

**HIGH COURT OF CHHATTISGARH, BILASPUR****FAM No. 94 of 2013****(Judgment/Order Reserved on 16.06.2022)****(Delivered on 13.07.2022)**

Dr. Ramkeshwar Singh S/o Shankar Prasad Aged About 30 Years R/o Prathmik Swasthya Kendra Mardapal, Tah. Kondagaon, P.S. Kondagaon, Distt. Kondagaron, Chhattisgarh
--- Petitioner

Versus

Smt. Sheela Singh @ Madhu Singh W/o Ramkeshwar Singh Aged About 26 Years R/o Center-1 C, 349 T.S. Balco Korba, P.S. BALCO, Distt. Korba C.G., Chhattisgarh
--- Respondent

For the Appellant : Mr. Manoj Paranjpe, Advocate.
For the Respondent : Mr. Himanshu Pandey, Advocate
along with respondent herself.

DB: Hon'ble Mr. Justice Goutam Bhaduri, Judge & Hon'ble-Mrs. Justice Rajani Dubey, Judge

C.A.V. Judgment/Order**Per Goutam Bhaduri, J**

1. The present appeal is against the judgment and decree dated 05.10.2013 passed by the Family Court Bilaspur in Civil Suit No.25-A/2006 whereby the petition filed by the husband seeking divorce u/s 13 of the Hindu Marriage Act, 1955 was dismissed.
2. (a) The brief facts of the case as have been pleaded by the husband before the court below, are that the marriage took place in between the appellant and respondent on



11.05.1995. Thereafter when she became pregnant unilaterally she got aborted the child without the consent of the husband. It is pleaded that after the marriage, the wife was found suffering with Tuberculosis and she often used to go to her maternal house and the applicant being a government doctor, could not always stay with her, therefore, for her benefit of health, she was sent to her parental house for treatment in 1995. Thereafter, many a time, he tried to take her with him but she used to take pretexts. It is stated that since she was not interested to stay with the husband, he filed an application for dissolution of marriage on 02.02.1996 which was eventually withdrawn before the Court at Jagdalpur and again on 06.11.1998 filed application for dissolution of marriage. The wife also filed application on 06.08.1996 before the Addl. Sessions Judge, Korba for dissolution of marriage which eventually was withdrawn on 15.03.2004.

2(b) It was pleaded that an FIR was lodged levelling false allegations against the husband and his entire family members, for which, a case was registered under section 498-A of IPC, thereby the appellant and his family members were put to harassment and in such adverse situation, the mother of appellant died on 06.07.1999 and despite knowing the information of death of his mother, the wife had not come to visit the husband. It is also stated that during the pendency of matrimonial case, the criminal case came to be finally decided on 28.02.2006 wherein the order was passed acquitting the husband and his entire family members. Subsequently the acquittal order was challenged



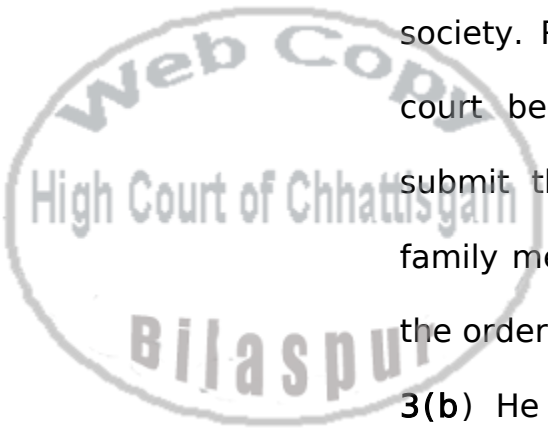


by the wife in criminal revision before the High Court and eventually the said revision bearing CRR No. Cr.R.No.340/2006 was dismissed on 28.11.2019.

3. (a) Learned counsel for the appellant referred to the pleadings made by him in application for divorce as also the contents of reply filed by the respondent and would submit that because of false report made by the wife, his entire family members were arrested. He would further submit that the acquittal order which was filed would show that false allegations were made and because of false report and initiation of subsequent proceedings, the reputation of the petitioner being a doctor was adversely affected in the society. Referring to acquittal order passed by the learned court below wherein the trial was conducted, he would submit that while acquitting the appellant along with all family members, the entire allegations were considered and the order was passed on merits.

