



IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 31ST DAY OF MAY, 2022

PRESENT

THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV

AND

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

MFA NO.102625/2015 (MC)

BETWEEN:

... APPELLANT

(BY SRI. SRINAND A. PACHHAPURE, ADVOCATE)

AND:

(BY SRI. S.R. HEGDE, ADVOCATE)

...RESPONDENT

MFA FILED UNDER SECTION 19(1) OF FAMILY COURT ACT, AGAINST THE JUDGMENT AND DECREE DATED 17.07.2015 PASSED IN M.C.NO.175/2014 ON THE FILE OF THE PRINCIPAL JUDGE FAMILY COURT, DHARWAD, DISMISSING THE PETITION FILED BY THE PETITIONER/HUSBAND UNDER SECTION 13(1)(ia) OF HINDU MARRIAGE ACT, 1955.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **K.S. HEMALEKHA J.**, DELIVERED THE FOLLOWING:

JUDGMENT

"*Quoad hume et quoad hume*, these people cannot consummate the marriage" quoted by the House of Lords (And Privy Council) in the case of **G. -vs- G.**, **[LR 1924 AC 349]**, holding that two people should not be tied up together for the rest of their life in a state of misery.

2. The present appeal is preferred by the husband assailing the judgment and decree dated 17.07.2015, passed in M.C. No.175/2014, on the file of Principal Judge, Family Court, Dharwad, whereby the petition filed by the husband under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act" for short) seeking decree of divorce on the ground of cruelty came to be dismissed.

3. The husband filed the petition under Section 13(1)(ia) of the Act, seeking decree of divorce on the ground of cruelty. The marriage solemnized on 13/05/2013 is not disputed by the parties. It is averred by the husband that the wife was co-operative for one month, however, her behavior altogether changed later on. It is averred that she refused to do household work, also started making allegations against her husband that he is incompetent to

discharge his matrimonial obligations, he is an unfit person to be a husband, the allegation of impotency was disclosed not only before him, but also before relatives of both parties, which caused lot of embarrassment to the husband resulting in mental torture, which was intolerable to lead the life with his wife and thus, sought for a decree of divorce.

4. On the other hand, the wife in her objections denied the averments made in the petition and averred that she had come to the matrimonial home to lead a happy married life, however, her dream to lead a happy married life went in vain due to the nature and distance maintained by the husband. It is averred by the wife that the husband is not interested in the martial life and he would always stay away for one or the other reason due to which it created a doubt in her mind regarding his competency

to lead marital life and that he might be an impotent person incompetent to lead marital life. It is further averred that she was always ready to discharge her matrimonial obligations and the husband, in order to cover his own defects, has filed the petition for divorce.

5. The Family Court framed the following points on the basis of the pleadings of the parties:

1. Whether the petitioner/ husband proves that the respondent/ wife subjected him to cruelty after solemnization of marriage?
2. Whether the petitioner/ husband is entitled to the decree of divorce as sought for?
3. What order?

6. The husband examined himself as PW.1 and got marked two documents at Exs.P1 and P2. On the other hand, wife examined herself as RW.1 and got marked documents at Exs.R1 and R2.

7. The Family Court, by its judgment and order dated 17.07.2015, dismissed the petition filed by the husband under Section 13(1) (ia) of the Act and directed the husband to pay Rs.8,000/- per month to the wife from the date of the judgment till he rejoins her company for leading future marital life.

8. Being aggrieved by the dismissal of the petition filed by the husband seeking divorce, the present appeal is preferred by the husband.

9. Heard Sri Srinand A. Pachchapure, learned counsel appearing for the appellant-husband and Sri S.R. Hegde, learned counsel for the respondent-wife.

10. It is the foremost contention of learned counsel for the appellant-husband that other than the wife disrespecting the husband as well as her in-laws and refusing to do the household work, had started

making serious allegations that the husband is incapable of discharging his matrimonial obligations.

The said allegation was not only made before the husband, but also before her and his relatives. This act of the wife has subjected the husband to mental and physical cruelty. It is more so contended that, the allegations so made, having not proved to be true, the Trial Court was not justified in dismissing the petition filed by the husband.

11. In order to substantiate his contention, learned counsel for the appellant has relied upon the following judgments:

(a) In **FCA 49/2005** in the case of **K.**

Srinivasa Sharma vs. T. Vijaya

Lakshmi by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh.

