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

FAMILY COURT APPEAL NO. 24 OF 2020

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.
ARGUMENTS WERE HEARD ON : 30.07.2021
JUDGMENT IS PRONOUNCED ON : 27.08.2021

O R A L J U D G M E N T (Per : G. A. Sanap, J.)

In this appeal challenge is to the Judgment and decree dated 07.12.2020 passed by the Family Court at Akola whereby the learned Judge of the Family Court, Akola rejected the decree for divorce as prayed by the appellant and granted a decree for judicial separation for a period of one year.

2] The facts leading to this appeal are as follows:

The respondent and the appellant got married on 04.072014 at Akola. After marriage, they went to stay at Panjim because the appellant at that time was working in the Panjim Goa Bench of the Bombay High Court. They started their married life blissfully. However, later on the discord in the relations were developed. It is the case of the appellant that after sometime in the company of the respondent he found that by nature she was aggressive. She would speak utter lies. She had extreme affinity towards her parents and particularly for parents' residence at Akola. The respondent would quarrel with the appellant on petty matters. The respondent would tell the appellant that she was uncomfortable at Panjim in as much as the distance between Akola and Panjim was too far. The respondent according to the appellant would insist the appellant to leave the job and shift to Akola with her and take some new assignment at Akola. It is stated that in the family of the respondent her mother is dominating and the respondent was under the total influence of her mother. The respondent would follow the instructions and advice of her mother. The job of the appellant was permanent job in the High Court. He, therefore, did not agree to the suggestions made by the respondent to quit the job. According to the appellant, this was the trigger point to escalate the conflict between him and the respondent.

3] After marriage the appellant and the respondent stayed at Panjim till 28.08.2014. Between 15.08.2014 and 18.08.2014

they had celebrated their honeymoon. From 28.08.2014 to 08.09.2014 the respondent resided at Aurangabad on the occasion of Ganpati and Mahalaxmi festivals. From 10.09.2014 to 18.10.2014 the respondent resided at Akola. The respondent came to Aurangabad on 19.10.2014 for Diwali. The appellant joined them at Aurangabad. After Diwali for the festival of Bhaubij the respondent went to Akola with her brother from 02.11.2014 to 09.12.2014. After Diwali between 13.12.2014 to 22.12.2014 the entire family of the appellant went to a trip of South India. After coming back, from 22.12.2014 to 09.04.2015, the respondent resided with the appellant at Panjim. It is alleged that during this period of four months the respondent forcefully insisted the appellant to leave his job at Panjim and shift to Akola. She started causing mental pain and agony to the appellants. She made his life miserable. The wife did not maintain any relations with the appellant. The respondent according to the appellant opposed the idea of motherhood. The cantankerous behavior of the respondent totally fed up the appellant. However, the appellant made it clear to the respondent that he would not resign the job and settle at Akola, as suggested by the respondent.

4] The respondent is well qualified. The respondent according to the appellant, on 09.04.2015, under the pretext of appearing for competitive examination left the house of the appellant. She carried all gold ornaments given by the appellant in the marriage with her. The appellant tried his level best to

convince the respondent to come back, however she did not pay heed to the request made by the appellant.

5] It is stated that in the night of 31.10.2015 the respondent alongwith her father came to Panjim. The appellant welcomed them. It is stated that all of a sudden the respondent and her father started quarreling with the appellant. The appellant realized that the respondent had not come to Panjim to stay over there. He realized that she had come there to carry her clothes, goods and articles and to leave his company permanently. The respondent packed her luggage including important documents and left his company in the mid-night. The appellant requested the respondent and her father with folded hands to desist from leaving in the night but to no avail.

6] The appellant called his two colleagues to assist his wife and father who had started walking on the street in the night. The appellant tried to pacify them. It is stated that the wife abused him in filthy language. The respondent and her father left the house of appellant. However, on 02.12.2015, he came to know that she had lodged the report at Panjim Police Station. He went to the Police Station. At the intervention of the Police the matter was settled. She withdrew the complaint. It is the case of the appellant that she has filed number of complaints and cases against him. She has made his life miserable. She has caused unbearable harassment and mental cruelty to the appellant. She

has made a complaint before the Member of the Women Commission; application under Section 125 of the Code of Criminal Procedure, 1973 before the Family Court at Akola; application under Section 12 of the Protection of Women From Domestic Violence Act, 2005 (For short 'the D.V. Act') before the Judicial Magistrate First Class; she has lodged the report against the appellant at Khadan Police Station Akola, on the basis of it crime under Sections 498-A, 506 and 323 of the Indian Penal Code, has been registered against the appellant and his family members. She has made reports to the various authorities of the High Court of Bombay and to Superintendent of Police, Akola. The appellant initially prayed for the decree of judicial separation on the ground of mental cruelty and harassment. However, during the pendency of petition he amended the petition and prayed for decree of divorce on the ground of harassment and mental cruelty as provided under Section 13(1)(i-a) of the Hindu Marriage Act, 1955.

