

**IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH**



DATED THIS THE 1ST DAY OF JUNE, 2018

PRESENT

THE HON'BLE DR. JUSTICE VINEET KOTHARI

AND

THE HON'BLE DR. JUSTICE H. B. PRABHAKARA SASTRY

MISCELLANEOUS FIRST APPEAL No.100178/2015 (FC)

BETWEEN:

SHRI.AMIT S/O VINAY WELANGI,
AGE: 41 YEARS, OCC: PRIVATE SERVICE,
R/O: FLAT NO.7-A, ANKUR HEIGHTS,
GANAJAYA SOCIETY, KOTHURD,
PUNE, MAHARASTRA STATE.

... APPELLANT

(BY SRI. A. B. NESARGI, ADVOCATE)

AND:

MRS.NUPUR W/O AMIT WELANGI,
AGE: 39 YEARS, OCC: BANK LEGAL OFFICER,
R/O: C/O: SUBHASH S. HERWADKAR,
1775, KELKARBAG, BELAGAVI.

... RESPONDENT

(BY SRI. M G NAGANURI, ADVOCATE)

THIS MFA IS FILED U/S 19(1) OF FAMILY COURT ACT, AGAINST THE JUDGMENT AND DECREE DATED 01.12.2014 PASSED IN MC NO.159/2013 ON THE FILE OF THE JUDGE FAMILY COURT BELAGAVI, DISMISSING PETITION FILED U/S.13(1)(i-a)(i-b) OF HINDU MARRIAGE ACT.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 29.05.2018, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **DR. JUSTICE H. B. PRABHAKARA SASTRY, J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

Mr. A. B. Nesargi, Advocate for appellant
Mr.M. B. Naganuri, Advocate for respondent

1. The petition filed by the present appellant in the Court of Judge, Family Court Belagavi, at Belagavi (henceforth referred to as 'Family Court' for brevity), against the present respondent under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955 (henceforth referred to as 'the Act' for brevity), seeking dissolution of his marriage with the respondent came to be dismissed by the judgment of the Family Court dated 01.12.2014. Being aggrieved by the said judgment, the appellant has preferred this appeal.

2. The summary of the case of the appellant in the Family Court was that;

His marriage was solemnized with the respondent on 05.12.2003 at Belagavi as per the customs prevailing in their community. Both of them led marital life for a period of six years happily and out of their wedlock, they also got a son born to them. He took care of his wife in a better manner and also helped her in pursuing her post graduation course in law. Gradually his wife started visiting her parental house often and in one such situation, on 31.03.2009, all of a sudden the respondent-wife along with her child left to her parental home stating that she would spend vacation there, but did not return to her marital house thereafter. On the contrary, she filed a petition against him seeking maintenance in the Family Court in Crl.Misc.No.488/2009, which came to be partly allowed directing the appellant herein to pay monthly maintenance to their son. The wife also filed a complaint in the Court of Judicial

Magistrate First Class – III at Belagavi under Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as ‘the D.V. Act’ for brevity) in Crl.Misc.No.197/2009 by making several false allegations against him. Several attempts made by him as well the elders and well wishers in the family to bring her back to her marital home went in vain. This made him to institute a petition seeking restitution of conjugal rights under Section 9 of the Act against her, which incidentally came to be dismissed. In this way, the cruelty and harassment meted to him by the respondent-wife did not stop. She further filed a suit for partition through her minor son in the Court of the I Addl. Senior Civil Judge, Belagavi in O.S.No.175/2009. However, the said suit came to be dismissed on 19.04.2012. Regarding a theft taken place in their house in the month of October-November, 2008, the wife also filed a police complaint in Kothrud police station, Pune on 16.11.2007, wherein the police filed a ‘B’ report in the matter. Further, alleging that

neither his wife is willing to join him in her matrimonial home nor allowing him to meet their child, the petitioner in the Family Court has stated that the same constrained him to file a petition seeking dissolution of their marriage.

