

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
FAMILY COURT APPEAL NO.16 OF 2008
ALONG WITH
FAMILY COURT APPEAL NO.17 OF 2008

A .. Appellant
Vs
B .. Respondent
—

Shri S.K.Shinde i/b Shri Sagar Kasar for the Appellant in both the Appeals.

Shri Ravindra V. Sankpal for the Respondent in both the Appeals.

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CORAM : A.S. OKA & P.D. NAIK, JJ

DATE ON WHICH SUBMISSIONS WERE HEARD : 29TH APRIL 2016

DATE ON WHICH JUDGMENT IS PRONOUNCED: 7TH OCTOBER 2016

JUDGMENT (PER A.S. OKA, J)

1. The names of both the parties in the cause title have been masked. Both the Appeals are preferred by the Appellant husband. The marriage between the Appellant and the Respondent was solemnized on 25th May 1990 as per the Hindu Vedic Rites. The Appellant husband filed Petition No. A-383 of 2004 in the Family Court at Bandra, Mumbai. The husband sought a decree of divorce on the ground of cruelty and desertion under Clauses (i-a) and (i-b) of Sub-section (1) of Section 13 of the Hindu Marriage Act, 1955 (for short

“the said Act”). The Respondent wife filed a Petition No. A-808 of 2002 in the same Family Court for judicial separation. The Petition for judicial separation was filed by the Respondent wife on 23rd April 2002 and the Petition for divorce was filed by the Appellant husband on 23rd February 2004. By the impugned judgment, both the Petitions were decided by the learned Judge of the Family Court at Mumbai. The Petition filed by the Respondent wife was allowed by granting a decree of judicial separation. The Appellant husband was directed to pay maintenance of Rs.3,000/- per month to the Respondent wife from the date of the impugned decree. In addition, the Appellant was directed to pay a sum of Rs.2,000/- per month each to the two minor children from 4th October 2005. The Petition filed by the Appellant husband for divorce was dismissed.

2. Family Court Appeal No.16 of 2008 has been preferred by the Appellant husband for challenging the decree of dismissal of the Petition for divorce and Family Court Appeal No.17 of 2008 has been preferred by the Appellant husband for challenging the decree passed on the Petition for judicial separation.

3. The learned Judge of the Family Court in the Petition filed by the Appellant husband held that he has failed to establish both the grounds of cruelty and desertion. In the impugned judgment in

Paragraph 55, the learned Judge referred to the allegations made by the Appellant husband against the Respondent wife about her illicit relationship with one Satyaprakash Sharma. He held that the said allegations have not been substantiated by the Appellant husband and, therefore, the said allegations caused cruelty to the Respondent wife.

4. With a view to appreciate the submissions made across the bar, it will be necessary to make a reference to the pleadings of both the parties.

5. In the Petition filed by the Respondent wife, her case is that after the marriage, instead of starting cohabitation in his own flat at Bhayander, the Appellant husband took her to the house of his sister Ujala at Vasai. Thereafter, she was taken by the Appellant husband to his native place at Village Digras at District – Yavatmal where they stayed for a period of one month. Thereafter, they came back at Vasai and stayed with the Appellant's sister at Vasai. After a week, the Appellant husband took her to the matrimonial home at Bhayander wherein they stayed for a period of six months. It is further stated that the Appellant husband has been working on off-shore project with Oil and Natural Gas Commission (for short “ONGC”). Thereafter, they went to stay in one room kitchen apartment in ONGC Colony at Andheri, Mumbai. The allegation in the Petition filed by the wife is that the

Appellant husband started business of running tourist taxis and the drivers used to stay in the premises where the Respondent wife was staying with the Appellant husband. For a period of 15 days in a month, the Appellant husband used to be at his off-shore duties. On 17th August 1992, the daughter Priya was born to the Respondent wife. It is alleged that during the pregnancy and after delivery, the Respondent wife was treated by cruelty by the Appellant husband and his family members. On 19th August 1994, a son was born to the Respondent wife. Various allegations have been made to the effect that the Appellant husband used to make quarrel with the Respondent and used to insult in presence of guests. It is alleged that sometime the Appellant husband used to fight with the Respondent wife throughout the night. It is alleged that to make her life miserable, the Appellant husband allowed his Mohammedan friend and his wife to stay at his premises at Andheri. It is alleged that the Appellant husband never used to give money to the Respondent wife for household expenditure. It is alleged that the Appellant used to beat the Respondent wife. The Respondent wife further alleged that one year after the birth of the son, the parties shifted to the one room tenement in MHADA colony. It is further alleged in the Petition that from the year 1999 till September 2001, she was staying with her mother. She came back to stay in the ONGC quarters at Andheri with her children. It is further stated that from September 2001, the Appellant husband employed one Shri

