

Manoj and Another Vs. Vijaya and Another

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Court : Mumbai

Decided On : Jul-11-2014

Judge : The Honourable Mrs. Justice Vasanti a. Naik & V.K. Jadhav

Appeal No. : First Appeal No. 547 of 2009 with First Appeal No. 129 of 2010

Appellant : Manoj and Another

Respondent : Vijaya and Another

Judgement :

Oral Judgment: (Vasanti A. Naik, J.)

Since both these appeals arise from the common judgment of the Family Court, Nagpur dated 15-4-2009 and similar issues arise for determination in the same, they are heard together and are decided by this common judgment.

The appellant in First Appeal No.547 of 2010 is the husband of the appellant in First Appeal No.129 of 2010. The parties are legally wedded husband and wife and their marriage was solemnized on 29-3-1998 at Indraprastha Mangal Karyalaya according to the Hindu rites and customs. It is not in dispute that after the solemnization of the marriage, the parties started residing in the house of the husband at Ujjawal Nagar, Nagpur and thereafter shifted to Bhusawal. Two children are born from the wedlock namely Kum. Rachita, who was aged about 5 years at the relevant time in the year 2005 and son Ayush, who was then aged 2 years. Both the children are residing with their mother, the appellant in First

Appeal No.129 of 2010.

In the year 2005, the wife filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. It is pleaded in the said petition that the parties resided together in Nagpur for a period of about 6 to 7 months and during that stay, the wife was harassed and tortured mentally and physically by the mother of the husband. It is pleaded in the petition that the mother of the husband, i.e. the mother-in-law of the wife had ill-treated her and harassed her mentally and physically when she visited Bhusawal on a couple of occasions. It is pleaded in the said petition that the husband and his parents had demanded and accordingly, the parents of the wife had paid an amount of Rs.75,000/- to the husband as dowry. It is pleaded that gold ornaments, colour television, various valuable articles were presented to the husband at the time of solemnization of the marriage. It is pleaded that though so many items were gifted to the husband and his family, the parents of the husband unnecessarily harassed the wife. It is pleaded by the wife that the mother-in-law used to provoke the husband and he used to ask the wife to bring money from her parents. It is pleaded that if the wife refused to do so, the husband used to mercilessly beat the wife by fists, kicks, utensils, sticks, etc. It is pleaded that the husband had once had a fall and he received minor injuries to his leg. It is pleaded that when this incident occurred in March, 2004, the mother-in-law came to Bhusawal and abused the wife, as according to her, the wife was responsible for the said incident. During the stay of the mother-in-law for a period of 7 days at that time, she regularly abused the wife and asked her to bring money from her parents. It is pleaded that on 01/04/2004 the mother-in-law had instigated the husband and on the provocation, the husband had beaten up the wife mercilessly and pushed her on a wall by holding her hair and also throttled her neck as a result of which she fell unconscious and suffered injuries to her head and other parts of the body. It is pleaded that the parents of the wife had visited Bhusawal to see the condition of the husband as well as the wife. However, as soon as they entered the house at Bhusawal, the mother-in-law said that the parents of the wife have four daughters and if one of them dies, they should not be bothered. Certain other allegations are levelled against the mother-in-law by the wife and it is also pleaded that while leaving Bhusawal on 4-4-2004 for Nagpur, the mother-in-law threatened the wife that she would not spare her and would take

revenge. It is pleaded that the husband had beaten the wife during the period from 1-5-2004 to 5-5-2004 by fists, kicks and sticks and directed her to leave the house. The wife was said to have been mercilessly beaten on 5-5-2004. It is pleaded that on 12-5-2004 the husband dropped the wife and the children to her parents' house in Nagpur. It is pleaded that when the wife had been to the residence of the husband at Bhusawal on 09/06/2004 at about 11.00 p.m., the husband bluntly told the wife that his mother did not like her and, therefore, he wanted a divorce. It is pleaded that on 11-6-2004 the husband had beaten the wife mercilessly but the wife was advised by the Police Station Officer not to lodge a complaint. In the aforesaid circumstances, according to the wife, the wife was compelled to return to her parents' house at Nagpur along with the two children on 14-6-2004. All efforts made by the wife and her parents and relatives of reuniting the parties failed and hence, the wife, it is pleaded, was constrained to file the petition for restitution of conjugal rights.