3(b) He would submit that there has been irretrievable break down of marriage as the parties have been living apart since 15.05.1996 which is admitted by the father of respondent that she is residing separately. He further submits that not only the complaint filed by the wife u/s 498-A came to be dismissed resulting into acquittal but also the complaint of bigamy filed u/s 494 IPC ended with dismissal.

3(C) He would further submit that apart from personal attack, the father of respondent made a correspondence with the employer State on the ground that the appellant has obtained the job on the basis of a false certificate, for which,

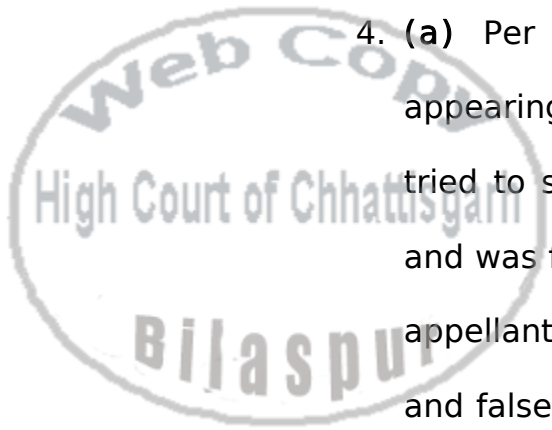




the litigation was filed before the High Court which too got dismissed. Therefore, if all the acts are taken into account, it would certainly amount to cruelty meted out by the wife. Referring to the judgment of Supreme Court in *Rani Narasimha Sastry v. Rani Suneeta Rani 2019 SCC OnLine SC 1595* he would further submit that in the like nature of cases, it is held that false accusations made by one spouse against the other would amount to cruelty. He also referred to the judgment passed by this Court in *Anjani Bhattacharya v. Smt. Latika Arpita Bhattacharya ILR 2019 Chhattisgarh 2418* and would submit that the finding of the trial Court would be wrong.

4. (a) Per contra, Mr. Himanshu Pandey, learned counsel appearing with the respondent submits that the petitioner tried to show that the wife was suffering from Tuberculosis and was forced to leave the house. He would submit that the appellant being a doctor took the advantage of his position and falsely declared the wife to be a patient of Tuberculosis, which later-on was negated by the subsequent medical examinations and prescriptions, which itself would reveal the fact that in order to send away the wife, false allegations were made.

4(b) He further submits that the appellant was in illicit relations with one Sudha Namdeo who was given the status of wife, which would be evident from the Life Insurance Policies wherein name of Sudha Singh was shown as wife and nominee. He also submits that in Voters ID also Sudha was shown as wife of the appellant, therefore, this conduct would show that from the day one, the appellant wanted to get rid

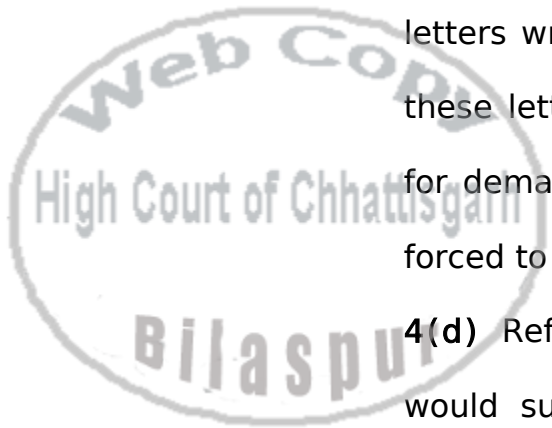




of the wife on one pretext or the other. He further submits that within one year of marriage, the divorce petition was filed which would show the intention of the husband.

