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HIGH COURT OF CHHATTISGARH AT BILASPUR

FAM No. 133 of 2015

{Arising out of judgment and decree dated 2-7-2015 in Civil Suit No.114-A/2012 of the Judge, Family Court, Rajnandgaon}

Lokesh Sinha, S/o Kanhaiyalal Sinha, aged about 30 years, Caste Kalar, R/o Near Jai Stambh Chowk, Rajnandgaon, Tahsil & District Rajnandgaon, Chhattisgarh, Civil & Revenue District Rajnandgaon.

(Plaintiff)

... Appellant

versus

1. Smt. Kusumlata Sinha, W/o Shri Lokesh Sinha, Caste Kalar, aged about 27 years, presently through her father Shri Parasram Sinha, Village Parastarai, Police Station Arjunda, Tahsil Gunderdehi, District Durg, Chhattisgarh

2. Devashish Nayak, S/o Maheshwar Nayak, aged about 31 years, Chief Security Officer, Simplex Company, Tedesara, R/o Tedesara, Police Station Somani, Tahsil & District Rajnandgaon, Chhattisgarh

(Defendants)

... Respondents

For Appellant : Mr. T.K. Jha, Senior Advocate with Mr. Parth Kumar Jha, Advocate.

For Respondent No.1 : Mr. Praveen K. Dhurandhar, Advocate.

For Respondent No.2 : None present, though served.

Division Bench: -

Hon'ble Shri Parth Prateem Sahu and
Hon'ble Smt. Sushma Sawant, JJ.

Judgment On Board
(29/09/2026)

Sushma Sawant, J.

1. Invoking the appellate jurisdiction of this Court under Section 19 of the Family Courts Act, 1984, the **appellant herein/plaintiff husband** has preferred this appeal challenging the judgment & decree dated 2-7-2015 passed by the Judge, Family Court, Rajnandgaon in **Civil Suit No.114-A/2012 (Lokesh Sinha v. Smt. Kusumlata Sinha and another)**, by which his application for grant of decree of divorce against **respondent No.1 herein/defendant No.1 wife**, has been rejected finding no merit.
2. Vide two Applications under Order XLI Rule 27 of the Code of Civil Procedure, 1908, namely, I.A.Nos.3/2021 & 6/2026, the appellant herein/plaintiff has requested that Annexure A-1 (copy of judgment dated 16/11/2018 passed by the Chief Judicial Magistrate, Rajnandgaon in CIS No.3388/2011), Annexure P-7 (copy of order sheet dated 31-8-2021), Annexure P-8 (copy of judgment dated 16-11-2021 passed by the 2nd Additional Sessions Judge, Rajnandgaon in ST No.67/2021) and Annexure P-9 (copies of order sheets passed in Civil Suit No.75-A/2013), respectively, be taken on record.
3. Similarly, vide another application under Order XLI Rule 27 of the Code of Civil Procedure, 1908, namely, I.A.No.4/2022, respondent No.1 herein/defendant No.1 has requested that Annexure D-1 (original agreement dated 31-8-2021), Annexure D-2 (copies of statements recorded in ST No.67/2021) and Annexure D-3 (copies of order sheets dated 13-12-2021 & 14-12-2021), be taken on record.

{FA(M)No.133/2015}

4. The aforesaid challenge has been made on the following factual backdrop: -

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the civil suit before the Family Court.)

Factual Matrix

:-Admitted facts:-

5. It is undisputed fact and admitted on record that both the parties i.e. the **appellant herein/plaintiff husband** and **respondent No.1 herein/defendant No.1 wife**, are governed by Hindu rites and customs and their marriage took place on 23-3-2010 at Rajnandgaon in accordance with the Hindu rites and customs by which they are husband and wife.

:-Case of the Appellant/Plaintiff Husband before the Family

Court:-

6. The plaintiff and defendant No.1 were married on 23-3-2010 at Rajnandgaon, Chhattisgarh, according to Hindu rites and customs. After the marriage, defendant No.1 joined the plaintiff at his matrimonial home. According to the plaintiff, the matrimonial relationship was not cordial from the beginning.
7. It is the allegation of the plaintiff that, on the first night of marriage, defendant No.1 had disclosed that she had been in a prior love relationship with one Omkar Sinha, a police constable residing at Dongargarh, and she expressed her unwillingness to continue the marriage. It is the further allegation of the plaintiff that defendant No.1

used to quarrel with the plaintiff and his family members repeatedly and used to threaten to implicate them in a false criminal case.

