



2026:CGHC:6157-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 257 of 2023

*{Arising out of judgment and decree dated 17-8-2023 in Civil Suit
No.55A/2022 of the Judge, Family Court, Dhamtari}*

Judgment reserved on: 14-1-2026

Judgment delivered on: 4-2-2026

Judgment (Full) uploaded on: 4-2-2026

Dharmendra Sahu, at present aged about 43 years, S/o Banshi Lal Sahu,
R/o Vivekanand Nagar, Street No.4, Dhamtari, District Dhamtari,
Chhattisgarh.

(Plaintiff)

... Appellant

versus

Smt. Sandhya Sahu, Age about 37 years, W/o Dharmendra Sahu, Presently
R/o Behind Sangam Marriage Palace, Boriakhurd, P.S. Tikerapara, Raipur,
District Raipur, Chhattisgarh.

(Defendant)

... Respondent

For Appellant : Mr. Yogesh Pandey, Advocate.

For Respondent : Mr. T.K. Jha and Mr. Shashi Kumar Kushwaha,
Advocates.

Division Bench: -

**Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Arvind Kumar Verma, JJ.**

C.A.V. Judgment

Sanjay K. Agrawal, J.

1. Feeling aggrieved and dissatisfied with the judgment & decree dated
17-8-2023 passed by the Judge, Family Court, Dhamtari in Civil Suit

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No.55A/2022, the appellant herein/plaintiff/husband has preferred this appeal under Section 19(1) of the Family Courts Act, 1984, calling in question the legality, validity and correctness of the same by which his application for divorce on the ground of cruelty and desertion has been rejected by the Family Court, Dhamtari, finding no merit.

2. The aforesaid challenge has been made on the following factual backdrop: -

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the civil suit before the Family Court.)

2.1) Marriage of the appellant herein/plaintiff was solemnized with the respondent herein/defendant on 28-4-2009 at Village Piperchedi, District Dhamtari as per the Hindu rites and they were blessed with a daughter namely, Disha on 14-12-2010 and thereafter, again on 9-4-2014, they were blessed with second daughter namely, Harshita. Thereafter, on 10-4-2017, on the basis of report lodged by the defendant/wife, the police registered offence against the plaintiff/husband, his brother Devesh and his mother Laxmi for offence punishable under Section 498A of the IPC under Crime No.125/2017 at Police Station City Kotwali, Dhamtari and after lodging the FIR, the defendant/wife went to her parents' house and did not return back to her matrimonial home. The jurisdictional criminal court by judgment dated 25-4-2022 (Ex.P-8) acquitted the plaintiff/husband, his brother and his mother of the charge under

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Section 498A of the IPC in Criminal Case No.460/2017 holding that charge has not been proved beyond reasonable doubt. Thereafter, the plaintiff/husband filed an application for divorce on the ground of cruelty under Section 13(1)(ia) and desertion under Section 13(1)(ib) of the Hindu Marriage Act, 1955 before the Family Court, Dhamtari alleging that false criminal case was instituted against him, his brother and his mother in which they have been acquitted and the defendant/wife is also guilty of desertion.

2.2) The defendant/wife filed her written statement controverting the allegations made in the plaint stating inter alia that she has not committed any cruelty or she is not guilty of desertion, rather the plaintiff/husband is cruel as a result of which she has attempted to commit suicide and she was admitted to hospital, as such, the suit deserves to be dismissed.