4(c) With respect to the report made u/s 498-A, he would submit that the documents and letters which were written prior to occurrence of incident and making the report, would reveal that the wife was subjected to cruelty and harassment and eventually the report was made. He further submits that even if the acquittal order was there, this would not completely exonerate the husband of any charge of cruelty and on the part of the husband, the allegation of respondent-wife being treated with cruelty still exists. He refers to the letters written by the wife to her parents and submits that these letters would show that she was subjected to torture for demand of dowry and treated with cruelty and she was forced to undergo abortion on false pretext.

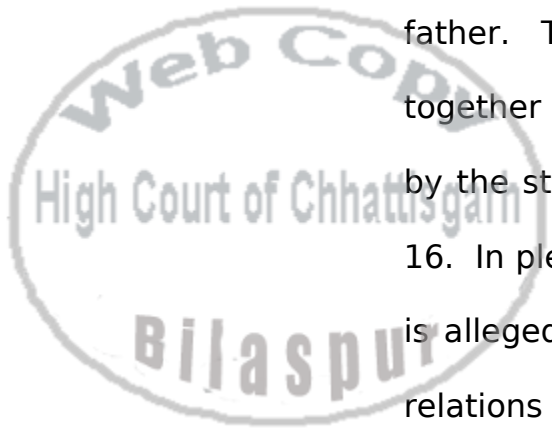
4(d) Referring to the statement of one Jayant Verma, he would submit that in criminal case, the documents were exhibited and the statements were recorded to show that the appellant got married to Sudha Singh, therefore, on some pretext or the other, the appellant tried to get rid of the respondent wife, hence it cannot be said that case of cruelty was not at all existing on the part of appellant. Learned counsel further submits that in criminal case, no representation was made on behalf of the State and complainant, therefore, proper adjudication could not be done. He also placed reliance in *(2017) 14 SCC 194 (Raj Talreja Vs. Kavita Talreja)* to further contend that mere filing of complaints is not cruelty, if there are justifiable reasons to





file the complaints. He further submits that in respect of service matter of the appellant, the dispute was not raked-up by the wife but it was carried forward by her father and she only intervened in the case.

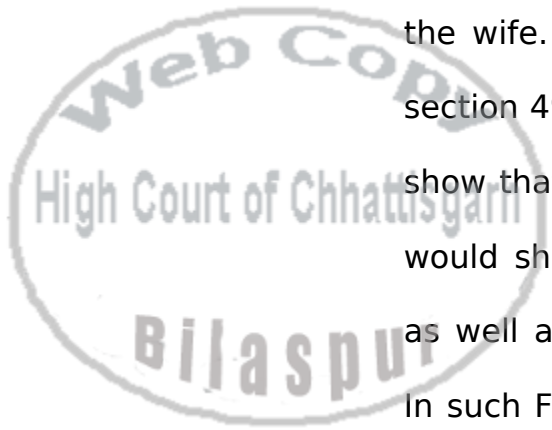
5. We have heard learned counsel for the parties at a length. Since the respondent was present in Court, she was also given opportunity of hearing to argue the case in addition to the arguments already advanced by her counsel, as such, she has also argued her case for a considerable time.
6. It is not in dispute that the parties were married on 11.05.1995 and they have been living apart since 15.05.1996 and since then she is residing separately with the father. Therefore, approximately for one year, they stayed together and thereafter parted ways. The said fact is fortified by the statement of her father Ram Swaroop Sinha at para 16. In pleadings made by the husband at Para 7(a) & 7(b), it is alleged that the allegations were made that he had illicit relations with one staff-nurse Sudha Namdeo. It has further been pleaded that the wife has lodged report making false allegation against the appellant as well as his age-old parents, unmarried sister and unmarried brothers at Police Station Chandini District Surguja that she was subjected to torture for demand of dowry of Rs.1 lakh. In reply to Para 7 of such pleading, it was contended by the wife that the husband used to maintain illicit relations with one Sudha Namdeo and spent nights with her. It is further stated that when a report was made u/s 498-A of IPC certain letters dated 13.08.1995, 02.10.1995 & 05.11.1995 were seized during police enquiry which are filed in the case. She further





reiterated the fact that the report made against the family members including the appellant about torture of non-applicant for demand of dowry is correct and the police after investigation came to conclusion that the offence u/s 498-A is made-out and the charge sheet was filed.

