

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**FAMILY COURT APPEAL NO. 158 OF 2008**

Nagesh Dhanapp Chilkanti .....Appellant  
versus  
Sau. Manisha Nagesh Chilkanti.....Respondent.

Ms. Seema Sarnaik adv. for the appellants.  
None for the Respondent.

**CORAM: A.P. DESHPANDE  
AND  
SMT. R.P. SONDURBALDOTA, JJ.  
DATED : 6th May, 2010.**

**ORAL JUDGMENT (Per A.P.DESHPANDE,J.):**

1. This appeal was listed for final hearing on 5<sup>th</sup> May 2010 on which date we heard the counsel for the appellant in the first session. However as the counsel for the respondent was absent, we had kept the matter in the second Session. In the second session as well the counsel for the respondent did not turn up. Hence we kept the appeal on 6<sup>th</sup> May 2010 with a view to afford one more opportunity to the respondent. Even on 6<sup>th</sup> May 2010 neither the respondent nor her counsel appeared. As such we proceeded to conclude the matter with the assistance of the learned counsel for

the appellant.

2. The appellant is the original petitioner before the Family Court who instituted a petition no. 898/05 against the respondent/wife for a decree of divorce under section 13(1) (ia) of Hindu Marriage Act. The petition for divorce on the ground of physical and mental cruelty was filed in the following facts and circumstances.

3. The petitioner and the respondent were married as per Hindu rights and customs on 18-12-2000 and marriage was performed at Ganj Peth, Pune. The expenses of the marriage were borne by both the sides in equal proportion. After the marriage the respondent cohabited with the appellant along with his family which then comprised of the appellant, his parents and brother. According to the appellant, the respondent is a very hot tempered lady and she stayed in the company of the appellant hardly for three months. She left the matrimonial house on 13-4-2001 and since then the parties are residing separately. According to the appellant despite very many efforts made by the appellant to bring back the respondent, she did not return. It is also the contention of the appellant that during short stay of three months, the respondent has treated the appellant with utmost mental cruelty. Amongst the instances of serious mental cruelty, the first one is that after the respondent left the matrimonial residence, she lodged a complaint with police station under section 498-A read with sec. 34 of IPC not only against the

appellant but his parents and brother. The prosecution of the appellant under section 498-A of IPC ended in acquittal. It is also the case of the appellant that after the acquittal of the appellant and his family members for the alleged commission of offence under section 498-A of IPC, the respondent filed yet another complaint, this time under sections 508, 506 read with 34 of IPC. The private complaint filed by the respondent was registered as Criminal Case No. 4826/05. The said case was filed on 27-12-2005. In the said case also the present appellant and his family members were acquitted.

4. It is also argued by the learned counsel for the appellant that even prior to the institution of false criminal cases by the respondent against the appellant and his family members, the respondent had also filed complaint with police and on account of which chapter proceedings were initiated under section 107 read with sec. 111 of Cr.P.C. Wherein the appellant had to furnish bond. It is strenuously urged that the respondent intentionally filed false criminal cases against the appellant and his family members only with a view to harass them. Perusal of the judgment of the trial court reveals that with a view to establish the mental cruelty, the present appellant/petitioner examined himself at Exh.9 and also examined his brother Yogesh at Exh.2. The respondent on the other hand did not step into the witness box and did not examine any witnesses and chose to pass a pursis at Exh.16 that she does not wish to lead any evidence. Despite the fact

that the appellant led evidence to establish mental cruelty at the hands of the respondent by filing criminal cases one after another, which ended in passing of acquittal orders, the trial court did not consider the said circumstance and committed an error of law in dismissing the petition for divorce.

5. The judgment of the trial court deals with the ground of filing false criminal case under section 498-A of IPC against the appellant and his family members in a very cryptic manner. Paragraph 12 of the judgment deals with the said issue. Para 12 reads thus:

“It is pertinent to note that the case under sec. 498-A of IPC was not at all filed till the respondent was residing at the house of the petitioner. Copy of the judgment in the case under section 498-A of IPC is also not available on record. It is therefore not known under what circumstances that case was filed.”

