

Tripura High Court

Smt. Aparna Dey vs Shri Alok Dey on 9 September, 2020

HIGH COURT OF TRIPURA

AGARTALA

FA No. 01 of 2019

BEFORE

HON'BLE MR. JUSTICE S.TALAPATRA

HON'BLE MR. JUSTICE S.G.CHATTOPADHYAY

Smt. Aparna Dey,  
Wife of Sri Alok Dey,  
Daughter of Late Makhan Ch.Dey,  
Resident of North Badharghat, Madhya Para,  
Agartala, Post Office- A.D.Nagar, PIN-799003  
Police Station- A.D.Nagar,  
District- West Tripura.

.....Appellant.

Versus

Shri Alok Dey  
Son of Late Banamali Dey  
Resident of Jagannath Bari Road  
Near Colonel Chowmuhani, palace compound  
Post Office- Agartala, PIN-799001  
Police Station- West Agartala,  
District- West Tripura

.....Respondent.

For Appellant(s)	:	Mr. Hillol Laskar, Adv.
For Respondent(s)	:	Mr. S.Lodh, Adv.
Date of hearing	:	27.08.2020
Date of Judgment and Order	:	09.09.2020
Whether fit for reporting	:	Yes No

JUDGMENT

[Per S.G.Chattopadhyay] Alleging cruelty and desertion against the appellant wife, her respondent husband being petitioner approached the Family Court at Agartala under Section 13 of the Hindu Marriage Act, 1955 praying for dissolution of his marriage with the appellant by a decree of divorce. The learned Family Judge allowed the petition and dissolved the marriage of the parties by his judgment dated 25.09.2018 passed in case no T.S.(Divorce)163 of 2014. The aggrieved wife has preferred this appeal under Section 28 of the Hindu Marriage Act,1955 read with Section 19 of the Family Courts Act, 1984 challenging the legality of the impugned judgment of the learned Family Judge, Agartala.

[2] The undisputed facts are that both of the appellant wife and respondent husband are Hindus and

governed by the provisions of the Hindu Marriage Act, 1955. Their marriage was solemnized on 31.07.2002 as per Hindu rites and customs and a daughter was born from their wedlock on 28.07.2003.

[3] The husband being the petitioner in the trial court made several allegations against his respondent wife, the appellant herein. According to him 02 years after their marriage, cancer was diagnosed in one of his eyes and he started losing his eye sight day by day. He had a small business of motor parts at Agartala. As a result of his ailment he had to close his business. His respondent wife then started avoiding him and abusing him for his blindness. On 12.01.2007 when the petitioner husband was away from home, his wife left the house along with their daughter for her parental home. Having returned home, he contacted his brother in law Sujit Kr. Dey over telephone who told the petitioner that his sister would not live with a blind person like him. Despite requests made by the petitioner husband and his relatives, his wife never returned to him. Rather, she always misbehaved with her husband and his relatives whenever they met her to persuade her for resuming conjugal life. During her stay with her parents, his wife approached the State Legal Services Authority at Agartala where both of them were called and they were advised to have a vacation tour together with their daughter outside the state. Pursuant to such advice the petitioner husband booked air tickets for travelling to Chennai. But before they left for Chennai, his wife lodged a complaint at the Women Police Station at Agartala against him and his sister Smt. Debika Das(Dey) which was registered as Women PS case No.92 of 2007 under Section 498A read with Section 34, IPC and during the investigation of the case, police arrested him and his married sister, Debika which event according to him shattered their conjugal relationship. Charge sheet was filed against him and his sister in the case and after trial, the learned trial court convicted and sentenced both of them to imprisonment and fine. In appeal, the learned Sessions Judge, Agartala acquitted them and the order of acquittal was challenged in the High Court which was pending as Crl. Appeal No. 06 of 2012 when the divorce case was filed. The respondent wife then resorted to proceedings under Section 125 of the Code of Criminal Procedure seeking maintenance allowance for her daughter and the trial court asked him to pay Rs.6000/- per month towards maintenance. Aggrieved with the order of the Family Court, he challenged the same before the High Court in Criminal Revision No.71 of 2013 and the High Court in Revision modified the order and reduced the maintenance allowance from Rs.6000/- to Rs.4000/-. His wife then moved a petition in the court of Chief Judicial Magistrate at Agartala seeking protection order under the Protection of Women from Domestic Violence Act which was dismissed by the learned trial court. According to the respondent husband, his wife changed her attitude towards him after his eye ailment was detected and he started losing vision. She deserted him without any genuine reason on 12.01.2007 and she had been keeping herself away from his company since then. This apart she brought false and baseless allegations not only against him but also against his married sister and implicated both of them in a criminal case under Section 498A IPC which according to him amounted to mental cruelty. As a result, the petitioner filed the petition in the Family Court under Section 13 of the Hindu Marriage Act, 1955 seeking decree of divorce on the ground of desertion and cruelty. [4] The respondent wife contested the petition and refuted the allegations made by her petitioner husband against her. According to her all the allegations made out by her husband were false and baseless. She never deserted her husband. Rather she along with her daughter was ousted from her matrimonial home by her husband. It was averted by the respondent wife in the written objection filed by her that during her

