

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE:

The Hon'ble Justice Soumen Sen

And

The Hon'ble Justice Uday Kumar

F.A. No. 25 of 2010

JHARNA MANDAL
Vs.
PRASHANT KUMAR MANDAL

For the Appellant : Mr. Rahul Karmakar, Adv.,
Mr. Debabrata Roy, Adv.,

For the Respondent : Mr. I. Mukhopadhyay, Sr. Adv.,
Mr. Pradip Neogi, Adv.,

Hearing Concluded On : 12th Day of December 2022

Judgment On : 31st Day of March 2023

Uday Kumar J. : The Judgment and decree of Ld. Additional District Judge 4th Court, Pashim Midnapur passed in Mat Suit No. 512 of 2008 on May 25th 2009 is the subject matter of this appeal, whereby the learned Trial Judge has decreed the suit instituted Under Section 13 of the Hindu Marriage Act, 1955 by petitioner-respondent Prashant Kumar Mandal for termination of his marital ties solemnized on

2nd July, 2001 with the appellant-respondent-wife Jharna Mandal. Being aggrieved and dissatisfied by the said order, appellant-Wife Jharna Mandal has preferred this appeal.

The emotional warmth in matrimonial relationship of Prashant Kumar Mandal and Jharna Mandal has gradually eroded due to constant commotions which arose in their life after few months of their marriage solemnized on 2nd July 2001. The unemployment of Prashant was the root cause of her agony and turbulence in their matrimonial life. Though, Prashant was earning from his profession of part-time teaching in school and from private tuition, yet the same was not sufficient to satisfy the financial requirement of his family. So, he occasionally asked money from appellant Jharna; as she was getting honorarium of Rs. 1400/- per month from her employment of 'Anganbari worker' posted at Basulia I.C.D.S Centre. Her grievance against Prashant and his family over this issue was not redressed properly as such her feeling of hatred towards petitioner and in-laws were regularly expressed through her misbehavior. She always cursed him for his cowardice attitude and she became belligerent to her in-laws which gradually increased after birth of their daughter Trishna on 03rd December 2003. However, Prashant tried his level best to tune relation with appellant but of no avail, rather she abetted him for committing suicide.

Leading to the disturbances in their matrimonial life, Jharna left her matrimonial home with her belongings threatening to teach them a lesson. Later she lodged a written complaint to Chandrakona town P.S. upon which P.S case number 70 of 2007 dated 04th July 2007 U/S

498A, $\frac{3}{4}$ D.P. Act, was initiated against them. On the other hand, petitioner instituted Matrimonial suit 362 of 2007 u/s 13 of Hindu Marriage Act 1955, for decree of divorce, in which Ld. Additional District Judge 4th Court, Paschim Midnapur had passed an order for payment of maintenance of Rs. 1000/- to minor daughter and 3000/- to wife as litigation cost within 15 days from the date of order by husband, in connection with her petition u/s 24 of H.M. Act 1955, but on the prayer of husband the suit was dismissed for non-prosecution on 10th June 2008 as he was unable to pay the amount. Subsequently, Prashant Kumar Mandal was selected for a job of Sahayak Panchayat Assistant but his joining was delayed due to non-clearance of Police Verification Report by Dy. S.P. (D.E.B) on the ground of pending criminal case lodged against him by Jharna.

On 24th July 2008, petitioner and his mother went to the house of appellant to bring her back to matrimonial home but she refused by stating that "I will not go, there will be no compromise and I will not allow the petitioner for getting his service." Such behaviour of appellant towards respondent and his parents and relative had triggered feeling of strong aversion, hatred and bitterness in Prashant to the extent that he decided to terminate his marital bond with Jharna by a decree of divorce. Hence the Mat Suit No 512 of 2008 dated 30th July 2008 under section 13 of Hindu Marriage Act 1955. On the contrary, the Appellant-O.P has challenged this suit on the ground of its maintainability as was barred by principle of res-judicata because his earlier matrimonial suit 362 of 2007

u/s 13 of Hindu Marriage Act, 1955 was dismissed by competent court on 10th June 2008.

She controverted the material allegations of plaint by filing written statement. She stated therein that since her marriage; she was residing jointly at her matrimonial home and gave birth to their daughter Trishna Mandal on 03rd December 2003. She further stated that despite the degree of M.Sc, the petitioner was unemployed. However, he used to earn from his profession of private tuition and part time teaching in reputed school, while she used to earn Rs. 1500/- p.m. from her employment as Anganbari worker at Basulia ICDS.