(b) In **S.B.Civil Misc. Appeal**

No.2015/2007 of **Mamta Goyal vs.**

Ramgopal by the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur.

(c) In **CMA No.3155/2002** of **Susarla**

Subrahmanyam Sastri vs.

Smt.S.Padmakshi, by the High Court of Andhra Pradesh at Hyderabad.

12. *Per contra*, learned counsel for the respondent-wife contended that the marriage between the husband and wife was never consummated, without there being any fault on the part of the wife and that the act of husband created a doubt in her mind regarding incompetency to perform his matrimonial obligations. It is further urged that she is always ready and willing to join the husband inspite of the incapability of the husband to perform his marital obligations and thus, sought to dismiss the appeal and confirm the judgment and decree of the trial Court. In

support of his contention, the learned counsel for the respondent-wife has relied upon the following judgments:

- i) AIR 2012 Calcutta 220** in the case of ***Shyamal Samaddar vs. Smt. Sampa Samaddar (Nee Guha Thakurta)***.
- ii) MFA No.3352/2016** in the case of ***Smt. S. Shyamala @ Kathayayani D/o S.N. Somasundara vs. Sri. B.N. Mallikarjunaiyah*** unreported judgment of a Co-ordinate Bench dated 14/03/2022.

13. Having heard the learned counsel for the parties, the points that arises for consideration are as under:

- (i) "Whether the allegation made by the wife that the husband is impotent and not competent to perform matrimonial obligations has resulted in mental cruelty as envisaged under Section 13(1)(ia) of the Hindu Marriage Act, 1955?"

(ii) "Whether the proceedings before the Mediator could be relied by the Courts in arriving at a conclusion in granting or rejecting the prayer for divorce?"

Re:Point No.(i):

14. In light of the submissions made by learned counsel for the parties, the pleadings and evidence in respect of the allegations made against each other need to be considered.

15. The specific ground for filing of the petition by the husband is that the wife has made an allegation that the husband is an impotent which amounts to mental agony and cruelty to the husband.

16. The husband in his petition has stated that the wife has subjected him to cruelty by making allegations that he is an impotent. In this regard, paragraph No.5 of the petition is extracted, which reads as under:-

"5. It is further submitted that, on and of the respondent use to say the petitioner that he has no capacity to discharge matrimonial obligations towards her and she is not satisfying herself about the matrimonial affairs by the petitioner and openly said to the petitioner that he is not competent person on this pretext the respondent flatly refused to join the company of the petitioner in leading the matrimonial affairs."

17. The husband in order to substantiate his contention has examined himself as PW1 and reiterated the petition averments. PW.1 in his chief-examination at paragraph Nos.3, 4 and 12 has stated as under:

"3. I state that the respondent on her returned to Dharwad started to behave in a different manner and also the respondent started to disrespect to my parents and to me, so also refuse to do the household work and further started to enquire about the moveable and immovable properties owned by my family. When I have advised her that this is not the

time for you and after some time I undertakes to furnish all the details in regard to the family properties.

4. I state that however, the respondent insisted me to furnish then and their only. When I refused to furnish the details annoyed by the same the respondent started to non co-operate in matrimonial affairs and the said attitude of the respondent has continued.

12. I state that the cause of action has accrued to me on 18/09/2014 when the respondent openly said that I am incompetent to discharge the matrimonial obligations. Hence she is not interested to lead martial life and she is ready and willing to give divorce to me and the same is continuing one.”

(Emphasis supplied)

18. On the other hand, the wife, in her objections at paragraph No.12, has stated as under:

“12. It is submitted that after some time the parents of the petitioner went to Chandigarh where their son is residing. Even that time also the petitioner not allowed the respondent to

carry out the marital activities, they started to sleep separately. The respondent asked the petitioner to start the marital life but the petitioner has not agreed for the same. On the contrary he tried to convince the respondent that he is not interested in marital life and we have to live the life as Ramakrishnaparam Hamsa and Sharada Devi. Even then the respondent controlled herself and ready to live with the respondent controlled herself and ready to live with the petitioner as per his will and wish. Without saying anything to her parents, with an utmost hope that one or the other day it will be solved but after receiving the divorce notice from the petitioner, she suffered a lot of mental agony. The act of the petitioner creates a doubt on the mind of the respondent and her parents that he might be an impotent and not a competent person to lead the marital life. The respondent is such an innocent lady she never refused to lead the marital life with the petitioner, though he is not ready to start the marital life with respondent even then she is ready to sacrifice her life and ready to live with the petitioner."

