



2025:CGHC:23858-DB

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 233 of 2018

Judgment Reserved on : 27/03/2025

Judgment Delivered on : 11/06/2025

- Dr. Chouleswar Chandrakar, S/o Shri Bharat Lal Chandrakar, aged about 39 years, R/o Kachna (Saddu), Raipur, District Raipur (C.G.).

---- Appellant /
Applicant

Versus

- Smt. Seema Chandrakar, W/o of Dr. Chouleswar Chandrakar, aged about 30 years, R/o F-13, Chakradhar Nagar, Raigarh, District Raigarh (C.G.)

---- Respondent /
Non-Applicant

And

FAM No. 92 of 2018

- Dr. Chouleswar Chandrakar, S/o Shri Bharat Lal Chandrakar, aged about 39 years, R/o Kachna (Saddu), Raipur, District Raipur (C.G.).

---- Appellant /
Applicant

Versus

- Smt. Seema Chandrakar, W/o of Dr. Chouleswar Chandrakar, aged about 30 years, R/o F-13, Chakradhar Nagar, Raigarh, District Raigarh (C.G.)

---- Respondent /
Non-Applicant

For Appellant : Mr. Rakesh Thakur, Advocate.
For Respondent : Mr. Ali Asgar, Advocate.

**Hon'ble Smt. Justice Rajani Dubey &
Hon'ble Shri Justice Sachin Singh Rajput**

(C.A.V. Judgment)

Per Rajani Dubey, J.

1. Since the aforesaid appeals arise out of judgment and decree dated 12.02.2018, they are being heard together and decided by this common judgment.
2. FAM No.233/2018 has been preferred by the appellant-husband being aggrieved by the impugned judgment and decree dated 12.02.2018 passed by the Judge, Family Court, Bilaspur (C.G.), in Civil Suit No.280-A/2016, whereby the application filed by the appellant-husband under Section 9 of the Hindu Marriage Act for restitution of conjugal right was dismissed.
3. FAM No.92/2018 has been preferred by the appellant-husband being aggrieved by the impugned judgment and decree dated 12.02.2018 passed by the Judge, Family Court, Bilaspur (C.G.) in Civil Suit No.287-A/2016, whereby application filed by the respondent-wife under Section 13 of the Hindu Marriage Act for dissolution of marriage by decree of divorce was allowed.
4. appellant-husband filed an application under Section 9 of the Hindu Marriage Act *inter-alia* on the ground that his

marriage was solemnized with respondent-wife on 14.05.2009 at village Jhalronda, District Janjgir-Champa, according to Hindu rites and ritual and out of their wedlock, one child namely Rishabh was born on 13.12.2011. It was pleaded in the plaint that in the year 2012, the respondent-wife was selected as Civil Judge Class-II and got posted at Raigarh and thereafter she was transferred to Dallirajhara, District Balod. Thereafter, the respondent-wife has been living separately since February, 2014, she deserted the company of her husband/appellant without any justifiable reason and she also denied visitation right to his son, therefore, he filed a suit being Civil Suit No.280-A for restitution of conjugal right.

5. The respondent-wife filed an application under Section 13 of the Hindu Marriage Act on this ground that after solemnization of marriage, since from very beginning the behavior of her husband and his family members were cruel against her. The appellant-husband had purchase one plot at Raipur with respondent-wife's money and did not hand over the property paper to her. It has been pleaded in the plaint that the appellant-husband has criminal background, he married respondent-wife deceitfully by giving exaggerated and false information about his employment, profession, monthly income and financial status in order to enter into a marital relationship. It has been further pleaded

that the appellant-husband and his family members behaved in cruel manner with respondent-wife by taunting her regarding dowry and with the intention of illegally dividing the wealth. After selection in judicial service, the appellant-husband continue started interfering in her official work. From February, 2014, they started living separately. Thus, the respondent-wife field a suit against the appellant-husband for dissolution of marriage by decree of divorce.

6. The learned Family Court, after examining and appreciating oral and documentary evidence of both the parties, dismissed the application of appellant-husband filed under Section 9 of the Hindu Marriage Act and allowed the application of respondent-wife filed under Section 13 of the Hindu Marriage Act and dissolved the marriage of both the parties. Hence, both the aforesaid appeals filed by the appellant-husband.

