

First Appeal No. 72 of 2019

Against the judgment and decree dated 12.12.2018 (decree signed on 21.12.2018) passed by Shri Deepak Nath Tiwari, learned Principal Judge, Family Court, Sahibganj Camp at Rajmahal in T.M.S.(Divorce) No. 88 of 2014.

Chandani Jain W/o Manoj Kumar Jain, D/o Ajay Kumar Chirania, R/o Kasim Bazar, PO & PS Rajmahal, Dist. Sahibganj, Jharkhand

... Appellant

Versus

Manoj Kumar Jain, S/o Gopal Jain, R/o Kasim Bazar, PO & PS Rajmahal, Dist. Sahibganj, Jharkhand

... Respondent\

For the Appellant : Mr. Mahesh Tewari, Advocate

For the Respondent : Mr. Raja Ravi Shekhar Singh, Advocate

Present:

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

HON'BLE MR. JUSTICE DEEPAK ROSHAN

C.A.V. on – 01.12.2023

Pronounced on – 03.11.2025

Per, R. Mukhopadhyay, J.

Heard Mr. Mahesh Tewari, learned counsel for the appellant and Mr. Raja Ravi Shekhar Singh for the respondent.

2. These appeals are directed against the judgment and decree dated 12.12.2018 (decree signed on 21.12.2018) passed by Shri Deepak Nath Tiwari, learned Principal Judge, Family Court, Sahibganj Camp at Rajmahal in T.M.S.(Divorce) No. 88 of 2014 whereby and whereunder the suit preferred by the appellant for dissolution of her marriage with the respondent has been dismissed.

3. For the sake of convenience, both the parties are referred to in this judgment as per their status before the learned trial court.

4. The plaintiff-wife (appellant herein) had preferred a suit under Section 13 (1) (i-b) and 13 (2) (iii) of the Hindu Marriage Act, 1955 for dissolution of her marriage with the defendant/husband (respondent herein) in which it has been stated that the marriage of the plaintiff and

the defendant was solemnized on 29.11.2008 as per Hindu rites and customs at Mohalla Kasim Bazar, PS Rajmahal, District Sahibganj. After marriage, the plaintiff stayed with the defendant for a few months at Kolkata. The relation between the plaintiff and the defendant was not cordial for various reasons which have not been disclosed in the plaint. It has been stated that the plaintiff is aged about 24 years whereas the defendant is aged 45 years and the difference in age is creating a lot of obstacles in leading a happy marital life. The defendant is in the habit of taking liquor and he used to pressurize the plaintiff to consume liquor which was unbearable to the plaintiff. The defendant also compelled the plaintiff to smoke cigarette which the plaintiff objected. The defendant had taken the plaintiff to Barakpore Court at Kolkata on 19.06.2009 and compelled the plaintiff and her parents and brother to sign on 4/5 written papers stating that the defendant has divorced the plaintiff and the plaintiff is free to go to her parents' house and lead her own life. The plaintiff had thereafter come back to her parents' house on 19.06.2009 from Kolkata and since then she is residing with her parents at Kasim Bazar, Rajmahal. The plaintiff had filed a criminal case against the defendant on 29.06.2009 which was dismissed at the stage of inquiry as Rajmahal P. S. Case No. 151 of 2009 was pending for trial. It has been stated that the defendant had preferred a suit under Section 9 of the Hindu Marriage Act, 1955 vide T.(M)S. No. 43 of 2009 which was disposed of on 09.03.2011. There is no conjugal relationship between both the parties since 19.06.2009.

5. On being noticed, the defendant had appeared and filed his written statement in which the allegations levelled against the defendant in the plaint have been denied. It has been stated that at the time of marriage, the economic condition of the family of the plaintiff was miserable as such, the entire expenses of marriage was borne by the defendant. The parents of the plaintiff had poisoned the mind of the plaintiff while she was living at Kolkata and leading a happy conjugal life. The relationship between the plaintiff and the defendant was cordial till 26.06.2009. It is not a fact that difference in age was an impediment to lead a happy marital life and in his evidence in Rajmahal P. S. Case No.

151 of 2009, the defendant had clearly deposed that difference in age was not a factor in leading a happy conjugal life.

