



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

FAMILY COURT APPEAL NO. 14 OF 2016

████ s/o H █████ C █████
Aged about 44 years,
Occupation : Service,
Resident █████
████████████████████ Nagpur
(Maharashtra)

APPELLANT
(Org. Petitioner on R.A.)

// V E R S U S //

Smt. M █████ w/o █████
C █████,
Aged 35 years,
Occupation- Private Job,
Resident █████
██
Nagpur (Maharashtra)

RESPONDENT

Ms Vidhya Umale, Advocate for the appellant.
Mr. Anil Thakare, Advocate for respondent.

WITH
CRIMINAL REVISION NO. 83 OF 2015

████ s/o H █████ C █████
Aged about 37 years,
Occupation : Service,
Resident █████
██
████████████████████ Nagpur
(Maharashtra)

APPLICANT
(Org. Respondent on
R.A)

// V E R S U S //

Smt. M █████ w//o █████

RESPONDENT

C [REDACTED]
Aged 35 years,
Occupation- Private Job,
Resident [REDACTED]
[REDACTED]
Nagpur (Maharashtra)

Ms Vidhya Umale, Advocate for the appellant.
Mr. Anil Thakare, Advocate for respondent.

**CORAM : URMILA JOSHI PHALKE, &
RAJ D. WAKODE, J.J.**

**JUDGMENT RESERVED ON:-13.08.2026
JUDGMENT PRONOUNCED ON:-19.08.2026**

O R A L J U D G M E N T : (Per Mrs. Urmila Joshi Phalke, J.)

1. Heard learned counsel for the respective parties.
2. Alleging cruelty against the wife, the appellant-husband approached to this Court by filing an appeal against the judgment and decree passed by the Family Court dismissing the petition bearing No.A-38/2014 which was filed by the appellant for seeking divorce and also challenged the judgment and order passed in petition No.283/2012 granting

maintenance to the respondent-wife at the rate of Rs.5,000/- per month.

3. The facts of the case giving rise to the dispute are as follows:-

The marriage of the appellant/husband and the respondent/wife was solemnized on 22.05.2003 at Nagpur as per the rites and customs. After marriage they were leading good life. As per contention of the appellant he has provided all sorts of comforts to the respondent and she used to manage household work. However, respondent/wife is a short tempered lady and used to raise quarrel with his mother on trifle issue. Once she has made an attempt for committing suicide as appellant refused to reside at Nagpur. It is further contention of the appellant that since marriage till 2011 everything was normal between them except the ordinary wear and tear disputes of marital life. However, suddenly the respondent has raised the issue of having no child and started blaming him. She also alleged that he has ill-treated her under the influence of liquor and on the

ground of non conceiving. He contended that there was no physical defect either in him or in the respondent, however, respondent could not conceive the child. The respondent disliked his decision of not shifting to Nagpur and under the fit of anger, she left his house on 21.06.2012. Due to such behaviour of the respondent, his mother has undergone mental pain, agony and despite he repeatedly requests her to join his company, there was no change in her behaviour and false complaints have been lodged against him by the respondent by threatening him that she would put him behind the bar. Therefore, he approached to the Family Court, Nagpur for seeking dissolution of marriage.

4. The respondent has also preferred an application bearing No.283/2012 for grant of maintenance. She has resisted the contention of the appellant by filing written statement and denied all the allegations. She stated that her father-in-law was paralysed and she has performed all her duties as a wife in the house of the appellant and taken care of his father as a nurse as well as his mother also but the

appellant used to ill treat her for non conceiving the child as well as was demanding the dowry. Therefore, she constrained to leave the matrimonial house. She contended that on 29.01.2012 there was a marriage of her younger brother and therefore she went to her parents house for helping her mother. On 05.02.2012 when she returned to her matrimonial house the appellant was not present in the house, and therefore, she called him. But he behaved with her rudely and abused her and asked her to go to her parents house. However, she stayed there. Due to the continuous ill-treatment she went to her parents house on 08.02.2012 and again returned back on 26.03.2012 but there was no change in the behaviour of the appellant. She though tried to convince him not to ill-treat her but he had not paid any heed to her request and raised quarrel and thrown her luggage on the road. Therefore, she lodged report to the police Station on 01.04.2012. Thereafter the appellant gave assurance in presence of police officers and took her at his house for resuming cohabitation. However, he had locked the house and has not allowed her to enter into the house and

therefore, there was no alternative before her but to join the company of her parents and thereafter she lodged the report on 11.05.2012. Again on 26.05.2012 the appellant took her for cohabitation. However, the ill-treatment continued and finally she was driven out of the house on 21.06.2012 and therefore, she constrained to file the application for grant of maintenance as well as she has resisted the petition filed by the present appellant for dissolution of marriage.

