

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Samapti Chatterjee

And

The Hon'ble Justice Manojit Mandal

F.A 135 of 2014

Sri Suchitra Kumar Singha Roy

v.

Smt. Arpita Singha Roy

For the appellant : Mr. Ashis Bagchi
Ms. Indrani Chatterjee
Mr. Kushal Chatterjee

For the Respondent : Mr. Srijib Chakraborty
Mr. Debabrata Roy
Mr. S. Das

Heard on : **03.03.2020**

Judgment on : **20.03.2020**

Manojit Mandal J.

This first appeal is at the instance of the petitioner/husband of a matrimonial proceeding and is directed against the judgment and decree dated 16th September, 2011, passed by the learned Additional District Judge, 5th Court, Burdwan, District- Burdwan, in Matrimonial Suit No. 33 of 2008, whereby the learned Trial Judge dismissed the suit on contest but without costs.

2. The plaint case, in short, is that the petitioner/husband was married to the respondent/wife on 4th day of February, 2002, according to Hindu Rites and Customs and after marriage they started to live together as husband and wife in the house of the petitioner/husband. After 2-3 years of marriage, respondent/wife being instigated by the inmates of her parent's house, started to misbehave with and abuse him and his parents and with his elder brother and sister-in-law. The further case of the petitioner/husband is that wife/respondent did not use to do any domestic work and as and when petitioner/husband would protest it, she used to raise hue and cry and lastly since 10th February, 2004, his parents started living in separate house and his brother also started living in Memari in a rented house along with his wife. Further case of the petitioner/husband is that respondent/wife was quarrelsome lady and she used to pick up quarrel on various issues and she used to subject him with various sorts of mental and physical cruelty as the respondent/wife was an active member of Mahila Samity. Further case of the petitioner/husband is that respondent/wife would not spare time to him and his son and on 28th

April, 2007, following a dispute regarding admission of his son in the village school, she assaulted him with a sickle and lastly petitioner/husband was forced to file a suit for a decree of judicial separation, which was registered as MAT Suit No. 125 of 2007 and which was subsequently compromised on 12th June, 2007. Thereafter, they lived peacefully for some days. Further case of the petitioner/husband is that to prevent birth of further issue, they used to use contraceptive pills but since the respondent/wife had forgotten to use the same, she was conceived again and on 17th June, 2007, the respondent/wife got aborted in one Nursing Home out of her own volition and even going against the intention of him. It is the further case of the petitioner/husband that on 21st June, 2007, when the petitioner/husband got back at home after having bath in a nearby pond, the respondent/wife did not allow him to enter into the room and kept him standing with wet wearing apparels for at least 1½ hours and in spite of being requested on numerous times, respondent/wife did not open the door and hence petitioner/husband was forced to take shelter in another house, where his parents used to reside and on the very same day in the evening when he had been to the former house, he was abused and was not allowed to stay in that house. Thereafter, on 23rd June, 2007, the respondent/wife lodged a false complaint against him, his parents, his brother and sisters-in-law and treating the complaint as FIR being No. 152, one case under Sections 498A, 406 and 313 of the Indian Penal Code was started against them. Further case of the petitioner/husband is that respondent/wife had been inflicting tortures upon them since long back. On 21st June, 2008, he and

his parents were assaulted at the hands of the respondent/wife and he and his mother were kept under lock and key for at least 7 hours. Further case of the petitioner/husband is that since 21st June, 2007, he did not resume conjugal life with the respondent/wife and there is possibility of his being murdered at her hand at any point of time. Further case of the petitioner/husband is that criminal case arising out of the said FIR being Sessions Trial No. 9 of 2008 was disposed of on 18th March, 2009 and all of them were acquitted from this case. Further case of the petitioner/husband is that he never condones such cruel behaviour of the respondent/wife and there is no possibility of reunion. So, the petitioner/husband prayed for dissolution of marriage in the matrimonial proceeding.

