



HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 175 of 2018

- Jitendra Chandrakar, S/o Shri Malik Ram Chandrakar, aged about 35 Years, R/o Gali No. 6, Idgahbhata, Raipur, Chhattisgarh.

----Appellant

Versus

- Smt. Namita Chandrakar, W/o Shri Jitendra Chandrakar, aged about 26 Years, R/o Infront of D. Lauhana, Bhagat Singh Chowk, Tikrapara, Raipur, Chhattisgarh, Presently Residing At New Subhash Nagar Near Gondwana Bhawan, Tikrapara, Raipur, District Raipur, Chhattisgarh.

---- Respondent

For Appellant Mr. Anand Shukla, Advocate.

For Respondent Mr. Krishna Kumar Dewangan and Mr. Pradeep Singh Rathore, Advocates.

FA(MAT) No. 43 of 2019

- Jitendra Chandrakar, S/o Shri Malik Ram Chandrakar, aged about 33 Years, R/o Idgah Bhata, Near Sahu Bhawan Raipur, Tahsil and District Raipur, Chhattisgarh.

----Appellant

Versus

- Namita @ Bhawna Chandrakar, W/o Jitendra Chandrakar, aged about 27 Years, R/o D/o Shri Malak Singh Chandrakar, Bhagat Singh Chowk, Near Dr. Lohanas, Infront Of Jalaram Sweets, Tikraparra, Raipur, Tahsil and District Raipur, Chhattisgarh.

Present Address Shri Malak Singh Chandrakar, R/o Village Udena, Post Office Chaati, District Dhamtari, Chhattisgarh.

---- Respondent

For Appellant Mr. Manoj Paranjpe, Advocate.

For Respondent Mr. Krishna Kumar Dewangan and Mr. Pradeep Singh Rathore, Advocates.



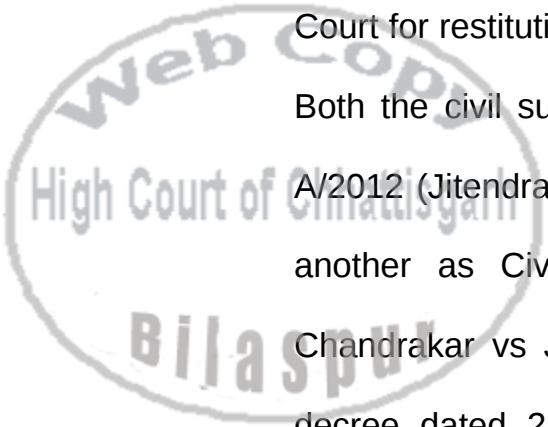
Hon'ble Shri Justice Goutam Bhaduri

Hon'ble Shri Justice Radhakishan Agrawal

Judgment on Board by Shri Radhakishan Agrawal, Judge

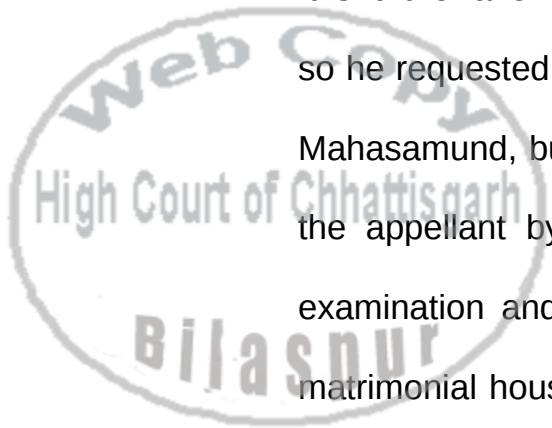
12/02/2024

1. Since both the appeals involve similar question of facts and law, they are being heard together and disposed of by this common judgment.
2. Appellant-Husband preferred a civil suit before the learned Family Court for dissolution of marriage under Section 13 (1)(A) of the Hindu Marriage Act, 1955 (for short, 'the Act, 1955'), whereas respondent-wife herein has also preferred a civil suit before the learned Family Court for restitution of conjugal rights under Section 9 of the Act, 1955. Both the civil suits were registered as Civil Suit H.M.A. Case No.8-A/2012 (Jitendra Chandrakar vs Namita @ Bhawna Chandrakar) and another as Civil Suit H.M.A. Case No.30-A/2012 (Smt. Namita Chandrakar vs Jitendra Chandrakar). Vide impugned judgment and decree dated 25.09.2019, the learned Second Additional Principal Judge, Family Court, Raipur, C.G., rejected the Civil Suit H.M.A. Case No.8-A/2012 filed by the appellant- Husband whereas the Civil Suit H.M.A. Case No.30-A/2012 filed by respondent-wife was allowed by 1st Additional Principal Judge, Family Court, Raipur while decreeing the suit in her favour.
3. Being aggrieved by the said impugned judgments dated 25.09.2019 & 09.07.2018, the appellant-husband herein preferred these appeals seeking decree of divorce in his favour while praying for setting aside the decree passed in favour of respondent-wife for restitution of conjugal rights.





