IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF NOVEMBER, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE T.P.VIVEKANANDA

MISCELLANEOUS FIRST APPEAL NO. 3018 OF 2020 (IDA)

BETWEEN:

SMT. RESHMA BABITA DSA
W/O RICHARD D'SOUZA
AGED ABOUT 41 YEARS
R/O NO.134/A, BANU STREET
6TH CROSS, VIDYANAGARA
SHIVAMOGGA-577 201

...APPELLANT

(BY SRI: RUDRAIAH M, ADVOCATE)

AND:

SRI. RICHARD D'SOUZA
S/O JEROME D'SOUZA
AGED ABOUT 48 YEARS
R/O NO.134/A, BANU STREET
6TH CROSS, VIDYANAGARA
SHIVAMOGGA-577 201
PRESENTLY RESIDING AT
SHIVAMOGGA-577 201

...RESPONDENT

(VIDE ORDER DATED 25.10.2024, NOTICE TO RESPONDENT IS HELD SUFFICIENT)

THIS MFA IS FILED UNDER SECTION 55 OF THE INDIAN DIVORCE ACT, AGAINST THE ORDER AND DECREE DATED 13.12.2019 PASSED IN MC.NO.103/2017 ON THE FILE OF THE PRL. JUDGE, FAMILY COURT, SHIVAMOGGA, DISMISSING THE

Digitally signed by PAVITHRA B
Location: HIGH COURT OF KARNATAKA

PETITION FILED BY THE PETITIONER UNDER SECTION 10(1)(x) OF THE DIVORCE ACT.

THIS MFA, HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 17.09.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **T.P.VIVEKANANDA J.,** PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE T.P.VIVEKANANDA

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE T.P.VIVEKANANDA)

This appeal is filed by the appellant-wife calling in question the judgment and decree dated 13.12.2019 passed by the Family Court in MC No.103 of 2017, whereby, the petition filed by her under Section 10(1)(x) of the Divorce Act, 1869, seeking dissolution of her marriage with the respondent-husband on the ground of cruelty, came to be dismissed.

2. The facts of the case as noticed from the pleadings of the parties before the Family Court and the judgment impugned are that the marriage between the appellant and the respondent was solemnized on 04.06.1999 at Sacred Heart Church, Shivamogga. In the wedlock, the parties have a daughter. The appellant instituted proceedings before the Family Court seeking dissolution of marriage contending that,

though the respondent treated her with affection during the initial months of their marriage, his conduct thereafter changed and she was subjected to continuous physical and mental cruelty. According to her, the respondent was addicted to alcohol, frequently quarreled with and abused her, assaulted her and subjected her and the members of her family to humiliation and harassment.

3. It was further alleged that the respondent had threatened her life and had, on one occasion, attempted to strangulate her. The appellant also alleged that the respondent had taken away her gold ornaments and misused the same for his bad habits, and that he had obtained a sum of Rs.2,00,000/- from her mother purportedly for the purpose of business. The appellant pleaded that the conduct of the respondent had caused her severe mental distress and had driven her to a state where she had attempted to end her life by consuming sleeping tablets.

4. The appellant also averred in the petition regarding the treatment obtained by her at Nanjappa Hospital, Shivamogga and Kasturba Hospital, Manipal. According to her, she had undergone treatment on several occasions and had suffered from depression and other health complications as a

consequence of the matrimonial discord and the ill-treatment meted out to her by the respondent. She further contended that the respondent had received substantial amounts from her through 29 cheques aggregating to Rs.25,08,000/-, which amounts were not properly accounted for.

5. The respondent entered appearance before the Family Court and contested the petition by filing objections. He denied the allegations of cruelty and asserted that he had always treated the appellant with care and affection. His specific case was that he had resided in the house belonging to the appellant's mother and had contributed towards the construction and renovation of the house. He claimed that he had been carrying on finance and pawn-broking business and had financially supported the appellant and her family.