3. The respondent/wife contested the said matrimonial proceeding by filing written statement contending, inter alia, that the allegations levelled against her were not at all true. The specific case of the respondent/wife is that after few days of marriage, the petitioner/husband and inmates of his family started inflicting mental torture upon her on various false pretexts and they started finding faults with her parents. Since, the financial condition of her parents was not good, it was not possible for them to fulfil all sorts of demands of the petitioner/husband and his family. Further case of the respondent/wife is that the petitioner/husband and his family were financially sound. They used to treat her like a maid servant and her husband did not agree to provide her essential needs and as and when she would demand of such essentials, her husband and his family members

would ask her to bring the essentials from her parent's house. Further case of the respondent/wife is that since the petitioner/husband is not so educated, he was just a prop at the hands of his parents and when she conceived, they subjected her with mental and physical cruelty for abortion. Further case of the respondent/wife is that since the father of the petitioner/husband was former Pradhan of a Gram Panchayat and since his father was a greedy man, the petitioner was not on a good terms with any of his relatives and off and on, petitioner/husband used to harass the people of his village and used to threaten them with dire consequences on various issues and since people of the village raised their voices against such sorts of torture, used to be inflicted upon her by them. The petitioner/husband falsely claimed herself as a member of political party although in reality, respondent/wife is not the same. Further case of the respondent/wife is that after employing labour for the whole day, if at any point of time, she, being tired, would become unable to obey any order of them, they would not provide food to her at night. Further case of the respondent/wife is that one suit praying for decree of judicial separation was filed by the petitioner/husband after instigated by his inmates of his family and after getting hints of his defeats, they cause the suit to come to an end on compromise. Further case of the respondent/wife is that her husband and inmates of his family made conspiracy to kill her and she was forced to lodge complaint against them. Further case of the respondent/wife is that local village people made arrangement for her and her son's accommodation in one room in the house of the petitioner/husband and inmates of his family have locked another room

and petitioner/husband has not made any arrangement for their maintenance. In spite of that, she is interested to lead conjugal life with the petitioner/husband. The respondent/wife prayed for dismissal of the suit.

4. In the matrimonial proceeding, the petitioner/husband examined himself as PW-1 and the father of the petitioner/husband was examined as PW-2. The petitioner/husband has proved certified copies of plaint of MAT Suit No. 125 of 2007 (Exhibit-1), copy of solenama filed in the said suit (Exhibit-1/1), certified copy of the order passed on the basis of solenama (Exhibit-1/2), certified copy of FIR, former FIR, charge sheet and judgment passed in connection with the Sessions case (Exhibit-2 series) and the certified copy of deposition of the mother of the respondent/wife in Misc. Case No. 28 of 2008 arising out of the instant suit under Section 24 of the Hindu Marriage Act (Exhibit-3) into evidence.

5. On the other hand, the respondent/wife examined herself as PW-1. She also examined her father as OPW-2 and one Manoka Bag as OPW-3. The respondent/wife did not prove any document in support of her case.

6. Upon consideration of the evidence on record, the learned Trial Judge dismissed the suit on contest but without any costs.

7. Being dissatisfied with the judgment and decree, the petitioner/husband has preferred this appeal.

8. Mr. Ashis Bagchi, learned Senior Advocate for the appellant contended that the learned Court below erred in law and, in fact, in

dismissing the Matrimonial Suit No. 33 of 2008 without any costs whereas on a proper appreciation of the pleadings of the parties and the evidence on record, the Matrimonial Suit ought to have been decreed on contest with full cost. He further contended that the learned Court below ought to have held that the petitioner/husband/appellant was subjected to mental and physical cruelty in the manner as stated in details in the pleadings and proved by evidence. He further contended that respondent/wife filed a false case under Section 498A/406/313 of the Indian Penal Code resulted in sending the husband and his parents to jail custody which caused tremendous physical hazard and mental agony besides loss of image, reputation and status in the society. He also submitted that respondent/wife has failed to prove the case filed by her under Section 498A/406/313 of the Indian Penal Code the petitioner/husband and his relatives and accordingly the appellant/husband and his inmates were acquitted from this case. He further contended that the judgment and decree passed by the learned trial Court is not sustainable in accordance with law and so, the suit should have been decreed. In support of his arguments, he has relied upon the decision reported in **(2014) 16 SCC 34 and (2017) 14 SCC 194.**