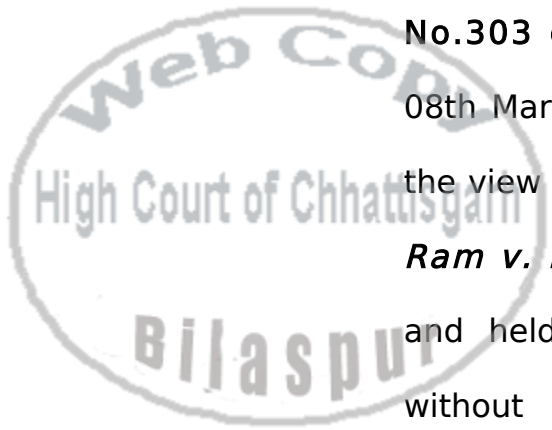
7. During the course of hearing before this court, respondent wife referred to different letters alleged to have been written by her while she was staying with the husband and thereafter. In such letters which were allegedly written on 09.02.1996, 14.02.1996 & 18.02.1996, it has been contended by the wife that the husband used to harass the wife, therefore, the cruelty was meted out by the husband to the wife. As against this, the copy of the FIR made under section 498-A of IPC is placed on record by the respondent to show that it was lodged on 19.06.1996. A perusal of the FIR would show that it was filed against the appellant husband as well as his aged parents, unmarried sister and brothers. In such FIR, it was alleged that she was treated with cruelty for demand of Rs.1 lakh coupled with a further allegation that he had relations with one lady namely Sudha Namdeo.
8. Pursuant to the report made by respondent wife, enquiry was conducted and during such enquiry, the documents including the letters which depict the alleged cruelty meted out by the husband to the wife were also seized. A perusal of the said order would show that the report was made after an application was filed by the husband under Section 13 of the Hindu Marriage Act.
9. The Court accepted the contention of the husband in a finding that after the notice of divorce was received, wife





Sheela Singh fabricated the letters and falsely inculpated the husband and other family members and eventually it was held that no offence u/s 498-A of IPC is made out. Therefore, after evaluating the evidence, the learned Judicial Magistrate acquitted the husband and all the family members by order dated 28.02.2006. At para 20 of the judgment, the learned trial Court has recorded the finding of acquittal. Therefore, it is not in dispute that the said acquittal order passed on 28.02.2006 was filed before the learned Family Court. Though such document was not exhibited, yet it is a judicial pronouncement.

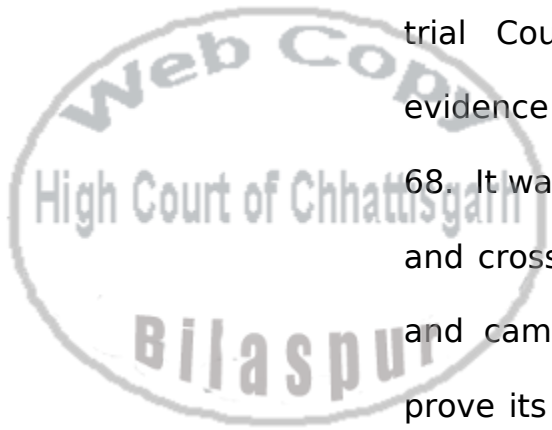
10. The M.P. High Court (Indore Bench) in **Second Appeal No.303 of 1958 (*Jadi Bai Versus Harsingh*)** decided on 08th March, 1961 reported in **1963 JLJ 842** had reiterated the view taken by Their Lordships of Privy Council in ***Tulshi Ram v. Kamla Prasad Balam Das, 1937 AIR (Pat) 222*** and held that where the documents are duly produced without objection and being certified copies of public documents can be taken to be proved and where after such production the opposite party had fair opportunity to rebut that material, it cannot be said that the documents should be left out of consideration on account of non-compliance with what may be called a mere formality of making an endorsement as to their admission.
11. Here, in the instant case, it has not been disputed about the issuance of the document i.e., certified copy of the judgment of acquittal. Therefore, in exercise of power under Order 41 Rule 27 of CPC, the discretion of Court would lean in favour of the appellant by inferring the fact that a criminal trial was





held which resulted into acquittal. It being certified copy of judgment is accepted in evidence. This Court In *Abhishek S/o Narayan versus Seema W/o Abhishek 2021 LawSuit (Chh) 869* while allowing the application under Order 41 Rule 27 of CPC, held that certified copy of the judgment is accepted as evidence being a relevant fact.

