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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 250 OF 2023

WITH CIVIL APPLICATION NO. 5854 OF 2023

Deepika w/o Nitin Khedkar
Age 36 years, Occu: Household,
R/o Flat No. 506, Abhilasha Coop. Hsg. Socy.
Lipane Vasti, Jambhulwadi,
Katraj Road, Pune.

... **APPELLANT**

V/s.

Nitin s/o Arun Khedkar,
Age 40 years, Occu: Service,
R/o Sadar Bazar, Ambajogai
Tq. Ambajogai Dist. Beed
Working at Cognizant Technology Services Ltd.,
Rajiv Gandhi Infotech Park, Phase-I,
Hinjewadi, Pune
Employee Code 304037,
At Present R/o Sai Nagar,
Near Pawanraj Hotel, Chanai, Ambajogai,
Dist. Beed.

... **RESPONDENT**

.....
Shri B. S. Phad, Advocate for the Appellant
Shri Prashant K. Nikam, Advocate for the Respondent
.....

CORAM : Y. G. KHOBRAGADE, J.
RESERVED ON : 01.04.2024
PRONOUNCED ON : 25.04.2024

ORDER / JUDGMENT:

1. Being dissatisfied with Judgment and Decree dated 20.02.2023 passed by the learned District Judge, Ambejogai, District Beed in Regular Civil

Appeal No. 09/2022 arising out of Judgment and Decree dated 09.12.2021 passed by the learned Civil Judge, S. D., Ambajogai, in H. M. P. No. 80/2017, the Appellant has invoked the jurisdiction of this Court under Section 100 of the Code of Civil Procedure, 1908.

2. Present Appellant is original Respondent-wife and the Respondent is original Petitioner-husband in H. M. P. No. 80 of 2017. For the sake of brevity, parties to the present appeal, hereinafter shall be referred as per their original description as the Petitioner-Husband and Respondent-Wife.

3. The Petitioner-husband filed H. M. P. No. 80 of 2017 and prayed for decree of divorce against the Respondent/Wife under Section 13 (1) (i-a) and 13 (1-A) (ii) of the Hindu Marriage Act.

4. According to Petitioner, on 21.12.2004, his marriage was solemnized with Respondent at Parbhani. After marriage the Respondent cohabited with him at Ambejogai in joint family. Out of said wedlock, they begotten a girl child namely Aditi on 10.05.2008. After residing at Ambejogai for some period, both of them shifted to Hadapsar, Pune and resided there till 14.11.2012. The relations between them were good till 14.11.2012. However, later on the Respondent quarreled with him on ground that she do not wish to cohabit with him. Therefore, he brought her back at Ambejogai, where she stayed for one month. Thereafter, Respondent along with their daughter left his

house and visited at her parental house and since then she deserted him. Thereafter, the Respondent filed various proceedings including false criminal complaints against him and his family members and caused physical and mental cruelty against him. The detail of proceedings are as under:

1.	Criminal M. A. No.82 of 2014 before J. M. F. C., Parbhani under the provisions of Protection of Women from Domestic Violence Act, 2005, (D. V. Act) which came to be dismissed on 28.04.2017
2.	H. M. P No. 132 of 2013 before the learned Civil Judge S. D., Parbhani for restitution of conjugal rights, which came to be allowed on 29.08.2014, but the respondent wife failed to cohabit with the petitioner husband.
3.	Missing Complaint dated 11.05.2016 and publishing of notice in the newspaper on 16.06.2016 about missing of the petitioner husband.
4.	Criminal M. A. No. 22 of 2016 before the Ld. J. M. F .C., Pune u/s 97 of Cr. P .C. falsely alleging that parents of petitioner had confined him. Said application was rejected on 15.07.2016.
5.	R. C. C. No. 2645/2016 on the basis of FIR lodged by respondent wife against Nilesh Arun Khedkar, brother of the petitioner, u/s 354 IPC. Petitioner's brother was prosecuted for said offence and after fledged trial acquitted on 04.05.2019.
6.	Report lodged against Shri Pramod Shahane, who is the husband of petitioner's for indecent violence, but police did not take any action.
7.	Civil Suit bearing R.C.S No.1046 of 2016 in which Shri Nilesh, brother of the petitioner, was shown as husband of respondent, which is false, frivolous and vexatious case.

