

(2011) 04 CAL CK 0084**Calcutta High Court****Case No:** F.A. No. 239 of 2007

Palash Chandra Karan

APPELLANT

Vs

Sujata Karan (Das)

RESPONDENT

Date of Decision: April 11, 2011**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27
- Hindu Marriage Act, 1955 - Section 13, 13(1)
- Penal Code, 1860 (IPC) - Section 323, 327, 34, 384, 498A

Citation: (2011) 3 CHN 739**Hon'ble Judges:** M. K. Chaudhuri, J; Amit Talukdar, J**Bench:** Division Bench**Advocate:** S.K. Mal and B. Das, for the Appellant; Malay Kr. Dhar, for the Respondent**Final Decision:** Dismissed**Judgement**

Dr. M.K. Chaudhuri, J.

This appeal is preferred against the judgement and order dated 04.04.2007 passed by learned Additional District Judge, Contai, District Purba Medinipur in Matrimonial Suit No. 105 of 2007. The appellant case, in short, is that he married the respondent on 09.12.2002 as per Hindu rites and rituals. The said marriage was registered under Hindu Marriage Act on 30.12.2002. After marriage, the respondent lived with the appellant as husband and wife and the marriage was, therefore, consummated. The appellant, at the relevant time, worked as a sergeant in Indian Airforce and retired therefrom on 28.02.2003. The respondent/wife was an Assistant Teacher in Ramnagar Girls High School. The appellant/husband's case is that the respondent/wife is an eccentric, lady suffering from Schizophrenia and Insomnia. She used to misbehave with the appellant and rebuke him in filthy language. She was a lady of low temperament and does not like to lead conjugal life. She did not share the bed with the appellant at the matrimonial home. She used to exhibit

arrogant attitude and behaviour. She was at all times in a mood of assaulting and threatening him to put him in prison by lodging false cases. The unnatural behaviour of the respondent has caused damage to life, body and limb of the appellant and blighted the mental peace of the appellant. She was about to assault the appellant. The appellant was treated with cruelty and she was not willing to reside with the appellant. She has been residing in the house of her father since 13.04.04 without consent of the appellant. She passed sleepless night and refused to go to the doctor's chamber being accompanied with the appellant for the purpose of her treatment.

2. By amending the plaint the appellant has stated further that respondent filed a criminal case u/s 498A/327/384/34 of IPC being G.R. Case No. 227 of 2004 in the Court of learned A.C.J.M., Contai. In the said criminal case she falsely alleged about physical torture and assault by the appellant and his in-laws. Such false allegation in the criminal case shattered the mental peace of the appellant. The appellant went to the house of the father of respondent on 16.04.04, but she refused to return. The respondent refused to live with the appellant as husband and wife and she, therefore, deserted the appellant. She used to go out from the house of the appellant without informing the appellant or his family members. The appellant lodged a diary to the O.C. of Digha P.S. on 11.07.2003 vide G.D.E. No. 312 dated 11.07.2003. The whimsical and unbecoming behaviour of the respondent created tension and disturbed the mental peace. From the very beginning of the marriage she refused to have sexual intercourse for the reason best known to her. She did not attend or take part in any social occasion and used to keep secrecy in the matter of earning money and used to rebuke the appellant to the extent that he is not fit for her husband. She used to go to her father's house with lame excuse and with an expression of her rude, arrogant and challenging attitude without caring for her husband even at the time of his illness. The appellant belongs to the family of social repute as his father and brothers are teachers and they are highly qualified. The appellant instituted this matrimonial suit praying for a decree of divorce on the ground of desertion and cruelty.

