

Before Ritu Bahri & Ashok Kumar Verma, JJ.

DEVESH YADAV—Appellant

versus

SMT. MEENAL—Respondents

FAO-M No. 208 of 2013

April 8, 2022

Hindu Marriage Act, 1955—S.13—Grant of divorce to Husband—Extraordinary—jurisdiction—Held, the separation between the parties had continued for a sufficient length of time and there is a strong presumption that the marriage has broken down—A marriage which has long ceased to be effective is bound to be a source for greater misery to the parties—Divorce granted with a permanent alimony of Rs.20,00,000/- to the wife—Appeal by husband for grant of divorce allowed.

Held, that it is well settled that once the parties have separated and separation has continued for a sufficient length of time and anyone of them presented a petition for divorce, it can well be presumed that the marriage has broken down. The Court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.

(Para 34)

Gurpreet Singh, Advocate, *for the appellant*-husband.

Gautam Diwan, Advocate for the respondent-wife.

ASHOK KUMAR VERMA, J.

(1) The appellant-husband has come up in appeal before this Court seeking setting aside of judgment and decree dated 26.02.2013 passed by the District Judge, Rohtak, whereby petition filed by him under Section 13 of the Hindu Marriage Act, 1955 (for short 'the HMA') for dissolution of marriage by a decree of divorce, has been dismissed.

(2) Brief facts of the case are that appellant-husband filed a petition under Section 13 of the HMA for dissolution of marriage by a

decree of divorce pleading therein that marriage between the parties was solemnized on 19.11.1998 and the same was registered on 23.11.1998 at Rohtak. At the time of marriage, appellant-husband was posted at Srinagar and they lived there upto March, 2000. Respondent-wife insisted that delivery of the child should take place at Rohtak, therefore, appellant acceded to her request and they went to Rohtak, where they were blessed with a son, namely, Jalaj on 24.08.1999. Thereafter, appellant was transferred to Jammu and parties lived together there upto April, 2002. The appellant remained posted at Jammu upto September, 2002 and then was transferred to Lucknow. It is alleged by the appellant-husband that from the beginning of the marriage, conduct, behaviour and attitude of the respondent-wife had been cruel, unwarranted and harsh and she used to pick up quarrels over trifles without any justifiable cause. The respondent deserted the appellant in April, 2002 and since then she had not returned to matrimonial home, whereas appellant had always been giving love and affection to the respondent and his son. In the beginning of December, 1999 appellant had taken the respondent along with his son to his place of posting at Srinagar and at the request of respondent her mother was also taken there and appellant provided proper food, clothing and every good lodging facility to the respondent, her mother and the son. In mid December, 1999, respondent suffered with breast abscess and she was got treated and operated at Army Hospital, Srinagar. In December, 1999, respondent was again operated at PGIMS, Rohtak, as the said ailment had re-developed. In April, 2002, respondent went to the house of her parents at Rohtak and thereafter in spite of best efforts of the appellant, she did not return to her matrimonial home. Appellant had also written several letters from the place of his posting requesting respondent and her parents to send the respondent and his son to him but in vain. Whenever, appellant came on leave at Rohtak and tried to meet his wife and the child, respondent's parents did not allow him to meet them. Rather, Pawan, brother of the respondent, misbehaved with the appellant whenever appellant visited the house of his in-laws. Appellant also met the respondent in April, 2006 and requested her to accompany him and apprised her that he had booked seats for journey but she flatly refused to accompany him and threatened that if he tried to take her with him, she would commit suicide. It is further alleged that respondent failed to discharge her matrimonial duties and obligations and rather she ill-treated and mal-treated the appellant, caused physical and mental cruelty upon him, did not cooperate in married life and made his life hell. The respondent even failed to give

any respect and regard to the parents of the appellant. When respondent expressed her desire to do a job, appellant agreed to her request and she had worked at Army Public School, Jammu, from July, 2001 to March, 2002. As in spite of best efforts made by the appellant, respondent did not join the matrimonial home, he was compelled to institute a divorce petition bearing No.58 of 2006. The matter was referred to Lok Adalat/mediation. During the course of these proceedings, respondent agreed to withdraw her complaint made to the Air Force authorities as well as the application for maintenance filed before the Senior Air Force Officer, on withdrawal of said petition by the appellant. The matter was compromised on the basis of separate statements dated 21.12.2008 and the petition filed by the appellant was dismissed as withdrawn. Appellant further alleged that respondent was working as lecturer in mathematics in Matu Ram Institute of Engineering and Management at Rohtak. Even during vacations she never joined the company of the appellant. Despite having given undertaking before the Court in her statement dated 21.12.2008, she had not withdrawn her complaint and maintenance application filed before the Senior Air Force Officer and did not join the company of the appellant at the matrimonial home at the place of his posting i.e. at M.E.T. Flight Air Force Station, Sirsa (Haryana). Therefore, appellant sought decree of divorce on the ground of cruelty and desertion.

