

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA

FIRST APPEAL No. 1664 of 2018

BETWEEN:-

**AVINASH KUMAR TRIPATHI S/O SHRI
RAJESH TRIPATHI, AGED ABOUT 32
YEARS, OCCUPATION: VTH CIVIL
JUDGE CLASS II AND JUDICIAL
MAGISTRATE FIRST CLASS RAIPUR E-2,
BEHIND GAURAV VATIKA SHANTI
NAGAR RAIPUR DISTRICT
RAIPUR (CHHATTISGARH)**

.....APPELLANT

***(BY MR. SANJAY AGRAWAL - SENIOR ADVOCATE WITH MR. GAUTAM TRIPATHI,
MR. S. BHAMORE AND MR. GAURAV SINGHAL - ADVOCATE)***

AND

**SMT. PRIYANKA TRIPATHI W/O SHRI
AVINASH KUMAR TRIPATHI D/O
BALMUKUND DUBEY OCCUPATION: EX
SARPANCH GRAM BHEDA POST
SLEEMNABAD TEWARI (MADHYA
PRADESH)**

.....RESPONDENT

(BY MR. SANJAY K. AGRAWAL AND MR. YOSHOWARDHAN JAIN - ADVOCATE)

FIRST APPEAL No. 1665 of 2018

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Reserved on	:	20 /11/2023
Pronounced on	:	13 /12/2023

These appeals having been heard and reserved for orders, coming on for pronouncement this day, Justice Devnarayan Mishra pronounced the following :-

JUDGMENT

This common judgment shall govern the disposal of both the first appeals filed by husband as both the appeals are arising out of same impugned judgment.

2. These First Appeals under Section 19(1) of the Family Courts Act, 1984 have been preferred by appellant/husband being aggrieved by the judgment and decree dated 11.07.2018 passed by the Principal Judge, Family Court, Katni in Hindu Marriage Act Case Nos.261A/2014 and 265A/2014, whereby the application filed by the appellant/husband under Section 13(1)(ia) of the Hindu Marriage Act, 1955 was dismissed and the application filed by the respondent/wife under Section 9 of the

Hindu Marriage Act was allowed and the appellant/husband was ordered to reconstitute conjugal relations.

3. The facts of the case in brief are that the appellant and respondent are legally wedded husband and wife and their marriage was solemnized as per Hindu Rites and Rituals on 20.02.2011 at Village-Bheda, Police Station-Sleemanabad, District-Katni and at that time, the appellant was in Judicial Service and was posted at Raipur as Vth Civil Judge Class-II. On 27.08.2012, they were blessed with a baby girl named Kumari Aradhya. After marriage, the behaviour of the respondent/wife was harsh towards the appellant and his family members. Wife started treating family members of husband with cruelty. The respondent/wife and her family members used to threaten to falsely implicate the appellant and his family members in criminal case. The respondent/wife doubted the character of her husband as and when husband went out to play badminton, by alleging that appellant was consuming liquor and womanizing. On 16.06.2011, the sister-in-law of the appellant namely Shayan Dubey was at Raipur, she was standing outside the house of appellant and shouted against the appellant and thereafter, the appellant reported the matter to the Police Station-Civil Lines. Head Constable and Mr. R.S Tiwari, a Police Officer came and enquired about the matter. The respondent was falsely alleging that the appellant was having illicit relations with the women judges posted thereby doubting his character. She also used scandalous words and made obscene utterances. When the daughter was born to the respondent/wife, the mother of the appellant came to look after the respondent

and, on 30.08.2012 when she was in the hospital, the respondent/wife misbehaved with her mother-in-law. Being disturbed by the conduct of the respondent, the mother-in-law of the respondent returned to her home on 01.09.2012. On 08.11.2012, at the time of Deepawali festival, the appellant/husband went to Bandhavgarh to meet his parents and persuaded the respondent/wife to return to her matrimonial home but she refused to go with him and asked him to leave. The respondent/wife continued to stay at her parental home despite appellant requesting her time and again to return to his place of posting but she outrightly refused. Moreso the wife was avoiding to receive his phone calls. In the month of January, 2013, the appellant sent a bank draft of Rs.5,000/-and a letter to the respondent which was though received by her on 19.01.2023 but she neither intimated nor replied to the same.

