

Sri Chandrashekara B T vs Smt. Rajini H J on 26 July, 2024

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NC: 2024:KHC:29448-DB
MFA No.98/2021
C/W MFA No.96/2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 26TH DAY OF JULY, 2024
PRESENT

THE HON'BLE MRS JUSTICE K.S.MUDAGAL
AND
THE HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL
MISCELLANEOUS FIRST APPEAL NO.98/2021 (FC)
C/W
MISCELLANEOUS FIRST APPEAL NO.96/2021 (FC)

BETWEEN:

SRI CHANDRASHEKARA B T
S/O LATE SRI THIMMAPPA B T
AGED ABOUT 37 YEARS
R/AT NO.109, PURPLE GARDEN
APTS, VENKATESHPURA, JAKKUR POST
BENGALURU - 560 077

... APPELLANT
(COMMON)

(BY SRI.AKARSH KANADE ADVOCATE A/W
SMT.BIRI MARY, ADVOCATE)

AND:

Digitally
signed by K S
RENUKAMBA
Location: High
Court of
Karnataka

SMT RAJINI H J
D/O JAYASHEELA H
AGED ABOUT 34 YEARS
R/AT NO.32, 4TH FLOOR
KEMPAIAH BLOCK
1ST CROSS, ARAMANENAGAR
BENGALURU - 560 003

... RESPONDENT
(COMMON)

(PARTY-IN-PERSON)

M.F.A. NO.98/2021 IS FILED UNDER SECTION 19(1) OF THE
FAMILY COURTS ACT, PRAYING TO SET ASIDE THE JUDGMENT AND
DECREE DATED 28.09.2020 PASSED IN MC NO.4772/2016 ON THE
FILE OF THE PRINCIPAL JUDGE, FAMILY COURT, BENGALURU,
ALLOWING THE PETITION FILED UNDER SECTION 9 OF THE HINDU
MARRIAGE ACT, 1955.

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NC: 2024:KHC:29448-DB
MFA No.98/2021

M.F.A. NO.96/2021 IS FILED UNDER SECTION 19(1) OF THE FAMILY COURTS ACT, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 28.09.2020 PASSED IN MC NO.1100/2015 ON THE FILE OF THE PRINCIPAL JUDGE, FAMILY COURT, BENGALURU, DISMISSING THE PETITION FILED UNDER SECTION 13(1)(ia) OF THE HINDU MARRIAGE ACT, 1955.

THESE MISCELLANEOUS FIRST APPEALS HAVING BEEN RESERVED FOR JUDGMENT ON 03.07.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, K.S.MUDAGAL. J., DELIVERED THE FOLLOWING:

CORAM: HON'BLE MRS JUSTICE K.S.MUDAGAL
AND
HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

CAV JUDGMENT

(PER: HON'BLE MRS JUSTICE K.S.MUDAGAL) These two appeals arise out of the common judgment and order/decreed dated 28.09.2020 in M.C.Nos.1100/2015 and 4772/2016 passed by the Prl. Judge, Family Court, Bengaluru.

2. The appellant in these cases was the petitioner in M.C.No.1100/2015 and respondent in M.C.No.4772/2016. The respondent in these cases was the respondent in M.C.No.1100/2015 and petitioner in M.C.No.4772/2016. M.C.No.1100/2015 was filed by the appellant against the respondent under Section 13(1)(ia) of Hindu Marriage Act, 1955 (for short 'the Act') seeking decree for dissolution of marriage on the ground of cruelty. The present respondent NC: 2024:KHC:29448-DB filed MC No.4772/2016 against the appellant under Section 9 of the Act seeking decree for restitution of conjugal rights.

3. The marriage of the appellant and respondent was solemnized on 13.11.2011 at Unity Hall, Thirthahalli as per the Hindu rights. The marriage was subsequently registered before the Sub Registrar of Marriages, Sagar. During their conjugal life the couple were blessed with a son by name Vihan on 19.02.2013. Appellant is a Mechanical Engineer and at the time of marriage was employed at Bengaluru. Subsequently he is working in Pune. Respondent is a civil engineer. At the time of marriage, she was also employed in Bengaluru.

4. In M.C.No.1100/2015 decree for dissolution of marriage was sought alleging following acts of cruelty:

i) That the respondent was abuser since the beginning of the marriage itself. Being the eldest son, the appellant had the duty to help his parents and family. However, that was disliked by the respondent. Whenever he helped his parents, she used to

become violent and assault him, abuse him, his parents and family members in vulgar language. During nights she used to shout at him hit, pinch and punch him.