5. She also contended that before filing of the application she has also issued the notice dated 25.06.2012 through Advocate to the present appellant to take her back for cohabitation, but the appellant has not turned up and filed this petition for seeking divorce.

6. The learned trial Court has framed the issues after pleadings are completed. In support of the contention the appellant examined himself and reiterated the allegations as raised in the petition. Similarly, the respondent /wife has also adduced her evidence and in support of her contention,

she also examined her brother Rabin Arun Meshram to prove the ill treatment at the hands of the present appellant.

7. She had also filed petition bearing No.283/2012 for grant of maintenance under Section 125 of the Code of Criminal Procedure Code, 1973 for herself. The appellant appeared in the maintenance application and resisted the application. Pursis was filed by the respondent/wife that cross-examination conducted in Petition No.E-283/2012 be adopted in other petition.

8. After recording the evidence and on appreciating the same, the Family Court, Nagpur pleased to dismiss the petition of the appellant of dissolution of marriage and allowed the maintenance petition and granted maintenance at the rate of Rs.5,000/- (Rupees Five Thousand Only) per month to the respondent.

9. Being aggrieved and dissatisfied with the said judgment and decree, the present appeal is preferred by the

husband on the ground that the learned trial Court has not considered that it was the respondent/wife who treated him with cruelty. She was habitual in picking up the quarrels. Learned trial Court has also not appreciated the evidence which clearly indicate that appellant/husband was treated with cruelty by the respondent/wife and wrongly and erroneously dismissed the prayer of dissolution of marriage. It is further contended by him by filing criminal revision that there was no refusal and neglect on the part of the husband and therefore, the respondent is not entitled for grant of maintenance.

10. Heard Ms Vidya Umale, learned counsel for the appellant. She submitted that the marriage between the appellant/husband and respondent/wife was solemnized on 22.05.2003. Despite the medical treatment respondent/wife could not conceive. Initially there was no dispute between them but as wife wants to reside at Nagpur, she made an attempt to shift the present appellant from Kamptee to

Nagpur for which appellant was not ready and therefore, she started raising quarrels. She has filed various criminal complaint against the present appellant which caused harassment to him. She submitted that all comforts and facilities were made available by the appellant but it was the wife who was not willing to stay with the appellant/husband and therefore, she left the matrimonial house. Despite various attempts, she has not resumed the cohabitation and therefore, the appellant approached to the Family Court for dissolution of marriage. Due to the behavior of the respondent/wife mental agony was caused to the appellant which was not considered by the trial Court and trial Court wrongly dismissed the petition. She further submitted that the respondent/wife is able bodied person. Therefore, the order of grant of maintenance by the Family Court is also wrong, illegal and liable to be quashed and set aside.

11. In support of her contention she placed reliance on *K. Srinivas Rao vs. D.A. Deepa* reported in (2013) 5 SCC 226, she also placed reliance on *V. Bhagat vs. Mrs. D. Bhagat*

reported *AIR 1994 SC 710* and *Pradeep s/o Namdeorao Ambhore vs. Pallavi Pradeep Ambhore* reported in *2017 (6) Mh.L.J. 627* and submitted that the appellant is entitled to dissolution of marriage by decree of divorce as the cruelty is proved and therefore, appeal deserves to be allowed.

12. Per contra learned counsel for the respondent/wife submitted that it was appellant-husband who treated respondent/wife with cruelty. The cross-examination of the appellant shows that it was the respondent/wife who has taken efforts to save the marriage. There was no effort by the present appellant to fetch back to respondent when she had been to her parents house. Twice he has assured before the police authorities to take the respondent for cohabitation but has not allowed her to enter in the house and driven her out of the house. By considering all these facts, the Family Court has granted the maintenance to her, as refusal and neglect on the part of the present appellant was proved. Therefore, the appeal as well as

criminal revision both being devoid of merit liable to be dismissed.