6. With regard to the amount of Rs.25,08,000/-, the respondent contended that the amounts were utilized for establishing and running a cyber cafe, including purchase of equipment and payment of shop advance, and that certain amounts were also utilized towards the marriage expenses of the appellant's younger brother. He further contended that the appellant and her brother were involved in running the cyber cafe. He denied having forcibly taken the appellant's ornaments

or having misused the same. The respondent also expressed his willingness to resume matrimonial cohabitation and discharge his responsibilities towards the family.

7. The appellant was examined as PW1 and the respondent was examined as RW1. The appellant has produced and marked Exs.P1 to P20, however, the respondent has not produced any documentary evidence. After hearing the submissions of both sides, the Family Court has formulated the following points for consideration:

> *"(i) Whether the petitioner proves that the respondent has treated her with cruelty ?*
>
> *(ii) Whether the petitioner is entitled for the decree of divorce as prayer for?"*

8. The Family Court, after considering the pleadings and evidence answered the above points in the negative holding that the appellant had failed to establish cruelty within the meaning of Section 10(1)(x) of the Act and dismissed the petition. Aggrieved by the said judgment and decree, the appellant has preferred the present appeal.

9. Notice in the appeal was ordered on 27.10.2021. Thereafter, on 22.02.2023, 08.06.2023 and 03.08.2023, the

appellant was directed to take steps for service of notice on the respondent. By order dated 24.07.2024, this Court permitted substituted service by way of publication in the Shivamogga editions of *Vijaya Karnataka* and *Deccan Herald*, noticing that the respondent was evading service and that ordinary service was not likely to be effected in the near future. A memo regarding publication was accepted on 25.10.2024 and the respondent having remained absent, service was held sufficient.

10. The appeal was admitted on 05.02.2025 and the records of the Family Court were called for. Though the respondent was duly served by substituted service and the matter was thereafter taken up for hearing, he has chosen not to appear before this Court or engage counsel to contest the appeal.

11. We have heard the learned counsel appearing for the appellant and have carefully perused the pleadings, oral and documentary evidence, the impugned judgment and the grounds urged in the appeal.

12. In light of the rival pleadings, judgment of the Family Court and the grounds urged in the memorandum of appeal, the following points arise for our consideration:

> *"(i) Whether the appellant has established that the respondent treated her with such cruelty as to cause a reasonable apprehension in her mind that it would be harmful or injurious for her to live with him any more?*
>
> *(ii) Whether the judgment and decree passed by the Family Court dismissing the petition calls for interference?*
>
> *(iii) What order?"*

Analysis, re-appreciation of oral & documentary evidence and our Consideration:

13. Before adverting to the evidence, it would be appropriate to notice the scope of Section 10(1)(x) of the Divorce Act, 1869. The provision enables either spouse to seek dissolution of marriage where the other spouse has treated him/her with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious to live with the respondent. The expression 'cruelty' is not confined to physical violence, it includes the conduct which, having regard to the nature, gravity, frequency

and cumulative effect of the acts complained of, renders continued matrimonial life harmful or injurious.

14. In the case of ***V Bhagat Vs D Bhagat***[1]**,** at paragraph 16, the Hon'ble Supreme Court explained that mental cruelty must be assessed having regard to the circumstances of the parties, their social status, educational background and the surrounding circumstances. The Court emphasized that the question is whether the conduct complained of has caused such mental pain and suffering that the parties cannot reasonably be expected to live together.

15. In ***Parveen Mehta Vs Inderjit Mehta***[2]**,** particularly paragraphs 15 and 21, the Hon'ble Supreme Court held that mental cruelty is a state of mind and its existence has to be inferred from the facts and circumstances of each case. In paragraph 21, the Court observed:

> *"The inference has to be drawn from the attending facts and circumstances taken cumulatively."*
>
> *The principle laid down therein is that matrimonial conduct cannot be assessed by isolating each incident from the larger course of the relationship.*

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[1] (1994) 1 SCC 337

[2] (2002) 5 SCC 706

The Court must examine the cumulative impact of the conduct complained of.