8. Further case of the plaintiff is that on 22-11-2010, defendant No.1 left the matrimonial home and thereafter resided at her parental home. Efforts were allegedly made by the parties and their relatives to resolve the matrimonial dispute, including intervention by the Chhattisgarh Dadsena Kalar Sinha Samaj. The plaintiff has also stated in the plaint that applications were submitted before the concerned police authorities seeking intervention, but the dispute could not be resolved. The plaintiff also alleged that thereafter defendant No.1 lodged complaints alleging dowry harassment against the plaintiff and his family members, pursuant to which a criminal case for offence under Section 498A read with Section 34 of the Indian Penal Code was registered and charge-sheet was filed before the jurisdictional criminal court. The plaintiff claimed that the allegations were false and that the criminal proceedings had caused him mental and physical harassment.
9. The plaintiff further alleged that defendant No.1 had continued her relationship with Omkar Sinha even after the marriage and since 22-11-2010, she had been living separately from the plaintiff for more than two years. The plaintiff, therefore, claimed that defendant No.1 had deserted him and there was no possibility of restoration of the matrimonial relationship between them. The plaintiff also alleged that on 22-6-2013, defendant No.1 married one Devashigyan Nayak and thereafter lived with him as his wife. On these allegations, the plaintiff

sought dissolution of marriage between the plaintiff and defendant No.1 by a decree of divorce under Section 13 of the Hindu Marriage Act, 1955, along with litigation expenses and other appropriate reliefs.

10. The plaintiff also pleaded that the cause of action arose on 22-11-2010 when defendant No.1 allegedly left the matrimonial home and subsequently on the dates on which criminal complaints were lodged against him and his family. It was further pleaded that the marriage was solemnized and the parties last resided together at Rajnandgaon, conferring territorial jurisdiction upon the Court. On the aforesaid factual premise, it was prayed that the suit filed for divorce be decreed.

**:-Written Statement of Respondent No.1/Defendant No.1 Wife
before the Family Court:-**

11. Defendant No.1 has filed written statement admitting that her marriage with the plaintiff was solemnized on 23-3-2010 according to Hindu rites and customs and she initially resided with him at her matrimonial home. However, she denied the plaintiff's allegations regarding any prior relationship with Omkar Sinha and stated that she married the plaintiff of her own free will and never had any relationship with any other person. She has further stated that after few months of marriage, the plaintiff and his family members started harassing and ill-treating her on account of insufficient dowry and she was forcibly sent to her parental home on 19-9-2010. She denied having deserted the plaintiff and stated that she has always been willing to resume matrimonial life with him. She has further stated that she made efforts for reconciliation through the community and has also instituted proceedings under

{FA(M)No.133/2015}

Section 9 of the Hindu Marriage Act for restitution of conjugal rights, which were pending before the Family Court, Durg. She denied the allegations of cruelty, desertion and adultery made by the plaintiff.

12. Defendant No.1 also disputed the territorial jurisdiction of the Court, contending that the marriage was solemnized at Parastarai, District Durg, and therefore the case was not maintainable before the Court at Rajnandgaon. She has thus, denied the material allegations of the plaintiff and sought dismissal of the divorce petition.

13. During the pendency of the proceedings, the **appellant/plaintiff husband** has impleaded one Devashish Nayak as respondent No.2 alleging that **respondent No.1/defendant wife** was having illicit relation with him. However, despite service of notice, respondent No.2/defendant No.2 remained absent and the proceeding against him were accordingly taken ex parte.