Upon service of notice, the respondent-wife put her appearance through their counsel. The matter was referred to the conciliation, which ended in vain. She filed her statement of objection, wherein except admitting her marital relationship with the petitioner/husband and they begetting a child out of their marriage wedlock, she denied all other petition averments, more particularly the allegation that for no valid reasons she has deserted her husband and has practiced cruelty upon him. On the contrary, she accused of her husband addicting to consumption of alcohol and quarreling with her on various silly matters. She also accused him of abusing her in front of their child and spoiling the family atmosphere. Contrary to the petition averment, the respondent-wife alleged that she was harassed and

subjected to mental torture by the petitioner-husband. She also alleged that, apart from her husband being a chronic consumer of alcohol, he has also been in the company of another woman by name Miss. Nirmala Baban Chinchawade, resident of Pune and that he is spending huge amount on the said lady in order to keep her pleased. She stated that, both of them are leading life in broad day light and the petitioner has forgotten his matrimonial obligation against his legally wedded wife. She specifically accused her husband of having illicit relationship with said Miss.Nirmala Baban Chinchawade. She stated that, in order to overcome all his normal activities, the petitioner has got filed a frivolous petition against her.

The petitioner-husband got himself examined as PW1 and got marked documents from Exs. P1 to P14. The respondent-wife got herself examined as RW1 and got marked documents from Exs. R1 to R4.

After hearing both sides, the Family Court by its judgment dated 01.12.2014 holding that the petitioner could not prove that he was deserted by his respondent-wife and that she also subjected him to cruelty, dismissed the petition filed by the petitioner-husband. It is against the said judgment, the petitioner-husband has preferred this appeal.

3. The learned counsel for the appellant in his argument submitted that, the respondent-wife has made it very specific and clear that she has determined not to join her husband even if the Court passed an order to join him. This shows that she has decided to permanently live separately from her husband for no valid reasons. The learned counsel further submitted that the respondent-wife has made several serious allegations against her husband including suspecting his chastity, accusing him of undergoing second marriage with another lady and also of being a chronic alcoholic. However, she failed to substantiate the accusation made against her husband. Those facts of living

separately from her husband for more than eight years and making baseless serious allegations against her husband itself proves desertion and cruelty. The said aspect has not been properly appreciated by the Family Court and as such, the impugned judgment deserves to be set aside and the petition deserves to be allowed.

The learned counsel also relied upon two judgments of this Court in his support, which will be relied upon at the appropriate stage hereinafterwards.

4. The learned counsel for the respondent–wife in his argument submitted that, ‘cruelty’ has not been specifically defined in the Hindu Marriage Act, 1955. The facts and circumstances of the case do not show that there was any averment of cruelty practiced by the wife against her husband. On the contrary, the very fact of dismissal of the petition filed by the husband against the respondent under Section 9 of the Act seeking the relief of restitution of conjugal rights, by itself goes

to show that there was no desertion by the wife and she had every valid reason to live separately from her husband. Thus *animus deserendi* is not proved by the husband.

The learned counsel further submitted that, PW1 in his cross-examination has admitted that since 2009 he has not visited his wife. This itself goes to show that it is the husband who has deserted his wife. Further, the husband being a drunkard was frequently physically assaulting his wife and he has maintained an illicit relationship with another lady, the respondent-wife is justified in living separately, which cannot be considered either as desertion or cruelty practiced upon her husband. In his support, the learned counsel relied upon the judgment of the Hon'ble Apex Court in the case of *Ramchander Vs. Ananta* reported in *2015 AIAR (Civil) 387*, wherein with respect to Section 13(1)(i-a)(i-b) of the Act, the Hon'ble Supreme Court at paragraph 10 of its judgment was pleased to observe that;

“The expression ‘cruelty’ has not been defined in the Hindu Marriage Act. The ‘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 a reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Cruelty can be physical or mental.”