7] The respondent filed the written statement and opposed the petition. In sum and substance, the respondent has denied material facts pleaded in the petition. She has categorically denied that she insisted the appellant to leave his job and settle down at Akola and take some new job at Akola. According to the respondent, the allegations are false, frivolous and baseless. She has stated that the appellant and his parents, within few months of her marriage started making demand of the

household articles. They ill-treated the respondent by pointing out that the marriage at Akola was not celebrated as per their status. They made demand of dowry. The parents of the respondent could not afford to pay the dowry. Similarly, her parents could not afford to meet the other demands made by the appellants and his parents. It is alleged that during her stay at Aurangabad the mother of the appellant literally made her life miserable. The respondent was forced to do the household work. They discontinued the services of the maid servant. The respondent was burdened with the entire household work. She was ill-treated. Sometime she was beaten and tortured. She was not given meals. She had became weak. She could not bear the torture and ill-treatment. It is the case of the respondent that ill-treatment was meted out to her in as much as her parents could not fulfill the greedy demands of appellant and his parents. According to the respondent, in the night of 31.10.2015 she had gone to Panjim with her father. The appellant quarreled with them. The appellant did not allow her to enter the house. The appellant, according to the respondent, drove her out of the house with her goods, articles and clothes and instructed her not to come back again. It is stated that therefore, she had no other alternative but to stay at the house of her parents at Akola. According to her, the complaints made by her are genuine. She has not caused mental cruelty as alleged to the appellant. On the contrary, according to her she has been put to severe mental cruelty at the hands of the appellant.

8] In the Family Court at Akola both the parties adduced the evidence. The appellant has examined himself. He has examined one independent witness to corroborate his case on the material points. The respondent has examined herself as a sole witness. Both the parties have produced on record their documentary evidence.

9] The learned Judge of the Family Court on appreciation of the evidence came to the conclusion that the case was not made out to grant a decree of divorce. The learned Judge came to the conclusion that in the facts and circumstances the decree for judicial separation would be the appropriate relief. Being dis-satisfied with this judgment and decree denying the relief of divorce the appellant has come before this Court in appeal. The grounds of a challenge to the impugned judgment have been set out in the memo of appeal. The main ground is that the learned Judge of the Family Court has recorded a finding on the basis of the evidence adduced by the parties that the appellant has established a case of the cruelty at the hands of wife but refused to grant the decree for unacceptable reasons. It is stated that the decree for judicial separation has been granted on proof of the mental cruelty meted out to the appellant by the respondent.

10] We have heard the learned Advocate for the appellant at length. The respondent and her Advocate remained absent throughout. Therefore, we had no benefit to hear the argument

on the side of the respondent. With the assistance of the learned Advocate for the appellant we have gone through the entire record and proceedings.

11] In view of the facts and circumstances of the appeal following points fall for our determination and we record our findings thereon for the reasons to follow:

Sr. No.	POINTS	FINDINGS
1.	Whether the appellant has proved that the respondent after the solemnization of their marriage had treated him with cruelty ?	...In the affirmative
2.	Whether the Judgment and decree passed by the learned Judge of the Family Court rejecting the decree of divorce is sustainable ?	...No
3.	What order ?	As per final order

AS TO POINT NOS. 1 AND 2:

12] The learned Advocate for the appellant submitted that on the basis of the cogent and concrete evidence, the appellant has proved that for no reason and no fault on his part the respondent had made his life miserable. The learned Advocate submitted that on appreciation of the evidence led by the appellant and the respondent, the learned Judge of the Family Court recorded a candid finding in para No. 32 of the Judgment that on the basis of the oral and documentary evidence the

appellant has established a case of a mental cruelty to him at the hands of the respondent. The learned Advocate submitted that in view of this finding of a fact based on the oral and documentary evidence, the learned Judge of the Family Court without recording a justifiable reason denied the relief of divorce to the appellant. The learned Advocate submitted that there is ample oral and documentary evidence to establish that the respondent made unfounded, unsupported and baseless allegations against the appellant and his family members. The learned Advocate submitted that the conduct of the respondent made the life of the appellant miserable. The learned Advocate submitted that the appellant being caring husband extended support to the respondent to peruse her further studies. The learned Advocate submitted that the arrogant and cantankerous nature of the respondent not only made the life of the appellant miserable but also made the life of his parents miserable. The learned Advocate submitted that the learned Judge of the Family Court has accepted the case of the appellant that the respondent has made unfounded & unsupported wild allegations against the appellant and his family members. The learned Advocate submitted that the appellant was within his right to deny the request made by the respondent to leave the secured job. The learned Advocate submitted that the respondent took it as insult and started extending threats and all sorts of trouble to the appellants.