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ii) In June 2012 he lost his father. Therefore, he used to visit his mother regularly at Thirthahalli. That was also objected by the respondent. She wanted the appellant to cut all his connection with his mother and younger brother.

iii) After postnatal care respondent refused to return to matrimonial home. However, after some time, she returned to their house in Bengaluru posing several conditions. On the request of his mother on 21.11.2013 the appellant rendered financial assistance of Rs.2,00,000/- to his mother. On learning about the same on 23.11.2013 during night the respondent abused the appellant, in the fit of anger she assaulted him with kitchen knife and fork on his head, shoulder and back causing him severe injuries. On taking treatment in K.C.General hospital, Bengaluru he filed complaint against her. As a counter blast to the same, she filed complaint against him, his brother and friend before the Vyalikaval Police Station. Further she filed a false dowry harassment complaint before the Halasurugate Women Police Station against the appellant, his parents and relatives. She never treated him gracefully as a spouse. Her conduct has subjected him to immense cruelty NC: 2024:KHC:29448-DB making it impossible to continue the marital life. Hence he be granted decree for dissolution of marriage.

5. The respondent contested the petition denying the allegations of cruelty and the instances alleged by him. She claimed that at the time of marriage, cash of Rs.5,00,000/-, gold chain, gold ring and bracelet were given to the appellant as dowry. During her pregnancy also the appellant despite having sufficient means neglected to take care of her. Four to five months after marriage, the appellant at the instigation of his brother, mother and maternal uncle subjected her to physical and mental cruelty in connection with demand for additional dowry. The appellant did not even meet the domestic exigencies. The advise of elders did not yield any result. The allegation of assault of 23.11.2013 was denied. It was contended that when she did not yield to the demand of the appellant for dowry of Rs.10,00,000/- the appellant himself at the instigation of his mother and brother assaulted her seriously. Since the child was sleeping she could not file the complaint immediately. To overcome his misdeeds he filed the complaint against her. After the incident he left home and did NC: 2024:KHC:29448-DB not return and deserted her and the child without any reasonable cause. Hence she sought dismissal of the petition.

6. On the same grounds she filed MC No.4772/2016 seeking decree for restitution of conjugal rights and that petition was opposed by the appellant reiterating the grounds taken in M.C.No.1100/2015.

7. The Trial Court consolidated both the matters and recorded common evidence in M.C.No.1100/2015. The appellant was examined as PW.1 and on his behalf Exs.P1 to P11 were marked. The respondent was examined as RW.1. On her behalf Ex.R1 to R23 were marked. The trial Court on hearing the parties by the impugned judgment and order dismissed M.C.No.1100/2015 holding that the cruelty alleged was not proved, allowed M.C.No.4772/2016 and ordered for

restitution of conjugal rights holding that the respondent has proved that the appellant without reasonable excuse has deserted her. Challenging the said judgment and decree, the above appeals are filed.

8. Before this Court the parties have filed several interim applications. Particulars of the pending applications are as follows:

NC: 2024:KHC:29448-DB Sl. IA No. Filed by Relief In MFA No.

1. IA Appellant/husband Grant of stay No.1/2020 of operation judgment and decree

2. IA Respondent/wife Permanent No.1/2024 alimony of Rs.3.5 crore

3. IA Appellant/husband To summon No.2/2024 the Manager & HR of BBR Common India Pvt Ltd (MFA No.

4. IA Appellant/husband To summon C/W MFA No.3/2024 the Manager, No.96/2021) ICICI Bank to furnish the entire bank statement Submissions of Sri Akarsh Kanade, learned counsel for the appellant:

9. The Trial Court in appreciating the evidence adopted the standard of proof of fact beyond reasonable doubt expected of in criminal trial, whereas in civil cases the proof required is preponderance of probability. The respondent in her pleading itself admitted the injuries suffered by the appellant in the incident dated 23.11.2013. But the Trial Court disbelieved the injuries solely on the ground that wound certificate was not proved. The Trial Court failed to note that the respondent NC: 2024:KHC:29448-DB claimed that they were self inflicted injuries. To overcome her overt acts she filed complaint after 2 days against the appellant, his brother and friend claiming that they were the assailants. On trial they were acquitted. The Trial Court failed to note that after filing such false complaint, the respondent further implicated the appellant and his family members in dowry harassment case, though her evidence itself shows that the appellant had funded her and her family members on several occasions. Such cases filed against the appellant and his family members are being prolonged. Similarly, the Trial Court committed error in finding loopholes in payment of Rs.2,00,000/- to his mother just on the ground that the account extracts etc were not produced. The tenor of the defence of respondent itself shows that she alleged that the appellant's brother was squandering money in serial productions etc. The Trial Court's finding on condonation of cruelty based on Exs.R1 to R10 is erroneous. Such photos were taken for the sake of the son, that does not amount to condonation of cruelty. So far as application for permanent alimony, the respondent though gainfully employed has suppressed her employment in the affidavit filed in support of her claim. That goes to show that she stoops to any extent to NC: 2024:KHC:29448-DB make wrongful gain. To show that she is gainfully employed the appellant has produced bank statement by way of additional evidence. If the employer of the respondent and the concerned bank are summoned, the truth comes to light. For that purpose, the appellant has filed IA Nos.2 and 3 of 2024. Such additional evidence is required for complete adjudication of the matter. As the appellant had no access to those documents and came to know about them during the pendency of the appeal, those