In FAM No.92/2018

7. Learned counsel for the appellant submits that the impugned judgment dated 12.02.2018 passed by the learned Family Court is illegal, perverse, erroneous and contrary to the law, therefore, it is liable to be quashed. The learned Family Court has erred in granting decree of divorce in favour of respondent-wife without any proof of cruelty by the appellant-husband. Learned counsel further submits that the learned Family Court has erred in granting decree by

holding that the petitioner made complaint before the police authorities as well as before the High Court and the same was rejected. The respondent is admittedly posted as Civil Judge and under the influence of her position she was influencing the case proceedings, therefore, the appellant made complaint before the authorities including before the High Court and the same cannot be made a ground for granting decree of divorce, as the appellant was having right to make complaint in regard to injustice. Learned counsel also submits that the appellant has also filed a writ petition bearing W.P.(C) No. 3009/2016 (Annexure A-2) before the High Court relating to interference being made by the respondent in the judicial proceedings (their matrimonial dispute) on the basis of her position and status and the said writ petition is still pending. The learned Family Court did not consider this fact that the respondent had made every efforts to take back the respondent-wife in the matrimonial house, but she did not come back, which itself indicates that the respondent-wife somehow wanted to dissolve the marriage. The learned Family Court has also failed to appreciate that there is no long desertion between the parties, therefore, also the impugned judgment and decree of divorce is unsustainable in law and deserves to be quashed. Learned counsel also submits that the learned Family Court has failed to consider that in the year 2014, the

respondent-wife left her matrimonial house and started residing separately and thereafter, within one year, on 22.09.2014, she filed the divorce petition. The learned Family Court has failed to appreciate that in ordinary course, the decree of divorce cannot be granted. There is no material on record to show that the appellant was subjected the respondent-wife to any type of cruelty. The finding recorded by the learned Family Court is baseless, perverse, erroneous and contrary to the facts and circumstances of the case. It has been also submitted that the respondent-wife used to meet with the Presiding Judge, and therefore, the application filed by the respondent-wife under Section 12 of the Protection of Women from Domestic Violence Act has been refused to hear by the JMFC, District Raigarh and vide order dated 14.02.2014, the said case was transferred to C.J.M., Raigarh. Thus, considering all the aforesaid facts, the impugned judgment and decree are liable to be set aside.

8. On the other hand, learned counsel for respondent-wife supported the impugned judgment and submits that the learned Family Court minutely appreciated oral and documentary evidence and rightly passed the decree in favor of wife. The impugned judgment and decree are well merited and no interference is called for by this Court.

In support of his submission, learned counsel placed

reliance on the decisions of Hon'ble Apex Court in the matter of *Shilpa Sailesh Vs. Varun Sreenivasan* reported in *(2023) 14 SCC 231*, *Rakesh Raman Vs. Kavita* reported in *2023 SCC OnLine SC 497*, *Joydeep Majumdar Vs. Bharti Jaiswal Majumdar* reported in *(2021) 3 SCC 742*, *Amutha Vs. A.R. Subramanian* reported in *2024 SCC OnLine SC 3822* and this Court's order dated *12.05.2022* passed in *FA(M) No. 75/2016 [Pritam Lal Sahu Vs. Smt. Kalpana Sahu]*.

In FAM No. 233/2018

9. Learned counsel for the appellant submits that the learned Family Court while dismissing the application filed by the appellant under Section 9 of the Hindu Marriage Act only on the basis of findings recorded in the divorce petition filed by the respondent, which is not proper. The learned Family Court seriously erred in not considering that the petition by the husband against the wife was filed earlier for restitution of conjugal rights and after about six months, the wife filed the application for divorce, this conduct of the wife should have been viewed in the light that the petition for divorce was just to frustrate the petition under Section 9 of the Hindu Marriage Act. Accordingly, the material should have been appreciated. The finding of the learned Family Court is illegal, against the matter of record and due to biased and improper appreciation of material on record, hence it is

liable to be quashed. Learned counsel also submits that the learned trial Court seems to have been illegally influenced by pendency of criminal cases falsely instituted by the respondent and her father against the appellant forgetting the basis principal of criminal jurisprudence that accused is presumed to be innocent until convicted. Thus, the finding recorded by the learned Family Court deserves to be set aside and the application filed by the appellant under Section 9 of the Hindu Marriage Act may be allowed.