13] The learned advocate further submitted that during the

pendency of the petition itself the respondent had made her intention of parting ways with appellant clear, by uploading her profile on two marriage bureau websites, namely BharatMatrimony.com and Shaadi.com. The learned Advocate submitted that before judgment delivered in the petition by the learned Judge of the Family Court, on 22.10.2020 the appellant has produced the relevant documents on record. The learned Advocate submitted that the respondent did not file reply to this application and specifically denied the facts brought on record by way of these documents. The learned Advocate submitted that respondent made her intention writ large to get rid of the appellant and begin her life afresh with someone else. The learned Advocate submitted that the documents produced on record with the application at Exh.69 on 22.10.2020 can be taken into consideration in view of the provisions of Section 14 of the Family Courts Act, 1984. The learned Advocate submitted that the learned Judge of the Family Court has not taken these documents into consideration while deciding the claim.

14] At the outset it would be necessary to consider the settled legal position. In the case of *Dr. (Mrs.) Malathi Ravi, M.D. .v/s. Dr. B. V. Ravi, M.D.,* reported in *2014 (7) SCC 640,* the Hon'ble Supreme Court of India has held that if the wife has no intention to lead a normal life then on the ground of mental cruelty the decree for divorce can be granted. It is further held that the false allegations by one spouse against the other amounts

to mental cruelty. It is held that the mental cruelty and its effect cannot be stated with arithmetical exactitude. It varies from individual to individual, from society and also depends upon on the status of the person. In this case the false first information report against the husband under the Dowry Act and under Section 498-A was found to be a valid ground for divorce.

15] In the case of *Vishwanath S/o. Sitaram Agrawal .v/s. Sarla Vishwanath Agrawal* delivered in *Civil Appeal No. 4905* of 2020, the Hon'ble Supreme Court of India has held that the mental torture caused by one spouse to the another by making wild and false allegations in a report lodged to the authority as well as in the electronic and print media constitute a mental cruelty and as such the ground for divorce.

16] In the case of *V. Bhagat .v/s. Mrs. D. Bhagat* reported in *AIR 1994 SC 710* the Hon'ble Supreme Court of India has considered as to what constitute mental cruelty and what should be the parameters while deciding the cruelty. It is held that the 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 impossible for that party to live with the other. It is held that the 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 out with such conduct and

continue with the other party. It is held that it is not necessary to prove that the mental cruelty is such as to cause injury to the health of the appellant. While arriving at such conclusion regard must be had to the social status, educational level of the parties, 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. It is held that a cruelty in one case may not amount to cruelty in another case. It is matter to be determined in each case having regard to the facts and circumstances of that case. If it is case of accusations and allegations, regard must also be had to the context in which they were made.

17] In order to appreciate the submissions on facts it would be necessary to see whether the case of the appellant fits in the parameters laid down in the judgments supra. At the outset it would be necessary to make a note of the conduct of the respondent pending the divorce petition.

18] The evidence adduced by the parties and the conduct of the respondent needs to be appreciated in the backdrop of the observations made by the learned Judge of the Family Court in para No. 32 of the impugned judgment. The learned Judge has recorded a categorical finding that, on the basis of the oral and documentary evidence, the appellant has established the case of a cruelty at the hands of respondent in as much as the respondent

made unfounded and unsupported allegations against the appellant. The learned judge observed that the fact that the allegations are unfounded and unsupported has been established on the testimony of the respondent. It is to be noted that despite this finding of fact the learned Judge did not deem it appropriate to grant a decree for divorce.

