
(2016) 02 RAJ CK 0122
In the Rajasthan High Court
Case No : Civil Misc. Appeal No. 2173/2011

Dimple	Vs	APPELLANT
Subhash		RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

Constitution of India, 1950 — Article 142
Hindu Marriage Act, 1955 — Section 13, Section 13(1) (i-a), Section 9
Penal Code, 1860 (IPC) — Section 109, Section 323, Section 406, Section 498A,
Section 498-A

Citation : (2016) AIRCC 1236 : (2016) 1 DNJ 437 : (2016) 2 HLR 326

Hon'ble Judges : Dr. Vineet Kothari, J.

Bench : Single Bench

Advocate : H.M. Saraswat, for the Appellant; A.A. Bhansali, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Vineet Kothari, J.—1. To live with a man (woman) you hate is a slavery but to be compelled to submit to his (her) embraces is a misfortune too great even for slavery itself.

2. The matrimonial acrimonies involving more of psychological and behaviour problems do not always fit in well within the framework of statutory provisions specially when the courts are dealing with the case like the one in hand, namely divorce decree granted under Section 13 of the Hindu Marriage Act, 1955 on the ground of mental cruelty and desertion by the appellant wife.

3. Dimple & Subhash, the parties to the present matrimonial dispute & belonging to the respectable Agarwal families of Swaroopganj & Abu Road, got married on 13/5/2001. Soon they fell apart and after they started living separately & the marriage broke down, a son - Harsh was borne to them on 22/2/2002. The usual litigation channels in such marriage dispute ensued and an FIR No. 83/2006 was filed after four years of separation on 5/6/2006 in Police Station Swaroopganj for the alleged offences committed by the husband under Section 498-A, 406, 109

IPC read with Section 323 IPC. The members of the husband family remained in custody for 3-4 days and the charge sheet against them was filed in the competent court on 12/12/2006 & that case is still pending trial. The husband filed the divorce petition under Section 13 of the Hindu Marriage Act, 1955 on 8/9/2008, inter alia, on the ground of cruelty and desertion, while in the same divorce petition No. 1/10 (65/2008), the present appellant-wife-Dimple filed her counter claim under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights.

4. The Family Court of learned District Judge, Sirohi granted the divorce on the ground of cruelty committed by the wife-Dimple, while denying the ground of desertion by wife and also rejecting the counter claim filed by her under Section 9 of the Hindu Marriage Act for restitution conjugal rights.

5. The respondent-husband-Subhash has not filed any cross objections for establishing desertion in the present appeal filed by the appellant-wife-Dimple aggrieved by the grant of divorce decree on the ground of cruelty and rejection of her application under Section 9 of the Act for seeking restitution of conjugal rights.

6. Efforts were also made for reconciliation by this Court in Chambers as well as by the trained mediator in the Mediation Centre attached with this Court but the parties were unable to resolve their matrimonial dispute and, therefore, the present appeal was heard on merits.

7. The subsequent facts which have developed in the case after the marriage and the separation of the parties are that the respondent-husband is now said to be working in China for last more than 10 years and during the mediation talks he categorically stood by his stand to remain divorced & part ways from the appellant-wife, Dimple, but he expressed his willingness to pay her reasonable alimony for the maintenance of the appellant & son - Harsh, born out of this wedlock.

8. Assailing the judgment of learned District Judge, Sirohi dated 28/7/2011, Mr. H.M. Saraswat, learned counsel appearing for the appellant-wife, vehemently submitted that the learned court below has wrongly drawn the inference of any mental cruelty committed by the appellant-wife upon the respondent-husband merely because the cases under Domestic Violence Act and under Sections 498-A, 406, 109 IPC were filed by her due to the compelling circumstances and the facts arising by way of demand of dowry & physical mal-treatment given to her. Learned counsel Mr. H.M. Saraswat submitted that case under Sections 498-A & 406 IPC is still pending trial before the competent court & the orders for grant of monthly maintenance of Rs. 1800/- have been made in her favour under the provisions of Domestic Violence Act and, thus, merely filing of criminal cases could not be said to be any mental cruelty committed by the wife-Dimple upon her husband-Subhash. The other important fact, which has formed the basis of divorce decree in favour of respondent-husband by the court below is the letter

Ex. A/3 produced by the appellant-wife before the court below, purportedly written by the husband-Subhash to his sister-in-law (Bhabhi) Ms. Alka, wife of his elder brother, who is in the same age group of respondent-husband as a "love letter". The Court below treated it as a mental cruelty committed by wife by producing such a letter, which was not written by the respondent-Husband & it did not make out any case of illicit relationship of respondent-Subhas with his "Bhabhi" Ms. Alka but by making the said document public, she committed a mental cruelty upon the respondent-Subhash. Certain behavioral aspects of the appellant-wife were also held to be amounting to mental cruelty and these were found sufficient to grant the decree of divorce to the respondent-Subhash under Section 13 of the Act.

