

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

Family Court Appeal No.113/2014
with
Cross Objection (ST) No.24362/2014

Dr. Santosh Shetty
Age - 40 yrs., Occupation : Doctor,
r/o. 55/56, "A" Wing,
Dewas Garden CHS, Ambadi Road,
Vasai (West),
Thane - 401 202
..... Appellant
(Ori. Petitioner)

Vs.

Mrs. Ameeta Shetty
Age - 38 yrs., Occu : Fasion Designer,
c/o. Raghuram Shetty,
Gangadeep Society, Near Hotel Chenab
Sagar Vihar Lane, Vashi,
New Mumbai.
..... Respondent
(Ori. Respondent)

Mr. Rajiv Chavan, Senior Advocate a/w. Smt. Priyanka
Chavan and Mr. Atul Mankame I/b. Mahesh Thorat for the
Appellant
Mrs. Ameeta Shetty, Respondent in-person.

**CORAM: K.K.TATED &
SARANG V. KOTWAL,JJ.**

**RESERVED ON : 23rd JANUARY 2020
PRONOUNCED ON : 18th MARCH 2020**

JUDGMENT : (PER : K.K.TATED,J.)

1 Heard the learned senior counsel for the Appellant
and the Respondent in-person.

2 The matter was closed for orders on 23.01.2020, permission was granted to both the parties to file their written submissions, if any, pursuant to which, both the parties have filed their written submissions in the Registry on 21.02.2020.

3 By this Family Court Appeal, the Appellant challenges the judgment and decree dated 25.11.2013 filed by the Family Court, Mumbai at Bandra in Petition No.A-2330/2007 dismissing the Appellant's petition u/s.13(1)(ia)(ib) of the Hindu Marriage Act, 1955 on the ground of cruelty and desertion.

4 The Respondent wife also filed cross objection, mainly on the ground of maintenance.

5 During the pendency of the Family Court Appeal, the Applicant had filed Civil Application No.73/2017 for carrying out amendment by adding the ground in appeal memo, as per the schedule of amendment annexed to the Civil Application. This court, by order dated 16.08.2019 had allowed the said application and permitted the Applicant to carry out amendment. Pursuant to the said amendment, the Appellant has alleged that, the Respondent has filed false and fabricated complaint against the Appellant and his family members, alleging that they have caused cruelty to her u/s.498A, 406 read with section 34 of the Indian Penal Code, a case bearing RCC No.1053/2009, was tried by the Judicial Magistrate, F.C., Belapur. The said complaint was decided by the Learned Metropolitan Magistrate by order date 07.03.2016 and acquitted the Appellant as well as his

family members. The Appellant has also placed on record, by way of the amendment, a copy of order dated 07.03.2016 passed by the Judicial Magistrate, F.C., dismissing RCC No.1053/2009 u/s.498A, 406 read with Section 34 of the Indian Penal Code. The learned Metropolitan Magistrate, in his order dated 07.03.2016 on point No.2 recorded that the Respondent has failed to prove that the Appellant had misappropriated the Respondent's jewellery and Stridhan to the extent of Rs.27,35,000/- (Twenty Seven Lacs Thirty Five Thousand only). English translation of paragraph 31 of the said order, reads thus:

“31. As mentioned above as per the submissions of the complainant party accused have committed misappropriated of Stridhan/ornaments worth Rupees 27,35,000/- of the complainant. Even though complainant could not proved as accused have taken out Stridhan/ornaments of the sum of Rs.27,35,000/- from her this fact cannot be proved due to absence of important document papers. Similarly in the cross-examination of complainant she admit that, she had filed return of articles application in the month of February 2008 to the divorce application filed by accused NO.2 even though no Stridhan/ornaments list was attached to that application. Under such situation accused have committed conspiracy of complainant's Stridhan i.e. committed conspiracy of gold-silver ornaments total worth Rs.27,35,000/- due to absence of evidence could not proved. Hence my answer to issue No.2 is record in negative.”

The Apex Court, in the matter of Vishwanath Agrawal s/o. Sitaram Agrawal Vs. Sarla Vishwanath Agrawal (2012) 7 SCC 288 held that the subsequent events can be considered at the time of final hearing.

6 The learned senior counsel for the Appellant submits

that, the Appellant married to the Respondent as per Hindu Rites on 17.03.2002. A girl child viz. Saraya was born on 28.06.2003 from the wed-lock. He submits that for some time, the married life between the Appellant and the Respondent was smooth, but in June 2003 the Respondent had started harassing the Appellant mentally, abusing and treated the Appellant with cruelty on financial matters and for separate accommodation. He submits that on 25.10.2004 for non fulfillment of her demand, the Respondent left the matrimonial home along with minor daughter and started residing with her father. He submits that between 25.10.2004 to 23.05.2007 the Appellant made several attempts to bring the Respondent back to the matrimonial home, but she refused to come only on the ground that, she wants separate accommodation. He submits that after mediation by elder family members, the Respondent returned to her matrimonial home on 23.05.2007 but denied the marital relations to the Appellant.

7 The learned senior counsel for the Appellant submits that some time in August 2007, the Appellant's family had shifted to a rented premises at Mira Road, Mumbai. He submits that, as the Respondent hails from a very rich family, she refused to shift to Mira Road premises and again deserted the Appellant on 15.10.2007 and returned to her parents' home along with her daughter. Thereafter from October 2007 to November 2007 the Appellant made all efforts for the Respondent's return, but they were in vain. Thereafter the Appellant filed divorce petition on

13.11.2007 on the ground of cruelty and desertion. He submits that thereafter the Respondent wife also filed FIR with Vashi Police Station on 18.02.2009 u/s.498A and 406 of the Indian Penal Code against the Appellant, his parents and other family members. The learned Metropolitan Magistrate, Belapur Court by the order dated 07.03.2016 acquitted all the parties (accused) in that case. He submits that said order is final, because there is no Appeal and/or Revision.

8 The learned senior counsel for the Appellant submits that the Respondent, from time to time used to abuse the Appellant on his character, relationship with other family members, relatives etc. He submits that the Respondent used to harass the Appellant's parents. She never used to do any house work. She always wanted a separate accommodation. Not only that she used to spend money which was beyond the capacity of the Appellant. He submits that the Respondent used to insult the Appellant in front of the relatives of the Appellant as well as her relatives also. He submits that these facts were narrated by the Appellant in his petition for divorce, which are as under:

"5. The Petitioner states that, during their courtship period i.e. one month, both of them could not meet each other. But, they had a regular telephonic conversation, wherein gradually he realised that the Respondent had a very high expectation of life, as she came from a very rich family. She insisted him to have a car of his own to commute for his convenience. At that time, he tried to convince her that for the car, he do not have any hard cash and could not afford the same at that time. But she could convince him to take a car on loan and

insisted for Ford Ikon. Accordingly, he took loan from Standard Chartered Bank and booked a Ford Ikon car for him. Thereafter, she started planning for their honeymoon trip and insisted for International Trip, as he had suggested for domestic trip. Thereafter, she started insisting for Seven Star Hotel for their first night. At that time, he had a talk with his parents regarding her high expectations and insistence. But at that time, since everything was fixed earlier, his parents agreed for the same for his happiness and helped him financially. Accordingly, he booked Maratha Sheraton Presidential Suit Room for their first marriage.”

