

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR  
BEFORE**

**DB :- HON'BLE SHRI ANAND PATHAK &  
HON'BLE SHRI HIRDESH, JJ**

**ON THE 5TH OF NOVEMBER, 2024**

**FIRST APPEAL NO. 518 OF 2021**

**SUMIT RAJ SHIVHARE**

**Versus**

**SMT. ANUSHREE GUPTA (SHIVHARE)**

**&**

**FIRST APPEAL NO. 519 OF 2021**

**SUMIT RAJ SHIVHARE**

**Versus**

**SMT. ANUSHREE GUPTA (SHIVHARE)**

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***Appearance:***

*Shri Amit Lahoti- learned Counsel for appellant- husband in both first appeals  
Shri Sidharth Sharma- learned Counsel for respondent-wife in both first  
appeals*

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**JUDGMENT**

**Per Shri Hirdesh, J:-**

Above-mentioned First Appeal No.518 of 2021 and First Appeal No.519 of 2021 have been filed by appellant- husband under Section 19 of Family Courts Act, challenging the common judgment and decree dated 14<sup>th</sup> of June, 2021 passed by Principal Judge, Family Court, Gwalior in Case No.314-A of 2016 (HMA) and in Case No.200-A of 2014, whereby the petition filed by respondent-wife under Section 9 of the Hindu Marriage Act, 1955 [ in short "

the HM Act"] for restitution of conjugal rights has been allowed and the petition under Section 13(1)(i-a) of the HM Act for grant of decree of divorce on the ground of "cruelty" has been dismissed.

(2) Since facts of both the appeals are same, therefore, both the appeals are heard simultaneously and are disposed of by this common judgment.

(3) On behalf of appellant- husband, it is averred that his marriage was solemnized with respondent on 10<sup>th</sup> of February, 2012 as per Hindu rites and rituals. After marriage, they were living in Pune (Maharashtra) because he was working in a private Firm as Software Engineer there. His wife is a degree holder in B.Com. (Retail Marketing) and is earning Rs.30,000 – 35,000/- per month by doing her own private work. A male child, namely, Aryaman, was born out of the said wedlock on 28<sup>th</sup> January, 2013. It is further averred that after birth of child, his wife started misbehaving towards him and his parents. Behaviour of respondent- wife towards him and his family members became cruel. She stopped establishing the marital relationship with him. In the month of April, 2013, she came with him at Gwalior and again started misbehaving with his parents. He went to the parental home of respondent and asked her parents about problems and reasons for not performing the conjugal rights. His wife abused and frightened him. Parents of respondent came his house and assured that in future, respondent will not commit any cruel behaviour. Thereafter, appellant went with his wife to his work place Pune, where-after living with her for a month, she again started behaving in a cruel manner and refused to maintain marital relationship with him and also started abusing and making obscene remarks against his parents.

It is further averred that his wife had taken an education loan before marriage and installment of said loan was overdue for which, his wife was pressurizing him for paying the education loan. When he refused to pay the same, his wife threatened to register false case of dowry as well as Domestic Violence against him and his family members. On 12<sup>th</sup> of September, 2013, in

absence of the appellant-husband, his wife left her matrimonial home along-with jewellery and valuable articles without informing anybody, without any rhyme or reason. Therefore, on 11<sup>th</sup> of March, 2014, he filed a petition seeking decree of divorce in counter-blast of which, his wife registered multiple criminal cases against him and his family members.

It is further averred that on 18<sup>th</sup> March, 2014, his brother-in-law Anurag Gupta committed suicide in front of train due to family reasons and respondent and her family registered a false case under Section 306 of IPC for commission of abetment against him and his parents on 31<sup>st</sup> of March, 2014 before the GRP, Gwalior in connection with Crime No.89 of 2014 as a result of which, his father and mother were arrested and sent to judicial custody for a period of near about 5-8 days and later on, they were released on bail. Against which, they filed petitions for quashment of criminal proceedings and the same were allowed by this Court *vide* orders dated 26<sup>th</sup> of November, 2014 and 8<sup>th</sup> of April, 2015 respectively. It is further averred that on 9<sup>th</sup> May, 2014, his wife registered a false criminal case under Sections 498-A and 323 of IPC against him and his parents at PS Madhoganj with regard to demand of dowry and harassment and the same is kept pending before the Court of JMFC, Gwalior.

