

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 11TH DAY OF SEPTEMBER 2019

PRESENT

THE HON'BLE MR. JUSTICE L. NARAYANA SWAMY

AND

THE HON'BLE MR. JUSTICE B.M. SHYAM PRASAD

MISCELLANEOUS FIRST APPEAL NO.24044 OF 2011(MC)

C/W

MISCELLANEOUS FIRST APPEAL NO.24045 OF 2011

IN M.F.A. NO.24044/2011:

BETWEEN:

SRI. K.S. SHANKAR S/O L. SHEKAPPA
AGE: 32 YEARS, OCC: WORKING AS POLICE CONSTABLE
NO.226 AT SIRUGUPPA POLICE STATION
R/O: NEW BLOCK, POLICE QUARTERS
SADASHIVA NAGAR, SIRUGUPPA
TAL: SIRUGUPPA, DIST BELLARY.

... APPELLANT

(BY SRI. SRINAND A. PACHHAPURE, ADVOCATE)

AND:

SMT. K. JYOTHI W/O K.S. SHANKAR
D/O R. KENCHAPPA
AGE:34 YEARS, OCC: TEACHER IN BHP SCHOOL
R/O: HALEKOTE, SIRUGUPPA TALUK
DIST: BELLARY.

... RESPONDENT

(BY SRI. V. SHIVARAJ HIREMATH, ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER
SECTION 19 OF THE FAMILY COURT ACT 1984, AGAINST THE

JUDGMENT AND DECREE DATED:19.02.2011 PASSED IN M.C.NO.5 OF 2008 ON THE FILE OF THE II-ADDITIONAL SESSIONS JUDGE, BELLARY, DISMISSING THE PETITION FILED UNDER SECTION 10 OF THE (INDIAN) DIVORCE ACT, 1869.

IN M.F.A. NO.24045/2011:

BETWEEN:

SRI. K.S. SHANKAR S/O L. SHEKAPPA
AGE: 32 YEARS, OCC: WORKING AS POLICE CONSTABLE
NO.226 AT SIRUGUPPA POLICE STATION
R/O: NEW BLOCK, POLICE QUARTERS
SADASHIVA NAGAR, SIRUGUPPA
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AGE:34 YEARS, OCC: TEACHER IN BHP SCHOOL
R/O: HALEKOTE, SIRUGUPPA TALUK
DIST: BELLARY.

... RESPONDENT

(BY SRI. SHIVARAJ HIREMATH, ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 19 OF THE FAMILY COURT ACT 1984, AGAINST THE JUDGMENT AND DECREE DATED:19.02.2011 PASSED IN M.C. NO.2 OF 2009 ON THE FILE OF THE II-ADDITIONAL SESSIONS JUDGE, BELLARY, ALLOWING THE PETITION FILED UNDER SECTION 22 OF SPECIAL MARRIAGE ACT, 1954.

THESE APPEALS HAVING BEEN HEARD AND RESERVED ON 12.06.2018 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **B.M. SHYAM PRASAD J.**, DELIVERED THE FOLLOWING:

JUDGMENT

These appeals are filed by the husband impugning the common judgment and decree dated 19.02.2011 in matrimonial cases in M.C.No.5/2008 and M.C.No.2/2009 on the file of the II Additional Sessions Judge, Bellary (for short, '*the family Court*'). The matrimonial case in M.C.No.5/2008 is filed by the husband for divorce on the ground of cruelty under Section 10 of the (Indian) Divorce Act, 1989 (for short, '*the Divorce Act*') and the matrimonial case in M.C.No.2/2009 is filed by the wife for restitution of conjugal rights under Section 22 of the Special Marriage Act, 1954 (for short, '*the Special Marriage Act*'). These cases have been clubbed, and decided by the common judgment and decree dated 19.2.2011. The husband's petition for divorce in M.C.No.5/2008 is dismissed, and the wife's petition for restitution of conjugal rights in

M.C.No.2/2009 is allowed. As such, these appeals by the husband.