6. The learned counsel for the appellant in the first place submits that it is immaterial as to whether false criminal case is filed when the respondent was co-habiting with the appellant or is filed thereafter. In the second place it is contended that the certified copy of the judgment in Cri. Case No. 4826022/05 dated 9-11-2006 under sec. 508 & 506 read with 34 of IPC was very much placed on record.

7. We have perused the original record of the trial

court. From the record of the Family Court, it is seen that the appellant's advocate had moved an application at Exh.14 on 4-12-2006 seeking permission of the court to produce some important document, which were stated to be necessary to decide the real controversy. The application at Exh.14 was allowed by the Family Court on the very same date. Exh.15 is the list of document whereas the document referred to in the application and the list of document being the judgment of Judicial Magistrate First Class, Court No.8, Pune is the judgment in Regular Criminal Case No. 4826022/05 dated 9-11-2006. By the said judgment the appellant and his family members came to be acquitted for the alleged commission of offences under section 508, 506 read with 34 of IPC. In the said judgment, there is a reference to the filing of a case under section 498-A of IPC and copy of the said judgment was also placed on record of the Magistrate who decided the criminal case under sec. 508 and 506 read with 34 or IPC. In paragraph 11 of the judgment it is categorically observed that it is an admitted fact that on 21-10-2001 accused were acquitted by judgment for offence under section 498-A IPC. Perusal of the said judgment leaves no room of doubt that the present appellant and his family members were acquitted of the charges under sec. 498-A of IPC vide judgment dated 21-12-2002 and also from the charges under secs. 508 and 506 read with 34 of IPC vide judgment dated 9-11-2006.

8. We have perused both the judgments of acquittal. On

perusal of the said judgments, it can safely be inferred that the respondent had filed false criminal cases against the appellant.

9. The appellant has categorically deposed in examination in chief before the Family Court that by filing of false complaint for alleged commission of offence under sec. 498-A of IPC the respondent has falsely prosecuted the appellant and his family members. The cross examination of the appellant indicate that the fact of acquittal of the appellant and his family members was never disputed and as such the Family Court ought to have proceeded to accept the contention of the appellant that false criminal cases were filed against the appellant and his family members with a view to cause utmost embarrassment, humiliation and sufferings. Filing of false criminal cases against the appellant and his family members would very much constitute mental cruelty. We see no justification for the Family Court not to accept the evidence of the appellant touching the instances of cruelty, more so when the respondent did not even step into the witness box and did not examine any other witness.

10. The learned counsel for the appellant has also placed on record copy of the judgment dated 2-10-2002 which goes to acquit the appellant and his family members, in regular criminal case No. 270/01 under section 498-A read with 34 of IPC. On perusal of the judgment in both the criminal cases, we are satisfied that the respondent had filed the said criminal cases only with a view to harass the appellant and his family

members. The said criminal cases which ultimately ended in acquittal must have caused utmost mental cruelty to the appellant. At any rate, it can be safely so inferred having regard to the evidence on record.

11. In our view the divorce petition filed by the appellant ought to have been allowed by the Family Court. The fact that the appellant and his family members were acquitted has not been denied though it is categorically asserted in the memo of appeal. We are of the clear view that the respondent is guilty of treating the appellant with utmost mental cruelty by filing false criminal cases, which ultimately resulted in acquittal and hence the appellant is entitled to a decree of divorce on the ground of cruelty. The petition thus needs to be allowed. The judgment and decree passed by the Family court dismissing the petition filed by the appellant dated 21-12-2006 is quashed and set aside. Allowing the appeal, we declare that the marriage of the appellant with the respondent solemnised on 18-12-2000 stands dissolved by a decree of divorce on the ground of cruelty.

12. The appeal is thus allowed with no order as to costs.

(A.P.DESHPANDE, J.)

(SMT. R.P. SONDURBALDOTA, J.)