

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

SECOND APPEAL NO.407 OF 2018

Satish Dhudku Halnor,
Age 39 yrs., Occ. Service,
R/o Rohidas Housing Society,
Chalisgaon, Dist. Jalgaon.
Presently residing at Dakshata Nagar,
Centre No.2, Room No.3, Police Line,
Jalgaon, Tq. & Dist. Jalgaon.

... **Appellant.**

...**Versus...**

Sau. Yogita Satish Halnor,
Age 34 yrs., Occ. Household and
Tailoring work. Through,
Hiraman Nimba Patil, Ozar,
R/o Type-A, 2259, Township Ozar,
Nasik.
At present R/o Khanderav Tample, Ozar,
Tq. Niphad, District Nasik.

... **Respondent.**

...

Mr. K.C. Sant, Advocate for the appellant
Mr. K.S. Patil, Advocate for the respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 21st FEBRUARY, 2019

PRONOUNCED ON : 22nd APRIL, 2019

J U D G M E N T :

1 Present appeal has been filed by the original petitioner-husband challenging the concurrent Judgment and Decree against him. He had filed Hindu Marriage Petition No.327/2010 before 2nd Joint Civil Judge Senior Division, Jalgaon under Section 13 (1) (ia) and (ib) of Hindu Marriage Act, 1955 for dissolution of marriage. It is not in dispute that petitioner and respondent are the husband and wife and their marriage was solemnized on 11.12.2001 as per Hindu rites and customs. They have son by name Anand. Petitioner was employed in police even prior to the marriage. It is also not in dispute that petitioner had issued notice for dissolution of marriage on 15.04.2003 to the respondent and it was replied by the respondent. Petitioner had filed Marriage Petition No.112/2003 for dissolution of marriage, but then it was compromised. It is also not in dispute that the respondent-wife had lodged First Information Report for the offence punishable under Section 498-A of the Indian Penal Code against the petitioner and his family members. It was compromised during the pendency of the said criminal case. In spite of the settlement of the dispute, she lodged report again for the offence punishable under Section 498-A read with Section 34 and Section 494 of the IPC on 13.05.2005. Further, it is not in dispute that the petitioner and his family members have been acquitted from

the said criminal proceedings. Another criminal proceeding was filed by the father of the respondent under Section 97 of Cr.P.C. for custody of the respondent against the petitioner. That application was disposed of. Respondent-wife had also filed application under Section 24 of the Guardian and Wards Act for custody of son Anand. That application was dismissed. She has also filed application for maintenance under Section 125 of Cr.P.C. against the petitioner. Respondent-wife has also filed a complaint under Section 323, 504 of I.P.C. on 07.07.2003 against one Sonyabapu Deoram Thorat, who is the relative of the husband. Father of the respondent has also filed a private criminal complaint against petitioner and his relatives under Section 498-A read with Section 34 of the IPC on 02.08.2003 vide complaint case No.574/2003. One more application has been filed by the respondent-wife for various reliefs under Domestic Violence Act and it is pending before Judicial Magistrate First Class, Pimpalgaon, Tq. Niphad, Dist. Nashik.

2 The petitioner had contended that after the marriage, wife used to complain that the marriage was solemnized against her wish. She has tried to commit suicide by self immolation on that ground. One more time she has tried to commit suicide by consuming phenyl. She used to give threats to petitioner-husband regarding false implication of him as well as his family members in criminal matters. She was insisting on the petitioner to bring

luxurious articles. She used to pick up quarrels with the husband and because of that he was physically and mentally harassed. Wife went to her parents house without informing him on 28.03.2003 and his efforts to fetch her back did not yield results immediately. Thereafter, he had given the said notice for dissolution of marriage. It is also contended by husband that wife has lodged several criminal cases against him without any reason, it amounts to cruelty for him. Wife is not residing with him since 12.05.2005 and therefore, he prayed for dissolution of marriage.

