

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 07<sup>TH</sup> DAY OF OCTOBER, 2026**

**PRESENT**

**THE HON'BLE MR. JUSTICE JAYANT BANERJI**

**AND**

**THE HON'BLE MR. JUSTICE K. V. ARAVIND**

**MISCELLANEOUS FIRST APPEAL NO. 2480 OF 2022 (FC)**

**BETWEEN:**

[REDACTED]  
[REDACTED]  
[REDACTED]  
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[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

...APPELLANT

(BY SRI. RAJESH RAO K., ADVOCATE)

**AND:**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

...RESPONDENT

(NOTICE HELD SUFFICIENT VIDE ORDER DATED 17.07.2026)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 19(1) OF FAMILY COURTS ACT, 1984 PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 09.04.2021 PASSED IN O.S.NO.4/2018 ON THE FILE OF THE PRINCIPAL JUDGE, FAMILY COURT, SHIVAMOGGA, DISMISSING THE SUIT FILED UNDER ORDER VII RULE 1 AND 2 OF CPC READ WITH SECTION 27(1)(D) AND (E) OF THE SPECIAL MARRIAGE ACT 1954.



THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT COMING ON FOR PRONOUNCEMENT THIS DAY, **JAYANT BANERJI J.**, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI  
AND  
HON'BLE MR. JUSTICE K. V. ARAVIND

**CAV JUDGMENT**

**(PER: HON'BLE MR. JUSTICE JAYANT BANERJI)**

The aforesaid appeal is by the husband/plaintiff/appellant whose petition filed in O.S No.4/2018 on 02.01.2018 under Section 27(1)(d) and (e) of the Special Marriage Act, 1954 was dismissed by the Principal Judge, Family Court, Shivamogga on 09.04.2021.

2. In the petition, it is stated that the appellant's marriage with the respondent was solemnized on 04.05.2009 before the Sub-Registrar, Shivamogga under the Special Marriage Act bearing marriage registration No.SMG-S4/2009-10 in the presence of witnesses. The respondent is a Muslim by religion and since prior to marriage she is the devotee of Amma Bhagavan and she is following those traditions and customs and teachings of Amma Bhagavan.

3. The appellant and the respondent became friends and thereafter, due to their long-standing friendship, they agreed to get married. Accordingly, under the Special Marriage

Act, their marriage was registered on 04.05.2009 at Shivamogga in the Marriage Registration Office before the Marriage Officer. After the marriage, the appellant and the respondent continued to live in their respective parents' house till the death of the appellant's mother. Thereafter, the appellant got a rented house in Vinobha Nagara, Shivamogga where they lived joyfully for about six months. The respondent then started avoiding cohabitation and her duties as a wife. She started mentally harassing and behaving cruelly with the appellant and the matter reached such a stage that the marriage broke down irretrievably with no possible chances for reconciliation. Because of her behaviour, the appellant lost his social respect. In the first rented house, after about six months, the respondent put a condition that the appellant's mother and sisters should not come to their house. The appellant's mother got depressed and died and the appellant's sisters stopped coming to that house due to which for about eight years, the appellant did not see his sisters' face.

4. The respondent started displaying abnormal behaviour. She used to wake up in the midnight and start washing clothes and when everybody was in deep sleep, she would switch on the mixer for no reason and when the

neighbours and the owner of the house questioned and objected to that, the respondent quarreled with them and also insulted the appellant because of which the owner of the house asked the appellant to leave that house. Thereafter, the appellant shifted his house, where he and the respondent resided for one year and three months. The same behaviour of the respondent continued. It is stated that she abused the appellant by making false allegations of illegal relationship with a neighbour and owner of the house and she even objected to the funeral customs of the house owner when they were performing the customs after their daughter's death. For this reason, the appellant was forced to vacate the house.

5. Thereafter, the appellant got a third rented house where the respondent continued her abnormal behaviour. They again shifted to a fourth rented house, where they resided for about 11 months, whereafter the owner evicted the appellant. Then the appellant shifted to his fifth rented house at Navule. Given the same abnormal behaviour of the respondent, he vacated this house also and shifted to a sixth rented house at Siddaganga Badavane, Shivamogga. It is stated that she used to wash the appellant's bike with salt water whenever it was touched by another person. She used to insist that the

appellant should apply kumkum on his forehead till the time of his returning home at night. If kumkum was not visible on the appellant's forehead, the respondent started quarrelling and making allegations against the appellant.

6. It is stated that after the second rented house, the respondent demanded a two-bedroom house. In that house, the appellant was restrained from touching anything in the house and was restricted by the respondent to sit in a specific place and she used to say that the king and queen should not stay in the same bedroom. Whenever the neighbors offered pooja prasadam, she openly refused and threw it out which caused insult and humiliation to the appellant as well as the person who offered the same. The respondent always prevented the appellant from attending any funeral ceremony or birth ceremony of relatives or friends' families. It is stated that due to the abnormal and unnatural behaviour of the respondent, the appellant took the respondent to one Dr. Nagaraj for medical advice, who said that the respondent was unable to conceive and there are no chances of having a child. Again, the appellant took the respondent to Usha Nursing Home, Shivamogga, where the same opinion was expressed and advise was given to try the test tube baby method which

also was not hopeful. The appellant became mentally depressed and lost his 'ambitions'. The respondent felt happy that she would not conceive.