2. The undisputed facts are that the couple's marriage is solemnised on 13.11.2005 according to the Christian rites and customs. The couple have a daughter, Miss.Krupa born on 30.10.2006. The husband is working as a police constable, and just prior to the wedding, he was working at Hospet, but after the marriage, he started working at Siruguppa. The wife is a government teacher, and even as of the date of the marriage, she was working in a Government School at Halekote Village of Siruguppa taluk. The couple are estranged, and have been living separately ever since the date of the petition by the husband for divorce on 20.11.2008. The husband is staying in a lodge, and the wife is residing in the quarters allotted to the husband.

3. The husband's case is that he is subjected to *cruelty* by the wife. He reasonably apprehends that it

would be harmful and injurious for him to live with respondent, and therefore, he is entitled for divorce. The wife was abusive and he had to suffer severe mental trauma because of the wife's conduct. The wife was in the family way within 4-5 months of the marriage, but she was not interested in continuing the pregnancy. Therefore, she called on a doctor to undergo medical intervention for abortion. When he and his parents tried to counsel the wife, she would retort that she was not a childbearing machine. However, the wife continued the pregnancy after much persuasion. The child was born in the month of October 2006 after a cesarean procedure. The wife stayed with her parents for confinement, but she returned to the matrimonial home with the child after the customary period.

4. The wife insisted that they refrain from any physical intimacy because she did not want to go through the difficulties and pain of childbearing once

again. He was denied the comforts of marital life. The wife was accompanied by one of her nieces to assist her in looking after the child, and he had to suffer severe humiliation because the wife would allege that he was intimate with this niece. The wife would insist that none from his family should stay with them, but he is one of the eight siblings, including six sisters and therefore under a pious obligation to provide opportunities for the younger siblings to study. As such, his two younger siblings came to join him and the wife. They were completely humiliated by the wife much to his agony. The wife would put them on house hold work constantly without an opportunity for them to pursue studies.

5. He also had to suffer because the wife was always condescending and disparaging. She would state that he came from a poor background, while she was the daughter of an officer. She would humiliate him. She would insist he change his uniform even if the

circumstances were exigent and he to only drop her for shopping on the way to work stating that if she accompanied him while he was in his uniform it would look like she was accompanying a watchman. The wife would also physically assault him, and regularly speak ill of his parents. Therefore, he had to seek the assistance of a priest from the church, who advised the wife to mend her ways and do her best to lead a happy married life. Nevertheless, the wife continued being abusive, even challenging him to pick up physical fights with her father/her brother threatening him. He was under duress from the wife because she would not allow him to attend to his official work as detailed in the legal notice dated 30.8.2008.

6. A panchayat was convened, and the wife was advised by them. Despite these efforts, the wife continued with her difficult behaviour. She would even call his superior officers and tell them lies against him.

Therefore, he was constrained to issue legal notice dated 30.8.2008 calling upon the wife to mend her ways and make efforts to lead a normal matrimonial life.

7. The wife's case is that the husband is given to different vices, and in fact, he is acquainted with a certain third person even prior to the date of marriage. This third person is working in a beauty parlour in Bellary. She has two children, and she is deserted by her husband. The husband introduced this third person as his good friend at the time of the wedding, and she did not suspect any intimacy between them. However, she has come to know that they are into a physical relationship. They clandestinely exchange SMSs over mobile (*the mobile phone, a SIM and the transcription of the messages exchanged between them are marked as Exhibits*). This third person's second child is born to the husband. He has filed a false case for divorce so that he can get rid of her and marry this

third person. The husband pays this third person every month for her maintenance and the maintenance of the children. Therefore, he is staying separately in a lodge. She is interested in continuing the marital life with the husband. She has denied all the allegations made by the husband against her.

8. The couple rely upon certain subsequent events to bolster their respective cases. The husband asserts that the wife has resorted to lodging false cases against him with the jurisdictional police as well as his superiors. The subsequent circumstances relied upon by the husband are as follows:

(a) The wife has lodged a false complaint against him stating that she visited the lodge he was staying and because she visited him at the lodge, he assaulted her. However, she has later withdrawn this complaint (Ex.P12).

