



CNR: KAHC030063332022

NC: 2026:KHC-K:10044-DB
MFA No. 202201 of 2022

IN THE HIGH COURT OF KARNATAKA KALABURAGI

DATED THIS THE 23RD DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE R.DEVDAS

AND

THE HON'BLE MR. JUSTICE BRUNGESH M

MISCL. FIRST APPEAL NO. 202201 OF 2022 (FC)

BETWEEN:

...APPELLANT

(BY SRI. SACHIN M MAHAJAN., ADVOCATE)

AND:

...RESPONDENT

(V/O DTD. 28.02.2023 SERVICE OF NOTICE TO RESPONDENT
IS HELD SUFFICIENT)

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COURT OF
KARNATAKA





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THIS MFA IS FILED U/S 19(1) OF THE FAMILY COURT ACT, BY THE ADVOCATE FOR APPELLANT, PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO CALL FOR THE RECORDS, SET ASIDE THE JUDGMENT AND DECREE DATED 31.03.2022, PASSED BY THE LEARNED PRINCIPAL FAMILY JUDGE AT BIDAR, IN MC NO.107/2020 AND ALLOW THE PETITION FILED IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.,

THIS MFA HAS BEEN HEARD AND RESERVED ON 24.06.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE R.DEVDAS
and
HON'BLE MR. JUSTICE BRUNGESH M

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE BRUNGESH M)

This appeal is preferred by the wife, Smt. Lata wife of Manojkumar Gaikwad under Section 19(1) of the Family Courts Act, calling in question the judgment and decree dated 31st March, 2022 passed by the Principal Family Court, at Bidar in M.C. No.107 of 2020, whereby the



petition filed by her seeking dissolution of marriage by a decree of divorce came to be dismissed.

2. Brief facts of the case are as under:

(i) The appellant, Smt. Lata is the legally wedded wife of respondent Shri Manojkumar son of Baburao Gaikwad. Their marriage was solemnized on 23rd April, 2014, at Bidar and it was an arranged marriage.

(ii) It is the case of the appellant-wife that, at the time of marriage, both she and the respondent-husband were employed in the Health Department on a contract basis. However, for the reasons best known to him, the respondent-husband left the said employment. Thereafter, he allegedly started neglecting the appellant-wife and picking up quarrels with her on flimsy grounds. According to her/wife, the ill-treatment gradually increased and the matrimonial relationship became seriously strained. It is further alleged that the respondent/husband, along with his family members, started manhandling her and that the



respondent-husband subjected her to physical abuse even during her pregnancy. In fact, it is alleged that respondent/husband once kicked her/wife during the advanced stage of pregnancy.

(iii) The appellant-wife further contends that, on 28th March, 2015, she gave birth to a daughter. However, according to her, the respondent-husband continued to subject her to cruelty even thereafter. She tolerated such conduct in the hope that he would change his attitude and that the matrimonial situation would improve. As the situation did not improve, she was eventually compelled to approach the Mahila Police Station. It is alleged that, due to the influence of the respondent-husband, the police did not register a case against him.

(iv) It is further alleged that the respondent-husband started making additional demands for dowry and, having left his employment, began depending upon the earnings of the appellant-wife. When she stopped



providing money to him, he allegedly resumed abusing and assaulting her. It is also alleged that he/husband made false allegations regarding her character.

(v) According to the appellant-wife, the matrimonial relationship had broken down irretrievably and there was no possibility of restoration of the relationship. It is further alleged that she was ultimately driven out of the matrimonial home. On these allegations, she instituted a petition seeking dissolution of marriage before the Family Court at Bidar, which came to be registered as M.C. No.107 of 2020.

3. Upon service of notice, the respondent-husband entered appearance and filed his statement of objections. While admitting the relationship between the parties, he specifically denied the allegations of cruelty and ill-treatment. He contended that the appellant-wife herself had deserted him three and a half years after the marriage, without any justifiable reason, and had not



shown any inclination to resume cohabitation with him despite his efforts. On these grounds, he sought dismissal of the petition.