5. From the pleading and evidence of the parties, the undisputed facts are that the parties to this appeal were married to each other on 05.12.2003 as evidenced in Ex.P2 – the marriage invitation card and Ex.P1 – photograph of the marriage. Out of their wedlock, a son was born to them, who at present is in the care and custody of the respondent. As is evidenced in Ex.P6, the respondent joined with her son filed a petition in Cr1.Misc.No.488/2009 against the present appellant in the Family Court under Section 125 of the Code of Civil Procedure for maintenance. The said petition came to be allowed by the Family Court vide its order dated 11.12.2012, wherein the petitioner No.2 Master Ojus was granted with maintenance at the rate of ₹7,500/- per month till he attains the age of majority and

payable by the appellant herein. It is also not in dispute and as could be seen from Ex.P9, the certified copy of Domestic Incident Report with respect to application under Section 12 of the Protection of Women from Domestic Violence Act, 2005, the present respondent-wife had filed a petition against the present appellant under D. V. Act in the Court of III Addl. JMFC at Belagavi in Crl.Misc.No.197/2009. Ex.P10 shows that the present respondent on behalf of her son Master Ojus instituted Original Suit in O.S.No.175/2009 in the Court of I Addl. Senior Civil Judge, Belagavi against the present appellant for partition and separate possession of the suit schedule property. Admittedly, the said suit came to be dismissed vide judgment dated 19.04.2012 as could be seen from Ex.P11. The plaintiffs therein have preferred an appeal in R.A.No.144/2012 against the judgment and decree passed in O.S.No.175/2009 in the Court of the District and Sessions Judge, Belagavi as could be seen from certified copy of the memorandum of appeal at

Ex.R1. It is also not in dispute that the present appellant had also filed a petition in M.C.No.21/2010 under Section 9 of the Act against the respondent seeking the relief of restitution of conjugal rights, which came to be dismissed as could be seen from the certified copy of the judgment and decree which is at Ex.P3. Further, it is also not in dispute that, alleging a theft in their house, the respondent – wife had filed a complaint with Kothrud Police Station, Pune, which ultimately resulted in police filing 'B' report in it, observing that someone residing in the house might have committed the alleged theft. Undisputedly, at the time of incident, it was only complainant wife and her husband i.e., the appellant herein who were residing in the said house. It is in the light of these undisputed and admitted facts, the case has to be analysed.

6. The grounds upon which the appellant has sought for divorce is on the alleged desertion and cruelty. The appellant-husband as PW1 in the Family Court, while reiterating

the contention taken up by him in his petition has stated that, without any reasons, the respondent-wife taking their son with her left his company and went to her parental house on 31.03.2009. Even though the respondent-wife in her evidence as RW1 has denied that she left the company of her husband voluntarily on 31.03.2009, but has stated that she was thrown by her husband out of their house. However, in the cross-examination of RW1, it was further elicited that the respondent-wife is residing with her parents in their house from the said day and that from 01.04.2009, the appellant-husband has not visited them in his in-laws house. The said statement and a specific admission in that regard by RW1 in her cross-examination makes it clear that from 31.03.2009, the respondent-wife is residing with her parents at Belagavi leaving the company of her husband. She has also admitted in her cross-examination that, from the said date, she had no physical relationship with her husband. Whether such an act of the wife living separately from

her husband was at her own volition or due to any compelling reasons is another point to be considered.

7. Even though the respondent-wife both in her statement of objection as well in her evidence as RW1 has denied that she voluntarily left the company of her husband on 31.03.2009, but stated that due to the bad habits like consumption of liquor, for which her husband was addicted to, and she being beaten by him frequently, she was constrained to live away from her husband.

