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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 396 OF 2013
WITH
SECOND APPEAL NO. 397 OF 2013

Anil Yashwant Karande,	)	
age about 46, resident of Market	)	
Committee Karmachari Low Income	)	
Group Co-operative Housing Society	)	
Plot No.34, Ekata Colony, Sangli.	)	...Appellant
		...(Orig.Plff.)

...Versus...

Smt. Mangal Anil Karande,	)	
age about 42, Occ : Service,	)	
C/o. Smt.Kalika Datta Chormule,	)	
Dongri Chawl, Limaye Wadi,	)	
Solapur.	)	...Respondent
		...(Orig.Opp.)

Mr.S.G. Deshmukh i/b Mr.Abhijeet Khandarkar for the Appellant.

Mr.Ashok Tajane with Ms.Manali Patil for the Respondent.

CORAM : **R.D. DHANUKA, J.**
RESERVED ON : **5th DECEMBER, 2015**
PRONOUNCED ON : **23RD DECEMBER, 2015**

JUDGMENT :-

1. By these two second appeals, the appellant has impugned the order passed by the Lower Appellate Bench granting reliefs in favour of the respondent in two separate civil appeals filed by the respondent.

2. On or about 16th June, 2002 the marriage was performed between the appellant and the respondent as per Hindu Rites and Rituals. Pooja was organized after marriage on 21st June, 2002. It was alleged by the respondent that the respondent was forced to leave the matrimonial house along with her sisters by the appellant. It was the case of the respondent that on 30th June, 2002, the respondent and her relatives visited the house of the appellant when they were abused and the respondent was driven out of the matrimonial house.

3. On 12th August, 2002, an FIR came to be lodged by the respondent under sections 498A, 323, 504 and 506 of the Indian Penal Code against the appellant, his father, mother and brother. The appellant and his family members were arrested by the police pursuant to such complaint by the respondent. Pursuant to the said FIR, a Regular Criminal Case No.378 of 2002 was initiated against the appellant and his family members in the Court of IVth Joint Judicial Magistrate, First Class, Sangli.

4. On 21st December, 2002, the respondent filed a petition under section 9 of the Hindu Marriage Act for restitution of conjugal rights. On 5th September, 2005, the appellant, his family members were acquitted in the Regular Criminal Case No.378 of 2002. The said order passed in the Regular Criminal Case No.378 of 2002 was not challenged.

5. On 10th March, 2006, the appellant herein filed a Hindu Marriage Petition (49 of 2006) against the respondent in the Court of learned Civil Judge Senior Division, Sangli *inter-alia* praying for annulment of marriage and for divorce. The said marriage petition

was filed on various grounds including ground of cruelty alleged to have been committed by the respondent. The said Hindu Marriage Petition was resisted by the respondent. Both the proceedings were heard together and were disposed of by a common order. On 29th February, 2008, the learned Civil Judge Senior Division, Sangli allowed the said Hindu Marriage Petition filed by the respondent under section 9 of the Hindu Marriage Act for restitution of conjugal rights and rejected the Hindu Marriage Petition filed by the appellant *inter-alia* praying for annulment of the marriage and for divorce against the respondent. Being aggrieved by the said judgment and order dated 29th February, 2008, the appellant herein filed two regular appeals before the learned District Judge, Sangli. By a common judgment and decree dated 18th January, 2012, the learned District Judge dismissed both the regular civil appeals filed by the appellant.

6. On 17th February, 2015, this Court admitted Second Appeal No.396 of 2013 and formulated following substantial questions of law :-

“Whether for the act of filing complaint under Section 498A of Indian Penal Code, to amount to mental cruelty on the acquittal of husband and family, it is essential that judgment of acquittal must find that the complaint filed was false and with an intention to defame ? ”

7. In so far as Second Appeal No.397 of 2013 is concerned, while admitting the said second appeal, this Court formulated following substantial question of law:-

“Whether for the act of filing complaint under Section 498A of Indian Penal Code, to amount to mental cruelty on the acquittal of husband and family, it is essential that judgment of acquittal must find that the complaint filed was false and with an intention to defame ? ”

