noticed the relevant facts and came to a definite conclusion that the appellant has not only been cruel to the respondent, but has also brought the situation to the point where the respondent had no option but to leave the matrimonial home. In this situation as the appellant was trying to take advantage of his own wrong, the Courts disallowed the relief as was sought for. We find that the order to that effect of the High Court does not suffer any infirmity, illegality or perversity; no interference is called for.”*

52. Hon’ble Supreme Court laid down that a party cannot take advantage of his own wrong. However, as noticed hereinbefore, the present is a case wherein fact that the appellant was seeking to take advantage of his own alleged wrong has not been proved.

53. Similarly, in the case of **Smt. Shashi Bala (supra)**, another Division Bench of this court came to the conclusion that the plaintiff



therein had committed physical and mental cruelty and not vice versa, based on which the decree was refused and the appeal was allowed. As already observed hereinbefore, the said judgment would have no application to the facts of the present case.

54. In view of the above discussion, it is apparent that the Family Court has not dealt with the allegations made by appellant based on documentary evidence in correct perspective and in a cursory manner has sought to explain all the allegations made, without coming to the conclusion that there was any substance in the allegations made by the respondent in various proceedings against the husband insofar as the allegations pertaining to mental cruelty are concerned.

55. In view of what has been found hereinbefore, the allegations made against the appellant in various pleadings/complaints/statements have apparently no basis and the same, as laid down by Hon'ble Supreme Court in the case of **Raj Talreja (supra)**, being reckless, defamatory and false, would be an act of cruelty to the appellant, which has been sufficiently proved. In view thereof, the judgment of the Family Court rejecting the petition of the appellant seeking dissolution of marriage cannot be sustained and, therefore, liable to be set aside.

56. As noticed hereinbefore, counsel for the appellant, while closing the submissions, keeping in view the observations made by Hon'ble Supreme Court in the case of **Raj Talreja (supra)** regarding requirements of the wife to have a decent house, where she can live and therefore some permanent arrangement has to be made for her alimony and residence and keeping in view the status of the parties directed the husband to make payment to the wife as one time permanent alimony and directed that she will not claim any further amount at any later stage, made submissions that the respondent was already in possession of a valuable residential property purchased and owned by the appellant, the appellant is further ready to pay a sum of

Rs.3,00,00,000/- (Rupees Three Crore) as permanent alimony so as to take care of her status post grant of decree of divorce. In view of the stand taken by the respondent seeking to continue with the matrimony, no response was given to the said offer.

57. However, as it is not denied that the residential house, which is claimed to have been purchased by the appellant in the name of respondent, continues to be in her possession, the offer of Rupees Three Crore made by the appellant by way of permanent alimony, keeping in view the status of the parties, appears to be reasonable.

58. Consequently, the appeal is allowed. The judgment and decree dated 01.09.2017 passed by Additional Principal Judge, Family Court, Gautambuddha Nagar in Original Suit No. 1195 of 2011 (Vipin Kumar Agrawal Vs. Smt. Manisha Agrawal) is set aside. The petition for dissolution of marriage filed by the appellant under Section 13 of the Act is decreed and the marriage of the parties, solemnized on 06.12.1994, is dissolved by a decree of divorce.

59. The respondent shall be entitled to a permanent alimony of Rs.3,00,00,000/- (Rupees Three Crore Only) and would be entitled to retain possession of the residential house where she is residing. The amount of permanent alimony be paid within a period of six weeks from the date of this judgment.

60. No order as to cost.

**Order Date :-** 01.07.2024  
P.Sri.

(Vikas Budhwar, J.) (Arun Bhansali, CJ)