X Vs Y

Family Court Appeal No. 133 of 2006

Court: Bombay High Court

Date of Decision: March 7, 2014

Acts Referred:
Civil Procedure Code, 1908 (CPC) - Section 24#Criminal Procedure Code, 1973 (CrPC) - Section 125 407 408 410#Hindu Adoptions and Maintenance Act, 1956 - Section 18(2)#Hindu Marriage Act, 1955 - Section 24#Penal Code, 1860 (IPC) - Section 498A 498A

Citation: (2014) 3 ABR 83 : (2014) 4 BomCR 168 : (2014) 3 DMC 530 : (2015) 3 MhLj 66

Hon'ble Judges: S.C. Gupte, J; A.S. Oka, J

Bench: Division Bench

Advocate: N.V. Gangal, for the Appellant; Anilkumar Patil, for the Respondent

Judgement

S.C. Gupte, J.
This appeal is filed by the Appellant husband, whose petition for divorce against the Respondent wife was dismissed by the

Family Court. Considering the nature of dispute, we have blocked the names of the parties in the cause title. The Appellant and the Respondent

were married on 2 May 1999. Since 14 December 1999, the Respondent has not stayed in the matrimonial home except for a few days between

18 August 2005 to 12 October 2005 after the Appellant filed the present petition for divorce. In between there have been several matrimonial and

criminal proceedings between the parties, as mentioned hereinafter. The Appellant sought divorce on the grounds of desertion and cruelty. The

Petition was dismissed on 24 August 2006. The present appeal was filed by the Appellant on 6 November 2006. During the pendency of the

present appeal, a spate of criminal prosecutions has been launched by the Respondent against the Appellant, as narrated hereinafter. All this while

the parties have been staying separately. There is no issue out of the wedlock. In the backdrop of these facts, the appeal needs to be considered.

2. The case of desertion as made out by the Appellant in his pleadings and evidence may be briefly summarized as follows:

(i) After about 7 months of marriage, during which there have been studied neglect and indifference on the part of the Respondent, on 14

December 1999 the Respondent''s father and brother suddenly came to the matrimonial home to fetch the Respondent citing the reason of critical

illness of her mother. At that time, the Respondent was pregnant and not in a position to travel. She, however, left for Ahmednagar where her

parents lived. (The Respondent has denied the allegations of studied neglect and indifference, but the incident of 14 December 1999 is admitted.)

(ii) According to the Appellant, there was no communication thereafter about the illness or the state of health of the Respondent''s mother. (This is

disputed by the Respondent.)

(iii) On 18 December 1999, the Appellant was seriously injured in the left leg and advised bed rest for 14 days. The Respondent was informed

about it, but refused to come back to the matrimonial home.

(iv) On the Appellant''s request a few days thereafter to come back, the Respondent refused to return on the ground that the Appellant''s sister ''S''

had ill-treated her. ''S'' thereupon wrote a letter to the Respondent with a view to clear the misunderstandings and even apologized with a view to

mollify the Respondent''s feelings.

(v) There was no response from the Respondent. She continued to stay away from the matrimonial home. (It is the Respondent''s case that the

Respondent could not undertake the journey from Ahmednagar to Mumbai on medical advice.)

(vi) On 27 April 2000, when the Respondent was in the seventh month of pregnancy, the Appellant went to her house at Ahmednagar to visit the

Respondent and stayed there till 2 May 2000.

(vii) On 8 June 2000, the Appellant received a call that the Respondent was admitted in a hospital for some pregnancy related complication. On

the same day, he left for Ahmednagar, and visited the hospital. The Respondent delivered a still-born baby.

(viii) On 12 June 2000, the Respondent was discharged from the hospital. The Appellant was at Ahmednagar during these days. He left for

Mumbai on 14 June 2000.

(ix) Between July 2000 and September 2000, despite the Appellant''s several calls, the Respondent did not return to Mumbai. Even the

Appellant''s father''s call requesting the Respondent''s father to send her home for a religious function held as a family tradition (''Kulachar'') was

not heeded. (The Respondent has denied the calls.)

(x) Between 10 October 2000 to 20 October 2000, the Respondent went on a South India Tour.

