

**(2023) 10 CHH CK 0028**

**Chhattisgarh High Court**

**Case No:** Writ Petition (C) No. 1270 Of 2017

Rajkumar Mishra

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

**Date of Decision:** Oct. 19, 2023

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 21
- Right to Information Act, 2005 - Section 4(1)(b), 4(1)(c), 8(1)(h), 10, 24, 24(1), 24(4), 27
- Code Of Criminal Procedure, 1973 - Section 2(s), 197
- Prevention of Corruption Act, 1988 - Section 19
- General Clauses Act, 1897 - Section 20, 21
- Freedom of Information Act, 2002 - Section 16, 16(4)

**Hon'ble Judges:** Sanjay K. Agrawal, J; Radhakishan Agrawal, J

**Bench:** Division Bench

**Advocate:** Rajkumar Mishra, Amrito Das

**Final Decision:** Allowed

**Judgement**

1. Heard.
2. Learned Counsel for both the parties did not object hearing of the case through live streaming.
3. The instant Appeal is filed by the Appellant/wife against the judgment and decree dated 20.08.2019 passed by the Judge, Family Court, Bemetara, District Bemetara in Civil Suit No.37-A/2015 whereby, the application filed by the Respondent/husband under Section 13 of the Hindu Marriage Act, 1955 was allowed. The wife is in Appeal before this Court.
4. The facts of the case are that the parties got married on 8.05.2008 and out of the said wedlock, a girl child was born on 19.07.2009. The Respondent/husband is presently posted as Siksha Karmi, Grade-1. After marriage, as per the social custom, on 04.07.2008, the Appellant/wife had returned to her matrimonial house situated at village Barduli after performing 'gouna' and both the husband and wife lived happily together for about 6 months. It is alleged that initially, the Appellant/wife did not like the marriage as it was performed in the rural area and thereafter, she joined B.Ed course at Raipur and in the last week of May, 2009, after finishing of the said examination, the Respondent/husband had gone to take back his wife from Raipur but she had stated that she would reside at her maternal house situated at village Devarbija and during such period, she got conceived also. After 8 days, when the Respondent/husband had gone to village Devarbija, the Appellant/wife refused to go

with him as there are no proper medical facilities at the village of her in-laws and she delivered a baby girl on 19.07.2009 at village Devarbija. In the year 2010, the Respondent/wife had filed a police complaint for dowry at police station Mahila Thana, Durg and thereafter, the Respondent/husband had called various social meetings, which were convened at Sahu Samaj, Saja in the month of December, 2013 but the Appellant/wife did not turn up in the said meetings. On 24.02.2014, a social meeting was scheduled wherein the Appellant/wife had imposed a condition that she would not go to village Barduli and reside separately to which, the Respondent/husband accepted and they both started residing at village Pipariya from 26.11.2010. After some time, again the behavior of the Appellant/wife has changed and she started threatening the Respondent/husband that she will commit suicide and stated that he should keep her at village Pipariya and she will not go to village Barduli though as per the advice given in the social meeting, they were supposed to live separately only for 4 to 6 months from the family and in such circumstances, the Respondent/husband vacated the rented house at village Pipariya in the month of February, 2011 and asked the Appellant/wife to reside with him at village Barduli but she had not accepted the said proposal. The wife had filed an application for maintenance before the Family Court, Bemetara in the month of May, 2011 and thereafter, the Respondent/husband had also filed an application for restitution of conjugal rights before the Court at Bemetara and the same was dismissed for want of jurisdiction and thereafter, he again filed an application for the same purpose at Family Court, Kabirdham in which, counseling was done in the months of September and October, 2013 and they started to reside at Kawardha and lived together for 4-6 months at such place. On 03.02.2014, the Appellant/wife reached the office of the Respondent/husband at ITI where also, negotiation was made for compromise but the Appellant/wife refused to reside at village Barduli. On 17.02.2014, a compromise application (Ex.P-3) has been filed and the matter was listed before the Lok Adalat scheduled on 23.02.2014. On 21.04.2014, the Appellant/wife had again gone to the office of ITI of the Respondent at Kawardha and threatened him to take her back to his house at Kawardha otherwise, she would kill herself. Though the Respondent/husband had tried his level best to keep his wife with him peacefully, but she always kept on imposing conditions and there was no physical relation also between them since last 4 years, therefore, the Respondent/husband sought divorce on the ground of cruelty.