“6. The Petitioner states that, after the marriage since the Respondent had insisted for Passport, as she wanted to go for honeymoon abroad. He tried to convince her, that they would go for some domestic trip. But she flatly refused and told him to apply for Tatkal passport and to delay the honeymoon till she gets the same, as she wishes to go to Mauritius. Since the Respondent was newly wedded wife, he did not wanted to upset her, hence he agreed for the same and accordingly, they went for Honeymoon to Mauritius. In Mauritius also, she spent lots of money on shopping, despite of knowing that he was on tight budget. During the honeymoon, he tried to convince her to not to spend the was so extravagantly. At that time, she picked up a heavy quarrel with him, insulted him and also taunted him on his incapacity to fulfill her demand. By looking at such adamant and non-co-operative attitude of the Respondent, he felt very miserable and suffered with tremendous mental trauma.

7. The Petitioner states that, after coming from Honeymoon he resumed his duties. He used to travel by railway to K.G. Somaiya Hospital, Sion. The Respondent started showing her true colours and insisted him to use a car to avoid Railway journey. When he started going by car, the her Respondent would ask him everyday to drop her at her parental place at Vashi and then go to Sion. For the first trips, he did not mind, as he thought that being a newly

wedded wife, she must have been missing her parents. But later on, it was her program of everyday. She would visit her parental place almost daily and would not help his mother in household chores. Therefore, one day, in the month of June'2002, he tried to convince her, that not to visit her parental place so often, without any reason or occasions and she should take interest in household responsibilities. But in stead of understanding the same, the Respondent became very furious and started arguing with him. She insulted and tainted him of having middle class mentality. At that time, she started shouting at him at the top of her voice and abused him in front of his parents. Thereafter, she stopped going to her parental place by car with him for some days. But started visiting her parents without informing him. At times, she used to talk on the telephone with her mother for hours together. The Respondent never took any interest in household duties and also not given helping hand to his mother. But instead, she always kept grudge in her mind against him and his family members, the reason best known to her.”

“8 The Petitioner states that, after some days, in the month of July'2002, the Respondent again resumed to her earlier behavior and started insisting him to drop her at Vashi every morning. When he tried to convince her not to behave in such an irresponsible manner and take interest in her marital obligation, at that time she created a big scene at his home in front of his parents. She had abused and insulted him and started throwing things on his person within her reach. He anyhow tried to pacify her and controlled the situation. But due to such adamant and arrogant attitude of the Respondent, he suffered with tremendous mental tension and agony, which cannot be explained in words. At that time, for the first time he took the decision to inform her parents regarding her such indifferent attitude, as it had become unbearable for him.”

“11 The Petitioner states that, on the occasion of Respondent's cousin's wedding at Bangalore in the month of August-September'2002, it was very difficult

for him to take leave. But the Respondent pressurized him to take a leave for a week and both went to Bangalore to attend the said wedding. During that period, the Respondent had falsely accused him for being flirtiest with her cousin sister AKSHATA SHETTY, without having any fault on his part. On the said issue, she quarreled with him at the hotel room and resorted to physical abuse to him. It was very much shocking for him and he collapsed due to the Respondent's erratic and Suspicious nature. During that trip, he immediately informed to her mother regarding her such erratic and suspicious nature. At that time, her mother assured him that she would take up the said matter in front of all family members after reaching to Mumbai and would also convince the Respondent."

"12. The Petitioner states that, after reaching Mumbai, he met her parents immediately and explained the Respondent's misconduct at Bangalore. At that time, her parents assured him that they would convince and make understand and apologized for her misdeeds and misbehaviour towards him. At that time, the Respondent stayed along with her parents at Vashi for one month, i.e. in the month of September 2002. Thereafter, she came back to the matrimonial home. After her coming back to the matrimonial home, he thought that the Respondent would mend her ways and would behave properly with him. But after few days, the Respondent again resumed over adamant and non cooperative attitude. She started staying aloof from him and his family members and used to confine herself in the bedroom and used to refuse to attend his family functions with him. She started with the new tactics, that not to have food for some time, dressing up shabbily, not taking care of his needs. When he asked her the reason about her such indifferent attitude towards him, at that time she arrogantly answered him that, this is how she would live. He tried to convince her a lot, but she stucked to her adamant and non-co-operative attitude. Due to such erratic attitude of the Respondent, he also developed tremendous stress and could not concentrate on his work. At that time also, he

informed her parents regarding her misbehavior, but as usual, they assured of her improvement in future.”

“13 The Petitioner states that, after the above incidences, within a week i.e. in the month of September'2002, again the Respondent had come up with the new complaint of severe back-ache and inability to stand. She requested him to drop her to the parental place for some days. Being a doctor, he was very disturbed with her said complaint, as she had confined herself in the bed room. He got her X-ray done, but did not find any problem in her back and everything was normal. But due to her insistence, he dropped her at Vashi. The Respondent had started her normal activities social life at Vashi After some days, he brought her back to matrimonial home, but the Respondent was reluctant to come back. After coming home, again she started picking up issues at home with him and his family members on unwanted and unreasonable things. When informed the said matter to her parents, at that time they suggested him to take separate accommodation, which was impossible for him.”

“15 The Petitioner states that, as per the tradition, the Respondent had to go to her parental place after her Seventh month. But, she put the pressure and left for her parental place in the 6th month of her pregnancy. During her stay at her parental place, whenever he used to phone call her to now about her wellbeing, she used to insist him for separate accommodation using child's future as a new technique. The petitioner further states that on 28.06.2003, she gave birth to a baby girl. After the birth of the child, she stayed at her parental place for more than 3 to 4 months by delaying her return back on one or the other pretext. He and his family members were expecting new born baby at home soon, but the Respondent kept on refusing and extended her stay at her parental place. Due to such attitude of the Respondent, he was very much disturbed and was suffering from sleepless nights. Therefore, on October'2003, he had arranged for a joint meeting along with his family members. In front

of the Respondent's parents, again he requested her to come back to the matrimonial home along with the child, as it was high time. At that time, the Respondent agreed to comeback with him very reluctantly and according joined him at the matrimonial home.”

“21 The Petitioner states that, after the Respondent rejoined him in the matrimonial home, after 2 ½ years, he thought that everything would become normal and they would lead happy marital life along with daughter 'SARAYU'. But to his utter shock, the Respondent had created a new issue by not allowing him to have physical relations after their reunion and she flatly refused for the said. Whenever he tried to show intimacy towards her for the physical relations, she flatly refused for the said and told him that she has accepted the said reunion only for the sake of her daughter. Thus, the Respondent has willfully neglected and refused him to have his marital bliss, without having any fault on his part. Thus, there is no physical relation between them since May'2007, due to the willful refusal and neglect of by the Respondent.”

“24. The Petitioner states that, on 15.10.2007 at 7.15 a.m., when daughter 'SARAYU' was getting ready for the school, he thought of hugging his daughter and came closer to 'SARAYU'. At that time, the Respondent came charging, threw his arms off 'SARAYU' and abused him in most vulgar language. When he also asked her the reason about such rude behaviour, at that time the Respondent started throwing things at him. By hearing the said noise from their bedroom his parents rushed there and his mother tried to stop her. At that time, she also abused and insulted his parents in most filthy language and asked them to leave their house permanently. At that time, 'SARAYU' was witnessing everything. Hence, he also tried to pacify her, but the Respondent had become out of control. Thereafter, the Respondent packed all her bag and baggage i.e. her Streedhana articles, cloths and other belongings and left the matrimonial home along with 'SARAYU' and

while going, she threatened him of dire consequences, that she would implicate him and his family members in false criminal case, if he would come to her parental place to take her back.”