5. The Petitioner further submits that due to institution of all above cases at the hands of Respondent, he and his family members suffered mental and physical cruelty, hence, prayed for decree of divorce on account of cruelty, desertion and denial of restitution of conjugal rights.

6. Respondent-wife filed her written statement at Exh.9 and denied all adverse allegations made against her. According to the Respondent, she had filed a case under the D. V. Act before the learned J.M.F.C., Parbhani. Thereafter, she filed Cri. Misc. Appln. No. 87/2014 and application before this Court for transfer of proceeding under D.V. Act to transfer the file from J.M.F.C., Parbhani to J.M.F.C., Pune. Therefore, she did not appear before the learned J.M.F.C., Parbhani, hence, said proceeding was dismissed for non prosecution.

7. The Respondent further alleged that she had filed H.M.P No. 132 of 2013 and prayed for restitution of conjugal right. On 29.08.2015, the learned Civil Judge Sr. Dn., passed the decree in her favour. Thereafter, she had gone for cohabitation with the petitioner at Flat No. 403, Katraj, Pune, but her husband/petitioner had left his house without giving intimation to her. Therefore, she lodged a missing complaint of her husband and filed an application under Section 97 of Cr. P. C. before the Ld. J.M.F.C., Pune.

8. To contradict the allegations of the Petitioner about lodging of FIR against Nilesh Khedkar/brother of Petitioner and brother-in-law of Respondent, she contended that she was molested at their hands, she reported said incident to the Police Authority and trial of said incident is pending. According to Respondent-wife, Petitioner has subjected her to cruelty and tortured her physical and mentally. So also, the Petitioner refused to maintain her and her daughter, hence, she prayed for dismissal of the petition got want of jurisdiction.

9. On the bass of rival pleadings of both the sides, the learned trial Court framed Issues at Exhibit 32. To substantiate the claim, the Petitioner examined himself at Exh. 53 and AW-2 Nilesh at Exh. 79. Besides oral evidence, the Petitioner proved documentary evidence at Exh. Nos 63, 71, 73, 75, 76, 86, 118 and 151. The Respondent-wife examined herself (DW-1) at Exh. 83 and another witness (DW-2) Shri Pandhari Marutrao Shahane at Exh. 113.

10. After hearing both the sides, on 19.12.2021, the learned Civil Judge, Sr. Dn., passed the judgment and decree recording that the Respondent-wife filed cases against Petitioner-husband as well as her in-laws, brother in laws and published notice in the newspaper in respect of missing of the Petitioner and filed complaint under Section 97 of the Cr.P.C. The Respondent

treated the Petitioner with cruelty, so also, even after passing of decree of restitution of conjugal rights, there were no cohabitation between the Petitioner and Respondent. Accordingly, the learned trial Court dissolved marriage of the petitioner and Respondent under section 13 (1) (i-a) of Hindu Marriage Act.

11. Being aggrieved by said Judgment and decree of divorce, the Respondent filed an appeal bearing R.C.A. No. 09/2022 before the District Court, Ambejogai. On 20.02.2023, learned First Appellate Court passed impugned Judgment & Decree and confirmed the Judgment & decree passed by the learned Trial Court.

12. Heard the learned counsel appearing for the Respondent-wife and the learned counsel for the Petitioner-husband at length.

13. The learned counsel appearing for the Respondent-wife in vehemence submits that, while passing the impugned judgment and decree, the learned First Appellate Court wrongly held that after the decree of restitution of conjugal right is passed the Respondent-wife had been to the husband for cohabitation, but the husband was not there, therefore, the Respondent-wife lodged a missing complaint of her husband. Therefore, lodging the missing complaint of husband, does not constitute cruelty.