13. After hearing both the sides following points are arisen for our consideration and we answer the same accordingly.

(i) Whether the petition for dissolution of marriage is liable to be allowed on the ground of cruelty as pleaded in the petition?

(ii) Whether respondent/wife is entitled for grant of maintenance?

14. As the point Nos.i and ii both are interlinked they are answered together.

15. It is always said that the marriages are settled in heaven. The parties to marriage tying knot are supposed to bring about the union of souls. It creates a new relationship of love and affection, concern between the husband and wife. According to Hindu Vedic it is 'Sanskar'. The two human

being pledged themselves. Despite the pledge and promises sometimes said relationship becomes complex.

16. Present case is also one more example of the complex relationship between the husband and wife. There is no dispute about matrimonial relationship between appellant/husband and the respondent/wife.

17. The appellant/husband had filed a petition for seeking dissolution of marriage mainly on the ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. The petition for dissolution of marriage is preferred mainly on the allegation that the respondent/wife had treated him with cruelty after marriage. As per allegation of the appellant/husband, the respondent/wife used to raise the quarrel with his mother and was not behaving properly with him as well as his family members. As per his evidence despite they both have taken treatment and there was no defect in both of them, respondent/wife could not conceive

and therefore, she started blaming the appellant. His evidence further shows that since 2003 to 2011 everything was smooth between the relationship. Thereafter respondent/wife wants to shift at Nagpur, being he is only son, he was not ready to leave his mother and therefore, he denied for the same and thereafter wife started raising quarrels for not having child. She made false allegation against him as to the ill treatment and demand of dowry and lodged the reports to the police station. His further evidence shows that despite various attempts made by him, she has not resumed the cohabitation and therefore, he constrained to prefer the petition for dissolution of marriage. It is further contended by him that with the false allegation the respondent/wife has filed application for grant of maintenance against him. Due to the behaviour of wife he suffered mental agony and therefore, as there was no alternative before him but to approach the Court. Therefore, he approached the Court and constrained to file petition for seeking decree of dissolution of marriage.

18. He was cross-examined at length. During his cross-examination, he denied that it was respondent/wife who was taking care of his father during the ailment as his father was suffering from paralysis. The cross-examination further shows that his father was hospitalized and at that time, it was respondent who was bringing tiffin for his father. He further admits that after discharge of his father from the hospital, father was bedridden. It further shows that maid servant was there but maid servant was not looking after his back. He was serving in Ordinance Factory and as per his evidence, his duty time was 7.00 a.m. to 7.00 p.m. His further cross examination shows that his elder brother is not alive and in the year 2009 there was a ritual of (Shradhha) of his elder brother. At the relevant time, the respondent extended her cooperation and organized all the rituals. She has also accompanied his uncle when his uncle has to join his posting at Jodhpur. His cross-examination further reveals that it was the wife who has joined the company and he has not visited her parents house to bring her back. It further shows that it was the wife who twice came to his house but he has not

taken any efforts to bring her back. Thus, the cross-examination of appellant specifically shows that in his absence maid servant and respondent were in the house. His admission shows that maid servant was not taking care of his parents, obviously it was the respondent who was taking care when appellant was on his duty. The specific admission further shows that whenever he was in need of assistance it was the respondent who has assisted him. Undisputedly, respondent has filed criminal complaint against him. The cross-examination further reveals that it was respondent who convinced him to take her back but refused to fetch her. It further shows that it was the respondent who made an attempt to join his company. Thus, as far as the cruelty is concerned, no specific instances are narrated by him. His evidence nowhere discloses what type of physical or mental harassment was caused to him due to the conduct of wife.

