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Before V. M. JAIN, J.

ASHA GUPTA ALIAS ANJU GUPTA,—Respondent/Appellant

versus

RAJIV KUMAR GUPTA,—Petitioner/Respondent

F.A.O. 139/M OF 1998

8th September, 2004

*Hindu Marriage Act, 1955—S. 13(1)(a)—Allegations of cruelty against wife by husband—Dissolution of marriage by decree of divorce—Challenge thereto—Minor quarrels between the husband and wife—General allegations by husband—Husband failing to prove on record that wife treated him with cruelty mental or physical—In the absence of any other proof merely lodging of report with the police against husband for the offences under sections 406/498-A I.P.C. is no ground to say that wife had caused cruelty to the husband—Parties lived together for two years and a child was also born—Merely because the parties are living separately for the last 11 years would be no ground to hold that the marriage had irretrievably broken down—Trial Court committing an illegality in holding that wife had caused cruelty to the husband—Appeal allowed, judgment and decree passed by trial Court set aside.*

*Held*, that the learned Additional District Judge had committed an illegality in holding that the appellant wife had committed an act of cruelty upon the respondent husband by lodging a criminal complaint under sections 406/498-A I.P.C. at Moga and/or to get him arrested in that case. This is especially so when nothing has come on the record to show as to what was the fate of the said case. In the absence of any other proof, in my opinion, it could not be said that by allegedly lodging report with the police for the offences under sections 406/498-A I.P.C., the appellant wife had caused cruelty to the respondent-husband, especially when it is the admitted case of the respondent husband himself that he was still in possession of the dowry articles at the time when the divorce petition was filed by him.

(Para 11)

*Further held*, that the learned Additional District Judge could not have granted the decree of divorce on the ground that the marriage had irretrievably broken. Even otherwise, merely because the parties are living separately for the last 11 years, would be no ground to hold that the marriage had irretrievably broken keeping in view that the parties lived together for two years and a child was also born. Further more, except levelling vague and general allegations regarding quarrels between two sides, nothing has been brought on the record to show that the appelland wife had caused cruelty to the respondent husband, in any manner whatsoever.

(Para 13)

*Further held*, that with regard to allegations that the appelland wife had gone to the office of respondent husband and had levelled serious allegations against him including his having illicit relations with a workman, suffice it to say that the respondent husband failed to produce any witness from the bank in support of these allegations. In the absence of any such witness, the bald testimony of the respondent husband in this regard cannot be accepted. With regard to the appelland wife approaching the Mahilla Sangthan, that by itself cannot be taken as a ground to hold that the appelland wife had caused cruelty to the respondent husband especially when the parties were living separately and even up to the date of the filing of the divorce petition, the respondent husband was having dowry articles with him. In my opinion, even by approaching the Mahila Sangthan, it cannot be said that the appelland wife had caused cruelty to the respondent husband. Thus, it would be clear that the learned trial Court had committed an illegality in holding that the appelland wife had caused cruelty to the respondent husband. The learned trial Court had also erred in law in holding that the respondent husband was entitled to the dissolution of marriage by decree of divorce not only on the ground of cruelty but also on the ground that the marriage has irretrievably broken.

(Paras 14 and 15)

Ashok Singla, Advocate, *for the appelland*.

Girish Agnihotri, Advocate, *for the respondent*.

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**JUDGMENT**

**V. M. JAIN, J.**

(1) This appeal has been filed by the appellant wife against the judgment and decree dated, 27th July, 1998, passed by the Additional District Judge, Chandigarh,—*vide* which the divorce petition filed by the husband was allowed and the marriage between the parties was dissolved by decree of divorce.

(2) The facts in brief are that Rajiv Kumar Gupta (husband) had filed petition under Section 13 of the Hindu Marriage Act, at Delhi, against his wife Smt. Asha Gupta @ Anju Gupta, seeking dissolution of marriage by decree of divorce. It was alleged in the said petition that the marriage between the parties was solemnised on 26th October, 1985 and after the marriage the parties lived together as husband and wife till 26th September, 1987 and since then the parties were residing separately. It was alleged that on the first night after marriage, the respondent wife has told him that her marriage with him was solemnised against her wishes and that she was forced to marry him by her parents and elder brother and that she was not interested in the marriage. It was alleged that when the petitioner tried to have sexual relations with her on the first night after marriage, she avoided it on some pretext on that night and for some days thereafter and that the sexual intercourse was performed for the first time when the parties had gone for honeymoon to Shimla, Kullu and Manali. It was alleged that in November, 1985, she told him that she would like to live separately from the joint family upon which the petitioner expressed his inability. It was alleged that after coming back to Delhi from honeymoon, the respondent did not attend to domestic work and used to get up late and when he asked her to help his old mother in domestic work she threatened him and asked him that he should live separately with her. It was alleged that in December, 1985 she expressed her desire to do some work, whereupon he asked her to get her certificates but the certificates did not come and in one of the letters written by her to her brother he found that she had told her brother not to send the certificates till the date of birth in the certificates was changed. It was alleged that subsequently when the certificates were received, it was found that there was great difference in her age as told to him at the time of marriage and as mentioned in the certificates. It was alleged that on account of cruel acts and