6. Based on the pleadings of the parties, the following issues have been framed for adjudication:

1. *Whether the marriage between the parties may be declared as null and void?*
2. *Whether the suit of the plaintiff is entitled to be decreed and the marriage between the parties should be dissolved by passing a decree of divorce on the basis of grounds as claimed?*
3. *Whether the plaintiff is entitled for any other reliefs?*

7. The plaintiff has examined two witnesses on her behalf including herself.

8. P.W. 1 – Chandni Jain is the plaintiff who has stated that her marriage was solemnized with the defendant on 29.11.2008 as per Hindu rites and customs at Kasim Bazar, Rajmahal and after the marriage, she was taken to the ancestral house of the defendant at Rajmahal where she stayed for 10 days after which she went to Kolkata with the defendant. She was kept well for one month at Kolkata after which she was tortured by the defendant on trivial matters. The defendant had brought her to his house at Kasim Bazar after the marriage, where his family members humiliated and tortured her. On hearing this, her parents came and brought her back to their house on 06.03.2009. She has stated that the defendant had come to her house on 29.04.2009 and assured her parents that he will not repeat the mistake in future and being convinced, her parents had sent her to her matrimonial house. However, once again, she was subjected to torture by her in-laws. The defendant had taken her to Kolkata on 07.05.2009 and there she was subjected to assault and dissatisfaction was shown by the defendant regarding her preparation of food. The defendant used to force her to drink liquor and sometimes cigarette. The defendant had called her parents and brother to Kolkata and they were taken to Barakpore Court on 19.06.2009 when he got all of them to sign 4/5 papers which were typed and the defendant had stated that divorce was done and she is now free to go to her parents' place. She has thereafter returned back to her parents' place on 19.06.2009 itself

and since then she is staying at her parents' house. She had filed a criminal case against the defendant being Rajmahal P. S. Case No. 151 of 2009 which is pending. The defendant had filed a matrimonial suit before the Family Court, Sahibganj which was dismissed on 09.03.2011.

In cross-examination, she has deposed that she does not consider the defendant as her husband. She is a teacher at St. Teresa Public School and is working for the last 7 years. Her mother does the work of looking after the children in the hostel in the said school. Her father runs a shop selling plastic products. The financial condition of her house is now stable. The defendant is twice her age which has made her life miserable. She and the defendant reside in the same locality and know each other from the childhood. At the time of marriage her age was 18 years. The financial condition of her family at the time of marriage was poor. In Kolkata, the defendant used to work as a transporter. The defendant used to remain out of his house for most of the time due to work related issues. The flat where she stayed at Kolkata was equipped with TV, fridge and telephone, but it was kept locked. She did not have a mobile phone with herself. She has deposed that she had stayed at Kolkata for 4 and ½ months. After returning from Kolkata, she had filed a case in court at Rajmahal on 29.06.2009 under Section 498A of I.P.C. which was numbered as P.C.R. Case No. 313 of 2009. She does not know as to whether the said case is pending or not. She had thereafter made another application to the police station regarding threat being given by the defendant to withdraw the earlier case instituted otherwise she will have to face dire consequences and the said complaint was registered as G. R. No. 255 of 2009. The defendant had scratched and bloodied her body, but she is not ready for an examination by a doctor. An obscene film was shot of her at Jagdhatri Tower, Anand Mohan Basu Road in the 3rd floor. Babli Jain was also residing in the said building. She had not made any complaint in the police station at Kolkata regarding her being forced to act in a blue film. It is true that for the purposes of Vidai, a Panchayati was convened by the defendant at Rajmahal police station.

9. P.W. 2 – Ajay Kumar Chirania is the father of the plaintiff who has more or less reiterated what has been stated by P.W. 1 in her sworn statement.

In cross-examination, he has deposed that the first case instituted by the plaintiff under Section 498A of I.P.C. was P.C.R. Case No. 313 of 2009. He does not know whether the said case has come to its logical conclusion or not. The second case which was instituted by the plaintiff was related to the threats which were given by the defendant. The defendant had instituted a case for restitution of conjugal rights at Sahibganj. He had given evidence in the case under Section 498A of I.P.C. as well as the case instituted at Sahibganj. The marriage of the plaintiff was solemnized with the defendant with his consent as well as the consent of the plaintiff. He knows the defendant since his childhood days. He has solemnized the marriage of the plaintiff with the defendant due to the pressure created by the family members of the defendant. The plaintiff works in a school and also imparts tuition. His wife does not work at present. His family is running on account of the income generated by him, his wife and the plaintiff. At the time of marriage, his financial condition and that of the defendant were same. He had gone to the flat situated at Kolkata only once in July 2009 and he was accompanied by his wife and his relatives. During the Pujas, the plaintiff had stayed in his house for two months, after which the defendant asked him for Vidai, but he has refused. He had not given the Vidai of the plaintiff as the defendant used to torture her. A panchayati was held to resolve the dispute between the plaintiff and the defendant. He had got prepared the divorce paper on 19.06.2009 at Barakpore Court at which he and his family members had signed.

