



[2026:RJ-JP:40348-DB]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Civil Miscellaneous Appeal No. 1736/2021
CNR: RJHC020622112021 | URN: CMA / 2611U / 2021

██████████ Son Of Shri ██████████ Alias ██████████ Aged About 30 Years,
R/o ██████████ ██████████ Tehsil ██████████ District ██████████ (Raj.)
-----Appellant

Versus

Smt. ██████████ W/o Shri ██████████ D/o ██████████ Aged About 29
Years, R/o ██████████ ██████████ Tehsil ██████████ District ██████████
Presently Residing At Village ██████████ Tehsil ██████████ ██████████
(Rajasthan).
-----Respondent

For Appellant(s) : Mr. R B Sharma Ganthola
For Respondent(s) : Mr. T.C. Vyas
Mr. Vinod Kumar Sharma
Mr. Tanay Jareda

**HON'BLE MR. JUSTICE INDERJEET SINGH
HON'BLE MRS. JUSTICE SANGEETA SHARMA**

Order

01/10/2026

1. This appeal has been filed on behalf of the appellant (hereinafter to be referred as 'husband') under Section 19 of the Family Courts Act, 1984, against the judgment and decree dated 02.09.2021 passed by the learned Family Court, ██████████ whereby the application filed by the husband against the respondent (hereinafter to be referred as 'wife') under Section 13 of the Hindu Marriage Act, 1955 (hereinafter to be referred as 'the Act of 1955') was dismissed.
2. Brief facts of the case are that the husband filed an application against the wife under Section 13 of the Act of 1955 before the learned Family Court stating therein that marriage



between the parties was solemnized on [REDACTED] and out of the said wedlock one daughter was born. The husband further stated in his application that behavior of the wife from the very beginning of marriage was cruel with the husband and his family members and she was in the habit of going to her parents home without informing the husband. He further stated that the wife and her father threatened to lodge a false criminal case against him and at one point of time, a compromise was entered between husband and wife and the husband paid Rs.60,000/- to the wife. Thereafter, the wife for sometime resided with the husband and in the month of April, 2009, the wife again left her matrimonial home and, thereafter, the husband tried to take the wife back to her matrimonial home but she refused. Thereafter, on [REDACTED] the husband filed an application under Section 9 of the Act of 1955 before the learned Family Court, [REDACTED] wherein the wife refused to live with the husband. The husband further stated that in the month of April, 2013, the wife lodged a criminal complaint against the husband under Sections 498A and 406 IPC, in which the police after investigation, submitted the negative final report. However, on the application submitted by the wife, the Court of competent jurisdiction took cognizance against the husband under Section 498A IPC. The husband further stated that the husband along with his family members and community members tried their level best to save his matrimonial relationship with the wife but despite efforts being made, the wife refused to reside with the husband. He further stated that wife is living separately from the husband since 2009 and lastly, prayed for allowing the divorce application.



3. Reply to the said application was filed on behalf of the wife before the learned Family Court, in which she has denied the allegations levelled by the husband against her. She has further stated that the behavior of husband and his family members was cruel with her and they were also in the habit of demanding dowry. On account of which, she had no other option except to lodge a criminal case against the husband with regard to demand of dowry. She further stated that the husband has not returned her *stridhan* back and the husband is working as Police Constable in Rajasthan Police and he wants to marry again. Lastly, prayed for dismissal of the application.

4. On the basis of the pleadings of the parties, the learned Family Court framed the following issues:

- (i) आया प्रार्थी, अप्रार्थी के साथ दिनांक [REDACTED] को हुआ विवाह अभित्याग, क्रूरता तथा प्रार्थना पत्र में वर्णित आधारों पर विच्छेद करवाने का अधिकारी है ?
- (ii) आया प्रार्थी द्वारा पेश दाम्पत्य अधिकारों की पुर्नस्थापना की याचिका खारिज होने से यह याचिका काबिले खारिज है ?
- (iii) अनुतोष ?

5. The husband in support of his case, submitted his own evidence as AW1-[REDACTED], AW2 [REDACTED], AW3-[REDACTED] [REDACTED] and AW4-[REDACTED] and also submitted the documentary evidence Ex. A-1 to Ex. A-3. The wife submitted her own evidence as NAW-1 and NAW-2 and also submitted the documentary evidence Ex.NA-1 to Ex.NA-6.

