

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FAMILY COURT APPEAL NO.13 OF 2008

Dr.-X Husband

**...APPELLANT
(Orig. Petitioner)**

VERSUS

Dr.-Y Wife

...RESPONDENT

...
Mr. P.M. Shah, Senior Counsel with Mr. Amol
N. Kakade Advocate for Appellant-Husband.
Mr. V.D. Sapkal Advocate for Respondent-Wife.
...

**CORAM: R.M. BORDE AND
A.I.S. CHEEMA, JJ.**

**DATE OF RESERVING JUDGMENT :9th DECEMBER, 2015
DATE OF PRONOUNCING JUDGMENT:21st JANUARY, 2016**

JUDGMENT [PER A.I.S. CHEEMA, J.] :

1. This Appeal is filed by the Appellant - husband an Ophthalmologist (hereafter referred as "Petitioner"), whose Petition for divorce against the Respondent - wife B.H.M.S. - practicing

Homeopathy (hereafter referred as "Respondent") has been dismissed by the Family Court, Aurangabad in Petition No.A.263 of 2006. Keeping in view the nature of dispute, we have blocked the names of the parties in the cause title.

2. Succinctly put, the marriage between the parties took place on 29th November 2002. They lived together happily for some time and then due to disputes, the Petitioner claims that the Respondent deserted him on 30th December 2003. The Respondent claims that she was beaten and left at the place of her parents on 4th December 2003. Petitioner - husband earlier filed Divorce Petition No.A.46 of 2004 on 3rd February 2004. The Respondent received summons in that matter on 9th February 2004. Thereafter few incidents took place and the Respondent filed F.I.R. leading to criminal case against the Petitioner and his other family members. The Petitioner withdrew earlier divorce Petition due to further developments. The

present Petition No.A.263 of 2006 came to be filed later on, on 27th September 2006, which has now been dismissed by the Family Court on 27th March 2008.

3. To understand the disputes between the parties, it is now necessary to refer the facts in some more details.

EARLIER PETITION NO.A.46 OF 2004

. Exhibit 52 is copy of the earlier Petition No.A.46 of 2004. It was divorce Petition under Section 13 of the Hindu Marriage Act, 1955. The Petitioner claims that his marriage with Respondent could be termed as self arranged marriage. Engagement took place on 27th October 2002. The engagement was broken by the parents of the Respondent on the ground that she was not offered proper gifts and number of

persons who attended the function were more. As Respondent and her paternal uncle were ready for marriage, registered marriage was performed and religious rites were carried out at Ghrishneshwar Temple, Ellora (on 29th November 2002). Reception took place on 8th December 2002, in which only uncle and aunt of Respondent attended. In the evening, on the day of marriage, the parents and relatives of Respondent had come to the residence of the Petitioner and quarreled. The marriage was happy for few days. Later on Respondent was not behaving properly and insulted the Petitioner in front of his parents and friends. She used to take suspicion against the Petitioner if any time he talked with any girl. She suspected him with his cousin sister also and he was lowered in the eyes of relatives and sister. When a female friend called from Bombay, Respondent quarreled with the

Petitioner and left the house alleging that Petitioner had relations with that friend. She was back answering elderly persons and mother of Petitioner. The Respondent was being instigated by her parents. She had the habit of disclosing private life to friends and creating embarrassment. She left house on many occasions and the Petitioner brought her back. She did not behave properly with friends and relatives and avoided to perform religious ceremonies. She had the habit of leaving the gold ornaments open on bed and when pointed out, she quarreled. She quarreled and deserted the Petitioner claiming that she will put him behind the bars. She threatened to commit suicide. She consistently humiliated him which acts amounted to cruelty. It had become impossible to live with her due to mental agony and torture.

. With such facts the first Petition claimed divorce.

WITHDRAWAL OF EARLIER PETITION:

4. The Petitioner filed application (Exhibit 58) in the earlier Petition claiming that the Respondent has now filed criminal complaint and he wanted to withdraw the Petition to file fresh divorce Petition after dismissal of the criminal case and so with permission, liberty may be given. The Respondent took time to reply but did not file reply and then the Judge of the Family Court, without recording grant of permission, passed order dismissing the Petition for want of prosecution. Against the withdrawal, Respondent filed Family Court Appeal No.47 of 2004 (Exhibit 59) in this Court and the Appeal was dismissed with clarification that no adverse order has been passed against the present Respondent, as no leave

had been granted.

PRESENT PETITION NO.A.263 OF 2006

5. Subsequently the present divorce Petition No.A.263 of 2006 was filed. In this Petition the first twelve paragraphs are similar to the averments as made in the earlier Petition, to which we have made brief reference above. From Paragraph No. 13 onwards, there is reference to other facts which took place after filing of the earlier Petition. We proceed to refer to those facts in brief, as pleaded by the Petitioner.

. The Petitioner has now further claimed that after the earlier Petition was filed, notice was issued to Respondent and it was served on her. Thereafter she came to the Petitioner and gave threats that she will file false criminal case under Section 498-A of the Indian Penal Code (I.P.C.) against him and his family members. On 25th

February 2004 when Petitioner was going on motorcycle from Kranti Chowk towards Paithan Gate, at about 2.00 p.m., in Nutan Colony, the Respondent stopped him and gave such threats. She also threatened that she will commit suicide and implicate him and his family members and put them in jail. On 26th February 2004 she came to the clinic of the Petitioner and in front of patients abused and threatened him. In view of such acts of Respondent, the Petitioner filed application with Kranti Chowk Police Station on 27th February 2004. On 28th February 2004 Respondent came in front of his clinic and asked him to withdraw the divorce Petition or else she would file case under Section 498-A of I.P.C. The Petitioner informed this to Mukundwadi Police Station vide N.C. No.163 of 2004. The Respondent filed false complaint (F.I.R.) on 29th February 2004 making false

and vexatious allegations against the Petitioner, his mother, two brothers and wife of one brother that she was ill-treated, assaulted and there was dowry demand of Rupees Two Lakhs and Fifteen Tola gold. She claimed that she had been assaulted on 28th February 2004 in the cabin of the Petitioner. This led to registration of offence at Jinsi Police Station vide Crime No.I-14 of 2004. The Petitioner and his family members suffered great hardship. The Petitioner and his brother Vijay were arrested and thereafter came to be released on bail. They were greatly humiliated. When bail petition came up, Respondent, although she did not have injury, bandaged her both hands and appeared before the Court to take sympathy and tried to get the bail rejected. She appeared in the course of trial on each date and opposed exemption applications.

She gave false evidence in the criminal case. (The Petition then mentions as to what was allegedly the false evidence.) Respondent went back from her signature on application which she had given at the time of marriage to Jinsi Police Station that she had married on her own accord. She sought various adjournments in the criminal case and at the stage of arguments even got the case transferred vide Transfer Petition No.68 of 2006 making averments against the Judicial Officer. The Petitioner and his family members came to be acquitted. The marriage has irrevocably broken down and parties have been residing separately for more than 2 ½ years. Respondent left the house on 30th December 2003 without any reason and has been guilty of willful mental ill-treatment and cruelty to Petitioner. It is impossible for the parties to live together without mental

agony, torture and distress. Thus the divorce Petition.