(3) Respondent-wife contested the petition admitting the factum of solemnization of her marriage with the appellant and the birth of the son out of their wedlock. Respondent denied that she insisted that the delivery of the child should take place at Rohtak. It was also denied that from the beginning of the marriage, her conduct, behaviour and attitude had been cruel, unwarranted, harsh and she used to pick up quarrels with the appellant without any good cause and reason. It was also denied that she deserted the appellant in April, 2002 whereas the appellant had caused mental as well as physical cruelty to her. In the beginning of December, 1999 she was taken to Srinagar by the appellant and the mother of the respondent had to accompany her as there was no one else to look after her and her son. There respondent suffered with breast abscess in December, 1999 but the appellant refused to consult the doctors at Air Force Hospital being male staff and pressurized her to consult a nurse and due to the delay, the respondent had to undergo an operation at Srinagar Army Base Hospital and her mother had to look-after her. Since she was not fully recovered, she had to undergo another operation in December, 1999 at PGIMS, Rohtak. As her mother-in-law refused to look after her,

therefore, her sister stayed there to look after her and her mother took care of the child. The appellant did not avail leave at that time to join her in such painful moments. In march, 2000 respondent returned to the matrimonial home and went to appellant's place of posting at Jammu, however, appellant started teasing her by hurting her physically and mentally. On several occasions, respondent was thrashed by the appellant and in the midnight of June 19, 2000 she was turned out of the matrimonial home. Appellant levelled false allegations about her character. Therefore, her brother had to come to Jammu to patch up the matter. On 27/28 August, 2000, appellant repeated his behaviour and left the respondent and her son at Ambala at her brother's house forcibly. He came in November, 2000 and had taken the respondent and their son back on 18.11.2000. However, after a few days, appellant again started treating the respondent like a slave and demanded money to pay his loan taken for purchase of a car. As a result, respondent had to go back to her parental home as it was not possible to live in such isolation where she was compelled to keep even every window shut with curtains and not to talk to any person. After reaching Rohtak, it was revealed that the respondent had conceived again but appellant forced her to abort the pregnancy alleging that the same did not belong to him. After that appellant went to the house of the respondent and apologized for his mis-behaviour. Respondent denied that she did not allow the appellant to meet his son Jalaj. She also denied that she deserted the company of the appellant continuously since April, 2002. She joined the company of the appellant after April, 2002 and lived together at Lucknow and they along with their son Jalaj visited Imambara and other historical places of Lucknow. They also visited Nainital and enjoyed picnic and photographs were snapped at those places. Respondent alleged that marriage of her brother was solemnized in February, 2003 and appellant and her family members attended the said marriage. Respondent admitted the factum of filing of earlier divorce petition by the appellant but after compromise, the same was got dismissed as withdrawn and thereafter respondent joined the company of the appellant. She was ready to withdraw her complaint moved by her before the Air Force authorities, however, appellant turned her out of his place of posting and deserted her. It is further alleged that in fact appellant had withdrawn his earlier divorce petition because he wanted the respondent to withdraw the complaint filed before the Air Force authorities. While denying all other allegations, respondent-wife sought dismissal of the petition.

(4) Appellant-husband filed replication controverting the

contents of the written statement and reasserted the contents of the petition.

(5) From the pleadings of the parties, following issues were framed by the Family Court on 07.01.2010: -

- “1. Whether the petitioner is entitled for a decree of divorce on the ground of cruelty, harassment and desertion, as alleged in the petition? OPP
2. Whether the present petition is not maintainable? OPR
3. Whether the petitioner is estopped from filing the present petition by his own act and conduct? OPR
4. Whether the petitioner has no cause of action to file the present petition? OPR.
5. Relief.

(6) In order to prove his case, appellant-husband stepped into witness box as PW1, besides examining his mother Usha Yadav as PW2. He tendered his duly sworn affidavit Ex.PW1/A.