9. Mr. H.M. Saraswat, learned counsel for the appellant-wife also relied upon the judgments in the cases of Gurbux Singh vs. Harminder Kaur - , 2010 DNJ (SC) 1134, Perminder Charan Singh vs. Harjit Kaur - , 2003 (10)SCC 161, Rani Raj Kaur vs. Kuldip Singh - 1984 DMC 168 (Delhi High Court), Ren Prakash vs. Mst. Sneha Lata - , 2001 RLW (4) Raj. 145 and Somasekharan Nair vs. Thankamma - AIR 1998 (Kerala) 308.

10. On the other hand, Dr. A.A. Bhansali, learned counsel for the respondent-Subhash cited number of judgments, which are enumerated below, and vehemently contended that not only the false and frivolous cases were registered by the appellant-Wife but grave mental agony and cruelty was committed by her by falsely implicating the respondent-husband in so called illicit relationship with his "Bhabhi" - wife of his elder brother, even though they were living in a joint family and no such letter was ever written by him, which caused serious loss of reputation of the respondent-husband within the family & even in the outside world and he had to virtually leave the country for this reason and to seek employment in China. He urged that no quantified mental agony can be established in such cases and it depends upon the respect and stature of the family, where such things can cause tremendous loss of reputation & respondent husband and his family was of that level at Abu Road, where the entire family not only remained in jail for some period on account of false and frivolous cases but infamous publicity given to the family for the alleged illicit relationship between the respondent-Subhash and his own sister-in-law, Ms. Alka, a fact which was disputed & denied by both Ms. Alka & her husband Suresh.

11. Learned counsel for the respondent-husband, Mr. Bhansali also submitted that the learned court below has rightly treated the cumulative facts established by the respondent-husband as sufficient ground of mental cruelty caused to the respondent-husband and, therefore, the decree of divorce deserves to be maintained by this Court by dismissing the present appeal of the appellant-wife.

12. The judgments cited by the learned counsel for the respondent-husband in support of his various contentions are discussed here in below.

"(i) In Naveen Kohli vs. Neelu Kohli - , 2006 (1) WLC (SC) 690 the Hon"ble

Supreme Court while granting the decree of divorce in an appeal filed by the appellant-husband observed as under:

"The expression "cruelty" has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties..... Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted."

The Supreme Court further observed as under:--

"..... All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hypersensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court."

(ii) In Smt. Anita Jain vs. Rajendra Jain - 2010(2) CDR 833 (Raj.)(DB), the Division Bench of this Court upholding the judgment of learned Family Court granting decree of divorce to the respondent-husband observed as under:--

"18. In this case, the appellant has not only instituted a number of cases against the respondent and his family members but she has also made allegations against the respondent regarding illicit relations with his Bhabhis and niece which are worst types of allegations and she has also admitted these allegations to be untrue. The conduct of the appellant clearly amounts to cruelty to the respondent.

19. In view of the above discussion, it is clear that the argument of learned counsel for the appellant that the appellant has not treated the respondent with cruelty has no force. There is also no substance in the argument of learned counsel for the appellant that the respondent has forgiven the appellant as no such evidence is available on the record.

20. From the analysis and evaluation of the entire evidence, it is clear that the appellant has resolved to live in agony only to make the life a miserable hell for the respondent as well. This type of adamant attitude leaves no manner of doubt that the appellant is bent upon treating the respondent with mental cruelty. It is

thus clear that learned Family Court has not committed any error by deciding issue No. 1 against the appellant."

