

AFR

Reserved on : 06.07.2022

Delivered on : 29.08.2022

Court No. - 39**Case :-** FIRST APPEAL No. - 212 of 2018**Appellant :-** Smt. Sneha Pandit**Respondent :-** Sri Tarun Pandit**Counsel for Appellant :-** Vipin Chandra Dixit, Siddharth Khare**Counsel for Respondent :-** Amit Krishna, Alok Tiwari, Anil Sharma**Hon'ble Mrs. Sunita Agarwal, J.****Hon'ble Mrs. Sadhna Rani (Thakur), J.**

1. This is wife's appeal against the divorce decree prepared pursuant to the judgment and order dated 21.2.2018, passed by the family court in a suit instituted under Section 13 of the Hindu Marriage Act' 1955 (hereinafter referred as Act' 1955), namely the Matrimonial Petition No. 1614 of 2013, by the respondent-husband.

Introduction:-

2. The divorce petition was filed on 27.11.2013 on the grounds of cruelty and desertion. As per the statement therein, the parties got married on 22.11.2009 and at the time of marriage, the respondent/petitioner was working as a Fighter Pilot in the Indian Air Force and was posted as Flight Lieutenant in Badmer, Rajasthan. It was stated therein that for few days after marriage, the appellant went to stay with the respondent to the place of his posting but she could not adjust herself. The appellant wife was studying the B.Tech (Electronics and Instrumentation Engineering) course at the time of marriage and with the inspiration of the respondent husband, she could complete her studies. But after getting the degree, the appellant started pressurizing the respondent to allow her to take up a job in the NCR namely Delhi/Noida/Gurgaon region. It was further stated in the

divorce petition that the family members of the appellant and the appellant herself were clearly informed by the respondent husband at the time of marriage itself, that she would not be allowed to take up any employment because of the nature of the job of the respondent and the appellant-wife and her family members had agreed to the said condition put before marriage. It was contended therein that while putting pressure to take up employment in a place like Delhi/Noida/Gurgaon, the appellant wife became annoyed and started quarreling frequently with the respondent. With a view to get the respondent dismissed from services of the Indian Air Force, the appellant started complaining to higher Officials of the Force and this attitude of the appellant had resulted in undermining the position of the respondent and he had suffered indignation. The appellant started committing cruelty both physically and mentally upon the respondent. On account of the ill-behaviour of the appellant, the respondent who was working as a Squadron Leader, Flying MIG-21 and other fighter jet, started suffering mentally and physically and did not remain in the position to discharge his responsibilities to his full potential and devotion in the interest of the Nation. All efforts made by the respondent/petitioner and his family members to pacify the appellant went in vain and she remained adamant with her demands. On account of her attitude only, the appellant could not conceive (bear a child) and the respondent and his family members had suffered mental stress also due to the said reason.

3. On 23.11.2011, while the respondent/petitioner was on duty, in his absence, the brother of the appellant and one more person came to their house at Ambala Cantt. and, in execution of their pre-conceived plan, all valuables, jewellery, clothes, cash, diamond sets, F.D., ATM cards, bank passbooks etc. were collected by the appellant and she started making preparations for going to her parent's home at

Meerut. At that point of time, on an intimation given by the wife of an Officer who was a neighbour, the respondent came to his house from the duty at around 2:00 P.M. and saw that the appellant alongwith the above two persons had already kept her luggage in a car and was ready to go to Meerut. All efforts made by the respondent to persuade the appellant (wife) proved futile and the appellant started misbehaving with him, remained adamant and left the respondent (husband) as against his wishes to go to her parent's home. The information of this incident was given by the respondent to his parents, who also went to the house of the appellant at Meerut and tried to persuade her. It was stated that the appellant refused to listen to anyone and remained adamant on her demand that she wanted to take up a job in Delhi/Noida/Gurgaon area and if the respondent wished he could leave his job to live with her, which was not possible for the respondents.

4. It was further stated in the petition that after 23.11.2011, despite best efforts made by the respondent and his family members to persuade the appellant and her family members, no possible solution could come out and the appellant remained adamant and refused to discharge her marital obligations. It is finally stated that on account of the above attitude of the appellant, her behavior, use of abusive language, the respondent had suffered severe mental stress and indignation at the hands of the appellant which undermine his position in front of his superiors, resulting in mental cruelty committed upon him. Due to the attitude of the appellant, the respondent could not undertake examination for promotion and his promotion got delayed. By the action and behaviour of the appellant, respondent had suffered severe mental stress which came within the meaning of 'cruelty' under the legal parlance. For her personal motives, the appellant had deserted the respondent for a period of

more than two years which also fell within the meaning of 'cruelty'.

5. It was further contended therein that despite all efforts made by the respondent, the appellant did not agree to grant divorce by mutual consent and hence, the respondent was constrained to file the divorce petition. The cause of action for filing the divorce suit arose on 22.11.2009 when the appellant while living with the respondent had committed cruelty on him by all means and started pressurizing him to agree to her demand to take up a job in NCR and also on 23.11.2011 when she had left for her paternal home along with her brother as against the wishes of the respondent and lastly on 25.11.2013 when she had refused to live with the respondent.

6. The appellant in her written statement had denied all the allegations levelled in the divorce petition and only accepted the factum of marriage. The plea of desertion had been categorically denied with the assertion that the appellant had filed a restitution petition under Section 9 of the Hindu Marriage Act before the competent court registered as Case No. 993 of 2013, which was pending and in the Mediation proceedings also, the appellant had expressed her wishes to go along with the respondent and live with him as his wife. It was further stated therein that the appellant was still ready and willing to live with the respondent and discharge her wifely duties.

7. It was further contended that in the month of February, 2013, both the parties spent time together as husband and wife and mental as well as physical relationship were established between them. On 5.7.2013, the appellant went to her in-law's house and stayed there till 8.7.2013 in an effort to save her marriage. But she was left by the said relatives of the respondent at her paternal home giving her assurance that they would call her very soon. It was stated in the written statement by the appellant-wife that she was always

ready and willing to live with the respondent and discharge her responsibilities, even after 23.11.2011 and the plea of desertion without any cause or reason on her part was false.

8. A disclosure had been made therein that the appellant-wife had lodged a criminal case under Section 498-A, 323, 504, 506, 377 I.P.C. and 3/4 of D.P. Act on account of ill behaviour of the respondent and physical assault made on her, which was registered as Case Crime No. 84 of 2014 at the Mahila Police Station, Meerut. However, she was ready and willing to forgive the respondent and live with him as his wife.

Opinion of the Family Court:-

9. Three witnesses were examined before the family Court, respondent-husband as PW-1, appellant-wife as DW-1 and mother of the appellant as DW-2. Various documentary evidences were filed by both of the parties in support of their stand before the family court.

10. The family court on the basis of the pleadings of the parties framed following issues for determination:-

(i) Whether the marriage solemnized between the parties is liable to annulled on the ground of cruelty by the defendant appellant?

(ii) Whether the defendant had deserted the plaintiff without any reason?

(iii) Whether the plaintiff respondent is entitled to any other relief?

11. On issue no.1, the family court concluded that the act of the appellant wife in making complaint to higher officials of the Air force, the assertive behaviour of the wife pressuring the respondents frequently to go out of the Air Force station, her act of filing of the criminal cases against the respondent husband and institution of the case under Section 125 Cr.P.C. despite getting maintenance from the

department making a reckless allegations against the respondent that he was not appearing in the case under Section 9 of the Hindu Marriage Act' 1955, false allegations levelled against the husband of unnatural sexual assault, the allegations of SMS of other girls on the mobile set of the respondent and character assassination of the respondent on the part of the wife amounted to mental cruelty. In such a situation, it was not possible for the respondent husband to spend his life with the appellant wife. The issue No.1 on the ground of cruelty by the wife had been decided in favour of the plaintiff respondent.

12. While coming to the aforesaid conclusion, the family court has discussed that the unreasonable demand of the wife to go out of Air Force Station as against the disciplined life of a Squadron leader and insisting to take up job at places like Delhi, Noida and Gurgaon (NCR) became a vindictive act on the part of the wife which had resulted in causing physical and mental cruelty to the husband. It was also noted that when the respondent husband did not accede to unreasonable demand of the appellant wife, she in order to get him dismissed from service made complaints to higher officials of the respondent which had resulted in derogation of the position of the husband and undermined his dignity.

13. It was also noted by the family court that the wife had filed a criminal case under Section 498-A, 323, 504, 506, 377 IPC and Section 3/4 D.P. Act making reckless and false allegations against her husband. A petition under Section 9 of the Act' 1955 was also filed by the wife with the aim to make out a case against the husband. On the final report submitted by the Investigating Officer in the criminal case lodged under Section 498-A and Dowry Prohibition Act, a protest petition was filed by the respondent wife whereupon re-investigation was ordered by the competent court. The Investigating

Officer again submitted a final report, whereafter, another protest petition was filed by the wife. False cases under the Domestic Violation Act and Section 125 Cr.P.C. were filed though the appellant wife was getting interim maintenance from the department, itself. The allegations made in the first information report lodged by the appellant wife were taken note of by the family court to record a finding that the appellant wife had failed to establish the allegations made by her and all those acts of the wife had caused mental agony to the respondent plaintiff. The respondent being a Squadron Leader in the Air Force could not discharge his duties properly as his mental peace was shattered at the hands of his wife.

14. On issue No.2 about desertion, it was recorded by the family court that the appellant admitted that she had left the place of posting of the respondent husband on 21.11.2011 alongwith her brother Mohit Dixit and cousin Sushil Sharma. In a complaint filed by the appellant wife to the superior officers of the Air Force Officer, it was stated that the marital discord between the parties was of such nature that no reconciliation was possible between them. As a result of it, the department had ordered for payment of interim maintenance to the appellant wife. It is, thus, recorded by the family court that once the wife herself went to the senior Air Force Officer making a statement that marital discord between them was irreparable, her statement that she had discharged her marital obligation up till February 2013 was contradictory. The act of the appellant wife in going to the place of posting of the respondent in January 2016 after filing of the divorce petition was viewed with suspicion by the family court to record a finding that there was no justification for the appellant wife to go to the place of posting of the respondent husband when she herself was making allegations of assault by her husband by filing a criminal case against her husband. The said act of the

appellant wife was aimed to fulfill her other ulterior motives. It was concluded that there was no reason to accept that by doing so, the appellant wife was making an effort for reconciliation and, moreover, there was no possibility of both the parties living together.