Initially the sole burden of proving the alleged desertion and cruelty was upon the husband since he had instituted a petition for divorce against his wife with those allegations. The grounds shown by him for the alleged desertion and cruelty by his wife was, his wife leaving his company for no valid reasons from 31.03.2009 till date and her alleged act of instituting petitions for the relief of maintenance, alleging domestic violence against her and also a suit for partition. As already

observed above, except denying that her act of living separate from her husband from 31.03.2009 was voluntary, the respondent-wife has admitted about she instituting petitions against her husband for the relief of maintenance; accusing him of domestic violence; and also seeking partition in the property, through her son. Those admissions had they been stood at that stage itself, they could have proved certain acts on the part of the wife against her husband, but it would not have been sufficient to call them as an act of desertion and cruelty upon her husband, in the absence of *animus deserendi* and the circumstances of the case. It was also for the reason of the settled principle of law that the case of the plaintiff has to be assessed based on the strength of his pleading and proof and that it was improper to decree the suit based on the weaknesses in the case of the defendants.

However, in the instant case, which is a matrimonial case, the respondent-wife apart from denying the averments made in the petition by her husband, has also shown her intention and

determination of living permanently away from the company of her husband and more particularly, through her pleadings and evidence, accused her husband/appellant of various acts including assailing his character. In her pleading, she has averred that her husband was found badly addicted to the alcohol and gutka; he used to come home fully drunk and used to abuse her in filthy language and also manhandle her. She also stated that attempt was made to send him to rehabilitation center for the purpose of prevailing upon him to come out from the clutches of alcohol and gutka. She has also averred in her pleading that her husband was found to be leading his life in the company of another woman by name Miss. Nirmala Baban Chinchawade, a resident of Pune. She further stated that the act and behaviour of her husband was causing her mental cruelty and harassment. She spent six years in the matrimonial house always under the harassment as well as mental torture by her husband. She specifically averred that the relationship of her husband with said

Miss. Nirmala Baban Chinchawade was an illicit relationship and the said lady all the while was staying with him in the residential flat situated at Kothrud Pune.

In this way, the respondent-wife apart from mere denying the averments made in the petition filed by her husband, has specifically and categorically averred several wrong doings and illegal acts against her husband including the serious allegation of her husband's alleged illicit relationship with another lady.

Apart from the above, the respondent-wife in the cross-examination of PW1, has further alleged in the form of suggestion to the witness that he was removed from his previous employment at Pune on the ground that he was not discharging his duty properly. She further alleged by way of suggestion to PW1 that his transfer from Bengaluru to Pune was for the reason that he was always quarrelling with his colleagues in the office at Bengaluru. PW1 has denied both those allegations made in the form of suggestions to him.

The respondent-wife further continued her accusation against her husband in the cross-examination of PW1 that on 08.03.2009 in a drunkard state PW1 quarreled with general public of the street in Pune, which suggestion was denied by the witness. However, PW1 admitted a suggestion as true that on that day, he was assaulted by some passerby on the street and that he was admitted to the hospital.

In this manner the respondent wife in her pleadings as well in the cross-examination of PW1 and in her evidence as RW1 has made certain allegations.

8. In a matrimonial case, that too particularly in a case falling under Section 13(1)(i-a) of the Act, when a spouse makes certain specific and serious allegations of moral turpitude, immoral character, bigamy etc., then it is that spouse who has made those allegations is required to prove them. The onus shifts upon that particular spouse to prove them, otherwise such serious allegations as made in the present case may be

considered as mental cruelty practiced upon her or his husband or wife.

On this aspect, we refer to a judgment of the Hon'ble Supreme Court in the case of *U. Sree Vs. U. Srinivas* reported in (2013) 2 SCC 114, wherein in a matter pertaining to Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955, the Hon'ble Supreme Court observed that:

“The husband used to practice and learn music in the presence of his father, who was also his ‘Guru’; the wife was showing immense dislike towards ‘sadhna’ of her husband in music and exhibiting indifference and contempt to tradition of teacher and disciple; she had no concern for public image of her husband and putting him in embarrassing situations leading to humiliation including before his father and ‘Guru’; she was also making wild allegations about conspiracy of getting remarried for greed of dowry; however she failed to lead any evidence to substantiate such allegations; thus, there were maladroit efforts to malign reputation of family of husband.”

With the said observation, the Hon'ble Apex Court held that the husband has proved his case of mental cruelty, as such, divorce granted to him on the basis thereof was proper.