Satyaprakash Sharma to look after his business. The Respondent wife along with her children attended Satyanarayan Pooja in MHADA Colony as per the instructions of the Appellant husband who was not in Mumbai. It is alleged that the Appellant husband started suspecting the character of the Respondent wife by alleging that she was keeping relationship with the said Satyaprakash Sharma. It is stated that on 15th February 2002, the Appellant husband assaulted the said Satyaprakash Sharma and compelled the Respondent wife to leave the matrimonial home along with the children. It is alleged that since that date, the Respondent wife is staying with her brother. It is alleged in the Petition filed by the wife that she was subjected to both mental and cruelty by the Appellant husband. Apart from seeking decree of judicial separation on the ground of cruelty, a prayer was made for grant of maintenance.

6. In the Petition for judicial separation filed on 23rd April 2002, a written statement was filed by the Appellant husband on 17th May 2003. Various allegations made by the Respondent wife were denied by the Appellant husband. It is alleged by him that whenever he used to go on off-shore duty, the Respondent wife never used to look after his parents and she never used to provide food for them. The Appellant denied that he appointed the said Satyaprakash Sharma as a Secretary to look after his business. He alleged that he allowed the said

Satyaprakash Sharma and two others (Atul Marathe and Pravin Mane) who were from his native place to reside in the flat at MHADA Colony on humanitarian grounds. He stated that the Respondent wife was staying in three room kitchen flat at ONGC Colony which was at a distance of 10 minutes from the said one room kitchen flat in which the said Satyaprakash Sharma was staying. In Paragraph 20 of his written statement, the Appellant husband stated thus:

“20. The Respondent states that he was remaining 15 days out of his house, for his job purpose on high seas on O.N.G.C. duty. Petitioner took advantage of Respondent's absence in the house, regularly for 15 days. The Petitioner developed illicit relations with Mr. Satyaprakash Sharma. Mr. Atul Marathe respondent's relative suspected Mr. Sharma's illicit relationship with the Respondent's wife, as the Petitioner was used to make telephone calls to said Mr. Satyaprakash Sharma five-six times in a day, and used to talk him. On one day, Mr. Atul Marathe, asked Satya Prakash Sharma, as to which lady was making telephone calls frequently to him, on which Mr. Satyaprakash Sharma told Mr. Atul that one of his girl friend was making telephone calls to him. But at one time Mr. Atul Marathe was present in the room along with Mr. Satya Prakash Sharma, lifted the receiver of telephone and shocked and surprised to hear the voice of the Respondent's wife, calling to Mr. Sharma, on telephone line with fictitious name as 'Sanjana'. The Respondent when came back from his job on 15 days leave, the said Mr. Atul Marathe narrated the said incidence to the Respondent, but Respondent did not disclose this thing to anybody or to the petitioner thinking that one or other day good sense will be prevailed upon, the petitioner as she was the mother of two children. But the Petitioner did not improve her behaviour.”

7. There is a further allegation made in the written statement that on 25th January 2002, there was a pooja ceremony in MHADA Colony Building at Goregaon where the said Satyaprakash Sharma was staying along along with Shri Atul Marathe and Pravin Mane. Further allegations are material which read thus:

“The Petitioner went to attend the Pooja ceremony at the same building. When the pooja ceremony was over, there was a programme of dinner at building terrace at about 10.30 p.m. in the evening. The Petitioner told Mr. Atul Marathe who was present in the room to go on terrace and have a dinner. As soon as Atul went on terrace, the Petitioner went on fourth floor flat, in which Mr.Satyaprakash Sharma waiting for her. After finishing dinner Atul came down from terrace to the flat on 4th floor, and knocked the door of the flat, he also saw that the light of the flat was also put off. After some time Mr. Sharma unlocked the latch of the door, Mr. Atul shocked and surprised after seeing the Respondent's wife was present in the room. Mr. Atul asked the Respondent's wife why the door was closed, what both of them were doing in the room by locking the door inside?. Upon which respondent's wife told him that she was chitchatting with Mr. Sharma and nothing else. But Mr.Satyaprakash Sharma afterwards gave his confession in writing to the Respondent, which shows that the Petitioner has kept illicit relation with Mr. Sharma.