(xi) The Respondent did not come back to the matrimonial home even during the Diwali festival (around 26 October 2000). When the Appellant

called on the Diwali day, the Respondent refused to take the call and instead her parents spoke to the Appellant insisting that the Respondent

would not talk to the Appellant. The same night, the Respondent called the Appellant''s elder sister and told her that she needed divorce. (The calls

are denied by the Respondent.)

(xii) On 30 October 2000, the Appellant wrote a letter to the Respondent as a final attempt to call her back. The Appellant''s father also wrote to

the Respondent''s father. There was no response.

(xiii) The Appellant, thereafter, filed a petition for restitution of conjugal rights in the Family Court at Bandra.

(xiv) On 4 January 2001, on the first day of hearing of the petition, the Respondent came with her luggage saying that she had come to stay with

the Appellant. Both parties appeared before the marriage counselor.

(xv) After the matter was adjourned, the Respondent and her brother came to the Appellant''s house. According to the Appellant, they threatened

to teach him a lesson. The Appellant insisted that the Respondent should come to stay with him through a court order.

(xvi) On the next date of hearing, i.e. on 26 February 2001, the Appellant applied for withdrawal of his petition. The Appellant was allowed to

withdraw the petition on 17 March 2001.

(xvii) During the pendency of the petition, the Respondent applied for maintenance u/s 125 of Criminal Procedure Code before the court of Chief

JMFC at Ahmednagar. There was an order passed for maintenance of Rs. 1500 p.m., then reduced to Rs. 750 p.m. and restored in revision to

Rs. 1500 p.m. The Appellant has been regularly paying maintenance since then.

(xviii) Thereafter, on 6 August 2001, the Respondent filed her petition for restitution of conjugal rights in the District Court at Ahmednagar. The

Appellant had to take leave and travel from Mumbai to Ahmednagar to attend the hearing from time to time. The petition was finally dismissed on

the ground of want of territorial jurisdiction.

(xix) All this while the parties stayed separate. The Appellant in June 2003 sent a notice to the Respondent calling for an amicable settlement, but

the Respondent through her advocate''s reply refused.

(xx) Finally, the Appellant filed the present petition for divorce on 19 August 2003.

3. The Respondent, in her reply as well as evidence, more or less accepted the above referred to bare facts. (Her denials, wherever made, are

indicated against each of these facts.) The main refrain of the Respondent has been that the Respondent never declined to go back to the Appellant

for cohabitation; that the Appellant or his family members were ""never turned back from 14th June 2000 to take respondent back to Mumbai"";

that the Appellant did not ""come to take respondent back though he promised so upto Diwali 2000. In fact respondent hoped so""; and that so

many times the Respondent ""urged the petitioner and his parents to come to see her and take her back for cohabitation"".

4. In the face of the hard facts set out above, the Respondent''s plea and evidence that she was ready to cohabit, but the Appellant never came to

take her back to the matrimonial home, clearly sounds hollow and unbelievable. There are broadly three periods in which the entire period of

physical separation between the parties can be divided. The first period, from 14 December 1999 (when the Respondent left for Ahmednagar) to

12 June 2000 (when she was discharged from the hospital), clearly indicates that it was the Respondent who on her own left the matrimonial home.

One may not attribute any motive of desertion when the Respondent left for Ahmednagar on 14 December 1999. It is believable that the

Respondent''s departure from the matrimonial house on 14 December 1999 was in view of her mother''s illness, though the circumstances in which

she left appear rather strange. But there is no adequate explanation why she did not return back at any time before 12 June 2000. It must be borne

in mind that during this period there was even an episode of the Appellant suffering fracture in his leg and being advised a fortnight''s bed rest. (This

fact is not denied by the Respondent either in the pleadings or evidence.) In her pleadings and evidence, the Respondent''s version concerning this

period appears to be this:

(i) The Respondent left for Ahmednagar on 14 December 1999 with her father and brother. At that time, she told the Appellant that she would

return on the very next day.

(ii) The Respondent''s mother had blood pressure problem. She, however, recovered after two/three days.

(iii) The Respondent''s health did not allow her to travel back to Mumbai between 14 December 1999 and till 12 June 2000. She stayed at

Ahmednagar as per medical advice.

