

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 19 of 2012

Smt. Sadhna Singh aged about 50 years (Sadhna Jana) wife of Jagatpal Singh, R/o Gali No.2 Near Gayatri Mandir, Vinoba Nagar, PS Tarbahar, Tahsil and District- Bilaspur (CG)

---- Appellant

Versus

Jagatpal Singh, aged about 56 years, Son of Ramdas Singh, R/o Malti Bhawan, in front of Vikram Super Bazar, Vidya Nagar, PS Tarbahar, Tahsil and District-Bilaspur (CG)

---- Respondent

For Appellant	:	Shri C.K. Kesharwani, Advocate
For Respondent	:	None appears

**D.B. :Hon'ble Mr. Justice Manindra Mohan Shrivastava &
Hon'ble Mrs. Justice Vimla Singh Kapoor**

Judgment On Board

18/02/2020

Per Manindra Mohan Shrivastava, J.

1. This appeal is directed against judgment dated 30.11.2011 passed in Civil Suit No.170-A of 2009 by which respondent's application for grant of decree of divorce on the ground of cruelty has been allowed and decree has been passed in his favour.
2. Respondent-husband filed an application for grant of decree of divorce on the pleadings that the parties were married on 27.2.2004. The applicant/respondent was a widower. His first wife Malti died in April 2002. The applicant/respondent got advertisement published in the newspaper and, thereafter, appellant came out with the offer and later on, marriage was solemnized. It was also pleaded that the

wife/appellant did not disclose true information and the respondent/husband was misled on many important particulars with regard to her status and other credentials.

3. As far as allegation of cruelty is concerned, it was pleaded that when the husband started inquiring about the caste status and mark sheet, the appellant-wife got enraged. She used to leave matrimonial house frequently without informing and return after many days. On certain occasions, appellant-wife was seen with unknown males and females and they all started threatening the husband that if demand of the wife – Sadhna are not accepted, husband and his other family members would be falsely implicated in cases, on account of which, the respondent-husband was living in agony. It was further pleaded that the wife insisted that if the house is not registered in her name, she would get him involved in dowry case. She also used to subject the respondent-husband to mental cruelty and assault. It was also pleaded that on one day, respondent -husband was wrongfully confined in a room for seven hours. The lock of the room could be opened only when his son-in-law came and rescued him. Respondent -husband is already suffering from after effects of head injury. A false criminal case of commission of offence under Section 498-A IPC was also registered against the respondent-husband which was finally closed and the respondent-husband was acquitted vide judgment dated 20th October 2005. It was further pleaded that appellant-wife was in the habit of hurling abuses not only in the house but also in the open road and because of quarrel, such incidents happening every day, respondent/husband felt agonized, suffered from mental stress and it is now harmful for him to continue with the wife anymore. Further pleading was that when respondent-husband was detained in jail, wife demanded cash of Rs.20 lakh and also registration of the house in her name, gift of two cars and also divorce. He was threatened that if her demands are not fulfilled, she will ensure that he continues in jail. His residential house has been illegally occupied and the respondent – husband and children have been thrown

out. Appellant- wife also extended threat of committing suicide and involving in criminal case in respect of which, report was also lodged in the police station. She indulged in his character assassination by making allegation and getting the news published in newspaper, namely 'Evening Times' and also in certain TV channels. She used to come late in the night and also hurled abuses by standing on the road and also pelting stones which has adversely affected reputation of respondent -husband by making false allegation with the help of certain NGOs'. Respondent-husband is being falsely implicated. She has been hurling abuses and leveling accusation on the husband. She used to spit on the respondent-husband alleging him as impotent. She used to make allegation against daughter, mother etc. It was also pleaded that wife insisted the husband to go for unnatural sex and indulged in abuses and assaulting and branding the husband as impotent. In this manner, respondent-husband has been subjected to cruelty. No cohabitation has been taken place between the parties since 20th October 2005.