3 The wife has resisted the claim of the husband by filing written statement. It is stated that in her reply to the notice issued by the petitioner, she has clearly stated that she is willing to cohabit, however, the petitioner has not taken her back. When she was with petitioner, he used to demand amount of Rs.50,000/- for purchasing flat. He had abused her and threatened her to kill, when she could not fulfill the said demand. He had not provided proper meals to her. She had, therefore, given an application to Police Station on 17.07.2003, however, since the petitioner himself is a constable, her application was not taken seriously. She was beaten and driven out of the house on 06.08.2003. Her father was constrained to file application under Section 97 of Cr.P.C. So also, she has been constrained to file various litigations. Though there was a compromise between her and the

husband during the pendency of earlier divorce petition, and petitioner had agreed to take her back for cohabitation; instead of keeping her with himself, he had kept her with his relatives for about 8-10 days. Thereafter, after beating her and abusing her in the house of relative, she was driven out. At that time, he was demanding amount of Rs.50,000/- for purchasing motorcycle. Therefore, she was forced to file report again under Section 498-A of IPC. It is stated that petitioner has performed second marriage. Even the relatives of the petitioner are pressurizing her for dissolution of marriage. She has expressed readiness to cohabit with the petitioner and therefore, she prayed for dismissal of the petition.

4 Both the parties have led oral as well as documentary evidence after the issues were framed. After considering the evidence on record and hearing both sides the learned Trial Court has dismissed the petition.

5 The said Judgment and Decree of the Trial Court was challenged by the husband in R.C.A. No.58/2015 before District Court, Jalgaon. The said appeal was heard by learned District Judge-5, Jalgaon and it was dismissed on 13.02.2018. Hence, this Second Appeal.

6 Heard learned Advocate Mr. K.C. Sant for appellant and learned Advocate Mr. K.S. Patil for respondent. In view of order passed by this Court

on 12.07.2018, the matter has been decided finally at the stage of admission itself.

7 It has been submitted on behalf of the appellant that most of the facts are not in dispute. However, since the petitioner had filed the petition, it was for him to prove that respondent had treated him with cruelty and has deserted him without any reasonable cause, for a period of more than two years. It is not in dispute that the husband and wife were residing separately since more than two years prior to the petition. It is also not in dispute that various criminal litigations were filed by the wife. Filing of so much of litigations itself amounts to cruelty. The husband and the relatives have been acquitted of the offences punishable under Section 498-A of IPC. Though the order of maintenance has been passed, the parameters are different. It has come on record that the father of the wife had filed application under Section 97 of Cr.P.C. contending that the wife has been wrongly confined. In fact, the said application ought not to have been entertained, as the father himself has admitted in the cross-examination that his daughter was in his house. Still he went on to file the application. Therefore, it shows that it was a frivolous application. Further, the son was with wife. Still she filed application under Section 24 of the Guardian and Wards Act for custody. That means, she has dragged the husband into unnecessary litigation and therefore, it amounts to

cruelty. No doubt, earlier also the husband had filed petition for divorce prior to 2006 and it was compromised in 2006 itself. However, there was no attempt by the respondent to resume cohabitation. By virtue of orders of the criminal Court she is getting maintenance @ Rs.9,000/- per month. Therefore, it appears that she is happy to reside separately. Under such circumstance, at least the ground of desertion should have been considered by both the Courts below. In order to buttress his submissions he has relied on the decision in A. Jayachandra vs. Aneel Kaur, AIR 2005 Supreme Court, 534, wherein expression “cruelty” has been interpreted as used in Section 13 of the Hindu Marriage Act. It has been observed -

“The expression 'cruelty' has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se

unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. To constitute cruelty, the conduct complained of should be 'grave and weighty' so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than 'ordinary wear and tear of married life'. The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of S.10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.”