The husband filed the written statement and denied the claim of the wife. Each and every pleading in regard to the harassment to the wife was specifically denied by the husband. The husband pleaded that the wife had treated the husband with cruelty. It was pleaded by the husband that in fact the wife had beaten the husband on a couple of occasions and also assaulted him by a knife when he was bedridden. It was pleaded that the allegations made by the wife in the petition for restitution of conjugal rights show that she is not desirous of staying with the husband. It was pleaded by the husband that the wife used to level baseless allegations against the husband and was always finding fault with him. It was pleaded that the wife was a quarrelsome and short tempered woman and had dragged him in a criminal case for the offence punishable under Section 498-A of the Indian Penal Code. It was pleaded that though the parents of the husband were staying at Nagpur and were not residing at Bhusawal where the parties resided, the wife had deliberately and intentionally lodged the complaint under Section 498-A of the Code against the mother of the husband. In the facts of the case, according to the husband, the wife was not entitled to a decree of restitution of conjugal rights.

After the wife filed the petition for restitution of conjugal rights, the husband also filed the petition for grant of decree of divorce under Section 13(1) (ia) and (ib) of the Hindu Marriage Act. According to the husband, the wife was continuously quarreling with the husband without any rhyme or reason. It was pleaded that the nature of the wife was quarrelsome and fault finding. It was pleaded that though the parents of the wife had given an understanding to the wife that she should not behave in such a manner, the wife did not mend her ways. When the mother of the husband visited Bhusawal in the year 2004 after his leg was fractured, the wife unnecessarily quarreled, insulted and abused her in filthy language. It is pleaded that when the husband went to the parents of the wife and requested them to ask the wife to change her ways, the wife got furious and after quarreling with the husband, assaulted him by a knife. The husband, it is pleaded, had no other option but to leave the matrimonial home and reside separately since 12-5-2004. It is pleaded that the wife lodged a false complaint against the husband and his mother in Bhusawal Police Station and without due enquiry, the husband and his mother were arrested by the Police on the false and baseless complaint made by the wife. It is pleaded that it was falsely stated by the wife in the complaint that the husband had demanded dowry from her parents. It is pleaded that there was no possibility of cohabitation when the wife had falsely implicated the husband and his mother in the proceedings for the offences punishable under Sections 498-A and 323 read with Section 34 of Indian Penal Code. It is pleaded that the husband feared danger to his life in the company of his wife and, therefore, sought a decree of divorce.

The wife filed the written statement in the petition filed by the husband for grant of decree of divorce. The allegations levelled by the husband against the wife were specifically denied by the wife in the written statement. Apart from denying the facts pleaded by the husband in the petition, the wife also reiterated the facts pleaded by her in the petition filed by her for restitution of conjugal rights. The wife did not dispute that she had lodged the complaint in Police Station Bhusawal against the husband and his mother. It was, however, pleaded that the complaint was not false and baseless and the same was lodged, as the husband and his mother had demanded dowry as stated in the complaint. It was denied that there was no possibility of cohabitation between the parties and the husband was entitled to grant of decree of divorce. The wife sought for the dismissal of the

Hindu marriage petition filed by the husband.

The parties tendered the evidence and on an appreciation of the same, the Family Court, by the judgment dated 15-4-2009, dismissed both the petitions, the one filed by the husband for grant of decree of divorce and the other filed by the wife for grant of decree of restitution of conjugal rights. Being aggrieved by the dismissal of the petition for restitution of conjugal rights, the wife has filed First Appeal No.129 of 2010 challenging the judgment of the Family Court. Similarly, aggrieved by the dismissal of the petition for grant of decree of divorce, the husband has filed First Appeal No.547 of 2010 seeking a reversal of the judgment refusing a decree of divorce.