DEFENCE

6. The Respondent filed Say/Written Statement vide Exhibit 40. We proceed to refer to those facts in brief, as pleaded by the Respondent in the Written Statement:

. It is not disputed by the Respondent that engagement took place on 27th February 2002. She claims that her parents spent Rupees Sixty Thousands on the engagement. The marriage was fixed for 29th December 2002 but the Petitioner wanted to finish up the marriage ceremony in simple and economical manner. For saving Rupees Two Lakhs, parents of Respondent agreed. They gave garland of five Tola gold to her and remaining ten Tola gold was to be given

within a year. Marriage took place at Ellora in Ghrishneshwar Temple in simple ceremony. It is denied that Petitioner arranged reception on 8th December 2002. Her parents and relatives attended and there was no quarrel. She denies that she was taking suspicion or that she quarreled on that count. She claims that the elder brother of Petitioner, Mr. Sujay was married unemployed. Though he was living separate but used to come for meals twice in the house of the Petitioner. She claims that he was "parasite"(?) in the family. Her father was serving in S.T. Department. She has two sisters, one brother and mother. She comes from religious, social, cultural back-ground. She never threatened Petitioner with case under Section 498-A of I.P.C. and she is from medical side and not legal side. The earlier Petition was withdrawn as Petitioner had filed bogus pan

card and income tax record in the earlier case when pendente lite maintenance was sought by Respondent and Respondent filed complaint of forgery and cheating. The present Petition is hit by the principle of 'res judicata'. When the earlier divorce Petition was filed, the Respondent had requested Petitioner to withdraw the divorce Petition. On the contrary, Petitioner went to police station as he wanted to swallow the clinic developed by her from her money of medical profession and *stridhan*. When she requested to withdraw the Petition, she was beaten when she was attending patients and her thumbs were fractured by the Petitioner. Although both her thumbs were fractured by the Petitioner, she did not go to private doctor as she did not want to disclose the deeds of her husband. She went to Ghati hospital where police made out Medico Legal

Case and recorded offence under Section 498-A of I.P.C. as the Petitioner - husband had demanded Rupees Two Lakhs and fifteen Tola gold from her parents. She claimed that the Petitioner and his family members got acquitted as they managed the police and pressurized police prosecutor. She has preferred appeal to the High Court.

. In the Written Statement, further pleas are raised by the Respondent. According to her, it cannot be said that the marriage between her and Petitioner was love marriage. She claims that the Petitioner and his mother had approached the parents of Respondent and the engagement took place. Out of oneness she was sending patients to the Petitioner thereafter. When the marriage was preponed, it was agreed that whatever would be saved, would be spent on further development of

the couple. Her father agreed to give fifteen Tola gold after marriage. After simple ceremony at Ellora, marriage was registered. She started living in the three storeyed building at Seven Hill Colony, belonging to the Petitioner. Petitioner insisted that she should not practice in slum area and should shift in Indu-Ganga complex where he was practicing. Even prior to marriage, believing Petitioner, she shifted in that complex and took gala on rent. She took Rupees One Lakh Sixty Thousands from the State Bank of Hyderabad as loan to set up the clinic. She got the loan after engagement ceremony had taken place. Petitioner asked her to shift her practice in the same clinic where he was practicing. She spent the amount in setting up both the clinics. Petitioner took Rupees Seventy Thousand from the loan which was sanctioned to her and spent it on his

family members. She claims that Rupees Ninety Five Thousand were still outstanding from the said loan amount. After marriage she was treated nicely for two months. Thereafter her mother-in-law Nirmala, sister-in-law Pragati and brother-in-law Sujay started claiming that Petitioner was highly qualified and could have got big money as dowry and girl who had M.B.B.S. degree, but he had preferred a girl from hutment. She claims that her mother-in-law and sister-in-law started quarreling with her that she does not know cooking and domestic work. They started instigating Petitioner who started beating her. She was beaten on 9 to 11 occasions. Petitioner was himself taking her to clinic and dropping back out of suspicion that she may go to her parents. When she was beaten, he took her to doctors, namely Rege, Sameer Deshmukh, Dande, Rakshale under fear that

Respondent should not expose him. Mother-in-law, sister-in-law and brother-in-law were alleging that she had extra marital affair, without naming any body. When her father met with an accident and was in hospital for eight months, she was never allowed to meet him. Her income of Rs.7000/- to 8,000/- per month was being taken away by the Petitioner. She was brutally beaten on 4th December 2003 for an hour and dropped at the place of her parents, on 5th December 2003. She was pregnant of three months at that time. She developed complications and was taken to Dr. Mrs. Mahindrakar. Doctor informed the Petitioner but he did not come. She lost her child at that time, due to physical, verbal and economical abuse. Her sister-in-law Pragati, mother-in-law Nirmala, brothers-in-law Vijay and Sujay claim that she does not know cooking and spends money

on beauty parlour and shopping and they don't need her. Petitioner used to be mute spectator to all this. Even after she was left at the place of her parents, she was attending the clinic at Indu-Ganga complex. She tried to go back to matrimonial home but was denied entry and was asked to bring fifteen Tola gold and Rupees Two Lakhs. After separation she was not able to practice as when she joined Dr. Roplekar and later on Dr. Jadhav, she was removed due to Petitioner and her mother-in-law not liking her working. On 16th July 2006 there was an advertisement showing inauguration of big hospital by the Petitioner at Seven Hills Colony. The hospital is worth Rupees Three Crores and the Petitioner is earning not less than Rupees One Lakh per month. Respondent claimed that she is entitled to Rupees Twenty Five Thousand per month as pendente

lite maintenance.

ISSUES AND EVIDENCE BROUGHT BEFORE FAMILY

COURT:

7. With such pleadings, the Family Court framed issues at Exhibit 28. First issue related to jurisdiction to try the case. Second issue related to alleged cruelty. Third issue related to the question whether the Respondent had deserted Petitioner without reasonable cause. Fourth issue related to, whether there was bar under Section 23 of the Hindu Marriage Act. Parties brought on record necessary evidence. Petitioner examined himself as PW-1 giving evidence on line of above pleadings. Per contra Respondent led her evidence on above line of pleadings and to support herself, examined RW-2 Nandkumar Parikh, handwriting expert, as she was claiming that the income tax return tendered in the "earlier" Petition was forged and was also claiming that the letter dated 29th November 2002, Exhibit 84, relied on by

the Petitioner in Criminal Case, as sent by her to police that the marriage was willful, was forged. Respondent examined RW-3 Ravindra Sangavikar, employee from Bank regarding loan she had taken. (Although question of maintenance was not being decided -). Sub Registrar Saheb Khan was examined as RW-4 regarding value of the property of the Petitioner at Seven Hills to claim that it was worth more than a Crore of Rupees. RW-5 P.S.I. Shahabuddin Shaikh has been examined to bring on record evidence that in the police station concerned original of Exhibit 84, the letter dated 29th November 2002 was not available and neither station diary entry was there. RW-6 Satish Purohit was examined to prove Tipan Exhibit 168 that when the engagement took place, marriage was initially scheduled for 27th December 2012.

8. The Family Court considered the evidence led by the parties and held that it had jurisdiction to try the case. It however held that

Petitioner failed to prove cruelty by Respondent and that he had also failed to prove that she had deserted him without reasonable cause. The Family Court observed that question of bar under Section 23 of the Hindu Marriage Act does not survive. Family Court concluded that Petitioner was not entitled for decree of divorce.

