

(2016) 10 BOM CK 0056

Bombay High Court (Nagpur Bench)

Case No: Family Court Appeal No. 323 of 2014

Sau. Nikita w/o Pushpendra Saini

APPELLANT

Vs

Pushpendra s/o Rakesh Saini

RESPONDENT

Date of Decision: Oct. 18, 2016

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13(1)(i-a)

Citation: (2016) 6 AIRBomR 709

Hon'ble Judges: Smt. Vasanti A Naik and Kum. Indira Jain, JJ.

Bench: Division Bench

Advocate: Shri Shriram Deoras, Advocate, for the Respondent; A.K. Bhangde, Advocate, for the Appellant

Final Decision: Allowed

Judgement

Smt. Vasanti A. Naik, J. (Oral)—By this family court appeal, the appellantwife challenges the judgment of the family Court, Nagpur, dated 12.6.2014 dismissing the petition filed by the appellant for a decree of divorce on the ground of cruelty.

2. The appellant-wife (hereinafter referred to as "the wife" for the sake of convenience) and the respondent - husband (hereinafter referred to as "the husband") were married at Saharanpur in Uttar Pradesh according to Hindu rites and customs on 28.11.2009. The family of the wife was residing at Nagpur when the marriage was settled and the family of the husband was residing at Saharanpur. After the marriage, the wife started residing in the matrimonial house at Saharanpur. The wife left the matrimonial house on 13.12.2009 to join the company of her parents at Nagpur and the parties have separated since then. The wife filed petition under Section 13 (1) (ia) of the Hindu Marriage Act for a decree of divorce on 25.11.2010. According to the wife, at the time of marriage, the parents and relatives of the wife had gifted valuable articles and ornaments to her. The wife pleaded that after she started residing in the matrimonial home, the husband and his family

members started torturing her on the ground that her father had gifted a Santro Xing car to the husband, though he wanted Estilo car. It is pleaded that the husband and his family members started quarreling with the wife and tortured her physically and mentally. It is pleaded that since the marriage, the husband and his family members pressurised the wife to leave the job and to do the household work like a maidservant. It is pleaded that the husband and his family members always told the wife that she was not fair, she had a mark on her forehead and that she looked ugly. It is pleaded that everyday the mother and the sister of the husband asked the wife to wash a lot of clothes and after she washed them, they quarreled with her on the ground that the clothes were not clean. It is pleaded by the wife that though she performed all her marital obligations to the best of her ability, the husband and his family members expressed dissatisfaction and abused the wife for not bringing sufficient dowry at the time of marriage. It is pleaded that the husband always asked the wife to change the clothes before him and when the wife refused to do so, he used to snatch her hand and force her to change the clothes in his presence. It is pleaded that the husband used to catch her hair and drag her in the room many a times. It is pleaded that the husband had a suspicious nature and he doubted the character of the wife. It is pleaded that though the wife told the husband that she does not have enough warm clothes and she was not willing to go to Masoori in the absence of warm clothes, the husband refused to listen and took her to Masoori, where she suffered from fever and vomiting. It is pleaded that though the wife was ill, the husband and his family members told her that she was making a drama in respect of her illness and they administered heavy antibiotics and other medicines to her without consulting any Doctors, due to which she suffered some side effects. It is pleaded that many a times, the husband and his family members quarreled with the wife without any rhyme or reason and abused the wife and her relatives in a very filthy and foul language. It is pleaded that the wife was not permitted to talk to her relatives. It is pleaded that on 12.12.2009 the husband conducted a pregnancy test on the wife in the house without consulting a Gynecologist and without the consent of the wife. It is pleaded that the husband told the wife before she came to Nagpur on 13.12.2009 that she should bring Rs.70,000/- from her father and her father should purchase a flat for the husband at Delhi. It is pleaded that though the wife told the husband that her father is not in a position to purchase a flat at Delhi at the cost of about Rs.80,00,000/- to Rs.90,00,000/, the husband started torturing the wife and abused the wife and her parents. It is pleaded that after the said incident, the husband and his parents did not permit the wife to have breakfast. It is pleaded that the parties separated on 13.12.2009 and the wife never returned to the matrimonial home thereafter. It is pleaded that on 19.1.2010, the husband sent an email to the wife and threatened her. It is pleaded that on 10.2.2010, the husband telephoned the wife and started quarreling with her and when she handed over the phone to her mother, the husband also quarreled with the wife's mother and abused her in filthy language. It