Smt. Jog, the learned counsel appearing on behalf of the husband, submitted that the Family Court committed a serious error in dismissing the petition for grant of decree of divorce when there was voluminous evidence on record that the wife had treated the husband with cruelty. It is submitted that the husband had not only examined himself, but also examined an independent witness to prove that the wife had treated him with cruelty. It is submitted that the evidence of the husband and his witness about the acts of cruelty inflicted by the wife on the husband went unchallenged, as there is no cross-examination on several facts mentioned by the husband in his examination-in-chief. It is submitted that the wife had written a suicide note at Exhibit-87 stating therein that the husband and his mother would be responsible for her suicide. It is submitted that it would be highly dangerous for a person to live in the company of such a woman, who is in the habit of threatening the husband of committing suicide and also writing a suicide note with a view to falsely implicate the husband and his mother. It is submitted that the wife had lodged a false complaint against the husband and his mother under Sections 498-A, 323, 504 and 506 read with Section 34 of Indian Penal Code and the husband and his mother have been acquitted in the criminal trial conducted against them. It is submitted that it is apparent that the wife was in the habit of harassing the husband by lodging false Police reports against him and also threatening him by writing suicide notes like the one at Exhibit-87. It is submitted that the evidence of the husband that the wife once attacked the husband by a knife has remained unchallenged. It is submitted that the parties are living

separately for more than 10 years and in the facts and circumstances of the case, it would be highly impossible for the husband to stay in the company of the wife and grant of decree of divorce would therefore be necessary. It is submitted that the observations made by the Family Court in paragraph Nos.22 to 28 of the judgment clearly show that the wife had treated the husband with cruelty, as it is observed by the Family Court in those paragraphs that the wife had lodged a report in the Police Station on 20-9-2004 only because the husband had filed a petition for grant of decree of divorce against her, the wife had failed to substantiate the charges against the husband and his mother, the wife had made the allegations against the husband and his mother with ulterior motive, the complaint made by the wife that the husband was making a demand of Rs.1,00,000/- was an afterthought and the conduct of the wife in making baseless allegations would justify the husband to live separately from her. It is submitted that the Family Court ought to have granted a decree of divorce after making the observations, as are made in paragraph Nos.22 to 28 of the judgment. It is submitted that the trial Court had rightly dismissed the petition filed by the wife for restitution of conjugal rights, but had committed a serious error in dismissing the petition filed by the husband for grant of decree of divorce.

Shri Khandalkar, the learned counsel for the respondent-wife submitted that the Family Court was justified in dismissing the petition filed by the husband for grant of decree of divorce. It is submitted that in the facts of the case and on the basis of the evidence on record, it was necessary for the Family Court to have granted a decree of restitution of conjugal rights in favour of the wife. It is submitted that in view of the provisions of Order XXIII, Rule 1(4) of the Code of Civil Procedure, the petition filed by the husband for grant of a decree of divorce was not maintainable as the husband was precluded from instituting a fresh petition in respect of the claim made by him in a petition filed by him earlier and which was withdrawn without leave to file a fresh petition on the same cause of action. It is submitted that earlier the husband had filed a Hindu Marriage Petition for grant of a decree of divorce and the same was withdrawn on 12-7-2005. It is submitted that after the previous petition filed on 31-8-2004, was withdrawn by the husband on 12-7-2005, the husband could not have instituted the second petition for grant of a decree of divorce. The learned counsel placed reliance on the judgments reported in AIR

1973 RAJASTHAN 94, Smt. Anandi Devi v. Raja Ram and AIR 1978 Punjab and Haryana 150, Smt. Manjit Kaur V. Gurdial Singh Gangawala to substantiate his submission that the second petition for grant of decree of divorce could not have been filed by the husband in view of the provisions of Order XXIII, Rule 1(4) of the Code of Civil Procedure.