10. On the other hand, learned counsel for respondent-wife supporting the impugned judgment and decree submits that the learned Family Court minutely appreciated oral and documentary evidence of both the parties in both the cases & has rightly dismissed the application of husband filed under Section 9 of the Hindu Marriage Act. The impugned judgments are well merited and no interference is called for by this Court.
11. We have heard learned counsel for the parties and perused the material available on record.
12. It is not disputed in both the cases that marriage of appellant-husband with respondent-wife was solemnized on 14.05.2019 and out of their wedlock one son namely Rishabh was born on 12.12.2011 and since February, 2014, both the parties are living separately. It is also not in dispute that after marriage, respondent-wife was selected in judicial

service in 2012. The learned Family Court on the basis of pleading of both the parties framed as many as 03 issues each in both the cases, out of which, issue No.1 in Civil Suit No.280-A/2016 being significant is reproduced for ready reference herein as under :-

क्रं.	वाद प्रश्न	निष्कर्ष
1.	क्या अनावेदिका ने आवेदक को युक्तियुक्त प्रतिहेतु से बिना साहचर्य से प्रत्याहरण किया है ?	सबित नहीं

13. Similarly, in Civil Suit No.287-A/2016, Issue Nos. 1 and 2 are reproduced herein as under :-

क्रं.	वाद प्रश्न	निष्कर्ष
1.	क्या अनावेदक/पति, आवेदिका/पत्नी को अनेक प्रकार से मानसिक एवं शारीरिक रूप से प्रताडित कर कूरतापूर्ण व्यवहार किया है ?	सबित है।
2.	क्या आवेदिका/पत्नी, अनावेदक/पति के विरुद्ध विवाह विच्छेद की आज्ञाप्ति प्राप्त करने की अधिकारी है ?	सबित है।

14. Both the parties have filed various documents in both the cases to substantiate their case and it is also an admitted position that respondent-wife filed application under Section 12 of the Domestic Violence Act against appellant-husband.
15. In order to justify the finding recorded by the learned Family Court in granting decree of divorce by dissolution of marriage between the parties and dismissing the application filed by appellant-husband, we have gone through the

evidence of appellant-husband, who has admitted in para 59 of his cross-examination that he had made complaints against his wife/respondent and in-laws before various senior police officers in addition to his wife's department. He himself admitted that he has filed complaint as he was tortured by them. He denied that he used to harass his wife and in-laws through such complaints. He has also denied that due to his complaints, his wife had inconvenience in discharging her judicial duties. He has also denied this suggestion of respondent-wife that he used to take money from the people on the pretext of providing job in Govt. office. He has also denied this suggestion that he had ever tried to misuse his wife's posting/position. The appellant-husband has also admitted in para 64 of his cross-examination before the learned Family Court that Amit Pratap Chandra is elder brother of respondent-wife, who is posted as Civil Judge and Judicial Magistrate. He has also admitted that he has filed a complaint before Chhattisgarh High Court against Shri Vivek Tiwari, the then Chief Judicial Magistrate, at present Judicial Magistrate Class-I, Bilaspur, Shri Sanjay Agrawal and Amit Prapat Chandra, Judicial Magistrate.

16. The respondent-wife has also levelled certain allegations against appellant-husband that at the time of her delivery, the appellant-husband and his family members committed

cruelty with her which lead to miscarriage. The respondent-wife has admitted that at the time of studying LL.M. she was residing in Raipur. She has also admitted this suggestion of appellant-husband that after marriage they had gone to Manali. She has denied this suggestion that appellant-husband and his family members did not take proper care of her during her first pregnancy. She herself stated that had the proper care been taken, miscarriage would not have been happened.