9 The learned senior counsel for the Appellant submits that the Respondent has also admitted most of these facts in her written statement. In support of this contention, he relies on following paragraphs of the written statement filed by the Respondent which reads thus:

“6The Petitioner's mother Mrs. Ratna.C.Shetty is a lady of excellent dramatic skills. As soon as the Petitioner and the Respondent came back from the honeymoon the Petitioner's mother falsely claimed of having severe leg pain to which the Petitioner put a plaster from thigh to toe confining his mother to bed rest, this was a ploy on behalf of the Petitioner and his mother to compel and burden the new bride into doing all the household chores, they also removed the house-maid who was working for 8 years with them before the Petitioner and Respondent's marriage. The Petitioner's parents told the Respondent that the Respondent's status in her matrimonial home was that of an 'ayaah' (maid servant). The Respondent was compelled to do all the household chores of sweeping, swabbing, washing clothes and utensils of the Petitioner's family as well as his sister's family and also cook for the entire family. Even though the Petitioner's sister Sarika and her husband Thomas Jerry had a rented accommodation of their own nearby, they had their meals in the Respondent's matrimonial home. The Petitioner's sister Sarika had an illicit relationship with Mr.Jerry Thomas who was then working as her boss and was a married man with two children. The Petitioner had once told the Respondent Respondent that his sister had eloped from home and was not sure about authenticity of Sarika's marriage and hence the legitimacy of her daughter Rhea. The Petitioner had also admitted to the Respondent that his sister Sarika had filed a police case against her own parents

because Sarika feared for Mr. Jerry Thomas's life as her parents at that time did not approve of her relationship with Mr. Jerry Thomas. The Petitioner's sister Sarika would leave her daughter Rhea in the care of the Respondent. The Respondent had to feed, bathe, clothe Rhea and also accompany Rhea to the school bus at 6.45 in the mornings and then bringing Rhea back from school. At nights, on the insistence of the Petitioner's family, the Respondent had to make Rhea sleep in between her and the Petitioner as a deliberate ploy not to allow the newly married Petitioner and Respondent to get intimate. The Petitioner's sister Sarika would drape herself in nothing but a towel and move around shamelessly in the house in the presence of her brother and father. The Petitioner and his parents expected the Respondent to do the same. When the Respondent refused to oblige to this outrageous demand of the Petitioner and his family, the Respondent was ridiculed and humiliated as being outdated and conservative.”

“8The Petitioner was shamelessly flirting with the Respondent's cousin sisters which became very embarrassing for the Respondent and her relatives. Some of the relatives even questioned the Respondent about the Petitioner's character. When the Respondent pleaded with the Petitioner to mend his ways, the Petitioner started shouting at the Respondent and threatening the Respondent with dire consequences, drawing attention of all the present relatives and friends. Despite the Petitioner's shocking behaviour, the Petitioner and the Respondent had physical relations after which the Respondent conceived in the month of September/October 2002. The Respondent craves leave to refer to and rely upon the Petitioner's telephonic records showing the Petitioner's regular interactions with females in the middle of the night.”

“10. With reference to para 15 the Respondent denies the allegations made therein by the Petitioner. The Respondent states that as per the tradition he Respondent was sent to her parent's house in the 7th

month after a proper function of 'godhbharai' in her matrimonial home at Vasai. The Respondent's father was forced to pay money for the 'godhbharai' function as well. The function was a simple and homely affair in the presence of family members. After the Respondent was sent to her parental home, the Petitioner and his family did not permit the Respondent to visit her matrimonial home to meet the Petitioner. The Respondent gave birth to a girl who is named Sarayu Shetty on 28/6/2003. However, the Petitioner refused to bear any expense for the delivery at the hospital and the Petitioner also refused to bear any expense for the child. The Respondent's father had to provide for the Respondent and her new born child. The Petitioner and his Family insisted that the Respondent's father should hold a grand function for the naming ceremony of the Respondent's new born child which the Respondent's father obliged. After the passing of 3 months in the month of September 2003 as is customary the Respondent went back to her matrimonial home."

"12The Petitioner forced the Respondent to abort the child. The Petitioner at the instigation and in connivance with his mother would physically assault and verbally abuse the Respondent. Despite the Petitioner's handsome earnings from his job as a Senior Registrar at S.L. Raheja Hospital, the Petitioner refused to meet any expense towards the Respondent and the minor child Sarayu....."

"16The Respondent states that the Petitioner upon instigation of his parents and sister Sarika would from time to time treat the Respondent with utter disrespect. The Petitioner would shamelessly relate to the Respondent about his sexual relations with his colleagues especially Dr.Gayatri Parchure and female relatives of his patients, the Petitioner would talk to these ladies at mid-night in front of the Respondent, causing immense hurt and emotional turmoil to the Respondent. The Petitioner used the Respondent merely to extract as much money as possible from the Respondent's father....."

“18The Respondent states that the contents of the paragraph are completely false and baseless and malicious in nature. The Respondent states that the Respondent was ill treated by the Petitioner and his family, in the Respondent's matrimonial home. The Respondent further states that normally at around 4 to 4.30 pm the Respondent would go to the kitchen to prepare tea for the Petitioner's family members. On 10th October 2007 at around 4.30 pm when the Respondent entered the kitchen she was shocked and surprised to get a foul odour of cooking gas. On close inspection the Respondent found that the gas stove was left open and the gas was leaking out of the stove. The Respondent immediately took remedial action and was saved from a fatal disaster.....”

10 The learned senior counsel for the Appellant submits that in the present proceedings the Appellant has filed his affidavit along with affidavit of examination in chief (Exhibit-29 and 41), affidavit of Sadanand Shetty, maternal uncle of the Appellant (Exhibit- 42). He submits that the Appellant has also placed on record several documents, including the document showing income of the Respondent.

11 The learned senior counsel for the Appellant submits that the Family Court has failed to consider all the materials placed on record at the time of passing the impugned judgment. He submits that the Family Court has failed to consider even the evidence adduced by the Respondent herself. He submits that the Respondent, in her affidavit in examination-in-chief has specifically made several allegations about the character of the Appellant in front of the family members in family function. These facts were not considered by the Family Court at the time of passing the

impugned order. He submits that, in fact, there was major difference in the lifestyle and standard of living between the Appellant and the Respondent and because of that, it became impossible for the Appellant to stay with the Respondent. Apart from that, the Respondent, for want of separate accommodation, left the Appellant along with their child and never returned, in spite of several requests by the Appellant himself as well his family members. All these facts were brought on record by the Appellant and in spite of that the Family Court dismissed the petition for divorce on the ground of cruelty and desertion.

12 The learned senior counsel for the Appellant submits that bare reading of the proceedings clearly show that it is impossible for both the parties to stay together. He summarized those grounds in written submission.

13 The learned senior counsel for the Appellant submits that during pendency of the present proceedings, the learned Magistrate has passed the order in the complaint u/s.498A of the Indian Penal Code and specifically recorded that the allegations made by the Respondent against the Appellant as well as his family members are false. He submits that these facts itself show that the Respondent has treated the Appellant with cruelty, so it became impossible for the Appellant to continue the marital life with the Respondent wife.

14 The learned senior counsel for the Appellant submits that the Trial Court has erred in coming to the conclusion

that the court can pass the decree for maintenance without any application by the other side. He submits that admittedly, in the present proceedings the Respondent has failed to file any application for permanent alimony u/s.25 of the Hindu Marriage Act, 1955. He submits that in any case, the question of granting permanent maintenance comes, if the decree for divorce is granted. The learned senior counsel for the Appellant submits that in the matter of Chand Dhawan (Supra), the Apex Court held that in case of dismissal of the petition of the husband under any of the sections 9 to 14 of the Hindu Marriage Act, 1955, no alimony can be granted to the wife but maintenance can be claimed by wife u/s.18(c) of the Hindu Adoption and Wards Act or u/s.125 of the Cr.P.C. He relies on para 25 and 28 of the said judgment which reads thus:

“25. We have thus, in this light, no hesitation in coming to the view that when by Court intervention under the Hindu Marriage Act, affectation or disruption to the marital status has come by, at that juncture, while passing the decree, it undoubtedly has the power to grant permanent alimony or maintenance, if that power is invoked at that time. It also retains the power subsequently to be invoked on application by a party entitled to relief. And such order, in all events, remains within the jurisdiction of that Court, to be altered or modified as future situations may warrant. In contrast, without affectation or disruption of the marital status, a Hindu wife sustaining that status can live in separation from her husband, and whether she is living in that state or not, her claim to maintenance stands preserved in codification under Section 18(1) of the Hindu Adoptions and Maintenance Act. The Court is not at liberty to grant relief of maintenance simpliciter obtainable under one Act in proceedings under the other. As is evident, both the statutes are codified as

such and are clear on their subjects and by liberality of interpretation inter-changeability cannot be permitted so as to destroy the distinction on the subject of maintenance.”

“28. On the afore-analysis and distinction drawn between the fora and perspectives, it is difficult to come to the view that a claim which is ancillary or incidental in a Matrimonial Court under the Hindu Marriage Act could be tried as an original claim in that Court; a claim which may for the moment be assumed as valid, otherwise agitable in the Civil Court under the Hindu Adoptions and Maintenance Act, 1956. As said before, these two enactments keeping apart, the remaining two, i.e., Hindu Succession Act, 1956 and Hindu Minority and Guardianship Act, 1956 are a package of enactments, being part of one socio-legal scheme applicable to Hindus. When distinctive claims are covered distinctly under two different statutes and agitable in the Courts conceived of thereunder, it is difficult to sustain the plea that when a claim is otherwise valid, choosing of one forum or the other should be of no consequence. These are not mere procedural technicalities or irregularities, as termed by one line of reasoning by some of the High Courts. These are matters which go to the root of the jurisdiction. The Matrimonial Court, a Court of special jurisdiction, is not meant to pronounce upon a claim of maintenance without having to go into the exercise of passing a decree, which implies that unless it goes onwards, moves or leads through, to affect or disrupt the marital status between the parties. By rejecting a claim, the Matrimonial Court does make an appealable decree in terms of Section 28, but that neither affects nor disrupts the marriage. It certainly does not pass a decree in terms of Section 25 for its decision has not moved or done anything towards, or led through to disturb the marriage, or to confer or take away any legal character or status. Like a surgeon, the Matrimonial Court, if operating, assumes the obligation of the post operatives, and when not, leaves the patient to the physician.”

15 The learned senior counsel for the Appellant has relied on the following judgment on the point of cruelty. He submits that Apex Court in the matter of ***K. Srinivas Rao Vs. D. A. Deepa (2013) 5 SCC 226*** held that making unfounded, indecent, defamatory allegations against the spouse or his/her relatives in the pleading, filing repeatedly false complaint or cases in the court amounts to cruelty. He relies on para 16 of the said judgment, which reads thus:

“16. Thus, to the instances illustrative of mental cruelty noted in Sumar Chosh Vs. Jaya Ghosh (2007) 4 SCC 511, 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 The learned senior counsel for the Appellant also relies on the judgment in the matter of ***K. Srinivas Vs. K. Sunita (2014) 16 SCC 34***. He submits that in this authority also the Apex Court held that filing of false criminal complaint against the husband and his family members u/s.498A read with section 307 of the Indian Penal Code constitutes matrimonial cruelty. He relies on para 5 of the said judgment which reads thus:

“5. The Respondent-Wife has admitted in her cross-examination that she did not mention all the incidents on which her Complaint is predicated, in her statement under Section 161 of the Cr.P.C. It is not her case that she had actually narrated all these facts to the Investigating Officer, but that he had neglected to

mention them. This, it seems to us, is clearly indicative of the fact that the criminal complaint was a contrived afterthought. We affirm the view of the High Court that the criminal complaint was “ill advised”. Adding thereto is the factor that the High Court had been informed of the acquittal of the Appellant-Husband and members of his family. In these circumstances, the High Court ought to have concluded that the Respondent-Wife knowingly and intentionally filed a false complaint, calculated to embarrass and incarcerate the Appellant and seven members of his family and that such conduct unquestionably constitutes cruelty as postulated in Section 14(1)(ia) of the Hindu Marriage Act.”

17 The learned senior counsel for the Appellant submits that even the Apex Court in the matter of **Malathi Ravi, M.D. Vs. B.V. Ravi, M.D. (2014) 7 SC 640** held that the subsequent events can be considered at the time of deciding the matter between the parties. He submits that the Apex Court held that the false and fictitious criminal proceedings u/s.498A, 506 read with section 34 of the Indian Penal Code against the husband and his family members by wife after filing the divorce petition, can be considered at the time of deciding the matter.

18 The learned senior counsel for the Appellant submits that the Apex Court in the matter of **G.V.N.Kmeswara Rao Vs. G. Jabilli (2002) 2 SCC 296** held that false police complaint and consequential loss of reputation and standard in the society at the instance of one's spouse amounts to mental cruelty. He relies on para 9 of the said authority, which reads thus:

9 Under Section 13(1) (ia) of the Hindu Marriage Act, on a petition presented either by the husband or

wife, the marriage could be dissolved by a decree of divorce on the ground that the other party has, after the solemnization of the marriage, treated the petitioner with cruelty. 'Cruelty' is not defined in the Act. Some of the provisions of the Hindu Marriage Act were amended by Hindu Marriage Laws (Amendment) Act, 1976. Prior to the amendment, 'cruelty' was one of the grounds for judicial separation under Section 10 of the Act. Under that Section, "cruelty" was given an extended meaning by using an adjectival phrase, viz. "as to cause reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party". By the Amendment Act of 1976, "cruelty" was made one of the grounds for divorce under Section 13 and relevant provision reads as follows:-

"13. Divorce (1) Any marriage solemnized, whether before or after the commencement of the Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party

(i)

(i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty, or

(ib) ..

(ii)-(ix) "

19 The learned senior counsel for the Appellant relies on judgment in the matter of **Vijaykumar Ramchandra Bhate Vs. Neela Vijaykumar Bhate (2003) 6 SCC 334**. He submits that in this authority, the Apex Court held that the leveling disgusting accusation, unjust and indecent allegations against the person amounts to mental cruelty. Para 7 of the said judgment reads thus:

“The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1) (i-a) of the Act. The position of law in this regard has come to be well settled and declared that leveling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross- examination satisfy the requirement of law has also come to be firmly laid down by this Court. On going through the relevant portions of such allegations, we find that no exception could be taken to the findings recorded by the Family Court as well as the High Court. We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible.”

20 The learned senior counsel for the Appellant submits that the Apex Court in the matter of **Chand Dhawan (Smt) Vs. Jawaharlal Dhawan (1993) 3 SCC 406** held that repeatedly accusing embarrassment in social status also amounts to cruelty. He submits that bare reading of the pleading of the parties and the authorities of the Apex Court

clearly show that the impugned order passed by the Family Court is required to be set aside granting the divorce to the Appellant on the ground of cruelty.

21 The learned senior counsel for the Appellant submits that the Family Court has erred in coming to the conclusion that the Appellant is liable to pay sum of Rs.30,000/- (Rs. Thirty Thousand only) to the Respondent and Rs.15000/- (Rs. Fifteen Thousand only) to daughter Sarayu, though there was no application filed by the Respondent u/s.25 of the Hindu Marriage Act, 1955. He submits that the Family Court has recorded its finding in para 81 that in the interest of justice, the court can pass the maintenance order without any application from the spouse. He relies on para 81 of the impugned judgment, which reads thus:

“81. In this case, the claim of petitioner for divorce is rejected. The question of permanent alimony u/s.25 of the Hindu Marriage Act, 1955 is for consideration before this Court. Refusing maintenance will drive the Respondent to file another proceeding u/s.18/20 of the Hindu Adoption and Maintenance Act, which will result into multiplicity of proceeding. Therefore, the issue of permanent alimony can be decided in favour of Respondent in this case to avoid multiplicity of proceeding.”

22 The learned senior counsel for the Appellant submits that the Family Court has erred in coming to the conclusion that the Appellant has failed to justify the ground of desertion. He submits that admittedly, the Respondent was staying with her parents for several years. Therefore, the court ought to have granted decree for divorce on the

ground of desertion also. In support of his contention, he relies on the judgment in the case of ***Geeta Jagdish Mangtani Vs. Jagdish Mangtani*** AIR 2005 SC 3508. Paragraph 5 thereof reads thus:

“We are of the view that these observations of the High Court are fully justified in the facts of the present case. One has to particularly note the fact that the parties knew even prior to marriage whatever they were earning. The earnings of the wife from a Government job before the marriage was more than double of that of the husband. With the knowledge of this fact the parties entered into matrimonial alliance. The marriage survived only for a brief period of about seven months. After 2nd June, 1993 till the exchange of notices and replies during September to December, 1996 and filing of the divorce petition ultimately by the husband on 31st December, 1996, there has been no attempt on the part of the wife to stay with the husband. She is a school teacher and it is common knowledge that in schools there are long vacations during summer months, more so, in Government schools where the wife teaches. At least during those holidays she could have visited the husband at Ulhasnagar along with her son and stayed with him. There is nothing on record to show that any such attempt was ever made by her to visit the husband during this entire period. She has stated in her evidence that the husband used to come and stay with her during her vacations. This has been denied by the husband. Therefore, the conclusion is inevitable, that there was never any attempt on the part of the wife to go to husband's house i.e., matrimonial home of the parties after she left on 2nd June, 1993. From this fact alone animus deserendi on the part of the wife is clearly established. She has chosen to adopt a course of conduct which proves desertion on her part. In the facts and circumstances of the case, it cannot be said that this desertion on the part of the wife was with a reasonable cause. Such a course of conduct over a long period indicates total abandonment of marriage and cannot be justified on ground of monetary

consideration alone as a reasonable cause to desert. It also amounts to willful neglect of the husband by the wife. Therefore, the conclusion reached by the High Court appears to be absolutely correct in the facts and circumstances of the case. This appeal is accordingly dismissed with no order as to costs. "

23 On the basis of these facts, the learned senior counsel for the Appellant submits that this Hon'ble Court be pleased to allow the appeal on the ground of cruelty and desertion and hold that the Respondent is also earning sufficient amount. Therefore, she is not entitled to any maintenance charges.

24 On the other hand, the Respondent in-person submits that the appeal, as it is field by the Appellant, is liable to be dismissed. It is without any merits. She submits that the Family Court, at the time of passing the impugned judgment and decree, considered all the documents on record including the evidence adduced by the parties. She submits that the Family Court has rightly held that the Appellant has failed to prove any cruelty and/or desertion on the part of the Respondent. She submits that, in fact, the Appellant used to torture the Respondent for small things. He never cared for the Respondent. Whenever, the Respondent used to ask some money for her expenses, he used to refused to do so. Not only that, when the Respondent was pregnant, the Appellant has never taken care of her during that period. Apart from that, at the time of delivery, all the expenses were paid by the Respondent's father, as the Appellant had refused to do so. Therefore, there is no question of cruelty committed by the Respondent. In fact,

the Appellant treated the Respondent with cruelty.

25 The Respondent party-in-person submits that though the courts, from time to time, passed orders directing the Appellant to pay monthly maintenance for herself and her daughter, he used to avoid the same and for that purpose the Respondent has filed several Applications. She submits that till the date of filing the present appeal, the Appellant has failed and neglected to clear his liability towards the payment of maintenance charges for the Respondent as well as her daughter. Therefore, the appeal is required to be dismissed with costs.

26 The Respondent in-person further submits that the Family Court, at the time of deciding the maintenance amount, has failed to consider the status of the Appellant. She submits that the Appellant is well-known Orthopedic Surgeon. His daily income is more than Rs. 2,00,000/- (Rs. Two lacs only). He is associated with several hospitals. She submits that in spite of having huge income, the Appellant had made a statement before the Family Court that his income is not more than Rs.25,000/- (Rs. Twenty Five Thousand only) per month to Rs.30,000/- (Rs. Thirty Thousand only) per month. Therefore, the maintenance awarded by the Family Court is on lower side.

27 The Respondent in-person submits that she has also filed Cross Objections, explaining the way in which the Family Court has failed to consider the Appellant's income at the time of awarding the maintenance charges. She

submits that she has raised the following objections in the Cross Objections in respect of the maintenance charges:

“(a) The Hon’ble Family Court further while deciding the issues qua the return of the amounts, has erred in not allowing the entire refund of the amount of the Respondent which the father of the Respondent had admittedly paid and in respect whereof the Respondent had specifically made a claim by a separate application.

(b) The Hon’ble Family Court did not appreciate that the prayer for permanent alimony was clear and ultimately the Respondent ought to have been granted the entire amount claimed as alimony as it was already brought on record that the Appellant earned a lot of money and the same was brought in very clear terms before the Hon’ble Court and hence the Appellant ought to have directed to pay the amount of permanent alimony as claimed by the Respondent in entirety.

(c) The Hon’ble Family Court erred in not allowing the entire claim of the maintenance to the Respondent and daughter of the Respondent and hence the judgment of the family court to that extent needs to be modified.

(d) The Hon’ble Family Court after ought to have granted the entire prayer of the Respondent in respect of the alternate accommodation while disposing of the Petition which has not been done putting the Respondent to serious prejudice.

(e) The Respondent has filed (i) Application for Enhancement @ EXBH 30 (ii) Application for Directions @ EXBH 37 (iii) Application for right to reside @ EXBH 49 which was to be decided along with the main Petition (This has also been mentioned in the Roznama) by the Hon’ble Family Court at Bandra, but has been pending so far, the Respondent has also mentioned these pending Applications in her Written Arguments, but there has somehow been a lapse and

these Applications still remain pending as of today and have not been disposed off.

(f) The Respondent craves leave to add, amend and alter any of the grounds to the Cross Objections subject to leave of this Hon'ble Court."

28 The Respondent in-person has filed the written submissions dated 21.02.2020, wherein she has annexed several complaints made by her with the Senior Inspector of Mira Road Police Station for police investigation to support the family Court's order. She has also placed on record the photographs downloaded from the Google showing that the Appellant is a Director of the Orthopedic and Joint Replacement Society. He is awarded with several Awards for his work as an Orthopedic Doctor. She has also placed on record a statement of account for the period 01.04.2018 to 31.03.2019 issued by the Tunga Health Care, having office at Opposite Nariman Diagnostic Center, Oraswadi Road, Malad (W), Mumbai - 400064. She submits that the said statement clearly shows that the Appellant has received the income of Rs.41,78,107/- (Rs. Forty One Lacs Seventy Eight Thousand One Hundred Seven only) for the period 01.04.2018 to 31.03.2019. She submits that, on the basis of these facts, this Hon'ble Court be pleased to direct the Appellant to pay the maintenance at higher rate.

29 The Respondent in-person submits that, the case of the Appellant, that the Respondent has deserted him intentionally, is not correct. She submits that because of harassment from the Appellant's family members, she was constrained to go and stay with her father, in the interest of

her daughter. She submits that, though, from time to time she tried to convince the Appellant to stay separately, he has failed and neglected to do so. He never contacted her to resume her company. She submits that neither the Appellant nor his family members made any efforts to reconcile their disputes so that both can stay together. He never cared for the daughter. She submits that during pendency of the divorce proceedings before the Family Court and also before this Hon'ble Court, he never met the child, though it was permitted by the Family Court. This itself shows that the Appellant never cared for his daughter also. She submits that now the daughter is more than 13 years old. She is taking education and for that purpose, the Respondent needs money. These facts were considered by the Trial Court at the time of rejecting the Appellant's prayer for divorce on the ground of desertion also. On the basis of these submission, the Respondent in-person submits that there is no substance in the appeal and the same is liable to be dismissed with costs.

30 It is to be noted that, the Family Court framed the following issues :

	Issues	Findings
1	Does the Petitioner proved that the Respondent treated him with cruelty, after the solemnization of the marriage ?	In negative.
2	Does the Petitioner prove that the Respondent deserted him for the period not less than two years last preceding the presentation of the petition ?	In negative

3	Whether there is any legal bar u/s.23 of Hindu Marriage Act to pass a decree of divorce in favour of the Petitioner ?	In affirmative
4	Whether the Petitioner is entitled to the access of her child – Sarayu ? If, what would be the scheme of access ?	As per final order
5	Whether the Respondent is entitled to her Stridhan as claimed to her application Exh.6 ?	As per final Order
6	Whether the Respondent is entitled to the permanent alimony from the Petitioner for herself and maintenance for her daughter Sarayu ?	Yes. Rs.30,000/- for the Respondent and Rs.15,000/- for the daughter.
7	Whether the Respondent is entitled to the separate accommodation, as claimed ?	As per final order.
8	What order and decree ?	Petition is dismissed.

31 We have gone through the papers and the record and proceedings called from the Family Court. On the basis of the submissions made by the learned senior counsel for the Appellant and the Respondent – in person, including their written submissions, record and proceedings, following points for our consideration.

	Points	Findings
1	Whether the Appellant husband had made out a case for divorce u/s.13(1)(ia) of the Hindu Marriage Act, 1955 on the ground of cruelty?	In the affirmative
2	Whether the Appellant has made out a case for divorce on the ground of desertion?	In the affirmative

3	Whether the maintenance charges awarded by the Trial Court is maintainable in view of section 25 of the Hindu Marriage Act, 1955 ?	In the affirmative
4	Whether the Respondent is entitled to any maintenance for herself and her daughter ?	Yes, as per final order

32 Though the Appellant, in his submission raised the issue of taking action against the Respondent u/s.340 of the Code of Criminal Procedure for making incorrect statement on solemn affirmation, same was not argued by the learned senior counsel for the Appellant before this court. Therefore, there is no question of considering the said issue.

33 It is to be noted that bare reading of the copy of plaint and some of the paragraphs, as reproduced hereinabove show that the Respondent used to make allegations against the Appellant on his character in the society at large. The Respondent in her written statement, particularly in paragraph 3,4,5,6,8,10,12,16,18 made several allegations against the Appellant. Not only that the Respondent, in her claim affidavit in lieu of oral evidence on oath dated 13.08.2012 made several allegations. Para 6, 9 and 15 reads thus:

“6 I say that since the inception of marriage I was ill-treated in my matrimonial home. The Petitioner refused to take me for any outing, his family functions or any of his official functions. To my utter disbelief I saw that the Petitioner's father would never go for work and the Petitioner too returned from the hospital by late afternoon. I say that the Petitioner and his family members even refused to add my name in their ration card although soon after the marriage I

had cancelled my name in the ration card in my parental home (Exbht-8) and had requested the Petitioner and his family innumerable times to add my name in their ration card (Exbht-9&10). The Petitioner and his parents would humiliate the Respondent on her physical appearance that the Respondent was not good-looking enough for the Petitioner, the Petitioner's mother Mrs. Ratna. C. Shetty is a lady of excellent dramatic skills as soon as the Petitioner and the Respondent came back from the honeymoon the Petitioner's mother falsely claimed of having severe leg pain to which the Petitioner put a plaster from thigh to toe confining his mother to bed rest, this was a ploy on behalf of the Petitioner and his mother to compel and burden me into doing all the household chores, they also removed the house-maid who was working with them for 8 years with them before my marriage to the Petitioner. The Petitioner's parents told me that my status in my matrimonial home was that of an 'ayah' (maid servant) as their son was not happy with me and their son had married me because they had pressurized him to do so. I was compelled to do all the household chores of sweeping, swabbing, Washing clothes and utensils of the Petitioner's family as well as his sister's family and also cook for the entire family including the Petitioner's sister and her family (photographs 22-27). Even though the Petitioner's sister Sarika and her husband Thomas Jerry had rented accommodation of their own nearby, they would their meals in my matrimonial home. The Petitioner's sister Sarika had an illicit relationship with Mr. Jerry Thomas who was then working as her boss and was a married man with two children. The Petitioner had once told me that his brother-in-law Mr. Jerry Thomas was a married man with two children. The Petitioner had also told me that Mr. Jerry Thomas's first wife had committed suicide because of his sister Sarika. The Petitioner had also told me that his sister had eloped from home and since Mr. Jerry Thomas was a married man and 15 years older to his sister hence they were not sure about the authenticity of Sarika's marriage and therefore the legitimacy of her daughter Rhea. The Petitioner had also admitted to me that his sister

Sarika had, filed a police case against her own parents because Sarika feared for Mr. Jerry Thomas's life as her parents at that time did not approve of her relationship with Mr. Jerry Thomas. The Petitioner's sister Sarika would leave her daughter Rhea in my care and would leave for work as she started working as a Personal Secretary in a firm in Mahim Bazaar in May 2002. I was forced to feed, bathe, clothe Rhea and also accompany Rhea to the school bus at 6.45 in the mornings and then bring Rhea back from school. At nights, on the insistence of the Petitioner's family, I had to make Rhea sleep in between myself and the Petitioner as a deliberate ploy not to allow the newly married Petitioner and myself to get Intimate. The Petitioner's sister Sarika would drape herself in nothing but a towel and move around shamelessly in the house in the presence of her brother and father. The Petitioner and his parents expected me to do the same. When I refused to oblige to this outrageous demand of the Petitioner's family, I was ridiculed and humiliated as being outdated and conservative."

"9 I state that the Petitioner and his family especially his sister Sarika were not at all happy with the my pregnancy, the Petitioner's family made the my life a living hell by constantly pressurizing me to abort the child to which the I did not agree. With the intervention of my parents I was allowed to go ahead with the pregnancy. However the Petitioner's family continued to harass me by not giving me proper food and rest. The Petitioner under duress from his family pressurized me that if I wished to do go ahead with my pregnancy then my family would have to finance the building of a hospital for the Petitioner. By now my father was completely fed up of meeting the Petitioner's never ending demands in cash, so , ultimately, on 16th December 2002 in order to protect the me and my unborn child, my father and myself paid a cheque bearing number 187122 dated 16th December 2002 for an amount of Rs. 10,00,000" drawn on Syndicate Branch(Exhbt-13), Tardeo Branch from my account in the name of "Health Harmony" (State Bank of India-Navghar Bassein Branch account number-01050015143-Exbht 14) of

which the Petitioner was the sole proprietor (Exbht-15) . The said Health Harmony Hospitals was a front created by the Petitioner and his family to legitimize their illegal demand for money. The said cheque was immediately encashed and the amount was misappropriated by the Petitioner and his family. I was also forced to become a co-applicant for a personal loan of Rs.7 lacs from ICICI Bank by the Petitioner (Exhibit-16, 17 & 18). “

“15 I say that since I firmly decided to stay back in my matrimonial home along with my daughter Sarayu my in-laws were aghast with my decision. The Petitioner's parents and sister would abuse me in the filthiest language possible. The Petitioner's father had also accused me of having extra-marital affairs. The Petitioner upon the instigation of his parents and sister Sarika would from humiliate me and treat me with utter disrespect. The Petitioner would shamelessly relate to the Respondent about his sexual relations with his colleagues especially Dr.Gayatri Parchure and female relatives of his patients', the Petitioner would talk to these ladies at mid-night in front of the Respondent, causing immense hurt and emotional turmoil to the Respondent .The Petitioner used me to merely to extract as much money as possible from my father. The Petitioner's parents and sister would often tell me that the Petitioner married me only because the Petitioner and his parents thought that my father would finance the Petitioner's study/settling down abroad. The Petitioner earns a lot of money, which is mostly in cash. However the Petitioner has refused to take any expense towards me and our minor daughter Sarayu. At the instigation and interferences of his mother and sister Sarika, the Petitioner maintained a restrained behavior with the Respondent. The .Petitioner religiously spoke to some ladies, especially to Dr.Gayatri Parchure in the middle of the night. I crave leave to refer- to and rely upon the telephonic records revealing the Petitioner's calls made to the mobile number 9869674712 belonging to Dr.Gayatri Parchure(Exbht-40). As a matter of fact it was Ms.Gayatri Parchure who had obtained my contact number and told me that the Petitioner had

promised her marriage after getting a divorce it was she who had couriered the telephonic records to me. This shocked me but the estranged behavior of the Petitioner towards me caused me to suffer deep pain and anguish.”

Thus, in this affidavit, the Respondent has commented on the character of the Appellant’s sister and has gone to the extent of making insinuation regarding legitimacy of the birth of the Appellant’s niece. Such extreme unnecessary allegations made in bad taste would certainly amount to cruelty against the Appellant.

34 Not only that, in her cross-examination also she has admitted these facts. Paragraph 28 and 29 of her cross-examination is clear on this point, which read thus:

“28. At the time of marriage, I had no passport. It is false to say that I insisted for Tatkal Passport and abroad tour. We went to Mauritius. It is incorrect to say that we had lot of shopping even though Petitioner requested to restrict considering his financial position. It is false to say that therefore there was a quarrel.”

“29. Our relations were always cordial. Till I was threw out i.e. 25th October 2004 relations were cordial. Father, mother, sister, sister’s husband, sister’s child of Petitioner were in the matrimonial home. It is incorrect to say that Petitioner’s sister was staying in her flat. Petitioner’s sister had taken rental accommodation at Vasai. My relations with Petitioner’s sister were never cordial. There used to be no qurrel with her. My relations with father and mother-in-law are cordial till today. I have lodged complaint against them under section 498A in the year 2009. Before filing petition I have not filed any complaint.”

35 The Respondent in-person, in support of her case, filed affidavit of examination in chief dated 26.03.2013, Exhibit-59, of Ms.Sarayu S. Shetty, her daughter aged 9½ years. Said affidavit was affirmed by the Respondent herein as a natural guardian. It bears signature of her daughter also. It is difficult to understand, how the Family Court has accepted the affidavit of minor child, aged 9½ years. The Respondent has also filed affidavit dated 22.03.2013 of Mr. Purandar Hegde, her maternal uncle to support her case that the Appellant used to torture her. It is to be noted that the said witness, in paragraph 11 of his cross-examination, has specifically admitted that he never visited the Appellant's house at Mira Road which was taken by the Appellant on rent. He has also admitted in his cross-examination that he has no personal knowledge about the physical assault to the Respondent. Therefore, it is very difficult to rely on this witness.

36 The Respondent has also examined one Mr.Krishna Shetty, Uncle of the Respondent, who has filed affidavit of evidence dated 03.05.2013 Exhibit- 63. He too admitted in his cross-examination that he never visited the Appellant and Respondent's house after their marriage and in spite of that he has stated in his affidavit about the knowledge of torture committed by the Appellant on the Respondent. Paragraph 14 of the cross-examination reads thus:

“14. I have never visited house of Petitioner and Respondent after their marriage. I have not personally witnessed the alleged physical abuse done by the Petitioner on Respondent. The fact of cruelty on Respondent was informed to be by her parents.

Father of Respondent has informed me that Petitioner was extracting money from me. I have no personal knowledge about this fact. Cash of Rs.40 lacs were not given in my presence to the Petitioner by the father of Respondent. (W.V. that only after payment of Rs.40 lacs engagement ceremony was held). I do not know when and where Rs.40 lacs were paid. Father of Respondent informed me that he has paid Rs.40 lacs to the Petitioner. The Respondent has prepared this affidavit which was read over to me and thereafter I signed on it. I do not know when cheque of Rs.10 lacs was given by father of Respondent in the name of health harmony to the Petitioner. I do not know when the Respondent was pregnant. I have not lodged any complaint when the Petitioner tried to extract Rs.36 lacs from me. It is not true to say that para 6 of my affidavit is false."

37 This, clearly shows that whatever stated by this witness viz. Mr. Krishna in his affidavit in examination, is not possible to rely in the present matter. The Respondent has also filed affidavit of evidence dated 03.05.2013 Exhibit-64 of Mr. Subbaya V. Shetty, her Uncle. In para 5 of his affidavit of evidence, he has stated that the Respondent's father has paid Rs.40,00,000/- (Rs.Forty Lacs only) to the Appellant and his family members. He has stated in his affidavit that, the Appellant used to torture the Respondent, but in his cross-examination, he has specifically stated that there was no incidence between the Appellant and the Respondent in his presence. He learnt these facts from his brother. He has specifically stated in his cross-examination that he has visited the Appellant's house on two occasions after their marriage. For the first time, 2 days after the marriage and secondly, when the Respondent was pregnant for 7 months. Bare reading of cross-examination of this

witness clearly shows that whatever stated by him in his affidavit in examination in chief cannot be believed.