(Emphasis supplied)

19. The wife has examined herself as RW.1 reiterating the very contention that the behavior of the husband's staying away from marital obligation has resulted in the mind of wife that the husband is impotent as a result, incompetent to perform his matrimonial obligation. The relevant portion of the cross examination of RW1 is as under:-

“17. ನಿನ್ನ ಗಂಡ ದೃಂಡಿಕ ಸಂಪರ್ಕ (ಇಂಟರ್ವೆಂಸ್)

ಹೊಂದಲು ಸಂಪರ್ಕನಿದ್ದು ಅಂತಾ ಗೊತ್ತಾದಾಗ ನೀನು ಆ ವಿಷಯವನ್ನು ಒಬ್ಬ ಪ್ರಯೋಧ ಹೆಣ್ಣು ಮಗಳು ಆಗ ತಂದೆ ತಾಯಿಯ ಹತ್ತಿರ ಏಕೆ ತಿಳಿಸಲಿಲ್ಲ ಅಂತಾ ಸಾಕ್ಷಿಗೆ ಕೇಳಿದಾಗ ಸಾಕ್ಷಿ ಆಗ ಆತನು ಅಸಮರ್ಪ ಅಂತಾ ತಿಳಿದಿರಲಿಲ್ಲ ಆದರೆ ಅಜ್ಞಾದಾರನ ತಮ್ಮ ಅನಾರೋಗ್ಯದಿಂದ ಇರುವುದರಿಂದ ಈಗ ದೃಂಡಿಕ ಸಂಪರ್ಕ (ಇಂಟರ್ವೆಂಸ್) ಹೊಂದುವುದು ಬೇಡ ಅಂತಾ ಹೇಳುತ್ತಿರುವುದರಿಂದ ನಾನು ಅದನ್ನು ನೋಡಿ ಸ್ವಲ್ಪ ದಿವಸ ಕಾಯೋಣ ಅಂತಾ ಸುಮೃನೇ ಇರುತ್ತಿದ್ದೆ ಅನ್ನತ್ತಿದ್ದಾಳೆ.

18. ಮದುವೆಯಾದ ಮೇಲೆ ಕೊನೆಯ ಬಾರಿಗೆ ನಾನು ತವರು ಮನೆಗೆ ಹೋಗುವ ಮಧ್ಯದ ಅವಧಿಯಲ್ಲಿ ನಾನು ಗಂಡನ ಮನೆಯಲ್ಲಿ 4-5 ತಿಂಗಳು ಇದೆ. ಸಾಕ್ಷಿ ಮುಂದುವರೆದು 4-5

ತಿಂಗಳು ಖಾಯಂ ಆಗಿ ಇರಲಿಲ್ಲ ಆದರೆ ಮಧ್ಯದಲ್ಲಿ
ಪದ್ಧತಿಯಂತೆ ಹೋಗಿ ಬಂದು ಮಾಡುತ್ತಿದ್ದೆ ಅನ್ನತ್ತಿದ್ದಾಳೆ.
ಅರ್ಜಿದಾರ ಅಸಮರ್ಥನಿದ್ದಾನೆ ಅಂತಾ ನನ್ನಷ್ಟಕೆ ನಾನೇ ಕ್ಷಾನೆ
ಮಾಡಿಕೊಂಡು ಗಂಡನ ಮನೆಯಲ್ಲಿರುವಾಗ ಅರ್ಜಿದಾರ ಮತ್ತು
ಅತ್ಯೇ ಮಾವಂದಿರ ಜೋತೆ ಅಸಹಕಾರದಿಂದ ವರ್ತಿಸುತ್ತಿದ್ದೆ
ಅನ್ನವುದು ಸುಳ್ಳ. ಅತ್ಯೇಗೆ ಅನಾವಶ್ಯಕವಾಗಿ ಬಯಸುತ್ತಿದ್ದೆ
ಮತ್ತು ಗಂಡನ ಜೋತೆ ಜಗಳ ತೆಗೆಯುತ್ತಿದ್ದೆ ಅನ್ನವುದು ಸುಳ್ಳ.