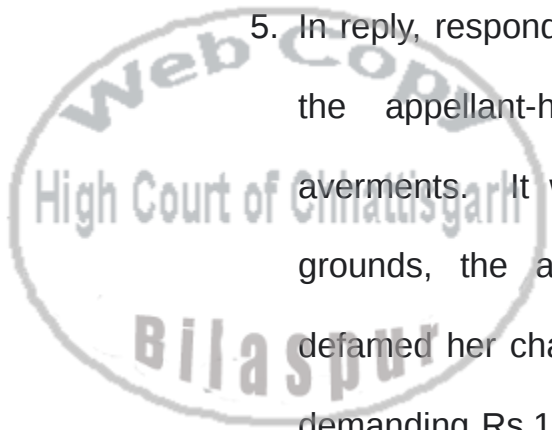
4. Brief facts of the case are that on 23.05.2010, marriage of the appellant-husband was solemnized with the respondent-wife according to Hindu Rites and Rituals. Prior to marriage, appellant-husband was well aware about the financial status of the family of the respondent-wife, due to which, he himself borne all the expenses in the marriage ceremony. It is further pleaded that after 8 days of marriage, father of appellant saw the respondent/wife with one man namely Shekhar Chandrakar in the garden during morning walk and he informed the same to appellant. It is also pleaded by him that even after marriage, respondent-wife used to talk with Shekhar Chandrakar. It is further averred by appellant that as he is a government employee, so he requested the respondent-wife to accompany him and reside at Mahasamund, but the respondent-wife refused to join the company of the appellant by making false pretext of taking coaching of CMO examination and studying at some university and ultimately left the matrimonial house and started living at her brother's house at Bhagat Singh Chowk Tikrapara. Thereafter, appellant came to know that respondent-wife had already taken the admission at C.V. Raman University, Kota and to avoid a dispute, he has also voluntarily paid a sum of Rs.70,000/- as her fee. He has also averred that on several times, he has requested the respondent-wife to reside with him, but the respondent-wife was unwilling and not ready to leave Bilaspur. It is contended by him that one friend of the respondent-wife informed him that respondent-wife is having an illegal affair with one Shekhar Chandrakar and when he asked about the same to respondent-wife, she assured him that she would not repeat such mistake in future. It is also contended by him that he tried his level best to live with the





respondent-wife, but she never agreed to live with him wherever he is posted and ultimately she started harassing him and his family members and also used to threat of dire consequences of involving them in false complaints. Thereafter, he informed the same to Mahila Police Station and Superintendent of Police and an application was also filed by him before the community and in the said community meeting, respondent-wife asked the appellant to prove her adultery and was leading adultery life, despite that she used to demand money from him. On these grounds, the appellant prayed for grant of decree of divorce in his favour.

5. In reply, respondent-wife, while admitting the factum of marriage with the appellant-husband on 23.05.2010, denied the aforesaid averments. It was specifically pleaded by her that on fabricated grounds, the appellant levelled allegation of adultery and thus defamed her character. During the course of cohabitation, he started demanding Rs.10 lakhs from her and when she refused to bring such money from her maternal home, the appellant started quarreling and accusing her of having illicit relations and ultimately, the appellant-husband ousted her from matrimonial home because of such reason, she started living separately in her maternal home. Owing to harassment by the appellant-husband, a report was lodged at Police Station and Superintendent of Police at Raipur. She has further put forth that even today she is willing to live with the appellant-husband, but her husband (appellant) is always willing to divorce her on false pretexts. Therefore, she has also filed a counter suit / separate application for restitution of conjugal rights. It has been further prayed by her that the petition filed by her husband seeking dissolution of