2.3) The Family Court, on the basis of material available on record, framed following four issues and arrived at the findings recorded therein:-

क्र.	वाद प्रश्न	निष्कर्ष
1.	क्या प्रतिवादी ने वादी के साथ विवाह के अनुष्ठापन पश्चात् क्रूरतापूर्ण व्यवहार किया?	“प्रमाणित नहीं”
2.	क्रूरतापूर्ण क्या वादी द्वारा विवाह-विच्छेद हेतु याचिका प्रस्तुत किये जाने के ठीक पहले कम से कम 02 वर्ष की कालावधि तक वादी को प्रतिवादिनी द्वारा अभित्यक्त रखा गया है?	“प्रमाणित नहीं”
3.	क्या वादी उक्त आधारों पर विवाह-विच्छेद की डिक्री पाने का अधिकारी है?	“नहीं”
4.	सहायता एवं व्यय?	“निर्णय की कंडिका 70

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		अनुसार वादी का दावा निरस्त”
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2.4) Ultimately, the Family Court, Dhamtari, dismissed the application for divorce holding that after the judgment of acquittal, the defendant/wife preferred appeal before the Court of Sessions questioning the judgment of acquittal and after rejection of the acquittal appeal, criminal revision is pending before this Court.

2.5) In the first round of litigation, this Court by its judgment & decree dated 28-1-2025, allowed the appeal preferred by the plaintiff/husband and granted decree for dissolution of marriage and permanent alimony of ₹ 5,00,000/- to the defendant/wife. The defendant/wife preferred special leave petition before the Hon'ble Supreme Court being SLP (Civil) No.13336/2025 (Sandhya Sahu v. Dharmendra Sahu) in which their Lordships of the Supreme Court while allowing the special leave petition and setting aside the judgment & decree dated 28-1-2025, restored the matter to the file of this Court for consideration afresh taking into account the merits of the matter. This is how the appeal is before us.

3. Mr. Yogesh Pandey, learned counsel appearing on behalf of the appellant herein/plaintiff/husband, would confine his submissions in this appeal only on the ground of cruelty and submit that the plaintiff/husband, his brother and his mother have falsely been implicated on false charge by the defendant/wife by lodging report on 10-4-2017 for offence under Section 498A of the IPC in which all of them have been honourably acquitted by judgment dated 25-4-

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2022 vide Ex.P-8 and thereafter, appeal against acquittal has also been dismissed which the appellate court has taken cognizance of and revision preferred before this Court was also dismissed on 14-10-2024 passed in Cr.Rev.No.577/2023 (Smt. Sandhya Sahu v. Dharmendra Sahu and three others). Therefore, the plaintiff/husband is entitled for decree of divorce on the ground of cruelty. Mr. Pandey would rely upon the decisions of the Supreme Court in the matters of **Rani Narasimha Sastry v. Rani Suneela Rani**¹ and **K. Srinivas Rao v. D.A. Deepa**² to support his submissions.

4. Mr. T.K. Jha, learned counsel appearing on behalf of the respondent herein/defendant/wife, would oppose the appeal and support the impugned judgment & decree and submit that though the criminal revision preferred by the defendant/wife has been dismissed by this Court, the respondent herein is making efforts to file special leave petition before the Supreme Court through the Supreme Court Legal Services Committee. As such, the Family Court is absolutely justified in dismissing the suit filed by the plaintiff/husband, as no cruelty has been committed by the defendant/wife and therefore the instant appeal deserves to be dismissed. Mr. Jha would rely upon the decision of the Supreme Court in the matter of **Darshan Gupta v. Radhika Gupta**³ to buttress his submissions.

5. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the

1 (2020) 18 SCC 247

2 AIR 2013 SC 2176

3 (2013) 9 SCC 1

record with utmost circumspection. The appellant herein/plaintiff has sought decree of divorce and confined his submission only to the ground enumerated under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

6. The question that arises for consideration in this appeal is, whether the Family Court is justified in rejecting the application filed by the appellant/plaintiff for grant of decree for dissolution of marriage on the ground of cruelty and desertion?
7. In order to answer the plea raised at the Bar, it would be appropriate to notice the provision contained in Section 13(1)(ia) of the Hindu Marriage Act, 1955, which states as under :-

“**13. Divorce.** - (1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party -

(i) xxx xxx xxx

(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty, or

(ib) xxx xxx xxx”

8. A careful perusal of Section 13(1)(ia) of the Hindu Marriage Act, 1955 would show that husband or wife would be entitled for decree of dissolution of marriage on the ground of cruelty if after solemnization of marriage, one spouse has treated the other spouse with cruelty.

