IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 155 OF 2018

Vaibhavi Rajendra Chalke … Appellant

Versus

Rajendra Ganpat Chalke …Respondent

Mr. Omkar Nagvekar i/b. Prabha U. Badadare for the appellant.
Mr. Dushyant S. Pagare for the respondent.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.
Date : 3 January, 2025

Oral Judgment (Per G.S. Kulkarni, J.)

1. This Family Court Appeal is directed against the judgment and decree dated 5 March, 2018 passed by the learned Judge, Family Court, Thane in Petition No. A-22/2012 whereby the decree of divorce filed by the respondent-husband on the ground of cruelty came to be allowed in terms of the following order:

"ORDER

"1. The petition is allowed.

2. The marriage between Rajendra (petitioner/husband) and Vaibhavi (respondent/wife) which was solemnized on 02.03.2006, is hereby dissolved by decree of divorce w.e.f. the date of decree.

3. The respondent shall bear her own costs and shall pay the costs of petitioner.

4. Copy of judgment be given free of costs to both the parties as per Sec.23(4) of the Hindu Marriage Act, 1955.

5. Decree be drawn accordingly."

2. At the outset, we may observe that the present appeal which today is listed for admission, although was filed on 1 August, 2018. There was no stay to the impugned judgment and decree by which the marriage between the parties have been annulled. It is informed by learned counsel for the appellant that in the meantime, the respondent has remarried. The appellant is also aware and conscious of the respondent having remarried. The scope of the present proceedings does not exceed the challenge, to the impugned judgment and decree which would have nothing to do with the second marriage of the respondent. In the facts and circumstances of the case, learned counsel for the parties would not dispute that even assuming the appeal is to be admitted and heard finally, adjudication of this appeal would be academic, as the second marriage of the respondent cannot be disturbed in the present proceedings. In fact this is not even the case of the appellant. The proceedings needs to end at this.

3. Be that as it may, for the sake of completeness, in the context of the challenge as raised in the appeal we may observe that the only objection as urged on behalf of the appellant in assailing the impugned judgment and order passed by the Family Court is to the observations made by the Family Court in paragraph 34 of the impugned judgment. The respondent's case for a decree of

divorce on the ground of cruelty against the appellant, was to the effect that the appellant had lodged a false prosecution against the respondent, under the provisions of Section 498A of Indian Penal Code. The observations of the Family Court in paragraph 34 of the impugned judgment reads thus:

> "34. Admittedly, the parties separated in the year 2006. Till today, the respondent has persuaded her criminal case. The evidence shows that respondent was unsuccessful before Trial Court and First Appellate Court. It is necessary to note here that the learned advocate for petitioner made statement at the bar that he had not received any notice from the Hon'ble High Court about any appeal filed by the respondent against acquittal of petitioner in criminal case. The respondent only mentioned that she has filed appeal before the Hon'ble High Court. She has not mentioned the case number or given any details. In such circumstances, it can be said that the respondent was never interested to continue relation, therefore, the evidence on record is sufficient to prove about ingredients of matrimonial offence namely 'desertion'. Hence, I answer this issue in affirmative."

4. Learned counsel for the appellant would submit that the aforesaid observations are not correct for the reason that the appellant had challenged the orders which were passed by the Sessions Court before this Court in the year 2014 and that such proceedings were pending before this Court. The learned counsel for the appellant however is not in a position to make out any case to dispel the findings as recorded by the Family Court on cruelty which are to the effect that appellant had falsely lodged a prosecution against the respondent under Section 498A of the IPC, with a purpose not to bring home the guilt of the respondent, but merely to change the behaviour of the respondent. The relevant observations as made by the Family Court are

contained in paragraphs 15 and 27 of the impugned judgment, which reads thus:

> "15. There is glaring admission of respondent that she had filed complaint u/sec. 498-A of IPC not with intention to punish the petitioner but he should change his behaviour. She has admitted that her appeal has been dismissed and she has not moved to Hon'ble High Court against that acquittal.
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> 27. In the case at hand, the respondent herself unequivocally admitted that she had filed criminal case not to punish petitioner, but to change his behaviour. It could not be understand who advised such therapy, by abusing process of law. This has adverse effect more to the respondent than changing behaviour of the petitioner. The admission of the respondent herself is sufficient to say that her case under Section 498-A of IPC was false. In my opinion, the ratio is clearly applicable to the petitioner."
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> (emphasis supplied)

