NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). OF 2025
(Arising out of SLP(Crl.) No(s). 4297 of 2023)

VISHAL SHAH .....APPELLANT(S)

VERSUS

MONALISHA GUPTA & ORS. ....RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. Leave granted.

2. The instant appeal is directed against the judgment and order dated 25th January, 2023, passed by the High Court of Calcutta in Criminal Revision being CRR No. 135 of 2023, whereby the High Court dismissed the said Criminal Revision filed by the

authorized representative of the appellant[1], i.e., his sister, and affirmed the order dated 15th September, 2022, passed by the learned Judicial Magistrate, Howrah[2], in Miscellaneous Case No. 440 of 2022 arising out of Criminal Case No. 446C of 2020. Learned trial Court *vide* order dated 15th September, 2022, had directed the competent authorities to start the extradition process against the appellant.

3. The facts in a nutshell are that the marriage between the appellant and respondent was solemnized on 19th February, 2018, as per Hindu rites and ceremonies. In March, 2018, the couple moved to the United States of America ('USA'), where the appellant has been working as a Software Engineer since 2014.

4. The appellant alleges that, while residing in the USA, he was subjected to continuous domestic abuse at the hands of the respondent-wife[3] and endured the same. On 23rd March, 2018, he reported an incident of abuse to the local police, claiming protection and

---

[1] The appellant is the husband of the respondent. For short, 'appellant'.
[2] Hereinafter, being referred to as 'trial Court'.
[3] For short, 'respondent'.

displaying visible injuries on his face. Although the appellant clarified that he did not wish to press charges, he requested the police to issue a warning to his wife. Despite this intervention, the abuse persisted. On 2nd April 2018, the respondent allegedly became enraged and scratched the appellant's face, causing significant injuries. Unable to face the situation, the appellant called the police again, leading to the respondent being charged with second-degree assault.

5. On account of the grave differences, the relationship between the appellant and the respondent became strained, leading to estrangement after only 80 days of matrimony. Accordingly, the couple returned to India. When it was time to return to the USA, the respondent refused to accompany the appellant, who left alone for the USA on 19th May, 2018. The couple has not begotten a child from the wedlock. Shortly, after the appellant's return to the USA, the respondent initiated multiple legal proceedings against the appellant and his family members in various courts/fora across the country. The details of these cases, along with the respective dates of filing, are as follows:

"1) In Muzaffarpur, Bihar Courts: -

a. Criminal case No. 852 of 2018 under Sections 498A, 307, 506, 406, 323, 324 IPC[4] and Sections 3 & 4 DP Act[5] before Sub-Divisional Judicial Magistrate, Muzaffarpur, Bihar against the appellant, Gayatri Shah(mother-in-law of the respondent), Bhavna Chatterjee(sister-in-law of the respondent) & Sourav Chatterjee(husband of the sister-in-law of the respondent).

[Date of filing: 14th June, 2018]

b. Complaint Case No. 1009 of 2018 under Section 12 of the DV Act[6] before Additional Chief Judicial Magistrate 1st, West Muzaffarpur, Bihar, against the appellant, Gayatri Shah, Bhavna Chatterjee & Sourav Chatterjee.

[Date of filing: 5th July, 2018]

c. Matrimonial Suit No. 280 of 2018 under Section 9 HMA[7], before the Family Court, Muzaffarpur, Bihar, seeking Restitution of Conjugal Rights against the appellant.

[Date of filing: 5th July, 2018]

d. Maintenance Case No. 229 of 2018 under Section 125 CrPC[8] before the Family Court, Muzaffarpur, Bihar for Maintenance against the appellant.

[Date of filing: 5th July, 2018]

---

[4] The Indian Penal Code, 1860 (in short 'IPC').
[5] The Dowry Prohibition Act, 1961 (in short 'DP Act').
[6] The Protection of Women from Domestic Violence Act, 2005 (in short 'DV Act').
[7] The Hindu Marriage Act, 1955 (in short 'HMA').
[8] The Code of Criminal Procedure, 1973 (in short 'CrPC'.

e. Complaint case No. 444 of 2020 under Sections 405, 406, 407, 420, 379, 499, 500, 324 and 506 IPC before Additional Chief Judicial Magistrate, Muzaffarpur, Bihar against the appellant, Gayatri Shah, Bhavna Chatterjee, Sourav Chatterjee, Vijayeta Soni, Dilip Soni & Rajkumari Soni.

