



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

SECOND APPEAL NO.266 OF 2016

Prakash s/o Tukaramji Salpe,
Aged 44 years,
Occupation-Service,
R/o. Ramkrushna Nagar,
Wadgaon Road, Yavatmal,
Tahsil and District-Yavatmal.
Presently r/o c/o. Smt. Sarita
wd/o Tukaramji Salpe,
R/o. Plot No.30, Ramkrishna Nagar,
Wadgaon Road, Yavatmal,
Tahsil and District-Yavatmal. .. Appellant
(Ori. Petitioner on R.A.)

.. Versus ..

Sau. Ratna Prakash Salpe,
Aged 40 years,
Occupation-Beauty Parlor,
R/o. Plot No.28, Ramkrushna Nagar,
Wadgaon Road, Yavatmal.
Tahsil and District-Yavatmal. .. Respondent
(Ori. Non-Applicant on R.A.)

.....
Shri A.V. Bhide, Advocate for Appellant,

Shri Y.S. Nikam, Advocate holding for Shri N.B. Bargat, Advocate
for Respondent.

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CORAM : SANJAY A. DESHMUKH, J.
DATE : 19/08/2024.

JUDGMENT :

1. This appeal is preferred by unsuccessful husband against the judgment and decree passed by the learned Principal District Judge, Yavatmal in Regular Civil Appeal No.115/2012, dated 11.01.2016, which was preferred against the judgment and decree passed by the learned Civil Judge, Senior Division, Yavatmal dated 04.09.2012 passed in Hindu Marriage Petition No.104/2008.

FACTUAL MATRIX

2. The appellant-husband filed petition for divorce on the ground of cruelty as well as desertion. The main allegations against the respondent-wife are that she behaved with him arrogantly without any reason. She was hot tampered raising quarrels frequently. Therefore, his parents and sister started to reside separately. The brother and other relatives of the respondent frequently used to come there and used to cause interference in their marital life. They used to demand money to

the appellant and if it is not paid, they used to quarrel with him. In the month of March-2006, the respondent without the consent of the appellant tried to terminate her pregnancy of six months by taking strong dose of medicine. But her abortion could not succeed. Therefore, she was admitted in the hospital. The respondent continued mental torture to the appellant. She started to make false allegation of illicit relationship with Smt. Vaishali Wagh, who was divorcee Teacher serving in the same school, where the appellant is serving as a Teacher.

3. The appellant further contended that the respondent lodged false report against the appellant on 28.12.2007. On 21.01.2008, the respondent raised quarrel with the appellant and took both daughters out of the house and threatened to commit suicide along with them. She was convinced and brought back to the house. However, she went to the Police Station, Wadgaon, District-Yavatmal and lodged the false report. The Police did not take any action. The police convinced both of them. However, the respondent could not change her arrogant attitude. Now Vaishali Wagh, who has disturbed by the respondent on the false allegations is serving at Kamathwada and the appellant is serving

at village Rasa. Due to false allegation of illicit relationship, the appellant suffered mental agony. It is therefore impossible for him to reside under one roof with her.

4. The appellant also contended that the respondent went to Rakshabandhan on 16.08.2008, however, she could not come back on that night. On 17.08.2008, the respondent lodged the report against the appellant. Due to fear and torture of the respondent, the appellant left the house and started to reside with his parents from 17.08.2008. Though the appellant made complaint to the Police and claimed protection from District Superintendent of Police, by letter dated 07.01.2008, the police did not take any action against respondent. The appellant has filed the petition for divorce on the ground of cruelty and desertion.

5. The respondent denied the material contentions raised by the appellant and contended that the appellant had illicit relationship with colleague teacher Vaishali Wagh and, therefore, he harassed to the respondent. The report was lodged against the appellant because of cruelty caused to the respondent. However, on the request of the appellant, the action was not taken as the

matter was compromised. There was no reason for the appellant to ask any protection, as alleged by him from the police. In the year 2005, the appellant started to go with Vaishali Wagh, that time, the respondent was not having any doubt or suspicion about their illicit relationship. Lateron, she come to know that Vaishali Wagh filed divorce proceedings against her husband and some criminal cases also. The respondent was expecting change in the behaviour of the appellant for future of their daughter. But appellant was spending more time in the house of Vaishali Wagh. After the death of their second daughter, appellant used to spend more nights with Vaishali Wagh in her house. The respondent suffered mental pain and torture from that conduct of appellant. Therefore, she lodged the report for treating her with cruelty, but no change in the attitude of the appellant took place.