(b) The wife has filed a false complaint against him with his superiors in 2009, and because of such complaint, his transfer from Shiruguppa being cancelled (Ex. P.25, P18 & P19).

(c) He was compelled to file information with his superiors about the mental cruelty caused to him by his wife's conduct. The Inspector General of Police, Eastern Zone called upon the Police Inspector, Bellary to counsel the couple and to file a Report. The Superintendent of Police, Bellary filed a Report with the Inspector General of Police opining that the husband was subjected to cruelty recording that the husband had stated before the Superintendent of Police that he would rather work as a *Coolie* than stay with the wife because of her conduct (Ex.P-20).

(d) The wife has lodged a false information with the police, which is registered in crime No.66/2010 on

20.4.2010 against him. Ultimately, the jurisdictional police filing a 'B' Report.

9. In this appeal, the husband has also filed application under Order XLI Rule 27 of CPC seeking leave of this court to produce as additional evidence/document the judgment in CC No.156/2013 on the file of the II Addl.Civil Judge and JMFC Bellary, a penal proceedings initiated against the husband and the said third person for offences punishable under Sections 323, 324, 341, 504, 506 read with 34 of IPC for an alleged incident on 25.10.2011 when the wife, along with the media, visited the residence of this third person and the husband was found at her place. The husband and this third person are acquitted in C.C.No.156/2013 because the wife herself did not support the case of the prosecution.

10. The wife, on the other hand, has relied upon the Domestic Incident Report filed by CDPO under the

provisions of the Protection of Women from Domestic Violence Act, 2005 wherein it is recorded that the couple, as well as the third person, were called for counselling. The husband and the third person appeared before the CDPO for counselling. In the counselling, they only reiterated that they were good friends, and there was no intimacy between them. However, they both walked out of the counselling without cooperating. The CDPO has opined in the Report that the husband was not looking after the wife and there were differences between them because of certain financial matters, including the demand for dowry by the husband. The wife has also relied upon a Report filed by an advocate, Ms. V Indira, also a conciliator, and it is recorded in this Report that this third Party stated that she was acquainted with the husband only as a friend, and because of the allegations made, she would not allow him to visit her again.

11. The husband examined himself as PW1, and examined four other witnesses. The husband has marked Exhibits P1 to P27 which include the Marriage Invitation Card, Marriage Photographs, Out-Patient Record/Prescription, his statements to the Seniors in the Department, the official Communications amongst the Senior Police Officers about his transfer. The four witnesses examined by the husband are Police personnel.

12. Sri M Yallappa (*Sub-Inspector of Police - Crime, Siruguppa*) is examined as PW2 to establish that the husband was posted on duty between 14.3.2009 and 17.3.2009 to serve summons, and as such, the husband could not have accompanied the wife to the residence of the third person as alleged by the wife. The wife has stated that the husband took her to the residence of the third person under the pretext of allaying her misunderstanding about the relationship and trying

to project that this third person was indeed in love with somebody and that they proposed to marry.

13. Sri Hussain Sab (*a police constable and an occupant of one of the adjacent quarters*) is examined as PW3. He has stated that the wife has lodged a complaint alleging physical assault by the husband on 29.3.2010 for dowry, but he was at home and there was no such occurrence. Sri K Narayanaswamy, (*a Head Constable and occupant of one of the other adjacent quarters*) is examined as PW4. This witness speaks about the couple living a happy life for a short time, but their relationship souring because of the wife's arrogance and indifference. He, and his mother, also had to intervene about 3 to 4 times to counsel the wife. The husband, because of the wife's conduct, shifted out of the quarters and is residing in a lodge.

14. Sri T.R.Pawar (*a Police Sub-Inspector, Siurguppa*) is examined as PW5, and this witness has

stated, amongst others, that multiple counselling sessions were held. Both were unapologetic and insistent on justifying their respective stands, and it was after one such counselling session, the husband informed him that he would reside in Srinivasa lodge, Siruguppa. He had advised the husband to seek transfer, and because of the wife's complaint, the husband was under suspension once and his transfer was also cancelled.