4. On 22.03.2013, at 06:30 pm, the appellant returned from his work, at that time, the father-in-law, mother-in-law, sister-in-law, wife and brother-in-law of the appellant came to his official residence and after some conversation, they started abusing him and his father-in-law snatched his mobile phone and was receiving his phone calls for three hours. In the meantime, the respondent and her mother assaulted the appellant with the charger of the mobile phone and iron rods and threatened to implicate him in a false case of dowry. Chandraprakash Thakur, who was the Peon of the appellant and another person Kejuram Gadhewal came in the appellant's residence, they were threatened by the family members of the respondent. The matter was intimated to CJM Raipur, on that C.J.M. Raipur with Police Officers came in the residence of the appellant, at that time, Judicial Magistrate Bhupendra Vasnikar also

reached there. They were ill treated by the relatives of the appellant and threatened that they would also be implicated in a case of Section 376 of the Indian Penal Code.

5. After receiving information of dispute, Special Judge Mr. Ganpat Rao, Ms. Deepa Katare Judicial Magistrate and Mr. Shailesh Ketarap Chief Judicial Magistrate reached the residence of the appellant but the respondent and his family members started abusing the aforesaid persons and threatened the appellant. Thereafter, the Police intervened in the matter, and a report was lodged. Due to ill treatment and cruelty by the respondent/wife, the appellant/husband suffered mental distress. The act of the respondent was of extreme mental and physical cruelty which compelled the appellant to file a divorce petition on 23.03.2013 before the Principal Judge Family Court Raipur. The aforesaid matter was transferred from Family Court Raipur to Family Court Katni by the order of the Apex Court dated 08.10.2013 passed in Transfer Petition No.792/2013.

6. The respondent/wife in her written statement denied the above allegations and further alleged that the appellant and his family members were misbehaving with her and insulting her by saying that as per the status of Judge, they have not got dowry. The husband and his family members were demanding a four wheeler vehicle and on their demand, her father has given a four wheeler and Rs.15,00,000/- in cash to the appellant. After that also, the appellant started demanding Rs.45,00,000/- in cash and when his demand was not fulfilled, he compelled her to live in her parental home. She never subjected appellant or his family members to cruelty. She never

doubted the integrity and character of the appellant. The parents of the appellant were residing elsewhere i.e. Bandhavgarh and thus there was no occasion of separating the appellant from his parents. The sister of the respondent did not cause any nuisance on 16.06.2011. She never alleged that the appellant was having any illicit relationship with any female colleagues. In 2013, the appellant took the respondent to her parental home and after that, he left her there and said that she had been operated and the girl was very young so staying in "Maika" would be helpful for her and after that he never went to her home to fetch her. The appellant was demanding Rs.45,00,000/- and on telephonic conversation between the appellant and father of the respondent, the appellant told him to bring the respondent to Raipur and also told him to bring Rs.45,00,000/-, and thereafter, on 22.03.2013, the respondent went with her father to Raipur where the appellant started quarrelling with her and demanding Rs.45,00,000/- as a dowry and also assaulted her. In the meantime, the appellant/husband called his father at Raipur and with his father sent his wife/respondent to Bandhavgarh and from Bandhavgarh, the father of the appellant left her at her parental home.

7. On 28.03.2013, at 11:30 pm, appellant and his family members left the respondent at her parental home situated at village Bheda and demanded Rs.45,00,000/- and when the family member of the respondent refused to fulfill the demand, the family members of the appellant started beating, misbehaving, abusing the respondent and also threatening the family members of the respondent. The appellant has never tried to keep the respondent with him. The appellant concocted a

false story and reported the matter to the Police and registered the false case against the respondent. The respondent is ready and willing to live with her husband.

8. On the above facts, a petition under Section 9 of the Hindu Marriage Act, 1955 registered as RCHM No.261-A/2014 was filed by the respondent/wife and as per the order dated 04.07.2015 of the Family Court, the case was consolidated by the impugned order and both the cases were decided by the impugned judgment.