15. It was, thus, concluded by the family court that in view of the admission of the appellant wife that she was residing separately w.e.f 21.11.2011, the period of two years of desertion on the part of the wife, at the time of filing of the divorce petition on 27.11.2013 having been completed, desertion on the part of wife was proved. The issue No.2 with regard to the desertion by the wife was, thus, concluded in favour of the respondent husband.

16. With the aforesaid findings, a decree of dissolution of marriage w.e.f 21.02.2018 was passed by the family court giving permanent alimony of Rs.25 lacs to the respondent wife.

Submissions of the Counsels for the appellant:-

17. Challenging the findings returned by the family court, Sri Siddharth Khare learned counsel for the appellant submits that the respondent husband had filed the divorce petition on the trivial issues. The allegations of cruelty were reckless in nature and the family court had ignored that the respondent himself was causing cruelty on his wife and was trying to take advantage of his own wrong by filing the divorce petition. It was argued that the allegations in the divorce petition that the respondent husband encouraged the appellant wife to complete the B.Tech course and the appellant was adamant to undertake an employment in Delhi, Noida, Gurgaon (NCR) against the wishes of the respondents are itself contradictory. Further contention in the divorce petition that the respondent at the time of marriage itself, made it clear that the appellant wife would not take up employment after marriage is a reflection of male chauvinism. The

only allegation against the appellant wife was that she was pressing hard and insisting to take up employment outside the Air Force Center.

18. The contention is that the allegations in the divorce petition of the complaint made by the appellant wife to the Senior Officers of the Air Force could not be proved by the respondent husband, rather the truth is that on 23.11.2011, the appellant wife was thrown out of her matrimonial house at Ambala Cantt by the respondent husband. She had to call her brothers who could reach in the evening to rescue her as the respondent did not allow the appellant to enter inside the house. It is argued that the appellant wife has taken a categorical stand that she made all efforts of reconciliation by meeting her in-laws and even went to stay with them for three days in July 2013, but the respondent did not meet her before the divorce petition was filed by him. It is then argued that the allegations in the divorce petition that the first information report under the Dowry Act and Section 498-A IPC was lodged on false allegations and the act of the appellant wife in filing protest petitions against the final reports twice had caused cruelty, is nothing but a whimsical approach of the family court in dealing with the entire issue with pre-determined mind and pre-conceived approach against the appellant.

19. The submission is that the respondent husband, in his cross-examination, had admitted that he did not make any effort for reconciliation and never visited his wife after 23.11.2011 who was living with her parents at Meerut till the matter was brought before the family court in the divorce petition. The contention is that this is a classic case of desertion of the wife by her husband on some trivial issues and then filing the divorce petition on false allegations of cruelty. It is argued that the conclusion drawn by the family court both on the grounds of cruelty and desertion cannot be sustained. The

appeal is liable to be allowed while setting aside the divorce decree granted by the family court.

20. Reliance is placed on the decision of this Court in First Appeal No.31 of 2007 to submit that the element of 'cruelty' cannot be found from the allegation made in the divorce petition. Mere trivial 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. It is argued that there is no instance of any act or conduct of the appellant wife which could be said to have caused injury to the mental health of the plaintiff.

21. The contention is that in absence of any pleadings in the plaint, the divorce could not be granted on the ground of commission of cruelty because of the allegation of false criminal proceedings instituted by the wife against the husband. The contention is that there is absolutely no allegation in the divorce petition which amounts to cruelty by the wife.

Submissions of the Counsel for the respondent:-

22. Sri Amit Krishna learned counsel for the respondent, in rebuttal would submit that the respondent was constrained to file divorce petition in November 2013 when all efforts of reconciliation between the parties failed. The respondent and his family members met the appellant and her family members on several occasions after 23.11.2011 when she had left the house of the respondent at Ambala. Many efforts were made by the family members for reconciliation between the fighting couple but the appellant remained adamant on her demand and was not ready to discharge her matrimonial obligations. The act of the appellant in making complaints to Senior Officials in the Air Force had caused bitterness in the mind of the respondent. This act of the wife had seriously hampered the career

prospects of the respondent and his image/status was brought down in the eyes of his seniors. He argued that on 23.11.2011, the wife had left her matrimonial house at Ambala alongwith his brother and a relative in the presence of the respondent husband and did not accede to his request to stay with him. She had also filed the criminal case on false allegations of demand of dowry and other atrocities wherein final reports were submitted twice by the Investigating Officer and protest petition on both the occasions were filed by the wife just to harass the respondent husband.

23. It is, thus, argued that the stand of the wife that she was ready and willing to reside with her husband to discharge her matrimonial obligations runs contrary to the stand taken by her in filing the criminal cases. The allegations in the criminal cases caused mental agony to the respondents so much so that restoration of marriage is totally unworkable which has seized to be effective and would be a greater source of misery for the parties. The marriage between the parties had broken down irretrievably and there is no chance of their coming together or living together again. As an instance of mental cruelty, it is submitted by the learned counsel for the respondent that the act of the wife in pressurizing the respondent to allow her to take up jobs in NCR (Noida, Delhi, Gurgaon) and to reside outside the Air Force Station, caused mental agony to the husband who had made it clear in the beginning of the alliance itself that being a fighter pilot he has to stay at the Air Force Station and according to the norms of social life of an Air Force Officer, the appellant his wife, had to stay with him.

24. The complaints made by the wife to Senior Officials of the Indian Air Force had resulted in harassment and torture to the husband as his character and reputation at his workplace was brought down. Making such complaints is sufficient to constitute mental

cruelty caused by the wife. The career prospects of the respondent had been seriously hampered as he could not get promotion in time. The respondent was, thus, constrained to file the divorce petition and, thereafter, the appellant in order to harass him moved the Air Force department for interim maintenance with the assertion that marital cord between them was completely broken. At the same time, she filed a criminal case under the Dowry Act, 498-A, 323, 504, 506 & 377 IPC on reckless and false allegations. Her complaint was found false and a final report was submitted by the Investigating Officer on 17.04.2015. The appellant filed a protest petition wherein an order for re-investigation was passed. Again a final report was submitted on 02.02.2016 by the Investigating Officer when protest petition was filed by the wife. A case under Section 9 of the Act' 1955 was also filed by the appellant in the year 2013 wherein she had admitted that there was no relationship of husband and wife between them from 23.11.2011 onwards and the couple had never lived together thereafter. The contention is that the act of the appellant in filing application under Section 125 Cr.P.C. seeking for maintenance though she was already receiving maintenance from the department; lodging of the false FIR; filing protest petitions after submission of final reports by the Investigating Officer, on one hand, and moving petition under Section 9 of the Act' 1995, on the other, shows her dubious character. Her statement that she was ready and willing to forgive all previous issues and would live with the respondent peacefully cannot be substantiated from her conduct and actions.

25. It is further pointed out that the appellant went to the Air Force Station in January 2016 without any reason and tried to enter forcibly in the house of the respondent when a report was given to the Superintendent of Police and the Commanding Officer, Air Force by the respondent. It is, thus, argued that consideration in the totality of

the conduct and behaviour of the wife clearly established that she had caused mental cruelty upon her husband by making unreasonable demands, complaints to the Senior Officials, filing of false criminal cases and then pressurizing the respondent to live with her, and make out a clear case of mental cruelty caused by the wife. The result is that it is not possible for the respondent to continue with the matrimonial relationship in the circumstances like this. The respondent, a wronged party, cannot be expected to continue with the matrimonial relationship and there is enough justification for him to seek separation.

26. Reliance is placed on the judgement of the Apex Court in **A. Jayachandra vs. Aneel Kaur¹, Vishwanath Sitram Agarwal Vs. San. Sarle Vishwanath Agarwal², K. Srinivas vs K. Deepa³**, to submit that the mental cruelty as discussed in the aforesaid decisions has to be culled out on consideration of complete matrimonial life of the parties. The illustrations given by the Apex Court in **Samar Ghosh vs Jaya Ghosh⁴** have been taken note of therein to record as to what may amount to mental cruelty. The submission is that the circumstances of the present case are all covered in the decisions noted above and having gone through the same, it can be safely concluded that the act of the appellant caused mental cruelty to the respondent.

27. Further judgements of the Apex court in **Shamim Bano vs Asraf Khan⁵, K Srinivas Vs. K. Sunita⁶; Dinesh Nagda Vs. Santibai⁷, Manisha Srivastava Vs. Rohit Srivastava⁸**; and a judgement of the High Court of Delhi in the Family Court

1. AIR 2005 SC 534

2. 2012 (7) SC 288

3. 2013 (5) SCC 226

4. 2007 (4) SCC 511

5. 2014 (7) SCC 740

6. 2014 (16) SCC 34

7. AIR 2012 MP 40

8. 2015 (2) ADJ 547

Appeal, dated 10.03.2022 have been placed before us to assert that false complaints of demand of dowry or any criminal nature results in harassment and torture to the husband and can be construed as mental cruelty within the meaning of Section 13 (1) (ia) of the Act' 1955. Further the decision in **Devesh Yadav S. Smt. Minal**⁹ of the High Court of Punjab & Haryana and the Apex Court judgement in **Joydeep Majumdar vs Bharti Jaiswal Majumdar**¹⁰ have been pressed into service to argue that derogatory complaints made by the wife affecting the career progress of the husband amounted to cruelty.

Analysis of Evidence:-

Allegations from marriage to separation between 22.11.2009 till 23.11.2011.