ARUGMENTS FOR PETITIONER-APPELLANT:

9. Against the Judgment, present Family Court Appeal came to be filed raising various grounds. It is claimed in the Appeal and it has been argued by the learned counsel for the Petitioner - Appellant that the Family Court did not consider the evidence in proper perspective. The marriage between the parties was a love marriage which was performed against the wish of parents of the Respondent. The parents and other relatives except one uncle of Respondent, did not attend the marriage. Although photographs were produced, none showed the presence of the parents

or other family members of the Respondent. The Respondent had herself filed the letter to the police on 29th November 2002 vide Exhibit 84 but later on has gone back from her signature on the letter. The Appellant proved on record the conduct of the Respondent, post receipt by her of the summons in the earlier petition. Petitioner proved how he was abused and threatened on 26th February 2004 and 28th February 2004 and subsequently false criminal case was filed. Because of the criminal case Petitioner-Appellant and his brother were arrested and thereafter released on bail. Other family members had to rush to file anticipatory bail petition, during the course of which hearing, the Respondent appeared with bandaged hands to prejudice the Court. It has been argued that the Respondent made all endeavours to put the Petitioner and his family members behind bars all the while making false allegations. Although it was pleaded that her thumbs were fractured, in evidence she accepted that they were not

fractured. Wild allegations were made that the family members of the Petitioner were asking for dowry and that Petitioner would have got girl having M.B.B.S. The marriage took place with full knowledge of the back-ground of the Respondent. Wild allegations of miscarriage were made without any medical evidence being brought on record. Dr. Mrs. Mahindrakar was not examined. Family Court failed to see that the private handwriting expert examined, had relied only on xerox copies, which was inadmissible. The Respondent filed domestic violence case, which came to be dismissed. She filed frivolous case against the advocates of the Appellant, which also came to be dismissed. Although the Appellate Court had remanded the matter after acquittal, post impugned Judgment the High Court maintained the Judgment of acquittal and S.L.P. filed by the Respondent came to be dismissed. Thus, it has been argued that the cruelty has been proved. In present Appeal, the Petitioner filed Civil Application Nos. 14302 of

2015 and 15183 of 2015 with copies of documents which are Judgments/applications in the various proceedings between the parties supported by the affidavits. Some of the Judgments and orders are relating to the period before the impugned Judgment while some Judgments and orders have been rendered subsequent to the disposal of the impugned matter.

10. Learned counsel for Respondent has not disputed the correctness of the documents relating to the Judgments and orders passed or applications moved. The counsel have referred to the said Judgments and orders as well as applications at the time of arguments and we are taking note of the subsequent proceedings also.

ARGUMENTS FOR RESPONDENT:

11. On behalf of the Respondent, the learned counsel referred to Sub Rules (3) and (4) of Order XXIII Rule 1 of the Code of Civil Procedure, 1908

(C.P.C.) to argue that if the earlier Petition was withdrawn without taking permission referred to in Sub Rule (3), the Petitioner would be precluded from instituting any fresh suit in respect of the subject matter or part of the claim. It is argued that the earlier Petition was for divorce on the ground of cruelty and present Petition is also for divorce on the ground of cruelty. As the earlier Petition was withdrawn without taking permission of the Court and which order has been clarified by the High Court in the earlier Appeal, the present Petition was barred. Learned counsel agreed that the observation of the trial Court in Para 50 of its Judgment that the present Petition was hit by the principles of 'res judicata' was not maintainable, as earlier Petition was not decided on merits, but according to him the bar is under Order XXIII Rule 1 of the C.P.C., which is applicable. It is argued by the Respondent that due to withdrawal of the earlier matter, the Respondent was unable to prove her defence which

she was to take in the earlier Petition. The grounds raised for divorce are general and vague. The Respondent denied in her written statement that she was suspecting cousin sister of the Petitioner. According to the learned counsel, there was no evidence that the Respondent was guilty of ill-treatment and desertion. (The counsel took us through the evidence.) It is claimed that in the earlier proceedings, the documents filed of income tax return and Exhibit 84, letter claimed to be filed by the Respondent to police, were forged and so handwriting expert was examined. The counsel submitted that the Respondent is ready to go and reside with the husband and the husband is not ready to take her back and thus divorce should not be granted. Lapse of time is no reason to grant divorce. Irretrievable breakdown of marriage is no ground. Only because the Petitioner was acquitted in the criminal proceedings, would not go to prove that the Respondent inflicted cruelty. The first

divorce petition was filed within fifteen months of the marriage, which showed that the husband was not interested in maintaining the marriage.

IN REPLY:

12. The learned counsel for the Petitioner in reply submitted that when in the earlier Petition the Petitioner had filed application for withdrawal with permission to institute fresh proceedings, if the permission was not being granted, what Court could have done was to refuse the permission but the Court could not have simply disposed the Petition as withdrawn. He however, did not press for this argument, as according to him, the matter had been, at that time, carried to the High Court and in Appeal High Court recorded opinion and so that order has become final. The learned counsel submitted that in the present Petition, the Petitioner is not relying on the earlier events which were agitated in the earlier Petition, but is relying on the incidents which

took place subsequent to the filing of the earlier Petition and present Petition is based on those subsequent facts which according to learned counsel are not barred under Order XXIII of the C.P.C. According to the learned counsel the earlier Petition was based on facts till the date of filing of the earlier Petition, which facts themselves constituted cause of action. The present Petition cannot be said to be based on the same subject matter as in the present Petition, the set of facts relied on are different and cause of action is also different. According to the counsel, subsequent to filing of the earlier Petition, the Respondent reacted inappropriately and further, the Petitioner and his family members were dragged into criminal cases and they were got arrested and harassed making wild allegations against the character of the husband and criminal acts were attributed, because of which the present Petition was required to be filed. It is argued that it would be unimaginable to hold that once a

divorce petition on the ground of cruelty has been withdrawn further divorce petition cannot be filed even if there are subsequent events showing cruelty. The counsel submitted that the record and proceedings of Family Court show that the Respondent resorted to raising various obstructions to the Petitioner by filing various criminal cases and even in the present Petition irrelevant evidence was brought like that of the valuer although question of maintenance was not being decided and in cross-examination there were multiple repetitions. Although the Respondent claims not to be a person of law, she carried out extensive cross-examination of the Petitioner, in-person, on 9th July 2007, 10th July 2007, 21st July 2007 and 12th October 2007. She has legal acumen and is not a lay person and the evidence has not been properly appreciated by the Family Court.

13. It is submitted by the learned counsel

for the Petitioner that in the record of the Family Court at Page No.98, there is copy of complaint dated 4th September 2007 which discloses that Respondent filed complaint to the Police Commissioner against Head Constable Adhane claiming that he had given false evidence in the criminal case. The Criminal Court accepted the evidence of Adhane and acquitted the Petitioner and his family members and thus such complaint could not have been maintained. The counsel for Petitioner further submitted that Respondent filed application Exhibit 12 in the Petition before the Family Court claiming domestic violence and even secured some orders in her favour on 11th January 2007. Subsequently she filed Criminal M.A. No.130 of 2008 under Domestic Violence Act before the J.M.F.C. on 4th February 2008 and thereafter on 10th March 2008 withdrew the application under Section 26 of the Domestic Violence Act which she had filed before the Family Court. This Criminal M.A. No.130 of 2008 containing similar allegations

as made before the Family Court, has also come to be dismissed by 19th Court of J.M.F.C., Aurangabad on 31st December 2012.

14. Before proceeding to discuss the facts of the matter, quick reference may be made to the Judgments relied on by the learned counsel for both sides to support their averments.