“29) ಅರ್ಜಿದಾರ ನಿನ್ನಿಂದ ಬೇರೆಯಾಗಿ ಮಲಸುತ್ತಿದ್ದರೂ ಮತ್ತು
ಆತನಿಂದ ನಿನಗೆ ಮಾನಸಿಕ ಹಳಸೆ ಅಗುತ್ತಿದ್ದರು ನೀವು
ಯಾವುದೇ ಪರಿಚಾಯತ್ವ ಮಾಡಿಸಿಲ್ಲ ಅಂತಾ ಸಾಕ್ಷಿಗೆ ಕೇಳಿದಾಗ
ಸಾಕ್ಷಿ ಇಲ್ಲ ಮಾಡಿಸಿಲ್ಲ ಅಂತಾ ಹೇಳಿ ಅರ್ಜಿದಾರನ ತಮ್ಮನಿಗೆ
ಹುಣಾರು ಇರಲಿಲ್ಲವಲ್ಲ ಕಾರಣ ಪ್ರಾಲಿಸಿದ ದಿವಸ ಕಾಯೋಣ
ಅಂತಾ ಪರಿಚಾಯತ್ವ ಮಾಡಿಸಿಲ್ಲ ಅನ್ನತ್ತಿದ್ದಾರೆ. ಮುಖ್ಯ
ಅರ್ಜಿಗೆ ಆಕ್ಷೇಪಣೆ ಬರೆಯಲು ನಮ್ಮ ವರ್ಷೀಲರಿಗೆ ನಾನೇ
ಮಾಹಿತಿ ಕೊಟ್ಟಿದ್ದೇನೆ. ಎದುರುದಾರರ ಲಿಖಿತ ಆಕ್ಷೇಪಣೆಯ
15 ನೇ ಪುಟದ 2ನೇ ಸಾಲಿನಿಂದ The act of petitioner
creates a doubt on the mind of the respondent
and her parents that he might be an impotent
and not a competent person to lead a marital
life. ಅಂತಾ ಆಕ್ಷೇಪಣೆಯಲ್ಲಿ ನಾನೇ ಮಾಹಿತಿ ಕೊಟ್ಟ
ಬರೆಸಿದ್ದೇನೆ.”

(Emphasis supplied)

Placing reliance on the written statement and evidence of RW.1 stated supra, learned counsel for the appellant-husband would contend that the act of wife by making false allegations about impotency has caused mental cruelty to the husband.

20. In regard to mental cruelty, the Hon'ble Apex Court has held in catena of judgments that cruelty includes both physical and mental cruelty as enumerated under Section 13(1)(ia) of the Act and the cruelty needs to be assessed in the facts and circumstances of the case. The relevant decisions in this regard are as follows:-

(a) The Apex Court, in the case of **Parveen Mehta vs. Inderjit Mehta [(2002)5 SCC 706]** at paragraph Nos.15, 19 and 21 held as under:

"15. This Court in the case of N.G.Dastane vs. Dr. Dastane, examined the matrimonial ground

of cruelty as it was stated in the old Section 10(1)(b) and observed that any inquiry covered by that provision had to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious to live with the respondent. It was further observed that it was not necessary, as under the English law that the cruelty must be of such a character as to cause danger to life, limb or health, or as to give rise to a reasonable apprehension of such a danger though, of course, harm or injury to health, reputation, the working character or the like would be an important consideration in determining whether the conduct of the respondent amounts to cruelty or not. In essence what must be taken as fairly settled position is that though the clause does not in terms say so, it is abundantly clear that the application of the rule must depend on the circumstances of each case; that "cruelty" contemplated is conduct of such type that the petitioner cannot reasonably be expected to live with the respondent. The treatment accorded to the petitioner must be such as to

cause an apprehension in the mind of the petitioner that cohabitation will be so harmful or injurious that she or he cannot reasonably be expected to live with the respondent having regard to the circumstances of each case, keeping always in view the character and condition of the parties, their status, environments and social values, as also the customs and traditions governing them.

19. Clause (i-a) of sub-Section (1) of Section 13 of the Act is comprehensive enough to include cases of physical as also mental cruelty. It was formerly thought that actual physical harm or reasonable apprehension of it was the prime ingredient of this matrimonial offence. That doctrine is now repudiated and the modern view has been that mental cruelty can cause even more grievous injury and create in the mind of the injured spouse reasonable apprehension that it will be harmful or unsafe to live with the other party. The principle that cruelty may be inferred from the whole facts and matrimonial relations of the parties and interaction in their daily life disclosed by the evidence is of greater cogency in cases falling

under the head of mental cruelty. Thus mental cruelty has to be established from the facts (Mulla's Hindu Law, 17th Edn., Vol. II, p. 91).