14. The Family Court after appreciating oral and documentary evidence available on record, framed following issues and answered the issues as under:-

क्र.	वाद प्रश्न	निष्कर्ष
1.	क्या प्रतिवादिनी ने विवाह के पश्चात् वादी के साथ क्रूरता का व्यवहार किया?	“नहीं”
2.	क्या वाद प्रस्तुति के दो वर्ष पूर्व से प्रतिवादिनी ने बिना युक्तियुक्त कारण के वादी का अभित्यजन किया ?	“नहीं”
3.	क्या वादी विवाह विच्छेद की आज्ञाप्ति प्राप्त करने की अधिकारी हैं ?	“नहीं”
4.	सहायता एवं व्यय ?	वादी का वाद निरस्त किया ।

15. Parties were given opportunity to adduce evidence and after completion of trial, the suit of the appellant herein/plaintiff husband has been dismissed vide **judgment dated 2-7-2015**, being aggrieved against which, this appeal has been filed on the following grounds:-

(i) The learned Family Court has erred in facts as well as law while dismissing the suit of the appellant for grant of decree of divorce.

(ii) In the facts and circumstances of the case, the learned Family Court has committed an illegality in recording a finding that there is no cruelty on the part of the respondent No.1-wife against the appellant-husband.

(iii) The learned Family Court has failed to appreciate the evidence of second marriage of respondent No.1 with one Devashish Nayak.

(iv) The learned Family Court failed to see that the appellant has been able to prove the allegation of adultery beyond reasonable doubt.

(v) The learned Family Court failed to appreciate that respondent No.1 has deserted the appellant for a continuous period of not less than two years immediately preceding the presentation of the petition.

(vi) In the facts and circumstances of the case, the learned Family Court ought to have held that after the solemnization of the marriage respondent No.1 treated the appellant with cruelty.

(vii) The learned Family Court failed to appreciate the evidence of the appellant and his witnesses wherein they have categorically stated that the respondent is a quarrelsome lady and used to quarrel with her husband and in-laws.

(viii) The Family Court failed to appreciate that just to save herself, respondent No.1 made a false report to the police due to which the appellant has to suffer several mental agony and stress.

-:Pleadings and Proceeding before the Appellate Court:-

-: Details of applications under Order 41 Rule 27 of the Code of Civil Procedure: -

16.It is pertinent to mention here that the husband has filed two separate applications, whereas the wife has filed one application. The said applications are being dealt with separately.

(1) Appellant's/plaintiff's application dated 17-6-2021 (I.A. No.3/2021)

17. An Application under Order 41 Rule 27 of the Code of Civil Procedure dated 17-6-2021 (I.A.No.3/2021) has been moved by the **appellant herein/plaintiff husband** with a request that **Annexure A-1** (copy of judgment dated 16-11-2018 rendered in a case for offence under Section 498A of the Indian Penal Code) be taken on record, on the ground that during pendency of this appeal, he has been acquitted of the said charge, therefore, the aforesaid document is relevant and necessary for proper adjudication of the dispute between parties.

Reply to application dated 17-6-2021:-

18. Respondent No.1 herein/defendant No.1 wife Kusumlata, while opposing the said application, filed a written reply contending that the said judgment cannot be admitted in evidence at the appellate stage.

(2) Respondent No.1 herein/defendant No.1's application dated 5-1-2022 (I.A.No.4/2022)

19. Respondent No.1/defendant No.1 wife, while filing an application under Order 41 Rule 27 of the Code of Civil Procedure dated 5-1-2022 (I.A.

{FA(M)No.133/2015}

No.4/2022), has prayed that the compromise entered into between the parties dated 31-8-2021 (**Annexure D-1**), the certified copy of evidence recorded in Sessions Trial No.67/2021 (**Annexure D-2**), and order sheets dated 13-12-2021 & 14-12-2021 (**Annexure D-3**) of the acquittal appeal, be taken on record.

(3) Reply to application dated 5-1-2022 and application of the appellant herein/plaintiff husband dated 16-1-2026 (I.A. No.6/2026):-

20. In reply to the aforesaid application filed by respondent No.1/defendant No.1 wife, the appellant/plaintiff husband has again filed an application under Order 41 Rule 27 of the Code of Civil Procedure, seeking to place on record the fact that he was in custody on the date of the compromise **Annexure P-7**, his acquittal in the Sessions Case **Annexure P-8**, and the order-sheets relating to the proceedings based on the alleged marital relationship between respondent No.1/defendant wife and another person **Annexure P-9**.