3. The respondent contested the said suit by filing written statement and denying all the material allegations. According to respondent, she was treated with cruelty and tortured by the appellant and her in-laws since after the marriage. She is M.Sc. B.Ed. and working as an Assistant Teacher at Ramnagar Girls' High School since before her marriage with the appellant. The father of the respondent gave a sum of rupees 50,000/- in cash along with ornaments and articles as per demand of the appellant at the time of marriage. The appellant is addicted to drinking liquor. He insisted the respondent to drink liquor and on refusal the respondent was assaulted by the appellant mercilessly. After the retirement the appellant demanded a further sum of rupees 1,00,000/- from the father of respondent who paid the same by installment. The appellant forced the respondent to give the appellant her monthly salary of rupees 8,000/- This respondent came to know after marriage that the appellant

previously married one Snigdha who was forced to leave the matrimonial house of the appellant and the appellant obtained an ex parte decree of divorce. The appellant suppressed the fact of his previous marriage and divorce to the respondent. Further case of the respondent is that the appellant is rude and on the occasion of "Jamaisasthi" in the house of the father of respondent, the appellant created trouble in intoxicated condition and abused and assaulted the respondent. She has further alleged that the incident of regular drinking by the appellant and assault upon the respondent by the appellant became a regular affair. She informed this incident to her parents but avoided to take shelter of law in fear of social scandal. On 13.04.2000 at about 10 a.m. the appellant again assaulted the respondent with fist and blow and attempted to kill her by pressing a pillow on her face to block her respiratory system. Therefore, the respondent left the house of the appellant on 13.04.2000 and came to her father's house. She was treated by Doctor P. Roy. The appellant, apprehending criminal case filed matrimonial suit on false ground of cruelty and desertion. She lodged FIR. Since police did not take steps to start specific case, the respondent filed a complaint before learned ACJM, Purba Medinipur and learned ACJM directed OC to investigate the case after treating the complaint as FIR. Accordingly, OC, Digha PS started Digha PS case u/s 498A/323/384, IPC treating the said complaint as FIR. After investigation the police submitted chargesheet against the appellant and his family members. In the circumstances, the respondent prayed for dismissal of the suit. On perusal of the pleadings, learned Trial Court framed as many as five issues and recorded the evidence of both the parties and passed the judgement and order by virtue of which the matrimonial suit was dismissed on contest.

4. Being aggrieved by and dissatisfied with the judgment and order of the dismissal of the suit the appellant has preferred this appeal. This appeal has been contested by the respondent. The appellant has filed a petition praying for adducing additional evidence under Order 41 Rule 27 of CPC. The judgment of the G.R. Case No. 227 of 2004 where the appellant and his family members were acquitted is the only additional evidence the appellant wants to rely. The supplementary paper books along with the judgement and order of G.R. case has been filed to that extent.

5. Now, the points for consideration are :

- 1) Has the appellant/husband been able to prove his case of desertion and cruelty against the respondent?
- 2) Has the judgment and order of acquittal of G.R. Case No. 227 of 2004 in isolation any bearing to prove the allegation of cruelty in this matrimonial suit?
- 3) Is the learned Trial Court justified in dismissing the matrimonial suit?

Decision with Reasons

6. The appellant/husband has prayed for a decree of divorce on two grounds, firstly, on the ground of desertion and secondly, on the ground of cruelty. So far as the ground of desertion is concerned, section 13(1)(i-b) provides that a marriage may be dissolved by a decree of divorce in case either of the spouse has deserted other for a continuous period of not less than two years immediately preceding the presentation of petition. In the instant case, the said time bar has not been satisfied. The respondent is living in the house of her father since 13.04.2004. The suit has been filed on 21.04.2004. Therefore, the appellant cannot get a decree of divorce on the ground of desertion for non-compliance of section 13(1)(i-b) of the Hindu Marriage Act, 1955. Moreover, learned Advocate for the appellant has submitted that the point for desertion is not pressed by the appellant. In the written note of averment this is also mentioned.