mental torture created by her, the mother of the petitioner started suffering from blood pressure etc. It was alleged that in April, 1986 the petitioner noticed a large bottle of Brahmi Amla Hair Oil with a black liquid in it and on inquiry, the respondent revealed that she was having grey hair and was dying the same, which fact was concealed from petitioner. It was alleged that on 26th May, 1986, the brother of the respondent took the respondent to Moga for delivery and she gave birth to a male child on 23rd June, 1986 in Singla Nursing Home, Moga and in the first week of August, 1986, when the petitioner went to Moga to meet her and the child, during his 3-4 days stay there, he came to know that she was not the youngest child of the family even though it was proclaimed that she was the youngest. It was alleged that the respondent lived at Moga till middle of November, 1986 when the petitioner brought her back to Delhi alongwith the child to his newly rented house, which was taken by him on rent on her insistence and thereupon the parties started residing together, separate from his parents and brother with effect from 15th November, 1986. It was alleged that in that house the respondent became more aggressive as there was no one to watch her and she used to pick up quarrels with petitioner every day without any provocation and she used to get up late and the petitioner used to take his breakfast and lunch at Dhabas and had to wash his own clothes and also used to clean house and utensils. It was alleged that the respondent never attended to the household works. It was alleged that on 17th November, 1986 and 30th December, 1986 the respondent quarrelled with the petitioner and she also quarrelled with him in the last week of January, 1987 and threatened to commit suicide. It was alleged that she also threatened to end her life in second and last week of February, 1987, after quarrelling with him. It was alleged that the acts of the respondent wife had caused mental pain and agony to the petitioner, who always tried to pacify her. It was alleged that again in March, 1987 and on 7th April, 1987 and 11th April, 1987, the respondent wife quarrelled with him and gave similar threats, as a result of which the petitioner had to lead miserable life. It was alleged that in the second week of April 1987, late at night the respondent started bleeding profusely all of a sudden due to miscarriage and she was taken to hospital where she recovered and returned home. It was alleged that respondent wife never bothered for the brother and other relations of the petitioner and never showed any courtesy towards

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them. It was alleged that in first week of July 1987, she insisted for going to Moga to meet her parents and the petitioner got her railway tickets booked but because of the disturbances in Punjab, she decided to go to Narora, where her brother was residing whereupon the parties went to Narora on 9th July, 1987 where again the respondent quarrelled with him on the next day whereupon he left Narora, leaving her at Narora. It was alleged that in the last week of July, 1987, she returned to Delhi alongwith her brother without any prior intimation and her brother left her outside the house which was laying locked and on coming to know about it the petitioner came to the house and found her inside the house after breaking open the lock. It was alleged that the petitioner tried to talk to her parents on phone but of no avail. It was alleged that on 1st August, 1987, petitioner fell into a manhole. It was alleged that his legs and hands used to tremble and he used to have servere headache and instead of showing sympathy towards him the respondent became more agressive and started threatening to commit suicide. It was alleged that she used to taunt the petitioner saying that she was more qualified and could look after herself and the child. It was alleged that she would open the door, sit in the balcony and tell the child that his father, i.e. the petitioner was dead. It was alleged that on 26th July, 1987, the respondent again quarrelled with the petitioner in the presence of her brother and when he asked her brother to advise her to behave properly, the brother of the respondent told the petitioner that for him and all his family members the respondent wife was already dead and he could do nothing to resolve the matter. It was alleged that on that night the petitioner went to Police Post and reported the matter to the police saying that he was leaving his residence (rented house) because of harassmtent and mental torture caused to him by the respondnt wife and he would live with his brother and that he would continue to bear the expenses of rented house where the respondent wife was residing. It was alleged that the respondent lived in the said rented house till 8th December, 1987 and for the said period of 2½ months the petitioner paid the house rent etc. It was alleged that finally on 8th December, 1987 the petitioner was informed that the said house may be locked as the respondent was going to Moga. It was alleged that on 8th December, 1987, the respondent left the rented house alongwith the child and her borthers and went to Moga. It was alleged that since