9. On the basis of the pleadings in both Case Nos.261A/2014 and 265A/2014, the Family Court framed the issues and after giving opportunities to adduce evidence and hearing both the parties passed the impugned judgment as stated above.

10. Being aggrieved by the judgment, the appellant/husband has filed these first appeals on the ground that the Family Court has erred in holding that the appellant has not proved the cruelty by his wife with him either by oral evidence or by documentary evidence. He has proved that after marriage, the respondent has treated him with cruelty, she levelled false allegations of demand of dowry and instituted criminal proceedings for that purpose. The respondent used to allege that the appellant was consuming alcohol and womanizing in the guise of playing badminton. On 16.06.2011, the sister of the respondent was standing outside the house and shouted loudly at the husband causing embarrassment and loss of reputation. The incident of 22.3.2013 was wrongly interpreted by the trial Court. During the course of proceedings before the Family Court, the respondent has lodged false cases against the appellant and his family members.

11. During the pendency of the appeals, the appellant has filed an I.A. No.15386/2022, an application under Order XLI Rule 27 CPC for taking additional documents on record and by that the appellant has requested to take on record the certified copy of criminal proceedings i.e. bail application no.307/2015 filed by appellant/husband and his brother before the Sessions Judge, Rewa. Certified copy of order dated 27.11.2014 in Writ Petition (Civil) 2291 of 2014 (*Balmukund Dubey and other vs. State of Chhattisgarh and Others*) wherein, the complaint was made by the respondent-wife against the appellant and his seniors and copy of civil suit filed by respondent-wife against her husband vide RCS-B 30/2019 and status report of the criminal case filed by respondent-wife against her husband.

12. The respondent in her reply has submitted that the appellant is not entitled to produce additional evidence either oral or documentary before the Appellate Court as pre-conditions for invoking Order XLI Rule 27 of CPC are not fulfilled in this case. Hence, the application deserves to be rejected.

13. Heard the parties.

14. The original divorce petition was filed on 23.03.2013 and the evidence of the parties was closed on 21.02.2018 till that time, the documents were already on the record which indicates that the appellant had knowledge of the documents and some documents are already on the record, but the appellant had not exhibited the documents. At the appellate stage, additional documents cannot be taken on record especially in the absence of respondent failing to establish that despite exercise of due

diligence the documents sought to be produced as additional evidence could not be produced earlier. Hence, **I.A. No.1586/2022** is not maintainable and it is hereby dismissed.

15. Mr. Sanjay Agrawal, learned senior counsel for the appellant-husband has argued that the marriage of parties was solemnized on 22.02.2011. Daughter Aaradhya was born on 27.07.2012. On 08.11.2012, respondent/wife was brought to her parental home. The last telephonic conversation of the appellant and the respondent was on 25.01.2013. On 22.03.2013, the respondent/wife went to Raipur along with her father, mother, brother and sister assaulted the appellant and abused the colleague judicial officers. The appellant has proved that he lodged the F.I.R and in M.L.C report, four injuries were found on the person of the appellant. The Family Court has ignored this fact and treated it only as a family matter. It is a clear example of cruelty and the respondent has lodged a false report on 24.08.2013 against the appellant and his family members. She has also lodged a criminal case under Section 498-A of the Indian Penal Code in the month of February, 2015 (Exhibit-D/5). In this case, when the appellant and his family members applied for bail, the respondent filed objections before the trial Court so that the appellant and his family members are denied bail and the respondent further filed an application (Exhibit-P/40) seeking judicial enquiry against the appellant and she also filed a complaint before the Higher Administrative Authority to take disciplinary action against appellant-husband. The respondent in addition filed defamation case and defamation criminal complaint against the appellant in the year 2019.