7. The second ground for a decree of divorce as raised by the appellant is the ground of cruelty. Cruelty may be physical or mental. Plaintiff averment reveals that the respondent was in a mood of assaulting the appellant. Besides this, there is no other evidence. The appellant, Palash Chandra Karan has also uttered this statement in his evidence as P.W.1. But there is no whisper in the evidence of other witness of the appellant as regards the physical assault upon the appellant by the respondent. The appellant/husband lodged a diary on Digha P.S. being G.D.E. No. 312 dated 11.07.2003. The said G.D.E. No. 312 dated 11.07.2003 marked as Ext.2 does not reveal that the respondent/wife ever assaulted or attempted to assault the appellant. The said G.D. does not reveal that the respondent abused the family members of the appellant in filthy language or inflicted ill-treatment upon them. Averment of the said G.D. only reveals that the respondent misbehaved with the appellant in various ways like avoiding norms and rules of the appellant's home and neglected the appellant. As she is a school teacher of Ramnagar Girls' School, she is self-sufficient and is willing to avoid her husband and threatened the appellant to lodge case against the husband for torture. There is no specific whisper in the said G.D, about the incident of cruelty, mental or physical. Had there been any infliction of cruelty by the respondent upon the appellant, the appellant/ husband must have incorporated the same in the G.D. E, bearing No. 312 dated 11.07.2003.

8. Therefore, the allegation of physical cruelty has not at all been proved by the appellant/husband. On the point of mental cruelty it may be stated that the word "cruelty" has not been defined in the Hindu Marriage Act. It has only been mentioned in section 13(1)(i-a) of Hindu Marriage Act. Hon'ble Apex Court in a case of Praveen Mehta Vs. Inderjit Mehta, has opined that "21. Cruelty for the purpose of section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be

correct approach to take an instance of behaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether petitioner in the divorce petition has been subjected to mental cruelty due to the conduct of the other." Hon"ble Apex Court in a decision reported in [A. Jayachandra Vs. Aneel Kaur](#), in A Jayachandra vs. Aneel Kaur, has held that the cruelty may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb and health bodily or mental as to give rise to a reasonable apprehension of such a danger. There are considerable number of decisions of Hon"ble Apex Court on the point of mental cruelty, which disclose the aforementioned standard.

9. In order to establish the allegation of mental cruelty the appellant/ husband has stated in the plaint as well as in his examination-in-chief that the respondent/wife is an eccentric lady suffering from Schizophrenia and Insomnia. Save and except this averment in the plaint and statement of appellant in his examination-in-chief, there is no cogent and reliable evidence to substantiate the allegation that his wife is an eccentric lady suffering from Schizophrenia and Insomnia and she has, therefore, been suffering from mental disorder or psychopathic disorder. Other PWs are quite silent on this point. In cross-examination, this appellant as P.W. 1 has categorically stated that there is no document to show that his wife has been suffering from Schizophrenia and Insomnia. He has categorically stated in his cross-examination "I have no document to prove that the respondent has been suffering from Schizophrenia". He has stated this in the plaint from his knowledge as para military man. Therefore, the allegation that his wife has been suffering from Schizophrenia has not at all been proved by any cogent evidence. Moreover, other witness of the appellant although they are related have not at all made any whisper on this point. In the absence of any cogent explanation as to why the complaint levelled the allegation that his wife has been suffering from aforesaid disease, it may be held that those allegations were levelled in order to get a decree of divorce on the ground of mental disorder or psychopathic disorder and this conduct is nothing but an act of mental cruelty on the part of the husband. Moreover, in the G.D.E. the appellant has mentioned that his wife threatened him to lodge case for infliction of torture. With regards to other allegation on the ground of cruelty, it has been stated by the appellant in his evidence that the respondent used to misbehave with him and subject him into mental cruelty. Surprisingly no such categoric or specific example of mental cruelty has been advanced in his evidence and in the evidence of other witnesses. All the allegations of misbehaviour in using of filthy language, disregarding husband are general statement which cannot at all constitute the ground of mental cruelty so as to cover section 13(1)(i-a) of Hindu Marriage Act. The appellant has alleged that the respondent never used his company to go to doctor and she did not take part in any social occasion in the matrimonial house during her stay and she used to keep secrecy in the matter of her earning money and she used

to create tension under the instigation of her parents and younger brother. No such endeavour has been made by appellant to prove these allegations. All these allegations are superficial and common having no evidence on the same. There is no mention of particular date when his wife subjected him to cruelty in any particular way so as to constitute mental cruelty as per observation of Hon"ble Apex Court made above. Similarly, other witnesses have also stated in the same tune in the same tutored fashion. They have only stated that respondent used to quarrel with the petitioner. She used filthy language. She insulted and neglected her husband. All the statement are general allegations without any detail particular of the incident and date. All the statements of the other witnesses have no depth and credibility to constitute mental cruelty as to invite the standard of cruelty as per observation of Hon"ble Apex Court.

