



CNR: KAHC010399222018

NC: 2026:KHC:39557-DB
MFA No. 3834 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

MISCELLANEOUS FIRST APPEAL NO. 3834 OF 2018 (FC)

BETWEEN:

B. GANESH KISHAN,
S/O LATE B.M.KRISHNA,
AGED ABOUT 44 YEARS,
NO.10, 1ST FLOOR, 4TH FLOOR,
NALA ROAD,SHIVAJINAGARA,
BENGALURU - 560 051.
PRESENTLY RESIDING AT NO.12
NEW KORCHA PALYA, 5TH CROSS,
SHIVAJINAGARA,
BENGALURU - 560 051.

...APPELLANT

(BY SRI. ARUN BHAT., ADVOCATE)

AND:

SMT PADMASHREE G @ PADMA G.,
D/O LATE GOPALAKRISHNAPPA,
R/AT NO.17, K.S.COLONY,
R.K.2ND BLOCK,
THYAGARAJNAGARA,
BENGALURU - 580 028.

...RESPONDENT

(BY SMT. M. RADHIKA., ADVOCATE)

Digitally
signed by
REKHA R
Location:
High
Court of
Karnataka



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THIS MFA IS FILED UNDER SECTION 19(1) OF THE FAMILY COURT ACT, 1984, AGAINST THE JUDGMENT AND DECREE DATED:02.04.2018 PASSED IN M.C.NO.473/2008, ON THE FILE OF THE II ADDITIONAL PRL. JUDGE, FAMILY COURT, BENGALURU, DISMISSING THE PETITION FILED UNDER SECTION 13(1) (ia) OF THE HINDU MARRIAGE ACT.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M.NADAF)

Petitioner in MVC.No.473/2008 is before us in this appeal under 19(1) of Family Courts Act, 1984, assailing the judgment and decree dated 02.04.2018, passed by the II Additional Principal Judge, Family Court at Bengaluru¹.

2. In the impugned order, the Family Court dismissed the petition filed by the petitioner under Section

¹ "FC" for short



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13(1) (ia) of Hindu Marriage Act, 1955² and disposed of I.A.No.5 filed by the respondent under Section 26 of HM Act, 1955, directing the petitioner to bear the entire education expenses of the child till he attains the age of majority from the academic year.

3. The parties are referred to as per their ranking before the Family Court.

4. Facts germane to file the present appeal are as under:

4.1 The petitioner and respondent marriage was solemnized on 21.01.2007, at Sahakara Samudaya Bhavana, Padmanabhanagar, Bangalore. The parties are Hindus and their marriage was solemnized as per Hindu Rites and Customs. The petitioner claim that since the day of their marriage, respondent-wife was very adamant and was in the habit of picking up quarrel on trivial matters and abusing the petitioner

² "HM Act, 1955" for short



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as well as family members in unparliamentary words and filthy language. She also used to threaten his old aged mother and always in the habit of calling her brother and mother for her support and collectively indulged in quarreling standing in the main road in front of his house, with an intention to degrade and defame name and reputation of family in public.

- 4.2 On 24.10.2007, in one such a quarrel, the respondent-wife threatened, that she is going to file a criminal case against him by implicating his old aged mother and brother, if he failed to accede to her demands. Thereafter, the respondent-wife and her mother gave false police complaint to Basavanagudi Police Station against the petitioner and his mother. The said complaint was registered as NCR and after considering the case of both the parties, the police have closed the case and advised the respondent to change the attitude towards him.



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4.3 It was further contended that there was no change in the attitude and conduct of the wife. She was instigated by her uncle, a retired employee of All India Radio and on his instigation she made the life of the petitioner-husband very pathetic. It is further alleged that, when he leaves his home for job, the respondent-wife even manhandled his old aged mother. In view of persistent threat, quarrel and assault, the petitioner-husband having left with no other alternative, filed a petition seeking for divorce on the ground of cruelty under Section 13(1) (ia) of HM Act, 1955.

4.4 In response to the notice, the respondent-wife appeared and filed statement of objections denying all the allegations made against her, however, admitting the relationship with the petitioner-husband. It was contended by the respondent-wife that petitioner-husband was given Rs.1,50,000/- with one gold chain of four sovereign, one gold ring of one



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sovereign, one Raymond suit and watch and her parents have given her 12 sovereigns of gold to her and the marriage was performed in a grand scale on 21.01.2007. They lived as husband and wife happily only for a period of 25 days. Thereafter, mother of the petitioner-husband started throwing tantrums on preparation of food by the respondent-wife and assaulted her. When she complained this to the petitioner-husband, he asked her either to oblige or to leave the matrimonial home. The petitioner-husband and his mother were not allowing the respondent-wife to visit her parental home. She was house arrested and deprived of all freedom.

