

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

**SECOND APPEAL NO. 439 OF 2010
WITH
CIVIL APPLICATION NO.9436/2010 IN SA/439/2010
WITH
CIVIL APPLICATION NO.16774/2010 IN SA/439/2010**

Vasundhara w/o. Gautam Patare
Age: 38 years, Occu.: Household,
R/o. C/o. Smt.Sunita Ramchandra
Gaikwad, Dhawan Wasti,
Lekha Nagar, Near Tapowan Road,
Pipe Line Road, Savedi,
Ahmednagar.

..Appellant
(Orig. Opponent)

Versus

Gautam s/o. Keshav Patare
Age: 41 years, Occu.: Service,
R/o. Chavani Police Station,
Aurangabad, Dist.Aurangabad.

..Respondent
(Orig. Applicant)

...
Advocate for Appellant : Shri Vinayak Sudhakar Bedre
Advocate for Respondent : Shri Amit S. Deshpande
...

CORAM : P.R.BORA, J.

**Reserved On : 13th August, 2018
Pronounced On: 16th October, 2018**

JUDGMENT :-

1. The appellant has filed the present appeal against the Judgment and order passed by District Judge-3 and Additional Sessions Judge at Ahmednagar in Regular Civil Appeal No.18 of

2009 decided on 07.04.2010. The appellant had filed the aforesaid appeal being aggrieved by the Judgment and order passed in Hindu Marriage Petition No.12 of 2007 by 2nd Joint Civil Judge (Senior Division), Ahmednagar on 02.12.2008.

2. The respondent had filed the aforesaid Hindu Marriage Petition No.12 of 2007 seeking decree of divorce against the appellant under Section 13(1) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'). It was the contention of the respondent in the said petition that the appellant, without any sufficient cause, deserted him and subjected him to cruelty by filing a false criminal case against him and his parents, brothers under Section 498-A of the Indian Penal Code (IPC) and by filing a proceeding under Section 97 of the Code of Criminal Procedure seeking custody of minor son Rohan, and certain other proceedings.

3. Petition was resisted by the appellant. She denied the allegations made by the respondent against her and made counter allegations against the respondent that he, without any cause, deserted her and the minor son and did not care for their maintenance. It was also the contention of the appellant that though son Rohan was having heart disease by birth and huge

expenses were required to be spent on his treatment, the respondent did not contribute in the said expenses and never cared about the health of son Rohan. It was also alleged by her that the respondent was intending to perform a second marriage. Allegation of unlawful monetary demands was also raised against the respondent and his family members.

4. In the Trial Court, the present respondent had deposed before the Court and had also examined three witnesses. The respondent had also filed on record the certified copies of the depositions of the appellant recorded in Miscellaneous Criminal Application No.285 of 2001 and in R.T.C. No.268 of 2001. In the meanwhile, the appellant had filed Hindu Marriage Petition No.246 of 2008 under section 9 of the Act seeking restitution of conjugal rights. The copy of the said petition was also placed on record by the respondent. The appellant had also deposed before the Court in the said petition. The learned Civil Judge (Senior Division), after having assessed the oral and documentary evidence brought on record before him, allowed the petition filed by the respondent and granted the decree of divorce in favour of the respondent. Aggrieved by the Judgment and decree so passed, the appellant preferred Regular Civil Appeal No.18 of 2009 before the District Court and since the

District Court has dismissed the said appeal and thereby has confirmed the decree of divorce passed by the Trial Court, the appellant has preferred the present Second Appeal.

5. Shri V.S.Bedre, learned Counsel appearing for the appellant assailed the judgments passed by the Courts below on various grounds. The learned Counsel submitted that the Courts below have utterly failed in appreciating that the desertion was the main ground for seeking divorce by the respondent, which has not been duly proved by the respondent. The learned Counsel further submitted that the Courts below have also failed in appreciating that if the wife is forcibly driven away by the husband and is, therefore, compelled to live at her parental house, sometimes for a quite long period as is the situation in the present case, the said period cannot be considered in arriving at a conclusion that the wife deserted her husband and remained away from his company for a long time so as to entitle the husband to seek divorce on the ground of desertion. The learned Counsel submitted that in the instant matter, the appellant was driven out by the respondent in the year 1996 and her one year old son was snatched from her by the respondent. The learned Counsel submitted that since then against her wish, the appellant is residing at her parental house. The learned