She has specifically alleged that the petitioner-husband and his family used to inflict physical and mental torture on her for demand of more money from her parents. The torture gradually intensified when she failed to satisfy their demand. Ultimately, they drove her out from her matrimonial home on 25th October 2001. After a settlement held on 6th November 2002, she started to live there from 23rd November 2002. She was driven out by them again on 03rd March 2003, but this time she straightaway went to Kamarpukur, where her husband was living in a rented house. Her mother-in-law also followed her to Kamarpukur and she again ousted her there-from. She instructed the appellant that she wouldn't let her enter the house until she brings Rs. 1,25,000/- from her parents required for service of petitioner, but she failed. On 20th June 2003 she went to her matrimonial home despite her pregnancy, but they didn't allow her to enter the house. So, she was compelled to return back to her father's home. Consequent to her said pregnancy, she delivered her

daughter on 03rd December 2003 at Arambag, but none from her matrimonial family visited and completely neglected them.

Once she had been to Baitul School at Bankura, where Prashant was working as a private teacher, and shared her agony to Dulal Babu of the said school. He sympathetically convinced Prashant to live with appellant, who consented to, but under influence of his mother, he changed his mind. She knocked the door of party office, local Panchayat, Police Station and respected persons to settle the dispute but in vain. Later at the intervention of local police, she started to live together with Prashant with her daughter in a rented house at Ramjibanpur. However after a short duration Prashant fled away to Kamarpukur and he refused to return there. When every hope of his return was completely exhausted, she went to her matrimonial house on 25th June 2007, but she was not allowed to live there. Thus, she returned back to her father's house with all belongings under compelling circumstances.

She further pleaded that despite his unemployment, Prashant Mandal was able to bear expense of his family from his income from private tuition and part time teacher in reputed school, but he always avoided his responsibility; which created kerfuffle in her matrimonial life. On the contrary they expected money from her but the amount received in honorarium was meagre to meet her personal requirements.

Therefore, Appellant prayed for dismissal of the petition because the petitioner husband is not entitled to get relief as prayed for as she wanted to lead her peaceful matrimonial life with her husband and daughter.

Upon the pleadings of the both party Ld. Trial court has framed the following issues to determine -

- I. Is the suit maintainable in its present form?
- II. Has the O.P / Wife behaved with her husband petitioner in cruel manner?
- III. Whether the wife during her stay till 30th March 2007, tortured upon her husband both physically and mentally?
- IV. Is the petitioner entitled to any decree of divorce as prayed for?
- V. To what other relief, the petitioner is entitled to?

During course of trial the petitioner-respondent-husband Prashant Kumar Mandal examined himself as PW1, his uncle Laxman Chandra Mandal as PW2, a co-villager Barad Prasad Mandal as PW3, and submitted pages of personal diary of Jharna Mandal marked Ext. 1, FIR and written complaint lodged by Jharna Mandal to the Chandrakona P.S marked 04th July 2007 Ext 2, the order sheet of Mat Suit 362/2007 filed U/S 13 of Hindu Marriage Act 1955 by Prashant Kumar Mandal against Jharna Mandal, marked Ext 3 and the letter to District Magistrate in respect of pending police verification for his appointment as Additional Sahayak in Panchayat Department Ext. 4, in support of his case.

On the other hand the appellant-O.P respondent wife Jharna Mandal examined herself as DW1, Pranab Kumar Mandal as DW2, Pathik Ghosh of Rejina as DW3 and Rabika Ranjan Panja as DW 4 but did not adduce any document, in support of her contention.

On the basis of evidences led by both party, Ld. Trial Court has decreed the suit on the ground of cruelty.

Being aggrieved by the said Judgment and decree, the appellant wife has challenged this order on the ground that the Ld. Trial Court has committed mistake by considering the criminal case to have been falsely lodged u/s 498A of IPC and $\frac{3}{4}$ of D.P. Act against her husband and in-laws, despite the fact that the same is still pending before criminal court. Ld. Trial Court was unmindful of the fact that a court of civil jurisdiction has no authority to draw any inferences as to genuineness of a pending criminal case but it erroneously held that wife has committed cruelty by filing a false and frivolous criminal case against husband and his relatives. The said order has been challenged in the present proceedings.

As such we find the following questions to arise in this appeal for determination –

i. Whether matrimonial court can take into consideration the statements of wife made in written complaint lodged to Chandrakona police station on 04th July 2007 (Exhibit 2) to evaluate the conduct of Wife and if proved whether it amount to cruelty?

ii. Whether adverse consequence of pending criminal case against petitioner- husband in joining government job would amount to mental cruelty on him?

iii. Whether living separately from his joint family in compliance of a settlement (SALISI) would amount to cruelty on petitioner?