28. Having heard learned counsel for the parties and perused the record, we may note certain factual aspect of the matter at the outset. There is no dispute between the parties that their marriage was solemnized on 22.11.2009 and at the time of marriage, the respondent was a fighter pilot in the Indian Air Force and was posted as Flight Lieutenant in Badmer, Rajasthan. Both the parties lived together till 23.11.2011 at different places of the posting of the respondent. Though the allegations of the respondent is that the wife lived with him reluctantly and was adamant to take up employment at a place like Delhi, Noida and Gurgaon (NCR) after she had completed B.Tech course. The respondent also stated that the wife was studying B.Tech at the time of marriage and she could complete the course after marriage with the support of the respondent.

29. Though there are assertions in the divorce petition that the wife being annoyed by the denial of the respondent to permit her to take jobs in NCR, started making complaints to the higher officials of

9. FAO-M 208 of 2013

10. 2021 SCC 3 742

the Air Force, with the aim and object of getting the respondent removed from service but there is not a single instance of any oral or written complaint made by the wife to Senior Air Force officers prior to 23.11.2011, i.e. during the period when she was living with the respondent at the Air Force station. The averments in this regard in the affidavit of the respondent filed in his examination in chief are vague.

30. In cross, the respondent as PW-1 stated that his wife made false complaints while staying at the Air Force Station Uttarlai and then stated that it was an oral complaint. He further admitted that no written complaint was given by the wife at the Air Force Station Uttarlai. On a further query, he stated that on the oral complaint of the wife, no written explanation was called from him by his senior officers. He also admitted, in cross, that there is no mention of the oral complaint made by the wife at the Air Force Uttarlai either in the divorce petition or in his affidavit filed in the examination in chief. A suggestion was, thus, given to the respondent that the statement with regard to the oral complaint made by the wife was made only to give colour to the case. Apart from the bald allegation of one such complaint, no specific allegation of any complaint made by the wife before 23.11.2011 when she had allegedly left her matrimonial home on her own volition, was made or proved by the respondent.

31. As regards the allegations of the respondent that the wife after completion of B.Tech course was adamant to take up a job at NCR, it may be noted that the statement in this regard has been categorically denied by the wife in her written statement and stated in the examination in chief that after marriage she was residing with her husband at the place of his posting and as a result of it, her visits to Meerut were very few. She was discharging wifely duties and obligations.

32. In cross, the appellant stated that the respondent was posted in Uttarlai, Rajasthan, she went to live with him and undertook a job for three months inside the Air Force centre with the consent of her husband. When her husband was transferred to Ambala she had quit the job. In the entire cross-examination of the appellant, she has not been confronted on her alleged demand to take up employment in NCR namely Delhi, Noida and Gurgaon after completion of the B.Tech course. The stand of the respondent in the complaint that the dispute between them after marriage began on account of the demand raised by the wife to undertake employment outside the Air Force Station, especially in NCR, could not be established by the respondent. As per the respondent, the appellant left her matrimonial home on 23.11.2011. Prior to 23.11.2011, since after marriage, only allegations against the appellant was that she was not agreeable to stay with her husband (respondent) at the place of his posting, at the Air Force Station and being B.Tech qualified she was insisting to take up employment, leaving the respondent alone at the Air Force Station, though categorical clarification was given by the respondent at the time of the marriage that looking to his status, the wife would not allow to do job after marriage. The assertion of the respondent is that when the respondent refused to accede to the request of his wife/appellant to go outside the Air Force Station to take up a job, she started making his life hell and made complaints to higher officials of the Indian Air Force. The family members and the respondent himself tried to persuade the appellant but she did not listen to anyone. For this part of the allegations made by the respondent, from the above analysis of the evidence on record which is oral, none of the allegations noted above could be proved by the respondent.

33. The relationship, however, took an ugly turn on 23.11.2011, when the appellant went to her paternal house alongwith

her brother and cousin. The stand of the respondent in the divorce petition is that on the said day, i.e. on 23.11.2011 while the respondent was on duty, in his absence, the appellant alongwith his brother Mohit Dixit and one other person, in a planned manner collected all valuables, jewelry, clothes, cash, diamond set, FD, ATM card, bank pass book and started making preparation to go to Meerut to her parent's home. The respondent got information through a neighbour and reached at his house at around 02.00 PM. He then saw that the appellant alongwith his brother and another person was ready to go to Meerut and her entire luggage was kept in the car. The respondent did his best to persuade the appellant not to leave him but she started misbehaving with the appellant in front of other people collected on the spot and did not listen to anyone and left her matrimonial home in order to desert the respondent against his wishes. Narrating the incident occurred on 23.11.2011, the appellant wife, however, stated that her husband had deserted her since 23.11.2011 without any reason and the respondents refused to keep her with him as his wife.

34. In her cross-examination, the appellant stated that on 23.11.2011 she was in the house of her husband (her matrimonial home) at Ambala till evening. Her husband was on duty but came home early. She called her brother Mohit Dixit and cousin Suhil Sharma as her husband threw her out of the house and despite repeated requests, he did not allow her to enter inside the house. She called her brother through telephone in the afternoon and her brother and cousin reached around evening. On further confrontation, the appellant as DW-1 stated that when she made the telephone call, her husband already came back from the duty and threw her out of the house.

Allegations of desertion by wife after 23.11.2011:-

35. The debate, thus, is as to whether the appellant wife had left the respondent husband on her own volition, or she was thrown out of her matrimonial home. In this regard, it may be noted that according to the respondent, soon after the appellant had allegedly left her matrimonial home on 23.11.2011, he gave information of the incident to his parents at Meerut. They also tried to persuade the appellant but the appellant and her parents insisted that the appellant would take up an employment in Delhi, Noida, Gurgaon and if the respondent wished he could live with her after leaving his job, which was not possible for the respondent.

36. The respondent then gave an information to the Air Force Commanding Officer about the incident of his wife leaving his home by moving an application on 25.11.2011, within two days of the wife leaving his home. The said application is on record as paper no.45 Ga/2 and 45Ga/3. In the said application, the respondent stated about the incident which happened on 23.11.2011 at his place of residence when his wife Mrs. Sneha Pandit had gone to her father's home alongwith her brother Mohit Dixit who came to take her. He then stated therein that he wanted to place it on record that he was unaware of the activity which was planned by his wife and Mohit Dixit. The respondent was not told about the arrival of his brother-in-law Mohit Dixit who also did not speak to him when the respondent reached his home from his workplace at about 02.00 PM. He found that his wife was ready to leave after packing up all her bags with Mr. Mohit Dixit. The respondent then stated that he tried and requested his wife to stay back because he wanted to live with her. His own brother-in-law and sister also came and tried to persuade the appellant to stay back but she did not listen to anyone and left with her brother. The respondent then stated that he wanted to bring to the notice of the Commanding Officer by writing that letter that his wife had taken

away all her clothes, valuables, Sarees, Gold Jewelry of 200 grams and one diamond set of Rs.2,50,000,- SBI F.D. of 3,50,000/-; ATM card and cheque book and passbook of SBI account wherein balance at that point of time was Rs.25,000/- and Rs. 5000/- in cash which was kept for household expenditure.

37. The respondent lastly stated in the said application that the involvement of the appellant and his brother-in-law and planned activity of the said kind proved hindrance in his effort to lead a happy married life. This application lastly noted that the above noted information was for the kind intimation to the Commanding Officer and for future record.

38. We may further note that the father of the respondent namely Ram Gopal Sharma also moved an application dated 29.11.2011 before the Assistant Police Commissioner, Ambala Cantt. The statements therein are that he was father of Tarun Pandit (the respondent) who was Fighter Lieutenant in the Air Force posted at Ambala Air Force Station. His daughter-in-law Sneha Pandit/appellant herein was not acceding to any suggestion or request of the family members and was making all efforts to harass them. She was fighting on trivial issues and did not trust her husband. They were making efforts for the last two years to improve the relationship between his son and her wife but his daughter-in-law Sneha Pandit was not ready to listen to anyone. The complainant Ram Gopal Sharma stated therein that he was residing at Meerut and on 28.11.2021, when he came to meet his son he got to know about the incident occurred on 23.11.2011, where his daughter-in-law had left her matrimonial home after packing all valuables, clothes and cash. The submission therein is that the son of the complainant, namely the respondent herein, made all efforts to persuade his wife and brother-in-law but they did not listen to her. An apprehension was then raised

by Ram Gopal Sharma that after reaching Meerut, his daughter-in-law /appellant herein would make a false complaint in order to harass them and hence he brought the facts to the knowledge of the police authority. The record further indicates that the said complaint was consigned to record with the report dated 27.01.2012 wherein it was noted that no untoward incident was reported to have occurred on 23.11.2011, in the investigation conducted by the police officials after lodging of the complaint.

39. We may further note that within two years of the incident dated 23.11.2011, when the appellant wife had allegedly left her matrimonial house on her own volition, the respondent moved an application on 13.01.2013 to the concerned officers at the Air Force Station, seeking for allotment of a proper living-in-accommodation. It is stated in the said application that on account of some personal problem, it was not possible for him to stay in a living-out-accommodation. Living-out-accommodation for our record is an accommodation for the married couple whereas living-in-accommodation is an accommodation for a single person.

40. While all that was happening between the couple, the respondent PW-1 stated in his deposition that he moved the application for leaving the "living out accommodation" and allotment of "single officer accommodation" on 30.01.2013, since the appellant had refused to come and live with him at the Air Force Station for about two years, inspite of the best efforts made by him.

41. In the cross-examination, PW-1 was put to cross on the averments made by him in paragraph No.'11' of the affidavit filed in his examination in chief. The respondent (PW-1) admitted that he had never talked to the appellant for compromise after 23.11.2011. He then stated that since he had to remain on duty, his parents had a talk of compromise and kept on their efforts to reconcile between the

couple for about two years. All meetings in that regard were held at Meerut and he could know the outcome of those meetings through his parents. On further confrontation, the respondent admitted that whatever was stated in paragraph No.'11' of the affidavit in the examination-in-chief was correct and he never met the appellant to talk about any compromise. He also admitted in the same breath, that he did not talk to his wife before filing of the divorce petition and straightway went to the Court. He further admitted that the talk about the divorce by way of mutual consent was made only after the divorce suit was filed and he did not talk to his wife about the divorce prior to the institution of the divorce suit.