5. Reply has been filed by the Appellant/wife wherein, she denied all the averments and stated that she was always willing to reside in the company of the Respondent/husband, but he did not want to keep her along with him and always created pressure to live separately at village Barduli and as he himself had lodged a complaint earlier before the police, therefore, in such circumstances, she had also gone to the police for lodging report and she had never given any threat to him for committing suicide and stated the he had taken a false and baseless plea.

6. Learned Family Court on the basis of the pleadings, framed issue as to whether the Appellant/wife had treated the Respondent/ husband with cruelty and in order to prove the facts, the Respondent/husband had examined himself as AW-1, Ghuruwaram (AW-2), President of the Block Development, Janpad and Uttam Sahu (AW-3), resident of village Kothar and member of social meeting whereas, the Appellant/wife had examined herself and one Sukhpati Sahu (NAW-2), her mother.

7. The trial Court, after evaluating the entire facts and evidence, passed a decree in favour of the Respondent/husband on the ground of cruelty and allowed the application, therefore, the instant Appeal by the Appellant/wife.

8. Learned Counsel for the Appellant submits that the Appellant/ wife was always willing to reside in the company of the Respondent/husband but he himself never wanted to keep her with him and wanted her to reside separately at Village Barduli. He further submits that after compromise, they lived peacefully at Village Pipariya and a compromise application (Ex.P-3) has also been filed by both the parties before the Family Court, Kabirdham, where, the Respondent/husband himself had filed an application for restitution of conjugal rights under Section 9 of the Hindu Marriage Act on 17th February, 2014. He further submits that the Respondent/husband himself had neither given proper respect to his wife nor brought her from her parental house and filed an application for divorce on the false ground and in such circumstances, the Appellant/wife had filed an application for grant of maintenance and the Respondent/husband is paying maintenance to her awarded in such proceeding to the tune of Rs.7,000/- to the Appellant/wife and Rs.3,000/- to the daughter i.e. in aggregate Rs.10,000/- per month. He further submits that the said finding was not challenged by the Respondent/husband, which itself shows that the Appellant/wife is not living separately without any sufficient cause and the Respondent/husband himself neglected her. He further submits that no specific incident has been proved and the dispute is only normal wear and tear of the married life, therefore, the decree of divorce granted by the trial Court is perverse and prays to allow the Appeal.

9. On the other hand, learned counsel for the Respondent/ husband submits that the Appellant/wife is in the habit of making false allegations and she had also made a police complaint against the Respondent/husband for the offence under Section 498-A of the IPC. He further submits that whenever the Respondent/husband tried to bring her back, she always threatened to commit suicide and even in the social meeting, she imposed a condition that if someone takes responsibility of her life, then only she would return and join the company of the Respondent/husband. He further submits that the Respondent/husband had convened several meetings at the social level and even a compromise has been made on 17th February, 2014 before the concerned Family Court. He further submits that even thereafter, the Appellant/wife had not returned and not fulfilled the matrimonial obligation and deserted the husband which amounts to cruelty, therefore, the trial Court had rightly appreciated the evidence, which is well merited and does not call for any interference.

10. We have heard learned counsel for the parties and also perused the records with utmost circumspection.

11. It is well settled proposition that burden of proving allegation of cruelty is on the Plaintiff, who must adduce reliable and admissible evidence for the purpose for which he made the Petition. In the instant case, the Respondent/husband sought relief of divorce on the ground of cruelty and admittedly, he had filed an application for restitution of conjugal rights before the concerned Family Court and both the parties have filed an application vide Ex. P-3 as per the advice of the elder people of the society wherein, it was resolved on 10th February, 2014 as both have agreed to reside together at Kailash Nagar, Kawardha for at least six months and thereafter, they would choose a proper place for their residence. Though the Petition has been filed on 26th September, 2015, however, the Respondent/Appellant had preferred a representation vide Ex.P-4 to the President of Sahu Samaj, Saja, District Bemetara stating that the Appellant/wife, without any reason, started residing separately from him at her parental house.