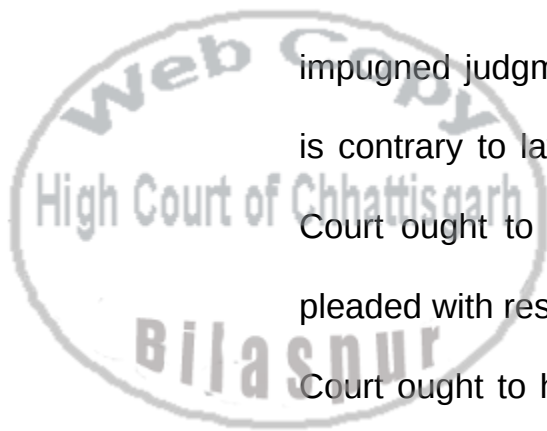


marriage is baseless, therefore, the same is liable to be dismissed.

6. Before the Family Court, parties led evidence and brought on material documents. The Family Court, on the basis of evidence and material available on record, allowed the counter suit /application filed by the respondent-wife under Section 9 of the Act, 1955 for restitution of conjugal rights and dismissed the suit filed by the appellant-husband under Section 13 of the Act, 1955 for dissolution of marriage on the ground that appellant-husband failed to prove his case. Aggrieved by the said judgments, the appellant-husband is before this Court.

7. Learned counsel for the appellant / husband submits that the impugned judgment and decree granted in favour of respondent-wife is contrary to law and erroneous. He further submits that the Family Court ought to have appreciated that the appellant has specifically pleaded with respect to mental cruelty. He also submits that the Family Court ought to have held that the appellant had filed direct evidence with respect to mental cruelty meted out by the respondent-wife. He also submits that the Family Court has failed to appreciate that it was the respondent-wife who filed the false criminal case against the appellant and thus subjected the appellant to mental cruelty. It is also contended by learned counsel for the appellant that the appellant and his family members have been acquitted of the charge under Section 498-A of IPC. On these grounds, he urged that the appeals may be allowed and the appellant may be granted decree of divorce.

8. Per contra, learned counsel for the respondent / wife submits that the husband used to quarrel with the wife on the ground of her character as he used to always suspect her and used to taunt her that she is



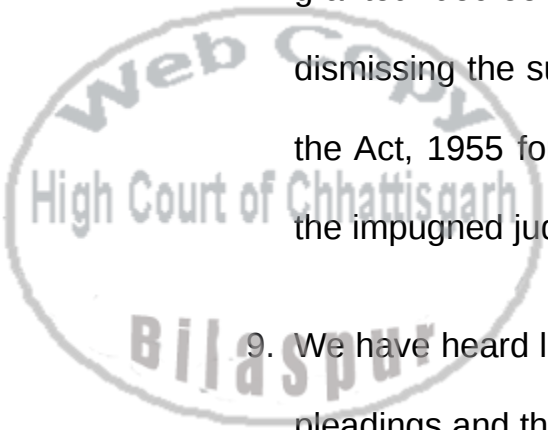


having illicit relations with another person. According to the wife, without any rhyme or reason, appellant-husband driven her out from the matrimonial home. Respondent / Wife is always ready to discharge her matrimonial obligations, which were prevented by the appellant-husband on one occasion or other. He also submits that husband has not pleaded with respect to complaint filed under Section 498-A of IPC, therefore, appellant-husband cannot take this ground without pleading. He also submits that the Family Court, considering all the relevant aspects of the matter in light of the pleadings of the parties and the evidence adduced in support thereof, has rightly granted decree in favour of respondent-wife and was justified in dismissing the suit filed by the appellant-husband under Section 13 of the Act, 1955 for dissolution of marriage. As such, no interference in the impugned judgment and decree is warranted.

9. We have heard learned counsel appearing for the parties, perused the pleadings and the evidence available on record.

10. Before going into the merits of the matter, we shall deal with the application (I.A. No.1/2022) filed by the appellant under Section 41 Rule 27 of CPC seeking production of documents on record i.e. certified copies of judgment dated 25.01.2019 passed by the Judicial Magistrate First Class, Raipur in Criminal Case No.1271/2011 and the judgment dated 13.04.2022 passed in Criminal Appeal No.171/2019 by the Court of Special Judge, Atrocities and Additional Sessions Judge, Raipur, showing the acquittal of appellant and his family members.