26th September, 1987 parties were living separately. It was alleged that on 25th March, 1989, the respondent wife came to the bank where the petitioner was working alongwith the child and there she threatened to create a scene and she also interfered with the official work of the petitioner and in order to avoid confrontation and unplesantness, the petitioner left the bank. It was alleged that in his absence the respondent met the Manager, the Chief Manager and other colleagues of the petitioner and falsely told them that the petitioner was having illicit relations with another woman and on coming to know about these facts the petitioner suffered mental agony, humiliation as all these allegations were totally false. It was alleged that on 29th March, 1989, various representatives from Dahej Virodhi Mahila Sangrhan, came to the house of the petitioner accompanied by the respondent alongwith photocopies of the various letters allegedly written by the respondent levelling the allegations against the petitioner and they asked the family members of the petitioner that he should appear in their office failing which they threatened to create a scene. It was alleged that on 30th March, 1989 the petitioner went to the office of that Sangthan alongwith his mother etc. and there the respondent was also present and she levelled false allegations against the petitioner that he was having relations with other women. She also levelled false allegations that the petitioner and his family members were planning to kill her and demanding Rs. 1 lac from her. It was alleged that a lot of tension was created by the respondent and the mother of the petitioner started shivering, upon which they were asked to leave and to think over the matter for a couple of days. It was alleged that on 2nd April, 1989 when the petitioner was not at home his parents received a telephonic call from those ladies requiring to see them. It was alleged that the petitioner did not go there on 3rd April, 1989 and visited on 4th April, 1989, after informing the police post about it. It was alleged that on 8th December, 1989 when the respondent had left for Moga, she had taken with her some of the dowry articles while the remaining were still lying with the petitioner, as detailed in para 29 of the petition and the petitioner was ready to return these articles to the respondent. It was alleged that the respondent had treated the petitioner with cruelty and as such the petitioner is entitled to the dissolution of marriage by way of decree of divorce on the ground of cruelty.

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(3) Respondent filed written statement and controverted the various allegations levelled against her. It was alleged that correct age of the respondent was told to the petitioner and his family members before marriage. It was alleged that the marriage was consummated on the first night after marriage. It was denied that she had ever asked the petitioner to live separately from the joint family. It was denied that she ever threatened or she did not do any domestic work. It was alleged that in fact the petitioner had forced her to some job and her family members had sent the certificates at the asking of the petitioner. It was alleged that the petitioner used to treat her with cruelty and had been raising demand for Rs. 1 lac and sometimes Rs. 50,000 for payment of instalments of flat at Rohini. It was denied that the age of the respondent was concealed as alleged. It was denied that she had ever threatened to commit suicide. It was alleged that the petitioner and his family members had been maltreating her and compelling her to bring Rs. 1 lac from her parents. It was denied that the petitioner had taken the rented house at the asking of the respondent. On the other hand, it was alleged that it was the asking of his own family members that the petitioner had taken a rented house. It was denied that she did not prepare breakfast for the petitioner. It was alleged that the petitioner continued to harass her and had been pressuring her to bring money from her parents. It was denied that the parties had gone to Narora on 9th July, 1987, as alleged. On the other hand, it was alleged that the petitioner took the respondent with him to Narora and there he left her with the child and came back on the next morning without any programme. It was alleged that the petitioner did not have any love and affection either for the respondent or for the child. It was denied that she ever told the child that his father was dead. It was alleged that no incident, as alleged, had taken place and she had no intimation about any report lodged by the petitioner with the police. It was denied that the parties were living separately from each other since 26th September, 1987. On the other hand, it was alleged that on 8th December, 1987, the brother of the respondent had taken a Panchayat to the house of the petitioner and his family members put up the condition regarding payment of Rs. 1 lac. It was admitted that the respondent had gone to the bank of the petitioner alongwith child, but it was alleged that she was turned out of the bank by the petitioner. The various allegations levelled against her about her meeting the Manager etc. and humiliating the petitioner were denied. It was alleged that subsequently the respondent tried to contact the petitioner in the bank but she was

told that he had gone out of the bank for banking business. It was alleged that inspite of various visits the respondent could not meet the petitioner and it was only on 25th March, 1989 that the petitioner met her in the bank, but on seeing her he went out of the bank premises and did not turn up. It was denied that she ever contacted the Manager or any other employee. It was alleged that since the respondent could not meet the petitioner and talk to him, as per advise she took up the matter with Dahej Virodhi Mahila Sangthan but the petitioner took ill of it and gave threats. It was denied that any threat was given to the petitioner. It was alleged that the respondent and the child were turned out of the matrimonial home on account of non-fulfilment of the demand made by the petitioner and his family members. It was alleged that the petitioner used to take drinks very often and he had beaten the respondent numerously after taking drinks. It was denied that she had taken various dowry articles with her while going to Moga on 8th December, 1987 or otherwise. Various other allegations were also denied and it was prayed that the divorce petition be dismissed.