10. The defendant has examined as many as 7 witnesses in support of his case.

11. D.W. 1 – Manoj Jain is the defendant himself who has stated that his marriage was solemnized with the plaintiff on 29.11.2008. He had borne the entire expenses of the marriage including that of the plaintiff. After marriage, he and the plaintiff started residing peacefully at Kolkata in a rented house. During their stay at Kolkata, the parents of

the plaintiff started frequenting his house and making demand of money for business purposes as well as for running the household expenses. Because of the financial condition of the plaintiff being poor, he used to provide financial assistance, but when he started limiting the amount for assistance, the parents of the plaintiff started poisoning the mind of the plaintiff. On 17.06.2009, it was the last time he and the plaintiff had come together from Kolkata to Rajmahal and along with them there were parents and brother of the plaintiff. He has stated that he had a peaceful marital life till 26.06.2009. At the instigation of the parents of the plaintiff, the plaintiff has lodged two cases – one being criminal case against him and his family members and the second making false allegation of threat against them. The plaintiff started making demand of Rs. 2,00,000/- on the threat of sending him to jail and also pressurized him for divorce. He had through the society as well as the Panchayat continued his quest to take the Vidai of the plaintiff. When he failed in his endeavor, he had filed a suit for restitution of conjugal rights before the Family Court, Sahibganj. He does not want to divorce the plaintiff and has expressed his desire to lead a happy and peaceful marital life with the plaintiff. He has never touched liquor nor had he ever smoked. He has denied that he had made the complainant sign on divorce papers at Barakpore Court and had sent them to Rajmahal. He has also denied that he had made a blue film of the plaintiff.

In cross-examination, he has deposed that he had not filed any case against the act of the plaintiff in demanding an amount of Rs. 2,00,000/- otherwise he would be sent to jail.

12. D.W. 2 – Kishore Jain is the brother of the defendant who has reiterated what has been stated by the D.W. 1 in his sworn statement.

In cross-examination, he has deposed that he cannot produce any document of the Panchayat. The dispute has been considered at the society level.

13. D.W. 3 – Md. Intekhab Alam was acquainted with both the sides and he has stated similar to D.W. 1 and D.W. 2.

In cross-examination, he has deposed that the defendant is his neighbour and he is a frequent visitor to the house of the defendant.

14. D.W. 4 – Bhudeo Kumar stays in front of the house of the defendant in a rented house. He has reiterated what has been stated by the other witnesses of the defendant.

In cross-examination, he has deposed that the plaintiff and the defendant are staying separate for the last 8-9 years.

15. D.W. 5 – Virendra Prasad Sah has stated similar to D.W. 2 in his sworn statement.

In cross-examination, he has deposed that in the dowry related case, the defendant has been sentenced to 3 years imprisonment.

16. D.W. 6 – Pramod Kumar Jain is the uncle of the defendant, who has stated similar to that of the other witnesses.

In cross-examination, he has deposed that in the case instituted by the plaintiff under Section 498A of I.P.C., the defendant has been convicted.

17. D.W. 7 - Manoj Kumar Saha has also supported what has been stated by the other witnesses in their sworn statements.

In cross-examination, he has deposed that he has come to know that in the dowry related case instituted by the plaintiff, the defendant has been convicted.

18. It has been submitted by Mr. Mahesh Tewari, learned counsel for the plaintiff/appellant that the learned trial court has committed an error in not allowing the suit for dissolution of marriage. It has been submitted that several instances have been projected by the plaintiff and the witnesses which indicate the manner in which the marriage was solemnized and the various techniques adopted by the defendant to commit torture upon the plaintiff. It has also been submitted that both the parties are living separate since 19.06.2009 and there has been no conjugal relationship between them and the marriage for all practical purposes have become dead. There has been a willful abandonment on the part of the defendant and even the suit filed for restitution of conjugal rights has been dismissed. Apart from the desertion, cruelty has also been a focal point of seeking divorce and the conviction of the defendant under Section 498A of I.P.C. adds muscle to the instance of cruelty highlighted by the plaintiff. The learned trial

court has mis-directed itself while coming to a conclusion that there are no grounds pleaded to declare the marriage to be null and void. Mr. Tewari has thus submitted that the impugned judgment be set aside and the marriage between the plaintiff and the defendant be dissolved.

