

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK KUMAR SINGH

&

HON'BLE SHRI JUSTICE AJAY KUMAR NIRANKARI

ON THE 23<sup>rd</sup> OF JANUARY, 2026

FIRST APPEAL NO.238 of 2017

*KAVITA*

*Versus*

*SUDHAKAR RAO SUKHSOHALA*

---

**Appearance :**

*Shri Sandeep Singh Baghel - Advocate for the appellant.*

*Shri Pramod Kumar Thakre - Advocate for the respondent.*

---

**Reserved on : 19/01/2026**

**Pronounced on : 23/01/2026**

**JUDGMENT**

**Per : Justice Vivek Kumar Singh**

This first appeal has been filed under Section 19 of the Family Courts Act, 1984 against the judgment and decree dated 06.05.2015 passed by learned Presiding Officer, Family Court, Betul in Civil Suit No.1-A/2014 dismissing the application filed by the appellant under Section 13 of the Hindu Marriage Act, 1955 (for brevity 'HM Act, 1955') seeking dissolution of marriage on the ground of 'cruelty'.

2. Factual matrix of the case, in short, are that the marriage between the appellant and the respondent was solemnized on 12.07.2008 as per Hindu Rites

and Customs. At the time of marriage, the respondent demanded dowry of Rs.1,75,000/-, which was given by the father of the appellant and at the relevant point of time, the respondent was working temporarily in VMB College, Amravati and after some time left his job voluntarily and falsely narrated his wife that a case regarding his permanent job is pending in the High Court but later on she was completely staggered to know that the respondent had no source of income. Later on, the appellant beget a daughter on 10.09.2009. Thereafter, the appellant visited her matrimonial home on 13.07.2010 and tried to keep the marriage alive but respondent did not show interest in continuing the marital relationship anymore. Since then she is living separately and earning her livelihood by taking tuition and also taking care of her daughter with the help of her family. The appellant has lived with the respondent for about 02 years continuously in spite of various acts of physical or mental cruelty by the respondent and his relatives. Ergo, the appellant filed the divorce petition under Section 13 of the H.M. Act,1955 on the ground of cruelty which was dismissed vide order dated 16.05.2015 passed by the Presiding Officer, Family Court, Betul on the ground that the appellant is living separately from her husband without any sufficient reason and in spite of cruelty and demand of dowry by the respondent, no FIR has been lodged by the appellant.

3. Learned counsel for the appellant succinctly submits that the respondent preferred a petition, under Section 9 of Hindu Marriage Act, 1956 for Restitution of Conjugal Rights, which was registered as HMP No. 234/2017 and dismissed by the Court below vide judgment and decree dated 04.01.2023, on the ground that the conduct of the petitioner and delay in filing the aforesaid petition that too after filing of the application under Section 125 of Cr.P.C. for maintenance creates dent to his sincerity and does not inspire confidence to show *bona fide* on his part to seek reunion and togetherness. It is further submitted that the learned Court below has failed to appreciate the fact that the

husband of the appellant has no earnings and the appellant being well qualified, is earning to take care of her daughter on her own. Hence, judgment and decree dated 06.05.2015 is liable to be quashed as it is not in the interest of justice because the parties have been living separately since, 2013 and the marriage has broken down irretrievably. Therefore, she is entitled to a decree of divorce.

4. In support of her arguments, learned counsel for the appellant has relied upon the judgment passed by the Delhi High Court in the case of **Poonam Wadhwa Vs. Rajeev Wadhwa, MAT.APP.(F.C.) 197/2022** in which the Court has observed that:-

“29. “Cruelty”, which may be a ground for divorce, may be “physical” or “mental”. The “physical cruelty” is easy to comprehend as it involves causing physical harm to a person. In the instant case, though the appellant has claimed that she was being physically abused, beaten regularly and on one occasion her head was struck against the wall because of which she had to be taken to the hospital. However, there is no medical document to corroborate her assertions, except a medical report of RML Hospital dated 14.12.1994 (Mark R 1), which merely reflected that the appellant suffered from an epilepsy attack on the said date. Also, it cannot be overlooked that if she was being subjected to physical cruelty on regular basis, she would have made a call or complaint to the police on some occasion. There being no corroborative evidence or document to support the allegations of physical cruelty aside from Medical Report Mark R-1 which supports the case of respondent that she was suffering from epilepsy, it cannot be said that the respondent was responsible or was instrumental in causing any physical cruelty.

30. However, the more challenging aspect is “mental agony” which has also been recognized as part of “cruelty”, and a valid ground for divorce. The contours of “mental cruelty” were defined in case of *V. Bhagat v. D. Bhagat*, (1994) 1 SCC 337, wherein the Hon'ble Supreme Court held that mental cruelty in Section 13(1)(ia) of the Act, 1955 can broadly be defined as that

conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put-up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner/appellant. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case.

**31.** The question of determination of mental cruelty was answered in the case of *Shobha Rani v. Madhukar Reddi*, (1988) 1 SCC 105. The Apex Court observed that the enquiry of mental cruelty must begin with the nature of the cruel treatment and subsequently, the impact of such treatment on the spouse must be examined. It must be seen whether such actions caused reasonable apprehension that it would be harmful or injurious to live with the other spouse. It was further observed that the same is a matter of inference to be drawn from the facts and the circumstances of the case.

