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Presented on : 12/02/2019
Registered on : 13/02/2019
Decided on : 16/03/2026
Duration : 07Y 01M 04D

IN THE COURT OF DISTRICT JUDGE -1, WASHIM.

(Presided over by J. P. Zapate)

Regular Civil Appeal No.15/2019

Exh.37

[CNR No.MHWS010002562019]

Sau. Chaya Ganesh Kad

Age : 30 years, Occu : Household

C/o. Ravindra Dagdu Ingole

R/o. Sirsala, Tq. Malegaon,

Dist. Washim.

... Appellant

VERSUS

Ganesh Shamrao Kad

Age : 34 years, Occu : Agriculture

R/o. Sawargaon Bade,

Tq. & Dist.Washim.

... Respondent

Appeal under Section 28 of Hindu Marriage Act

Shri. R.S.Gawali, Advocate for appellant

Shri. Z.G.Shaikh, Advocate for Respondent

J U D G M E N T

(Delivered on 16th day of March, 2026)

This is an appeal preferred by Sau.Chaya Kad against her husband Ganesh Kad against common Judgment and Decree in HMP No.33/2012 and HMP No.3/2014 delivered by Ld. Civil Judge Senior Division, Washim whereby on 23/01/2019 Ld.trial Court decreed HMP No.33/2012 for divorce and dismissed HMP No.3/2014 for restitution of

..2..

conjugal rights. In HMP No.33/2012 present respondent was petitioner and present appellant was opponent. In HMP No.3/2014 present appellant was petitioner and respondent was opponent.

2. **Brief facts giving rise to the present appeal are as under :**

A] **Facts in HMP No.33/2012 :**

As stated by the petitioner Ganesh, in H.M.P No.33/2012, his marriage with respondent Chaya had solemnized at Sirsala, Tq.Malegaon, Dist.Washim on 11/05/2005. They both are governed by the Act of 1956. After marriage respondent came to his house at village Sawargaon Barde. Out of wedlock they are blessed with son namely Kartikesh who has born on 28/10/2006. As stated by petitioner, respondent Chaya any how pulled on marital life with him till the birth of their son Kartikesh. But, thereafter, she started quarreling with him on one or other count.

As stated by petitioner he lives in joint family consisting of his parents and elder brother Pravin. His brother Pravin married with Gayatri in the year 2007. The respondent was not liking to do domestic works so she was always saying that, her mother-in-law and Gayatri should do all the domestic works. Petitioner tolerated her arrogant behavior. But the respondent was subjecting him to cruelty for one or other reason.

The petitioner further stated that, the respondent used to go to her parents house at village Sirsala on and often at her own whims. He used to fetch her back. Because of such behavior of the respondent he was suffering great mental torture. Thereafter, at the time of Sankrant festival of 2010 respondent asked him to reside separate from his parents by claiming partition. But, as his parents were old, petitioner was not willing to ask for partition and to reside separate from his old aged parents. As the petitioner was not ready for asking partition from his parents, the respondent threatened him that she will not cohabit with him unless and until he resides separate in mess and estate from his parents. For the said

reason respondent was ill-treating him to high extent. In the year 2009/10 the respondent was alleging that she is sick. The petitioner took her to various doctors as per her wish for treatment. But, there is no change in the behavior of respondent.

Thereafter, on 18/10/2010 the respondent called her father at village Sawargaon Barde, who took respondent alongwith her son Kartikesh to his village Sirsala. At the time of living his house, the respondent and her father told and threatened him that unless and until he resides separate she will not come back. Thereafter, petitioner time and again visited place of his in-laws and requested the respondent to return back with him. But, the respondent flatly refused to accompany him. Being fed up with such behavior of the respondent, the petitioner left his house since November, 2011 for labour work and since then he H.M.P No. 33/2012 and H.M.P No.3/2014 was not in contact with his parents as well as respondent.

The petitioner further stated that thereafter he came to know about the report dated 19/01/2012 lodged by respondent against him and his parents, brother, sister and husband of his sister. In the said report the respondent made allegations that the petitioner and his family members made demand of Rs.2 lakh from her for purchase of Tractor and for the fulfillment of their demand the petitioner and her relatives subjected her to cruelty. She also alleged that her maternal uncle found the petitioner with one lady and apprehended that the petitioner has performed second marriage. On the basis of said report crime No.15/2012 for the offence punishable under section 498A read with 34 of I.P.C came to be registered against him and his family members. As a result of said report he and his family members came to be arrested by police on 01/02/2012. Thereafter, police produced them before J.M.F.C. Court,

..4..

Washim and they got released on bail. As such the petitioner stated that, because of the false allegations made by respondent against him and his family members, there is no substance to continue the marital relations with the respondent. Hence, the present petition.