RULINGS:

15. The learned counsel for the Petitioner has placed reliance on the following reported cases:

(A) Learned counsel for the Petitioner relied on the case of **X husband vs. Y wife, reported in 2014(4) Bom.C.R. 168** to submit that this Court had, in that matter, taken note of how the wife in that matter also had subjected the husband to various criminal proceedings in a bitter legal battle and this Court had held that filing of

false criminal cases against a spouse is itself an act of cruelty and can very well sustain a decree of divorce.

(B) The Petitioner further relied on the case of **Vishwanath Agrawal s/o Sitaram agrawal vs. Sarla Vishwanath Agrawal, reported in (2012) 7 Supreme Court Cases 288**, where also the husband was dragged into criminal cases and Hon'ble Supreme Court observed in Para 50, that subsequent events can be considered. The Hon'ble Supreme Court observed in Para 47 as below:

"47. Another aspect needs to be taken note of. The respondent had made allegation about the demand of dowry. RCC No. 133/95 was instituted under Section 498-A of the Indian Penal Code against the husband, father-in-law and other relatives. They have been acquitted in that case. The said decision of acquittal has not been assailed before the higher forum. Hence, the allegation on this count was incorrect and untruthful and it can 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 Para 54 and 55 of the Judgment, the Hon'ble Supreme Court observed as follows:

"54. Regard being had to the aforesaid, we have to evaluate the instances. In our considered opinion, a normal reasonable man is bound to feel the sting and the pungency. The conduct and circumstances make it graphically clear that the respondent-wife had really humiliated him and caused mental cruelty. Her conduct clearly expositis that it has resulted in causing agony and anguish in the mind of the husband. She had publicised in the newspapers that he was a womaniser and a drunkard. She had made wild allegations about his character. She had made an effort to prosecute him in criminal litigations which she had failed to prove. The feeling of deep anguish, disappointment, agony and frustration of the husband is obvious.

55. It can be stated with certitude that the cumulative effect of the evidence brought on record clearly establishes a sustained attitude of causing humiliation and calculated torture

on the part of the wife to make the life of the husband miserable. The husband felt humiliated both in private and public life. Indubitably, it created a dent in his reputation which is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity. Thus analysed, it would not be out of place to state that his brain and the bones must have felt the chill of humiliation. The dreams sweetly grafted with sanguine fondness with the passage of time reached the Everestine disaster, possibly, with a vow not to melt. The cathartic effect looked like a distant mirage. The cruel behaviour of the wife has frozen the emotions and snuffed out the bright candle of feeling of the husband because he has been treated as an unperson. Thus, analysed, it is abundantly clear that with this mental pain, agony and suffering, the husband cannot be asked to put up with the conduct of the wife and to continue to live with her. Therefore, he is entitled to a decree for divorce."

(C). The counsel for Petitioner relied on the case of **Seth Ramdayal Jat vs. Laxmi Prasad,**

reported in AIR 2009 S.C. 2463 to submit that the Judgment in a criminal case is admissible to prove conviction or acquittal. Learned counsel submitted that Judgment in this matter shows that when in the civil matter admission is given regarding what was stated in the criminal case, the same would be admissible. According to the learned counsel, in the present matter the Respondent wife admitted that in criminal case she had admitted her signature on letter Exhibit 84 which was sent to police on 29th November 2002, but she still backed out from the signature in the civil proceedings and even led evidence of handwriting expert to prove that it was not her signature. The counsel submitted that her admitting signature in the criminal case was proved and was required to be considered.

(D) The learned counsel for the Petitioner relied on the case of **Malathi Ravi, M.D. vs. B.V. Ravi, M.D., reported in (2014) 7 Supreme Court**

Cases 640 to submit that even in the case brought on the ground of desertion, by taking into consideration subsequent events, divorce could be granted on the ground of cruelty. The Hon'ble Supreme Court referred to various incidents of that matter and observed in Para 43 as under:

"43. As we have enumerated the incidents, we are disposed to think that the husband has reasons to feel that he has been humiliated, for allegations have been made against him which are not correct; his relatives have been dragged into the matrimonial controversy, the assertions in the written statement depict him as if he had tacitly conceded to have harboured notions of gender insensitivity or some kind of male chauvinism, his parents and he are ignored in the naming ceremony of the son, and he comes to learn from others that the wife had gone to Gulbarga to prosecute her studies. That apart, the communications, after the decree for restitution of conjugal rights, indicate the attitude of the wife as if she is playing a game of chess. The launching of criminal prosecution can be perceived from the spectrum of conduct. The learned Magistrate has recorded the judgment of acquittal. The

wife had preferred an appeal before the High Court after obtaining leave. After the State Government prefers an appeal in the Court of Session, she chooses to withdraw the appeal. But she intends, as the pleadings would show, that the case should reach the logical conclusion. This conduct manifestly shows the widening of the rift between the parties. It has only increased the bitterness. In such a situation, the husband is likely to lament in every breath and the vibrancy of life melts to give way to sad story of life."

. The learned counsel submitted that facts of the present matter are similar and require drawing of conclusion of cruelty and divorce needs to be granted. It is stated, as was done by the Hon'ble Supreme Court in the above referred matter, this Court is competent to grant divorce and even pass order granting permanent alimony under Section 25 of the Hindu Marriage Act, 1955, taking note of the status of the parties.

(E). The further reliance was placed on the

case of **K. Srinivas Rao vs. D.A. Deepa, reported in (2013) 5 Supreme Court Cases, 226.** In Para 28 of the Judgment, the Hon'ble Supreme Court observed as under:

"28. Pursuant to this complaint, the police registered a case under Section 498-A IPC. The appellant husband and his parents had to apply for anticipatory bail, which was granted to them. Later, the respondent wife withdrew the complaint. Pursuant to the withdrawal, the police filed a closure report. Thereafter, the respondent wife filed a protest petition. The trial Court took cognizance of the case against the appellant husband and his parents (CC No.62 of 2002). What is pertinent to note is that the respondent wife filed criminal appeal in the High Court challenging the acquittal of the appellant husband and his parents of the offences under the Dowry Prohibition Act and also the acquittal of his parents of the offence punishable under Section 498-A IPC. She filed criminal revision seeking enhancement of the punishment awarded to the appellant husband for the offence under Section 498-A IPC in the High Court which is still pending. When the criminal appeal filed

by the appellant husband challenging his conviction for the offence under Section 498-A IPC was allowed and he was acquitted, the respondent wife filed criminal appeal in the High Court challenging the said acquittal. During this period the respondent wife and members of her family have also filed complaints in the High Court complaining about the appellant husband so that he would be removed from the job. The conduct of the respondent wife in filing a complaint making unfounded, indecent and defamatory allegation against her mother-in-law, in filing revision seeking enhancement of the sentence awarded to the appellant husband, in filing appeal questioning the acquittal of the appellant husband and acquittal of his parents indicates that she made all attempts to ensure that he and his parents are put in jail and he is removed from his job. We have no manner of doubt that this conduct has caused mental cruelty to the appellant husband."

(F). Learned counsel for the Petitioner relied on the case of **Naveen Kohli vs. Neelu Kohli, reported in (2006) 4 Supreme Court Cases 558,** which was followed by the Hon'ble Supreme Court in

the matter of **Samar Ghosh vs. Jaya Ghosh**, reported in (2007) 4 Supreme Court Cases, 511 also, to submit that there was no uniform standard laid down for guidance as to what amounts to mental cruelty, but still the Hon'ble Supreme Court has referred to some of the instances in Para 101 of the Judgment of **Samar Ghosh**, cited supra. Referring to the instances, the learned counsel submitted that in the present matter also the wife can be held responsible for inflicting cruelty to her husband.