4. After completion of the pleadings, the learned Trial Court afforded an opportunity to both parties to lead evidence. The appellant-wife examined herself as PW-1. She also examined her mother as PW-2, and an independent witness, as PW3. Four documents were marked on her behalf as Exs.P1 to P4. The respondent-husband examined himself as RW-1 but did not produce any documentary evidence.

5. After closure of the evidence, the learned Trial Court heard the arguments of both sides and, by judgment and decree dated 31st March, 2022, dismissed the petition. Aggrieved by the said judgment and decree, the appellant-wife has preferred the present appeal.



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Submissions on behalf of the appellant-wife:

6. The learned advocate for the appellant-wife submits that the Family Court has failed to appreciate that the matrimonial relationship between the parties has broken down irretrievably and that there is no possibility of reunion. It is pointed out that the respondent-husband himself has stated in his statement of objections that the parties have been residing separately for three and a half years after their marriage, i.e., since about the year 2017. Thus, according to the learned counsel, the prolonged separation and the absence of any possibility of restoration of the matrimonial relationship ought to have been taken into consideration by the Family Court/trial court.

7. It is further submitted that the appellant-wife was subjected to intense physical and mental cruelty and that sufficient evidence has been placed on record in support of the said allegation. The learned counsel contends that the Family Court has failed to appreciate the seriousness of the allegations and the evidence on record



in their proper perspective and has assigned unsustainable reasons for dismissing the petition.

Submissions on behalf of the respondent-husband:

8. Per contra, the learned advocate for the respondent-husband contends that the allegations made by the appellant-wife are self-serving and are not supported by trustworthy or acceptable evidence. It is submitted that, except for her oral allegations, the appellant-wife has not produced any material to establish that she suffered an abortion on account of the alleged cruelty or that she was subjected to the alleged ill-treatment by the respondent-husband. In the absence of such material, according to the learned counsel, the Family Court was justified in disbelieving the case of the appellant-wife and dismissing the petition.

9. The Trial Court records have been secured and perused. We have heard the arguments advanced by the



learned counsel appearing for the appellant-wife and the learned counsel appearing for the respondent-husband.

10. In the considered opinion of this Court, it is necessary, at the outset, to take note of certain admitted facts. It is an admitted fact that the marriage between the appellant-wife and the respondent-husband was an arranged marriage and was solemnized on 23rd April, 2014 at Bidar. It is also an admitted fact that, out of the said wedlock, a girl child was born.

11. It is pertinent to note that, at paragraph No.7 of the memorandum of appeal, the appellant-wife has contended that the respondent-husband started pestering her with a fresh demand for additional dowry. The learned counsel for the appellant-wife has also repeatedly advanced submissions on the same lines. However, on careful perusal of the averments made in the petition, it is noticed that the appellant-wife has not made any allegation that the respondent-husband demanded dowry



either at the time of marriage or subsequent thereto. Even in the petition, there is no specific allegation that the respondent-husband made any demand for additional dowry.

12. On the contrary, the specific allegation made in the petition is that the respondent-husband insisted that the appellant-wife should borrow hand loans from others and hand over the money to him. It is further alleged that the respondent-husband, for the reasons best known to him, left his employment and thereafter insisted that the appellant-wife should borrow money from others to meet his requirements and maintain his lifestyle. In the considered opinion of this Court, such an alleged request or insistence to borrow money by way of hand loans cannot, by itself, be equated with a demand for dowry.

13. Therefore, the allegation regarding a demand for additional dowry, which has been specifically raised in the memorandum of appeal, does not find support in the



pleadings. If such an allegation were in fact made and relied upon by the appellant-wife, the same would ordinarily have found a place in the original petition and also in the examination-in-chief of PW-1. The absence of such an allegation in the petition and in the evidence of PW-1 assumes significance.

14. As noticed earlier, the appellant also examined her mother, namely Rukmini, as PW-2. PW-2 has filed her affidavit under Order XVIII Rule 4 of the CPC in lieu of her examination-in-chief. Significantly, even PW-2 has not alleged that the respondent-husband demanded additional dowry from the appellant-wife. She has also not stated that any dowry was demanded by the respondent-husband either at the time of marriage or thereafter. Thus, the allegation contained in paragraph No.7 of the memorandum of appeal does not receive corroboration from the pleadings or from the evidence of PW-1/wife and PW-2/mother.