is pleaded that when on 14.2.2010, the wife and her father reached Saharanpur for dropping the wife at her matrimonial home, they had stayed at her uncle's house at Saharanpur. On 15.2.2012, the husband and his family members came to the house of the uncle of the wife and started abusing and shouting on the wife and her father. It is pleaded that the father of the wife was not only abused, but the husband also tried to beat the father of the wife. It is pleaded that though the mother and uncle of the wife requested the husband and his family members to talk peacefully, they refused to do so and the father of the husband said to the wife "Tu Haramkhor Hai, Tu Kise Ke Ghar Ka Chirag Nahi Jala Sakti". It is pleaded that the husband asked the wife not to return to the matrimonial home and they would not return her "Stridhan", which was gifted to her by her parents and relatives at the time of marriage. It is pleaded that on 30.5.2010 a meeting was held at the house of the wife's uncle at Saharanpur for settlement but the husband and his parents refused to join the same. It is pleaded that on 5.6.2010 the husband called the wife and talked rubbish with her on the telephone and abused her father and other relatives in a foul language. It is pleaded that the husband told her "Wo Jo Tera Baap Manager Banke Firta Hai, Uske Pass Koi Degree Bigree Nahi Hai, Wo to Handicapped Kote Se Laga Hai, Aur Thodehi Dino Main Tu Bhi Handicap Ho Jayagee". It is pleaded that though the wife had initially thought that the husband and his family members would mend the ways, they did not do so and the wife decided not to join the company of the husband as there was danger to her life and limb in the matrimonial home. It is pleaded that the wife sent a complaint to the police station at Saharanpur against the husband as the husband and his father had given threats to the wife. The wife claimed the marriage expenses to the tune of Rs.5,00,000/- and also claimed compensation of Rs.25,00,000/- towards mental harassment and agony. The wife sought a decree of divorce on the ground of cruelty.

3. The husband filed the written statement and denied the claim of the wife. It was denied that the husband and his family members started torturing the wife as her father had presented Santro Xing car to the husband. It is pleaded that it was not possible that on the very next day of the marriage, the inlaws of the husband would torture a newly wedded wife. It is pleaded that the father of the wife had told the father of the husband at the time of marriage that his daughter, i.e., the wife insisted that a Santro car should be gifted to the husband when he was planning to give a Alto car to him. The husband denied that he tortured the wife physically and mentally. It is pleaded that the husband belongs to a well to do family with a good background and the father of the husband is also in service. It is pleaded that there was no reason for the husband or his family members to demand dowry from the wife. It is pleaded that the wife resided with the husband only for ten days and they had been to Masoori for three days. It is pleaded that during this short span, there was no reason for the husband and his family members to insist or pressurise the wife to do the household work. It is denied that the husband and his family members told the wife that she was not fair, she had a mark on the forehead and

that she looked ugly. It is denied that the husband's mother asked the wife to wash a number of clothes and scolded her as the clothes were not clean. It is pleaded that the wife did not behave like a newly wedded wife that she gave threats to the husband and was not ready to have physical relationship with him. The husband pleaded that the wife desired to live at Nagpur at her parents' house and did not wish that she should be transferred from Nagpur to Saharanpur. It is pleaded that it is clear from the orders issued by the Department of Telecommunications in which both the husband and wife were working, dated 31.3.2010 and 21.4.2010 that the wife refused to come to the matrimonial home at Saharanpur despite the fact that the Department was ready to transfer her to Saharanpur. It is denied that the husband used to ask the wife to change her clothes in his presence. It is denied that the husband used to drag the wife in and out of the room, many a times. It is denied that the husband insisted that the wife should go to Masoori with him though it was very cold in Masoori and she did not have any warm clothes. It is denied that the wife suffered from fever and vomiting at Masoori and without consulting the Doctors the husband and his family members administered heavy antibiotics to the wife. The husband denied that he had demanded a sum of Rs.70,000/- and one flat at Delhi from the father of the wife. It is pleaded that there was no need for the purchase of the flat at Delhi and the allegation of the wife in this regard is not true. The husband pleaded that the wife was a self made woman and was serving on a very good post in Bharat Sanchar Nigam Limited, Nagpur. The husband denied that he had abused the wife and her father on 15.2.2010 at her uncle's house at Saharanpur. It is denied that the husband did not attend the meeting at Saharanpur. The husband denied all the adverse allegations levelled against him and sought for the dismissal of the petition filed by the wife.

4. On the aforesaid pleadings of the parties, the family Court framed the issues. The wife examined herself in support of her case and the husband examined himself and closed the evidence on his side. On an appreciation of the oral and the documentary evidence tendered by the parties on record, the family Court, by the judgment dated 12.6.2014, dismissed the petition filed by the wife. The wife has challenged the said judgment in this family court appeal.