15. The wife has examined herself as RW1, and at her instance, the CDPO is summoned and examined as RW2. This witness has spoken about receiving on 28.3.2009, a complaint by the wife, and summoning the couple and the third person for counselling. The witness has also spoken about counselling the third person against leading life as the second wife. A Report is marked through this witness as R5 and the extract of the register as exhibit R6 (*which is essentially a report*

by the conciliator/legal adviser, Ms Indira). The wife in her examination has reiterated her case as already detailed.

16. The family Court has concluded that though the couple alleged physical violence, but the violence that they complain of is not extreme and out of the bounds of a normal marital life. The family Court has concluded that though the evidence as regards intimacy between the husband and the third person cannot be adjudged on the basis on which evidence is charged in criminal cases, the wife is able to justify her suspicion about the husband's intimacy with the said third person. The wife's suspicion is borne out by the material on record like the CDPO's Report and the wife's complaint to the Seniors in the Police Department. The husband could not have reasonably abandoned the wife and resided in a lodge, especially given that he is a police personnel and the couple have a daughter, who

was aged about four years in 2010-2011. The wife has been willing to condone and step back because she wants the marital life to continue, and this is demonstrated in the wife writing the letter marked as Exhibit P12 though it is obvious that the wife is prevailed upon to write this letter. Therefore, it is the duty of the husband to mend his ways and conduct himself in such manner that the wife's suspicion was allayed.

17. The family Court has further concluded that the couple's marriage is not irretrievably broken down, and the couple's circumstances do not justify dissolution of marriage. The wife's complaint is only against the third person's association with the husband. But, she is consistent in her stand that she wants the marital life to continue. However, it is obvious that the family Court has imposed a certain higher burden on the husband because he is a police personnel, and this

becomes obvious by the repeated reference to the husband being a police personnel in the judgment. The family Court hasn't attached much significance to the evidence of the witnesses examined by the husband because they, like the husband, are from the police department. It is for these reasons, the family Court has dismissed the husband's petition for divorce and allowed the wife's petition for restitution of conjugal rights.

18. The canvass by the learned counsel for the husband in support of the appeals is essentially multifold. Firstly, the family Court could not have discarded the testimony of the witnesses examined on behalf of the husband merely because they were also, like the husband, personnel of the police department. The family Court ought to have seen that PW3 and PW4, admittedly being residents of the neighboring premises, would be natural witnesses to the happenings between

the couple at their residence. The evidence of PW2, who was categorical that there was no incident at home on 29.3.2010, established that the wife had lodged a false information with the police alleging that on 29.3.2010 she was brutally assaulted by the husband for dowry. The testimony of this witness was significant in the context of the husband's case that the wife was unjustly persecuting him with lodging false information with the police and his superiors resulting in his suspension and cancellation of transfers, and his prosecution. The testimony of PW5, a senior personnel from the Sirguppa Police Station, was also significant and relevant inasmuch as it established the husband's case that the wife was called for counselling, but she had remained adamant. She had persisted with false complaints compelling the husband to stay separately and also resulting in his suspension and cancellation of transfers. The family Court in discarding this evidence

without much discussion has erred in misjudging the husband's case of cruelty.

19. Secondly, the family Court could not have ignored the events subsequent to the filing of the petition by the husband for divorce on the ground of cruelty. The subsequent events highlighted by the appellant are as follows. The husband had placed on record material which established that, subsequent to the filing of the petition for divorce, the wife had lodged complaints with his superiors which resulted in the cancellation of his transfer from Sirguppa to Bellary. The wife had filed information with the jurisdictional police alleging that the husband had assaulted her on 29.3.2010 demanding dowry, which had resulted in registration of FIR in Crime No.66/10 and the husband being kept under suspension. But, later the jurisdictional police filed 'B' Report. His transfers were cancelled at the instance of the wife. The husband was

compelled to file representation with the seniors, who advised counselling. Consequently, the concerned Police Inspector advised the couple, but the wife persisted with her adamancy.