(iv) The Respondent could not visit the Appellant when he met with an accident, since the doctor advised her not to undertake the journey.

5. There is no reference in the Respondent''s pleadings or evidence to any serious illness or pregnancy related complication during this period. No

report or medical record is produced. No evidence of doctor''s advice is led. In the absence of such evidence, it is hard to believe on the basis of

her bare word that during this entire six months period, i.e. from 14 December 1999 (when she left for Ahmednagar saying that she would return

the next day) and 8 June 2000 (when she was admitted for delivery), the Respondent could not come back to Mumbai for medical reasons or on

the doctor''s advice. The Respondent''s act of not returning to the matrimonial home during the period must be, therefore, attributed to her

conscious decision not to return. At the same time, it ought to be noted that this conscious decision is not actuated by any fault or wrong on the

part of the Appellant. The Respondent has not alleged any act of cruelty on the part of the Appellant at any time before 14 December 1999. The

Respondent has admitted in her Written Statement that in Mumbai there were only 2-3 persons in her matrimonial family and sufficient

accommodation where she comfortably enjoyed her privacy. Even during the period of the Appellant''s stay at Ahmednagar, in April 2000, the

Appellant admittedly visited Ahmednagar and stayed at her parents'' house for a couple of days when the parties ""celebrated the birthday of the

Respondent and Marriage Anniversary, showed love and affection to each other"". The inescapable inference from the pleadings and evidence

noted above is that the Respondent left, and stayed away from, her matrimonial home of her own volition and for no wrong on the part of the

Appellant from 14 December 1999 till 12 June 2000.

6. The learned trial judge has, so far as this period is concerned, whilst acknowledging that the Respondent has not produced any documentary

proof of the fact that she was medically advised not to take the long journey (between Ahmednagar and Mumbai) during the days of pregnancy

(i.e. from the third month of pregnancy till her delivery in the ninth month) or not examined any doctor in support, found her evidence believable

because ""the evidence of the petitioner proves that she underwent various tests of sonography"". The learned trial Judge observed that it has been

brought on record that the Respondent''s health was very delicate and she was weak. As we have discussed above, there is absolutely nothing on

record to conclude that the Respondent''s health was so delicate or weak that she could not undertake the journey from Ahmednagar to Mumbai.

A pregnant lady undergoing sonography on a couple of occasions proves nothing concerning such delicate or weak health. That the Appellant

himself took her for medical check up in February 2000 also proves nothing. The observation that ""had there been no medical advice, he would

have insisted the Respondent to come back to the matrimonial home but the fact that neither he not his family members insisted her to come back

to the matrimonial home, is sufficient to prove that the Respondent was under medical advice of Dr. Joshi and that she was advised not to

undertake the journey"", is a rather strange assessment. The entire appreciation of evidence by the learned trial Judge in this behalf exhibits a serious

error.

7. The second period is between 12 June 2000 (when the Respondent was discharged from the maternity home after giving birth to a still born

baby) and 7 November 2000 (when the Appellant filed his petition for restitution of conjugal rights). The Respondent continued to stay at her

parents'' house in Ahmednagar throughout this period. There is no case of any medical reason for this stay. The only explanation of the Respondent

for not returning to the matrimonial home during this period is that ""the petitioner or his family members was (sic were?) never turned back from 14

June 2000 to take the respondent back to Mumbai""; that they had ""not inquired about her health or asked her to return back to her matrimonial

home""; that ""the respondent never denies to go with the petitioner for cohabitation""; and that ""the respondent herself requested and called many

times to the petitioner to take her back but the petitioner himself never responded to the Respondent''s request"". None of this is, however, testified

by the Respondent in her examination in chief. Whilst it is the case of the Appellant that he made several attempts by himself and through his family

members to persuade the Respondent to come back, the Respondent has denied such attempts. At the same time, the Respondent has admitted in

her Written Statement that there were no disputes between the Appellant and the Respondent during this period and there was therefore no

question of any reconciliation. In the face of these pleadings and the state of evidence as it stands, it is not possible to believe the Respondent''s

case that she was keen to return the matrimonial home. The Respondent had left the matrimonial home on her own, never bothered to return to it

and cannot be heard to say that this was because the Appellant did not come to take her back.