12. The order of acquittal was challenged by the wife in Criminal Revision No. 340/2006 filed before the high Court. The learned single Bench of this Court, after hearing the argument at length especially the contention of the wife that the acquittal judgment of the trial Court is bad in law as also considering the facts on record observed that the learned trial Court has appreciated the oral and documentary evidence at Paras 10 to 13 which is clear from Ex.D-1 to D-68. It was further observed that the trial Court has examined and cross examined witness Ramkeshwar Singh in evidence and came to a finding that the prosecution has failed to prove its case beyond reasonable doubt, on the other hand, the accused respondents have succeeded to prove their defence. It was therefore further held that the learned trial Court has rightly acquitted the respondents from the charge. This order of dismissal of revision affirming the order of acquittal which was at the behest of respondent No.5 is also not in dispute. The certified copy of the same has been placed on record.
13. The respondent wife by reading the correspondence, which was stated to have been made prior to the report u/s 498-A, has tried to establish that she was treated with cruelty. It was eventually concluded by way of FIR. The said argument





of the respondent appears to be completely misconceived for the reason that the evidence which was led before the Court of Judicial Magistrate including the letters written which were alleged to be seized during the enquiry by the Police were produced in the criminal case. Later on, after the evidence was adduced the court below came to conclusion that no offence u/s 498-A of IPC is made out to hold that the wife was treated with cruelty for demand of dowry. Any effort, at this stage, would amount to reviewing the finding arrived at by the Judicial Magistrate as also the High Court and would not be in proper judicial propriety to disturb the finding in the revision passed by the High Court.

14. The further submission has been made by the wife that the husband being a doctor took the advantage of his position and false ailment of Tuberculosis was clamped. During the course of submission, the document has been referred by the respondent wife that while she was tested for Tuberculosis at her parental place, it was all tested negative. Certain letters written by the husband have been referred to demonstrate that it was the husband who insisted that the wife was ailing. However, this Court cannot act as an expert to give an opinion that whether the respondent was actually suffering from Tuberculosis for the reason that the subsequent negative report came. Whereas in the application for divorce the husband only stated that she was suffering from Tuberculosis before the marriage and it was concealed during marriage. However, after the marriage, she was being treated. Except this, no inference can be arrived at by the submission of the parties.





15. The documents and the facts surfaced on record would show that on the basis of report made by the wife u/s 498-A of IPC the husband along-with all other family members were roped in and they were eventually arrested. The respondent wife tried to canvass that she was treated with cruelty by the husband by showing that he wrote certain love letters which were recovered from the suit case which are marked as Ex.D-1 to D-3. It has been further stated that in Life Insurance Policy, the wife was shown as Sudha and not the respondent. The LIC Policies were marked as Ex.D-7, D-8, D-9 & D-10. Likewise, the voters list was marked as Ex.D-5 wherein at Sl.No.479 the name of R.K. Singh appears and at Sl.No.480 the name of Sudha Kushwaha, wife of R.K.Singh is shown. These evidences may invite the inference about the character of husband, however, will not over ride the report made by wife under Section 498-A of IPC and subsequent acquittal by the Courts on merits.

16. The Supreme Court in ***Samar Ghosh Versus Jaya Ghosh (2007) 4 SCC 511*** has indicated the illustrative cases wherein the inference of mental cruelty can be drawn. Para 101 is relevant and quoted below:

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive :

(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.
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(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.
(iii)	Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.
(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.
(v)	A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.
(vi)	Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.
(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.
(viii)	The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.
(ix)	Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.
(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.





