

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 128 OF 2009

Phulmala Ajay SinghAppellant

Age : Adult, Occ : Nil.

Re/at C/o. Shri. Faujiram Yadav

40 AC/17, Badrinath Colony,

Rajpur, Chungi, Agra

V/s.

Ajay Kumar Singh

Age : 25 years, Occ. Service

R/at. Flat no.403, Bldg. No.03,

James Court, Vimannagar,

Pune, 411 014.

....Respondent

Mr. R.K. Desai, Advocate for the appellant.

Mr. Uday Warunjikar, Advocate for the respondent.

CORAM :- R.M.SAVANT, &

SANDEEP K. SHINDE, JJ.

Judg. Resd on :- 5TH JANUARY, 2018.

Judg. Pron. On :- 25TH JANUARY, 2018.

JUDGMENT (PER :- SANDEEP K. SHINDE, J) :

1 This Appeal under Section 19 of the Family Courts

Act, 1984 is preferred by the wife i.e. the original respondent against the judgment and decree dated 13th October, 2006 passed by the Family Court, Pune in Petition No. 406 of 2007 whereby the marriage of the appellant with the respondent was dissolved on the ground of cruelty and counter-claim of the appellant-wife, for restitution of conjugal rights was dismissed.

2. The respondent, who is the husband, had filed Petition No. 406 of 2007 for divorce on the ground of cruelty. It is the case of the respondent that, soon after the marriage i.e. 20th April, 2006 wife picked up quarrels recurringly with him and parents on various counts which made his life miserable. It is his case that, her temperament seldom matched with his temperament. That the stubborn attitude of the wife was found not compatible with the family traits. It is his case that, she lived with him in the matrimonial house initially in April, 2006 till 5th June, 2006 and from 2nd September, 2006 till 15th September, 2006. It is his case that, on 24th January,

2007 she broke opened the lock of the matrimonial house in his absence and in the absence of his parents and again left for her parents' house on 15th February, 2007. He thus pleaded hostile attitude of his wife, eventually all his efforts to reconcile the differences failed. It is his case that, upon realising that his wife was not interested to cohabit with him and having found that her nature and attitude was not compatible to his nature and having further realised that, it was not possible to live together, he had filed a petition on 13th October, 2006 in the Family Court for dissolution of marriage on the ground of cruelty.

3. He amended his petition on 3rd March, 2008 after notice to wife and brought on record subsequent events to substantiate the fact that rigid nature and revengeful attitude of his wife caused cruelty, and in the given circumstances, it was not possible to live with her. In other words, the husband sought a decree of dissolution of marriage on the ground of mental cruelty inflicted by his wife.

4. That, in the written statement, the appellant denied the allegations and contended that, the petitioner and her in-laws were making unlawful demands though sufficient dowry was given in lieu of marriage, and subjected her to harassment. She contended that, she visited her parents house as her mother was not well. She contended that, because of continuous harassment by husband and in-laws, she was left with no choice but to lodge a complaint against the petitioner and her in-laws under Section 498A of the Indian Penal Code at Agra, U.P. She would also contend that, she was interested to cohabit with the respondent and thus preferred a counter-claim seeking decree of restitution of conjugal rights.

5. The parties to the petition led oral evidence of themselves and their respective witnesses. Besides, parties placed on record, documents in the shape of complaints to the police, notices issued by the lawyers, the sale-deed, FIR and such other proceedings initiated

against the husband under the Domestic Violence Act.

6. The Learned trial Judge after appreciating the evidence, dissolved the marriage and dismissed the counter-claim of the wife by the judgment and decree dated 24th June, 2009. That against the said judgment and decree, wife has preferred this Appeal.

7. Heard Learned Counsel for the petitioner, appellant and the respondent. Perused the evidence.

8. The points that arise for consideration are,

(i) Whether the decree of dissolution of marriage passed by the trial Court, was just and proper ?

(ii) Whether from the facts and circumstances brought on record by the parties, would it be reasonable to hold that, the parties would live together after living apart nearly for eleven years ? and

(iii) Whether the appellant, wife has made out a

case for granting the decree of restitution of conjugal rights.

9. It is an admitted fact that, the appellant lived in the matrimonial house with the husband for very short time i.e. initially from 20th April, 2006 to 5th June, 2006; from 2nd September, 2006 to 15th September, 2006, and from 24th January, 2007 to 15th February, 2007. It is not in dispute that since, 15th February, 2007 the appellant is staying at her parent's house in U.P. That as such, the parties are living apart, atleast for 11 years. There is no issue out of the said wedlock and much water has flown under the bridge during the period of 12 years.

10. The petition for dissolution of marriage was filed by the husband on the ground of mental cruelty he suffered at his wife's hand.