Reply to application dated 16-1-2026:-

21. Respondent No.1/defendant wife did not file any written reply to the second application; however, she opposed the same orally.
22. Heard on the First Appeal and the above mentioned Applications. In the context of the appeal and the applications, arguments, evidence and documents available on record of the Family Court, were examined.

Points for Consideration: -

23. In order to dispose of this First Appeal and the Applications under Order XLI Rule 27 of the Code of Civil Procedure, the following questions are to be considered:-

(i) Whether the documents submitted through Applications under Order XLI Rule 27 of the Code of Civil Procedure, can be taken on record?

(ii) Whether the Family Court is justified in rejecting the application filed by the Appellant-Husband for grant of decree of divorce on the ground of cruelty?

(iii) Whether the Appellant/plaintiff husband is entitled for decree of divorce as claimed?

:-Arguments of the Appellant/Plaintiff:-

24. On behalf of the **appellant herein/plaintiff husband**, detailed submissions have been advanced in terms of the grounds raised in the memo of appeal. It has been contended that the appellant sought a decree of divorce on three grounds, namely, “**cruelty**”, “**desertion**” and “**adultery**”; however, the Family Court failed to properly consider the evidence and documents produced by the appellant.

25. It has further been submitted that **respondent No.1/defendant wife** has placed on record an affidavit purportedly executed by the **appellant/plaintiff husband** along with the compromise petition. However, the **appellant/plaintiff husband** was in custody at the relevant time and, therefore, such affidavit could not have been

executed without the permission of the competent Magistrate. In the absence of any material showing that such permission was obtained, the said affidavit cannot be acted upon or taken into consideration.

26. It has also been contended that **respondent No.1/defendant wife** subsequently married a person named **Devashish**, which, according to the **appellant/plaintiff husband**, indicates her adulterous relationship. The **appellant/plaintiff husband** has further relied upon the fact that he was acquitted in the criminal case instituted for offence under Section 498A of the IPC, contending that the false allegations levelled against him therein also constitute cruelty.
27. Relying upon the judgment of the Supreme Court in the matter of ***Rani Narsimha Sastry v. Rani Suneela Rani, (2020) 18 SCC 247***, and the judgment dated 11-1-2024 of the Madhya Pradesh High Court in **First Appeal No.185 of 2014 (Prashant Kumar Jha v. Smt. Sadhna Jha)**, it has been contended on behalf of the appellant/plaintiff husband that the respondent/defendant wife, on false and baseless allegations, implicated the appellant/plaintiff husband in a criminal case under Section 498A of the IPC and institution of such proceedings on false allegations, with a view to harass and pressurize the appellant/plaintiff husband, caused him serious mental agony and humiliation and, therefore, it amounts to “**mental cruelty**” within the meaning of the provisions contained in the Hindu Marriage Act.

:-Arguments of Respondent No.1/Defendant No.1:-

28. Per contra, learned counsel for **respondent No.1/defendant wife** has contended that the **appellant/plaintiff husband** never intended to keep **respondent No.1/defendant wife** with him and with a view to falsely implicating her, instituted a false proceeding under Section 9 of the Hindu Marriage Act before the Family Court through his friend. It has further been contended that on the assurance that he would resume cohabitation with her, the **appellant/plaintiff husband** persuaded **respondent No.1/defendant wife** to enter into a compromise in another criminal proceeding and acting upon his assurance, she did not make any statement against the husband in the said proceeding, resulting in his acquittal. Thereafter, however, the **appellant/plaintiff husband** went back on his assurance and refused to keep her with him, despite there being no fault on her part.
29. It has also been contended that mere acquittal of the husband in the proceedings under Section 498A of the IPC does not, by itself, establish cruelty on the part of **respondent No.1/defendant wife**.
30. In this regard, learned counsel appearing for respondent No.1 relied upon the judgment of the Chhattisgarh High Court in the matter of ***Gopal Verma v. Poona Bai, 2017 SCC OnLine Chh 1092***, in which it has been held as under: -

“16. We have given our anxious consideration to this ground. However, present is a case where the appellant was initially convicted by the trial Magistrate and the order of conviction was set aside in appeal by the appellate Court. Even if illicit relation constituting cruelty in terms of Section 498A IPC is not found proved in the criminal case on the

{FA(M)No.133/2015}

principle of proof beyond reasonable doubt, the same cannot assist the appellant in the divorce proceeding because in the present case the respondent has examined one of the members of the Panchayat (DW-2) Ram Ashray Dilliwar who has stated that on verification the allegation of illicit relation was found true by the Panchayat.