5. Shri Bhangde, the learned Counsel for the wife submitted that the family Court was not justified in dismissing the petition filed by the wife. It is submitted that the family Court has erroneously rejected the case of the wife that she was treated by the husband with cruelty mainly on the ground that she had not examined her father and her other relatives in support of her case. It is stated that the family Court mainly relied on the cross-examination of the husband to hold that he had not treated the wife with cruelty and that he had denied all the suggestions in respect of the acts of cruelty. It is stated that the family Court has erroneously refused to believe the case of the wife though the wife was not cross-examined by the husband in respect of some of the material facts and incidents that proved the cruelty on the part of the husband. It is stated that the family Court refused to believe that the

husband was threatening the wife on email and telephone merely because she had not produced the copies of the email on record and had also not clarified as to what type of quarrel took place between the husband and the wife on the telephone. It is submitted that the family Court erroneously disbelieved the evidence of the wife that the husband and his family members had demanded a sum of Rs.70,000/- and a flat at Delhi merely because the wife had not examined her parents in support of the said case. It is submitted that the family Court erroneously held that there was no reliable evidence in respect of the presentation of gold ornaments and articles to the wife as on some of the receipts pertaining to the purchase of gold ornaments, the name of the purchaser was not inserted in the cash memos. It is submitted that it is apparent from the record that the wife being the only issue to her parents, the parents of the wife had got her married with the husband who was residing at Saharanpur, by spending lavishly on the marriage and also gifting him a Santro car in view of his demand for a car but the greed of the husband and his family members increased and they started torturing the wife when she pointed out that it was not possible for her father to purchase a flat costing at Rs.80,00,000/- to Rs.90,00,000/- at Delhi. It is apparent from a reading of the evidence of the parties that the husband had tortured the wife only in view of his greed for money and valuables. It is submitted that the family Court ought to have accepted the evidence of the wife that she was insulted right from the second day of the marriage, that she was not fair and had a mark on her forehead and she looked ugly. It is stated that it is not possible to believe that a wife who was married to the husband with such happiness and enthusiasm should return to her paternal home within a fortnight and separate from the husband, if there was no reason for her to so separate. It is submitted that the wife desired to save the marriage even after returning from the matrimonial home on 13.12.2009 but the acts on the part of the husband of threatening the wife on email, phone and abusing the wife and her father at Saharanpur on 15.2.2010 and even thereafter on 5.6.2010, made the wife to change her mind. It is stated that the wife realised within four to five months of the marriage that it was not possible for her to live under one roof with the husband and bear the cruelty that was meted out to her, by the husband. The learned Counsel sought for the reversal of the judgment of the family Court and a decree of divorce in favour of the wife.

6. Shri Deoras, the learned Counsel for the respondent supported the judgment of the family Court. It is submitted that the family Court has rightly appreciated the material evidence on record to hold that the wife had not been successful in proving that the husband had treated her with cruelty. It is submitted that the wife was perhaps not ready and willing to live in the matrimonial home and had left the matrimonial home on 13.12.2009, never to return. It is submitted that though the husband and his family members tried for the transfer of the wife who was then working in the Department of Telecommunications at Nagpur to Saharangpur, the wife informed the Department that she was not willing for the transfer. It is stated

that the aforesaid act on the part of the wife clearly showed that the wife was not desirous of living with the husband in the matrimonial house. It is submitted that the family Court has rightly disbelieved the case of the wife in regard to the demand of dowry by the husband, specially a sum of Rs.70,000/- and a flat at Delhi as the wife had not examined any witness to substantiate her case in this regard. It is submitted that the husband had clearly denied in his cross-examination that he and his family members had asked the wife to work like a housemaid and abused her as she was not good looking and had a mark on the forehead and that they had tortured her right from the inception of the marriage. It is submitted that the family Court has scanned the evidence of the parties, specially the evidence of the parties in their cross-examination to believe the case of the husband and disbelieve the case of the wife. It is submitted that the view expressed by the family Court is a possible view and this Court may not interfere with the same in this family court appeal. It is submitted that though the wife had claimed that her father had given 270 grams of gold to her at the time of marriage and that she had left the entire gold in the matrimonial home while she left for Nagpur on 13.12.2009, the cash memos and the receipts produced by the wife pertain only to 150 grams of gold. It is submitted that the receipts tendered by the wife do not pertain to the period in the proximity to the date of solemnization of the marriage and some of the receipts pertain to the earlier period. It is stated that no particulars in regard to the gifting of the gold by the parents of the wife were given either in the pleadings of the wife or in her evidence. It is stated that there is no evidence tendered by the wife in regard to the allegations made by her against the husband except her bare word and therefore, the family Court has rightly disbelieved her evidence after holding that her evidence is not corroborated by the evidence of her father or any other family members. The learned Counsel for the husband relied on the judgment, reported in 2015 (6) Mh.L.J. 536.