8. For this period, the justification for the Respondent''s continued stay at her parental home considered by the learned trial Judge only seems to be

that the Appellant himself did not go to fetch the Respondent after 12 June 2000. As we have noted above, considering the facts that the

Respondent left the matrimonial home of her own volition and chose to stay for over six months thereafter at the parental home without justification,

that the Appellant did not visit the Respondent''s house to fetch her is no ""reasonable cause"" for staying away for the Respondent.

9. The third period was between 7 November 2000 and 19 August 2003 (when the present divorce petition was filed by the Appellant). Whilst

assessing this period, it is necessary to bear in mind that during this period both the parties would be under legal advice and their actions ought to

be viewed accordingly. The Respondent came with her bag and baggage purportedly to stay with the Appellant on the very first day of the hearing

of the Appellant''s petition for restitution. The Appellant was suspicious of this action and insisted that the Respondent should come through a court

order. This approach of the Appellant, considering what had transpired so far, as recounted above, cannot be faulted. It certainly does not exhibit

any refusal to admit the Respondent to the matrimonial home. The Respondent insisted on the withdrawal of the Appellant''s petition for restitution.

She seemed to have prevailed and the Appellant withdrew his petition. The Respondent, however, did not stay at the matrimonial home after the

withdrawal. On the other hand, just before the petition was withdrawn, on 9 March 2001, she filed for maintenance u/s 125 of Criminal Procedure

Code before the Chief JMFC at Ahmednagar. This was obliviously, a counter-move in a legal game. Whatever be its merits, it certainly does not

exhibit any genuine desire to move back to the matrimonial home. From thence on, what follows is a legal game of one-upmanship. What,

however, stands out throughout this period is that there is no attempt to return to the matrimonial home on the Respondent''s part and on the other

hand, there is an animus to stay away from it.

10. As regards this period, besides the bare statements of the Respondent that she had bona fide desire to stay with the Appellant, the only other

material considered by the learned trial Judge for concluding that the Respondent did make an attempt to resume cohabitation are the two

incidents; i.e. (i) the incident on the first date of hearing of the Appellant''s petition for restitution of conjugal rights, when the Respondent came to

the matrimonial home with her brother expressing a desire to stay at the matrimonial home and (ii) the withdrawal of his petition for restitution by

the Appellant despite the Respondent expressing her willingness to cohabit. As we have considered above, both incidents have been adequately

explained by the Appellant and his conduct therein is in keeping with ordinary human nature and is only to be expected of him regard being had to

the attendant circumstances. These incidents neither show any genuine desire on the part of the Respondent to cohabit with the Appellant nor

exhibit any refusal for cohabitation on the part of the Appellant.

11. What clearly emerges from the above analysis is that there is not only an established fact of separation, but that the separation is willful. The

Respondent abandoned the Appellant intending to permanently cease cohabitation and none of this is attributable to any wrong on the part of the

Appellant. There is a clear case of desertion.

12. The essential requisites of desertion have long been settled by the Supreme Court even before the Hindu Marriage Act, 1955 came into force.

The Supreme Court, whilst dealing with a case under Bombay Hindu Divorce Act, 1947, in Bipin Chander Jaisinghbhai Shah Vs. Prabhawati, ,

held as follows:

For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of

separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the

deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the

matrimonial home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two

spouses respectively...Desertion is a matter of inference to be drawn from the facts and circumstances of each case. The inference may be drawn

from certain facts which may not in another case be capable of leading to the same inference: that is to say, the facts have to be viewed as to the

purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation.

If, in fact, there has been a separation, the essential question always is whether that act could be attributable to an animus seperandi. The offence of

desertion commences when the fact of separation and the animus deserendi co-exist. But it is not necessary that they should commence at the

same time. The de facto separation may have commenced without the necessary animus or it may be that the separation and the animus seperandi

coincide in point of time

13. This was later affirmed by the Supreme Court in the case of Lachman Utamchand Kirpalani Vs. Meena alias Mota, , whilst dealing with a case

of desertion under the Hindu Marriage Act, 1955, in the following words.