(iii) In *Rajesh Dodiwal vs. Smt. Sangeeta* - , 2007 (3) CDR 2344 (Raj.) (DB), the Division Bench of this Court while granting decree of divorce to the appellant-husband on the ground of cruelty observed as under:--

"Both the husband and the wife have a right to expect certain amount of respect, a certain amount of love and affection from each other. However, in the present case the repeated verbal abuses, the repeated insults, the repeated physical assaults committed by the respondent upon the appellant are bound to shake the foundation of marriage. No person likes to be publicly humiliated or likes to be subjected to cruel treatment. In the present case the appellant has been cursed, assaulted and verbally abused in front of his friends and neighbors. Even the appellant's parents have been subjected to verbal abuses. The respondent has failed to perform her household responsibilities of providing food and comfort to the in-laws. She has levelled the allegations of infidelity against her husband and of molestation against her younger brother-in-law. She seems to have lodged criminal complaints against the appellant and his family members only after the divorce petition was filed by the appellant. Prima facie it seems that such steps were taken by her with an ulterior motive. These acts would certainly tantamounts to mental cruelty. Such acts are sufficient to convince the appellant that it is not possible for him to continue the marriage."

(iv) In *Smt. Indu Mishra & anr. vs. Kovid Kumar Gaur & Anr.* - , 2006(2) CDR 1249 (Raj.) (DB), another Division Bench of this Court while dismissing the appeal of the appellant-Wife against the decree of divorce granted by the learned Family Court observed in para 12 and 14 as under:--

"12. The trial court has found as a fact that the allegation of illicit relations of the respondent-husband with his Bhabhi is totally false and baseless and the appellants have failed to prove this allegation against the respondent husband.

14. Thus, in the instant case, the very fact that a totally false and baseless allegation has been levelled against the respondent-husband by the wife about his having illicit relations with his Bhabhi clearly tantamounts to cruelty on her part to the respondent-husband and the respondent-husband is entitled to a decree of divorce on this ground as well."

This judgment is on all fours with the facts of the present case.

(v) In *Smt. Alka Dadhich vs. Ajay Dadhich* - , 2007 (3) CDR 2322 (Raj.) (DB), the another Division Bench of this Court again while upholding the decree of divorce granted by the learned Family Court, Ajmer, observed in para 20 as under:--

20. Having considered the alleged conduct of wife in the background of social status of the parties, their education, physical and mental conditions, customs and traditions we find that it amounts to cruelty. We are satisfied from the

material on record that the relationship between the parties had deteriorated to such an extent due to conduct of the wife that it would be impossible for them to live together without mental agony, torture or distress. After dragging the husband and his old parents in to the prison, the wife cannot expect to reconcile the marital ties. Having tied nuptial knot the spouses are supposed to perform social, religious and spiritual duties but in the instant case neither such duties were performed nor did new relationship of love, affection, care and concern between the spouses ever created."

(vi) In *Mamta Goyal vs. Ramgopal* - , 2011 (3) CDR 1252 (Raj.), a coordinate bench of this Court affirming the decree of divorce granted by the learned District Judge, Dholpur observed in para 23 to 25 as under:--

"23. I called the parties to marriage and made an effort to explore the possibility of reconciliation. They were given sufficient time. Albeit, the wife expressed her desire to live with the respondent-husband, but the respondent-husband was not at all prepared to live together even for a moment. Though the appellant-wife showed her willingness to live with the respondent-husband, but the manner, in which she presented herself on two or three dates of hearing in the Court and spoke always bitter about her husband, it cannot be said that she was serious about her willingness.

24. The appellant-wife is also found to have lodged one FIR with the Police Station, Basedi for the offences under Section 498A and 406 of Indian Penal Code, wherein the respondent-husband and his mother and father were arrested and remained in jail. The appellant-wife in the Court itself exhibited her adamant and callous attitude towards her husband, which leaves no manner of doubt in my mind that the appellant-wife is bent upon treating the respondent-husband with mental cruelty. It is abundantly clearly that the marriage between the parties had broken down irretrievably and there is no chance of their coming together or living together again.

25. When we take into consideration aforementioned factors along-with an important circumstance that the parties have been admittedly living separately for more than 13 years, the irresistible conclusion would be that matrimonial bond has been ruptured beyond repair because of the mental cruelty caused by the appellant-wife. In view of above, the impugned judgment is found to be just and proper, which suffers from no infirmity. I am in full unison with the findings arrived at by the learned trial court and to my view too, it warrants no intervention."

This case also squarely applies to the facts of the present case.