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15. Before arriving at any conclusion on this aspect, however, it is necessary to consider one suggestion put to PW-1 during her cross-examination. The learned counsel appearing for the respondent-husband suggested to PW-1 that she was falsely alleging that the respondent-husband had demanded dowry. PW-1 emphatically denied the said suggestion. The question, therefore, is whether such a suggestion put in cross-examination, coupled with the denial by PW-1, is by itself sufficient to establish the alleged demand for dowry.

16. It is well settled that a fact which has not been pleaded cannot ordinarily be established merely by adducing evidence. In ***Bondar Singh v. Nehal Singh*** reported in ***(2003) 4 SCC 161***, the Hon'ble Supreme Court has reiterated the settled principle that, in the absence of necessary pleadings, evidence cannot be permitted to travel beyond the pleadings.



17. Applying the aforesaid principle to the facts of the present case, the allegation of demand for dowry, insofar as it is sought to be projected in the memorandum of appeal and through the suggestion made during the cross-examination of PW-1, cannot be accepted as an independently established fact when no such specific allegation was made in the original petition and the same is also not supported by the evidence of PW-1 and PW-2.

18. It is also necessary to note that, during her cross-examination, PW-1 has stated that, about one year after the marriage, she gave birth to a child. She has further admitted that the birthday of the child was celebrated in a grand manner. Thereafter, the learned advocate appearing for the respondent-husband suggested to PW-1 that the expenses incurred for celebrating the child's birthday were borne by the respondent-husband. PW-1 emphatically denied the said suggestion and, in addition, explained that she herself had borne the



expenses of the birthday celebration from her own earnings. Significantly, after PW-1 gave such an explanation, the learned advocate for the respondent-husband did not further cross-examine her on this aspect.

19. Therefore, the explanation offered by PW-1 that she had herself borne the expenses of the birthday celebration appears probable and can be accepted. However, the question that arises is whether this circumstance, by itself, is sufficient to conclude that the respondent-husband had subjected the appellant-wife to ill-treatment.

20. In the considered opinion of this Court, the mere fact that PW-1 herself incurred the expenses of celebrating the birthday of the child cannot, by itself, constitute an act of cruelty or ill-treatment. **If PW-1 had stated** that she had requested the respondent-husband to contribute towards the expenses of the celebration and



that he had refused to shoulder such responsibility or to provide any amount for that purpose, the matter might have stood on a different footing. Such evidence could have been relevant to assess the respondent-husband's conduct towards the child and the appellant-wife. However, in the absence of any such evidence, the mere fact that the appellant-wife spent money from her own earnings for celebrating the birthday of the child cannot, by itself, lead to a conclusion that the respondent-husband had subjected her to cruelty or ill-treatment.

21. Further, it is necessary to note that, at page No.7 of her deposition, during cross-examination, PW-1/ wife has admitted the suggestion that on every *Panchami* festival, she used to go to her parental house. It is further necessary to note that the learned advocate appearing for the respondent-husband suggested to PW-1 that whenever she went to her parental house, the respondent-husband visited her there with an intention to take her back to the matrimonial home, her parents used to ill-treat and



humiliate him. However, PW-1-wife has specifically denied the said suggestion.

22. It is interesting to note that thereafter, the learned advocate appearing for the respondent-husband suggested to PW-1 that the parents of the respondent-husband, who are none other than the parents-in-law of the appellant-wife used to give her good advise and advise her to behave properly. PW-1 admitted the said suggestion. In the considered opinion of this Court, this admission assumes significance. However, this admission, by itself, may not establish that PW-1 had committed any particular act of misconduct. Nevertheless, when this admission is considered along with the other evidence on record, it indicates that there were occasions when the appellant-wife was also advised by her parents-in-law regarding her conduct and behaviour.

23. If the appellant-wife had explained that, despite such advice, the respondent-husband had also committed



certain acts which had contributed to the matrimonial dispute, such explanation would have required consideration. However, no such explanation has been offered by PW-1 in her evidence. Therefore, on a cumulative consideration of these circumstances and the other evidence on record, it can be said that the appellant-wife also appears to have contributed, at least to some extent, to the matrimonial discord between the parties.