It is further averred that on 29<sup>th</sup> of May, 2014, a private complaint under Sections 406 and 195-A of IPC was also filed by respondent and the same was dismissed as withdrawn by respondent herself on 12<sup>th</sup> of March, 2021. A private complaint under Section 12 of the Domestic Violence Act has been filed by respondent on 3<sup>rd</sup> of June, 2014 and the same is pending before the Court of JMFC, Gwalior and a private complaint under Sections 494 and 109 of IPC has also been filed on 14<sup>th</sup> of September, 2015 by respondent which is kept pending before the Court of JMFC, Gwalior. An application under Section 125 of CrPC filed by respondent for grant of maintenance has been disposed of *vide* order dated 29<sup>th</sup> of April, 2014. It is further averred that respondent has also filed a petition against the order of rejection of her application under

Section 91 of CrPC in connection with offence under Section 498-A of IPC and has also filed a petition against the decision of Additional District Judge for enhancing interim maintenance amount in connection with Domestic Violence Proceedings. Due to above act of cruelty and harassment, he and his family have been defamed in the society and among the relatives and it is not possible for him to live with his wife.

On these grounds, petition filed by appellant under Section 13(1)(1-a) of the HM Act for grant of decree of divorce on the ground of cruelty deserves to be allowed and the marriage held on 10<sup>th</sup> of February, 2012 deserves to be dissolved. The application filed by respondent under Section 9 of the HM Act for restitution of conjugal rights deserves to be rejected.

(4) Respondent-wife denied the allegations of appellant. It is averred that her parents had given sufficient dowry including cash, car and other household articles. After marriage, on the first occasion, she stayed at her in-laws house for almost 18 days and her husband left for his workplace in Pune after 8 days. After sometime, her husband behaved indecently and tortured her physically and mentally. It is further averred that appellant has an illicit relationship with a divorced lady, namely, Gauri Tavde, who is earning Rs.80,000–1,00,000/-and the said Gauri Tavde has a two BHK Flat. Her husband and family members used to behave her cruelly by beating her and threatening to kill her. Her husband and in-laws ousted her from the house.

It is further alleged that on 7<sup>th</sup> of September, 2013, she was beaten up and threatened to kill her and her son, therefore, she called her brother to Pune and thereafter, came at Gwalior with her brother and son. Her husband knowing the fact that he was already married and without dissolution of marriage, he conspired his parents and got married for the second time while his first marriage with said Gauri was still in existence.

It is further alleged that her brother Anurag committed suicide on 18<sup>th</sup> of March, 2014 due to abetment committed by appellant and his parents. On 19<sup>th</sup>

of March, 2014, her husband sent a notice for divorce. Due to physical and mental torture in regard to demand of dowry and harassment, she had left with no other option but a case was got registered against appellant and his family members under Sections 498-A and 323 of IPC at PS Madhoganj. A written complaint was also submitted at Mahila Thana, Padav, District Gwalior. On the basis of such complaint, a case has been registered under Sections 498-A, 406, 323 and 195-A of IPC and Section 3/4 read with Section 5 of Dowry Prohibition Act and the same was withdrawn after six and a half years i.e. on 12<sup>th</sup> of March, 2021. Respondent has also filed a case under Section 12 of the Domestic Violence Act which is pending consideration before the Court of JMFC, Gwalior.

It is further alleged that she received notice of divorce filed by her husband on 11<sup>th</sup> of March, 2014 after filing a complaint on 24<sup>th</sup> of February, 2014 before Mahila Thana Padav, Gwalior. With intention to pressurizing her and her parents, the appellant has filed a divorce petition on false grounds. Appellant abandoned her on account of demand of dowry and his affair with said Gauri and he has not cared for her and her son as the appellant wants to live with said lady Gauri. She had to endure physical and mental torture inflicted at her by appellant and his family members.

On these grounds, the petition filed by appellant under Section 13(1)(i-a) of the HM Act for decree of divorce deserves to be rejected and the petition filed by her under Section 9 of the HM Act for restitution of conjugal rights deserves to be allowed.

(5) On the basis of pleadings of both the parties, the learned Family Court framed issues and *vide* impugned judgment and decree, held that appellant-husband has utterly failed to prove the ground of "cruelty" against respondent-wife and therefore, he is barred from getting relief of divorce on the ground of cruelty under Section 13(1)(i-a) of the HM Act and allowed the petition filed by wife under Section of 9 of the HM Act for restitution of conjugal rights.

(6) Challenging the impugned judgment and decree, it is contended on behalf of appellant that learned Family Court has not properly appreciated the evidence and decided all the issues against the appellant. Respondent has filed petition for restitution of conjugal rights after more than two years of filing of divorce petition at the time of closing of evidence of husband. In the counselling held before the Family Court on 11-11-2014 in divorce and maintenance cases, the respondent specifically stated that she was feeling unsafe in the hands of appellant and she would be *bona fide* and agreed to live without appellant. Although this fact has also been admitted by respondent in her cross-examination, but the learned Family Court has committed an error in coming to a conclusion that the appellant has deserted respondent. It is further contended that after staying with appellant in Pune for one and a half year, respondent never had lodged any complaint regarding assault and demand of dowry either at Police Station, Pune or at Gwalior. As a counter-blast, after filing a divorce petition, various false criminal cases and complaints have been registered against the appellant and his family members in order to pressurize him and his family members.