9. The word ‘cruelty’ has not been defined in the Hindu Marriage Act, 1955. However, the Black’s Law Dictionary, Eighth Edition, defines ‘cruelty’ as the intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human and defined ‘legal cruelty’, ‘mental cruelty’ and ‘physical cruelty’ as under:-

“legal cruelty. Cruelty that will justify granting a divorce to the injured party, specif., conduct by one spouse that endangers the life, person, or health of the other spouse, or creates a reasonable apprehension of bodily or mental harm. [Cases: Divorce →27. C.J.S. Divorce § 22.]

mental cruelty. As a ground for divorce, one spouse’s course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse. See EMOTIONAL, DISTRESS. [Cases: Divorce →27. C.J.S. Divorce § 22.]

physical cruelty. As a ground for divorce, actual personal violence committed by one spouse against the other. [Cases: Divorce →27(3, 6). C.J.S. Divorce §§ 24, 27, 29-31.]”

10. The word ‘cruelty’ has not been specifically defined in the Hindu Marriage Act, 1955. However, the Supreme Court in the matter of **Samar Ghosh v. Jaya Ghosh**⁴ has laid down some situations or instances of human behaviour that would constitute mental cruelty. Paragraph 101 of the report states as under :-

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other

4 (2007) 4 SCC 511

could come within the broad parameters of mental cruelty

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discomode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life

would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

11. It is doubtless that burden must lie on the petitioner to establish his or her case for, ordinarily, the burden lies on the party which affirms a fact, not on the party which denies it. This principle accords with common sense as it is so much easier to prove a positive than a negative. The petitioner must therefore, prove that the respondent

has treated him with cruelty within the meaning of Section 10(1)(b) of the Hindu Marriage Act, 1955. [See : **Dr. N.G. Dastane v. Mrs. S. Dastane**⁵ para 23.]

12. In the instant case, it is the case of the plaintiff/husband that the defendant/wife has instituted a false complaint under Section 498 of the IPC implicating him, his brother and his mother making unfounded, indecent and objectionable behaviour pursuant to which offence was registered under Section 498A of the IPC in which he was apprehending arrest, however, he could not be arrested and prosecution was launched by the State for the aforesaid offence against him, his brother and his mother, aged about 37, 36 and 62 years, respectively, at the relevant point of time, and they were tried for the aforesaid offence at least 5 years and as such, it is an intentional and malicious infliction of mental or physical suffering on the plaintiff/husband and thereafter, vide judgment dated 25-4-2022 (Ex.P-8) passed by the Judicial Magistrate First Class, Dhamtari in Criminal Case No.460/2017, they have been acquitted of the charge by recording following findings: -

32. प्रार्थिया के समग्र साक्ष्य का अवलोकन किया जावे, तो उसमें स्वयं प्रार्थिया ने जो तथ्य बताए हैं, उनसे यह कहीं स्पष्ट नहीं होता है कि उसके पति अथवा उसके परिजनों ने प्रार्थिया के साथ ऐसा कोई कार्य, आचरण अथवा प्रताड़ना की हो, जिससे वह कथित रूप से आत्महत्या करने के लिए विवश हुई हो। बल्कि यह उल्लेखनिय है कि प्रार्थिया ने प्रतिपरिक्षण में यह स्पष्ट स्वीकार किया है कि उसके द्वारा कथित रूप से अपनी नस काटने का प्रयास करने पर उसका पति तत्काल उससे चाकू छिना था। इसके अलावा यह भी साक्ष्य आया है कि प्रार्थिया के मायके पक्ष में कभी भी कोई कार्यक्रम में जाने से अभियुक्तगण द्वारा मना नहीं किया जाता था, बल्कि स्वयं अभियुक्त धर्मोद्ग उसे ऐसे कार्यक्रम में लेकर जाता था। स्वयं प्रार्थिया ने अपने साक्ष्य में उसके