42. While explaining his conduct in writing the letter dated 25.11.2011 to the Commanding Officer, the respondent (PW-1) stated that he wanted to keep his wife with him on 23.11.2011, 24.11.2011 and 25.11.2011 and with that view of the matter, the said letter was sent. The suggestion that the said letter was written for his own protection, was denied by PW-1 (respondent). The respondent also admitted that he did not provide any maintenance to his wife after 23.11.2011 till October 2013.

43. The respondent further denied that he lived with his wife in January or February 2013 and also denied that he ever went to the house of his wife at Noida in those months and they had cohabited.

44. The appellant, on the other hand, made a categorical statement that her husband had deserted her on 23.11.2011 when she objected to the ill behaviour of her husband, both physical and mental. The appellant also filed a petition under Section 9 of the Act' 1955 in order to save her marriage. It was further stated by the appellant in her examination-in-chief, that on 05.07.2013, she went to the house of her in-laws, parents of the respondent, at Meerut with a view to save her marriage and stayed there for a period of three days

from 05.07.2013 till 08.07.2013, in the absence of her husband. However, on 08.07.2013, the family members of the respondent sent the appellant to her parent's house saying that they would talk to the respondent and then call her within 2-3 days. No-one called or came to call the appellant since thereafter. She stated that the respondent had deserted her without any reason or reasonable cause and rather she was the one who had made all efforts to save her marriage.

45. In the cross-examination, DW-1, the appellant, on confrontation, further stated that she came to Meerut alongwith her brothers as her husband refused to keep her. She then stated that the report of the said incident was not given by her at the police station Ambala Cantt rather the Commanding Officer of the Air Force Station who was present on the spot was intimated. She categorically stated that she was deserted by her husband and the assertion that she had left her matrimonial home alongwith her brothers on her own volition was incorrect.

46. From the pleadings and the evidence led by the parties, though it remains a debatable issue as to who (amongst the couple) was at fault but the fact remains that after the appellant had left her matrimonial home in the company of her brothers on 23.11.2011, the respondent had never met her nor made any effort to persuade her to rejoin him. No legal remedy for restoration of the matrimonial cord was initiated by the respondent. The assertion made by the respondents about the efforts made by him to persuade his wife in his divorce petition and the affidavit in the examination-in-chief was put to him in the cross-examination and he admitted categorically that he never met the appellant nor went to Meerut where the appellant was living with her parents after 23.11.2011. The statement of the respondent that all efforts made by him after 23.11.2011 to resolve the dispute between him with his wife with the help of his family

members in his petition and the affidavit is, thus, found to be false. The respondent soon after the expiry of the period of two years and five days from the date of the incident dated 23.11.2011, the day of alleged desertion by the wife, had filed the divorce petition under Section 13 of the Act' 1955 in the Family Court at Meerut on 27.11.2013. There is no whisper in the divorce petition that the respondent made any effort to meet his wife at Meerut or made any effort for reconciliation before filing of the divorce petition with his affidavit dated 27.11.2013. The assertion in the divorce petition that further cause of action arose on 25.11.2013 for filing the divorce petition when the appellant refused to live with him, was, thus, proved to be false.

Law of desertion:-

47. Section 13(1)(ib) of the Act' 1955 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 provision stipulates that the husband or wife would be entitled for a dissolution of marriage by the decree of divorce if the other parties had deserted the parties seeking the divorce for a continuous period of not less than two years immediately preceding the presentation of the petition.

48. To deal with the concept of desertion, the Apex Court in **Savitri Pandey Vs. Prem Chandra Pandey**¹¹ has stated that:-

"Desertion", for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means

11. 2022 (2) SCC 73

*withdrawing from the matrimonial obligations, i.e., not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. After referring to host of authorities and the views of various authors, this Court in *Bipinchandra Jaisinghbhai Shah v. Prabhavati* [AIR 1957 SC 176] held that if a spouse abandons the other in a state of temporary passions, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion.”*

49. The desertion, in its essence, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. For the act of desertion so far as the deserting spouse is concerned, two essential conditions must be there (i) the factum of separation and (ii) the intention to bring cohabitation permanently to an end (*animus deserendi*). Similarly two elements are essential as far as the deserted spouse is concerned: (i) the absence of consent, and (ii) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid.

50. It was observed by the Apex Court in **Dr.(Mrs.) Malathi Ravi, M.D vs Dr. B.V . Ravi M.D**¹² that for holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed

¹² 2014 (7) SCC 640

by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation.

51. Meaning thereby, the Court on the basis of acts, conduct and expression of intention by the parties, both prior to and subsequent to the actual acts of separation, can draw an inference from the proven facts and circumstances that the deserting spouse had the intention to bring cohabitation permanently to an end, without the consent of the deserted spouse. For the deserted spouse, it was required to be proved that the act of desertion was without his consent and there was no such conduct of the deserted spouse giving reasonable cause to the spouse (deserting spouses) for leaving the matrimonial home to form the necessary intention to bring cohabitation permanently to an end. In simple words, it can be described to be an unilateral act of the deserting spouse, without the consent of his/her partner and in absence of any conduct of the deserted spouse which may have lead to the act of the deserting spouse.

Findings on the issue of desertion:-

52. In light of the law relating to the concept of desertion, in the factual matrix of the instant case, having noted each and every circumstance brought on the record, we find that the evidence on record is insufficient, to come to a conclusion even on probability that the wife deserted her husband, the respondent, with the intention to bring the matrimonial relationship to an end. The allegations of the respondent that his wife/appellant had left her matrimonial house without his consent and in absence of his conduct giving reasonable cause to the wife to leave her matrimonial home, could not be proved by the respondent in the present case. Rather the situation looks otherwise. The wife after leaving her matrimonial home on 23.11.2011 on account of the act of the respondent (as per her

contention) to throw her out of the house, made efforts to resolve the matter. She even went to the house of her parents-in-law to reside there for three days in the absence of the respondent, in order to persuade them to bring the dispute to an end. She filed restitution petition under Section 9 of the Act' 1955, participated in the mediation proceeding showing her willingness to live with her husband. Since the allegations of the appellant was that she was thrown out of her matrimonial home by the respondent and then she called her brother to go to Meerut, the admission of the respondent that he never went to Meerut to bring back his wife after 23.11.2011 and before filing of the divorce suit, i.e. for a period of two years, gave a clear indication of the fact that the respondent never wanted to patch up with his wife and his version that the wife had left her matrimonial home on her own volition, thus, seems to be unbelievable.

53. The family court has committed illegality in twisting the entire evidence and ignoring the version of the respondent, in returning a finding of act the of desertion by the appellant wife, while deciding the said issue in favour of the respondent husband. The discussion made by the family court to return the findings on issue No.2 that the appellant wife had deserted her husband without any reasonable cause, is capricious and whimsical. Mere fact that the appellant had moved an application before the officers of the Air Force seeking interim alimony after filing of the divorce suit by the respondent could not have been viewed against the wife. As regard the statement about the marital discord between them having been reached at such level that no reconciliation was possible, it was the statement recorded in the order dated 15.09.2014 passed by the Air Force Officer on the application for maintenance. The application moved by the wife, however, has not been brought on record.

54. Further act of the wife in going to the place of the posting of the respondent in January 2016, after filing of the divorce petition has been viewed against her. The family court had recorded without any basis that the said act of the wife was aimed at some ulterior motive as she had already filed criminal complaint against her husband and family members. The family court had also concluded that since the wife had admitted that she was living separately from her husband from 21.11.2011, the period of two years of desertion stood proved.

55. The above act of the wife rather shows that she was making efforts to meet her husband even after filing of the divorce suit. The respondent, to the contrary, wrote a letter to the Commanding Officer on 28.01.2016 stating therein that he came to know that his wife Smt. Sneha had arrived at the Air Force Station Kalaikunda on 25.01.2016 without any intimation to him and he had apprehension that his wife came to stay at the Air Force Station, Kalaikunda with the intention to file further complaints of criminal cases which she had filed earlier. The respondent further stated therein that any act of the wife to come and stay with him would also interrupt the separation period and weaken his case for divorce. He had no faith or trust on his wife after separation of more than four years and did not want to have any kind of meeting or interaction and definitely could not agree to stay together with her. Prayer was made in the said application that the wife (Mrs. Sneha Pandit) be requested to leave Air Force Station, Kalaikunda as soon as possible or else the respondent would not be responsible for any misdeeds of his wife which she intended while staying inside the Air Force Station, Kalaikunda.

56. The respondent had also filed a complaint before the Superintendent of Police, Paschim Medinipur, West Bengal, on

30.01.2016 leveling allegations of harassment and act of forceful breaking into his house on the part of the appellant. It was stated therein that in the morning on 29.01.2016 at about 06.00 AM, appellant Mrs. Sneha Pandit had tried to break into the house of the respondent forcibly, causing mental harassment to him and creating public nuisance at the Air Force Station, Kalaikunda. It was also stated therein that the respondent wanted to end his relationship and was waiting for the decision of the Court where the divorce petition was pending. He further requested to lodge the criminal complaint against appellant Mrs. Sneha Pandit because of her intentions being malign.

57. The action of the respondent in sending letter to the Commanding Officer on 25.11.2011, intimating the incident occurred on 23.11.2011, act of his father Ram Gopal Sharma in lodging the criminal complaint on 29.11.2011 before the Assistant Police Commissioner, Ambala Cantt on apprehension, the application moved by the respondent on 30.01.2013 (within two years of the incident) for allotment of a single officer accommodation i.e. living-in-accommodation clearly shows that the respondent sine the beginning of the incident dated 23.11.2011 had no intention to live with his wife. The appellant had admitted in her cross-examination that she had given the entire details of the incident orally to the Commanding Officer who was present on the spot. However, after she had left, the respondent presented his side of story by writing a letter after two days. Not only this, the father of the respondent who admittedly was in Meerut on 23.11.2011, came to Ambala to lodge a criminal complaint at the police station Ambala Cant on 29.11.2011 leveling allegations against the appellant raising an apprehension that she would make a false complaint to implicate all of them. The fact of the matter is that no complaint was lodged by the wife till the divorce

suit was filed for about two years after said incident is on record.

