

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO-M-182 of 2017

Date of Decision:- October 11 ,2022

.....Appellant

Versus

.....Respondent

**CORAM:- HON'BLE JUSTICE MS. RITU BAHRI
HON'BLE JUSTICE MS. NIDHI GUPTA**

**Present:- Mr. Shiv Kumar, Advocate for the appellant/husband
Mr. Rahul Bhargava, Advocate for the respondent/
wife**

NIDHI GUPTA, J.

This appeal has been filed by the husband against the order dated 8.5.2017 passed by the Additional District Judge, Patiala whereby his petition under Section 13 of the Hindu Marriage Act, 1955 (hereinafter 'the Act'), seeking dissolution of his marriage with the respondent on the ground of cruelty and desertion has been dismissed.

Briefly stated the facts are that the parties were married according to Sikh rites and ceremonies at Ludhiana on 11.11.2012. After marriage they cohabited together as husband and wife. No child was born of this wedlock. It is appellant's case that soon

after their marriage the respondent started pressurising him to leave his job as C.O., Dental Centre, Air Force Station, Gorakhpur, Uttar Pradesh so as to settle in Patiala where her parental home was. She is stated to be dominating and disrespectful to him and his family and picked up quarrel for no reasons. She is also stated to have physically assaulted the petitioner at times and misbehaved with him and insulted him in the presence of his relatives and friends. It is further alleged that the respondent frequently behaved offensively and arrogantly using bad language, and would lock herself up in her room for hours threatening to do something drastic and implicate the appellant in criminal case involving non-bailable offences. Appellant states that this caused him great mental tension and agony. It is averred that to please the respondent the appellant also brought her to her parental home on Lohri soon after their marriage in the month of April 2013, as the respondent preferred to stay mostly in her parental home. He brought her back on 24.4.2013. The appellant was transferred from Gorakhpur to Udhampur on 28.8.2013 and was to join on 5.9.2013. During this period while they were staying at the appellant's parents' house the respondent left from there on 1.9.2013 without any reasonable cause and she took away all her dowry articles including the ones given to her by the appellant's parents and she did not join the appellant's company thereafter though he requested and pleaded with her several times. Accordingly it was pleaded that the respondent had deserted the appellant.

On the other hand, respondent denied all the allegations and stated that in fact she had been deserted by the appellant. She stated that prior to her marriage she had worked as Ayurvedic Medical Officer for four years in the State Health Department.

However, she had been forced by the appellant to leave her Government job. She further states that after marriage she moved to Gorakhpur with her husband but soon thereafter he started torturing her and making illegal demand of dowry and would beat her mercilessly and never paid any maintenance to her because of which she had to seek monetary help from her parents. Respondent further states that the appellant constantly mocked her abusively for bringing inadequate dowry and made her work as domestic help and would lock her in room for hours together. It is further stated that in April 2013 respondent was sent to her parental home for a long time and was brought back to Ludhiana on 24.4.2013 to attend the engagement ceremony of the appellant's cousin which was scheduled for 27.4.2013. She further states that appellant's parents visited Gorakhpur in July 2013. Thereafter prior to appellant's transfer from Gorakhpur to Udhampur they stayed in the appellant's parents' home and that on 1.9.2013 the appellant along with his parents threw the respondent out of the matrimonial home and appellant flatly refused to take her with him to Udhampur. Eventually the respondent was constrained to approach the police authorities and registered case under Section 406/ 498-A, 377 IPC against the appellant.

The appellant filed replication before the trial Court controverting the abovesaid allegations of the respondent and stated that the respondent had filed innumerable false complaints against the appellant and his family. The respondent had filed a false complaint on 25.3.2014 against the appellant; and then again on 1.4.2014 before DSP, Patiala. Appellant stated that he and his mother were facing trial in the Court of JMIC, Patiala, on totally false charges levelled by the respondent. Not only this she had also filed false complaints before the

