

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

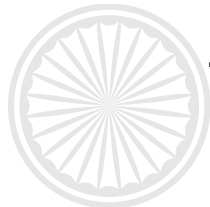
**CIVIL APPEAL NO. 1794 OF 2013**

(Arising out of Special Leave Petition (Civil) No. 4782 of  
2007)

K. SRINIVAS RAO

Versus

D.A. DEEPA



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APPELLANT

RESPONDENT

**JUDGMENT**

**(SMT.) RANJANA PRAKASH DESAI, J.**

1. Leave granted.

2. This appeal, by special leave, has been filed by the appellant-husband, being aggrieved by the judgment and order dated 8/11/2006 passed by the Andhra Pradesh High Court in Civil Miscellaneous Appeal No.797/03, setting aside the decree of divorce granted in his favour.

3. The appellant-husband is working as Assistant Registrar in the Andhra Pradesh High Court. The marriage between the appellant-husband and the respondent-wife was solemnized on 25/4/1999 as per Hindu rites and customs. Unfortunately, on the very next day disputes arose between the elders on both sides which resulted in their abusing each other and hurling chappals at each other. As a consequence, on 27/4/1999, the newly married couple got separated without consummation of the marriage and started living separately. On 4/10/1999, the respondent-wife lodged a criminal complaint against the appellant-husband before the Women Protection Cell alleging *inter alia* that the appellant-husband is harassing her for more dowry. This complaint is very crucial to this case. We shall advert to it more in detail a little later. Escalated acrimony led to complaints and counter complaints. The respondent-wife filed a petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights before the Family Court, Secunderabad. The appellant-husband filed a counter-claim seeking dissolution of marriage on the ground of cruelty and

desertion under Section 13(1)(i-a) and (b) of the Hindu Marriage Act, 1955.

4. The Family Court while dismissing the petition for restitution of conjugal rights and granting decree of divorce *inter alia* held that the respondent-wife stayed in the appellant-husband's house only for a day, she admitted that she did not have any conversation with anyone and hence any amount of oral evidence adduced by her will not support her plea that she was harassed and driven out of the house; that the story that the appellant-husband made a demand of dowry of Rs.10,00,000/- is false; that by filing false complaint against the appellant-husband and his family, alleging offence under Section 498-A of the IPC in the Metropolitan Magistrate Court, Hyderabad and by filing complaints against the appellant-husband in the High Court where he is working, the respondent-wife caused mental cruelty to the appellant-husband and that reunion was not possible. The Family Court directed the appellant-husband to repay Rs.80,000/- given by the respondent-wife's father to him

with interest at 8% per annum from the date of the marriage till payment.

5. By the impugned judgment the High Court allowed the appeal carried by the respondent-wife against the said judgment and set aside the decree of divorce granted in favour of the appellant-husband. The High Court *inter alia* observed that the finding of the Family Court that lodging a complaint with the police against the appellant-husband amounts to cruelty is perverse because it is not a ground for divorce under the Hindu Marriage Act, 1955. The High Court further held that the appellant-husband and the respondent-wife did not live together for a long time and, therefore, the question of their treating each other with cruelty does not arise. According to the High Court, the conclusion that the respondent-wife caused mental cruelty to the appellant-husband is based on presumptions and assumptions.

6. Mr. Jayanth Muth Raj, learned counsel for the appellant-husband assailed the conduct of the respondent-wife and

submitted that it disentitles her from getting any relief from this Court. Counsel took us through the complaint lodged by the respondent-wife with the Superintendent of Police, Women Protection Cell, Hyderabad, making defamatory allegations against the mother of the appellant-husband and drew our attention to the various legal proceedings initiated by her against the appellant-husband and his family. Counsel submitted that she also lodged complaints with the High Court asking for the removal of the appellant-husband from his job. Counsel submitted that by lodging such false complaints the respondent-wife caused extreme mental cruelty to the appellant-husband. Counsel submitted that the High Court fell into a grave error in observing that because the respondent-wife did not live with the appellant-husband for long she could not have caused mental cruelty to him. Counsel submitted that this observation is erroneous and is contrary to the law laid down by this Court. False and defamatory allegations made in the pleadings can also cause mental cruelty. Counsel submitted that the marriage has irretrievably broken down and, therefore, it is necessary to