21. Cruelty for the purpose of [Section 13\(1\)\(ia\)](#) is to be taken as a behavior by one spouse towards the other which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behavior or behavioral pattern by the other. Unlike the case of physical cruelty mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct

approach to take an instance of misbehavior in isolation and then pose the question whether such behavior is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other."

(b) In another judgment of the Apex Court in the case of ***Vinita Saxena vs. Pankaj Pandit*** [**(2006)3 SCC 778**] in paragraphs 31 to 36, it is held as under:

"31. It is settled by catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the Section. It is to be determined on whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such wilful treatment of the

party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case.

32. The word "cruelty" has not been defined and it has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.
33. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions, their culture and human values to which they attach

importance. Judged by standard of modern civilization in the background of the cultural heritage and traditions of our society, a young and well educated woman like the appellant herein is not expected to endure the harassment in domestic life whether mental, physical, intentional or unintentional. Her sentiments have to be respected, her ambition and aspiration taken into account in making adjustment and her basic needs provided, though grievances arising from temperamental disharmony are irrelevant. This view was taken by the Kerala High Court in Rajani vs. Subramanian.

34. In 1993 (2) Hindu L.R. 637 (sic), the Court had gone to the further extent of observing as follows:

"Sometime even a gesture, the angry look, a sugar coated joke, an ironic overlook may be more cruel than actual beating"

35. Each case depends on its own facts and must be judged on these facts. The concept of cruelty has varied from time to time, from

place to place and from individual to individual in its application according to social status of the persons involved and their economic conditions and other matters. The question whether the act complained of was a cruel act is to be determined from the whole facts and the matrimonial relations between the parties. In this connection, the culture, temperament and status in life and many other things are the factors which have to be considered.

36. The legal concept of cruelty which is not defined by statute is generally described as conduct of such character as to have caused danger to life, limb or health (bodily and mental) or to give rise to reasonable apprehension of such danger. The general rule in all question of cruelty is that the whole matrimonial relations must be considered, that rule is of a special value when the cruelty consists not of violent act but of injurious reproaches, complaints accusations or taunts. It may be mental such as indifference and frigidity towards wife, denial of a company to her, hatred and abhorrence for wife, or physical, like acts of violence and abstinence

from sexual intercourse without reasonable cause. It must be proved that one partner in the marriage however mindless of the consequences has behaved in a way which the other spouse could not in the circumstances be called upon to endure, and that misconduct has caused injury to health or a reasonable apprehension of such injury. There are two sides to be considered in case of cruelty. From the appellant's side, ought this appellant to be called on to endure the conduct? From the respondent's side, was this conduct excusable? The court has then to decide whether the sum total of the reprehensible conduct was cruel. That depends on whether the cumulative conduct was sufficiently serious to say that from a reasonable person's point of view after a consideration of any excuse which the respondent might have in the circumstances, the conduct is such that the petitioner ought not be called upon to endure.

(c) In ***Naveen Kohli vs. Neelu Kohli [AIR***

2006 SC 1675] to constitute cruelty, the Hon'ble Supreme Court has held as under:

(e) "To constitute cruelty, the conduct complained of should be 'grave and weighty' so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not

absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive languages leading to constant disturbances of mental peace of the other party'.

(f) "The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However, insignificant or trifling, such conduct may cause pain the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity, it has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which

may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be by words, gestures or by mere silence, violent or non-violent".

(d) In ***Samar Ghosh vs. Jaya Ghosh***

[(2007)4 SCC 511], illustration of act of cruelty

held as under;

"101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behavior 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, discommode 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 resistant for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behavior 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 sterilization 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."

Adhering to the judgments of the Hon'ble Apex Court stated supra, the term cruelty to fall within Section 13(1)(ia) of the Act would require the assessment of the cumulative effect of the attending facts and circumstances established by evidence on record.