The Respondent states that Mr. Atul Marathe then given various stories about the Petitioner's behaviour. Mr. Atul told him that when Respondent was out of his house, Petitioner was used to meet Mr. Satyaprakash Sharma outside home, late in the night, on the pretext of engaging herself in computer class. In fact she never engaged in any computer class, but she was roaming with Mr. Satyaprakash Sharma. Petitioner also told her mother-in-law about engaging

her the computer class and also told her mother-in-law not to tell this facts to the Respondent.”

8. In the written statement, the Appellant alleged that on one occasion when the Respondent wife came back to the house at 11.45 pm., the Appellant's mother questioned her as to why she came late. It is alleged that though the Respondent wife stated that she was busy with election campaign, she was roaming around with the said Satyaprakash Sharma. It is further alleged that the said Satyaprakash Sharma gave a tape-recorder as a gift to the Respondent wife which was noticed by the said Atul Marathe. It is further stated that after the Appellant came back from his off-shore duty , on 14th February 2002, the said Atul narrated the incident to the Appellant husband. It is further alleged that as the said Satyaprakash Sharma was friend of the Appellant's brother, the Appellant took the said Satyaprakash Sharma to his brother. It is stated that after learning from the said Atul that the Respondent wife was having an illicit relationship with the said Satyaprakash Sharma, the Appellant had beaten the said Satyaprakash Sharma. It is further alleged that even the Appellant husband's brother gave the same treatment to the said Satyaprakash Sharma. It is stated that the Appellant husband along with his brother and mother of the Respondent wife came to the place where the Respondent wife was residing and demanded explanation from the Respondent wife. It is stated that the Respondent wife gave evasive reply. It is stated that at

that time, the said Satyaprakash Sharma was with the Appellant husband. It is stated that while leaving the premises, the Respondent wife exchanged some words with the said Satyaprakash Sharma which substantiated the case of the Appellant husband that the Respondent wife was having an affair with the said Satyaprakash Sharma. It is alleged that on 15th February 2002, the Respondent wife left the matrimonial home and thereafter, never returned. Therefore, the Appellant husband prayed for dismissal of the Petition for judicial separation filed by the Respondent wife.

9. In the Petition for divorce subsequently filed by the Appellant husband, the allegations are in two parts. In the first part of the allegations, the Appellant husband has stated that he used to provide sufficient money to the Respondent wife and in his absence, she was not properly looking after his mother. It is alleged that the Respondent wife was not happy with one room kitchen house of the husband at Goregaon and, therefore, the Appellant husband procured a residential premises from his employer at ONGC Colony which consisted of three rooms and kitchen at the monthly rent of Rs.5,000/-. It is alleged that the Respondent wife started residing in the said premises from 1st September 2001 along with the children. This is the first part of the allegations in the Petition for divorce. In the second part, the allegations which are made in the written statement filed by

the Appellant husband to the Petition filed by the Respondent wife as regards her alleged relationship with the said Satyaprakash Sharma have been set out. It is alleged that due to the conduct of the Respondent wife of maintaining such illicit relationship with the said Satyaprakash Sharma, the Appellant suffered mental tension and agony and in fact, his health condition got deteriorated.

10. The written statement filed by the Respondent wife is of denial and is a repetition of what is stated by in her Petition for restitution of conjugal rights.

11. As narrated earlier, by common judgment, both the Petitions have been decided. The Appellant husband examined himself as well as two witnesses Shri Atul Marathe and Shri Pravin Mane. The Respondent wife examined herself. She did not examine any other witnesses.

12. The learned counsel appearing for the Appellant husband assailed the finding of the learned Judge of the Family Court that the Appellant husband could not substantiate allegations made by him against the Respondent wife of maintaining illicit relationship with the said Satyaprakash Sharma. He submitted that the evidence of Shri Atul Marathe and Shri Pravin Mane substantiates the said case. He invited

our attention to the cross-examination of the Respondent wife made by the Advocate for the husband and in particular Paragraphs 35 and 36. He submitted that considering the admissions given by the Respondent herself, the case made out about her relationship with the said Satyaprakash Sharma was duly proved. He submitted that the allegation about the relationship between the Respondent wife with the said Satyaprakash Sharma could have been established even by preponderance of probability. In the present case, there was very concrete evidence of the relationship which was of substantial nature as distinguished from the mere preponderance of probability. He submitted that as the said allegation against the Respondent wife was established by the Appellant husband, the decree on the ground of cruelty ought to have been passed and the decree for judicial separation ought not to have been passed. He submitted that in view of the fact that the aforesaid allegations have been substantiated by the Appellant husband, the Respondent wife was not entitled to a decree of judicial separation and maintenance. He relied upon a letter dated 5th November 2004 addressed by the Respondent wife to the Appellant husband in which she accepted that she has committed mistakes. He submitted that the said statement is in respect of her relationship with the said Satyaprakash Sharma.