6. The learned Family Court after recording the evidence and hearing the parties, dismissed the application filed on behalf of the husband *vide* judgment and decree dated 02.09.2021.



7. Being aggrieved by the judgment and decree dated 02.09.2021 passed by the learned Family Court, this appeal has been filed on behalf of the husband.

8. Learned counsel for the husband submitted that the wife has lodged a false criminal case against the husband under Section 498A IPC, in which after facing the trial, the husband and his family members were acquitted by the learned trial Court *vide* its judgment dated [REDACTED]. The certified copy of the said judgment has been placed on record by the husband along with additional affidavit. Learned counsel further submits that the wife has also lodged a complaint against the husband under Sections 494 and 120B of IPC, in which the police after investigation has closed the proceedings. The said report submitted by the police before the Court of Chief Judicial Magistrate, [REDACTED] [REDACTED] [REDACTED] dated [REDACTED] has also been placed on record by the learned counsel for the appellant before this Court along with additional affidavit. Learned counsel further submitted that apart from this, the wife has also lodged a case under Domestic Violence Act as well as one application under Section 125 Cr.P.C. against the husband. Learned counsel further submits that both husband and wife are living separately since the year 2009 and there is no chance of their re-union. Learned counsel further submits that the findings recorded by the learned Family Court on the issue of cruelty is perverse and the same deserves to be set aside.

9. Learned counsel for the wife opposed the submissions made by the learned counsel for the husband and submitted that the husband does not want to keep the wife with him and the wife is still ready to go and live with him. Counsel further submits that





the husband is not regularly paying the maintenance. He further submits that the findings recorded by the learned Family Court are based on proper appreciation of evidence and the same do not require any interference by this Court. Counsel further submits that the husband has deliberately withdrawn the application under Section 9 of the Act of 1955 filed before the learned Court below and the wife was always ready to live with the husband.

10. In support of his contentions, learned counsel has placed on record the judgments passed by Hon'ble Supreme Court in **Gurbux Singh Versus Harminder Kaur 2010 DNJ (SC) 1134**, by Rajasthan High Court in **Srikant Mathur Versus Smt. Rajni D.B. Civil Writ Appeal No. 1528 of 1999 dated 23.01.2007**, **Madan Mohan Sharma versus Manju Madan Sharma AIR 2018 Rajasthan 49** and by Patna High Court in **Bhola Kumar v. Seema Devi @ Dolly AIR 2015 PATNA 119**.

11. Heard learned counsel for the parties and perused the record.

12. The Hon'ble Supreme Court in the matter of **Rakesh Raman Versus Kavita** reported in **2023 17 SCC 433**, has held as under:

"17. Under similar circumstances, this Court in *R. Srinivas Kumar v. R. Shametha* [*R. Srinivas Kumar v. R. Shametha*, (2019) 9 SCC 409 : (2019) 4 SCC (Civ) 522] , *Munish Kakkar v. Nidhi Kakkar* [*Munish Kakkar v. Nidhi Kakkar*, (2020) 14 SCC 657] and *Neha Tyagi v. Deepak Tyagi* [*Neha Tyagi v. Deepak Tyagi*, (2022) 3 SCC 86 : (2022) 2 SCC (Civ) 29] has held that an irretrievable marriage is a marriage where husband and wife have been living separately for a considerable period and there is absolutely no chance of their living together again. In all the above cited three cases, this Court in exercise of its power under Article 142 of the Constitution of India has dissolved the marriage on the ground of irretrievable breakdown as a ground, which





otherwise does not exist under the Hindu Marriage Act.

18. In *Naveen Kohli* [*Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558] , a strong recommendation has been made by this Court to the Union of India to consider adding irretrievable breakdown of a marriage as a ground for divorce under the Hindu Marriage Act."

