

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

**FAMILY COURT APPEAL NO.36 OF 2017
WITH
CIVIL APPLICATION NO.12452 OF 2017**

Shraddha W/o. Prasad Ganu,
Age-27 years, Occu-Nil,
R/o.Flat NO.40, 6th Floor,
'B' Wing, Morya Building,
Suryoday Complex,
Kalbhor Nagar, Old Mumbai-Pune Highway,
Chinchwad, Pune-411019

...APPELLANT
(Ori.Respondent)

VERSUS

Prasad S/o. Nilkanth Ganu,
Age-33 years, Occu-Service,
R/o. Plot No.121, Dattaprasad Banglow,
Jaivishwabharti Colony, Aurangabad

...RESPONDENT
(Ori.Petitioner)

Mr.S.R.Dheple, Advocate for the appellant
Smt.R.R.Mane, Advocate for the respondent

**CORAM : S.S. SHINDE &
S.M. GAVHANE, JJ.**

RESERVED ON : 23.04.2018

PRONOUNCED ON : 15.06.2018

J U D G M E N T [PER: S.M. GAVHANE, J.]

. The appellant wife (hereinafter referred to as the 'respondent') against whom decree for divorce under Section 13 (1)(i-a) of the Hindu Marriage Act, 1955 has

been passed on 11.08.2017, in petition No.A-342/2016 filed by present respondent-husband (hereinafter referred to as the 'petitioner'), by the Principal Judge, Family Court, Aurangabad, has preferred this appeal being aggrieved by the said decree.

2. Facts giving rise to this appeal, in short, are as under:-

A] The marriage between petitioner and respondent was solemnized on 05.01.2013 according to the Hindu Vedic Rites and it is love marriage. After marriage they resided at Aurangabad and one son is born from the said wedlock, who is in the custody of respondent.

B] Case of the petitioner/husband before the Family Court was that within 4 to 5 months of the marriage the respondent/wife on some ground or other started taunting his parents and pick up a fight. The petitioner being only son of his parents, they tolerated respondent's mental and physical ill-treatment. Even after birth of the son, there was no change in the behavior of the respondent. She also started ill-treating the petitioner. According to the petitioner, on being frustrated, his parents and he himself being fed up with the conduct and

behavior of the respondent decided in February, 2016 to live separately from his parents. In spite of living separately, there was no change in the behavior of respondent.

C] Further, it is the case of the petitioner that the respondent threatened him that she would send him and his parents to jail, as her mother is criminal lawyer. She left all the gifted jewellery given to her by his father, at her mother's house. He used to hand over entire salary to her. Both of them were earning but income was not huge. The respondent used to insist for buying a flat, air-conditioner, car, Fridge and TV. He gave understanding that their economical condition is not so good, but in vain. The respondent being short tempered, was insulting him in presence of the relatives, friends and guests.

D] According to petitioner on 29.06.2016, there was Death Anniversary of father of respondent. Due to work he reached home at 11.00 O'clock. The respondent quarreled with him on the issue of his returning home late. The petitioner found pizzas at home. He inquired from the respondent about it. The respondent in a fit of anger attacked him. She scratched him with her nails, hit him

with kicks and blows. One of the blows hit on his eye and the same turned black. He got injuries on his neck and chest. Since the incident occurred at night, on the next day i.e. on 30.06.2016, he went to the police station and lodged complaint against the respondent, being Crime No.1754/2016 dated 02.07.2016. He was sent by the police to Ghati Hospital, Aurangabad for medical examination and treatment.

E] According to the petitioner, after the said incident, due to mental and physical ill-treatment at the hands of respondent, it is not possible to continue to live with the respondent. He apprehends danger to his life. The mother of respondent on telephone abused and threatened the petitioner of filing false criminal complaints and sending him to jail. In these circumstances, the petitioner filed petition for dissolution of marriage and ultimately prayed to dissolve the marriage between him and the respondent on the ground of cruelty.

F] Respondent/wife resisted the petition by filing reply at Exh.9. She has admitted her marriage with the petitioner and birth of son from said wedlock. However, she has denied almost all the allegations made against

her by the petitioner attributing cruelty to him by her.