19. The respondent/wife has also adduced the evidence in both the petitions and she has reiterated the contentions as per her written statement. The sum and

substance of her evidence is that it was the appellant/husband who started ill-treating her. She has narrated the specific instances that she had been to her parents house on the occasion of marriage of her brother. When she returned after attending the marriage, she was not allowed by the present appellant to enter in the house. On the contrary, she was abused and therefore, she was constrained to leave the matrimonial house. Her evidence further shows that she again resumed the cohabitation at the house of the present appellant on 05.02.2012. At that time, the appellant was not in the house. On calling him, he abused her and asked her to go to her parents house. She again came back at her own on 26.03.2012 but it was the appellant who raised the quarrel with her and therefore, she constrained to leave the matrimonial house and thereafter on 01.04.2012 she lodged the report at Kamptee Police Station against the present appellant. The appellant has agreed before the police authority to maintain and cohabit her but on 17.04.2012 when she went to the house of the appellant, she was not allowed to enter in the house. Therefore, again on

19.04.2012 she lodged the report with police station Kamptee about the aforesaid incident. Thus, her evidence shows that it was she who has taken efforts to join the company of the appellant.

20. The evidence of her brother Rabin Arun Meshram is to the extent of ill-treatment to her by the present appellant. He has narrated that on various occasions his sister attempted to join the company of the appellant but it was the appellant who refused to accept her and was raising quarrel with her and also demanded money from her. His cross-examination shows that he has visited the matrimonial home of the respondent on various occasions.

21. Besides the oral evidence of the present respondent she has further relied upon the various complaints filed by her to the police authorities against the present appellant and filed in petition No.A-38/2014. She has filed a pursis that the evidence adduced by her in petition No.A-38/2014 be read in the present petition also. The said

pursis is at Exh.18. The complaints which she has filed are at Exh.20, 26, 21. On the basis of the evidence it is to be ascertained whether the contention of the appellant/husband that the respondent /wife was harassing him and ill-treating him by abusing and by filing complaints against him. In relation to matrimonial matters, it is contemplated that a conduct of such type which endangers the living of the other amounts to cruelty. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. Cruelty however, has to be distinguished from the ordinary wear and tear of the family life. The question whether the act complained off was a cruel act is to be determined from the whole facts and the matrimonial relations between the parties. In ***Samar Ghosh vs. Jaya Ghosh*** reported in ***(2007) 4 SCC 511*** the Hon'ble Apex Court given certain illustrative examples wherefrom inference of mental cruelty can be drawn. The Hon'ble Apex Court reproduced some of the illustrations:-

“(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

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(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

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(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

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(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.”

22. The allegations of cruelty cannot be considered on trivial issues. The allegation should have the origin with reference to time, place and manner of cruelty. General allegations of cruelty do not constitute cruelty in the eyes of law so as to grant decree of dissolution of marriage on that premise. Mere annoyance or irritation may not constitute cruelty, rather it is a spontaneous change in human behaviour which restricts the other side to live with the spouse under the fear of endangering life or bodily injuries. Though, the word, 'cruelty' has not been defined strictly, but it has to be gathered from attending circumstances of each case. The allegation should be specific with regard to time, place and manner of committing such cruelty. The cruelty should be such in which it is not reasonably expected to live together. It is observed by the Hon'ble Apex Court in ***Gurbux Singh vs. Harminder Kaur*** reported in ***AIR 2011 SC 114*** that the aggrieved party has to make a specific case that the conduct of which exception is taken amounts to cruelty. It is true that even a single act of violence which is of grievous and inexcusable nature satisfies the test of cruelty. The marital life

should be access as a whole and few isolated instances over a certain period will not amounts to cruelty.

23. After adverting the material on record it is not disputed that matrimonial relationship between the appellant and respondent was cordial approximately after 10 to 11 years. It is clear from the evidence of the appellant that he had grievance that the respondent was insisting him to shift at Nagpur. However, except his words there is no evidence on record to support or to substantiate the said contention. It is pertinent to note that his admissions itself show that the respondent had cooperated him while arranging the rituals of shradhha on account of death of his brother. His cross-examination further shows that it was the respondent who was managing all household chores. It further appears that the issue cropped in the matrimonial relationship when the respondent had left the matrimonial home to attend the marriage of her brother and stayed there. When she returned back the appellant has not allowed her to enter in the house.

Thereafter also she stayed. It is apparent that as she was not accepted or not allowed to enter in the house. Therefore, she constrained to leave matrimonial house. The evidence further shows that it was she who made an attempt to join the company of the present appellant. In specific words he has admitted that the respondent has convinced him for taking her back but he refused to fetch her. Thus, when he refused to fetch her back thereafter she approached to the police station and lodged the report. The evidence further shows that the police authorities have made an attempt to settle the matrimonial dispute and appellant has taken her on a pretext of cohabitation but subsequently not allowed her to enter in the house. Again she has made an attempt but it was the appellant who was not willing to cohabit with her and therefore, she was not having any alternate and she started residing along with her parents.