58. It, thus, seems to us that the trivial dispute between the couple took an ugly turn on 23.11.2011 when the wife left her matrimonial home alongwith her brothers. The respondent instead of trying to resolve the issue taking benefit of the situation made criminal complaint against his wife. It is the admission of the respondent that he did not make any effort to bring back his wife. There is absolutely no disclosure of any such instance prior to 23.11.2011 which made it impossible for the couple to live together.

59. Further action of the respondent in making a reckless complaint of the act of harassment and forcibly breaking into his house on 13.01.2016 on the part of the appellant, when she visited the Air Force Station Kalaikunda in January 2016 with an aim to talk to him, on an apprehension that the appellant would lodge another false complaint or do something adverse to malign his image, reflects the mindset of the respondent that he was never inclined to patch up with his wife like a wise persons as he is trying to project himself.

60. In any case, taking into consideration of the acts, conduct and expression of intention by the parties from their acts and conducts, both anterior and subsequent to the actual act of separation, no inference can be drawn for holding that the appellant wife had left her matrimonial home on 23.11.2011 with the intention to bring the cohabitation permanently to an end. Mere act of withdrawal of the wife from her matrimonial home at the Air Force station, Ambala and the factum of separation of the wife for a period of two years from her husband when she was making efforts to pacify her husband with the help of the family in order to bring matrimonial harmony cannot lead to the conclusion that the wife had no intention to lead a normal married life with the husband or her act of leaving her matrimonial home was in absence of any conduct of the husband (respondent)

giving the wife (appellant) a reasonable cause to form the necessary intention aforesaid.

61. From the analysis of the evidence on record, the allegations of 'desertion' as enshrined under Section 13 (1) (ib) to seek divorce have not been established. The finding on the issue No.2 as recorded by the family court are liable to set aside being perverse, contrary to the evidence on record.

Issue of cruelty:-

62. On the issue no.1 of 'cruelty' alleged to have been caused by the wife, the finding is that the wife had caused mental cruelty to the respondent by her conduct, action and inaction and with the lodging of the criminal cases after filing of the divorce suit. The question would be whether a decree of divorce on the ground of mental cruelty can be granted, in the facts and circumstances of the case.

Law of cruelty:-

63. Before proceeding to deal with the factual aspects on the issue of mental cruelty, it would be apposite to note the concept of 'mental cruelty' as discussed by the Apex Court in a series of decisions ranging from the year 2006. In **Vinit Saxena vs. Pankaj Pandit**¹³ while dealing with the issue of mental cruelty the Apex Court held as follows:-

"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

13. 2006 (3) SCC 778

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.

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".

64. In **Samar Ghosh (supra)**, the Apex Court had given certain illustrations wherefrom inference of mental cruelty can be drawn. The Court has observed that illustrative example given therein were not exhaustive. It would be apposite to reproduce some of the illustrations:-

"(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.

XXXXXXXXXXXXXX

(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.

XXXXXXXXXXXXXX

(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.

XXXXXXXXXXXXXX

(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.

XXXXXXXXXXXXXX

(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."

65. Speaking about the concept of mental cruelty, the Apex Court in **Samar Ghosh (supra)** has also observed thus:-

“Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances.”

66. In **Vishwanath Agrawal, s/o Sitaram Agrawal Vs. Sarla Vishwanath Agrawal**¹⁴ while dealing with the mental

14.2012 SCC (7) 288

cruelty, it was opined thus:-

“The expression ‘cruelty’ has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.”

67. In **K. Srinivas Rao (supra)** while dealing with the instance of mental cruelty, the Court added certain other illustrations to the illustrations given in the case of **Samar Ghosh (supra)**. The relevant extract of observations therein are relevant to be noted herein:-

“Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.”

68. In **Malathi Ravi, M.D (supra)** taking note of the various decisions of the Apex court, while discussing the concept of 'mental cruelty' it was observed that mental cruelty and its effect cannot be stated with arithmetical exactitude. It varies from individual to individual, from society to society and also depends on the status of the persons. What would be a mental cruelty in the life of two individuals belonging to particular strata of the society may

not amount to mental cruelty in respect of another couple belonging to a different stratum of society. The agonized feeling or for that matter a sense of disappointment can take place by certain acts causing a grievous dent at the mental level. The inference has to be drawn from the attending circumstances.

69. It was observed in **A. Jayachandra (supra)** that 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 at 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 must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an 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. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

70. It was observed therein that 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 in 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 words, gestures or by mere silence, violent or non-violent.

(i) Allegations of cruelty in the divorce petition:-

71. In the instant case, in the divorce petition, the respondent stated that he had suffered mental agony, torture and distress on account of the demand of the appellant to allow her to take up a job in the NCR i.e. places like Delhi, Noida and Gurgaon, after the wife had completed her B.Tech course. It was stated by the respondent that the appellant and her family members were initially conveyed clearly at the time of marriage itself, that the appellant (wife) would not be permitted to take up any employment in the interest of the family and looking to the status of the respondent being employed in the Air Force. However, when the appellant insisted and the respondent denied, the wife started quarreling with him and in a planned manner with a view to get the respondent dismissed from service of the Air Force, she made complaints to his higher officials, as a result of which, the respondent had suffered indignation and his image had been sullied before his colleagues and superiors and on account of her own conduct, the appellant could not conceive (bear a child) which also caused severe mental pain to the respondent as also his family members.

72. Considering these allegations in the divorce petition, when the respondent was put to cross about the allegations of complaints made by the wife, he stated that an oral complaint was made by his wife at the Air Force Utarlai that the respondent had physically assaulted her and fought with her. He stated that the parents of the appellant were informed of that conduct and he intimated to his parents as well. When further confronted, the respondent admitted that no written complaint was made by his wife and on the oral complaint made by her, his written explanation was not called by his superior officials. He also admitted that he did not specify in his petition or the affidavit filed in the examination-in-chief about the oral complaint made by the wife at the Air Force Station Uttarlai.

73. From this part of the cross-examination of the respondent, atleast it is evident that he could not bring on record any specific instance of complaints made by his wife namely the appellant herein in support of his pleadings in the divorce petition. The plea of the respondent that the act of his wife in making false complaints in a planned manner to his Senior Officers had resulted in mental agony to him, thus, could not be proved by any evidence much less cogent evidence.

74. As regards the allegation of demand raised by the wife to take up employment outside the Air Force Station after completion of the B.Tech course, in his cross-examination, the respondent had admitted that his wife also took the job of teaching while he was posted at the Air Force Station Uttarlai for sometime, while she was residing with him. He then admitted that the appellant was free to take up any employment while residing with him but stated that she wanted to live separately outside the Air Force Station to take up a job after completion of the B.Tech course. However, no specific time, year or month could be narrated by the respondent, in his cross-

examination, as to when the appellant had raised such a demand but averred that she (wife) started fighting with him for that reason soon after marriage.

75. The appellant wife, on the other hand, in her cross, stated that at the time of marriage, her husband/respondent herein was posted as Flight Lieutenant in the Air Force and was posted in Uttarlai, Rajasthan. Soon after marriage, she went to Uttarlai to live with her husband and did a job for three months with the consent of her husband but when he was transferred to Ambala, she left the job and came with her husband. From the statement of the parties, it may be inferred that the appellant wanted to be economically independent or engage herself. She even took a job of teaching for a short period of three months while living with the respondent at the Air Force Uttarlai, Rajasthan, but it cannot be assumed from any of the circumstances brought before us that she was insisting to take up employment elsewhere after completion of the B.Tech course. Not a single instance of the wife having applied for such a job during the period when she was living with the respondent, could be narrated by the respondent in his deposition. The allegation of the respondent that insistence of the wife to take up employment elsewhere outside the Air Force station just to live separately from the respondent had caused rift between them soon after marriage and the said act had resulted in mental agony to the respondent, thus, is not substantiated from the evidence on record.

76. Even otherwise, such trivial dispute resulting in quarrel between spouses, even if existed, it is a rift which happened in day-to-day married life and cannot amount to cruelty. Even if it is accepted for a moment that the appellant had aspirations to be an independent person even after marriage and was insisting to take up employment after completion of B.tech course, the situation could

have been dealt by the respondent more wisely. Instead of controlling his wife, quarreling on the issue, the respondent could have cajoled his wife to rationalize his point of view so as to convince her not to leave him alone just to earn some money.

77. Be that as it may, no such instance is before us to draw any inference that any such effort was made by the respondent husband which went in vain and the appellant wife did not listen to his wisdom rather the statement in the divorce petition in this regard reflects male-chauvinistic attitude of the respondent husband when he goes on to say that his wife and her family were categorically told in the beginning of the alliance at the time of marriage itself, that the wife would not be allowed to take up any employment, meaning thereby that she could not think of being an economically independent person.

78. Leaving this issue as it is, without much deliberation on the approach of the respondent husband about the dispute, we proceed to examine other allegations of cruelty made against the appellant.

79. Another contention of the respondent in the divorce petition was that the wife could not conceive (could not bear a child) on account of her indifferent attitude and malicious behaviour, which also added to mental trauma to the respondent as well as his family. In this regard, suffice it to note that apart from the bald pleading and reiteration of the said allegation in the affidavit filed in the examination-in-chief in a casual manner, no evidence whatsoever has been brought on record to even demonstrate that the respondent had ever consulted any doctor to know the real problem. Moreover, the couple stayed together barely for two years after marriage and if during such a short period, wife did not conceive, it was nothing unusual and the said situation cannot be attributed to the conduct or

behaviour of the wife as alleged by the respondent.