7. On hearing the learned Counsel for the parties and on a perusal of the record and proceedings, it appears that the following points arise in this family court appeal, for determination :

(1) Whether the wife is successful in proving that the husband had treated her with cruelty and whether she is entitled to a decree of divorce under Section 13 (1) (ia) of the Hindu Marriage Act.

(2) What order ?

8. To answer the aforesaid points for determination, it would be necessary to consider the pleadings of the parties and the evidence tendered by them. We have already incorporated the pleadings of the parties in detail, in the earlier part of the judgment. It is, therefore, not necessary to reiterate the facts pleaded by the wife in her petition and the husband in his written statement. In this case, the wife and the husband have examined only themselves and have not examined any witnesses on their behalf. The wife has tendered her evidence on affidavit and has reiterated

the statements pleaded by her in her petition. The wife was cross-examined by the husband. In the cross-examination, the wife stated that the petition was filed as per her instructions. The wife admitted that she left the matrimonial home on 13.12.2009 and did not return to her matrimonial home thereafter. The wife admitted that she had lodged certain cases against the husband. The wife admitted that she had filed an application for her transfer from Nagpur to Saharanpur on 16.12.2009. The wife admitted that subsequently in the month of March, 2010 and thereafter the wife was reluctant for her transfer to Saharanpur as she found that it was unsafe to reside in the matrimonial home. The wife denied that on 13.12.2009 she had carried all her valuables, belongings and clothes to her parental house. It is stated that on 16.12.2009 she had applied for her transfer and there was no reason for her to carry the valuables to Nagpur on 13.12.2009. The wife admitted that the husband and the wife had been to Masoori which is at a distance of 100 km. from Saharanpur. The wife denied that she had wrongly stated that it was too cold in Masoori and that she suffered from fever and vomiting in view of the cold. The wife admitted that there were some talks between the husband and the wife before the engagement. The wife however denied that the husband and his family members did not say that the wife was ugly. The wife denied that her father had told the father of the husband that he was ready to give a Alto car to the husband but she told him to gift a Santro car to the husband. The wife admitted that there was no furniture in the house of the husband except one bed and one sofa. The wife admitted that except herself and her husband, all the members used to sleep on the "Takhat". The wife admitted that the distance between the house of her uncle and her matrimonial house at Saharanpur was only 10 minutes walking distance. The wife admitted that her parental house at Nagpur is well furnished. The wife however denied the suggestion that because her parental house at Nagpur is well furnished, she felt suffocated in the house at Saharanpur. The wife denied that she performed the household duties with the help of the three sisters of the husband. The wife denied that in the house of the husband there was a washing machine. The wife volunteered that because there was no washing machine in the house of the husband, she had opened the semiautomatic washing machine that was gifted to her, for washing the clothes in the matrimonial home. The wife volunteered that she had to do some manual work for washing the clothes in the semiautomatic washing machine that was gifted to her. The wife admitted that the husband and his father would earn for their livelihood. The wife stated in her cross-examination that though the breakfast was prepared for everybody and was served to them, there was no material in the kitchen to prepare the food as the said material was always kept in a separate room, in lock by the mother of the husband. The wife admitted that her father accompanied her to Saharanpur to drop her to her matrimonial home on 14.2.2010, but they did not directly go to the matrimonial home and stayed for a night in the house of her uncle. The wife admitted that she had filed a complaint against her husband for an offence punishable under Section 498 A of the Indian Penal code and a complaint under the provisions of the Protection of Women from

Domestic Violence Act, 2005. The wife stated that she had filed a list of articles and the expenses incurred on her marriage. The wife denied that the receipts produced by her in respect of her gold ornaments were false and bogus. The wife denied that she had falsely stated about the incidents, dated 15.2.2010, 3.5.2010 and 5.6.2010. The wife also denied that she was deposing as aforesaid, only to gain the sympathy.