16. In ***Samar Ghosh Vs Jaya Ghosh***[3]**,** paragraphs 99 to 101, the Hon'ble Supreme Court reiterated that no straitjacket formula can be prescribed for determining mental cruelty. The illustrations set out therein are not exhaustive. The Court must examine the totality of the matrimonial relationship and determine whether the conduct has crossed the threshold of ordinary wear and tear of married life.

17. In ***Dastane Vs Dastane***[4]**,** the Hon'ble Supreme Court held that matrimonial proceedings are civil proceedings and the standard of proof is that of preponderance of probabilities and not proof beyond reasonable doubt. The evidence must therefore be assessed on the touchstone of probabilities, keeping in view the nature of the matrimonial relationship and the fact that incidents occurring within the matrimonial home may not always have independent witnesses.

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[3] (2007) 4 SCC 511
[4] (1975) 2 SCC 326

18. This Court, in ***Smt J H Veronica @ J H Manila Vs Mr D Anil Kumar***[5]**,** while considering cruelty under Section 10(1)(x) of the Divorce Act, examined the scope of the expression 'harmful or injurious'. In paragraph 18, this Court observed:

> *"It is also clear, the expression harmful or injurious cannot be limited to physical harm or injury."*
>
> *In paragraph 22, the Court considered the evidence as a whole, including the undertaking, oral evidence and documentary material, and found that the Family Court had failed to properly appreciate the material establishing physical and mental cruelty. Ultimately, in paragraph 25, this Court held that, on an overall re-appreciation of the pleadings, evidence and materials on record, the wife had proved cruelty and was entitled to a decree under Section 10(1)(x) of the Act."*

19. We are conscious that the decision in ***Smt J H Veronica @ J H Manila*** *(supra)* was rendered on facts obtaining in the facts of the said case and that the evidence in the present case must independently satisfy the statutory requirement. The legal principle, however, is clear: the Court

[5] MFA No.103466/2017 DD 24.03.2022

cannot restrict cruelty to acts resulting in visible physical injuries, nor can it assess each incident in isolation.

20. At the same time, the mere fact that a respondent does not contest matrimonial proceedings cannot automatically result in a decree of divorce. In ***Smt. Vyshnavee Vikranth v. Sri Vikranth Jagannath***[6], this Court, in paragraph 15, held that a decree of divorce cannot be granted merely because the respondent did not contest the proceedings and that the Court must satisfy itself that the grounds alleged have been proved. We are guided by the said principle. The absence of the respondent in the present appeal is not treated as proof of cruelty by itself. The appeal has to be decided on the evidence available on record not merely accepting the plea of the appellant.

21. The relationship of the parties and the birth of the daughter out of the wedlock is not in dispute. The dispute is essentially with respect to the treatment meted out to the appellant during the subsistence of the marriage and whether such treatment amounts to cruelty enabling the appellant to seek dissolution of marriage.

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[6] MFA No.6578/2021 DD 05.12.2023

22. The appellant examined herself as PW1 and re-iterated the allegations made in the petition. Her evidence was subjected to cross-examination. The respondent examined himself as RW1 and denied the allegations. Thus, the case cannot be treated as one in which the respondent's evidence was wholly absent before the Family Court. We have, therefore, considered the evidence of both parties and the admissions elicited in cross-examination.

23. The appellant's specific case is that the respondent was addicted to alcohol and, after the initial period of marriage, subjected her to frequent quarrels, abuse and physical harassment. She has also spoken about the respondent's conduct towards her mother and daughter. In the cross-examination, she stated that her mother had resided with the couple on two occasions and that the respondent used to quarrel with her mother when he returned home after consuming alcohol.