Counsel submitted that the appellant was forced to make an application under Section 97 of the Code of Criminal Procedure so as to obtain custody of her tender aged son. The learned Counsel further submitted that since beginning the appellant had consistently taken a stand that she wants to cohabit with the respondent. She also filed a petition under Section 9 of the Act seeking restitution of conjugal rights against the respondent. The learned Counsel submitted that the appellant had made all honest and bonafide efforts to cohabit with the respondent, but as the respondent had fallen in love with one Megha Rokade and was intending to marry with her, and according to information of the appellant, ultimately got married with her, the respondent did not allow the appellant to cohabit with him and by making false allegations, filed divorce petition against her. The learned Counsel submitted that both the Courts below have lost sight of the aforesaid aspect that the appellant was always ready and willing to cohabit with the respondent and under such circumstances, no decree of divorce could have been passed against her that too on the allegation of desertion. The learned Counsel, therefore, prayed for setting aside the Judgments passed by the Courts below.

6. Shri A.S.Deshpande, learned Counsel appearing for the

respondent supported the impugned judgments. The learned Counsel submitted that the evidence, which has come on record clearly demonstrates that the appellant was not willing to stay with the respondent and at her own had left the company of the respondent by leaving behind minor son Rohan with the respondent. The learned Counsel further submitted that by making false allegations, an application was preferred by the appellant under Section 97 of the Code of Criminal Procedure for custody of minor son Rohan. The learned Counsel submitted that the said application is not the only instant of making false allegation by the appellant against the respondent, but there are many more such acts committed by the appellant thereafter.

7. The learned Counsel submitted that the appellant had filed absolutely false case under Section 498-A of the IPC, not against the respondent alone, but also against his parents and brother. The learned Counsel submitted that the aforesaid criminal case ultimately ended in acquittal. The learned Counsel submitted that the false allegations were made by the appellant in the aforesaid complaint as about the monetary demands by the respondent and his parents from the appellant, which ultimately proved to be without any substance.

8. The learned Counsel further submitted that the appellant in her testimony, in the proceeding under Section 125 of the Code of Criminal Procedure, has unambiguously deposed before the Court that she was not willing to cohabit with the respondent. The learned Counsel further submitted that though, an allegation was made by the appellant that the respondent did not care for the health of son Rohan, the material on record shows that the respondent and her mother both had admitted in their respective cross-examinations that the entire expenses on the treatment of Rohan were borne by the respondent.

9. The learned Counsel submitted that the petition for restitution of conjugal rights was filed by the appellant much after the petition seeking divorce was filed by the respondent. According to the learned Counsel it was an after thought decision. The learned Counsel further submitted that the Civil Court dismissed the said petition and though, the appellant preferred appeal against the said Judgment in the District Court, the appeal so filed by her, has also been dismissed by the District Court. The learned Counsel submitted that it has been throughout proved that the appellant was never willing to cohabit with the respondent. The learned Counsel submitted

that it has also been amply proved that the appellant had made all false allegations against the respondent and his family members and has caused great harassment to all of them. The learned Counsel submitted that had the appellant been really intending to rejoin the company of the respondent, she would not have indulged in making such false allegations against him and his family members.

10. The learned Counsel further submitted that the appellant and the respondent are living separately for last more than 20 years and therefore, chances of joining together are very dim and bleak. The learned Counsel further submitted that having regard to long period of continuous separation, it has to be held that present is the case of irretrievable breakdown of marriage and there is no propriety in now asking the parties to reunite. In order to support his contention, the learned Counsel relied on the decision in ***Naveen Kohli Vs. Neelu Koli [AIR 2006 Supreme Court 1675]***. The learned Counsel also relied upon two Judgments of Orissa High Court; one from the Division Bench in the case of ***Susmita Acharya Vs. Dr.Rabindra Kumar Mishra [AIR 2003 Orissa 23]*** and other by learned single Judge in the case of ***Pradeep Kumar Nanda Vs. Sanghamitra Binakar [AIR 2007 Orissa 60]***. The learned Counsel prayed for dismissal of the appeal.

11. I have given due consideration to the submissions made by the learned Counsel appearing for the parties. I have perused the Judgments passed by the Courts below as well as the other material placed on record. I have also gone through the evidence on record.

12. The respondent had filed Hindu Marriage Petition No.12 of 2007, seeking decree of divorce against the appellant on two grounds; cruelty and desertion. It was the specific allegation of the respondent that by making false allegations against him and his family members and initiating false complaints against them, the appellant had subjected all of them to tremendous mental pain and agony. It was further specifically contended by the respondent that the appellant at her own left his company in the year 1997 and since then, is residing separately and has thus, deserted him without any sufficient cause.