It is submitted that the husband had failed to prove that the wife had treated the husband with cruelty. It is submitted that the husband had withdrawn from the company of the wife without any reasonable cause or excuse. According to the learned counsel, the complaint filed by the wife under Sections 498-A, 323, 504 and 506 read with Section 34 of the Penal Code was not false and was based on the ill-treatment meted out to the wife by the husband. It is submitted that the husband and wife were on good terms, but due to instigation by the mother-in-law of the wife, the husband had beaten up the wife on a number of occasions. It is submitted that the case of the husband that the wife had assaulted the husband with a knife was rightly found to be incorrect by the Family Court as the husband had not made any complaint in that regard to the police. It is stated that some of the facts stated in the oral evidence of the husband were not pleaded by the husband in his petition for grant of a decree of divorce and the Family Court had rightly not considered that evidence. It is submitted that the Family Court has rightly recorded a finding of fact that the wife had not treated the husband with cruelty and on the basis of the material evidence on record, the same should not be interfered with.

On hearing the learned counsel for the parties and on a perusal of the original record and proceedings, it appears that the following points arise for determination in these appeals.

POINTS :

1] Whether the present petition filed by the husband for grant of decree of divorce was not maintainable in view of the provisions of Order XXIII, Rule 1 (4) of the Code of Civil Procedure?

- 2] Whether the husband has succeeded in proving that the wife had treated him with cruelty?
- 3] Whether the wife is entitled to grant of decree of restitution of conjugal rights?
- 4] Whether the judgment of the Family Court is just and proper?
- 5] What order?

To answer the points for determination as framed herein above, it would be necessary to consider the pleadings of the parties and the evidence tendered by them, both oral and documentary. We have already stated the facts pleaded by the husband and the wife in the petitions filed by them for grant of decree of divorce and for restitution of conjugal rights respectively. We have also recorded the pleadings of the parties in defence, in their written statement. The husband entered into the witness box to prove that the wife had treated him with cruelty. The husband also examined Jaideo Bhagwantrao Wankhede, an employee of the Accounts Department of the Railways to prove that the wife had treated the husband with cruelty. Similarly, the wife had examined herself to prove that the husband had left the company of the wife without reasonable cause or excuse and that she was entitled to grant of a decree of restitution of conjugal rights. The wife examined her father Shri Manikrao Ughade to prove her case.

Before discussing the evidence tendered by the witnesses, it would be necessary to consider whether the petition filed by the husband for grant of a decree of divorce is not maintainable in view of the provisions of Order XXIII, Rule 1(4) of the Civil Procedure Code as canvased on behalf of the wife. The provisions of Order XXIII, Rule 1(4) clearly stipulate that a party would be precluded from instituting a fresh suit or proceedings in respect of such subject matter or such part of the claim that is abandoned or withdrawn by the party without permission to file a fresh suit or proceedings on the same cause of action. The first petition for grant of a decree of divorce was filed by the husband on 31-8-2004. It is an admitted position that the first petition filed by the husband for grant of a decree of divorce was withdrawn by the husband on 12-7-2005 without seeking leave of the Court to institute a fresh petition for grant of a decree of divorce. A second petition on the

same facts and on the same cause of action that accrued to a party on the date of institution of the suit or proceeding is not maintainable in view of the clear provisions of Order XXIII, Rule 1(4) of the Civil Procedure Code, if the suit or proceeding is withdrawn without seeking leave of the Court. It would, therefore, be necessary to consider whether the second petition filed by the husband for grant of a decree of divorce was based on the same cause of action which led to the filing of the first petition on 31-8-2004. On a perusal of the second petition filed by the husband, with which we are concerned, it appears that the same is based on a fresh cause of action. The first petition was based on the incidents which occurred before 31-8-2004. The present petition filed by the husband refers to several acts of cruelty inflicted by the wife on the husband after the institution of the first petition on 31-8-2004. In the second petition, with which we are concerned, the husband has specifically pleaded about the alleged false and baseless report lodged by the wife in the Police Station on 20-9-2004 alleging therein that the husband was guilty of offences punishable under Sections 498-A and 323 read with Section-34 of the Penal Code. In the complaint dated 20-9-2004, several allegations were also levelled against the mother of the husband. On the basis of the complaint filed by the wife on 20-9-2004 under Section 498-A of the Penal Code, the husband and his mother were arrested on 24-9-2004 and 26-9-2004 respectively. It is the case of the husband that thereafter on 14-10-2004, the wife addressed a communication to the Police Station Officer, Bhusawal levelling serious allegations against her husband and his mother. One more letter, it is pleaded by the husband, was again issued by the wife to the Police Station Officer, Bhusawal on 21-2-2004. It is the case of the husband that the husband suffered great mental trauma in view of the false and baseless complaints made by the wife to the Police Station Officer in the month of February, 2005. It is stated on behalf of the husband that the wife had filed the proceedings for restitution of conjugal rights on 6-9-2005 after the husband had withdrawn the petition for grant of a decree of divorce on 12-7-2005 and the husband was scared that the wife may start living with him again after having put him behind the bars and hence, he filed the second petition for grant of a decree of divorce. It is apparent from the pleadings in the second petition filed by the husband for grant of a decree of divorce that the cause of action in the first petition and the cause of action in the second petition is not

