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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

FAMILY COURT APPEAL NO.58 OF 2018

Kailashchandra s/o Vithalrao Waghmare
Age 43 years, Occu. Service
(as Naib Tahsildar)
R/o Tathagatnagar
Malegaon Road, Taroda Khu,
District Nanded

...APPELLANT

VERSUS

Priya w/o Kailashchandra Waghmare
Age 32 years, Occu. Servie,
R/o C/o Shri Ashok Gopalrao Sable,
"Gopal Sadan", Ganga Colony,
Chhatrapati Chowk,
District Nanded

...RESPONDENT

...
Ms Preeti R. Wankhede, Advocate for appellant
Mr. R.O. Awasarmol, Advocate for respondent
...

**CORAM : SUNIL P. DESHMUKH &
R.G. AVACHAT, JJ.**

DATE : 30th April, 2019.

JUDGMENT (PER R.G. AVACHAT, J.) :

This appeal is directed against the judgment and decree of the Family Court, Nanded, dated 11.6.2018, passed in the petition, being Marriage Petition No.A-60/2015. By the

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impugned judgment and decree, the marriage by decree of divorce petition preferred by the husband for dissolution of marriage on the ground of cruelty and desertion, came to be dismissed. The husband has, therefore, preferred this appeal.

2. Facts necessary to decide this appeal are as follows :-

The appellant married the respondent (wife) on 15/3/2010. The respondent started residing at her matrimonial home. The father and two sisters of the appellant would reside along with the appellant and the respondent in the matrimonial home. The respondent has been serving with Forest Department, while the appellant has been serving as a Naib Tahsildar with Revenue Department. One of the sisters living with the appellant has been deserted by her husband. The respondent would quarrel with her and ultimately compelled the appellant to shift along with her to the parental house of the respondent.

3. At the parental house of the respondent, her mother and sister would reside together. The father and the brother of the respondent used to be away at their respective service places. They would come on weekends. The appellant found unknown persons visiting the parental house of the respondent. It was also noticed that respondent had intimate relationship with one Vaibhav

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Sharma. With a view to cover up her relationship with Vaibhav, the respondent filed a false and fictitious F.I.R.. against the appellant and his relations. The respondent also instituted number of Court proceedings against the appellant. In spite of having been in service, the respondent preferred application for interim maintenance. On filing of the false and frivolous F.I.R. on 22/1/2012, the respondent deserted the appellant for no fault of his.

4. It is also the case of the appellant that the respondent did not discharge her matrimonial obligations. She treated him with cruelty. The allegations made in the F.I.R. preferred against the appellant are unconscionable. The respondent wanted to ruin the appellant in his life. She preferred application to the State Government for cancellation of the appellant's selection for the post of Tahsildar. As such, the relations between the appellant and the respondent reached a point of no return. The petition for dissolution of marriage, therefore, came to be filed.

5. The respondent filed written statement, disputing most of the averments in the petition. It is the case of the respondent that the appellant and her parents-in-law did not treat her well. The appellant made a demand of Rs.6 Lakhs. The parents of the respondent paid the appellant Rs.4 Lakhs. The respondent's father

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had to withdraw the amount from his G.P.F. Account to meet the demand. The appellant has extra marital relations with number of women. The appellant snapped respondent's nude photographs. He wanted the respondent to keep physical relationship with his brother. The appellant and the in-laws of the respondent are superstitious. They made very many experiments on the respondent. Since the ill-treatment became unbearable, the respondent had no option but to file the F.I.R. against appellant and the in-laws.

6. Before the trial Court, the appellant and the respondent examined themselves on oath. The appellant examined one more witness. Number of documents came to be tendered in evidence. On appreciation of the evidence, the trial Court held the ground of desertion to have not been proved. In view of the trial Court, the appellant drew home his case of cruelty. However, to non-suit the appellant, the trial Court held that, the appellant could not take benefit of his own wrong.

7. Heard. Ms Preeti Wankhede, learned counsel for the appellant would submit that the trial Court ought to have decreed the petition since the ground of cruelty has been proved. The learned counsel took us through the relevant evidence in the case to ultimately submit that unfounded and unconscionable

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allegations made by the respondent in the F.I.R., and the proceedings instituted under the Protection of Women from Domestic Violence Act, constitute cruelty. The Family Court need not wait until the criminal cases instituted by the respondent are decided. In view of learned counsel, the respondent, after filing a false and frivolous F.I.R. against the petitioner, left the petitioner's company for no return. The respondent did not file proceedings for restitution of conjugal rights. Efforts for reconciliation failed. The parties have reached a point of no return. It would thus be a case of irretrievable break-down of marriage. Learned counsel ultimately urged for grant of decree of divorce.