14. It is further canvassed that after the decree of restitution of conjugal right in favour of the Respondent-wife in H.M.P No. 132 of 2013, the Respondent made all efforts for cohabitation by filing of execution proceedings, however, her husband refused to cohabit with her. Further, due to mental and physical cruelty at the hands of of petitioner and her in-laws, proceedings under D. V. Act, 2005 was filed. Therefore, mere filing of proceedings under D. V. Act does not constitute cruelty. However, both the Courts below wrongly recorded findings about raising cruelty against the petitioner. Therefore, prayed for quash and set aside both Judgments and Decrees.

15. In support of his submissions, the learned counsel appearing for the respondent relied on the case of ***Satish Dhudku Halnor Vs. Yogita Satish Halnor, 2019 (6) Mh.LJ 159***, wherein, it has been held that, filing of litigation for maintenance as well as application under D. V. Act ipso facto does not amount to 'cruelty' as contemplated under section 13 (1) (i-a) of Hindu Marriage Act.

16. The learned counsel for the Respondent further relied on the cases of ***Khatunbi wd/o Mohammad Sayeed Vs. Aminabai w/o Mohammad Sabir, 2006 (6) Mh.LJ 759*** and ***Asaram Devrao Sakalkar Vs. Jayshree w/o Vishnu Sakalkar, 2019(5) Mh.LJ 409***, wherein it has been held that the First Appellate Court is required to consider the pleadings of the parties as well as evidence

and thereafter frame points for determination. However, the counsel for the Respondent failed to point out as to how would the ratio laid down in cited cases be applicable to the facts and circumstances of the present case.

17. Per contra, the learned counsel appearing for the Petitioner-husband supported concurrent findings of both the Courts below. He canvassed that the marriage between the Petitioner-husband and Respondent-wife was solemnized on 21.12.2004 at Parbhani and after marriage, everything was cordial till 14.11.2011. Out of said wedlock, a girl child -Aditi was begotten however, the Respondent-wife alleged physical and mental cruelty by filing various complaints including false and frivolous criminal complaints against the Petitioner as well as against his father, brother and brother in law (husband of sister of the Petitioner). The Petitioner proved cruelty at the hands of Respondent by oral as well as by documentary evidence. Therefore, considering the evidence available on record, the learned Trial Court passed the judgment and decree of divorce and dissolved the marriage and confirmed by learned First Appellate Court. Therefore, no substantial question of law is involved, hence, prayed for dismissal of the appeal.

18. Adv. Nikam, the learned counsel for the Petitioner relied on ***M Vs. M; 2014 (4) Bom.C.R. 456 = 2014 (2) Mh.L.J. 825***, wherein it is held that, the allegations of filing of a false complaint and trauma of facing trial amounted to

cruelty, caused agony, trauma and humiliation undergone by the appellant and his family and as such, the said conduct amounts to mental cruelty to appellant and by reason of such mental cruelty, the husband is not reasonably expected to continue cohabitation with the Respondent-wife.

19. In the case in hand, Petitioner-husband sought a decree of dissolution of marriage mainly on ground that, the Respondent-wife has lodged various false and frivolous criminal proceedings as well as complaints against him and his brother and father. His brother and father were prosecuted on the basis of false and baseless allegations for the heinous offence like molestation/outraging modesty, issuance of life threat. Therefore, the father and brother of the Petitioner have certainly faced trauma and were humiliated in the society.