19] The evidence of respondent was over on 08.10.2020. On 15-10-2020, she filed a pursis closing her evidence. On 22.10.2020, the Advocate for the appellant made an application at Exh. 69 under Section 14 of the Family Courts Act, 1984 and sought the leave of the Court to produce on record the matrimonial profile of the respondent uploaded by her on BharatMatrimony.com and Shaadi.com. The learned Advocate for the respondent filed his say contending that the application is not legal and tenable and therefore, prayed for rejection of the same. It is pertinent to note that alongwith this application the Advocate for the appellant has produced the matrimonial profile uploaded on the above two websites by the respondent. It is pertinent to mention that on being confronted with the documents, sought to be produced on record, the respondent was supposed to file a detailed reply and place on record her side of the story. The respondent could have either denied the documents or placed on record plausible explanation vis-a-vis the documents. But, the respondent chose not to do either of it. The learned Judge of the Family Court, on 22.10.2020, allowed the production of the

documents. The documents are part of the record. The learned Advocate for the appellant placing reliance on Section 14 of the Family Courts Act, 1984 submitted that these documents can be read in evidence. Section 14 of the Family Courts Act, 1984 provides that the Family Court may receive as evidence any report, statement, documents for deciding the dispute effectively. It further provides that the Family Court can receive the documents whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872. Section 14 of the Family Courts Act, 1984 is an exception to the application of Indian Evidence Act, 1872 and allows the Family Court to admit the documents on record provided the same are necessary for effective resolution of the dispute. On plain reading of Section 14 we have no reason to reject the submissions advanced by the learned Advocate for the appellant. In our opinion, the documents produced on record in the form of matrimonial profile uploaded by the respondent on 22.10.2020 can be taken into consideration for deciding the question in controversy in this appeal.

20] On perusal of the matrimonial profile uploaded by the appellant it would show that even before decision in the divorce petition she had made up her mind to perform the second marriage. The respondent uploaded her matrimonial profile on two matrimonial websites. She has uploaded the necessary information. In the uploaded matrimonial profile she has categorically stated that she is awaiting the divorce in pending

case. In our opinion, the respondent by uploading her profile on two matrimonial websites made her intention writ large. On the basis of this document it can be inferred that she wanted to get rid of the appellant and wanted to perform the second marriage. It is pertinent to note that this conduct of the respondent is not consistent with the facts stated by her in the written statement. In the written statement she has contended that as an obedient wife and daughter-in-law she performed her duties sincerely but the appellant and his parents did not like her and wanted to get rid of her from the life of the appellant. In our view this statement in the written statement if read in the context of the documents would seriously reflect upon the conduct of the respondent.

21] The appellant has examined himself. In his evidence he has reiterated the facts pleaded in the petition. In sum and substance in his examination in chief he has narrated his plight and sufferings undergone by him at the hands of the respondent during this short span of their married life. It has come on record in his evidence that the respondent since beginning was not happy to stay with him at Panjim. She insisted him to quit the secured job and shift to Akola and take some new job at Akola. The appellant has stated that he was not ready to do it. The appellant has stated that there was no question of making any demand of either dowry or other household articles in as much as they are financially well off. It has come on record that the father of the appellant has retired from the service of United News of India.

His mother is serving as an Assistant Registrar in the High Court of Bombay, Bench at Aurangabad. It has come on record that they have three storied building of their own at Aurangabad. The further development would show that the appellant has now been transferred from Panjim to Aurangabad. In his evidence the appellant has stated that due to the false and frivolous complaints and reports made by the respondent to the various authorities, she has caused immense mental stress, depression, pain and agony to him and his parents. In his evidence he has deposed about their stay together during the short span of their married life. The incident, occurred on 31.10.2015, when the respondent left him permanently, has been narrated by him in his evidence. On minute perusal of the evidence of the appellant and particularly his cross examination we do not see any reason to discard and disbelieve his evidence. In his cross examination sufficient material has not been elicited to doubt the credence and credibility of his evidence. Despite searching cross examination his evidence has gone unshaken.

22] The appellant has examined one independent witness Shri Ashwin Sharma to corroborate his evidence on the point of the incident dated 31.10.2015. In his evidence he has elaborately deposed about the said incident. In sum and substance he has deposed that despite the repeated and humble request made by the appellant to the respondent not to leave his company, she and her father did not take pity on him and left the house in the night.

The father of the respondent has not been examined as a witness to substantiate the contention of the respondent that the appellant drove her out of his house and therefore, in the night she left his house. The case of the respondent does not appear probable. The independent witness has corroborated the evidence of the appellant on this important point. The evidence proves that the respondent packed her luggage and left the house of the appellant permanently. In his evidence in detail the appellant has narrated the mental cruelty suffered by him at the hands of the respondent.