It is further contended that respondent is living separately since 12<sup>th</sup> of September, 2013 i.e. since last more than 11 years till date and there is no possibility to live with respondent as husband and wife. The matrimonial bond has been ruptured beyond repair because of mental cruelty caused by the respondent. Therefore, appellant sought a decree of divorce by setting aside the impugned judgment and decree dated 14<sup>th</sup> of June, 2021 passed by learned Family Court.

(7) *Per contra*, learned Counsel for the respondent- wife while supporting the impugned judgment and decree, vehemently opposed the contentions of appellant-husband and prayed for dismissal of both the appeals filed at the instance of appellant-husband.

(8) Heard learned Counsel for the parties at length and perused the

impugned judgment and decree as well as evidence available on record.

(9) The first question for determination is whether appellant-husband is entitled to obtain a decree of divorce on the ground of cruelty or not ?

(10) Concept of mental cruelty has been elaborately discussed in the judgment rendered by Hon'ble Apex Court in the matter of **Dr. Narayan Ganesh Dastane Vs. Mrs. Sucheta Narayan Dastane, AIR 1975 SC 1534** whereby, the relevant extract of said judgment is reproduced as under:-

"The question whether the misconduct complained of constitutes cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another, and what may not be cruel to an individual under one set of circumstances may be extreme cruelty under another set of circumstances."(1) The Court has to deal, not with an ideal husband and ideal wife (assuming any such exist) but with the particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court for, even if they may not be able to drown their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures. As said by Lord Reid in his speech in *Gollins v. Gollins* (2) ALL ER 966

"In matrimonial cases we are not concerned with the reasonable man, as we are in cases of negligence. We are dealing with this man and this woman and the fewer a priori assumptions we make about them the better. In cruelty cases one can hardly ever even start with a presumption that the parties are reasonable people, because it is hard to imagine any cruelty case ever arising if both the spouses think and behave as reasonable people."

(11) The aforesaid judgment of **Dr. Narayan Ganesh Dastane** (supra) still holds the field and is source of wisdom time and again in respect of "mental cruelty". The aforesaid decision was referred to with approval in the cases of **Praveen Mehta Vs. Inderjit Mehta AIR 2002 SC 2582, Samar Ghosh Vs. Jaya Ghosh (2007) 4 SCC 511, Manisha Tyagi Vs. Deepak Kumar (2020) 4**

**SCC 339, Vishwanath Agrawal Vs. Sarla Viswanath Agrawal (2012) 7 SCC 288 and U. Sree Vs. U. Srinivas (2013) 2 SCC 114.**

(12) The Hon'ble Supreme Court in the matter of **Samar Ghosh vs. Jaya Ghosh (2007) 4 SCC 511** has also considered the instances of cruelty as well as the aspects of irretrievable breakdown and held that the same can be made a ground for divorce.

(13) The broad facts of the case elucidated above establish that marriage between the parties took place on 10<sup>th</sup> February, 2012 and out of wedlock a male child, namely, Aryaman was born on 28<sup>th</sup> of January, 2013. However, due to reason as mentioned above, the marital bond was broken and the parties started living separately for the last more than 11 years i.e. since 12<sup>th</sup> of September, 2013 till date. There is no hope about cohabitation between them. Their matrimonial bond has been completely ruptured beyond repair. It has become impossible to reunite the parties. Their marriage is totally unworkable, emotionally dead and beyond salvation. After a long period of more than 11 years, both the parties have failed to establish their marital relationship. Thus, in the light of decision of the Supreme Court, the marriage irretrievably broken-down due to efflux of time. The facts further proved the circumstances as to how the wife treated the appellant-husband with cruelty.

(14) The divorce petition was filed by appellant-husband before the Family Court on 11<sup>th</sup> of March, 2014. Respondent-wife did not stop herself from moving ahead even to proceed further against her husband to implicate and prosecute him in criminal cases. By initiation of proceedings for offence punishable under Section 306 of IPC which was dismissed in MCRC Nos.4069 of 2014, 4098/2014 and 11932/2014 respectively. Thereafter, again a case under Sections 498-A and 323 of IPC was filed on 9<sup>th</sup> of May, 2014 which is kept pending before the Court of JMFC as RCT No.9472 of 2014. A private complaint under Sections 406 and 195-A of IPC was also filed on 29<sup>th</sup> of May, 2014 which later on was got dismissed as withdrawn on 12<sup>th</sup> of March, 2021 by

the respondent-wife.