(7) On the other hand, respondent-wife herself appeared as RW1 besides examining her father Bhagat Singh Malik as RW2. She tendered her duly sworn affidavit Ex.RW1/A.

(8) The Family Court has returned the findings against the appellant-husband and decided issue No.1 in favour of the respondent-wife observing that appellant had not been able to prove the ground of cruelty, harassment and desertion, as alleged in the petition. Therefore, petition under Section 13 of the HMA filed by the appellant was dismissed.

(9) Learned counsel for the appellant vehemently has contended that impugned judgment and decree passed by the Family Court dismissing the petition filed by the appellant-husband under Section 13 of the HMA is erroneous and contrary to the material on record as during her stay at matrimonial home, respondent treated the appellant with cruelty and she herself deserted the appellant-husband in April, 2002 without any reasonable cause. Efforts of the appellant to bring back the respondent to her matrimonial home went in vain since she refused to join the company of the appellant-husband. Learned counsel has further contended that respondent-wife made complaints to the senior officers of the appellant-husband in the Air Force, which caused great mental cruelty to him and affected his service career.

Learned counsel has contended that on a false complaint filed by the respondent-wife, FIR No.644 dated 20.10.2010 under Sections 498-A, 406, 313, 323, 506 IPC was registered at Police Station Civil Lines, Rohtak, against the appellant-husband and his parents. During investigation, parents of the appellant were found innocent whereas appellant was tried for the offences under Sections 498-A, 406, 313, 323, 506 IPC and during the pendency of present appeal the trial Court, finding the allegations against the appellant-husband false, acquitted him of the charges vide judgment dated 16.04.2015 (Annexure P-A). The false complaint leveling serious allegations against the appellant is itself a cruelty by the respondent. Learned counsel has, thus, contended that there is no possibility of reconciliation of the marriage and the marriage is irretrievably broken and they are residing separately for the last about 20 years (11 years on the date of order of the Family Court) which aspect has not been considered by the Court below while passing the impugned judgment and decree. In support of his contentions, learned counsel for the appellant placed reliance on the judgments in the cases of K. Srinivas Rao vs. D.A. Deepa, (2013) 5 Supreme Court Cases 226; FAO-1767 of 2017-Smt. Veena v. Shri Naveen decided on 23.09.2021 (P&H); FAO-M-261 of 2008-Santro Devi v. Virender Kumar alias Virender Singh decided on 18.02.2015 (P&H); FAO-326 of 2007-Soma Banerjee v. Subhrojyoti Banerjee decided on 05.08.2009 (Calcutta High Court); K. Srinivas v. K. Sunita, (2014) 16 Supreme Court Cases 34 and ***Civil Appeal No.4905 of 2012-Vishwanath versus Sau. Sarla Vishwanath Agrawal decided on 04.07.2012.***

(10) Per contra, learned counsel for the respondent-wife sought to justify the impugned judgment and decree passed by the Court below and has contended that the appellant had not made out any ground to grant divorce. The appellant failed to prove cruelty on the part of the respondent. Learned counsel has further contended that respondent-wife has never deserted the appellant-husband, therefore, he is not entitled for decree of divorce on the grounds of cruelty, desertion or on the ground of irretrievable break down of the marriage. Earlier also the appellant- husband had filed divorce petition in the Court of Additional District Judge, Rohtak. However, the matter was compromised on 21.12.2008 according to which parties mutually agreed to resolve all their disputes and appellant agreed to withdraw the divorce petition whereas respondent-wife assured that she would withdraw the application for maintenance filed before the senior Air Force officers. Learned counsel for the respondent has further contended that factum of lodging of FIR against the appellant and his family members was not

pleaded in the petition under Section 13 of the HMA, therefore, appellant cannot be allowed to take benefit of the judgment of acquittal dated 16.04.2015, which is subsequent to the judgment and decree dated 26.02.2013 dismissing the petition under Section 13 of the HMA filed by the appellant. Only vague and baseless allegations have been levelled against the respondent. Therefore, he sought dismissal of the present appeal. In support of his contentions, learned counsel for the respondent placed reliance on the judgments of the Hon'ble Supreme Court in *Seth Ramdayal Jat versus Laxmi Prasad*¹ and *Mangayakarasi versus M. Yuvaraj*².

(11) We have considered the rival submissions made by learned counsel for the parties and perused the records.

(12) Matrimonial cases are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general.