80. Now coming to the incident dated 23.11.2011, there are contradictory versions of both the parties and as discussed in the foregoing paragraphs, the respondent could not prove the act of desertion by the wife/appellant herein. The statement of mental cruelty caused by the wife on account of her act of desertion, therefore, cannot be substantiated. To the contrary, the conduct of the respondent after 23.11.2011 in giving intimation in writing to the Commanding Officer on 25.11.2011 about the act of his wife of leaving his home and further the action of his father in going to Ambala and lodging a criminal complaint at the police station Ambala Cantt on 29.11.2011 based on his apprehension, further shows that the respondent himself did not intend to remove the differences between him and his wife. The averments of the respondent in the divorce petition as also in the affidavit filed in the examination-in-chief that the respondent and his parents had tried to persuade the appellant to forget all differences and live with the respondent are proved to be false. The conduct of the respondent and his father in lodging a criminal complaint at the police station and the admission of the respondent that he did not make any effort for reconciliation and did not even meet or talk to his wife after she had left his home, had resulted in widening of the rift between the parties and has increased the bitterness between them.

81. The next contention of the respondent husband is that on account of the attitude and ill treatment of his wife, he was so much disturbed mentally that his promotional prospects were seriously hampered. The contention is that he could not get promotion on account of the false complaints lodged by his wife with his Senior officials and further he could not complete the promotional course in the year 2011 because his wife had left him without any reason. In

this regard, we may note that the respondent in the course of his cross examination, had admitted that he was not given promotion prior to 2014 as he was not qualified and the 'Qualified Instructor course' was completed by him in the year 2014. He admitted that his name was not in the list of selectees for promotional course as he did not fulfill the eligibility criteria. The respondent then reiterated that he had mentioned in the divorce petition and his affidavit that he could not undertake the promotional course on account of the mental tension because of the conduct of his wife.

82. As noted above, the respondent could not prove that his wife had made any complaint before his superior officers prior to the filing of the divorce petition. In view of his admission that he was not qualified for promotional course prior to the year 2014, the assertion in the divorce petition that the promotional prospects of the respondent were hampered due to the conduct and behaviour of his wife are proved to be false. The said ground appears to have been taken in the divorce petition on legal advise and later reiterated in the affidavit filed by the respondent in his examination-in-chief, in order to prove his case which he failed to establish in the cross examination. The divorce petition, thus, proved to have been filed on incorrect facts and false pleas. The family court has erred in taking into consideration of the averments made in the divorce petition as gospel truth, ignoring the evidence on record.

(ii) Additional grounds of cruelty:-

83. Now coming to the additional ground taken by the family court for granting the decree of divorce, the criminal cases filed by the wife after 23.11.2011, when she allegedly had left her matrimonial home on her own. Relevant is to note that the petition under Section 9 of the Act' 1955 was filed by the wife in the year

2013. It was categorically stated by the appellant wife that the respondent husband was not appearing in Section 9, restitution matter and after two and a half months of filing of the petition under Section 9, the appellant wife filed application seeking interim maintenance under Section 125 Cr.P.C. On confrontation, the appellant stated that she was constrained to file the application under Section 125 Cr.P.C. as the respondent was not appearing in the petition under Section 9 of the Act' 1955. The appellant was confronted in the course of cross examination about her act of filing the petition under Section 9 of the Act' 1955 and Section 125 Cr.P.C., but the categorical statement made by her that the respondent husband was not appearing in Section 9 matter, which was filed prior to filing of the divorce petition, could not be disputed. It has come on record that the application under Section 125 Cr.P.C. was filed in October 2013, and it is admitted by the respondent, in cross, that from the date of alleged desertion, i.e. from 23.11.2011 till October 2013, he did not provide any maintenance to his wife. It was also admitted by the respondent, in cross, that the copy of the application for maintenance given by the wife in the department was provided to him. It is pertinent to note that till 27.11.2013, when the respondent filed the divorce petition, no criminal case was lodged by the wife except the application for maintenance under Section 125 Cr.P.C. and on this fact when the respondent was put to cross, he admitted the same but reiterated that false complaints were made by the wife in his department, which he could not prove.

(iii) Conduct of the husband:-

84. On the other side, looking to the conduct of the respondent, it may be noted that his father made a criminal complaint to the police on 29.11.2011 and when the appellant was confronted about the said complaint, he stated that on 23.11.2011, when his wife had

left his home, his father was called in the evening and the entire incident was narrated to him. His father came to Ambala on the very next date, i.e. 24.11.2011. The respondent, however, gave a vague answer when confronted as to whether his father stayed from 24.11.2011 till 29.11.2011, the date of the complaint to the police, but it was admitted by him that on the date of the complaint, i.e. 29.11.2011, his father was in Ambala and he made the complaint to the Police Commissioner. The respondent then stated, in cross, that the complaint was not transcribed by his father in his presence as he was on duty and further stated that he got the copy of the complaint lodged by his father before the Police Commissioner, Ambala on 29.11.2011 and it was also read over to it. He then stated that he did not find any mistake in the complaint made by his father. The suggestion that the complaint was lodged by his father in defence was though denied but from the averments made in the said complaint brought on record as paper No.45-Ga1/4 and 45-Ga 1/5, it is evident that the father of the respondent pleaded the case of his son that his daughter-in-law, the wife of his son, had left her marital home without any reason and against the wishes of his son. The father of the respondent in his complaint further raised an apprehension that his daughter-in-law and her family members may lodge false cases against him and his son, which otherwise proved to be false. The respondent also admitted that he wrote the letter to the Commanding Officer on 25.11.2011 narrating the incident occurred on 23.11.2011, when his wife had left Ambala, and stated that he did so in order to put everything on record for future.

85. From the conspectus of the above facts, at-least, it is evident that the father and son were having something in mind that they created evidence for their protection for future soon after the appellant allegedly left her marital home, though no criminal

complaint was filed by the wife till the year 2014, much after filing of the divorce petition by the respondent.

(iv) Conduct of the wife:-

86. Coming to the criminal case lodged by the wife under the Dowry Prohibition Act and Section 498-A IPC, the said case was filed by the appellant wife on 06.05.2014 and it was an admission of the respondent, in cross, that prior to the filing of the said criminal case, only a complaint was filed by the wife in the Mahila Thana in December 2013 but from 23.11.2011 when the wife had allegedly left her matrimonial home till December 2013, no criminal case was lodged by the wife.

87. Thus, analyzing the conduct of the wife from the beginning, we may note that the appellant wife has proved that she did not make any complaint to the senior officers of the Air Force against her husband nor did she file any complaint in the police station rather the criminal complaint made by the respondent and his father were proved to be false. After the wife came back from the house of her husband in the year 2011, it was her categorical stand that she started her studies while living in Noida at the house of her sister and completed M. Tech course in the year 2014. After 2014, she was doing coaching for higher studies and the entire expenses of her education and daily needs were borne by her father. It was categorical statement of the appellant, in cross, she belonged to a middle class family. The petition under Section 9 of the Act' 1955 was filed by her at Noida while she was residing there. Section 125 Cr.P.C. application was filed after about two and a half months of filing of the petition under Section 9 of the Act' 1955 as the respondent was not coming forward in the said petition.

88. When paper No.45Ga/8 was shown to the appellant, in

cross, she admitted that she filed the application for maintenance in the department wherein the said order dated 15.09.2014 was passed. She then stated that the said order was passed after hearing both the parties and she did not challenge the said order. When the averments in the order dated 15.09.2014 were put to her wherein it was recorded that in her application dated 20.12.2013, the appellant had stated that the marital discord between them had reached beyond reconciliation, she categorically replied that no such statement was made by her in the application dated 20.12.2013 rather it was own assessment of the officer who had mentioned the said fact in the order on account of the stand taken by the respondent. The fact of the matter is that though the appellant was confronted about her statement in the application dated 20.12.2013 seeking maintenance from the department but the said application was not brought on record by the respondent rather he had heavily relied upon the statement in the order dated 15.9.2014 (Paper No.45 Ga/8) to put the said statement in the mouth of the appellant.

89. Be that as it may, it is evident that apart from moving the application for maintenance and seeking restitution of conjugal rights, the appellant wife did not initiate any criminal proceeding nor instituted any adverse legal action against her husband so as to put her relations in peril, till the divorce suit was filed by the respondent on the allegations which have been proved to be false and concocted.

(v) Criminal cases lodged by the wife:-

90. About lodging of the criminal case under Section 482 Cr.P.C., when confronted, the appellant stated that she had filed the criminal case in May 2014 narrating the incident which occurred with her. On submission of the final report, protest petition was filed by her wherein re-investigation was ordered. She again filed a protest

petition on submission of the final report which was pending in the court of the Chief Judicial Magistrate on the date of her cross-examination in this case. On the suggestion that the appellant filed the criminal case and protest petitions twice in order to harass the respondent and his family members and get them punished, she responded that she did so in order to make them realize they had wronged her. She, however, maintained the stand that the Investigating Officer did not make a proper investigation and did not go to Ambala to make a proper enquiry and further stated that nothing wrong had been mentioned by her in the first information report lodged against the respondent and his family members.

91. A further perusal of the contents of the first information report indicates that the appellant had narrated her plight and stated that the incident of physical assault upon her was intimated to the Senior officials when she was medically treated at the Air Force Station. Even the respondent had tendered an apology before the Commanding Officer at the Air Force, Ambala for the incident occurred on 25.10.2011. She further narrated an incident occurred outside the Mahila Thana on 06.04.2014 when she and her father were abused by her husband and father-in-law. She further stated therein that on 05.07.2013, her father had left to her in-law's house at Prabhat Nagar, Meerut where she stayed there for a period of three days but on 08.7.2013 but her-in-laws had thrown her out after abusing her. It may be noted that during the course of the cross-examination of the appellant, she was not confronted on the allegations of the incident of physical assault narrated by her in the first information report, though the cross-examination of the appellant wife was made in the year 2017. She was also not confronted about her narration of the incident occurred on 06.04.2014 outside the Mahila Thana. About the statement made by her having been stayed

in the house of her in-laws from 05.07.2013 till 08.07.2013, the respondent husband had showed his ignorance. The parents of the respondent with whom, the appellant had allegedly resided from 05.07.2013 till 08.07.2013 did not come forward to confront her.