20. It is settled law that the subsequent events have to be considered because the couple were aware of this facet of the husband's case, and evidence was led on this facet. The learned counsel relied upon the decision of the Hon'ble Supreme Court in *K Srinivas v. K Sunita reported in (2014) 16 SCC page 34* and *Malathi Ravi M.D v. B V Ravi reported in (2014) 7 SCC 640* in support of the proposition that even subsequent to the filing of the petition would have to be considered.

21. Thirdly, the family Court ought to have seen that though the wife was persistent in her complaint that the husband was in relationship with a third person, but she had not been able to establish the

same. She relied upon SMS/transcription thereof to substantiate her case that the husband was in relationship with another person. The family Court has concluded that this evidence was not sufficient to conclude that the exchange of message was with the third person. Therefore, this evidence was helpful to the wife, and without this evidence, there was no evidence to establish the wife's case.

22. The other circumstance was that a Report was filed by CDPO under the provisions of the Protection of Women from Domestic Violence Act, but this Report only spoke about the couple and the third person being called for counselling. This Report did not in any manner establish any relationship between the husband and the third party, and in fact this person had only stated that her acquaintance with the husband was as a friend. She further stated that in the light of the allegation, she would not keep in touch with the

husband. This evidence could not have been construed howsoever as proof of any relationship between the husband and this third person. If the evidence is examined in the totality of the facts and circumstances of the case, it is established that the wife was persecuting the husband without any justifiable reason. As such, the husband had been able to make out a case for dissolution of marriage on the grounds of mental cruelty.

23. On the other hand, the learned counsel for the wife argued in support of the impugned judgment contending that the family Court had examined the evidence on record in the totality of the facts and circumstances. The family Court's judgment is justified in the light of the evidence on record. The family Court had rightly concluded that the evidence as regards the wife's case of adulterous life by the husband could not be assessed as in criminal cases. The CDPO's Report

more than probabalise the wife's case that the husband was living separately in a lodge because the husband was leading an adulterous life, otherwise there was no justification for the husband to live in a lodge. The husband's allegation of cruelty was not at all established, and the wife exercising her right in initiating complaints or lodging information with the superiors officers cannot be construed as acts of persecution. The family Court had rightly concluded that because the wife is interested in preserving the marital life, she had withdrawn a complaint against the husband not once but twice. The reasoning by the family Court that the relationship between the husband and wife is not irretrievably broken down, and the marriage cannot be dissolved on tenuous grounds, as well as the couple will have to bury their differences in the interest of the minor child, is unexceptionable. Therefore, there is no ground for interference in this appeal.

24. In the light of the rival submissions, the following points for consideration arise:

- a. *Whether it is permissible for the family Court to consider events that are subsequent to the filing of the petition in deciding a petition for dissolution of marriage on the ground of cruelty, and if the subsequent events could be considered, whether the family Court has considered the subsequent events, more specifically the subsequent events relied upon by the husband.*
- c. *If the subsequent events as asserted by the husband are considered, whether any ground is made for interference with the impugned judgment and decree.*

25. The points for consideration formulated will have to be considered in the background of the couple's station in life and how their marital life has panned out.

The wife is employed as a teacher in a government school, and the husband is employed as a personnel with the police department. They were so employed even before the marriage. They have the definite incomes. Their marriage is solemnised on 15.12.2005, and their child is born on 30.10.2006. The wife was in her parental house for confinement for the next 4-5 months. The husband has filed a petition for divorce in the month of November, 2008 after causing legal notice dated 30.8.2008. The husband has moved out of the matrimonial home, and he is living in a lodge. In the interregnum, there were panchayats involving family members and neighbours. It is obvious from these circumstances that the couple lived a very short happy married life, but their marital life thereafter has been tumultuous with different criminal proceedings, panchayat and counselling sessions, as well as the proceedings resulting in these appeals. It is also undeniable that during the aforesaid different

proceedings, a number of attempts were made to bring about rapprochement, but these have been to no avail. Thus, there is ample material to establish embittered relationship between the couple, who have their own independent source of definite income, limited as it could be.