(13) It is undisputed fact that the marriage between the appellant and respondent was solemnized on 19.11.1998 and the same was registered on 23.11.1998. On 24.08.1999 a child, namely, Jalaj was born out of the wedlock. According to the appellant, in the month of April, 2002, the respondent left the company of the appellant and went to her parents' house and the efforts made by the appellant to bring her back went in vain. It is the specific case of the respondent-wife that she never deserted the appellant nor caused any cruelty to him. The Family Court, considering the averments of both the parties, dismissed the petition filed by the husband under Section 13 of the HMA.

(14) In view of the above circumstances, before proceeding with the appeal on merits, taking into consideration the fact that the parties were residing separately for about 12 years, vide order dated 28.04.2014, the parties were directed to appear before the Mediation

¹ 2009(11) SCC 545

² 2020(2) R.C.R.(Civil) 155

and Conciliation Centre of this Court on 19.05.2014. However, on several occasions parties did not appear before the mediator. Therefore, due to lackadaisical approach of both the parties to settle the matter and due to expiry of the stipulated period, mediator referred back the matter to this Court on 14.08.2014. Thus, the appeal was admitted on 20.02.2015.

(15) Being fed up of the behavior of the respondent-wife, earlier also appellant had instituted a petition for divorce bearing No.58 of 2006, which was referred to the Lok Adalat. The matter was compromised on 21.12.2008 and on assurance of the respondent to withdraw her complaint made to the Air Force authorities and the application for maintenance filed by her before the senior Air Force officer, appellant had withdrawn the said petition for divorce.

(16) To prove her case, respondent-wife Meenal appeared as RW1 in the witness box. In her cross-examination she has stated that *it is correct that earlier the matter was compromised in Lok Adalat and it was agreed by her that she would withdraw her application for maintenance as well as application/complaint moved by her against her husband to the higher authorities of Air Force. Application for maintenance was not withdrawn. I worked in Army Public School, Jammu from July 2001 to March 2002. I also worked at M.K.J.K. College, Rohtak, from August, 2002 to February, 2003. Now, I am working in Matu Ram Institute since July, 2008. I am getting salary of Rs.18,000/- to Rs.20,000/- per month. My son Jalaj is studying in Indus Public School in 8th standard. I have a driving licence and a PAN card. It is correct that I do not write name of my husband along with my name. It is correct that I had given complaint against my husband before his senior officers because he was not keeping me with him. I met my husband in October, 2010. My husband also visited me in October, 2010. I have been residing separately since 20.04.2009. It is correct that we know each other prior to marriage and it was a love-cum-arranged marriage. It is correct that I remained in Srinagar upto March, 2000. While working in Army Public School, Jammu, I used to go with my husband on picnic etc. It is correct that our joint statement was recorded before the Lok Adalat on 21.12.2008. I visited Sirsa 7/8 times. It is correct that my husband has been paying the maintenance to me and my child as per orders of the Air Force Authorities. It is correct that in my affidavit I have shown address of my parents' and not the address of my sister, who is residing in H. No.2507, Sector 1, Rohtak.*

(17) From the above deposition of the respondent-wife it is

axiomatic that entire case set up by her stands demolished from her own statement wherein she has admitted in so many words that despite compromise, as assured, she had not withdrawn the complaint filed by her before the Air Force authorities and the application for maintenance before Senior Air Force officer. It is also clear from her statement that even after compromise she had not resided with the appellant rather visited him at Sirsa 7/8 times.

(18) RW2 Bhagat Singh Malik, father of respondent-Meenal, also deposed in the similar manner. He stated that *petitioner (appellant herein) never gave beatings to the respondent in any manner in my presence. I cannot tell the date, month and year when she was abused by the petitioner. I do not know if the respondent had lodged any complaint to the senior officers of the petitioner in the Air Force about his conduct. The alleged incident of threatening my daughter with knife had taken place at my house at Rohtak. I did not see the said incident of threatening by showing knife by the petitioner to the respondent. However, my wife had seen the said incident. The child goes to the school sometimes from my house and sometimes from the house of my elder daughter namely Pushpa. I cannot tell since which year my daughter is residing with me at Rohtak.*

(19) During the pendency of the present appeal, learned counsel for the appellant has placed on record judgment dated 16.04.2015 (Annexure P-A), whereby appellant has been acquitted of the charges under Sections 498-A, 406, 313, 323 and 506 IPC. The FIR was registered on the basis of complaint dated 13.10.2010 of respondent-wife against the appellant-husband and his parents, namely, B.S. Yadav (father) and Usha Rani (mother). During investigation, parents of the appellant were found innocent. After facing trial about 4½ years appellant has been acquitted of the charges as the allegations levelled by the respondent against the appellant were found to be false.