Army Wives Welfare Association on 27.3.2015 and the worst was that the respondent had levelled false allegations against the appellant's father alleging that the appellant's father had behaved with her in an objectionable and inappropriate manner. Appellant further denied that the respondent had been turned out of the matrimonial home. It was stated that in fact the respondent had left directly from the venue of his cousin's wedding along with her brother and father on 1.9.2013 on the pretext of visiting her ailing mother for a few days whereafter she never came back and never replied to the appellant's requests to join the matrimonial home. Appellant further stated that he had got a return Railway ticket booked for both of them from Ludhiana to Udhampur for 27.12.2013. However, she never joined him. On the contrary she sent her father and brother on 27.12.2013 to bring back all her educational and professional certificates from which it was clear that she had no plan to return to her matrimonial home. It was further stated that numerous complaints made by her to his professional Headquarters had caused him immense embarrassment in front of his seniors and colleagues. This had caused him mental harassment and ruined his reputation in his fraternity. On 26.10.2014 and then on 8.1.2015 the respondent had filed false online dowry complaints against him with the National Commission for Women, New Delhi. Respondent further filed a criminal complaint against him before this Court in 2014 and against senior Police authorities of State of Punjab seeking directions for the arrest of the appellant even though he had already been granted interim bail by the Hon'ble Supreme Court on 15.12.2014. Respondent also continuously alleged that her jewellery and other valuable articles were still in the possession of the appellant and his family though the entire istri dhan of

the respondent had been handed over to her by the appellant's mother at Women Police Station, Patiala on 23.6.2014 when his mother had been granted interim bail which was later on made absolute on 28.6.2014.

On the basis of the aforesaid pleadings and submissions, the trial Court framed the following issues:

1. Whether the respondent has treated the petitioner with cruelty as alleged? OPP
2. Whether the petition is not maintainable? OPR
3. Relief.

In support of his petition the appellant appeared in the witness box as PW1 and also examined his sister-in-law (brother's wife) Maninder Jit Ahuja as PW2, and led various other documentary evidence from Ex. P-1 to Ex. P-14.

Respondent appeared as RW1, and also led documentary evidence Ex.R1 to R-24 whereafter she closed her evidence.

The learned Additional District Judge, Patiala on the basis of the above facts and submissions made by the parties as also after considering numerous judgments of this Court and the Hon'ble Supreme Court, dismissed the appellant's petition u/s 13 of the Act, primarily on the grounds that:

- A. Cruelty on part of the respondent was not made out as appellant had levelled "*very general and vague allegations with regard to the cruel behaviour of the respondent. ... mere general allegations have been levelled by the petitioner in his petition with regard to*

cruelty.”;

- B. Respondent had filed all the complaints against the appellant only after he had filed the instant petition for divorce – *“It is pertinent to mention here that the parties had got married in November 2012 and stayed together till 1.9.2013. The instant petition had been filed by the petitioner on 2.1.2014. Respondent did not file any complaints before any authority after 1.9.2013 till the filing of the instant petition by the petitioner. Had the respondent had the intention to end her relationship with the petitioner, she would have filed complaints immediately after she had left her matrimonial home on 1.9.2013 but she did not do so. Instead of bringing the respondent back to matrimonial home, petitioner filed the instant petition for dissolution of marriage with the respondent.”;*
- C. Admittedly no charge against the appellant had been framed by the JMFC Patiala under section 377 IPC, *“but trial against petitioner and his mother is still pending and charge can be amended at any stage of trial”.*
- D. Desertion on part of the respondent was not established because the return railway ticket bought by the appellant for both himself and the respondent for travel on 27.12.2013 from Ludhiana to Udhampur which was his new workstation, *“was got issued by the petitioner merely for the purpose of collecting evidence as after a few days i.e. on 2.1.2014, petitioner had filed the instant petition which indicates that his intention was never to take her back.”*

Accordingly, on the basis of the above reasoning, the learned Court below dismissed the appellant’s petition under section 13 of the Act. Hence, present appeal.

Counsel for the appellant has vehemently stated before us that the respondent has caused great ignominy, embarrassment, harassment and and loss of reputation to the appellant by making utterly false allegations against him and his entire family before his seniors and colleagues, as also to the senior officers of the Punjab Police. The appellant and his old mother were even undergoing a trial. The respondent had made innumerable vicious and vindictive complaints before every forum and platform that she could find from the Army Headquarters, Air Force Headquarters, Army/Air Force Wives Welfare Association, National Commission for Women, this Court, as well as senior police officers of the Punjab Police. Accordingly, counsel submitted that the appellant and his family had been subjected to tremendous mental agony and cruelty.