(xii)	Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.
(xiii)	Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.
(xiv)	Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

17. Further the Supreme Court in *Rani Narasimha Sastri Vs. Rani Suneela Rani 2019 SCC Online S.C. 1595* has observed that when a prosecution was launched against the husband on a complaint made by the wife u/s 498-A of IPC making serious allegations in which the husband and his family members were constrained to undergo trial which ultimately resulted into acquittal, then in such case it cannot be accepted that no cruelty was meted out on the husband, therefore, he can make a ground for grant of decree of dissolution of marriage u/s 13(1)(i-a) of the Act. In the instant case, the report was made by the wife not only against the husband but also against his aged parents, unmarried sisters and brothers of the appellant. Admittedly, they were arrested and had sustained the torment of criminal trials. A perusal of the judgment of acquittal of the learned court below followed by the finding arrived by the High Court would show that the appellant was acquitted of the charges by recording the clear findings.

18. In case of *Raj Talreja Vs. Kavita Talreja AIR 2017 SC*





2138 the legal position as to when a false complaint would amount to cruelty was also examined, as below :

“11. Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage act, 1955 (For short the Act). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty. In the present case, all the allegations were found to be false. Later, she filed another complaint alleging that her husband along with some other persons had trespassed into her house and assaulted her. The police found, on investigation, that not only was the complaint false but also the injuries were self-inflicted by the wife. Thereafter, proceedings were launched against the wife under section 182 IPC”.

19. Applying the above legal proposition, we are of the opinion that in this case false accusations were made by the wife and having made the report with false allegations, the appellant and his entire family members including his age old parents were forced to pass through the of criminal trial which would definitely have the effect of lowering his reputation in the society. Certainly it will have an adverse affect in the social standing of a family as it results into isolation of a person



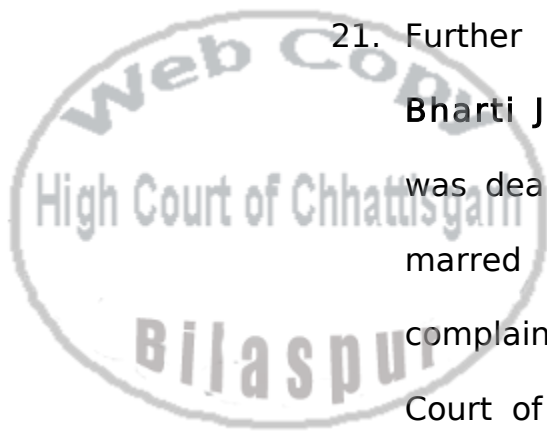


who faced criminal trials because of the false accusations made by the other spouse. Therefore, before making such allegations, regard must be had to social status, educational level of the parties and the society they move-in, otherwise, such allegations would amount to cruelty.

20. In the landmark decision of **Mayadevi vs. Jagdish Prasad (2007)**, the Supreme Court held that both either spouse can apply for divorce on grounds of any kind of mental cruelty faced and the provision was not just restricted to woman but extended to men as well. In that case, the husband was granted divorce on grounds of repeated cruelty inflicted by his wife.

21. Further in a recent decision of **Joydeep Majumdar v. Bharti Jaiswal Majumdar (2021)** (supra), a similar issue was dealt with by the Supreme Court where the wife had marred the reputation of the husband by defamatory complaints to husband's superiors in army, which led to a Court of inquiry held by the Army authorities against the husband. His reputation was damaged and career progress suffered. The Supreme Court held "When the reputation of the spouse is sullied amongst his colleagues, his superiors and the society at large, it would be difficult to expect condonation of such conduct by the affected party." The Court also held that the High Court was in error in describing the broken relationship as normal wear and tear of middle class married life and the marriage was dissolved.