(20) 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. We are, therefore, not impressed by this argument raised on her behalf.

(21) Respondent wife also bent upon destroying the career and reputation of the appellant-husband as she made complaints against him

to his senior officers in the Air Force.

(22) At this juncture, it is important to make reference to the judgment passed by the Hon'ble Supreme Court in **Raj Talreja versus Kavita Talreja**, Civil Appeal No.10719 of 2013, decided on 24.04.2017, wherein, it was held that a false complaint was registered against the husband by the wife, after wife herself inflicted injuries on her person. In criminal proceedings, the husband had been acquitted and thereafter, proceedings against the wife were launched. On this account, the husband was held entitled to decree of divorce, on the ground of cruelty. It was further observed as herein given:-

“9. This Court in Para 16 of K. Srinivas Rao v. D.A. Deepa, 2013 (2) RCR (Civil) 232 has held as follows:

“16. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh v. Jaya Ghosh, 2007 (4) SCC 511, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.”

In Ravi Kumar v. Julmidevi, 2010 (2) RCR (Civil) 178, this Court while dealing with the definition of cruelty held as follows:

“19. It may be true that there is no definition of cruelty under the said Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, sometime it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty.

20. Therefore, cruelty in matrimonial behaviour defies any definition and its categories can never be closed. Whether the husband is cruel to his wife or the wife is cruel to her

husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any predetermined rigid formula. Cruelty in matrimonial cases can be of infinite variety-it may be subtle or even brutal and may be by gestures and words. That possibly explains why Lord Denning in *Sheldon v. Sheldon*, (1966) 2 WLR 993 held that categories of cruelty in matrimonial cases are never closed.

10. 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. Later, she filed another complaint alleging that her husband along with some other persons had trespassed into her house and assaulted her. The police found, on investigation, that not only was the complaint false but also the injuries were self- inflicted by the wife. Thereafter, proceedings were launched against the wife under Section 182 of IPC."

(23) Likewise in *Joydeep Majumdar versus Bharti Jaiswal Majumdar*, Civil Appeal Nos.3786-3787 of 2020, decided on 26.02.2021 (Law Finder Doc Id #1813316), where defamatory complaints had been made by wife to husband's superior officers and the complaint so made by the wife was held to have affected the career progress of the husband, the Hon'ble Apex Court held that it amounted to 'mental cruelty' as the husband had suffered adverse consequences, in his life and career, on account of allegations, made by wife. The Family

Court, had granted divorce to the husband, on the ground of cruelty. However, the High Court had reversed the finding of the Family Court. The Hon'ble Apex Court, while deciding the matter, referred to another judgment passed in ***Samar Ghosh versus Jaya Ghosh***³, wherein, it was observed that in order to make out a case of mental cruelty, no uniform standard can be laid down and each case will have to be decided, on its own facts. Further, in ***Joydeep Majumdar's case (supra)***, it was observed as herein given:-

“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.”

(24) No doubt, criminal complaint was made by the respondent-

³ 2007 (4) SCC 511

wife after filing of the divorce petition by the appellant-husband, however, the fact remains that earlier also she filed complaints against the appellant before his senior officers in the Air force, which she assured to withdraw after withdrawal of the said petition for divorce by the appellant-husband. Filing of the complaint and initiation of criminal proceedings which were found to be baseless and false, do cause harassment and torture to the husband and his family. One such complaint is sufficient to constitute matrimonial cruelty. In this regard, reference is made to *K. Srinivas versus Sunita (supra)*.

(25) In *K. Srinivas Rao versus D.A. Deepa (supra)*, the Hon'ble Supreme Court had examined a complaint, where the wife had raised allegation that mother of her husband had asked her to sleep with father of her husband. This allegation was found to be false and it amounted to extreme mental cruelty to the husband. Ultimately, divorce was granted to the husband. The Hon'ble Supreme Court therein observed as herein given:-

“28. In the ultimate analysis, we hold that the respondent-wife has caused, by her conduct, mental cruelty to the appellant-husband and the marriage has irretrievably broken down. Dissolution of marriage will relieve both sides of pain and anguish. In this Court, the respondent-wife expressed that she wants to go back to the appellant-husband, but, that is not possible now. The appellant-husband is not willing to take her back. Even if, we refuse decree of divorce to the appellant-husband, there are hardly any chances of the respondent-wife leading a happy life with the appellant-husband because a lot of bitterness is created by the conduct of the respondent-wife.”