24. It is true that the appellant admitted that no police complaint had been lodged by her against the respondent during the approximately nineteen years of matrimonial relationship. The Family Court treated the absence of a police complaint as a circumstance creating doubt about the

allegations. In our considered view, such circumstance cannot be treated as conclusive. The absence of a complaint may be one of the circumstances to be considered, but it cannot, by itself, discredit the testimony of a spouse in a matrimonial proceeding. A spouse may, for several reasons, refrain from initiating criminal proceedings, including the desire to preserve the marriage, concern for the child, dependence on the matrimonial arrangement or the hope that the conduct of the other spouse would improve.

25. The appellant has explained that she did not initiate proceedings earlier because she wished to preserve the matrimonial relationship. The fact that she continued in the marriage for a considerable period does not necessarily establish that the alleged conduct did not occur. Equally, the Court cannot presume that every allegation of cruelty is true merely because it is made by one spouse. The evidence has to be considered as a whole.

26. The appellant has relied upon Exs.P2 to P15, consisting of discharge summaries, casualty and outpatient slips and laboratory reports issued by Nanjappa Hospital, Shivamogga. She has also produced Ex.P19, an outpatient ticket of Kasturba Hospital, Manipal. The Family Court noticed

that certain records refer to epilepsy, giddiness, allergic bronchitis, vomiting, fever, headache and complex partial seizure with anxiety neurosis.

27. We agree with the Family Court to the limited extent that these medical records do not, by themselves, establish that every medical condition suffered by the appellant was caused by the respondent's conduct. A medical record must be appreciated for what it actually records and cannot be enlarged to establish a causal connection which it does not expressly contain. The appellant's medical condition, therefore, cannot be treated as independent proof of each allegation of physical assault.

28. However, the Family Court ought not to have treated the medical records as wholly irrelevant merely because they did not expressly attribute the ailments to matrimonial cruelty. The records establish that the appellant had repeatedly sought medical attention and that she had experienced episodes of ill health. The material is relevant as part of the surrounding circumstances, though it cannot be regarded as conclusive proof of the alleged cause.

29. Ex.P7, in particular, refers to an overdose of tablets. The appellant has stated that she had consumed sleeping tablets and had regained consciousness after a period of hospitalization. She also admitted that she did not inform the doctor or the police that the alleged act was on account of the respondent's conduct. The Family Court consequently held that there was no connection between the overdose and the alleged cruelty.

30. We are unable to treat Ex.P7 as proof, by itself, that the respondent drove the appellant to attempt suicide. There is no contemporaneous medical endorsement in the said document expressly attributing the overdose to the conduct of the respondent. Nevertheless, the incident cannot be completely excluded from consideration when assessing the appellant's evidence and the overall matrimonial circumstances. The Court has to distinguish between the fact of an overdose, which is reflected in the record, and the cause for the same, which must be established from the entire evidence.

31. The appellant also stated that she had visited Dr.S.N. Rao, Neurophysician at Kasturba Hospital, Manipal, and that counseling was undertaken jointly and separately for both parties. She admitted that she had not informed the doctor

during such counseling about the alleged torture. The Family Court considered her explanation that the respondent had threatened her not to disclose the same to the doctor to be an afterthought, as such explanation was not specifically pleaded in the petition or stated in her examination-in-chief.

32. We find that the appellant's omission to disclose the alleged cruelty to the doctor is a relevant circumstance. However, it must be assessed along with the rest of the evidence and cannot be elevated into an inflexible rule that a spouse who does not make a contemporaneous complaint to a medical practitioner cannot subsequently establish cruelty before a Court. The absence of such disclosure affects the weight of the evidence; it does not automatically render the entire testimony unacceptable. When both the spouse have together visited the doctor, one cannot expect that the wife should have informed the doctor about the ill-treatment and cruelty by the other spouse.