13. The appellant had denied all the said allegations in the written statement filed by her in the said Hindu Marriage Petition No.12 of 2007. The appellant had, on the contrary, made counter allegations against the respondent that she was being physically and mentally tortured by him and was subjected to cruelty on account of non-fulfillment of the monetary demands

made by him. It was also alleged by the appellant that since her parents could not fulfill the demand made by the respondent to pay him Rs.1,00,000/- for his appointment on the post of PSI, she was brutally beaten by the respondent and was ultimately driven out by snatching son from her.

14. It was alleged by the appellant that the respondent was in love with one Megha Rokade and was intending to get married with her. According to the appellant, the aforesaid were the reasons for which the respondent was not ready to cohabit with her. It was also the contention of the appellant that no attempt was made by the respondent to take her back for cohabitation. It was also alleged by the appellant that since the respondent was intending to marry with Megha Rokade, he was bent upon to give divorce to her.

15. In order to substantiate the contentions raised in the petition, the respondent himself had deposed before the Civil Court and had examined three more witnesses. The witnesses were examined by the respondent to prove his efforts to bring back the appellant for cohabitation. The appellant had also deposed before the Civil Court, but did not examine any more witness. The Civil Court, after having assessed the oral and

documentary evidence brought on record, granted the decree of divorce in favour of the respondent and declared the marriage solemnized between the appellant and the respondent to have been dissolved from the date of decision of the petition.

16. I have carefully gone through the evidence, which was recorded in Hindu Marriage Petition no.12 of 2007, and the Judgment delivered by the Civil Court on 02.12.2008, in the said petition. On the basis of the evidence on record, a finding has been recorded by the Trial Court that the appellant is residing separately since 1997. The petition for divorce was filed in the year 2007. It is thus, evident that since prior to 10 years of filing the petition, the appellant and the respondent were residing separately.

17. The next question arises, whether there was any sufficient reason for the appellant to reside separately from the respondent ? The question also arises, whether the respondent had made efforts to cohabit with the appellant ? In order to prove that he was willing to cohabit with the appellant, the respondent has adduced the evidence of three witnesses. All the three witnesses namely Laxman Tukaram Ghaitadak (PW-2), Shaikh Asif Babulal (PW-3) and Keshav Bhoju Patare (PW-4) were

examined to bring on record the efforts made by the respondent to bring back the appellant for cohabitation. As has come on record through the evidence of the aforesaid witnesses, all genuine efforts were made by the respondent to bring back the appellant for cohabitation. Nothing has been brought on record in the cross-examinations of these witnesses so as to disbelieve the facts stated by these witnesses before the Civil Court.

18. As against it, though, in her examination-in-chief, the appellant stated that she will be examining some witnesses to prove her allegations made against the respondent, no witness came to be examined by her. From the facts, which have come on record through the evidence of witnesses examined by the respondent and the facts, which have come on record through the cross-examination of the appellant, the Trial Court reached to a conclusion that respondent successfully proved that the appellant has deserted him without any sufficient cause.

19. After having scrutinized the Judgment delivered by the learned Trial Court in the light of the evidence adduced before it, I did not find any infirmity in the findings recorded by the Trial Court. Two serious allegations were made by the appellant against the respondent; first that he did not care for the health of

their son Rohan though, he was having heart disease by birth and the second allegation was that a huge amount of Rs.1,00,000/- was demanded by the respondent and for non-fulfillment of the said demand, she was subjected to physical and mental tortures and driven out from the house. In so far as the first allegation is concerned, in her cross-examination, the appellant candidly admitted that the medical expenses on the treatment of Rohan were borne by the respondent. She has also admitted that blood to Rohan was donated by the friend of respondent namely Avinash Bhatangekar. She has also admitted that Rohan was admitted in Ruby Hospital on 09.11.1995 by her, respondent and his parents. In view of such admissions given by the appellant in her cross-examination, the Civil Court has dismissed the allegation of the appellant against the respondent that the respondent did not care for the health of son Rohan.

20. As about the second allegation in regard to monetary demands allegedly made by the respondent, the appellant had filed a Criminal Case No.268 of 2001 under Section 498-A of the IPC in the Court of Chief Judicial Magistrate, Ahmednagar, against the respondent, his parents and two brothers. The Chief Judicial Magistrate, Ahmednagar dismissed the said criminal case vide its Judgment rendered on 27.09.2005. The Chief Judicial Magistrate

has held that the complainant i.e. present appellant could not bring on record any evidence to prove her allegations made against the respondent and his family members.