9. On the other hand, Mr. Chakraborty, learned Advocate for the respondent/wife supported the judgment and decree passed by the learned trial Judge. In support of his argument, he has relied upon the decision reported in **(2000) 1 SCC 636, 2011 (3) CHN 739 and 2008 (2) CHN 377.**

10. Upon taken into consideration of the submissions of the learned Advocate of both sides and on perusal of the materials on record, I find that admittedly, the parties were married on 4th day of February, 2002, according to Hindu Rites and Customs and after marriage they lived together as husband and wife. It is also an admitted position that in the wedlock, a son was born to them. Admittedly, the respondent/wife is residing in a matrimonial house along with her son and petitioner/husband and his parents are living separately in another house. It is also an admitted position that the petitioner/husband filed one suit for decree of judicial separation which was registered as MAT Suit No. 125 of 2007 and the said suit was compromised amongst them on 12th June, 2007 and thereafter, they lived together peacefully for some days. Admittedly, the respondent/wife lodged an FIR against her husband and his relatives and on the basis of the said FIR, Memari P.S. Case No. 152/07 dated 23/06/2007 under sections 498A, 406 and 313 of the Indian Penal Code was started against the petitioner/husband and his relatives. Admittedly, after trial, the petitioner/husband and his relatives were acquitted from this case on 18/03/2019 under Section 235(1) of the Code of Criminal Procedure. Now, the point is to be decided in this appeal is:

Whether the learned trial Judge was justified in dismissing the suit with costs?

11. PW 1 is the husband himself. In the evidence he has deposed that after marriage they started to live together as husband and wife but their

conjugal life was not happy one. After 2/3 years of marriage his wife being instigated by the inmates of her parents' house started to misbehave with and abuse him and his parents and his elder brother and sister-in-law and his wife did not use to do any domestic work and as and when he would protest it, his wife used to raise hue and cry and lastly since 10.02.2004 his parents started living in separate house and his brother also started to live in Memary in a rented house along with his wife. He has further deposed that his wife is quarrelsome lady and she used to pick up quarrel on various trivial issues and she used to subject him with various sorts of mental and physical cruelty and his wife was an active member of 'Mahila Samity'. On 20.04.2007 following a dispute regarding admission of his son in village school, his wife assaulted him with sickle and lastly he was forced to file one suit for a decree of judicial separation which was registered as MAT Suit 125 of 2007 and the said suit was compromised on 12.06.2007 and thereafter they lived peacefully for some days. He has further deposed that to prevent birth of further issue, they used to use contraceptive pills but since his wife had forgotten to use the same, his wife was conceived again and on 17.06.2007 his wife got aborted in one Nursing Home out of her own volition. He has further deposed that on 21.06.2007 when he returned back her home after having a bath in a nearby pond, then his wife did not allow him to enter into the room and kept him standing with wet wearing apparels with at least one and half hours. In spite of several requests, his wife did not open the door and hence, he was forced to take shelter in another house where his parents used to reside. On the very same day in the evening his wife abused him

and was not allowed to stay in the house. He has further deposed that on 23.04.2007 his wife lodged a false complaint against him, his parents, his brothers and sisters-in-law under Sections 498A, 406 and 313 of the Indian Penal Code. His wife had been inflicting torture upon them since long back. He has further deposed that on 21.08.2001 his parents were assaulted by his wife and he and his mother were kept under lock and key at least seven hours. He has further deposed that he, his parents, his brother and sisters-in-law were acquitted on 18.03.2009 in the criminal case lodged by his wife being Sessions Trial No. 9 of 2008. The PW 1 was cross-examined on various dates but on scrutiny of his statement, I do not find anything for which his evidence may be discredited. So, I am of the view that PW 1 is trustworthy and that his evidence can be acted upon.