8. Mr.Deshmukh, learned counsel for the appellant invited my attention to the order passed by IVth Joint Judicial Magistrate, First Class, Sangli in Regular Criminal Case No.378 of 2002 filed by the State of Maharashtra against the appellant and his family members alleging offences punishable under sections 498A, 323, 504 and 506 of Indian Penal Code on 5th September, 2005. He submits that in the said proceedings, various witnesses were examined including the respondent herself by the prosecution. It is submitted that after considering the oral evidence and the documentary evidence, the learned IVth Joint Judicial Magistrate, First Class, Sangli held that the prosecution had failed to prove that the appellant and his family members herein in furtherance of their common intention subjected the complainant to cruelty by demanding dowry or had voluntarily caused hurt to the complainant or had intentionally insulted the complainant with intent to make her breach of public peace. Learned Joint Judicial Magistrate, First Class, Sangli also rendered a finding that the prosecution had failed to prove that the appellant and his family members in furtherance of their common intention criminally intimidated the complainant by threats of injury to her person. He submits that by the said order, the appellant and his family members were acquitted of offences punishable under sections 498A, 323, 504 and 506 of Indian Penal Code. The said order was not challenged by the State and has attained finality.

9. Learned counsel also invited my attention to the order passed by the learned trial judge allowing the application filed by the respondent for restitution of conjugal rights and dismissing the Hindu Marriage Petition filed by the appellant *inter-alia* praying for annulment of marriage and for divorce. He submits that the

respondent had filed a false complaint against the appellant and his family members due to which the appellant and his family members were arrested and were subsequently acquitted by an order dated 5th September, 2005. The learned IVth Joint Judicial Magistrate, First Class, Sangli has found that the prosecution had failed to prove any offences alleged to have been committed by the appellant and his family members. Such action on the part of the respondent in filing such false and frivolous complaint and getting the appellant and his family members arrested amounted to an act of cruelty by the respondent upon the appellant.

10. It is submitted that the Hindu Marriage Petition thus filed by the respondent wife under section 9 of the Hindu Marriage Act for restitution of conjugal rights itself was not maintainable in view of the act of cruelty on the part of the respondent upon the appellant having been proved. He submits that the order passed by the lower appellate Court dismissing the appeal filed by the appellant and upholding the order passed by the learned trial judge is also patently erroneous and contrary to the law laid down by the Supreme Court and this Court in catena of decisions.

11. Learned counsel appearing for the appellant placed reliance on the judgment of this Court delivered on 6th May, 2010 in case of **Nagesh Dhanapp Chilkanti vs. Sau. Manisha Nagesh Chilkanti** in Family Court Appeal No.158 of 2008 holding that filing of false criminal cases would amount to cruelty within the meaning of section 13(i)(a) of the Hindu Marriage Act and on that ground the husband was entitled to a decree of divorce. Reliance is also placed by the learned counsel for the appellant on the judgment of Supreme Court in case of **K.Srinivas vs. K.Sunita, (2014) 16 SCC 34** and

would submit that filing of a false and frivolous complaint under section 498A itself amounted to cruelty.

12. It is submitted by the learned counsel for the appellant that in the examination in chief filed by the respondent in the proceedings before the trial Court, there were no allegations of dowry made by the respondent against the appellant and his relatives. Only during the course of cross examination of the respondent, she alleged demand of dowry for the first time alleged to have been made by the appellant and her family members. He submits that the allegation made by the respondent about demand of dowry has been totally disbelieved by the Criminal Court while dismissing the complaint filed by the State of Maharashtra. The prosecution did not challenge the said findings rendered by the learned Joint Judicial Magistrate, First Class, Sangli. Learned counsel for the appellant also placed reliance on the unreported judgment of this Court delivered on 16th August, 2012 in case of **Nitin Ramesh Dhiwar vs. Sou.Roopali Nitin Dhiwar** in Family Court Appeal No.118 of 2006 in support of the submission that when the complaint filed under section 498A by the wife is dismissed, the inference can be drawn by the Court that the said complaint was a false complaint and filing of such complaint amounted to cruelty within the meaning of section 13(1)(i-a) of Hindu Marriage Act.

