

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

FAMILY COURT APPEAL NO.63 OF 2015

Pravin @ Shankar s/o Shamrao Matikhaye,
Aged about 28 years,
Occupation – Labour
R/o. Rui-Panjra,
Tah. & District Nagpur

...APPELLANT

VERSUS

Sau. Venu @ Savitra W/o Pravin @
Shankar Matikhaye
Aged about 23 years,
Occupation – Housewife,
R/o. C/o. Devaji Dahane,
Near the house of Pintu Gharad,
M.S.E.B. Colony, New Subhedar Layout,
Nagpur - 24

...RESPONDENT

Shri M.A. Kadu, Advocate for the appellant.
Shri A.D. Dangore, Advocate for the respondent.

CORAM : ROHIT B. DEO & URMILA JOSHI-PHALKE, JJ.
DATE : OCTOBER 17, 2022.

JUDGMENT (Per Urmila Joshi-Phalke, J.)

Heard finally with the consent of learned Counsel for the parties.

2. Alleging cruelty against the wife, the appellant-husband approached this Court by filing an appeal against the judgment and

decree passed in Petition No.A-906/2007 by which the petition for dissolution of marriage was dismissed.

3. The facts of the case giving rise to the dispute are as follows:

A] The respondent - Sau. Venu @ Savitra W/o Pravin @ Shankar Matikhaye is a legally wedded wife of the appellant and their marriage was solemnized at Nagpur on 20/04/2006 as per the customs prevailing in the society.

B] As per the contention of the appellant, after marriage the respondent-wife resumed cohabitation at his house. He gave all love and affection in the hope of leading a happy matrimonial life but the respondent-wife stayed with him only for four months and left his house without sufficient reason. Thereafter he had convinced her and brought her back at his house. Out of the said wedlock, she delivered a male child. It is alleged by the appellant-husband that though she delivered a male child she had not informed about the same to the appellant-husband. She was keeping all the indifferent attitude towards him and his parents. She used to quarrel with him frequently over petty matters by using filthy language. It is further alleged that the respondent-wife was in habit of leaving the matrimonial house as per her own accord by behaving arrogantly. She also demanded separate residence and

expressed inconvenience in residing with the parents of the appellant-husband. It is alleged that she has not only humiliated and insulted the appellant-husband but also treated him with mental cruelty as well as physical torture. There is irrevocable breakdown of the marriage between them.

C] He further contended that though she left the matrimonial house, she has lodged the false complaint against him at Hingna police station alleging that she was ill-treated by him and his parents under Section 498-A read with Section 34 of the Indian Penal Code (hereinafter referred to as 'the IPC' for short). Since 17/04/2007, respondent-wife is residing separately and falsely implicated the appellant in false criminal cases. As per the contention of the appellant-husband due to disrespectful and rude behaviour of the respondent-wife he constrained to file petition before the Family Court for dissolution of marriage on the ground of cruelty.

4. In response to the notice, respondent-wife had filed her written statement before the Family Court and denied all the contentions of the appellant-husband. As per her contention after marriage, she resumed cohabitation at the house of the appellant-husband but she was treated well initially for two months and thereafter the appellant-husband and his family members started ill-treating her by demanding

money from her parents. She further contended that she and her sister are the only daughters to her parents, therefore, the appellant-husband started claiming share in the property of her father which is situated at village Rui and on that count she was subjected for physical and mental harassment by the appellant-husband and his family members. She was also pressurized to perform the marriage of her younger sister with the younger brother of the appellant-husband only with an intention to grab the entire property of her father. Due to the ill-treatment at the hands of the appellant-husband and his family members she constrained to leave the matrimonial house and lodged the report at Hingna police station on 18/04/2007 vide Crime No.62/2007 under Sections 498-A and 323 of the IPC.

5. It is further her contention that she was ill-treated by the appellant-husband as well as his parents. The appellant-husband has not made any provision for her maintenance, therefore, she filed a petition bearing No.65/2008 for maintenance. It is her contention that with false allegations this petition for dissolution of marriage was filed by the appellant-husband.