applications be allowed. With an intention to harass the appellant, the respondent is approaching several forums, viz., under the Protection of Women from Domestic Violence Act, 2005 ('DV Act' for short), under Section 125 Cr.PC; by way of applications under Sections 24 and 25 of the Act etc., though she could make all such claims in the proceedings under Sections 24 and 25 of the Act. In different courts different interim orders were passed. Based on that she is filing execution petitions before several Courts driving him to attend the Courts, hence his work is also being disrupted. If the petition for divorce is dismissed, then permanent alimony cannot be granted.

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10. In support of his submissions, he relies on the following judgments:

- i) Jayachandra vs. Aneel Kaur¹
- ii) Badri Prasad vs. Urmila Mahobiy²

Submissions of respondent/party in person:

11. The appellant failed to prove the grounds of cruelty set up by him. Exs. R1 to R10 admitted by him show that even during the pendency of the proceedings he was meeting her and spending time with her. Therefore, the trial court was justified in holding that he has condoned the cruelty. The appellant, despite having sufficient means, has failed to pay maintenance to the child and herself. She has no source of income as she has given up her employment to look after the child and to attend to all these cases. Despite she filing Ex.Case No.111/2020 to execute the decree for restitution of conjugal rights, he has not complied the same. But he challenges before this court the interim maintenance awarded. Of late it is discovered that the appellant's brother has conspired with some other persons to commit her murder. Now it has become (2005)2 SCC 22 AIR 2001 MP 106

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NC: 2024:KHC:29448-DB unsafe for her to live with the appellant. Thus she seeks permanent alimony of Rs.3.5 crores. She opposes the documents produced by way of additional evidence and summoning of the witnesses.

12. On hearing both side and on examining the materials on record, the questions that arise for consideration are:

- i) Whether the impugned judgment and order of dismissal of the petition of the appellant for divorce and granting decree to the respondent for restitution of conjugal rights is sustainable?

ii) Whether the respondent is entitled to permanent alimony of Rs.3.5 crores as claimed in IA No.1/2024?

iii) Whether IA Nos.2 and 3 of 2024 filed by the appellant for adducing additional evidence deserve to be allowed?

Analysis

13. There is no dispute that the marriage of the appellant and respondent was solemnized on 13.11.2011

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NC: 2024:KHC:29448-DB according to the Hindu rights and they have a son born on 19.02.2013. It is also not disputed that in the year 2012, after the marriage of the parties, the father of the appellant passed away and the appellant has a widowed mother and younger brother who reside in the village. It is also not disputed that on 24.11.2013 the appellant filed complaint as per Ex.P3 against the respondent before Vyalikaval police alleging that on 23.11.2013 at 3.00 p.m. taking objection to payment of money by him to his mother, respondent assaulted him with knife, fork and caused injuries. Based on the said complaint, FIR Ex.P4 was registered for the offences punishable under Sections 324 and 506 of IPC. It is not disputed that after investigation, said Police have filed chargesheet against the respondent for the offences punishable under Sections 324 and 506 of IPC which is pending in C.C No.32133/2014 before the VIII Additional Chief Metropolitan Magistrate, Bangalore and she is facing trial in the said case.

14. After the appellant filing the said complaint against her, on 26.11.2013 i.e., after two days, the respondent filed complaint as per Ex.P6 against the appellant, his younger brother and friend before Vyalikaval Police. Based on the said

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NC: 2024:KHC:29448-DB complaint, said police registered FIR as per Ex.P7 and on investigation filed charge sheet as per Ex.P8 against them for the offences punishable under Sections 341, 323, 504, 506 read with Section 34 IPC. Learned VIII Additional Chief Metropolitan Magistrate on taking cognizance registered the said case in C.C. No.32150/2014 and on trial, by the judgment dated 29.09.2022 acquitted the accused.

15. Soon after filing of the complaint Ex.P6, the respondent on 18.12.2013 filed another complaint as per Ex.P9 against the appellant, his mother, younger brother, uncle and his wife alleging dowry harassment. Based on the said complaint, Halasurugate police registered FIR as per Ex.P10 against them and on investigation filed chargesheet as per Ex.P11 for the offences punishable under Sections 498A and 506 of IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. The said case was registered in C.C.No.20754/2014. Both C.C.No.32133/2014 and C.C. No.20754/2014 are still pending and appellant, his family members and friend are facing trial in the said cases.

