

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FAMILY COURT APPEAL NO.20 OF 2016

Mr. Deepak Gokulchand Aggarwal ..Appellant

Vs.

Mrs Meghna Deepak Aggarwal ..Respondent

Mrs. Aarti Bhide a/w Charulata Khanna, for the Appellant.

Mr. Sushil Upadhyay I/b A. M. Saraogi, for the Respondent.

**CORAM :- K. K. TATED &
B. P. COLABAWALLA, JJ.**

**RESERVED ON :- MARCH 27, 2018.
PRONOUNCED ON :- APRIL 27, 2018.**

JUDGMENT:- [PER B. P. COLABAWALLA, J]

1 By this Appeal, the Appellant (Original Petitioner – husband before the Family Court) has challenged the judgment and decree dated 24th August, 2015 passed by the Family Court, Mumbai at Bandra. By this judgment, the Petition of the Appellant for divorce on the ground of cruelty under section 13(1)(ia) of the Hindu Marriage Act, 1955 was dismissed and the Appellant was directed to pay maintenance for the child @ Rs. 15,000/- per

month from the date of filing of the Written Statement by the Respondent – wife before the Family Court. The relief of injunction claimed by the Appellant – husband was also rejected by the Trial Court. It is being aggrieved by this judgment and decree of the Family Court that the present Appeal has been filed.

2 The brief facts giving rise to the present Appeal are as under:-

The Appellant herein was the Original Petitioner-husband before the Family Court. The Respondent herein was the Original Respondent-wife before the Family Court. The marriage between the Appellant and the Respondent was solemnized on 5th December, 2006 at the Cricket Club of India Lawns, Churchgate, Mumbai. It is not in dispute that the marriage between the Petitioner and the Respondent is registered. Prior to marriage, the Appellant was a bachelor and the Respondent was the spinster. Out of the said marriage, the Appellant and the Respondent have a son named Kairav born on 25th December, 2007. It is an admitted fact that the said son resides with the Respondent.

3 It is the case of the Appellant that after marriage, the Appellant and the Respondent cohabited and resided with the Appellant's parents at their residence situated at 64, Ameeta building, Gen. Jagannath Bhonsle Marg, Mumbai- 400 021. Thereafter, on 1st September, 2007, the Appellant took up a flat on leave and licence basis situated at 193/25, Omkar Co-operative Housing Society, sector 16A, Nerul, Navi Mumbai 400 706 and started to reside in the said premises.

4 It is the case of the Appellant that initially he had filed Petition bearing No. A-2342 of 2007 for divorce against Respondent on the ground that the same was null and void. However, after filing of the said Petition, several events transpired and the Respondent has filed various false cases against the Appellant, his parents and brother ruining and maligning their name in the society. It is the case of the Appellant that the Respondent went to the extent of wrongfully filing cases of molestation against the Appellant's brother and thereby ruining his chances of pursuing an honorable profession and a decent living. It is in these circumstances that the present Petition came

to be filed against the Respondent seeking divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955 on the ground of cruelty. We must mention that Petition bearing No. A-2342 of 2007 has been withdrawn.

5 It is the case of the Appellant that he first met the Respondent on 1st May, 2006 in a meeting arranged by one Raman Agarwal. At that particular moment of time, the Appellant's mother was suffering from Cancer and was under going treatment for the same. At that time, when the Appellant and the Respondent met in the presence of Mr. Agarwal, it was impressed upon the Appellant that the Respondent was a well educated, caring and loving person, kind hearted and had a very good sense of humour. It was further represented to the Appellant that the Respondent belonged to a very cultured and highly respected family and the Respondent's father was a businessman having a texturing plant at Silvassa. It was further represented that the Respondent was very good natured, calm and cultured and that she could completely take care of the household duties as a housewife.

6 It is thereafter stated that the Appellant informed the Respondent that his earnings per month were not more than Rs. 20,000/- per month and also that his mother is a cancer patient and needed attention. It is the case of the Appellant that the Respondent and her parents assured the Appellant that the Respondent would adjust to the salary of the Appellant as well as live in harmony with the Appellant's parents.

7 In these circumstances, on 10th May, 2006, an engagement ceremony was performed finalizing the marriage proposal between the Appellant and the Respondent. The ceremony was attended by close relatives of both parties. It is the case of the Appellant that he and his father amply made it clear that the Appellant's mother, being gravely sick, the marriage ceremony would be performed only after her chemotherapy treatment was finished. However, disregarding the Appellant's pleas and the poor health of the Appellant's mother, Mr. Raman Agarwal as well as the Respondent's father time and again started pressurizing the Appellant's parents and also the Appellant's grand father for fixing an early date for the marriage.

8 It is also the case of the Appellant that prior to marriage, the Appellant expressed his desire to the Respondent that he would like to visit the Respondent's home and meet her family, to which the Respondent flatly refused saying that as per their custom the groom does not visit the bride's house before marriage. Hence, the Appellant was not allowed to meet the Respondent in her own house prior to the marriage. It is the case of the Appellant that all this while, from the month of May 2006 till October 2006, the Respondent's father kept harassing the Appellant's father for an early marriage. It was therefore finally agreed that the marriage between the Appellant and the Respondent was to be solemnized on 5th December, 2006 at the Cricket Club of India in the morning and that is how the marriage was solemnized.

9 It is the case of the Appellant that before the reception of the marriage, the Respondent threw temper tantrums causing inordinate delay in reaching the venue. Be that as it may, after marriage, the Appellant and the Respondent went for their honeymoon to Singapore. There the Respondent would disappear on her own without prior intimation to the Appellant as a result of

which the Appellant would suffer severe trauma and harassment and get worried for the Respondent's safety in an unfamiliar place. The Appellant has spent most of his time looking for the Respondent and worrying about her whereabouts. The Appellant was petrified of the Respondent's irrational and irresponsible behaviour. It is thereafter averred that after marriage the Appellant realized that the Respondent always spoke about her friends and relatives in a demeaning manner and ridiculed them. When the Appellant asked the Respondent as to why she has developed such a nature of ridiculing her family and friends, the Respondent surprised the Appellant with her answer that they were not her friends but were bees on her money. According to the Appellant, the Respondent used derogatory terms for everyone, including her own family members. Initially, the Appellant believed the Respondent's stories. However, with passing of time the Appellant realized that all that the Respondent said were either lies or statements twisted to suit her own convenience.

10 In the Petition before the Family Court great details have been set out about the cruelty that has been meted out to the Appellant by the Respondent. We, in this Appeal are not going into

great detail about each and every incident save and except the major ones that have been canvassed before us by the learned counsel appearing on behalf of the Appellant.

11 Considering the submissions made by both counsel and perusing the papers and proceedings, following points arise for our consideration:-

I	Whether the Appellants prove that the Respondent had treated him with cruelty as averred in the Petition?	In the affirmative.
II	Whether the Appellant has made out a case for dissolution of their marriage which was solemnized on 5 th December, 2006 by decree of divorce under Section 13 (1) (ia) of the Hindu Marriage Act, 1955?	In the affirmative.
III	Whether the Appellant has made out a case for setting aside the impugned judgment and decree dated 24 th August, 2015 passed by Family Court No.3, Mumbai in Petition No. A-134 of 2009?	Partly, Yes

12 The first incident that was brought to our notice is an incident that took place on 9th August, 2007 when the Respondent strongly hit the Appellant's mother in her stomach with her elbow

knowing fully well that the Appellant's mother was suffering from breast cancer and that during an operation the Appellant's mother's abdominal muscles were removed and transplanted around the chest along with the fat and fascia and there were no nerves on the left side of the abdomen and therefore she did not feel any pain immediately. However, a week later the pain gradually increased.

13 The second incident is the incident that took place on 25th August, 2007 wherein the Respondent once again assaulted the Appellant's mother and as a result of which she developed complications and was hospitalized.

14 The third incident is an incident that occurred on 10th August, 2007 when the Respondent slapped the Appellant as an argument ensued between them. For this incident, the Appellant in fact filed N. C. No. 1133 of 2007 on 26th August, 2007.

15 The fourth incident is an incident that took place on 18th November, 2007 wherein the Respondent filed a police complaint with the Goregaon Police Station against the Appellant

and his family members with respect to dowry and physical assault on her.