G] Case of the respondent is that being a love marriage, the parents of the petitioner and his relatives were against the marriage. The entire marriage expenses of Rs.4.5 lacs to 5 lacs including jewellery had to be met by her parents. On 07.01.2013, the mother of the petitioner on the pretext of keeping all the ornaments in the locker, recovered the same. Since then till date, her jewelery is in custody of mother of the petitioner. The petitioner and his parents behaved with her properly only for one month. The house of the petitioner is two storey. On the first floor there is a kitchen. On the second floor there is a bed room of the petitioner and respondent. Father of the respondent used to close the door of the first floor from 11 to 4 pm. The respondent used to bring food of the petitioner and herself on the ground floor. The respondent further contends that during her pregnancy, the petitioner would go with her every month for medical checkup. In her 3rd month of pregnancy, the Doctor enquired about diet and she informed that except two meals she is not allowed to eat. The petitioner and his parents were angry with respondent for informing the doctor about her diet. Hence, she was abused. She then left for her mother's house at

Chinchwad.

H] Further, it is the case of the respondent that in June, 2013, the petitioner wanted to buy Royal Enfield Motorcycle, hence he demanded from her to bring Rs.1,00,000/- from her mother. Her mother gave Rs.60,000/- to the mother of the petitioner. The baby shower was held at Aurangabad. At that time, mother of the petitioner demanded moneys to purchase a car for the petitioner. On refusal of mother of respondent, the mother of the petitioner informed her mother that the delivery and naming ceremony function will not be held at Aurangabad and the mother of respondent will have to spend for the function. The respondent delivered a baby boy on 05.12.2013. The mother of respondent gifted all gold and silver ornaments to the baby boy. She spent Rs.1.5 lacs to 2.3 lacs. Then respondent returned to her matrimonial house. The mother of the petitioner told the respondent that all the jewelery she would keep in the locker and accordingly had taken jewelry from her and till date all the jewelery is in her custody.

I] According to the respondent, the petitioner then demanded Rs.75,000/- from her mother to purchase a big LED TV and her mother gave Rs.25,000/- as she could not

give the entire amount. The petitioner has vices of smoking, eating tobacco and drinking alcohol. He used to return home late on 02.00 am under influence of liquor and pick up fights with her on any issue and beat her.

J] Further it is the case of the respondent that on 05.01.2016 there was first wedding anniversary and as the petitioner did not return till 10.00 pm she inquired to his parents. Father of the petitioner abused her and drove her out of the house by pulling her hair. Her mobile was also snatched away. On 10.01.2016, she lodged a police complaint being N.C.No.26/2016 against the petitioner and his relatives. She informed her mother about it. Her mother came to Aurangabad. Mother of petitioner assured her mother that the petitioner and respondent would reside separately from them in a rented premises and the petitioner would stop consuming alcohol. Then they started residing in rented premises at Garkheda, Aurangabad.

K] Thereafter, for 2 to 3 months the petitioner behaved properly. The visits of the parents of the petitioner were frequent. Thereafter, there were fighting for no-reason and petitioner started abusing her. The petitioner was not giving her monies for admission of the

son. She had to take Rs.10,000/- from her mother to get admission of son in July, 2016. She demanded her jewelry from the petitioner, but he avoided to bring the same. On 29.06.2016 when there was death anniversary of her father at midnight 12.30 hours the petitioner came house under the influence of liquor. When she inquired to him about her jewelery, he got angry and told her that his mother would not give jewelry and beat her. He beat on her left ear. He was leaving home alongwith minor son. He tried to throttle her, hence she started screaming. On hearing her screams, their landlord came out and rescued her from the petitioner. Therefore, she lodged the complaint being NC No.1750/2016. Since then she is residing with her mother. Thereafter, she made efforts to return to matrimonial house, but the petitioner and his relatives have refused to accept her. Therefore, on 03.08.2016 she filed a police complaint against the petitioner and his relatives and offence punishable under Section 498-A of the IPC was registered. Since then she is residing in the rented premises. The petitioner has deserted her and has filed this false petition. She prayed to dismiss the same.

L. Learned Principal Judge of the Family Court framed following two issues at Exh.14.

1. Whether the petitioner proves that respondent has, after

solemnization of the marriage, treated the petitioner with cruelty?