12. Tejnath @ Kejwa (AW-1) had deposed that after marriage, the Appellant/wife and her relatives did not like such relation as the Respondent/husband belonged to a rural background and from the very beginning, she wanted to keep herself away from his

family and was not willing to reside at Village Barduli. In the month of October, 2010, the Appellant/wife had made a complaint at Mahila Thana, Durg and after counseling, both the parties had agreed to reside together and started living at Village Pipariya. He further deposed that in the month of November, 2010, the Respondent/husband had taken a house on rent from Shri Kumar Nishad and during such period also, the Appellant/wife was neither willing to go to Village Barduli nor to attend any function and always threatened to commit suicide and in the month of February, 2011, she had gone for appearing in the exam. He further deposed that he asked the Appellant/wife to reside at Village Barduli for her safety but she was not ready for the same and from Raipur, she returned to her parental house at Village Dewarbija. The Respondent/husband had, in his pleadings at para-6 of the Plaint, specifically stated that he had vacated the rented house in the month of February, 2011.

13. In such circumstances, the Appellant/wife had filed an application for maintenance, which was allowed in favour of the Respondent/husband and the same was not challenged by him and he admitted the same during the hearing also. Even considering the conduct of both the parties and on comprehensive appraisal of their entire matrimonial life, it is explicit that in the year 2014, before the Lok Adalat, both the parties had agreed to live together and even after filing of the Petition in the year 2016, the Respondent/husband had preferred a representation before the President of caste society to settle the issue, therefore, considering the conduct of the Respondent/husband, it is vivid that there was nothing wrong, but the same has not been proved by the Respondent/husband and they have preferred an application jointly before the Lok Adalat.

14. It is very natural and rightful demand of the wife from her husband to keep her along with him. The Respondent/husband herein, from the very beginning, not accepted such genuine request of the Appellant/wife and always used to treat her as a chattel and thought that she is bound to live in such a place where he wants to keep her. The Appellant/wife is not willing to reside at Village Barduli and wants to reside along with her husband, therefore, we are of the view that only on this issue, the dispute between both the parties exists and the trial Court has not appreciated the evidence in its proper perspective.

15. The other witness i.e. Ghuruwaram (AW-2) had specifically stated that he is not aware of the relation of both the parties and in para-12, he further admits that he never enquired as to whether the Appellant/wife is willing to reside in the company of the Respondent/husband or not. Similarly, Uttam Sahu (AW-3), at para-8, had deposed that the Appellant/wife resided in the company of the Respondent/husband and he never visited his residence or school and at para-10 of the cross-examination, he admits that he never enquired about their relation. The mother of the Appellant/wife namely Sukhmati Sahu (NAW-2) had categorically deposed that the Respondent/husband whenever visited the parental house of the Appellant/wife to take her back, he used to put a condition and also stated that he never gave proper treatment to her and he also stated in front of all that he will not keep her as a wife with him, therefore, in such circumstances, if the Appellant/wife lives separately and the reason is bona fide, the act of the Appellant/wife does not amount to cruelty.

16. It is well settled that in the matrimonial house, the wife should not be treated as hired chattel or a bonded labour to stay under the conditions imposed by the husband.

17. In Samar Ghosh Vs. Jaya Ghosh (2007) 4 SCC 511, the Hon'ble Supreme Court has indicated illustrative cases where inference of mental cruelty can be drawn. They are reproduced as under:-

“99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

“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, discomode 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.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead 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. It is obvious that if the wife insists to stay with the husband and without any extraneous reason or official cause, if husband refuses to keep her it cannot be said to be a cruelty by the wife towards the husband for such insistence. During the matrimonial ties the reciprocal respect and regard to each other and the company is necessary. In absence thereof any forceful imposition of condition by either side may lead to a matrimonial disruption. So if the husband expects the wife to stay at a place other than his company without any sufficient cause it cannot be stated that because of resistance by the wife to stay apart-it would be a cruelty by wife.

19. Keeping in view the aforesaid principles, if we examine the facts of the present case and the grounds taken by the Respondent/husband in this Appeal, we are of the opinion that none of the grounds has been satisfied individually or collectively so as to entitle the Respondent/husband to claim decree of divorce.

20. In the result, the Appeal is allowed and the impugned judgment dated 20.08.2019 passed by the Family Court, Bemetara, in Civil Suit No.37-A/2015 is hereby set aside.

21. A decree be drawn accordingly.