17. Since civil cases are decided on the principle of preponderance of probability and the respondent is not seeking decree of divorce on the ground of appellant's illicit relation but she is defending the suit for divorce to raise just cause for deserting the company of the appellant, in our considered opinion, the facts in the matter before the Supreme Court were entirely different. Even otherwise, the trial Magistrate had convicted the appellant, therefore, it is not a case where FIR or the allegations were absolutely false and concocted. Moreover after the appellant's acquittal, the respondent had not taken the matter further by moving any revision or appeal against acquittal nor she had ever moved before the appellant's employer which might create adverse impact on his employment. Therefore, it is not a case where the respondent tried to falsely implicate or harass or torture the appellant in a frivolous case. Merely because the appellant has been acquitted in the criminal case, the same does not furnish a ground nor does it amount to cruelty for seeking decree of divorce.”

:- Details of evidence available before the Family Court:-

31. Before the Family Court, witnesses on behalf of the appellant/plaintiff have been examined as **Dhanraj Singh Thakur (PW-1) & Smt. Anita Sonwani (PW-2)** – neighbours of the plaintiff and **Lokesh Sinha (PW-3)** – the plaintiff himself, whereas witnesses on behalf of respondent No.1/defendant No.1 have been examined as **Kusumlata (DW-1)** – defendant No.1 herself and **Parasram Sinha (DW-2)** – father of defendant No.1.

:-Details of documents submitted by the Plaintiff husband:-

32. The plaintiff husband has submitted copy of order sheet passed in

{FA(M)No.133/2015}

Civil Suit No.75A/2013 and application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights filed on behalf of respondent No.2 herein before the Family Court, Rajnandgaon as **Exhibit-1**.

-:Details of documents submitted by defendant No.1 wife:-

33. Similarly, defendant No.1 wife has submitted copy of order sheet dated 16-1-2013 passed by the Sub-Divisional Magistrate, Chhawani, District Durg in Case No.248/2013 as **Exhibit D-1**, affidavit of respondent No.2 herein filed before the Court of Sub-Divisional Officer, Durg as **Exhibit D-2**, statement on oath of one Bharti Sahu as **Exhibit D-3**, complaint under Section 98 of the Code of Criminal Procedure filed by respondent No.2 herein as **Exhibit D-4**, police intimation regarding offence as **Exhibit D-5** and judgment dated 4-7-2014 passed by the 1st Additional Principal Judge, Family Court, Durg in Civil Suit No.104A/2013 as **Exhibit D-6**.

-:Analysis of the Appellate Court:-

Points for determination No. (i) -

34. First of all, considering the fact that whether the documents submitted by the appellant/plaintiff husband and respondent No.1/defendant No.1 wife through the above mentioned Interlocutory Applications (under the provisions of Order 41 Rule 27 of the Code of Civil Procedure, 1908) can be taken on record?

35. For this purpose, it would be appropriate to refer to the provisions contained in **Order 41 Rule 27 of the Code of Civil Procedure**,

1908. Under this provision, no additional evidence during the appeal, whether oral or documentary, is admissible; except in the following circumstances:-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause.

36. Upon examining the present case, in the context of the aforesaid provision, it is not reflected from the record of the Family Court that the appellant and respondent No.1 have produced these documents before the Family Court and the Family Court has refused to accept them. Apart from this, the grounds mentioned in the applications filed by the appellant and respondent No.1 are also not to the effect that, despite exercising due diligence, they were not aware of these documents or that they were unable to produce these documents before the Family Court.

37. Now, let us consider clause (b) of the aforesaid provision of Order 41 Rule 27 of the Code of Civil Procedure, 1908. The documents sought to

be produced by the parties relate to proceedings between them in other cases. Some of these documents pertain to earlier proceedings; however, they are certified copies issued by the Court, the authenticity of which has neither been disputed nor has any allegation been made that they are fabricated.