11. The concept of cruelty in the matrimonial cases is explained by the Hon'ble Supreme Court in the case of

V. Bhagat V/s. D. Bhagat, reported in 1994 (1)

SCC page 337 in para-16 as follows :-

“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.”

12. We have gone through the evidence which unfolded following facts :-

(i) wife left the matrimonial house in June, 2006 and came back in September, 2006. She revisited

the parents house on 15th September, 2006 and returned only after a notice issued by the husband.

(ii) On 25th January, 2007 in absence of husband and his family members, the appellant broke open the lock of matrimonial house at Pune with the prior intimation to the police.

(iii) On 13th April, 2007 the father of the appellant, lodged a complaint against the respondent, his parents and two brothers under Section 498A of the Indian Penal Code, at Uttar Pradesh.

(iv) On 3rd November, 2007 the father of the appellant came to Pune with warrants alongwith the police in a private jeep.

(v) father of the appellant secured warrants against the respondent, his father, his two brothers and mother.

(vi) brother-in-laws of the appellant were students; one studying at Sangamner and another at Pune and residing at the respective hostels. The mother could not be arrested for want of a lady constable.

Admittedly, at the given point of time, the husband was not in Pune and therefore he could not be arrested.

(vii) That, the father-in-law and two brother-in-laws of the appellant were taken in a jeep from Pune to Agra by road and were detained in the police custody for 2-3 days.

(viii) Their custody was taken from Pune house in presence of the members of the Housing Society.

(ix) The father-in-law of the petitioner was an Army Personnel.

(x) The respondent-husband was required to obtain protective order from the High Court in the proceedings filed against him under Section 498A.

(xi) In the first week of January, 2007 i.e. on 7th January, 2007 the appellant came to Pune but having found nobody in the matrimonial house and under lock, created a scene in the building which according to the respondent was done intentionally to damage his image and the image of the family

amongst the members of the Society.

13. The evidence also disclosed the fact, that in September, 2006 undivided share of the respondent's family in the ancestral land situated at District-Agra, Uttar Pradesh was purchased by the appellant for the consideration of Rs.45,000/- by registered deed; however there is no evidence to show that, such consideration was actually paid by the appellant, wife. The appellant, neither denied this fact nor clarified in the cross-examination, object of buying undivided share soon after marriage and when and how, she had paid agreed consideration.

14. The evidence of the husband has disclosed a fact that, the wife had threatened to commit suicide if she was not allowed to enter the house and thereafter the husband had filed a complaint on 13th March, 2007. On this point, neither there is cross-examination nor any evidence led in rebuttal thereto by the appellant or denial

thereof.

15. A circumstance has surfaced in the evidence of the husband that, the father of the appellant informed Yerwada Police Station from Agra that, her daughter was beaten by the in-laws and in response thereto the Pune police questioned the father of the respondent. According to the respondent, husband it was a false complaint and was done with an intention to bring disrepute to the family and his dignity.

16. It is disclosed in the evidence of the respondent that, on 19th February, 2007 his father had gone to Agra as he had lost his mother. Even on that occasion, the appellant's father created a "tamasha" and therefore his father had gone to Phirozabad at his in-laws house. Even at that place, the father of the appellant reached with the lawyer and informed his father that he had acquired undivided share in the property and threatened that he would make all efforts to leave him without any property or means.

17. The Learned Counsel appearing for the respondent has culled out the aforesaid circumstances from the evidence of the parties and thus submitted that the appellant and her father left no stone unturned to cause harassment and actually caused it in every possible manner. He would submit that, his two brothers who were students and admittedly staying at their respective hostels, were paraded in a jeep from Pune to Agra and were detained in the police custody for no fault on their part and on false accusation of unlawful demand. The Learned Counsel would submit that, his father who was a Army Personnel was taken in the same manner from Pune to Agra under police escort. He would therefore submit, that the appellant and his family members intentionally paraded his family members to bring disgrace and harm their reputation which has left permanent scar of anguish on their mind. The Learned Counsel would therefore submit, that the appellant and her father deliberately did all possible things to humiliate

his parents and family members, recurringly and repeatedly.

18. The Learned Counsel for respondent has strenuously submitted that, the crime under Section 498A was registered after institution of the petition for divorce and that too in May, 2007. He has taken us through the complaint dated 14th September, 2006 (Exhibit-58) made by his wife to the police at Pune making the allegation of demand of dowry and consequent harassment.

19. We have gone through the said complaint dated 14th September, 2006, as well as, the FIR filed in May, 2007. Admittedly, the FIR has been lodged as a counterblast to the petition for divorce filed by the respondent, husband. The wife in her evidence has failed to give any plausible explanation as to why she did not file the complaint though allegations were made by her in September, 2006 for the alleged demand of dowry. In the

evidence, the appellant did not attribute any role or made any allegations against her brother-in-laws. There is no whisper in her evidence or the evidence of her witnesses that, brother-in-laws had any time subjected her to harassment. The question, therefore arises is, why the brother-in-laws were implicated in the case and why they were paraded in a jeep from Pune to Agra. The only answer that we could find is that, it was done deliberately to bring disrepute to the husband and his family members and to disgrace her father-in-law who was an Army Personnel.