26. Therefore, the family Court could not have categorized the differences between the couple as trivial. If the husband is able to establish that the embittered relationship is because of the wife, and he is put to mental cruelty justifying a reasonable apprehension in him that it would be harmful for him to live with the wife, he would be entitled for dissolution of marriage. If the husband is thus able to establish his case, the wife would not be entitled for restitution of conjugal rights.

27. The husband begins with counting the wife's conduct during the short time they lived together as

husband and wife, and her subsequent conduct to substantiate his case. The husband counts the wife's reluctance to be in the family way, her insistence on abstaining from physical intimacy because of the pain she suffered during the birth of the child, her disparaging remarks and abuses against him and his family members, her indifference and aggressive conduct. If this is the first layer of his case of cruelty, the other layer is made up of the different proceedings commenced at the instance of the wife subsequent to the petition.

28. The evidence as regards the first layer of his case is his own testimony, and the testimony of PW3 and PW4, his neighbours, who have spoken about the wife's behaviour. The family Court could not have disregarded the evidence of these witnesses only because they are also from the police department. As rightly contended by the learned counsel for the

husband, the family Court should have appreciated that they were natural witnesses, and their evidence was in sync with the evidence of the husband at least as regards the wife being quarrelsome. The wife, undisputedly could have examined someone from her family in support of her case that the husband was difficult because of his agenda to marry someone, but she has not examined any. The husband has detailed in his evidence as regards the wife's conduct, but the wife has not responded with her own detailed account of the husband's conduct.

29. On the scrutiny of the evidence on record, this Court is of the considered opinion that there is evidence about the wife's aggressive behaviour. But, this could also be because the wife justifiably suspected that the husband was involved in more than a dalliance with another woman. If the wife is able to justify her suspicion, her conduct could be explained,

and even considered in assessing whether the husband is entitled for dissolution of marriage. It is in this background that the subsequent events relied upon by the couple become significant, but predicated on the question whether these subsequent events could be considered.

30. The Hon'ble Supreme Court in *Malathi Ravi M.D v. B V Ravi supra* has held as follows:

"The seminal question that has to be assessed is whether under these circumstances the decree for divorce granted by the High Court should be interfered with. We must immediately state that the High Court has referred to certain grounds stated in the memorandum of appeal and taken note of certain subsequent facts. We accept the submission of the learned counsel for the appellant that the grounds stated in the memorandum of appeal which were not established by way of evidence could not have been pressed into service are taken aid of. But it needs no special emphasis to state that the

subsequent conduct of the wife can be taken into consideration. It is settled in law that subsequent events under certain circumstances can be taken into consideration".

The Hon'ble Supreme Court has referred to the declaration in its earlier decision in *A. Jaichander versus Aneel Kaur* wherein it is held that, *'if acts subsequent to the filing of the divorce petition can be looked into to infer condonation of the aberrations, acts subsequent to the filing of the petition can be taken note of the show a pattern in the behaviour and conduct'. Thus, it is settled that subsequent events, so long as they are substantiated by indubitable evidence, can be considered.*

31. But, the family Court has not considered the subsequent events which are relied upon by the husband, though the subsequent events relied upon by the wife *viz.*, the initiation of proceedings under the provisions of the Protection of Women from Domestic

Violence Act and the Report filed by the CDPO are taken into consideration. As already delineated, the subsequent events should have been considered to assess the pattern of the wife's behaviour and conduct.

32. The evidence on record, even excluding the judgment dated 20.7.2012 in CC No. 637/2011 on the file of the JMFC, Sirguppa, which is sought to be produced as an additional document, establish the following material subsequent events. The wife lodging a complaint with the husband's senior officers alleging that any transfer of the husband would only help him in establishing his dalliance with another person. It is undisputed that this complaint culminated in cancellation of the husband's transfer. Later, the wife filed the first information with the jurisdictional police alleging that the husband physically assaulted her on 29.3.2010 demanding dowry. The jurisdictional police registered FIR, and consequentially, the husband was

suspended from duty for sometime. However, the jurisdictional police have filed 'B' Report stating that the commission of any culpable act is not established. Further, the wife has lodged another complaint stating that when she visited the lodge in which her husband was staying, she was physically assaulted. But, she has later withdrawn this complaint as well. It is also undisputed that during these subsequent proceedings, multiple counselling sessions were held, but this was not helpful. These proceedings have undisputedly impeded the husband's career.