dissolve it by a decree of divorce. In support of his submissions counsel placed reliance on **G.V.N. Kameswara Rao vs. G. Jabilli<sup>1</sup>, Parveen Mehta vs. Inderjit Mehta<sup>2</sup>, Vijayakumar R. Bhate vs. Neela Vijayakumar Bhate<sup>3</sup>, Durga Prasanna Tripathy vs. Arundhati Tripathy<sup>4</sup>, Naveen Kohli vs. Neelu Kohli<sup>5</sup> and Samar Ghosh vs. Jaya Ghosh<sup>6</sup>.**

7. Mr. D. Rama Krishna Reddy, learned counsel for the respondent-wife, on the other hand, submitted that the father of the respondent-wife had given Rs.80,000/- and 15 tolas of gold as dowry to the appellant-husband's family. However, they demanded additional cash of Rs.10,00,000/-. Because this demand could not be met, the respondent-wife and her family was humiliated and ill-treated. Therefore, the parents of the respondent-wife had to return to their house along with her immediately after marriage. The father of the respondent-wife made efforts to talk to the appellant-

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<sup>1</sup> (2002) 2 SCC 296

<sup>2</sup> (2002) 5 SCC 706

<sup>3</sup> (2003) 6 SCC 334

<sup>4</sup> (2005) 7 SCC 353

<sup>5</sup> (2006) 4 SCC 558

<sup>6</sup> (2007) 4 SCC 511

husband's family, but, they did not respond to his efforts. They persisted with their demands and, therefore, the respondent-wife had no alternative but to lodge complaint against them under Section 498-A of the IPC before the Metropolitan Magistrate, Hyderabad. The appellant-husband thereafter gave a false assurance that he will not harass her and, therefore, she withdrew the complaint and went to the matrimonial house. However, the approach of the appellant-husband and his family did not change. She had to therefore renew her complaint. Counsel submitted that only because of the obstinate and uncompromising attitude of the appellant-husband and his family that the respondent-wife had to take recourse to court proceedings. Counsel submitted that the respondent-wife values the matrimonial tie. She wants to lead a happy married life with the appellant-husband. She had, therefore, filed a petition for restitution of conjugal rights which should have been allowed by the Family Court. Counsel submitted that after properly evaluating all the circumstances the High Court has rightly set aside the decree of divorce and granted a decree of

restitution of conjugal rights. The High Court's judgment, therefore, merits no interference.

8. The matrimonial dispute started with a quarrel between the elders of both sides in which initially the appellant-husband and the respondent-wife were not involved. The ego battle of the elders took an ugly turn. Parties were dragged to the court and the inevitable happened. The relations between the two families got strained. With a fond hope that we could bring about a settlement we requested the counsel to talk to the parties and convey our wishes that they should bury the hatchet and start living together. We also tried to counsel them in the court. The respondent-wife appears to be very keen to go back to the matrimonial home and start life afresh, but the appellant-husband is adamant. He conveyed to us through his counsel that by filing repeated false complaints against him and his family the respondent-wife has caused extreme cruelty to them and therefore it will not be possible to take her back. In view of this we have no option but to proceed with the case.



9. The High Court has taken a view that since the appellant-husband and the respondent-wife did not stay together, there is no question of their causing cruelty to each other. The High Court concluded that the conclusion drawn by the Family Court that the respondent-wife caused mental cruelty to the appellant-husband is erroneous. We are unable to agree with the High Court.

10. Under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, a marriage can be dissolved by a decree of divorce on a petition presented either by the husband or the wife on the ground that the other party has, after solemnization of the marriage, treated the petitioner with cruelty. In a series of judgments this Court has repeatedly stated the meaning and outlined the scope of the term '*cruelty*'. Cruelty is evident where one spouse has so treated the other and manifested such feelings towards her or him as to cause in her or his mind reasonable apprehension that it will be harmful or

injurious to live with the other spouse. Cruelty may be physical or mental.

11. In **Samar Ghosh** this Court set out illustrative cases where inference of 'mental cruelty' can be drawn. This list is obviously not exhaustive because each case presents its own peculiar factual matrix and existence or otherwise of mental cruelty will have to be judged after applying mind to it. We must quote the relevant paragraph of **Samar Ghosh**. We have reproduced only the instances which are relevant to the present case.