9. The husband examined himself and reiterated the facts pleaded by him in his written statement. The husband denied the allegations made by the wife against him in her petition. The husband was cross-examined on behalf of the wife. The husband denied that a close relative of the wife, i.e., her uncle was residing at Saharanpur. He, however, admitted that one Mr. Verma was residing in Ahmedbagh area at Saharanpur. The husband admitted that he and his family members selected the wife to be his wife. The husband admitted that the father of the wife had presented a Santro car to him even before the marriage. The husband admitted that the Santro car is registered in his name and he was using the same. The husband admitted that the car had a run of about 2000 to 3000 km. The husband denied that at Masoori the wife suffered due to cold weather and that he had said to her that she was making a drama. The husband admitted that when he went to Nagpur along with the wife on 13.12.2009, the parents of the wife treated him well and the father of the wife had showed him one flat at Nagpur. The husband admitted that after taking permission from his Department he could have been transferred to Nagpur. The husband stated that he had not filed any such transfer application on record. The husband admitted that he came to Nagpur in the month of January, 2010 also. The husband admitted that the wife had been to Saharanpur in February, 2010. He admitted that he had been to the house of the uncle of the wife at Saharanpur on 15.2.2010. Though the husband stated that he did not know the house address of Mr. Verma, the uncle of the wife, he had visited Mr. Verma's house on 15.2.2010 along with his father. The husband admitted that in February, 2010, the wife's relative was getting married at Saharanpur. The husband denied that his father abused the wife and said that she was "Haramkhor" and that she cannot live happily in a matrimony. The husband admitted that there was a common meeting between the family members of the husband and the wife in May, 2010 but he had not attended the meeting. The husband denied the suggestion that he had doubted the character of the wife. The husband denied that he had demanded money from the wife and also a flat from the father of the wife at Delhi. It was denied by the husband that for about 5 to 6 months from the marriage he and his family members were harassing the wife for the "Dahej" articles. The husband denied that he had treated the wife with cruelty and that she had suffered physical and mental cruelty at the hands of the husband. The husband admitted that he had made a complaint to the Vigilance Department of the Western Coalfields Limited against the father of the wife.

10. It is apparent from a reading of the evidence of the husband and the wife that after the marriage, the parties resided together only for a fortnight and the wife left

the matrimonial home along with the husband to return to her parental home at Nagpur on 13.12.2009. It is not in dispute and there is ample evidence on record to show that the marriage of the parties was performed by the parents of the wife with great pomp and splendour at Saharanpur as the wife appears to be the only issue to her parents. The wife was working on a respectable post in the Department of Telecommunications at Nagpur and the husband was working on the same post in the same Department at Saharanpur when the marriage was settled between the parties. It appears from the documentary evidence produced by the wife on record that several gift articles were gifted by the parents, relatives and friends of the wife to the wife at the time of the marriage. It is admitted by the husband that even before the solemnization of the marriage, the father of the wife had presented a Santro Xing car to the husband, that was accepted by the husband and the husband was using the same even when he tendered his evidence in 2014. Since the wife was the only issue to her parents, it appears that her parents decided to do everything that was possible to be done during the solemnization of the marriage of the wife with the husband. It is the case of the wife that from the inception of the marriage, the husband and his family members taunted the wife in respect of her looks. The husband and his family members told the wife that she was not fair, that she had a mark on her forehead and that she looked ugly. It is apparent that the husband was not only gifted with gold articles and a ring at the time of the marriage but he was also gifted a Santro car before the solemnization of the marriage. It appears from a reading of the evidence of the parties that the husband and his parents were expecting more and more from the parents of the wife as she was their only daughter. It is the case of the wife that she was asked by the mother and sister of the husband that she should wash the clothes of all the family members and they scolded her that the clothes were not clean. In her cross-examination, the wife has stated that there was no furniture in the house of the husband, which was a joint family house, and there was only one sofa and one bed. The wife had admitted that there was a lot of furniture in her parental house. The wife had stated in her cross-examination that she was required to open the semi automatic washing machine gifted to her at the time of the marriage as there was no washing machine in the house of the husband. It is stated by the wife in her cross-examination that she was required to do some manual work while washing the clothes as the machine was semiautomatic.

It would be necessary to believe the case of the wife as the questions in regard to the meagre furniture in the house of the husband and the lack of amenities in his house are posed to the wife in her cross-examination and that is not her case in her evidence on affidavit. It is, thus, apparent that the wife who had all the luxurious of life in her parental home was married in a house where there was lack of furniture and lack of basic amenities. It is, however, clear from the evidence of the wife that despite the lack of amenities, she was ready to reside happily in the matrimonial home and hence, even after she returned to Nagpur on 13.12.2009, she made the

application to her Department on 16.12.2009 for her transfer from Nagpur to Saharanpur. It is, thus, apparent that though the wife was not treated well by the husband and his family members immediately after the solemnization of the marriage, the wife thought that the husband and his family members would change their ways and she would be able to reside happily in the matrimonial home. The wife was however forced to change her mind and cancel her transfer in March April, 2010 because the husband did not mend his old ways and continued to harass the wife.