[Date of filing: 15th May, 2020]

f. Complaint Case No. 698 of 2021 under Sections 31 & 32 of DV Act before Additional Chief Judicial Magistrate, 2nd Court, Muzaffarpur, Bihar against Gayatri Shah, Bhavna Chatterjee, and Sourav Chatterjee.

[Date of filing: 14th July, 2021]

g. Complaint Case No. 699 of 2021 under Sections 31 & 32 of the DV Act before Additional Chief Judicial Magistrate, 2nd Court, Muzaffarpur, Bihar against the appellant.

[Date of filing: 14th July, 2021]

2) In Howrah, West Bengal: -

a. Complaint case No. 79 of 2021 under Section 379 IPC before Ld. I Judicial Magistrate, Howrah, West Bengal, against Mrs. Gayatri Shah, Bhavna Chatterjee, and the appellant.

[Date of filing: 10th March, 2021]

b. Police case No. 72 of 2021 under Sections 186, 188, and 332 IPC [Arising out of a police complaint made by the respondent Bhavna Chatterjee, i.e., the married sister of the appellant]

[Date of filing: 4th March, 2021]

> **c.** Complaint Case No. 440 of 2022, filed under Sections 26, 18, 19, 20, 21, 22, and 12 of the DV Act, before Ld. I Judicial Magistrate, Howrah, West Bengal, against the appellant, Gayatri Shah, Bhavna Chatterjee, Sourav Chatterjee, Sudipa Chatterjee (mother-in-law of the Bhavna Chatterjee), Dilip Soni (husband of the sister-in-law of the respondent), Vijayeta Soni (sister-in-law of the respondent).
>
> [Date of filing: 11th July, 2022]**"**

6. In view of the aforesaid cases registered against the appellant, his passport was impounded by the concerned authorities on 3rd October, 2018. Between 2018 and 2020, the respondent resided in the same house with her mother-in-law, i.e., the appellant's mother. As per the appellant, during this period, the respondent had subjected his mother to severe physical and mental torture, ultimately forcing her to leave the house and seek shelter at her daughter's residence on 14th September, 2020. Consequently, a Complaint Case No. 446C of 2020 was filed by the mother of the appellant against the respondent for the offences punishable under Sections 323, 341, 342, 379, 403, 504, 506, and 120B IPC.

7. As a counterblast, the respondent also filed an application under Section 26 of the DV Act against the appellant, his mother, and five other close relatives, which came to be registered as Miscellaneous Case No. 440 of 2022 in Complaint Case No. 446C of 2020. The application filed by the respondent was proceeded with, and *vide* order dated 11th August 2022, the appellant was directed to personally appear before the Court on the scheduled date, *i.e.*, 15th September 2022. However, when the appellant failed to appear before the trial court on the notified date, the competent authorities were instructed to initiate the extradition process against him.

8. Being aggrieved by the direction to commence the extradition process, the appellant, through his authorized representative i.e., his sister, filed Criminal Revision being CRR No. 135 of 2023 before the High Court of Calcutta, which came to be dismissed *vide* the judgment and order dated 25th January, 2023, which is impugned in this appeal by special leave.

9. During the pendency of the instant appeal, the appellant has filed an Interlocutory Application[9] under Article 142 of the Constitution of India, seeking dissolution of marriage on the ground of irretrievable breakdown.

10. Learned senior counsel representing the appellant, urged that the appellant and the respondent cohabited together only for a short duration of 80 days after their marriage and that too in the USA. Thereafter, there has been no spousal interaction whatsoever between the parties so as to justify the lodging of numerous cases filed by the respondent against the appellant and the in-laws in the courts of different jurisdictions. He contended that the respondent has launched a vendetta with evil intention to harass and humiliate the appellant and his family members, which is manifested from the multiple cases filed by her in different *fora* with almost identical allegations.