In respect of the above issues, Ld. Advocate for appellant has submitted that the petitioner has failed to establish acts of cruelty ever inflicted by appellant on him. No specific evidences on this were led by him during trial. Entire allegations of cruelty labeled against the appellant are flimsy and baseless. They lived together at Ramjibanpur from 14th August 2006 to 03rd March 2007. It indicates that there was harmonious relation between them.

He further submitted that living of spouse separately from their parents-in-law on justifiable ground does not amount to cruelty as held by this High Court in *Kakli Das vs Dr. Ashish Kumar Das* 2003 SCC online Cal 242 (Paragraph 46).

He further contended that petitioner-respondent did not suffer from any disqualification in joining his service due to the pending criminal case. Except said pending criminal case, she didn't make any complaint against petitioner-husband to any authority. Nothing is available on record to prove cruelty, but Ld. Trial Judge has completely misunderstood the difference between the civil and criminal proceedings and under influence of such misconception he wrongly derived his conclusion from said pending criminal case that wife acted cruelly by filing FIR against petitioner-husband and his family, beyond the pleading of the party. Thus Ld. Trial Judge has introduced third case beyond the pleadings of the parties. Apart from that some common domestic issues relating to daily matrimonial life are there but they are so insignificant to be considered as cruelty for a ground for divorce as decided by Hon'ble apex court in plethora of judgments.

He further submitted that her personal feelings as expressed in her private diary couldn't be a good ground for divorce on cruelty because such expression was exclusively relating to her private liking, disliking and dream.

He accordingly submits that the judgment of trial court requires to be set aside by allowing this appeal because husband respondent miserably failed to prove the ground of cruelty inflicted by appellant wife on them and she is always ready and willing to live her peaceful and dignified matrimonial life together with respondent and daughter. He placed reliance on the ratio decided by Hon'ble Supreme Court and High Courts in *Neelam Kumar Vs Dayarani* (2010) 13 SCC (298) (paragraphs 7,8,9), paragraphs 12,13 of *Gurbux Singh Vs Harminder Singh* (2010) 14 SCC 301 / 2004 SCC online Cal 468 / (2005) 2 Cal LT 576 / 2003 SCC online Cal 242 / AIR 2003 Cal 287 / *Vishnu Dutt Sharma Vs Manju Sharma* (2009) 6 SCC 379 / 2000 II CTC 449 / 1996 (I) CTC 496 / 1983 SCC Online P&H 210 / 2003 SCC Online Cal 178. Per contra, Ld. Advocate for respondent emphasizes on the behavior of appellant towards her husband and his family. It appears from the evidences on record that appellant wife was behaving dreadfully with her husband and in-laws, as she was unhappy and dissatisfied with financial condition of her husband and she disliked to live in joint family. As she was not comfortable at her matrimonial home, she used to insult petitioner in public and she liked more to reside at her parents' house. She never showed her readiness and willingness to live her peaceful matrimonial life with Prashant. The long deprivation of the husband from enjoyment of

happy and satisfied connubial relationship and her unwillingness to resume conjugal life would definitely amount to mental cruelty.

He further submitted that evidences on record shows that appellant never wanted to marry him because she had strong feeling of hatred towards him due to his unemployment and poor financial condition as appears from her note in personal diary (Exbt.1), her written statement and from her admission in cross-examination. She stated that 'she hates coward person like her husband'. Her act and conduct of hatred and ill-treatment towards her husband and in-laws caused deep anguish, disappointment and frustration to him. It appears from her cross-examination that she never wanted to lead happy matrimonial life with her husband. In such adverse situation the husband cannot reasonably be expected to continue his matrimonial relationship alone with the appellant. Indeed, there is a long and continuous separation between them from which it can be fairly concluded that their marital bond is beyond repair and now it became a fiction though supported by *vinculum juris* i.e., legal tie.

He further submitted that petitioner was under immense mental pressure when his joining in government service was stalled due to pending criminal case lodged by appellant against him and his family, in which they were falsely implicated in the case for demand of dowry. She brought the prosecution against them after getting knowledge of his selection in government job. Therefore, Ld. Trial court has rightly held this conduct of appellant as mental cruelty on her husband.