16 Thereafter, on 19th November, 2007, the Respondent filed another complaint against the Appellant and his parents at Cuffe Parade Police Station before attacking the Appellant's parents' house at Ameeta building (the fifth incident). In this complaint it was alleged that the Respondent was prevented from getting into house that was admittedly owned by the parents of the Appellant. After this complaint was filed, on the very same day, i.e. on 19th November, 2007 the Respondent along with some other persons attacked the Appellant's father and mother at Ameeta building and damaged the Appellant's father's premises. Accordingly, a complaint was filed by the Appellant's father against the Respondent and her family and friends with DCP, Colaba.

17 Thereafter, it is alleged that on 28th November, 2007, the Respondent filed Petition B-113 of 2007 in the Family Court demanding the Appellant's father's property. This Petition was dismissed by the Family Court. It is thereafter stated that on 5th April, 2008 and 5th May, 2008, the Appellant's father was

assaulted by the Respondent's father and his associates for which the Appellant's father lodged a complaint and filed a criminal case No.64/SW/O8 in the Metropolitan Magistrate Court at Esplanade. On 21st April, 2008 the Respondent's family and others filed criminal Revision Petition No.765 of 2008 before the Sessions Court, Mumbai to quash the said case which was rejected on 20th September, 2008. This order was challenged by filing a Writ Petition in this Court wherein this Court gave partial relief and directed that the case in the Magistrate's Court be tried in a time bound manner. We must mention here that this criminal complaint was ultimately withdrawn by the Appellant's father on the basis of an agreement that was arrived at between the parties vide a Memorandum of Understanding dated 25th July, 2013. It appears that though the Appellant's father acted on the basis of the said MOU, the Respondent and her family members have failed to keep up to their end of the bargain under the said MOU.

18 Be that as it may, another incident that occurred was on 15th July, 2008 when an NC came to be filed by the Respondent in MRA Police Station for which the Appellant and his father were detained for six hours and finally freed on proving to the police the false nature of the said NC. This NC is numbered as NC No.932

dated 15th July, 2008. We must mention here that there is no dispute that this incident has taken place. However, it was argued before us that the Respondent is unaware whether the Appellant and his father were detained for six hours.

19 Thereafter, on 18th July, 2008 a criminal complaint of molestation was filed against the Appellant's younger brother – Dr. Deepesh and others at Nirmal Nagar Police Station bearing FIR No. 171 of 2008. According to the Appellant, at that relevant time, the Appellant and his entire family was in the Sessions Court for hearing of an Anticipatory Bail Application. In this very proceeding, the Respondent also filed a criminal appeal in the High Court for getting further investigation done on the production of some CCTV footage from the security of the High Court and her said Appeal was allowed by this Court and the police were directed to do further investigation. Thereafter, further investigations were done and the police filed their report dated 22nd February, 2014 wherein it has been opined that no substantial proof is received to the effect that the CCTV footage being claimed by the Respondent was procured by them from the CCTV recording room of the High Court and the person visible in the footage is the same person which is accused in the case filed by the Respondent

herein. We will refer to this report in greater detail later in this judgment. Be that as it may, this complaint filed against the brother of the Appellant was finally disposed of by order dated 16th July, 2016 when the Appellant's brother had filed an application for discharge under Section 239 of the Code of Criminal Procedure, 1973 (Crpc). By this order, the Metropolitan Magistrate's Court, after hearing both the parties, allowed the application and discharged the Appellant's brother vide Section 239 of the CrPC for offences punishable under Sections 341, 323, 504, 354 r/w 34 of the Indian Penal Code 1860 (for short "IPC").

20 What is important to note is that in this order, the court has recorded that apart from the complaint being lodged after some delay and for which there was no explanation, the Complainant (namely the Respondent herein) was not able to provide the description of any of the aforesaid three unknown persons (who allegedly acted on the behest of the Appellant's brother - Dr. Deepesh) either in her FIR or in her further statement. The court further noted that the Complainant had not produced her clothing, which were allegedly torn off by the so called three unknown persons to substantiate her allegations. Further, the Complainant had not disclosed the number of the

rickshaw nor had she stated that one of the assailants was accompanied by the Appellant's brother in motor car no. 9800. Further, the police report sets out the statement of the complainant that three unknown persons allegedly assaulted the Complainant and she sustained injuries. However, no medical certificate was also filed to prove the injuries on the person of the Complainant. It is in these circumstances that the Metropolitan Magistrate's Court observed that the Appellant's brother is the sole person against whom the police has submitted the charge sheet for commission of the alleged offences. It was an admitted fact that the assault had not taken place by the Appellant's brother, but on his instructions, by three unknown persons. Considering that those three unknown persons were never identified nor arrested nor arrayed by her in the FIR, the Metropolitan Magistrate's Court observed that the provisions of Section 34 of IPC were inapplicable against the Appellant's brother (the accused). The Appellant's brother was not liable to be prosecuted for sharing a common intention with the so called three unknown persons especially when the Police had never arrested any other person or submitted a police report against any of the so called unknown persons. The Court further opined that

the Investigating Officer had not collected any evidence to show that there was any direct or indirect involvement of the accused (Appellant's brother) to commit the offences punishable under Sections 341, 323, 504, 354 read with 34 of the IPC. It is in these circumstances that the Court observed that there is no evidence on record to frame the charge against the Appellant's brother (accused) and hence an order was passed allowing the application of the Appellant's brother and he was discharged of the offences punishable under Sections 341, 323, 504, 354 r/w 34 of the IPC.

21 Considering all these incidents and many more, on 13th January, 2009, the Appellant filed Petition No. A-134 of 2009 in the Family Court seeking a divorce on the ground of cruelty under Section 13 (1) (ia) of the Hindu Marriage Act, 1955. In this Petition, on 19th October, 2010, the Respondent moved an application for maintenance. This application was allowed by the Family Court vide its order dated 17th June, 2013 granting maintenance of Rs.10,000/- p. m. for the child and Rs. 30,000/- p. m. for the Respondent.

22 After filing of this Petition, another complaint was filed

on 20th December, 2011 by the Respondent against the Appellant's brother - Deepesh in MRA Marg Police Station wherein it was alleged that the Appellant's brother had threatened that he would kidnap the child of the Respondent.

23 It is the case of the Appellant that on 24th January, 2014 the Family Court ordered arrest warrant against the Appellant in RD No. 213 of 2011 despite the Appellant having made the full payment by 10th May, 2013. Despite full payment being made, the Respondent did not withdraw RD No. 213 of 2011 and requested for arrest behind the back of the Appellant. As far as this incident is concerned, the Appellant was released on his personal surety with a warning. The Appellant was subjected to confinement for the whole day and humiliated, at the hands of the Respondent, is the allegation.

24 On 25th November, 2014, the Respondent again moved an application seeking arrest of the Appellant in RD NO. 583 of 2013, despite the order dated 15th November, 2014 passed by one of us (K. K. Tated, J.) having granted relief by staying the said Family Court proceedings till 12th December, 2014. Despite the stay order of this Court, the Appellant was initially arrested and

thereafter released in view of the fact that this court had already stayed the Family Court proceedings as mentioned earlier.

25 Looking to all these incidents, and as narrated above, the learned counsel appearing on behalf of the Appellant, submitted that there was no real dispute that these incidents actually took place. There have been several criminal complaints filed by the Appellant and his family members against the Respondent and her family members and vice versa. She submitted that looking to all these incidents and certainly when looked at as a whole, a clear case of cruelty was made out by the Appellant. She submitted that some of these incidents have not even been discussed by the Trial Court in the impugned order. They have been completely ignored. Furthermore, according to the learned counsel, the Trial Court had gone completely wrong in taking each incident in isolation rather than looking at all the incidents as a whole and then coming to the conclusion whether there was a case of cruelty made out or otherwise. She also took us through the evidence led by the parties in respect of these incidents and submitted that this was a fit case where a decree of divorce ought to have been granted under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 and the impugned order ought to be

set aside, at least to the extent of not granting a divorce in favour of the Appellant.

26 On the other hand, the learned counsel appearing on behalf of the Respondent, submitted that the Trial Court had correctly appreciated the evidence led by the parties and has thereafter come to the conclusion that no case for divorce on the ground of cruelty has been made out by the Appellant. The Trial Court has examined each individual incident and thereafter come to the conclusion that it has. The learned counsel painstakingly took us through the impugned order and the reasoning given therein. He therefore submitted that there was absolutely no justification for interference with the impugned order which was well reasoned and passed on sound legal principles. Accordingly, he submitted that there was no merit in this Appeal and the same ought to be dismissed.

27 We have heard the learned counsel for the parties at length and have perused the papers and proceedings in the present Appeal.