Counsel for the appellant further stated that the parties have been living separately since past 9 years i.e. since 2013. They, by their own admission lived together only for 9 months. The appellant states that till the present date, he has already paid Rs.23 lacs to the respondent as maintenance.

Learned counsel for the appellant has placed reliance upon *K.Srinivas v K.Sunita*, (2014) 16 SCC 34; *K. Srinivas Rao vs. D.A.Deepa*, (2013) 5 SCC 226; *Major Ashish Poonia v Mrs. Nilima Poonia*, FAO-922 of 2013; *Munish Bajaj v Manisha Bhutani*, FAO 5254 of 2015; *Smt.Gurbaksh Kaur v Sita Ram*, FAO-M-234 of 2016; *Amandeep Goyal v Yogesh Rani*, FAO-M-101 of 2019; *Gurwinder Kaur @ Gurvinder Kaur v Kulwant Sing*, FAO-M-128 of 2018; and *Harpinder Kaur v Gurpreet Singh*, FAO-M-108 of 2018.

Counsel for the respondent states that the wife has

developed Ovarian tumour and keeps bad health since 2018 and denies all other allegations made against her and reiterates the averments made by her in her written statement and relies upon the evidence led by her. Particular and repeated reference has been made to Ex. R11 and R12, whereby the appellant is stated to have admitted to unnatural sex. Said Ex. Marked as Ex. R11 and R12 are reproduced hereunder:

“...Harpreet, all through out our stay in Gorakhpur wanted me to be going family way (plan a child) to which I didn't agree as I first thought it prudent to wait for good understanding and normal cordial relations to develop between us. I am sorry to be sharing my bedroom, but the actual truth is that during our stay together, she was never interested in a normal physical relation which exists between a husband and wife. She used to abstain (wanting to go in for physical relations only if we plan a child, otherwise no relations), saying she felt like nauseating and has vomiting sensation (just to avoid the same). I was repeatedly poked by her in challenging my male ego and all this was done at the instigation by her parents as a well planned conspiracy. Sir, if a female was not ready to share a natural sexual relationship with her husband (unless he agreed to her demands), considering her dominating and authoritative nature, how can you expect the same female to be subject to actions which were against the nature. All the false and discriminatory charges u/s 377 surfaced on 13 March 2014 and not before because this was a means of pressurizing me to bow to their tactics.....”

It is on the basis of above Ex. R11 and R12 that the counsel for respondent states that this constitutes appellant's admission to unnatural sex. Counsel further states that the respondent is still willing to go back to her matrimonial home. No further argument has been raised on behalf of the respondent.

Learned counsel for the respondent placed reliance upon **Sarbjit Kaur v Lakhvir Singh, 2021(1) RCR (Civil) 749; Yogender Singh v Smt.Sunta, FAO 127-M of 2004; Ashok Kumar Jain v Sumati Jain, 2013(2) RCR (Civil) 835; Chetan Dass v Kamla Devi, 2001(2) RCR (Civil) 641; Darshan Gupta v Radhika Gupta, 2013(9) SCC 1; Gurbux Singh v Harminder Kaur; 2011 AIR(SC) 114; Neelam Kumar v Dayarani, 2011 AIR(SC) 193; Ravi Kumar v Julmi Devi 2010 (2) RCR (Civil) 178; Savitri Pandey v Prem Chandra Pandey, 2002(1) RCR (Civil) 719; and judgment of Hon'ble Supreme Court in Neelam Kumar v Dayarani, Civil Appeal No.1957 of 2006.**

We have heard learned counsel for the parties, and perused the evidence led by the parties/ Lower Court record in great detail. Counsel have also submitted brief synopsis and referred to various judgments, which has been considered by this Court. It may be mentioned that this Court had also referred the matter to mediation, but a resolution could not be found. We shall examine each aspect of the matter, as also test the veracity of the reasoning forwarded by the Id. Trial Court on the touchstone of evidence led by the parties.