- 4.5 On several occasions, they kept her starving without allowing her to cook and eat food, whereas the petitioner-husband used to go out and eat. The mother-in-law was always taunting her that she has not brought proper dowry and demanding a sum of Rs.1,50,000/- more. She was always abusing



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respondent-wife that there are many others who were ready to marry petitioner with Rs.5,00,000/- dowry and a car and assaulted her and demanded to get a Pulsar bike and additional dowry and sent to her parents' home.

4.6 A Panchayath was conveyed, wherein it was stated that, since the parents of the respondents already performed marriage by spending a sum of Rs.5,00,000/-, they are not in a position to arrange for additional dowry and the Panchayath directed to drop her back to the matrimonial home. The family of petitioner-husband even tried to kill her and suffocate her on death by putting a pillow on her face.

4.7 The petitioner, his mother and brother assaulted the respondent-wife by causing bleeding injuries. This made the respondent-wife to approach Shivajinagar Police Station, wherein the petitioner, brother and



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wife were called and the petitioner was asked to make a separate house. The petitioner had taken her to Jain Hospital, wherein the husband made her to inform the doctor that she fell down and sustained injuries and the petitioner - husband thereafter promised that, he will make a separate house and will take care of her and left her in her parental home.

- 4.8 Despite the respondent informed the petitioner about her pregnancy, he has not cared to take her back. A Panchayath was conveyed by brother, sister-in-laws and sisters of respondent, wherein the petitioner reluctantly said that he would marry again, but he would not make a separate house. Even the brother of the petitioner abused the Panchayathdars stating that, they would not allow the respondent to join the matrimonial home. A police complaint was lodged in that regard on 13.06.2008, in Cr.No.97/2008 under



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Section 498-A of IPC and accordingly, sought to dismiss the petition.

4.9 An application in I.A.No.5 under Section 26 of HM Act, 1995 was filed seeking a direction to petitioner to pay a sum of Rs.10,000/- per month to the minor child G.Nishanth for his educational expenses, as the petitioner himself got admitted the child to St. Mary's Public School, Bengaluru and he has failed to pay the educational expenses of the child. The respondent-wife is not in a position to maintain the educational expenses, as she is totally dependent on her mother and brother. She had also filed an application under Section 24 of HM Act, 1955, seeking maintenance of Rs.2,000/- per month. The said application was allowed during the pendency of the petition.

4.10 It was further contented that the petitioner is employed in Insurance Company and drawing a handsome salary more than Rs.1,00,000/- per



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month. That apart, he has a three storied house property in Shivajinagar and deriving rental income, but falsely alleging that it belongs to his mother. It was further contended that the respondent-wife and her child have no means for maintenance, the petitioner-husband be directed to pay the maintenance as well as the educational expenses of the child.

4.11 The petitioner-husband filed his objections to the application denying the contentions stated therein and contended that he is drawing only sum of Rs.45,000/- per annum as an Insurance agent and he is not in a position to afford educational expenses as claimed. He also disputed that the child was born from the wedlock.

5. The Family Court after completion of the pleadings framed in all four issues. In order to prove his case, petitioner examined as PW-1 and marked 16



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documents as per Exs.P1 to P16. In response to the same, the respondent examined as RW-1 and got marked 7 documents as Exs.R1 to R7. Apart from that the respondent-wife has examined one witness by name B.K.Chandrashekar as RW-2.

6. The Family Court answered all the issues against the petitioner-husband and so far as I.A.No.5 in favour of the respondent-wife and proceeded to dismiss the petition filed by the petitioner-husband and directed him to bear the entire educational expenses of the child till he attains the age of majority from the academic year, as on the date of passing of the order.

7. The Family Court has considered that though there were allegations of manhandling his old aged mother, by the respondent-wife, however, in the cross-examination he has accepted that he has not lodged any complaint against the said incident. He has not produced any documents to support his averments in paragraph



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No.5 of his Examination-in-Chief Affidavit. He has admitted in his evidence that notice was issued by Senior Citizen Helpline to him and his wife and both have appeared before the said Helpline and the petitioner-husband had given a statement that he would reside with his wife in a separate house and on the said statement, the file was closed. However, the Family Court observed that the contentions taken in the petition are contradicting to his statement, wherein in the petition he has stated that, it is the respondent-wife harassing him for separate residence. As such the Family Court has come to the conclusion that he has failed to prove his contention/allegation made by him that, his wife is persistently demanding for separate residence. Though he has produced Ex.P2 to P4, but has not examined his mother to prove the harassment by the respondent as alleged by his mother as per Ex.P2.

8. The Family Court further observed that he has not produced any document to show that whether he had



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made a separate house. In that view of the matter his allegation in the petition that he had made separate house on the demand of wife remained as allegation and not proved and the same has been falsely alleged. He has not examined any witness to support his allegations contained in the petition regarding the harassment, quarrel, using abusive and filthy language. The contents of the complaint filed by the respondent-wife at Ex.P13 shows that petitioner, his brother and mother were persistently demanding for additional dowry of Rs.1,50,000/- and also for a car, wherein the petitioner, his mother and brother falsified the matter and stated that the petitioner would make separate arrangement and he had taken her to Jain Hospital for providing treatment and made her to give information that she fell down and sustained the injuries. Further, the Family Court observed that when the respondent was pregnant, the petitioner and his family members have not visited the parental home of the respondent to enquire about the same and in Panchayath



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convened to resolve the dispute, the petitioner and his family members threatened even the Panchayathdars and uttered that they would throw her out from the matrimonial home, if they send her back to the matrimonial home.

