

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO.305 OF 2016

"X"

..Appellant.

VERSUS

"Y"

..Respondent.

...
Mr. P. P. Dhorde, Advocate for appellant.
Mr. D. S. Kudle, Advocate for respondent.
...

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of reserving the Judgment :
24-01-2019.**

**Date of pronouncing the Order :
20-02-2019.**

ORAL JUDGMENT :

1. Present appeal has been filed by original petitioner husband who had filed petition for divorce under Section 13 (1) (i-a) of Hindu Marriage Act bearing Hindu Marriage Petition No.155 of 2006 before 2nd Joint Civil Judge, Senior Division, Jalgaon. The present respondent is the original respondent wife.
2. It is an admitted fact that, the marriage between petitioner and respondent took place at Solapur in a Mass Marriage Program as per

Hindu customs and rites on 16-12-1999. It is also admitted that, after marriage petitioner was transferred to Jalgaon, and petitioner and respondent both started residing at Jalgaon since June 2000. It is also not in dispute that, for about three to four years immediately after the marriage there was no dispute between them.

3. The petitioner had come with a case that, after three to four years of marriage, the respondent started visiting to house of her parents two to three times in a year and used to reside there for about three months. When petitioner made enquiry, he came to know that the respondent had married earlier and from her earlier marriage, she had two children. However, petitioner was unaware about the said fact. When he asked about the same to respondent, she avoided to give answer and used to say bad words to him. Petitioner came to know that, one Suresh Jagtap was her first husband. Respondent went to her parents at the time of Diwali of 2004 and she did not returned for about three to four months. After she came to down to Jalgaon she resided for a month and then again went to her parents house and again resided there for about three to four months. Respondents started giving false complaints against him to the police station as well as in the hospital of the petitioner. She also started demanding money in presence of servants and also her share in the petitioner's property.

She used to give threats that, she would commit suicide by pouring kerosene on her person if share in the property is not given. Petitioner then told her that, they should take divorce by mutual consent. It was also decided that, the petitioner would give a car to respondent, amount of Rs.1 lakh and a plot in Mamurabad Shivar. It is stated that, respondent took away her ornaments and documents without his consent. Respondent has harassed him mentally as well as physically by making false complaints against him, and therefore, on the ground of cruelty he prayed for divorce.

4. Respondent resisted the petition by filing written statement. It is stated that, prior to the marriage there was a love affair between her and the petitioner. Petitioner had knowledge that, she has two sons from her earlier marriage. He accepted that she should look after her children by going oftenly to meet them. In fact he had also agreed to maintain her children also. He had given amount of Rs.10,000/- to her towards maintenance of children. In fact she was also serving and contributed to the family income for purchasing two wheeler and four wheeler. However, both the vehicles are in the name of petitioner. It is stated that, petitioner is a drunkard and has habit of spending more. He had physically and mentally harassed her for money. She was sustaining the harassment in a ray of hope. It is stated that, the

petitioner is a womanizer. Parents of the petitioner had demanded dowry. She was physically harassed by not providing food and by driving her out of the house. Petitioner had incurred huge debts from moneylender Uday Digamber Khande. It is also stated that, the petitioner has illicit relations with a lady by name Sarita. Petitioner used to give money to Sarita by taking it from respondent. He also used to give false notices for giving divorce to her, and therefore, she contended that the petition should be dismissed.

5. With these rival contentions issues came to be framed, parties went to trial. After hearing both the sides and perusing the evidence on record, the learned trial Court allowed the petition for divorce and the marriage between the petitioner and the respondent was declared as dissolved.

6. Original respondent challenged the said Judgment and decree before learned Principal District Judge, Jalgaon in Regular Civil Appeal 191 of 2009. After hearing both the sides, the appeal came to be allowed and the Judgment and decree passed by the learned Second Joint Civil Judge, Senior Division, Jalgaon was set aside by dismissing the said petition. Hence, the original petitioner has filed this appeal.