33. The Family Court also drew an adverse inference against the appellant for not producing the complete medical records of Kasturba Hospital, Manipal, despite the hospital having informed the Court that the doctor had left service and that the records sought had been destroyed. The appellant was

directed to produce the records available with her, but did not produce them. The Family Court was justified in noticing the non-production of the records and in assessing the evidence with caution. However, the adverse inference cannot be extended beyond the particular records that were not produced, nor can it be treated as disproving every other allegation of cruelty.

34. Another important aspect relates to the financial transactions between the parties. Ex.P16 is the appellant's bank passbook, Ex.P17 is the bank passbook of her mother and Ex.P20 is the account extract reflecting 29 cheques aggregating to Rs.25,08,000/- transferred to the respondent. The respondent, in his evidence, admitted receiving and drawing the amounts through the said cheques.

35. The respondent explained that the amounts were utilized for establishing and running a cyber cafe, including purchase of equipment, a xerox machine and payment of shop advance. He further stated that certain amounts were used towards the second marriage expenses of the appellant's younger brother. The appellant, in her cross-examination, admitted that the respondent had arranged the licence and shop for the cyber cafe and that she and her brother were

running the business in partnership. She also admitted that the respondent had assisted in establishing the said business.

36. The respondent did not produce documentary evidence to substantiate the precise manner in which the entire amount of Rs.25,08,000/- was utilized. He also stated that he would produce documents relating to his finance and pawn-broking business, but no such documents were produced. The Family Court, nevertheless, accepted his explanation on the basis of the admissions made by the appellant.

37. We are of the view that the admission regarding the cyber cafe and the respondent's assistance in establishing, it is a material circumstance which cannot be ignored. The mere fact that the respondent received the amounts through cheques does not, in the absence of further evidence, establish that the entire amount was misappropriated or used for his personal habits. The appellant's allegation in that regard has to be considered with caution. The financial transactions, however, demonstrate that the parties had substantial financial dealings and that the appellant's grievance regarding the manner in which the amounts were dealt with formed part of the matrimonial discord.

38. With regard to the gold ornaments, the appellant admitted that the respondent had sold ornaments for the purpose of renovation of the house and that approximately Rs.17,00,000/- was spent towards such renovation. The Family Court, therefore, rejected the allegation that the ornaments had been taken and misused for the respondent's personal habits. On the material placed before us, we do not find sufficient reason to disturb that finding.

39. The respondent's case before the Family Court was that he had been carrying on finance and pawn-broking business and had acted as an 'illatom son-in-law', contributing towards the household and the welfare of the appellant's family. He relied upon the appellant's admission that he had earlier been associated with finance activities and that he had arranged the licence and premises for the cyber cafe. However, the respondent did not produce documentary evidence establishing the nature, extent or continuity of the alleged business or the precise financial contribution claimed by him.

40. The absence of documents relating to the business does not, by itself, establish that the respondent was unemployed or that he had subjected the appellant to cruelty. Equally, the Court cannot accept every assertion of financial

contribution merely because the respondent has made such a statement. The evidence must be weighed on the basis of what is admitted, what is proved and what remains unsubstantiated.

41. The appellant also admitted that she had consumed alcohol on occasions. Such an admission cannot be treated as establishing that the respondent's alleged consumption of alcohol and the consequent quarrels never occurred. The conduct of each spouse must be assessed independently and in the context of the evidence. The Family Court ought not to have treated this admission as a complete answer to the appellant's allegations.

42. The respondent, in his evidence as RW1, denied the allegations and asserted that the appellant suffered from epilepsy and other ailments and that he had taken her to hospital and provided treatment. He also expressed willingness to resume cohabitation and discharge his duties as a husband and father. His willingness to resume matrimonial life was a relevant circumstance for the Family Court to consider. However, a mere expression of willingness to take the appellant back cannot, by itself, answer the allegations of cruelty. The Court must examine whether the respondent's conduct, viewed as a whole, satisfies the statutory test.