17. The respondent-wife filed various documents which are exhibited as Ex.D-1 to Ex.D-45. Ex.D-14 is a copy of complaint made by the appellant-husband against his wife-respondent before the High Court. Ex.D-11 and 13 are the copies of complaints made by the appellant-husband before the Superintendent of Police. Ex.D-43 is the copy of order-sheet dated 18.10.2016 of learned JMFC passed in an application filed under Section 27 of the Domestic Violence Act, 2005. The appellant-husband has also admitted this fact that he has filed various complaints against his wife/respondent before the police authorities and High Court.
18. While dealing with the issue of cruelty, the Hon'ble Supreme Court in the matter of *Amutha (supra)* held in paras 27, 28 and 34 as under :-

"27. One of the primary grounds for the

dissolution of the marriage is the appellant's conduct, which constitutes mental cruelty under Section 13 (1) (ia) of HMA. The respondent has provided sufficient evidence to show that the appellant was engaged in a pattern of behavior that caused him immense mental and emotional distress. This included filing false and baseless criminal complaints against the respondent and his family, which not only strained their relationship but also caused significant damage to his reputation and peace of mind.

28. In N.G. Dastane (Supra), this Court laid down the principle that cruelty is not confined to physical violence but also encompasses actions that inflict mental pain and suffering that creates a reasonable apprehension of harm or injury to the aggrieved spouse from the conduct of the other spouse so as to make it impossible for them to stay together. In the present case, the appellant's conduct, including the initiation of frivolous legal proceedings, falls squarely within the definition of mental cruelty. The respondent's claim is further supported by this Court's judgment in Samar Ghosh (Supra), wherein it was recognized that actions causing sustained emotional torment and loss of trust in the marital relationship constitutes cruelty.

29. xxxx

30. xxxx

31. xxxx

32. xxxx

33. xxxx

34. It is evident from the record that continuation of the marriage would only lead to further animosity and litigation, causing harm to both parties. The appellant's insistence on reconciliation appears to be more of a strategy to prologn the proceedings rather than a genuine effort to revive the relationship. In matrimonial disputes, this Court has emphasized the need to prioritize welfare and dignity of both parties. Forcing a marriage to continue when it has become a source of unhappiness and conflict undermines the very purpose of the institution of marriage. In the present case, the interests of both the parties to move on with their lives independently."

19. Further, the Hon'ble Apex Court in the matter of ***Rakesh Raman*** (supra) held in para 9, 10, 11, 15 and 16 as under :-

"9. At the very initial stage the Trial Court had sent the parties for mediation, which did not succeed. This Court had also sent the two for mediation, which failed. The case was again sent for settlement in the Lok Adalat but with no results. On 11.04.2015, this Court again requested the parties to explore possibilities of living together, but nothing materialised. Then on 09.05.2015, this Court asked the parties to come to some mutual settlement, but in vain. In other words, every single effort of the Court and the mediators, towards a compromise or settlement has led to a blind alley. Even now, before giving a formal hearing to the parties we tried to gather the current situation from the parties. The

appellant has unequivocally stated that there is no room for any compromise or settlement and he requests that a decision be made in this case on its merits, whereas the counsel for the respondent apprised this Court that the respondent would like to save her marriage and he prays for mediation once again. He would also submit that no ground for divorce has been made out and the well-considered decision of Delhi High Court should be upheld.

10. The husband and wife, who are before us have been living separately since the last 25 years. There is no child out of the wedlock. There are bitter allegations of cruelty and desertion from both the sides and multiple litigations between the two in the last more than 25 years. This embittered relationship between the appellant and the respondent which has not witnessed any moment of peace for the last 25 years is a marital relationship only on paper. The fact is that this relationship has broken down irretrievably long back.

11. The High Court has taken a view that mere filing of criminal cases against the appellant-husband would not constitute cruelty. All the same, the number of criminal cases filed by the respondent-wife against the appellant-husband are far too many which have been discussed above. All these cases have either resulted in discharge or acquittal of the appellant-husband, if not before the pronouncement of the Judgment of the Delhi High Court but definitely after the pronouncement of the Judgment of the Delhi

High Court. Moreover, a three Judge Bench of this Court in Naveen Kohli v. Neelu Kohli held that repeatedly filing of criminal cases by one party against the other in a matrimonial matter would amount to cruelty and the same was reiterated by a Division Bench of this Court in K. Srinivas Rao v. D.A. Deepa².