4. The allegations made in the plaint were denied by filing written statement. The respondent-wife denied all the allegations and made counter allegation against respondent -husband that the solemnization of marriage between the parties was outcome of fraud practiced on her. She pleaded that she was subjected to cruelty due to which, report for alleged commission of offence under Section 498-A IPC was leveled and the husband was arrested and thereafter, he commanded respondent-wife to send letter for settlement and pressurized her. As the husband assured that he would not commit further cruelty on her, she had entered into compromise and the criminal case was closed, not by way of acquittal but, on the basis of compromise between the parties. After some days of compromise, respondent- husband again started subjecting her to cruelty in various ways due to which, again a criminal case was registered. It was further pleaded that all allegations of cruelty leveled by the husband against wife are false, fabricated, as in respect of this incident of alleged cruelty, no report has ever been lodged in any

police station.

5. Wife further averred that husband, son, daughter and daughter-in-law, all subjected her to frequent assault due to which, report was lodged in the police station. The husband committed rape on another lady in respect of which, that lady Sushma filed a complaint in the Court. The respondent-husband is maintaining illicit relation with many females and he used to consume drugs.
6. On the basis of pleadings of the parties, learned trial Court framed issues as to whether the husband is entitled to decree of divorce on the ground of cruelty. Learned trial Court, relying upon the evidence led by the husband and various instances of cruelty including assault, husband kept in wrongful confinement, making false allegation on his character, a decree was granted in favour of respondent-husband. It is this judgment and decree which is under challenge in this appeal.
7. Assailing legality and validity of impugned judgment and decree, learned counsel for the appellant argues that the learned Family Court granted decree even though, the allegations of cruelty have not been proved by clinching evidence. It has been argued that the evidence is not only at variance with the pleadings made in the plaint but also contrary to each other with regard to alleged different incidents of cruelty. Evidence led by respondent-husband are misled, self-serving in nature. None of the allegation of cruelty or assault, beating, keeping in wrongful confinement are proved by any independent witness. The independent witness Sharmila Chouhan (AW2) is only a hearsay witness and she herself has not seen any incident. Further submission is that the allegation that the respondent-husband was locked in a room for seven hours by appellant-wife, is liable to be disbelieved because there is no independent witness in this regard and husband's own witness, his son-in-law Kamal Kishore has admitted that there was no lock. It is further argued that the allegation of respondent- wife assaulting the respondent- husband are not based on any clinching evidence and stray evidence of quarrel between the husband and wife cannot be made a

basis to seek decree of divorce on the ground of cruelty. Further submission is that there is no evidence led by the respondent-husband that the wife was administering threat of false implication in a criminal case by committing suicide. It is argued that evidence has to be appreciated in proper perspective and because of continuous cruelty committed upon the wife that, out of disgust and displeasure, sometimes she used to say those words which cannot be treated as admission of false implication in a criminal case. It has also been argued that the allegation that while respondent-husband remained in jail, the wife demanded cash, car, property and also divorce, has not been appreciated in proper context because the evidence of appellant-wife that such letter was written by her to her husband on his instructions and direction, has not been taken into consideration by learned Family Court. Next submission is that as far as the judgment in the criminal case is concerned, the said case was closed in view of compromise arrived at with the husband and, therefore, acquittal in that case could not be taken as proof of the fact that respondent- wife made false allegation of cruelty and harassed the husband by subjecting him to agony of undergoing trial on false accusation. He next submits that the allegation of illicit relation have not only been made but specifically proved from the contents of criminal complaint which was filed by one Sushma against the husband in which, she has made allegation that she was subjected to rape. Therefore, it cannot be said that present is a case of making false and fabricated allegation. Last but not the least, learned counsel for the appellant would submit that the appellant was denied proper opportunity to lead evidence. It is submitted that one of the main witness of appellant, namely, Rinku was not allowed to be examined. This witness was present for cross-examination, but for one reason or other, case was adjourned. Because of inadvertent mistake, defendant's evidence was closed but soon thereafter, application was moved for examination of Rinku, who was one of the important witness to prove the fact with regard to cruelty committed by respondent -husband on the appellant-wife.

8. None appeared for the respondent though served.
9. We have heard learned counsel for the appellant and perused the records of the case.
10. Learned Family Court has granted decree of divorce on the ground of cruelty. Relying upon the evidence of the plaintiff Jagatpal Singh (AW1), Sharmila Chouhan (AW2) and Kamal Kishore (AW3), learned Family Court has held proved various incident of cruelty narrated in the evidence by these witnesses including the episode of keeping respondent -husband in wrongful confinement under lock and key for about seven hours until he was rescued by his son-in-law Kamal (AW3).