38 Considering the allegations made by the Respondent in her written statement and also examination in chief, it is crystal clear that the Respondent has made several allegations against the Appellant on his character in public at large. This amounts to mental cruelty. Apart from that the Respondent has also filed criminal complaint u/s.498A of the Indian Penal Code against the Appellant and his family members, wherein the Appellant and his family members were acquitted. Thereafter the said order was not challenged by the Respondent before a higher court.

39 Considering these facts and on the basis of the law declared by the Apex Court in the matter of Srinivas Rao (supra), K Srinivas (supra), Malathi Ravi M.D. (supra), G.V.N. Kameswara Rao (supra), Vijaykumar Ramchandra Bhate (supra), and Mr. Pravin Mehta (supra), it is clear that the Respondent has committed mental cruelty on the Appellant. She has made several allegations against the Appellant in their family function. These facts were not considered by the Trial Court at the time of deciding the petition filed by the Appellant on the ground of cruelty. The Family Court has failed to consider the written statement and evidence filed by the Respondent in which she has specifically made several allegations against the Appellant which amounts to mental cruelty. Apart from that, both the parties are residing separately for last more than 10-12 years. Considering these facts, we are of the opinion that the

Appellant has made out a case to answer point No.1 in the affirmative i.e. the Appellant has proved a case that the Respondent has committed cruelty and therefore, he is entitled for decree of divorce.

40 The second point is about the desertion. It is to be noted that initially, when the Respondent had left the home, thereafter the Appellant and his family members held joint meetings with the Respondent's family members and settled the matter and thereafter the Respondent started residing with the Appellant. But within a short span i.e. on 15.10.2007 the Respondent left the home with her daughter without intimating the Appellant. Thereafter the Appellant has filed the petition for divorce on 15.12.2007. These facts were considered by the Family Court, at the time of deciding the issue of desertion. Though the learned counsel for the Appellant relied on the Apex Court judgment in the matter of Geeta Jagdish Mangtani Vs. Jagdish Mangtani AIR 2005 SC 3508, on this point, that if the wife leaves the husband's house without any intimation, the same amounts to desertion, is not applicable in the facts and circumstances of the present case. Therefore, we are of the opinion that the view taken by the Family Court on Point No.2 is correct.

41 It is to be noted that in the present proceedings, admittedly, the Respondent has not filed any proceeding u/s.18 or 20 of the Hindu Adoption and Maintenance Act, for maintenance. In spite of that the Family Court has awarded the maintenance only on the ground, that filing separate proceedings for maintenance will result into multiplicity of

proceedings and therefore, awarded the maintenance to the Respondent. It is to be noted that the Apex Court, in the matter of Chand Dhawan (supra) held that dismissal of the petition filed by the husband under any of the provisions of section 9 to 14, no alimony can be granted to the wife u/s.25 of the Hindu Marriage Act, 1955. However, the maintenance can be claimed by her u/s.18(1) of the Hindu Adoption and Maintenance Act or u/s.125 of Cr.P.C. Admittedly, in the present proceedings there was no application on behalf of the Respondent u/s.18(1) of the Hindu Adoption and Maintenance Act and/or u/s.125 of the Code of Criminal Procedure, 1973 and in spite of that the Family Court has awarded the maintenance charges.

42 It is to be noted that, it is the case of the Appellant that he has already paid the amount more than Rs.1,00,00,000/- (Rs. One Crore to the Respondent) towards maintenance charges of her daughter and for other expenses, though she is not entitled. It is to be noted that for want of any application under the Hindu Adoption and Maintenance Act, the Family Court should not have awarded the maintenance charges, because the petition filed by the Appellant husband was dismissed without granting any decree for divorce. However, since we are granting decree of divorce in this appeal, we are also considering grant of permanent alimony u/s.25 of Hindu Marriage Act, 1955.

43 It is to be noted that in the present proceedings the Appellant has placed on record the documentary evidence

to show that the Respondent is also earning substantial amount. These documents are issued by the Bank. Bare going through these documents clearly show that the Respondent is also earning substantial amount. Apart from that, she is also an educated lady, who can earn at her own. Apart from that, it is a duty of the Appellant, being a father of a minor child, to take care of financial needs of his daughter. The Appellant is a qualified Doctor. He should maintain her daughter by taking care of her education expenses, day-to-day needs etc. Apart from that it is a duty of the Appellant to pay some maintenance charges to wife also. Whatever amount is paid by the Appellant to the Respondent so far, same shall be treated for the welfare of minor daughter. Therefore, there is no question of refund of the said amount to the Appellant.

44 Considering these facts, the income of the Appellant, the income of Respondent and the statement made by the Respondent in her claim affidavit, in view of oral evidence dated 13.08.2012 in paragraph 37 that the Respondent has stated that she has issued cheque bearing No.187122 dated 16.12.2002 for an amount of Rs.10,00,000/- (Rs. Ten Lacs only) drawn on Syndicate Bank, Branch Tardeo account in the name of "Health Harmony", we are of the opinion that the Appellant must pay sum of Rs.40,000/- (Rs. Forty Thousand only) per month to minor daughter Sarayu and Rs.25,000/- (Rs. Twenty Five Thousand only) per month to the Respondent wife towards their maintenance charges from the date of this order. In addition to maintenance charges, the Appellant shall open a Fixed Deposit Account

for the sum of Rs.5,00,000/- (Rs. Five Lacs only) in the name of minor daughter Sarayu in any Nationalized Bank and hand over the Fixed Deposit Receipt to the Respondent, being natural guardian, within three months from the date of this order. Said sum shall be incurred for the marriage expenses of minor daughter Sarayu. In view of these facts, there is no question of clearing any arrears of maintenance charges payable, if any, to the Respondent, because the order passed by the Family Court towards the maintenance itself, is bad in law, in view of the Apex Court judgment in the matter of Chand Dhawan (supra).

45 The Respondent has also filed Cross-Objection stating that the maintenance charges awarded by the Trial Court is on lower side. In view of the findings recorded by us on issue No.4, nothing survives in the Cross Objection. Same is liable to be dismissed.

46 Hence, following order is passed:

- a. The judgment and decree passed by the Family Court, Mumbai in Petition No.A-2330/2007 is set aside.
- b. Decree of divorce is granted in favour of the Appellant on the ground of cruelty only.
- c. The marriage between the Appellant and the Respondent solemnized on 17.03.2002 stands dissolved.

- d. The Appellant to pay sum of Rs.40,000/- (Rs. Forty Thousand only) towards maintenance charges, to his daughter Sarayu from March 2020 on or before 10th day of each month.
- e. The Appellant to pay sum of Rs.25,000/- (Rs. Twenty Five Thousand only) to the Respondent wife towards her maintenance charges from March 2020 on or before 10th day of each month, till she remarries.
- f. The Appellant shall open a Fixed Deposit Account for the sum of Rs.5,00,000/- (Rs. Five Lacs only) in the name of minor daughter Sarayu in any Nationalized Bank and hand over the Fixed Deposit Receipt to the Respondent, being natural guardian, within three months from the date of this order. Said sum shall be incurred for the marriage expenses of minor daughter Sarayu.
- g. The Appeal is allowed accordingly.
- h. The Cross Objection filed by the Respondent stands dismissed.
- i. No order as to costs.

(SARANG V. KOTWAL, J.)

(K.K.TATED, J.)