6. The appellant-husband had also contested the maintenance petition filed by the respondent-wife. Learned Family Court recorded the evidence in both the petitions and after hearing both the sides pleased to

dismiss the petition filed by the appellant-husband for dissolution of marriage and granted maintenance to the respondent-wife @ Rs.2000/- to her and Rs.1000/- to her son.

7. Being aggrieved and dissatisfied with the common judgment passed by the Family Court, Nagpur, present appeal is preferred by the appellant-husband. The appellant-husband has not challenged the order of maintenance passed by the Family Court in petition No.65/2008. Present appeal is preferred by the appellant-husband on the ground that the learned trial Court had not considered that the respondent-wife had treated him with physical as well as mental cruelty and without sufficient reason left his company. It is further contention of the appellant-husband that the learned trial Court has wrongly dismissed his petition for dissolution of marriage. The reasons recorded by the learned trial Court are erroneous and liable to be set aside.

8. Heard Shri M.A. Kadu, learned Counsel for the appellant. He submitted that the appellant-husband has claimed dissolution of marriage on the ground of cruelty. The respondent-wife had withdrawn herself from the company of the appellant-husband and not resumed cohabitation.

9. He invited our attention towards the evidence of the appellant-husband and submitted that the appellant-husband as well as

his witness PW-2 – Sunita Haribhau Deulkar had proved that the appellant-husband was subjected to mental as well as physical cruelty. He submitted that since inception of marriage the respondent-wife was not behaving properly. She was abusing, using filthy language, quarreling on petty matters and expressed her desire to stay separately from the parents of the appellant-husband. This type of behaviour of the respondent-wife caused mental cruelty to the appellant-husband. There was continuous harassment at the hands of the respondent-wife. On the contrary, the appellant-husband had made several continuous efforts to fetch her back but his all efforts resulted futile.

10. Learned trial Court had not considered the evidence and erroneously dismissed the petition for dissolution of marriage. He submitted that the reasons recorded by the learned trial Court are erroneous and liable to be set aside.

11. On the other hand, Shri A.D. Dangore, learned Counsel for the respondent submitted that the respondent-wife and her sister are the only daughters of their parents. After marriage, respondent-wife was ill-treated by claiming share in the property of the parents of the respondent. The respondent was also pressurized to convince her parents to perform the marriage of their younger daughter with the brother of the appellant-husband only with an intention to grab the

entire property. As the respondent-wife was ill-treated physically as well as mentally, she lodged the report with the Hingna police station on the basis of which the offence was registered. He further submitted that though the appellant-husband and his parents are acquitted from the charges, is not sufficient to prove that there was no cruelty. In fact, the respondent-wife was treated with the cruelty and she constrained to leave the matrimonial house. Learned Counsel for the respondent placed his reliance on *Mr. M Vs. Mrs. M 2014 (2) Mh.L.J. 825* wherein it is held that whether a particular act was constituted cruelty or not will depend upon the facts and circumstances of each case. It is further held that even if the acquittal is on the ground that the charge could not be substantiated and even if there is no finding recorded by the Criminal Court that the prosecution case was false, there can be a case of cruelty.

12. After hearing both the sides following points arise for our consideration and we answer the same accordingly :

- (i) Whether the petition for dissolution of marriage is liable to be allowed on the ground of cruelty as pleaded in the petition?
- (ii) Whether the judgment and decree passed by the trial Court calls for any interference?

13. Point Nos.(i) to (ii) - It is always said that the marriages are settled in heaven. The parties to marriage tying knot are supposed to

bring about the union of souls. It creates a new relationship of love and affection, concern between the husband and wife. According to Hindu Vedic it is 'Sanskar'. The two human being pledged themselves. Despite the pledge and promises sometimes said relationship becomes complex.

14. Present case is also one more example of complex relationship between husband and wife. There is no dispute about matrimonial relationship between the appellant-husband and the respondent-wife. The appellant who is the husband has filed the petition for seeking dissolution of marriage on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955. The petition for dissolution of marriage is preferred mainly on the allegation that the respondent-wife had treated him with cruelty after marriage. As per the allegation of the appellant-husband, the respondent-wife stayed only for four months, however, he fetch her back but the behaviour of the respondent-wife was not good towards him as well as his parents. It is alleged by him that she used filthy language and used to quarrel with him frequently over petty matters. She was in habit of leaving the matrimonial house on her own accord and behaving arrogantly. She also demanded separate residence and was not ready to stay at matrimonial house. He further alleged that though he attempted to fetch her back but his efforts were futile.