one and the same. The incidents narrated herein above occurred after filing of the first petition on 31-8-2004 and hence, the husband was not precluded from instituting a fresh petition for grant of a decree of divorce as the incidents giving rise to the cause of action for filing the second petition did not exist at the time of filing of the first petition on 31-8-2004. In this background, it would not be necessary for us to consider whether the provisions of Order XXIII, Rule 1(4) of the Code of Civil Procedure would strictly apply to matrimonial proceedings or not. On the basis of the pleadings in the second petition filed by the husband, it is clear that the husband was not precluded from instituting a second petition as the same was not based on the cause of action that accrued to the husband on the date of filing of the first petition on 31-8-2004. We are clearly of the view that the second petition filed by the husband for grant of a decree of divorce was maintainable and was not barred by the provisions of Order XXIII, Rule 1(4) of the Code of Civil Procedure. The judgments reported in AIR 1973 RAJASTHAN 94, Smt. Anandi Devi v. Raja Ram and AIR 1978 Punjab and Haryana 150, Smt. Manjit Kaur V. Gurdial Singh Gangawala and relied on by the learned counsel for the wife cannot be made applicable to the facts of this case. In those reported decisions, the cause of action for instituting the first petition and the second petition was the same and in that background, the Courts had held that the party withdrawing the first petition without leave was precluded from filing a second petition on the same cause of action. The first point for determination is, therefore, answered in the negative and in favour of the husband.

Having held so, it would now be necessary to consider whether the husband has succeeded in proving that the wife had treated the husband with cruelty. While considering the said question, it would be necessary to consider the oral and documentary evidence tendered by the husband. The husband had clearly stated in his evidence that the wife had a very quarrelsome and fault fighting nature. She quarrelled with the husband and his mother on petty issues. It was stated by the husband in his evidence that though his parents were old and there was nobody to look after them in the family, due to the quarrelsome nature of the wife, the husband started residing away from his parents at Nagpur by shifting to Bhusawal. It is stated that the behaviour of the wife at Bhusawal, when his mother joined their company after he had suffered a fracture to his leg, was cruel. It is stated that the

wife always abused the mother of the husband in filthy language. It is stated that the wife had once assaulted the husband by a knife and he suffered a mental shock due to the incident. It was stated by the husband in his evidence that the wife had lodged false and baseless complaints against the husband and his mother in the Police Station at Bhusawal, as a result of which, the husband and his mother were put behind the bars. It is stated that the husband had suffered great mental trauma due to the acts of cruelty inflicted by the wife and specially the false and baseless complaints filed by her in the Police Station. The husband was cross-examined at length on behalf of the wife. Nothing was, however, brought out from the cross examination of the husband to disbelieve his version in the examination-in-chief. In the cross-examination the husband stated on the query made on behalf of the wife that the wife used to give threats of suicide to him and used to also threaten that the husband and his family members would be sent to Jail. In the cross examination, he stated that the wife was not behaving like a true Hindu woman. The husband denied the suggestion in the cross-examination that the wife had not assaulted him with a knife and that he had not made any complaint to her father about her conduct and behaviour. In fact, several facts which were not stated by the husband in his examination-in-chief were extracted by the questions posed on behalf of the wife to the husband in his cross examination. Therefore, there are several statements in the cross-examination of the husband which further prove the case of the husband that the wife had treated him with cruelty.