13. Mr.Tajane, learned counsel appearing for the respondent wife on the other hand relied upon the findings rendered by the two Courts below and would submit that the said findings of fact being not perverse cannot be interfered with by this Court under section 100 of the Code of Civil Procedure, 1908. He invited my attention to the findings rendered more particularly in paragraphs 23 to 25 of the order passed by the learned trial judge and the issues framed in the

said proceedings. He submits that the appellant had already given up grounds of nullity of the marriage before the lower appellate Court. He submits that the appellant had filed false and frivolous Hindu Marriage Petition *inter-alia* praying for annulment of the marriage and divorce only after four years of acquittal of the appellant and his family members. He submits that the appellant and his family members have not been acquitted on the ground of false complaint but have been acquitted on the ground that the prosecution had not proved his case.

14. Insofar as judgments relied upon by the learned counsel for the appellant is concerned, it is submitted by the learned counsel for the respondent that all such judgments relied upon by the appellant have been delivered in the family Court appeal and are distinguishable in the facts of this case. He submits that the judgments delivered under family court appeal cannot be relied upon since in family court appeal, the Court has to consider all the question of facts and law whereas in the second appeal, the Court can interfere only if substantial question of law arises. He submits that in any event the fact in those judgments relied upon by the learned counsel for the appellant are totally different than the facts in this case. He submits that there was no finding rendered in the order passed by the Criminal Court that the complaint against the appellant and his family members was false and was filed with an intention to defame the appellant and his family members. He submits that there was no finding rendered by the learned trial judge on the offence under section 498A of the Indian Penal Code. There was no cross examination of the respondent on the issue that the said complaint made by the respondent was false or was filed with an intention to defame the appellant and his family members.

15. It is submitted by the learned counsel for the respondent that even if the respondent had committed any cruelty upon the appellant, the respondent was entitled to maintain petition for restitution of conjugal rights independently. He submits that even if this Court comes to the conclusion that any cruelty was committed by the respondent upon the appellant, this Court cannot set aside the orders passed by the two Courts below insofar as the reliefs of restitution of conjugal rights under section 9 of the Hindu Marriage Act has been granted in favor of the respondent is concerned, it is submitted that the said proceedings under section 9 of the Hindu Marriage Act is independent proceedings and did not depend on the outcome of the criminal complaint filed by the respondent against the appellant and his family members.

16. Mr.Deshmukh, learned counsel for the appellant in rejoinder submits that for the purpose of deciding whether cruelty was committed or not by the respondent upon the appellant, positive findings of the Criminal Court that the complaint filed by her was false and frivolous was not necessary. Since it was found that the prosecution had failed to prove the offence against the appellant and the appellant was acquitted in such complaint, that itself proved the cruelty on the part of the respondent upon the petitioner under section 13(1)(i-a) of the Hindu Marriage Act.

17. Learned counsel once again invited my attention to various findings rendered by the Criminal Court on this issue. He submits that the appellant had given up his allegation of fraud against the respondent before the lower appellate Court and did not press that allegation.

18. Insofar as submission of the learned counsel for the respondent that the application for restitution of conjugal rights was independent proceeding and could be considered even if any cruelty was committed by the respondent upon the appellant is concerned, it is submitted that the person who had committed cruelty cannot seek restitution of conjugal rights at the same time.

REASONS & CONCLUSIONS :-

19. This Court shall first decide whether filing of the complaint under section 498-A of the Indian Penal Code by the wife against the husband amounted to mental cruelty on the acquittal of the husband and his family members or whether any specific finding by the Criminal Court while acquitting the husband and his family members was essential that the complaint filed by the wife was false and was with an intention to defame the husband and his family members.

20. There is no dispute that the marriage of the appellant (original plaintiff) was performed with the respondent (original opponent) on 16th June, 2002. Since 21st June, 2002 the respondent was alleged to have been forced by the appellant to leave the matrimonial home. It is not in dispute that pursuant to the complaint filed by the respondent, FIR came to be lodged under sections 498-A, 323, 504 and 506 of IPC against the appellant, his father, mother and brother. Pursuant to such FIR, the husband and his family members were arrested by the the police. There is no dispute that by an order and judgment dated 5th September, 2005, the learned IVth Joint J.M.F.C., Sangli has acquitted the appellant and his family members of an offence punishable under sections 498-A, 323, 504 and 506 of

IPC. The said order dated 5th September, 2005 has not been challenged and has attained finality.