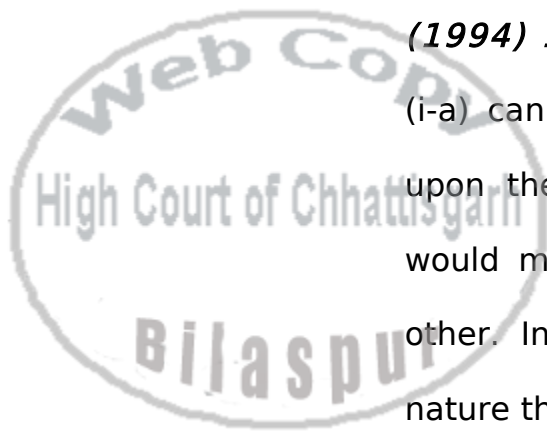
22. In the present case, apart from the appellant-husband, his entire family members were inculpated. The wife alleged that the husband has treated her with cruelty and he was not





entitled to divorce. In acquittal judgment of the Court below, it was categorically found that the allegations are patently false. If the letters on which the respondent wife vehemently relied are examined, the cumulative effect of which would go to show that periodically the allegations are made against the husband and all her in-laws. The authenticity of the letters was not accepted by the learned trial Court while adjudicating the trial. As such, when the finding has been arrived at about the conduct of the respondent who levelled false accusations against the appellant, it would lead to show "Cruelty" on her part.

23. The Supreme Court in *V. Bhagat v. D. Bhagat (Mrs.) (1994) 1 SCC 33* held that mental cruelty in Section 13(1) (i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it 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 with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not





amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.

24. The appellant is a Doctor and as stated during the course of hearing, the respondent wife is a private teacher. Therefore, facing a criminal case would always castigate a stigma in the Society. The report u/s 498-A of the IPC cannot be used as a tool to teach a lesson to the family members of the husband as it may adversely affect the future prospects of a young professional and it may take long time to fill up the gap. Therefore, we are of the opinion that false accusations made by the wife against the entire family members under section 498-A would amount to mental cruelty and such conduct of respondent wife which inflicts upon the appellant husband such mental pain and suffering would make it not possible for her to live with the appellant husband.

25. With respect to bigamy, copy of the order dated 14.09.2011 passed by the Additional Sessions Judge, Korba in criminal revision No.36/2011 wherein the respondent was also a party, has been produced by the wife. A perusal of the same would show that a complaint was filed by the wife u/s 494 read with section 39 wherein certain interim order dated 19.12.2017 was granted. Though the bunch of documents have been filed by the wife, what was the ultimate fate of the complaint filed by the wife u/s 494 has not been made clear. Therefore, at this stage, no finding can be given about the relationship of the husband with the lady Sudha Namdeo.





26. Further the nature of accusations made against each other in a matrimonial case would show that since 1996, the parties are living apart and litigating in different courts. Taking into such facts into consideration, we are of the view that that there is irretrievable break-down of marriage which is beyond repairs. Under the circumstances, we allow the appeal and grant a decree of divorce to the husband. The marriage solemnized between the parties is dissolved and accordingly a decree be drawn.

27. Now coming to grant of alimony to wife, it is apparent from the facts and pleadings that the appellant is a Government Doctor and the respondent is a teacher in a private school. Since the appellant is a Government Officer drawing salary from State exchequer and looking to the status of parties, in order to avoid further litigation between the parties, it would be appropriate for us to grant alimony of Rs.15,000/- per month to the wife, which would be deducted from the monthly salary of appellant. Accordingly, it is directed that the appellant shall pay maintenance of Rs.15000/- per month which the wife is entitled to received through the court below after making necessary deductions every month from the salary of the appellant.

**Sd/-
(Goutam Bhaduri)
Judge**

**Sd/-
(Rajani Dubey)
Judge**

**Head Notes**

The report u/s 498-A IPC cannot be used as a weapon to teach a lesson to the entire family of husband to settle a matrimonial score with the husband.

पति के साथ वैवाहिक विवाद के निपटारे हेतु भारतीय दंड विधान की धारा 498-क के अधीन रिपोर्ट का प्रयोग पति के समस्त परिवार को सबक सिखाने के लिए एक हथियार के रूप में नहीं किया जा सकता है।