15. To substantiate the contention, the appellant-husband

adduced his evidence by examining himself by submitting affidavit of evidence. He also adduced the evidence of PW-2 – Sunita Haribhau Deulkar. The appellant-husband has reiterated the contention as per the pleading in his examination-in-chief. Besides his oral evidence, he relied upon the certified copy of the First Information Report which was registered against him. He deposed that on the basis of false allegation false FIR is registered against him. He is cross-examined at length. During his cross-examination it is admitted that the parents house of the respondent-wife is near to his house. He also admitted that his father was a Police Patil. His cross-examination shows that he had filed two cases simultaneously, one for divorce and another for restitution of conjugal rights. Both the cases are filed before the same Court. From his cross-examination, it is further reveals that before filing the divorce petition he had not issued any notice for restitution of conjugal rights. He admitted that he is not aware about the date of birth of his son. Respondent has left the matrimonial house when she was pregnant of two months. He further admitted that he as well as his family members were aware that his wife was pregnant of two months. He further admitted that her parents and sister were present when she was admitted for delivery.

16. It is vehemently submitted by the learned Counsel for the appellant that the evidence of the appellant-husband shows that he had

made several efforts to fetch back the respondent-wife to resume cohabitation but it was the respondent-wife who left the matrimonial house and not returned back. It is further vehemently submitted that the respondent-wife left the matrimonial house without any reason and lodged the false report against the appellant-husband and his parents. If the admission of the appellant-husband is taken into consideration, he admitted that he had also filed a petition for restitution of conjugal rights.

17. To corroborate this version he also examined one Sunita Haribhau Deulkar who is the sister of the appellant-husband. She supported the contention of the appellant-husband to the extent that the respondent-wife was not behaving properly and was harassing the appellant-husband and his family members. During cross-examination, she admitted that she is residing at Rui-Panjari as well as at Khaparkheda. She admitted that she was working in Maharashtra Vidyalaya, Khaparkheda as a cook since 2002. She further admitted that her place of residence is at Khaparkheda. She further admitted that sister of her husband took her at Khaparkheda after the death of her husband and since then she is residing at Khaparkheda. Thus, evidence of PW-2 shows that she is resident of Khaparkheda whereas the appellant-husband is resident of Panjari. Though she has narrated about the cruelty at the hands of the respondent-wife but she has not made any

reference about the day, date and year about the behaviour of the respondent-wife. There is no evidence that when she had witnessed the incidence of any abuses or using a filthy language by the respondent-wife to her husband in her presence. Her evidence is only in the nature of the vague statement that the respondent-wife used to harass her husband and in-laws by making false allegations.

18. The respondent-wife had also adduced her evidence in support of her contention. She reiterated the contentions as per her written statement. She alleged that she was physically and mentally harassed by the appellant-husband and his family members by claiming share in the property of her father. She was also pressurized to propose the marriage of her sister with the brother of the appellant-husband, and therefore, she lodged the report against the appellant-husband and his family members. She is also cross-examined at length by the appellant-husband. Her cross-examination shows that after marriage she stayed at her matrimonial house for one year. She subsequently stated that initially she disliked the proposal of the appellant-husband to perform the marriage with him. She performed the marriage as per the wish of her father. By this cross-examination, it is admitted by the appellant-husband that as the marriage was against her wish, she was not willing to cohabit with the appellant-husband. But there is no such evidence brought on record that the marriage was against her wish. She stated

during the cross-examination that nobody came to fetch her back though she was pregnant. Thus, her evidence shows that as she was not treated well she left the matrimonial house and stayed at her parents house.

19. Admittedly, neither the appellant-husband nor the respondent-wife alleged that there was physical assault on them by each other. Only allegation made by the appellant-husband that she was not behaving properly and was using filthy language to him as well as his parents. Whereas it is alleged by the respondent-wife that she was ill-treated by the appellant-husband by claiming share in the property of her father as she and younger sister are the only daughters of their father.