43. The Family Court has also placed considerable emphasis on the fact that the appellant did not issue any prior notice to the respondent before filing the divorce petition and that the respondent had remained in the house until service of summons. We are of the view that neither circumstance is decisive. There is no statutory requirement that a spouse must issue a prior notice before instituting proceedings for dissolution of marriage on the ground of cruelty. The question is not whether the appellant gave advance notice of her intention to seek divorce, but whether the statutory ground has been established by evidence.

44. The fact that the parties have a daughter and that preservation of the marriage may ordinarily be desirable is also not, by itself, a ground to compel a spouse to continue in a matrimonial relationship where the statutory ground for dissolution has been established. The welfare of the child is undoubtedly important, but it cannot be used to disregard the dignity, safety and well-being of either spouse.

45. We now turn to the conduct of the respondent in the present appeal. The record discloses that this Court made repeated efforts to secure his appearance. After ordinary service was found unlikely to be effective, substituted service

by publication was permitted in two newspapers having circulation in the relevant locality. The publication memo was accepted and service was held sufficient on 25.10.2024. The appeal was thereafter admitted on 05.02.2025 and the matter proceeded for hearing.

46. Despite the above, the respondent has neither appeared personally nor engaged counsel to defend the judgment of the Family Court. He has not placed any additional material before this Court, sought to explain the allegations made against him, or taken any steps to demonstrate that his earlier assertion of willingness to resume cohabitation was accompanied by any genuine effort towards reconciliation. His earlier statement before the Family Court that he was willing to take the appellant back remains only a statement on record. No subsequent conduct has been brought to our notice to demonstrate any meaningful attempt to resolve the matrimonial dispute.

47. We are conscious that a party cannot be compelled to participate in appellate proceedings and that non-appearance may occur for several reasons. We do not draw an automatic inference of cruelty from the respondent's absence. Nevertheless, once service has been held sufficient and the

appeal has been pending for a considerable period, his continued absence is a circumstance which the Court is entitled to notice while assessing whether there is any material before it to sustain his earlier assertions. The respondent has chosen not to avail himself of the opportunity to defend the findings of the Family Court or to place any further explanation before this Court.

48. The respondent's assertion that he is willing to resume cohabitation must also be considered in the context of the entire matrimonial history. A bare willingness expressed in a written statement or in the witness box cannot, without more, neutralize the effect of conduct which is otherwise found to constitute cruelty. The Court cannot compel the appellant to return to a matrimonial relationship merely on the basis of such an expression, particularly when the appellant has consistently sought dissolution and has pursued the present appeal.

49. On an overall re-appreciation of the evidence, we find that the Family Court has examined the individual circumstances largely in isolation. The absence of a police complaint, the non-production of certain medical records, the appellant's admission regarding the cyber cafe and the respondent's expression of willingness to resume cohabitation

were treated as substantially determinative of the entire dispute. Though each of these circumstances is relevant, the Court was required to examine their cumulative effect along with the appellant's sworn statement of the matrimonial conduct and the surrounding circumstances.

50. The standard of proof in matrimonial proceedings is preponderance of probabilities. The Court is not required to insist upon the same degree of corroboration as would be necessary in a criminal prosecution. At the same time, serious allegations cannot be accepted merely because they are made. The evidence must be assessed with care, having regard to the fact that acts of cruelty occurring within the matrimonial home may not always be witnessed by independent persons.

51. In the present case, the appellant's case is not founded solely upon the fact that the parties have been living in discord or that the marriage has not worked out. Her grievance relates to the course of treatment meted out to her during the matrimonial relationship, the repeated quarrels and harassment alleged by her, the effect of the same upon her mental and physical well-being and the eventual inability to continue the relationship. The admissions of the parties and the evidence

regarding the financial dealings also demonstrate the strained nature of the relationship.

52. We have also considered the respondent's denial and his explanation regarding the financial transactions, the renovation of the house and the cyber café. These circumstances do not establish that every allegation made by the appellant is true. However, the existence of an explanation for certain financial transactions does not, by itself, answer the appellant's case regarding the manner in which she was treated during the matrimonial relationship.