16. Mr. Agrawal, learned senior counsel has relied upon the judgments of the Apex Court in **Sivasankara Vs. Santhimeenal (2021) SCC Online SC 702**, **K. Srinivas Rao Vs. D.A. Deepa (2013) 5 SCC 226**, **Manju Kumari Singh Alias Manju Singh (2018) 17 SCC 378** and **Smt. Santosh Meena vs. Siddharth B.S. Meena in First Appeal 1797 of 2019 on 20.03.3023** and has argued that the series of incidents show that the wife was constantly treating the appellant with cruelty. It is not necessary for the act of cruelty that the party should be residing in the same house with the other party. Mr. Sanjay Agrawal has further argued that the marriage has irretrievably broken down without any chance of resumption of cohabitation especially looking at the litigation between the parties, it is prayed that decree of divorce be granted.

17. Mr. Sanjay K. Agrawal, learned counsel for the respondent has argued that the father of appellant was employed in the Forest Department and was residing at Bandhavgarh and the mother of the appellant were also living at Bandhavgarh with her husband and the appellant and the respondent were residing at Raipur, so there is no ground to infer that the respondent was harassing the appellant to live separate of the family members since all the family members were already living separately. The Family Court has discussed this point in paragraph nos.84 and 85 of the judgment.

18. Learned counsel for the respondent has also argued that the respondent has never alleged that the appellant was having any illicit relation with any women or of womanizing in her reply and in the application filed under Section 9 of the Hindu

Marriage Act and Section 125 of the Code of Criminal Procedure. In all the proceedings, she has never alleged this fact and the Family Court in paragraph no.91 of the judgment has correctly inferred that this never happened. Regarding the incident of 16.06.2011 by the sister of the respondent, the trial Court has rightly appreciated the evidence and inferred in paragraph no.94 of its judgment as it is not found proved.

19. As regards incident of 22.03.2013, it is proved that the appellant left respondent at her parental home saying that she had a newly born baby and her family members would look after her and in this guise, he left his wife and he never tried to take her back. On this, the father of the respondent with the prior approval of father of the appellant and informing the appellant went to send her daughter at Raipur and when the father of the respondent with the respondent reached the official residence of the appellant, the appellant/husband quarreled for demand of dowry. The appellant himself has assaulted the respondent and after the quarrel, he himself beg for pardon and on false ground has lodged the Police report and just after the second day, he has filed a divorce petition. The appellant has filed a criminal case which came to the knowledge of the respondent after 2-3 years. There was demand of dowry by the appellant so, when the matter was not resolved, the respondent has registered an F.I.R. This fact has been discussed thoroughly by the Family Court in the judgment of paragraph no.117. The appellant himself in revision of maintenance case before the High Court of Chhattisgarh has admitted that he is ready and willing to keep his wife and daughter with him. The respondent from the very beginning is

ready and willing to reside with the appellant. No case for divorce is made. Hence, the appeal is dismissed.

20. Learned counsel for the respondent has relied on the judgment of **Anil Kumar Rathore Vs. Shashi Rathore 2011 SCC OnLine MP 2261** in which, it has been held that the general allegations of cruelty or the normal living of matrimonial life and on that basis, divorce cannot be granted.

21. Learned counsel for the respondent has also relied upon the judgment of **Bondar Singh and Others Vs. Nihal Singh and Others (2003) 4 SCC 161** and has argued that in the absence of pleading and written statements on an issue, no evidence can be looked into. He has argued that the subsequent facts and the documents were brought on the record but no averments were taken on record and the plaint has not been amended, hence, the above facts while deciding the appeal cannot be taken into consideration.

22. Learned counsel for the respondent has further relied upon the judgment of **Ravinder Kaur Vs. Manjeet Singh (Dead) Through Legal Representatives (2019) 8 SCC 308**, the wife initiating legal proceeding as shield against the assault to protect herself and property, cannot be treated as cruelty. The irretrievable breakdown of the marriage is itself not a ground for dissolving the marriage. The Family Court considered the application filed by the respondent/wife under Section 9 of the Hindu Marriage Act and the appellant was ordered to keep the respondent with him.

23. In this case, it is an admitted fact that the marriage of the petitioner with the respondent was solemnized on 20.02.2011 as per Hindu Rites and Rituals and out of the said wedlock baby Aradhya was born on 27.08.2012. Appellant is a Judicial Officer in Chhattisgarh.