20. We have also gone through the sale-deed whereby she has purchased undivided share of respondents family in ancestral land and the evidence brought on record by the husband. It is not clarified by the appellant in her evidence as to what prompted her to purchase the undivided share in the land of her husband's family at Uttar Pradesh. It is the evidence of the husband that, no consideration was paid but on this point there is

neither cross-examination nor any evidence brought on record in rebuttal thereto. Therefore, the fact remains that, soon after the marriage in September, 2006 a part of undivided share of husband's family was transferred in the name of the appellant. It is another suspicious circumstance which goes against the appellant, apart from other circumstances, to hold that, she caused cruelty to husband.

21. The evidence of the appellant does not even remotely suggest that, she has made any efforts to reconcile the differences between herself and her husband. There is nothing in her evidence to suggest that since January, 2007, she has made any efforts to go back to the matrimonial house and cohabit with the respondent. Infact, the appellant chose to stay at her parents house since February, 2007 and had lodged a complaint and filed an FIR against the husband and her in-laws in May, 2007. All these facts cumulatively lead us to hold that, the appellant has not made any efforts, much

less, genuine to reconcile the differences. In fact, the evidence on record has proved a fact, that in the revengeful manner, appellant and her family made all possible efforts to harass the respondent and his family members.

22. Under Section 13(1)(i-a) of the Hindu Marriage Act, a marriage can be dissolved by a decree of divorce on a petition presented either by the husband or by the wife on the ground that, the other party has, after solemnisation of marriage, treated the petitioner with cruelty. The Apex Court in series of judgments has succinctly stated the meaning and outlined the scope of the term "cruelty". Cruelty is evident where one spouse who has treated the other and manifested such feelings towards her and him as to cause in her or in his mind a reasonable apprehension that it will be harmful or injurious to live with the other spouse. A cruelty may be physical or mental.

23. In the case of **K. Srinivas Rao V/s. D.A. Deepa**

in **Civil Appeal No. 1794 of 2013**, the Hon'ble Supreme Court has indicated certain instances of human behaviour, which may be relevant in dealing with the cases of mental cruelty. We have gone through such instances culled out in para-11 of the said judgment.

24. We have gone through the entire evidence, oral as well as, documentary led by the parties in the case in hand. We have hereinabove elaborated each of the circumstances as have surfaced in the evidence of the parties. Taking together all the said circumstances, we are of the view that a sustained course of abusive and humiliating treatment meted out by the appellant and her family members to the respondent and his family members has rendered his life miserable. Herein, the conduct of the appellant and her father was unjustifiable. We hold so, because soon after the marriage, within a span of three to four months, appellant had addressed a complaint to the police making allegations of illegal demands or dowry, as could be seen from Exhibit-58

dated 14th September, 2006. This complaint was not taken further by the appellant. That even otherwise, we find the complaint was palpably false because in September, 2006 undivided share of respondent's family property in agricultural land at Uttar Pradesh was transferred by registered deed in the name of the appellant for the consideration of Rs.45,000/-. We could not see any evidence of passing of such consideration by the appellant to the family of the respondents. This transaction is not in dispute as evident from the copy of the registered deed placed on record by the parties. When we pose a question to the Learned Counsel for the appellant as to how there could be complaint of unlawful demand by the wife in September, 2006 (Exhibit-58), when in the same month, part of a land was transferred by the family of the respondent to the wife. The Learned Counsel for the appellant, however, could not satisfy us. In the circumstances, we are of the considered view that the alleged complaint dated 14th September, 2006 was obviously false on the face of it as both the events i.e. the

alleged demand and transfer of interest in the land cannot stand together, simultaneously. We are also unable to comprehend as to why within a very short span of marriage, a deed was executed in favour of the appellant.

25. It may also be stated that the respondent filed a complaint in May, 2007 against the respondent and his family members under Section 498A. This complaint was filed at Agra in Uttar Pradesh. The same allegations were made in the complaint dated 14th September, 2006 at Pune. The appellant did not pursue the said complaint at Pune but chose to file a complaint at Agra in April-May, 2007. The complaint under Section 498A was registered much after the filing of the petition and after counseling held in the Family Court. Though a chargesheet has been filed in the said crime and though the case is pending but taking into consideration the totality of the circumstances, we have no manner of doubt that the complaint was a counterblast to the petition filed by the husband, to humiliate and harass the respondent and his

family members.