10. On the point of cruelty another ground is taken by the appellant to the effect that the respondent did not share the bed with the appellant at the matrimonial home and she refused to have sexual intercourse from the very beginning of solemnization of marriage. This allegation has not been corroborated by other witnesses of the appellant in any way. Moreover, this appellant has stated in his examination in chief that after marriage, the respondent came to his house and lived with him as husband and wife. Furthermore, para 3 of the plaint clearly reveals that the appellant lived with the respondent as husband and wife after marriage and accordingly the marriage was consummated. The respondent examined as D.W.1 Sujata Khatun has clearly stated in her cross-examination that after her marriage she had sexual intercourse with her husband for conceiving. Her husband told her that he was not willing to have child within one year and at that time she has no objection with the opinion of her husband during the stay with her husband after marriage. This statement of the cross-examination of respondent clearly falsifies the allegation of the appellant that respondent did not have any sexual intercourse with him after marriage. So, this allegation on the point of cruelty finds no merit. It is crucial to consider that appellant/husband has categorically admitted that he has not mentioned any particular date as to when he was treated with cruelty by the respondent. It is suggested that he did not mention the date because no such cruelty as alleged was ever inflicted upon the appellant by his wife/respondent. He has stated that the cruelty was a continuous process and that is the reason as to why he did not mention the date. This explanation is hardly to be believed. Had it been a continuous process it must be clearly reflected in the plaint as well as in his evidence with specific data and date. It is surprising to note that there is no averment in the plaint as well as in examination-in-chief that the appellant prior to his marriage with the respondent married one Snigdha Karan. But in his cross-examination he has admitted that Snigdha was his first wife and he married Snigdha on 26.06.1990. He has also stated that he was not in a position to show the certified copy of the divorce decree from his first wife, Snigdha because the certified copy was handed over to his second wife i.e. the present respondent.

But this explanation is not corroborated by any independent witness or any document. On the contrary, respondent has categorically stated in her written statement as well as in her evidence that the appellant suppressed his earlier marriage and divorce. She has also stated in her evidence that due to the cruelty upon Snigdha, she was compelled to leave her matrimonial house and this incident was suppressed by the appellant to the respondent at the time of marriage. Subsequently, after marriage respondent came to know about the previous marriage of appellant. When she asked as to why he suppressed the fact, the respondent was subjected to cruelty and torture. She has stated that torture upon her by the appellant and his family members increased day by day. The appellant was in the habit of taking liquor and this incident of taking liquor and the assault upon her by the appellant became a regular affair. She informed the matter to her parents, but she did not take shelter of law in fear of social scandal. On 13.04.2000 when appellant assaulted her and pressed a pillow on her face to block her respiratory system in order to kill her, she left the house and she was treated by Doctor P. Roy. She has further stated that the respondent, apprehending the criminal case on the ground of torture and assault filed this matrimonial suit. The respondent finally informed O.C., P.S. Digha on 28.04.2004. She has further stated that further demand of dowry was made from the end of the appellant. The said demand includes a sum of rupees one lakh. She was told by the appellant if the said amount was not paid he will marry again. The said amount was paid by the father by installments. Moreover, the appellant compelled the respondent to hand over her monthly salary of 8,000/- In her cross-examination this respondent has stated that she found liquor bottle stored in almirah in the house of her husband. On query her husband told that he took the liquor bottles from the military canteen for the purpose of selling them outside. Subsequently she came to know her husband used to drink liquor. She found bottles of different brand and one of them was of "Bagpiper". She has categorically stated in her cross-examination that she did not lodge any complaint about the torture by her husband in apprehension that the prestige would be denigrated. In her cross-examination she has further stated that on 07.03.2003 her husband forced her to part with her entire salary. She has also replied in her cross-examination that she went to the chamber of Doctor P. Roy on 13.04.2004 in the evening at Saraswatitala. So, the averment of written statement as well as examination-in-chief and cross-examination of respondent reveal that respondent was subjected to torture by the appellant and this is the reason as to why she lodged complaint at P.S. Digha and finally a criminal case was lodged by her. That she was subjected to torture by her husband was corroborated by her father examined as D.W.2 Phanibhusan Das. Another witness i.e. D.W.3 Jawaharlal Das who resides after three house of the father of the respondent has stated that on the day of "Jamaisasthi" he went to the house of the father of the respondent and came to know that on that occasion a dispute arose between the appellant and respondent. A sound was coming out from the house of the father of respondent and the respondent told him as to the drinking of liquor by the appellant on that