28 At the outset, we must mention here that a detailed

Written Statement was filed by the Respondent to the Petition filed by the Appellant which can be found from pages 190 to 208 of the paper book. We have carefully gone through this Written Statement wherein the Respondent herself alleges several acts of cruelty that have been allegedly meted out to her and her family members by the Appellant and his family members. In fact, on this basis, an issue also was framed whether the Respondent proved that the Appellant had treated her with cruelty as averred in her Written Statement. This issue however was not at all decided by the Trial Court on the ground that the same was not necessary to decide the same since the Respondent had not made any claim based on the alleged cruelty and that by itself would not discharge the Appellant from proving cruelty pleaded by him.

29 Having said this, we shall now deal with the incidents of cruelty that were pleaded by the Appellant and examine the same on the basis of the pleadings and the evidence led by the parties in that regard.

**CRIMINAL COMPLAINT FILED BY THE RESPONDENT
AGAINST THE APPELLANT'S BROTHER FOR
MOLESTION:-**

30 The first incident and which according to us is one of the most important incidents of cruelty alleged by the Appellant is the criminal complaint filed on 18th July, 2008 by the Respondent against the Appellant's younger brother – Dr. Deepesh on the ground that the Respondent was molested by three unknown persons on the instructions/behest of the said Dr. Deepesh. In this regard, an FIR came to be filed bearing FIR No. 171 of 2008. This FIR can be found at pages 84-88 of the Respondent's compilation Exhibit-76. On the basis of the FIR Criminal Case no.2277/PS/2008 was filed in the Metropolitan Magistrate's Court at Bandra.

31 As far as this incident is concerned, the averments of the Appellant can be found at paragraph "oo" of the Appeal (page 179 of the paper book). The Appellant has stated that on 18th July, 2008 the Respondent filed a case against the Appellant's brother falsely alleging that with the help of three goons the Appellant's brother tore her clothing and threatened her to divorce the Appellant. It is thereafter stated that this complaint of the Respondent is totally false as the Appellant's brother (Dr. Deepesh) was with the Appellant at the Sessions Court for filing an

application for Anticipatory bail. In reply to the Respondent's FIR, a detail statement was filed at the Nirmal Nagar Police Station, explaining the facts. It is thereafter stated that despite this, the Appellant's brother was arrested and then released on bail and told to report the Police Station every Sunday like a criminal.

32 As far as this incident is concerned, the Appellant has led evidence in chief wherein what has been stated by the Appellant in his Divorce Petition has been reiterated in his evidence. Even in the cross examination of the Appellant he has categorically denied the incident of 18th July, 2008 and has stated that the Appellant and his brother had applied for Anticipatory Bail and it was not true to say that the Appellant and his brother, with the help of local goons has tried to pressurize the Respondent into divorcing the Appellant by molesting her. Apart from the Appellant being examined himself, the Appellant also examined his mother. The Appellant's mother in her evidence has stated that on 18th July, 2008, the Respondent filed a false molestation case against her son Deepesh (Appellant's brother). She has categorically stated that the time mentioned in the complaint made by the Respondent, her son Dr. Deepesh was with her at the

Sessions Court. What is interesting to note is that there is no cross examination of the Appellant's mother on this at all. The next witness that has been examined by the Appellant, is Appellant's father (PW-6). He, at paragraph 19 of his affidavit, has stated that on 18th July, 2008, the Respondent filed an FIR against his younger son Deepesh falsely alleging that Deepesh, with the help of three goons, tore her clothes and threatened her to give divorce to the Appellant. The Appellant has further stated that the said complaint is clearly false as his son Deepesh was with him at the Sessions Court for filing an application for Anticipatory Bail. He has further stated that this FIR has been investigated and re-investigated and the allegations of the Respondent in this regard have been proved false in the police report. We must state that even the Appellant's father has not been cross-examined with reference to this incident.

33 The only pleading that we find of the Respondent with reference to this incident is in paragraph 42 of her Written Statement (page 203 of the paper book). All that the Respondent has stated in her pleading is that on 18th July, 2008 she had come to meet her advocate in the Family Court for discussion with her

brother and father and whilst returning she was alone. It is thereafter stated that the Appellant took advantage of the same and the Respondent was humiliated/molested on the road. Accordingly, the Respondent's complaint came to be filed which are self explanatory.

34 What is interesting to note from these pleadings is that in the Written Statement the Respondent alleges that the Appellant took advantage of the situation that Respondent was alone and humiliated/molested her on the road. However, in the FIR filed about this alleged incident, the Appellant does not figure in the same anywhere. In the FIR, the allegation is that the Appellant's brother – Dr. Deepesh, conspiring with three unknown persons, on 18th July, 2008 had pushed the Complainant and pulled her dupatta and kicked on her private parts. The detailed police report with reference to this incident has been filed before us at page 209 of the Appellant's compilation. The police report with reference to this incident clearly states that in February, 2008 the Complainant (Respondent herein) had received summons to the effect that a suit was filed against her in the Family Court, Bandra and as the date of hearing in the said notice was 19th July, 2008, in order to file reply to it, the Complainant

(Respondent) had gone to meet her Advocate Sandhya Sharma at the Family Court at Bandra, Mumbai. After meeting her advocate at about 13.45 hours, the Respondent started to go to her residence at Goregaon by Rickshaw. On her way to the residence, near Ascension at fly over bridge, the Rickshaw suddenly broke down and therefore the Rickshaw driver pushed the Rickshaw and brought it on the service road and informed the Respondent that he would arrange for another Rickshaw. Thereafter, the Respondent got down at the service road and was waiting for another Rickshaw. At that time, three persons were standing there. There were rings in the fingers of their hands. Moreover, amongst them, there was a strongly built person wearing a black kurta and pajama. Another person was having a beard and was wearing a pant and a shirt. The third person's teeth were shabby and his face was dreadful. The strongly built person pushed the Respondent and pulled her dupatta and kicked on her private parts. Moreover, the person who was looking dreadful caught hold of her hair and the person who was sporting a beard was speaking on the phone to somebody, when he said "Doctor madam work had been done". At that time, the Respondent asked him as to who had sent him, upon which she was informed that "Doctor

has sent us” and stated that just now they have only torn of her kurta but hereafter they will tear her nickers, if she does not sign the papers pertaining to the divorce with the Appellant. Saying this, they left from there. After this she got a rickshaw on the service road and while she was proceeding ahead on the service road, out of her three assailants, the Respondent saw that the person sporting a beard sitting with the accused Deepesh in a black colour car bearing No.9800 on the highway by the side of the service road. At that time the said person and Deepesh were laughing seeing the complainant (Respondent). Thereafter the Respondent went to her house at Goregaon by rickshaw and narrated the aforesaid facts to her mother. Thereafter this information was also given to the Respondent's father over the phone. This information was thereafter also given by the Respondent's father to his friend Varun Chowdhary who thereafter came to the Respondent's house and accompanied her to Goregaon Police station and narrated all the aforesaid facts to the Senior Police Inspector there.

35 What we find very interesting is that it is the Respondent's own case that the rickshaw that she had gotten into

to go to her residence from BKC to Goregaon broke down on the highway. It is for this reason that the rickshaw was pushed on the service road. It is the Respondent's own statement that when the Rickshaw was pushed on the service road on the side and was parked there, three persons (who allegedly molested her) were standing there. It is not her case that those three people were either following her or arrived there once she was at the spot where the rickshaw had broken down. It is also not her case or allegation that the rickshaw driver was in anyway involved in this incident. This being the case, it is ludicrous to suggest that her 3 assailants, and who were supposedly acting at the behest of the Appellant's brother, happened to be at the exact same spot where the rickshaw broke down. The police report which has been prepared after further investigation (as ordered by this Court in Writ Petition No.3075 of 2012 dated 26th September, 2012), was also filed in the Magistrate's Court. After this report came to be filed, the Appellant's brother Dr. Deepesh filed an application under Section 239 of the CrPC for discharge in the said Criminal Case No. 2277/PS/2009. This application for discharge came to be allowed by the Metropolitan Magistrate's Court, Bandra, Mumbai vide its order dated 16th July, 2016. This order clearly records

that though this incident occurred on 18th July, 2008, the Complainant had lodged the FIR on 19th July, 2008, and for this delay, there was no explanation. It has been further recorded that the Respondent had not been able to provide description of any of the aforesaid three unknown persons either in her FIR or in her further statement. Further, the Respondent had not produced her clothes which were allegedly torn off by the so called three unknown persons at the time of the alleged incident to substantiate her allegations and neither had the Respondent disclosed the number of the rickshaw in which she was traveling. Despite the fact that it is her case that she was molested and had suffered injuries, the Investigating Officer had not filed any medical certificate on record to prove injuries on the person of the Respondent. The chargesheet that came to be filed was against one person only namely Dr. Deepesh for the alleged offences. In this regard, the Metropolitan Court opined that the provisions of Section 34 of the IPC were inapplicable against Dr. Deepesh. Dr. Deepesh was not liable to be prosecuted for the alleged offence for sharing a common intention with the so called three unknown persons especially when the police had never arrested any person or submitted a police report against any of the so called unknown

persons. The Investigating Officer had not collected any evidence to show that there was either any direct or indirect involvement of Dr. Deepesh to commit offences punishable under Sections 341, 323, 504, 354 r/w 34 of the IPC. It is in these circumstances and considering the very object of Section 239 of the CrPC, the Metropolitan Magistrate allowed the application of discharge.