19. Mr. Raja Ravi Shekhar Singh, learned counsel appearing for the defendant/respondent has submitted that all the issues raised by the plaintiff have been negated by the learned trial court by giving appropriate reasons. The defendant is always bound and is still willing to resume his marital life with the plaintiff. Vague and unsubstantiated allegations have been made against the defendant and none of the allegations constitute either desertion or cruelty. Conviction for the offence under Section 498A of I.P.C. cannot be considered to be a ground enhancing the allegation of cruelty when such specific allegation of cruelty has not been made nor any allegation finds place in the evidence of the plaintiff witnesses.

20. We have heard the learned counsel for respective parties and have also perused the trial court records.

21. The learned trial court based on the pleadings of the parties has considered three grounds through which the plaintiff has sought for dissolution of marriage with the defendant. So far as issue no. 2 is concerned, the same is for a declaration of the marriage itself as null and void. In this context, the learned trial court has made reference to Section 12 of the Hindu Marriage Act, 1955 which describes a voidable marriage as well as Section 13 (2) of the Act and which is referred to at the initial stage of the complaint. The learned trial court on a detailed discussion has negated the said issue and has also taken into consideration that the plaintiff has herself stated that she does not have any grievance with respect to the age of the defendant being more than her. Cruelty is one of the foremost issues raised by the plaintiff as several instances have been cited by her constituting, according to her, cruelty. However, before embarking on a threadbare analysis on the said issue, it would be necessary to clarify the term cruelty and in this context, we may refer to the case of *"Shobha Rani v. Madhukar Reddi"* reported in (1988) 1 SCC 105, wherein it has been held:

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

22. In the case of ***A. Jayachandra v. Aneel Kaur*** reported in (2005) 2 SCC 22, a similar issue regarding the term cruelty was considered and it was observed as follows:

“10. The expression “cruelty” has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal

cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

11. *The expression “cruelty” has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. (See Shobha Rani v. Madhukar Reddi⁵.)*

12. *To constitute cruelty, the conduct complained of should be “grave and weighty” so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than “ordinary wear and tear of married life”. The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the court that the relationship between the parties had deteriorated to such an extent due to the*

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

23. The plaintiff (P.W. 1) has stated about leaving for Kolkata along with the defendant to live in a rented house after staying for 10 days at her matrimonial house at Rajmahal. After one month, the plaintiff was subjected to torture by the defendant on trivial matters. She had returned back to Rajmahal, where she was once again extended a similar treatment. There has been an intermittent visit by the plaintiff to Kolkata and her stay at Kolkata and Rajmahal at her matrimonial house was flooded with torturous behaviour on the part of the defendant and ultimately, the plaintiff was constrained to institute a case against the defendant for the offence under Section 498A of I.P.C., in which the defendant was convicted and sentenced to undergo rigorous imprisonment for 3 years. Though, the defendant has denied of having committed torture upon her, but the overall circumstances of the case and the allegation of torture having been cemented by the plaintiff in her evidence against the defendant convicting him under Section 498A of I.P.C. would further the case of the plaintiff seeking dissolution of marriage on the ground of cruelty. The defendant has harped much upon convening a Panchayati and filing of a suit for restitution of conjugal rights to assert that the defendant was all along willing to restore normalcy in his marital life. So far as the suit is concerned, the same was dismissed by the learned trial court and the holding of Panchayat does not seem to get substantiated as no document in respect of the same has been brought on record by the defendant. Mere holding of Panchayat would not act as a deterrent to the quest of the plaintiff to seek dissolution of marriage as there is nothing concrete on record to suggest that the defendant was genuinely interested in re-igniting his

marital relationship with the plaintiff. There has been no intention on the part of the defendant to make efforts to resume his marital life barring what has been stated above and this clearly appears to be a willful abandonment of the plaintiff by the defendant and the defendant also seems to have forsaken all his duties and responsibilities towards the plaintiff and all these points towards the desertion by the defendant of the plaintiff. It is more than 16 years since the plaintiff and the defendant are staying separately and the long duration of separation would furthermore minimize the efforts of re-union purportedly made by the defendant. The learned trial court has not made any appropriate consideration to the entire facts and the circumstances of the case while considering cruelty and desertion and in view of the findings recorded by us, both the said grounds have been proved by the plaintiff and consequently the issue no. 2 is answered in favour of the plaintiff and against the defendant.

24. We therefore on the basis of the discussions made hereinabove, set aside the judgment and decree dated 12.12.2018 (decree signed on 21.12.2018) passed by Shri Deepak Nath Tiwari, learned Principal Judge, Family Court, Sahibganj Camp at Rajmahal in T.M.S.(Divorce) No. 88 of 2014 and consequently dissolve the marriage between the plaintiff/appellant and the defendant/respondent.

25. This appeal is allowed.

26. Pending I.A., if any stands closed.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)