He also submitted that appellant wanted petitioner to live separately with her and daughter away from his family without any reasonable cause. In fact, it was not possible for petitioner to live away in a rented house as he was unemployed and had meagre income. He was dependent on his parents for requirements of his family as his income was uncertain and irregular. Putting pressure on petitioner by appellant to live separate from his family without reasonable ground also amounts to inflict mental torture on him.

He further stated that due to living of spouses separately since long the emotions in their marital bondage has already been evaporated and now their marriage became dead for all practical purposes as no chances of their reunion is left. So, it can be fairly concluded that their marital bond is now beyond repair and a fiction though supported by *vinculum juris* i.e., legal tie. The continuance of such marriage would itself amount to cruelty.

At last, he concluded his submission by stating that appellant has her independent source of income as she is employed as an Anganbari worker and her daughter has become major now. In support of his contention, he placed reliance on the ratio decided by apex court in *Naveen Kohli vs Neelu Kohli*, AIR 2006 SC 1675, *Satis Sitole vs Ganga* AIR 2008 SC 3093 and *Maya Devi vs Jagdish Prasad*, AIR 2007 S.C 1426. Therefore, he submitted for confirmation of judgment and decree of Ld. Trial Court by dismissing this appeal.

We have considered the impugned judgment and have gone through the evidence on record necessary for determination of points involved in this appeal. Indeed, the instant Matrimonial Suit was instituted on the application of husband Prashant Kumar Mandal in which he prayed for divorce from appellant on the ground of cruelty inflicted on him by filing a false criminal case to prevent the petitioner from joining his government job, compelling him to live separately from his parents and other cruel acts amount to torture on him.

In respect of filing a false criminal case by appellant to cause hurdles for petitioner-husband in joining his government job, the contradictions in her statements in written complaint and admissions in cross-examination, are material. On the fact of torture for demand of dowry she stated in her written complaint (Exhibit 2) that since her marriage she was residing at her matrimonial home jointly with her husband and in-laws, where they inflicted torture on her for demand of money in dowry as the articles given in marriage were of inferior quality. When she failed to satisfy their demand, they drove her out from matrimonial home in July 2006 and was living at her brother's house since then, but she admitted in her cross-examination (held on 11th May 2009) that "on 26th June 2007 I was lastly driven out by my parents-in-law and since then I am residing in my father's house".

These evidences show dichotomy in statements of appellant on the date when she was lastly driven out from her matrimonial home and since when she was residing at her parent's house. Admittedly she stated in her written complaint dated 04th July 2007 (Exhibit 2) that she was ousted

from her matrimonial home by accused persons in July 2006 and since then she was residing at her brother's house, while admitted in her cross-examination that she was driven out from her matrimonial house by husband and his family on 26th June 2007 and she was residing at her parents' house since then.

Indubitably, both statements cannot coexist together as they reveal contradictions in date of occurrence of alleged offence of driving away of appellant from her matrimonial home by husband and his family. It is evident from her statements the alleged act to have happened on two different dates; both about a year apart. It indicates that any one of the statements must be false.

Moreover, the Exhibit 2 does not convey any specific date and time of occurrence of act of her expulsion from matrimonial home by respondent and his family. Mere referring to July 2006 is not sufficient to communicate the information about date and time of occurrence. On the other hand, she stated specific date of 26th June 2007 as date on which she was driven out from her matrimonial house by husband and his family in cross examination. Such vague, contradictory and incomplete statement does not inspire confidence as to its veracity. The court cannot rely on evidences of dubious and indecisive nature as it lacks probative force. Such contradiction in evidence is vital in nature.

Contradictory statement on the reasons for demand of dowry also appears from her statements in Exhibit 2 which reveals that her husband and his relative inflicted torture on her for demand of dowry as the quality

of articles given in dowry were not good. So, they demanded more money from her to compensate the same.

On the other hand, she stated in her examination-in-chief that at the time of marriage Rs. 125,000/- was demanded on behalf of petitioner but her widow mother managed to pay only Rs. 90,000/ in dowry, and assured them to pay the remaining amount later. They subjected torture on her for demand of remaining unpaid amount of dowry from her.

But in paragraph 6 her examination-in-chief she averred that her mother-in-law ousted her out from Kamarpukur by stating her to bring Rs. 1,25,000/- from her parents required for the service of her husband. All these statements are inconsistent in itself, so fails to inspire confidence of court. Three different stories relating to demand of dowry are not reliable.

