

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

FIRST APPEAL NO.162 OF 2018

Swapnil Gopal Chaudhary,
Age 27 yrs., Occ. Service,
R/o C/o Gopal Rameshwar Chaudhary,
Gandhi Chowk, Savda, Tq. Raver,
Dist. Jalgaon.

... Appellant.

... **Versus** ...

Mamta Swapnil Chaudhary,
Age 25 yrs., Occ. Nil,
R/o C/o Vilas Jaywant Zope,
Plot area, in front of hospital of
Dr. Warke, Savda, Tq. Raver,
Dist. Jalgaon.

... Respondent.

...

Mr. S.S. Bora, Advocate h/f Mr. Shaikh Mohd. Naseer, Advocate for appellant
Mr. Swapnil S. Patil, Advocate for sole respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 25th JUNE, 2019

JUDGMENT :

1 Present appeal has been filed by the original respondent
challenging the Judgment and decree passed in Special Marriage Petition

No.13/2005 passed by learned District Judge-2, Bhusawal, Dist. Jalgaon dated 16.06.2017, thereby it was declared that the marriage between the appellant and the respondent is dissolved.

2 Before turning to the disputed facts, admitted facts are considered first and the parties are addressed by their nomenclature before the Trial Court. Petitioner got married to respondent on 18.04.2013 by way of registered marriage at Jalgaon. It is, further, not in dispute that they performed marriage as per their custom and rites on 28.12.2013. There is no issue to them out of wedlock. They cohabited for about 18 months and then separated since 17.04.2014. It is also not in dispute that the present petition i.e. Special Marriage Petition No.13/2015 was filed by the wife for getting the dissolution of marriage, whereas the husband had filed Marriage Petition No.7/2015 for restitution of conjugal rights.

3 Original petitioner-wife had come with a case that after the marriage she was treated nicely for few days by the respondent-husband. The behaviour of the respondent was not proper as he used to raise quarrel on trifle grounds. He was in habiting of consuming liquor and playing gambling (satta). He used to beat her. He used to ask her to bring dowry. He had demanded amount of Rs.30,00,000/- for purchase of flat in

Aurangabad and also Rs.10,00,000/- for his employment. Thereafter, he started demanding Honda City car. The relatives of the respondent viz. his mother, father and sister went to the house of petitioner and quarreled with her. They gave threat to kill her, in case demands are not fulfilled. Respondent had taken her on 17.07.2014 to Savda, where her mother resides and then demanded Rs.30,00,000/- for purchase of flat. It is stated that she made efforts for cohabiting with the respondent, however, he is not willing to cohabit with her in proper manner and therefore she filed petition for divorce.

4 The respondent filed written statement and denied all the allegations against him. It is contended that the marriage between him and the petitioner was love marriage and they were in relationship for about 7-8 months prior to the marriage. It is stated that initially they resided at Savda, Tq. Raver, but after his service they were residing at Aurangabad. He has stated that petitioner is the only child of her parents and therefore, she is stubborn and obstinate. Her parents used to interfere in the marriage life of petitioner and respondent. Petitioner was not doing any household work and was only demanding divorce from him on the say of her parents. He had made efforts to take her back, however, she is not willing. He has stated that he has desire to cohabit with her.

5 Taking into consideration the pleadings, issues were framed. Parties have led oral as well as documentary evidence. Taking into consideration the evidence on record the learned Trial Court has allowed the petition. The marriage between the petitioner and the respondent has been declared to be dissolved from the date of the order. This marriage is under challenge in this appeal.

6 Heard learned Advocate Mr. S.S. Bora holding for learned Advocate Mr. Shaikh Mohd. Naseer for appellant and learned Advocate Mr. S.S. Patil for respondent. Following point arises for determination. Findings and reasons for the same are as follows.

Whether the petitioner was subjected to cruelty by the respondent and on that count she is entitle to get divorce from the respondent ?