7. Heard learned advocate Mr. Pramod P. Dhorde for appellant and

learned Advocate Mr. D. S. Kudale for respondent. Taking into consideration the fact that it is a matter in respect of matrimonial dispute, the matter has been finally heard by consent of both the parties at the stage of admission.

8. It has been submitted on behalf of the appellant/ petitioner that, the learned First Appellate Court was not justified in interfering with the Judgment and decree passed by learned Trial Court for the simple reason that, the petitioner had proved the acts of cruelty on the part of the respondent. One of the contention raised by him was that, respondent was in a habit of filing false complaints against the petitioner and his family members. The observations in paragraph No.42, 43 and 44 of the Judgment of the Trial Court were quoted by the Appellant Court and it was observed that, levelling baseless allegations against husband can tantamount to inflicting cruelty upon him. But then went on wrongly to rely on the statement recorded by police in connection with alleged illicit relations of the petitioner. Further in Criminal Writ Petition No.464 of 2007 which was decided by the Division Bench of this Court on 3rd August 2017, the First Information Report lodged by the respondent alleging that, petitioner and his parents have committed offence punishable under Section 498-A of the Indian Penal Code was quashed and set aside. It was specifically observed that, the

contents of the FIR would show that, very vague allegations are made against all the petitioners. No specific incident was also quoted by her and therefore it was observed that, it will be the misuse of provisions of Section 498-A of the Indian Penal Code and process of law, if proceeding is allowed to continue. That means, the respondent was misusing the said provisions for making baseless allegations against the petitioner. In fact evidence was also led by the petitioner to show that, the respondent used to go to the office of the petitioner. She had also written certain communication to the Government officers which was in the nature of complaint against the petitioner. The said communication in the nature of complaint was also made to the then Deputy Chief Minister of Maharashtra regarding the alleged behaviour of the petitioner. This is nothing but in order to defame the petitioner and it amounts to cruelty. The learned advocate appearing for the petitioner relied on the decision in ;

- i) *K. Srinivas Rao Vs. D. A. Deepa, reported in 2013 AIR SCW 1396,*
- ii) *V. Bhagat Vs. Mrs. D. Bhagat, reported in AIR 1994 Supreme Court 710,*
- iii) *Samar Ghosh Vs. Jaya Ghosh, reported in (2007) 4 Supreme Court Cases 511,*
- iv) *'M' Vs. 'R', reported in 2014(1) Mh.L.J., 440,*

- v) *K. Srinivas Vs. K. Sunita, reported in (2014) Supreme Court Cases 34,*
- vi) *Anil Yashwant Karande Vs. Mangal Anil Karande, reported in 2016 (2) Mh.L.J., 166],*
- vii) *U. Sree Vs. U. Srinivas, reported in 2013 AIR SCW 44,*
- viii) *Mangesh Balkrushna Bhoir Vs. Leena Mangesh Bhoir, reported in 2016 (2) Mh.L.J. 252]*

on the point that making false allegations of harassment, unfounded and indecent allegations against the husband and his family members would tantamount to cruelty. Further he also relied on the decision of Division Bench of this Court at Principal Seat in *Gauri Sanjay Bhosale Versus Sanjay Raghunath Bhosale*, reported in 2013 (3), Mh.L.J. 829, wherein it has been held that,

"When oral evidence brought on record and documents placed on record suggest that, relation between parties had suffered set back, that means the relationship had irretrievably broken, then divorce decree passed by the trial Court is justified. "

Based on these decisions, he submitted that the interference by the First Appellate Court was unwarranted, and therefore he prayed for restoration of the decision of the trial Court by setting aside the

Judgment and decree passed in First Appeal.

9. Per contra, the learned advocate appearing for the respondent submitted that, the First Appellate Court has properly considered the points involved. The statement of the lady with whom it is alleged that the petitioner has illicit relations though may not be strictly admissible gives an indication that there was material in respect of behaviour of the petitioner. In order to prove that the allegations are baseless, evidence has to be lead but no such evidence has been produced by the petitioner. At that time the Criminal Case under Section 498-A of Indian Penal Code was pending, and therefore, it was not proper on the part of the trial Court to come to a conclusion that the said FIR was false. Petitioner has in fact intentionally suppressed the fact that there was love affair with respondent for about three years prior to the marriage and has tried to impress upon the Court that the respondent has suppressed her earlier marriage from him, so also the fact regarding her two children. Conduct of the husband therefore deserves to be taken into consideration. Therefore, the First Appellate Court were justified in interfering and there is no need to interfere in the Judgment and decree passed by the First Appellate Court.

