

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

FAMILY COURT APPEAL NO. 4 OF 2010

**RAJESH ANANT SAKHARE
VERSUS
SOW MEENAL RAJESH SAKHARE**

Advocate for Appellant : Mukhedkar Amit A.
Advocate for Respondent : P.R.Katneshwarkar For R/sole**

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

DATE : 16/08/2017

PER COURT :-

The husband has filed the present Appeal aggrieved by the judgment of the Family Court, refusing decree of divorce on the ground of cruelty.

2] Mr.Mukhedkar, learned counsel for the appellant submits that the act of respondent amounts to cruelty. The respondent till the birth of the child Shrutika in the year 1995 lived happily, thereafter, insisted for living separate. To please her, the husband took up separate accommodation at Thane in the year 1996 and since then were residing there. The husband and the wife resided at Thane till the year 2003. During the said period also respondent was not

behaving properly and was giving mental torture to the husband. The respondent was behaving arrogantly, she was not providing meal to the appellant. The appellant was required to do his daily work and the respondent was not helping the appellant, which caused mental trouble. The respondent was sending letters and making false allegations against him, even false complaint was filed against the husband and his parents, by the respondent wife. All these acts taken together, would be sufficient to bring home the act of cruelty, on the part of the respondent. The said evidence has not been properly appreciated by the Family Court. The learned counsel submits that since fourteen years, the appellant and respondent are not residing together. The Court has erroneously believed the case put forth by the respondent. The respondent has not corroborated her evidence.

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

4] We have considered the submissions. Filing of a false criminal complaint may tantamount to cruelty, however, in the present case, it was observed that after the criminal case was filed by the wife, the settlement took place between husband and wife and after that case, both were residing together for some time. As such filing of criminal case cannot be a ground for cruelty.

5] It has been observed by the Family Court that the present appellant who has sought decree for divorce on the ground of cruelty, has not corroborated his evidence. The husband has led his oral evidence, the same is not supported by any other witness nor any document on record. The Court has observed that in the year 1995, the couple had a daughter viz. Shrutika. The Court has found the evidence of the respondent as trustworthy.

6] The allegations made by appellant as against respondent were not proved, as such, the Court rightly refused to grant decree of divorce.

7] The ground of desertion was not a ground raised before the Family Court, as such the same cannot be a subject matter of consideration before this Court in the present Appeal. If at all the appellant has cause of action on the basis of desertion, then the appellant can institute proceeding on the said ground, which certainly the respondent will have every opportunity to defend on all the legal permissible defenses. Appeal as such is dismissed. No costs.

(MANGESH S. PATIL,J.)

(S.V.GANGAPURWALA,J.)