The appellant has sought divorce primarily on the ground of cruelty. But the Id. Family Court has held that no cruelty on part of the respondent is made out as the appellant had levelled "*very general and vague allegations with regard to the cruel behaviour of the respondent. ... mere general allegations have been levelled by the petitioner in his petition with regard to cruelty.*"

In our view, this finding is factually incorrect as a perusal of the record reveals that the respondent has levelled the most objectionable allegations against the appellant and his family. The most

obnoxious of these can be said to be the imputations she has made against her father-in-law stating that he used to behave inappropriately towards her. A perusal of Ex. RW1A pg. 153 at pg. 160 of the Lower Court Record - which is the respondent's evidence on oath by way of affidavit - shows that the respondent has stated as follows: "*The father-in-law of the deponent is not only a greedy person, but had an evil eye on the deponent. He behaved inappropriately with the deponent by his indecent gestures and behaviour that are never expected from a fatherly figure.*"

In her cross examination as RW1 the respondent again stated that "*I did not complain regarding the evil eye of my father in law to any authority. It is correct that the story of allegation of evil eye on me by my father-in-law was not found correct by the police as such my father-in-law was not Challenged by the police.*"

This Court, as well as the Hon'ble Supreme Court have held in numerous decisions that false allegations made by a party against the spouse or his/her family, amount to cruelty. Admittedly in this case, the respondent has unequivocally admitted in her cross-examination that her complaint against her father in law alleging inappropriate behaviour was found to be false by the police, and therefore he was not challenged. However, the learned Court below has not dealt with this aspect at all. A reference has been made in para 13 of the impugned order to the evidence of respondent as RW1 to the effect that "*she never complained against her father-in-law keeping an evil eye upon her during her stay at her in-law's house. She stated that her allegations against her father in law were not found correct and he was not challenged.*" Thus, though the Id. Court below has noticed this fact, yet, has not considered or dealt with

this aspect of the matter at all.

Furthermore, the record reveals that the respondent made the following complaints to various authorities at various times.

This list of complaints may be summarised as follows:

1. It is not disputed that the respondent made a complaint dated 31.1.2014 at the SSP Office, Patiala, Punjab against the appellant and his parents in context of dowry demand and unnatural acts and offences.
2. As per the respondent's own admission she had lodged a complaint against the appellant on 17.2.2014 under section 377 IPC.
3. The respondent filed a Complaint dated 25.3.2014 against the appellant before the Investigating Officer, Women's Counselling Cell-I, inter-alia, alleging therein that the appellant forcibly committed unnatural sex with her. (Ex.P1, at Page 185 of the LCR) on the basis of which an FIR No.71 dated 6.6.2014 was lodged under Sections 498-A, 406, 377 at PS Women, Patiala, in which the appellant and his mother are facing trial in the Court of learned JMIC, Patiala. However, the charge under Section 377 IPC against the appellant was dropped by the Id. JMIC Patiala vide order dated 9.4.2015 (Ex.P4 at page 192 of the LCR).
4. The respondent made a Statement dated 1.4.2014, (Ex.P3, Page 189-190), before DSP

(Detective)Patiala, alleging therein that appellant used to beat her as he was impotent and which fact was known to his parents.

5. The respondent made Complaint dated 27.3.2014, (Ex.P5 at page 193 to 196), to the President, Army Wives Welfare Association(R), HQ Northern Command, Udhampur, thereby alleging physical and mental torture given to her by the appellant.
6. The respondent made a complaint dated 10.5.2014 (Ex.P6 page 197-198) to DSP(D)Patiala alleging therein that her father-in-law behaved with her in an objectionable and inappropriate manner.
7. The respondent made a Complaint dated 6.10.2014 (Ex.P9A, page 203 to 205), to the D.G.M.S. (Director General Medical Services) at the Army HQ Delhi. In this Complaint letter, the respondent informed the DGMS regarding the aforementioned FIR no. 71 dated 6.6.2014 registered against the appellant, in pursuance to which the appellant had moved applications before the Id. Trial Court, this Court, as well as the Hon'ble Supreme Court seeking anticipatory bail. In this regard Punjab Police had also sent an application to the Commanding Officer of the appellant's Unit of CMDC, NC, Udhampur c/o 56APO regarding the intimation of his arrest on 3.9.2014. However, no action was taken by the authorities at Udhampur in

this regard. Accordingly, the respondent vide this complaint letter urged the DGMS to “*requesting speedy and timely intervention in the implementation of arrest orders of the husband*”.