marriage her parents gave valuables like TV, Bike, Sofa set, Almirah, showcase, designed table, blanket, box cot and ten vori of gold and only a year after marriage, her alcoholic husband started abusing her for dowry. According to her, he always used to misbehave with her and humiliate her saying that she was very ugly looking and her father should have compensated him for marrying her. After she was driven out of her matrimonial home she approached the State Legal Services Authority where their matter was taken up for reconciliation. They were advised to have a vacation tour outside the state along with their daughter and her husband was asked to buy air tickets for such tour. It is stated that though her husband bought air tickets for them she was never informed about the date of travelling. As averted by her, it was undertaken by her husband before the State Legal Services Authority that after returning from Chennai, he would take his respondent wife back to his home. When there was no response from the side of her petitioner husband pursuant to such undertaking, she lodged complaint against him and his sister under Section 498A IPC at Agartala Women PS which ended in the conviction and sentence of her husband and his sister. In appeal, the learned Sessions Judge acquitted her husband and her sister-in-law of the charge. But appeal was preferred by the state government against the order of their acquittal which was pending in the High Court when she filed her reply in the Divorce Proceeding. According to her, she always tried to live a happy conjugal life with her husband. But there was no response from his side. Rather he treated her with cruelty and ousted her along with her daughter from his home. She, therefore, prayed for dismissal of the petition of her husband seeking divorce.

[5] The learned trial court, on the basis of pleadings framed the following issues in the Suit:

- (i) Whether the petitioner was subjected to cruelty by the wife respondent and if so, to what extent?
- (ii) Whether the petitioner was deserted by the wife respondent and if so, at what point of time?
- (iii) Was the petitioner entitled to a decree of divorce as sought for.

The Husband petitioner adduced the evidence of himself and 4 other witnesses by way of affidavit. The witnesses who have been examined on his side were as follows:

- (i) PW-1, Shri Alok Dey, the petitioner husband.
- (ii) PW-2, Sri Niranjana Das, a businessman aged 60 years who is the brother in law of the husband petitioner.
- (iii) PW-3, Smt. Debika Das(Dey), a house wife aged 55 years who is the elder sister of the petitioner husband and the wife of PW2.
- (iv) PW-4, Sri Anjan Chakraborty a businessman aged 40 years who is a tenant of the husband petitioner for the preceding 12 years.

(v) PW-5, Sri Chiranjit Sarkar, a businessman aged 33 years who is a neighbor of the petitioner husband. All these witnesses were subjected to cross examination. Besides adducing their evidence the husband petitioner also relied on 2 documents which were marked as exhibit-1 and exhibit-2.

[6] The wife respondent on the other hand submitted the examination in chief of herself and 3 other witnesses by way of affidavit. The witnesses adduced on her behalf were as follows:

(i) DW-1, Smt. Aparna Dey, the respondent wife herself.

(ii) DW-2, Sri Sanjit Kr. Dey, a service holder aged 47 years who is the elder brother of the respondent wife.

(iii) DW-3, Sri Sujit Kr.Dey, a service holder aged 51 years who is also the elder brother of the respondent wife.

(iv) DW-4 Sri Anirban Das, a government servant aged 51 years who is a next door neighbor of the parents of the respondent wife. All these witnesses were subjected to cross-examination by the other side.

[7] The trial court considered the matter in great detail in the background of the evidence available on record and after considering all the evidence and the facts and circumstances of the case came to the conclusion that the respondent wife had voluntarily withdrawn herself from the company of her husband on 12.01.2007 without any genuine reason and the couple did not reunite for the last 11 years which amounted to a irretrievable break down of their marriage. It was further held by the learned trial Judge that her allegations of matrimonial cruelty against her husband under Section 498A, IPC was proved to be false in appeal in the court of Sessions Judge as well as in the High Court. According to the learned trial Judge, the wife respondent brought such false allegations against her husband with a view to harass her husband which amounted to cruelty for the purpose of granting divorce under Section 13 of the Hindu Marriage Act. The trial Judge having relied on the decisions of the Apex Court in K.Srinivas Rao vs. D.A.Deepa reported in (2013) 5 SCC 226 and the decision of this High Court in Biswanath Baspar vs. Jhumarani Ghosh(Baspar) reported in (2015) 1 TLR 649 dissolved the marriage between the petitioner husband and the respondent wife by a decree of divorce under Section 13 of the Hindu Marriage Act, 1955 on the ground of desertion and cruelty which is in challenge before us.

[8] We have heard learned counsel representing the parties at length. Mr. Hillol Laskar, learned advocate appearing for the appellant wife vehemently argued that the facts and circumstances of the case clearly show that the husband was at fault who had driven out his appellant wife from his home after committing torture upon her. According to Mr. Laskar, learned counsel of the appellant, the petitioner husband could not prove desertion and cruelty against his respondent wife in the trial court. But the learned trial court without proper appreciation of evidence decreed the suit for divorce relying on the unfounded evidence of the petitioner husband. As a result the decree of divorce granted by the learned trial court is liable to be set aside in appeal.