2. Whether the petitioner is entitled to a decree of divorce?

M. On behalf of the petitioner, in evidence he produced his affidavit at Exh.16 and relied upon certain documents which would be referred later on and on behalf of respondent in evidence, she has produced her affidavit at Exh.21 and she also relied upon certain documents. Considering the evidence adduced by the parties, the trial Court held that the petitioner has proved that the respondent has after solemnization of the marriage treated the petitioner with cruelty and further held that the petitioner is entitled to a decree of divorce. Thus, on answering both above referred issue Nos.1 and 2 in affirmative the Principal Judge, Family Court, Aurangabad by the judgment and order dated 11.08.2017 allowed the petition and passed a decree of divorce directing that the marriage solemnized between the petitioner and the respondent on 05.01.2013 is dissolved by a decree of divorce under Section 13 (1) (i-a) of the Hindu Marriage Act from the date of said order.

3. Being aggrieved by the aforesaid decree of divorce, the respondent wife has filed this appeal on

several grounds mentioned in the appeal and mainly on the ground that the trial Court has wrongly held that she has treated the petitioner with cruelty. She has prayed to set aside the impugned decree by allowing the appeal.

4. We have heard learned Advocates appearing for the petitioner and respondent. We have also gone through the written notes of argument submitted on behalf of the respondent-wife. With the assistance of learned Advocates we have perused the original record i.e. pleadings of the parties and evidence adduced by them in support of their respective contentions and impugned judgment.

5. Learned Advocate appearing for the respondent-wife submitted that the trial Court has considered single incident dated 29.06.2016 which is not sufficient to hold that the respondent has caused cruelty to the petitioner. However, the trial Court has only on the basis of said incident held that the respondent has caused cruelty to the petitioner and granted decree for divorce in favour of the petitioner-husband. It is submitted that the evidence adduced by the petitioner-husband in support of his allegations of cruelty in the form of N.C. lodged by the petitioner against the respondent is not proved by the petitioner. The trial Court has wrongly relied upon

the evidence which is not properly proved. It is submitted that in matrimonial life, uttering of some words, here and there, by wife, itself may not be treated as an act of cruelty and cannot be treated as a ground for dissolution of the marriage. Further, it is submitted that relationship between the husband and wife cannot be allowed to be severed on the grounds/incidents which are ordinary wear and tear of matrimonial life. Thus, the learned Advocate for the respondent-wife prayed to set aside the impugned decree. To support his submissions the learned Advocate has relied upon the decisions of the Division Bench of this Court in the case of Manish Satpal Agarwal Vs Sou. Dolly Manish Agarwal reported in 2009(6)MH.L.J.755 and in the case of Latesh Subhash Kadam Vs Neeshal Latesh Kadam reported in 2010(5)ALL MR 318.

6. On the other hand learned Advocate appearing for the petitioner-husband submitted that the evidence whatever adduced by the petitioner is sufficient to state that the petitioner has proved that the respondent has caused cruelty to him and therefore, the petitioner is entitled to divorce on the ground of cruelty. It is submitted that the acts of the respondent alleged in the petition certainly amount to mental cruelty and

therefore, there is no reason to interfere with the impugned decree. To support his submissions the learned Advocate appearing for the petitioner has relied upon the following decisions:

a) In Samar Ghosh Vs Jaya Ghosh reported in 2007(4)Supreme Court Cases 511 in paragraph Nos.40,97 and 99 the Hon'ble Supreme Court has observed as under:-

“40. The term “mental cruelty” has been defined in *Blacks's Law Dictionary* (8th Edn.,2004) as under:

“*Mental cruelty*- As a ground for divorce, one spouse's course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse.”

97. This Court in *Naveen Kohli v. Neelu Kohli* dealt with the similar issues in detail. Those observations incorporated in SCC paras 74 to 79 are reiterated in the succeeding paragraphs: (SCC pp.579-80)

“74. We have been principally impressed by the consideration that 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 interests 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.

75. 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.

76. 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 forever to a marriage that in fact has ceased to exist.

77. Some jurists have also expressed their apprehension for introduction of irretrievable breakdown of marriage as a ground for grant of the decree of divorce. In their opinion, such an amendment in the Act would put human ingenuity at a premium and throw wide open the doors to litigation, and will create more problems than are sought to be solved.

78. The other majority view, which is shared by most jurists, according to the Law Commission Report, is that 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.

79. When we carefully evaluate the judgment of the High Court and scrutinies its findings in the background of the facts and circumstances of this case, then it becomes obvious that the approach adopted by the High Court in deciding this matter is far from satisfactory.”