8. The respondent made an Online complaint dated 26.10.2014, (Ex.P9, Page 206) addressed to National Commission for Women, alleging dowry harassment and cruelty.
9. The respondent made another Online complaint dated 12.1.2015 (Ex.P 10-B, Page 207) addressed to National Commission for Women regarding istri dhan being in possession of the appellant and denying her maintenance.
10. The respondent has also registered a complaint against the appellant under Sections 376 and S. 377 IPC. However, as per the record, the appellant was never summoned in the complaint against him under Section 376 IPC, and as stated above, charge u/s 377 IPC was dropped.

The impugned order shows that the Id. Court below has noticed the vital fact of these numerous complaints and also referred to the respondent's statement in this regard as follows:-

“She stated that she had filed 2-3 complaints when her husband had been transferred to Udhampur Air Force Station. The said complaints were made to Air Force Wives Welfare Association but no relief was granted to her”.

Despite the above admissions on the part of the respondent, the Id. Court below has rejected this fact and held that even though the respondent had filed so many complaints but no cruelty is made out because all these complaints had been made after the appellant had filed the petition for divorce. In the impugned order the Id. Court has observed as follows:

“It is pertinent to mention here that the parties had got married in November 2012 and stayed together till 1.9.2013. The instant petition had been filed by the petitioner on 2.1.2014. Respondent did not file any complaints before any authority after 1.9.2013 till the filing of the instant petition by the petitioner. Had the respondent had the intention to end her relationship with the petitioner, she would have filed complaints immediately after she had left her matrimonial home on 1.9.2013 but she did not do so.”

We are again in disagreement with the view taken by the Id. Court below. In this regard, the following observations of the Hon'ble Supreme Court in **K. Srinivas v. K. Sunita (SC) : Law Finder Doc Id # 632736** are apposite:

“Another argument which has been articulated on behalf of the learned counsel for the Respondent is that the filing of the criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filing of the husband's divorce petition, and being subsequent events could have been looked into by the Court. In any event, both the parties were fully aware of this facet of cruelty which was allegedly suffered by the husband. When evidence was lead, as

also when arguments were addressed, objection had not been raised on behalf of the Respondent-Wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf.”

Moreover, this Court as well as the Hon’ble Supreme Court have repeatedly held that if the wife files frequent and frivolous complaints against her spouse, it amounts to cruelty and is sufficient ground for divorce. In this regard reference may be made to one such judgment passed by Hon’ble the Supreme Court in the case of ‘**Joydeep Majumdar v. Bharti Jaiswal Majumdar (SC) : Law Finder Doc Id # 1813316**’, wherein a 3-Judge Bench of the Hon’ble Supreme Court has been pleased to hold as follows:

“11. The materials in the present case reveal that the respondent had made several defamatory complaints to the appellant's superiors in the Army for which, a Court of inquiry was held by the Army authorities against the appellant. Primarily for those, the appellant's career progress got affected. The Respondent was also making complaints to other authorities, such as, the State Commission for Women and has posted defamatory materials on other platforms. The net outcome of above is that the appellant's career and reputation had suffered.

12. When the appellant has suffered adverse consequences in his life and career on account of the allegations made by the respondent, the legal consequences must follow and those cannot be prevented only because, no Court has determined that the allegations were false. The High Court however felt that without any definite finding on the credibility of the

wife's allegation, the wronged spouse would be disentitled to relief. This is not found to be the correct way to deal with the issue.

13. Proceeding with the above understanding, the question which requires to be answered here is whether the conduct of the respondent would fall within the realm of mental cruelty. Here the allegations are levelled by a highly educated spouse and they do have the propensity to irreparably damage the character and reputation of the appellant. When the reputation of the spouse is sullied amongst his colleagues, his superiors and the society at large, it would be difficult to expect condonation of such conduct by the affected party.”