33. The wife's reason for initiating the subsequent proceedings is because of her suspicion that the husband was trying to cement his dalliance with another woman. However, the evidence placed on record in this regard is her own oral testimony, purported messages exchanged by the husband with the other person, transfer of money to this third person

and the Report by the CDPO as contemplated under the provisions of the Protection of Women from Domestic Violence Act. Her oral evidence is that the husband introduced the other woman as his friend, but this was untrue. When she insisted that he desist from having any relationship with the other person, in a manner of placating her, in an orchestrated effort, she was taken to the residence of this other person and made to believe that she was in love with somebody else and she intended to marry him. The husband continued to interact with this other person, and because he wanted to break of the marriage and marry this other person, he initiated the divorce proceedings on false grounds.

34. There is no evidence to corroborate the same, and in cases involving adulterous conduct, whether as a defence or otherwise, mere oral testimony of one would generally not suffice and there must be some corroboration. The family Court has rightly

disbelieved the wife's evidence both as regards the husband transferring money to this third person and exchanging messages with her.

35. The only evidence that could even be looked into to understand whether there is corroboration, is the report of the CDPO and her testimony as RW1. The report and testimony is that both the husband and the other person came to the counselling, but they insisted that they were only friends and there was no relationship other than that. In fact, it is reported that the other person said that she would not meet the husband henceforth in view of the allegation. And, the report that the husband and this other person walked out of the counselling proceedings, cannot impel a reasonable conclusion that they admitted to any relationship as alleged by the wife. Therefore, this evidence is also not helpful to the wife in a case. If the allegation of adulterous life by the husband is not

established, but it is established that the husband is subjected to multiple proceedings because of such suspicion, and such suspicion have had some kind of an adverse impact on his career, it would establish that the husband is persecuted on the grounds of suspicion. The persistent initiation of multiple proceedings, could reasonably be considered as circumstances causing cruelty that creates reasonable apprehension in the husband's mind that it would be injurious and harmful for him to live the wife.

36. It is settled that whether a spouse is subjected to cruelty will have to be examined in the facts and circumstances of each case, and there can't be any strict definition for the same. Further, it is settled that if it is established that a feeling of deep anguish, disappointment, frustration is caused in one spouse by the conduct of the other for a long time, mental cruelty can be reasonably inferred. In this case where the wife

is not able to justify her suspicion that the husband was in a dalliance with another person, and initiation of multiple proceedings because of such unfounded suspicion is established along with the adverse impact on the career of the husband, this Court is of the considered view that the husband is able to establish mental cruelty because of the wife's conduct. The family Court has erred in failing to consider the subsequent events, the testimony of PW2 - PW5 in the light of the other evidence on record.

For the foregoing, the points for consideration formulated are answered in favour of the appellant and it is concluded that the husband is able to establish cruelty as contemplated under section 10 of the (Indian) Divorce Act, 1869 and consequentially, the wife is not entitled for grant of restitution of conjugal rights. As such, the following order:

- a. The appeals in MFA No. 24044/2011 and MFA No.24045/2011 are allowed. The common judgment and decree dated 19.2.2011 in M.C. No.5/2008 and M.C.No.2/2009 on the file of the II Additional Sessions Judge, Bellary are set aside,
- b. The petition in MC No. 2/2009 filed by the wife for restitution of conjugal rights under Section 22 of the Special Marriages Act, is dismissed, and the petition filed by the husband in MC No. 5/2008 under section 10 of the (Indian) Divorce Act, 1869 on the file of the II Additional Sessions Judge, Bellary is allowed.
- c. The marriage solemnised on 13.11.2005 between the appellant - husband and the respondent - wife is dissolved on the ground of Cruelty by the wife-respondent.

- d. The office is directed to draw decree accordingly. No costs.

In view of the disposal of the above appeals, the pending applications do not survive for consideration and they are accordingly disposed of.

Sd/-

JUDGE

Sd/-

JUDGE

nv*

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