Learned trial Court also held the act of the appellant-wife in demanding huge amount of cash, car, property and consent for divorce as an act of cruelty. Learned trial Court has also taken into consideration the evidence that the appellant-wife threatened the respondent-husband that she would commit suicide and get everybody in family involved in criminal case. This has also been considered to be an act of cruelty.

The acquittal of the respondent- husband from the allegation of commission of offence under Section 498-A IPC has also been taken into consideration as one of the act of cruelty. The allegation against the husband that he is a person of loose character and moral and that he is maintaining illicit relation with large number of women, has been held to be one of the ground of cruelty as, according to learned trial Court, the wife failed to prove this allegation. On these considerations, learned Family Court granted decree of divorce to respondent- husband.

11. One of the allegations constituting cruelty by appellant-wife against her husband/respondent is that the appellant used to assault her husband. In this regard, the evidence of Sharmila (AW2), who is an independent witness and neighbour, stated that the appellant-wife used to say that she is non-vegetarian and compelled her husband and sons to fetch non-veg and also liquor and when her demand were not fulfilled, she

was in the habit of hurling abuses and also assaulting. In para-3 of her affidavit, she has stated that at times, she pelted stones and also using floor cleaner to assault the husband and coming outside the house. She has further deposed that she had heard hurling abuses on many occasions. She has been subjected to cross-examination. In the cross-examination, it has been elicited that this witness Sharmila is a neighbor who resides in a house which is at a distance of 15-20 steps only. She claimed to be familiar with the family of the respondent-husband since childhood. Though, she suggests that she does not know as to what is the cause of quarrel between them but she has stated that many instances of quarrel, hurling abuses have taken place. In para-15, she has stated that she has seen the wife assaulting her husband with floor cleaner. She states that she has once witnessed the incident of quarrel between them. This witness is an independent one and there is no reason why the evidence of this witness should not be accepted.

12. The respondent-husband, in order to prove cruelty, has specifically pleaded regarding the incident of he having been kept in wrongful confinement under lock and keys for about seven hours by his wife until he was rescued by son-in-law Kamal (AW3). In this regard, the appellant in his affidavit under Order 18 Rule 4 CPC has stated in para-3 that he was locked in the room in his house and for seven hours wife did not open the door despite all requests made by the appellant, then he called his son-in-law who came and broke open the lock. He further deposed that he is suffering from head injury and this act resulted in cruelty on him. In his cross-examination, it has been elicited that he did not make any report in the police station. Sharmila (AW2), the independent witness, though states in her evidence that in an incident of confinement, the respondent-husband was locked in a room for seven hours by appellant-wife, in her evidence, as far as this incident is concerned, she appears to be a hearsay witness in view of what she has stated in para-4 of her affidavit wherein she states that the incident was reported to them. That means that she herself had not witnessed this

incident.

However, Kamal Kishore (AW3) has deposed regarding the said incident. In his affidavit under Order 18 Rule 4 CPC, he has stated that in the year 2005, on one day, appellant- wife had locked respondent in a room. At that time, there was nobody at home. When his father-in-law was not released despite several requests, he was given a mobile call by his father-in-law whereafter, he went to his house and rescued him. As his father-in-law has a history of head injury, his condition had deteriorated and he was to be taken to the hospital and treatment was to be provided.

13.This particular incident of putting husband in lock and keys for about seven hours, as stated by this witness is sought to be impeached in his cross-examination. A suggestion that as the respondent- husband was not put in lock and key therefore no report was made in the police station, has been denied.

14.True it is that report of the incident was not lodged in the police station. But, that does not mean that the evidence in this regard has to be rejected only on this ground. There is specific averment not only made in the plaint but specific evidence to this effect led by respondent-husband and also by Kamal Kishore (AW3). Sharmila (AW2), a neighbour, though states that incident was, later on, disclosed to her and others, the evidence in this regard is reliable on the basis of evidence of respondent-husband Jagatpal (AW1) and Kamal Kishore (AW2). The act of keeping respondent-husband in lock and keys for about seven hours until he was rescued from his son-in-law Kamal (AW3), definitely is an act of cruelty.