3. **Case of respondent in HMP No.33/2012 :**

The respondent Chaya on the grounds similar to that of the grounds put forth by her in her written statement (Exh.19) filed by her in H.M.P. No.33/2012, filed separate H.M.P. No.03/2014 for restitution of conjugal rights. As stated above grounds taken by the respondent in her written statement (Exh.19) and H.M.P. No.03/2014 are identical and common. So, in order to avoid repetition I am not reproducing those grounds again over here.

The petitioner Ganesh(the respondent in H.M.P. No.3/2014) in response to service of notice of H.M.P. No.3/2014 recorded his appearance and resisted claim of restitution of conjugal rights put forth by Chaya (the respondent in H.M.P. No.33/2012) by filing his written statement (Exh.10). Grounds put forth by the petitioner Ganesh (the respondent in H.M.P.No.03/2014) in his written statement Exh.10 filed to H.M.P. No.03/2014 are similar to that of his pleading in H.M.P. No.33/2012. Hence, in order to avoid repetition I am not reproducing the same.

4. **Issues in HMP No.33/2012 :**

Sr. No.	Issues	Findings
1	Does the petitioner prove that Sau.Chaya has ill-treated him ?	Accordingly.
2	Whether the respondent has left the petitioner without reason ?	Accordingly.

3	Whether the petitioner is entitled for decree of divorce ?	Accordingly.
4	What Order ?	As per final order.

5. **Issues in HMP No.3/2014 :**

Sr. No.	Issues	Findings
1	Whether the petitioner proves that respondent has deserted her without just and reasonable cause ?	Accordingly.
2	Whether the petitioner is entitled to the relief as sought ?	Accordingly.
3	What Order ?	As per final order.

Evidence :

6. In both these matters parties led their common evidence in H.M.P No.33/2012. In order to substantiate his claim Ganesh (PW.1), the petitioner in H.M.P No.33/2012 led his evidence at Exh.26. In addition to his own evidence he led evidence of one Mr. Dattatrya (PW.2) (Exh.58). He relied on deposition of Chaya (Exh.85) recorded in R.C.C.No.150/2010, F.I.R. (Exh.86), deposition of Revaindra (Exh.118) recorded in R.C.C.No.150/2010. Thereafter, Ganesh, the petitioner in H.M.PNo.33/2012 vide pursis Exh.59 Closed his evidence in both these cases.

On the other hand Chhaya(D.W.1), the respondent in H.M.P NO.33/2012 (petitioner in H.M.PNo.3/2014) led her evidence at Exh.16. In addition to her evidence she also led evidence of her father Ravindra (D.W.2) (Exh.91). In addition to aforesaid evidence respondent Chhaya

..6..

relied on revenue documents Exh.39 to Exh.53 and birth certificate Exh.57 of her son Kartikesh. Thereafter, she filed pursis (Exh.119) and thereby closed her evidence.

7. After considering the evidence and argument Ld.trial Court by recording affirmative findings to issues in HMP No.33/2012 decreed the suit and by recording negative finding dismissed HMP No.03/2014. Being aggrieved with common judgment, present appeal came to be preferred on the grounds mentioned in appeal memo.

Arguments :

8. It is argued by Ld. Advocate Shri.Gawali for appellant that divorce is granted illegally on the ground of cruelty and desertion. Admittedly, appellant filed criminal case under Section 498A against respondent and his family members. That case is resulted in acquittal. Its certified copies was produced on record before Ld.trial Court but petitioner/respondent did not amend his pleading and did not stated in evidence that the acquittal resulted in cruelty. Therefore, false pleading is amended. This ground cannot be shelter for divorce. To that effect they have relied on Judgment **Darshana vs. Alok, 2022(1) Mh.L.J. 713** in which it is held that, “ We thus find that it was necessary for the husband to have in compliance with requirements with Section 20(1) r/w Section 21 of the Act, 1955 at least pleading about initiation of the criminal proceeding by wife and its subsequent culmination in an order of acquittal may be amending proceeding. Such course not having been followed, it becomes clear that circumstances not pleaded by husband nor deposed as causing mental cruelty have been taken into consideration for granting relief of decree of divorce on the ground of cruelty especially when the ground on which such claim was based was not found to be sufficient to pass such decree.”

Therefore, Ld.advocate Shri.Gawali pressed for setting aside decree for divorce and granting decree for restitution of conjugal rights.