21. A perusal of the said order dated 5th September, 2005 clearly indicates that the prosecution had examined six witnesses, including the respondent – wife, who was the complainant. The learned IVth Joint J.M.F.C. in the said order dated 5th September, 2005 after considering the evidence of the six witnesses examined by the prosecution has acquitted the appellant and his family members of various offences. Insofar as the evidence of PW-1 is concerned, it is held in the said order that the said witness did not know about the marriage of the appellant with the respondent. The witness (PW-2) also deposed that he did not know about the marriage of the appellant with the respondent. It is held that their testimony was thus of no use to prove the case of the prosecution. Insofar as the witness (PW-4) was concerned, it is held that the said witness had deposed that the complainant herself did not tell him about ill-treatment or harassment met out to her and thus his testimony did not help the prosecution.

22. Insofar as the witness (PW-5) is concerned, it is held that the deposition of the said witness was in consonance with the deposition of the complainant about the incident taken place on 21st June, 2002, who did not depose about any abuse or assault or threat to kill given on 21st June, 2002. Insofar as the witness (PW-6) is concerned, it is held that according to his deposition, he had carried out investigation in C.R. No.164 of 2002.

23. Insofar as the evidence of the respondent herein (PW-3) is concerned, the learned Magistrate has held that in her cross-examination she admitted that on 21st June, 2002 while being driven

out of her house, she was told not to come back unless she brought Rs.2.00 lacs and 10 Tollas gold. It is held that no such deposition was made in the examination in chief. There was variation in the cross-examination. It is held that the said deposition in the cross-examination for the first time about the alleged demand of dowry was an after thought. No incident had occurred from 16th June, 2002 to 21st June, 2002. It is held that it appeared to be improbable that on 21st June, 2002 after Pooja was performed, she was suddenly and forcibly asked to leave the matrimonial home.

24. The respondent herself had admitted that her father-in-law had come to leave her on the bus stand. She further admitted that gifts were given to her sister Kalika and also to her niece Teja after Pooja. The learned Magistrate accordingly held that in this sequence of events the alleged demand of dowry or forcing her out of the matrimonial home appeared to be totally improbable. The FIR was lodged more than one month after the alleged demand of dowry. The learned Magistrate totally disbelieved the explanation given by the respondent about the delay in lodging FIR.

25. It is held that the case of the respondent was not believable in view of the appellant and his family members giving gifts to the relatives of the respondent and in view of the delay on her part in lodging a complaint against the appellant and his family members. The respondent had not given adequate reasons for the delay of more than one month in filing the FIR. The aforesaid finding of fact recorded by the learned Magistrate thereby acquitting the appellant and his family members of the offence under sections 498-A, 323, 504 and 506 of IPC has attained finality.

26. A perusal of the order passed by the learned Magistrate and the lower appellate Court indicates that both the Courts have held that the appellant husband had not proved that the respondent had committed any cruelty on him and further held that the respondent was entitled to a decree of restitution of conjugal rights. It is held that the appellant was thus not entitled for a decree of nullity or marriage or in the alternative the relief of divorce on the ground of cruelty. The lower appellate Court held that the husband and his family members had been acquitted on the ground that the prosecution was not able to prove the offence beyond reasonable doubt. It is held that the proof of offence beyond reasonable doubt leading to acquittal is a very different concept from a false case lodged in order to defame anybody.

27. The lower appellate Court has held that the Criminal Court which was seized of the matter had nowhere stated that false complaint had been lodged and specific act of cruelty about the wife had not been pleaded and proved and thus the said ground cannot be canvassed for nullity of marriage or for seeking divorce. The lower appellate Court held that taking into consideration the evidence led by the wife, which was more probable, the wife had proved that her marriage with the appellant was legal and the appellant had deserted her without reasonable ground and thus the wife was entitled to get a decree for restitution of conjugal rights.

28. Both the parties have relied upon several judgments of the Supreme Court and this Court. The Supreme Court in case of **K. Srinivas** (supra) has held that it is beyond cavil that if a false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty, such as would entitle

the other spouse to claim a divorce. The Supreme Court in the said judgment held that the respondent wife had admitted in her cross-examination that she did not mention of the incidents on which her complaint was predicated, in her statement under section 161 of Cr.P.C. It was also not her case that she had actually narrated all those facts to the Investigating Officer but he had neglected to mention them. The Supreme Court accordingly held that it was clearly indicative of the fact that the criminal complaint was contrived after thought. The Supreme Court took cognizance of the fact that though the High Court had been informed about the acquittal of the husband and his family members, the High Court had not concluded that complaint of the wife was knowingly and intentionally a false complaint, calculated to embarrass and incarcerate the appellant and seven members of his family. It is held that the High Court ought to have concluded that the said complaint was false complaint and that such conduct of the wife unquestionably constituted cruelty as postulated in section 13(1)(i-a) of the Hindu Marriage Act, 1955.