8. Learned counsel for the respondent would, on the other hand, submit that the trial Court gave cogent and convincing reasons for dismissal of the petition. The appellant has rightly been not allowed to take benefit of his own wrong. Learned counsel reiterated the reasons given by the trial Court for dismissal of the petition.

9. The appellant married the respondent on 15/3/2010. Both the appellant and the respondent have been in State Government service. The appellant has been serving as a Naib Tahsildar. The respondent is an employee of Forest Department. Both have made allegations of cruelty against each other.

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According to the appellant, the respondent – wife would pick up quarrels with his sister. On one of the pages of the diary referred hereafter, it was recorded that the respondent had quarreled with her sister-in-law. In the petition itself the appellant has contended that the respondent frequently quarreled with her sisters-in-law. She compelled the appellant to leave his home and start living at the respondent's parental house. Respondent's mother and sisters would reside together. The respondent's father and brother used to be away at their respective service places. They would visit their house on weekends. According to the appellant, some unknown male persons used to visit the house. One of them was Vaibhav Sharma. He has intimate relationship with the respondent. Thus, it appears that, the appellant initially tried to make out a case of adultery. Before the trial Court itself the ground of adultery has been given up. The appellant gave evidence consistent with his pleadings. Whereas the respondent testified consistent with the case propounded in the written statement. As such, it turned out to be a case of words against words.

10. On two grounds namely, desertion and cruelty, the appellant has sought for dissolution of his marriage by decree of divorce. It is in his evidence that the respondent did not discharge her matrimonial obligations. She refused to cook food for him on the ground of having been in Government service. With a view to

cover up her behavioural aspect and relationship with Vaibhav Sharma, she lodged the First Information Report replete with false and fabricated allegations against the appellant and his family members. The First Information Report was lodged on 22/1/2012. Since then, both of them have been living away from each other. The appellant meant to say that, the respondent deserted him for no reason from the day the First Information Report was lodged.

11. We have carefully perused the documentary evidence namely the First Information Report (Exh. 51), application preferred under the Protection of Women from Domestic Violence Act (hereinafter referred to as the Domestic Violence Act for short) and other documents to find that the couple had lastly resided at the house of the appellant. In reply filed by the appellant to the application under Domestic Violence Act, he did not come with the case that, at the instance of the respondent he started residing at the house of his in-laws. There is no other evidence on record to conclude that the appellant and the respondent had shifted their residence to the parental house of the respondent. As such, the appellant failed to make out a case of desertion with a view to get a decree of divorce on this count.

12. The Trial Court has observed the appellant to have failed to make out both the grounds as pleaded. It is the case of

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the respondent that the appellant, his mother and sisters would ill-treat her. On their demand of Rs.6 Lakhs, her father paid them Rs.4 Lakhs. True, there is documentary evidence to indicate the respondent's father to have had withdrawn a sum of Rs.4 Lakhs from his G.P.F. Account in March 2010. The marriage of the appellant with the respondent took place on 15/3/2010. This indicates that the respondent's father must have withdrawn the said amount to meet the marriage expenses of the respondent and not to meet the alleged unlawful demand made by the appellant. According to the respondent, the appellant has extra-marital relationship with some women. It is in her evidence that the appellant himself would relate her names of his girl friends and the way he made love with them. Exh.39 are the loose sheets of a diary maintained by the appellant. The sheets appear to have been written daily. On the basis of the matter contained in the diary, coupled with the C.D.R. records, the trial Court held the appellant to have extra-marital relationship with a few women.