6. The respondent filed Misc. Criminal Application No.3/2009 for relief of protection as per the provisions of the Protection of Women From Domestic Violence Act, 2005. Thereafter, the appellant got annoyed and started harassing her. In order to create false evidence, he started to sent Rs.1,000/- by

money order to her. The respondent is ready and willing to cohabit with the appellant. He had neglected her wilfully.

7. The learned trial Court held that the appellant failed to prove the cruelty and desertion. First appellate court also held that appellant failed to prove cruelty and desertion.

8. The following substantial question of law is formed for decision of this appeal :-

“Whether the evidence on record led by the appellant was sufficient to grant him a decree for divorce under the provisions of Sections 13 (i-a) and 13 (1-b) of the Hindu Marriage Act, 1955.?”

9. The learned counsel for the appellant submits that the evidences were not properly appreciated by the trial Court as well as first appellate court. The cruelty is proved because the false case under Section 498-A of the Indian Penal Code, 1860 was filed and conducted against the appellant which had resulted into acquittal. He was falsely prosecuted. There is evidence of cruelty caused by respondent to the appellant. There is no cogent and acceptable evidence of alleged illicit relationship between Vaishali Wagh and the appellant. The transactions of selling and re-selling of plot between them is admitted fact. However, it is not

sufficient evidence to establish the alleged illicit relationship between them. In this regard, conclusion and findings drawn up by the both courts are not legal and correct and not sustainable in the eyes of law. He prayed to allow the appeal.

10. The learned counsel for the appellant is relying upon the following precedential law :

(i) ***K. Srinivas .vs. K. Sunita***, reported in ***(2014) 16 SCC 34***, in which law is laid down that one criminal complaint was filed by wife after the filing of husband's divorce petition was filed and it being a subsequent event could have been looked into by court and when evidence was led, it can be considered to grant a decree of divorce.

(ii) In the case of ***Mangayakarasi .vs. M. Yuvaraj***, reported in ***(2020) 3 SCC 786***, it is held in para 14 which reads as under :

“It cannot be in doubt that in an appropriate case the unsubstantiated allegation of dowry demand or such other allegation has been made and the husband and his family members are exposed to criminal litigation and ultimately if it is found that such allegation is unwarranted and without basis and if that act of the wife itself forms the basis for the husband to allege that mental cruelty has been inflicted on him, certainly, in such circumstance if a petition for

dissolution of marriage is filed on that ground and evidence is tendered before the original court to allege mental cruelty it could well be appreciated for the purpose of dissolving the marriage on that ground. However, in the present facts as already indicated, the situation is not so. Though a criminal complaint had been lodged by the wife and husband has been acquitted in the said proceedings the basis on which the husband had approached the trial court is not of alleging mental cruelty in that regard but with regard to her intemperate behaviour regarding which both the courts below on appreciation of the evidence had arrived at the conclusion that the same was not proved. In that background, if the judgment of the High Court is taken into consideration, we are of the opinion that the High Court was not justified in its conclusion.”

11. Learned counsel for the respondent submitted that there is concurrent finding of both the courts against the appellant about the alleged cruelty as well as desertion on the part of wife. Therefore, this Court cannot interfere in these findings of the impugned judgments. The evidence is properly appreciated and no any perversity is pointed out in these impugned judgments. It is proved and held that the appellant developed illicit relationship with Vaishali Wagh. Both of them are teacher. They were serving in one and same school. There is no any reason for the respondent to make such false allegation of

illicit relationship against appellant as they had begotten two daughters. The brother of the respondent DW-2 has seen Vaishali Wagh, while she was travelling as pillion rider on the motorcycle of appellant for about 10 to 12 times. When respondent has resided and cohabitated happily from 1995 to 2005 to maintain the good relationship. She given birth to two daughters. There is absolutely no legal reason and scope to interfere in the findings in judgments and decrees of both the courts. He lastly prayed to dismiss the appeal with costs.

12. Whether the evidences are sufficient and properly appreciated or not as well as whether the cogent and convincing reasons are given by both the courts and they have arrived at right conclusion after considering the matter before it as contemplated by the definition of 'proved' and 'not proved' in the Indian Evidence Act, 1872 (now Bharatiya Sakshya Adhiniyam, 2023), is the crucial aspect to be decided in this appeal.