16. Further, respondent has filed complaint in Crl. Misc. No.23/2014 before MMTC-II, Bengaluru against appellant under

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NC: 2024:KHC:29448-DB the provisions of the DV Act. In the said case Magistrate awarded interim maintenance of Rs.5,000/-. Respondent challenged that order before Fast Track Court, Bangalore City in Crl.A.No.581/2014. The said appeal was allowed in part on 05.03.2015 enhancing the interim maintenance to Rs.20,000/- per month. In M.C.No.1100/2015 on the application of the respondent by order dated 21.03.2019, the Trial Court awarded interim alimony of Rs.25,000/- per month in addition to Rs.20,000/- awarded in the DV Act proceedings. That order was confirmed by this Court on 24.07.2019 in W.P.No.15952/2019 filed by the appellant.

17. In addition to the above proceedings, on 18.12.2020 the respondent filed Crl.Misc.No.480/2020 against the appellant under Section 125 Cr.PC before the Family Court claiming maintenance of Rs.1,50,000/- per month for her and litigation expenses of Rs.1,00,000/-. Respondent has filed Execution Petition Nos.197/2023, 111/2020 before the Family Court alleging that the arrears of maintenance is not paid. She also filed Ex.Case No.213/2023 before the MMTC-II, Bengaluru claiming that the interim maintenance awarded in DV Act

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NC: 2024:KHC:29448-DB proceedings is not paid. In the execution case, the warrants for attachment of salary, non bailable warrants are being issued.

18. The above facts and circumstances go to show that the parties are entrapped in a web of litigations. The appellant sought decree of divorce on the ground that respondent has subjected him to physical and mental cruelty, therefore it is impossible for him to continue the marital life. The following were the acts of cruelty alleged:

i) Respondent was contemptuous towards appellant, his widowed mother and brother. She wanted to separate him from them.

ii) She did not tolerate he lending financial assistance to his mother, brother and on that ground she was employing abusive language against them.

iii) Whenever he lends money to his mother, she was assaulting him inside, outside house and in front of his relatives.

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iv) She subjected him to cruelty by filing multiple cases, false dowry harassment case and criminal cases against him and his family members.

19. Respondent denied the same. Though the judgment of the Trial Court runs into 70 pages, up to page No.44, it consists of only repetition of the pleadings, arguments of the Counsel on both sides and the judicial precedents referred to by them. The reasoning of the Trial Court starts from page No.44 Para 22 of the judgment. The Trial Court has considered only two grounds of cruelty alleged by the appellant. First one is regarding respondent's reaction for the appellant transferring Rs.2,00,000/- to his mother. Second one is regarding allegation of assault by the respondent on 23.11.2013. The Trial Court disbelieved the contention regarding transfer of the amount on the ground that, at one breath appellant states that he transferred the money to his mother and at another breath he stated that he transferred money to the account of his younger brother, but he has not produced any records like bank statement or transfer details and in his complaint Ex.P3, he has not stated about transfer of Rs.2,00,000/-.

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20. Trial Court disbelieved the incident dated 23.11.2013 on the ground that there was delay of 26 hours in appellant filing the complaint, he had suffered simple injuries, he did not produce the wound certificate and only produced the photographs Ex.P5 (a to f), the Doctor who treated the appellant has not registered the MLC case and FIR was not registered on the medico legal intimation of the doctor. The Trial Court further says that the appellant has not examined his friend to corroborate his evidence. The Trial Court further states that bloodstained clothes of the appellant and the photos produced in this case were not seized by the Investigating Officer.

21. The reading of the entire judgment shows that the Trial Court proceeded with the matter as if it is sitting in trial in CC No.32133/2014. In doing so, the Trial Court failed to note that such observations prejudice the trial of the case in C.C.No.32133/2014. Strangely, the Trial Court says that the contents of the charge sheet have not been proved before it. The Trial Court lost sight of the fact that degree of burden of proof in civil cases and criminal cases are different. In criminal case, prosecution is required to prove the charges beyond all

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NC: 2024:KHC:29448-DB reasonable doubts and burden of proof is heavy. Whereas in the civil case, the party asserting certain facts has to lead evidence to probabalise his contention and the evidence has to be weighed on the principle of preponderance of probability. Therefore, the Trial Court was required to see whether the appellant had suffered such injuries at the given date, time and place and whether he probabalised his case that such injuries were inflicted by the respondent.