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

***(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.***

***(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the***

wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) xxx xxx xxx

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

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

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

(vii) xxx xxx xxx

(viii) xxx xxx xxx

(ix) xxx xxx xxx

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

(xi) xxx xxx xxx

(xii) xxx xxx xxx

(xiii) xxx xxx xxx

(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."*

It is pertinent to note that in this case the husband and wife had lived separately for more than sixteen and a half years. This fact was taken into consideration along with other facts as leading to the conclusion that matrimonial bond had been ruptured beyond repair because of the mental cruelty caused by the wife. Similar view was taken in **Naveen Kohli**.

12. In **V. Bhagat v. D. Bhagat**<sup>7</sup> in the divorce petition filed by the husband the wife filed written statement stating

<sup>7</sup> (1994) 1 SCC 337

that the husband was suffering from mental hallucination, that his was a morbid mind for which he needs expert psychiatric treatment and that he was suffering from '*paranoid disorder*'. In cross-examination her counsel put several questions to the husband suggesting that several members of his family including his grandfather were lunatics. This court held that these assertions cannot but constitute mental cruelty of such a nature that the husband cannot be asked to live with the wife thereafter. Such pleadings and questions it was held, are bound to cause immense mental pain and anguish to the husband. In **Vijaykumar Bhate** disgusting accusations of unchastity and indecent familiarity with a neighbour were made in the written statement. This Court held that the allegations are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous to live with her husband. In **Naveen Kohli** the

respondent-wife got an advertisement issued in a national newspaper that her husband was her employee. She got another news item issued cautioning his business associates to avoid dealing with him. This was treated as causing mental cruelty to the husband.

13. In **Naveen Kohli** the wife had filed several complaints and cases against the husband. This Court viewed her conduct as a conduct causing mental cruelty and observed that the finding of the High Court that these proceedings could not be taken to be such which may warrant annulment of marriage is wholly unsustainable.

14. Thus, to the instances illustrative of mental cruelty noted in **Samar Ghosh**, we could add a few more. 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.

15. We shall apply the above principles to the present case. Firstly, it is necessary to have a look at the legal proceedings initiated by both sides against each other. The facts on record disclose that after the marriage, due to some dispute which arose between the elders, both sides abused and virtually attacked each other. The respondent-wife was taken by her parents to their house. According to the respondent-wife, her father made efforts to bring about an amicable settlement but the other side did not respond favourably and, therefore, on 4/10/1999 she lodged a complaint with the Superintendent of Police, Women Protection Cell against the appellant-husband and members of his family. In our opinion, this complaint is, to a large extent, responsible for widening the rift between the parties. In this complaint, after alleging ill-treatment and harassment for dowry, it is alleged that mother of the appellant-husband asked the respondent-wife to sleep with the father of the

appellant-husband. When she was cross-examined in the Family Court during the hearing of her petition for restitution of conjugal rights the respondent-wife admitted that she had lodged the complaint. PW-2 her mother, in her cross-examination stated that though they had asked her not to lodge the complaint, the respondent-wife lodged it. She told them that she had lodged the complaint because the appellant-husband was not listening to her. Thus, it appears that this complaint was lodged out of frustration and anger and was a reaction to the appellant-husband's refusal to live with her. It was, perhaps, felt by her that because of the pressure of such a complaint the appellant-husband would take her back to his house. Far from helping the respondent-wife, the complaint appears to have caused irreparable harm to her. It increased the bitterness. Perhaps, the respondent-wife was misguided by someone. But, such evidence is not on record. Even in this court, this complaint appears to us to be a major factor amongst others impeding settlement. Pursuant to the said complaint, Crime No.8/2000 was registered by C.I.D., Hyderabad, in the



Metropolitan Magistrate (Mahila Court), Hyderabad against the appellant-husband and his family under Section 498-A of the IPC. It is the respondent-wife's case that the appellant-husband gave an assurance before the police that he will not harass her. She, therefore, withdrew the complaint. The police then filed a closure report. According to the respondent-wife, the appellant-husband did not abide by the promise made by him and, therefore, she filed a protest petition. The Magistrate Court, Hyderabad, then, took cognizance of the case and renumbered the case as C.C.No.62/2002.