(G) As regards the objections raised under Order XXIII Rule 1 of C.P.C., the learned counsel for Petitioner relied on the case of **Vallabh Das vs. Dr. Madan Lal and others**, 1970(1) Supreme Court Cases 761.

16. This Judgment was followed by Hon'ble Supreme Court in the matter of **N.R. Narayan Swamy vs. B. Francis Jagan**, reported in (2001) 6 Supreme

Court Cases 473. The Hon'ble Supreme Court observed in Para 10 as under:

"10. The aforesaid rule would have no application in a proceeding initiated for recovering the suit premises on the ground of bona fide requirement which is a recurring cause. Order 23 Rule 1(4)(b) precludes the plaintiff from instituting any fresh suit in respect of such subject matter or such part of the claim which the plaintiff has withdrawn. In a suit for eviction of a tenant under the Rent Act on the ground of bona fide requirement even though the premises remain the same, the subject matter which is the cause of action may be different. The ground for eviction in the subsequent proceedings is based upon requirement on the date of the said suit even though it relates to the same property. Dealing with similar contention in *Vallabh Das v. Dr. Madanlal and Others* [(1970) 1 SCC 761)], this Court observed thus:

"The expression 'subject-matter' is not defined in the Civil Procedure Code. It does not mean property. That expression has a reference to a right in the property which the plaintiff seeks to enforce. That expression includes the cause of action and the relief

claimed. Unless the cause of action and the relief claimed in the second suit are the same as in the first suit, it cannot be said that the subject-matter of the second suit is the same as that in the previous suit."

17. Learned counsel for the Respondent placed reliance on the following Reported Cases:

(A) The learned counsel for the Respondent relied on the case of **Surjit Kaur vs. Jhujhar Singh, reported in 1978 CJ (P&H) 286**, where Order XXIII Rule 1 of C.P.C. was invoked to bar the second Petition as it was on same cause of action.

(B). The learned counsel for Respondent relied on the case of **Darshan Gupta vs. Radhika Gupta, reported in AIR 2013 S.C. (Supp) 85**, to submit that ground of irretrievable breakdown of marriage is not available to husband when he is responsible for the conditions. The counsel submitted that the Hon'ble Supreme Court has, observed in Para 35 of

that Judgment that perusal of grounds on which divorce can be sought under Section 13(1) of Hindu Marriage Act, 1955 would reveal that the same are grounds based on the 'fault' of the party against whom dissolution of marriage is sought. The party seeking divorce should be innocent. It is argued that in the present matter the husband is not innocent.

(C) The learned counsel for Respondent relied on the case of **Vishnu Dutt Sharma vs. Manju Sharma, reported in AIR 2009 S.C. 2254(1)** and submitted that ground of irretrievable breakdown of marriage is not available as carving out such ground would amount to legislating.

POINTS FOR CONSIDERATION:

18. Considering the various pleadings of the parties, the evidence and arguments raised, the Points for Determination are:

(1) Whether the present Petition for divorce based on incidents occurring subsequent to the earlier Petition is maintainable?

(2) Whether the Petitioner has proved that the Respondent has, after solemnization of the marriage, treated the Petitioner with cruelty and he is entitled to decree of divorce?

WHETHER PRESENT PETITION WAS MAINTAINABLE:

19. As regards first Point for Determination, reference may be made to Order XXIII Rule 1 Sub-Rule (3) and (4) of C.P.C. The Rule deals with withdrawal of suit or abandonment of part of claim. The Sub-Rules (3) and (4) of Rule 1 of Order XXIII of C.P.C. read as follows:-

"(3) Where the Court is satisfied,-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim."

. It is clear from reading of the above that if the plaintiff withdraws from the suit without taking permission, he would be precluded from instituting any fresh suit 'in respect of such subject-matter or such part of the claim'. The Hon'ble Supreme Court in the matter of **Vallabh Das vs. Dr. Madan Lal**, (referred supra) has observed that expression "subject-matter" includes the cause of action and the relief claimed. In the matter of **N.R. Narayan Swamy vs. B. Francis Jagan** (referred supra), the Hon'ble Supreme Court was dealing with eviction matter under the Karnataka Rent Control Act, where landlord claimed eviction on the basis of bona fide requirement. The Hon'ble Supreme Court found that in the matter of bona fide requirement, there could be recurring cause of action. In the suit for eviction on the ground of bona fide requirement, even though the premises remain the same, the subject-matter which is cause of action, may be different. Case of "**Sujit Singh**" relied on

by learned counsel for Respondent can be distinguished as it had different facts and subsequent matter was based on same cause of action. In the present matter, although the foundational facts regarding relationship of the parties remain the same, the present proceedings could not be said to be barred as although they refer initially to earlier incidents, they are based on events which took place subsequent to the filing of the earlier proceeding which was sought to be withdrawn in view of the subsequent developments. If such view is not taken, it would mean that once in such matter if the spouse fails to establish cruelty, subsequently also on the ground of cruelty, proceeding would not be entertainable. When the relationship continues between the couple, there could be recurring incidents giving rise to fresh causes of actions and claim for relief which would be subject-matter for the subsequent action. For such reasons, we do not find that the present Petition is barred. We

would ignore the claims of the Petitioner with reference to the incidents claimed by him in the earlier Petition as constituting cause of action for the earlier Petition. Order XXIII Sub Rule (4) of Rule 1 of C.P.C. precludes the plaintiff from instituting any fresh suit in respect of the subject-matter, however, it does not bar the earlier defendant or respondent from agitating the instances provided they are relevant in subsequent petition. In the present matter although now objection under Order XXIII of C.P.C. has been raised, the Respondent has raised various disputes in evidence with reference to what were instances claimed by the Petitioner in earlier Petition. As the present Petition is now being dealt with and decided on the basis of subsequent events, the reference to the evidence of the Respondent with regard to earlier instances can be referred only where and if relevant to decide present subject matter or for appreciation of evidence if the witness is reliable.

CRUELTY :

20. Coming to the second Point for Determination, there is evidence of the Petitioner claiming that notice of the earlier divorce Petition No.A.46 of 2004 was served on the Respondent. Exhibit 53 shows that the summons of that proceeding was served on the Respondent on 9th February 2004. As per the Petitioner, when she received notice, she threatened the Petitioner with false prosecution under Section 498-A of I.P.C. against him and his family members. He has deposed that on 25th February 2004 when he was travelling on motorcycle from Kranti Chowk to Paithan Gate, at about 2.00 p.m. in Nutan Colony Respondent stopped him and threatened him with complaint under Section 498-A of I.P.C. He claims that she threatened that she will commit suicide and implicate him and his family members and put them in jail. His evidence is that on 26th February 2004 also Respondent visited his clinic

and in front of patients abused him and threatened him. Regarding this incident, he sent application to Kranti Chowk Police Station on 27th February 2004. The Petitioner further deposed that on 28th February 2004, in the morning, Respondent came in front of the clinic asking him to withdraw the divorce petition and gave threats of complaint under Section 498-A of I.P.C. if he will not withdraw the Petition. Petitioner claims that he informed the police about this incident also on 28th February 2004 which was recorded as N.C. No. 163 of 2004. Document in this regard is at Exhibit 95.