(26) The conduct of the respondent-wife in filing a complaint making unfounded, indecent and defamatory allegations against her husband and parents-in-law indicates that she made all attempts to ensure that appellant and his parents are put in jail and the appellant is removed from his job. We have no manner of doubt that this conduct of respondent-wife has caused mental cruelty to the appellant-husband.

(27) The issue for consideration in the present appeal would be whether the relationship of the husband and wife has come to an end and if the respondent-wife is not ready to give mutual divorce to the appellant-husband, whether this act of her, would amount to cruelty towards husband, keeping in view the fact that she is not staying with her husband for the last twenty years and there is no scope that they can

cohabit as husband and wife again. Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in a case of **Chandra Kala Trivedi versus Dr. S.P.Trivedi**⁴ wherein Hon'ble the Supreme Court was considering a case where marriage was irretrievably broken down and held that in these cases, the decree of divorce can be granted where both the parties have levelled such allegations against each other that the marriage appears to be practically dead and the parties cannot live together.

(28) Reference at this stage can be made to a judgment of three Judge Bench of Hon'ble the Supreme Court of India in case of **A Jayachandra versus Aneel Kaur**⁵ wherein Hon'ble the Supreme Court was having an occasion to consider the case of divorce on the basis of cruelty including mental cruelty. While examining the pleadings and evidence brought on record, the Hon'ble Supreme Court emphasized that the allegation of cruelty is of such nature in which resumption of marriage is not possible, however, referring various decisions, the Hon'ble Supreme Court observed that irretrievable breaking down of marriage is not one of statutory grounds on which Court can direct dissolution of marriage, the Hon'ble Supreme Court has with a view to do complete justice and shorten the agony of the parties engaged in long drawn legal battle, directed in those cases dissolution of marriage. In para 17, it has been observed as under:-

“17. Several decisions, as noted above, were cited by learned counsel for the respondent to contend that even if marriage has broken down irretrievably decree of divorce cannot be passed. In all these cases it has been categorically held that in extreme cases the court can direct dissolution of marriage on the ground that the marriage had broken down irretrievably as is clear from para 9 of Shyam Sunder case. The factual position in each of the other cases is also distinguishable. It was held that long absence of physical company cannot be a ground for divorce if the same was on account of the husband's conduct. In Shyam Sunder case it was noted that the husband was leading adulterous life and he cannot take advantage of his wife shunning his company. Though the High Court held by the impugned judgment that the said case was similar, it unfortunately failed to notice

⁴ 1993 (4) SCC 232

⁵ 2005 (2) SCC 22

the relevant factual difference in the two cases. It is true that irretrievable breaking of marriage is not one of the statutory grounds on which court can direct dissolution of marriage, this Court has with a view to do complete justice and shorten the agony of the parties engaged in long- drawn legal battle, directed in those cases dissolution of marriage. But as noted in the said cases themselves, those were exceptional cases.”

(29) Hon'ble the Supreme Court in the case of *Naveen Kohli versus Neetu Kohli*⁶ was considering a case of irretrievable break down of marriage. In this case, wife was living separately for long but did not want divorce by mutual consent, only to make life of her husband miserable. Thus, the decree of divorce was granted and held it a cruel treatment and showed that the marriage had broken irretrievably. In para 62, 67, 68 and 69, it has been observed as under:-

“62. Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again. The High Court ought to have visualized that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.

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67. The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a

⁶ 2006 (4) SCC 558

new chapter in life.

68. In our considered view, looking to the peculiar facts of the case, the High Court was not justified in setting aside the order of the Trial Court. In our opinion, wisdom lies in accepting the pragmatic reality of life and take a decision which would ultimately be conducive in the interest of both the parties.