5. The aforesaid findings recorded by the Family Court are based on materials, as both the parties were granted complete opportunity to assert/plead their respective case, and supported by their oral and documentary evidence. For detailed and cogent reasons as recorded in the impugned judgment, the Family Court has refused to accept the case of the appellant. In such context, some of the further observations as made by the Family Court in the impugned judgment are required to be noted, which reads thus:

> "24. At the cost of repetition, the total cohabitation between parties was of few months. If there was any demand by the petitioner and his family, there was no reason for the respondent and her brother to arrange separate house. The evidence of Rajendra (PW-1) is sufficient to show that he was feeling moral obligation towards adopted family. Only after marriage, he was asked to get separate. There is possibility that the petitioner wanted to balance his family and matrimonial life, therefore, he agreed to shift in rented premises only at the insistence of the respondent. There was no possibility for the respondent to put her life at risk by arranging rented

> premises and away from the family, if there was harassment at the hands of petitioner. This clearly shows dual standard of the respondent, which is totally unnatural.
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> 25. If the pleading and evidence of both parties are considered as it is, it can be said that allegations levelled by respondent are more serious than petitioner. It is unbelievable that if respondent was treated with such cruelty, she will propose for restitution of conjugal rights and offer to cohabit. It can be infer that petitioner was loving and affectionate husband since beginning till the parties separated. The criminal prosecution filed by the respondent has been turned down by two Courts. The intense prosecution of criminal case by respondent is nothing but rubbing salt on the injury of petitioner.
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> 30. It is settled that cruelty is the relative term. It mainly depends upon facts to facts, case to case and person to person. Case of Rajendra (PW-1) falls under mental cruelty. It is significant to note that respondent has not even put any suggestion during cross-examination of Rajendra (PW-1) that she was harassed by the petitioner as alleged. It can be inferred from the evidence of Rajendra (PW-1) that he was always positive to continue relation. The respondent herself was in hurry to resort to criminal proceeding, even though she had no merit in her story. This was the turning point of matrimonial life of the parties. The evidence of Vaibhavi (RW 1) and Mangesh (RW 2) is inconsistent/contradictory and unnatural. It can be said that the conduct of respondent has made life of petitioner miserable."

6. We are in agreement with the findings recorded and the view taken by the Family Court in the impugned judgment. As clearly seen, the appellant had lodged a false prosecution against the respondent, which has been concurrently affirmed by the Criminal Court. This would certainly amount to cruelty in terms of Section 13(1)(i-a) of the Hindu Marriage Act, 1955. We may observe that the respondent and his family members being subjected to false criminal proceedings and the ordeal of such serious charges being faced by them that too for the reason that the appellant-wife wanted to correct the

behaviour of the husband, would find no place in the harmonious relations of mutual trust, respect and affection, a married couple would normally maintain. Also, once the mind of a spouse is corrupted to resort to a false prosecution against a spouse, it is certain that the spouse has lost all reasonableness and rationality to maintain solemnity of the marriage. Also once there is a dent to such essential values, on the foundation of which a marriage rests, by a false and draconian action of a criminal prosecution being resorted by either spouse, it is in the realm of cruelty which would be a ground for divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. Thus, such actions on the part of the appellant of resorting to a false prosecution, was certainly a sufficient ground, entitling the respondent for a divorce on the ground of cruelty. The principles of law in this regard are well settled.

7. In **K. Srinivas vs. K. Sunita**[1], the Supreme Court was considering the appellant/husband's case for dissolution of marriage to the respondent by decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. The cruelty as alleged was on the account of filing of a criminal complaint by the respondent-wife against the appellant and several members of his family under Sections 498-A and 307 of the Indian Penal Code. In this context, the Court observed that such cruelty in the wake of filing of a false criminal case by

[1] (2014) 16 SCC 34

either of the spouses has been agitated frequently before Courts and has been discussed in several decisions. Referring to the principles of law in this regard in **K. Srinivas Rao vs. D.A. Deepa**[2], which refers to several decisions on the subject, the Court observed that it is now beyond cavil that if a false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce. The Court observed that in the said case, the wife intentionally had filed a false complaint, calculated to embarrass and incarcerate the appellant and the members of his family and that such conduct unquestionably constitutes cruelty as postulated in Section 13(1)(i-a) of the Hindu Marriage Act. The Supreme Court set aside the order of the High Court and allowed the marriage petition filed by the husband by accepting his case of cruelty meted out to him by the respondent-wife being proved by such conduct of the wife and hence annulled the marriage under the provisions of Section 13(1)(i-a) of the Hindu Marriage Act.