8 Further reliance has been placed on **Smt. Mayadevi vs. Jagdish Prasad, AIR 2007 Supreme Court 1426**, wherein it has been held that for

proof of cruelty under Section 13 of Hindu Marriage Act, it is not required to be proved beyond reasonable doubt as it requires in criminal trial, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact but as the effect on the mind of the complainant spouse because of the act or omission of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there may be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence. Courts are required to probe into the mental process and mental effect of the incidents that are brought out in evidence.

9 Further reliance has been placed on the decision in **Shri Mangesh Balkrushna Bhoir vs. Sau. Leena Mangesh Bhoir** decided by this Court at Principal Seat in Second Appeal No.634 of 2013 dated 23.12.2015, wherein also the wife had lodged various criminal proceedings and they were taken as acts of mental cruelty to the husband.

10 Per contra, the learned Advocate appearing for the respondent supported the reasons given by both the Courts below and submitted that the various litigation has not been filed for luxury or for pleasure by the wife. But as it was the right of the wife to fight out for her rights and want to get redress of the grievances. Acquittal of the husband and his relatives from the

complaint under Section 498-A of IPC on merits without any observation by the Trial Court, that the complaint itself is false, will not amount to harassment of any kind. No advantage can be given to the husband. On the contrary, it had been produced on record that the wife has obtained decree for restitution of conjugal rights against the husband and still the husband is not taking steps to take her back for cohabitation. The husband was only interested in the divorce and if it is seen that he has taken action only within 20 days of alleged desertion or separation that he has given notice for divorce. There was no attempt by the husband to take the wife back for cohabitation. It has come on record that when she left the house under constrained circumstances she was pregnant. It would have rather given mental stress to the wife, than the husband. Dismissal of the application under Section 97 of Cr.PC. as well as 24 of the Guardian and Wards Act will not amount to cruelty or dragging the husband to a litigation. The Criminal Court has granted maintenance to the wife and the son and they were required to approach the revision Court in order to get enhancement in maintenance amount. Even that enhancement is granted. It shows that a competent Court had come to the conclusion that the husband is neglecting the wife and the son from maintaining. He also submitted that the authorities relied by the learned Advocate for the appellant are not helpful,

as the facts in those cases are different. What acts alleged in present petition amount to cruelty will have to be decided on its facts. Both the Courts have concurrently decided it and come to the conclusion that those alleged acts do not amount to cruelty or desertion without reasonable cause by the wife. Therefore, no substantial question of law is arising in this matter.

11 The first and the foremost fact, that is required to be considered is, the petitioner had filed Hindu Marriage Petition No.112/2003 on 09.06.2003 and it was withdrawn on 18.08.2006, on the ground that he does not want to proceed with the matter and therefore, simple withdrawal was permitted. There was no mention of compromise in the say. But then it appears that almost at the same time, the wife had filed H.M.P. No.238/2003 before Civil Judge Senior Division, Nashik for restitution of conjugal rights. That petition came to be allowed on 05.12.2006. That means, the first petition filed by the husband was withdrawn by him. Yet the petition under Section 9 of the Hindu Marriage Act filed by the wife came to be decreed. The respondent therein, that means the present husband had not resumed cohabitation with the petitioner. It can be seen that he had not challenged the said Judgment and Decree in appeal, that means, that decree had become final. Perusal of the decree passed in the said petition at Exh.67 would show that it was filed on the basis of desertion. That means, the desertion without

any reasonable cause by the husband was accepted by the competent Court. Under that circumstance, now it does not lie in the mouth of the husband that wife has deserted him without any reasonable cause.

12 The fact is also admitted in the cross by the husband that wife cohabited with him for about two years and during that period she had become pregnant. It is the specific contention of the wife that when she was driven out of the house, she was pregnant. Even questions have been asked that he did not even go to see his child. Though he has denied that, he was unable to tell as to how many times he has met his son. If the wife was pregnant then it is hard to believe that she would have left the house of the husband, on her own accord, without any reason.