15.The third incident of cruelty proved by respondent-husband is that the wife threatened to get him and his family members implicated in a case by committing suicide. In this regard, respondent-husband, in para-2 of his evidence, has stated that appellant-wife threatened him to get implicated in a case and get him sent to jail. Sharmila (AW2) has also

stated in para-5 of her evidence that the appellant-wife used to threat her husband that she would commit suicide and get them falsely implicated in a false case. Third witness Kamal Kishore (AW2) has also stated in para-4 regarding false implication. The evidence of the aforesaid witnesses are reliable because the appellant -wife, examined as defence witness No.1 herself, has also admitted in para-24 of her cross-examination that once, she had threatened that she would commit suicide and get the husband and his family implicated in a case. Though, she states that this threat was given by her only once. Therefore, the pleadings and evidence of respondent-husband in this regard is reliable that it was the appellant-wife who threatened respondent-husband to implicate in a criminal case.

16. In the pleading and the evidence of Jagatpal Singh (AW1) and that of other witnesses, it has come that when respondent- husband was detained in jail, the appellant-wife demanded Rs.20 lakh, a house, two cars and also assurances for divorce. This incident of writing letter has not been disputed by the appellant- wife. However, it is sought to be explained by giving an explanation, which is wholly improbable, that she did it on the instructions of her husband. When husband is arrested and detained in jail on the allegation made by the appellant-wife, to say that wife would be sending letters to the husband raising demand of cash, car, house on the instructions of her husband is wholly improbable. Learned trial Court has also considered this as an act of cruelty on the husband by making such kind of demand. One of the ground for granting decree of divorce is that respondent- husband has been subjected to cruelty inasmuch as false allegation of commission of offence under Section 498-A was levelled against him by the wife in which the husband was finally acquitted.

17. Merely because there is acquittal in the aforesaid case, it would not invariably lead to conclusion that it was a case of false implication. Whether or not the criminal case and the allegation made therein were false, fabricated, would depend upon facts and circumstances of each

case. This Court in its judgment in the case of *Santosh Kumar Vastrakar Vs. Smt. Dhaneshwari Vastrakar* (FAM No.58 of 2015, decided on 27.09.2019) considered legal position after referring to decision of the Supreme Court in **K. Srinivas Rao Vs. D.A. Deepa** (2013) 5 SCC 226 and **K Srinivas Vs. K. Sunita** (2014) 16 SCC 34, as under:

“10. We shall now advert to the aspect as to whether acquittal of the appellant, without anything, should be interpreted to draw a presumption that it was a case of false implication, calculated to embarrass and harm his reputation and to constitute cruelty. Before we advert to the order passed by the Family Court and other material on record, we consider it appropriate to refer to observations made by the Supreme Court in some of the decision which were observed by this Court in its order dated 30.7.2019 passed in FAM No.3 of 2015 (*Anjan Bhattacharya Vs. Smt. Latika Arpita Bhattacharya*)

“13.In the case of **K. Srinivas Rao Vs. D.A. Deepa** (2013) 5 SCC 226, Their Lordships in the Supreme Court outlined the scope of term “Cruelty”. In para 10 of the aforesaid decision, it was observed as under:-

“10. “Under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, a marriage can be dissolved by a decree of divorce on a petition presented either by the husband or the wife on the ground that the other party has, after solemnization of the marriage, treated the petitioner with cruelty. In a series of judgments this Court has repeatedly stated the meaning and

outlined the scope of the term 'cruelty'. Cruelty is evident where one spouse has so treated the other and manifested such feelings towards her or him as to cause in her or his mind reasonable apprehension that it will be harmful or injurious to live with the other spouse. Cruelty may be physical or mental."

14. In illustrative cases, inference of "mental cruelty" can be drawn, was considered in the case of *Samar Ghosh vs. Jaya Ghosh*¹, which was referred to in the aforesaid decision in the case of *K. Srinivas Rao* (supra), as below:-

11. In *Samar Ghosh* this Court set out illustrative cases where inference of 'mental cruelty' can be drawn. This list is obviously not exhaustive because each case presents its own peculiar factual matrix and existence or otherwise of mental cruelty will have to be judged after applying mind to it. We must quote the relevant paragraph of *Samar Ghosh*. We have reproduced only the instances which are relevant to the present case.

"101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) xxx xxx xxx

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or

apprehension must be very grave, substantial and weighty.