92. In any case, legal remedy availed by the appellant in filing a criminal case on the allegations made in the first information report as noted above, cannot be said to be a ground to conclude that the act of the wife in lodging the criminal case under the Dowry Act and 498-A had caused mental cruelty to her husband, the respondent herein, for the only reason that final reports were submitted by the Investigating Officer and the appellant wife had filed protest petitions twice challenging the investigation made by the police.

(vi) Subsequent events:-

93. As regards the domestic violence case, it was filed on 05.04.2016 when all doors of reconciliation knocked by the appellant were closed. It was categorical statement of the appellant that she went to the Air Force Station Kalaikunda, West Bengal on 25.01.2016 in order to save her marriage and the suggestion that all her moves after leaving her husband's home were part of a pre-conceived plan was denied. When confronted, the appellant stated that she went to the above noted place of posting of the respondent but came back when the respondent told his senior officers that he would not meet her. She admitted that she made efforts to patch up but came back on account of the refusal of the respondent to talk to her. She gave certain papers to the concerned officers as a proof of being the wife of the respondent. The respondent husband, on the other hand, admitted that on 25.01.2016, his wife did not come to meet him rather she came to the Air Force Station, Kalaikunda, West Bengal, where he was posted. His wife stayed for five days at the Air

Force Station and he did not meet her in those five days. The respondent had shown ignorance about the fact that his wife had expressed her wishes to meet him and stated that the department informed him that his wife came there and was staying in the Guest House. He then gave an explanation that he did not meet his wife because of the pendency of the divorce suit though there were other reasons to meet her.

94. Having noted the admission of the respondent that he did not meet his wife nor his wife came to him when she stayed for five days at the Air Force Station Kalaikunda West Bengal, we are required to note the contents of the complaint filed by the respondent on 30.01.2016, on the 5th day when his wife had already left the Air Force Station. As per the contents of the said report submitted to the Superintendent of Police, Pachchim Medinipur, West Bengal, the appellant broke into the house of the respondent in the morning on 29.01.2016 in order to forcibly enter inside the house and thereby caused mental harassment to him and created public nuisance in the Air Force Station Kalaikunda. We may note that there is no narration of this incident, during cross, by the respondent when he was confronted about his complaint on the visit of his wife at the Air Force Station, Kalaikunda, West Bengal. What was the date of the complaint given to the police, was not brought in the Court. From the analysis of the conduct of the respondent and his action in making criminal complaint at the police station on 30.01.2016, after his wife had already left the Air Force Station, Kalaikunda, West Bengal, it is evident that it was a calculated move of the respondent to create evidence against his wife. It could not be proved by the respondent that the appellant wife had submitted any complaint against the respondent husband when she visited the Air Force Station, Kalaikunda, West Bengal during the pendency of the divorce suit. It

is proved that she only met some senior officers of the department.

Findings on the issue of cruelty:-

95. Apart from the facts noted above from the record, there is nothing against the appellant. The family court has erred in returning a finding that the appellant made complaints to the Senior officers of the Air Force aimed to get the respondent dismissed from service while holding that the appellant had thereby caused mental cruelty to her husband by her conduct and behaviour. The reasoning given by the family court that the appellant wife was adamant to take up a job in Noida, outside the Air Force Station, was bereft of evidence. Lodging of the criminal complaint by the wife cannot be viewed against her so as to reach at the conclusion that by lodging the criminal complaint, the wife had traumatized the respondent and his entire family.

96. As discussed above, the criminal case lodged by the wife cannot be a reason to grant divorce on the ground of cruelty and the family court had acted illegally in holding that even filing of the application for maintenance under Section 125 Cr.P.C. by the wife would come within the meaning of cruelty. It seems that the family court was swayed away by the fact that the respondent husband was a Fighter Pilot posted as Squadron Leader in the Air Force and any kind of mental disturbance caused to him would come in the way of the dedicated services of the Nation, having lost sight of the fact that the respondent husband cannot take benefit of his own wrong by his mere position in service. Once he had wronged his wife by not treating her well and not trying to patch up the marital discord by acting wisely in his complete matrimonial life, no indulgence can be given to the respondent for the sole fact of being posted as a fighter pilot in the Indian Air Force. The conclusion drawn by the family

court that all the abovenoted acts of wife had resulted in an act of 'cruelty' caused upon her husband is, thus, contrary to the evidence on record. The findings returned by the family court on issue No.1 in favour of the petitioner/respondent herein are, thus, liable to set aside.

Relief:-

97. Now the question remains as to the relief to which the appellant wife is entitled to.

98. From the statement of the husband, their marriage was arranged and was solemnized with the approval of both the families. Soon after the marriage, they stayed together for about 3-4 months at the place of posting of the husband at the Air Force Station, Uttarlai, Badmer, Rajasthan. As per the husband, they could not stay together peacefully even during this short period of 3-4 months after marriage and his statement is that the wife was adamant to go out to take up employment and that was the reason for their differences, which is not acceptable as it is admitted by the husband that the wife had completed B.Tech course only in the year 2010 whereas their marriage was solemnized in November 2009. During their short stay at Badmer, Rajasthan, the wife also went to Meerut to undertake examination for the B.Tech course. During the posting of the husband at the Air Force Station, Uttarlai, Badmer, Rajasthan soon after marriage, certain dispute had occurred between them and as per the statement of the wife in the first information report, she was treated at the Air Force Station hospital on 31.03.2010. Again an incident had occurred in February 2011 wherein wife had suffered certain injuries and was treated at the Air Force Station, at the place of the posting of the husband. The respondent was confronted, in cross, about those incidents and he showed ignorance about the treatment of his wife on 01.04.2010 at the Air Force Station, Uttarlai. The respondent also

showed ignorance about the incident occurred in February 2011 as narrated in the first information report. He, however, had categorically denied the suggestion that he had assaulted his wife after consuming liquor.

99. The differences between the spouses had ultimately resulted in the incident occurred on 23.11.2011, when the appellant had left her marital home alongwith her brothers in the presence of the respondent husband. Both the spouses are levelling allegations against each other shifting responsibility for the marital discord, but it is difficult to accept that the fault lies only with the appellant wife. In the matter before us, it seems that during the short period of two years of their marital life, both the spouses were facing issues of compatibility. The allegations of wife are of physical assault by the husband, whereas husband seems to be aggrieved by the stubborn attitude, conduct and behaviour of the wife. They could not live peacefully and happily even during the short period of two years soon after marriage. It further seems to us that the respondent husband was under influence of his parents. The role of his father in going to Ambala and lodging a report at the P.S. Ambala Cantt, soon after the wife had left her matrimonial home alongwith her brothers, reflects dominating and reckless behaviour of an elder member in the family of the husband. The husband states that after two years of separation he realized that adjustment was not possible and as such talked about mutual divorce with the wife who refused the request. The husband admitted that he never met his wife after she had left him on 23.11.2011. He never went to meet his wife or her parents, never called her. The statement of the husband that his parents made efforts for reconciliation by talking to the parents of his wife and the wife herself who was staying at Meerut proved to be incorrect. Looking to the attitude of the father of the respondent, it is difficult to accept that

he acted as a bridge between his son and daughter-in-law and made any efforts to remove their differences. The respondent husband showed his ignorance about the visit of his parents to his wife's home at Meerut though both the families were residing in the same city. Rather categorical stand of the husband is that his wife went from his home without his consent and, as such, he did not make any effort to bring her back. He stated that two years of marriage was not a good experience for him so he did not bring his wife back and waited for another two years to file the divorce petition. The husband stated that the wife had opportunity to come back to him during the initial two years of separation but firmly stated that he was not ready to keep his wife in any circumstance. No legal remedy was availed by the husband to bring back his wife and he categorically stated during his cross-examination that he was never ready to keep the appellant Sneha Pandit as his wife. He never met her personally from the date of the separation till the date of the institution of the divorce suit, as he needed divorce at any cost.

100. From the statement of the wife, it seems that the father of the respondent namely the father-in-law went to the mediation center during reconciliation proceedings. The wife categorically stated that her father in law was instrumental in institution of the divorce petition and he was doing pairvi in the matter . The respondent had filed a petition under Article 227 of the Constitution of India in the year 2016, itself for expeditious disposal of the divorce petition. The certified copy of order dated 11.04.2016 passed by this court directing the family court to decide the divorce petition is on record.

101. The respondent husband in his cross-examination has categorically stated that he did not make any effort to bring back his wife after 23.11.2011 as she left on her own volition without his consent and thereafter she lodged cases against him and also moved

an application for maintenance. He however, admitted that during the period of two years, the appellant wife had only moved an application before the department to seek maintenance and also that no maintenance was given by him during the period of two years of separation.

102. It is clear that the dispute between the parties assumed alarming proportions with the passage of time and it seems that no one in the family made efforts to make the warring couple see reason. No effort was made at the early stage of the dispute to help the couple, before the wife filed the complaint under the Dowry Act, 498-A, in a desperate attempt to save her marriage. She was not counselled by any independent person or responsible elder of the family. Mediation proceedings between the parties failed on account of adamant stand of the respondent husband that he would not keep his wife at any cost. The husband did not even participate in the mediation proceeding and sent his father. Whereas the wife was always ready to go to with her husband and was making efforts in that direction by going to his parent's home and his place of posting to meet him even after criminal and civil cases were filed by both the parties. It seems to us that the criminal case was filed by the wife, in desperation, in order to bring her husband to the negotiation table. Her said attempt also failed as final reports were submitted twice in favour of the husband. The situation, however, turned against her each time and she had lost every battle with her husband, failed in every attempt to save her marriage, she never got any level-playing field, to bring her husband to the negotiation table, who refused to meet her at any cost.

103. We may not be misunderstood in saying that the fault lies only with the respondent husband but the sequence of the events of the present case portrays a clear picture that in the matrimonial

dispute both the spouses were at fault but no one even elders in the family had helped them to overcome their differences and the way the appellant wife had approached the problem, it turned against her.