[9] Mr. S.Lodh, learned counsel appearing on behalf of the respondent husband has argued that a long period has elapsed since the appellant wife deserted her husband on 12.01.2007. The husband and wife never lived together thereafter which clearly show that the relationship between the appellant wife and her respondent husband has totally broken and there seems to be no chance of retrieval at all. According to learned counsel it has been proved before the learned trial court that the appellant wife voluntarily deserted her husband without any genuine reason and caused enormous mental cruelty to her husband by bringing unfounded allegations against him and his close relatives which were proved to be false in the court of law. According to Mr. Lodh, learned counsel, the learned trial court rightly snapped the bond of marriage between the respondent husband and his appellant wife by granting a decree of divorce on the ground of desertion and cruelty which does not deserve any interference in appeal. It has been argued by Mr.Lodh that making unfounded allegations against the spouse and his relatives causes mental cruelty and entitles him to a decree of divorce. It is also contented by Mr.Lodh that though irretrievable break down of marriage is no statutory ground of divorce, in a good number of cases divorce has been granted where the matrimonial bond between the couple is beyond repair and there is no chance of their reunion. In support of his contentions Mr. Lodh, learned counsel of the respondent husband has relied on the following decisions:

- (i)Rani Narasimha Sastry vs. Rani Suneela Rani reported in MANU/SC/1837/2019
- (ii)Ravinder Kaur vs Manjeet Singh(Dead) through LR reported in (2019) 8 SCC 308
- (iii)K.Srinivas Rao vs. D.A.Deepa reported in (2013) 5 SCC 226
- (iv)Biswanath Baspar vs. Jhumarani Ghose(Baspar) reported in (2015) 1 TLR 649
- (v)Abhash Paul Vs. Manidipa Paul reported in (2017) 1 TLR 608 [10] It was further contended by the learned counsel that serious initiatives were taken at the instance of the High Court for reconciliation between the parties during the pendency of this appeal. The matter was referred to the court appointed mediator who made efforts for reconciliation. But the parties did not agree to stay together which further indicates that the marriage has broken down irretrievably with no possibility of the parties living together again. Learned counsel therefore urges us for dismissing the appeal.

[11] In the instant case, we are to consider as to whether the grounds of cruelty and desertion against the respondent wife, the appellant herein, existed on the date of filing of the divorce petition, or not.

[12] The petitioner husband categorically asserted in his plaint before the trial court that two years after the marriage when he developed a problem in his eye-sight which was later diagnosed to be cancer, his respondent wife started distancing herself from him and suddenly on 12.01.2007 she left his home along with their daughter in his absence at home. Denying the allegations, the respondent wife in her written statement, filed at the trial court, averted that her alcoholic husband used to torture her almost on every night and on 12.01.2007 she was driven out of his home along with her daughter by her husband. According to her, her husband always used to taunt her saying that she

was ugly looking and he committed a wrong by marrying her.

[13] We have gone through the evidence adduced on behalf of the parties. PW-1, Sri Alok Dey, petitioner husband in his examination in chief submitted by way of affidavit has supported his plaint case. His statement made out in his examination in chief could not be impeached in his cross examination. The petitioner husband in his cross examination admitted that after the matter was brought to the State Legal Services Authority by his respondent wife, he had undertaken to take back his wife after his return from Chennai. Pursuant to the said undertaking he also purchased air tickets for him and his wife and daughter for visiting Chennai. But immediately thereafter, his wife had filed a case under Section 498A IPC against him and his sister in which he was taken into police custody.

[14] PW-2, namely Niranjan Das, brother-in-law (sister's husband) of the petitioner also supported the case of the petitioner and asserted that petitioner's wife and her relatives always used to humiliate the petitioner for his weak vision and accuse him of damaging the life of his wife. His cross examination was declined by the respondent wife.

[15] Smt. Debika Das(De) [PW-3] who is the sister of the petitioner also supported the case of his brother in her examination in chief and supported the fact that after his brother lost his vision, his respondent wife left him along with their daughter. She and her husband along with her petitioner brother met the respondent on several occasions in her parental home and persuaded her to return to her matrimonial home. Most of the times they were ill treated in the house of the respondent. The respondent had never shown any positive attitude for restoration of her relationship with her petitioner husband. Rather, she started filing false complaints against her husband in which her husband as well as the PW were arrested and sent to prison. Her cross examination was also declined by the respondent wife. [16] PW-4, namely Sri Anjan Chakraborty has stated in his examination in chief that from his nearby shop he witnessed the respondent wife leaving her matrimonial home along with her daughter on 12.01.2007 from his nearby shop. The PW wanted to help her by calling a rickshaw for her when the respondent replied that she would not need the help. She further told the PW that she would be back home by the evening. Thereafter the respondent never returned to her matrimonial home. His cross examination was also declined by the respondent.

[17] PW-5, namely Sri Chiranjit Sarkar, a next door neighbor of the petitioner also supported his case. According to him he never noticed any discord in the relationship between the petitioner and his respondent wife. Suddenly after the petitioner lost his vision due to his eye ailment his respondent wife left him along with her daughter on 12.01.2007 and she did not return thereafter. His cross examination was also declined by the respondent.

[18] The respondent wife on the other hand examined herself as DW-1. In her examination in chief submitted on affidavit she asserted that after she spent a happy conjugal life for about a year, her husband started humiliating her saying that she was ugly looking. It was also asserted by her that her husband was an alcoholic who used to torture her regularly for which she filed a case against him under Section 498A IPC and since he was denying her maintenance, she had also filed a case

against him under Section 125 Cr.PC. According to her she always tried to live a peaceful conjugal life with her petitioner husband but her husband always avoided her. During her cross examination it was suggested to her that the petitioner was not an alcoholic and he never tortured her. It was also suggested to her that she never tried to have a peaceful conjugal life with her husband and all these suggestions were denied by her. [19] Her brother Sri Sanjit Kr.Dey, DW-2, also supported the case of his sister. In his cross examination he denied that his sister was not ill treated at her matrimonial home by her husband. He also denied that his sister was not driven out of her matrimonial home by her husband.

[20] DW-3, another brother of the respondent also supported the case of his sister in his examination in chief. His cross examination contains a few suggestions which were put to him on behalf of the petitioner. The DW denied that his sister was not ill treated at her matrimonial home by her husband. He also denied that his sister was not driven out of her matrimonial home by her husband.