16. In the meantime, the respondent-wife filed O.P.No.88/2001 in the Family Court, Secunderabad, for restitution of conjugal rights. The appellant-husband filed a counter claim for divorce on 27/12/2002. The Family Court dismissed the petition for restitution of conjugal rights and allowed the counter claim for divorce filed by the appellant-husband. The respondent-wife challenged the Family Court judgment in the High Court. On 8/12/2006 the High Court

reversed the Family Court's order and allowed the petition for restitution of conjugal rights. The present appeal is filed by the appellant-husband against the said judgment.

17. According to the respondent-wife, on 17/9/2007 when she, along with her mother, came out of the court after a case filed by her against the appellant-husband was adjourned, the appellant-husband beat her mother and kicked her on her stomach. Both of them received injuries. She, therefore, filed complaint for the offence punishable under Section 324 of the IPC against the appellant-husband (C.C.No. 79/2009). It may be stated here that on 19/10/2009 the appellant-husband was acquitted in this case.

## JUDGMENT

18. On 24/6/2008 the judgment was delivered by Additional Chief Metropolitan Magistrate, Hyderabad in C.C.No. 62/2002. The appellant-husband was convicted under Section 498-A of the IPC and was sentenced to undergo six months simple imprisonment. He and his parents were acquitted of the offences under the Dowry Prohibition Act.

His parents were acquitted of the offence under Section 498-A of the IPC. After this judgment the respondent-wife and her parents filed a complaint in the High Court saying that since the appellant-husband was convicted he should be dismissed from service. Similar letters were sent to the High Court by the maternal uncle of the respondent-wife.

19. On 14/7/2008 the appellant-husband filed Criminal Appeal No.186/2008 challenging his conviction under Section 498-A of the IPC before the Metropolitan Sessions Judge. It is pertinent to note that the respondent-wife filed Criminal Appeal No.1219/2008 in the High Court questioning the acquittal of the appellant-husband and his parents of the offences under the Dowry Prohibition Act and also the acquittal of his parents of the offence punishable under Section 498-A of the IPC. This appeal is pending in the High Court. Not being content with this, the respondent-wife filed Criminal Revision Case No.1560/2008 in the High Court seeking enhancement of punishment awarded to the

appellant-husband for offence under Section 498-A of the IPC.

20. According to the appellant-husband on 6/12/2009 the brother of the respondent-wife came to their house and attacked his mother. His mother filed a complaint and the police registered a complaint under Section 354 of the IPC. The brother of the respondent-wife also lodged a complaint and an offence came to be registered. Both the cases are pending.

21. On 29/6/2010 Criminal Appeal No. 186/2010 filed by the appellant-husband challenging his conviction for the offence under Section 498-A of the IPC was allowed by the Metropolitan Sessions Judge and he was acquitted. The respondent-wife has filed criminal appeal in the High Court challenging the said acquittal which is pending.

22. We need to now see the effect of the above events. In our opinion, the first instance of mental cruelty is seen in the scurrilous, vulgar and defamatory statement made by the

respondent-wife in her complaint dated 4/10/1999 addressed to the Superintendent of Police, Women Protection Cell. The statement that the mother of the appellant-husband asked her to sleep with his father is bound to anger him. It is his case that this humiliation of his parents caused great anguish to him. He and his family were traumatized by the false and indecent statement made in the complaint. His grievance appears to us to be justified. This complaint is a part of the record. It is a part of the pleadings. That this statement is false is evident from the evidence of the mother of the respondent-wife, which we have already quoted. This statement cannot be explained away by stating that it was made because the respondent-wife was anxious to go back to the appellant-husband. This is not the way to win the husband back. It is well settled that such statements cause mental cruelty. By sending this complaint the respondent-wife has caused mental cruelty to the appellant-husband.