11. In the instant case, it has not been disputed about the issuance of such document i.e. certified copies of the judgment of acquittal.





Therefore, in exercise of power under Order 41 Rule 27 of CPC, the discretion of Court would lean in favour of the appellant by inferring the fact that a criminal trial was held which resulted into acquittal. FIR was lodged by respondent-wife against her husband and in-laws and even after their acquittal by the trial Court under Section 498-A of IPC, the wife herself preferred a criminal appeal which was also dismissed by the Appellate Court. Appellant filed certified copies of those judgments and the respondent-wife was very much aware of the facts and circumstances as well as judgments of the cases. It being certified copies of judgment are accepted in evidence. This Court in *Abhishek S/o Narayan versus Seema W/o Abhishek, 2021 LawSuit (Chh) 869*, while allowing the application under Order 41 Rule 27 of CPC, held that certified copy of the judgment is accepted as evidence being a relevant fact.

12. Now, the question that falls for our consideration is whether the appellant-husband is entitled for decree of divorce?

13. Admittedly, marriage between both the parties was solemnized on 23.05.2010 according to Hindu Rites and Rituals. After marriage, the respondent-wife joined the company of appellant-husband and it is not disputed that they have been living apart since 2010. Husband / PW-1 Jitendra Chandrakar has stated in his deposition that after marriage he came to know from his father that respondent is maintaining illicit relation with one Shekhar Chandrakar, upon which he asked her about the same whereupon she assured that she would not repeat such mistake in future. He has also stated that as he is a government employee, he requested the respondent-wife to accompany him and



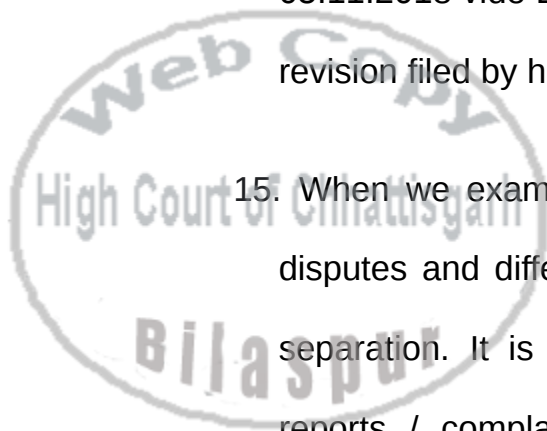
reside at Mahasamund, but the respondent-wife refused to join the company of him by making one false pretext and another. He has also stated that on several times, he has requested the respondent-wife to reside with him, but the respondent-wife was unwilling and not ready to leave Bilaspur. He has also stated that he made all efforts to live with the respondent-wife, but in vain. It is also stated by him that during cohabitation, she started harassing him and his family members and also used to threat of dire consequences of involving them in false complaints. Thereafter, on 08.10.2010, an application (Ex.D-1) was also filed by him on 08.10.2010 before the Chandranahu Kurmi Community and in turn, the said community forwarded the same to Mahila Police Station. It has been stated by him that respondent-wife has lodged a report for the offence under Section 498-A/34 of IPC against him and his family members, which is marked as Ex.D-3. Thereafter, counselling proceedings took place between them in Mahila Police Station, which is marked as Ex.D-4 and in addition to above, the respondent-wife had also filed application under Section 125 of Cr.P.C. before the Family Court and the said case filed under Section 125 of Cr.P.C. has been disposed of on 18.06.2014. Although, he has leveled allegations against his wife with respect to cruelty and adultery, but he did not report the matter in any police station. Therefore, the appellant-husband constrained to file civil suit seeking decree of divorce.

14. DW-1 Smt. Namita Chandrakar, respondent-wife herein has stated that appellant-husband used to visit Tikrapur, Raipur and subjected her cruelty with respect to bring dowry from her maternal home. Being fed up with the persistent ill-treatment, she has filed a written report (Ex.D-3) against the appellant-husband before Mahila Police Station



where offence under Section 498-A/34 of IPC has been registered against the appellant and his family members. She has also stated that her application filed under Section 125 of Cr.P.C. was allowed and appellant and his family members were accused and punished for the said offence, resulting therein the appellant-husband used to provide maintenance. It has also been stated by her in para 28 that in Criminal Case No.1271/2011, the appellant and his family members were acquitted of Section 498-A of IPC, which has been filed and exhibited as Ex.P-1. It has been stated by her in para 32 that application filed by under Section 195 of IPC read with 340 of Cr.P.C. has been rejected on 05.11.2018 vide Ex.P-3. She further submits that against the said order, revision filed by her before this Court was also rejected vide Ex.P-4.