13. Before the trial Court, the appellant offered an explanation about the matters in the diary. According to him, he wrote such matters in the diary only with a view to falsely boast before the respondent that he too could attract women as the respondent was in relationship with Vaibhav Sharma. We are conscious of the fact that there could hardly be direct evidence of

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adulterous relationship. We, however, cannot lose sight of the fact that the women who are sought to be connected with the appellant are not before the Court. The findings about the alleged relationship between the appellant and those women is bound to harm their reputation, that too without affording them an opportunity of hearing. We have perused the matter in the diary (Exh.39). The first page of the diary relied upon is dated 13/2/2010. The same pertains to the matter indicating the appellant's relationship with a lady "X". Whatever has been written on this page pertains to the period before the appellant tied the nuptial knot with the respondent. Same is the case about the matter on the page dated 8/3/2010. The matter appearing on the page dated 10/5/ also pertains to the past events. True, the further matter appearing on the said page indicates the appellant's desire to continue with his relationship with "X". The matter appearing on the page dated 15/4/2010 reads in verbatim :

"लग्नाची तारीख काढण्यासाठी बाबा आले. कुण्यातरी महाराजाकडून त्यांना प्रज्ञा जोंधळेंचं नाव कळालं. अखेर तिचं नाव लपवून ठेवायचं होतं, शेवटपर्यंत ! पण त्यांनी उघडकीस आणलंच. पण यातून त्यांना साध्य तरी काय करायचं."

14. The aforesaid matter indicates that it pertains to the event that took place long back as the same speaks about fixing a date of marriage. It is true that the matter in the diary suggest the

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appellant to have close association with one or two women. The Call Data Record (CDR) reinforce this fact since the same indicates the appellant to have had telephonic contacts with the women named by the respondent. True, the respondent, therefore, may have a reason to feel to have been treated with cruelty . She, however, is not less innocent.

15. The appellant too had a reason to contend to have been treated with cruelty. It is in his evidence that, Vaibhav Sharma was regular visitor. He (Vaibhav) has lodged a false complaint against him with a police station. A station diary entry (Exh. 92) indicating the same was tendered in evidence. The Trial Court did not read the station diary entry in evidence on the ground of having been produced before the Court after recording of evidence of both the sides was over. Though the trial Court has not read station diary in evidence, in our view, the station diary entry is a public document. To a limited extent, it should have been read in evidence. Leaving apart the probative value of the allegations in the station diary entry, the Trial Court ought to have observed that at the instance of one Vaibhav Sharma, a crime was registered against the appellant. Who is Vaibhav Sharma and what was his relationship with the respondent was a matter that should have been explained by the respondent, more so when the appellant came with a case of Vaibhav having been in close

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relationship with the respondent. We propose to make it clear here itself that no other way round inference (adultery) is sought to be raised by us. In our view, even if a married woman is in a friendship with a man, which her husband does not like, tantamounts to cruelty.

16. The evidence so far appreciated undoubtedly suggests both the appellant and the respondent committed breach of matrimonial bond. The Trial Court found that the appellant could not be granted relief since he cannot take benefit of his own wrong. We do not agree with the above observations made by the Trial Court since both the parties to the marriage are found to be equally guilty.

17. Let us now appreciate the evidence regarding cruelty post both the appellant and respondent started residing away from each other since 22/1/2012. Admittedly, the respondent has filed number of Court proceedings against the appellant. Learned counsel for the respondent may be right in submitting that filing of the complaint itself can never be considered as an act of cruelty unless it is found by positive evidence that it was a false complaint. When the complaint has not yet been decided and is still pending before the competent Court, no much weightage about the factum of filing of such complaint and trying to find out as to whether the

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allegations in the said complaint are correct or not. If ultimately the said complaint is dismissed, naturally one can presume that the wife is guilty of filing false cases and making reckless allegations against the husband. When the Act permits the wife to approach a Court under the Domestic Violence Act and if the remedy is availed of, such act should not be treated as an act of cruelty. [*Mrs. Deeplakshmi Sachin Zingade Vs. Sachin Ramesh Rao Zingade - 2009 (4) Mah. L.R. 57*].

18. In our view, there, however, may be cases to suggest that the allegations made in the F.I.R. or other proceedings instituted against the spouse may prima facie found to be extremely heinous and improbable. The party making such allegations in such cases is not exempted to lead evidence in proof of such allegations before the Civil Court when the issue in that regard crops up.

If the attending circumstances brought on record by the parties in their evidence, if suggesting on the preponderance of probabilities, the complaints lodged with the police are false, mere pendency of the prosecution is not a ground for not considering such circumstances in the matrimonial dispute between the parties. [*Phulmala Ajay Sing Vs. Ajay Kumar Singh - 2018 CJ (Bom) 137*].