date. In her cross-examination this witness has also stated this aspect of the matter. He has stated further in his cross-examination that on 12/13th March, 2004 the respondent handed over complaint to him against her husband. As this witness was a member of the ward committee the complainant was handed over to him by the respondent. On the basis of the complaint a meeting was held on 15/16th April, 2004 by Councillor of Ward No. 2, but no resolution was prepared as none from appellant turned up. From the evidence of the appellant it does not appear that the appellant has been able to prove his case of cruelty so as to get a decree of divorce. Learned Trial Court was justified in holding that the ground of cruelty was not at all substantiated. Moreover, no attempt was made by the appellant to substantiate that the allegations made in the criminal case are false and baseless. On the contrary, the cumulative effect of the evidence of witnesses of the respondent as well as the evidence of the appellant reveals that the appellant married the respondent after having suppressed his first marriage. First wife was compelled to leave matrimonial home. Subsequently after marriage this respondent was also subjected to torture on different causes including the ground of demand of money. Though the appellant alleged that she was suffering from Schizophrenia and was eccentric lady and used to misbehave and quarrel with him and his family members, all these allegations in absence of proof stand totally baseless and false.

11. The appellant in his additional evidence has stated that the respondent instituted a criminal case u/s 498A/323 IPC bearing Case No. 227 of 2004. The said case was pending at the time of trial of matrimonial suit before the learned Trial Court. After the judgement of the matrimonial suit, the criminal case was disposed of and the appellant and his family members were acquitted. Learned Advocate for the appellant has submitted that the allegations of the criminal case are false and baseless and, therefore, they were acquitted. The filing of the criminal case on the baseless ground constitutes the ingredient of cruelty. This is the only point of argument advanced by learned Advocate of the appellant during the time of hearing this appeal. It is pertinent to note that the appellant has not adduced any cogent evidence to prove that the allegations in the criminal case are totally false and baseless, although those allegations in filing criminal case were known to him during the trial of matrimonial suit where he got sufficient opportunity to adduce independent evidence to prove that allegations are baseless and false.

12. Now, the question that comes for consideration is whether acquittal of the appellant in that case will automatically constitute the ingredient cruelty so as to get a decree of divorce. In this connection, it is wise to remember that the standard of proof of the criminal case is quite different from that of the civil suit. In the criminal case prosecution must prove its case beyond all reasonable doubts whereas in civil case standard of proof is based upon the preponderance of probability. In this regard, decision of Apex Court can be quoted. Mr. Moloy Dhar, learned Advocate on behalf of the respondent has cited a decision namely Vishnu Dutt Sharma vs. Daya Sapra passed on 5th May, 2009 by Hon"ble Apex Court. On perusal of the said