**32.** In light of the foregoing, it emerges that “Mental Cruelty” cannot be defined in any strait jacket parameter. The circumstances and the situation of the spouses has to be considered to ascertain if certain acts, which are complained of, would be a source of mental agony and pain.

**33.** In the present case, it is easy to decipher the mental trauma as the appellant was working and the respondent was not working. There was a huge disparity in the financial status of the appellant and the respondent. The endeavours of the respondent to be able to sustain himself had admittedly failed. Such kind of financial instability is bound to result in mental anxiety on account of husband being not settled in any business or profession which resulted in other vices, can be termed as a constant source of mental cruelty to the appellant.

The term “mental cruelty” is wide enough to take within its ambit the “financial instability.”

5. He further relied on the judgment passed by the Co-ordinate Bench of this Court passed in F.A. No. 774/2006 (**Smt. Saroj Bai Vs. Naresh Kumar**), in which the Court has observed the following:-

“6. Respondent in divorce petition under Section 13 of Hindu Marriage Act, 1955 has stated that appellant and respondent had no relationship since February, 1999 and they are living separately since then. Petition for divorce was filed on 26/07/2005 after more than two years after they started living separately.

7. As per Section 13(1)(ib) of Hindu Marriage Act, 1955 if either husband or wife has deserted other person for continuous period of more than two years before presentation of petition, then marriage can be dissolved by Court granting decree of divorce.”

6. Learned counsel for the respondent submits that the judgment passed by the Court below is a reasoned judgment based on proper appreciation of facts and evidence brought on record. Therefore, he supports the findings given by the Court below in the impugned judgment.

7. Heard learned counsel for the parties and perused the record.

8. After considering the arguments advanced by learned counsel for the parties, it is apposite to refer to the law laid down by the Supreme Court in the case of **Samar Ghosh vs. Jaya Ghosh, (2007) 4 SCC 511**, in which the Apex Court has illustrated the instances of human behaviour, relevant for dealing with the cases of "mental cruelty" and has also considered the aspect of "irretrievable breakdown" and observed that the same can be made a ground for divorce, which are as under:-

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

each other could come within the broad parameters of mental cruelty.

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

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

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

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

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

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

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

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

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

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

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

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

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

**9.** Further, in the case of **Shri Rakesh Raman Vs. Smt. Kavita 2023 Live Law (SC) 353**, the Hon'ble Apex Court has manifestly observed that long separation, in absence of cohabitation and complete breakdown of all meaningful bonds and existing bitterness between husband and wife, has to be read as "cruelty" under Section 13(1)(i-a) of the HM Act.

**10.** Also, the Hon'ble Apex Court in the case of **Shilpa Sailesh Vs. Varun Sreenivasan (2023) AIR (SC) Civil 2212** has clearly observed that grant of divorce on the ground of irretrievable breakdown of marriage by the Court is not a matter of right, but a discretion which is to be exercised with great care and caution, keeping in mind several factors ensuring that 'complete justice' is done to both the parties. It is obvious that this Court should be fully convinced and satisfied that the marriage is totally unworkable, emotionally dead and beyond salvation and, therefore, dissolution of marriage is the right solution and the only way to look forward. That the marriage has irretrievably broken-down is to be factually determined and firmly established. For this, several factors are to be considered such as the period of time the parties had cohabited after marriage; when the parties had last cohabited; the nature 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 intervention of the Court or through mediation, and when the last attempt was made, etc. The period of separation should be sufficiently long, and anything above six years or more will be a relevant factor.

**11.** After taking into consideration the submissions made by learned counsel for the appellant and findings given by the Court below, it is apparent that the Court below while giving the findings was aware of the fact that after their marriage, the appellant and respondent had lived together only for a year and

thereafter, they are living separately till date and it is the appellant only who is taking care of her daughter by her own source of income.

**12.** From evidence available on record, it is clear that the relations between the parties have evidently grown sour beyond the point of return and such a long period of separation has turned these differences irreconcilable. It is unfortunate that the parties have already spent a large number of years of their adult lives fighting marital battles in the courtrooms. The parties still have a considerable natural life ahead of them to look forward to. It is evident that in the instant case, marital discord has reached to a point of no remedy and there is a complete irretrievable breakdown of marriage. Therefore, no purpose would be served by insisting the parties to continue their marital relationship which is already dead and we are, accordingly, inclined to allow the appeal preferred by the appellant/wife and grant divorce on the ground of irretrievable breakdown of marriage, which also falls within the ambit of mental cruelty in the terms of Section 13(1)(ia) of HM Act, 1955. In these circumstances, this Court deems it fit and proper to dissolve the marriage solemnized between the appellant and the respondent on 12.07.2008.

**13.** Resultantly, the first appeal is **allowed**. The impugned judgment and decree dated 06.05.2015 passed by Presiding Officer, Family Court, Betul in Civil Suit No.1-A/2014 is hereby **set aside**.

**14.** Decree be drawn accordingly.

**15.** Parties to bear their own costs.

**(VIVEK KUMAR SINGH)**  
**JUDGE**

**(AJAY KUMAR NIRANKARI)**  
**JUDGE**