9. The Family Court observed that there are no independent witnesses examined by the petitioner to prove the allegations made in the petition and the Family Court upon considering the entire evidence, both oral and documentary, formed an opinion that except bald allegations of harassment without mentioning any specific date and time and corroborative evidence, the petitioner has not proved the same in accordance with law. The petitioner is taking advantage of some petty differences between the respondent and his mother and filed the petition suppressing the fact that he has agreed to make a separate house before the Senior Citizen Helpline and even had gone to the extent of saying that he has no issues.



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10. The contention of the petitioner disputing the birth of child from the wedlock itself amounts to cruelty against the respondent-wife and as such answered point No.1 against the petitioner and so far as point No.2 regarding the maintenance sought for the educational expenses of the child G.Nishanth, the Family Court has concluded that the petitioner is obligated to pay the entire educational expenses of the child till he attains the age of majority from the academic year as on the date of passing of the order. It is this judgment and decree passed by Family Court is called in question before this Court in this appeal.

11. Heard Sri.Arun Bhat, learned counsel for appellant and Smt.M.Radhika, learned counsel for respondent.

12. Sri.Arun Bhat, with all vehemence submits that the Family Court has failed to consider the documents produced before the Senior Citizen Helpline. A false case is



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filed by the respondent-wife to harass the petitioner-husband, involving him and his relatives including his old aged mother amounts to cruelty. In the complaint given by the mother, there is a clear statement of assault by the respondent-wife on the mother-in-law. The Family Court has failed to consider this aspect of the matter but weighed much on the statement that though the petitioner has acceded to make arrangement for separate house, but not made the separate house by producing document.

13. Though the petitioner-husband made a separate house, it is the respondent-wife who has refused to join him. In that view of the matter, the Family Court ought to have considered the evidence in its proper perspective and granted decree of divorce. Further, the learned counsel submits that the order passed by the Family Court directing him to take care of the entire educational expenses of the child causing economic hardship on him and sought to allow the appeal in its entirety.



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14. *Per contra*, Ms.M.Radhika, with equal vehemence supports the judgment and decree passed by the Family Court and submits that, the petitioner though made allegations failed to prove the same with corroborative evidence, even on the touch stone of preponderance of probabilities. The Family Court taking into consideration of the fact that the son is a school going child, directed the petitioner to bear all educational expenses. The petitioner having fathered the child, it is his responsibility to provide education to the child. In that view of the matter no interference required in the judgment and decree passed by the Family Court and sought to dismiss the petition.

15. We having considered the rival submissions perused the entire appeal papers and TCR.

16. As observed by the Family Court, the petitioner though made several allegations, but failed to provide corroborative and cogent evidence to substantiate the



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same before the Court. He has not examined any independent witnesses to substantiate his claims. Though, the evidence required to be given is on the touch stone of preponderance of probabilities, the mere production of documents would not absolve the petitioner from proving those documents, by examining the person who alleged to have given such complaint. In the absence of the corroborative evidence to the allegations made in the petition, the Family Court properly considered the entire materials and passed the order that the petitioner has not proved his case to grant the relief claimed.

17. The institution of marriage is a sacramental tie, it cannot be detached or removed or set at knot on mere asking. A person, who claims that he has been meted with cruelty, must prove the same as per the ingredients. The cruelty may be mental or physical, but the element of cruelty required to be proved on preponderance of probabilities by substantiating the same with corroborative evidence. The petitioner herein has failed to prove the



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allegations. He has taken a contention by way of objection to the application filed under Section 26 of HM Act, 1955, seeking maintenance to the child, disputing that the child was born from the wedlock. This callous allegation amounts to assassination of a character and the same in itself amounts to cruelty. '*A wrongdoer cannot be allowed to take advantage of his own wrongs*'. It is the petitioner-husband who is cruel towards the respondent-wife and child. Though he has fathered a child, till date he has not taken any care to provide the basic amenities and education. The respondent-wife with reasonable cause living separately taking shelter in her parental home.

18. In that view of the matter, we find no interference in the judgment and decree passed by the Family Court declining to grant decree of divorce for lack of evidence.

19. Though the Family Court directed the petitioner-husband to bear entire education expenses of



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the child, but restricted it; till the child attains age of majority. We therefore, increase the same by substituting that '*till the child completes his education and starts earning independently*'.

20. Accordingly, we ***dismiss*** this appeal as sans merits but with above modification to direction with reference to the child. Given the facts and circumstances there is no order as to costs.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

RR
List No.: 1 Sl No.: 32
ct-vn