The evidences also reveal discrepancies in the date when she was driven out from matrimonial home. Exhibit 2 shows that she was driven out from her matrimonial home in July 2006, whereas she admitted in her cross-examination that she was driven out from her matrimonial home on 26th June, 2007. Both speaks about the spouses living apart latest by 26th June, 2007, but this contention is also not reliable as they admitted that they stayed together in rented house at Ramjibanpur from 14th August 2006 to 03rd March 2007. Once she was driven out from her matrimonial house in July 2006 and was residing at her parent's house, then how could she again stay with her husband 'in between 14th August 2006 to 03rd March 2007? If she stayed with her husband after July

2006 i.e., from 14th August 2006 to 03rd March 2007, then her averment given in written complaint would be incorrect, as she averred that she was residing at her father's house since July 2006. Such paradoxical statement seems totally unreliable and untrustworthy.

Such inherent contradictions are sufficient to shake the credibility of witness and strengthen the presumption of bringing false prosecution against her husband intentionally to prevent respondent from joining his service of Sahayak Panchayat Assistant.

Moreover, appellant brought false prosecution against husband and his family on 04th July, 2007 for alleged act of torture inflicted on her since 2001, when she got information of his selection in government job, as it appears from her admission that "It is fact that I knew about my husband's selection as government employee." She was also aware about the impact of said criminal case on his joining in service, as she admitted that "my husband has been selected for government job but his service is not given due to police case." These evidences are sufficient to show her malice towards her husband. She willfully attempted to prevent him from joining in the service by bringing this criminal prosecution on false statements. Such cruel act of appellant has emotionally ruined him. He admitted that "My police verification against government service is not cleared for my wife's objection and police case. It is fact that my wife lodged police case against me." Her malice towards petitioner appears more prominent from her averment that she was driven out from matrimonial home first on 25th October 2001 but by virtue of a settlement she resumed to live there from 23rd November, 2002 but she was again

driven out on 03rd March, 2003 and faced turmoil in her matrimonial life; despite that she never took any initiative before proper authority to counter them. If she was suffering from torture since 2001 then what prevented her to take prompt steps against the husband? Why she waited for till 04th July, 2007? Nothing on record to explain these circumstances, which indicates about her doubtful conduct.

It is true that the foundation of a sound marriage is based on tolerance, adjustment and respect for one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. But the criminal case lodged by appellant intentionally to cause damage to husband Prashant by affecting his chance of joining government job; has certainly reined the possibility of acquiring his government employment and thus would amount to mental cruelty to him.

Moreover, bringing criminal prosecution on false statement by either spouse, amounts to mental cruelty as held by Hon'ble Supreme Court in *K. Srinivas Rao Vs D.A. Deepa* 2013 (5) SCC 226, *Anil Yashwant Karande Vs Mangal Anil Karande* decided on 23rd December, 2015. It was held that bringing false prosecution against husband and his family would invariably and indubitably constitute matrimonial cruelty, such as would entitle the spouse to claim a divorce.

Recently the issue of bringing prosecution on false statement is also considered as cruelty by Punjab and Haryana High Court in *Joginder Singh vs Rajwinder Kaur*. It is held that "once criminal litigation is

initiated between the parties, it leads to a point of no return. And if it is a false case filed by the wife merely to harass and humiliate the husband and his family, then the resultant bitterness rarely leaves any room or reason for reconciliation”.

Therefore Ld. Trial Court has rightly derived his inferences that the conduct of appellant amount to cruelty against her husband as she brought criminal prosecution against him on false statement and husband would be entitled to claim divorce.

It also appears that appellant had strenuous relation with her matrimonial family, so she wanted to live with husband separately from parents-in-law, but petitioner was not willing to live separate from his family. Resultantly, appellant lodged her complaint to Chandrakona police station and on intervention of local police; Prasant agreed to live with appellant in a separate rented house at Ramjibanpur, but without any justifiable cause. As per the terms of SALISI husband, wife and daughter lived together thereat, as it appears from her admission in cross-examination that “in between 14th August, 2006 to 03rd March, 2007, I was with my husband at my husband’s rented house at Ramjibanpur but parents-in- law did not stay with us at that time”. Despite his unemployment, insufficient income and socio-economic reason, Prasant resided there unwillingly, as it appears from his admission that ‘on the complaint of appellant police compelled him to live with her separately in rented house at Ramjibanpur’. The stay of petitioner at Ramjibanpur was not suitable for him either economically or professionally or socially because it is admitted fact that he was working as part-time teacher at

Kamarpukur and was residing there in a rented house. So professionally his stay at Ramjibanpur was not worthy to him as his workplace was at Kamarpukur. It was also not economically viable for him because income of petitioner was insufficient to bear expenses of two establishments. Due to thick social belief, it was not suitable for him to live separate because in our society, it is a pious obligation of the son to live and maintain the parents. A son living with his parents is absolutely normal in Indian culture and ethos. Despite that petitioner resided with appellant and his daughter from 14th August 2006 to 03rd March 2007, till the date when appellant left to her parents' house with all belongings. Appellant wanted to live separately from her in-laws without justifiable reasons while respondent husband wanted to live with his parents and family. This act of appellant claimed as cruelty by petitioner as she forced him to live separately to his parents to which his conscience was not allowed.