11. Learned senior counsel further submitted that the appellant's old and ailing mother was thrown out of her

[9] I.A. No. 35450 of 2024.

own house by the respondent. He urged that the cases instituted *(supra)* by the respondent against the appellant and his family members are a clear reflection of her vindictive nature and are nothing short of a gross abuse of the process of law. Learned counsel urged that the appellant gave a generous proposal of permanent alimony to the respondent for an amicable settlement of all the disputes, but since she has the propensity to continue the harassment and humiliation of the appellant and his family members, the respondent has bluntly repelled this genuine offer of settlement made by the appellant. She has also countered all efforts to settle the disputes despite multiple mediation efforts.

On these grounds, learned senior counsel representing the appellant urged that this is a fit case wherein this Court should feel persuaded to step in to end the plight of the appellant and his family members by exercising the powers conferred by Article 142 of the Constitution of India. He prayed that while quashing the proceedings of the various cases filed by the respondent against the appellant and his family

members, a direction deserves to be issued dissolving the marriage between the appellant and the respondent.

12. Learned counsel representing the respondent did not dispute the fact that the spouses resided together only for a short period of less than three months after their marriage in the year 2018. However, he vehemently and fervently opposed the submissions advanced by the appellant's counsel, urging that the respondent was maltreated and was unlawfully turned out of the matrimonial home on account of the greed of the appellant and his family members for dowry.

13. Learned counsel contended that none of the cases filed by the respondent are barred by limitation, nor can it be said that the allegations levelled by the respondent against the appellant and his family members do not disclose a valid cause of action. He submitted that the appellant was granted conditional permission to travel abroad by the family court on 9th May, 2022. However, instead of complying with the family court's directions, the appellant failed to appear for subsequent hearings and sent derogatory and threatening e-mails to the respondent. Under these circumstances, the Magistrate

was fully justified in directing the initiation of extradition proceedings against the appellant.

Learned counsel thus concluded his submissions, stating that it is not a fit case wherein this court should feel inclined to grant any relief to the appellant by exercising its extraordinary jurisdiction under Articles 136 and 142 of the Constitution of India.

14. We have heard the learned counsels appearing for the parties and have given our thoughtful consideration to the submissions advanced and perused the pleadings.

15. Taking note of the facts and circumstances narrated above, the first question that arises for consideration is whether the initiation of the extradition process against the appellant *vide* order dated 15th September 2022 is justified in the eyes of the law.

16. It is undisputed that the appellant returned to the USA on 19th May, 2018, and his passport was impounded under Section 10 of the Passport Act, 1967, by the concerned authorities on 3rd October, 2018 because of numerous matrimonial and other cases filed against him by the respondent.

17. The respondent and her mother-in-law had been residing under the same roof since 2018. The mother-in-law had alleged that she was brutally assaulted, and her modesty was outraged by the respondent, compelling her to file Complaint Case No. 446C of 2020 before the Ld. JMFC, Howrah, under Sections 323, 341, 342, 379, 403, 504, 506, and 120B IPC against the respondent. It is further claimed that, despite her old age, she was forced to leave her own home to ensure the safety of her property and dignity from the vicious design of the respondent.

18. In the afore-mentioned complaint case, an application[10] was filed by the respondent under Section 26 of the DV Act against the appellant, her mother-in-law, and their five other relatives. A notice was issued to the appellant *vide* order dated 21st July 2022. Subsequently, on 11th August 2022, the learned JMFC passed an interim order in favour of the respondent, prohibiting her eviction from the matrimonial home and directing the personal appearance of the appellant

[10] Miscellaneous Case No. 440/2022.

(respondent therein) and other respondents on the next hearing date. However, when the matter was listed again, the Court noticed that the appellant had not returned to India, and the concerned authorities were directed to initiate the extradition process against him. We may observe that as the proceedings under the DV Act are *quasi*-criminal in nature, thus, there cannot be any justification to require the personal presence of the appellant in these proceedings. Thus, the learned Magistrate grossly erred while directing the appellant to remain personally present in the Court.