69. Consequently, we set aside the impugned judgment of the High Court and direct that the marriage between the parties should be dissolved according to the provisions of the Hindu Marriage Act, 1955. In the extra-ordinary facts and circumstances of the case, to resolve the problem in the interest of all concerned, while dissolving the marriage between the parties, we direct the appellant to pay Rs.25,00,000/- (Rupees Twenty five lacs) to the respondent towards permanent maintenance to be paid within eight weeks. This amount would include Rs.5,00,000/- (Rupees five lacs with interest) deposited by the appellant on the direction of the Trial Court. The respondent would be at liberty to withdraw this amount with interest. Therefore, now the appellant would pay only Rs.20,00,000/- (Rupees Twenty lacs) to the respondent within the stipulated period. In case the appellant fails to pay the amount as indicated above within the stipulated period, the direction given by us would be of no avail and the appeal shall stand dismissed. In awarding permanent maintenance we have taken into consideration the financial standing of the appellant.”

(30) In the present case, the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again. Further, not to grant decree of divorce would be disastrous for the parties.

(31) The three-Judge Bench of Hon'ble the Supreme Court in a case of *Samar Ghosh* (*supra*) passed the decree on the ground of mental cruelty but the concept of irretrievable breakdown of marriage has been discussed in detail referring the 71st report of the Law Commission of India.

(32) Hon'ble the Supreme Court in a case of *K. Srinivas Rao versus D.A. Deepa* (*supra*) has observed that though irretrievable breakdown of marriage is not a ground for divorce under the Hindu

Marriage Act, however, marriage which is dead for all purposes, cannot be revived by Court's verdict, if parties are not willing since marriage involves human sentiments and emotions and if they have dried up, there is hardly any chance of their springing back to life on account of artificial reunion created by court decree.

(33) Now, once the respondent-wife who is not staying with the appellant for the last about 20 years and is not ready to give mutual divorce to the appellant-husband, reference at this stage can be made to *Naveen Kohli's case (supra)*, which was a case of cruelty (physical and mental) where Hon'ble the Supreme Court considered the concept of irretrievable breakdown of marriage. In this case as well, the parties were living separately for the last 10 years and the wife was not ready to give divorce to the husband. Hon'ble the Supreme Court granted decree of divorce but directed the husband to pay a sum of Rs.25 lacs towards permanent maintenance. In para 58, it has been observed as under:-

“58. The High Court ought to have considered the repercussions, consequences, impact and ramifications of all the criminal and other proceedings initiated by the parties against each other in proper perspective. For illustration, the High Court has mentioned that so far as the publication of the news item is concerned, the status of husband in a registered company was only that of an employee and if any news item is published, in such a situation, it could not, by any stretch of imagination be taken to have lowered the prestige of the husband. In the next para 69 of the judgment that in one of the news item what has been indicated was that in the company, Nikhil Rubber (P) Ltd., the appellant was only a Director along with Mrs. Neelu Kohli whom held 94.5% share of Rs.100/- each in the company. The news item further indicated that Naveen Kohli was acting against the spirit of the Article of the Association of Nikhil Rubber (P) Ltd., had caused immense loss of business and goodwill. He has stealthily removed produce of the company, besides diverted orders of foreign buyers to his proprietorship firm M/s Navneet Elastomers. He had opened bank account with forged signatures of Mrs. Neelu Kohli and fabricated resolution of the Board of Directors of the company. Statutory authority-Companies Act had refused to register documents filed by

Mr. Naveen Kolhi and had issued show cause notice. All business associates were cautioned to avoid dealing with him alone. Neither the company nor Mrs. Neelu Kohli shall be liable for the acts of Mr. Naveen Kohli. Despite the aforementioned finding that the news item was intended to caution business associates to avoid dealing with the appellant then to come to this finding in the next para that it will by no stretch of imagination result in mental cruelty is wholly untenable.”

(34) It is well settled that once the parties have separated and separation has continued for a sufficient length of time and anyone of them presented a petition for divorce, it can well be presumed that the marriage has broken down. The Court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.

(35) In the present case, the appellant-husband and the respondent-wife are living separately since April, 2002. Firstly, efforts were made to resolve the matrimonial dispute through the process of mediation, which is one of the effective mode of alternative mechanism in resolving the personal dispute but in vain.

(36) Applying the ratio of the above-mentioned judgments to the facts of the present case and keeping in view the extra-ordinary facts and circumstances of the case, the appeal is allowed, judgment dated 26.02.2013 passed by the District Judge, Rohtak, is set aside and decree of divorce is granted accordingly in favour of the appellant-husband. Decree- sheet be prepared accordingly. However, we direct the appellant-husband to make an F.D. of Rs.20 lakhs as permanent alimony in the name of the respondent-wife.

Dr. Payel Mehta