20. Now, on the basis of the above said evidence, it is to be ascertained whether the contention of the appellant-husband that the respondent-wife treated him with cruelty and the allegation made by him amounts to cruelty. Cruelty has not been defined under the Hindu Law. Admittedly, there is no allegation of violence against each other. In relation to matrimonial matters it is contemplated that a conduct of such type which endangers the living of the other amounts to cruelty. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. Cruelty however, has to be distinguished from the ordinary wear

and tear of the family life. The question whether the act complained of was a cruel act is to be determined from the whole facts and the matrimonial relations between the parties. In ***Samar Ghosh Vs. Jaya Ghosh (2007) 4 SCC 511*** the Hon'ble Apex Court given certain illustrative examples wherefrom inference of mental cruelty can be drawn. The Hon'ble Apex Court reproduced some of the illustrations:-

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

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

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

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(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

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

21. After advertng to material on record the evidence on record shows that the allegations of the appellant-husband regarding the harassment are vague one. He nowhere narrated the manner in which he was harassed. The allegations of cruelty are regarding the trivial issues. It is well settled that the allegations of cruelty should have the origin with reference to time, place and manner of cruelty. General allegations of cruelty do not constitute cruelty in the eyes of law so as to grant decree of dissolution of marriage on that premise. It is observed by the Hon'ble Apex Court in ***A. Jayachandra Vs. Aneel Kaur 2005 (5) ALL MR 313 (S.C.)*** that mere annoyance or irritation may not constitute cruelty, rather it is a spontaneous change in human behavior which restricts the other side to live with the spouse under the fear of endangering life or bodily injuries. Though, the word 'cruelty' has not been defined strictly, but it has to be gathered from attending circumstances of each case. The allegations should be specific with regard to time, place and manner of committing such cruelty. The cruelty should be such in which it is not reasonably expected to live together. It is observed by the Hon'ble Apex Court in ***Gurbux Singh Vs. Harminder Kaur AIR 2011 SC 114*** that the aggrieved party has to make a specific case that the conduct of which exception is taken amounts to cruelty. It is true that even a single act of violence which is of grievous and inexcusable nature satisfies the test of cruelty. The marital life

should be access as a whole and few isolated instances over a certain period will not amounts to cruelty.

22. Here in the present case, mere allegation is that the respondent-wife was using filthy language and arrogant behaviour. The appellant-husband has to make out a specific case that the conduct of the respondent-wife was such a nature that it was difficult for him to lead the life along with her. Admittedly, in the manner and case, the nature of behaviour by which the appellant-husband faced the cruelty is not described by him. The matrimonial life of the appellant-husband and the respondent-wife is only for one year. They both had not made any allegation of violence against each other. The appellant-husband had not adduced the evidence regarding the time and manner in which he was harassed. The allegations made by him falls under routine wear and tear in the nature. A Hindu marriage solemnized under the Act can only be dissolved on any of the grounds specified therein.

23. Admittedly, the appellant-husband had not proved the cruelty at the hands of the respondent-wife. There is no evidence to show that the respondent-wife was desiring to end the relationship permanently.

24. After giving thoughtful consideration to the controversy we are of the view that the appellant-husband failed to prove the ground of

cruelty to obtain a decree of dissolution of marriage. The manner in which the appellant-husband faced cruelty is not proved. Mere annoyance or irritation or normal wear or tear differences does not constitute cruelty. The cruelty should be such in which it is not reasonably accepted to live together. Merely because the respondent-wife is staying separately an inference of cruelty cannot be drawn. The marriage between the parties cannot be dissolved on the averments made by one of the parties that the marriage between them has broken down. The irretrievable breakdown of the marriage is not a ground by itself to dissolve it. As regards the allegation made by the appellant/husband are not believable. It is well settled that except the ground enumerated under Section 13 of Hindu Marriage Act, 1955 the marriage solemnized under the Act cannot be dissolved on any other ground.

25. In the light of the above discussion we are unable to accept the contention of the appellant-husband, hence no ground is made out to interfere with the findings of the Family Court. Accordingly, point nos. (i) to (ii) answered in negative. We accept the conclusion derived by the trial Court. Therefore, the appeal fails and is dismissed. There will be no order as to costs.