24. Further, PW-1, during her cross-examination at page No.7 of her deposition, reiterated that she had been subjected to forcible abortion by her husband. The learned advocate appearing for the respondent-husband suggested to her that she was deposing falsely in that regard. PW-1-wife, however, emphatically denied the said suggestion.

25. In the considered opinion of this Court, before deciding the allegation of forcible abortion made by the appellant-wife, it is necessary to first examine the evidence of the respondent-husband as well. Thereafter, it



would be appropriate to consider and decide the allegation of forcible abortion made by the appellant-wife.

26. The record shows that the respondent-husband Manojkumar has examined himself as RW-1. The RW-1 has filed his affidavit under Order XVIII Rule 4 of the Code of Civil Procedure in lieu of his examination-in-chief. In the said affidavit, he has reiterated the objections and contentions taken in his objection statement. It is necessary to note that, in paragraph Nos.2 and 3 of the objection statement and paragraph Nos.3 and 4 of his affidavit filed in lieu of examination-in-chief, the respondent-husband has specifically stated that he and the appellant had led a happy married life for about three and a half years. He has further stated that thereafter, the brother-in-law of the appellant took her to his house, stating that he would bring her back to the house of the respondent-husband in the evening, but he did not do so.



27. The respondent-husband has further stated that thereafter, during the year 2017–2018, the appellant-wife went to her parental house along with her brother-in-law and that she has been residing there ever since. He has also stated that, on several occasions, he approached the appellant and requested her to return to the matrimonial home and lead a happy married life, but she did not respond to his requests. He has further stated that, on several occasions, he called his mother-in-law from his mobile phone, but she also did not respond. On the contrary, according to RW-1, his mother-in-law abused him in filthy language and threatened to kill him.

28. It is important to note that the record reveals that, even though the respondent-husband has made such serious allegations against the appellant-wife, the learned counsel appearing for the appellant has not disputed the said assertions by putting any specific suggestion in denial. Thus, the question that arises for consideration is



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as to what would be the legal effect of such failure on the part of the appellant-wife.

29. In this regard, it is apt to refer to the judgment of the Hon'ble Supreme Court in the case of ***Sarwan Singh v. State of Punjab*** reported in ***AIR 2002 SC 3652***, wherein the Hon'ble Apex Court has held as follows:

"It is a rule of essential justice that whenever the opponent has declined to avail himself of the opportunity to put his case in cross-examination, it must follow that the evidence tendered on that issue ought to be accepted."

30. If the aforesaid position of law is applied to the facts and circumstances of the present case, this Court has no option but to conclude that the allegations and assertions made by the respondent-husband, which have not been specifically disputed in cross-examination, have to be accepted. Thus, the circumstances create an impression that the appellant-wife has not disclosed the



entire factual position and has attempted to project a different picture before the Court.

31. Besides, it is necessary to note that, at page No.5 of his deposition, during cross-examination, RW-1-husband has denied the suggestion that, prior to the marriage, he was leading a lavish life. It was further suggested on behalf of the appellant-wife that he had an ambition to lead a luxurious or lavish life even before the marriage. RW-1 has emphatically denied the said suggestion.

32. The question, therefore, is whether, even if the said suggestion is accepted on its face value, such an ambition on the part of the respondent-husband could, by itself, be treated as harassment or ill-treatment of the wife. It is common knowledge that every human being would aspire to lead a comfortable and, if possible, a luxurious life. Merely because a person has or had an ambition to lead such a life, the same, per se, cannot be



treated as harassment or ill-treatment of his spouse. Therefore, the said suggestion put to RW-1 in cross-examination and his answer thereto do not assume any significance. Further, in the cross-examination of RW-1, it was suggested on behalf of the appellant-wife that, in the family of the respondent-husband, **except** himself, there were no other earning members. RW-1 has specifically denied the said suggestion.

33. In the considered opinion of this Court, the said suggestion put to RW-1 in cross-examination runs contrary to the earlier contention taken by the appellant-wife. The reason for arriving at such a conclusion is as follows.