38. Having regard to the nature of the documents, they also appear to be relevant and conducive to the proper adjudication of the present appeal. Therefore, the documents can be taken on record under clause (b), as there is no legal impediment to their being considered by this Court.

39. As to the evidentiary value of these documents and the conclusions, if any, that may be drawn therefrom, the parties have already advanced their submissions on merits along with the appeal. Accordingly, those aspects shall be considered and decided while adjudicating the appeal on its merits.

40. In the aforesaid circumstances, all the three applications under Order 41 Rule 27 of the Code of Civil Procedure filed on behalf of the appellant and respondent No.1 are allowed, and the documents filed therewith are taken on record.

Points for determination No. (ii) and (iii) -

41. In the light of the rival submissions, an examination of the evidence available on record reveals that, out of the two witnesses examined on behalf of the **appellant/plaintiff husband**, one is his friend **Dhanraj Singh Thakur (PW-1)**. Although, in his examination-in-chief, he has deposed in terms of the pleadings, which appear to have

been pre-typed, in his cross-examination, he has expressed his lack of knowledge as to what actually occurred between the parties inside the house. He has stated only what his friend, i.e., the **appellant/plaintiff husband**, had told him regarding the incidents between the parties.

42. Likewise, neighbour of the plaintiff **Smt. Anita Sonwani (PW-2)**, in her cross-examination, has stated that she has no personal knowledge of what actually occurred between the parties inside the house and that whatever she has stated in this regard is based on what she had heard from others. Thus, no substantial assistance can be derived by the appellant from the testimony of these witnesses.

43. Although **respondent No.1/defendant wife** has examined herself as well as her father **Parasram Sinha (DW-2)** in support of her case, the burden of proving the grounds pleaded for dissolution of marriage rests upon the **appellant/plaintiff husband**. It is, therefore, necessary to examine the statements made by the **appellant/plaintiff husband** and the documents produced by him.

44. So far as the ground of “**desertion**” is concerned, nothing emerges from the **Appellant/plaintiff** husband’s testimony to establish that **respondent No.1/defendant wife** has been living separately from him without any justifiable cause. On the contrary, an admission made by the appellant/plaintiff husband **Lokesh Sinha (PW-3)** in paragraph 16 (*It is noteworthy that paragraph No.16 has been mentioned twice in deposition sheet. Reference to paragraph No. 16 in the subsequent paragraph shall be read as a reference to the second*

paragraph bearing No. 16.) of his cross-examination indicates that the wife had convened a social meeting in an attempt to resolve the dispute, wherein he refused to take her back and resume cohabitation with her.

45. An important fact also emerges from the document marked as **Exhibit D-6**, which shows that **respondent No.1/defendant wife** had instituted a proceeding for restitution of conjugal rights in Durg Family Court with a view to resuming cohabitation with the husband, in which an order was passed against the **appellant/plaintiff husband**. This circumstance clearly indicates that it was not the wife but the fault lies with the **appellant/plaintiff husband**. Therefore, the ground of desertion is not established.

46. As regards the ground of “**adultery**”, **respondent No.1/defendant wife** has contended that the husband, in collusion with his friend, had set up a false case against her through the said friend. It is noteworthy that the **appellant/plaintiff husband** introduced this ground during the pendency of the proceedings and, in support thereof, impleaded a third person, namely, **Devashish**, as a party.

47. There is no explanation from the **appellant/plaintiff husband** as to how he came to know about the alleged proceedings instituted by **Devashish**. The documents on record before the Family Court also do not appear to support the version put forward by the husband. The alleged application under Section 9 of the Hindu Marriage Act (**Exhibit-1**) was purportedly filed by the said person **Devashish** within 22-23 days of the marriage, alleging that he married Kusumlata

(respondent No.1/defendant of this case) on 22-6-2013, she had stayed with him for only seven days and thereafter went to her parental home on 30-6-2013 and did not return to the matrimonial home. Significantly, instead of taking any other legal recourse, the said person is stated to have directly instituted a proceeding for restitution of conjugal rights. These circumstances require careful scrutiny while assessing the evidentiary value of the material relied upon by the husband.