10. It is to be noted from the evidence that the husband was contending that though the respondent was married earlier to one

Suresh Jagtap, she had not disclosed the said fact to him. She had also not disclosed that, she has two sons from Suresh Jagtap. Respondent is not denying that, she has two sons from Suresh Jagtap, however if the cross-examination of the respondent and his brother witness Tanaji Anandrao Deshmukh would show that she was denying the fact of marriage between herself and Suresh Jagtap. If her examination-in-chief is taken into consideration then she says that, she has two sons by name Kiran and Prakash. In cross-examination she says that, the full name of Kiran is Kiran Suresh Jagtap and full name of Prakash is Prakash Suresh Jagtap. She says that, the relationship between Suresh Jagtap and herself were between 1984 to 1990. She admits that, both the sons are begotten from Suresh Jagtap. Suresh Jagtap used to reside with her wherever she was posted but she was not ready to disclose in specific words that she was married to Suresh Jagtap. Another fact that is also required to be considered is that, she has not come with a case that, she has obtained divorce from Suresh Jagtap, if it is to be accepted that she was married to him. When she is accepting the relationship then it will have to be presumed that, Suresh and the respondent were residing at all those places as husband and wife. Now except bare words that, petitioner - husband was knowing the fact about two sons begotten to respondent prior to their marriage, there is nothing on record brought by her. No doubt petitioner has

admitted in the cross that, he had love affair with the respondent prior to marriage for some years. A specific question was asked to him in the cross that, he had obtained all the information regarding respondent prior to marriage and then he has answered that, he did not feel it necessary to collect all the information about her prior to marriage. He has also accepted that, he has not sought any kind of declaration regarding nullity of marriage on the ground that respondent is married earlier. Thus it is to be noted that, there is no concrete evidence regarding the first marriage of respondent, however the fact cannot be denied that she has two sons prior to her marriage with petitioner. Now as per the petitioner, respondent used to go oftenly to look after her children at her parental house. Respondent says that, petitioner had accepted that, he would look after her sons and had also given some amount for their maintenance. If that was the fact then why she had not taken her children along with her to reside with petitioner is a question. Though both the parties are claiming that, they were residing at Jalgaon for about three to four years. If husband had taken the responsibility of those children also then there would not have been any hurdle for her to bring those children to stay along with her. Therefore, there is some substance in the say of the husband that, respondent was leaving him intermittently for a long period to meet her children for which he had not given any consent.

11. Petitioner has led evidence to show that, respondent was giving threats to him, lodging false complaints against him and thereby causing mental harassment. As aforesaid respondent was oftenly going to her parental house and was residing there for two to three months together, can also be taken as harassment to the husband because he had not given consent for such arrangement. As regards threats by the respondent is concerned, it appears that apart from whatever has been stated in the examination-in-chief, in respect of false complaints he has produced and examined person from police station so also the official communication. Respondent herself has admitted in cross that, she had given complaint against the petitioner to the then Deputy Chief Minister of Government of Maharashtra. That means, whatever allegations she was levelling against the petitioner, though it was relating to her domestic affair, she has given publicity to the same by making complaints to the hospital of the petitioner i.e. the Government hospital, where the petitioner was serving at that time and also with the police. As regards her complaint under Section 498-A of Indian Penal Code is concerned, it can be seen that, she had made not only the petitioner as accused but also his parents and brothers and sister as accused. When it has been brought on record in this case also that, only the petitioner and the respondents were the persons residing

under one roof. It appears that she had claimed desertion by petitioner from June 1999 but then she has given First Information Report on 08-10-2006. It is to be noted that, the Hindu Marriage Petition for divorce bearing No.155 of 2006 in this case was filed by the petitioner on 13-06-2006, therefore it can be said that the said act of filing complaint under Section 498-A of Indian Penal Code was in retaliation to the said petition by the petitioner, that is what has been observed by the Division Bench of this Court while quashing the FIR on 03-08-2017 . It has been stated that, as to why after so many years of desertion she has approached the police. It was specifically stated that, continuation of the said FIR would amount to misuse of the provisions of Section 498-A of Indian Penal Code. Under such circumstance it can definitely be concluded that, it was an act of cruelty on the part of the respondent.

