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**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
BEFORE  
HON'BLE SHRI JUSTICE SHEEL NAGU  
&  
HON'BLE SHRI JUSTICE VINAY SARAF  
ON THE 11<sup>th</sup> OF JANUARY, 2024  
FIRST APPEAL No. 185 of 2014**

**BETWEEN:-**

**PRASHANT KUMAR JHA S/O SHRI SURESH KUMAR JHA, AGED ABOUT 35 YEARS, OCCUPATION: AUTO RICKSHAW DRIVER R/O BESIDES PURUSWANI GARAGE, OLD POWER HOUSE CHOWK, SATNA, P.S. CITY KOTWALI, SATNA (MADHYA PRADESH)**

**.....APPELLANT**

***(BY SHRI MANOJ CHATURVEDI - ADVOCATE)***

**AND**

**SMT. SADHNA JHA W/O PRASHANT KUMAR JHA, AGED ABOUT 32 YEARS, OCCUPATION: HOUSEWIFE, D/O SHASHI BHUSHAN JHA, R/O PRABHAT VIHAR COLONY SATNA, P.S. CIVIL LINES, SATNA (MADHYA PRADESH)**

**.....RESPONDENT**

***(BY SHRI PRAMOD K. SAHU - ADVOCATE)***

.....

*This appeal coming on for hearing this day, Justice Vinay Saraf passed the following:*

**ORDER**

Judgement dated 6.2.2014 passed in H.M. Case No.51/2011 by IVth Additional District Judge, Satna is subject matter of challenge in the present appeal, whereby application filed by appellant-husband under Section 13(1)(i) and 13(1)(i-a) of Hindu Marriage Act (H.M. Act), 1955 for seeking decree of divorce on various grounds was dismissed.

2. It is admitted in the present matter that appellant-husband and respondent-

wife were married on 20.2.1994 and there are three children out of wedlock and children are residing with respondent-wife. The appellant filed application on 7.3.2007 for grant of decree of divorce on two grounds. Firstly, respondent treated appellant with cruelty and secondly that respondent had voluntarily made physical relations with another person other than her spouse. At the outset, during course of argument, learned counsel Mr. Manoj Chaturvedi appearing on behalf of appellant gave up the ground of adultery as person with whom respondent-wife allegedly made physical relation was not impleaded as party in the matter and for purpose of proving allegation of adultery, it is essential to implead person as party in the case. Since, counsel for appellant gave up the ground of adultery, only ground left for consideration is cruelty and therefore, the pleadings, evidence and arguments relevant to the allegation of cruelty are considered hereinafter.

3. Appellant pleaded in main application filed for divorce that behaviour of respondent was cruel with appellant and appellant lodged complaints against respondent-wife before Police authorities time to time complaining her behaviour and threats. Appellant-husband further pleaded in his petition that respondent-wife always threatened him to lodge criminal reports against him and his family members. According to petition, respondent-wife threatened appellant that she will commit suicide or lodge report of harassment due to demand of dowry.

4. Respondent-wife denied the allegations in toto and prayed for dismissal of petition by filing written statement in the matter.

5. Appellant-husband examined himself as PW-1, Neelam Jha (PW-2), Paras Shah (PW-3) and respondent-wife examined herself as DW-1 and Pankaj Jha

(DW-2). In statement, appellant repeated allegations leveled in petition and stated that respondent lodged report at Police Station Mahila Thana, Satna against appellant and his parents registered under Section 498-A of IPC and 3/4 of Dowry Prohibition Act as Crime No.17/2007 wherein during investigation, appellant and his parents were arrested and were taken in custody. Appellant produced copies of several complaints lodged by him against respondent before Police authorities, Copy of charge-sheet, F.I.R. lodged by respondent and other relevant documents to demonstrate that respondent treated him with cruelty.

6. In cross examination of appellant, it was brought on record by the counsel for respondent that criminal case lodged by respondent is pending against appellant and his parents. Neelam Jha (PW-2) and Paras Shah (PW-3) supported the statement of appellant. In statement, respondent reiterated allegation of demand of dowry, harassment etc. It is stated by her that criminal case is pending against appellant and his parents upon report of respondent. Pankaj Jha (DW-2) supported the allegation of demand of dowry etc.