13. The learned counsel appearing for the Respondent wife submitted that the said Shri Atul Marathe and Shri Pravin Mane were close to the Appellant husband and in fact, he himself allowed them to stay along with the said Satyaprakash Sharma in his own premises at Goregaon. He urged that both the witnesses were interested witnesses and, therefore, their testimony was not rightly accepted by the Family Court. He submitted that there is absolutely no evidence about the relationship between the Respondent wife and the said Satyaprakash Sharma and that is the reason why the Family Court was justified in passing a decree of judicial separation and dismissing the prayer for divorce.

14. There is no possibility of any amicable settlement. Hence, the Appeals will have to be decided on merits. We have given careful consideration to the submissions. In the Petition filed by the Appellant husband, the allegations in the first part do not constitute cruelty as they at highest constitute normal wear and tear of matrimonial life. The real ground of cruelty pleaded by the Appellant husband is that the Respondent was maintaining illicit relationship with the said Satyaprakash Sharma. If the said ground is established, a decree of divorce will follow in the Petition filed by the husband. If the ground is held as not established, the decree of judicial separation on the ground

of cruelty passed by the Family Court on the Petition filed by the wife will have to be confirmed.

15. We have already quoted the relevant part of the said allegations. There are two witnesses examined by the Appellant husband on the said point. The first witness is Shri Pravin Manikrao Mane. In his affidavit in lieu of examination-in-chief, he has stated that he is a distant relative of the husband. He stated that he came to Mumbai in January 2002 and stayed in the house of the husband at MHADA Colony at Goregaon. At that time, Shri Atul Marathe (another witness) and the said Satyaprakash Sharma were residing with him. He stated that the Respondent wife used to call the said Satyaprakash Sharma on telephone 4 to 5 times a day. He stated that he had seen both of them roaming around. Thereafter, in his examination-in-chief, he deposed about the incident of 25th January 2002. He stated that on that date, there was a pooja ceremony in MHADA Colony at Goregaon where they were staying. On that date, the husband was on off shore duty. He stated that the wife attended the said pooja ceremony. The material portion of his evidence reads thus:

“When the pooja ceremony was over there was a program of dinner at the bldg. terrace at about 10.30 pm. The Petitioner told Mr. Atul Marathe to go on the terrace and have the dinner. As soon as Mr. Atul Marathe, went on the terrace to have dinner, Petitioner went to the room on the 4th floor in which Mr. Sharma

was waiting for her. After finishing dinner within ½ an hrs. Atul Marathe came down from terrace to the flat on 4th Floor and knocked the door of the flat, but for about 10 to 15 mits. nobody came out from home. Ultimately Mr. Sharma unlocked the door from inside and put on the lights of the room and at that time Petitioner was present in the room. Upon asking by Mr. Atul Marathe, they both told him that both were chitchatting. Petitioner told Mr. Atul Marathe to not to disclose this incident to anybody including Respondent. At the same time I was on the terrace and Mr. Atul Marathe narrated this whole incidence to me immediately.

5. I say that Respondent returned from his duty on 14.2.2002 and Mr. Atul Marathe told the above incidence dated 25.1.2002 to the Respondent. Upon which Respondent became very upset and therefore severally beaten Mr. Sharma in front of myself and Mr. Atul Marathe and Mr. Sharma also gave in writing and admitted his illicit relation with Petitioner in front of us. Respondent also took Mr. Sharma to the house of Petitioner's brother and informed Petitioner's brother about Petitioner's illicit relations with Sharma. On which her bother also severally beaten Mr. Sharma on the same day Mr. Sharma and Petitioner both admitted their guilt. Respondent also took Mr. Sharma to the residence of the Petitioner along with Petitioner's brother and mother. At that time both myself and Mr. Atul Marathe was present there. Respondent quarreled with Petitioner and asked her the explanation about the said but Petitioner gave evasive answers to him. Petitioner told him that she had no interest to continue matrimonial relation with him, thereafter Petitioner left the house on her own. While leaving she uttered the words that she had committed no wrong by keeping illicit relations with Mr. Sharma as Respondent never gave her love and affection. Petitioner told respondent that he was impotent person.”