(vi) In *Smt. Abha Agarwal vs. Sunil Agarwal* - , 2001 (1) CCC 266 (Allahabad), the Division Bench of Allahabad High Court in para 24 observed as under:--

"24. On consideration of the arguments articulated across the bar in the light of the available material, our view tuned by the evidence on record and related

circumstances is for endorsing the finding of the lower Court that a case is strongly made out for the dissolution of the marriage of the couple by the decree of divorce on the ground of cruelty caused by the wife to the husband. Really speaking, it is not a case of physical cruelty, but of mental one. Various instances referred to by the husband are not in nature of ordinary quarrels between the husband and wife. They are quite serious and demanding, constituting mental cruelty. Mental cruelty is capable of causing even more grievous injury. In the present case, mental cruelty caused by the wife to the husband is clearly perceptible from the whole facts emerging out of her misconduct and misbehaviour in daily life. Hers was not a single act of misconduct or misbehaviour. Rather the same formed a series of acts spread over a period of time. We are clear in our mind that her misbehaviour and misconduct tended to destroy the legitimate ends and objects of matrimony. It is not merely the incompatibility of temperament. She did not make any allegation regarding the character of her husband but came up with a bogus defence of having been ill-treated by her husband and in-laws over the demand of dowry. It is obvious that she raised this false plea to cover up her own cruelty heaped upon the husband. Her conduct was unnerving for the husband producing telling adverse effect on his mental faculties. There is irreparable breakdown in the matrimonial tie. Fountain of love and affection between the couple has completely dried up. The stage of irreversibility and irretrievability has reached and the blame squarely lies at the door of the wife who had been most inconsiderate and selfish. The marriage between the couple has to be dissolved by a decree of divorce on the ground of cruelty caused by the wife to the husband."

13. The judgments cited by the learned counsel for the appellant-wife are also discussed in brief hereunder.

"(i) In Gurubux Singh vs. Harminder Kaur - , 2010 DNJ (SC) 1134 - the Hon"ble Supreme Court dismissed the appeal filed by the Husband - Gurubux Singh and held that marriage cannot be dissolved only on the ground of abusing the parents and leaving the matrimonial home without any justifiable reasons. The Hon"ble Supreme Court in para 14 and 15 observed as under:--

"14) As regards the allegations about beating her child and not feeding him, the High Court, after analyzing the entire materials, disbelieved the same. It is also brought to our notice that the appellant condoned the alleged act of cruelty as he wanted to bring back the respondent to his house. As such, the allegations of cruelty do not appear to be truthful. It is also proved that the appellant is not interested to keep the respondent as his wife and he wants divorce by any means. As observed earlier, except the grounds enumerated in Section 13, a Hindu marriage solemnized under the Act cannot be dissolved on any other grounds.

15) Finally, a feeble argument was made that both the appellant and respondent were living separately from 2002 and it would be impossible for their reunion, hence this Court exercising its jurisdiction under Article 142 of the Constitution

their marriage may be dissolved in the interest of both parties. Though, on a rare occasion, this Court has granted the extraordinary relief de hors to the grounds mentioned in Section 13 in view of the fact that the issue has been referred to a larger Bench about permissibility of such course at present, we are not inclined to accede to the request of the appellant. If there is any change of law or additional ground included in Section 13 by the act of Parliament, the appellant is free to avail the same at the appropriate time."

In this case, the appellant-husband could not fairly establish the ground of cruelty committed by wife and the Hon"ble Supreme Court kept it open for the appellant to avail the remedy if there is any change of law or additional ground included in Section 13 of the Act by the Parliament. Therefore, this case is distinguishable on facts and is of no help to the present appellant-wife in the present case.

(ii) In J.L. Nanda vs. Smt. Veena Nanda, reported in Supreme Court on Matrimonial Laws page 95, the Hon"ble Supreme Court while rejecting the appeal of the Husband held as under:

"It is no doubt an unfortunate state of affairs but it could not be held that the respondent was behaving with the appellant in a manner which could be termed as cruelty which would entitle the appellant to a decree for divorce. Sometimes the temperament of the parties may not be conducive to each other which may result in petty quarrels and troubles although it was contended by the appellant that he had to suffer various ailments on account of this kind of behaviour meted out to him by the wife but it could not be held on A the basis of any material that ailment of the appellant was the direct result of her (respondent's) conduct. The Division Bench therefore was right in coming to the conclusion that there is no material to come to the conclusion that the respondent treated the appellant with such cruelty as would entitle him to a decree for divorce. In view of the facts and circumstances, therefore, the appeal is devoid of merit. It is therefore dismissed.

In this case also, the cruelty could not be established by the Husband and the Hon"ble Supreme Court observed that there is no material to conclude that the ailment suffered by the husband was the direct result of the conduct of the wife and the behaviour of the wife with appellant-husband in such a manner could not be termed cruelty. Therefore, this case is also of no help to the present appellant-wife to get the reversal of the decree of divorce in the present case.