24. The respondent-wife (D.W-1) has clearly stated in paragraph no.15 in her deposition that at Raipur, she resides with the appellant. When she was pregnant, every month she was examined by a private doctor. During stay with her husband, her husband assisted her to complete her L.L.M. Degree. Further she applied for diploma of human rights, post graduation in computer application. She also appeared in Chhattisgarh Judicial Services Exams and all the expenditures of the education and examination was borne by her husband. When she was residing with her husband, her husband made her to travel by air, she went to watch movies and for shopping with her husband. Her husband assisted her to open her bank account and subscribe to mutual fund in which their daughter was made nominee and during this period, the appellant never misbehaved with her. He was cooperative in family liabilities. He never abused her. Thus, till 20.03.2023, the appellant/husband never misbehaved with his wife and as per her own statement, he was caring for his wife.

25. Keeping these facts and the above aspect in mind, we shall appreciate the evidence and the facts of both the cases. The appellant in his appeal and statement has alleged that his wife was accusing him of consuming liquor, womanizing, and was having suspicion over his character. This fact has been supported by witness

Bhupendra Kumar Vashnekar (P.W-2) who was also a Judicial Officer and at that time, he was posted with the appellant though this witness has stated that the respondent alleged that the appellant was having illicit relations with other persons and this fact was told by the appellant himself and by no other source.

26. It is worthwhile to mention that the appellant is a Judicial Officer, who would never attempt to malign his own image and reputation. In paragraph nos.23 and 24 of the statement of Bhupendra Kumar Vashnekar (P.W-2) and in the cross-examination it has specifically been asked with whom the respondent was alleging that the appellant was having illicit relations. On the same point, in para no.15 of cross-examination of K. Tripti Rao (PW-3), certain questions were asked by the respondent-wife to which K. Tripti Rao (PW-3) specifically disclosed that appellant and the lady with whom the respondent was alleging illicit relation have disclosed that the respondent is having doubt over their character and that was the reason of dispute in matrimonial life, though her name has not been disclosed.

27. The reason to disbelieve the evidence of the witnesses of appellant examined by the Family Court cannot be sustained as the appellant himself is a Judicial Officer and other persons affected by the allegations are also Judicial Officers, then why the witnesses would take the blame and malign her/his reputation by deposing in the Court. So only on this ground, the testimony of the appellant witnesses cannot be disbelieved otherwise also what was the reason that such a caring husband left his wife in her parental home. The doubt in character was the reason that

mobile phone of the appellant was snatched by his father-in-law, who wanted to know with whom the appellant was talking and what conversation was going on.

28. On the date of incident i.e. on 16.06.2021, the statement of the appellant has not been found suspicious and there is nothing on the record that the aforesaid incident cannot be believed.

29. On the point of dispute that occurred on 20.03.2011, the appellant has examined himself and the witness Bhupendra (P.W-2) and K. Tripti Rao (P.W-3) and on the documentary evidence, the case was registered on the report Exhibit-P/1 and P/2 and P/1 are the medical reports of the appellant.

30. The respondent had taken u-turn and stated that only when her father went with her to send her at Raipur but from the perusal of the documents which are the bail application filed by the respondent and her family members and affidavit in support of the bail application, it is clear that the respondent with her family members went on 20.03.2011 to the government residence of the appellant and have quarreled with him. The appellant was assaulted by the respondent and her family members.

31. First of all on this incident, the statement of the appellant are supported by the police report Ex. P/1) and his medical examination report (Ex. P/2 and Ex. P/3).

32. The documents of respondent Exhibit as P/34 which is anticipatory bail application filed by respondent and her family members supported with an affidavit of respondent and her family members, paragraph no.4, it has been mentioned that all the applicants i.e. Shri Balmukund Dubey, Mrs. Rajkumari Dubey, Mrs. Priyanka

Tripathi, Shayan Dubey and Parth Dubey parents of the respondent and brother-sister went to Raipur and there the companion Judges and the appellant were present and they all demanded Rs.45,00,000/- dowry and they assaulted and abused the family members of respondent. This fact is also mentioned in para no.5 of Ex.P/36 which is the certified copy of MCRC No.13/2015 filed by respondent and family members and in that also it has been alleged that five Judicial Officers were present when so called incident had taken place. These facts were confronted to the respondent-wife.