12. PW 2 is the father of the appellant/husband. PW 2 has duly corroborated by statement of PW 1 by saying that after marriage respondent/wife started doing work for 'Mahila Samity' after 1/2 years of their marriage but he did not oppose and respondent/wife did not use to do any domestic work and used to abuse his son and his wife. The respondent/wife used to subject his son with mental and physical cruelty and his son started living apart so that the couple can live peacefully. Before filing of this suit, one day at noon his son came to him with wet wearing apparels on his person and since then he has been living with him and at least one and half years back they have been acquitted in criminal case which was falsely lodged by respondent/wife against them. On scrutiny of the evidence of PW 2, I find that there is nothing on record to

disbelieve his statement. So, his evidence is cogent, reliable and acceptable.

13. The respondent/wife deposed as OPW 1. She denied all the allegations. However, she admitted that her husband filed one suit for decree of judicial separation which was registered as MAT Suit No. 125 of 2007 and by virtue of the settlement arrived at in the reconciliation meeting, earlier suit filed under Section 10 of the Hindu Marriage Act was compromised. She also admitted in her cross-examination that she filed a criminal case against her husband and his parents, her brother-in-law and her sisters-in-law. This witness has not denied on oath that in the said criminal case her husband, parents-in-law, brother-in-law and sisters-in-law were not arrested and her husband and father-in-law were not in police custody for nine days.

14. PW 2 is the father of the respondent/wife. He has deposed that appellant/husband and his relatives used to insult his daughter and that appellant/husband and his relatives used to torture upon his daughter. But this witness has nowhere stated about any specific date or place when the torture was inflicted by the husband and his relatives upon his daughter.

15. The next witness is PW 3 Menoka Bag who has deposed that family members of Singharoy family used to torture upon the respondent/wife and they used to keep respondent/wife as maid servant. This witness also has nowhere stated in her evidence about the date or place of such torture on the respondent/wife by the appellant/husband and his relatives.

Moreover, this witness has not stated in her evidence as to how she came to know about the alleged torture.

16. Exhibit-2/2 is the certified copy of judgment passed by the learned Additional District Judge, Fast Track, 1st Court, Burdwan, in connection with Sessions Case No. 32/2008. It is found from the said document that on the basis of a complaint lodged by the respondent/wife, this case was instituted. In such document, the learned Additional District Judge, Fast Track, 1st Court, Burdwan, has found that claim of the respondent/wife finds no support from medical evidence and as per evidence of Dr. Anjan Dasgupta (PW-6) on 10.06.2007, the pregnancy of Arpita was not terminated. The learned Additional District Judge has further observed that the prosecution has not been able to substantiate the allegations that pregnancy of the respondent/wife was terminated against her will by the appellant/husband and his relatives. The said document also discloses that on trial, the appellant/husband and his relatives were acquitted as the criminal Court disbelieved the evidence of the prosecution.

17. Exhibit-1 is the certified copy of original petition of Matrimonial Suit 125 of 2007. Exhibit-1/1 is the certified copy of the solenama executed by and between the parties in the said matrimonial suit. Exhibit-1/2 is the certified copy of the order passed in the said suit on the basis of the said solenama. The said documents disclose that both the parties filed a joint petition of compromise and the MAT Suit No. 125 of 2007 was disposed of on compromise and in the compromise petition, the respondent/wife clearly and categorically stated that after 1 and 2 years of marriage, the

respondent/wife used to quarrel with her husband and his relatives and that as such there was no peace in the family and the respondent/wife never did any household work and respondent/wife used to assault her husband when her husband used to tell her to work. It also appears from the said document that the respondent/wife assaulted her husband by sickle and it was decided that respondent/wife's parental relation would not visit her matrimonial house and she could only visit her parental house and following such a decision made by the Panchayat, the said MAT Suit was settled on compromise. But there was no change in the mind of the respondent/wife.

18. Mr. Asish Bagchi, learned Senior Advocate appearing on behalf of the appellant/husband strenuously argued that wife treated the husband and the members of his family with cruelty and, therefore, the learned trial Judge erred in law in the facts and circumstances of the case in refusing to pass a decree for divorce.

19. The Hon'ble Apex Court in a case **(Raj Talreja v. Kavita Talreja)** reported in **2017 SCC 194** observed that:-

"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."