99. Human mind is extremely complex and human behavior is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behavior in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.”

b) In the case of Narendra Vs K. Meena reported in 2016 ALL SCR 2113 it was held that persistent effort of wife to constrain husband to be separated from his parents,

without any justifiable reason, would be torturous for husband, same constitutes an act of cruelty on husband. In the said case wife locked herself in bathroom and poured kerosene on herself so as to commit suicide. She was saved with the help of neighbors. Had she been successful in her attempt, husband would have suffered for entire life due to legal provisions. It was held that only this one event was sufficient for husband to get decree of divorce on ground of cruelty.

c) In the case of K. Shrinivas Rao Vs D.A.Deepa reported in 2013 (3) MH.L.J.85 the marriage between appellant and respondent-wife was solemnized in 1999, unfortunately on the very next day dispute arose between the elders on both sides, resulting in their abusing each other and hurling chappals at each other. Consequently, the couple got separated without consummation of the marriage and started living separately, from the third day itself. Respondent-wife filed criminal complaint with Women Cell, pertaining to dowry charges. Escalated acrimony led to complaints and counter complaints, followed by petition for restitution of conjugal rights by respondent-wife, counter-blasted with a claim for dissolution of marriage by appellant-husband on the ground of cruelty and desertion. The trial Court

dismissed the petition of respondent-wife, while allowed divorce petition filed by appellant-husband, with a direction to repay Rs.80,000/- to his father-in-law alongwith interest at 8% p.a. from the date of marriage till payment. High Court while allowing appeal of respondent-wife, set-aside decree of divorce granted in favour of appellant-husband, holding that, finding of family Court that lodging a complaint with the police against appellant-husband amounts to cruelty is perverse because it is no ground for divorce under H.M. Act, 1955, besides, High Court recorded certain other observation. As held, respondent-wife has caused by her conduct mental cruelty to appellant-husband and marriage has irretrievably broken down. Dissolution of marriage will relieve both sides of pains and anguish. In Supreme Court, respondent-wife had expressed that she wants to go back to appellant, but that is not possible now. Appellant-husband is not willing to take her back. Even if decree of divorce is refused to husband, there are hardly any chances of respondent wife leading a happy life with appellant, because a lot of bitterness is created by her own conduct. Decree of divorce allowed, however, subject to payment of Rs.15 lakh as and by way of permanent alimony to respondent-wife. Impugned order was set aside.

7. In view of the submissions made on behalf of the parties and controversy between them, following points arise for our determination :

- i. Whether it is proved by the petitioner that the respondent-wife treated him with cruelty?
- ii. Whether the petitioner is entitled to decree of divorce?

8. The facts in respect of which there is no dispute are that the marriage between the petitioner and respondent-wife was solemnized on 05.01.2013 according to the Hindu Vedic Rites. After marriage respondent started residing with the petitioner with his joint family consisting of himself and his parents at Aurangabad. There is one son born on 05.12.2013 to the respondent from the said wedlock who is in the custody of the respondent/mother. Since February, 2016, the petitioner and respondent started residing separately from the parents of the petitioner at Garkheda Aurangabad. Petitioner is only the son to his parents and so is the case with respondent. Respondent is residing with her mother at Pimpri Chinchwad, Pune with her son.

9. According to the petitioner-husband, the respondent caused him mental and physical cruelty and the grounds/acts of cruelty attributed to the respondent-wife by the petitioner are thus:

1. After the marriage on 05.01.2013 within 4-5 months the respondent on some ground or other started taunting parents of the petitioner and pick-up the fight with them.
2. The respondent being short tempered used to insult the petitioner in presence of his relatives, friends and guests.
3. The respondent used to demand flat, refrigerator, TV and car and the petitioner could not fulfill the said demand.
4. On 29.06.2016 in the night the respondent quarreled with the petitioner and caused nail injuries on his neck and chest on hitting him and therefore the petitioner lodged complaint on 30.06.2016 in the police station.
5. Even after residing separately from the parents of the petitioner in February, 2016, the respondent used to threaten that she would send the petitioner and his parents to jail by filing police complaint as her mother is a criminal lawyer.