7. Learned trial Court framed three issues. First in respect of cruelty, second in respect of adultery and third relief and costs and after considering the evidence by judgment dated 6.2.2014, dismissed application filed by appellant-husband for grant of decree of divorce.

8. During pendency of appeal, I.A. No.7141/2023 filed on behalf of appellant under Order 6 Rule 17 read with Section 151 of CPC for incorporating pleadings in respect of subsequent event acquittal of appellant and his parents in criminal case lodged by respondent and prayed for grant of decree of dissolution of marriage on the ground of cruelty for lodging false report. The I.A. was allowed by order dated 12.5.2023 and consequently amendment was

incorporated by appellant in appeal memo. I.A. No.6758/2023 filed by appellant under Order 41 Rule 27 of CPC with a prayer to consider judgment of criminal case as additional evidence. Looking to facts and circumstances of the case and order dated 12.5.2023 by which application filed under Order 6 Rule 17 of CPC was allowed, it is just and proper to consider judgment passed by criminal court delivered during pendency of this appeal as additional evidence because the same is having bearing on merits of the case and judgment passed by criminal court is subsequent and relevant to issues of the case. Consequently, I.A. No.6758/2023 is allowed and judgment passed by JMFC Satna in Criminal Case No.1890/2007 on 25.3.2017 is accepted as additional evidence. In peculiar facts and circumstance of present case, it is not essential to remand the case for recording further evidence or for formally proving document accepted as additional evidence by adducing evidence as the document is certified copy of judgment passed by JMFC Satna.

9. It is vehemently argued by learned counsel for appellant that by lodging false report respondent has treated the appellant with cruelty and on that ground alone decree of divorce may be granted. He further argued that learned trial Court committed error of law in not granting decree of divorce on the ground of cruelty despite ample evidence available on record that respondent treated appellant with cruelty and lodged false report against appellant and his parents and threatened to commit suicide.

10. Learned counsel for appellant relied on judgment of Apex Court in the matter of **K. Srinivas vs. K Sunita** reported in **JT 2014(13) SC 8** wherein Apex Court has held that, *if a false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty,*

*such as would entitle the other spouse to claim a divorce. It is further held that when wife had filed a false criminal complaint, and even on such complaint is sufficient to constitute matrimonial cruelty and for grant of decree of divorce.* In the matter in hand, respondent-wife has admitted in her statement that she lodged report before Police and and upon her report, criminal case was registered against appellant and his parents. Appellant-husband has filed copies of several complaints lodged by him prior to report lodged by respondent-wife, wherein appellant reported to police authorities that his wife is threatening to lodge false criminal case against him and living in adultery. This fact clearly indicative of the situation that criminal complaint lodged by respondent-wife was afterthought and ill advise.

11. Learned counsel Mr. Pramod K. Sahu appearing on behalf of respondent-wife opposed the prayer and argued that ground of lodging false F.I.R. was not pleaded and copy of judgment was filed directly before High Court, therefore, no decree of divorce can be granted. He relied on the judgment of coordinate Bench in the matter of Kunal Kant Saxena vs. Smt. Sangeeta Saxena and another, F.A. No.16/2010 passed on 20.12.2022, wherein coordinate Bench after considering pleadings of the parties, evidence and argument held that husband failed to prove that wife after solemnization of marriage has raised cruelty upon appellant. In the said matter, allegation of lodging false criminal case and acquittal by competent criminal court was not in issue and on the contrary, upon report of husband, wife was prosecuted and was acquitted. Therefore, judgment rendered in the matter of Kunal Kant Saxena (supra) is not helpful to respondent in present matter.

12. Learned counsel for respondent further relied on judgment of Apex Court delivered in the matter of Chandra Mohini Srivastava vs. Avinash prasad

Srivastava and another reported in AIR 1967 SC 581 wherein decree of divorce was declined by Apex Court and order of trial Court rejecting petition of husband for grant of divorce was restored. However, in the said matter, issue of lodging of criminal complaint and acquittal of husband and parents by competent criminal court was not involved and that was a matter wherein cruelty was not found by trial Court as well as by High Court and decree was passed on the ground of adultery only and, therefore, judgment rendered in the matter of Chandra Mohini Srivastava (supra) also not helpful to respondent.