34. It is apt to refer to the ratio laid down by the Hon'ble Supreme Court of India in ***Balu Sudam Khalde and another v. State of Maharashtra*** reported in ***AIR 2023 SC 1736***, wherein, at paragraph No.38, the Hon'ble Apex Court has held as follows:



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"38. It is evident that the suggestion made by the defence counsel to a witness in the cross-examination, if found to be incriminating in nature in any manner, would definitely bind the accused, and the accused cannot get away on the plea that his counsel had no implied authority to make suggestions in the nature of admissions against his client."

35. Thus, the Hon'ble Apex Court has reiterated the doctrine of law that "a suggestion put in cross-examination is a reflection of the case of the party putting such suggestion". If the said proposition of law is applied to the facts and circumstances of the present case, the suggestion that, "in the family of the respondent-husband, **except** himself, there was no other earning member", indirectly indicates an admission on the part of the appellant-wife that the respondent-husband was/is earning. Further, it was not suggested that the respondent-husband was earning illegally or by indulging in any anti-social activity. Therefore, the evidence on



record indicates that the respondent-husband was working and earning.

36. Thus, the question put to RW-1 in cross-examination and the answer given by him thereto are sufficient to cast doubt on the contention of the appellant - wife that the respondent-husband had left his job and was remaining idle and, therefore, being in need of money, was pestering her to pay money. This is yet another circumstance which creates doubt regarding the allegations levelled by the appellant-wife against the respondent-husband.

37. Further, it is necessary to note that at page No.6 of the deposition of RW-1, the appellant-wife suggested that the respondent-husband had not produced any material to establish his monthly salary. RW-1 admitted the same. The suggestion is factually correct. However, the mere absence of documentary proof regarding his income cannot, by itself, establish that the



respondent-husband subjected the appellant-wife to harassment or ill-treatment or demand of money.

38. In paragraph No.4 of the objection statement and paragraph No.4 of his affidavit filed in lieu of examination-in-chief, the respondent-husband specifically stated that he was working as Sales Manager at Manchester Life Sciences. However, he has not stated anything about his quantum of salary. Though, he did not produce documentary evidence in support of his income, the appellant-wife herself suggested that, in his family, he was the only earning member. This suggestion indicates that the respondent-husband was working and earning. Therefore, the non-production of documentary proof regarding his income is insufficient to conclude that he was jobless and, being in need of money, was pestering the appellant-wife to pay money to him.

39. Further, at page No.6 of his deposition, the appellant-wife suggested that, after the marriage and until



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the parties started residing separately, RW-1 was not working at all. Nevertheless, the subsequent suggestions put to RW-1/husband also disclose that said allegations are false.

40. At page No.7 of the deposition of RW-1/husband, the appellant-wife suggested that he had borrowed several hand loans from various persons and, therefore, was insisting that she should pay her salary to him. RW-1 denied the suggestion. It was further suggested that, when she refused such demand and subsequently stopped paying the amount, RW-1 tied her to a cot and started tarnishing her reputation. These suggestions were also denied by RW-1/husband.

41. The petition contains an allegation that the respondent-husband had, on one occasion, tied the appellant-wife to a cot and harassed her. She reiterated the same in her affidavit filed in lieu of examination-in-chief. However, neither the petition nor her examination-



in-chief, nor the examination-in-chief of PW-2/her mother contains any allegation that the respondent-husband was demanding or insisting upon payment of her salary. Thus, the allegation that RW-1 was demanding her salary was introduced for the first time by way of a suggestion in cross-examination, without any foundation in the pleadings. The legal effect of such a suggestion therefore assumes significance.

42. In ***Bondar Singh*** (*supra*), the Hon'ble Supreme Court has held that, in the absence of pleadings, any amount of oral evidence would not be sufficient to prove a fact. Applying the aforesaid principle to the present case, the suggestions put to RW-1 that he was demanding and insisting that the appellant-wife to pay her salary cannot be accepted, there being no foundation for such an allegation in the pleadings. It may, however, be contended that the present proceedings arise out of a matrimonial dispute and are not in the nature of an ordinary civil suit



and, therefore, the strict rules relating to pleadings and evidence may not apply with the same rigour. On that basis, it may be argued that the ratio in ***Bondar Singh*** (supra) cannot be applied with equal force to the present proceedings.