20. The Petitioner (PW-1) deposed at Exh.53 that solemnization of his marriage with the Respondent on 21.12.2004 and out of said wedlock they were blessed with a girl child Aditi on 10.05.2008. After marriage, his wife Respondent cohabited with him in joint family at Ambejogai. Thereafter, respondent cohabited with him at Hadpsar Pune in a rented Flat/House till 14.11.2012, but subsequently, she started quarreling with him on ground that she did not want to stay there. Therefore, he brought the Respondent at Ambejogai, where, she cohabited with him for a month, but during said period, the Respondent quarreled with him and with his family members and then she

left his house with their daughter and resided at her parental house. Since then, she had withdrawn his company and deserted him and lodged various false and baseless criminal complaints. In pursuance of same his father, brother and his brother-in-law were prosecuted for charges of molestation, due to which, he and his family have suffered physical and mental harassment which amounts to cruelty. The evidence of the PW-2 Nilesh Arun Khedkar is similar to the evidence of the Petitioner.

21. The Petitioner has proved the following documents through evidence viz.,

- a) Exh. 63- Copy of judgment and order in Cri. M. A. No. 82 of 2014,
- b) Exh. 71- Publication of Public Notice dated 16.05.2015 in respect of missing of petitioner,
- c) Exh. 73- Copy of R.C.C. No. 1046 wherein AW-2 Nilesh Arun Khedkar, brother of petitioner was prosecuted,
- d) Exh. 75- Copy of judgment and order 04.05.2019 passed in RCC No. 2645/2016 whereby Shri Nilesh AW-2 acquitted for the offence punishable under section 354 of Indian Penal Code.
- e) Exh. 76 Judgment and order dated 15.07.2016 passed in Cri.M.A. No. 2284/2016 u/s 97 of Cr.P.C. for search of the husband.
- f) Exh. 86- Copy of judgment and decree dated 29.08.2014 in H.M.P No. 132/2013 for restitution of conjugal right.
- g) Exh. 118- Copy of application/complaint u/s 340 for change in address.

h) Exh. 151- Copy of judgment and order dated 29.11.2021 passed in R.C.C No. 191/2018 whereby Petitioner's father was prosecuted and acquitted for the offences punishable u/s 354, 323, 506 IPC.

22. The Respondent-wife filed evidence affidavit at Exh. 83 and admitted about their marriage and out of said wedlock she delivered a female girl. The Respondent-wife first time stated in evidence about harassing and raising physical and mental cruelty against at the hands of the Petitioner due to non-fulfillment of demand of dowry. The Respondent-wife has not pleaded said fact in her written statement. She stated that when her husband was staying at Karad, at that time, she was taking care of her in-laws, but her in laws caused physical and mental violence to her. She, further stated that, her sister-in-law (Petitioner's sister) had developed illicit relationship with one Pramod @ Pandharinath Shahane, who was on visiting terms at her house and had teased her. Therefore, she lodged Report against him. She also lodged various Court proceedings including a complaint under D. V. Act, petition for restitution of conjugal rights, as well as proceeding for seeking maintenance for her and her daughter.

23. In cross examination, she admitted about her cohabitation with Petitioner-husband in a joint family at Ambejogai. She admitted that after six months from marriage there were frequent quarrels between her and her in-laws which never ended. She further admitted that the Petitioner brought her

at Hadpsar, Pune from Ambejogai because of quarrel between her and her father & mother in-laws, which were not pacified. She stayed with her husband at Hadpsar, Pune till 14th November, 2012. She admitted that in the year 2012, quarrel took place between her and the Petitioner. Since then they are not on talking terms. Further, she never visited the Petitioner and the Petitioner also not visited her. She admitted about lodging of complaint with the police station against the Petitioner's brother-in-law and against the PW-2 Nilesh Khedkar and father of the petitioner. She further admitted about not making request in D.V. case about making arrangement of her separate accommodation. The Petitioner and his relatives attended Court proceedings under the D.V. Act at Parbhani. The Respondent further admitted about lodging of complaint against her father in law alleging outraging modesty.