23. Pursuant to this complaint, the police registered a case under Section 498-A of the IPC. The appellant-husband

and his parents had to apply for anticipatory bail, which was granted to them. Later, the respondent-wife withdrew the complaint. Pursuant to the withdrawal, the police filed a closure report. Thereafter, the respondent-wife filed a protest petition. The trial court took cognizance of the case against the appellant-husband and his parents (CC No. 62/2002). What is pertinent to note is that the respondent-wife filed criminal appeal in the High Court challenging the acquittal of the appellant-husband and his parents of the offences under the Dowry Prohibition Act and also the acquittal of his parents of the offence punishable under Section 498-A of the IPC. She filed criminal revision seeking enhancement of the punishment awarded to the appellant-husband for the offence under Section 498-A of the IPC in the High Court which is still pending. When the criminal appeal filed by the appellant-husband challenging his conviction for the offence under Section 498-A of the IPC was allowed and he was acquitted, the respondent-wife filed criminal appeal in the High Court challenging the said acquittal. During this period respondent-wife and members

of her family have also filed complaints in the High Court complaining about the appellant-husband so that he would be removed from the job. The conduct of the respondent-wife in filing a complaint making unfounded, indecent and defamatory allegation against her mother-in-law, in filing revision seeking enhancement of the sentence awarded to the appellant-husband, in filing appeal questioning the acquittal of the appellant-husband and acquittal of his parents indicates that she made all attempts to ensure that he and his parents are put in jail and he is removed from his job. We have no manner of doubt that this conduct has caused mental cruelty to the appellant-husband.

24. In our opinion, the High Court wrongly held that because the appellant-husband and the respondent-wife did not stay together there is no question of the parties causing cruelty to each other. Staying together under the same roof is not a pre-condition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. In a given case, while

staying away, a spouse can cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse's life miserable. This is what has happened in this case.

25. It is also to be noted that the appellant-husband and the respondent-wife are staying apart from 27/4/1999. Thus, they are living separately for more than ten years. This separation has created an unbridgeable distance between the two. As held in **Samar Ghosh**, if we refuse to sever the tie, it may lead to mental cruelty.

## JUDGMENT

26. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, 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.

27. In **V. Bhagat** this Court noted that 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. The facts were such that there was no question of reunion, the marriage having irretrievably broken down. While dissolving the marriage on the ground of mental cruelty this Court observed that irretrievable breakdown 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. In ***Naveen Kohli***, where husband and wife had been living separately for more than 10 years and a large number of criminal proceedings had been initiated by the wife against the husband, this Court observed that the marriage had been wrecked beyond the hope of salvage and public interest and interest of all concerned lies in the recognition of the fact and to declare *defunct de jure* what is already *defunct de facto*. It is important to note that in this case this Court made a recommendation to the Union of India that the Hindu Marriage Act, 1955 be amended to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce.

28. In the ultimate analysis, we hold that the respondent-wife has caused by her conduct mental cruelty to the appellant-husband and the marriage has irretrievably broken down. Dissolution of marriage will relieve both sides of pain and anguish. In this Court the respondent-wife expressed that she wants to go back to the appellant-husband, but, that is not possible now. The appellant-husband is not

willing to take her back. Even if we refuse decree of divorce to the appellant-husband, there are hardly any chances of the respondent-wife leading a happy life with the appellant-husband because a lot of bitterness is created by the conduct of the respondent-wife.

29. In **Vijay Kumar**, it was submitted that if the decree of divorce is set aside, there may be fresh avenues and scope for reconciliation between parties. This court observed that judged in the background of all surrounding circumstances, the claim appeared to be too desolate, merely born out of despair rather than based upon any real, concrete or genuine purpose or aim. In the facts of this case we feel the same.

30. While we are of the opinion that decree of divorce must be granted, we are alive to the plight of the respondent-wife. The appellant-husband is working as an Assistant Registrar in the Andhra Pradesh High Court. He is getting a good salary. The respondent-wife fought the litigation for more

than 10 years. She appears to be entirely dependent on her parents and on her brother, therefore, her future must be secured by directing the appellant-husband to give her permanent alimony. In the facts and circumstance of this case, we are of the opinion that the appellant-husband should be directed to pay a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) to the respondent-wife as and by way of permanent alimony. In the result, the impugned judgment is quashed and set aside. The marriage between the appellant-husband - K. Srinivas Rao and the respondent-wife - D.A. Deepa is dissolved by a decree of divorce. The appellant-husband shall pay to the respondent-wife permanent alimony in the sum of Rs.15,00,000/-, in three instalments. The first instalment of Rs.5,00,000/- (Rupees Five Lakhs only) should be paid on 15/03/2013 and the remaining amount of Rs.10,00,000/- (Rupees Ten Lakhs only) should be paid in instalments of Rs.5,00,000/- each after a gap of two months i.e. on 15/05/2013 and 15/07/2013 respectively. Each instalment of Rs.5,00,000/- be paid by a

demand draft drawn in favour of the respondent-wife "D.A. Deepa".