43. It is significant to note that Section 20(1) of the Hindu Marriage Act, 1955, mandates that every application presented under the said Act shall state, as distinctly as the nature of the case permits, the facts on which the claim for relief is founded and, except in a petition under Section 11, shall also state that there is no collusion between the appellant and the other party to the marriage. The expression "**the facts on which the claim for relief is founded**" assumes significance in the present case, particularly having regard to the nature of the allegation made by the appellant-wife.

44. The appellant-wife seeks dissolution of marriage on the ground of harassment, negligence and ill-



treatment. One of the allegations made by her is that the respondent-husband, being in need of money, was pestering her to borrow or obtain money from others and pay the same to him so as to enable him to clear his hand loans and meet his expenses. However, without there being any foundation in the pleadings, the appellant-wife introduced, during the cross-examination of RW-1, a further allegation that the respondent-husband was demanding or insisting her to pay her salary to him. If the appellant-wife intended to rely upon such demand for payment of her salary as a ground of harassment or ill-treatment in support of her claim for dissolution of marriage, such a material fact ought to have been specifically pleaded in the petition in terms of Section 20(1) of the Hindu Marriage Act. No such allegation is found in the petition. It has been introduced for the first time by way of suggestions put to RW-1 in cross-examination. Therefore, such suggestions, having no foundation in the pleadings, cannot be given any



significance while determining the claim of the appellant-wife.

45. Further, the appellant-wife has alleged that the respondent-husband was insisting that she should borrow hand loans from others and pay the said amounts to him for his use and enjoyment. This allegation was put to RW-1 in cross-examination, and he specifically denied the same. Thus, the oral evidence on this aspect is essentially a case of oath against oath. The appellant-wife, in her evidence, has made certain serious allegations against the respondent-husband. During her cross-examination, the respondent-husband attempted to elicit admissions in support of his case, but was unable to do so. Likewise, RW-1 has adhered to the contentions taken in the objection statement, while the appellant-wife, during his cross-examination, attempted to elicit admissions in support of her case but was unsuccessful.

46. In such circumstances, the oral evidence of the parties does not, by itself, provide a sufficient basis for



determining where the truth lies. It is well settled that, when the oral evidence is evenly balanced, the Court is required to examine the documentary evidence and other corroborative material on record to determine which version is more probable.

47. As stated above, in his objection statement as well as in his examination-in-chief, RW-1 has stated that the brother-in-law of the appellant-wife took her to his house, stating that he would bring her back to the matrimonial home in the evening. However, he did not do so and, thereafter, took her to her parental house. According to RW-1, the appellant-wife did not thereafter return to the matrimonial home. It is significant to note that, during the cross-examination of RW-1/husband, the appellant-wife did not dispute the said version by putting any specific suggestion that the statement was false or that RW-1 had created a concocted story. RW-1 further stated that, by the time of his cross-examination, the said



brother-in-law was no more. The appellant-wife did not elicit any further material from RW-1 to discredit this statement, nor has she placed any contrary material on record regarding the said circumstance.

48. Therefore, the specific version of RW-1 regarding the circumstances in which the appellant-wife went to her parental house and thereafter did not return to the matrimonial home has remained substantially unchallenged. In this context, the principle laid down by the Hon'ble Apex Court in **Sarwan Singh** (supra), assumes significance. At the same time, the oral evidence of the parties on the disputed aspects remains directly opposed to each other. The appellant-wife has made allegations against the respondent-husband, whereas RW-1 has denied the same and has put forward his own version regarding the matrimonial dispute. Thus, on these aspects, the evidence essentially remains oath against oath.



49. The appellant has also examined Smt. Sunita wife of Shamsunder, as P.W.3. She has filed her affidavit in lieu of examination-in-chief and supported the case of the appellant. However, in paragraph Nos.3 and 4 of her affidavit, P.W.3 specifically states that she came to know about the strained relationship between the parties and the alleged harassment and ill-treatment meted out to the appellant through the appellant herself and her mother. In the preceding paragraphs of this judgment, this Court has already noticed that the evidence of P.W.1/ appellant-wife and P.W.2/mother of the appellant falls short of the legal evidence required to establish the allegations made by the appellant. When that being so, there is no necessity to discuss the evidence of P.W.3 in detail. Suffice it to observe that, when the evidence of the appellant-wife and her mother itself is insufficient to establish the alleged ill-treatment and harassment, the evidence of P.W.3, which is based on the information furnished by them, also cannot be relied upon to establish the said allegations.