Again in '**Kahkashan Kausar @ Sonam v. State of Bihar (SC) : Law Finder Doc Id # 1941423,**' the Hon'ble Supreme Court held as follows:

“Further, it is submitted that the FIR in question has been made with a revengeful intent, merely to harass the Appellant in-laws herein, and should be dealt with accordingly. Reliance is placed on ***Social Action Forum for Manav Adhikar & Anr. v. Union of India, Ministry of Law And Justice & Ors., (2018) 10 SCC 443***, wherein it was observed:-

"4. Regarding the constitutionality of Section 498A IPC, in ***Sushil Kumar Sharma v. Union of India and others***, it was held by the Supreme Court:-

"Provision of S. 498A of Penal Code is not unconstitutional and ultra vires. Mere possibility of abuse of a provision of law does not per se invalidate a legislation. Hence plea that S. 498A has no legal or constitutional foundation is not tenable. The object of the provisions is prevention of the dowry menace. But many instances have come to light where the complaints are not bona fide and have been filed with

oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame-work."

In this regard, the statements made by PW2 Maninderjeet Kaur, who is the sister-in-law of the appellant, his brother's wife, are very important. She has categorically stated that none of her in-laws have ever raised any demand for dowry, or troubled her.

In '**Raj Talreja v. Kavita Talreja**', (2017) 14 SCC 194, the Hon'ble Supreme Court held as follows:

"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.”

Perusal of the record further reveals that appellant had bought return Railway ticket from Ludhiana to Udhampur for travel on 27.12.2013. It is alleged against him that he had bought these tickets only to create evidence as, in actual fact he had plans to separate from the respondent as, he had filed the petition for divorce soon thereafter which is on 2.1.2014. In our view this finding of the learned Court below is erroneous and conjectural. It is undisputed that the appellant had bought the ticket. It is an uncontroverted fact that the respondent's father and brother had also come to the matrimonial home on 27.12.2013 and had taken all her remaining belongings in form of certificates etc back with them. Thus, it is more likely that when the respondent did not accompany the appellant to Udhampur on 27.12.2013 he was left with no alternative but to accept the finality of the situation, and accept her departure on 1.9.2013, and had in these circumstances filed the petition for divorce on 2.1.2014.

In our view, the conduct of the parties in the present case evidences that there are irreconcilable differences between the parties, rendering the marriage, as of today, a mere legal fiction. It is not in dispute that the parties are residing separately since 2013. Even mediation attempts between the parties have remained unsuccessful. Though irretrievable breakdown of marriage is not available as a ground under the statute, yet, the reality of it has been recognised by the Supreme Court in a catena of decisions. Reference in this regard may be made to some:

Hon'ble Supreme Court in '**N. Rajendran v. S. Valli**', (2022) SCC

OnLine SC 157 has observed as follows:

“In this regard, learned counsel for respondent pointed out that this is not a case for exercising power under Article 142. He addressed this submission, reminding us of the conduct of the appellant throughout. He would submit that the respondent is completely without blame. She was always ready and willing. The findings as found by the High Court being confirmed, no occasion arises for this Court to exercise power under Article 142. We record this submission for as a prefatory remark to indicate that *this is not a case where both parties are agreeable for a dissolution by way of irretrievable breakdown of marriage. But that then leads us to the question as to whether the consent of the parties is necessary to order dissolution of marriage on the ground of irretrievable breakdown.* This again, is not res integra. We may notice that this Court has in a catena of decisions discussed this very aspect. The judgment reported in **R. Srinivas Kumar v. R. Shametha** reads as under:

“7. Now so far as submission on behalf of the respondent wife that unless there is a consent by both the parties, even in exercise of powers under Article 142 of the Constitution of India the marriage cannot be dissolved on the ground of irretrievable breakdown of marriage is concerned, the aforesaid has no substance. *If both the parties to the marriage agree for separation permanently and/or consent for divorce, in that case, certainly both the parties can move the competent court for a decree of divorce by mutual consent. Only in a case where one of the parties do not agree and give consent, only then the powers under Article 142 of the Constitution of India are required to be invoked to do substantial justice between the parties, considering the facts and circumstances of the case. However, at the same time, the interest of the wife is also required to be*

protected financially so that she may not have to suffer financially in future and she may not have to depend upon others.”