36 On going through this order, we find that the application of the Appellant was allowed after perusing the police report filed before it and the Magistrate finding absolutely no evidence whatsoever against Dr. Deepesh (namely the Appellant's brother). We, therefore, find that as far as this incident is concerned, the Appellant's brother was wrongfully accused of molesting the Respondent. More importantly, what is also important to note is that in the evidence led by the Appellant's mother as well as the Appellant's father, it is their case that Dr. Deepesh at the time of the alleged incident was in the Sessions Court with them applying for Anticipatory Bail apprehending that the Respondent may file a complaint against them under Section 498A of the IPC. This evidence has not been controverted whatsoever by the Respondent. This is another factor, which at

least to our mind, clearly goes to show that there was no real substance in the FIR filed by the Respondent against the Appellant's brother on the alleged ground of molestation. We clearly find that this complaint filed against the Appellant's brother would certainly amount to cruelty as it has tarnished the image of the Appellant and his entire family in society and would certainly amount to cruelty as contemplated under Section 13 (1) (ia) of the Hindu Marriage Act, 1955. According to us, on this ground alone the Appellant would be entitled to a decree of divorce.

37 It is crystal clear from the report submitted by the Nirmal Nagar Police Station in a molestation case filed by the Respondent Wife that she can make false statements to gain favourable orders even before the Courts. In that case she specifically made a statement that she obtained CCTV footage from the High Court to show that the Appellant's brother tried to pressurize her even in the High Court premises. The official English translated portion of the police report which reads thus shows that the Respondent intentionally made false statement in a proceeding before the Magistrate Court hearing Case No. 2277 of 2011.

“On the date 17.12.2011, he and his father had gone to the High Court alongwith the complainant for hearing into the said petition. The complainant had seen the person who had beaten her up in the aforesaid case on the date 19.7.2008, outside the High Court building with the arrested accused Dipesh. He threatened the complainant saying, “Still you have not mended up your behaviour, still you are coming to the Court, we will cut you and your child into pieces,” and both of them left away from them. When the complainant was scared. She made a complaint to M.R.A. Police Station.

On the date 11.1.2012 the witness and his father and friend Linesh Nagda had gone alongwith the complainant to the High Court for further hearing into the aforesaid writ petition. On that day, the complainant saw the accused, to whom she had seen outside the High Court on the date 17.12.2011, of the aforesaid case, in the compound of the High Court. Complainant gave the said information to the witness and father thereupon, he gave the said information to the complainant's advocate Ashokji Saraogi. The advocate asked him to check the C.C.T.V. footage of the Court. Thereupon, on that day itself, all of them had gone to Security officer's office in the High Court and gave the said information to the police who were present there and requested them (police personnel) to show the C.C.T.V. footage. “Thereupon they showed us C.C.T.V. footage, in the said footage, the complainant, on seeing a bearded person who was entering the Court premises, stated that he was the same person who had beaten her up on the date 19.7.2008. The beard on his face had grown up more. He was found to be of the age group of 40 years, having slim built and of the height about five feet 8 inches and wearing white shirt and black pant on his person. From this, when the police made the search for the said accused person in the precincts of the High Court, but, he was not found anywhere in the compound and around the High Court. On the date 11.1.2012, police sub-inspector Revankar had met us in the Bombay High Court. We gave the aforesaid information even to him thereupon police sub-inspector Revankar told us, ‘we will make an application to the High Court and get C.C.T.V. footage’. Thereafter, when all of us sought a copy of the said footage from the police, the police said that they could not give footage to us and if we wanted the said footage then we should make an application to Higher Officers and should get the same. “However, we make earnest request to him and told the gravity of the incident thereupon, he allowed us to record the said footage in the mobile, I downloaded the said footage in my mobile. We showed the said photos (images) to the High Court on the next date. If the bearded person from Muslim Community, to whom I saw in the C.C.T.V. footage of the Bombay High Court on the date 11.1.2012, if he comes before me then I can identify him.” The complainant's brother Piyush Goyanka recorded his statement accordingly and the same has been annexed herewith.

From the information given by the complainant and witness, when the enquiry was made with witness Linesh Laherchand Nagda, who has family relation with them, he gave the information as follows :- on the date 19.7.2008, when the complainant, after meeting her advocate of the Family Court, was returning to her house at the spot, near Bandra

Highway, her rickshaw got breakdown, thereupon rickshaw driver had taken his rickshaw aside on the service road. As soon as he had taken his rickshaw aside and parked, at that moment itself, some unknown persons caught hold of her and thrashed her and told her “Do as what Doctor says otherwise we will make your condition more worse” and one person out of the unknown persons beating her up, told someone from his mobile by making a phone call that - “Doctor madam your work has been done” thereafter, those unknown persons fled away through nearby lane there. On account of this eventuality, the complainant got scared and remained unmoved there. At that time, she saw around her, when across the service road on the Highway her brother-in-law by name Dipesh Agarwal seated in the black colour car. She did not tell me as to which direction he had gone. Moreover, I do not know as to exactly which spot the aforesaid incident had occurred on the service road. Thereupon, I told them that the aforesaid incident was wrongful and that they should question the relatives of Meghna's in-laws and told them to sit together with the members of their community and to resolve the said matter in a proper manner (amicably).

Thereafter, about three days later, Piyush Navalkishore Goyanka informed that he had gone alongwith the complainant and had lodged the offence with the Nirmal Nagar Police Station.

In connection with the aforesaid offence, the complainant has filed the Writ Petition in the High Court. On the date 11.01.2012, Navalkishore Goyanka, Piyush Goyanka and also the said witness alongwith the complainant had gone to the High Court, Bombay for hearing of the said petition.

On that day, when all of them were standing in front of Court Room No.3 in the High Court, at about 12.30 in the afternoon, the complainant told them that she had seen one of the persons who were thrashing her on the service road, at Bandra on the date 19/7/2008, in the precincts (compound) of the Court. Thereupon, the said information was conveyed to Advocate Ashokji Saraogi of the case. Thereupon, he told us to to check the footage of C.C.T.V. in the Court. Therefore, on that day itself all of us had gone to the office of the Security Officer and given the said information to the police personnel who was present there and requested him to show the footage of C.C.T.V. Thereupon, when he showed us the C.C.T.V. footage, Meghana on seeing one bearded person, who was being seen entering the Court precincts in the said footage, stated that this was the same person who had beaten up her up on the date 19/7/2008. Thereupon, all of them (us) had sought a copy of the footage to the said police, he had told us that he could not give the said footage to from and that if we wanted the said footage, then we should make an application to the higher (superior) officer and to get the same. However, when we made earnest request and told him the gravity of the incident, he allowed us to record the said footage on mobile, thereupon, Piyush Goyanka had down loaded the said footage in the mobile. Statement of the said witness has also been recorded and included in the papers.

When enquiry was made with the arrested accused Dipesh Gokulchand Agarwal, gave the information that since the time of marriage there has been quarrel between the complainant and his brother

Deepak Gokulchand Agarwal. Therefore, the family members of the complainant's parental home were harassing Deepak, parents and him in various manner and thereby they were trying to grab their movable and immovable properties. Therefore, the complainant's relatives have lodged many false complaints against them with different police stations. As such the aforesaid activities of the complainant and her parents were increased and therefore, Deepak Agarwal had filed a petition in the Family Court, B.K.C., Bandra in the year 2007 for granting him the order to live separately from the complainant. Therefore, complainant's relatives filed a suit in the Court to get the property of the parents of the accused and harassed his parents, brother Deepak and him in various ways. Moreover, as the accused had got the information that the complainant was thinking of filing case against his brother, mother and father and him, under Section 498(A), the accused and his parents and brother together had gone to the office of the Registrar of Sessions Court, Mumbai with their advocate I.B. Singh, on the date 18/07/2008 at about 12.00 noon, to make an application for getting anticipatory bail to prevent from being arrested, if she (complainant) filed such case. (complainant) and we were there upto about 4.30 to 05.00 p.m. in the evening. For hearing of the said matter we had again remained present in the Session Court on the date 19/07/2008, and in the hearing, we were granted anticipatory bail.