21. The objections of the wife at paragraph No.12, indicates that it is her allegation that the husband is impotent, further the cross-examination of PW1 reveals the fact that instructions were given by her to her counsel to file the objections. The careful perusal of the objection reveals the fact that the wife apprehended that the husband is incompetent to perform the matrimonial obligations and he is an impotent. This allegation has been made in her objections as well as in her evidence and also by way of cross-examining PW.1, as regards discharging the burden of proof that her allegation is justifiable, no

material is forthcoming and no efforts have been made to prove that the contention raised by her about the impotency of the husband is true and is not merely an allegation, but a fact. This having not been done, the allegation of impotency in the presence of others and her husband would necessarily affect the reputation of the husband. No prudent woman would think of making allegation of impotency in the presence of others, rather she would take necessary steps to see that the reputation of the husband is not affected and not thrown out in public. The complaining of incapacity of the husband to bear children, without any proof creates an intense mental agony and anguish of the husband which the High Court of Andhra Pradesh has concurrently held in the case of ***Smt. G.Padmini vs. G. Sivananda Babu*** reported in [AIR 2000 A.P. 176] that:

"When wife made complaint about her husband's impotency and soon after she conceived,

immediately her husband filed petition for divorce on the ground of making false allegation, on the ground of cruelty as she made false allegation which caused mental pain and anguish held such conduct amounts to mental cruelty."

22. In the present case, the allegations made by the wife to the extent that the husband is not discharging his matrimonial vows and that creates a doubt in the mind of wife that he is impotent, which has affected the reputation of husband. The wife has failed to discharge the burden to prove that the husband is impotent as the husband is willing to undergo medical examination as stated in his affidavit. Having not proved the allegation, the unproved/unsubstantiated false allegations about impotency has led to mental disturbance of the husband causing disharmony between the husband and wife, which makes the husband unable to stay with the wife.

23. Though Section 13 of the Act does not consider the impotency as the ground for divorce, the false allegation of impotency being made by the wife would definitely cause mental disharmony and this would amount to mental cruelty within the meaning of Section 13(1)(ia) of the Act, and enables the husband to seek divorce on the ground of cruelty.

24. As no evidence having been specifically adduced by the wife to prove that the husband is actually impotent, the allegation would remain only an allegation and has the effect of lowering the dignity of the husband, which amounts to cruelty as the Apex Court has held in the case of ***Smt. Pramila Bhatia vs. Vijay Kumar Bhati [AIR 2000 Raj. 362] (para 26)***

"26. There is another act of cruelty which is manifested by her reply as well as her statement and the statement of her father.

She has alleged that she was asked to bring dowry and that on two occasions, she brought the amount of Rs. 10,000/- on each occasion and that on the third occasion, she was asked to bring a sum of Rs. 50,000/- and when she refused to fulfil this demand, she was harassed and given a beating. These allegations have not been proved by reliable evidence. The allegations of this nature are easy to be made but unless they are proved, as required by Sec. 3 of the Evidence Act, the allegations must be treated as not proved. Making false allegations is no doubt an act of cruelty if the object behind the making of false allegations is to lower the dignity or self-esteem or destroy the reputation or to bring some harm to the person against whom the allegations are made. Therefore, any one who makes allegations which are detrimental to the dignity, self-esteem, reputation or well being of the persons against whom they are made, must be careful in making such allegations. In other words, such allegations may not be made unless there is sufficient evidence to prove them. Anyone who makes allegations of serious nature against any one without sufficient evidence to

prove them, must bear responsibility for making such allegations. If the allegations are made falsely or without sufficient evidence to prove them, the act of making allegations against either party may amount to cruelty."

(Emphasis supplied)

25. Under similar circumstances, the High Court of Judicature at Hyderabad for the State of Telangana and State of Andhra Pradesh in the case of ***Srinivasa Sharma vs. T. Vijaya Lakshmi*** (stated supra) at para Nos.27, 28, 29, 30, 31, 32, 35 and 36 held as under:-

"27. Keeping in mind relevant considerations to decide cruelty and those two instances, applying to the facts of the present case, certainly serious or wild allegations made against the petitioner by the respondent that the petitioner is "impotent" amount to cruelty, such baseless allegations would certainly amount denouncing his prestige among his friends and public and when the respondent telephoned to PW.5 and informed that the

petitioner is impotent and incapable of performing sexual intercourse, certainly it would cause mental pain.

28. For deciding the questions, it is necessary to know what is the meaning of impotency, it means:

"The word 'impotency' is absolute. Previously it was used as a blanket term to denote that the male is not sexually fit. Now, the word impotency is no more used. Scientifically accepted term is "ERECTILE DISFUNCTION" which means inability to get erection/or inability to perform sexual intercourse."