Once desertion, as defined earlier, is established there is no obligation on the deserted husband (taking the case where he is the deserted spouse)

to appeal to the deserting spouse to change her mind, and the circumstance that the deserted husband makes no effort to take steps to accept a

reconciliation with the wife does not debar him from obtaining the relief of judicial separation, for once desertion is proved the deserting spouse, so

long as she evinces no sincere intention to effect a reconciliation and return to the matrimonial home, is presumed to continue in desertion. Of

course, the matter would, wear a different complexion and different considerations would arise where before the end of the statutory period of 2

years or even thereafter, before the filing of the petition for judicial separation the conduct of the deserted spouse was such as to make the

deserting spouse desist from making any attempt at reconciliation

14. In a more recent case, the Supreme Court in the case of Tata Consultancy Services Vs. State of Andhra Pradesh, , applied the law enunciated

above as follows:

Coming to the case at hand, it is revealed from the evidence on record, as discussed in the judgments of the trial court and the High Court that the

respondent had gone to her parents'' house for birth of the child, which apparently cannot be construed as an expression of her desire to forsake

her husband permanently; but after the birth of her child when attempts were made by the appellant, his parents and relations, she laid down a

condition that the appellant should live in a separate house from his parents taking the plea that her father-in-law had attempted to molest her,

which explanation she signally failed to establish. In the meantime, the father of the appellant expired sometime in 1988, putting an end to the so-

called reason of misbehaviour of her father-in-law. There is nothing on record that thereafter she expressed her desire to join her husband at the

matrimonial home. It is relevant to state here that the appellant is the only son of his parents and as expected, he was not willing to establish a

separate residence leaving his parents to live alone in their old age. The cumulative effect of the circumstances and the conduct of the respondent is

that she had given expression of animus deserendi. Thus, the two ingredients of the matrimonial offence of desertion i.e. separation in fact and

animus deserendi have been established by the appellant. The learned trial Judge, having regard to the facts and circumstances of the case, was

right in recording the finding that the husband had successfully established the case of desertion by the wife and exercising the discretion vested u/s

13-A of the Act, the learned trial Judge had granted the decree of judicial separation instead of divorce

15. The judgments of the Supreme Court referred to above clearly establish that for the matrimonial offence of desertion, so far as the deserting

spouse is concerned, there are two essential conditions, namely,

(i) the factum of separation; and

(ii) the intention to bring cohabitation permanently to an end (animus deserendi).

Similarly two elements are essential so far as the deserted spouse is concerned, namely,

(i) the absence of consent; and

(ii) the absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention referred to above.

No doubt it is the petitioner for divorce who bears the burden of proving these elements in both the spouses respectively. But all these elements are

questions of fact. The circumstances that the deserting spouse has physically stayed away from the matrimonial home; that there is absence of

consent for such stay from the deserted spouse; that there is a failure to substantiate any reason for such stay; and that there is a clear omission to

demonstrate readiness and willingness to discharge the continuing obligation to return to the matrimonial home, taken together, may be sufficient to

draw a conclusion that there was an animus deserendi and the same was without a reasonable cause. Once such desertion is established, there is

no obligation on the deserted spouse to appeal to the deserting spouse to change his or her mind or actually take steps to effect a reconciliation or

bring the deserting spouse back to the matrimonial home.

16. In the present case, it is admitted that the Respondent left the matrimonial home on her own and not at the bidding of the Appellant. No doubt

when she left the matrimonial home on 14 December 1999, the Respondent cannot be said to have any animus deserendi. But the circumstances

that without her husband"s consent she continued to stay away and did not return to the matrimonial home throughout this period, whilst her

husband did not give her any cause to stay away, exhibits nothing but animus deserendi. Even if one gives her the benefit of doubt, though as we

have discussed above there is no scope for any, that till June 2000, the Respondent was justified in staying away from the matrimonial home on

medical grounds, there is no case whatsoever to stay away after 12 June 2000. The only ground alleged for such stay was omission of the husband

to come to take the Respondent back. There is, as we have discussed above, no substance in this ground. The animus deserendi at least since 12

June 2000 is clearly established. This animus has continued throughout the statutory period of two years and till the petition for divorce was filed by

the Appellant. A case of desertion is, thus, conclusively established.