29. The Criminal Court while acquitting the appellant and his family members, after considering the evidence of six witnesses had rendered a positive finding that the complaint filed by the respondent was an after thought. The Criminal Court has rejected the complaint on merits after evaluating the evidence of six witnesses. Though the appellant had produced a copy of the said order passed by the learned Magistrate First Class before the lower appellate Court, the lower appellate Court has brushed aside the said judgment by taking a very casual approach in the matter.

30. The Division Bench of this Court in case of **Nagesh Dhanapp Chilkanti vs. Sau.Manisha Nagesh Chilkanti** (supra) had

considered a similar case where the husband and his family members were acquitted in the complaint filed under section 498-A of IPC read with other provisions of IPC. The Division Bench of this Court has held that filing of false criminal cases against the husband and his family members would very much constitute mental cruelty. The Division Bench further held that the respondent wife was guilty of treating the husband with utmost mental cruelty by filing false criminal case which ultimately resulted in acquittal and thus the husband was entitled to a decree of divorce on the ground of cruelty. A perusal of the order passed by the learned Magistrate First Class in the criminal case filed by the prosecution based on the complaint filed by the respondent and more particularly the evidence appreciated by the learned Magistrate First Class indicates that the said complaint has been rejected on merits and not on the ground that the prosecution had failed to prove the case beyond reasonable doubt. In my view, it was thus clear that the said complaint filed by the respondent wife after five days of marriage against the appellant and his family members was a false complaint and was filed as and by way of after thought and with an intention to defame the appellant and his family members. The respondent had not alleged that during those five days there was any ill-treatment or demand of dowry by the appellant or his family members from the respondent or her family

members.

31. The Division Bench of this Court in case of **Nitin Ramesh Dhiwar vs. Sou. Poopali Nitin Dhiwar** (supra) has held that filing of a false criminal case itself amounts to cruelty within the meaning of section 13(1)(i-a) of the Hindu Marriage Act, 1955.

32. The Division Bench of this Court in the judgment reported in **2014(4) B.C.R. 456** has held that in a given case depending upon the evidence on record, even if acquittal is on the ground that the charge could not be substantiated and even if there was no finding recorded by the Criminal Court that the prosecution's case was false, there can be a case of cruelty. It depends on the manner in which the complaint was filed and prosecuted.

33. The Supreme Court in case of **Vishwanath Sitaram Agrawal vs. Sau.Sarla Vishwanath Agrawal**, reported in **AIR 2012 SC 2586** has after considering the fact that the wife had filed a complaint under section 498-A of IPC against the husband, her father-in-law and other relatives, who had been acquitted in that case and the said decision of the acquittal had not been assailed before the higher forum, the allegations on that count were incorrect and untruthful and thus it could be unhesitatingly be stated that such an act creates mental trauma in the mind of the husband as no one would like to face a criminal proceeding of this nature on baseless and untruthful allegations. In this case also the appellant and his family members have been acquitted since the allegations made in the complaint filed by the respondent and in the proceedings filed by the prosecution were not proved on merits. The said judgment of the

learned Magistrate First class has admittedly not been assailed before the higher forum. The appellant husband had filed the proceedings for divorce on the ground of cruelty under section 13(1)(i-a) of the Hindu Marriage Act after such acquittal of the appellant and his family members of such offence under sections 498-A, 323, 504 and 506 of IPC. The said judgment, in my view, would squarely apply to the fact of this case.

34. The Supreme Court in case of **G.V.N. Kameswara Rao vs. G. Jabilli**, reported in **(2002) 2 SCC 296** has adverted to its earlier judgment in case of **V. Bhagat vs. D. Bhagat**, reported in **(1994) 1 SCC 337** in which it was held that a mental cruelty under section 13(1)(i-a) can 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. 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. The Court must have regard to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. In that case also both the parties did not live together for a long period as happy married couple. The Supreme Court held in that case that the appellant husband could not be denied the relief by invoking section 23(1)(a) of the Hindu Marriage Act.