(4) The petitioner husband filed replication controverting the allegations contained in the written statement and reiterated the stand taken up in the petition.

(5) On the pleadings of the parties the learned trial court framed the following issues :—

“1. Whether the respondent, after the solemnisation of marriage treated the petitioner with cruelty ? OPP

2. Relief”.

(6) At the instance of the respondent wife the case was transferred from Delhi to Chandigarh. Both sides led evidence in support of their respective contentions. After hearing both sides and perusing the record, the learned Additional District Judge ordered the dissolution of marriage by way of decree of divorce in favour of the husband and against the wife, holding that the respondent wife was guilty of cruelty. Aggrieved against the decree of divorce granted by the Additional District Judge, the wife filed the present appeal in this court.

(7) I have heard the learned counsel for the parties and have gone through the record carefully.



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(8) The learned counsel appearing for the appellant wife submitted before me that from the allegations made in the divorce petition and the evidence led by the husband it was not proved on the record that the appellant wife had treated the respondent husband with cruelty, mental or physical and as such the learned trial court had erred in law in deciding issue No. 1 against the appellant wife and had erred in granting decree of divorce in favour of respondent husband. It has been submitted that except referring to minor disputes that might have taken place between the parties, nothing else has been alleged or proved to show that the appellant wife had treated the respondent husband with cruelty. It has been submitted that while deciding issue No. 1, even the learned trial court on the question of age had found that both the parties had tried to conceal their exact ages and that not disclosing correct age would not be sufficient to prove the allegation of cruelty especially when the husband himself was guilty of not giving the exact age. It was submitted that in the present case the respondent husband had miserably failed to prove that the appellant wife had treated him with cruelty.

(9) On the other hand the learned counsel appearing for the respondent husband submitted before me that from the evidence available on record, it was clearly proved that the appellant wife had treated the respondent husband with cruelty and as such the trial court had rightly decided issue No. 1 in favour of the husband and against the wife and had rightly granted the decree of divorce.

(10) After hearing the learned counsel for the parties and perusing the record, in my opinion, the present appeal must succeed and the judgment and decree passed by the trial court must be set aside and the divorce petition filed by the husband must be dismissed.

(11) Except narrating the minor quarrels between the husband and wife, in my opinion, the respondent husband had not alleged and proved on the record that the appellant wife had treated him with cruelty, mental or physical. As referred to above, the discrepancy in ages has already been explained by the learned trial Judge. In para 15 of the judgment, the learned Additional District Judge considered that the respondent wife had created scene by sitting in the balcony and by not preparing the food for the petitioner and also threatened him to implicate in false cases and that the petitioner husband left the company of the respondent wife and went to reside with her parents and DDR in this behalf, Ex. PY was recorded. The learned Additional District Judge also considered that the respondent wife remained in that house for number of days and

left the house with certain dowry articles, as detailed in the petition. It was also noticed that no suggestion was given to the petitioner husband that he had misutilised the dowry articles. After referring to these facts, the learned Additional District Judge suddenly came to the conclusion that in these circumstances, lodging of complaint under Sections 406/498-A. IPC at Moga and to get the petitioner husband arrested was certainly an act of cruelty. In my opinion, the learned Additional District Judge had committed an illegality in holding that the appellant wife had committed an act of cruelty upon the respondent husband by lodging a criminal complaint under Sections 406/498-A IPC at Moga and /or to get him arrested in that case. This is especially so when nothing has come on the record to show as to what was the fate of the said case. In the absence of any other proof, in my opinion, it could not be said that by allegedly lodging report with the police for the offences under Sections 406/498-A IPC, the appellant wife had caused cruelty to the respondent husband, especially when it is the admitted case of the respondent husband himself that he was still in possession of the dowry articles at the time when the divorce petition was filed by him.

(12) In para 18 of the judgement, the learned Additional District Judge considered that about 11 years have passed since the parties had separated and it would not be unfair to hold that the marriage had broken actually and emotionally and the chance of reunion is impossible and marriage has irretrievably broken. Keeping these circumstances in view and keeping in view the fact that the respondent wife was guilty of cruelty, as referred to above, the learned Additional District Judge decided issue No. 1 in favour of the petitioner husband and against the respondent wife.