(vii) xxx xxx xxx

(viii) xxx xxx xxx

(ix) xxx xxx xxx

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) xxx xxx xxx

(xii) xxx xxx xxx

(xiii) xxx xxx xxx

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

15. Their Lordships also added more instances of mental cruelty in addition to what was noted in the case of *Samar Ghosh* (supra), as below:-

16. Thus, to the instances illustrative of mental cruelty noted in *Samar Ghosh*, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse”

16. Dealing with the case in hand, Their Lordships noticed that the wife had lodged a report under Section 498-A of IPC against the husband and his parents and finally there was an acquittal. The conduct of the wife in filing a complaint and making unfounded allegations coupled with other conduct and keeping in view the ultimate result of acquittal, it was held that such a conduct on the part of the wife was mental cruelty on the husband, it was held:-

28. “Pursuant to this complaint, the police registered a case under Section 498-A of the IPC. The appellant-husband and his parents had to apply for

anticipatory bail, which was granted to them. Later, the respondent-wife withdrew the complaint. Pursuant to the withdrawal, the police filed a closure report. Thereafter, the respondent-wife filed a protest petition. The trial court took cognizance of the case against the appellant-husband and his parents (CC No. 62/2002). What is pertinent to note is that the respondent-wife filed criminal appeal in the High Court challenging the acquittal of the appellant-husband and his parents of the offences under the Dowry Prohibition Act and also the acquittal of his parents of the offence punishable under Section 498-A of the IPC. She filed criminal revision seeking enhancement of the punishment awarded to the appellant-husband for the offence under Section 498-A of the IPC in the High Court which is still pending. When the criminal appeal filed by the appellant-husband challenging his conviction for the offence under Section 498-A of the IPC was allowed and he was acquitted, the respondent-wife filed criminal appeal in the High Court challenging the said acquittal. During this period respondent-wife and members of her family have also filed complaints in the High Court complaining about the appellant-husband so that he would be removed from the job. The conduct of the respondent- wife in filing a complaint making unfounded,

indecent and defamatory allegation against her mother-in-law, in filing revision seeking enhancement of the sentence awarded to the appellant-husband, in filing appeal questioning the acquittal of the appellant-husband and acquittal of his parents indicates that she made all attempts to ensure that he and his parents are put in jail and he is removed from his job. We have no manner of doubt that this conduct has caused mental cruelty to the appellant-husband."

17. In the case of *K. Srinivas* (2014) 16 SCC 34 also, relying upon the decisions in the case of *K. Srinivas Rao* (supra), held that if a false criminal complaint is preferred by either spouse, it would constitute matrimonial cruelty and entitle the other spouse to claim a divorce, as below:-

1. "In this Appeal, counsel for the Appellant has sought to draw our attention to all the arguments that had been addressed before the High Court on behalf of the Appellant-Husband in support of his claim for dissolution of his marriage to the Respondent by a decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955. We have, however, restricted him to the ground of alleged cruelty on account of the filing of a criminal complaint by the Respondent against the Appellant and several members of his family under Sections 498A and 307 of the Indian Penal Code (IPC). We did this for the reason that if this ground is successfully

substantiated by the Petitioner, we need not delve any further i.e. whether a marriage can be dissolved by the Trial Court or the High Court on the premise that the marriage has irretrievably broken down. This nature of cruelty, in the wake of filing of a false criminal case by either of the spouses, has been agitated frequently before this Court, and has been discussed so comprehensively and thoroughly that yet another Judgment on this well-settled question of law, would be merely a waste of time. A complete discourse and analysis on this issue is available in a well- reasoned judgment in K. Srinivas Rao vs. D.A. Deepa, 2013(5) SCC 226, in which numerous decisions have been cited and discussed. It is now beyond cavil that if a false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce.”

18. In a mere recent decision in the case of **Raj Talreja** (AIR 2017 SC 2138), the legal position as to when a false complaint would amount to cruelty was also examined, as below:-

10. “Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there

are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act 1955 (for short 'the Act'). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty. In the present case, all the allegations were found to be false. Later, she filed another complaint alleging that her husband along with some other persons had trespassed into her house and assaulted her. The police found, on investigation, that not only was the complaint false but also the injuries were self inflicted by the wife. Thereafter, proceedings were launched against the wife under Section 182 of IPC."