48.Although the application was instituted, it was withdrawn on the very first date of hearing. This fact is evident from the order-sheet produced under Order 41 Rule 27 of the Code of Civil Procedure. From the said proceeding and the order-sheet, no inference whatsoever can be drawn that the wife had contracted a second marriage.

49.On the contrary, the version put forward by **respondent No.1/defendant wife** appears more plausible in the circumstances of the case. The **appellant/plaintiff husband**, despite producing the aforesaid order-sheet and other documents, did not confront the wife with the same or put any specific question to her in this regard. Had such a question been put to her, she would have had an opportunity to furnish her explanation.

50.In the absence of such material and in view of the aforesaid circumstances, the proceeding in question appears to have been set up for the purpose of creating evidence against the wife. It, therefore, cannot be relied upon to establish the allegation of “**adultery**”.

Likewise, there is no specific or cogent evidence in support of the allegations concerning any alleged relationship of **respondent No.1/defendant wife** prior to the marriage.

51. As regards the ground of “**cruelty**”, the **appellant/plaintiff husband** has relied upon his acquittal in the proceedings under Section 498A of the Indian Penal Code, the judgment of acquittal having been produced along with the application under Order XLI Rule 27 of the Code of Civil Procedure, and has contended that the said acquittal establishes that the allegations of cruelty made against him were false. However, it is well settled that the concept of cruelty is person-specific and varies with the circumstances of each case. Mere acquittal in a criminal proceeding under Section 498A of the IPC does not, by itself, establish that the allegations constituting cruelty were false. For determining whether cruelty has in fact been established, the evidence available in the matrimonial proceedings has to be examined as a whole.
52. In **Gopal Verma** (supra), the High Court of Chhattisgarh has also clarified that the principles governing appreciation of evidence in matrimonial proceedings are distinct from those applicable in criminal proceedings.
53. It is pertinent to note that the documents produced by both the parties before the appellate Court also reveal that a criminal proceeding had been instituted between the parties, which was subsequently compromised. In connection with the said compromise, an affidavit of the **appellant/plaintiff husband** was executed and placed on record.

It is this very affidavit on which the husband has relied to contend that, at the relevant time, he was in custody and, therefore, such an affidavit could not have been executed without obtaining the permission of the Magistrate.

54. It is true that the affidavit indicates that the **appellant/plaintiff husband** was in custody at the time of its execution. However, there is no material on record to establish that the requisite permission of the Magistrate was not obtained. Nor has any plea been raised that the said affidavit is fabricated or that the signatures appearing thereon are not those of the **appellant/plaintiff husband**. Non-production of any material showing that permission was obtained from the Magistrate may be a circumstance requiring consideration; however, merely on that basis, the entire surrounding circumstances cannot be disregarded, particularly when the execution of the affidavit itself has not been specifically denied.

55. A perusal of the documents produced under Order 41 Rule 27 of the Code of Civil Procedure would show that, in the aforesaid criminal case under Section 307 of the IPC, which was registered on the report of **respondent No.1/defendant wife**, she did not support the prosecution case against the **appellant/plaintiff husband** in view of the aforesaid compromise, resulting in his acquittal. However, after achieving the intended purpose, the **appellant/plaintiff husband** did not adhere to his promise i.e. terms of the compromise and started refusing to keep the wife with him. Such conduct of the **appellant/**

plaintiff husband lends support to the wife's case and indicates that he was, in fact, unwilling to keep her with him and was subjecting her to cruelty.

56. There is no cogent evidence on record to establish that **respondent No.1/defendant wife** had withdrawn from the company of the **appellant/plaintiff husband** without any justifiable cause, that she was living in "**adultery**", or that she had subjected the husband to "**cruelty**". Therefore, the learned Trial Court committed no error in dismissing the husband's petition seeking dissolution of marriage.

:-Conclusion:-

57. In view of the foregoing discussion and for the reasons recorded herein-above, we are of the considered view that the impugned judgment & decree passed by the learned Family Court do not suffer from any error in appreciation of the material on record warranting interference in appeal. Consequently, the appeal deserves to be and is hereby **dismissed**.

58. Decree be drawn-up accordingly.

Sd/-
(Parth Prateem Sahu)
JUDGE

Sd/-
(Sushma Sawant)
JUDGE