21. Though the allegation was also made by the appellant that the respondent was not ready to cohabit with her as he was in love with one Megha Rokade and was intending to marry with her, as has been rightly observed by the learned Trial Court, the appellant had not taken any such averments in her written statement. The Trial Court has also rightly observed that when these facts were well within her knowledge, she must have specifically averred the said facts in her written statement. The Trial Court has further rightly recorded a conclusion that not filing of any complaint by the appellant in the Police Station at the relevant time i.e. in the year 1997, when she was allegedly driven out of house and was allegedly beaten prior to that, no implicit reliance can be placed on the said allegation. The Trial Court has also observed that in the proceeding under Section 125 of the Code of Criminal Procedure filed by the appellant seeking maintenance from the respondent, the appellant has unambiguously deposed that she was not ready to cohabit with the respondent.

22. After having analyzed the evidence as aforesaid, the learned Trial Court has recorded a finding that the petitioner i.e. the present respondent had successfully proved that the respondent i.e. the present appellant was residing separately since 1997, without any sufficient cause and though, it was her contention that she was residing with her husband till 2001, the said contention was false. It is the matter of record that during pendency of the Hindu Marriage Petition No.12 of 2007, the appellant filed another Hindu Marriage Petition No.246 of 2008 under Section 9 of the Act, seeking restitution of conjugal rights. The learned Trial Judge in paragraph no.17 of its Judgment has dealt with the said fact and has recorded a conclusion that had the appellant was really intending to cohabit with the respondent, she must have filed the petition seeking restitution of conjugal rights much prior. The Court has also observed that the appellant had not given any explanation for the inordinate delay committed by her in filing petition seeking restitution of conjugal rights. After considering the facts as aforesaid and the evidence adduced by both the parties, the Trial Court held that the respondent has sufficiently proved that the appellant deserted him without any sufficient cause and consequently, granted decree of divorce on the said ground.

23. The appellant though challenged the Judgment and decree passed by the Trial Court by filing Regular Civil Appeal No.18 of 2009, the learned First Appellate Court did not cause interference in the findings recorded by the Trial Court. The First Appellate Court has also recorded an unambiguous finding that the appellant deserted the respondent in the year 1997 and since then, she had been staying with her mother. While appreciating the evidence, the First Appellate Court has also dismissed the allegations made by the appellant against the respondent of not taking care of son Rohan and giving physical and mental tortures to her for non-fulfillment of monetary demands allegedly made by the respondent.

24. In the present Second Appeal, as noted by me herein above, the emphasis of Shri Bedre, learned Counsel appearing for the appellant, was on the issue that the Courts below have failed in appreciating that the appellant was forced to live separately and as such in no case, it can be said that the appellant deserted the respondent. I am, however, not at all convinced with the argument so made. The Courts below have elaborately discussed that the appellant has failed in proving that she was driven out in the year 1997, and was forced to live separately since then. On the contrary, it was the case of the

appellant that till 2001, she was residing with the respondent. The said contention was negated by the Courts below on the basis of evidence on record. As I noted herein above, there is no infirmity in the findings recorded by the Courts below.

25. It was also sought to be contended by Shri Bedre, learned Counsel that had there been the intention of the appellant not to cohabit with the respondent, she would never have filed a petition seeking restitution of conjugal rights. The submission so made is also liable to be turned down. The petition for restitution of conjugal rights was admittedly filed during pendency of the petition filed by the respondent seeking divorce on the ground of cruelty and desertion. The Court, which has dismissed the petition for restitution of conjugal rights and the First Appellate Court, which has confirmed the said decision in Regular Civil Appeal No.256 of 2010 have rightly observed that if the appellant was really desiring to cohabit with the respondent, she would have filed the petition for restitution of conjugal rights much prior. The said Courts have also observed that the appellant has not provided any cogent explanation for filing the petition for restitution of conjugal rights at such a belated stage.

26. The appellant has filed a civil application for permitting her

to produce certain documents as additional evidence. These documents contain the complaints made by the appellant with the higher Police authorities of the respondent and letter received to her from the Colaba Police station as well as a letter received from Podar International School, containing an information that Antara Patare daughter of Gautam Patare is studying in their School in class 2 and her date of birth is 06.10.2002. The copy of memo of appeal in Regular Civil Appeal No.256 of 2010 is also sought to be produced on record.