judgment it transpires that Hon"ble Apex Court observed that a judgment of a criminal Court in a civil proceeding will only have limited application, viz, *inter alia* for the purpose as to who was the accused and what was the result of the criminal proceedings". Hon"ble Apex Court reliedupon the decision of Seth Ramdayal Jat Vs. Laxmi Prasad, and held that "it does not lay down that a judgement of Criminal Court would be admissible in the Civil Court for its relevance is limited"...."Any finding in a criminal proceeding by no stretched of imagination would be binding in a civil proceeding". It was further observed "if a primacy is given to a criminal proceeding indisputably the civil suit must be determined on its own keeping in view the evidence which has been brought on record before it and not in terms of the evidence brought in the criminal proceeding". Therefore, Hon"ble Apex Court held "that the standard of proof required civil and criminal proceeding are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond all reasonable doubt has to be given". Although the facts of this case is quite different from the present one, the ratio of the decision and principle laid down therein are quite applicable in the present case. In the instant case, the respondent alleged that she was subjected to torture and cruelty by her husband on different grounds including the extraction of money and as she could not endure the torture she left her matrimonial house and lodged complaint. In this matrimonial suit lodged by her husband she has also disclosed the details of torture including the factum of first marriage of her husband which was kept in suppression at the time of marriage. The appellant got ample opportunity to adduce independent evidence to prove that the allegations made in the criminal case are all false and baseless. Merely because of the acquittal, it would not be a ground to hold that all the allegations were false and baseless inasmuch as in the criminal case the standard of proof is beyond all reasonable doubts. Since the appellant failed to prove that allegations in criminal case are false and baseless it cannot be *ipso facto* held that the allegations are false and baseless as he was acquitted. Facts not proved does not amount to falsity. A fact is said not to be proved where it is neither proved or disproved. In this connection, the decision reported in A. Abdul Rashid Khan (Dead) and Others Vs. P.A.K.A. Shahul Hamid and Others, is quite relevant.

13. We may quote the observation which reads as: "There is difference between "not proved" and "false". Merely not able to prove cannot be in all cases categorized as false." Similarly, a decision of Division Bench of this Court reported in Anuradha Ghosh Moulick Vs. Subir Krishna Ghosh Moulick, may also be relied upon, it is also a case of divorce u/s 13 of Hindu Marriage Act. In the said case party filing written statement could not prove the allegations. It was held if the party making allegation in the written statement fails to prove such fact by cogent evidence, according to law such fact is "not proved". However, if a particular fact is not proved, the same does not become baseless unless the same is found to be false and it is for the spouse claiming divorce to adduce convincing evidence to disprove such allegation

and burden lies on the party to convince the Court that those allegations are false and baseless. In the present case the allegations of cruelty, torture have been made by the respondent/wife in her written statement as well as in her evidence. On the scrutiny of the entire evidence of both the parties including the conduct of the appellant it cannot be ruled out that the respondent/wife was subjected to cruelty and torture by her husband and in-laws. But she failed to prove her allegations beyond all reasonable doubts in a criminal proceeding under sections 498A and 323, IPC. Since the burden lies upon the plaintiff/appellant to prove his case that the allegations in the criminal case are false and baseless, he is required to adduce convincing evidence to disprove the allegations of his wife to establish before the Court that all those allegations are baseless, false and groundless. But nothing has been done in the instant case. The burden lies upon the appellant/husband to prove the ground of cruelty and also to prove that the allegations of torture and assault made by her wife in the criminal case are false and baseless. Mere family dispute or quarrel cannot be tantamount to cruelty. It cannot be held that although the incapability of a party to prove the cruelty alleged in the plaint results in dismissal of the claim of divorce, the failure of the party to prove the counter allegation in the criminal complaint for want of sufficient evidence will automatically give birth to a right upon the party to get a decree of divorce in spite of the fact such party failed to prove the case of cruelty made out in the plaint. The ratio of the decision of Anuradha Ghosh Moulick Vs. Subir Krishna Ghosh Moulick, has sufficient application in the present case.

14. Learned Advocate for the appellant has cited some decisions reported in Naveen Kohli Vs. Neelu Kohli, . Suman Kapur Vs. Sudhir Kapur, and 2009 (4) CLT (HC) 287. The facts and law in the case Naveen Kohli Vs. Neelu Kohli, are quite distinguishable. In the said case respondent/wife filed several cases including criminal complaint against her husband and made all efforts to harass and torture. She got issued public notice in the newspaper with a view to lower the prestige of her husband. Both the parties levelled allegations against each other. The wife was not prepared to have a decree of divorce on mutual consent. It was held the respondent treated the appellant with cruelty but the said facts and decisions are not applicable in the instant case. In the case reported in Suman Kapur Vs. Sudhir Kapur, Hon"ble Apex Court held that even making a false allegation that the husband had married an American woman is a ground of mental cruelty. The facts and circumstances are quite distinguishable for the present one and the same cannot help the appellant in any way. Another decision reported in 2010 (1) WBLR (Cal) 265, Manju Das vs. Chittaranjan Das has also been cited by the learned Counsel for the appellant. In the said case the wife left the house of her husband and lodged a general diary in police station where by the intervention of police the husband went to bring back the wife from parent's house but in vain and, thereafter, husband lodged a general diary at police station. The wife wrote letter to the husband claiming money paid by her, for a fixed deposit before starting criminal proceeding against him for criminal breach