53. Having regard to the evidence of PW1, the surrounding circumstances and the totality of the matrimonial relationship, we are of the considered view that the appellant has established the statutory ground of cruelty. The fact that the appellant has not lodged any complaint against the respondent-husband regarding the mental and physical cruelty by itself cannot become a ground to disbelieve the version of the appellant. In the instant case, there are circumstances to accept the plea of the appellant that there is serious mismanagement of finance by the respondent which ultimately result in misunderstanding and acrimony in the family for which no evidence can be placed. The fact that the respondent has

received from the appellant a sum of Rs.25,08,000/- is admitted. The circumstance under which the said amount was received and spent is explained by the respondent, however, the said explanation is not supported by any oral or documentary evidence. The receipt of huge amount and its non return is a circumstances which might have created an atmosphere resulted in respondent becoming aggressive and cruel. The said circumstances cannot be ruled out.

54. We find it relevant to observe that in Indian society, a wife may not always be inclined to approach the police and lodge a complaint against her husband even when she is subjected to physical or mental cruelty. Matrimonial disputes are often treated as private and sensitive matters and parties may prefer to keep it within four corners of matrimonial home. Either with an intention of avoiding bringing the matrimonial dispute into public domain or loss of face in the society the wife may not venture to approach the police. Therefore, the circumstances of wife not lodging the police complaint by itself cannot be a ground to discard other evidence led in by the wife regarding cruelty of the husband.

55. The Family Court, in our view, gave undue weight to the absence of contemporaneous complaints and the

respondent's bare expression of willingness to resume cohabitation, without sufficiently examining the cumulative effect of the evidence. Its approach has resulted in the material circumstances being considered in isolation rather than as part of the entire matrimonial relationship. The impugned judgment and decree, therefore, cannot be sustained.

56. We make it clear that our conclusion is not founded merely on the respondent's non-appearance before this Court, nor on the fact that the marriage has been strained for a considerable period. It is founded on our independent assessment of the pleadings, oral evidence, documentary material and the surrounding circumstances, applying the standard of preponderance of probabilities and the test prescribed under Section 10(1)(x) of the Divorce Act, 1869.

57. The plea of the respondent before the Trial Court that he intends to continue the matrimonial relationship with the appellant and take care of the daughter cannot be accepted in light of the fact that since 2017 the parties are living separately. No attempts have been made by the respondent for restoration of the relationship and no petition for restitution of conjugal rights has been filed. The respondent has not made any attempt to visit the daughter for more than 8 years. No

financial support has been made for the education expense of the daughter. Even after dismissal of the petition for divorce, the respondent has not made any contact for restoration of the relationship. The aforesaid circumstances also weigh in favour of the appellant.

58. In view of the foregoing discussions, we answer Point Nos.1 and 2 in the affirmative, holding that the appellant has made out a case for interference with the judgment and decree passed by the Family Court.

59. At the time of hearing of the appeal, learned counsel for the appellant has categorically submitted that the appellant has not made any claim for maintenance or permanent alimony. Therefore, we have not considered the aspect of awarding of maintenance for appellant and her daughter, so also, grant of permanent alimony.

60. In the result,

(i) The appeal is ***allowed.***

(ii) The judgment and decree dated 13.12.2019 passed by the Family Court in M.C.No.103/2017 are hereby set aside.

(iii) The petition filed by the appellant-wife under Section 10(1)(x) of the Divorce Act, 1869, seeking dissolution of her marriage with the respondent-husband, is allowed.

(iv) The marriage solemnized between the appellant and the respondent on 04.06.1999 is hereby dissolved

(v) In view of the facts and circumstances of the case, there shall be no order as to costs.

Pending interlocutory applications, if any, shall stand disposed of.

Sd/-
(ANU SIVARAMAN)
JUDGE

Sd/-
(T.P.VIVEKANANDA)
JUDGE

BGN