. According to the Petitioner, Respondent filed false F.I.R. dated 29th February 2004 alleging that he and his family members ill-treated her, assaulted her, demanded Rupees Two Lakhs and fifteen Tola gold and went to the extent of alleging assault on her on 28th February 2004. This led to offence being registered at Jinsi

Police Station and he and his brother Vijay got arrested and thereafter were released on bail. It is deposed that at the time of bail proceedings, Respondent, although she did not have any injury, appeared with both hands bandaged, to get sympathy of the Court. The evidence further shows as to how in the criminal case the Respondent appointed Advocate and brought about criminal cases and led false evidence causing great humiliation and mental agony. It is claimed that relations have deteriorated to such an extent that now it is not possible to live with Respondent.

21. The Respondent extensively cross examined the Petitioner and brought on record various documents relating to the criminal cases. The Petitioner, in cross-examination, gave certain admissions (relating to incidents which were basis of earlier petition) while denying allegations of ill-treatment by him or that he or his family members had demanded dowry or beaten the

Respondent.

RESPONDEDNT NOT RELIABLE:

22. The Respondent filed affidavit as examination-in-chief and reiterated what she had claimed in her say/written statement, which we have discussed above. We need not repeat the same. She has also been cross-examined and her cross-examination reveals certain facts which show that she is not reliable witness. We will briefly refer to those instances:

(a). In evidence the Respondent has tried to show that after separating from the Petitioner she, having qualification of BAMS, has tried to practice, for which she joined the office of one Dr. Roplekar and one Dr. Jadhav (Para 36 and 37 of her examination-in-chief). She claimed that she could not continue due to the pressure from the mother of Petitioner. Thus, she has

tried to show that the Petitioner and his family are making her life miserable. In cross-examination, however, she accepted that her own sister, with whom she had got good relations, herself has a clinic at Kartiki Hotel (Para 2 of the cross-examination). She denied that she was practicing with her sister.

(b) In pleadings and in evidence Respondent claims that the Petitioner husband took away part of the amount of loan which she had taken from the Bank for her clinic. However, her cross-examination, Para 9 shows that she had submitted quotations to the Bank to get the loan released. Her evidence (Cross - Para 29) shows that initially she accepted that she received cheque from Bank of Rupees Ten Thousand in the name of M/s. Vijay and sons, but in further cross-examination she

conveniently pleaded loss of memory with regard to various specific cheque amounts pointed out by the cross examiner, given to Shantiram Glasses, Kaushaldeep, Usha Electrics and System and Store.

(c). Respondent raised much hue and cry regarding the pleading of the Petitioner that theirs was a self arranged or love marriage. She went to the extent of even denying application dated 29th November 2002 (Exhibit 84) given to police station on the date of marriage that she had married by her own will and complaint of her parents or relatives may not be given cognizance. She has even led evidence of a handwriting expert, RW-2 Nandkumar to claim that the signature on Exhibit 84 was not of hers, although in the criminal case bearing RCC No.414 of 2004, evidence came on record of Head Constable Shaikhnath Adhane that on

29th November 2002 he was given original of this document (marked Exhibit 78 in the criminal case) for inquiry and that he had gone to the house of the Petitioner and also given understanding to the parents of the Respondent. Against this, the cross-examination of the Respondent, Para 10, shows her admitting that one year before the marriage she had gone to the clinic of the Petitioner to extend Diwali greetings. Although the Respondent claims that the marriage was with consent of her parents, no evidence worth the name was brought on record by her. In the photographs of marriage, brought on record, her parents or other relatives are not shown. According to Petitioner only one uncle of hers had attended the marriage. Even the marriage certificate Exhibit 137 has signatures of witnesses on her behalf as those advocates who were friends of the Petitioner, not

known to Respondent since before. Although denied in Written Statement, Respondent admitted (in Para 17 of her cross-examination) that the marriage reception dated 8th December 2002 was arranged by the Petitioner.

(d). Respondent claimed (in Para 18 of cross-examination) that she was not sent for Makar Sankrant. However, the evidence further showed that she accepted that everything was all right for two months after the marriage. Marriage took place on 29th November 2002. As such Makar Sankrant would be in the middle of January 2003. In spite of this she wanted to insist that she was not sent for Makar Sankrant.

(e). Respondent wanted to attribute misconduct to the Petitioner and his family claiming that she was not allowed to go to

meet her father when he met with an accident. However, evidence has come on record that she had indeed been going out and had gone and met her father.

(f). Respondent claimed physical assault on her on 28th February 2004 seen by compounder Vishnu (Para 53 of examination-in-chief). She claimed that the incident took place at 12.30 p.m. Still she went to Ghati Hospital only at 5 - 5.30 p.m. and that too to Dr. Vikhe, husband of her friend Anupama (Para 19 of her cross-examination). She tried to show that she did not go to private doctor in order to save name of the family but still she goes to husband of her friend in Government hospital and then has tried to show that it was beyond her control that it became a police case. Although she claimed assault, the spot was in the clinic which was in

crowded area (Para 19 of her cross-examination) and still she had no witness in her support. In criminal case and in this Petition also there is no corroboration to her claims of having been beaten more than 9-10 times.

(g). In written statement Para 14 and the evidence Para 15 Respondent claimed that in the incident dated 28th February 2004 she was so assaulted that her both thumbs of the hands were fractured. However, in cross-examination Para 20 she admitted that she did not have fracture to the thumbs of both the hands. In evidence she claimed that she had tendon injury to her thumbs. Even this is not supported by medical evidence. Para 27 of her cross-examination shows that she admitted that at the time of anticipatory bail of the relatives of the Petitioner, she was

present in Court and filed photographs showing bandage to both of her hands. Of course, she immediately retracted from this admission also.

(h). Although Respondent denied her signature on Exhibit 84, the application dated 29th November 2002 filed to police station about willful marriage, the Respondent was confronted (in Para 25 of the cross-examination) with her admission in the criminal case where she admitted her signature on the document. She deposed that she had admitted her signature in the case under Section 498-A of I.P.C. Then she has added that it was under pressure of Advocate Ghanekar representing the accused.

(i). In Para 27 of her cross-examination, Respondent accepted that there was no dispute at the time of betrothal

ceremony about what is to be given. We have already mentioned that the subsequent reception was arranged by the Petitioner is admitted fact. The marriage admittedly took place in a temple followed by registration before the Marriage Registrar vide Exhibit 137 and a letter to police vide Exhibit 84. In spite of this, the Respondent has tried to depose that the Petitioner and his family members were subsequently harassing her for dowry. Evidence rather shows that after the betrothal the family of Respondent was not willing but Petitioner went ahead with support of his family and friends as Respondent herself was willing and they got married. Petitioner and his family knew that father of Respondent was a humble Class IV employee and she was B.A.M.S. and her younger sisters and brother were still studying. Still they went ahead with the marriage as Respondent

was willing. A family interested in dowry would not have done that.

(j). Although the Respondent claimed that when she was cohabiting with the Petitioner, she was seriously beaten on more than 8-9 occasions, no single piece of evidence was brought on record either in the form of medical certificates or the evidence of any other doctor to whom Respondent claims that she was taken by the Petitioner.

(k). Respondent denied (in Para 27 of cross-examination) that she had engaged Advocate Nanasaheb Jagtap in Criminal Case No.414 of 2004 as Advocate to assist the prosecutor. However, in subsequent cross-examination (Para 33) when she was confronted with the Vakalatnama Exhibit 132 and other documents, she had to admit that

she did engage Advocate Jagtap in the criminal case.