The husband examined Jaideo Wankhede, a Section Officer in the Accounts Department of the Central Railway, to prove his case. The witness has stated in his evidence that the wife had visited the office of the husband on nearly three occasions in the months of March and April, 2004. He has stated that the husband had informed him that he used to avoid her, as he was very much disturbed by her visits to his workplace. The witness stated that the police had visited the office where the husband and the witness worked, in connection with the complaint made by the wife in the police station. A suggestion to the witness that the wife had never visited the office or the workplace of the husband, was denied by the witness. He also denied the suggestion that the police had visited the workplace in connection with some other work.

The wife has admitted in her cross-examination that the suicide note at Exhibit 87 was signed by her and the handwriting on the suicide note was her handwriting. She has, however, denied the suggestion that she used to quarrel with the husband. She has also denied the suggestion that she gave threats to the husband that she would implicate him and his mother in false criminal cases. She has admitted that there was no documentary evidence that the husband and his mother demanded dowry and that her father had paid a sum of Rs.75,000/- to the husband along with several other articles in view of their demand. The wife has admitted in her cross-examination that she had mentioned in the complaint to the police station that the mother of the husband had made a demand of Rs.1,00,000/- from her, but no particulars about the date, time, etc., in regard to the demand were mentioned in the complaint or in the petition filed by her for restitution of conjugal rights. The wife has also admitted that the husband had lodged the report with the police at Bhusawal that he apprehended danger to his life from her and her relatives.

The father of the wife has denied in his evidence that the mother of the husband had not made any demand for dowry. He has admitted that the parents of the husband used to live at Nagpur and the mother of the husband was about 70 years of age. He has also admitted in his cross-examination that when the wife had lodged the report against the husband and his mother, the husband was not present at Bhusawal. It is, however, denied by the father of the wife that the wife had lodged a false report to implicate the husband and his mother. The witness has denied that the wife was harassing her husband and her mother-in-law.

On an appreciation of the material evidence on record, it is clear that the wife had treated the husband with cruelty. The husband has clearly established that the wife was a quarrelsome lady and was always finding fault with the husband without any rhyme or reason. The husband has proved that when he suffered an accident in the year 2004 and was bedridden at Bhusawal, his wife had quarreled and insulted his mother and also abused his mother in filthy language. By placing the necessary complaints on record, the husband has also succeeded in proving that the wife had lodged the complaint against the husband for offences punishable under Sections 498-A and 323 read with Section 34 of the Penal Code.

The judgment in the criminal prosecution, acquitting the husband and his mother of the charges, has been placed on record. It appears from the reading of the evidence of the parties that the charges levelled by the wife against the husband in the police complaint were false and baseless and were levelled after he had instituted the proceedings against her for grant of decree of divorce. The Trial Court has recorded in the judgment in the criminal case that the wife had levelled allegations against the husband in the police station only because the wife did not want to stay with her mother in law and wanted to get rid of her. We find from the evidence on record that the husband has also established that the wife had assaulted him with a knife and had threatened the husband that she would falsely implicate the husband and his mother in a false criminal case. The wife had admitted the so-called suicide note written and signed by her, wherein she has clearly stated that the husband and his mother should be held responsible for her death. It is rightly submitted on behalf of the husband that it would be highly dangerous to stay with a woman, who is in the habit of threatening the husband and also writing suicide notes of the nature of the so-called suicide note at Exhibit 87 to ensure that the husband and his mother should be put behind the bars. In fact, the husband and his mother were put behind the bars after the complaint was lodged against them under Section 498-A of the penal Code. Even if the acts of the wife are considered individually, each of them clearly shows that the wife had treated the husband with cruelty and it was impossible for the husband to stay with the wife, in such circumstances under one roof. The independent witness from the husband's office, has clearly stated that the wife had attended the workplace of the husband on more than a couple of occasions and the police had also visited the workplace of the husband to make an enquiry in regard to the complaint made by the wife to the police. These actions on the part of the wife would have surely humiliated the husband and would have made his life impossible. We find that the allegation of the wife that the husband had demanded an amount of Rs.75,000/- towards dowry and the same was paid to the husband at the time of marriage, is also false and baseless. The wife had admitted in her cross-examination that there is no material whatsoever to substantiate the allegation. Making false allegations in regard to the demand of dowry by the husband or his mother, would surely constitute an act of cruelty. Hence, even if the acts on the part of the wife are

considered individually and not cumulatively, they do constitute cruelty. In any case, all the aforesaid acts on the part of the wife, if considered cumulatively, clearly show that the wife had treated the husband with cruelty.