[21] Anriban Das, DW-4, in his examination-in-chief submitted on affidavit supported the case of the petitioner. In his cross examination he denied the suggestion of the petitioner that the respondent was not driven out of her matrimonial home by her husband. [22] From the pleadings of the parties and their evidence it would appear that the respondent wife left her matrimonial home along with her daughter on 12.01.2007 and she did not live with her husband at any point of time till the petition was filed by her husband on 22.04.2014 seeking divorce and even thereafter. The fact that her husband lost his vision as a result of his eye ailment is supported by the witnesses adduced on his behalf and the fact is not even denied by the respondent wife and her witnesses. The witnesses of the petitioner including two of his neighbours had categorically asserted that they did not notice any untoward incidents preceding to the departure of the respondent wife from her matrimonial home. Rather PW-4 stated in his examination in chief that he met the respondent on 12.01.2007 when she was leaving her matrimonial home who told him that she would be back home by the evening. The evidence of PW-4 in this regard was also supported by PW-5. The respondent did not counter their evidence in cross examination. The case of the petitioner that his respondent wife left him voluntarily on 12.01.2007 without any genuine reason thus stands established. It is not also denied by the respondent wife that her husband and his relatives met her and persuaded her to return to her matrimonial home. It is evident from the evidence of PW2 and PW3 that the respondent wife had never shown any interest in returning to her matrimonial home. Rather, she prosecuted her husband and her sister-in-law [PW-3] under Section 498A IPC on the allegation of dowry demand and cruelty allegedly meted out to her and both of them were arrested in the case. Though the trial court convicted them, they were acquitted of the charge in appeal by the Sessions Judge. Against the acquittal order of the Sessions court, an appeal was preferred before the High Court. The High Court also found them not guilty in Criminal Appeal No. 06 of 2012 by judgment and order dated 09.12.2014 and held as follows:

"9. I have meticulously gone through the evidence on record. Nothing specific stated about the nature of exercise of mental or physical cruelty. Mere statement that she was subjected to cruelty both mentally and physically is not sufficient to arrive at a conclusion of guilt under Section 498A of IPC. Something more specific overt act has

to be alleged and proved to substantiate the charge of exercise of cruelty by the husband or inmates of the husband's house. There may be lot of wear and tear in the matrimonial home, which cannot be termed as matrimonial offence. Only those events which consists criminal instinct and mens-rea would amount to a criminal offence punishable under Section 498A of IPC. Here some statements have been made regarding demand of money to repay a loan. The appellate Court considered the evidence very meticulously and arrived at a reasoned finding. The finding of the appellate Court is reflected in para 14 and 15 of the judgment which reads as follows:-

"14. I have considered the submissions of both sides. I have gone through evidence of the prosecution witnesses. I have found that almost all the prosecution witnesses have improved and exaggerated their versions from their earlier statements made before the investigating officers while giving evidence before the trial court. This aspect creates doubt about the veracity of the evidence of the prosecution witnesses. It further appears from the prosecution witnesses including the victim herself that she was subjected to torture by the appellants in her in-laws house demanding money and that her brothers paid Rs.1,10,000/- to her husband-appellant who ultimately utilised the amount for meeting the loan amount which he had taken from the bank for construction of his house. From the evidence of the prosecution witnesses, it further reveals that the concerned bank also arrange for issuing crop order against the property of the husband of the informant for realising the bank loan amount. But in order to substantiate this, the investigating officer did not seize any paper from the concerned bank. Even the witnesses in their cross examination have admitted that they did not state this fact before the I.O. in course of investigation of the case. It also reveals from the case record that the informant and other prosecution witnesses deposed about demanding of Rs.2,00,000/- in cash by the husband of the informant having been instigated by the other two accused appellants and that the informant having had ill treated by her husband and other two accused persons on her failure to satisfy the demand of Rs.2,00,000/-. But surprisingly most of the prosecution witnesses did not state this fact in their earlier statement made before the I.O. The witnesses also could not state specifically the date and time the informant was subjected to torture both mentally and physically at the hands of the appellants. The informant in her evidence has stated that after one year of her marriage she was maltreated by the appellants in her matrimonial home demanding money but she had filed the complaint with the police after 5 years . She did not explain the reasons for the delay in lodging the complaint with the police. This aspect creates doubt about the prosecution case. The informant cum victim did not produce any medical paper to show that she was treated by any doctor for the alleged physical torture she had in her matrimonial home. Besides, she also did not state that she lodged any complaint to the police about the incident of torture. On careful scrutiny of the evidence of the prosecution witnesses it does not prove beyond doubt that the informant was treated cruelly or harassed by the appellants so as to attract the offence under Section 498(A) IPC. The judgments referred to by the learned counsel appearing for the appellants appear to have governed the case of the appellants.



15. In view of the evidence available in case record and the decision referred to by the appellants' side, I am of the considered opinion that the prosecution has failed to establish that the victim Aparna Das(P.W.1) was harassed in her in laws house with a view to coercing her to meet the unlawful demand made by the accused appellants and as such the order of conviction and sentence recorded by the learned Judicial Magistrate 1st Class, Court No.4, Agartala, West Tripura, in her judgment dated 05.08.2011 in case No. GR 880/2007 against the appellants namely Alok Dey, Smt. Devi Dey(Das) and Sri Niranjan Das is liable to be set aside."