(15) Further, private complaint under Section 12 of Domestic Violence Act was instituted on 3<sup>rd</sup> of June, 2014, which is reported to be pending before the Court of JMFC as MJCR No.69 of 2014. Thereafter, again a private complaint under Sections 494 and 109 of IPC was filed on 14<sup>th</sup> of September, 2015 which is kept pending before the Court of JMFC, Gwalior in RCT No.150 of 2016. When the evidence of appellant- husband became closed on 29<sup>th</sup> of March, 2016, respondent- wife filed a petition under Section 9 of the HM Act on 30<sup>th</sup> of June, 2016. The averments further disclose that an application under Section 125 of CrPC for grant of maintenance was disposed of by the Family Court *vide* order dated 29<sup>th</sup> of April, 2014 against which, Criminal Revision No.2493 of 2024 and Criminal Revision No. 3154 of 2024 were filed by the parties seeking enhancement/rejection by the respective parties.

(16) It is further noted that MCRC No.13222 of 2024 against rejection of application of respondent-wife in pending case registered for offence under Section 498-A of IPC is reported to be kept pending before the Court. MCRC No.52232/2023 raising the ground against rejection of enhancement of interim maintenance in the proceedings of Domestic Violence is also kept pending adjudication. Further, MCRC No. 37309 of 2019 is pending between the parties against the order in appeal for making said Gauri Tavde as accused in bigamy case.

(17) The narration of aforesaid facts clearly demonstrate the factum of cruelty, as respondent-wife against her appellant-husband by filing criminal cases even after closing the evidence of appellant in divorce case, considering the above facts, the Family Court does not see, to have committed an error in passing a divorce in favour of appellant- husband as the marriage is irretrievably broken-down by efflux of time and the respondent- wife did not even try to cohabit with her husband. It is only after closing the evidence of appellant- husband in divorce petition, the petition under Section 9 of the HM

Act was filed on 30<sup>th</sup> of March, 2016 by respondent- wife which is based on *mala fide* ground.

(18) Accordingly, the impugned judgment and decree passed by the Family Court on the petition filed by respondent- wife under Section 9 of the Restitution of Conjugal Rights is not just and proper. Therefore, the same **stands rejected**.

(19) The act of respondent-wife amounts to "mental cruelty" towards husband and his family members and thus, the break down of marriage has reached to an irretrievable situation. Thus, petition filed by husband under Section 13(1)(i-a) of the HM Act for grant of decree of divorce on the ground of "cruelty" deserves to be and is **allowed**. Decree be drawn accordingly.

(20) In the result, judgment and decree dated 14<sup>th</sup> of June, 2021 passed by Principal Judge, Family Court, Gwalior in Case No.314-A of 2016 (HMA) and in Case No.200-A of 2014 is **set aside**.

(21) So far as the question for grant of interim maintenance to respondent-wife is concerned, an affidavit along with salary slip filed by appellant-husband clearly shows that he is a Software Engineer working in a private Firm, namely, Dassault System Software Solution Private Limited in Pune and getting gross salary of approximately Rs.1,18,875/-per month including other liability. It is averred that respondent- wife is a B. Com, MBA in Retail Business Management and Marketing from MIT College, Pune. From the record, it is found that the learned Family has already awarded maintenance amount to the extent of Rs.25,000/- per month by allowing the application under Section 125 of CrPC to maintain herself and her minor son Aryaman. The same amount of Rs.25,000/- per month awarded by the Family Court is found to be just and proper and, therefore, there is no need to pass separate order for the same. So far as question of granting arrears in regard to order of maintenance passed by the Family Court under Section 125 of CrPC is concerned, both the parties have already filed criminal revisions before this

Court challenging the order of Family Court and the same are pending and, therefore, question regarding grant of arrears shall be attained finality in aforesaid Criminal Revision No.2493 of 2024 and Criminal Revision No. 3154 of 2024. However, we may add here that the amount of Rs.25,000/- per month shall fetch enhancement every calendar year @ 5% to meet the ends of justice, till it attains finality or altered subsequently in future, in some appropriate proceedings at the instance of parties. The facts of record further discloses that the minor child Aryaman, who is now aged around 11 years is living under the guardianship of his mother i.e. respondent and, therefore, being minor child, she is the best person to look after him. Appellant-husband is allowed visitation rights, if they so desire.

(22) As a sequel, in view of above discussion, both the appeals are **allowed**.

(23) A copy of this judgment be kept in connected FA No.519 of 2021.

**(ANAND PATHAK)**  
**JUDGE**

**(HIRDESH)**  
**JUDGE**