(iii) In Perminder Charan Singh vs. Harjit Kaur - , 2003 (10) SCC 161, Hon"ble Supreme Court observed as under:

"..... Unfortunately, the Court did not enter a specific finding that there was cruelty on the part of respondent. Despite the absence of this finding, the trial court granted divorce to the appellant and the same was rightly been set aside by the learned Single Judge.

The learned Single Judge elaborately considered the matter and held that there

was no cruelty on the part of the respondent..... The learned Single Judge found that the various allegations made in the petitions were not satisfactorily proved and the conduct of the appellant was not certainly above board."

This case is also distinguishable on facts as in the present case the trial court, on the basis of evidence, categorically reached to the conclusion that the respondent wife committed cruelty on the appellant husband and that the conduct of the appellant-husband in the present case was not such so as to deny him the decree of divorce on the ground of cruelty.

(iv) In *Rani Raj Kaur vs. Kuldip Singh* - 1 (1984) D.M.C. 168, the Delhi High Court observed as under:--

"50. In what are called in colloquial language "mental cruelty" cases there must be present in the charge of cruelty the danger - to - health element. How far a spouse has departed from the normal standards of kindness and self-control that are the basis of the married life and how great is the cumulative effect of that departure on the other spouse before it constitutes cruelty is always a question of degree, depending largely on the temperament, circumstances and health of each party. What do we find here? A thick skinned husband. Complete absence of normal kindness and consideration. No normal civility to the wife. On the part of the wife it was atrocious to prefer the charge of illicit intimacy of the husband with his own mother. There were faults on both sides. They were both difficult people. Both have their grievances against each other. But that does not prove that the wife was cruel. If without the presence of danger -to-health element the courts were to grant divorce on the ground of cruelty a heavy toll would be levied on the institution of matrimony"

This case also has no application on the facts of the present case in hand and, therefore, the same is of no assistance to the learned counsel for the appellant-wife.

(v) In *Ren Prakash vs. Mst. Sneh Lata* - RLW , 2001 (4) (Raj.) 145, the Division Bench of this Court dismissed the appeal of the husband while observing as under:

"No grave and weighty incidents which can amount of cruelty. Every little act which is mere triviality cannot be made ground upon which Court can pass a decree of divorce under Section 13(1) (i-a) on the ground of cruelty. On the contrary, the conduct of the petitioner himself establishes his cruelty with his wife."

(vi) Lastly, learned counsel for the appellant-wife relied upon the judgment of Kerala High court in the case of *Somasekharan Nair vs. Thankamma* - , AIR 1988 Kerala 308, in which the Division Bench of Kerala High Court dismissed the appeal of the appellant-husband on the ground that he failed to establish any of the grounds given in Section 13 of the Hindu Marriage Act. The Court observed in para 9 as under:--

"9. In the instant case the allegation seems to have some basis. Some of the letters alleged to be written by the respondent have been produced in this case. In many of such letters the allegations against the appellant are seen made. One letter purported to have been written by the father of the respondent also is seen produced. Therein also this sort of allegation has been made against the appellant. From the correspondence it appears that these allegations had been made since long time. Considering the relationship between the parties, we do not think that these allegations can be termed as cruelty meted out to the appellant. The appellant also has alleged that the respondent had caused bodily injury to him. For that also, there is absolutely no acceptable evidence."

14. This Court does not find any similarity of the cited judgments with the case in hand.

15. It would be now appropriate to reproduce the relevant findings of the court below on the point of mental cruelty in the impugned judgment dated 28/7/2011.

16. It is also found relevant to reproduce the offending letter Ex. A/3, which according to the respondent-husband caused him mental agony and cruelty by appellant-wife since she produced this letter before the court below but at the same time disclosing different sources at different time about its source of finding it & as noted by the court below in the afore quoted portion, she failed to prove whether her husband had really written the said letter to his sister-in-law.

"Dear-N-Dear

Bhabhi ji,

17. Besides the aforesaid letter, it will also be appropriate to quote some portions of the statements recorded by the court below in the proceedings under Section 13 of the Act.