16. The witness was cross-examined by the Advocate for the wife. In the cross-examination, he stated that on 2 to 3 occasions, he

picked up the phone calls when he could recognize the voice of the Respondent wife. He admitted that the incident regarding the Respondent wife going to the room on the floor where the said Satyaprakash Sharma was waiting for her was told to him by Shri Atul Marathe. Thus, this witness had no personal knowledge about this incident. He admitted that he had not disclosed to the Appellant that he had seen the Respondent moving in the station area with the said Satyaprakash. In paragraph 1 of his affidavit in lieu of examination-in-chief, the witness admitted that he was a distant relative of the husband.

17. Now we deal with the evidence of Shri Atul Marathe. The husband in paragraph 8(b) of the Petition for divorce has stated that the said witness is his nephew(his sister's son). In Paragraph 3 of his affidavit in lieu of examination-in-chief, witness Marathe stated that the wife used to make phone calls to the said Satyaprakash Sharma 5 to 6 times in a day. He also stated that once he picked up the phone call. He stated that though a person on phone disclosed her name to be Sanjana, he could recognized the voice of the Respondent wife. In Paragraph 4 of his affidavit-in-lieu of the examination-in-chief, he stated thus:

“4. I say that on 25.1.2002 in the evening when there was Pooja ceremony at MHADA Colony at Goregaon where we were stayed. Petitioner had come to attend the Pooja ceremony. When the Pooja

Ceremony was over, there was a programme of dinner at the bldg. terrace at about 10.30 pm. The Petitioner told me to go on the terrace and have the dinner. As soon as I went on the terrace to have dinner, Petitioner went to the room on 4th Floor in which already Mr. Satyaprakash Sharma was waiting for her. After finishing dinner within ½ an hrs. I went down from the terrace to the room and knocked the door of the flat but for about 10 to 15 minutes nobody was came out from house. Ultimately Mr. Sharma unlocked the door from inside and put on the light of the room. At that time I was shocked and surprised to see that the Petitioner was also present in the room. I have asked the Petitioner why the door was closed from inside for such a long time and why the lights were put off upon which Petitioner told me that she was chitchatting with Mr. Sharma and nothing else. Petitioner told me not to disclose this incident to any body including Respondent.”

In Paragraph 5 of his affidavit-in-lieu of the examination-in-chief, he stated that on 26th January 2002, the Respondent wife was roaming around with the said Satyaprakash Sharma upto 6.00 p.m. from 11.00 a.m. onwards. He stated that he witnessed that the Respondent wife and the said Satyaprakash Sharma were coming back to home at about 6.00 pm.

18. In the cross-examination, he admitted that the Appellant husband was providing food and residence to him. He admitted that even the said Satyaprakash Sharma was provided money by the Appellant husband and in absence of the husband, his business was being looked after by the said Satyaprakash Sharma. He stated that on

the day of Pooja i.e. 25th January 2002, the Respondent wife came with her children. He stated that the children were playing down. He stated that he invited the said Satyaprakash Sharma and the witness Pravin Mane to have food with him on the terrace when the said Satyaprakash Sharma informed him that he will follow later. He admitted that he was in Mumbai for about one and half months. He admitted that he did not disclose the incident of 25th January 2002 to the husband's parents.

19. The Respondent wife was cross-examined on the aspect of allegation of relationship with Satyaprakash Sharma. In her affidavit-in-lieu of the examination-in-chief, she stated that the said Satyaprakash Sharma was invited by her husband from September 2001. She stated that she attended a Pooja ceremony in the premises of MHADA at Goregaon along with her children. She stated that from that date, the Appellant husband doubted her character. In Paragraph 35 of the cross-examination, she admitted that there was a communication between her and the said Satyaprakash Sharma, Shri Pravin Mane and Shri Atul Marathe. She admitted that the said Satyaprakash Sharma used to give her money and she visited the office to collect the money. She claimed that the Appellant husband had sent her with the said Satyaprakash Sharma to purchase a dress for her daughter. We must note here that in Paragraph 36, further part of the cross-examination is relevant, which reads thus:

"I have also gone out with Satyaprakash Sharma for marketing etc., without any work. I have not gone out with Satyaprakash Sharma. I have attended the Pooja in the building along withh Satyaprakash Sharma on 25.1.2001. Witness volunteers to say she had not gone with Satyaprakash Sharma. She had gone on her own, since she was invited for Pooja in the Building. I attended the Pooja with children as per the instructions of the respondent. I did not go for the pooja with Satyaprakash Sharma. In para-19 of affidavit of evidence, it is true that I have stated that I went to Pooja with Satyaprakash Sharma. It is a mistake done by my lawyer. Not true to say that I had attended dinner with Satyaprakash Sharma. True to say that because I attended the dinner and the pooja as per the instructions of the respondent with Satyaprakash Sharma, he started doubting my character. True to say that I have mentioned in my petition that I had gone for Pooja with Satyaprakash Sharma. True to say that I had food at the residence at MHADA Colony. The food was served on the terrace. It was a buffet service. I had the same food in the house. The premises in MHADA Goregaon is on the 4th floor. Satyaprakash Sharma, Atul Marathe, were in the house. **I came to the residence with the food because the respondent had telephoned. I have not included the same in my petition, affidavit since I was not aware that it need to be included and I was not informed by my lawyer. True to say that I went to the room because respondent was to telephone. I, therefore waited for his phone call with others and chatted with them during that period. I say that I was waiting for the phone call in the meanwhile I went to eat on the terrace I was called for the phone of the respondent.** Not true to say that when Atul Marathe came to the house because I had not returned for the food, he found that there were no lights and the house was locked, the house was opened after about 10-15 minutes by Satyaprakash Sharma and I was the only person inside the house. Not true to say that I was talking to Satyaprakash Sharma. Not true to say that I was talking to Satyaprakash Sharma two or three times a day. Witness states that she spoke to him as per the

need. **I used to telephone whenever I wanted money from the respondent or had some work with the respondent.** Not true to say that I was only talking Satyaprakash Sharma even when Atul Mane and Pravin Mane were present in the house.”

20. The Respondent wife in her cross-examination accepted that she stated in her affidavit that she had gone to attend the Pooja with the said Satyaprakash Sharma. In the further part of the cross-examination, she denied that she met Satyaprakash Sharma outside. She was confronted with the writing allegedly given by Satyaprakash Sharma. When she was confronted with the alleged writing of the Satyaprakash Sharma, she was not able to identify the handwriting. She denied that Sanjana was her name. She denied that on 26th January 2002, she was moving around the said Satyaprakash Sharma. The evidence of the two witnesses and the aforesaid answers given by the wife in her cross-examination is not at all sufficient to establish the alleged illicit relationship between the wife and Satyaprakash even by preponderance of probability.

21. Both the witnesses Shri Atul Marathe and Shri Pravin Mane are related to the Appellant husband. They were staying in the premises of the husband at his mercy. Therefore, both are interested witnesses, and hence, their testimony could not have been believed. In the cross-examination of the wife conducted by the Advocate for the Appellant husband, no admission could be procured from the

Respondent wife which affects the veracity of the case made out by her. The alleged writing marked as X was not proved to be in the handwriting of Satyaprakash. Even assuming that it is in the handwriting of Satyaprakash, the case of the husband is that he as well as his brother had beaten Satyaprakash. Therefore, the Family Court was right when it declined to rely upon the said document. Reliance is placed on a letter dated 5th November 2004 addressed by the wife to the husband. We have very carefully read the entire handwritten letter which runs into more than six pages. The entire letter shows that the wife loved the husband and how keen she was to resume cohabitation. She stated that by writing the letter, she was making the last effort. In the said letter, she has apologized to her husband for her mistakes. If the entire tenor of the said letter is considered, it is impossible to accept that she had admitted her relationship with Satyaprakash.

22. Therefore, it is very difficult to accept the contention of the Appellant husband that the Respondent wife had relationship with the said Satyaprakash Sharma as alleged by him. The said allegation has not been substantiated. Hence, the finding of the Family Court that the said unsubstantiated allegations caused mental cruelty to her will have to be accepted as correct. It follows that the decree of judicial separation will have to be upheld.

23. As far as the maintenance amount is concerned, in Paragraph 56, the finding of the learned Judge of the Family Court is that the salary slip of the husband at Exhibit 47 shows that his gross salary was Rs.43,791/- and net salary was Rs.15,691/-. There is no dispute about the said finding. Under the impugned decree, maintenance of Rs.3,000/- is made payable to the Respondent wife and a total sum of Rs.4,000/- per month is made payable towards the maintenance of the two children. Considering the income of the Appellant husband as reflected from the document at Exhibit-47, it is not possible to find fault with the said decree especially when it is not his case that wife was earning.

24. Hence, there is no scope to interfere with the impugned judgment. Accordingly, the Appeals are dismissed with no orders as to costs.

(PD. NAIK, J)

(A.S. OKA, J)