31. Before parting, we wish to touch upon an issue which needs to be discussed in the interest of victims of matrimonial disputes. Though in this case, we have recorded a finding that by her conduct, the respondent-wife has caused mental cruelty to the appellant-husband, we may not be understood, however, to have said that the fault lies only with the respondent-wife. In matrimonial disputes there is hardly any case where one spouse is entirely at fault. But, then, before the dispute assumes alarming proportions, someone must make efforts to make parties see reason. In this case, if at the earliest stage, before the respondent-wife filed the complaint making indecent allegation against her mother-in-law, she were to be counselled by an independent and sensible elder or if the parties were sent to a mediation centre or if they had access to a pre-litigation clinic, perhaps the bitterness would not have escalated. Things would not have come to such a pass

if, at the earliest, somebody had mediated between the two. It is possible that the respondent-wife was desperate to save the marriage. Perhaps, in desperation, she lost balance and went on filing complaints. It is possible that she was misguided. Perhaps, the appellant-husband should have forgiven her indiscretion in filing complaints in the larger interest of matrimony. But, the way the respondent-wife approached the problem was wrong. It portrays a vindictive mind. She caused extreme mental cruelty to the appellant-husband. Now the marriage is beyond repair.

32. Quite often, the cause of the misunderstanding in a matrimonial dispute is trivial and can be sorted. Mediation as a method of alternative dispute resolution has got legal recognition now. We have referred several matrimonial disputes to mediation centres. Our experience shows that about 10 to 15% of matrimonial disputes get settled in this Court through various mediation centres. We, therefore, feel that at the earliest stage i.e. when the dispute is taken up by the Family Court or by the court of first instance for hearing,

it must be referred to mediation centres. Matrimonial disputes particularly those relating to custody of child, maintenance, etc. are preeminently fit for mediation. Section 9 of the Family Courts Act enjoins upon the Family Court to make efforts to settle the matrimonial disputes and in these efforts, Family Courts are assisted by Counsellors. Even if the Counsellors fail in their efforts, the Family Courts should direct the parties to mediation centres, where trained mediators are appointed to mediate between the parties. Being trained in the skill of mediation, they produce good results.

33. The idea of pre-litigation mediation is also catching up. Some mediation centres have, after giving wide publicity, set up "Help Desks" at prominent places including facilitation centres at court complexes to conduct pre-litigation mediation. We are informed that in Delhi Government Mediation and Conciliation Centres, and in Delhi High Court Mediation Centre, several matrimonial disputes are settled. These centres have a good success rate in pre-litigation

mediation. If all mediation centres set up pre-litigation desks/clinics by giving sufficient publicity and matrimonial disputes are taken up for pre-litigation settlement, many families will be saved of hardship if, at least, some of them are settled.

34. While purely a civil matrimonial dispute can be amicably settled by a Family Court either by itself or by directing the parties to explore the possibility of settlement through mediation, a complaint under Section 498-A of the IPC presents difficulty because the said offence is not compoundable except in the State of Andhra Pradesh where by a State amendment, it has been made compoundable. Though in **Ramgopal & Anr. v. State of Madhya Pradesh & Anr.**<sup>8</sup>, this Court requested the Law Commission and the Government of India to examine whether offence punishable under Section 498-A of the IPC could be made compoundable, it has not been made compoundable as yet. The courts direct parties to approach mediation centres

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<sup>8</sup> (2010) 13 SCC 540



where offences are compoundable. Offence punishable under Section 498-A being a non-compoundable offence, such a course is not followed in respect thereof. This Court has always adopted a positive approach and encouraged settlement of matrimonial disputes and discouraged their escalation. In this connection, we must refer to the relevant paragraph from **G.V. Rao v. L.H.V. Prasad & Ors.**<sup>9</sup>, where the complaint appeared to be the result of matrimonial dispute, while refusing to interfere with the High Court's order quashing the complaint, this court made very pertinent observations, which read thus:

*"12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different courts."*

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<sup>9</sup> (2000) 3 SCC 693

In **B.S. Joshi & Ors. v. State of Haryana & Anr.**<sup>10</sup>, after referring to the above observations, this Court stated that the said observations are required to be kept in view by courts while dealing with matrimonial disputes and held that complaint involving offence under Section 498-A of the IPC can be quashed by the High Court in exercise of its powers under Section 482 of the Code if the parties settle their dispute. Even in **Gian Singh v. State of Punjab & Anr.**<sup>11</sup>, this Court expressed that certain offences which overwhelmingly and predominantly bear civil flavour like those arising out of matrimony, particularly relating to dowry, etc. or the family dispute and where the offender and the victim had settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may quash the criminal proceedings if it feels that by not quashing the same, the ends of justice shall be defeated.

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<sup>10</sup> AIR 2003 SC 1386

<sup>11</sup> (2012) 10 SCC 303

35. We, therefore, feel that though offence punishable under Section 498-A of the IPC is not compoundable, in appropriate cases if the parties are willing and if it appears to the criminal court that there exist elements of settlement, it should direct the parties to explore the possibility of settlement through mediation. This is, obviously, not to dilute the rigour, efficacy and purport of Section 498-A of the IPC, but to locate cases where the matrimonial dispute can be nipped in bud in an equitable manner. The judges, with their expertise, must ensure that this exercise does not lead to the erring spouse using mediation process to get out of clutches of the law. During mediation, the parties can either decide to part company on mutually agreed terms or they may decide to patch up and stay together. In either case for the settlement to come through, the complaint will have to be quashed. In that event, they can approach the High Court and get the complaint quashed. If however they chose not to settle, they can proceed with the complaint. In this exercise, there is no loss to anyone. If there is settlement, the parties will be saved from the trials and tribulations of a

criminal case and that will reduce the burden on the courts which will be in the larger public interest. Obviously, the High Court will quash the complaint only if after considering all circumstances it finds the settlement to be equitable and genuine. Such a course, in our opinion, will be beneficial to those who genuinely want to accord a quietus to their matrimonial disputes. We would, however, like to clarify that reduction of burden of cases on the courts will, however, be merely an incidental benefit and not the reason for sending the parties for mediation. We recognize 'mediation' as an effective method of alternative dispute resolution in matrimonial matters and that is the reason why we want the parties to explore the possibility of settlement through mediation in matrimonial disputes.

36. We, therefore, issue directions, which the courts dealing with the matrimonial matters shall follow:

- (a) In terms of Section 9 of the Family Courts Act, the Family Courts shall make all efforts to settle the matrimonial disputes through mediation. Even if the

Counsellors submit a failure report, the Family Courts shall, with the consent of the parties, refer the matter to the mediation centre. In such a case, however, the Family Courts shall set a reasonable time limit for mediation centres to complete the process of mediation because otherwise the resolution of the disputes by the Family Court may get delayed. In a given case, if there is good chance of settlement, the Family Court in its discretion, can always extend the time limit.

- (b) The criminal courts dealing with the complaint under Section 498-A of the IPC should, at any stage and particularly, before they take up the complaint for hearing, refer the parties to mediation centre if they feel that there exist elements of settlement and both the parties are willing. However, they should take care to see that in this exercise, rigour, purport and efficacy of Section 498-A of the IPC is not diluted. Needless to say that the discretion to grant or not to

grant bail is not in any way curtailed by this direction. It will be for the concerned court to work out the modalities taking into consideration the facts of each case.

- (c) All mediation centres shall set up pre-litigation desks/clinics; give them wide publicity and make efforts to settle matrimonial disputes at pre-litigation stage.

37. The appeal is disposed of in the aforesaid terms.

.....J.  
(AFTAB ALAM)

JUDGMENT  
.....J.  
(RANJANA PRAKASH DESAI)

NEW DELHI,  
FEBRUARY 22, 2013.