50. As stated earlier, the oral evidence on record is essentially oath against oath. Therefore, it is necessary to examine whether there is any documentary evidence supporting the allegations made by the appellant-wife against the respondent-husband. The appellant has got marked four documents. Ex.P1 is the Wedding Invitation card, whereas Exs.P2 to P4 are the Photographs of the appellant-wife and the respondent-husband taken at the time of their marriage. Since the marriage between the parties is not in dispute, there is no necessity to discuss Exs.P1 to P4 in detail. In any event, these documents do not throw any light on the alleged ill-treatment or harassment said to have been meted out to the appellant-wife by the respondent-husband.

51. It is also necessary to note that the specific allegation of the appellant is that, when she conceived for the second time, the respondent-husband and his parents forced her to undergo an abortion. However, the appellant has not produced any documentary or medical evidence in



support of this allegation. If such an allegation were true, some medical record or other supporting material could reasonably have been produced before the Court. In the absence of any such material, this Court finds it difficult to accept the said allegation merely on the basis of the oral assertion of the appellant. The appellant-wife has also alleged that she had lodged a complaint before the Mahila Police Station, but, that the police did not take any action against the respondent. This Court is conscious of the fact that, in matrimonial disputes, the police may, in appropriate cases, advise the parties to settle their differences amicably instead of immediately proceeding with criminal action. In such circumstances, the police may issue a NCR (Non-Cognizable Report), depending upon the nature of the complaint. At the least, the appellant-wife could have produced a copy of the complaint allegedly lodged by her before the Mahila Police Station alleging harassment by the respondent-husband. However, for the



reasons best known to her, no such material has been produced before the Court.

52. Therefore, on a careful consideration of the entire material on record, this Court is of the considered opinion that the appellant-wife has failed to establish, by cogent and acceptable evidence, that the respondent-husband subjected her to ill-treatment or harassment. Consequently, the ground of cruelty pleaded by the appellant-wife has not been established and, therefore, the appellant is not entitled to a decree of divorce on the said ground.

53. The appellant-wife/petitioner has also specifically asserted in the memorandum of appeal that she and her husband have not been living together for the last three to four years. However, mere separation of the parties for a considerable period, by itself, cannot be treated as a ground for dissolution of marriage when such



ground is not one of the statutory grounds available under Section 13 of the Hindu Marriage Act, 1955.

54. It is important to note that, while considering the evidence of the husband/respondent as R.W.1, this Court has noticed that he has consistently stated that the brother-in-law of the appellant had taken her to her parental house on the assurance that he would bring her back in the evening, but he did not do so and, thereafter, the appellant-wife continued to reside in her parental house. It is also noticed that the appellant-wife has not disputed this assertion of the husband by eliciting anything contrary to it in further cross-examination of RW-1/husband. Therefore, this circumstance gives an indication that the appellant-wife herself left the company of the husband/respondent. When that being so, in the considered opinion of this Court, the appellant-wife cannot rely upon the fact of their living separately as a ground for dissolution of marriage, particularly when the evidence



indicates that she herself left the company of the respondent-husband.

55. Another contention raised by the wife/appellant is that the marriage between the parties has irretrievably broken down and, therefore, there is no purpose in directing them to continue the marital relationship. According to her, dissolution of marriage by a decree of divorce would be the appropriate remedy. However, a perusal of Section 13 of the Hindu Marriage Act, 1955, makes it clear that irretrievable breakdown of marriage is not expressly provided as an independent ground for seeking a decree of divorce under the said provision. Therefore, in the facts and circumstances of the present case, this Court is of the considered opinion that the appellant-wife has failed to establish any statutory ground for dissolution of marriage by a decree of divorce. Consequently, this Court does not find any infirmity in the judgment and decree passed by the trial Court warranting interference in the present appeal.



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56. For the foregoing reasons, this court proceeds to pass the following:

ORDER

The miscellaneous first appeal filed by the appellant/wife is ***dismissed***.

Sd/-
(R.DEVDAS)
JUDGE

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