Whereas it is argued by Ld.advocate Shri.Shaikh that respondent has specifically pleading about filing of criminal case against him and his family members by appellant. He has placed on record certified copy of acquittal. In fact, appellant has deserted her husband respondent without any sufficient cause. Respondent has proved incident of cruelty successfully. They have relied on Judgment which are relied before Ld.trial Court. These are as under :

i] **K.Srinivas Rao Vrs. D.A.Deepa, A.I.R.2013 S.C.2176:**

In which it has been held that making scurrilous, vulgar and defamatory statement by wife in complaint amounts to mental cruelty.

ii] **Mr. M.V Mrs. M.A.I.R.2014(2)ABR 424:**

In which it has been held that Failure by wife to substantiate allegations of cruelty made by her against husband and in laws in criminal case under section 498A of I.P.C. amounts to cruelty.

iii] **Smt.Shanti Devi Vrs. Pankaj, A.I.R.2014 RAJASTHAN 59:**

In which it has been held that Making reckless allegations against husband and his family members amounts to cruelty.

iv] **Dr.Malathi Ravi Vrs. Dr. B.V.Ravi, A.I.R.2014 S.C.2881:**

In which it has been held that allegation that husband harbored notions of gender insensitivity or some kind of male chauvinism not proved against him amounts to mental cruelty.

v] **Gajjala Shankar Vrs. Anuradha, A.I.R.2006 AP 65:**

In which it has been held that filing of complaint under section 498A of I.P.C and petition for maintenance under Section 125

Cr.PC indicate intention of wife as the intention to abandon matrimonial home permanently.

vi] **Manoj Mahukarrao Pate Vrs. Sau.Vijaya Manoj Pate, 2015(1) ALL MR.95:**

In which it has been held that 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 ideal case for granting decree of divorce.

vii] **K.Shrinivas Vrs. K.Sunita, 2015(2)ALL MR 435 S.C.:**

In which it has been held that filing of false criminal complaint by the wife against husband is sufficient to constitute matrimonial cruelty.

viii] **Sau.Lilesh Vinod Agrawal Vrs. Vinod Ramrichpal Agrawal, 2016(1)ALL MR.605 :**

In which it has been held that making of allegation against the husband that he is having relationship with some lady without having any proof of the same amounts to cruelty.

ix] **Smt.Anupama Ashok Aher Vrs. Mr.Ashok Bajirao Aher, 2015(3)ALL MR.677:**

In which it has been held that filing petition of restitution of conjugal rights by the wife against the husband and also filing complaint under section 498A of I.P.C. against him and his family members amounts to cruelty.

x] **Narendra Vrs. K. Meena :**

In which it has been held that leveling of unsubstantiated allegations by wife against husband and issuing threats and attempt to commit suicide by her amounts to cruelty.

xi] Sandip Gopinath Bhalke Vrs. Aruna Sandip Bhalke,
MH.L.J.2009(6) 961 :

In which it has been held that in order to constitute cruelty, the basic requirement is the conduct must be such, which inflict upon the husband such mental pain and suffering as would make it impossible for the husband to leave with the wife.

xii] Amit Kaushik Vrs. Monika Gaur, 2016(5)ALL MR(Journal)P.NO.1 :

In which it has been held that dismissal of wife's complaint filed under Domestic Violence Act does not translate into Act of cruelty to decree of divorce.

9. It is argued by Ld.advocate Shri.Gawali that petitioner in his petition HMP No.33/2012 has pleaded about filing of criminal case. During the pendency of petition that RCC No.150/2012 was decided on 17/12/2016. Filing of criminal case under Section 498A of IPC ip-so-facto does not amount to cruelty. He has to carry amendment to that effect in his plaint. But he has not done this exercise. Therefore, they have relied on rulling between **Darshana vs. Alok, 2022(1) Mh.L.J. 713**. Other ingredients of cruelty and desertion are not proved by respondent. Ld.trial Court have only relied on admission of appellant in cross-examination. Therefore, they are praying for allowing the appeal and dismissal of HMP No.33/2012 alongwith HMP No.03/2014. They have relied on following rullings :

i] **Dhanraj Tukaram Shirsat vs. Shalini Kisan Wankhade, Criminal Writ Petition No.531/2017 dated 7th August 2017.**

10. Per contra, it is argued by Ld.advocate Shri. Shaikh that when the Judgment of acquittal was delivered at that time evidence of respondent was over. Appellant has admitted about acquittal in criminal

case hence there is no need to amend the pleading. Without any reason appellant has deserted respondent for more than two years. Filing of criminal case itself amount to cruelty to respondent and his family members. Therefore, they are praying for dismissal of appeal.

11. Having heard the parties and perused the record and proceedings, the following points arise for my consideration, together with my findings thereon, for the reasons recorded below :

Sr. No.	Issues	Findings
1	Does the petitioner prove that Sau.Chaya has ill-treated him ?	Accordingly.
2	Whether the respondent has left the petitioner without any reason ?	Accordingly.
3	Whether the petitioner is entitled for decree of divorce ?	Accordingly.
4	Whether the petitioner proves that respondent has deserted her without just and reasonable cause ?	Accordingly.
5	Whether the petitioner is entitled to the relief as sought ?	Accordingly.
6	What Order ?	As per final order.