24. Thus, after giving thoughtful consideration to the controversy, it reveals that it was present appellant who has

denied to stay with her. The appellant has alleged that he was subjected for the cruelty. To constitute cruelty it is enough that conduct of one party is so abnormal and below the accepted norm that the other spouse could not reasonably be expected to put up with it. Cruelty was made a ground for divorce and the words that reasonable apprehension in the mind of the petitioner that it will be harmful or injuries for the petitioner to live with other party which are now omitted from Section 10. The word cruelty has not been defined in the Hindu Marriage Act. It has been used in Section (1) (i-a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. Thus, the appellant must have specific pleadings with reference to the instances of cruelty meted out by the respondent and those have to establish by the cogent and reliable evidence.

25. This aspect is also considered by the Hon'ble Apex Court in the case of *V. Bhagat vs. Mrs. D. Bhagat* reported in

AIR 1994 SC 710 relied upon by the learned counsel for the appellant wherein it is held that mental cruelty in Section 13(1)(ia) 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.

26. Section 13(1)(i-a) uses the word "treated the petitioner with cruelty". The word "cruelty" has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the court

will have no problem to determine it. It is a question of fact and degree. If it is mental, the problem presents difficulty. First, the inquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered.

27. It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court

should not search for standard in life. A set of facts showing cruelty in one case may not be in another case. The cruelty alleged may largely depend upon the type of life the parties are leading or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance.

28. In the light of above principles if the facts of the present case are examined and the evidence adduced is appreciated it reveals that the appellant failed to establish the cruelty by narrating a specific instances.

29. Per contra the evidence on record shows that it was the behaviour of the present appellant due to which the respondent constrained to leave the matrimonial house. The manner in which the appellant faced the cruelty itself is not proved. As already observed that mere annoyance or irritation or normal wear or tear difference does not constitute cruelty. The cruelty should be such in which it is not reasonably

expected for the couple to live together which is absent in the present case. The allegations made by the appellant/husband are not proved and therefore, the Family Court has rightly considered that the ground of cruelty is not established by the appellant.

30. The appellant has also challenged the judgment and order of maintenance passed in other petition granting maintenance at the rate of Rs.5,000/-. While granting maintenance the Family Court has considered the evidence which was adduced by the respondent therein. The salary certificate of the present appellant showing he was drawing salary of Rs.23,808/-. It is not disputed that the appellant is serving in Ordinance Factory. The evidence on record shows that it was respondent who has made an attempt to join the company of the appellant but the appellant has refused to fetch her back. The admission given by the appellant during the cross-examination itself sufficient to prove that there was refusal and neglect on the part of present appellant. His

evidence further shows that initially the respondent was serving as a Nurse but after marriage she left the job. Thus, it is apparent that she has no source of income to lead her life. The object of Section 125 of the Cr.P.C. is to prevent the vagrancy and to provide immediate relief to destitute women which was considered by the trial Court. Admittedly, the respondent has to incur the expenses to maintain herself towards her food, clothes and shelter. The family Court has considered these requirements. It is settled law that wife is entitled to live in the same status and standard as that of her husband. Therefore, having regard to entire facts and circumstances, the Family Court rightly assessed the amount of maintenance and granted maintenance @ of Rs.5,000/- per month. The amount granted towards the maintenance is reasonable and justifiable one. Therefore, no interference is called in the order of maintenance.

31. In the light of the above discussion, as we have already observed that we are unable to accept the contention of

the appellant husband, hence no ground is made out to interfere with the finding of the Family Court.

32. Accordingly point Nos.(i) is answered in negative and point No. (ii) is answered in affirmative. We accept the conclusion derived by the Family Court, Nagpur. Therefore, appeal bearing No.14/2016 and Criminal Revision No.83/2015 are dismissed.

33. Pending application/s, if any, shall stand disposed of accordingly.

(RAJ D. WAKODE, J.)

(URMILA JOSHI PHALKE, J.)