The question 'whether desire of appellant to have separate residence with her husband away from in-laws is a reasonable and legal desire or not' was considered by one of us **[Soumen Sen J.]** in FAT 275 of 2017 [*Smt. Kusha Sarkar Vs Sri Chandan Sarkar*] and it was observed that

“showing respect to the parents of the husband and elderly persons in her in-laws family is a descent expedition that the husband can reasonably expect from the wife and any unreasonable demand as insistence for separate living would amount to mental cruelty.”

This Court has expressed similar view on this matter in *Kakoli Das Vs Dr. Asish Kumar Das*, AIR 2003 Cal 287 in which it was observed that:

46. Gender equality is equality for both the spouse. No spouse enjoys predominance and can impose his / her decision or desire on the other. Where desires and demands of two spouses move in opposite directions and they fail to reconcile each of them should be prepared to accept the inevitable consequence of break-down of marital ties. When such disputes concerning respective rights, liberty, and obligation come to the Court of law for adjudication those are to be decided on the touchstone of reasonableness of conjugal living in the context of the society they live in. A reasonable demand or refusal to meet an unreasonable and obstinate demand does not constitute an act of mental cruelty.

Where husband lives separately the wife can very well demand that she will live with the husband at his place of residence. If she does not get proper respect, status and treatment from her parents-in-law or other relations of the husband, she can stay at a place of her choice away from such relations but in absence of any justifiable reason wife's demand for a separate residence may amount to obstinacy and an act of mental cruelty. Wife's insistence on separate residence per se cannot constitute a mental cruelty unless it is found to be totally unnecessary, unreasonable, inhuman and unfair. (emphasis supplied)

In the case of *Narendra vs. K Meena* (2016) 9 SCC 455 the Hon'ble Supreme Court has held that continuous efforts of a wife to separate her husband from his family would amount to cruelty and be a ground for divorce.

“In normal circumstances, a wife is expected to be with the family of the husband after the marriage. She becomes integral to and forms part of the family of the husband and normally without any justifiable cause and strong reason she shouldn't live separate from their parents.”

Therefore, this act of appellant is also amount to mental cruelty against husband.

It is fact that Indian culture nurtures the concept of pious obligation of the son to maintain his parents. If a wife makes an attempt to deviate the son from the normal practice and normal custom of the society, she must have some justifiable reason for that and in this case, we do not find existence of any justifiable reason, except the instances of clash of ego on trifle domestic issues and problems related to fulfillment of financial requirements. The appellant wife wanted the respondent to get separated from his family. It is not common practice for a son in India to get separated from parents at the instance of the wife. Moreover, the evidence shows that petitioner was part-time teacher in Kamarpukur and was also earning from tuition. He was residing in a rented room at Kamarpukur as he was working there. He had no reason to reside at

Ramjibanpur despite that he resided with appellant and his daughter in rented room for the sake of his peaceful matrimonial life.

Thus, the desire of appellant to have separate residence with her husband away from in-laws is not based on justifiable reasons, as such it amounts to cruelty. Normally no husband would tolerate such acts of wife and no son would like to be separated from his parents and other family members. The persistent effort of the wife to constrain the husband to be separated from the family would be torturous for the husband as Apex Court has opined in above referred case.

