

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FAMILY COURT APPEAL NO.17 OF 2020
WITH
FAMILY COURT APPEAL NO.18 OF 2020
WITH
FAMILY COURT APPEAL NO.22 OF 2020

FAMILY COURT APPEAL NO.17 OF 2020

Nayan s/o Santoshrao Kamble,
Aged 36 years, Occupation-Service,
R/o. Plot No.54, Chandramani Nagar,
Nagpur.

.. Appellant

.. Versus ..

Pranita w/o Nayan Kamble,
Aged about 27 years,
Occupation-Service,
R/o. C/o. Deopal Ganar,
Plot No.68, Milind Nagar,
Near Boudha Vihar, Khamla,
Nagpur.

.. Respondent

.....
Shri Mahesh Rai, Advocate for the appellant,
Shri G.N. Khanzode, Advocate for the respondent.
.....

WITH

FAMILY COURT APPEAL NO.18 OF 2020

Nayan s/o Santoshrao Kamble,
Aged 36 years, Occupation-Service,
R/o. Plot No.54, Chandramani Nagar,
Nagpur.

.. Appellant

.. Versus ..

Pranita w/o Nayan Kamble,
Aged about 27 years,
Occupation-Service,
R/o. C/o. Deopal Ganar,
Plot No.68, Milind Nagar,
Near Boudha Vihar, Khamla,
Nagpur.

..

Respondent

.....

Shri Mahesh Rai, Advocate for the appellant,
Shri G.N. Khanzode, Advocate for the respondent.

.....

WITH

FAMILY COURT APPEAL NO.22 OF 2020

Pranita w/o Nayan Kamble,
Aged about 29 years,
Occupation-Service,
R/o. C/o. Deopal Ganar,
Plot No.68, Milind Nagar,
Near Bouddha Vihar, Khamla,
Nagpur.

..

Appellant

.. Versus ..

Nayan s/o Santoshrao Kamble,
Aged 38 years, Occupation-Service,
R/o. Plot No.54, Chandramani Nagar,
Nagpur.

..

Respondent

.....

Shri G.N. Khanzode, Advocate for the appellant,
Shri Mahesh Rai, Advocate for the respondent.

.....

CORAM : A.S. CHANDURKAR AND
N.B. SURYAWANSHI, JJ.

RESERVED ON : 22.12.2020.

PRONOUNCED ON : 21.01.2021.

JUDGMENT [PER : N.B. SURYAWANSHI, J.]

1. These three appeals take exception to the common judgment passed by the Judge, Family Court No.2, Nagpur in Petition No. A-1014/2016 filed by Nayan under Section 13 (1)(i-a) of the Hindu Marriage Act, 1955 seeking divorce, Petition No. A-276/2017 filed by Pranita under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights and Petition No. E-395/2015 filed by Pranita under Section 125 of the Code of Criminal Procedure, 1973 for grant of maintenance.

2. By the impugned common judgment, the Family Court dismissed Nayan's petition for divorce, rejected Pranita's claim for maintenance, however, decreed the petition of Pranita for restitution of conjugal rights, hence these three appeals are being decided by this common judgment.

Petition No.A-1014/2016

3. Nayan has filed this petition seeking divorce from Pranita on the ground of cruelty. Marriage between Nayan and Pranita was solemnized on 28.09.2014 at Nagpur. After the marriage, Pranita cohabited with Nayan for near about five months. At the time of

marriage, Nayan was serving as Research Officer at Tribal Development Department at Nandurbar. The parents of Nayan were residing at Nagpur. After the marriage, Nayan went to Nandurbar and Pranita stayed with her in-laws. Father of Nayan is a heart patient and his mother is bed ridden. According to Nayan, Pranita refused to take care of his parents though the ailments of his parents were informed to Pranita's family prior to marriage. Nayan took Pranita to Nandurbar, where he was residing with his friends in the quarter. He stayed with Pranita in a separate room in that quarter, but Pranita was not satisfied. She was insisting for separate room on rent which he could not get. Pranita was not preparing tiffin for him at his office time and she was not discharging matrimonial duties towards Nayan. As Nayan was deputed for an inquiry at Aurangabad between 22.12.2014 to 17.03.2015, he brought Pranita to Nagpur on 21.12.2014, however, she refused to stay with his parents and asked him to leave her to her paternal house. According to Nayan, his mother was unwell, however, Pranita did not take her care and she neglected her in-laws. She was constantly quarreling with her in-laws on instigation of her mother. On 18.02.2015, Pranita told her cousin on phone that if her mother-in-law had been given a kick blow the back, she would behave properly. Pranita also demanded divorce. On 19.02.2015, her mother instigated her by saying that she should

behave in a rude and arrogant manner with in-laws. On 20.02.2015 her sister Manisha Balvir used bad words for Nayan and Pranita called Nayan as 'Hijada' (eunuch).

4. Nayan has quoted conversation of Pranita on cell phone wherein she said bad words for her mother-in-law. Conversations of Pranita with her mother and her cousin sister dated 18.02.2015, 19.02.2015 and 22.02.2015 in vernacular are quoted in the pleadings. On 11.04.2015 when mother-in-law was admitted in Neuron Hospital for operation, Pranita did not visit the hospital, though she was aware. Pranita used insulting words to his mother that her mother-in-law is old and suffering from ailments, however, she does not die early, she should die early and then only Pranita can rule. She used to ask her mother to give such poison by which her in-law would die at once. When father-in-law was admitted in hospital for operation that time also Pranita never visited him. Pranita used to insult father-in-law frequently. When father-in-law asked Pranita to wash the vegetable clean and use less oil and chilly powder while preparing it, Pranita arrogantly told father-in-law that he may do it on his own and not to tell her to do any work. Thereafter, she would not do any work and if anybody says something to her, then by telling her sister, she would lock them up

in the Police Station, she also said that she is not their maid servant. According to Nayan, he called her cousin (brother) and uncle and they came, however, Pranita refused to listen to them. Pranita called her mother and along with her by taking her belongings, ornaments and clothes left the matrimonial home on 28.2.2015. This shows that Pranita was not interested in cohabiting with Nayan. It is further pleaded that Pranita's mother is serving in a hospital and she knows about the poison. Pranita's mother assured her to bring poison for mixing it in the meal and medicines of her in-laws. Pranita, with the help of her mother, planned to kill in-laws by poisoning. Pranita asked her mother to bring poison which would instantaneously kill her in-laws. Even Pranita's cousin (sister) used to instigate her against the in-laws. Even the conversation between Pranita and her cousin was recorded. Pranita used to say to Nayan that she will not do anything for her ailing in-laws and she wanted divorce from him. Pranita was not taking care of his parents and was behaving with them in insulting manner. Pranita adopted uncompromising and adamant attitude and neglected Nayan and his old parents, who were suffering from serious ailments. Pranita's mother and mediator instigated her in doing so and also supported her maliciously with malafide intention to mentally harass Nayan. He further pleaded that due to rude, arrogant, proudy and insulting behaviour of

Pranita, Nayan had suffered great mental torture and agony, due to which, Nayan had come to the conclusion that it will not be possible for him to live a peaceful and happy married life with Pranita in future. Nayan claimed to have lost confidence of faithfulness and loyalty of Pranita towards him. Nayan was afraid of any untoward incident and causing danger to his life and life of his parents suffering from serious ailment at the instance of Pranita, as Pranita with her mother had conspired to kill Nayan's old aged parents by mixing poison in their milk, water or medicines. Pranita's mother threatened Nayan on mobile that if he does not listen to Pranita, then she will kill Nayan by sending 4-5 youths from her house. Nayan claimed that Pranita had left matrimonial house on her own accord. Because of the plan of Pranita to kill her in-laws by poisoning them, the matrimonial relations between Nayan and Pranita became strained and since then Pranita had been residing separately. Due to the above narrated instances, Pranita has caused mental cruelty to him and Nayan's life was in danger at the hands of Pranita. He, therefore, claimed that there is no possibility of reunion and hence he wants decree of divorce. He further claimed that Pranita had lodged false complaints by levelling serious allegations upon him, she also filed petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 as well as proceedings under Section

125 of the Code of Criminal Procedure. Pranita and her mother defamed Nayan in the society and, therefore, it is not possible for him to continue his matrimonial relations with Pranita. He, therefore, prayed for dissolution of marriage on the ground of cruelty.

Pranita's case in short is as under :

5. Pranita, by filing written statement at Exh.14, resisted the claim of Nayan. She denied all the allegations. According to her, at the time of settlement of marriage, she was told that she would reside with Nayan at the place of his work. As per the custom, after marriage wife is supposed to stay with her husband, but she was forced to stay with her in-laws, therefore, from the date of marriage, Nayan was not performing his marital obligations. She was always subjected to mental and physical cruelty, as she was not allowed to stay with Nayan. According to her, after the solemnisation of marriage on 28.9.2014, she was for the first time taken to Nandurbar on 9.11.2014. At Nandurbar also Nayan did not take her care and he used to stay out of the home till midnight, leaving her alone in the strange and unknown town. After a brief stay of 10 days, she was brought back to Nagpur on 21.11.2014 for the reason that her father-in-law was not well. On coming to Nagpur, Pranita found her

father-in-law hale and hearty. On 22.11.2014 Nayan left Pranita with in-laws and went back. When Pranita insisted that she should accompany him, he told her that the marriage was performed by him only to look after his parents. She was intentionally kept at Nagpur to serve her in-laws. Pranita sincerely discharged her duties towards in-laws. After the marriage, she was taken to Nandurbar only for total period of 15 days and rest of the time she was always taking care of her in-laws. Nayan used to beat her and under the influence of liquor subjected her to mental and physical cruelty. The mother-in-law always used to taunt her being infertile and ill-omen lady. On 28.2.2015, a meeting of the relatives was called in which her in-laws behaved in adamant manner. Nayan slapped her in the presence of all the relatives. According to her, calling of the meeting was a plan of Nayan to drive her out of the matrimonial house. She was driven out on 28.2.2015 and since then she is residing at the mercy of her parents. In spite of repeated efforts, Nayan due to instigation of his mother did not accept Pranita back. Even in the notice/reply sent by Pranita, she called upon Nayan to take her back within 7 days, as she was willing to join him, but he did not take her back. Nayan has neglected and refused to maintain her in spite of having sufficient means. Pranita was constrained to lodge report against Nayan about ill-treatment. Though Nayan appeared at the

women cell in that behalf and assured to take Pranita back, he did not do so. Nayan filed petition for judicial separation making false allegations to avoid his duty to pay maintenance. Pranita therefore claimed that Nayan and his parents have ill-treated and humiliated her, which amounts to mental cruelty. Therefore, Nayan is not entitled for decree of divorce on the ground of cruelty and therefore, his petition may be dismissed.

Petition No.A-276 of 2017

6. Pranita, by pleading similar facts as noted above and further contending that many efforts were made by her for reconciliation and though in her notice-reply she called upon Nayan to take her back for cohabitation within 7 days, he failed to do so. She, therefore, sought relief of restitution of conjugal rights. Nayan, in his reply, has denied the contents of Pranita and reiterated his contentions in the divorce petition.

Petition No. E-395/2015

7. Pranita claimed maintenance under Section 125 of the Code of Criminal Procedure by reproducing the facts in the written statement filed by her in Petition No. A-1014/2016 and her

pleadings in Petition No. A-276/2017. She claimed that Nayan is earning monthly income of more than Rs.50,000/- and his parents are getting pension. Pranita claimed to be residing at the mercy of her parents and hence she claimed maintenance at the rate of Rs.25,000/- per month.

8. The learned Judge of Family Court rejected the divorce petition filed by Nayan, so also maintenance petition filed by Pranita and decreed Pranita's petition for restitution of conjugal rights. Hence, the present Family Court Appeals filed by Nayan and Pranita respectively challenging the decisions against them.

9. Heard the learned advocates for the parties. The learned advocate for Nayan vehemently contended that Nayan has proved cruelty on the part of Pranita and hence the Family Court ought to have allowed the divorce petition. He further argued that from the rival contentions and the evidence brought on record, it is clear that the marriage is irretrievably broken down and on that ground also, the trial court ought to have granted divorce. Further submission is that the Family Court has committed an error in rejecting electronic evidence of CD on the ground that Certificate u/s 65B of Evidence Act is not filed and that Nayan has failed to prove the digital

evidence as required by law. According to him, the Family Court has adopted hyper technical approach in rejecting the evidence of CD. By placing reliance on Section 14 of the Family Courts Act, 1984 he submitted that the CD was admissible in evidence and it ought to have been exhibited and considered by the Family Court while deciding the matters. It is further urged that the Family Court erred in holding that Nayan has failed to prove the conversation in the CD. He further argued that in number of reports filed by Pranita against the in-laws and Nayan, improvements are made from time to time. The learned advocate for Nayan argued that documents at Exh.19 to 52 pertain to ailments of the parents of Nayan and they are relevant documents. The denial on the part of Pranita about ailments of in-laws itself amounts to cruelty. He further submitted that sister of Pranita, who filed F.I.R. alleging offence under Section 354 of the Indian Penal Code against Nayan and in-laws, was not examined and, therefore, adverse inference should be drawn against Pranita. He contended that the Family Court has failed to appreciate the evidence led by the witnesses in the proper perspective. Nayan has proved his case for divorce by leading cogent and reliable reasons and by examining witnesses. He further submitted that filing of various proceedings against Nayan by Pranita itself amounts to cruelty and on that ground alone, Nayan is entitled for divorce.

In support of his contention, he relied upon the following judgments :

- (1) V. Bhagat .vs. D. Bhagat, 1994 SCC (1) 337.
- (2) Samar Ghosh .vs. Jaya Ghosh, (2007) 4 SCC 511.
- (3) Sameersingh Sureshsingh .vs. Savita Sameersingh Suryawanshi, 2008 (1) MhLJ 13.
- (4) Sau. Lilesh Agrawal w/o Vinod Agrawal .vs. Vinod s/o Ramrichpal Agrawal, 2015 (6) Mh.L.J.
- (5) Poonamchand Patil .vs. Smt. Shilpa Patil in Family Court Appeal No.306-307/2014.
- (6) Prajakta w/o Abhay Chandpurakar .vs. Abhay s/o Baban Chandpurakar in Family Court Appeal No.346/2014.
- (7) Madhu Dhyade .vs. Sangmeshwar Dhyade in Family Court Appeal No.134/2008.
- (8) Sri Subhash Chandra Das Chowdhury .vs. Smt. Sandhya Das Chowdhury in First Appeal No.96/2000.
- (9) Sri Kiran C. .vs. Smt. Latha T G. in Misc. First Appeal No.6507/2015 (FC).
- (10) Smt. Archana .vs. Dr. P.K. Tomar, 2003 (2) AWC 1119.
- (11) Ramesh Jangid Alias Rameshwar .vs. Smt. Sunita, RLW 2007 (4) Raj. 2726.
- (12) Vivek .vs. Vanita, II (2204) DMC 362.
- (13) K. Radha Raju .vs. K. Seetharama Raju, 2001 (6) ALD 460, 2001 (6) ALT 350.
- (14) Manpreet Kaur Malkiat Kaur .vs. Salwinder Singh, FAO No.M-270/2013.

- (15) Smt. Sadhana Srivastava Wife of .vs. Sri Arvind Kumar Srivastava, AIR 2006 All 7, 2006 (1) AWC 177, II (2005) DMC 863.
- (16) Smt. Lavanya .vs. Ragavendra Goud, Civil Misc. Appeal No.1134/2019.
- (17) Civil Revision Petition No.1849/2018 R. Premalatha .vs. V. Nandagopal.
- (18) Second Appeal No.0683/2014 Nilesh Bhagwan Mahajan .vs. Shivpriya Nilesh Mahajan.
- (19) Criminal Writ Petition No.210/2019 Premdeep s/o Nishikant Matlane .vs. Mrs. Bhavana w/o Premdeep Matlane.

10. *Per contra*, the learned advocate for Pranita submitted that after marriage on 28.9.2014 within a short span of approximately five months, Pranita was driven out of the matrimonial house. During this period, Nayan was serving at Nandurbar and only for a period between 14.11.2014 to 26.11.2014, Pranita stayed along with Nayan at Nandurbar at railway quarter wherein 4 friends of Nayan were staying. Pranita prepared meals for all of them during her stay. On 27.11.2014, Pranita was brought back to Nagpur on the pretext that father-in-law was ailing. Except this period, Pranita was never taken to the place where Nayan was serving. Pranita was all along with in-laws serving them and taking care of them. He further submitted that during the period between

4.12.2014 to 21.12.2014 Nayan was at Aurangabad on deputation. During this period, Nayan has alleged about conversation of Pranita on phone allegedly talking bad things about in-laws and about killing them by administering poison, however, there are neither specific pleadings nor any details are given by Nayan, even cell number from which the alleged conversation was made, the time of conversation, who called all these details are missing from the pleadings. Thus vague allegations are levelled by Nayan which cannot be taken into consideration and the Family Court has rightly not relied on them. It was further submitted that Petition No.A-476/2015 filed under Section 12 of the Hindu Marriage Act by Nayan for judicial separation was withdrawn by Nayan, however, this fact was not disclosed in the present divorce petition, so also the same was also not disclosed in the notice at Exh.14 given by Nayan to Pranita. In the notice/reply, Pranita has specifically contended that she was ready and willing to cohabit with Nayan. He further submitted that there are no specific pleading and evidence about CD. The Family Court, therefore, was justified in disallowing the evidence of CD by giving cogent reasons. By taking us through the evidence of Nayan and his witnesses, he submitted that the same does not prove cruelty on the part of Pranita. The witnesses examined by Nayan are not reliable and they do not in any manner help the case of Nayan.

Nayan and his father have admitted in cross-examination that they stopped Pranita from entering the house. The learned advocate supported the orders of Family Court to the extent it rejected decree of divorce to Nayan and it granted decree of restitution of conjugal rights in favour of Pranita.

11. In respect of maintenance, he submitted that interim maintenance at the rate of Rs.8,000/- per month was granted during the pendency of the proceedings before the Family Court and it was reduced to Rs.6,500/- per month by this court. He submitted that the Family Court has erred in rejecting the maintenance to Pranita. The findings of the Family Court in that behalf are perverse. In absence of Labour Officer having been examined, the certificate issued by him could not have been relied upon by the Family Court. The Family Court ought to have granted maintenance at the rate of Rs.25,000/- per month to Pranita.

12. In view of above contentions, following points arise for our consideration :

- (i) Whether the Family Court was justified in rejecting the decree of divorce to Nayan ?
- (ii) Whether the Family Court was justified in rejecting maintenance to the Pranita ?

- (iii) Whether the Family Court was justified in granting decree for restitution of conjugal rights in favour of Pranita ?
- (iv) What order ?

For consideration of rival contentions, it would be appropriate to consider the evidence led by both the sides.

13. Nayan, in support of his case, examined himself by filing an affidavit in lieu of evidence, which was reproduction of his pleadings on the petition filed by him seeking divorce. In his cross-examination, he admitted that he was staying in the railway quarter at Nandurbar along with his friend Sunil, Sandip and one more boy studying in 10th Standard. He did not avail separate accommodation for him. At the time of his marriage, elder brother Aman alone was staying along with his parents and there were matrimonial disputes between Aman and his wife. Divorce took place between Aman and his wife and Aman has paid Rs.7,00,000 (Rs. Seven Lacs only) as permanent alimony to his wife in compromise. He admitted that both his parents have retired, his mother was Headmistress in Zilla Parishad High School, Wadi and his father retired as a teacher in 2007 and his parents were getting monthly pension. He also

admitted that he was working as Assistant Project Officer. He did not have document to show that his parents were seriously ill during the period 23.11.2014 to 26.11.2014. He went back alone on 26.11.2014 to Nandurbar. Pranita stayed back with his parents as they were not keeping well and as there was no one, except Pranita to take care of his parents. He further admitted that he did not have any personal knowledge about events took place in his house at Nagpur in his absence. He also stated that his parents have mobile phone and he was in constant contact with his parents who were giving him information. He admitted to have filed petition no.A-476/2015 for judicial separation, which was filed within three months of incident dated 28.2.2015. The same was withdrawn as he wanted to file petition for divorce. Before filing of the said petition he had issued notice to Pranita through his advocate. Pranita replied the said notice by denying all the allegations and asking him to take her back for cohabitation within seven days of the receipt of the notice. He admitted that he had not taken Pranita for cohabitation within seven days as asked by her. He further admitted that on 4.9.2016 Pranita along with her father, brother-in-law, her sister, her maternal aunt and husband of maternal aunt had come to his house, she brought her bag of clothes with her and he was at home at that time. He further admitted that he stopped Pranita from entering the

house. He stated that his evidence affidavit Exh.16 was prepared by his advocate as per his instructions. Before signing the affidavit, he read the contents of it. In his evidence, marathi version of telephonic conversation was mentioned in paras 4, 5, 6, 7, 8 and 10, however, he did not mention the time of said phone call, cell number from which the said conversation was done, as he wanted to file the compact disc (CD) of the said conversation in his evidence. He also admitted that at the time of filing of his evidence affidavit and recording of further examination-in-chief, he had not filed the compact disc of the said conversation. He denied the suggestion that no such telephonic conversation had taken place and, therefore, he has not mentioned the cell numbers and timing of the conversation in his evidence affidavit. Though he claimed to have lodged report to the Police Station alleging that Pranita tried to kill her in-laws by slow poisoning them, till the date of recording of his evidence, he did not file copy of the said report on the record of this file. He admitted that on 4.9.2016 Pranita had lodged the report at Police Station, Ajni against him and his mother alleging that they beat her and her relatives. He also stated that he had decided to take divorce from Pranita in any situation.

14. Friend of Nayan Shri Rajiv Zodape was examined as PW-2, he stated in his evidence that he knows Nayan and Pranita

since last 15 to 20 years. Their marriage took place on 28.9.2014 as per Bouddha rites. Pranita and her relatives were informed about ailing parents of Nayan prior to the marriage. The marriage was settled with intervention of Manisha Balvir, relative of Pranita. She used to visit the house of Nayan at Nagpur. The mother of Nayan used to tell him that Pranita is not behaving properly. She used to tell about bad utterances by Pranita towards them. He stated that Pranita was not taking care of in-laws and she used to abuse them in filthy language. He stated that she wanted divorce.

In cross-examination, he admitted that whatever he has stated in para 2 of his evidence/affidavit i.e. about behaviour of Pranita with her in-laws is on the basis of information given by the mother of Nayan and he has no personal knowledge of the same.

15. Father of Nayan namely Santosh Kamble was examined as PW-3. He stated in his evidence that Pranita was not behaving properly with them and she was not taking their care. Pranita used to always taunt about their ailing condition, she was neglecting her household duties. She used to always go to her maternal home. She had left the matrimonial house on her own accord along with her relatives on 28.2.2015.

In the cross-examination, he admitted that after marriage Pranita started residing with in-laws, as Nayan was working at Nandurbar. Nayan used to visit Nagpur at the time of weekly holidays or on other holidays and Pranita stayed with in-laws at Nagpur. At that time, Aman, brother of Nayan was also staying with them. He admitted that on 9.11.2014 Nayan took Pranita to Nandurbar first time after the marriage and as mother-in-law was not keeping well, Nayan and Pranita returned to Nagpur on 21.11.2014 from Nandurbar as per the phone call made by him. He stated that it is not true that during the period of stay of Pranita with them, she used to do entire household work, such as cooking food, fetching water etc. He stated that, in fact, they had hired a maid servant to cook food and to wash clothes, utensils and to fetch water. He denied that when Pranita was fetching the water, he scolded her as she had dipped her fingers in the water. He stated that, in fact, he gave understanding to her that she should not put her fingers inside the pot while fetching water as there may be germs on her fingers. He admitted that his elder son Aman took divorce from his wife in January-2016 by way of settlement. He feigned ignorance about the quantum of alimony paid by Aman to his wife. Aman married again but he was staying separately. He also admitted that since 28.2.2015 Pranita was staying at her matrimonial house and they did not try to

bring her back, as they were not ready to take her back for cohabitation. He also admitted that Nayan filed petition for judicial separation which was withdrawn in the month of August. He denied that after withdrawal of the said petition, on 4.9.2016 Pranita along with her parents and elder sister came to their house and requested them to allow her to stay in the matrimonial house. He admitted that Pranita's maternal uncle and two other persons were also present along with her and she tried to enter in the matrimonial house, however, they prevented her from entering the house. He also admitted that he has not mentioned about the date, time and place of incident of meeting of the relatives for the conciliation between Nayan and Pranita and of the incidents of Pranita saying bad things to the in-laws. He also admitted in his evidence-affidavit that he mentioned about the letter of the advocate of Pranita being shown to them as order of the court, the same is not filed on record. The date of incident is also not mentioned.

16. Sau. Yashodhara Nanvate, neighbour of Nayan who used to stay in front of his house at Nagpur, was examined as PW-4. She deposed that Pranita never behaved properly with her in-laws. She was not taking their care and she used to quarrel on petty issues. Pranita used to pressurise Nayan for staying separate from his

parents. She used to call her mother on mobile phone and her mother used to quarrel by coming in front of the house of Nayan, she used to abuse in filthy language, she used to ask Pranita to pack her bags and leave the house of Nayan. Pranita left the matrimonial house on 28.2.2015 after quarreling and since then she is residing at her maternal house. On 4.9.2016 Pranita came along with her sister, father, brother and brother-in-law by showing advocate's letter, they told that it is a court order, they entered the house of Nayan and beat him, his father shouted for help, the neighbour rushed and saved them.

During cross-examination, she did not remember the dates on which her two daughters got married. She admitted to have acquaintance with Nayan's family from more than 20 to 25 years. She further admitted that the family of Nayan helped her at the time of marriage of her two daughters. She admitted that she had not mentioned the dates of incident and its timing as well as the name of the witnesses in front of whom Pranita uttered abuses for her in-laws. She also admitted that she did not mention the name of disease which parents of Nayan are suffering from. She denied that on 4.9.2016 Pranita was brought by her sister, brother, father and brother-in-law to drop her at her matrimonial house and at that time she was holding a bag in her hand. She further stated that it is not

true that on that day Pranita was not allowed to come inside the matrimonial house by Nayan and his parents. She did not mention the name of another neighbour who was present on the date of incident dated 4.9.2016 in her affidavit of evidence. She admitted that she had come to the court along with Nayan.

17. Pranita filed affidavit in lieu of evidence and reiterated the contentions raised in the written statement as well as in the petition filed for restitution of conjugal rights and in the petition for maintenance. In her cross-examination, she denied the suggestion that at the time of fixation of marriage they were made aware of the fact that Nayan's mother was suffering from illness and she was bedridden. She admitted to have gone to Goa for honeymoon on 5.10.2014 and returned home on 11.10.2014. She admitted to have gone to Nandurbar along with Nayan on 9.11.2014 and they returned back to Nagpur on 22.11.2014. She stayed along with her in-laws thereafter, she admitted that there is no documentary proof to show that she was mercilessly beaten at the hands of Nayan. She denied the suggestion given on behalf of Nayan about not taking care of his parents and abusing them. She denied that there was a maid for cooking in matrimonial house. She further denied that she was serving as a Computer Teacher with Pracharya Arunrao Kalode High School and Junior College Khamla, Nagpur. She denied the

suggestion that at the railway quarter at Nandurbar where she was living with Nayan, there were only three persons living in the quarter. According to her, six persons including herself and Nayan were staying in the quarter. She denied that during her stay at Nandurbar, Nayan was taking proper care of her. She admitted that on 7.12.2014 she along with Nayan went to Nandurbar for second time and they lived there for six to seven days. She denied the suggestion that while cohabiting she frequently used to call on cell no.8421466613 from her cell no.7385533302. Pranita specifically denied the conversations allegedly made by her on cell phone in respect of her in-laws which were mentioned by Nayan in vernacular. She further denied that she used to hatch a plan to give poison to her in-laws in the food and other consumable things. She admitted that her mother is serving in Lata Mangeshkar Hospital. She denied that her mother had planned to provide poison to her in-laws with the help of doctors. She also stated that on 4.9.2016, she carried a letter of her advocate and stated it to be an order of court and tried to enter the house of Nayan. She admitted that her sister Ashmita is a lady Police Constable, but denied that due to her sister's influence she got registered offence u/s 498-A of the Indian Penal Code registered against Nayan and his parents. She further admitted that during pendency of the proceedings before the Family Court, she was

working as a Computer Trainer at Pracharya Arunrao Karode Vidhyalaya. She denied that she was getting salary of Rs.12,934/-. She denied that she also joined in Lata Mangeshkar Hospital and was getting salary of Rs.12,934/- there and that salary was deposited in her account through the account of one Mr. Vilas Bhalekar. She stated that said amount was credited in her account as a financial aid to her education and this was not the amount of her salary. She further stated that at that time she was taking training of C.T. Scan and MRI and for that purpose she was being financially assisted. She denied the suggestion that she was working in Meet X-Ray Clinic with Mr. Pradeep Kesare. She was shown eight photographs filed in Petition E-395/15 with list Exh.38. In photograph no.1, Pranita and Mr. Pradeep Kesare were seen. She, however, denied that she was serving and earning in Meet X-Ray Clinic and earning. She denied the certificate issued by the Labour Officer that she was working and earning.

18. Vanita Wasnik, maternal aunt of Pranita, was examined as RW-2 by Pranita. She stated that Pranita started residing at matrimonial house after marriage. Nayan left for Nandurbar to join his duties, however, he did not take Pranita to Nandurbar. He said before this witness that he had performed marriage only to serve his

parents and, therefore, Pranita would be staying with in-laws. She narrated ill-treatment given to Pranita and that Pranita was driven out of the matrimonial house on 28.2.2015. Her efforts of mediation with Nayan failed. After withdrawal of petition bearing no.476/2015, this witness along with Pranita, her sister, son-in-law, father and brother went to the matrimonial house as Pranita wanted to stay there. However, Pranita was not allowed to enter the house. She along with her family members were abused in filthy language by Nayan and were also subjected to beating. Nayan also manhandled Pranita's sister Ashmita and outraged her modesty. She admitted that on 28.2.2015 she was not present at the house of Nayan. She denied other suggestions that Pranita did not take care of her in-laws and she used to quarrel with them and she failed to perform her duties towards her in-laws.

19. Maternal uncle of Pranita Shri Siddheshwar Dhole was examined as RW-3. He reiterated the contentions of Pranita and other witnesses. This witness has stated in cross-examination that he did not know what incidents happened from the date of marriage till 28.2.2015 between the parties. He was not aware about the cases pending between the parties. On 4.9.2016 he along with Pranita and her relatives went to the matrimonial house of Pranita by his car. He

admitted that there was no order of court allowing them to go to the matrimonial house of Pranita. He stated that Nayan and her in-laws assaulted Pranita due to which blood started oozing from her nose and her face was swollen. After the incident they went to the Police Station. He admitted that the police did not take cognizance of the complaint of Pranita.

20. Sau. Manisha Balvir, maternal aunt of Pranita, was examined as RW-4, who was mediator along with one Asha Gaikwad in the marriage between Nayan and Pranita. She deposed about ill-treatment given to Pranita. In cross she denied that she used to instigate Pranita not to reside with her in-laws. She has not stated the date, day or month as to when Pranita was threatened. She admitted that she was not present in the meeting dated 28.2.2015.

21. The learned Family Court, after assessing the evidence, came to the conclusion that Nayan has failed to prove cruelty on the part of Pranita and, therefore, held that Nayan is not entitled for decree of divorce, it further held that Pranita has proved that Nayan has withdrawn himself from her society without any reasonable cause or excuse and, therefore, granted decree of restitution of conjugal rights in favour of Pranita. The learned Family Court

though held that Nayan had sufficient means and has neglected and refused to maintain Pranita, rejected the prayer of maintenance holding that Pranita has every where made false statement on oath about her income and ability to earn. The Family Court relied upon the photograph in which Pranita and one Mr. Kesare were seen. Therefore, it came to the conclusion that Pranita is able to maintain herself and she had sufficient means to earn and that she has suppressed vital facts from the court. Hence, the maintenance was refused to her.

22. On careful scrutiny of evidence led by both the sides, it is clear that Nayan has placed CD on record at belated stage. There are no pleadings on record in respect of the CD. The learned advocate for Nayan was justified in arguing that the Family Court has adopted hyper technical approach in holding that since certificate u/s 65B of Evidence Act is not produced along with CD, the CD is not admissible in evidence and the CD could have been admitted in evidence in terms of Section 14 of the Family Courts Act, 1984 however, according to us, the Family Court was justified in not considering the CD in absence of any transcription of the CD placed on record and compared with it. Since the phone number from which the calls were made or received and the time when the calls were made and

conversations took place coupled with the fact that the CD was not produced at the first opportunity, so also when the affidavit of evidence was filed by Nayan or even at the time of recording his further examination-in-chief, the Family Court was right in not taking the CD into consideration. We also agree with the finding recorded by the Family Court that Nayan has failed to prove the conversations of Pranita on mobile phone with her mother and with her cousin, nothing is there to show as to when alleged conversations were made by Pranita on 18.2.2015, 19.2.2015 and 22.2.2015, no time is given as to when the conversations were made and from which cell number. It appears from the record that Nayan was not present at Nagpur when these alleged conversations were made by Pranita. Then how and in what manner and who recorded the conversations is not clear. Father-in-law, who was at Nagpur at the time of alleged conversations, does not utter a single word about the conversations. Therefore, it is clear that Nayan has failed to prove alleged conversations, so also alleged conspiracy and plan of Pranita and her mother to kill her in-laws by poisoning. There is absolutely no evidence on record to prove these serious allegations. The learned Family Court, according to us, was right in coming to the conclusion that Nayan has failed to prove the conversations on mobile phone and the alleged conspiracy to kill in-laws.

23. General allegations are levelled by Nayan against Pranita that she was talking to his parents in rude and arrogant manner and she was refusing to perform her duties as housewife and as daughter-in-law. The admission given by Nayan in the cross-examination that as his parents were not keeping well, Pranita had stayed with them and as there was no one except Pranita to take care of his parents, she stayed back with his parents, belies his allegations that Pranita was not taking care of his parents and was not doing her household duties. These vague and general allegations are unacceptable in view of the fact that in his notice Nayan has not given any specific instances, no day, date, month or year of the said behaviour is stated. Admittedly, during five months of cohabitation, Pranita hardly stayed with Nayan for about 14 days between 9.11.2014 to 22.11.2014 and, thereafter, for 8 days between 7.12.2014 to 14.12.2014. Thus barring this stay of Pranita with Nayan of about 22 days, for rest of the period Pranita was staying with in-laws and taking care of them. Father-in-law in his evidence has stated that when he advised Pranita to wash and clean the vegetables and prepare it by adding less oil and chilly powder, she arrogantly retorted to him, so also the admission given by father-in-law that he gave understanding to Pranita that while fetching water she should not dip her fingers in

the water as there may be germs in her fingers. Both these instances show that Pranita was doing her household duties. Though father-in-law has stated that they had hired a maid servant to cook food, the same is not believable in view of the above two circumstances. Father-in-law has admitted in cross-examination that he has not given the date, time and place of incident of Pranita abusing them and also of her threat to send them to lock up in Police Station. Thus, the evidence of father-in-law is not of any help to Nayan's case.

24. PW-2 Rajiv Zodape's evidence is not reliable in view of his admission that he was serving under Aman, the elder brother of Nayan since last 14 years and he was friend of Aman since last 15 years. His evidence in respect of alleged bad behaviour of Pranita with her in-laws is hearsay, in view of his admission that he has no personal knowledge about the same and it was based on the information given to him by Nayan's mother, therefore, the same is not admissible in evidence. PW-4 Yashodharabai appears to be a tutored witness in view of her admission that Nayan's family helped her in her daughters marriage. She has admitted that she stays at 25 to 30 ft. distance in front of the house of Nayan. She has not mentioned the dates and time of the incident and the names of witnesses in front of whom Pranita uttered abuses for her in-laws.

Considering her admission that she was brought to the court by Nayan, her evidence does not inspire confidence.

25. For the aforesaid reasons, we are of the view that vague and general allegations are levelled against Pranita by Nayan and his parents which are not substantiated by leading cogent evidence on record. Considering the material on record, the learned Family Court was justified in refusing decree of divorce on the ground of cruelty to Nayan. We answer point no.(i) accordingly.

26. It is an admitted position on record that Pranita is staying at her maternal house since 20.2.2015. Before filing the petition for judicial separation, Nayan had issued notice to Pranita through his Advocate. Pranita gave reply to the said notice and asked him to take her for cohabitation within seven days of the receipt of the notice-reply. Nayan did not take Pranita for cohabitation, on the contrary, proceeded to file petition for judicial separation. After withdrawal of the petition for judicial separation, on 4.9.2016 Pranita along with her father, brother-in-law, sister, maternal aunt, etc. had come to Nayan's house. Nayan admitted that he stopped Pranita from entering the house. Nayan has further admitted that he decided to take divorce from Pranita in any situation. Admission on

the part of PW-3, father of Nayan, that they did not try to bring Pranita back, though Pranita was staying at her maternal house since 20.02.2015, as they were not ready to take her back for cohabitation, his further admission that when Pranita tried to enter their house on 4.9.2016, they prevented her from entering the house, in view of this evience on record, we of the considered view that the learned Family Court was justified in granting decree of restitution of conjugal rights in favour of Pranita. We answer point no.(iii) accordingly.

27. The learned advocate for the appellant has heavily relied upon the decision in V. Bhagat (supra), Samar Ghosh (supra), Sameersingh (supra) in support of his contention that the marriage between Nayan and Pranita is irretrievably breakdown. In all the three cases, the Hon'ble Supreme Court considering the facts came to the conclusion that the marriage between the parties was irretrievably broken down and proceeded to grant decree of divorce on that ground under Article 142 of the Constitution of India. In the case in hand, there is no material on record to come to the conclusion that the marriage between Nayan and Pranita was irretrievably breakdown, therefore, these authorities would not help the case of Nayan. In any event, no relief can be granted only on that count.

In *Sau. Lilesh (supra)*, this court had arrived at the conclusion that wild and reckless allegations are made by the wife against the husband and his family members and those were not proved by the wife which amounted to cruelty. Therefore, this court in the facts of that case upheld the decision of the Family Court of granting decree of divorce in favour of the husband. In the case in hand the facts are different and therefore this decision would not help the appellant.

In *Poonamchand Patil (supra)*, the learned Single Judge of this Court at Nagpur Bench on facts held that the wife had treated the husband with cruelty by filing false reports against him in the police station in respect of the demand of dowry and also threatened the husband that she would commit suicide if he did not accede to her demands. In view of the settled legal position that levelling of false allegations against the husband and his family members pertaining to the demand of dowry and failing to prove the same would tantamount to cruelty, this court granted decree of divorce in favour of the husband. Such are not the facts of the case in hand and, therefore, the said decision would not be of any help to the case of appellant.

In *Prajakta Chandpurakar (supra)*, the Division Bench of this Court at Nagpur, taking into consideration the cross-examination

of wife wherein she admitted that she was not treated badly by the husband and despite the aforesaid position, the wife made reckless allegations against the husband in regard to the illegal demand of dowry as well as in regard to the forcible termination of pregnancy, which were not substantiated, upheld the decree of divorce granted in favour of the husband on the ground of cruelty. Even facts of case in hand are not similar and therefore this decision also would not help the case of appellant.

The decision in Madhu Dhyade (supra) is also rendered in the different facts and the same is not applicable to the present case. It would be apt to refer observations of the Hon'ble Supreme Court in V. Bhagat (supra) in para 21 is as under :

“21.Before parting with this case, we think it necessary to append a clarification. Merely because there are allegations and counter-allegations, a decree of divorce cannot follow. Nor is mere delay in disposal of the divorce proceedings by itself a ground. There must be really some extraordinary features to warrant grant of divorce on the basis of pleadings (and other admitted material) without a full trial. Irretrievable breakdown of the marriage is not a ground by itself. But while scrutinising the evidence on record to determine whether the ground(s) alleged is/are made out and in determining the relief to be granted, the said circumstance can certainly be borne in mind. The unusual step as the one taken by us herein can be resorted to only to

clear up an insoluble mess, when the court finds it in the interest of both the parties”.

If we apply the above ratio to the facts of the present case, there are only allegations and counter allegations. No extraordinary features and/or any admitted material is brought on record by Nayan to prove the cruelty on the part of Pranita which would entitle him for the decree of divorce under Section 13 (1) (i-a) of the Hindu Marriage Act, 1955.

28. Though the Family Court has held that Nayan is able to maintain Pranita and he has neglected and refused to maintain her, maintenance was denied to Pranita. The Family Court took into consideration the certificate Exh.46 issued by Govt. Labour Officer, which states that Pranita was doing a work of X-ray in Meet X-ray Clinic and when the Labour Officer visited Meet X-ray Clinic he found Pranita working there and Pranita informed him that she was getting salary of Rs.12,000/- per month in cash. Pranita, in her cross-examination, has denied the fact that she was working in Meet X-ray Clinic. The Family Court further took into consideration the photograph placed on record wherein Pranita was seen along with Mr. Kesare wearing apparel of medical profession. The Family Court was of the view that *prima facie* the said photograph appears to be

taken in laboratory. The Family Court, therefore, held that Pranita, in her affidavit of evidence, has failed to disclose the fact that she was working and earning salary. It was also held that Pranita has suppressed material facts about her earning from the court and therefore came to the conclusion that Pranita is able to maintain herself. According to us, the Family Court has taken into consideration inadmissible evidence while denying maintenance to Pranita. According to us, the Family Court has erred in coming to the conclusion that there was no honesty in the conduct of Pranita and she has every where made false statement on oath about her income and ability to earn. We deem it appropriate to rely on the ratio of the Hon'ble Supreme Court in ***Rajnish .vs. Neha and others, MANU/ SC/ 0833/ 2020*** wherein guidelines to be followed in the maintenance matters are laid down. In para 99, it is held that affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the concerned Family Court/District Court/Magistrates Court, as the case may be, throughout the country. According to us, the material on record does not justify denial of maintenance to Pranita and we do not agree with the reason given by the Family Court while rejecting maintenance to Pranita. We are

therefore of the considered view that the impugned judgment passed by the Family Court in Petition No. E-395/2015 is unsustainable in the peculiar facts of the present case and the same needs to be set aside and the matter is liable to be remanded back to the Family Court for taking decision on the prayer for grant of maintenance afresh by giving fair opportunity to both the parties to lead evidence in accordance with the guidelines given by the Hon'ble Supreme Court in *Rajnesh (supra)*. We answer point no.(ii) accordingly.

29. For the aforesaid reasons, we pass the following order :

- (1) Family Court Appeal Nos.17/2020 and 18/2020 are dismissed.
- (2) Family Court Appeal No.22/2020 is partly allowed. The impugned judgment of the Family Court, Nagpur in Petition No.E-395/2015 is hereby quashed and set aside and the matter is remanded back to the Family Court for taking fresh decision on merit, after giving opportunity to the parties to lead evidence, in accordance with the guidelines in *Rajnesh (supra)*.
- (3) The Family Court shall decide the proceeding as expeditiously as possible and in any case within

a period of six months from the date of receipt of this order. The parties shall cooperate for decision within stipulated time.

(4) Parties to bear their own costs.

(N.B. Suryawanshi, J.)

(A.S. Chandurkar, J.)

Gulande