17. We have noted above the matrimonial and criminal proceedings between the parties till the date of the present divorce petition. They exhibit a

bitter a legal battle between the spouses. But what followed the filing of the petition can only be described as bizarre. The litany of prosecutions is

recounted below:

(i) Soon after the Appellant filed his divorce petition, the Respondent filed Miscellaneous Civil Application No. 15 of 2004 before this Court at its

Aurangabad Bench u/s 24 of CPC for transfer of the Petition for disposal along with her petition for restitution at District Court at Ahmednagar or

at Family Court at Pune. The Civil Application was dismissed by the Aurangabad Bench by its order dated 04.03.2005.

(ii) On 10.12.2005, the Respondent filed F.I.R. No. Cr. 473 of 2005 against the Appellant, his sister and his father u/s 498-A of IPC. The FIR

resulted into RCC No. 210 of 2006.

(iii) The Respondent filed Miscellaneous Application No. 16/2007 in RCC No. 210 of 06 against the Appellant u/s 410 of Cr.P.C. before the

Chief Judicial Magistrate, Thane District Court on 25.01.2007 for transfer of the said case from that Court to other JMFC in the same Court on

the ground of alleged unfairness of the Judge. The same was withdrawn by the Respondent on 11.06.2007;

(iv) Prior to the withdrawal of the Miscellaneous Application, on 01.06.2007, the Respondent filed another Criminal Application No. 1863 of

2007 before this Court praying for transfer of RCC No. 210 of 2006 from the Court of JMFC Thane to the Court of JMFC Ahmednagar. That

Application (under Section 407) was filed pending the other Miscellaneous Application No. 16/07 (under Section 410) filed in Thane District

Court. In this case neither the Appellant nor the State of Maharashtra was served. Criminal Application No. 1863 of 2007 was dismissed by this

court vide order dated 02.08.2007 holding that the Court was not impressed with the reasons set out in support of the said transfer application;

(v) On 14.06.2007, the Respondent filed CA No. 194 of 2007 in the present divorce petition for maintenance u/s 24 of the Hindu Marriage Act in

this Court, which was disposed of by ordering interim maintenance of ""Rs. 5000 in all"" vide order dated 29.08.2007;

(vi) On 10.10.2007, the Respondent filed SLP (Criminal) No. 6354 of 2007 before the Supreme Court in which she assailed the order of this

Court in Criminal Application No. 1863 of 2007. The Supreme Court dismissed the SLP as withdrawn;

(vii) On 31.01.2008, the Respondent filed Special Civil Suit No. 4 of 2008 u/s 18(2) of the Hindu Adoption and Maintenance Act against the

Appellant, his sister, father, elder sister in the Court of CJSD Ahmednagar. In that suit, the Respondent claimed that she was entitled to recover

Rs. 45 Lakhs from the defendants. The Learned CJSD Ahmednagar was pleased to grant an ex-parte ad-interim injunction on 04.01.2008. The

Appellant and others filed a reply to the interim application and the ex-parte order was later vacated by the learned Judge;

(viii) On 14.01.2008, in spite of the withdrawal of SLP 6354 of 2007, the Respondent again filed Criminal Miscellaneous Application No. 6 of

2008 in the Sessions Court, Thane u/s 408 of Cr.P.C. In the said Application, the Respondent sought transfer of the said case from one Court to

another Court in the JMFC Thane. The Application was rejected by the Court by order dated 28.04.2008;

(ix) On 09.04.2008, the Respondent filed Consumer Case No. 150 of 2008 against the Appellant and Director and Manager of HDFC Bank

before the District Consumer Redressal Forum at Ahmednagar on the grounds that HDFC Bank revealed A/c No. of the Respondent and this

amounted to a breach of trust/contract and that heavy losses were incurred due to such breach of trust. Compensation amount of Rs. 5,00,000/-

was claimed from each defaulting HDFC Bank Officer. The case was dismissed by the Forum in limine vide order dated 25.06.2008;

(x) On 09.07.2008, the Respondent filed Criminal Writ Petition No. 1404 of 2008 in this Court against the order of Thane Sessions Court in

Miscellaneous Application No. 6 of 2008. This Court was pleased to reject the Petition by a detailed order dated 25.07.2008;

(xi) In or about August 2009, the Respondent filed SLP No. 7790 of 2009 in the Supreme Court against the order of this Court in WP No. 1404

of 2008. The same was rejected by the Supreme Court on 6.11.2009.