19. At this juncture, it is pertinent to note that while passing the order dated 15th September 2022, the learned JMFC took into account the fact that the passport of the appellant was impounded by the concerned authorities on 3rd October, 2018 and when the appellant lay challenge to this act of impounding before the High Court of Calcutta by filing a Writ Petition being WPA No. 4743 of 2020, the same was also dismissed by the High Court *vide* judgment and order dated 15th January, 2021, while affirming the revocation and barring the appellant herein from filing

any appeal under Section 11 of the Passport Act, 1967. The relevant observations from the order passed by the JMFC dated 15th September, 2022 are as follows:-

> **"Finally, the Govt of India, on its motion, revoked/impounded his passport (J1863634) on 03.10.2018 u/s 10 of the Passport Act, 1967, and this, the letter no. 17(1249)18/PSK/RPO/KOL (CALA07137810) dr. 04.10.2018 suggests. Against such revocation, he had approached the Hon'ble Calcutta High Court through WPA 4743 of 2020. The order dated 15.01.2021 of that action suggests that the Hon'ble High Court not merely dismissed his writ petition but has debarred him from any appeal u/s 11 of the said Act of 1967 while affirming the revocation."**
>
> (emphasis supplied)

20. It is apparent that the appellant's inability to travel to India and appear in Miscellaneous Case No. 440 of 2022, filed by the respondent under Section 26 of the DV Act, stemmed from the impoundment of his passport, a circumstance beyond his control. Consequently, the order of the learned JMFC directing the initiation of extradition proceedings against the appellant as a consequence of his non-appearance, despite being aware of the fact of impounding of the passport of the appellant, is untenable and unsustainable in the eyes of the law. Otherwise also, as

noted above, there is no requirement for the personal presence of any party in the proceedings under the DV Act, because they are *quasi*-criminal in nature and do not entail any penal consequences except when there is a breach of a protection order, which is the only offence provided under Section 31 of the DV Act.

21. The appellant challenged the order dated 15th September, 2022, passed by the learned JMFC by filing Criminal Revision being CRR No. 135 of 2023 before the High Court of Calcutta. However, the High Court *vide* a non-speaking order dated 25th January, 2023, dismissed the revision petition, stating that no grounds for interference were made out. This Court is of the considered opinion that the High Court could have examined the record of the case, particularly the reasons for the appellant's failure to appear due to circumstances beyond his control, and hence, a reasoned decision addressing the merits of the matter was expected in these circumstances.

22. In the wake of the above discussion, the order dated 15th September, 2022, passed by the trial Court, and the order dated 25th January, 2023, passed by the

High Court of Calcutta, are liable to be quashed and set aside.

23. The next question that arises for our consideration is whether there is an irretrievable breakdown of the marriage of the appellant and the respondent requiring this Court to exercise its extraordinary jurisdiction under Article 142 of the Constitution of India to do complete justice.

24. The issue regarding the invocation of the extraordinary powers of this Court under Article 142(1) of the Constitution of India in cases of marital disputes is no longer *res-integra* and has been settled by the Constitution Bench of this Court in ***Shilpa Sailesh v. Varun Sreenivasan***[11]. The Court held that in the exercise of the power under Article 142(1) of the Constitution of India, this Court has discretion to dissolve the marriage on the ground of its irretrievable breakdown. The relevant observations are extracted below: -

> "42. This question is also answered in (*sic*) affirmative, inter alia, holding that this Court, in the exercise of power under Article 142(1) of the Constitution of

[11] 2023 SCC OnLine SC 544.

> India, has the discretion to dissolve the marriage on the ground of its irretrievable breakdown. This discretionary power is to be exercised to do 'complete justice' to the parties, wherein this Court is satisfied that the facts established show that the marriage has completely failed, and there is no possibility that the parties will cohabit together, and continuation of the formal legal relationship is unjustified. The Court, as a court of equity, is required to also balance the circumstances and the background in which the party opposing the dissolution is placed."