8. In **Rani Narasimha Sastry vs. Rani Suneela Rani**[3], the facts of the case before the Supreme Court were similar to the case in hand. In the said case, the prosecution was launched by the respondent against the appellant under

[2] (2013) 5 SCC 226
[3] (2020) 18 SCC 247

Section 498-A of the IPC making serious allegations in which the appellant had to undergo trial which ultimately resulted in his acquittal. The appellant had accordingly set up a case seeking decree of divorce on the ground of cruelty which was established. The Supreme Court in accepting the case of the appellant concluded that the appellant had made out a ground for grant of decree of dissolution of marriage on the ground that cruelty under Section 13(1)(i-a) of the Hindu Marriage Act. The following observations of the Court are required to be noted, which reads thus:

> "13. …. The above observation of the High Court cannot be approved. It is true that it is open for anyone to file complaint or lodge prosecution for redressal for his or her grievances and lodge a first information report for an offence also and mere lodging of complaint or FIR cannot ipso facto be treated as cruelty. But when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498-A of IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has meted on the husband…..
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> 14. In view of forgoing discussion, we conclude that appellant has made a ground for grant of decree of dissolution of marriage on the ground as mentioned in Section 13(1)(i-a) of the Hindu Marriage Act, 1955."

9. In a recent decision of the Supreme Court in **Amutha vs. A.R. Subramanian**[4], the Court dealing with a challenge to an order passed by the High Court wherein the High Court allowing the respondent-husband's appeal which set aside the judgments of the two lower Courts thereby granting a decree of divorce on the ground of cruelty. The primary ground for dissolution

[4] 2024 SCC OnLine SC 3822

of marriage was the conduct of the appellant amounting to mental cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, inasmuch as the appellant had filed false and baseless criminal complaints against the respondent-husband, which not only strained their relationship but also caused significant damage to his reputation and peace of mind. In such context, the Court referring to the decision in **N.G. Dastane vs. S. Dastane**[5] observed that the said decision laid down the principle, that cruelty is not confined to physical violence but also encompasses actions that inflict actions that inflict mental pain and suffering that creates a reasonable apprehension of harm or injury to the aggrieved spouse from the conduct of the other spouse so as to make it impossible for them to stay together. The Court observed that in the case in hand, the appellant's conduct, including the initiation of frivolous legal proceedings, fell squarely within the definition of mental cruelty. The Supreme Court referring to the decision in **Samar Ghosh vs. Jaya Ghosh**[6] held that wherein it was recognized that actions causing sustained emotional torment and loss of trust in the martial relationship constitutes cruelty, as such actions of the spouse make the cohabitation impossible. Also, referring to the decision in **V. Bhagat vs. D. Bhagat**[7], the Court observed that sustained and

5 (1975) 2 SCC 326

6 (2007) 4 SCC 511

7 (1994) 1 SCC 337

deliberate acts of cruelty make it unreasonable to expect one spouse to continue living with the other. The aforesaid settled principles of law is squarely applicable in the facts of the present case.

10. In the present case, the appellant never realized the effect of the husband and his relatives being dragged into a false prosecution of such serious offences. Further, the social stigma and unwarranted harassment caused to the respondent and his family members is another significant aspect of the sufferings of the respondent and his family members. The learned Judge of the Family Court is, therefore, correct in his observations that a strong case for divorce on the ground of cruelty was made out by the respondent so as to decree the Marriage Petition filed by the respondent.

11. We do not find any perversity much less any illegality in the observations as made by the learned Judge of the Family Court in passing the impugned judgment and order. The petitioner has failed to make out a case for interference in this appeal. Resultantly, the appeal fails. It is accordingly rejected. No costs.

(ADVAIT M. SETHNA, J.) (G. S. KULKARNI , J.)