(1). Respondent claimed (in Para 3 of her examination-in-chief) that marriage was preponed and so her father gave five Tola gold and had agreed to give ten Tola gold within a year. Inspite of this, she has led evidence to claim that her in-laws were troubling her for fifteen Tola gold and Rupees Two Lakhs. No such assertion was made against the in-laws in the F.I.R. (Exhibit 86) which she had filed on 29th February 2004. In the F.I.R. this was attributed only to the husband.

(m). Respondent has claimed that when she was assaulted and left at the place of her parents, she was pregnant by three months and because of the assault she was taken to Dr. Mrs. Mahindrakar and although

doctor informed the Petitioner, he did not come and she lost the child. Although such serious allegations have been made, neither Dr. Mrs. Mahindrakar was examined nor any other medical evidence is brought to show that indeed the Respondent was pregnant and that she suffered miscarriage.

IMPUGNED JUDGMENT NOT MAINTAINABLE:

23. We have gone through the evidence of the Petitioner as well as Respondent. The Family Court discussed the evidence and while discussing the evidence of the Petitioner, referred to the admissions given by the Petitioner to observe that the admissions shattered his evidence, But, while referring to the Respondent, Family Court definitely concluded (in Para 66 of Judgment) that she has given false testimony to some extent. The observations of the Family Court show (in Para 40 of the Judgment) that this is not a case of physical cruelty. As regards mental cruelty, in

Para 45 of the Judgment the Family Court assumed that as father of Respondent was Class IV employee and Petitioner claimed that it was love marriage, mother and brother of the Petitioner must have tortured Respondent. We find that there was regular betrothal ceremony in the present matter and it appears that between the betrothal ceremony and marriage something happened due to which Petitioner and Respondent went ahead with their marriage inspite of opposition from the parents of the Respondent. The Petitioner who was doctor, knew the fact of father of Respondent being Class IV employee. As such no such conclusions could have been drawn by the Family Court on the basis of assumptions and presumptions. The Family Court (in Para 45 of the Judgment) found that the Respondent had failed to examine any doctor to prove assault. In Para 46 of the Judgment the Family Court justified the filing of criminal case under Section 498-A of I.P.C. on the reasoning that it was the Petitioner who first filed divorce

petition. We do not agree with such reasoning. Only because the husband had filed divorce petition, would be no licence for the wife to file criminal cases making wild allegations which she is unable to prove.

. The Family Court wanted the Petitioner to prove negative. The Respondent has claimed that she was beaten in the clinic. The Family Court observed that the Petitioner claims that Respondent was not beaten and on that count her thumbs were not swollen, then he should have examined the compounder Vishnu. This was placing burden on the Petitioner to disprove what the Respondent was asserting, without her bringing on record the necessary evidence. The Family Court burdened its Judgment, in Para 76 and 77, by unnecessarily resorting to philosophy with regard to the importance of child. In fact, the Family Court, in the course of recording evidence, has allowed to be brought on record lot of evidence

which was not really relevant for deciding the issues which had been framed. It was like trying to prove the criminal case in the civil proceedings. We find that the impugned Judgment is not maintainable.

THE CRIMINAL AND OTHER CASES FILED:

24. It is not in dispute that the Respondent had filed F.I.R. Exhibit 86 leading to filing of Regular Criminal Case No.414 of 2004. If Exhibit 86 is perused, after the introductory part, she alleged that she was treated well for two months after the marriage and then her sister-in-law Pragati and mother-in-law Nirmala started grumbling that the Petitioner would have got Rupees ten to fifteen Lakhs as dowry and girl who was M.B.B.S. but had married to a girl from hutment. It was alleged that listening to them, the Petitioner, after three months of marriage, started giving her trouble and started beating her claiming that she does not know household work or

cooking. She claimed that on 8-9 occasions the Petitioner had beaten her, and her brothers-in-law Sujay and Vijay were poisoning the ears of her husband and asking him to beat her. She claimed that on 4th December 2003 she was beaten and left at the place of her parents. She claimed that whenever she wanted to go to her parents, she was not being allowed to go and her mother-in-law, brother-in-law were suspecting that she has some love affair and so they were not letting her go out. In the F.I.R. it is further alleged that although she was left at the place of her parents, she continued to attend the clinic with her husband and in January 2004 she received summons from Family Court. On 28th February 2004 she went to the hospital at Thakre Nagar, at which time the Petitioner had slapped her in the cabin and twisted her thumbs of both hands and threatened that if she wanted to stay with him, she should get Rupees Two Lakhs and fifteen Tola gold from her parents or else he will not let her parents

live.

25. On the basis of above F.I.R., Regular Criminal Case No.414 of 2004 was filed against the Petitioner and his family members. We have already discussed evidence that the Petitioner and one of his brother were arrested and later on released on bail, while other family members succeeded in getting anticipatory bail, at which time the Respondent appeared in the Court with bandaged hands. The J.M.F.C. 11th Court, Aurangabad, vide Judgment dated 5th July 2006 acquitted the Petitioner and his family members observing (in Para 22) that the complaint had been made with intention to take revenge or pressurize the accused No.1 (Petitioner herein) to withdraw the divorce petition. Against this Judgment, the State had filed Criminal Appeal No.111 of 2006 to the First Additional Sessions Judge, Aurangabad, who had remanded the matter on the basis that separate charge under Section 323 of I.P.C. should have

been framed. In Criminal Revision No.188 of 2007 filed by the Petitioner and his other family members to the High Court, the Judgment of remand was set aside and learned Single Judge of this Court upheld the Judgment of the J.M.F.C. on merits. Respondent appears to have gone against the Judgment of the High Court in Special Leave to Appeal (Criminal) No.807 of 2009 to the Hon'ble Supreme Court, which dismissed the same on 19th July 2010. The Judgment of the High Court and orders of the Hon'ble Supreme Court are subsequent to the passing of the present impugned Judgment dated 27th March 2008. Copies of Judgments are on record. These are subsequent developments, which facts are undisputed. It goes to show that the allegations made by the Respondent in the criminal case were not proved. Apart from the criminal case, we have already discussed the evidence in the present petition where the Respondent has failed to show that she was at any time physically assaulted. We have also found her to be unreliable

as a witness.

26. During pendency of Petition No.A.263 of 2006 in Family Court, Respondent filed application Exhibit 12 under Section 26 of the Domestic Violence Act on 1st December 2006 and it was partly allowed on 11th January 2007. She then filed Criminal M.A. No.130 of 2008 before J.M.F.C. on 4th February 2008 and withdrew Exhibit 12 in Family Court on 10th March 2008. In these applications she was raising similar allegations against Petitioner and his family. Criminal M.A. No.130 of 2008 has also come to be dismissed by J.M.F.C. on 31st December 2012.