13 The husband has come with the case that the wife used to give him threats that she would commit suicide as the marriage is against her wish. This reason itself is unbelievable, because wife had become pregnant from the husband. A pregnant lady may not take extreme step to commit suicide unless there would be constrained circumstances. Pregnant lady will not think of taking life of herself, when she would be giving birth to a life. Except the bare words of the husband and his brother who has been examined as a witness in this case, there was nothing on record. We cannot forget a fact that petitioner-husband is employed in Police, that too he is

working as a Police Constable. There was no hurdle for him to lodge a report against the wife, if such kind of hallow threats were given by the wife to him. Without taking any action, now, it may be easy for him to orally say something to support his cause.

14 It appears that within few days of wife leaving the house, the husband has issued notice directly for divorce. There was absolutely no attempt on his part to bring her for cohabitation. This action on the part of the husband itself is surprising and it shows that he would not have accepted anything less than divorce. It is not his case that when such threats to commit suicide were given by the wife, he had called upon her father or arranged a meeting of elders to give advise to the wife and restrain her from doing any such acts in future. That could have been the natural conduct on his part. When the said natural conduct is not forthcoming it casts doubt over the bona fides of the husband.

15 Much capital has been tried to be raised in respect of various proceedings between the husband and the wife. There is no dispute, on the fact that if a party goes on filing false or frivolous complaint, then it will certainly amounts to mental cruelty. Therefore, the ratio laid down in **AIR 2005 SC 534** and **AIR 2007 SC 1426** (supra) cannot be disputed. The only fact is that whether the facts of the present case depicts such legal position or

not. As regards search warrant taken out by the father of the respondent, it is to be noted that the search warrant was issued and this fact is admitted by the husband in his cross-examination. Witness Hiranman is the father of wife and in his cross-examination he has stated that say was filed by the husband to the application under Section 97 of Cr.P.C. on 11.08.2003 and in that say it was mentioned by the husband that his wife is in the house of this witness i.e. her father's house. No doubt, that application was dismissed. But the cross-examination of this witness does not show that he has admitted the fact that the daughter was with him and yet he proceeded to file application under Section 97 of Cr.P.C.. Therefore, it cannot be said that the said application was frivolous. As regards application under Section 24 of the Guardian and Wards Act is concerned, what was prayed by the wife was to have custody of the child though the child was with her. Section 24 of the Guardian and Wards Act provides duties of guardian of the person. At the most, it can be said that she wanted to get herself declared as guardian of the said ward. Under such circumstance, that act also can not be stated as an act to harass or cause mental cruelty to the husband. She has also filed litigation for maintenance to which she was entitled to, since the husband has not claimed that he had made provision for her maintenance. Same is the case as regards her application under Domestic Violence Act. Therefore, mere filing

of these proceedings *ipso facto* will not amount to “cruelty” as contemplated under Section 13 of the Hindu Marriage Act.

16 One more aspect was tried to be argued that since last so many years i.e. from 2002 the parties are residing separately and there is absolutely no possibility of their cohabitation. The Trial Court ought to have granted divorce. The husband in this case has not made out the case for irretrievable break down of marriage. It is by his own acts he is keeping the wife away. Further in his cross-examination he had categorically stated that he is not willing to take the wife along with him. Under such circumstance, when he has no desire, it cannot be said that there is irretrievable break down of marriage.

17 Taking into consideration the above said reasons both the Courts below have come to the correct conclusion and rightly refused decree of divorce. No substantial question of law has been pointed out. Though the matter is dealt with finally, at the stage of admission itself, as no case is made out to interfere with the judgment and decree passed by both the Courts below, substantial question of law need not be framed. Hence, following order.

ORDER

- 1 The Second Appeal is dismissed.
- 2 Decree be drawn accordingly.
- 3 No order as to costs.

(Smt. Vibha Kankanwadi, J.)

agd