11. It is the case of the wife that the husband asked the wife before she left the matrimonial house that she should secure a sum of Rs.70,000/- from her parents and her father should also buy a flat for the husband at Delhi. The wife has pleaded in the petition and has also stated in her evidence that she had informed the husband immediately that her father would not be in a position to buy a flat for the husband at Delhi as it would cost about Rs.80,00,000/- to Rs.90,00,000/-. In our view, it would be necessary to believe the case of the wife that the husband had asked her to bring a sum of Rs.70,000/- from her parents and that her father should buy a flat for him at Delhi. The family Court has erroneously discarded the evidence of the wife in this regard solely on the ground that she has not examined any witness in support of her case. It was not possible for the wife to examine any witness in support of the said fact as the husband had told the wife alone, before she left the matrimonial house that she should get a sum of Rs.70,000/- from her parents and that her father should buy a flat for him at Delhi. If the said fact was stated by the husband to the wife alone, there was no question of examining any witness to prove the said fact. The evidence of the wife would be enough to substantiate the fact pleaded by her as the demand was not made by the husband in the presence of anybody else. We, however, have not relied only on the evidence of the wife to hold that she has been successful in proving the said fact. It is necessary to believe the case of the wife in this regard, as even before the marriage, the husband has accepted a Santro Xing car from the father of the wife. We are surprised that the husband has accepted a car from the father of the wife even before the solemnization of the marriage. An upright and honest son in law would never accept a Santro car from his woolennlaw even before the marriage is solemnized and get the car registered and start using the same. Even after the parties separated and decided that they cannot live in the matrimonial home, the husband continued to use the car and drive the same till he tendered his evidence in the year 2014. Apart from the fact that the husband accepted the car, which according to the wife, was demanded by him, it is necessary to consider the evidence of the husband in his cross-examination, where he admitted that when he came to Nagpur to his inlaws (i.e. the parents of the wife) on 13.12.2009, the parents of the wife treated him well and the father of the wife showed him a flat at Nagpur. This admission of the husband would clearly show that the husband was demanding a flat from the father of the wife, otherwise, there was no reason for the father of the wife to show a flat

to the husband at Nagpur during his stay at Nagpur from 13.12.2009 to 15.12.2009. It appears from the several documents tendered by the wife on record in respect of the articles gifted to her and her inlaws at the time of marriage, the gifting of the Santro car to the husband even before the marriage was solemnized and the fact that the husband was shown a flat at Nagpur by the father of the wife that the husband and his family members were expecting and demanding more from the parents of the wife. The family Court has erroneously rejected the evidence of the wife in regard to the illegal demands made by the husband from the father of the wife solely on the ground that the wife had not examined any other witness in support of her case. In our view, it would not be always necessary for a party to examine several witnesses in support of the case in respect of the demand of articles or dowry. The acceptability of evidence is not based on the number of the witnesses that are examined. It is well settled that the acceptability of the evidence cannot be based on the quantity of the evidence but is based on the quality of evidence, that is, tendered in the Court. The wife has clearly proved by her oral evidence, from the documentary evidence tendered by her and from the cross-examination of the husband that the husband had made certain demands from the father of the wife and since the wife had refused to accede to the demands, the husband and his family members had treated her badly immediately after the solemnization of the marriage and even thereafter in the months of February, May and June, 2010.

12. It will now be necessary to consider the other evidence tendered by the wife. The wife has pleaded and also stated in her evidence that since the inception of the marriage, the husband and his family members used to taunt her that she was not fair, that she had a mark on her forehead and that she was ugly. The wife has also stated in her evidence that the husband and his family members had asked her to leave the job and do the household work like a maid servant. The wife has stated in her evidence that she was required to wash the clothes of all the family members of the husband and the mother and sister of the husband scolded her that the clothes were not cleanly washed. The wife has further pleaded that husband would catch her hair and pull her in and out of the room. The wife has stated that the husband and his family members were not satisfied with the gifts that were received by them at the time of marriage and they demanded more from her parents. The wife has stated in her evidence that she was forcibly taken to Masoori though she had no woollen clothes with her and it was extremely cold in Masoori. The wife has stated that she suffered from fever and vomiting due to the extreme cold at Masoori and the husband and his family members taunted her that she was making a drama. The wife has stated in her evidence that the husband had wrongfully performed the pregnancy test on her in the house without consulting the Gynecologist and had also administered strong antibiotics to her when she suffered from fever at Masoori. According to the wife, the husband and his family members illtreated her after the solemnization of the marriage. The wife has pleaded and has also stated in her