27. Apart from the above criminal case No.414 of 2004 ending up in acquittal, which has become final, record shows that Respondent filed Regular Criminal Case No.958 of 2009 on 1st June 2009 before Chief Judicial Magistrate, Aurangabad against not merely the Petitioner but also his

Advocates who were signatories to the marriage certificate as well as Advocate Ghanekar who was defending the Petitioner in the criminal case and also Head Constable Adhane who gave evidence in the criminal case to prove application Exhibit 84 dated 29th November 2002. She arrayed all of them in the criminal case seeking prosecution under Sections 469 and 471 of I.P.C. The C.J.M. found the complaint to be time barred and also referred to Section 195 of the Code of Criminal Procedure (Cr.P.C.) that cognizance could not be taken by other Court except on the complaint in writing of the Court before whom the offence was alleged to have been committed. It shows that Respondent wants to intimidate whoever may stand for Petitioner. Roping in his defence Advocate as accused, seriously reflects against Respondent. Not satisfied with the Judgment of the C.J.M., the Respondent filed Criminal Revision No.19 of 2002 before the Additional Sessions Judge, Aurangabad and the dismissal of the complaint filed by the

Respondent has been maintained. It is quite clear reading Section 195 with Section 340 of Cr.P.C. that when the offence is alleged to have been committed in or in relation to the proceedings in the Court, the complaint by the concerned Court would be necessary. Ignoring these provisions, in the present matter the Family Court has allowed evidence to be led to show that the income tax return filed in the earlier petition was forged and that Exhibit 84 did not bear signature of the Respondent which was filed in the earlier criminal case. The Family Court concluded that these documents were forged (Para 60 to 62 of the Judgment) accepting the evidence of the handwriting expert, although the handwriting expert had admitted that the analysis he had carried out was on the basis of xerox copies (rather - photocopies) which the Respondent had provided to him. Thus, in law or even on appreciation of evidence, the findings recorded by the Family Court on this count cannot be

maintained.

28. In line with the other on-slaught of the Respondent against the Petitioner, is the Regular Civil Suit No.713 of 2009 filed by the Respondent against Petitioner claiming that he intends to go for another marriage and he should be restrained. The suit has been dismissed by 18th Joint Civil Judge, Junior Division, Aurangabad on 22nd November 2012.

29. With Civil Application No.15183 of 2015 the Petitioner has brought on record copy of the application which Respondent gave to Women and Child Welfare Officer on 12th December 2007. There also similar allegations as in the present matter, were made by the Respondent. She added in prayer (B) that the present Petitioner should be restrained from letting other women come to the building Sonai, Seven Hills, other than his mother and two sisters and no such other woman should be

allowed to stay there as paying guest or tenant or to come as friend.

. Clearly, Respondent was making allegations against the character of the Petitioner although in the written statement she filed, she claimed that she was not suspecting the character of the husband. Such psyche of groundless, unsupported doubts by one spouse as seen in present matter (of seeking to keep out all women (other than mother and sisters) from the house and baseless suit to restrain husband from re-marrying) cast aspersions on character of the other spouse amounting to cruelty.

30. Considering the observations of the Hon'ble Supreme Court in various matters, referred above, where wild allegations are made in criminal cases one after the other, we find that in the present case also the Respondent indulged in various conducts once she received summons in the

earlier divorce Petition No.A.46 of 2004, which were in the nature of subjecting the Petitioner and his family members to humiliation. She appears to have resorted to all means to ensure that the Petitioner or his family members do not get bail and should remain in jail. She made allegations of dowry demand and assault, which have not been proved. Considering the allegations in the F.I.R. and even those made to the Women and Child Welfare Officers, as well as allegations made to the J.M.F.C. in Domestic Violence case, the acts were in the nature of inflicting mental cruelty to the Petitioner and his family members. The Petitioner and one of his brother had to undergo the agony of getting arrested and later on being released on bail. Brother of Petitioner admittedly living separate has been called a "parasite" by Respondent in this Petition and was dragged in criminal case. They had to face the criminal prosecution, which appears to have been motivated. The Family Court brushed aside the impact of such

actions of Respondent only because the mother of Petitioner did not lose her job or the brother of Petitioner could still contest municipal election or the Petitioner put up hospital in already owned family house. When the family is facing such criminal prosecution, and they had to face arrest and the wife is making allegations against the character of the husband, mental cruelty is clearly established.

31. Considering evidence of the parties, we find Petitioner reliable when he deposed that due to conduct of Respondent deserting him, he filed earlier Petition reacting to which Respondent misbehaved with him in public at Nutan Colony on 25th February 2004 and again on 26th February 2004 and 28th February 2004 and then subjected him and his family to further cruelty by lining up false cases against him and his family.

32. A parting reference can be made to recent

Judgment of the Hon'ble the Supreme Court in the matter of K. Srinivas vs. K. Sunita, (2014) 16 Supreme Court Cases, 34, where it was observed that:

"It is now 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."

CRUELTY PROVED:

33. We find substance in the arguments of learned Senior Counsel for Petitioner. The Rulings relied on by learned counsel for Respondent were on different facts and we are unable to agree with his submissions made. For reasons discussed, we find that the Petitioner has proved that the Respondent has, after the solemnization of the marriage, treated the Petitioner with cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. There are no grounds to attract Section

23 of the Hindu Marriage Act and the Petitioner is entitled to decree of divorce.

PERMANENT ALIMONY:

34. Learned counsel for the Petitioner fairly stated that if this Court considers granting of divorce, any amount may be fixed as permanent alimony under Section 25 of the Hindu Marriage Act. In the record of the trial Court at Exhibit 157 there is assessment-sheet of the house at Seven Hills, Aurangabad belonging to the Petitioner and his family showing the value as Rs.1,07,41,500/- (Rupees One Crore Seven Lakhs Forty One Thousand Five Hundred). The property card at Exhibit 45 shows that apart from mother of Petitioner his two brothers are also co-owners in the property which they have inherited from their father. In the cross-examination of the Petitioner (Para 1) the Respondent brought on record the fact that his mother is assistant teacher in grant aided school. His father was no more at the time

of their marriage. Earlier, his father had been head master in private education institution. The above property came in the family in view of efforts of his father. One of the brother of the Petitioner appears to be worker of some political party and other brother Vijay was in service. The Petitioner appears to have set up his hospital in part of the property and is also having clinic at Indu-Ganga complex. Thus with humble beginnings the family was just coming up. Respondent similarly has started with humble beginnings and the sisters and brothers with education have come up. There was suggestion put by Respondent herself in the cross-examination of the Petitioner at Para No.19, that when they were together, she was earning Rs. 10,000/- to Rs.12,000/- per month, which suggestion has been accepted by the Petitioner. The position that emerges is that in the ancestral house, there are four co-sharers and the Petitioner is a doctor, while Respondent also is a doctor. Keeping in view this capacity of both

the parties, and the sources available to the Petitioner and the responsibility as husband to assist the wife in settling, it would be reasonable to direct the Petitioner to deposit an amount of Rs.25,00,000/- (Rupees Twenty Five Lakhs) in the Family Court as permanent alimony payable to the Respondent.

35. For the reasons afore stated, we pass the following order:

O R D E R

(I) The Family Court Appeal is allowed. Impugned Judgment and Order are quashed and set aside. Petition No.A.263 of 2006 is allowed.

(II) The marriage dated 29th November 2002 between the Appellant-Petitioner and Respondent is hereby dissolved by decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955.

(III) The Appellant is directed to pay permanent alimony of Rs.25,00,000/- (Rupees Twenty Five Lakhs) under Section 25 of the Hindu Marriage Act, 1955 to the Respondent. The amount shall be deposited in the Family Court within a period of THREE MONTHS from the date of this Judgment and order.

(IV) No order as to costs.

(V) Decree be drawn accordingly.

[A.I.S. CHEEMA, J.]

asb/JAN16

[R.M. BORDE, J.]