10. I find total justification in the finding of the learned Sessions Judge in respect of the appreciation of evidence. The trial Court as it appears superficially examined the evidence on record and arrived at a finding of guilt of the accused persons which is not sustainable in law and fact.

11. In view of the discussions made above, the appeal against acquittal is found to be devoid of any merit and accordingly it stands dismissed.

[23] From the pleadings of the parties and their evidence discussed above, we have found no material to show that the respondent wife was ever forced by her petitioner husband to leave his company or that she was thrown away from her matrimonial home. Rather, it is apparent from the evidence of the petitioner PW-1 and his witnesses that they met the respondent wife at her parental home several times and persuaded her to resume her conjugal life with her petitioner husband but she refused. Later, she prosecuted her husband and his relatives under Section 498A IPC which was proved to be unfounded in appeal in the court of sessions Judge as well as in the High Court. The learned Sessions Judge in Criminal Appeal No.34 (3) of 2011 preferred by the convict husband and his convict sister against the judgment of the learned trial court observed that the complainant in her evidence categorically stated that only one year after her marriage she was maltreated by her husband and in-laws for dowry but she filed the complaint with police after 5 years. The learned sessions Judge also found that the victim could not produce any material to prove that she was physically tortured by her husband in her matrimonial home and she also failed to produce any evidence with regard to any kind of mental cruelty allegedly meted out to her. The findings of the learned sessions Judge acquitting the accused husband and his sister Debika Dey were challenged in appeal before this court which was dismissed by this High Court by order dated 09.12.2014 in Criminal Appeal No 6 of 2012. It also stands established from the evidence of the petitioner PW-1 that the respondent wife, apart from lodging the complaint under Section 498A IPC against him and his sister, also sued him under the Protection of Women from Domestic Violence Act which was registered as CR 261 of 2011 in the court of the Judicial Magistrate of the First class at Agartala (Sarwar Murshed) and the case was dismissed as being time barred. It was found by the learned trial court that the respondent wife did not file the complaint within the limitation period of one year from the date of the incident.

[24] Mr.S.Lodh, learned counsel of the appellant has contended that the respondent wife after groundlessly withdrawing from the company of her husband kept making unfounded and scandalous allegations against him with a view to harass him and she filed a case under Section 498A IPC followed by a petition under the Protection of Women from Domestic Violence Act which amounted to enormous mental cruelty to the husband. This apart, despite repeated requests from her husband she did not resume her conjugal life with him and kept herself away from the company of her husband for a quite long period of time commencing from 12.01.2007 which indicates that their marriage is dead and there is no chance of restoration of their relationship. Learned counsel has, therefore, urged us to maintain the judgment of the learned trial court and dismiss the appeal.

[25] As noted by us, learned counsel of the appellant has placed reliance on the decision of the Apex Court in Rani Narasimha Sastry vs. Rani Suneela Rani reported in MANU/SC/1837/2019 in support of his contention that making false allegations against the spouse under Section 498A IPC amounts to mental cruelty which needs to be taken into consideration for granting divorce to the aggrieved spouse. [26] In Rani Narasimha Sastry (supra) the petition of the husband seeking a decree of divorce against his wife on the ground of cruelty was dismissed by the trial court as well as by the High Court in appeal. In his petition at the trial court, the petitioner husband referred to the criminal case lodged by his wife against him and his relatives under Section 498A IPC and pleaded that such conduct of his wife caused mental cruelty to him. The trial court refused to entertain the ground because the criminal case lodged by the wife under Section 498A IPC was still pending for adjudication. The petitioner husband assailed the judgment in the High Court in appeal. The High Court also dismissed the appeal. When the matter came up before the Apex Court in appeal, the Apex Court found that the case set up by the appellant seeking decree of divorce on the ground of cruelty was established. While dissolving the marriage between the parties, the Apex Court held as follows:

"13.In the present case the prosecution is launched by the respondent against the appellant under Section 498-A of IPC making serious allegations in which the appellant had to undergo trial which ultimately resulted in his acquittal. In the prosecution under Section 498-A of IPC not only acquittal has been recorded but observations have been made that allegations of serious nature are levelled against each other. The case set up by the appellant seeking decree of divorce on the ground of cruelty has been established. With regard to proceeding initiated by respondent under Section 498-A of IPC, the High Court made following observation in paragraph 14:

"14.....Merely because the respondent has sought for maintenance or has filed a complaint against the petitioner for the offence punishable under Section 498-A of IPC, they cannot be said to be valid grounds for holding that such a recourse adopted by the respondent amounts to cruelty."

14. The above observation of the High Court cannot be approved. It is true that it is open for anyone to file complaint or lodge prosecution for redressal for his or her grievances and lodge a first information report for an offence also and mere lodging

of complaint or FIR cannot ipso facto be treated as cruelty. But when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498-A of IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has meted on the husband. As per pleadings before us, after parties having been married on 14.08.2005, they lived together only 18 months and thereafter they are separately living for more than a decade now.

15. In view of forgoing discussion, we conclude that appellant has made a ground for grant of decree of dissolution of marriage on the ground as mentioned in Section 13(1)(i-a) of the Hindu Marriage Act, 1955."