22. Respondent in para 36 of her statement of objections itself contended that the appellant first assaulted her and thereafter he inflicted injuries himself on his body and filed a false complaint. She

further claimed that due to the injuries suffered by her, sensing threat to the life and limb of herself and the child, she filed complaint in Crime No.224/2013. It is settled position of law that admission in pleading has higher evidentiary value. In the light of such admission in the pleading about the appellant suffering injuries, the Trial Court was not justified in disbelieving such injuries only on the ground that MLC intimation was not given, the bloodstained clothes were not seized etc. In such cases, burden shifted to the respondent to prove that they were self inflicted injuries. But, there was

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NC: 2024:KHC:29448-DB not even any suggestion to PW.1 in his cross examination stating that he inflicted those injuries on himself.

23. In para 36 of the objections, she claimed that the appellant assaulted her. In her complaint Ex.P6, she implicated the appellant, his brother and friend. Admittedly based on such complaint, chargesheet was filed in the said case. The appellant, his brother and friend were tried in CC No.32150/2014 based on such charge sheet and acquitted on 29.09.2022. The copy of the said judgment is produced before this Court. Since the same is between the parties inter se and not disputed, having regard to Sections 57 and 58 of the Indian Evidence Act, 1872, the said document can be looked into. Reading of the said judgment shows that the said Court held that complaint was filed by the respondent as a counter blast to the complaint of the appellant. Learned Magistrate even disbelieved her version regarding dowry harassment, accused Nos.2 and 3 criminally intimidating her and the appellant assaulting her. In view of her admission regarding suffering injuries, the photographs Ex.P5 (a to f) can be looked into. Many of the injuries are found on the back of the shoulder and

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NC: 2024:KHC:29448-DB neck, it goes hard to accept that he could have inflicted those injuries on himself.

24. So far as observation of the Trial Court that the appellant has not proved the monetary transaction between him and his mother, all along the case of the respondent is that the appellant was harassing her at the instigation of his brother and mother and secondly that all of them subjected her to cruelty demanding dowry. In the cross examination of PW.1, she suggests that his younger brother was spending huge amount for making TV serial. That itself indicates that she was watching the financial affairs of the appellant, his brother and his parental family. In para 16 of the cross examination dated 07.02.2020 the respondent herself suggested to PW.1 that he transferred Rs.2,00,000/- to his mother through the account of his brother. She herself suggests that differences between himself and the respondent started after transferring the said amount. He denied that suggestion and volunteered that differences were there from the beginning. She suggests to him that he was suffering from Obsessive compulsive disorder without any attempt to prove that, though those suggestions were denied by him. Probably to overcome the incident of

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NC: 2024:KHC:29448-DB assault, she herself suggested to PW.1 that she has the disorder of walking in the night. Under such circumstance, conclusions of the Trial Court that clashes between the couple due to transfer of money by the appellant for the benefit of his mother was not proved, is contrary to respondent's own suggestions.

25. The contention of the appellant is that the respondent was always avaricious and expecting lavishness and he gave her and her family members, money and jewellery, etc., despite that she filed false dowry harassment case against him and his family members. To substantiate that, he has produced before this Court the depositions of the respondent in Crl. Misc No.23/2014. Since said proceeding is between same parties and not disputed, that can be looked into more particularly as per Section 14 of the Family Courts Act the Court can adopt its own procedure. In Page 18 of the said deposition, to the suggestion that she was spending her salary for her own purpose, respondent stated that she was depositing that to her RD account and remaining amount she was spending for the household. She admits that RD was of Rs.2,00,000/-. To the suggestion that the appellant was

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NC: 2024:KHC:29448-DB depositing the amount in the RD account, she says sometimes he used to deposit. She admitted the suggestion that the appellant deposited Rs.1,60,000/- in the account of her elder sister, but claimed that the appellant withdrew the said amount. She did not prove the said contention. In pages 18 and 19 of the said deposition, she admitted that on 03.10.2012 the appellant deposited Rs.1,00,000/- to her account and on 10.11.2012 he deposited Rs.20,000/-. Though she claimed that he took that back, there was no proof for the same. She admitted that the appellant deposited in all Rs.6,16,500/- to the accounts of herself, her elder sister and grandfather. But claimed that such remittances were made for paying the site value, tractor hiring charges, rent, water and electricity bill, again without any proof for such contention. When she was confronted with the bank statement to the effect that amounts were transferred from the account of the appellant to her account, though she admitted her name in such entries, later evaded saying that unless she cross checks that with her account, she cannot admit that. In page 22 and 23 of the deposition when she was confronted with several payments, she did not deny that but she evaded saying that she has to cross verify. However, she admitted that on 03.10.2011 the

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NC: 2024:KHC:29448-DB appellant transmitted Rs.50,000/- and again Rs.50,000/- through NEFT to her account. In her deposition dated 29.06.2022 she admits that the appellant has opened a company in her name. In para 7 of the cross examination of PW.1 in MC No.1100/2015 before the Trial Court, respondent suggested to PW.1 that appellant voluntarily and happily paid jewellery worth Rs.5,00,000/- to her. Such payments/suggestions create doubt about the respondent's allegation that the appellant and his family members subjected her to cruelty, demanding dowry or additional dowry.