10. To prove aforesaid grounds or acts of the respondent which have allegedly caused cruelty to the petitioner, the petitioner has mainly relied upon his sole oral evidence and documentary evidence which would be referred later at the appropriate stage. In the first place we will deal with the ground Nos. 1 to 3. In his evidence at Exh.16 the petitioner has stated about the said grounds as per the contentions in the petition. Except his uncorroborated testimony in respect of conduct of the respondent in respect of the said ground Nos. 1 to 3, the petitioner has adduced no evidence. So also, his pleading and evidence in respect of the said ground Nos. 1 to 3 and allegations made therein, is vague. Therefore, uncorroborated evidence of the petitioner that the respondent started taunting his parents and pick-up a fight after 4 to 5 months of marriage, that being short tempered respondent used to insult him in presence of his relatives etc. as alleged and that she used to demand a flat, refrigerator etc and harassed him, is not believable. The learned Judge of the trial Court referring the above referred ground Nos. 1 to 3 and evidence held that said grounds as well as evidence are vague and therefore, declined to accept the said grounds which allegedly caused mental cruelty to the petitioner

as observed in para No.36 of the impugned judgment. We find no fault with the said findings of the learned Judge of the trial Court in not accepting the aforesaid ground Nos. 1 to 3. The petitioner has not filed cross-objection in the appeal challenging the said findings of the trial Court in not accepting the aforesaid ground Nos. 1 to 3.

11. Now coming to the ground No. 4 of allegedly causing cruelty by the respondent-wife to the petitioner-husband, the petitioner has deposed that on 29.06.2016 he had come to the house in the night at about 11.00 o'clock. He found that respondent had called pizzas in the house and on that day there was death anniversary of father of respondent. He asked respondent how pizzas were called and she got angry. She rushed at him and started beating him with kicks and blows. She scratched him with her nails. One of the blows hit on his eye and the same turned black. He sustained injuries on his neck and chest of scratching. Since the incident occurred at night, on the next day i.e. on 30.06.2016 he went to the police station and lodged complaint against respondent and CR No.1754/2016 dated 02.07.2016 came to be registered. Thereafter, police sent him in Ghati Hospital for medical checkup. He stated that after the said incident he is sustaining mental and physical harassment and there is

danger to his life from the respondent. He also stated that in the night after the quarrel, the respondent had driven him out of the house.

12. In the cross-examination on behalf of respondent-wife, the petitioner has admitted that on 29.06.2016 it was death anniversary of father of respondent. He denied that he went home under the influence of liquor at midnight at 12.30 hours. He denied that at that time respondent demanded her gold jewellery from him. He further admitted that the respondent demanded gold jewellery from him. He denied that because she demanded gold jewellery he got angry and beat her. He denied that he throttled her at that time and hence the respondent screamed, the land lord arrived and tried to separate them. He denied that the respondent complained at Jawahar Nagar Police Station and Mukundwadi Police Station. He denied that thereafter respondent went away to her parents house. He admitted that an offence under Section 498-A of the IPC has been registered against him in Jawahar Nagar Police Station. He denied that he is deposing false that respondent has treated him with cruelty and that he has filed false affidavit. From the above evidence one thing is certain that on 29.06.2016 the petitioner and the respondent were residing at

Aurangabad separately from the parents of the petitioner.

13. In the course of the cross-examination of the petitioner, his evidence of giving fist and kick blows to him by the respondent in the night on 29.06.2016 and causing nail injuries to him has not been specifically challenged. As referred above there was suggestion on behalf of the respondent-wife that in the above said night the petitioner assaulted her when she demanded her gold jewelery from him. In such circumstances, before accepting or rejecting the evidence of the petitioner in respect of nail injuries to him allegedly caused by the respondent, it is necessary to refer the evidence of respondent and documentary evidence in the form of complaint lodged by the petitioner in the police station and medical papers, which documents are wrongly considered by the trial Court, though they are not proved, as argued by the learned Advocate for the respondent.

14. Before considering the evidence of respondent, it would be necessary to consider, whether the petitioner has proved that he was really sent to Ghati Hospital for medical check-up and whether alleged injuries were caused to him in the alleged incident dated 29.06.2016 in the

night by the respondent, in view of the fact that as per the suggestions given to the petitioner on behalf of respondent, the petitioner has filed false affidavit (Exh.16) in the evidence and in view of the argument advanced by the learned Advocate appearing for the respondent that the documents in this respect are not proved, but wrongly considered by the trial Court.

15. The petitioner has deposed that he has filed complaint in the police station on 30.06.2016 and he was given office copy of the said complaint. The copy of the said complaint is produced on record, but the petitioner has not proved the said copy. It is seen that Exh.26 is the copy of the letter given by the Police Station Officer, Mukumdwadi to the Medical Officer, Ghati Hospital, Aurangabad. Date on the said letter is 30th. It is mentioned in the letter that the petitioner was sent to the said hospital for treatment as he sustained beating on his left eye and chest and he was beaten. It appears that the said letter is exhibited in the cross-examination of the petitioner on behalf of respondent, as it was shown to the petitioner. Simply because the said letter was shown to the petitioner or referred in the course of his cross-examination, it cannot be said that it was properly proved by the petitioner. The petitioner

has not examined the police officer to prove the contents of the letter (Exh.26).