We also observe two more judgments of Coordinate Benches of this Court relied upon by the learned counsel for the appellant in his argument.

In ***R. Nagarathna and Others Vs. Dodda Channaiah*** reported in **2010(1) KAR.L.J. 174(DB)**, at paras 5 and 6, a Coordinate Bench of this Court has observed as below:

“5. The evidence discloses that the criminal complaint given by the wife against the husband for dowry harassment and cruelty ended in acquittal. The wife in the criminal case has not deposed in support of her complaint. The fact of giving false complaint itself amounts to cruelty. Therefore the grant of divorce on the ground of cruelty is sound and proper.

6. The wife has not let in evidence to prove the bigamous marriage of husband with one Manjula. The allegation of cruelty is not established. It is in the

evidence that the petitioner who is a housewife and residing separately. In that view, the grant of divorce on the ground of desertion is sound and proper. The wife has also stated in evidence that she is not willing to reside with the husband despite his offer.”

Another Coordinate Bench of this Court in ***Smt. Vijayalakshmi G.U. Vs. Siddesh S. Hombaradi*** reported in **2014(3) KCCR 2427(DB)**, in an appeal on the petition filed under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act, 1955, was pleased to observe that:

“The wife making baseless allegations imputing the chastity of her husband and not having required tolerance to sustain the marriage, but going to the extent of lodging false complaint and getting her husband and father-in-law arrested in order to harass them would amount to cruelty and the husband was entitled to decree of divorce.”

9. The above decisions go to show that, in matrimonial cases filed for the relief of dissolution of marriage under Sections 13(1) (ia) (ib) of the Act, it is not just the pleading and evidence

of the petitioner that matters, but the pleading and evidence of the respondent spouse also matters a lot in finding out the truth regarding the allegations of desertion and cruelty

10. In the instant case, as already observed above, after the respondent-wife started residing separately from her husband, she had filed a petition for maintenance to herself and to her son; filed a complaint under Protection of Women from Domestic Violence Act, 2005, against her husband; alleged theft in her house and lodged a FIR; the 'B' report filed by police stating that someone who were the inmates of the house have committed theft, was not challenged by her even though admittedly except her, the other inmate in the house was only her husband and her further act of instituting a suit for partition on behalf of her minor son against her husband, are all on one side, stands taken by her husband for cruelty meted upon him. However, the specific allegations and accusations made by respondent-wife against her husband imputing that;

- i. He was quarrelsome with his characters, as such he was transferred from Bengaluru to Pune,
- ii. He was inefficient in his work, as such, he was removed from his job,
- iii. He was drunkard and as such, he quarreled with passerby on public road and was beaten up by them,
- iv. He by himself threw her out of her matrimonial home,
- v. He used to consume alcohol everyday and used to quarrel with his wife and beat her everyday,
- vi. An attempt was made to send him to drug de-addiction and rehabilitation centre and
- vii. Lastly, he was in illicit relationship with one Miss. Nirmala Baban Chinchawade

are all very serious allegations hurting the moral conduct and character of a man/husband. Specific and categorical allegations/averments or accusations once made by a spouse in a petition for divorce are required to be established by that person making those averments, otherwise making those kind of serious accusations and allegations itself amounts to mental cruelty. In

the instant case, the respondent-wife has only made those serious allegations and accusations against her husband without bothering to prove them. Those allegations are only in the form of pleading filed by her, her oral evidence and suggestions made to PW1 in his cross-examination. PW1 - husband since has denied all those suggestions made to him and denied the oral evidence of RW1 in her cross-examination, it was required of the respondent-wife to place other cogent and reliable evidence in support of her contention, otherwise they remained as mere averments/accusations. In the instant case, except making those accusations and oral evidence, the respondent-wife has not taken any steps to produce any cogent or corroborative evidence in support of her averments/accusations.

