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IN THE HIGH COURT OF DELHI AT NEW DELHI  
MAT APPEAL (F.C) No. 188 OF 2017

IN THE MATTER OF:

RITA VASHISHTHA ...APPELLANT/PETITIONER

VERSUS

ANIL KUMAR VASHISHTHA ...RESPONDENT

APPEAL/PETITION UNDER SECTION 19 OF  
HINDU MARRIAGE ACT 1955 AGAINST THE  
IMPUGNED JUDGMENT DATED 16<sup>TH</sup> SEP 2017  
PASSED BY SHRI DHARMESH SHARMA,  
PRINCIPAL JUDGE, TIS HAZARI, COURT,  
DELHI IN HMA NO.674/14/06

MEMO OF PARTIES

Rita Vashishtha  
D/o Shriniwas Dixit  
R/o Dixit Bhawan;  
Agra Road,  
In front of Police Chowki  
Hathras (U.P.) ...Appellant/Petitioner

Versus

Anil Kumar Vashishtha  
S/o Late Chandra Bhan Bashishtha  
Addl. District Judge.  
District Court,  
Muradabad (U.P.) ...Respondent

New Delhi

Dated: 10/10/2017 Through

Appellant

(D.K. SHARMA)

Certified to be True Copy Advocate  
Chamber No.685A  
Patiala House Courts,  
New Delhi  
Mob.: 9811256468



+ MAT.APP.(F.C.) 188/2017

**RITA VASHISHTHA**

..... Appellant

Through: Mr.Vishesh Wadhwa, Mr.Saurabh  
Dhingra, Ms.Swadha Gupta and  
Mr.D.K.Sharma, Advocates

Versus

**ANIL KUMAR VASHISHTHA**

..... Respondent

Through: Mr.Anil Sharma, Mr.Arun Baali and  
Mr.Kunal Nath, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE G.S. SISTANI**  
**HON'BLE MS. JUSTICE JYOTI SINGH**

**G.S. SISTANI, J.**

1. The present appeal has been filed under Section 19 of the Family Courts Act, 1984 against the judgment dated 16.09.2017 passed by the Family Court by which the petition filed by the respondent/husband seeking divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'HMA') was allowed and a decree of divorce has been granted.
2. The necessary facts to be noticed for the disposal of the present appeal are that the marriage between the parties was solemnized on 03.11.1995, at Hathras-Uttar Pradesh, as per Hindu rites and



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ceremonies. Two children were born from the said wedlock, who are both major and are staying with their mother/appellant herein after separation. As per the appellant/wife, she is staying separately since 15.06.2001. On 09.07.2001, a petition seeking divorce under Section 13(1)(ia) of HMA was filed by the respondent/husband before District Court, Kanpur which was subsequently transferred to Delhi vide order dated 18.11.2002 passed by the Supreme Court of India.

3. Mr. Vishesh Wadhwa, learned counsel for the appellant/wife submits that the respondent/husband had infact failed to prove that the grounds of cruelty alleged in the petition. There are no pleadings or evidence which would establish the ground of cruelty. In fact, the main thrust of argument of the learned counsel for the appellant/wife is that the Family Court has simply relied upon the allegations made against the respondent/husband either in the written statement filed by her or during the course of her evidence. He submits that the only course available to the respondent/husband was to amend the plaint and lead additional evidence and the Family Court has thus erred in granting a decree of divorce based on the pleadings and evidence of the appellant/wife. He submits that his case would be squarely covered by a recent decision of the Supreme Court in the case of **Suman Singh v. Sanjay Singh** reported at (2017) 4 SCC 85. Reliance is placed on paras 18 to 21 which we reproduce below:

*“18. In our considered opinion, both the courts below failed to take note of this material aspect of the case and thus committed jurisdictional error in passing a decree for dissolution of marriage. We cannot, therefore, countenance the approach of the High Court because it did not, in the first instance, examine*



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may also note that it has emerged in the cross-examination of father of appellant/wife who was examined as RW-1 S.D.Dixit that he gave a bribe of Rs.3 lacs for getting the posting of his choice to the respondent/husband.

19. Applying the aforementioned law to the facts of the present case and after carefully examining the evidence on record, we are of the view that the appellant/wife has treated the respondent/husband with cruelty and made the life of the husband miserable by leveling false allegations against him. Four consecutive closure reports by four different Investigating Officers in favour of the respondent/husband also point towards the harassment faced by him. The matter was again re-investigated upon the directions of the High Court of Allahabad and yet again a closure report was filed by the Police officials. The conduct of the appellant/wife shows rift between the parties. Taking into account all the complaints made by the appellant/wife and her father against the respondent/husband, it can be inferred that the appellant/husband has been treated with mental cruelty and faced ignominy being a Judicial Officer. We are of the view that the decree of divorce granted by the Family Court deserves to be affirmed on the ground of mental cruelty.
20. As regards the irretrievable breakdown of marriage, we are of the view that there is no doubt that irretrievable breakdown of marriage by itself is not a ground under HMA, on which alone a decree of divorce can be passed. However, the irretrievable breakdown of marriage is a circumstance which the Court can take into account when cruelty is proved and blend them together. There is no doubt that irretrievable



breakdown of marriage has been blended with cruelty in recent judgments so as to dissolve the marriage between the parties, where the marriage is completely dead and beyond repair. In the present case, we find that the marriage is beyond salvage and the parties are living separately for the last more than 18 years. Thus, there is no possibility between the parties to reside together. Keeping in view that the respondent/husband is looking after the needs of the grown up children and undertook to pay all the necessary expenses at the time of their marriage. We do not find any infirmity in the view taken by the learned Family Court. Accordingly, the appeal is dismissed.

21. In view of the judgment passed, C.M. No.38860/2017 also stands dismissed.

**G.S.SISTANI, J.**

**JYOTI SINGH, J.**

**NOVEMBER 19, 2019**

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Department  
of Information Technology  
Section 70 of  
Indian Evidence Act