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FA-133-2007

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL DHAGAT

&

HON'BLE SMT. JUSTICE ANURADHA SHUKLA

ON THE 26th OF AUGUST, 2025FIRST APPEAL No. 133 of 2007

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Appearance:

Shri Eshaan Datt - Advocate for the appellant.

None for the respondent.

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Heard on :- 18.08.2025

Pronounced on :- 26.08.2025

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JUDGMENT

Per. Justice Anuradha Shukla

Appellant/husband is assailing the impugned judgment and decree dated 08.11.2006 passed in Hindu Matrimonial Case No.36-A/2006 by the First Additional District Judge, Hoshangabad, by which a divorce petition filed by appellant / husband on the ground of cruelty was dismissed.

2. Undisputed facts in this case are that parties were married on 29.04.2003 according to the Hindu rites and rituals. Out of this wedlock a girl child was born to them. Admittedly, respondent/wife sustained burn injuries in an incident. The fact that parties are living separately since 2005 has not been specifically denied by respondent/wife; therefore, this fact is deemed to be admitted.



3. In divorce petition it is summarily claimed that the behavior of respondent/wife became very unpleasant just after a month from the date of marriage; she had a strong dislike for appellant and used to ill-treat him and give threats on trivial issues; she set her clothes on fire which was successfully put off with much efforts by appellant and his family members. In the meantime, respondent/wife became pregnant and compelled appellant to send her to parental house, but in 8th month of pregnancy appellant forcibly brought her back for institutionalized delivery and got her admitted in _____ where she delivered a girl child. After one month she again went to her parental house alongwith the child and refused to come back. On 16.06.2005, appellant came to her parental house and on his persistent request respondent/wife came back to her matrimonial house, however, on 20.06.2005, she tried to immolate herself by pouring kerosene oil. She sustained burn injuries in this incident and was admitted in the Hospital for almost a month. She suffers from many health problems including passing urine while sitting on chair or bed. A request has, therefore, been made to allow the divorce petition and grant a decree of divorce on the ground of cruelty.

4. Respondent/wife has contested the divorce petition claiming that ever since marriage she was being harassed by appellant and his family members, and she never insisted to send her to parental house; false allegation of suicide by setting her *saree* on fire was made with intention to counter allegation made in criminal case. After the birth of girl child, appellant and



his family members became very hostile and cruel towards appellant and on 20.06.2005 the mother of appellant, the brother of appellant and sister-in-law (*bhabhi*) of appellant jointly poured kerosene oil on respondent/wife and set her on fire. She was rescued by neighbors and was taken to the hospital when her parental relatives arrived. Respondent/wife was very keen to lodge the FIR against the culprits, but for the advice of reputed members of society, she decided not initiated any criminal proceeding. She is always willing to cohabit with appellant and allegations about her ill health or uncontrolled physical condition has no truth. On account of burning, there are some physical changes in her appearance and for this appellant wants to wriggle out of this relationship. A request has therefore been made to dismiss the divorce petition.

5. On the basis of pleadings of both the parties, the trial Court framed the issues and recorded the testimony of both the sides. After considering the merits of the case, the trial Court dismissed the petition, hence this appeal.

6. The grounds raised in this appeal are that the learned Family Court could not appreciate the facts and evidence in correct perspective while dismissing the divorce petition; it was ignored that appellant was repeatedly humiliated and insulted while making attempts to get the respondent/wife back to the matrimonial house, however, she was refusing without any justifiable reason to live with him; it was ignored that the relationship between the parties never rested on affection or mutual respect; respondent/wife deserted the appellant without any justified cause and her



irresponsible behavior was barbaric to appellant. It is, therefore, submitted that on grounds of mental cruelty and desertion, the divorce petition was supposed to be decreed, but without giving any justifiable reasons, the divorce petition was dismissed by a perverse judgment. A request has therefore been made to set aside the impugned judgment and decree and allow the first appeal by decreeing the divorce petition.