In the matter of **Rani Narasimha Sastry Versus Rani**

Suneela Rani reported in **2020 18 SCC 247**, the Hon'ble

Supreme Court has held as under:

"**13.** In the present case, the prosecution is launched by the respondent against the appellant under Section 498-A 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 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 the respondent under Section 498-A IPC, the High Court [*Narsimha Sastry v. Suneela Rani*, 2017 SCC OnLine Hyd 714] made the following observation in para 15 :

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

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 of 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 IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has been meted out on the husband. As per the pleadings before us, after parties having been married on 14-8-2005, they lived together only 18 months and, thereafter, they are separately living for more than a decade now."



In the matter of **Raj Talreja Versus Kavita Talreja** reported in **2017 14 SCC 194**, the Hon'ble Supreme Court has held as under:

"**11.** Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act, 1955 (for short "the Act"). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty. In the present case, all the allegations were found to be false. Later, she filed another complaint alleging that her husband along with some other persons had trespassed into her house and assaulted her. The police found, on investigation, that not only was the complaint false but also the injuries were self-inflicted by the wife. Thereafter, proceedings were launched against the wife under Section 182 IPC."

In the matter of **Joydeep Majumdar Versus Bharti Jaiswal Majumdar** reported in **2021 3 SCC 742**, the Hon'ble Supreme Court has held as under:

"**13.** Proceeding with the above understanding, the question which requires to be answered here is whether the conduct of the respondent would fall within the realm of mental cruelty. Here the allegations are levelled by a highly educated spouse and they do have the propensity to irreparably damage the character and reputation of the appellant. When the reputation of the spouse is sullied amongst his colleagues, his superiors and the society at large, it would be difficult to expect condonation of such conduct by the affected party."



13. We have again gone through the judgment and decree passed by the learned Family Court as well as the evidence submitted by the parties before it.

14. The wife has filed a complaint against the husband under Sections 494 and 120B of IPC, knowing it well that the husband is working as Police Constable in Rajasthan Police, in which the police after investigation, filed the negative final report before the concerned Magistrate, which was accepted. In our considered opinion, the wife has tried to malign the image of the husband in the department which amounts to cruelty against the husband.

15. We have also considered the fact that the wife has lodged a false criminal case against the husband under Section 498A IPC, in which the husband and his family members were acquitted by the learned trial Court *vide* its judgment dated [REDACTED] against which, the appeal was filed on behalf of the wife, which is still pending. In our considered opinion, lodging of false criminal case by the wife amounts to cruelty against the husband.

16. We have also considered the fact that the husband and wife are living separately for more than 15 years and after such a long period, asking them to live together at this point of time amounts to cruelty to both of them.

17. We have also considered the fact that the wife is living separately since 2009 and levelled allegation of adultery against the husband, which was not proved either before the learned Family Court or before the Criminal Court. In our considered opinion, the wife has deserted the husband without any justified reason.



18. The Hon'ble Supreme Court in the matter of **Malathi Ravi, M.D Versus B.V. Ravi, M.D** reported in **(2014)7 SCC 640** has held as under:

"**18.** To appreciate the rivalised submissions raised at the Bar, we have carefully perused the petition and the evidence adduced by the parties and the judgment of the Family Court and that of the High Court. The plea that was raised for grant of divorce was under Section 13(1)(i-b) of the Act. It provides for grant of divorce on the ground of desertion for a continuous period of not less than two years immediately preceding the presentation of the petition. The aforesaid provision stipulates that a husband or wife would be entitled to a dissolution of marriage by decree of divorce if the other party has deserted the party seeking the divorce for a continuous period of not less than two years immediately preceding the presentation of the petition. Desertion, as a ground for divorce, was inserted in Section 13 by Act 68 of 1976. Prior to the amendment it was only a ground for judicial separation."

19. In view of the above discussion, the finding recorded by the learned Family Court on issue No. 1 is perverse and the same is accordingly set aside. The issue No. 1 is decided in favour of the husband.

20. In that view of the matter, the appeal filed on behalf of the husband is allowed and the marriage solemnized between the parties on [REDACTED] stands dissolved.

21. Office is directed to prepare the decree accordingly.

22. Record of the concerned Court below be sent back.

23. All pending applications, stand disposed of.

(SANGEETA SHARMA),J

(INDERJEET SINGH),J

50/SHIVANI