REASONS

As to point no.1 to All :

12. Admittedly, it is case of appellant that she was deserted by respondent without any sufficient cause. Hence, she had filed HMP No.03/2014 for restitution of conjugal rights. Whereas it is case of respondent that in fact appellant cause cruelty to him and his family members by filing criminal case which resulted in acquittal. In fact she

has deserted respondent for more than two years period without sufficient cause. Therefore, on these two fold grounds he filed HMP No.33/2012 for desertion under Section 13(1)(b)(c). As HMP No.03/2014 was under Section 9 Hindu Marriage Act for ready reference it is referred as under :

9. Restitution of conjugal rights.- When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

13. Whereas HMP No.33/2012 was filed on the ground of cruelty and desertion which is covered under Section 13(1)(b)(c). Hence, it is referred as under :

ia) has, after the solemnization of marriage, treated the petitioner with cruelty; or

ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition ; or

14. From above noted provision it reveals that when either husband or wife without reasonable excuse deserted from society may be preferred petition for restitution for conjugal rights. Whereas under Section 13(1)(ia) if respondent after solemnization of marriage treated petitioner with cruelty and deserted petitioner for continuous period of not less than two years immediately preceding presentation of petition then decree for divorce can be granted.

15. Basic allegations of cruelty are filing of criminal case RCC No.150/2012 by appellant against respondent and his family members for the offence punishable under Section 498A on the allegations of cruelty. RCC No.150/2012 is resulted into acquittal on 17/12/2016 and on that time HMP No.33/2012 and HMP No.03/2014 was pending before the Ld.trial Court. Both petitions are decided by common judgment on 23/01/2019. After perusal of HMP No.33/2012 it reveals that respondent has pleaded about filing of RCC No.150/2012- But there is no pleading about its result in acquittal and because of that he suffered either mental or physical cruelty. To that effect Judgment between **Darshana vs. Alok, 2022(1) Mh.L.J. 713 in which** Division Bench of Hon'ble Bombay High Court in para no.27 have held that, "We thus find that it was necessary for the husband to have in compliance with requirements with Section 20(1) r/w Section 21 of the Act, 1955 at least pleading about initiation of the criminal proceeding by wife and its subsequent culmination in an order of acquittal may be amending proceeding. Such course not having been followed, it becomes clear that circumstances not pleaded by husband nor deposed as causing mental cruelty have been taken into consideration for granting relief of decree of divorce on the ground of cruelty especially when the ground on which such claim was based was not found to be sufficient to pass such decree."

16. Therefore, it reveals from ratio that there should be pleading about filing of criminal case of cruelty and its acquittal and about causing of cruelty due to filing and acquittal of criminal case. In his petition HMP No.33/2012 husband has pleaded about filing of cruelty case. But there is no pleading about its acquittal. More-so, document filed today by respondent shows that RCC No.95/2012 was also filed which resulted in acquittal on 17/10/2024. MCA No.31/2012 was resulted in acquittal on 31/03/2021. Criminal Appeal no.03/2017 was decided on 01/10/2024.

So all the proceedings ought to have been pleaded in his petition property without which issue of cruelty cannot be decided on merit. More-so, unless and until issue of cruelty is decided which referred to these proceedings issue of withdrawal from society or desertion also cannot be held positive or without sufficient cause.

17. Already since 2012 both parties are fighting before the Court. If for want of pleading on side of both parties appeal would be dismissed on legal aspects then both parties will suffer loss because dispute of their family life will affect on their children. Therefore, it is necessary to remand both matters alongwith both parties to amend respective pleadings. Hence, I record my findings accordingly and pass following order.

ORDER

- 1] Appeal is partly allowed as under :
- 2] Common Judgment in HMP No.33/2012 and HMP No.3/2014 is hereby set aside.
- 3] Both petitions shall be remanded to Ld.trial Court for decision afresh.
- 4] Both parties are allowed to amend their pleading in lieu thereof.
- 5] Hearing of matter is expedite.
- 6] Both parties appear before the Ld.trial Court on 20/04/2026.

[Judgment dictated and pronounced in open Court]

Date : 16/03/2026

[J. P. Zapate]
District Judge -1, Washim.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment/ Order are same word to word, as per the original judgment/order.

Name of Stenographer :- R.K.Pawar, Stenographer

Name of Court :- District Judge 1 & Additional Sessions Judge, Washim.

Date of Judgment/ Order :- 16/03/2026

Judgment/Order signed by :- 02/04/2026
the Presiding Officer on

Judgment/Order uploaded on :- 02/04/2026