18.If we apply to the aforesaid legal position, we find that in the present case, the respondent-husband has been acquitted of the criminal charges by the trial Court vide its judgment dated 20th October 2005 passed in Criminal Case No.54 of 2005. A perusal of the said judgment, copy of which has been filed, shows that the allegation of demand of dowry, cash and assault were not at all made and the appellant- wife even denied having lodged any such report and denied that any kind of cruelty was committed upon her by the accused. In the result, taking into consideration the total lack of evidence in that regard, the respondent-husband has been acquitted of the criminal charges. Present is not a case where the appellant-wife has categorically deposed regarding cruelty committed on her which has been doubted by the learned trial Court and acquittal is based only by giving benefit of doubt.

The judgment shows that during the pendency of that case, a compromise was entered into and appellant-wife denied allegation of cruelty stating that nothing happened to her. That means, the institution of criminal case was more an act of false implication in order to compel the husband to come to compromise. Therefore, this act of lodging criminal case appears to be a case of false implication. In such an eventuality, in view of the law laid down and referred to herein-above, it would definitely be a case of cruelty meted out to the respondent-husband.

19. Learned trial Court also held that present is a case of cruelty on yet another ground that the appellant- wife has made allegation regarding character and chastity of her husband by branding him as womanizer having illicit relation with number of females. In this regard, the argument of learned counsel for the appellant is that as far as allegation of committing rape on Sushma is concerned, it could not be said to be false because she lodged criminal complaint also.

Keeping aside the case of allegation of having committed rape on Sushma, this Court finds that learned trial Court has taken into consideration the pleading and evidence of the appellant-wife where she has made serious allegation on the husband that he is having illicit relation with number of females. In this regard, no amount of evidence could be led by appellant- wife to prove such serious allegation on the character of the husband. In her cross-examination, she has gone to the extent of saying that he is having illicit relation with 50-100 women.

20. Apparently, such allegation are far-fetched, baseless and an attempt to strike at the character of the husband. We have no hesitation to hold that this allegation amounts to cruelty.
21. One argument made before us though specific ground to that effect has been taken in the memo of appeal is that one of the important witness of the appellant, namely Rinku was not allowed to be examined which has resulted in denial of proper opportunity to the appellant to prove

her case that it was the respondent -husband who subjected her to cruelty. From the records, we found that initially Rinku was made a witness and one day, he appeared but he could not be examined. Thereafter, on another day 9.9.2011, when the case was fixed for recording evidence of the appellant-wife, her witness -Goutam Buddh Jana was examined and cross-examined. Thereafter, the appellant did not make any prayer for examination of any other witness and declared her evidence closed. The case was, thereafter, listed on 23.9.2011 for argument. On that date, adjournment was sought on the ground that written argument could not be prepared. Case was again directed to be listed on 10.10.2011. On this day, an application was filed for examination of witness -Rinku. This prayer was rejected by learned Court below vide its order dated 9.11.2011.

Taking into consideration the relevant aspect, particularly that on previous dates, after examination of witness, Goutam Buddh Jana, the appellant- wife declared her evidence closed, the argument of denial of proper opportunity to lead evidence, appears to be an afterthought.

Moreover, after going through the affidavit of this proposed witness Rinku, we find that he was proposed to be examined as witness of incident of cruelty which led to lodging of report in the police station. This criminal case, however, finally ended in acquittal of respondent-husband, as considered herein-above. Therefore, non-examination of this witness to prove the fact regarding alleged cruelty and lodging of police report does not in any manner prejudice the case of the appellant.

22. In view of the above consideration, we do not find any good ground to interfere with the impugned judgment and degree of granting divorce to the respondent-husband.

23. There is another prayer made by learned counsel for the appellant that learned court below has not granted permanent alimony under Section 25 of the Hindu Marriage Act.

24.It appears that this aspect was not dealt with by learned trial Court as the appellant did not insist for grant of any permanent alimony under Section 25 of the Hindu Marriage Act. Even after grant of decree of divorce, such application can be separately filed and dealt with. It is, therefore, observed that if the appellant-wife move an application for grant of permanent alimony under Section 25 of the Hindu Marriage Act, the same shall be considered in accordance with law.

25.We made it clear that we have not expressed any opinion on the merits of the appellant's claim under Section 25 of the Hindu Marriage Act for permanent alimony.

26.In the result, the appeal fails and is hereby dismissed. Let appellate decree be drawn accordingly. Costs made easy.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge