

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

SECOND APPEAL NO. 387 OF 2019

Prashant Abhiman Tembhurne,
Aged 38 years, Occ.: Service,
R/o. Lala Lajpatrai Ward, Bhandara,
Tq. & Dist. Bhandara.

.... **APPELLANT.**

// VERSUS //

Supriya Prashant Tembhurne,
Aged 28 years, Occ. Labour,
R/o C/o Shri Ramnath Karwade,
Near Rajkumar Janbandhu House,
Behind Hajjare Chakki, Kosar
Mohalla, Old Budha Vihar, Village
Dawdipar (Bajar), Tah. Bhandara,
Dist. Bhandara.

.... **RESPONDENT.**

Shri N.S. Warulkar, Advocate for Appellant.
Shri A.M.Quazi, Advocate for the Respondent.

CORAM : ANIL S. KILOR, J.
DATED : NOVEMBER 23, 2021

ORAL JUDGMENT :

1. In this appeal, the challenge is raised to the judgment and decree dated 21/06/2019, passed in Regular Civil Appeal No. 92 of 2017 by the District Judge-III, Bhandara, allowing the appeal and thereby setting aside the judgment and decree dated 16/06/2017, passed by the learned Joint Civil Judge Senior Division, Bhandara in Hindu Marriage Petition No.132 of 2014, dissolving the marriage between the appellant and the respondent on the ground of cruelty.

2. Brief facts of the present case are as follows (The Parties are referred to as per their status before the trial Court.):

3. The appellant/petitioner who is the husband of the respondent filed petition under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act, 1955 for dissolution of marriage. It is the case of the petitioner that the marriage between the petitioner and the respondent was solemnized on 17/03/2013 and they started residing together. It is the further case of the petitioner that the respondent failed to share bed relations with the petitioner and used to insult the petitioner by using filthy language. It is further contended that

on 15/09/2013 the respondent left the house of the petitioner without any reason and without informing to the petitioner.

4. It is further case of the petitioner that the respondent lodged a false criminal complaint against the petitioner in the police Station, Bhandara on 23/11/2013. Thereupon, a crime was registered under Sections 498-A, 323 read with Section 34 of the Indian Penal Code(IPC), vide Crime No.479/2013 and the petitioner was arrested in the said crime along with his other family members.

5. The respondent/wife filed her written statement and opposing the prayer made by the petitioner for dissolution of marriage. It is the case of the respondent that the petitioner ill-treated her and there was a demand of dowry. She was compelled to leave the house of the petitioner. It is further contended that as there was danger to her life at the matrimonial house, a criminal compliant was lodged.

6. The learned trial Court after considering the oral as well as documentary evidence, had found substance in the allegation of cruelty made by the petitioner and accordingly, the petition was allowed and the marriage between the petitioner and the respondent was dissolved by the decree of divorce vide judgment dated 16/10/2017.

7. Feeling aggrieved by the same, the respondent preferred Regular Civil Appeal No.92 of 2017 which was allowed vide impugned judgment and decree dated 21/06/2019, the same is under challenge in this appeal.

8. This appeal was heard finally on 16/11/2021 and was adjourned to 18/11/2021 on a request by both the advocates to place on record some more judgments in support of their contentions.

9. On 18/11/2021 though the matter was on board, it could not be reached and it was adjourned for 23/11/2021.

10. Today, when the matter was called out, the learned counsel for the respondent filed a pursis, pointing out that after conclusion of hearing on 16/11/2021, the learned counsel for the respondent had returned back the case papers to the respondent and obtained an acknowledgment, wherein for hearing was mention the next date i.e. 18/11/2021. The learned counsel for the respondent has placed the copy of acknowledgment on record along with the pursis. The pursis is taken on record and marked as Article 'A'.

11. It is thus clear that the respondent was present in the Court *in person* on 16.11.2021, when the matter was heard and adjourned for 18.11.2021 to provide an opportunity to the both the counsel to cite judgments. The acknowledgment also shows that there is a specific mention of next date of hearing i.e. 18/11/2021.

12. Despite this fact, today, none appears for the respondent.

13. In the above stated backdrop, the respondent ought to have engaged another lawyer of her choice immediately on receiving the case papers back on 16.11.2021, particularly, when she is having knowledge that the matter has already been heard finally and adjourned for specific purpose. Thus, in the peculiar facts and circumstances, in absence of any Advocate on behalf of the respondent, I wish to proceed in this matter and to dictate the final judgment in the open Court.

14. In this appeal, this Court on 5th December 2019 has framed the following substantial question of law:

“Whether the first appellate Court failed to appreciate the term “cruelty” as mentioned in Section 13(1)(i-b) of the Hindu Marriage Act and by misreading the evidence reversed the finding of the trial Court ?”

15. It is an undisputed fact that a criminal complaint was lodged by the respondent against the petitioner and his family members and resultantly, the crime was registered under Sections 498-A and 333 read with Section 34 of the IPC vide Crime No.479 of 2013. There is also no dispute that the petitioner and his family

members were arrested in the said crime and subsequently, they were honourably acquitted.