evidence that she was physically and mentally tortured by the husband and his family members. The wife has stated that after she left the matrimonial home on 13/12/2009, the husband threatened her on emails and telephonic calls on a number of occasions. The wife has specifically mentioned about the threatening emails and telephonic calls in the months of January and February 2010. The wife has stated in her evidence that when she had been to Saharanpur for the marriage of her relative on 14/2/2010 and was residing along with her parents in the house of her uncle Mr. Verma, the husband and his family members came to the house of Mr. Verma in the morning on the next day, i.e. 15/2/2010 and abused the wife. It is stated by the wife in her evidence that the husband even tried to assault her father in the house of Mr. Verma. The wife has stated in her evidence that on 15/2/2010 the husband and his family members told her not to enter the matrimonial home and that they would also not return the valuables, furniture and gift articles that were gifted to her at the time of marriage. It is stated by the wife that on 15/2/2010, the father of the husband abused the wife and told her that "rq gjke[kksj gS] rq fdlh ds ?kj dk fpjx ugha tyk ldrh". It is stated that thereafter a meeting for considering a settlement between the parties was held in the house of her uncle at Saharanpur on 30/5/2010, but the husband did not attend the said meeting. It is stated that on 5/6/2010, the husband again made a telephonic call to the wife and started abusing her and her father. It is stated that the husband told the wife that her father is handicapped, that he has secured the job of a Manager on the handicap quota and after sometime, she would also be a handicapped lady.

13. Though the wife is cross-examined on some of the statements made by her in her evidence on affidavit, there is no cross-examination of the wife in respect of the incidents dated 15/2/2010 and 5/6/2010. About the incidents dated 15/2/2010 and 5/6/2010, only a suggestion is given to the wife that the statements made by her in respect of the incidents are false. There is no suggestion that the husband and the father of the husband did not abuse the wife on 15/2/2010 and that the husband did not try to assault the father of the wife on 15/2/2010. There is nothing in the cross-examination of the wife to disprove her case that she was treated by the husband and his family members with cruelty.

14. There is a word against word and there is evidence of the wife against the evidence of the husband. In this background, it would be necessary to consider as to whose evidence is more weighty and acceptable. We have perused the documentary evidence as also the oral evidence of the parties minutely. It is apparent from the documentary evidence tendered by the wife on record that just before solemnization of the marriage, the parents of the wife had made huge purchases of jewellery, sarees, clothes, furniture both wooden and steel, mattresses and all dailyneed items including electronic goods like washing machine, refrigerator and so on. Huge purchases appear to have been made by the wife's parents before solemnization of the marriage. The bills of the purchases are running into several lakhs of rupees. Most of the documents-receipts are exhibited. These documents

clearly show that the parents of the wife had tried their level best to ensure that best of the articles and things are given to their daughter and her family at the time of the solemnization of the marriage. A Santro Car was purchased by the father of the wife for the husband more than twenty days prior to solemnization of the marriage and the Car was admittedly registered in the name of the husband and the husband was using the car even till he tendered the evidence in the year 2014. Several gold ornaments were purchased at the time of marriage and even sometime earlier, for the wife. It is not the case of the husband that the wife had married him against her wishes and that she was not desirous of marrying him. In this background, it is difficult to gauge as to why a wife would leave the matrimonial home merely a fortnight after the solemnization of the marriage, never to return to the matrimonial home. Since there is no allegation against the wife about not being desirous of marrying the husband or that the marriage was performed against her wishes, it cannot be said that the wife, who had willingly consented for the marriage, would leave the matrimonial home within a period of one month, from the solemnization of the marriage. It is, therefore, necessary to believe the case of the wife that she was forced by the husband and his family members to live separately. Though the wife was treated badly since the solemnization of the marriage on 28/11/2009 till she stayed in the matrimonial home till 13/12/2009, it is the case of the wife that she always believed that the husband and his family members would mend their ways and she would return to the matrimonial home. That is the reason why the wife admittedly made an application to the Telecommunication Department, for her transfer from Nagpur to Saharanpur. The admission on the part of the husband in this regard clearly shows that the wife was desirous of returning to the matrimonial home even after 13/12/2009 though she was treated badly after the solemnization of the marriage. However, the subsequent conduct on the part of the husband and his family members made the wife and her parents believe that it was not possible for the wife to live under one roof with the husband and there was danger to the life of the wife in the matrimonial home. The wife has clearly stated in her evidence that after she returned to her parental house on 13/12/2009, her husband threatened her on emails and telephone. The Family Court has disbelieved this version only on the ground that the emails are not placed on record. The Family Court has also disbelieved the case of the wife that the husband and his father abused the wife in her uncle's house at Saharanpur on 15/2/2010. The Family Court has not scanned the evidence of the parties in a proper manner to hold so. Though the husband has stated in his evidence that he does not know whether the uncle of the wife resides in Saharanpur, he has admitted in his cross-examination that one Mr. Verma resides in Ahmedbagh area of Saharanpur. Though the husband has stated in his cross-examination that he did not know where Mr. Verma resides, immediately on the next suggestion, the husband has admitted that he had visited the house of Mr. Verma on 15/2/2010. It is the case of the wife that the husband and his father had abused her and the husband had also threatened to assault her father on 15/2/2010. There is word against word in this