When the accused was in the premises of Sessions Court, Mumbai on the date 18/07/2008, from 12.00 to 5.00 p.m. During that period, some unknown persons had beaten up the complainant and the said unknown person fled away, he (accused) was nearby spot, where the complainant was beaten up, such complaint has been lodged by the complainant and her relatives against him on the date at Crime Registration Number 171/2008, under Section 341, 323, 504, 354, 34 of I.P.C. and he was arrested. When he had given the aforesaid information to the police. Moreover, on that day, as he was in the Sessions Court, neither he had seen or waylaid the complainant on that full day. Moreover, she was not molested or beaten up. In order to malign his character and to see that his doctor (medical) practice is stopped and to cause loss to him, the complainant at the instance of her relatives lodged the aforesaid false complaint against him and he had told this fact to PSI Revankar at that time. However, as he told him that the proofs were found against him, therefore, the charge-sheet was filed. As the Charge-sheet was filed against him without making proper investigation and as he was innocent in the said offence, he had filed writ petition Number 1861/11 in the High Court to quash and set aside the complaint. On the date of hearing in to the said petition, the complainant and her father and other associates were coming to the Court, though they had nothing to do with the same. On the date 17/12/11, the accused had gone to the High Court alongwith his advocate. On that day, as the Hon'ble Judge had not come in the Court, without making my hearing in to the said petition, hearing of the petition was adjourned to 11/1/12 at 11.00 a.m. On the date 11/01/2012, the said accused, alongwith his advocates and his assistant were about to go out of the Court precincts, Investigating Officer of his case Police Sub Inspector Revankar had me him there, hence the accused greeted him 'Good Morning' and went ahead with his advocate. A that time,

complainant's father Navankishor Goyanka, Piyush Goyanka, Ajay Dalmia and some other persons were standing there. As soon as the Accused and his advocate went ahead, the Complainant's brother Piyush Goyanka on seeing him said, "Let's give him bashing" and proceeded towards him (accused). When Ajay Dalmia told him (Piyush) that - "All of us are in Court, if we do this then all of us will come in a fix" and dragged him back. "My advocate's Assistant and I have heard the said words and seen the said act." When they (Advocate & Assistant) took him (accused) alongwith them out side the Court and from there they took the accused to Bellard Pier Court. At that time he had ignored the aforesaid incident. However, as he had realised that complainant's associate and relatives would again hatch some conspiracy against him and would implicate him in some case. Hence, on each date of hearing into the Writ Petition, the accused Dipesh Agarwal used to move in and out of the Court only alongwith Advocate Sunil D'souza and his Assistant. On the date 19/1/2012, hearing was made in his aforesaid Writ Petition and decision was given to the effect that the points putforth by him have been kept open and that the hearing in to his case would be made in the concerned Court and there was no need to make enquiry (investigation) again and by giving such decision, the Hon'ble Court disposed of his Writ Petition. Therefore, at about 12.05 he alongwith his advocate Sunil D'souza left the High Court premises and went to Bellard Pier. Where he left (dropped) the advocate and at about 12.30 he went a taxi to his father's house near Mantralaya and relaxed.

Moreover, he never met the complainant on any date of hearing when he remained in the Hon'ble High Court for the hearing into the Writ Petition filed by him nor, he threatened her anywhere or he had shown any person by any pointing at him and threatened her in any manner whatsoever. Moreover, he had not asked any persons to beat up the complainant on the date 18/7/2008. However, the complainant and her relatives and associates, with an intention to cause financial loss and physical and mental harassment to him and his family members and to make them to suffer permanently in their rest of the life, threatened him and his family members and by hatching some or other conspiracy as aforesaid and approaching some or other police station lodge false complainant against them, such information has been given by the accused and the statement given by the accused has been recorded and the same has been included in the papers.

In order to make enquiry as to who has provided the C.C.T.V. footage submitted (produced) by the complainant, in the Hon'ble Court in the said matter, letter was sent to the Additional Police Commissioner, Protection and Security, Senior Police Inspector, Azad Maidan Police Station, In charge Police Inspector, High Court, Security Department and informed to make available the C.C.T.V. footage produced by the complainant in the Hon'ble Court and letter bearing o.w. No. 7958/13, dated 11/ 10/13 of Nirmal Nagar Police Station was sent to send the Police Official making available the photo in C.C.T.V. footage to the complainant and her relatives, to the Police Station to make enquiry and thereby information has been called for. In pursuance of the said letters Assistant Police Commissioner, Protection and Security, Mumbai and

Incharge Police Inspector, High Court, Mumbai, by their letter informed that 'if anyone demands footage or a photo from C.C.T.V. in the High Court, then unless there is an order in writing from the Additional Police Commissioner, Protection and Security, Mumbai the same is not given to anybody.' Moreover, upon making enquiry with the official who looks after C.C.T.V. recording in the High Court, he has clearly stated that on the date, stated by the complainant, photo or footage from the recording was not given to any one. Moreover, upon perusing the station diary of the said date, no entry of the C.C.T.V. footage is found to have been made therein. Moreover, it has been informed that no useful information is received about obtaining the said footage and photo by the complainant in her mobile illegally by whose assistance. Storage and D.V.D.'s capacity storing the recording (footage) in the High Court is only of 11 days after 11 days old recording gets deleted and new recording was stored, thus informed.

Upon making enquiry with Police Constable No. 080955/Shankar Baban Bhosale attached to C.C.T.V. Recording Cell in the High Court during the period from August 2010 to February 2013, in the High Court, at Mumbai he informed that -

He, during the period from August 2010 to February 2013 was in High Court Security Department, at High Court in C.C.T.V. Recording Room, for monitoring C.C.T.V. Footage and informing the superiors immediately, if there was a likelihood of occurring any untoward incident. And the aforesaid information was stored by Computer. He does not have any knowledge as to how the said information (data) is stored or checked. In the High , C.C.T.V. Control Room is near Gate Number 4 of the Bombay High Court where except the official on duty and In-charge Police Inspector, no body else is allowed to enter. As the recording made there recording and other information (data) are of confidential nature, without the written permission of the office of the Additional Commissioner of Police to the Engineer of Shargi Company looking after the maintenance of the C.C.T.V., to comply with the demand, the Engineer of the said company makes the compliance thereof. In the computer there, recording of only 11 days in stored and after 11 days the same gets deleted automatically.

On the date 11/1/12, he as usual, was discharging his duty in the aforesaid C.C.T.V. Control Room from 8.00 hrs to 20.00 hrs. On that day no person or police official or officer had come in the said room or nobody was allowed the entry to the said room for checking (seeing) C.C.T.V. footage or photo, in the said room. Nor anybody was shown the screen of the computer making C.C.T.V. recording. Moreover, the recording thereof was not transferred to mobile. Moreover, he has not seen or is not even knowing anyone by name Meghna Agarwal, or Piyush Goyanka or Naval Kishor Goyanka or Linesh Nagda. Moreover, he has not even seen or heard any policeman making search in respect of the offence committed by any person against any woman, on the date 11/1/12.

Working of the Bombay High Court starts everyday at 11.00 a.m. and movement of about 3000 of different kinds of people right from government employees, Police Officers, and Staff, advocates witnesses petitioners filing the petition and respondents starts in respect of different

cases there. These people consists of different castes, religions and many persons from Muslim Community come there, it is impossible to keep their identity.

From the information given by the complainant herein and the witnesses giving information from her side, a letter bearing o.w. No. 7855/13 dated 04/10/2013 of Nirmal Nagar Police Station, was sent and information was sought as to whether, the complainant had lodged complainant against the accused herein on the date 11/01/2012 and on the date 17/12/2011 with Mata Ramabai Police Station, thereupon, the complainant has lodged a complaint on the date 20/12/2011 to the effect that, the accused Deepak Gokulchand Agarwal and an unknown person had intimidated and hurled abuses at the complainant at Hutatma Chowk, near parking, Fort, Mumbai on the date 17/12/11, to the effect that if she spoke any thing in the Court about eh case then they would see her and her son and the same has been registered as Non Cognizable Complaint No. 924/11 under Section 504, 506 of I.P.C. and the complainant was intructed to seek relief from the Court, thus informed,.