35. A perusal of the record clearly indicates that the appellant and the respondent did not stay together for more than five days after their marriage and have been staying separately since 2002. The

respondent could not prove her case before the Criminal Court though the prosecution had examined six witnesses, including the respondent herein and the appellant and his family members were arrested and were subsequently released. The finding rendered by the learned Magistrate First Class acquitting the appellant and his family members has attained finality. There was a complete irretrievable break down of the marriage of the appellant and the respondent within a short span of time.

36. The judgments referred to aforesaid clearly indicate that if the complaint filed by the wife against the husband under section 498-A of IPC and other related provisions was dismissed on merits and the husband and his family members are acquitted, it was clear that the complaint filed by the wife against the husband was a false complaint. In my opinion, filing of such complaint itself which create mental trauma on the husband and the complaint which was seriously prosecuted by the wife by leading evidence of several persons and bringing the said complaint to its logical conclusion which ultimately resulted in acquittal of the husband and his family members clearly amounted to the cruelty committed by the wife upon the husband.

37. The judgments of the Supreme Court and this Court which are referred to aforesaid squarely apply to the facts of this case. I am respectfully bound by those judgments. There is no dispute that the husband and his family members were ultimately acquitted in such complaint made by the respondent. It was not the case of the respondent before the trial Court as well as before the lower appellate Court that the finding rendered by the learned Magistrate First Class were erroneous and such allegations were not independently proved by the respondent before the learned trial Court as well as before the

lower appellate Court. A perusal of the order passed by the lower appellate Court indicates that the evidence led by the respondent and other witnesses in the said criminal proceedings and the findings rendered by the learned Magistrate First Class have been totally ignored by the learned trial Court.

38. The Supreme Court as well as this Court in the aforesaid judgments have consistently held that if the false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce. In my view, the respondent having filed a false complaint alleging offence under section 498-A, 323, 504 and 506 of IPC in which the appellant and his family members were acquitted and thus the appellant was entitled to seek divorce on the ground of cruelty under section 13(1)(i-a) of the Hindu Marriage Act.

39. Insofar as the submission of the learned counsel for the respondent that the judgments relied upon by the appellant cannot be considered as a binding precedent on the ground that all such judgments were delivered under Family Court appeals where the Court could consider not only the question of law but also the question of facts is concerned, in my opinion, there is no substance in this submission of the learned counsel for the respondent. In each of these judgments even if few of them have been decided arising out of the orders passed by the Family Court, the Courts have laid down the principles of law after considering the facts in each case which facts were identical to the facts in this case. In the present case the proceedings of divorce filed by the appellant as well as the proceedings seeking restitution of conjugal rights filed by the respondent wife were filed before the learned Civil Judge, Senior

Division which Court had jurisdiction to hear both these proceedings. There was no Family Court constituted in Sangli when the said two proceedings were filed by the parties. The judgments relied upon by the appellant thus which are applicable to the facts of this case would be binding on this Court and also upon the parties.

40. Insofar as the submission of the learned counsel for the respondent that even if this Court comes to a conclusion that any cruelty was committed by the respondent upon the appellant, the respondent was still entitled to the relief of restitution of conjugal rights under section 9 of the Hindu Marriage Act is concerned, a perusal of section 9 of the Hindu Marriage Act clearly indicates that the application for restitution of conjugal rights can be filed under that provision only if when either husband or wife has without reasonable excuse withdrawn from the society of the other, the aggrieved party, may apply for restitution of conjugal rights and the Court after being satisfied of the truth of the statement made in such petition and that there was no legal ground as to why such application should not be granted, may decree restitution of conjugal rights accordingly. It is provided that the burden of proving the reasonable excuse shall be on the person, who has withdrawn from the society.

41. In this case the respondent wife had filed a complaint under section 498-A and other relevant provisions of IPC. The respondent after filing such complaint and after arrest of the appellant and his family members had filed a petition under section 9 of the Hindu Marriage Act on 21st December, 2002 *inter-alia* praying for restitution of conjugal rights. The husband on the other hand filed the marriage petition *inter-alia* praying for annulment of the marriage and for divorce, including on the ground of cruelty on 10th March, 2006.