25. The Constitution Bench further laid down the factors to be considered for such determination, which were also reiterated in the case of ***Kiran Jyot Maini v. Anish Pramod Patel***[12]. This Court, in both these judgments, opined that the factors to be examined *inter alia* include the period of cohabitation between the parties after marriage; the last cohabitation among the parties; the period of separation; the nature and the gravity of allegations made by the parties against each other and their family members; the orders passed in the legal proceedings from time to time, cumulative impact on the personal relationship; whether, and how many attempts were made to settle the disputes by

[12] 2024 SCC OnLine SC 1724.

intervention of the court or through mediation, and such other similar factors.

26. On the issue as to grant of divorce on the ground of irretrievable breakdown of marriage in the exercise of jurisdiction under Article 142(1) of the Constitution of India, this Court, in a very recent judgment of ***Rinku Baheti v Sandesh Sharda***[13], held that the factual analysis has to be undertaken in each case to determine as to what constitutes an 'irretrievable breakdown' while keeping in mind the non-exhaustive factors laid down in ***Shilpa Sailesh*** *(supra)*. The relevant observations are as follows:-

> **"8.11** But what constitutes an irretrievable breakdown has to be determined in each case by undertaking a factual analysis of the case and using judicial discretion in light of several non-exhaustive factors laid down by this Court in the judgment of ***Shilpa Sailesh.*** This Court has to reach the conclusion that the marriage has "completely failed" of and there is no possibility of the parties cohabiting together as husband and wife, and that the continuation of the formal legal relationship of marriage is unjustified lacking in substance and content.**"**

[13] 2024 SCC OnLine SC 3801.

27. Considering the above principles, we need to consider the factual matrix in the instant case before arriving at a decision on the application filed by the appellant under Article 142 of the Constitution of India.

28. The marriage between the appellant-husband and the respondent-wife was solemnized on 19th February, 2018. It is not in dispute that the spouses resided together for a short duration of 80 days in the USA and have been living separately since May, 2018. The respondent-wife is residing in Tripura, India, and on the other hand, the appellant-husband has been primarily living in the USA, for the last 5 years.

29. It is also to be noted that multiple cases have been filed by the respondent against the appellant and his family members, as recorded in Para 5 of this judgment. The appellant and his family members have also filed numerous cases against the respondent. The cases filed against the respondent and her relatives are as follows:-

a. Misc. Case No. 54/2020 (Gayatri Shah v. Monalisa Gupta and others, which was dismissed by learned District Judge, Muzaffarpur.

b. Misc. Case No. 20/2020 (Gayatri Shah v. Monalisa Gupta) is pending in the Court of Learned ACIM 2nd, Muzaffarpur.

c. Cr. Complaint Case No. 446C/2020 (Gayatri Shah v. Monalisa Gupta and others) pending in the Court of Learned JMFC, Howrah, West Bengal.

d. Title Suit Case No. 946/2020 (Bhavna Shah v. Monalisa Gupta).

e. Eviction Suit No. 1156/2020 (Bhavna Shah v. Monalisa Gupta).

f. Money Suit Case No. 342/2023 (Vishal Shah v. Monalisa Gupta) is pending in the court of learned Civil Judge, Junior Division, Howrah, West Bengal.

g. Divorce Case No. C-13-FM-18-001269 and C-13-FM-18-001451 (Vishal Shah v. Monalisa Gupta), which were dismissed by the State of Maryland, USA.

h. Domestic Violence Case No. D101FM18000130 (Vishal Shah v. Monalisa Gupta), which is pending in County USA.

i. NGR Case No. 444/2020 (Bhavna Shah v. Monalisa Gupta), closed by Serampore Court.

j. NGR Case No. 444/2020 (Gayatri Shah v. Monalisa Gupta), closed by Serampore Court.