As the advocate Ashokji Saraogi on behalf of the complainant herein was required to call for enquiry in the said matter, the complainant and the witnesses giving the deposition on her side was informed to give the full name and address of the said advocate and were told to inform to the said Advocate to remain present personally. However, they did not make any co-operation to that effect. Hence, the said advocate has not been brought before me to make enquiry with him. Moreover, when it was said that it was necessary to make enquiry with the complainant's mother-father, the complainant stated that as both of them were old in age, enquiry should not be made with them. Therefore, the enquiry could not be made with them.

Accused herein stated that he had seen R.V. Revankar the Investigating Officer of the case, in the High Court on the date 1/11/2012 and he had greatened him 'Good Morning', thereupon, in order to given the information in the said matter, information was given through the letter of the concerned police station to remain present for remaining present in the police station to give information, however, he did not remain present for the said enquiry work.

C.D.R. of the mobile of the accused for the date 1/11/12 was called for. However, even the same could not be made available.

When the accused herein was called in the police station for making enquiry, thereupon, at the time of enquiry alongwith him his father Gokulchand Tejpal Agarwal and advocate Negi had come to the police station. In the enquiry the accused gave the information that he always used to go to the High Court, with his advocate and his Assistant. Thereupon, he was told to bring his advocate Sunil D'souza, and his Assistant for enquiry, Moreover, he was asked to give their mobile number address. However, the accused's father asked and expressed anger as to why the advocate was being called for enquiry and the accused and his father did not make co-operation. Hence, the enquiry could not be made with him.

In the entire enquiry made in the present matter, the complainant was found bearded person in the precincts of the High Court near the

entrance gate on the date 01/11/12 at about 16.00 to 16.30 hrs. Moreover, second time he was found to be going out of the precincts of the Court and she had given the information thereof to her father on phone on that day, thus stated the complainant. However, the witness Linesh Nagda stated that on the date 01/11/12 at about 12.30 p.m., when the complainant's Father Navalkishore Goyanka, Piyush Goyanka and the complainant were standing in front of the Court Room number 03 of the High Court, the Complainant had seen him in the precincts of the Court. Moreover, on the date 01/11/2012, the complainants father her brother Piyush Goyanka and friend Linesh Nagada had gone with the complainant for the hearing in to the aforesaid petition in the High Court. At that time, she had told her brother and father that the complainant had seen in the precincts of the High Court the accused of the said case to whom she had seen outside the High Court on the date 17/12/11, thus her (complainant's) brother Piyush Goyanka stated. Discrepancy is found in the time of seeing the bearded person by the complainant as stated by the complainant and her brother and Linesh Nagda in their statement and in the information given to her father by the complainant.

Moreover the complainant alone gave the information to the C.C.T.V. police on the date 1/11/12 and checked the C.C.T.V. footage and thereafter, some days later again alongwith her brother and father and Linesh Nagda she had gone to the High Court and requested the police there for showing the aforesaid recording of the C.C. camera and the recording was seen by her and her father, brother and Linesh Nagda when the said footage was demanded the police had stated that the said recording could not be given legally, thus is the statement of the complainant. However, it has been stated that the said recording was seen by the complainant and her father and her brother Piyush Goyanka and family relation Linesh Nagda on the date 1/10/12. Discrepancy is found in the information of date of seeing the recording by the complainant and the recording seen by the witnesses.

The complainant had found the bearded person and the arrested accused were going out of the the High Court on the date 1/11/12, when the arrested accused stated, "Do you remember this man ? This is the same man of the date 18/07/08, keep this in mind" Moreover, some days later, she, upon going to the High Court alongwith father, brother and Linesh Nagda, the police had told them to go to M.R.A. Police Station or the concerned Police Station, they had gone to M.R.A. Police Station and narrated the aforesaid facts to the police, thus is the say of the complainant. However, upon perusing the complaint lodged by the complainant with M.R.A. Police Station, the complainant has made the complaint that on the date 20/12/2011, the accused Deepak Gokulchand Agarwal and unknown person had threatened her on the date 17/12/11 near Hutatma Chowk parking, Fort, Mumbai saying that if she uttered anything then they would see her on her child and hurled abuses and the said complaint has been lodged as Non Cognizable complaint No. 924/11 under Section 504, 506 of I.P.C. There is a discrepancy about the narration of the threat and also in the information of about in information given by the complainant in her statement about the threatening given by the Accused Deepak Agarwal to her and about the threatening given to her by

the opponent as per the complaint given by her in M.R.A. Marg Police Station.

Moreover, the police has stated to the the complainant and her father, brother and Linesh Nagda that C.C.T.V. footage of the High Court could not be given to them without the written order of the Senior Police Officer.

Moreover, there is a similarity in the same of the police department, the C.C.T.V. footage there cannot be given as per the order of the superiors.

A discrepancy is seen in the information given by the complainant and the witnesses about the fact as to when and from where the C.C.T.V. footage herein was taken. Moreover, there is no mentioning from which the police personnel they had obtained the said. Moreover, the statement given by the police constable no. 08-0955/Shankar Bhosale looking after the said work as stated that except the official working in the C.C.T.V. recording room of the High Court and in-charge police inspector nobody else had entered and that he had not given the said recording to anyone. Moreover, in the written information received from the said department, the same thing has been mentioned. Moreover, according to him on the working day, about 3000 people visit everyday to the High Court. Among them, there are many persons from Muslim community and bearded persons. From this, it is not understood in the enquiry as to exactly from whom the C.C.T.V. footage, produced in the Hon'ble Court by the complainant party, was acquired. From the information from the complainant and of the complainant party and the information given by the witnesses on her behalf moreover from the non co-operation made by the complainant party in respect of making her advocate of her case and her father to remain present, whose presence was utmost necessary in the matter of enquiry, no substantial proof is received to the effect that the C.C.T.V. footage, being claimed by the complainant party, was procured by them from the C.C.T.V. Recording room of the High Court and person visible in the footage is the same person, who is the accused in the case filed by her (complainant).

Therefore, this report is respectfully submitted for further necessary action or order.

Yours faithfully,

Sd/- (illegible)

(P. V. Pitale)

**Assistant Police Inspector
Nirmal Nagar, Police Station.**

The Senior Police Inspector, Nirmal Nagar Police Station, Mumbai.

Pursuant to the Order of the Hon'ble High Court, the enquiry into the said matter has been carried out. In the present matter, seen the statements of the Complainant, her brother and Linesh Leharchand Nagda recorded during the course of enquiry made by the Assistant Police Inspector Pitale with the Complainant and the witnesses who remained present on her behalf during the enquiry. It is found that there is a discrepancy between the time at which the Complainant had seen the bearded person, in the High Court precincts as well as in the

location of the place as well as in the information given to her father. Further, there is a discrepancy even in the date given by the Complainant on which she had seen the C. C. T. V. Footage in High Court and in the date given by the aforesaid witnesses on which they had seen the C. C. T. V. Footage. Moreover, there is also a discrepancy between the information given by the Complainant in her statement about the threat given to her by the Accused Deepak Agarwal, and about the facts in respect of the threat given to her by the opponent mentioned in the Complainant given by her in M. R. A. Marg Police Station and in the information about the said dates.

In the information given in the statement given by the complainant as well as the witnesses giving evidence on her behalf, there is a similarity that the C. C. T. V. Footage of the High Court cannot be given to them without the written permission of the Senior Police Officers.

Moreover, it has not been mentioned as to from which Police personnel, the Complainant and the witnesses obtained the said C. C. T. V. Footage. Further, in the statement given by Police Constable B. No.08 – 0955 / Shankar Bhosale working in the C. C. T. V. Recording Room in the High Court and in the information writing received from the said Section, it has been mentioned that save and except the official working in the C. C. T. V. Recording Room and the In-Charge Police Inspector, no one else is permitted to go in the said Room. Further it is his say that around 3000

people come in the High Court on a working day which include many persons belonging to Muslim Community as well as the bearded persons. Therefore, during the course of enquiry, it has not been revealed as to exactly from where the C. C. T. V. Footage produced by the Complainant before the Hon'ble Court, was obtained by them. Thus, no substantial proof is found to the effect that the C. C. T. V. Footage produced by the Complainant was obtained by them from the C. C. T. V. Control Room in High Court and that the person seen in the Footage is the Accused in the case filed by her. Therefore, I am agreeable to the Report by submitted by the A P I Pitale after completion of the investigation.