26. The appellant has also produced the order sheet dated 02.11.2014 in Crl. Misc. No.23/2014. In that learned MMTC II observed about the conduct of the respondent as follows:

"When the petitioner was cross examined, she argued before the Court and she shouted at the Court in the board and after repeated warning, she continued to shout in the open Court. Hence, case was adjourned. She even refused to sign the cross examination. The same was witnessed by advocate by name Sri Devi Prasad. The signature is obtained in the order sheet. For further cross examination of

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NC: 2024:KHC:29448-DB PW.1 and memo of calculation from the respondent side, call on 26.12.2023."

If such is the conduct of the respondent before a Court of law, one can imagine how she would have conducted with the appellant within four walls of the house.

27. The above facts and circumstances go to show that the respondent implicated the appellant, his brother and friend in a case of assault by making false allegations. The above discussed evidence further probabilizes the contention of the appellant that the respondent has implicated him and his family members in different cases, to derive sadistic pleasure. The finding of the Trial Court that the allegations of cruelty were not proved is totally unsustainable.

28. Another ground of rejection of petition for dissolution of marriage is that the appellant has condoned the cruelty, if any, by taking the respondent to several places as shown in the photographs, Exs.R1 to R10. The basis for such opinion of the Trial Court regarding condonation of cruelty is deposition of PW.1. In para 20 of the cross examination, the photos Exs.R1 to R8 were confronted to PW.1 and he admitted that he is depicted in the said photographs with the respondent

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NC: 2024:KHC:29448-DB and his son, but he denied that he had taken respondent to Ooty and Mysore for a trip. Though in para 21 of his cross examination he admitted the photographs in Exs.R9 and R10, he clearly stated that those photographs were taken soon after the marriage of himself and the respondent. In para 20 and 21 of the cross examination he clearly denied the suggestion that though he is interested to live with the respondent, at the instigation of some other persons he has filed false case against her.

29. It is to be noted that in none of the photographs in Exs.R1 to R8 the appellant is found exclusively with the respondent. It is the contention of the appellant that to spend time with his child, he had to call the respondent and she used to accompany the child. Therefore, those photographs cannot be called as condonation of cruelty. Ex.R21 the call detail records were produced to contend that the appellant was frequently calling the respondent, therefore, there is condonation of cruelty. Even in that regard in the cross examination of RW.1 dated 13.03.2020 the appellant suggested that he used to call the respondent to speak to the child. She does not dispute the said suggestion, but she added that

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NC: 2024:KHC:29448-DB appellant also spoke to her. Respondent herself produced the deposition of the appellant recorded in CC No.32133/2014 (Ex.R.22) which was recorded on 10.08.2018, 06.10.2018 and 23.11.2018. It is also not disputed that the appellant has not withdrawn any of the criminal cases filed on his complaint. The deposition Ex.R22 nowhere indicates that the appellant in any way condoned the cruelty. Admittedly, the appellant has filed G & WC No. 271/2023 before the Principal Judge, Family Court, Bangalore seeking custody of the child. The aforesaid facts and circumstances show that the appellant had the compulsion of permitting the respondent to accompany him and the child for the sake of facilitating his meeting with his son. Such acts cannot be called condonation. An act of condonation, should be out of freewill and intelligible acceptance. But the facts of this case show that under the urge of meeting his son, he was forced to permit the respondent to accompany them. The Trial Court without appreciating the evidence holistically, jumped to the conclusion that the photographs show the condonation of cruelty as required under Section 23(1)(b) of the Act. Condonation of cruelty presupposes that there was cruelty. The Trial Court first holds that cruelty was not proved, then holds that cruelty is condoned which is mutually contradictory.