30. As can be observed from the above list, the parties and their family members have indulged in multifarious litigations against each other, even though the period of the spousal relationship was very brief, and the discord started way back in 2018. The respondent filed a Complaint Case No. 1009 of 2018 under Section 498A IPC against the appellant and his family members. In addition to the said complaint, the respondent has registered a Matrimonial Suit No. 280 of 2018 under Section 9 HMA, seeking restitution of conjugal rights. The respondent had also filed a Complaint Case No. 444 of 2020 under Sections 405, 406, 407, 420, 378, 499, and 500 IPC against the appellant, her mother-in-law, and five other family members. Apart from these cases, the respondent filed two Complaint Cases bearing No. 698 of 2021(against the appellant's family members)

and No. 699 of 2021(against the appellant), under Sections 31 and 32 of the DV Act.

31. The filing of the aforesaid cases by the respondent-wife reflects her vindictive attitude towards the appellant and his family members and unambiguously reflects the bitterness that has seeped into the marital relationship. The tumultuous state of the marital relationship between the parties is quite evident, irrespective of the fate of the criminal complaints and the imputations made by the parties against each other. The passport of the appellant was also impounded by the concerned authorities, pursuant to the pending cases filed by the respondent.

32. On the other hand, the appellant and his family members have also filed various cases (Criminal Complaint Case, Title Suit Case, Eviction Suit, Money Suit, Domestic Violence Case, and Divorce Case) against the respondent before various courts.

33. Further, Smt. Gayatri Shah (the old-aged mother of the appellant) has alleged that she was brutally assaulted, and her modesty was outraged by the respondent and that she has been ousted from her own

house by the respondent on 14th September, 2020. Resultantly, she was constrained to file a Complaint Case No. 446C of 2020 against the respondent under Sections 323, 341, 342, 379, 403, 504, 506 and 120B IPC. Thus, the old-aged mother-in-law has also been entangled in the litigations spurted owing to the matrimonial discord between the appellant and the respondent, which also has an evident impact on the mind of the appellant in how he perceives the acts of the respondent and his relationship with her.

34. Thus, what emerges from the aforesaid facts is that:-

(i) The marriage between the parties did not really take off at all.

(ii) The parties cohabited with each other for a very short duration of 80 days, and during this period as well, there was neither any cordiality nor any mutual love, affection, or respect for each other.

(iii) No child has been born from the wedlock.

(iv) Since 2019, the appellant-husband has been residing in the USA, and the respondent-wife has been residing in India.

(v) The parties have filed numerous cases against each other, reflecting the ongoing conflicts and disputes, which have further deteriorated their relationship and made any hope of reconciliation virtually impossible.

(vi) Despite various mediation attempts, all efforts to resolve the dispute between the parties have been unsuccessful.

The aforesaid facts give us the impression that there was hardly any cordiality or meaningful marital relationship that flowed from the marriage between the parties. It is evident that the relationship between the parties appears to be strained from the beginning and has further soured over the years.

35. Whatever may be the justification for the spouses living separately, with so much time having passed by any marital love or affection that may have developed between the parties seems to have evanesced. This is a classic case of irretrievable breakdown of marriage. The

admitted long-standing separation, nature of differences, prolonged and multiple litigations pending adjudication, and the unwillingness of the parties to reconcile are evidence enough to establish beyond all manner of doubt that the marriage between the parties has broken down irretrievably and that there is no scope whatsoever for marriage to survive. Thus, no useful purpose, emotional or practical, would be served by continuing the soured relationship. On the basis of the above factual matrix, the present appears to be a case of irretrievable breakdown of marriage.

36. Apart from the irreconcilable status of the relationship between the parties, in the present case, another factor that has weighed with this Court in favour of the exercise of the power under Article 142(1) of the Constitution of India is that there is no child born from the wedlock and therefore, any direction to allow the parties to part ways would only affect the parties themselves and not any innocent child.

37. Thus, this is a fit case warranting the exercise of the discretion conferred under Article 142(1) of the Constitution of India to dissolve the marriage between

the parties on the grounds of irretrievable breakdown of marriage.

38. We have to now consider the question of assessing the alimony for the respondent upon the dissolution of marriage between the parties. Learned senior counsel for the appellant has fairly submitted that the appellant is willing to pay a reasonable lump sum of money as permanent alimony to the respondent in order to assist her in starting her life afresh and to put an end to multiple protracted litigations. The respondent blatantly declined the said offer, stating that she was not interested in the money of the appellant as her sole intent was to have an opportunity to resume her marital life.