Hence, this Report is respectfully submitted for information and orders.

*Sd/- (illegible)
Senior Police Inspector,
Nirmal Nagar Police Station,
Mumbai
Outward No. _____ / 2014
Date – ____ / 02/ 2014.”*

38 What is interesting to note is that in the impugned order the Trial Court has taken note of the fact that the incident as

on 18th July 2008 had taken place and that a criminal case with reference to the same was pending in the criminal court. The Trial Court has however recorded that since the case has not been decided, it is very difficult to say that the allegations made by the Respondent in that complaint are false. However, as can be seen from what is stated by us herein above, the Appellant's brother has been discharged from the said case as there was absolutely no evidence against him of any nature whatsoever. This being the case, we clearly find that the filing of the complaint by the Respondent against the Appellant's brother on the ground that she was molested by the three unknown persons at the behest of the Appellant's brother (and from which case subsequently the Appellant's brother has been discharged as there was no evidence whatsoever against him), would certainly amount to cruelty under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 entitling the Petitioner/ Appellant to a decree of divorce.

COMPLAINT FILED BY THE RESPONDENT AGAINST THE APPELLANT'S BROTHER ON THE ALLEGED GROUND OF THREATENING TO KIDNAP HER CHILD:-

39 The next incident of cruelty that is alleged by the Appellant is when the Respondent on 20th December, 2011 filed a

complaint against the Appellant's brother Deepesh in the MRA Marg Police Station about the alleged threat given to her on 17th December, 2011 about kidnapping her child if she uttered anything. The said complaint was lodged as a non-cognizable Complaint No. 924 of 2011 under Sections 504, 506 of the IPC. This complaint also can be found in the police investigation report at page 215 of the Petitioner's compilation. This police report clearly states that there is a discrepancy about the narration of the threat and also in the information given by the Complainant/Respondent in her statement about the threat given by Deepesh to her. It appears that thereafter no further action was taken with reference to this complaint. This is yet another incident where a complaint was filed against the Appellant's brother Deepesh on the ground that he threatened to kidnap the Respondent's child. Even the police report clearly states that there are contradictory statements made with reference to this complaint by the Respondent before the police authorities. This is yet another incident, which to our mind, would certainly amount to cruelty as contemplated under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 especially when one takes into consideration that no further action was taken on this complaint by the

investigating authorities as there appeared no substance in the allegations.

40 We are mindful of the fact that this alleged incident occurred after the filing of the Petition. But that itself cannot be a ground for holding that the same would not amount to cruelty. It is now well settled by the Supreme Court in the case of **Vishwanath Agrawal Vs. Sarla Vishawnath Agrawal** reported in **(2012) 7 SCC 288** that even incidents occurring during the pendency of the Divorce Petition can certainly be taken into consideration to come to the conclusion whether a party is entitled to a divorce on the ground of cruelty or otherwise. The relevant portion of this decision reads thus:-

“46. It is interesting to note that the respondent has deposed that it was published in the papers that the daughter-in-law was slapped by the father-in-law and Neeta Gujarathi was recovered from the house but eventually the police lodged a case against the husband, the father-in-law and other relatives under Section 498-A of the Penal Code. We really fail to fathom how from this incident and some cryptic evidence on record, it can be concluded that the respondent wife had established that the husband had an extramarital relationship with Neeta Gujarathi. That apart, in the application for grant of interim maintenance, she had pleaded that the husband was a womaniser and drunkard. This pleading was wholly unwarranted and, in fact, amounts to a deliberate assault on the character. Thus, we have no scintilla of doubt that the uncalled-for allegations are bound to create mental agony and anguish in the mind of the husband.

47. Another aspect needs to be taken note of. The respondent had made allegation about the demand of dowry. RCC No. 133 of 1995 was instituted under Section 498-A of the Penal Code against the husband, father-in-law and other relatives. They have been acquitted in that case. The said decision of acquittal has not been assailed before the higher forum. Hence, the allegation on this count was incorrect and untruthful and it can unhesitatingly be stated that such an act creates mental trauma in the mind of the husband as no one would like to face a criminal proceeding of this nature on baseless and untruthful allegations.

48. Presently to the subsequent events. The courts below have opined that the publication of notice in the daily Lokmat and the occurrence that took place on 11-10-1995 could not be considered as the said events occurred after filing of the petition for divorce. Thereafter, the courts below have proceeded to deal with the effect of the said events on the assumption that they can be taken into consideration. As far as the first incident is concerned, a view has been expressed that the notice was published by the wife to safeguard the interests of the children, and the second one was a reaction on the part of the wife relating to the relationship of the husband with Neeta Gujarathi.

49. We have already referred to the second incident and expressed the view that the said incident does not establish that there was an extramarital relationship between Neeta and the appellant. We have referred to the said incident as we are of the considered opinion that the subsequent events can be taken into consideration. In this context, we may profitably refer to the observations made by a three-Judge Bench in A. Jayachandra [(2005) 2 SCC 22] : (SCC p. 32, para 16)

“16. The matter can be looked at from another angle. If acts subsequent to the filing of the divorce petition can be looked into to infer condonation of the aberrations, acts subsequent to the filing of the petition can be taken note of to show a pattern in the behaviour and conduct.”

50. We may also usefully refer to the observations made in Suman Kapur [(2009) 1 SCC 422 : (2009) 1 SCC (Civ) 204 : AIR 2009 SC 589] wherein the wife had made a maladroit effort to take advantage of a typographical error in the written statement and issued a notice to the husband alleging that he had

another wife in USA. Thus, this Court has expressed the opinion that the subsequent events can be considered.”

(emphasis supplied)

41 Looking to this Authoritative pronouncement of the Supreme Court, events that have occurred during the pendency of the Divorce Petition can and should be looked into for considering whether a case of cruelty is made out as contemplated under section 13(1)(ia) of the Hindu Marriage Act, 1955.

APPELLANT TAKEN INTO CUSTODY IN R.D.213 OF 2011 PURSUANT TO AN ORDER PASSED BY THE FAMILY COURT:-

42 The next incident of cruelty which has been alleged by the Appellant is that he was taken into custody on 24th January, 2014 pursuant to an order passed by the Family Court in R.D. No. 213 of 2011. This arrest order can be found at pages 61 to 62 of the order compilation tendered before us. What is interesting to note is that, the Appellant herein had filed Writ Petition No.10237 of 2013 in this Court in which an application was moved on the very same day namely 24th January, 2014. This Court on the said date recorded the statement made on behalf of the Appellant herein that he had already paid a sum of Rs.6,50,000/- and that he

would deposit a sum of Rs.3,00,000/- in the Family Court, Mumbai on 27th January, 2014 and further undertook to deposit a further sum of Rs.4,00,000/- on or before 10th February, 2014 in the Family Court as a part of arrears of maintenance. This Court ordered that the aforesaid amounts would be deposited in the Family Court Mumbai on the aforesaid dates and further granted liberty to the Respondent to withdraw the said amount. Despite this order being passed on the same date, the same was not brought to the notice of the Principal Judge, Family Court by the Respondent and instead she pressed for having the Appellant arrested. It is in these circumstances that the Appellant was arrested on 24th January, 2014. It is only thereafter that the Appellant was released on his personal surety. The Appellant was subjected to confinement for the whole day and humiliated at the hands of the Respondent, despite the High Court passing the order dated 24th January, 2014 granting time to the Appellant to pay the arrears of maintenance as stated herein above.

43 This however does not stop here. On 25th November, 2014 once again the Respondent moved an application seeking arrest of the Appellant in R.D. No. 583 of 2013. This is despite the

fact that an order was passed on 15th November, 2014 by this Court granting a stay of the Family Court proceedings till 12th December, 2014. This order of the High Court dated 15th November, 2014 was passed in the presence of the advocates for the Respondent. Despite this, the same was not brought to the notice of the Family Court and instead an application for arrest of the Appellant was made on 25th November, 2014. On this application filed on 25th November, 2014, the Family Court issued an arrest warrant against the Appellant. It is only at 4.45 p.m. when the order of the High Court was brought to the notice of the Family Court by the Appellant's advocate, that the warrant issued against the Appellant was stayed. Both these incidents clearly go to show that the Respondent was out to harass the Appellant by having him arrested time and again without bringing the true and correct facts before the Family Court and subverting the process of law and justice. This, to our mind, would certainly amount to cruelty as contemplated under section 13(1)(ia) of the Hindu Marriage Act, 1955 entitling the Appellant to a decree of divorce.