To prove that her husband was transferred from Bengaluru to Pune on the ground of his alleged quarrelsome nature with his colleagues, she could have examined any of his colleagues or his employer, which she did not do. Same is with respect to his

alleged removal from the service, which according to the respondent-wife was due to his alleged inefficiency in his work. Even though PW1 in his cross-examination has admitted a suggestion as true that on 08.03.2009, he was assaulted by some passerby on the road and that he was admitted to hospital, that some attempt of assault upon him by itself cannot be considered that he was under the influence of alcohol on that day and that because of his misbehavior he was assaulted by the public. When PW1 has specifically denied of his alleged intoxication on that day and he quarrelling with any public, his subsequent admission of a suggestion that he was assaulted by some passerby on the road cannot be linked with the averment made against him that he was a drunkard.

It is at this point, the Family Court erred in appreciating the evidence. Without noticing that those two statements were two different statements, it linked them and held that even though PW1 denied that he was intoxicated on that day, since he

was assaulted by some passerby on the road, it is to be held that he was addicted to consuming alcohol and that on the alleged date of 08.03.2009 also he was intoxicated and misbehaved with general public and as such, he was assaulted. The said erroneous analysis of the evidence by the Family Court has led it to conclude that it was not the husband who was subjected to cruelty, but it was the wife who was put to cruelty by him.

The averment made by the wife in her statement of objections that her husband/petitioner had established an illicit relationship with one Smt.Nirmala Baban Chinchawade, was also taken as proved by the Family Court only based upon the pleading and oral evidence of respondent-wife and a copy of Registration Certificate extract of two wheeler, a receipt issued by Road Transport Authority, Maharashtra and a photograph showing parking of two wheeler motor vehicle bearing registration No.MH-12/HW4572 at a particular place. By these documents at Exs.R2, R3 and R4 respectively, the Family Court arrived at a

conclusion that the allegation made by the wife that her husband had developed an illicit relationship with Miss. Nirmala Baban Chinchawade, was established.

11. The learned counsel for the respondent-wife also in his argument relying upon these three exhibits submitted that, by preponderance of probabilities, it has to be necessarily inferred that the appellant-husband has established illicit relationship with the said Miss. Nirmala Baban Chinchawade. Neither we are inclined to accept the finding of the Family Court on this aspect nor the arguments of the learned counsel for the respondent-wife for the reason that, Exs.R2 to R4 though may go to show that the alleged vehicle shown in the photograph at Ex.R4 belongs to one Miss.Nirmala Baban Chinchawade, by that itself it cannot be said that she was residing or staying in the house of the appellant-husband and that the appellant had established an illicit relationship with her. Under no stretch of imagination, those documents at Exs. R2 to R4 lead any one to probabalise the

alleged illicit relationship of the appellant with the said lady. As such, the Family Court while appreciating the evidence placed before it regarding the accusation of the wife against her husband about her husband's alleged illicit relationship with another lady has committed an error. This erroneous appreciation of evidence by the Family Court has led it to dismiss the petition of the appellant-husband filed under Section 13(1)(ia)(ib) of the Act.

On the contrary, the evidence of respondent-wife in the Family Court in Crl.Misc.No.488/2009 as PW1 which was confronted to her in her evidence in the present case clearly go to show that by stating that even if the Court makes an order to join her husband, she is not ready to join him and that she is not in a position to say whether there is any love and affection towards him at any corner of her heart, she has made it clear that she has decided and determined to live separately forever from her husband and not to join him at any point of time. Thus, it is not

only her act of living away from her husband, but her determination to live separately from him forever proves *animus deserendi*.

12. Further, as observed above, apart from denying the petition averments about cruelty met by her husband in his pleading, the specific acts of the respondent-wife in the form of specific averments in her pleading, the evidence as RW1 repeating the very allegations and accusations against her husband and her failure to discharge her burden of proving them to the satisfaction of this Court has to be necessarily treated that there are materials to show that she has subjected her husband i.e., the appellant herein to mental cruelty. Therefore, a deep analysis of the materials and the evidence placed before us clearly go to show that the Family Court has erred in appreciating the materials and evidence placed before it and it has been carried away by mere averments and allegations made by the respondent-wife which led it to pass a erroneous judgment

dismissing the petition of the husband filed under Section 13(1)(ia)(ib) of the Act.