39. Before going into the details of the financial position of the parties, it is imperative that we highlight the position of law with regard to the determination of permanent alimony. This Court, in the cases of ***Rajnesh v. Neha***[14], ***Kiran Jyot Maini*** *(supra),* and ***Parvin Kumar Jain v. Anju Jain***[15], provided a comprehensive

[14] (2021) 2 SCC 324.
[15] 2024 SCC OnLine SC 3678.

criterion and a list of factors to be looked into while deciding the question of permanent alimony, which are as follows:-

i. Status of the parties, social and financial.

ii. Reasonable needs of the wife and the dependent children.

iii. Parties' individual qualifications and employment statuses.

iv. Independent income or assets owned by the party.

v. Standard of life enjoyed by the wife in the matrimonial home.

vi. Any employment sacrifices made for family responsibilities.

vii. Reasonable litigation costs for a non-working wife.

viii. Financial capacity of the husband, his income, maintenance obligations, and liabilities.

40. In the present case, it is a matter of record and an admitted fact that the respondent is currently employed as a Research Specialist at PwC in Kolkata, earning a salary of Rs. 50,000 per month. In her reply affidavit,

the respondent averred that the appellant earned Rs. 8 lakh per month in 2018 and claimed that he would now be earning more than Rs. 10 lakh per month. The appellant, in his rejoinder affidavit, admitted that while he was earning Rs. 8 lakh per month in 2018, however, at present, he is unemployed and is facing challenges in securing employment in India due to multiple cases filed by the respondent.

41. Considering the material on record, the totality of the circumstances, and the peculiar facts of this case, a one-time settlement as alimony for the respondent would be a fair arrangement. Taking into account the standard of living enjoyed by the respondent during the subsistence of the marriage, the prolonged period of separation, and the financial status of both the parties, an amount of Rs. 25 lakhs (Rupees twenty-five lakhs only) appears to be just, fair and reasonable to be paid by the appellant to the respondent towards settlement of all pending claims and to cover the permanent alimony. The appellant shall pay the amount provided above towards permanent alimony to the respondent within a period of two months from today.

42. Before we conclude our discussion, we must note that the act of impounding the passport of the appellant by the concerned authorities of the Government of India was *ex-facie* illegal in the eyes of the law. In the present case, the appellant's passport was impounded on the mere premise that the respondent has filed numerous cases before the various courts in India.

43. The law regarding the impounding of a passport of an individual has been settled by this Court in the case of ***Maneka Gandhi v. Union of India and Anr.***[16]**,** wherein it was held that the rules of natural justice must be followed before impounding a passport under Section 10(3) of the Passports Act, 1967. Justice Bhagwati, speaking for the majority, held as follows: -

> **"40.** ..... Now it is obvious that on a plain natural construction of Section 10(3)(*c*), it is left to the Passport Authority to determine whether it is necessary to impound a passport in the interests of the general public. **But an order made by the Passport Authority impounding a passport is subject to judicial review on the ground that the order is mala fide, or that the reasons for making the order are extraneous, or they have no relevance to the interests of the general public or they cannot possibly support the making of the order in the interests of the general public.** It was

[16] (1978) 1 SCC 248.

not disputed on behalf of the Union, and indeed, it could not be in view of Section 10 sub-section (5) that, save in certain exceptional cases, of which this was admittedly not one, the Passport Authority is bound to give reasons for making an order impounding a passport……"

45. "……..We, however, wish to utter a word of caution to the Passport Authority while exercising the power of refusing or impounding, or cancelling a passport. **The Passport Authority would do well to remember that it is a basic human right recognised in Article 13 of the Universal Declaration of Human Rights with which the Passport Authority is interfering when it refuses or impounds, or cancels a passport. It is a highly valuable right which is a part of personal liberty, an aspect of the spiritual dimension of man, and it should not be lightly interfered with**. Cases are not unknown where people have not been allowed to go abroad because of the views held, opinions expressed, or political beliefs, or economic ideologies entertained by them. It is hoped that such cases will not recur under a Government constitutionally committed to uphold freedom and liberty but it is well to remember, at all times, that eternal vigilance is the price of liberty, for history shows that it is always subtle and insidious encroachments made ostensibly for a good cause that imperceptibly but surely corrode the foundations of liberty."