15. When we examine the evidence of both the parties, it is clear that disputes and differences arose between the parties which led to their separation. It is also admitted fact that the respondent-wife lodged reports / complaints against the appellant-husband and his family members. The FIR (Ex.P-7) on record would show that against the appellant and his family members, an offence under Section 498-A/34 IPC was filed by her on 29.06.2011 and in such FIR, it was alleged that she was treated with cruelty for demand of Rs.10 lakhs coupled with further allegation that she had relations with one person. Pursuant to the report made by the respondent-wife, a case was filed against the appellant and his family members before Judicial Magistrate First Class, Raipur and the said Court, after hearing the parties and considering the evidence brought on record, acquitted the appellant and his family members of the charge under Section 498-A of IPC vide judgment dated 25.01.2019 in Criminal Case No.1271/2011. Against





which the respondent-wife herself had filed a Criminal Appeal No.171/2019 in which also the learned Special Judge (Atrocities) & Additional Sessions Judge, Raipur, C.G., after considering the evidence available on record and appreciating the same, affirmed the judgment dated 25.01.2019 vide order dated 13.04.2022. It is also evident from the record that the respondent-wife filed a Criminal Revision No.819/2018 before this Court against the rejection of application filed by her under Section 195 of IPC read with 340 of Cr.P.C vide order dated 02.05.2018, which also came to be dismissed by this Court on 22.11.2018 in CRR No.819/2018.

16. The documents and the facts surfaced on record would show that on the basis of report made by the respondent-wife under Section 498-A/34 of IPC the appellant-husband and his family members were falsely roped in. The respondent-wife tried to canvass that she was treated with cruelty by the husband and his family members by projecting them that they subjected her to cruelty for demand of dowry. However, the appellant and his family members were acquitted of the charge under Section 498-A of IPC as is evident from the certified copies of the judgments filed by the appellant-husband along with I.A. No.1/2022.

17. The Supreme Court in *Samar Ghosh Versus Jaya Ghosh (2007) 4 SCC 511* has indicated the illustrative cases wherein the inference of mental cruelty can be drawn. Para 101 is relevant and quoted below:

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the



cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

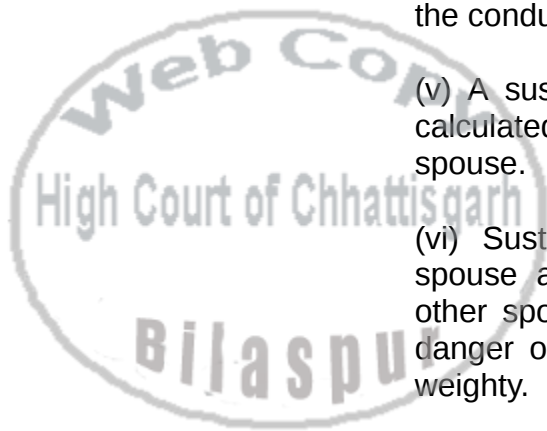
(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity





or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

18. Further the Supreme Court in *Rani Narasimha Sastri Vs. Rani Suneela Rani*, 2019 SCC Online S.C. 1595 has observed that when a prosecution was launched against the husband on a complaint made by the wife u/s 498-A of IPC making serious allegations in which the husband and his family members were constrained to undergo trial which ultimately resulted into acquittal, then in such case it cannot be accepted that no cruelty was meted out on the husband, therefore, he can make a ground for grant of decree of dissolution of marriage u/s 13(1)(i-a) of the Act. In the instant case, the report was made by the wife not only against the husband but also against his aged parents who also faced criminal trials. A perusal of the judgment of acquittal of the learned court below followed by the finding arrived by the Appellate Court would show that the appellant was acquitted of the charges by recording the clear findings.

19. In case of *Raj Talreja Vs. Kavita Talreja*, AIR 2017 SC 2138 the legal position as to when a false complaint would amount to cruelty was also examined, as below :

“11. Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members



and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage act, 1955 (For short the Act). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty. 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 IPC”.