27. I have carefully perused the documents sought to be placed on record. The appellant had made complaint with the higher authorities of the respondent that the respondent has contacted second marriage and had, therefore, prayed for taking appropriate action against the respondent. Most of the documents are in that regard only. However, Colaba Police Station had informed the appellant that in the enquiry conducted by the said Police Station, the allegation made by the appellant that respondent had contacted second marriage with one Megha Rokade is not confirmed. The other documents also at such belated stage cannot be permitted to be produced on record.

28. After having considered the evidence on record and having

gone through the Judgments passed by the Courts below, it does not appear to me that any error has been committed by the Courts below in granting the decree of divorce in favour of the respondent. I have no hesitation, after having scrutinized the evidence on record, to hold that the present respondent has sufficiently proved that the appellant, without any sufficient cause, deserted him. The Courts below have also rightly held that there was no genuine attempt from the side of the appellant for cohabitation with the respondent. On mere admission of the respondent that he loves Megha Rokade, no such inference can be drawn in absence of any concrete evidence in that regard that the respondent had contacted second marriage with her.

29. It is true that previously, Hindu Marriage Petition No.196 of 2005 was filed by the respondent seeking dissolution of the marriage, but the said came to be dismissed. However, admittedly the said petition was dismissed for want of taking steps by the respondent to serve the respondent in the said petition i.e. present appellant. Dismissal of the said suit on the said ground cannot be a bar for filing a fresh suit.

30. It has to be further stated that the decree of divorce was sought by the respondent on the ground of cruelty and desertion.

It is revealed that the Trial Court has given much weightage to the aspect of desertion. In fact, a specific issue as about the cruelty was also required to be framed. Admittedly, it was not framed. However, the respondent has sufficiently proved the ground of cruelty also and the reference has come in that regard in the Judgments of the Trial Court as well as the First Appellate Court. According to me, the ground of cruelty assumes equal importance and the respondent was fully justified in seeking decree of divorce against the present appellant on the ground of cruelty also.

31. As has come on record, the appellant had filed Regular Criminal Case No.268 of 2001, not only against the present respondent but against his parents and two brothers under Section 498-A of the IPC. It is the matter of record that all the five accused in the said case were acquitted by the Chief Judicial Magistrate, Ahmednagar, in the aforesaid criminal case. As was argued by the learned Counsel appearing for the respondent, the relations went on becoming more strained after the respondent and his family members were subjected to undergo a trial under Section 498-A of the IPC. It was also contended by the learned Counsel that a false criminal case would amount to matrimonial cruelty. There appears substance in the submission so made by

the learned Counsel. As has come on record and as has been observed by the Courts below, though, a serious allegation was made by the appellant against the respondent that a huge amount of Rs.1,00,000/- was demanded by the respondent and for non-fulfillment of the said demand, she was brutally beaten and was driven out of the house, the appellant could not substantiate the said allegation by bringing on record any cogent evidence therefor. It has also been observed by the Courts below that in the statement given by the mother of the appellant, she did not whisper about any such demand from the respondent. There is reason to believe that a false criminal case was filed by the appellant against the respondent and his family members.

32. As held by the Hon'ble Apex Court in the case of ***K. Srinivas Vs. K. Sunita, [(2014) 16 SCC 34]*** it is beyond cavil that, if a false criminal case is preferred by either spouse, it would invariably and indubitably constitute matrimonial cruelty and as such would entitle to the other spouse to claim a divorce.

33. In case of ***Vishwanath Sitaram Agrawal Vs. Sau. Sarla Vishwanath Agrawal [2012 (6) Mh.L.J. (S.C.) 1]*** the facts were that, the wife had filed a complaint under section 498-A of I.P.C.

against the husband, her father-in-law and other relatives, who were acquitted in that case and the said decision of the acquittal was not assailed before the higher forum and thus the conclusion recorded by the trial Court that allegations on that count were incorrect and untruthful had become final. In light of the facts as aforesaid, the Hon'ble Apex Court observed that, the act of filing false complaint under section 498-A of I.P.C. by the wife created mental trauma in the mind of the husband. The Hon'ble Apex Court has further observed that, no one would like to face a criminal proceeding of this nature on baseless and untruthful allegations.

34. The Hon'ble Apex Court in the case of ***V. Bhagat Vs. D. Bhagat [(1994) 1 SCC 337]*** has held that, 'a mental cruelty under Section 13 (1)(i-a) can be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other.'