(emphasis supplied)

44. While concurring with the majority opinion, Chief Justice M.H. Beg (as he then was) in his sole concurring opinion was of the view that: -

"218. <u>A bare look at the provisions of Section 10, sub-section (3) of the Act will show that each of the orders which could be passed under Section 10, sub-section (3)(*a*) to (*h*) requires a "satisfaction" by the passport authority on certain objective conditions which must exist in a case before it passes an order to impound a passport or a travel document. Impounding or revocation are placed side by side on the same footing in the provision.</u> Section 11 of the Act provides an appeal to the Central Government from every order passed under Section 10, sub-section (3) of the Act. Hence, Section 10, sub-section (5) makes it obligatory upon the passport authority to "record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case, the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy.

220. There can be no doubt whatsoever that the orders under Section 10(3) must be based upon some material even if that material consists, in some cases, of reasonable suspicion arising from certain credible assertions made by reliable individuals. It may be that, in an emergent situation, the impounding of a passport may become necessary without even giving an opportunity to be heard against such a step, which could be reversed after an opportunity given to the holder of the passport to show why the step was unnecessary, but, ordinarily, no passport could be reasonably either impounded or revoked without giving a prior opportunity to its holder to show cause against the proposed action. The impounding as well

(*sic*) as revocation of a passport, seem to constitute action in the nature of a punishment necessitated on one of the grounds specified in the Act. **Hence, ordinarily, an opportunity to be heard in defence after a show-cause notice should be given to the holder of a passport even before impounding it**."

(emphasis supplied)

45. Further, this Court, in ***Rajesh Sharma v. State of U.P.***[17], while dealing with the question of arrest and fair investigation in a case alleging the offence of cruelty under Section 498A IPC, was of the view that in respect of persons ordinarily residing out of India impounding of passports or issuance of 'Red Corner Notice' should not be a routine.

46. Applying the afore-mentioned legal principles to the present case, we find that the act of impounding the appellant's passport under Section 10 of the Passport Act, 1967, was carried out without granting the appellant an opportunity to be heard. This clear violation of the principles of natural justice renders the act of impounding the passport *ex-facie* illegal. Consequently, we hold that the concerned authorities

[17] (2018) 10 SCC 472.

should release the appellant's passport within a period of one week from today.

47. Resultantly, we conclude as below: -

a. The judgments/orders dated 15th September, 2022 passed by the learned Judicial Magistrate, Howrah and 25th January, 2023 passed by the High Court are quashed and set aside.

b. The application filed by the appellant-husband, under Article 142(1) of the Constitution of India, is allowed and the marriage between the appellant and the respondent is dissolved on the ground of irretrievable breakdown of marriage. The Registry to draw a decree accordingly.

c. Consequently, all the criminal cases/DV Act complaints and civil cases pending between the respondent and the appellant and his family members shall stand closed.

d. The appellant shall deposit a sum of Rs.25,00,000/- (Rupees Twenty-Five Lakhs only) in the Registry of this Court as the amount of permanent alimony payable to the respondent within two months from today. This amount shall

be disbursed to the respondent within a period of two weeks thereafter. An undertaking to that effect shall be filed before this Court within two weeks from today. We also make it clear that if the respondent refuses to accept the aforesaid amount and fails to draw the same from the Registry within the aforesaid period, the same shall be repaid to the appellant.

e. The passport of the appellant shall be released by the authorities concerned within a period of one week from today.

48. In view of the above, the appeal stands disposed of.

49. Pending application(s), if any, shall also stand disposed of.

.....J.
(PANKAJ MITHAL)

.....J.
(SANDEEP MEHTA)

NEW DELHI;
FEBRUARY 20, 2025.