15. The multiple Court battles between them and the repeated failures in mediation and conciliation is at least testimony of this fact that no bond now survive between the couple, it is indeed a marriage which has broken down irretrievably.

16. Matrimonial cases before the Courts pose a different challenge, quite unlike any other, as we are dealing with human relationships with its bundle of emotions, with all its faults and frailties. It is not possible in every case to pin point to an act of "cruelty" or blameworthy conduct of the spouse. The nature of relationship, the general behaviour of the parties towards each other, or long separation between the two are relevant factors which a Court must take into consideration. In Samar Ghosh v. Jaya Ghosh a three judge Bench of this Court had dealt in detail as to what would constitute cruelty under Section 13(1)(ia) of the Act. An important guideline in the above decision is on the approach of a Court in determining cruelty. What has to be examined here is the entire matrimonial relationship, as cruelty may not be in a violent act or acts but in a given case has to be gathered from injurious reproaches, complaints, accusations, taunts, etc.

The Court relied on the definition of cruelty in matrimonial relationships in Halsbury's Laws of England (Vol 13, 4th Edn, Para 1269, Pg 602) which must be reproduced here:

"The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. In cases where no violence is averred, it is undesirable to consider judicial pronouncements with a view to creating certain categories of acts or conduct as having or lacking the nature or quality which renders them capable or incapable in all circumstances of amounting to cruelty; for it is the effect of the conduct rather than its nature which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the impact of the personality and conduct of one spouse on the mind of the other, weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complainant's capacity for endurance and the extent to which that capacity is known to the other spouse. Malevolent intention is not essential to cruelty but it is an important element where it exists."

20. Further, Hon'ble Apex Court defined cruelty in ***Shilpa*** (supra) and held in para 43 as under :-

"43. On the meaning of "cruelty" as a ground for

dissolution of marriage. reference was made to the High Court's reliance on D. Tolstoy's passage in The Law and Practice of Divorce and Matrimonial Causes. Therein, "cruelty" has been defined as wilful and unjustified conduct of such character as to cause danger to life, limb or health, bodily or mentally, or as to give rise to a reasonable apprehension of such danger. However, this Court in Dastane case 49 felt that D. Tolstoy's passage, which cites Horton v. Horton 50, is not enough to show that the spouses find life together impossible even if there results injury to health. Accordingly, this Court in Dastane case 49 elucidated that if the danger to health arises merely from the fact that the spouses find it impossible to live together and one of the parties is indifferent towards the other, the charge of cruelty may perhaps fail. However, harm or injury to health, reputation, the working-career or the like, would be important considerations in determining whether the conduct of the defending spouse amounts to cruelty. The petitioner has to show that the respondent has treated them with cruelty so as to cause reasonable apprehension in their mind that it will be harmful or injurious to live with the contesting spouse."

21. Applying the aforesaid principal to the case in hand, it appears and observed herein above that both the parties are living separately for more than 11 years. The appellant-husband has also filed various complaints against the respondent-wife before the police authority and the High

Court, and respondent-wife has also filed criminal case against the appellant-husband. That apart, the respondent-wife has also filed application under Domestic Violence Act against appellant-husband. The learned Family Court also minutely appreciated oral and documentary evidence of both the parties and arrived at the conclusion that the appellant-husband committed cruelty against respondent-wife and the respondent-wife is entitled to the decree of dissolution of marriage and has also rightly recorded its finding that the appellant-husband is not entitled for restitution of conjugal right. We are of the opinion that the learned Family Court was fully justified in allowing the application of respondent-wife under Section 13 of the Hindu Marriage Act and dismissing the application of appellant-husband filed under Section 9 of of the Hindu Marriage Act.

22. Both the appeals being without any merit liable to be and are hereby dismissed.
23. Let a decree be drawn-up accordingly.

Sd/-

(Rajani Dubey)
Judge

Sd/-

(Sachin Singh Rajput)
Judge