5 AIR 1975 SC 1534

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ईलाज हेतु आवश्यक चिकित्सा उपलब्ध कराने में उसके पति द्वारा सहयोग करना स्वीकार है। यह स्वभाविक प्रश्न है कि यदि अभियुक्तगण का आशय पीड़िता को प्रताड़ित करने का होता, तो वे प्रार्थिया को ऐसी कोई सुविधा उपलब्ध नहीं कराते। इसके अलावा स्वयं प्रार्थिया की माता ने यह स्वीकार किया है कि प्रार्थिया के ससुराल में नौकर चाकर एवं समस्त सुख सुविधाएँ थी, ऐसे में काम ना करने को लेकर प्रार्थिया की सास द्वारा उसे ताना दिये जाने संबंधी साक्ष्य भी विश्वसनीय प्रतीत नहीं होता है। इस प्रकार जहाँ तक प्रार्थिया द्वारा उसे अभियुक्तगण द्वारा प्रताड़ित किए जाने संबंधी दिए गए साक्ष्य का प्रश्न है, वह उपरोक्त किए गए विवेचना अनुसार, विश्वसनीय प्रतीत नहीं होता है इस संबंध में अभियोजन का प्रकरण संदिग्ध प्रतीत होता है।

33. इस प्रकार प्रार्थिया के साक्ष्य से आरोपीगण द्वारा प्रार्थिया के साथ कूरता पूर्व व्यवहार कर उसे प्रताड़ित किया जाना नहीं होता है।

34. अतएव उपरोक्त साक्ष्य विवेचना के परिपेक्ष्य में न्यायालय इस निष्कर्ष पर पहुँचती है कि अभियोजन पक्ष अभियुक्तगण के विरुद्ध विचारणीय प्रश्न के तहत अभियोजित अपराध युक्ति-युक्त संदेह से परे प्रमाणित करने में पूर्णतः असफल रहा है कि अभियुक्तगण ने प्रार्थिया श्रीमती संध्या साहू के विवाह दिनांक 28 अप्रैल 2009 के तीन वर्ष बाद से लगातार थाना कोतवाली, जिला-धमतरी (छग) क्षेत्रांतर्गत स्थान विवेकानन्द नगर गली नं0 04 धमतरी में प्रार्थिया के पति के नातेदार होते हुए, प्रार्थिया को शारीरिक व मानसिक रूप से प्रताड़ित कर, उसके साथ कूरतापूर्ण व्यवहार किया। अतः उपरोक्त विवेचना के अलोक में अभियुक्तगण देवेश कुमार साहू, धर्मेन्द्र साहू तथा श्रीमती लक्ष्मी साहू को धारा 498 (ए) भारतीय दंड संहिता, 1860 के आरोप में दोषमुक्त किया जाता है।

13.The aforesaid findings have been affirmed by the appellate Court in the appeal against acquittal preferred by the defendant/wife, which is apparent from the judgment dated 17-4-2023 passed by the Additional Sessions Judge (FTC), Dhamtari in Criminal Appeal No.21/2023 and appeal has been dismissed during the pendency of the suit against which, at the time of passing decree by the Family Court, criminal revision was pending before this Court which is now said to have been dismissed by this Court on 14-10-2024. Both the documents i.e. judgment dated 17-4-2023 (appellate order) and order dated 14-10-2024 (revisional order) were not exhibited. As such, the jurisdictional criminal court has clearly recorded a finding

that the prosecution has failed to prove that the plaintiff/husband, his brother and his mother have treated the defendant/wife with cruelty and they were acquitted of the charge under Section 498A of the IPC.

14. In this regard, the decision of the Supreme Court in **Rani Narasimha Sastry** (supra) deserves to be noticed herein profitably in which their Lordships have clearly held that when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498A of the IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has been meted out on the husband, and observed in paragraphs 13 and 14 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 Court⁶ made the following observation in para 15: (*Rani Narsimha Sastry case*⁴, SCC OnLine Hyd)

“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

⁶ *Narsimha Sastry v. Suneela Rani*, 2017 SCC OnLine Hyd 714

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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.