13. Heard learned counsel for the parties and perused record.

14. It is not in dispute that respondent-wife lodged a report registered as Crime No.17/2007 at Police Station Mahila Thana, Satna against appellant and his parents and they were arrested during investigation and after trial by judgment dated 25.3.2017, JMFC Satna acquitted all of them from charges. It is also not in dispute that in original petition, appellant-husband pleaded ground of cruelty stating that respondent-wife was threatening him to lodged criminal complaint of demand of dowry and harassment against him and parents as well as for committing suicide. Meaning thereby, issue of cruelty was based on allegations of lodging false report by wife and ultimately she lodged report and after trial appellant was acquitted. Therefore, in view of judgment delivered by Apex Court in K. Srinivas (supra), appellant-husband is entitled for decree of divorce on the ground of cruelty and judgment of acquittal being subsequent event may be considered by this Court.

15. Appellant and his parents have been acquitted in criminal case and judgment of criminal case has brought on record along with application filed under Order 41 Rule 27 of CPC. Learned counsel for respondent-wife has not

controverted the fact of acquittal and in these circumstances, it may be safely concluded that respondent-wife knowingly and intentionally filed false complaint, calculated to embarrass and harass appellant and his parents and such conduct of respondent is unquestionably constitutes cruelty as postulated in Section 13(1)(i-a) of Hindu Marriage Act.

16. In original petition filed by appellant-husband, the fact of filing of criminal complaint by respondent-wife was not pleaded as the same was lodged later on. However, both parties brought in evidence the fact of pendency of criminal case. Apex Court in the matter of K. Srinivas (supra) permitted appellant-husband to raise issue of lodging criminal complaint later on to prove the ground of cruelty. Relevant part of judgment is reproduce as under:-

*"6. Another argument which has been articulated on behalf of learned counsel for respondent is that the filing of criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by wife after filing of husband's divorce petition, and being subsequent events could have been looked into by the Court. In any event, both the parties were fully aware of this fact of cruelty which was allegedly suffered by the husband. When evidence was lead, as also when arguments were addressed, objection had not been raised on behalf of the respondent-wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf."*

17. Apex Court in the matter of **Samar Ghosh vs. Jaya Ghosh** reported in **(2007) 4 SCC 511** narrated several illustrations eventual from instance for human behaviour which may be relevant in dealing with the cases of mental cruelty and justified the grant of decree of divorce on the ground of mental cruelty. Apex Court in the matter of **Raj Talreja vs. Kavita Talreja**, Civil Appeal No.10719/2013 judgment dated 24.4.2017 has held that, act of wife in filing false complaint against husband amounts to cruelty and granted decree of divorce on the ground of lodging false complaint wherein husband was acquitted.

18. Apex Court in the matter of **Rani Narasimha Sastry vs. Rani Suneela Rani** passed in Civil Appeal No.8871 of 2019 dated 19.11.2019 held that, prosecution is launched by respondent against appellant under Section 498-A of IPC making serious allegations in which ultimately resulted in his acquittal is sufficient for grant of decree of divorce on the ground of cruelty. It is held by Apex Court that, *it is true that it is open for anyone to file complaint or lodge prosecution for redressal for his or her grievances and lodge a first information report for an offence also and mere lodging of complaint or FIR cannot ipso facto be treated as cruelty. But when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498-A of IPC, levelled by wife against husband, it cannot be accepted that no cruelty has meted on the husband.*

19. In view of forgoing discussion, we conclude that appellant-husband has made a ground for grant of decree of dissolution of marriage on the ground as mentioned in Section 13(1)(i-a) of Hindu Marriage Act, 1955.

20. Accordingly, we allow the appeal of appellant-husband and grant decree of divorce. The marriage solemnized on 20.2.1994 is hereby dissolved. The impugned judgement is set aside. There shall be no order as to costs.

21. Registry shall draw a decree accordingly. Record of trial Court be sent back along with copy of judgment and decree.

(SHEEL NAGU)  
JUDGE

(VINAY SARAF)  
JUDGE

irf.