33. In the cross-examination, the respondent admitted that she had made a complaint to the Registrar of Chhattisgarh High Court and also made a complaint to the Registrar Vigilance of Chhattisgarh High Court.

34. On 23.11.2014, the respondent filed a writ petition before the Chhattisgarh High Court, Bilaspur and, demanded judicial enquiry pertaining to incident of 22.03.2013.

35. It appears from the record that on the report of the appellant, charge-sheet Exhibit-P/1 has been filed against the appellant. On 17.11.2015, Vth ASJ Bilaspur has discharged the respondent and her family members from the offence punishable under Sections 394, 395 and 201 of the Indian Penal Code i.e. Exhibit-D/9 but framed charges under Section 452, 342, 323/34, 506 of I.P.C and the trial is still pending.

36. From the above facts, it is clear that respondent and her parents, brother and sister were present in the official residence of the appellant-husband and that the dispute had taken place and in that dispute the respondent and her family members

assaulted and abused the appellant and the dispute was of such nature that when Judicial Officers tried to pacify the parties they were unable to and the Police Officers CSP and SHO of the concerned area were called and when they intervened the dispute and assaulting came to an end whereafter police report was lodged. This matter was published in the local newspaper and instead of that the respondent remained in the official residence of the appellant for three days. There is no reason to disbelieve the statements of Bhupendra Kumar Vashnekar (PW/2) and K. Tripti Rao (PW/3)

37. From the evidence and documents it is also clear that after this dispute, the respondent made a complaint to Saleemabad Police Station against the appellant, his parents and his brother and his sister-in-law stating that all the family members of the appellant came to her home and demanded Rs.45,00,000 dowry and committed *Marpeet* and abused respondent-wife which are Exhibit/37, Exhibit-P/38 and D/7. As per Ex.D/8, the complaint was filed to SP Katni on 20.02.2015 and that Saleemabad Police station did not register any offence.

38. Subsequent to that the respondent has filed a writ petition before the Madhya Pradesh High Court Jabalpur for direction to police authorities to register the case as the case was not registered by Saleemanabad Police as Ex P/38 (Ex. D/6 the copy of the order passed in Writ Petition 16879/2014) against the appellant Avinash Kumar Tripathi and his family members. It is worthwhile to mention that the respondent was confronted with this document and when she was asked in para 49,

64, 65 of her statement regarding this and the respondent and her father have clearly stated that the appellant Avinash Tripathi was not present on the date of incident but they have made respondent No.4 as a party in Writ Petition and demanded that F.I.R under Section 498 A and relevant sections be registered against the appellant also.

39. From the documents and statement of parties, it is also clear that the respondent on 21.02.2015 lodged an F.I.R. against the appellant and his family members and in that matter when the anticipatory bail application was filed by the appellant before the Sessions Judge, Rewa, the respondent-wife as per Ex. P/43 have filed a protest application and requested that the anticipatory bail application be dismissed.

40. The respondent was confronted with the above documents regarding her conduct of lodging a report in Saleemanabad Police Station for the offence of demand of dowry by the appellant and his family members and filing of the writ petition in Madhya Pradesh High Court for direction to register a criminal case against appellant and his family members.

41. During examination-in-chief, respondent has stated that on 02.11.2013, her father gave Rs.15 lakhs to purchase a car to the appellant and in cross-examination she had stated that she had forgotten whether this money was given or not to the appellant.

42. The respondent and her father Balmukund Dubey (D.W-2) were unable to disclose from where they got money for dowry and not a single document has been

submitted by the respondent or by her father which shows that any ornaments, car or electronic appliances were purchased by the father of the respondent, whereas contrary to that appellant has exhibited the documents which are exhibit P/32 to Ex.P/33 and the documents of purchase of car and electronic appliances.