24. The Petitioner proved several documents as discussed above. As per judgment and order dated 04.05.2019 Exh. 75 passed by the J.M.F.C. in R.C.C. No. 2645 of 2015, the PW.2 Nilesh Khedkar, brother of the Petitioner was acquitted for the offences punishable under section 354 IPC. It is evident that as per Judgment and order dated 29.11.2021 passed by the learned Sessions Court in R.C.C. No. 191 of 2018 Exh.151, Shri Arun Balaji Khedkar, father of the Petitioner was acquitted for the offence punishable u/s 324, 323, 506 IPC.

25. Needless to state that the evidence of the Petitioner-husband reveals that from the year 2016 till 2019, the Respondent-wife and their daughter were residing in the flat of the Petitioner. Therefore, it proves that after obtaining decree of restitution of conjugal rights, the Respondent-wife went to reside at Petitioner-husband's flat though, he was not residing there. The Petitioner-husband admitted in his cross examination that on 11.11.2016, the Respondent-wife had visited his flat in Shri Vyankatesh Kshitij Apartment, Jambhulwadi, Pune to stay with him, but she again quarreled with him, which has resulted in lodging of various complaints against the Petitioner and his relatives.

26. In the case of **M Vs. M** cited (supra), the Division Bench of this Court has held that filing of false complaint and prosecuting family of husband which causes trauma of facing trial amounts to cruelty. Such conduct of filing false criminal proceedings against husband and his relatives amounts to mental cruelty and by reason of such mental cruelty, he is not reasonably expected to continue cohabitation with the Respondent-wife.

27. In the case of *K. Srinivas Rao Vs. D. A. Deepa; (2013) 5 SCC 226*, it has been held that 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 of the job of the spouse and filing repeated false complaints and cases in the Court against the spouse amounts to causing mental cruelty to other spouse.

28. Recently in the case of ***Roopa Soni Vs. Kamalnarayan Soni, 2023 (6) Mh.L.J. 534***, Hon'ble Supreme Court has considered the word "cruelty" provided under Section 13(1) (i-a) of the Hindu Marriage Act and considered the case of ***Vishwanath Agrawal Vs. Sarla Vishwanath Agrawal, 2012 (6) Mh.L.J.(SC)***, it was observed in Para Nos. 17 to 19 as under:

"17. For a decade and half, the parties have been living separately. As fairly stated at the Bar, the marriage does not survive any longer, and the relationship was terminated otherwise except by a formal decree of divorce. The status quo continues, awaiting an approval from this Court.

18. The aforesaid facts would certainly make out a case for divorce and thus, the ratio laid down by a Constitution Bench of this Court in Shilpa Sailesh v. Varun Sreenivasan, 2023 (6) SCALE 402 would be applicable on all fours:

"26. V. Bhagat v. D. Bhagat [(1994) 1 SCC 337], which was pronounced in 1993, 18 years after the decision in N.G. Dastane [(1975) 2 SCC 326], gives a life-like expansion to the term 'cruelty'. This case was between a husband who was practicing as an Advocate, aged about 55 years, and the wife, who was the Vice President in a public sector undertaking, aged about 50 years, having two adult children - a doctor by profession and an MBA degree holder working abroad, respectively. Allegations of an adulterous course of life, lack of mental equilibrium and pathologically suspicious character were made against each other. This Court noticed that the divorce petition had remained pending for more than eight years, and in spite of the directions given by this Court, not much progress had been made. It was highlighted that cruelty contemplated under Section 13(1)(i-a) of the Hindu Marriage Act is both mental and physical, albeit a comprehensive definition of what constitutes cruelty would be