26. The appellant herein has not disputed the fact that the father and the brothers of her husband were taken in private jeep under the escort of the police from Pune to Agra after executing the warrants issued by the Court for the offence under Section 498A. It is the evidence of the respondent that, warrants were executed in the presence of the members of the housing Society and his father, who is a retired Army Personnel was taken into custody by the police and paraded till Agra. In our view, this was an unjustifiable conduct of the appellant and her father which certainly has affected physical and mental health of the respondent and his family members. There was no reason to implicate the brother-in-laws, in as much as, both were students and were admittedly residing in their college campus. In evidence, it has also surfaced that the respondent was required to approach the Court in Uttar Pradesh for obtaining protective orders. On the comprehensive appraisal of the evidence on record, we are of the considered view, that the

appellant and her father in a most calculative manner humiliated the respondent and his family with an intention to cause disrepute to his family. Yet another circumstance which needs to be discussed is that, the appellant, in the absence of the respondent or his family members, broke open the lock of the matrimonial house at Pune though, it was claimed by her that, it was with the prior intimation to the police. We were unable to understand the unusual step taken by the appellant, wife of breaking upon the lock of her matrimonial house. It has also come in the evidence that, before opening the lock she had raised hue and cry in the Society. Considering the totality of the circumstances, we have no doubt in our mind that the respondent had suffered a traumatic experience because of the unusual behaviour of the appellant and her father and obviously resulted into a loss of reputation and prestige in the Society.

27. It also appears from the evidence that the respondent's father had gone to Agra on 19th February,

2007 as he had lost his mother. Even on that occasion, at Phirozabad, the father of the appellant reached with the lawyer and humiliated him by uttering that, since he had acquired undivided share in the property, he would make every efforts to leave him without property or means. In the evidence, neither the appellant nor his witnesses denied such assertion of the husband or his witnesses.

. There is yet another piece of evidence which shows that, the father of the appellant made a phone call to the Pune Police Station alleging beating by the father-in-law to the appellant. It appears from the evidence, that the police visited the house of the respondent enquiring about the incident. However, the appellant has not placed anything on record as to what had happened to the subject complaint and whether that complaint was taken to a logical end. In the circumstances, we hold that the appellant and her father lodged complaints with police to cause continuous harassment to the respondent and his family members. We therefore hold that the harassment at the hands of the appellant and her father was and is

persistent even today since the complaint under Section 498A of the Indian Penal Code is pending at Agra.

28. On consideration of all the circumstances, as elaborated hereinabove, we hold that sustained unjustifiable conduct and behaviour of the wife has affected physical and mental health of the respondent. We further hold that, the harassment of the respondent and her family members was persistent. Therefore, we are of the considered view that the matrimonial bond of the parties is beyond repair.

29. Admittedly, the parties are living separately nearly for eleven years and there appears to be no efforts by the appellant to restore the matrimonial ties. There is nothing in the evidence even to indicate that the wife has made any efforts to save her matrimonial life.

30. The Learned Counsel appearing for the appellant, has also taken us through the impugned

judgment and submitted that the allegations in the police complaint about the unlawful demands and consequent harassment caused by the husband and his relatives is pending in the Court and until such allegations are disproved, the allegations itself would not constitute the ground to claim the divorce. In other words, it was sought to be suggested that the trial Court ought not to have taken into consideration the police complaint and the First Information Report to hold that the complaints were false and that itself amounts to cruelty.

31. We have hereinabove stated as to why the complaint on the face of it appears to be a false on the touchstone of preponderance of probabilities. If the attending circumstances brought on record by the parties in their evidence, if suggesting that on preponderance of probabilities, the complaints lodged with the police are false, mere pendency of the prosecution is not a ground for not considering such circumstances in the matrimonial dispute between the parties.

32. We have also gone through the evidence of the appellants. Though, the appellant in many words has not pleaded condonation as a defence, but in view of the provisions of Section 23(1)(d), it is the Court's duty to find whether the conduct of the Appellant enumerated to cruelty. The evidence on record shows that, she lived with the husband for a very short period and admittedly since February, 2007 she is residing with her parents house at Agra. That there is nothing on record to indicate that the respondent, husband has condoned either of the objectionable acts of the appellant and her father. Be that as it may, the fact remains, the prosecution under Section 498A is still pending and further there is nothing on record to indicate that the appellant has made any efforts to reconcile the differences or to compromise the disputes by filing any application in the Court where Section 498A proceedings are pending. The fact cannot be ignored that the parties are living apart for nearly eleven years and there are no issues out of the said wedlock.

33. In our view considering the facts and circumstances of the case and the evidence on record, no interference is called for with the judgment and decree passed by the trial Court. Points are answered accordingly. Resultantly, the Appeal is dismissed. The decree be drawn accordingly.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)