13. In the light of the facts and circumstances of the case, before concluding, we are also of the view that the circumstances of the case apart from entitling the husband/appellant for the decree of dissolution of his marriage with the respondent, the ends of justice also warrants awarding permanent alimony in favour of the respondent-wife. Section 25 of the Act, which speaks about the permanent alimony and maintenance reads as below:

“ 25. Permanent alimony and maintenance .

(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as,

having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just.

14. Admittedly, in the instant case, the respondent-wife has not made any application in the present petition for any permanent alimony. However, Section 25 of the Act does not prevent her from making any such application. No doubt, she joined by her son Master Ojus has filed a petition under Section 125 of the Code of Criminal Procedure, 1973 in Crl.Misc.No 488/2009 in the Family Court for maintenance. The said petition came to be allowed by the Family Court vide its order dated 11.12.2012, wherein the petitioner No.2 Master Ojus was granted with maintenance at the rate of Rs.7,500/- per month till he attains the age of majority and payable by the present appellant. However, the present respondent-wife was not awarded with any maintenance payable by her husband. By that itself, it cannot be held that this Court in an appeal emanating under Section 13(1)(ia)(ib) of the Act cannot award any alimony in favour of the wife.

A Coordinate Bench of this Court in the case of *Divya Ramesh Vs. S. Kiran @ Sheshadri K. Nittur* in MFA No.3933/2012 (FC) in its judgment dated 12.11.2013, had not found any irregularity in the act of the Family Court awarding permanent alimony in favour of the wife while granting the relief of dissolution of marriage in favour of the husband under Section 13(1)(i-a) of the Act.

The Hon'ble Supreme Court in *Jalendra Padhiary Vs. Pragati Chhotray* in Civil Appeal No.3876/2018, in its judgment dated 17.04.2018 had not found any fault in the Family Court awarding permanent alimony to the wife in a petition filed by the husband under Section 13 of the Hindu Marriage Act, 1954 and the Hon'ble High Court of Orissa at Cuttack upholding the said awarding of maintenance. However, the Hon'ble Apex Court remanded the matter to the Family Court only to decide the quantum of payment of permanent alimony afresh, by

passing a reasoned order after considering the materials placed before it.

Thus, it is clear that, while granting the decree of dissolution of marriage in favour of a husband under Section 13(1) of the Act, the Court is not debarred from granting permanent alimony in favour of the wife.

In *U Srinivas's* case (supra), the Hon'ble Apex Court after relying upon its previous judgment in *Vinny Parmvir Parmar V. Parmvir Parmar* reported in (2011) 13 SCC 112, was further pleased to observe with respect to Sections 25 and 23 of the Hindu Marriage Act, 1955 that:

“While granting permanent alimony, no arithmetic formula can be adopted as there cannot be any mathematical exactitude. It shall depend upon the status of the parties, their respective social needs, the financial capacity of the husband and other obligations. The duty of the Court is to see that the wife lives with dignity and comfort and not in penury.

The living need not be luxurious but simultaneously she should not be left to live in discomfort.”

It was further observed that the Court has to act with pragmatic sensibility to such an issue so that the wife does not meet any kind of man-made misfortune.

15. In the instant case, it is not in dispute that the appellant-husband has been working as a Software Engineer at Pune. The same has come in his evidence as PW1 also. The suggestion made to him in his cross-examination as PW1 that he has been earning a monthly salary of ₹80,000/- was denied by him. However, himself has stated that he was earning a salary of ₹45,000/- per month. In the very same cross-examination he has also stated that in the month of May 2014 he drew a salary of ₹46,000/-. He had also undertaken to produce his salary certificate in that regard. Thus, as admitted by him, as on 2014 he was drawing a monthly salary of not less than a sum of ₹46,000/- per month.