20. In another case (**K. Srinivas v. K. Sunita**) reported in (2014) 16 SCC 34 the Hon'ble Apex Court observed that:-

"5. The respondent wife has admitted in her cross-examination that she did not mention all the incidents on which her complaint is predicated in her statement under Section 161 Cr.P.C. It is not her case that she had actually narrated all these facts to the investigating officer, but that he had neglected to mention them. This, it seems to us, is clearly indicative of the fact that the criminal complaint was a contrived afterthought. We affirm the view of the High Court that the criminal complaint was "ill advised". Adding thereto is the factor that the High Court had been informed of the acquittal of the appellant husband and members of his family. In these circumstances, the High Court ought to have concluded that the respondent wife knowingly and intentionally filed a false complaint, calculated to embarrass and incarcerate the appellant and seven members of his family and that such conduct unquestionably constitutes cruelty as postulated in Section 13(1)(i-a) of the Hindu Marriage Act."

21. Mr. Srijib Chakraborty, learned Advocate appearing for the respondent/wife, on the contrary strenuously argued that the evidence of the husband on the allegation of cruelty was not reliable. Mr. Chakraborty cited the following cases in order to substantiate the submission that the

husband has failed to reach the standard of proof required for obtaining a decree for divorce against the wife on the ground of cruelty:

1. 2011 (3) CHN 739

2. 2008 (2) CHN 377

22. There is no quarrel to the proposition that initiation of the criminal case by the wife would not automatically lead to passing a decree of divorce on the ground of cruelty. There is, also, no denial that irretrievable breakdown of marriage is no ground for divorce. No decree for divorce could be granted on the ground of ordinary quarrels that is to say, the cruelty simplicitor is not enough, and the husband is to prove that cruelty is of a nature as to give rise to a reasonable appreciation in his mind that it will be harmful for him to live with his wife.

23. We have already decided in the foregoing paragraphs that on the complaint of the wife under Sections 498A, 406 and 313 of the Indian Penal Code, 1860, not only the husband but also his parents, his elder brother and his sisters-in-law were implicated and charge sheeted. The husband and his parents were arrested. The husband and his father remained in police custody for nine days. On trial, all the accused persons were acquitted as the criminal Court disbelieved the evidence of the prosecution. Rather it was proved that respondent/wife was conceived and on 17.06.2007 she got aborted in one Nursing Home out of her own volition. The respondent/wife, in our opinion, had no intention of living with the husband as would appear from the facts and circumstances of the

case and respondent/wife deliberately made wild allegations against the husband and his relatives. Inference can be drawn that the wife had no intention to reside with the husband and her intention was to terminate the matrimonial relationship. Hence such acts of the respondent/wife, specially filing a criminal case and for which her husband and father-in-law languished in the custody amounts to cruelty so as to create an apprehension about life and, thus, it amounts to ground of divorce.

24. The cases cited by Mr. Srijib Chakraborty are distinguishable and the decisions cited by Mr. Chakraborty are not applicable in the facts and circumstances of the case as those judgments deals with cruelty in general and not with cruelty vis-à-vis criminal proceeding.

25. From the materials on record, it appears that from the inception, the wife was rude and cruel not only to the husband but to his parents. The wife continued to use quarrel with the husband which was injurious for his health. The wife changed her attitude at the time of filing solenama application in the Matrimonial Suit No. 125 of 2007. After disposal of the said suit, she has again started abusing the husband and his parents. She was arrogant.

26. There was intervention by the local Panchayat. In presence of the local Panchayat, the wife gave a written undertaking that she would amend her ways. But there was no change in the mind of the wife.

27. Therefore, the impugned judgment and decree passed by the learned trial Judge are set aside. The Matrimonial Suit is decreed on contest. The marriage tie between the parties is dissolved by a decree of divorce.

28. The appeal is, thus, allowed.

29. We, however, direct the parties to bear their respective costs in this appeal.

30. Urgent Photostat certified copy of the order, if applied for, be given to the parties on priority basis on their usual undertaking.

(Samapti Chatterjee, J.)

(Manojit Mandal, J.)