16. So also, the petitioner has produced photo copy (two pages) of the case paper dated 30.06.2016 in respect of the medical check-up of the petitioner and his treatment in Ghati Hopsital, Aurangabad. In his evidence the petitioner has not stated about the said copy of the case paper. So also, he has not proved the copy of the said case paper by examining the casualty Medical Officer who attended the petitioner on 30.06.2016 at 11.15 am. Therefore, the said copy of the case paper cannot be read in evidence to state that there was assault on the petitioner by the respondent. Even, if, it is read in evidence, it does not show that in the night on 29.06.2016, in his house, petitioner was assaulted by the respondent-wife. Therefore, uncorroborated evidence of the petitioner is not sufficient to state that the petitioner has proved the incident of assault on him by the respondent in the night on 29.06.2016, and causing him injuries as deposed by him.

17. There is a copy of the FIR registered in Mukumdwadi Police Station in respect of incident, which shows that the said FIR was registered, on the compliant

of the petitioner against the respondent, for the offence punishable under Section 323,504 and 506 of the IPC. This copy of the FIR is also not proved by the petitioner. Therefore, same cannot be considered. Even, if, the same is considered, it does not prove the allegation of the petitioner that he was assaulted by the respondent in the night on 29.06.2016 and caused him nail injuries. There is also copy of NC case registered against the respondent in Mukundwadi Police Station, on the complaint of petitioner in respect of incident dated 29.06.2016, which took place in the night at 23.10 hours. The petitioner has not specifically stated about this copy of NC case and as such the same is also not proved. Therefore, the same cannot be considered. Even, if, the same is considered, it does not show that respondent caused injuries to the petitioner in the night on 29.06.2016, as alleged. In the above circumstances, we find substance in the argument advanced by the learned Advocate appearing for the respondent-wife that the trial Court has wrongly relied upon the evidence, which is not properly proved by the petitioner. Therefore, the oral evidence of the petitioner as well as the documentary evidence referred to above, which is not proved by the petitioner, is not sufficient to infer that the petitioner sustained injuries in the incident, which took place on 29.06.2016,

in the night in the alleged assault by the respondent.

18. Now coming to the evidence (Exh.23) of the respondent-wife it shows that after marriage the petitioner, his parents and sister have treated her properly only for one month. She deposed that house of the petitioner was two-storey. Father of the petitioner was closing the door of the first floor and used to open the same at 4.00 pm. She stated that while she was pregnant, she was not allowed to take food, besides two times meal. She was harassed by the petitioner and his parents and they were abusing her. She has also stated about demand of Rs.75,000/- by the petitioner. She stated that the petitioner was addicted to liquor, cigarette and tobacco and used to come to the house in the night at 2.00 hours under the influence of liquor since the marriage. Above said evidence of the respondent is also not properly challenged on behalf of the petitioner in the course of her cross-examination. She also stated that she did not file complaint with police in respect of above said conduct of the petitioner.

19. As regards the incident in the night on 29.06.2016, the respondent has stated that on that day there was death anniversary of her father and the

petitioner came to house at 12.30 in the night under the influence of liquor. When she asked him about ornaments, he was annoyed and said that his mother would not return the ornaments to her and that she should do whatever she wants to do and started beating and abusing her. At that time the petitioner beat on her ear and he started proceeding saying that he would take away the child but he was unable to balance himself as he had consumed liquor. At that time, he started throttling her. She shouted loudly, therefore, her land lord and wife of land lord had come and they had rescued her. Therefore, she filed NC No.1750/2016 in the police station and since then she is residing at her parental house with her son. There is also Crime No.259/2016 for the offence under Section 498-A of the IPC registered against the petitioner by her.