"(i) Statement of husband-Subhash - respondent

(ii) Statement of Suresh (Elder brother of Subhash)

(iii) Statement of Ms. Alka (sister-in-law of Subhash)

(iv) State of Smt. Dimple (present appellant)

(v) Statement of Satyanarain (Father of present appellant Dimple)

18. From the totality of facts and circumstances narrated above including the statements of various parties, this Court finds that the findings recorded by the learned court below on the ground of mental cruelty committed by the appellant wife are sustainable and justifiable findings and they do not deserve any reversal by this court. As already stated above, mental cruelty committed by the either party to the matrimonial dispute cannot be measured in mathematical terms and cannot be quantified, therefore, it depends upon numerous factors like nature of allegations, the timing thereof, effect and publicity thereof etc. which can cause disturbance to the mental tranquility of either party to the matrimonial dispute.

19. It is true that filing of criminal cases against the husband and his family members was a legal right of the appellant-Dimple but it is equally true that the arrest and judicial custody of the accused persons, namely all the family members of the husband, is a great loss of reputation in the society and even if the acquittal by the competent court after the prolonged trial, the loss of reputation and harassment in the meanwhile is generally irreparable. This court is conscious of various judgments in which this Court as well as Apex Court have held that Section 498-A and 406 IPC cases have become a tool of harassment in the hands of females and they ultimately turn out to be a sheer abuse of the process of law causing trail of mental harassment and loss of time, money and career and even life sometimes by launch of such cases. That is why, the Parliament is now considering the amendment in this law in the light of various judgments and making it a compoundable and bailable offence. Secondly, in this case, letter Ex. A/3 purportedly written by the husband, which is reproduced above, in the opinion of this court, does not indicate any illicit relationship or sexual advances made by the respondent husband towards his sister-in-law, Ms. Alka but presenting the said letter by the appellant wife to all other members of the family as if it was a "love letter" written by respondent husband to his sister-in-law and then making it public and known to outside world definitely resulted in a mental harassment, agony and even cruelty to the respondent husband. If a man is of character and has not done anything illicit of this nature but it is so projected to the outside world, he can neither sufficiently explain this nor can suffer illfame, which is thrown at him. Since no watertight compartment can be drawn in such cases as to what would cause and amount to cruelty and what would not, therefore, it is always compendium of facts which has to be taken into consideration and on the weighing of such evidence in the realm of preponderance of probability & the court has to either grant divorce decree under Section 13 of the Act or refuse the same.

20. The court below granted the divorce decree not on the ground of desertion but on the ground of mental cruelty taking into account the agony and cruelty caused by the appellant wife to her husband on account of such letter, which was never proved by her to be actually written by him. Though burden was obviously on her but the impact of this was definitely the mental cruelty caused to the husband, which he could establish as a ground of seeking divorce. This was besides great harassment & loss of reputation by filing of cases under Domestic Violence Act & under Sections 498A and 406 IPC, the other behavioral problems apart.

21. This Court also cannot lose sight of the fact that the marriage has irretrievably broken down by now as the parties are living separately since 2002 and for last 14 years, they have not been able to patch-up and from the mediation proceedings by the trained mediator and even by this Court, it appears to this Court that the reconciliation and restoration of matrimonial home of the parties is not possible under any circumstances. Therefore, this Court is not inclined to allow the present appeal of the appellant-wife-Dimple but on the basis

of material brought before the court below, the divorce decree granted by the learned District Judge, Sirohi deserves to be upheld.

22. In view of the above, the present appeal of the appellant-wife is liable to be dismissed and same is accordingly dismissed. No orders as to costs.

23. Now Coming to the award of permanent alimony to be paid by the respondent-husband to the appellant-wife for herself & her son Harsh, this Court considers it appropriate to award a sum of Rs. 20 lacs (Rupees Twenty lacs only) to be paid by the respondent husband, Subhash to the appellant-wife, Dimple for her own maintenance and for the maintenance of their son Harsh, born out of the said wedlock. The said amount of Rs. 20 lacs shall be paid within a period of three months from today by way of two separate FDRs of Rs. 10 lacs each, one in the joint name of appellant-wife, Dimple and son, Harsh and another FDR in the first name of Harsh and appellant-wife, Dimple. The said FDRs will be for a period of five years and by that time son (Harsh) will attain majority in 2020 since he was born on 22/2/2002. The maturity value of these FDRs will be paid by cheques in the name of first holder of the FDR. The original FDRs will be handed over to the appellant and photocopy of the same may be filed along with the compliance report by the respondent husband in this Court within three months. Upon giving the said FDRs, the payment of monthly maintenance presently being paid to the appellant will stop and the appellant and her son may withdraw the interest of the aforesaid FDRs from the bank and spend the same for their own maintenance.

24. With the aforesaid directions, the present appeal is dismissed. No costs. Copy of this order be sent to the parties concerned forthwith.