Admittedly, the respondent-wife is a post-graduate in law and is an enrolled advocate, who has also practiced as an advocate. In her cross-examination as RW1 in M.C.No.21/2010, which is marked at Ex.P4, she has stated that as on the date of her evidence, which was recorded on 02.07.2012, she was working in a bank at Mumbai. However, she denied a suggestion that she was drawing a monthly salary of a sum of ₹40,000/-. On the other hand, she stated that her salary was variable from ₹10,000/- to ₹12,000/- per month. The very same respondent-wife in her evidence as RW1 in CrI.Misc.No.488/2009, which was filed by her under Section 125 of the Code of Criminal Procedure, 1973 against the present appellant, has stated in her cross-examination that previous month to the date of 29.10.2011, when her said cross-examination was recorded, she had drawn a salary of a sum of ₹16,000/-. This is evident from Ex.P7. However, the respondent in her evidence as RW1 in the present case in her examination-

in-chief has stated that it was false to contend that she has been practicing as a law consultant. However, in her cross-examination, she has stated that for one year after her post-graduation in law, she has worked as a legal consultant. She further admitted a suggestion as true that she is working as a part time lecturer at R.L. Law College, Belagavi, however, denied a suggestion that she has also been working in Saraswat Bank at Thana, Mumbai and drawing a monthly salary of a sum of ₹40,000/-.

From the above evidence of the parties, it is clear that as on the date of the present petition, the appellant husband has been working as a Software Engineer at Pune, whose salary was ₹46,000/- per month as on August 2014. Therefore, as of date his salary should have been more than the said amount. Similarly, as admitted by RW1 in her cross-examination, in Crl.Misc.No.488/2009, in September 2011 she had drawn a monthly salary of a sum of ₹16,000/-. She is also working as a

part time lecturer at R.L. Law College, Belagavi. Therefore, she too has got some respectable income to maintain herself. However, as observed by the Hon'ble Apex Court in *U. Srinivas's* case (supra), no arithmetic formula can be adopted while granting permanent alimony. It depends upon the status of the parties, their social needs, financial capacity of the husband and other obligations. Admittedly, the father of the appellant-husband is a retired bank Officer. There is no material to arrive at a conclusion that the appellant-husband has any other commitments or obligations warranting any extra expenditure by him in that regard. As such, in order to ensure that the respondent-wife lives meeting her social needs and in a status befitting of the family, the earning which she is shown to have getting as on date appears to be not sufficient to lead such a life and the income and earning of her husband is of such an amount who could be ordered to pay permanent alimony to his wife to ensure a decent living on her part.

16. In the circumstances of the case, considering the place of living of respondent-wife and the requirement of decent living suitable to the status of the parties, we are of the view that awarding a permanent alimony of a sum of ₹10,00,000/- in favour of the respondent-wife payable by the appellant-husband would be just and reasonable. Even though the parties to this appeal have got a son by name Master Ojus born out of their wedlock, since the said son is getting a monthly maintenance at the rate of ₹7,500/- per month from the appellant herein by virtue of the order passed by the Family Court in Crl.Misc.No.488/2009 dated 11.12.2012, no order regarding maintenance in favour of the said Master Ojus is being made in this appeal.

17. In view of the fact that the above analysis has proved that the said erroneous finding of the Court below deserves to be set aside, the present appeal filed by the husband deserves to be allowed. Hence we proceed to pass the following order:

ORDER

The appeal is allowed.

The judgment and decree dated 01.12.2014 passed by the Judge Family Court Belagavi, at Belagavi in M.C.No.159/2013 is set aside. M.C.No.159/2013 is allowed.

The marriage solemnized on 05.12.2003 between the parties to this appeal stands dissolved from the date of the decree by a decree of divorce on the ground of desertion and cruelty.

It is further ordered that the appellant shall pay a sum of ₹10,00,000/-(Rupees Ten Lakh Only) to the respondent-wife as permanent alimony which amount he shall deposit in the Family Court within three months from this date.

Draw decree accordingly.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

gab