36. Having found that consent of the parties is not necessary to declare a marriage dissolved, *we cannot be unmindful of the facts as they exist in reality*. There has been a marriage which took place on 31.10.2004. There is a child born in the said marriage. No doubt being in contravention of Section 15, it becomes a fait accompli but at the same time we do not reasonably perceive any possibility of the appellant and the respondent cohabiting as husband and wife. Whatever life was there in the marriage has been snuffed out by the passage of time, the appearance of new parties and vanishing of any bond between the parties. Not even the slightest possibility of rapprochement between the appellant and the respondent exists for reasons though which are entirely due to the actions of the appellant and for which the respondent cannot be blamed. The marriage between the appellant and the respondent has become dead. It can be described as a point of no return. There is no possibility of the appellant and the respondent stitching together any kind of a reasonable relationship as the tie between the parties has broken beyond repair and having regard to the facts of this case, we would think that it would be in the interest of justice and to do complete justice to the parties that we should pass an order dissolving the marriage between the appellant and the respondent.

37. We make it clear that this decision of ours is not based on our approval of the conduct of the appellant nor is it based on sitting in judgment over the conduct of the respondent. In other words, we find that respondent is blameless in the matter but the facts as they have unfolded and the developments which have taken place, render it unavoidable for us to consider dissolution of marriage as the best course open in the interest of justice.”
(Emphasis supplied)

In our view, the above said pronouncement of the Hon'ble Supreme Court squarely covers the issue at hand.

Also, as stated above, in the present matter the parties have been living separately for the last almost ten years, since 2013. Reference at this stage can be made to the case of '**Naveen Kohli v. Neelu Kohli**', (2006) 4 SCC 558 which was also a case of cruelty (mental and physical) where the Hon'ble Supreme Court again considered the concept of irretrievable breakdown of marriage. In that case too the parties had been living separately since ten years and the wife was not ready to grant divorce to her husband. However, notwithstanding this factual position, Hon'ble Supreme Court was pleased to grant divorce in said matter and has further noticed as follows:

“32. In '**Sandhya Rani v. Kalyanram Narayanan**', (1994) Supp. 2 SCC 588, this Court reiterated and took the view that since the parties are living separately for the last more than three years, we have no doubt in our mind that the marriage between the parties has irretrievably broken down. There is no chance whatsoever of their coming together. Therefore, the Court granted the decree of divorce.

33. In the case of '**Chandrakala Menon v. Vipin Menon**', (1993)2 SCC 6, the parties had been living separately for so many years. This Court came to the conclusion that there is no scope of settlement between them because, according to the observation of this Court, the marriage has irretrievably broken down and there is no chance of their coming together. This Court granted decree of divorce.

34. In the case of **Kanchan Devi v. Promod Kumar Mittal**, 1996(2) RCR (Criminal) 614 : (1996)8 SCC 90, the parties were living separately for more than 10 years and the Court came to the conclusion that the marriage between the parties had to be irretrievably broken down and there was no possibility of

reconciliation and therefore the Court directed that the marriage between the parties stands dissolved by a decree of divorce.”

Thus, in the conspectus of the peculiar facts and circumstances of the present case, and in consonance with the aforesaid pronouncements of the Hon'ble Supreme Court, with a view to do complete justice, and put an end to the agony of the parties, this Court deems it appropriate to allow the present appeal.

Before parting, even though the parties have lived together in matrimonial home only for nine months, and even though there is no child from their wedlock, and even though during this litigation admittedly the appellant has already paid Rs. 23 lacs to the respondent as maintenance yet, we deem it fit to grant her permanent alimony of a sum of Rs. 18,00,000/- (Rupees eighteen lacs only) as full and final settlement.

For the reasons stated above, this appeal is allowed; impugned order dated 8.5.2017 passed by the learned Additional District Judge, Patiala is set aside; the petition for divorce filed by the appellant-husband under Sections 13(ia) and (ib) of the Act is decreed and the marriage solemnized between the parties on 11.11.2012 is dissolved by a decree of divorce.

All pending application(s),if any, stand disposed of.

(Nidhi Gupta)
Judge

(Ritu Bahri)
Judge

October 11 ,2022
Joshi

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No