most difficult. Much depends upon the knowledge and intention of the defending spouse, the nature of their conduct, the character and physical or mental weakness of the spouses, etc. The sum total of the reprehensible conduct or departure from normal standards of conjugal kindness that causes injury to health, or an apprehension of it, constitutes cruelty. But these factors must take into account the temperament and all other specific circumstances in order to decide that the conduct complained of is such that a petitioner should not be called to endure it. It was further elaborated that cruelty, mental or physical, may be both intentional or unintentional. Matrimonial obligations and responsibilities vary in degrees. They differ in each household and to each person, and the cruelty alleged depends upon the nature of life the parties are accustomed to, or their social and economic conditions. They may also depend upon the culture and human values to which the spouses assign significance. There may be instances of cruelty by unintentional but inexcusable conduct of the other spouse. Thus, there is a distinction between intention to commit cruelty and the actual act of cruelty, as absence of intention may not, in a given case, make any difference if the act complained of is otherwise regarded as cruel. Deliberate and willful intention, therefore, may not matter. Paragraph 16 of the judgment in V. Bhagat (supra) reads as under:

“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. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be

determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”

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33. *Having said so, we wish to clearly state that grant of divorce on the ground of irretrievable breakdown of marriage by this Court is not a matter of right, but a discretion which is to be exercised with great care and caution, keeping in mind several factors ensuring that ‘complete justice’ is done to both parties. It is obvious that this Court should be fully convinced and satisfied that the marriage is totally unworkable, emotionally dead and beyond salvation and, therefore, dissolution of marriage is the right solution and the only way forward. That the marriage has irretrievably broken down is to be factually determined and firmly established. For this, several factors are to be considered such as the period of time the parties had cohabited after marriage; when the parties had last cohabited; the nature of allegations made by the parties against each other and their family members; the orders passed in the legal proceedings from time to time, cumulative impact on the personal relationship; whether, and how many attempts were made to settle the disputes by intervention of the Court or through mediation, and when the last attempt was made, etc. The period of separation should be sufficiently long, and anything above six years or more will be a relevant factor. But these facts have to be evaluated keeping in view the economic and social status of the parties, including their educational qualifications, whether the parties have any children, their age, educational qualification, and whether the other spouse and children are dependent, in which event how and in what manner the party seeking divorce intends to take care and provide for the spouse or the children. Question of custody and welfare of minor children, provision for fair and adequate alimony for the wife, and economic rights of the children and other pending matters, if any, are relevant considerations. We would not like to codify the factors so as to curtail exercise of jurisdiction under Article 142(1) of the Constitution of India, which is situation specific. Some of the factors mentioned can be taken as illustrative, and worthy of consideration.”*

19. The Trial Court and the High Court adopted a hyper-technical and pedantic approach in declining the decree of divorce. It is not as if the respondent- Husband is willing to live with the appellant-Wife. The allegations made by him against her are as serious as the allegations made by her against him. Both the parties have moved away and settled in their respective lives. There is no need to continue the agony of a mere status without them living together. "

29. In the case in hand it is evident that, the Respondent-wife lodged proceedings under the provisions of the D.V. Act, 2005 and also filed petition for restitution of conjugal rights. No doubt, initiating proceeding under the D.V. Act and Restitution of conjugal right do not by itself constitute cruelty, but lodging of various false, baseless reports with the Police Authorities against the petitioner, his father, brother, and brother-in-law (husband of Petitioner's sister) and instituting Civil proceeding showing herself as wife of P. W. 2 certainly falls within the ambit of cruelty in view of **M vs M** and **Roopa Soni**; *cited supra*.

30. On perusal of record, it appears that both the Courts below recorded concurrent findings by holding that there was cruelty on part of Respondent-wife against Petitioner-husband and thereby rightly granted decree of dissolution of marriage. The findings recorded by both the Courts below is certainly based on evidence and law. Therefore, I am of the view that the evidence available on record is rightly appreciated by the learned First

Appellate Court and there is no perversity or illegality in the same. Therefore, I do not find that there is any substantial question of law involved in the present appeal. In view of the above discussion, I proceed to pass the following order:

::ORDER::

- I. The Second Appeal stands dismissed.
- II. Accordingly, the Civil Application stands disposed off.
- III. No order as to costs.

[Y. G. KHOBRAGADE, J.]