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

**FAMILY COURT APPEAL NO. 16 OF 2017
WITH CA/4736/2017 IN FCA/16/2017**

**ASHA SAKHARAM RATHOD
VERSUS
NITIN BALIRAM JADHAV**

Advocate for Appellant : Uttarwar Pavan P
Advocate for Respondent : Parghane Madhukar M. For R/1**

CORAM : S.V.GANGAPURWALA &
MANGESH S. PATIL,JJ.**

DATE : 09/08/2017

PER COURT :-

The respondent had filed Petition for divorce on the ground of cruelty and desertion. The Family Court negated the ground of desertion, however, granted decree for divorce on the ground of cruelty.

2] Mr.Uttarwar, the learned counsel for the appellant strenuously contends that only on the ground that the present appellant had alleged about respondent receiving obscene messages, and roaming with another girl, that decree for divorce has been granted on the ground of cruelty. The learned counsel submits that even mobile number was given by the present appellant, even efforts were made

to get the call details, application to that effect was also filed, however, the company was not in a position to give call details of the three mobile numbers provided by the appellant. According to the learned counsel, appellant has reasonable apprehension and only because sufficient evidence to that effect is not on record, could not have been ground to grant decree for divorce. Reasonable apprehension was made out. According to the learned counsel, the Family Court has not considered the aspect of cruelty in its correct perspective. The Family Court has not properly read the evidence on record.

3] The learned counsel for the respondent supports the order.

4] We have gone through the evidence, so also the judgment of the Family Court. The ground on which decree for divorce has been passed, is of cruelty. The Family Court has held the act of cruelty on the premise that the respondent has made wild and baseless allegations of the husband having illicit relations with other girl. In the written statement, wife has stated that the husband has relations with the other girl and receives obscene messages. At the relevant time, the appellant herein, did not take any steps to get the call details and only when the proceedings were filed before the Family Court, filed an application to call for the call details of three cell numbers. The

wife also did not lead any evidence with regard to the girl, with whom it was alleged that the husband moves around and has illicit relations. The Family Court has also observed that the wife has filed Complaint under Section 498-A of IPC. The Petition under the Domestic Violence Act is filed in the year 2013, that is prior to the filing of the present divorce petition and in the complaint filed by the wife, serious allegations are levelled against the husband and his relatives. The series of cases are filed by the wife. Not only that the series of cases are filed, the allegations raising aspersion on the character of the husband is made repeatedly. The said aspersion on the character of the husband is not proved. The Family Court has rightly relied on the judgment of this Court in the case of **Manisha Sandeep Gade V/s Sandeep Vinayak Gade reported in AIR 2005 Bom.180**, wherein it is held that leveling wanton and undue allegations amount to causing mental cruelty.

5] The allegations about the character of the present respondent are made by the present appellant in the written statement and that evidence which is part of the cross examination of the present appellant, is also reproduced by the Family Court, wherein the present appellant has categorically stated that she suspects the character of the petitioner i.e. the husband and that she has seen petitioner with a girl, however, does not know the name or address of

the girl, with whom she suspects that the husband is having intimate and illicit relations.

6] These allegations certainly would tantamount to mental cruelty. The Family Court has not committed any error while granting decree for divorce on the ground of cruelty. In the light of the above, Appeal is dismissed. No order as to costs.

7] In view of disposal of Appeal, Civil Application No.4736/2017 also stands disposed of.

(MANGESH S. PATIL,J.)

(S.V.GANGAPURWALA,J.)

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