The Trial Court has not considered the aforesaid evidence in the right perspective while declining to grant a decree of divorce in favour of the husband. It is, however, surprising that the Family Court, while rejecting the prayer made by the wife for grant of a decree of restitution of conjugal rights, has made several observations, which clearly show that the wife had treated the husband with cruelty. The Family Court has observed that after the wife received a notice dated 7-7-2004, she filed a complaint (Exhibit 74) to the police station at Bhusawal on 23-8-2004 against the husband and his mother. So also, the Family Court has observed that the wife had lodged the report dated 20-9-2004 only because the husband had filed a petition against her for grant of decree of divorce. The Family Court has observed that the wife had failed to substantiate the charges against the husband and her mother-in-law, as the husband and the mother-in-law were acquitted in the criminal trial conducted against them, by the judgment dated 23-12-2008. An observation is made in para 23 of the judgment that the conduct of the wife in filing the reports against the husband and his mother in the police station and then filing a petition for restitution of conjugal rights, leads to an inference that the wife was not desirous of resuming cohabitation with the husband. The Family Court has further observed in para 24 of the judgment that the admission of the wife in her cross-examination shows that allegations were levelled by the wife against her mother-in-law with an ulterior motive. It is observed by the Family Court that in the report to the police dated 23-8-2004, there was no mention of the demand by the husband for a sum of Rs.1,00,000/- and the mention of the said fact in the subsequent complaint dated 20-9-2004 by the wife was an afterthought. The Court observed that the wife was making baseless allegations against the husband, which justify the act on the part of the husband in living separately from the wife. Also the Court has observed in para 28 of the judgment that the husband has grave and weighty reasons for living separately from the wife. We fail to understand what was passing in the mind of the Court while dismissing the petition filed by the husband for grant of decree of divorce. If the Family Court was clearly of the view that the wife had made baseless

complaints against the husband and his mother and the allegation in respect of demand of Rs.1,00,000/-was an afterthought, we fail to understand what prevented the Court from granting a decree of divorce after holding that the conduct of the wife was such, which compelled the husband to stay separately. If the Court has observed that the husband was compelled to stay separately, because of the conduct of the wife and there were grave and weighty reasons for doing so, it should have been an ideal case for granting a decree of divorce. However, the Family Court, without appreciating the evidence tendered by the parties in the right perspective, has dismissed the petition filed by the husband on the ground that the husband had failed to prove that the wife had treated the husband with cruelty. We find from the pleadings in the petition filed by the wife for restitution of conjugal rights that the wife has all sorts of grievances against the husband. If the serious allegations levelled by the wife against the husband in the petition for conjugal rights were to be true, no wife would have thought of staying with such a man under one roof. On the basis of the evidence, we are of the clear view that this is a fit case for grant of decree of divorce, as the husband has clearly proved that the wife has treated him with cruelty of such a nature which made it impossible for him to continue the marital relations.

After answering the second point for determination in favour of the husband, it would not be necessary to decide the question whether the wife is entitled to grant of a decree for restitution of conjugal rights. Since we have already held that the husband is entitled to grant of a decree of divorce, the third point of determination would not be required to be answered by discussing the evidence. In view of our answer to the second point for determination in the positive, we answer the third point of determination in the negative and hold that the wife is not entitled to a decree for restitution of conjugal rights, as rightly held by the Family Court.

Hence, for the reasons aforesaid, First Appeal No.547 of 2010 filed by the husband is allowed. The judgment of the Family Court dated 15-4-2009 is quashed and set aside so far as it rejects the prayer made by the husband for grant of decree of divorce. The marriage between the parties is dissolved by a decree of divorce. First Appeal No.129 of 2010 filed by the wife stands dismissed. In the facts of the case, there would be no order as to costs.