The several instances of rude behavior including her belligerent attitude towards the petitioner and his family is appears from notes made in her personal diary. She expressed there in that “I hate that coward to whom I am going to marry” and that ‘she had no consent to marry to unemployed person like him and was tried to stop this marriage as she wanted to marry elsewhere, even after finalization of this marriage but her parents forcibly married her to petitioner’. The same is also affirmed by her in her cross-examination where she stated that “I had no intention to marry my husband so I have not accepted him cordially till now”. It indicates that appellant was not happy with her marriage as she stated that ‘she wanted to marry elsewhere’. Despite that husband tried his level best to accommodate with her. He always tried to maintain his marital tie. That’s why he and his mother went to her parents’ house on 24th July 2008 to bring her and his daughter Trishna back to matrimonial home and to settle the criminal case but she didn’t respond well with them rather Jharna became furious and insulted them badly. She refused to

return to her matrimonial home. After hearing about his service, she stated that there will be no compromise and she will not let him join his service. These facts amount to mental cruelty on husband. [See: *Shobha Rani v. Madhukar Reddi*, (1988) 1 SCC 105, AIR 2005 SC 334. *Vinita Saxena v. Pankaj Pandit*, (2006) 3 SCC 778, *Parveen Mehta v. Inderjit Mehta* (2002) 5 SCC 706, *V. Bhagat v. D. Bhagat (Mrs.)*, (1994) 1 SCC 337, *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511 and *Gurbux Singh Vs Harmander Kaur* (2010) 14 SCC 301.]

Apart from the above, it is fact that the spouses were living separately since March 2007, as PW1 admitted that “Since 30th March 2007 I am residing separately.” The same is affirmed by appellant in her cross-examination. She stated that “she is separate from her husband since 03rd March 2007”. It emanates from the admission of the parties that the spouses are living separately for more than 16 years. On the issue of long separation of spouse Hon’ble Supreme Court has expressed his view in *Satish Sitole vs Smt. Ganga*, (2008) 7 SCC 734 that

“Long separation of spouse is in itself is a good ground for divorce because in that situation the marriage between the parties is considered as dead for all practical purposes and there is no chance of it being retrieved, the continuance of such marriage would itself amount to cruelty, and, accordingly, in exercise of his powers under Article 142 of the Constitution we direct that the marriage of the appellant and the respondent shall stand dissolved. It is held that “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”.

In addition to that husband had no intention to lead his conjugal life, due to incessant cruelty inflicted by wife upon him. He completely lost his affection towards his wife as he admitted that “I have no intention to reside with my wife and lead a marital life because I lost faith upon her and she removed all her belongings from my rented house and I became street boy ...”. He further admitted that “My police verification against a government service is not cleared for my wife’s objection and police case. It is fact that my wife lodged police case against me. Even if the police case was withdrawn, I am not in a position to forget the past of my wife and to reside with her. I am not willing to lead any life with my wife and even by residing separately.” The Hon’ble Supreme Court has expressed his view on this point in *Sirajmohmed Khan Janmohamad Khan v. Haizunnisa Yasinkhan & Anr.*, (1981) 4 SCC 250, 1981 AIR 1972, that continuous cessation of marital intercourse would lead to legal cruelty.

Long separation, mental and physical torture, unwillingness of party to live together, has left no scope to repair their marital bond. In such condition the marriage has become 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 which may lead to mental cruelty. So the denial to grant a decree of divorce would be disastrous for the parties. In our opinion, wisdom lies in accepting the pragmatic reality of life and takes a decision which would ultimately be conducive in the interest of both the parties.

At last, it is pertinent to consider on the question that whether the Ld. Trial Court is competent to decide the falsity of content of written complaint filed against the respondent and whether it amounts to introduction of third case, if the written complaint is considered in evidence which is the main ground for challenge of impugned order.

Indeed, Trial Court may consider on the facts relevant to fact in issue which is admissible in evidence. It appears from evidence on record that the FIR and written complaint was duly produced before the trial court and was marked Exhibit 2 on proof. It's the settled law that content of exhibited documents may be considered by court for determination of fact in issue. Therefore, we do not find any irregularity if Trial Court has drawn his presumption of cruelty of appellant against husband and his family on the basis of content of Exhibit 2. So, there is no question of introduction of third case arises when Trial Court considered FIR for drawing contradictions in the statements to compare the same with her other statements.

Therefore, we are of opinion that matrimonial court has rightly considered on the statements of wife made in written complaint before police to evaluate her conduct.

We also held that adverse consequence of pending criminal case on joining government job would amount to mental cruelty on petitioner-respondent-husband. Similarly the act of appellant to compel the husband for living separately from his joint family without any justifiable reason would amount to inflict cruelty on petitioner – husband as well. Therefore, we find no perversity in the judgment and decree of Ld. Trial Court as he rightly observed the presence of element of mental cruelty in the behavior of appellant towards respondents and granted decree of divorce accordingly. We do not find any reasons for interference in the impugned judgment and decree. Accordingly, this appeal has been dismissed but with no order as to costs.