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30. It is material to note that, if at all the respondent wanted interim or permanent alimony, since the matrimonial proceedings were pending, she could have sought consolidated claim in the same case. But she goes on filing multiple proceedings like under the DV Act, seeking maintenance and execution petitions before different Courts etc. It is no doubt true that when the law provides, the parties have the right to seek remedies, but that should be bonafide. Approaching multiple Courts for maintenance though there was scope to seek maintenance in a consolidated way in the matrimonial case itself, obviously shows that she wanted to drive the appellant to run around several Courts at the cost of his profession and personal life and that is the calculated acts of cruelty. It is no doubt true that generally Courts are compassionate towards women considering the fact that they are more prone to exploitation. However, the Courts should also take cognizance of the fact that good number of times pro- woman laws are being misused to harass not only their spouses but even their family members. In the light of the aforesaid facts and circumstances, this Court has no hesitation to hold that the respondent has subjected the appellant to cruelty entitling him decree for divorce. Consequently, the decree of

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NC: 2024:KHC:29448-DB restitution does not sustain as appellant has sufficient reasons to stay separately from the respondent on the ground of cruelty.

31. The above discussed evidence goes to show that within two years of marriage the appellant has faced great turbulence in his life due to conduct of the respondent. The appellant and his family

members are dragged to the Court in multiple cases, in one of which they were apparently acquitted. Before this Court, the respondent produced certain records to claim that the appellant and his brother conspired with other persons to commit her murder and therefore criminal case is registered. Though she claims that chargesheet is filed in that case, only the copy of the FIR of Aldur Police Station, Chikmagalur District is produced. Even in that FIR, the appellant is not shown as the accused. Therefore, at this stage, this Court only on the basis of respondent's contention and FIR cannot jump to the conclusion that they are guilty of such offences.

32. The Trial Court to grant decree of restitution of conjugal rights states that appellant did not whisper anything in his evidence to counter the allegations made in the said petition

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NC: 2024:KHC:29448-DB namely, MC No.4772/ 2016. The Trial Court itself consolidated both the petitions and recorded the common evidence in MC No.1100/2015. The allegations and counter allegations in both the cases were common and they were addressed in the affidavit in lieu of his chief examination. Therefore, the Trial Court was patently incorrect in saying that the appellant did not meet the allegations made in MC No.4772/2016 in his evidence.

33. The Hon'ble Supreme Court in Jayachandra's case referred to supra has held that the cruelty, a ground for dissolution of marriage, though not defined in the Act, can be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental or as to give rise to a reasonable apprehension of such danger. It was also held that the question of mental cruelty has to be decided in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status and environment in which they live. It was held that cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. It was further held that the enquiry must begin

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NC: 2024:KHC:29448-DB as to the nature of cruel treatment and impact of such treatment in the mind of the spouse whether caused reasonable apprehension that it would be harmful or injurious to live with the other and ultimately it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. Therefore, the said judgment is aptly applicable.

34. For the aforesaid reasons the impugned judgment/order/decreed of dismissal of the petition of the appellant for divorce and allowing the petition for restitution of conjugal rights are liable to be set aside. Reg. Permanent Alimony (IA.Nos.1/2024/ 2/2024 and 3/2024).

35. IA No.1/2020 is for stay of the impugned judgment and decree. Since the main matters are being disposed of, that does not survive for consideration. IA No.1/2024 is filed by respondent/wife claiming permanent alimony of Rs.3.5 crores from the appellant. The appellant has filed IA No.2/2024 to summon the Manager and HR of BBR India Pvt. Ltd. Company to furnish the

employment particulars of the respondent in the said company and bank details to which her salary is being

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NC: 2024:KHC:29448-DB credited. IA No.3/2024 is filed to summon the Manager of ICICI Bank, Vyalikaval Branch to furnish statement of account of respondent bearing No.272601509109 for the period from 01.04.2021 to 31.12.2023.

36. The applications are opposed by the parties. In the affidavit of assets and liabilities filed by the respondent in support of IA No.1/2024 she claimed that she is unemployed. In clause (F) of her affidavit regarding her assets and liabilities in terms of the judgment of the Hon'ble Supreme Court in Rajnesh vs. Neha³ the respondent has claimed that she is not employed, she has no other source of income and she has mentioned those columns as 'nil', 'not applicable' etc. She claimed that her father is dependent on her and she has no other income. She has produced statement of account pertaining to Account No.007801529255 with ICICI Bank from 01.01.2021 to 30.12.2021 and SBI Bank Account particulars. Whereas in the affidavits of the appellant filed in support of IA Nos.2/2024 and 3/2024 and in his statement of objections to IA No.1/2024 he contends that respondent is a BE graduate and she is employed with the Company called BBR India Pvt. Ltd. as (2021)2 SCC 324

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NC: 2024:KHC:29448-DB Design Engineer and drawing salary of Rs.40,000/- per month. He further contends that the respondent has another Account No.272601509109 in ICICI Bank, Vyalikaval Branch and her salary is credited to the said account. He claims that the respondent has deliberately suppressed the said fact which amounts to perjury and playing fraud on the Court. Therefore, he seeks to summon that employer and the Bank Manager to produce the particulars of employment and bank account respectively. Respondent filed counter to those applications alleging the said evidence is irrelevant and applications are dilatory tactics to cause hardship to her etc. But in the entire statement of objection, nowhere she has denied such employment.