7. Respondent/wife failed to appear before this Court at the stage of final submission of arguments. Court proceeded *ex-parte* against respondent.

8. Heard counsel for the appellant and perused the record.

9. Appellant/husband is assailing the impugned judgment and decree on the grounds of cruelty and desertion. Divorce petition was filed on 13.03.2006. After solemnization of marriage on 29.04.2003 till the filing of divorce petition, the parties occasionally lived together in interregnum period of three years. There was no continuous separation for two years or more. The petition reveals that the parties last lived together in the month of June, 2005. In absence of two years of continuous separation, the ground of desertion was not available to the husband.

10. Section 13(1)(i-b) of the Hindu Marriage Act regarding ground of desertion for a decree of divorce reads as under :-

“Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by decree of divorce on the



ground that the other party has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition.”

11. The aforesaid legal requirement has not been satisfied in the present case so far as the ground of desertion is being pressed upon in the present appeal. Therefore, we do not find any need to examine the facts and evidence on this aspect.

12. The other ground raised in appeal is cruelty. The appellant/husband had requested for dissolution of marriage as respondent/wife was not only misbehaving and giving threats to him but she actually set herself on fire by pouring kerosene. According to appellant, this behavior was very abnormal and put him and his family members under scary thoughts and tremendous shock. The counter assertion made by respondent/wife was that she was set on fire by the close relatives of appellant/husband namely his mother, brother and sister-in-law and now appellant wants to get the marriage dissolved for the simple reason that there is substantial disfiguration in her body as respondent/wife has sustained burn injuries.

13. In the light of these contrasting sets of facts submitted by the parties regarding the episode of immolation, we are required to undertake a close scrutiny of evidence. Admittedly, after this incident which occurred in the matrimonial house of the parties, the respondent/wife was taken by the appellant to the hospital where she was admitted and given treatment for a long time. In para-07 of her examination-in-chief,



the wife has claimed that after she was set on fire by the relatives of appellant, the fire was extinguished by neighbors but no such neighbor was examined by her to give strength to her contention. Any such neighbor would have been a very relevant witness to establish that it was not a case of self immolation, but a criminal act committed by the relatives of appellant, still, there is no whisper to explain why the respondent/wife did not examine such an important witness.

14. Respondent/wife is claiming that she was set on fire by relatives of her husband but she not only failed in examining the neighbors as witnesses to the incident, but she also did not get any FIR lodged against the said relatives regarding this serious criminal act. Her explanation is that she was advised by the respected members of society to abstain from lodging F.I.R., but this explanation would have been of some value if the relationship between the parties normalized thereafter. From the evidence, it is clear that things became more worse after the incident and soon thereafter respondent/wife went to her parental house along with the child and did not return to her matrimonial house.

15. Respondent/wife is making allegations that on account of her disfiguration and physical changes in her appearance, appellant/husband does not want to cohabit with her, but this accusation appears to be far from truth. If intervention of respected members of society was the reason for not initiating criminal proceedings against a wrong doer regarding the burn episode then respondent/wife had a very formidable right to once again approach those respected members of the society and solicit their



intervention to convince the appellant/husband for cohabitation and restitution of their marriage ties. Statements of respondent/wife (DW-1) and her brother (DW-2) do not give any indication that the indulgence of those respected members of the society was ever sought by them on this objective.

16. The trial Court in para-08 of its judgment has placed heavy reliance on the reconciliation proceedings held between the parties. Record of family Court reveals that on 10.08.2006 the presiding Judge had conversation with the parties to explore the possibilities conciliation between them. Section 9 of Family Court Act and Section 23 of Hindu Marriage Act make it incumbent on the Court dealing with matrimonial cases to nail down every endeavor to bring about a settlement/reconciliation between the parties. We can say what transpired on 10.08.2006 in the trial Court was a Court assisted mediation. The objectionable part of this proceeding was, however, to record the conduct of the parties and the result of proceeding in the trial Court's order sheet dated 10.08.2006. This course has caused an embarrassment to the solemn obligation of confidentiality. It is ethically and legally acknowledged imperative that mediator and the parties should keep secret of issue identified during the pacification procedures and no deviations can be accepted.