In view of the aforesaid we are of the view that the Trial Court was justified in decreeing the suit in favour of the respondent. However, even if we dismissed the appeal, we cannot completely ignore the fact that they have a child and both the parents are required to look after the child for proper upbringing and joint parenting but Ld. Trial Court did not order for alimony.

However, Hon'ble Co-ordinate bench of this High Court has ordered to pay Rs. 1000/- p.m. to wife and Rs. 2500/-p.m. to child towards their maintenance on January 7, 2010 in condition with C.A.N 5996 of 2009.

The learned counsel for the appellant made his alternative submission that if appeal is not allowed, appellant is entitled for proper alimony to maintain herself and her daughter Trishna Mondal because she has insufficient source of income to maintain themselves and to bear

the liability for proper upbringing, education and marriage of her daughter from her meagre monthly income of Rs. 8313/- received in honorarium in lieu of her service rendered to Chandarkona-I I.C.D.S. Project as Anganwadi worker. He relied on the ratio decided by Hon'ble Supreme Court decided in *Uma Rani Vs D. Vivekannandan* 2000 (II) CTC 449.

Per contra, Ld. Advocate for respondent opposed the contention of appellant by submitting that she is not entitled to get any alimony as she is a working lady and is employed as Anganbari Worker under I.C.D.S. Project and her monthly income is about Rs. 8313/-. She has sufficient source to maintain herself. On the other hand, husband is earning only Rs 37,645/- and after deduction of Rs. 4000/- in GPF and Rs. 150/- in P.Tax, net salary stands to Rs. 33,495/- p.m. as it appears from the pay slip of May 2022 but he orally submitted that at present respondent is drawing his salary around Rs. 45,000/- only. He also submitted that husband has liability of his aged ailing parents.

It is true that section 25 of the Hindu Marriage Act, 1955, provided that on the application made to the Court by either party or even without an apply or as oral request the Court may pass an order of permanent alimony and maintenance at the time of passing decree or at any time subsequent there to. Hon'ble Supreme Court has decided in *Uma Rani Vs D. Vivekannandan* 2000 (II) CTC 449 that-

'No need of filing separate written application for grant of permanent alimony, but it can be granted on the basis of oral

application.’ (Paragraph 10). In *Jayakrishna Panigrahi vs Surekha Panigrahi* the Hon’ble Andhra Pradesh High Court has held that-

"Despite the dissolution of marriage at the instance of husband, it would also be a fit case to grant maintenance to the wife, even in absence of formal application before the Court".

In fact, the purpose of alimony is to provide financial support by one spouse to another after divorce but there is no set formula to decide quantum of alimony. The alimony amount can be provided as a monthly or periodical payment or in the form of a lump-sum amount as a one-time payment. If the alimony is being paid in the form of monthly payments, the Supreme Court of India has set 25% of the net monthly salary that should be granted to the wife by the husband.

For that income of parents as reveals from their respective affidavits of assets and liabilities that husband drawn his gross salary of Rs. 37,645/- in the month of December 2021, but he is presently drawing about Rs 45,000/- p.m. as orally submitted by his Ld. Advocate, while wife receives honorarium of Rs. 8313/- per month from her employment of Anganwari Worker, which is insufficient to maintain herself and her daughter are taken into considerations. The husband is earning a sizable amount, namely, about Rs. 45,000/- per month. So, we fix a sum of **Rs. 6000/-** per month towards maintenance of wife and another sum of **Rs. 6000/-** per month towards the maintenance, study and other expenses of daughter to be paid by the husband.

For all the above reasons, we confirm the decree of divorce passed by the Ld Trial Court in Matrimonial Suit No. 512 of 2008 dated 25th May, 2009 and grant a decree for maintenance of **Rs. 6000/-** per month for wife and **Rs. 6000/-** per month for daughter payable by the husband, from the date of this order. Said amount should be paid in the designated bank accounts of Jharna Mondal and of Trishna Mondal by the 14th day of the succeeding month. To this extent, the decree of the Ld. Trial Court is modified but in other respects, the decree is confirmed. The F.A 25 of 2010 is partly allowed as mentioned above.

We make it clear that parties are at liberty to take appropriate steps before the court of competent jurisdiction; for lawful modification in the amount of maintenance, if required.

The appeal is disposed of; accordingly. The applications are stand dismissed.

In the facts and circumstances of the case we direct the parties to bear their own costs.

Urgent Xerox certified copy of this judgment, if applied for, the same be supplied within seven days on usual terms.

I agree

(Soumen Sen, J.)

(Uday Kumar J.)