20. Applying the above legal proposition, we are of the opinion that in this case false accusations were made by the respondent-wife and having made the report with false allegations, the appellant and his entire family members including his age old parents were forced to pass through the criminal trial which would definitely have the effect of lowering his reputation in the society. Certainly it will have an adverse affect in the social standing of a family as it results into isolation of a person who faced criminal trials because of the false accusations made by the other spouse. Therefore, before making such allegations, regard must be had to social status, educational level of the parties and the society they move-in, otherwise, such allegations would amount to cruelty.

21. In the landmark decision of *Mayadevi vs. Jagdish Prasad, 2007 (3) SCC 136*, the Supreme Court held that both either spouse can apply for divorce on grounds of any kind of mental cruelty faced and the provision was not just restricted to woman but extended to men as well. In that

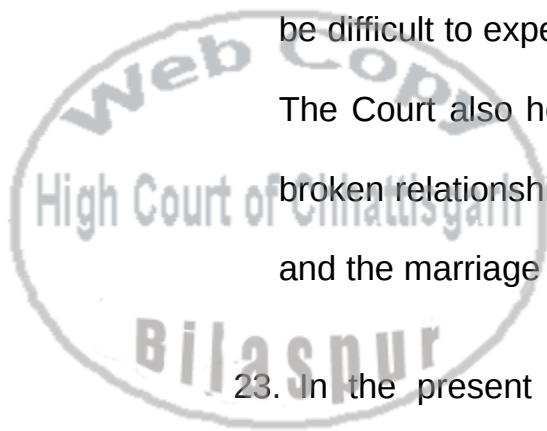


case, the husband was granted divorce on grounds of repeated cruelty inflicted by his wife.

22. Further, in a recent decision of *Joydeep Majumdar v. Bharti Jaiswal Majumdar*, (2021) 3 SCC 742, a similar issue was dealt with by the Supreme Court where the wife had marred the reputation of the husband by defamatory complaints to husband's superiors in army, which led to a Court of inquiry held by the Army authorities against the husband. His reputation was damaged and career progress suffered. The Supreme Court held "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." The Court also held that the High Court was in error in describing the broken relationship as normal wear and tear of middle class married life and the marriage was dissolved.

23. In the present case, apart from the appellant-husband, his entire family members were inculpated. The wife alleged that the husband has treated her with cruelty and he was not entitled to divorce. In acquittal judgment of the trial Courts, it was categorically found that the allegations are patently false. As such, when the finding has been arrived at about the conduct of the respondent-wife who levelled false accusations against the appellant, it would lead to show "Cruelty" on her part.

24. The Supreme Court in *V. Bhagat v. D. Bhagat (Mrs.)* (1994) 1 SCC 33 held that mental cruelty in Section 13(1) (i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the





other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put-up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.

25. In the instant case, appellant is a government employee and as stated during the course of hearing, the respondent wife is also pursuing studies. Therefore, facing a criminal case would always castigate a stigma in the Society. The report u/s 498-A of the IPC cannot be used as a tool to teach a lesson to the family members of the husband as it may adversely affect the future prospects of appellant, who is a government employee and it may take long time to fill up the gap. Therefore, we are of the opinion that repeated false accusations made by the wife against the husband and his entire family members i.e. by filing complaint under section 498-A/34 of IPC, which ultimately resulted into their acquittal; application under Section 195 of IPC read with 340 of Cr.P.C. against the husband for criminal prosecution, which also



came to be rejected on 05.11.2018 and by filing criminal revision, against the said order, which also came to be rejected by this Court on 22.11.2018 in CRR No.819/2018, all this would amount to mental cruelty and such conduct of respondent-wife inflicts upon the appellant-husband such mental pain and suffering which would make it not possible for her to live with the appellant-husband.

26. Further the nature of accusations made against each other in a matrimonial case would show that since July 2010, the parties are living apart and litigating in different courts. Taking into such facts into consideration, we are of the view that there is irretrievable break-down of marriage which is beyond repairs. Under the circumstances, we allow the appeals and grant a decree of divorce to the husband, while quashing the judgment and decree dated 09.07.2018 passed in favour of respondent-wife by the Family Court, Raipur under Section 9 of the Hindu Marriage Act, 1955.

27. For the foregoing discussion, the marriage solemnized between the parties is dissolved and accordingly a decree be drawn.

**Sd/-
(Goutam Bhaduri)
Judge**

**Sd/-
(Radhakishan Agrawal)
Judge**