104. The cause of misunderstanding between the spouses was trivial but could not be sorted out. The records indicates that the wife was barely 22 years of age at the time of marriage and husband was 25 years. They have consumed their prime period of progress and happiness in life in the litigation before the Court. They could live together only for two years soon after their marriage that too with great difficulty. The appellant wife and the respondent husband are staying apart from 23.11.2011, thus, they are living separately for more than 10 years, in their total period of 12 years of matrimonial life. This separation has created a distance between the two which may not be bridged if we refuse to grant divorce.

105. In recent decades, women have moved forward in various areas of their lives and are competing with men despite many obstacles. New opportunities in education, politics, and employment caused many to define new roles for women. In our Indian society, the women performs not only the role of wife, partner, mother, manager of the home but also hold key positions as Administrator, Economist, Disciplinarian, Teachers, Doctor, Artist. The ever evolving human desire drives the development of men and women alike. Over the past 60 years, we have witnessed a conspicuous change in human desires. Women wish to be less and less involve in household management and child care and are increasingly expanding their involvement in other areas of society. At the same time, the world is pushing towards greater equality and women assume roles and responsibilities previously only filled by men as the world becomes more independent, it demands the intervention of women, asking the women to put their unique qualities into practice. A

women is capable of holding on to a large number of tasks as well as carry them out successfully. Women and men are also different in their attitude but the mutual completion of each other qualities is the key to build a healthy society in the new era. The integration of women in the leadership of society and other system on human life is becoming necessary. The maternal qualities of women are expanding from the personal home to the global home. In this changing world, where the gender roles began to shift and change, where the man of the family is not necessarily the bread winner while the woman is the house wife, confining men and women in their fixed role inside their home, often led to this type of dispute.

106. In this changing world, in the case before us, we are feeling pain to note that a 22 years old girl who was doing B.tech course, was married off by her parents giving her a dream to live as the wife of a fighter pilot.

107. The parents of the girl did not allow her to complete even her graduation course and in the arrange marriage she was told by her husband that she would not be allowed to take up employment, a pre-condition for marriage. A 22 years old girl who was not even graduate might not be ready to take up the responsibilities of a marriage which became onerous for her with the attitude of her husband who takes credit even in his wife finishing B.Tech course. The young girl was not free to even express her aspirations to her husband, who was made incharge of her life. The independence of a young girl was, thus, curtailed brutally both by her parents and the husband. The husband also cannot be faulted as he was brought up in such an atmosphere where he was tutored that his wife would have to obey him. The aspirations of the young girl and the attitude of her husband being in conflict had been the cause of differences and

disputes on trivial issues. The differences arose because of compatibility issues between two adults who came from different social background. At that moment, elders in the family were required to play a mature role in saving their relationship to bring harmony between two warring young persons. However, father of the husband namely (father-in-law) of the wife, behaved completely in an immature way. Instead of helping his son and daughter-in-law to overcome the crisis, he had taken the dispute to another level by lodging police complaint at a time when actually there was no serious dispute between the couple. While acting defensive as per his own explanation, the act of father of the husband ignited a trivial dispute to assume an alarming proportion. As far as the husband is concerned, he had his own ego when he stated categorically that since his wife had left (his house) on her own, she could have returned back “on her own” within two years before filing of the divorce petition and, thus, sought to explain as to why he never went to meet his wife or to talk to her to bring her back with him. This attitude of the husband is a typical example of male chauvinism.

108. Keeping this attitude consistent, in the year 2017, the husband made a statement in the Court that he was not ready to keep his wife in any circumstance and needed divorce at any cost.

109. Looking to the entire matrimonial life of two individuals before us, while dealing with the problems they faced in a short period of their conjugal life and thereafter, considering the whole issue from human angle, physiological point of view of both the spouses, it can be concluded that the matrimonial bond is beyond repair. It is one of those cases where refusing to sever the marital tie does not serve the sanctity of marriage as in such case the marriage becomes a fiction though supported by a legal tie. Such a situation may lead to mental cruelty of both the individuals and hamper positive progress and

ultimate happiness in life. We are alive of the legal position that irretrievable break down of marriage is not a ground for divorce under the Act' 1955. We are also conscious of the law that the wrongdoer cannot take benefit of his own wrong. We are also conscious that being the first appellate court, the decree of divorce cannot be granted unless grounds as indicated under Section 13 of the Act' 1955 are established.

110. However, we cannot oblivious of the fact that both the spouses who are well educated, belong to well respected families had suffered a lot on account of their own attitude and behaviour. Though the husband had refused to keep his wife with him and his stand was consistent throughout but it cannot be said that it is only he who was at fault. The parties being well educated persons if free from the matrimonial bond, may look forward to settle in their life in a better and positive way which may make them happy individuals and their lives would be constructive to our society.

111. At this juncture, we are constrained to record our dissatisfaction in the manner in which the Family Court Judge had dealt with the entire issue. The approach of the Family Court Judge in dealing with the matter shows complete lack of sensitivity and reflects chauvinist attitude of the Presiding Officer. The way the judgement has been written reflects the male chauvinist belief of the Presiding Officer so much so that he could not see the basic human problem of compatibility in the attitude and behaviour of two individuals.

112. The one-sided approach of the family court judge had closed the doors of reconciliation between the parties. Had he acted in a neutral manner with progressive attitude, it was possible that the parties could see reasons when the matrimonial litigation was at the premature stage, bitterness between them might not have escalated to

this level. The gender neutral approach of the family Court judge was much needed to deal with the matrimonial issues impartially. But his answer to the problems of the couple had again wronged the appellant wife who was blamed by the family Court for all her deeds and acts, ignoring the acts of the husband and his family members.

113. The appellant wife must be 35 years of age as of now and the husband is about 39 years. We are of the considered view that if at this juncture of their life, they are not given a second chance and are forced to live together, their lives may become miserable. The matrimonial dispute which has assumed this proportion on trivial issues, seems to be beyond repairs on account of bitterness created by the acts of both the husband and the wife and their family members.

114. The Apex Court in **K. Srinivas Rao (supra)** has taken note of its previous decisions to observe that the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the Court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the Court's decree. It was noted therein that the divorce petition was pending for eight years and a good part of the lives of both the parties had been consumed in litigation, yet the end was not in sight. In such circumstance, the Apex Court in **V. Bhagat vs D. Bhagat** 1994 (1) SCC 337 had observed that irretrievable break down of marriage is not a ground by itself, but, while scrutinizing the evidence on record to determine whether the grounds alleged are made out and in determining the relief to be granted, the said circumstance can certainly be borne in mind.

115. In the course of fighting litigation in different Courts the parties lost their “young days of happiness and prosperity.” In the compelling circumstances of the present case, though we do not find any convincing ground taken in the divorce petition filed by the husband to grant the decree of divorce to him, but in order to give a chance to the parties to settle themselves and be relieved of a marriage which is dead, we are of the view that the marriage between the parties deserves to be dissolved.

116. But before concluding so, we are required to consider that the appellant wife who have lost employment opportunities after completion of the B.Tech course because of the resistance of her husband, who himself could not give her a peaceful comfortable life, is entitled to permanent alimony. A well educated girl who got married to an Air Force Officer at the age of barely 22 years must have a lot of dreams to lead the comfortable and secured life of the wife of an Air Force Officer. The wife though had completed B.Tech course in the year 2010 but could not take up any job due to marital obligations. During the period of separation of two years, she had studied M.Tech course and also took coaching for higher education but could not take any employment for becoming an economically independent person due to her energies being consumed in the litigation with her husband. The husband had wronged his wife in filing the divorce petition on false grounds.

117. Regard being had to the above circumstances and social status and strata of the parties especially the husband, the aspirations of the appellant wife to lead the life of the wife of an Air Force Officer, we found it justified to provide a sum of Rs.1 Crore (One Crore) as permanent alimony to wife, excluding the amount already paid to the appellant wife towards interim maintenance. We hope and trust that the alimony fixed by us may help the appellant wife to

purchase a decent house for herself and stand on her own legs to become a useful member of the society.

118. The total amount of alimony shall be deposited by the respondent husband within a period of six months from the date of the judgement, in two installments of Rs.50 lacs each, before the Principal Judge, Family Court at Meerut and the money shall be released in favour of the wife soon after the deposits on an application moved by her.

119. We are conscious that we are granting decree of divorce to the couple in the peculiar facts and circumstances of the case taking a pragmatic view in order to give them a chance to lead a peaceful and happy life in future and an opportunity to the wife to be economically independent with the permanent alimony which she receives from her husband. We hope and trust that the parties may now put an end to their dispute and look forward to a positive life in future.

120. We are making it clear that this judgement has been given in the peculiar facts and circumstances of the case on an analysis of complete matrimonial life of the parties though we are convinced that the appellant wife was not solely at fault. This judgement thus, shall not be treated as a precedent or guidance by the family court to grant decree of divorce on the ground of irretrievable break down of marriage. We have done so as both the parties are well educated and belong to a well-off family and they still have a chance to settle in their lives in a better way if are separated without any social stigma.

121. With the aforesaid directions, we annul the marriage between the parties granting them the decree of divorce.

122. The divorce petition No.1614 of 2013 is hereby allowed.

123 The appeal is disposed of, accordingly.

124. No order as to cost.

125. Before parting with this judgement, we find it imperative to put on record that the role of family court judges is not only of adjudicators but they are facilitators in matrimonial disputes where perception of a judge about gender issues plays a major role in his decisions. The Family Court judges have to be gender sensitive. To evolve as a Family Court judge, a person has to be gender neutral, gender sensitive, open to the social changes to have a mature thinking. In this evolution process, according to us, gender sensitization program can play an important role. We, therefore, recommend that gender sensitization program be especially designed and held for the Family Court Judges in the State of U.P. The High Court Family Court Sensitization Committee may consider the issue to take it further. The Registrar General is directed to place the matter before the committee.

(Sadhna Rani (Thakur),J.)

(Sunita Agarwal, J.)

Order Date :- 29.09.2022

Himanshu