17. In **Motiram and another Vs. Ashok Kumar and another (2011) 1 SCC 466** the Apex Court referred a matter for mediation in an attempt to resolve the dispute between the parties and in the mediator report subsequently placed before the Court, several settlement proposals made by the parties



were detailed. The Supreme Court stressed that mediation proceedings are strictly confidential and mediator should send the settlement agreement signed by the parties to the Court only when mediation is successful and should not mention what transpired during the mediation proceedings. The Court further observed that in an unsuccessful mediation, the mediator should simply inform that it was unsuccessful. The Apex Court has taken a view that any disclosure of the events happening during the course of mediation proceedings destroys the confidentiality of the process. We may add here that rules on confidentiality are in practice in mediation in matrimonial matters.

18. In aforesaid legal matrix, we find that a confidence was reposed by parties while engaging in conversation with the presiding Judge in an attempt to settle their dispute but trial Court failed it when it wrote down the behavior and the outcome of conversation in its order sheet. The question arises what is the remedy if in a Court annexed mediation the confidentiality of mediation process is compromised. The answer may be difficult, but it can certainly not be that the evidence available on record would be ignored and priority would be given to whatever was expressed in order sheet of the trial Court after mediation. Thus, the observations made by trial Court in its order sheet dated 10.08.2006 were in apropos and findings were to be strictly within the ambit of the facts and evidence available on record and nothing beyond that.

19. On the basis of foregoing discussion, we conclude that trial Court was incorrect in supplementing/replacing the facts and the evidence of the case



by its perceived notion which had the genesis in the mediation proceeding held with the parties. There is no evidence available on record which would suggest that at any point of time appellant/husband had expressed his feeling of loath or despise regarding the appearance or morphosis of respondent/wife after the fire episode. She herself is silent when and how appellant expressed any such feeling for her after the incident. Her brother has also not spoken any word on this point. Therefore, whatever has been expressed by the trial Court in the impugned judgment regarding the feelings of abhorrence entertained by appellant/husband against his wife is based on assumptions and misplaced perception and not on facts proved in the case. Accordingly, we do not concur with it.

20 . In the overall perspective we find that respondent/wife suffered a painful incident sustaining burn injuries for which she holds the relatives of appellant/husband responsible, but she has not produced any reliable evidence on this point and had also failed to initiate any criminal proceedings against the wrong doers. The excuse given for this slumbering approach is not appealing either, as the concerned respected members of society were not produced as witness before the trial Court nor were approached privately to get the dispute settled through them. On the other hand, appellant/husband has been consistent through facts and evidence to establish that the incident of burning was the result of self immolation and we do not have any reason to disbelieve this testimony and taking such a drastic step by a spouse is sufficient in itself to cause dread and fear in other spouse to avoid any bonding in matrimonial relationship.



21. It was held in **Samar Ghosh Vs. Jaya Ghosh (2007) 4 SCC 511** that 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, but if the situation becomes such that wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party or the treatment complaint of and the resultant danger or apprehension is very grave, substantially and weighty then such instances of human behavior may come within the purview of mental cruelty. In the present case the facts established reveal that in a moment of despair, respondent/wife set herself on fire and later put a blame on the relatives of the husband. This dreadful act itself is sufficient to hold that she has committed mental cruelty with appellant/husband and the trial Court was in error in not appreciating the facts evident on record and was even more so in replacing them with his own perceived notions, therefore, a good case of interference in the impugned judgment and decree has been made out. Accordingly, we allow this first appeal and set aside the impugned judgment and decree. Marriage solemnized between the parties on 29.04.2003 is declared to be dissolved under the provision of Section 13(1) (ia) of Hindu Marriage Act from the date of judgment.

22. Registry is directed to draw the decree accordingly.

(VISHAL DHAGAT)
JUDGE

(ANURADHA SHUKLA)
JUDGE



sjk/pnm