29. Since, impotency is a physical or mental condition it can be proved by medical expert but no such evidence is brought on record, thereby failed to prove impotency of petitioner.

30. In similar circumstances, the Division bench of this Court in **Susarla Subrahmanyam Sastry Vs. Padmakshi (2005(4) ALT 677)** ruled as follows;

"On account of non-cooperation, hostile attitude of wife-respondent, the

husband-petitioner was subjected to serious frustrating experience, it can safely be termed as cruelty within Section 13(1)(ia) of the Act. There is no dispute that the respondent and her parents saying that the petitioner cannot perform sexual intercourse. In our view failure to prove erectile dysfunction amount to cruelty."

31. In another judgment reported in **G.Padmini Vs. G.Shivananda Babu (AIR 2000 AP 176)** the Division Bench of this Court held that;

"When wife made complaint about her husband's impotency and soon after she conceived, immediately her husband filed petition for divorce on the ground of making false allegation, on the ground of cruelty as she made false allegation which caused mental pain and anguish held such conduct amounts to mental cruelty."

32. In view of the principles laid down by this Court in making baseless allegation of impotency against husband or wife causes mental pain and denounces prestige in office so also among his friends. It is nothing but stigmatizing the ability of the petitioner among relatives, friends and public pointing out his inability to perform sexual intercourse. Therefore, such acts certainly causes mental pain, which disables the petitioner, to concentrate on his duties in employment and therefore it is unsafe for him to live with the respondent. Such acts certainly amount to cruelty.

35. In the present case the respondent-wife made serious allegation of impotency against the petitioner-husband that would certainly cause mental pain to him if the allegation is not true. Here the respondent did not prove that the petitioner is impotent. Even otherwise telephoning to P.W.5 complaining that the petitioner is unable to perform sexual intercourse certainly amount to publicizing that petitioner is incapable of performing sexual intercourse and such act amounts to legal or

mental cruelty, which affords a ground to grant decree of divorce under Section 13(1)(ia) of the Act. But the trial Court did not consider the conditions in which the petitioner and the respondent are living, their social back ground, traditions they believe, their educational qualification and sense of reaction of each other to such wild allegations but concluded that the disputes between the petitioner and respondent are only in the nature of family feud, on account of mother and sister of the petitioner, stay with them. This reasoning is not based on any material and not supported by any law. The trial Court totally ignoring a specific allegation made and in the notice Ex.B.1, which is the basis for entire case and the evidence adduced in support of such allegation, dismissed petition, erroneously. Hence, the finding of the trial court liable is to be set aside holding the making wild allegation against petitioner-husband that he is incapable to perform sexual intercourse or impotent is a ground to grant decree of divorce under Section 13(1)(ia) of the Act. Hence, we hold this point in favour of the petitioner and against the respondent.

36. In view of aforesaid discussion on point, we find that the respondent subjected the petitioner to mental cruelty and thereby, the petitioner is entitled to decree of divorce under Section 13(1)(ia) of the Act. Hence, the petitioner is entitled to decree of divorce dissolving the marriage between the petitioner and husband. In the result, appeal is allowed setting aside the dismissal order dated 23.09.2004 in O.P. No.4 of 2004 passed by the Judge, Family Court, Kurnool and allowed the petition granting decree of divorce dissolving the marriage between petitioner and respondent. But in the circumstances each party has to bear their own costs."

26. The contention of the respondent-wife that she has never refused to live with the husband and her in-laws and never refused to perform her matrimonial obligations and that the marriage was not consummated in view of the behavior of the husband by staying away from the wife and refusing to perform the marital obligations, these contentions raised by

the respondent-wife are not justifiable in view of the fact that the wife has not placed any materials to unshore her contentions. The judgments relied upon by the respondent-wife in ***Shyamal Sammadar's*** case (stated supra) is in different context as the allegations made by the wife were not severe in nature as is in the present case. The other judgment of the Co-ordinate Bench relied upon by the respondent-wife in MFA No.3352/2016 was a petition filed under Section 13(1)(ia) and (ib) of the Act and same is not applicable to the present facts and circumstances of the case. Thus, the judgments relied upon by the respondent-wife is not consonance with the present facts. It is relevant to note that the facts of each case are different and there is no straight-jacket formula while considering the term "cruelty" and it depends upon the established pleadings and evidence on record and the inference has to be drawn

from the attending facts and circumstances taken cumulatively. Accordingly, we answer point No.1 in the affirmative and in favour of the husband.