[27] In Ravinder Kaur vs. Manjeet Singh(Dead) through LR reported in (2019) 8 SCC 308, which has also been relied upon by learned counsel of the appellant, the respondent husband brought the suit in the trial court under Section 13 of the Hindu Marriage Act, 1955 seeking dissolution of the marriage with his wife Ravinder Kaur alleging mental cruelty inflicted upon him by his wife. The suit was dismissed by the trial court. Finding fault with the judgment of the trial court in appeal, the High Court revised the order of the trial court by allowing the appeal and dissolving the marriage between the parties. The respondent wife brought the matter to the Apex Court in appeal. During the pendency of the appeal, the husband died. Since the marital status of the appellant was in issue, the daughters and sons were brought on record as legal representatives of the deceased appellant and the appeal was heard by the Apex Court. While setting aside the judgment of the High Court and restoring the judgment of the trial court, the Apex Court held as follows:

"11.Insofar as the action taken by the appellant herein to file a police complaint and the proceedings initiated under Section 107/151 of Cr.PC it is the natural legal course adopted by respondent to protect her right and possession of the property. It is not in dispute that at the point when a complaint was filed and a suit was also stated to have been filed by the appellant herein on 05.09.1995 there was misunderstanding brewing in the marital life of the parties and in that circumstance the appellant herein had adopted the legal course to protect her rights. Such action taken in accordance with law cannot, in any event, be considered as inflicting cruelty as the legal proceedings was used only as a shield against the assault. In this regard the decision of this Court in the case of Ramchander vs. Ananta (2015) 11 SCC 539 relied on by the learned counsel for the appellant would be relevant, wherein while taking note of similar instances this Court has held that the same would not amount to cruelty and such instances would not be convincing enough to lead to a conclusion that the marriage is irretrievably broken down.

12. In the above background, keeping in view the nature of allegations made and the evidence tendered in that regard, we find that the consideration made by the trial court with reference to the reliability of the evidence is more appropriate. As already noticed the High Court, while taking note of the nature of allegations made has proceeded on the basis that there is irretrievable breakdown of the marriage. Needless to mention that irretrievable breakdown of marriage by itself is not a ground provided under the statute for seeking dissolution of marriage. To this effect it would be apposite to

refer to the decision rendered by this Court to that effect in the case of Vishnu Dutt Sharma vs. Manju Sharma (2009) 6 SCC 379 relied upon by the learned counsel for the appellant. No doubt on taking note of the entire material and evidence available on record, in appropriate cases the courts may have to bring to an end, the marriage so as not to prolong the agony of the parties. However, in the present facts, at this point in time even that situation does not arise in view of the changed scenario on the death of the respondent herein.

13. As already taken note, the marriage between the parties had taken place in the year 1970 and the undisputed fact is also that the children of the parties are grown up and the very incidents referred to by the appellant regarding the illegitimate relationship were from the point of time when the respondent was posted at Manipur and the appellant herein had shifted there in the year 1991. By such time the marital bond was quite mature and with regard to certain incidents where there were allegations it can only be considered as a misunderstanding between the parties which only required a minor adjustment to reassure each other and iron out the crease. Hence, merely because certain issues have been raised with regard to the same, even if it be on a misunderstanding in the instant facts, it cannot be considered as inflicting mental cruelty in the nature it is required for considering the petition under Section 13 of the Hindu Marriage Act for dissolving the marriage. Though the learned counsel representing the respondents referred to the incidents by which the appellant had hurled false allegations against the respondent, presently when the respondent has died and in a circumstance where one of the legal representatives, namely Shri Iqbal Singh was examined as RW6 in support of the case of the appellant herein and the legal representatives No.1 and 3, though were majors had not been examined in the proceedings, any contention raised on their behalf would not be of any assistance to take any other view. Therefore, if all these aspects are kept in perspective, we are of the view that the High Court was not justified in reversing the well considered judgment passed by the trial court."

[28] Mr.S.Lodh, learned counsel of the appellant has further relied on the decision of the Apex Court in K.Srinivas Rao vs. D.A.Deepa reported in (2013) 5 SCC 226 in support of his contention that the conduct of making unfounded allegations by the wife under Section 498A IPC against her husband should be treated as mental cruelty for the purpose of granting divorce and court can dissolve a defunct marriage when such marriage is found to have broken irretrievably. The learned trial court also seems to have relied on this decision of the Apex Court.

[29] In K.Srinivas Rao (supra) the trial court decreed the suit for divorce in favour of the husband on the ground of desertion and cruelty. In appeal, the High Court set aside the decree. The husband being the appellant came to the Apex Court. While dismissing the judgment of the High Court and restoring the judgment of the trial court, the Apex Court held as follows:

"28.Pursuant to this complaint, the police registered a case under Section 498-A IPC. The appellant husband and his parents had to apply for anticipatory bail, which was granted to them. Later, the respondent wife withdrew the complaint. Pursuant to the withdrawal, the police filed a closure report. Thereafter, the respondent wife filed a protest petition. The trial court took cognizance of the case against the appellant-

husband and his parents (CC No. 62 of 2002). What is pertinent to note is that the respondent wife filed criminal appeal in the High Court challenging the acquittal of the appellant husband and his parents of the offences under the Dowry Prohibition Act and also the acquittal of his parents of the offence punishable under Section 498-A of the IPC. She filed criminal revision seeking enhancement of the punishment awarded to the appellant husband for the offence under Section 498-A IPC in the High Court which is still pending. When the criminal appeal filed by the appellant husband challenging his conviction for the offence under Section 498-A of the IPC was allowed and he was acquitted, the respondent wife filed criminal appeal in the High Court challenging the said acquittal. During this period respondent wife and members of her family have also filed complaints in the High Court complaining about the appellant husband so that he would be removed from the job. The conduct of the respondent wife in filing a complaint making unfounded, indecent and defamatory allegation against her mother-in-law, in filing revision seeking enhancement of the sentence awarded to the appellant husband, in filing appeal questioning the acquittal of the appellant husband and acquittal of his parents indicates that she made all attempts to ensure that he and his parents are put in jail and he is removed from his job. We have no manner of doubt that this conduct has caused mental cruelty to the appellant husband.