of trust and subjecting her to cruelty for which a search warrant was executed against the husband on the day when husband was observing death anniversary of his father. But the facts and circumstances leading to the decision are not applicable in the context of the present case where the wife herself detailed the incident of torture and cruelty. Another decision reported in 2009 (4) CLT (HC) 287, Soma Banerjee vs. Subhrojyoti Banerjee, has also been cited from the end of appellant. In the said case, the wife left the house of husband who filed suit for restitution of conjugal right and thereafter wife made frivolous complaint u/s 498A of IPC. The father of the husband who was a patient of diabetes and short of vision became ill and passed away. A criminal case ended in an acquittal. The facts of the case as well as points of law are quite distinguishable from the present one. The said decision cannot be applied to the present case.

15. Having analysed both of aspects of the matter and the decision of law we are of considered view that the inability on the part of wife/ respondent to prove the allegation made in the criminal case cannot ipso facto lead to conclusion that grounds are false and baseless. The burden lies upon the plaintiff/appellant to prove the falsity of allegation by adducing cogent evidence to the effect that the grounds taken in the criminal case are all false and baseless. It may be stated that the prosecution could not prove the allegation of section 498A/323 of IPC. Since those allegations are not proved the appellant was acquitted in view of the fact the prosecution failed to prove its case beyond all reasonable doubts. In the G.R. Case No. 227 of 2004 fifteen witnesses were examined by prosecution. Three witnesses were declared hostile. Mother of the appellant was tendered and her cross-examination was declined. P.W.1., P.W.3. P.W.8, P.W.9 and P.W.10 denied about the knowledge of the incident. P.W.11 did not disclose about the incident. So, the criminal case lodged by the wife ended in acquittal inasmuch as case was not proved beyond all reasonable doubts as most witnesses did not disclose the incident in detail. But for that reason cannot be automatically held that allegations are false and baseless. Until and unless the appellant/husband proves by adducing evidence that the allegations of criminal case are false, the mere acquittal would not automatically give a right to the husband to claim that he has been able to prove the allegation of cruelty in matrimonial suit. So, the acquittal of the criminal case does not help the appellant in absence of any other corroborative evidence that the allegations are baseless inasmuch as other incident of cruelty as alleged by the appellant could not be proved by the appellant by adducing evidence. In order to brand an allegation as baseless and false, such allegation must be disproved within the meaning of Evidence Act and it is the burden upon the appellant praying for divorce to prove all the allegations in the criminal case are baseless and false. The appellant has not taken the plea of divorce on the ground of irretrievable break down of marriage. The respondent has stated in her evidence that she is willing to live with the appellant provided he behaves well. As this ground has not been incorporated as one of the grounds of divorce, the Court cannot suo motu grant a

decree of divorce on the ground of irretrievable break down of marriage. Moreover, respondent/wife has disclosed her willingness to live with the appellant provided he behaves well and does not inflict torture.

16. Considering the facts and circumstances and decision of law elucidated above we are of the view that the appellant has failed to prove the allegation of desertion and cruelty as grounds of divorce. Learned Trial Court was justified in holding that the appellant has failed to prove the allegation of cruelty, torture inflicted upon him by the respondent/wife. The judgement and order of dismissal passed by learned Trial Court call for no interference and are affirmed. Even the judgment of acquittal in Criminal Court advanced as additional evidence under Order 41 Rule 27 of CPC cannot ipso facto prove the case of cruelty.

17. The appeal, therefore, stands dismissed without any cost.

18. Let a copy of judgment along with LCR be sent down to the learned Trial Court for information.