37. Section 25 of the Act requires the Court to have regard to the income and property of the respondent, conduct of the parties and other circumstances of the case to arrive at the quantum of alimony to be granted. Needless to say that while granting permanent alimony, the Court has to take into consideration the affidavit filed by both the parties regarding the assets and liabilities and the documents filed in support of them. The appellant in para 13 of his statement of objection to

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NC: 2024:KHC:29448-DB IA No.1/2024 in terms of the judgment of the Hon'ble Supreme Court in Rajnesh's case referred to supra, states that the respondent is a graduate in BE Civil engineering, she is employed with BBR India Pvt. Ltd. as design engineer and earning Rs.40,000/- per month. The respondent claims that she was employed with the said company, but she has resigned in 2012.

Thereby her employment in the said company was established and the burden was on her to prove that she is no more in the employment of the said company. Except for producing copy of the email alleged to be her resignation letter dated 23.07.2012, she did not examine the said employer to show that she is no more in the said employment. Whereas the appellant has produced summary of statement of Account No.272601509109 said to be standing in the name of the respondent with ICICI Bank. The same pertains to the period between 01.04.2021 to 03.11.2022. As per the said document in each month a sum ranging between Rs.36,604/- to Rs.36,309/- is periodically credited from the account of BBR India Pvt. Ltd.

38. Having regard to the material on record, it cannot be said that the contention of the appellant with regard to

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NC: 2024:KHC:29448-DB employment and income of the respondent is totally vexatious. This Court is satisfied that the enquiry needs to be conducted on the same and for that purpose the matter needs to be remanded to the Trial Court to decide on the permanent alimony on recording the evidence.

39. Admittedly, the award of interim maintenance of Rs.20,000/- in the DV Act proceedings and interim maintenance of Rs.25,000/- awarded by the Family Court have attained finality. The appellant shall go on paying the said sum every month till issue of permanent alimony is decided by the Trial Court. To avoid multiple execution petitions before different Courts and dispute with regard to sum due, the appellant shall deposit the interim alimony before the Trial Court on or before 10th of each calendar month. The applications are being disposed of accordingly. Hence the following:

ORDER

i) MFA.No.98/2021 and MFA.No.96/2021 are allowed.

ii) The impugned common judgment and order/decreed dated 28.09.2020 in MC Nos.1100/2015 and 4772/2016 on the file of Principal Judge, Family Court, Bangalore are hereby set aside.

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iii) The petition in MC No.4772/2016 is hereby dismissed.

iv) The petition in MC No.1100/2015 filed under Section 13(1)(ia) of the Hindu Marriage Act, 1955 is hereby allowed.

v) The marriage of the appellant/petitioner and respondent solemnized on 13.11.2011 in Unity Hall, Thirthahalli is hereby dissolved.

vi) IA Nos.2/2024 and 3/2024 filed by the appellant to summon the witnesses/documents are hereby allowed.

vii) IA No.1/2024 filed by the respondent for permanent alimony is hereby remanded to the Trial Court.

viii) The parties are permitted to lead evidence on IA No.1/2024 in addition to summoning of the witnesses/documents sought in IA Nos.2/2024 and 3/2024.

ix) Till the disposal of IA No.1/2024 by the Trial Court, appellant/petitioner shall go on paying Rs.45,000/-

per month towards the maintenance of the
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respondent and son of the couple. The said sum is inclusive of the maintenance awarded in DV Act proceedings and her claim under Section 125 Cr.P.C. if any.

x) The appellant shall deposit the arrears of maintenance, if any, at the above rate before the Trial Court within four weeks from the date of this order.

xi) To avoid filing of multiple execution petitions before multiple forums, the appellant shall go on depositing the interim alimony at the above rate before the trial Court on or before 10th of each calendar month. In case of default, the respondent shall file execution petition only before the Trial Court and not in the Courts of DV Act proceedings and proceedings under Section 125 Cr.P.C. as the same would save the time, resources of the parties and Courts.

xii) To avoid further delay, the parties are hereby directed to appear before the Trial Court on 29.08.2024 without any further notice.

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xiii) If any of the parties fail to appear, the Trial Court is at liberty to proceed in accordance with law.

xiv) The Trial Court shall record the evidence and dispose of IA No.1/2024 within 4 months from the date of appearance of the parties.

xv) IA No.1/2020 for stay stood disposed of.

Sd/-

(K.S.MUDAGAL) JUDGE Sd/-

(VIJAYKUMAR A. PATIL) JUDGE AKC