29. In our opinion, the High Court wrongly held that because the appellant husband and the respondent wife did not stay together there is no question of the parties causing cruelty to each other. Staying together under the same roof is not a precondition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. In a given case, while staying away, a spouse can cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse's life miserable. This is what has happened in this case.

30. It is also to be noted that the appellant husband and the respondent wife are staying apart from 27-4- 1999. Thus, they are living separately for more than ten years. This separation has created an unbridgeable distance between the two. As held in Samar Ghosh<sup>7</sup>, if we refuse to sever the tie, it may lead to mental cruelty.

31. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree.

32. In V. Bhagat<sup>8</sup> this Court noted that divorce petition was pending for eight years and a good part of the lives of both the parties had been consumed in litigation, yet the end was not in sight. The facts were such that there was no question of reunion, the marriage having irretrievably broken down. While dissolving the marriage on the ground of mental cruelty this Court observed that:(SCC

p.351, para 21) "21.....irretrievable breakdown of marriage is not a ground by itself, but, while scrutinizing the evidence on record to determine whether the grounds alleged is/are made out and in determining the relief to be granted the said circumstance can certainly be borne in mind."

33. In Naveen Kohli<sup>6</sup>, where husband and wife had been living separately for more than 10 years and a large number of criminal proceedings had been initiated by the wife against the husband, this Court observed that: (SCC p.582 para.86) "86.....the marriage had been wrecked beyond the hope of salvage [and] public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto."

It is important to note that in Naveen Kohli case<sup>6</sup> this Court made a recommendation to the Union of India that the Hindu Marriage Act, 1955 be amended to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce.

34. 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." [30] Learned counsel of the appellant as well as the learned trial court also relied on the decision of this High Court in Biswanath Baspar vs. Jhumarani Ghose(Baspar) reported in (2015) 1 TLR 649 wherein this High Court held that when the ground of cruelty or desertion is partly proved, then, if the marriage is dead, the court may take a view granting divorce. This court further held that where the marriage is dead that will be a factor which will have to be taken into consideration to come to the conclusion that divorce may be granted. By itself, the fact that marriage has irretrievably been broken down can never be a ground for grant of divorce.

[31] In Abhash Paul Vs. Manidipa Paul reported in (2017) 1 TLR 608 which has also been relied upon by the appellant, the petition of the appellant husband seeking decree of divorce on the ground of desertion and cruelty was dismissed by the trial court. In appeal, this High Court had taken a view that despite his sincere efforts, the appellant husband could not take back his respondent wife because she had never shown a positive attitude for restoring the relationship. Moreover, she instituted case under Section 498A IPC on unfounded allegations only with a view to harass the husband which could not be proved in trial. This apart, the court also found that the animus in the relationship of the fighting couple had gone to such an extent that there was no chance of its restoration. Under these circumstances this High Court allowed the appeal and dissolved the marriage. [32] The principle of law laid down in the judgments cited above is that institution of a complaint under Section 498A IPC against the husband does not ipso facto constitute mental cruelty unless the court having assessed the totality of the facts and circumstances and also having taken note of the nature of the allegations come to the conclusion that amongst other things the wife also brought unfounded and scandalous allegations with a clear intention to humiliate the husband and his relatives and such conduct of the spouse caused disappointment and frustration in the other

spouse. It also emanates from the judgments discussed above that though irretrievable break down of marriage is not by itself a ground for divorce, where the court is of the view that other grounds are also made out or the grounds of cruelty or desertion is partly proved, then if the marriage has irretrievably been broken and it is found that its continuation would prolong the agony of the parties and the dissolution will relieve them of their pain and anguish, the court may grant the decree of divorce.

[33] In the given case, the respondent wife is alleged to have withdrawn from the company of her husband on 12.01.2007 i.e. after about 4 ½ years of their marriage without any reason and the spouses did not live together at any point of time thereafter. After their separation, the respondent wife seems to have prosecuted her husband and his elder sister for offence punishable under Section 498A IPC alleging that her husband was an alcoholic and he used to torture her almost on every night and continued pursuing his demand for dowry though her parents gave valuables like TV, Bike, Sofa set, Almirah, showcase, designed table, blanket, box cot and ten vori of gold etc during their marriage. It has also been alleged by her that her husband also used to humiliate her for her black complexion saying that she was ugly looking. Her husband and her sister-in-law were however, found not guilty by the two appellate courts including the High Court. The respondent wife also brought several allegations against her husband in a proceeding under the Protection of Women from Domestic Violence Act which was dismissed on the ground of limitation bar. The allegation of the petitioner husband on the other hand is that when he developed his eye ailment, his wife started avoiding him and she did not even bother to enquire about his health. Rather, during that crisis of him, she left him along with their daughter and later prosecuted him under Section 498A IPC followed by a petition under the Protection of Women from Domestic Violence Act. [34] Now the question arising before us is whether such conduct of the respondent wife amounted to desertion of her husband and caused mental cruelty to him and entitled him to a decree of divorce. [35] About what amounts to desertion for the purpose of seeking divorce under the Hindu Marriage Act, 1955, the Apex Court in Savitri Pandey vs. Prem Chandra Pandey reported in (2002) 2 SCC 73 has held as follows:

"8."Desertion", for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations, i.e., not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. After referring to host of authorities and the views of various authors, this Court in Bipinchandra Jaisinghbhai Shah v. Prabhavati [AIR 1957 SC 176] held that if a spouse abandons the other in a state of temporary passions, for example, anger or disgust

without intending permanently to cease cohabitation, it will not amount to desertion....."