regard, but we are inclined to accept the evidence of the wife in respect of the incident dated 15/2/2010, more so when there is no specific cross-examination of the wife in this regard. Also, the husband has falsely stated in his evidence that he does not know where Mr. Verma resides, but subsequently, he has admitted that on 15/2/2010 he had gone to the house of Mr. Verma. We find that the husband and his family members were aggrieved that the wife was not willing to accede to the demands of the husband and his family members and, therefore, the incident dated 15/2/2010 occurred. Even after 15/2/2010, the parents of the husband and wife decided to have a common meeting on 30.5.2010 to settle the dispute between the parties, but the husband did not attend the meeting that was held for ensuring a settlement. The husband not only did not attend the meeting dated 30/5/2010, but it is the case of the wife and we are inclined to believe it that the husband called the wife on the telephone on 5/6/2010 and told her that her father is a handicapped person, that he had secured the job on the quota for handicapped persons, that he does not possess a degree and that the wife would also become handicapped one day. Though the husband has denied making the aforesaid call to the wife on 5/6/2010, we are inclined to accept the case of the wife in this regard. We are inclined to accept the aforesaid case of the wife as we find that but for the illtreatment meted out by the husband and his family members, there could not have been any reason for the wife to leave the matrimonial home and decide not to return to the same. No girl, who has happily married with her consent and whose parents have spent lakhs of rupees on the solemnization of the marriage and on gifting the articles to her and the other members in the matrimonial home would leave the matrimonial home and decide in favour of the dissolution of the marriage unless she is forced to do so. Though in regard to the incident dated 15/2/2010, the wife could have examined a witness, i.e. either her father or her uncle Mr. Verma, we do not find that in respect of any other allegation made by the wife against the husband she could have examined any witness in support of her case as all the allegations levelled by her against the husband were only within her personal knowledge and no other witness could have been examined to substantiate her case in respect of the allegations.

15. On a proper appreciation of the evidence on record, we are of the view that the husband and his family members have treated the wife with cruelty only because the wife and her family members were not in a position to fulfil all the demands of the husband and his family members. The Family Court erroneously discarded the evidence of the wife solely because she had not examined any witness in support of her case. The approach of the Family Court in deciding the matter was not just and proper. We find that the husband had accepted a Santro Xing car from the wife nearly a month before solemnization of the marriage and had not returned the car to the wife though the parties separated within a short time. The conduct on the part of the husband to use the car till the evidence was tendered in the year 2014 speaks volumes. We are not inclined to accept the submission made on behalf of the

husband that wife's parents did not purchase the gold ornaments for her as some of the receipts pertain to a period prior to the date of solemnization of the marriage. Normally, when a girl advances towards the marriageable age, the parents of the girl start purchasing gold ornaments for the girl. It is not possible for all the parents to purchase the gold ornaments for a girl at the time of marriage only. In fact, in some cases, as soon as a girl is born, small gold ornaments are purchased time and gain to ensure that the substantial ornaments could be gifted to the girl at the time of her marriage. We find that the Family Court has grossly erred in appreciating the evidence tendered by the parties and has dismissed the case of the wife without considering as to why the wife would file a petition for divorce, in the circumstances narrated here-in-above, if she was treated well by her husband and her inlaws. The judgment in the case of **Lilesh w/o Vinod Agrawal v. Vinod Ramrichpal Agrawal (2015 (6) Mh.L.J. 536)** and relied on by the Counsel for the husband is not applicable to the facts of this case. In the said judgment, the husband was not able to prove his case for a decree of divorce on the ground of cruelty on the basis of the allegations made by him against the wife, but still this Court had granted a decree of divorce in his favour, as the wife had made serious, wild and reckless allegations against the husband in her written statement and had failed to substantiate them. This Court had held in the circumstances of the case that the acts on the part of the wife of levelling wild and reckless allegations against the husband and his family members and failing to substantiate the same would tantamount to cruelty. The said judgment will have no application whatsoever to the case in hand.

16. Hence, for the reasons aforesaid, the Family Court Appeal is allowed. The judgment of the Family Court, dated 12/6/2014 is set aside. The petition filed by the wife for a decree of divorce on the ground of cruelty is allowed. The marriage solemnized between the parties on 28/11/2009 stands dissolved by a decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955. In the circumstances of the case, there would be no order as to costs.