13. As far as filing of criminal case and acquittal of the appellant under Section 498-A etc. of the Indian Penal Code, 1860 is concerned, admittedly that case was filed after the filing of the petition for divorce. The court can take cognizance of subsequent

relevant events. However, the root cause of the discord arose between the appellant and respondent which is proved by cogent and acceptable evidence is that illicit relationship between Vaishali Wagh and the appellant, which took place earlier. The appellant is responsible for said illicit relationship which caused the cruelty to the respondent-wife. Admitted facts is that the respondent has begotten two daughters. It means she stayed with husband and since beginning she was not at fault for causing alleged cruelty to the appellant. Considering this aspect, the subsequent lodging of report after the divorce proceeding which resulted into acquittal of appellant is not justifiable ground to grant decree on the ground of cruelty. The appellant is acquitted from that case under Section 498-A etc. of the Indian Penal Code, 1860, however, law is settled that the judgment of the criminal court is not binding on the civil court. The said judgment is not filed on record. Therefore, Precedential Law of **K. Srinivas (cited supra)** on behalf of the appellant is not helpful to him and hence it is not relied upon.

14. Both the Courts held that the said illicit relationship is proved. The appellant could not control his lust, though he is

teacher and having two daughters. He would have not opted that bad opportunity when he was having wife and two daughters. The evidences of appellant are properly weighed by both the courts. The evidence of the respondent is thus rightly held reliable not only by the trial court but also by the first appellate court. On reappreciation of entire evidences and under its correctional jurisdiction, the first appellate court did not find any ground to interfere in the findings of the trial court, either as to cruelty or desertion. There is justification for the respondent for not to cohabit with appellant as appellant was continuously having illicit relationship with Vaishali Wagh.

15. The cruelty is not defined, but its meaning is given in Section 498-A of the Indian Penal Code, 1860. Standard of proof in criminal case is that the case must be proved beyond reasonable doubt. Standard of proof in civil case that it can be proved on preponderance of probability. The strict proof is not necessary. Therefore, considering the concurrent finding as to the said illicit relationship of appellant with Vaishali Wagh, though there is subsequent event of acquittal of the appellant in the case filed under Section 498-A of the Indian Penal Code, 1860 there is

no any justifiable reason to grant decree of divorce on the ground of alleged criminal cruelty. Therefore, Precedential Law of ***Mangayakarasi .vs. M. Yuvaraj*** (cited supra) is not helpful to the appellant to grant the decree of divorce on the ground of cruelty allegedly caused on account of filing of false criminal case. The judgment of acquittal of appellant is not filed on record.

16. As far as the fact findings as to the cruelty as well as alleged desertion are concerned, both the courts have given cogent and acceptable reasons and came to the right conclusion that there was continuous illicit relationship between the appellant and Vaishali Wagh. No any perversity is found in the reasons and findings of the trial court as well as the appellate court. For the reasons stated, the argument of the learned counsel for the appellant is not acceptable. The sufficient evidence is not in existence to grant decree of the divorce. Therefore, substantial question of law no.1 is answered in the negative.

17. Learned counsel for the respondent pointed out that she had filed Civil Application (CAS) No.580/2022 under Section 24 of the Hindu Marriage Act, 1955 for grant of interim

maintenance *pendente lite* and expenses of the proceedings on 05.05.2022 and the same may kindly be allowed with direction to the appellant-husband to pay *pendente lite* expenses of Rs.25,000/- with 9% interest, if not deposited within four months, which shall be deposited in the trial court or executing court in the execution proceeding of maintenance.

18. As far as maintenance *pendente lite* is concerned, as per Section 24 of the Hindu Marriage Act, maintenance proceedings are filed by the wife-respondent. Therefore, it cannot be considered here. However, the respondent was compelled to face this appeal. She must have incurred some amount to engage the Advocate and to pay fees to him and also some amount for travelling. She also must have incurred some amount for collecting papers, preparing copies of the documents etc. Considering peculiar set of facts of this case, the appellant is certainly entitled for costs of this appeal and expenses of litigation which can be reasonably quantified of Rs.25,000/-. The appeal deserves to be dismissed. Hence, the following order is passed :

ORDER

- (1) The appeal is dismissed.

- (2) Civil Application (CAS) No.580/2022 under Section 24 of the Hindu Marriage Act, 1955 for grant of costs and expenses of litigation filed by the respondent-wife is partly allowed with direction to the appellant-husband to pay Rs.25,000/- which shall be deposited in the trial court or executing court in the execution proceeding of maintenance.
- (3) If the said amount is not deposited within four months, in view of the law laid down in the precedential law of ***Prakash s/o Eknath Dheple .vs. Vithabai w/o Prakash Dheple***, reported in 2024 online Bombay, 1487, the appellant has to pay 9% interest on the said amount from the date of this judgment, till its realization. The said Civil Application (CAS) No.580/2022 is disposed of.
- (4) The Record and proceeding be sent back to the trial court.

(Sanjay A. Deshmukh, J.)