35. In the case of ***Anil Yeshwant Karande Vs. Mangal Anil Karande [2016 (2) Mh.L.J. 166]*** the learned Single Judge of this Court has referred to the Judgment of the Division Bench of this Court in the case of ***Nagesh Dhanapp Chilkanti Vs. Sau.***

Manisha Nagesh Chilkanti in Family Court Appeal No.158 of 2008, wherein the division bench had considered a similar case where the husband and his family members were acquitted in the complaint filed under section 498-A of I.P.C. The Division Bench has held that, filing of false criminal case against the husband and his family members would very much constitute mental cruelty. The Division Bench has further held that, in the circumstances, the husband was entitled to a decree of divorce on the ground of cruelty.

36. The learned single Judge of this Court in the case of **Anil Vs. Mangal** (supra) has referred to all above judgments. In the present case, it is argued that the Criminal Court has not recorded a finding that a false complaint was filed against the respondent but acquitted the respondent and his family members by giving benefit of doubt. Similar question was raised in the aforesaid case of **Anil Vs. Mangal** (supra). I deem it appropriate to reproduce the said question herein below:-

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

37. The Division Bench of this Court in the case of **Mr.M Vs. Mrs.M [2014 (2) Mh.L.J. 825]** has held that;

“In a given case depending upon the evidence on record, even if acquittal is on the ground that, charge could not be substantiated and even if there was no finding recorded by the criminal court that, the prosecution case was false, there can be a case of cruelty. The division bench has further observed that, it depends upon the manner in which the complaint has been filed and prosecuted.”

38. The learned single Judge in the case of **Anil Vs. Mangal** (supra) after having referred to the above Judgments, has held thus:

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

37. The judgments of the Supreme Court and this Court which are referred to aforesaid squarely apply to the facts of this case. I am respectfully bound by those judgments. There is no dispute that the husband and his family members

were ultimately acquitted in such complaint made by the respondent. It was not the case of the respondent before the trial Court as well as before the lower appellate Court that the finding rendered by the learned Magistrate First Class were erroneous and such allegations were not independently proved by the respondent before the learned trial Court as well as before the lower appellate Court. A perusal of the order passed by the lower appellate Court indicates that the evidence led by the respondent and other witnesses in the said criminal proceedings and the findings rendered by the learned Magistrate First Class have been totally ignored by the learned trial Court.

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

39. In view of the law settled as above, there cannot be a doubt that the criminal case filed by the appellant under Section 498-A of the IPC against the respondent would indubitably constitute matrimonial cruelty and as such had entitled the respondent to claim divorce on the said ground.

40. Lastly, as about the issue raised and canvassed by Shri

Deshpande, the learned Counsel appearing for the respondent. The learned Counsel submitted that appellant and respondent are living separately from each other since last more than 20 years and their chances of reunion are very dim and bleak. There is much substance in the point so raised by the learned Counsel. After having considered the over all circumstances in the matter and more particularly, having regard to the fact that the appellant and the respondent are residing separately for last more than 20 years, it can be reasonably inferred that there is irretrievable breakdown of marriage.

41. The Hon'ble Apex Court in the case of **Naveen Kohli** (supra) has expressed the necessity of bringing an amendment in the Hindu Marriage Act, 1955 thereby making *“irretrievable breakdown of marriage as one of the grounds for seeking divorce.”* I deem it appropriate to reproduce relevant observations made by the Hon'ble Apex Court, which read thus:

“A law of divorce based mainly on fault is inadequate to deal with a broken marriage. Under the fault theory, guilt has to be proved; divorce courts are presented concrete instances of human behaviour as bring the institution of marriage into disrepute. once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interest of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a

fiction, though supported by a legal tie, by refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist. Human life has a short span and situations causing misery cannot be allowed to continue indefinitely. A halt has to be called at some stage. Law cannot turn a blind eye to such situations, nor can it decline to give adequate response to the necessities arising therefrom."

42. In the instant matter also, though, it was the contention of the learned Counsel for the appellant that still there are hopes of reunion of the appellant and the respondent, and the appellant is ready and willing to cohabit with the respondent, after having considered the evidence on record, it does not appear to me that any such possibility exists. It appears to me that the respondent had sufficiently proved the allegation of cruelty on the part of the respondent as well as the fact of desertion by the appellant without any sufficient cause and as such the Trial Court has rightly granted the decree of divorce on the aforesaid ground in favour of the respondent. It does not appear to me that the First Appellate Court has committed any error in confirming the said

decree. No such ground is made out by the appellant in the present appeal so as to cause interference in the judgments passed by the Courts below. The Second Appeal, therefore, fails and stands dismissed. Pending civil applications stand disposed of.

(P.R.BORA)
JUDGE

SPT