20. In the cross-examination respondent has denied that her behavior with land lord was also arrogant and hence she shifted to Pune in May, 2017. She denied that she harassed the petitioner and his parents. She filed proceeding under the provision of the Domestic Violence Act and under Section 498-A of the IPC. She stated that she is still ready to resume cohabitation. She denied that she had mentally, physically and economically

harassed the petitioner. Her evidence that the petitioner started throttling her and therefore, when she shouted, the land lord and his wife had come, has not been specifically challenged in the course of her cross-examination. It is true that respondent has also not examined her land lord or wife of land lord to prove the fact that really in the night on 29.06.2016 the respondent made cry when she was assaulted by the petitioner and on hearing cry the land lord had come to rescue her or land lord had really rescued her from the petitioner. Be that as it may, the fact remains that both the petitioner and respondent have filed complaint against each other in respect of incident dated 29.06.2016. So also, there is crime registered against the petitioner and his parents for the offence punishable under Section 498-A of the IPC on the complaint of the respondent, besides NC case against them. In such circumstances, it can be said that the petitioner and the respondent are making allegations against each other and as outcome of the said allegations some incident in the nature of quarrel between them has taken place on 29.06.2016, in the night. But, for the reasons discussed herein above the said solitary incident when other allegations i.e. ground Nos. 1 to 3 of cruelty refereed earlier are not proved by the petitioner and not accepted

by the trial Court, is not sufficient to hold that the respondent has caused physical cruelty to the petitioner.

21. As regards ground No.5 that even after the petitioner and respondent started residing separately from the parents of the petitioner in the February, 2016, the respondent used to threaten that she would send the petitioner and his parents to jail by filing false complaint as her mother is criminal lawyer, is concerned the petitioner has of course stated in consonance with this ground, in his affidavit (Exh.16). In the cross-examination on behalf of respondent, the said evidence has not been specifically challenged. He has denied that he and his parents threatened the respondent to kill her. He admits that the respondent had filed a police complaint against him, but he does not remember that date of said complaint was 10.01.2016. This shows that the respondent filed complaint against the petitioner and his parents on threats given to her. The petitioner has not specifically stated about the date and day when the respondent threatened to send him and his parents in jail. So also, there is nothing on record to show that he filed complaint in respect of said threat or threats given by respondent, with police or in Court. In such circumstances, vague evidence of the petitioner regarding

threat given to him and his parents by the respondent about sending them in jail is not believable. Therefore, ground No.5 as above is not proved by the petitioner. Therefore, it cannot be said that the respondent threatened as above to the petitioner and his parents and said amounts cruelty to him. In the above circumstances, it cannot be said that respondent has caused physical or mental cruelty to the petitioner, particularly when she cohabited with the petitioner, she has begotten a son from the wedlock with the petitioner and she resided with the petitioner nearly for three years after the marriage and that still she is willing to resume cohabitation with the petitioner.

22. For the reasons discussed above, we hold that the petitioner has failed to prove the ground Nos.4 and 5 referred to above attributed to the respondent which have allegedly caused cruelty to the petitioner on which ground the trial Court held that the respondent caused cruelty to the petitioner. In this view of the matter, reasons assigned by the trial Court in the paragraphs No.52 to 57 to arrive at a conclusion that the respondent caused cruelty to the petitioner and particularly the reasons that very fact that the petitioner was sent for medical examination by the police and the medical paper

(Exh.26) reveals that he has been physically abused and that this act on the part of the respondent per-se was sufficient enough to hold that she has physically ill-treated the petitioner, are not proper and sufficient to hold that the respondent caused cruelty to the petitioner. Therefore, the finding of the trial Court based on the said reasons that the petitioner has proved that the respondent has caused cruelty to him, is not sustainable and same is liable to be quashed and set aside.

23. In the above circumstances, the ratio laid in the decisions in the case of *Samar Ghosh* (supra), *Narendra* (supra) and *K. Shrinivas Rao* (supra) relied upon by the learned Advocate appearing for the petitioner-husband, are not applicable to this case to state that the respondent caused mental cruelty to the petitioner as the facts of the present case are different from the facts of the said decisions.

24. We, therefore, answer both the point Nos. 1 and 2 formulated by us, in the negative and hold that the petitioner is not entitled to divorce on the ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. Therefore, the impugned decree is liable to be

set aside by allowing the appeal, leaving the parties to bear their own costs in the circumstances present in the case. In the result following order is passed.

O R D E R

1. The appeal is allowed.
2. The impugned decree dated 11.08.2017 of divorce is set aside and the petition for divorce is dismissed.
3. Parties to bear their own costs.
4. Decree be drawn accordingly.
5. In view of disposal of the appeal, Civil Application No.12452 of 2017 does not survive and the same is disposed of.

[S.M.GAVHANE, J.]

[S.S.SHINDE, J.]