16. In the above referred undisputed facts, the learned counsel for the appellant/petitioner submits that the act of filing of a criminal complaint is sufficient to prove cruelty in view of the catena of judgments of the Hon'ble Supreme Court of India and this Court.

17, To consider the contention raised in this appeal, I have perused the record and also relevant following judgments.

i) The Hon'ble Supreme Court of India, in the case of A.

*Jayachandra Vs. Aneel Kaur*¹, has held thus:

10. The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of his spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the

mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty.....”.

11. The expression 'cruelty' has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial *duties and obligations*. *Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional.....*”

ii) The Hon’ble Supreme Court of India, in the case of *V. Bhagat*

*Vs. D. Bhagat*², has held thus :

16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner.....”.

iii) The Hon’ble Supreme Court of India, in the case of *K.*

*Srinivas Vs. K. Sunita*³, has held thus:

5. 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 13(1) (ia) of the Hindu Marriage Act.

2 (1994) 1 SCC 337

3 2014 (16) SCC 34

iv) The Hon'ble Supreme Court of India, in the case of *K.*

*Srinivas Rao Vs. D. A. Deepa*⁴, has held thus:

14. 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.

v) The Division Bench of this Court in the case of *Anil Yashwant*

*Karande Vs. Mangal Anil Karande*⁵, has held thus:

36. The judgments referred to aforesaid clearly indicate that if the complaint filed by the wife against the husband under section 498-A of IPC and other related provisions was dismissed on merits and the husband and his family members are acquitted, it was clear that the complaint filed by the wife against the husband was a false complaint. In my opinion, filing of such complaint itself which create mental trauma on the husband and the complaint which was seriously prosecuted by the wife by leading evidence of several persons and bringing the said complaint to its logical conclusion which ultimately resulted in acquittal of the husband and his family members clearly amounted to the cruelty committed by the wife upon the husband.

38. The Supreme Court as well as this Court in the aforesaid judgments have consistently held that if the false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce.....

⁴ (2013) 5 SCC 226

⁵ 2016 (2) Mh.L.J. 166

18. It is clear from the above referred judgments that cruelty is a course or conduct of one spouse, adversely affecting the other. Cruelty need not be physical. It may be mental, physical, intentional or unintentional. If the conduct of the spouse, causes an apprehension in the mind of the other spouse about his/her mental welfare, then this conduct amounts to cruelty. It is further clear that mental cruelty is that conduct which inflicts upon the other party, such mental pain and suffering as would make it not possible for that party to live with the other. If the complaint filed by the wife against the husband under section 498-A of the IPC and other related provisions, is dismissed on merits and the husband and his family members are acquitted. It is clear that the complaint filed by the wife against the husband is a false complaint. Such knowingly and intentionally filing of a false complaint, making unfounded indecent defamatory allegations against the spouse or his/her relatives in the pleadings, filing repeated false complaints and cases in the Court, calculated to embarrass and incarcerate the husband and family members, unquestionably constitutes cruelty as postulated in Section 13(1) (i-a) of the Hindu Marriage Act, 1955

such filing of false complaint by either spouse, would entitle the other spouse to claim a divorce.

19. It is thus, clear that the filing of false criminal complaint amounts to cruelty. In this matter, as I have observed that undisputedly, the petitioner and his family members were honourably acquitted in crime No.479/2013, which was registered on a complaint made by the respondent.

20. Hence, the above referred undisputed fact is sufficient to hold that the petitioner has proved cruelty in this matter. I am, therefore, of the considered opinion that the learned First Appellate Court has committed error in observing that a mere acquittal from the criminal prosecution is not sufficient to draw the inference that the police report was false.

21. The learned First Appellate Court has further committed error in observing that the petitioner failed to place a copy of First Information Report lodged by the respondent and also

failed to establish that the allegations made in the Police Report were false.

22. Once honourable acquittal has been granted to the petitioner by the Court, after the full fledged criminal trial, the observations made by the learned First Appellate Court that the petitioner has failed to establish that the allegations made in the police report were false, is contrary to the findings recorded by the Court in the criminal trial.

23. In that view of matter, I have no hesitation to hold that the above referred findings of the learned First Appellate Court are perverse and contrary to the evidence available on record.

24. Even otherwise in this case, there is no possibility of reunion, as during the pendency of this appeal, both the parties were referred to mediation and it was failed and accordingly, the Mediator has submitted it's report on 16/09/2021 to that effect.

25. In that view of the matter, I have arrived at a conclusion that the learned First Appellate Court failed to appreciate the term

cruelty as mentioned in Section 13(1)(i-a) of the Hindu Marriage Act, 1955 and by misreading evidence, has reversed the findings of the trial Court.

26. Accordingly, I have answered the substantial question of law in above terms and pass the following order:

- i) The appeal is allowed.
- ii) The judgment and decree dated 21/06/2019 passed by District Judge-3, Bhandara in Regular Civil Appeal No.92 of 2017 is quashed and set aside.

The Second Appeal stands **disposed of** accordingly. No order as to costs.

In view of disposal of Second Appeal, the Civil Applications, if any, shall stand **disposed of**.

(ANIL S. KILOR, J)

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Digitally signed by NIRANJAN
DOMAJI THAWRE
Signing Date: 23.12.2021
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