(13) From a perusal of the above, in my opinion, it would be clear that primarily, the learned Additional District Judge had granted the decree of divorce in favour of the husband and against the wife on the ground that the parties are living separately for the last 11 years and the marriage had irretrievably broken and that the appellant wife had committed act of cruelty by lodging a report with the police for the offences under Section 406/498-A, I.P.C. In my opinion, the learned Additional District Judge had committed an illegality in granting decree of divorce to the husband on the ground that the marriage had irretrievably broken. This is not one of the grounds provided under the Hindu Marriage Act, in which a marriage between the parties can be dissolved by way of decree of divorce. In my opinion, the learned Additional District Judge could not have granted the

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decree of divorce on the ground that the marriage had irretrievably broken. Even otherwise, merely because the parties are living separately for the last 11 years, would be no ground to hold that the marriage had irretrievably broken keeping in view that the parties lived together for two years and a child was also born. Furthermore, as referred to above, except levelling vague and general allegations regarding quarrels between two sides, nothing has been brought on the record to show that the appellant wife had caused cruelty to the respondent husband, in any manner whatsoever. The allegations that the appellant wife would open the door, sit in the balcony and tell the child that his father (i.e. respondent husband) was dead, in my opinion, had not been proved on the record. Except his own bald allegations no evidence has been led by the respondent husband to prove these allegations. Furthermore, as referred to above, the marriage between the parties was solemnised on 26th October, 1985. As per allegations of the husband himself the child was born on 23rd July, 1986 and according to the respondent husband the parties are living separately since 26th September, 1987 and the appellant wife had finally left the house on 8th December, 1987. In para 22 of the petition where the allegations regarding the appellant wife telling the child about the death of his father have been levelled, no specific date has been mentioned but only general allegations have been levelled. The child was less than one year at the time when the parties started living separately, as alleged by the respondent husband himself. Under these circumstances, it is not possible to believe the allegations of respondent husband that the appellant wife had been telling the child that her father was dead.

(14) With regard to the allegations that the appellant wife had gone to the office of respondent husband and had levelled serious allegations against him including his having illicit relations with a woman, suffice it to say that the respondent husband failed to produce any witness from the bank in support of these allegations. In the absence of any such witness, in my opinion, the bald testimony of the respondent husband in this regard cannot be accepted. With regard to the appellant wife approaching the Mahila Sangthan, in my opinion, that by itself cannot be taken as a ground to hold that the appellant wife had caused cruelty to the respondent husband especially when the parties were living separately and even upto the date of the filing of the divorce petition the respondent husband was having dowry articles with him. In my opinion, even by approaching the Mahila Sangthan, it cannot be said that the appellant wife had caused cruelty to the respondent husband. In **S. Hanumantha Rao versus S. Ramani(1)**, it was held by the Hon'ble Supreme Court that

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(1) 1999(2) P.L.R. 528

approaching the women protection cell for reconciliation of the estranged spouses did not amount to mental cruelty since the cell only made efforts to bring about conciliation between the parties but failed. Furthermore, in my opinion, except the bald allegations, nothing has come on the record that the members of the Mahila Sangthan had harassed the respondent husband or his family members, except making efforts for reconciliation.

(15) In view of detailed discussion above, in my opinion, it would be clear that the learned trial court had committed an illegality in holding that the appellant wife had caused cruelty to the respondent husband. I am further of the opinion that the learned trial court had also erred in law in holding that the respondent husband was entitled to the dissolution of marriage by decree of divorce not only on the ground of cruelty but also on the ground that the marriage has irretrievably broken.

(16) In **Rupinder Kaur versus Gurjit Singh Sandhu**,<sup>(2)</sup> it was held by a Division Bench of this Court that assuming that the marriage had broken down irretrievably, irretrievable breakdown of marriage is no ground to dissolve marriage. The authority **V. Bhagat versus Mrs. D. Bhagat**.<sup>(3)</sup> relied upon by the learned counsel for the respondent husband, in my opinion, would be of no help to the respondent husband, on the facts and circumstances of the present case. Furthermore, on the basis of said authority, in my opinion, the marriage between the parties in the present case cannot be dissolved by way of decree of divorce on that ground.

(17) In view of the detailed discussion above, I reverse the findings of the learned trial court on issue No. 1 and hold that respondent husband has failed to prove that the appellant wife caused cruelty to him.

(18) No other point has been urged before me.

(19) For the reasons recorded above, the present appeal is allowed, the judgment and decree passed by the trial Court are set aside and the divorce petition filed by the respondent husband is dismissed with no order as to costs.

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**R.N.R.**

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(2) 1997 (3) P.L.R. 553

(3) AIR 1994 S.C. 710