43. In F.I.R. Ex. D/4, the explanation was asked to lodge F.I.R after inordinate delay then it is informed that the process of compromise was in progress and the respondent herself admitted that she or her family members were never organised or called Samajik Panchayat to resolve the matrimonial disputes though the documents submitted by the respondent itself disclosed that when she approached the Police Officers of Saleemanabad they advised her to consult family dispute counseling centre but instead of that advice, the respondent had filed the writ petition and on the next occasion and she has lodged an F.I.R at Katni. From the examination and the documents, it is established that there was no dispute of dowry demand and when this question was specifically asked to respondent when the appellant from the very beginning of marriage was demanding dowry, then why she lodged F.I.R so late and on this point, she has stated in paragraph no.79 that the appellant threw her out from his home and thereafter, she lodged the report and if the husband had not thrown her out from matrimonial home, she would not have lodged the report.

44. From the cross-examination of respondent, it is also clear that she had made the complaint to the senior authorities of the appellant as admitted by respondent in her cross-examination in paragraph nos.40 and 49.

45. Thus, from the above facts, it appears that after the dispute of 20.03.2013, the respondent continuously filed cases, sought judicial enquiry made various complaints to higher authorities about the conduct of the appellant and thus, she has left no stone unturned to embarrass, harass, intimidate, abuse and belittle. On the point that the respondent/wife lodged an F.I.R under Sections 498-A, 34 of the Indian Penal Code (Exhibit-D/4).

46. The subsequent events can be taken while deciding the divorce petition as held in **Shivshankaran (Supra)** by the Apex Court and in the matrimonial matters. Events subsequent to the filing of divorce petition can be taking into consideration as decided by the Apex Court in **Vishwanath Agrawal Vs. Sarla Vishwanath Agrawal (2012) 7 SCC 288**.

47. The judgment of **Bondar Singh (Supra)** is not applicable in the case because in that case there was no pleading regarding sub-tenancy which was a new ground of defence and no issue was framed. In this case, the petition is based on cruelty and ample instances on that point have already been pleaded in the plaint and are also based on subsequent incidents occurred after filing of the petition. Thus, the cited judgment do not help the respondent.

48. From the above, it is clear that the acts/conducts of respondent constitute cruelty and they cannot be treated as a normal wear and tear of matrimonial life. In this factual position of case at hand the principle laid down in Judgment in **Anil Kumar Rathore (Supra)** is not applicable in this case. The conduct of the

respondent cannot be said that she was protecting her rights only so the judgment relied by respondent is not applicable in the case before this Court. In the following case, the parties were living away from each other for a long time but yet the Apex Court in **K. Srinivas Rao vs. D.A. Deepa (2013) 5 SCC 226** held thus:-

“29-In our opinion, the High Court wrongly held that because the appellant husband and the respondent wife did not stay together there is no question of the parties causing cruelty to each other. Staying together under the same roof is not a precondition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. In a given case, while staying away, a spouse can cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse’s life miserable...”

49. Thus, in the light of above judgments, it is proved that wife/respondent harassed her husband/appellant by doubting his character, blaming him of being drunkard womanizer, a person of loose character, assaulting him, lodged criminal cases for demand of dowry, filed writ petitions and also made complaints to his higher authorities for disciplinary action so that he may be terminated from his service and sent to jail. Thus, the above acts of the respondent looking to the status and society of the parties constitute cruelty. Long period has elapsed since 2012.

50. After the above discussions and in the facts and circumstances of the case as established by the appellant, the judgment and decree passed by the Family Court

dated 11.07.2018 cannot be sustained, the decree passed by the Family Court in the Case Nos.261A/2014 and 265A/2014 are hereby quashed.

51. The appeals filed by the appellant/husband are **allowed** and it is ordered that:-

(a) The marriage of appellant-Avinash Kumar Tripathi and respondent-Smt. Priyanka Tripathi solemnized on 20.02.2011 is dissolved.

(b) Cost of appeal shall be borne by the respondent. Advocate fee as per the rule.

(c) Decree be drawn accordingly.

(SHEEL NAGU)
JUDGE

(DEVNARAYAN MISHRA)
JUDGE

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