Re:Point No.ii:

27. The perusal of the judgment of the trial Court would reveal that the trial Court while dismissing the petition filed by the husband seeking divorce, has taken note of the conciliation proceedings between the husband and the wife before the Mediator and the trial Court takes into consideration the willingness expressed by the wife stating that inspite of the faults and shortcomings, the wife is ready to join the husband and that the husband has stated that he is not willing to join his wife and wants a decree of divorce. This is one of the grounds taken into consideration by the trial Court while deciding the matter on merits. As per the Karnataka Civil Procedure (Mediation) Rules 2005, (hereinafter

referred to as 'Rule' for short) which came into force on 29.12.2006, Rule 23 reads under:-

"23. Communication between mediator and the Court :-

(1) in order to preserve the confidence of parties in the court and the neutrality of the mediator, there should be no communication between the mediator and the court except as stated in sub rules (2) and (3) of this rule.

(2) If any communication between the mediator and the court is necessary, it shall be in writing and copies of the same shall be given to the parties or their counsel or power of attorney.

(3) Communication between the mediator and the court shall be limited to:-

- i) communication by the mediator with the court about the failure of party to attend;
- ii) with the court with the consent of the parties;

- iii) regarding his assessment that the case is not suited for settlement through mediation;
- iv) that the parties have settled the dispute or disputes."

28. Rule 23 of the Mediation Rules would state that the communication between the parties and the mediator is confidential and prescribes the procedure as to what is to be communicated between the mediator and the Court. The Hon'ble Apex Court in the case of ***Moti Ram (Dead) through LRs and Another Vs. Ashok Kumar and Another [(2011) 1 SCC 466]*** and at para No.2 the Apex Court has held as under;

"2. In this connection, we would like to state that mediation proceedings. This is unlike proceedings in court which are conducted openly in the public gaze. If the mediation succeeds, then the mediator should send the agreement signed by both the parties to the court without mentioning what transpired

during the mediation proceedings. If the mediation is unsuccessful, then the mediator should only write one sentence in his report and send it to the court stating that the "mediation has been unsuccessful". Beyond that, the mediator should not write anything which was discussed, proposed or done during the mediation proceedings. This is because in mediation, very often, offers, counter offers and proposals are made by the parties but until and unless the parties reach to an agreement signed by them, it will not amount to any concluded contract. If the happenings in the mediation proceedings are disclosed, it will destroy the confidentiality of the mediation process."

29. On this count too, the judgment of the trial Court calls for interference. Accordingly we answer point No (ii) in the negative and the trial Court was not justified in considering the mediation proceedings that transpired between the Mediator and the parties, as it is confidential and the same cannot be revealed to the Court until party has advised to.

30. For the reasons stated *supra* and in light of the allegations having not been proved to be genuine, and calling the husband an impotent without legally substantiating the same, itself would amount to cruelty within the meaning of Section 13(ia) of the Act and the trial Court was not justified in holding that the cruelty asserted by the husband is not proved. Thus, we are of the considered opinion that the judgment and decree of the Family Court needs to be set aside and the petition filed by the husband under Section 13(1)(ia) of the Act needs to be allowed granting a decree of divorce in favour of the husband.

31. However, looking into the dispute between the parties and they being separated since 2013, the wife needs to be maintained by the husband, the trial Court has awarded a sum of Rs.8,000/- per month from the date of order till he rejoins the wife. In light of the facts and circumstances of the case and looking

into the gross salary of the husband that he is earning Rs.38,000/- per month, award of maintenance by the trial Court at Rs.8,000/- per month to be paid on monthly basis as and when it accrues till she remarries. This amount of Rs.8,000/- would be in the nature of permanent alimony to the wife in view of the granting decree of divorce, till she gets remarried.

In the result, we pass the following;

ORDER

- i. The appeal is ***allowed in part.***
- ii. The judgment and decree insofar as dismissing the petition of the husband under Section 13(1)(ia) is set aside and the marriage between the parties solemnized on 13/05/2013 is dissolved.
- iii. The order insofar as granting of Rs.8,000/- p.m. stands affirmed. The

husband would continue to pay the amount to the respondent-wife, till she remarries.

iv. No order as to costs.

Sd/-
JUDGE

Sd/-
JUDGE

Vmb/Pj