FILING OF N.C.932 BY THE RESPONDENT UNDER WHICH THE APPELLANT AND HIS FATHER WERE DETAINED FOR SIX HOURS:-

44 Another incident of cruelty that is alleged by the Appellant is one of 15th July, 2008 when the Respondent filed N.C. No.932 in the MRA Police Station for which the Appellant and his father were detained for six hours and finally released after proving the false nature of the N.C. The fact that this N.C. was filed is not in dispute and in fact has been produced by the Respondent themselves in their compilation. It appears that no further action has been taken on this N.C. and despite this we find that there is absolutely no discussion about this incident in the impugned order. To our mind, this is one more incident which goes to show that the Respondent was out to harass the Respondent by filing frivolous complaints and having him detained and/or arrested.

THE RESPONDENT ASSAULTING THE MOTHER OF THE APPELLANT ON 9TH AUGUST 2007 AND 25TH AUGUST 2007:-

45 One more incident that we would like to narrate is one that took place on 9th August, 2007 and 25th August, 2007. The allegation is that on 9th August, 2007, the Respondent hit the Appellant's mother in her abdomen with her elbow knowing fully well that her mother in law was suffering from breast cancer and

the abdomen muscles were removed and transplanted around the chest along with the fat and fascia and there were no nerve on the left side of the abdomen. However, as the days passed she felt abdominal discomfort. On 25th August, 2007, again the Respondent assaulted the Appellant's mother as a result she developed complications and was hospitalized. The allegation is that it was found that the hit was in the pancreas and pancreas were damaged. The Appellant's complaint with reference to this incident also came to be filed by the Appellant on 17th September, 2007. Though this complaint has been filed after quite some delay, the same has been explained by the Appellant in his affidavit in lieu of evidence at paragraph 28 thereof. It has been stated that on 26th August, 2007 an N.C. was registered with the Cuffe Parade Police Station for abuse done by the Respondent to the Appellant on 10th August, 2007 and again on 14th August, 2007. This incident was related to the Respondent slapping and abusing the Appellant. At that time the Inspector was informed about the physical assault on the Appellant's mother at the hands of the Respondent. It was informed that a written complaint was required to be given and therefore the police authorities avoided to file a complaint. Due to the Appellant's mother's critical

condition in the hospital, a written complaint was filed on 17th September, 2007. According to the Appellant, the police officer on the duty was persistently avoiding to file the complaint with reference to the abuse on his mother. Even the NC filed by the Appellant on 26th August, 2007 was registered after a week of the complaint filed by the Appellant.

46 As far as the incident regarding the assault on the mother of the Appellant is concerned, the pleadings in this regard can be found at page 173 of the paper book. Even in his examination in chief, the aforesaid incident is narrated at paragraph 27 thereof. The only cross on this issue of the Appellant can be found at page 242 of the paper book (paragraph 82). In the cross examination the Appellant has stated that his mother was at home between 9th August, 2007 and 24th August, 2007. He has categorically denied that he has made any false allegation about the Respondent assaulting his mother. He has further denied that he and his parents conspired to throw the Respondent out of their house after taking her jewelry.

47 Apart from the evidence of the Appellant, the mother

of the Appellant has also led evidence and narrated the incident in her evidence. At paragraphs 7 and 8 of her examination in chief (page 251 of the paper book), she has categorically stated that on 9th August, 2007 when she called the Respondent for tea in the evening, she was hit by the Respondent with her elbow in her abdomen and chest knowing fully well that she was suffering from breast cancer and that during the operation, her abdominal muscles were removed and transplanted around the chest along with the fat and fascia due to which there was no sensation on the left side of her abdomen. In these circumstances, she could not feel any pain at that particular time. However, as the days passed, she gradually felt increasing abdominal discomfort. It is thereafter specifically stated that on 25th August, 2007, the Respondent again assaulted her. On that very night her condition deteriorated and her husband took her to the hospital where she was admitted. On evaluation it was found that she had acute pancreatitis which according to her, was due to the Respondent's assault. She has also stated that she has been in the hospital for 14 to 15 days fighting for her life but with the grace of God she survived. The only cross of the mother we find is at paragraphs 22 and 23 at pages 264 to 265 of the paper book. On going

through the cross, we do not find anything therein that shatters the testimony of the Appellant's mother. The Appellant's mother has categorically denied that she has falsely deposed that the Respondent assaulted her on 9th August, 2007 or 25th August, 2007. In fact, in the cross examination a suggestion was put to her that the Appellant and her parents were assaulting the Respondent and to avoid getting arrested by the police, the Appellant's mother had got admitted to the hospital. We find this suggestion on the face of it to be wholly ludicrous. Firstly, there is no pleading by the Respondent that she was ever assaulted by the Appellant and her parents on 25th August, 2007. Secondly, no complaint to that effect has ever been filed by the Respondent against the Appellant or his parents. Thirdly, in the cross examination, it has been specifically stated by the Appellant's mother that from 26th August, 2007 till 10th September, 2007, she was under going chemotherapy treatment for her cancer as she was suffering from breast cancer. All this clearly goes to show that the suggestion put forth to the Appellant's mother that she was admitted to the hospital only to avoid the arrest from the Police, is wholly unbelievable.

48 On going through the testimony of the Appellant as

well as of the Appellant's mother, we have no hesitation in holding that the testimony as given by the Appellant as well as his mother has not been in any way shattered by the Respondent. At least looking to the preponderance of probabilities and with the evidence on record, we have no hesitation in holding that this incident as narrated by the Appellant and her mother in fact took place and was not a concocted story, as sought to be alleged by the Respondent.

49 We must also mention that as far as this incident is concerned, the same has been dealt with in the impugned order at paragraph 98 thereof. The only reason for rejecting this contention of the Appellant and Appellant's mother is that the Respondent was pregnant of about four months at the time when the alleged incident took place and she had to take care of herself and the child in her womb, and therefore, it was not believable that she would give a blow to her mother in law causing complications to her body. We find this reasoning to be wholly of perverse. Merely because the Respondent was pregnant of about four months, is certainly not a reason to hold that she would not be able to give a blow to her mother in law. This is the only reason we find in the impugned order for rejecting the contention of the

Appellant.

50 There are several other incidents that have been narrated such as the incident that took place on 19th November, 2007 where the Respondent filed a complaint against the Appellant and his parents at Cuffe Parade police station before attacking Appellant's parents house at Ameeta Building. We are not going into details of these other incidents, considering the fact that the incidents discussed by us herein above are enough to grant a decree of divorce to the Appellant on the ground of cruelty under Section 13 (1) (ia) of the Hindu Marriage Act, 1955.

51 Looking to what is stated herein above, and looking at the facts of the case in their totality, we find that Trial Court had completely gone wrong in not granting a decree of divorce in favour of the Appellant. The mistake that the Trial Court has made is that it has wrongly examined each incident independently rather than looking at the case in its totality. Further, we find that some of the major incidents have not even been considered by the Trial Court in the impugned order. Looking to all these facts, we have no hesitation in holding that the impugned order suffers from perversity and the Appellant is entitled to a decree of

divorce.

52 In these circumstances, the following order is passed:-

- (a) The impugned order dated 24th August, 2015 is set aside insofar as it dismisses the Appellant's Petition seeking a decree of divorce.
- (b) The marriage solemnized between the Appellant and the Respondent on 5th December, 2006 stands dissolved by decree of divorce under Section 13 (1) (ia) of the Hindu Marriage Act, 1955.
- (c) The Appellant is granted a decree of divorce under Section 13 (1) (ia) of the Hindu Marriage Act, 1955.
- (d) Considering that the Appellant has succeeded before us, the direction by the Trial Court for the Appellant to pay costs of Rs. 15,000/- to the Respondent is also set aside.
- (e) As far Clauses 2, 3 and 4 of the operative part of the impugned order are concerned, the same are retained.
- (f) It is clarified that the Appellant shall pay

maintenance at the rate of Rs. 15,000/- p. m. for the child from the date of filing of the Written Statement till the child attains majority.

- (g) Arrears, if any, with reference to such maintenance shall also be cleared by the Appellant as expeditiously as possible and in any event within a period of four months from today.
- (h) Decree of divorce be drawn up accordingly.
- (i) The Appeal is, therefore, allowed with costs quantified at Rs.50,000/- to be paid by the Respondent to the Appellant within a period of four weeks from today.

(B. P. COLABAWALLA, J.) (K. K. TATED, J.)