The question that arises for consideration of this Court is that whether a wife who had filed a false complaint under section 498-A and other relevant provisions of IPC in which the husband and his family members were arrested and were subsequently acquitted can continue to maintain a petition under section 9 of the Hindu Marriage Act for seeking restitution of conjugal rights or not.

42. The Supreme Court in case of **V. Bhagat vs. D. Bhagat**, (supra) has held that a mental cruelty under section 13(1)(i-a) can 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. It is held that mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. It is also held that 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. In my view the said judgment clearly applies to the facts of this case.

43. The parties have been staying separately since 2002. In my view, since the appellant husband and his family members were wrongly implicated in a false case filed by the respondent alleging the offence under sections 498-A, 323, 504 and 506 of IPC and were arrested by the police and the said complaint was subsequently prosecuted rigorously by the respondent till it was brought to its logical conclusion and the appellant and his family members having been exonerated of all such charges and were acquitted, in my view, the appellant had withdrawn from the society of the respondent with a reasonable excuse.

44. In my opinion, the respondent having treated the appellant

with cruelty and such allegations having been proved, the respondent at the same time could not maintain her application for restitution of conjugal rights by filing an application under section 9 of the Hindu Marriage Act, 1955. The husband, who had suffered mentally in view of such false criminal case filed by the wife and admittedly in which he and his family members were acquitted, cannot be compelled by the Court by passing an order of restitution of conjugal rights under section 9 of the Hindu Marriage Act, 1955 and to co-habit with the wife. In my view, once the husband has made out a case of divorce and had proved the cruelty committed by the wife under section 13(1) (i-a) of the Hindu Marriage Act, the wife could not maintain her application for restitution of conjugal rights under section 9 of the Hindu Marriage Act, 1955.

45. In my view, the appellant husband had proved before both the Courts below that he had withdrawn from the society of the respondent due to the respondent having committed cruelty upon the appellant and such withdrawal from the society of the respondent was not without a reasonable excuse. In my view, both the reliefs are counter point to each other. Once the cruelty committed by the wife is proved by the husband, no relief for restitution of conjugal rights can be granted by the Court. Both the reliefs cannot be granted together at the same time. In my view, there is thus no substance in the submission made by the respondent that even if it was proved that the wife had treated the husband with cruelty, she will be independently entitled to maintain her application for restitution of conjugal rights under section 9 of the Hindu Marriage Act, 1955.

46. In my view no spouse can be allowed to urge that he or she would treat other with cruelty and at the same time would also

force other to co-habit with him or her by filing application under section 9 of the Hindu Marriage Act for restitution of conjugal rights under the same roof. In my view, since the appellant husband had proved the case of cruelty on the part of the wife, the learned trial Judge as well as the lower appellate Court ought to have considered such case as a fit case for divorce and not a fit case for granting a relief under section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights in favour of the respondent. In my view, since the husband was entitled to a decree of divorce under section 13(1)(i-a) of the Hindu Marriage Act, 1955, there was no question of the trial Court as well as the lower appellate Court granting the relief of restitution of conjugal rights under section 9 of the Hindu Marriage Act, 1955.

47. Insofar as substantial questions of law made in Second Appeal Nos.396 of 2013 and 397 of 2013 are concerned, the said questions are answered in the negative. In my view there is no positive finding required to be rendered in the judgment of acquittal that the complaint filed was false and was with an intention to defame the other party.

48. I therefore pass the following order :-

a). Second Appeal Nos.396 of 2013 and 397 of 2013 are allowed. The order dated 18th January, 2002 passed by the lower appellate Court in Regular Civil Appeal Nos.216 of 2008 and 215 of 2009 is set aside.

b). Hindu Marriage Petition No.49 of 2006 filed by the appellant in the Court of Civil Judge, Senior Division, Sangli *inter-alia*

praying for annulment of marriage and for divorce is decreed on the ground of cruelty under section 13(1)(i-a) of the Hindu Marriage Act, 1955.

c). Hindu Marriage Petition No.179 of 2002 filed by the respondent under section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights is dismissed.

d). No order as to costs.

(R.D. DHANUKA, J.)