19. It is also settled proposition of law that, even if a spouse who files a petition for divorce is not able to prove his/ her case on the ground of cruelty, as pleaded by him/ her, he/she may prove the same on the basis of unsubstantiated serious allegations that are leveled by the opposite party on him/ her in the written statement.

20. In the case at hand, the respondent has filed following judicial proceedings against the appellant.

- (1) F.I.R. dated 22.1.2012 (Sessions Case).
- (2) Petition under Domestic Violence Act.
- (3) Civil Suit for injunction restraining the appellant from alienating the house property (Suit withdrawn later on).
- (4) Application for interim maintenance when the respondent herself has been in service with the Department of Forest.
- (5) Application to the State Government for cancellation of the appellant's selection for the post of Tahsildar.

21. **F.I.R. dated 22.1.2012** :- Besides the general allegations of ill-treatment, demand of dowry etc., the respondent has alleged in the F.I.R. that the appellant, his mother and three

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sisters were superstitious. On new moon and full moon days, they would invite a Godman to their home who in turn would insist the respondent to consume some powder like substance. The respondent could not substantiate these allegations. To top it, the respondent did stoop to such a low to trade allegations against her mother and sisters-in-law to allege in the F.I.R. that these female in-laws of the respondent forced her on each and every new moon and full moon days to consume menses. It has further been alleged in the F.I.R. that once the mother-in-law served the respondent food laced with poison. Due to consumption of the food, the respondent had to be hospitalised.

22. Trial Court, on appreciating the evidence, has found these allegations to have been unsubstantiated. On reappraisal of the evidence, we do not find any reason not to agree with the finding recorded by the Trial Court in this regard. The respondent has been in State Government service. She enjoyed full freedom. She had, therefore, no reason not to make a complaint about such behaviour of her in-laws. Had there really any substance in these allegations, she would have immediately gone public. Her further actions suggest her to have not been shy. The appellant, after having been successful in competitive examinations held by the M.P.S.C., came to be selected for the post of Tahsildar. The respondent made complaints to the State Government to see that

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the appellant's selection is cancelled. The respondent came with an explanation that what she reported to the authorities were the true facts, which were concealed by the appellant from the competent authorities. The respondent could not substantiate her case. It is reported that the appellant has been given posting as a Tahsildar. The act of making such complaint to the Government authorities undoubtedly indicates the respondent to have determined to ruin the appellant in his life. This undoubtedly suggests the parties to have reached a point of no return. The respondent does not want to resume matrimonial relationship.

23. The evidence in the case undoubtedly suggests the respondent to have equally been guilty. She made every attempt to see the appellant and his relations are ruined in their life. There is evidence to indicate that the respondent and her parents had all along been present before the Sessions Court/ High Court when hearing of their application for anticipatory bail was scheduled. Their presence indicates that they wanted to see the appellant and his relations to go behind the bars. The allegations regarding feeding her food laced with poison and compelling her to consume menses suggests that the respondent wanted to ensure that it would become a Sessions triable case. True, on investigation of the matter the charge sheet has been laid. The respondent, therefore, wanted to contend that there was substance in her

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allegations. We do not agree since the respondent failed to even remotely substantiate these allegations before this Court.

24. **Petition under Domestic Violence Act :-**

The respondent has also filed proceedings under the Domestic Violence Act against the appellant, his parents and three sisters. The same indicates that that none of the family members of the appellant has been spared.

25. She preferred application for interim maintenance when she has already been serving on good pay.

26. As such, the evidence undoubtedly indicates the respondent to have made reckless and unconscionable allegations against the appellant. The same constitutes cruelty, giving rise to a ground for the appellant to claim dissolution of his marriage by decree of a divorce. We do not agree with the findings of the Trial Court that since the appellant himself is guilty of a matrimonial wrong, he cannot take benefit thereof and no decree for divorce, therefore, could be passed in his favour. Interference with the finding of the trial Court in that regard is called for.

27. In view of the above, we reach a conclusion that the conduct of the respondent amounts to cruelty to the appellant -

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husband, entitling him to get a decree of divorce.

28. For the reasons given hereinabove, the appeal succeeds.

ORDER

The appeal is allowed.

The judgment and decree dated 11/6/2018, passed by the learned Judge, Family Court, Nanded in Petition No. A 60/2015 is quashed and set aside.

The Marriage Petition filed by the appellant is allowed.

The marriage between the appellant and respondent stands dissolved by a decree of divorce.

No costs.

(R. G. AVACHAT)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE

fmp/