14. In view of the forgoing discussion, we conclude that the appellant has made a ground for grant of decree of dissolution of marriage on the ground as mentioned in Section 13(1)(i-a) of the Hindu Marriage Act, 1955.”

15. Furthermore, the Supreme Court in **K. Srinivas Rao** (supra) has held that the conduct of the respondent-wife in filing a complaint making unfounded, indecent and defamatory allegation against her mother-in-law, in filing revision seeking enhancement of the sentence awarded to the appellant-husband, in filing appeal questioning the acquittal of the appellant-husband and acquittal of his parents indicates that she made all attempts to ensure that he and his parents are put in jail and he is removed from his job. Their Lordships further held that this conduct has caused mental cruelty to the appellant-husband.

16. Coming to the facts of the case, the plaintiff/husband and his family members have been charged for the offence punishable under Section 498A of the IPC alleging that the defendant/wife was subjected to cruelty and harassment pertaining to demand of dowry; such allegations are extremely serious affecting the character and the reputation of the plaintiff/husband and he has also faced apprehension of arrest for the aforesaid offence though the jurisdictional criminal court granted bail to him and as such, he suffered great mental trauma of getting arrested and he not only stood trial for five years, but also suffered prosecution for fairly long

time which caused permanent scar on his mind and has definitely adversely affected his status in the society, we are of the considered opinion that the conduct of the defendant/wife would be treated as mental cruelty as considered by the Supreme Court in **Samar Ghosh** (supra).

17. As such, the defendant/wife not only lodged FIR against the plaintiff/husband, his brother and his mother, but they had also undergone trial and stood trial for five years in which all of them have been acquitted of the charge under Section 498A of the IPC and as per the principles of law laid down by the Supreme Court in **Rani Narasimha Sastry** (supra) and **K. Srinivas Rao** (supra), it can safely be held that the act of the defendant/wife in making false, unfounded and objectionable complaint against the plaintiff/husband is the intentional and malicious infliction of mental or physical suffering on the plaintiff/husband in which he remained in trauma of arrest and stood trial for 5 years and ultimately, he has been acquitted by the jurisdictional criminal court finding that charge of demand of dowry and harassment by his wife is not established, as such, cruelty has been meted out by the defendant/wife on the plaintiff/husband. The said finding has also been affirmed by the appellate Court in its judgment dated 17-4-2023 and by the revisional Court (this Court) in its order dated 14-10-2024, though the said documents were not exhibited, but judicial notice of the same can be taken by this Court in view of the provision contained in Section 14 of the Family Courts Act, 1984.

18. In that view of the matter, the plaintiff/husband has made out a case for decree of divorce on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955 that the defendant/wife has treated the plaintiff/husband with cruelty envisaged under Section 13(1)(ia).
19. The decision rendered by the Supreme Court in **Darshan Gupta** (supra) relied upon by Mr. Jha, learned counsel for the respondent herein/defendant/wife, is clearly distinguishable to the facts of the present case and thus, it would not be applicable to the case in hand.
20. Accordingly, the appeal is allowed and the impugned judgment & decree dated 17-8-2023 passed by the Judge, Family Court, Dhamtari in Civil Suit No.55A/2022 are set aside. It is held that the plaintiff/husband is entitled for decree of divorce, as such, it is hereby granted in favour of the plaintiff/husband and against the defendant/wife. Consequently, the marriage solemnized between the plaintiff/husband and the defendant/wife on 28-4-2009 is hereby dissolved by a decree of divorce.
21. The defendant/wife has not claimed any permanent alimony by making application or in the written statement, therefore, liberty is reserved in her favour for claiming permanent alimony by making a separate application under Section 25 of the Hindu Marriage Act, 1955.
22. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
JUDGE

Sd/-
(Arvind Kumar Verma)
JUDGE