23] The learned Judge of the Family Court took note of all the complaints and reports made against the appellant by the respondent. The complaints have been listed in para No. 9 of the judgment. It is seen on perusal of the documentary evidence that the respondent has made a complaint to the member of the Women Commission. This complaint was later on withdrawn. She made a report at Panjim Police Station against the appellant on 01.12.2015 and on 02.12.2015 the said report was also withdrawn. The respondent filed an application under Section 125 of the Code of Criminal Procedure before the Family Court at Akola. In the said application also she made wild allegations against the appellant and his parents. The respondent also filed an application under Section 12 of the D. V. Act before the Judicial Magistrate First Class, Akola. The record would show that on 24.11.2015, she lodged a report at Khadan Police Station, Akola. This report was lodged 6-8 days of the filling of the above petition

by the appellant. The respondent lodged a second report against the appellant and his family members on 14.06.2016 at Khadan Police Station. On the basis of this report the FIR has been registered against the appellant and his family members. Perusal of all these documents would show that the respondent has made serious and wild allegations against the appellant and his parents. The last part of the cross examination of the respondent would be very relevant in the context of the documents. In para No. 6 she has admitted that the application made by her under Section 12 of the D. V. Act was rejected on merit by the learned Magistrate.

24] The decision of the learned Magistrate is dated 12.04.2019 in Misc. Criminal Application No. 1935 of 2015. In the said application, the respondent had reproduced all allegations made in the reports/complaints against the appellant. The learned Magistrate on appreciation of evidence came to the conclusion that there was no substance in the allegations. The learned Magistrate rejected her case based on these allegations in toto. In our opinion, the learned Judge of the Family Court ought to have taken all these facts into consideration and accepted the case of the appellant seeking divorce. The learned Judge, as can be seen on perusal of the impugned judgment, has not taken into consideration the documentary evidence produced before delivering judgment with regard to the uploading of her marriage profile on the two matrimonial websites. The learned Judge without assigning a convincing reason denied the decree of

divorce. In para No. 32 the learned Judge of the Family Court on the basis of the evidence led by the appellant recorded a finding that the appellant has established the case of cruelty at the hands of the wife. In para No. 33 of the judgment the learned Judge of the Family Court has observed that the cruelty is not of such a nature which would cause reasonable apprehension in the mind of the husband that it would be harmful or injurious for him to live with the wife. In our opinion if the learned Judge of the Family Court had taken into consideration the documents produced on record before Judgment, whereby the respondent had uploaded her marriage profile on two websites, the learned Judge would not have recorded such a finding. In our opinion, this finding is without considering the material evidence on record. The evidence clearly indicate that the respondent had no wish and desire to remain in company of the appellant. If the respondent had sincere wish and desire to save her marriage she would not have taken a conscious decision to perform the second marriage even before the final out come of the divorce petition. The evidence placed on record by the appellant coupled with the conduct of the respondent through-out and subsequent to the filling of the petition would prove beyond doubt that the respondent had made the life of the appellant miserable. On the basis of the admitted and proved facts no other inference is possible. The allegations made in the complaints, produced on record by the appellant, would show that the same are wild and unfounded.

25] We have considered the legal position from the decisions of the Hon'ble Supreme Court of India herein above. The evidence on record proves that the respondent inflicted upon the appellant mental pain and sufferings which would make it impossible for him to live with the respondent. It has been proved that the mental cruelty is such that it would in all probability cause injury to the health of the appellant. The appellant and the respondent got married in 2014. The appellant has been made to fight this litigation till date for getting divorce. Before the decision of the petition the respondent took a conscious decision to perform the second marriage. In our view, therefore, the preposition of law laid down in the judgments (supra) squarely applies to the facts of the case of the appellant. It is further pertinent to note that the conduct of the respondent to perform the second marriage and not to lead the life with the appellant is writ large from the fact that she did not apply for restitution of conjugal rights. In the facts and circumstances we are of the opinion that the view taken by the learned Judge of the Family Court denying the decree of divorce for the reasons recorded in the judgment cannot be sustained. In our opinion, the appellant on the basis of cogent and concrete evidence has made out the case that he was made to suffer mental cruelty of high degree and therefore, he took a conscious decision to get separated from the respondent. Accordingly, we conclude that he has proved that he is entitled for divorce on the ground of the mental cruelty meted out to him by the respondent. As such we record our findings on

point No.1 in the affirmative. As far as point No.2 is concerned, we conclude that the judgment of the Family Court cannot be sustained. Hence, the following order:

ORDER

i. The family court appeal is allowed.

ii. The judgment and decree, passed by the Family Court at Akola, dated 07.12.2020 , rejecting the prayer for granting divorce, is set aside.

iii. The Hindu Marriage Petition filed by the appellant is allowed. It is declared that the marriage between the appellant and the respondent is dissolved by decree of divorce on the ground of cruelty.

iv. In view of the decree for divorce the order granting decree for judicial separation does not survive.

The decree be drawn up accordingly.

Parties to bear their own costs.

JUDGE **JUDGE**

Namrata