7 Learned Advocate appearing for the appellant submitted that the Trial Court has not appreciated the evidence properly. Merely on the ground, that any lady from a reputed family will not go to police station and lodge a report, it appears that the divorce has been granted. In fact, the learned Trial Court failed to consider that she had withdrawn her company with

respondent without any reasonable cause and denied the conjugal rights to the respondent. It has been wrongly held by the learned Trial Court that no efforts were done by the husband to bring back the wife. Merely by filing complaint under Section 498-A of the Indian Penal Code by the wife, it cannot be said that she has proved that she was subjected to cruelty. The cruelty, as alleged, ought to have been proved by the petitioner by adducing cogent evidence. Except her bare statement there is nothing.

8 Per contra, the learned Advocate appearing for the respondent-wife supported the reasons given by the learned Trial Court.

9 At the outset, it can be seen and it has not been brought to the notice of this Court, that any appeal was filed by the present appellant challenging the dismissal of his petition for restitution of conjugal rights. The present appeal is restricted to the decree that has been passed in Special Marriage Petition No.13/2017 filed under Section 27(1)(d) of the Special Marriage Act, 1954 for dissolution by the wife. The record and proceedings would show that the husband had filed Special Marriage Petition No.7/2015 for restitution of conjugal rights. The said petition was also disposed of on merits on 16.06.2017 by a separate Judgment. In fact, there was no reason for the learned Trial Court who was District Judge himself to write a separate

Judgment for petition for restitution of conjugal rights, when the same point or in other words overlapping point, on the same set of facts, was also involved in the petition for divorce. In fact, the learned District Judge ought to have disposed of both the petitions by a common Judgment. The fact remains that the dismissal of the petition of restitution of conjugal rights has not been challenged by the present appellant. Under such circumstance, the said decree has achieved finality. When the respondent-husband was contending that there was no reason for the wife to stay separately and he is ready and willing to cohabit with her, at the costs of repetition it is stated that both the petitions ought to have been decided by the common Judgment by the learned Trial Court. Therefore, now the point that is restricted is, as to whether the wife has proved that she was subjected to cruelty.

10 As regards the ground of cruelty is concerned, the petitioner has examined herself, whereas the respondent has examined himself. The petitioner has specifically stated that she was subjected to cruelty on the ground that the respondent used to beat her and used to make demand for dowry by asking her to bring amount of Rs.30,00,000/- for purchase of flat at Aurangabad, Rs.10,00,000/- for service and also Honda City car. Important fact is that the marriage between petitioner and respondent was initially a registered marriage on 18.04.2013, but it appears that they had not disclosed

the same fact to their respective parents and when the parents got knowledge about it, marriage by custom and rites was performed on 28.12.2013. Fact can be gathered is that parents of respondent-husband might not have approved the petitioner. It also appears that petitioner and respondent were the only persons residing together at same places, but then she has categorically stated that the respondent used to consume liquor, play satta and used to beat her. Except denial in her testimony there is nothing. Further, as regards demand of the dowry as aforesaid; except denial there is nothing. Fact that is required to be noted is that she had filed complaint under Section 498-A of IPC against present respondent and his relatives. Fact is to be recorded and no further use thereof can be made. What is prompting is that respondent-husband has not given a proper reason as to why wife left him, there is no support to her say that as petitioner was the only pampered child her parents wanted to be with them and therefore, insisting her to take divorce from husband. He has not made any effort to call meeting of elder persons from his family or from his community, so that they can stay together. No doubt, he has examined witness Bhagwat Patil to say that he had made efforts. However, the petitioner has produced on record receipts issued by Bhorgaon Leva Patil Panchayat, Padalse, which appears to be a registered institution whose help was taken by petitioner to resolve the dispute. They had called upon the respondent to come for mediation. There is no

explanation by the husband as to whether he had attended any such meeting or not. Taking into consideration the fact that the marriage between the petitioner and the respondent was a love marriage, what had happened suddenly after 18 months of cohabitation to such an extent that the petitioner would lodge a report under Section 498-A of IPC against the husband and his family members is required to be considered. Taking into consideration such evidence, the learned Trial Court has rightly come to the conclusion that wife was subjected to cruelty and therefore, the marriage between the petitioner and the respondent deserves to be dissolved. Point is, therefore, answered accordingly.

11 No interference is required in the Judgment and Decree passed by the learned Trial Court. Hence, the following order.

ORDER

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

(Smt. Vibha Kankanwadi, J.)