[36] The pleadings of the petitioner husband supported by the evidence adduced on his behalf clearly demonstrate that his respondent wife abandoned him on 12.01.2007 in his absence at home without any genuine reason. Thereafter she never resumed her conjugal life with her petitioner husband till the date of filing of the divorce petition or thereafter. She contested the case of her husband in the divorce proceedings. But she could not embellish the evidence adduced on behalf of her husband. The evidence that her husband along with his relatives met her on several occasions and persuaded her to return to her conjugal life is not also denied by the respondent wife. She could not also prove the grounds of her denial to return to her husband. Such course of conduct of the respondent wife undoubtedly amounts to desertion for the purpose of seeking divorce under the Hindu Marriage Act.

[37] As regards the ground of cruelty resorted to by the petitioner husband, the word 'cruelty' has not been defined in the Hindu Marriage Act. In a catena of decisions relating to matrimonial disputes, the Apex Court has examined the concept of cruelty.

[38] While dealing with the concept of cruelty, the Apex Court, in Ravi Kumar vs. Julmidevi reported in (2010) 4 SCC 476 has 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 held that categories of cruelty in matrimonial cases are never closed."

[39] Therefore, there cannot be a straight jacket formula for determining cruelty in matrimonial relationship. Whether the alleged conduct of the spouse constitutes cruelty has to be judged in the particular context of the case keeping in view all the attending facts and circumstances of the case.

[40] In the present case the petitioner husband, aged 52 years, is admittedly a small businessman and his 41 years old respondent wife is a house wife. The petitioner has proved his case that his wife



abandoned him along with their daughter when he lost his vision and was in dire need of their company and the support of his wife. His illness is not denied by the respondent wife. Such conduct of the wife must have hurt the sentiment of the petitioner husband and affected their relationship. After abandoning her husband, she labelled allegations of harassment for dowry against her husband in a proceeding under Section 498A IPC followed by a proceeding under the Protection of Women from Domestic Violence Act. She not only prosecuted her husband, the elder sister of her husband was also implicated in the case instituted by her under Section 498A IPC though both of them were ultimately acquitted in appeal. [41] It is true that the wife is not expected to endure the harassment meted out to her by her husband or in-laws without raising protest or filing appropriate proceeding against them, but in the given case the cumulative effect of the facts and circumstances emerging from the evidence on record lead us to a fair inference that her unprovoked humiliating treatment caused serious mental pain and suffering to her husband which no doubt constitutes cruelty.

[42] Admittedly the present appellant wife and her respondent husband are staying apart from 12.01.2007. They are thus living separately for more than 13 years. During this period they never stayed together even for a single day which indicates that their sentiments and emotions have dried up and there is hardly any chance of restoration of their conjugal life.

[43] In this regard, the Apex Court in Naveen Kohli vs. Neelu Kohli reported in (2006) 4 SCC 558 held as follows:

"74. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised 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."

[44] The Apex Court, while laying down the broad parameters for determination of mental cruelty for the purpose of granting divorce in Samar Ghose vs. Jaya Ghose reported in (2007) 4 SCC 511 reiterated the same principle and held as follows as one of those parameters:

"101...(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."

[45] As noted above, this court in the case of Biswanath Baspar (cited supra) had also taken the view that if other grounds are made out or the grounds of cruelty or desertion is partly proved, then, if the

marriage is dead, the court may take a view of granting divorce. [46] In the present case, as we have noted above, both the grounds of cruelty and desertion existed on the date of filing of the divorce petition. Moreover, there is no denial of the fact that the husband and the wife are staying apart for more than 13 years and during this period they never lived together at any point of time. Efforts of the mediator appointed by this court for reconciliation of their relationship also failed. Therefore, we are of the considered view that clearly this is a case of irretrievable breakdown of marriage and it is quite impossible to save the marriage.

[47] In these backdrop of the circumstances and the law laid down in the decisions cited above, we are of the view that the learned trial court was justified in dissolving the marriage by a decree of divorce. The appeal is therefore devoid of merit and dismissed. [48] Since there was no claim for alimony before the trial court, the learned trial Judge did not make any order for permanent alimony. A petition of the appellant wife under Section 24 of the Hindu Marriage Act, 1955 is pending before us. It is stated before us that as per order of this court in Crl. Rev.P. No.71 of 2013 the respondent husband is paying monthly maintenance allowance @ Rs.4,000/-(rupees four thousand)only towards the maintenance of his wife and daughter which was ordered by this court on the basis of the consensus between the parties. Now, the appellant wife claims Rs.35,000/- per month to meet her needs including the growing educational expenses of her daughter. No document has been placed before us from either side about the monthly income of the respondent husband. However, taking into consideration the relevant factors including the financial capacity of the parties and the requirements of the appellant wife and their daughter as well as the changed circumstances, it is directed that the husband will pay monthly maintenance allowance @Rs.4,000/-(rupees four thousand)only for his wife and Rs.6,000/-(rupees six thousand)only for his daughter which will be effective from 01.09.2020 payable within the first week of every succeeding month. The I.A. No 2 of 2020 is also disposed of accordingly.

JUDGE

JUDGE

Saikat Sarma