12. Further it is also to be noted that, she has tried to rely upon and especially the First Appellate Court has relied on the statement of lady by name Sarita against whom she had made allegations of illicit relations between her and petitioner. The copy of the said statement cannot be taken into consideration for the simple reason that, it was not at all proved by examining proper person. Merely because a true copy of the same or a certified copy of the same was filed in the said

proceeding, it does not become admissible in evidence. The observations of the First Appellate Court that, *"no doubt, these statements would not by itself prove the allegations, but it can safely said from this material that the allegations and the complaints made by the respondent to the police were neither wild nor baseless, and they merited inquiry. Such allegations per se cannot tantamount to inflicting cruelty,"* are unacceptable. Allegations merely on the basis of suspicion is a different thing and if there was any kind of truth in those allegations then respondent ought to have supported the same with some evidence. When that opportunity was available to her to lead evidence, she has not taken that opportunity. Under such circumstance without any evidence if such statements are made, they amount to mental cruelty.

13. The respondent has examined herself only and has not adduced any evidence to support her allegations that the petitioner is a womanizer, petitioner is borrowing money from moneylender Uday Khande and then he was harassing her on the count of money and the petitioner is a drunkard. When these allegations have not been supported by any evidence, definitely they would amount to mental cruelty for the husband. Therefore, the ratio laid down in ;

i) *K. Srinivas Rao Vs. D. A. Deepa, reported in 2013*

AIR SCW 1396,

- ii) V. Bhagat Vs. Mrs. D. Bhagat, reported in AIR 1994 Supreme Court 710,*
- iii) Samar Ghosh Vs. Jaya Ghosh, reported in (2007) 4 Supreme Court Cases 511,*
- iv) 'M' Vs. 'R', reported in 2014(1) Mh.L.J., 440,*
- v) K. Srinivas Vs. K. Sunita, reported in (2014) Supreme Court Cases 34,*
- vi) Anil Yashwant Karande Vs. Mangal Anil Karande, reported in 2016 (2) Mh.L.J., 166],*
- vii) U. Sree Vs. U. Srinivas, reported in 2013 AIR SCW 44,*
- viii) Mangesh Balkrushna Bhoir Vs. Leena Mangesh Bhoir, reported in 2016 (2) Mh.L.J. 252],*

would be applicable here. It can also be seen that, since June 1999 both of them have not come together for cohabitation. Further taking into consideration the fact that, as per the petitioner she had not disclosed about the two children borne prior to the marriage and making allegations, filing complaints with police has led to irretrievable breakdown of marriage. Though several instances of day to day life have been stated by the petitioner, therefore decree of divorce passed

by learned trial Court was justified. Ratio laid down in, *Gauri Sanjay Bhosale Versus Sanjay Raghunath Bhosale*, reported in 2013 (3) *Mh.L.J.*, is therefore helpful to the petitioner. Under such circumstance the learned First Appellate Court was not justified in interfering with the Judgment and order passed by the trial Court. Hence, interference in second appeal is required. Hence, following order.

ORDER

- 1) Second appeal is hereby allowed.
- 2) The Judgment and decree passed in Regular Civil Appeal No.191 of 2009 by the learned Principal District Judge, Jalgaon, on 21-07-2015 is hereby set aside.
- 3) The Judgment and decree passed in Hindu Marriage Petition No.155 of 2006 by 2nd Joint Civil Judge, Senior Division, Jalgaon, dated 25-08-2009 is hereby restored and confirmed.

**(SMT. VIBHA KANKANWADI)
JUDGE**

vjg/-.