(xii) On 14.08.2008, the Appellant filed Criminal Application No. 2820 of 2008 in this Hon''ble Court in RCC No. 210 of 06 for expeditious

hearing in a time bound schedule. However, the same came to be dismissed;

(xiii) On 04.05.2010, a Caveat was filed by the Respondent against Exb. No. for recasting of issues in Special Civil Suit No. 4 of 2008 in the

Aurangabad Bench of this Court;

(xiv) On 09.06.2010, the Appellant filed Writ Petition No. 5176 of 2010 in the Aurangabad Bench of this Court, u/s 10 for staying the order of

CJSD. The Aurangabad Bench of this Court was pleased to grant a stay of the proceedings in Spl. Civil Suit 04 of 08 vide order dated

17.08.2010;

(xv) On 19.10.2010, the Respondent filed Civil Application No. 15801 of 2010 for expediting final hearing of WP No. 5176 of 2010 at

Aurangabad Bench of this Court. The Aurangabad Bench was pleased to allow the application and fix the date as 8 June 2011 vide order dated

05.04.2011;

(xvi) Finally on 17.12.2011 an order of acquittal in Section 498-A case was passed by the Thane District Court. The Appellant and his father

were acquitted and the case against sister Sandhya abated as she expired on 07.03.2011;

(xvii) On 16.01.2012, the Respondent filed Civil Application No. 1855 of 2012 for fixing the date of final hearing for WP/5176/2010. This Court

was pleased to allow the application and fix the date as 30.03.2012 vide order dated 24.02.2012.

18. The proceedings referred to above were all subsequent to the filing of the present divorce petition but we have allowed the Appellant to bring

these on record as additional evidence. The factum of these proceedings as also the various orders passed therein are matters of record and not

disputed between the parties.

19. As held by our courts in a number of cases, filing of false criminal cases against a spouse is itself an act of mental cruelty and can very well

sustain a decree of divorce. The spate of proceedings launched one after the other in the present case suggests a malicious intent to inflict pain on

the opponent spouse. But even if one may not at this stage conclude any such intent on the Respondent''s part, in the minimum what it shows is that

the animus deserendi has not only continued throughout, but that the matrimonial bond is now irretrievably beyond repair. The parties were married

in May 1999. There is no issue out of the wedlock. Since December 1999 the spouses stated living apart and have not cohabited for the last

fifteen years. In between these fifteen years, as suggested by the trial Court, the spouses even stayed together for a few days between 18 August

2005 and 12 October 2005 on a trial basis. But even that did not work out. On the other hand, it led to the filing of a complaint by the Respondent

u/s 498A of IPC against the Appellant and his family members, as mentioned above. During all these years, the parties have acrimoniously

contested three matrimonial petitions, a few maintenance applications, and a score of criminal proceedings. The substratum of the marriage has

long disappeared and the marriage has become a mere fiction, hanging somehow by a legal tie. The question is, should the court in such a case

refuse to sever that tie, that too in the name of preserving the sanctity of marriage.

20. The Supreme Court in the case of Naveen Kohli Vs. Neelu Kohli, , dealt with this issue succinctly as follows:

74. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for

the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long

period of continuous separation, it may fairly be surmised 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.

75. Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained,

but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

76. Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the

parties tied forever to a marriage that in fact has ceased to exist.

21. The observations quoted above directly apply to the facts of the present case. It would be a grave injustice not to sever the marital tie between

the parties.

22. For all these reasons, we set aside the judgment of the Family Court and grant a decree of divorce to the Appellant. There shall no order as to

costs. On the prayer made by the learned Counsel for the Respondent, we restrain the Appellant from contracting marriage for a period of ninety

days from today.