7. It is stated that the respondent did not cook food regularly and the provision items like vegetables, oils and onions were thrown onto the streets after a few days by stating that fresh items were required. She used to threaten the appellant with suicide, stating that she belonged to Muslim community and if she committed suicide, her community people will assault and harass not only the appellant but also his sisters' families. She used to avoid marital obligations and household duties and even used to say that he was having illegal intimacy with her own sisters. When the appellant asked for co-habitation, the respondent alleged attempt to rape and forcibly 'knocked' the appellant from the house and threatened him not to return home. It is stated that on coming to know this, his sisters came to visit him after 8 years, where the respondent was residing, and for that reason the respondent lodged a complaint with Mahila Police Station. Due to this the appellant was forced to reside at his relative's house. Due to the respondent's abnormal behaviour, the appellant suffered mental agony, cruelty and insult since previous 6 years they

were not residing as husband and wife though they were residing in the same shelter and avoiding co-habitation. Whereafter, the petition for divorce was filed.

8. In the written statement filed by the respondent, she has admitted the marriage under the Special Marriage Act; that the respondent is a Muslim by Religion and since prior to marriage she is a devotee of Amma Bhagavan and is following those traditions and customs. The friendship between the parties and their marriage was admitted. The averments made in the plaint that after the marriage the parties continued their living in their respective parents house till the death of the appellant's mother and after that, as per the wishes of the respondent, the appellant got a rented house, were stated to be "partly true and partly false". It was described as false that after six months the respondent started mentally harassing and inflicted cruelty on the appellant. It was also stated to be false that in the first rented house, after six months, the respondent had put a condition that the appellant's mother and sisters should not come to the house. With regard to the allegation of abnormal behaviour of the respondent, was stated to be self-serving. The allegations made in paragraph No.10 of the plaint that despite giving best of convenience to the respondent, the

appellant left the house and got the third rented house at Kallahalli, wherein the respondent continued her abnormal behaviour and made false immoral allegations, was stated to be all repetitions and the appellant was put to strict proof of the same. With regard to the allegation in Paragraph No.11 of the plaint that the respondent deliberately avoided cohabitation and behaved inhumanely, was stated to be self-serving to file the vexatious petition with an intention to harass the respondent. Allegation made in Paragraph No. 12 of the plaint that the respondent used to wake up at midnight and wash clothes, switch on the mixer, behave like it was daytime and washing the gate and doors etc., are stated to be all created by the appellant to get the dissolution of the marriage by making false and unfounded facts.

9. The allegations made in Paragraph-13 of the plaint that after the second rented house, the respondent demanded to get a minimum two-bedroom house and the appellant was restricted by her to touch any of the things, are contrary to the any of the allegations made in the earlier paragraphs of the plaint and the appellant was put to strict proof of the same. Further, in the written statement, the averments that the respondent did not regularly cook food and frequently

demanded that the food be brought from reputed hotels and non-vegetarian food was forcibly stopped by her, were stated to be false. In reply to paragraph-15 of the plaint, that the respondent always prevented the appellant to attend the funeral ceremony etc., of any relatives, friends or family, were stated to be all created by the appellant to file the suit. Importantly, with regard to the averments and allegations made in paragraph-16 of the plaint that due to the abnormal and unnatural behaviour of the respondent, the appellant had taken the respondent to Dr. Nagaraj, is stated to be true, but it is stated that the appellant took her by force, though she was in normal condition. The averments and allegations made in paragraphs- 18, 19, 20 and 21 are stated to be repetitions and the appellant was put to strict proof. The averments made in Paragraphs-22 and 23 are stated to be true and correct. It was further stated in the written statement that after living happily for some time, the appellant started to neglect and started taunting that he had married a Muslim who was older than him. It is stated that, he used to say several times that the marriage be dissolved by filing a suit jointly. It is stated that the allegations are created as reasons to get divorce. It was alleged in the written statement that the appellant and his

parents were making arrangements to get marriage of the appellant to the girl of the same caste and therefore, the suit was filed on false grounds. It is stated that the respondent is ready and willing to live with the appellant and co-operate with him in all respect and discharge her marital obligations.

10. The following issues were framed by the Family Court:-

- i) Whether the plaintiff proves that the defendant has deserted him and treated him with cruelty?
- ii) Whether the plaintiff is entitled for the decree of divorce as prayed?
- iii) What order?

**Additional issue:**

- 1) Whether plaintiff proves that defendant treated him with cruelty?

11. In order to prove his case, the plaintiff/appellant examined himself as PW.1 and got marked 22 documents as Exs. P1 to P22 and also examined three more witnesses as PW.2 to PW.4 and closed his side.

12. The defendant/respondent got herself examined as DW.1 and got marked 09 documents as Exs.D1 to D9 and closed her evidence.

13. The issue Nos. 1 and 2, and the additional issue No.1 were answered in the negative.

14. Family Court held that the appellant sought divorce from the respondent on the ground of cruelty by making false allegations.

15. The grounds urged by the appellant were found to be not proved by the appellant for want of cogent and convincing evidence. It was observed that, to grant divorce on the ground of cruelty (under the Special Marriage Act, 1954), the appellant had to convince the Court as to the behaviour pattern and conduct of the respondent and conduct of the respondent which caused danger to his life, limb or health, bodily or mentally, or to give raise the reasonable apprehension of such danger. If from the conduct of the spouse, it is established or an inference can be legitimately drawn that the conduct of the respondent is such that it causes injury or apprehension in the mind of the appellant about his mental well-being, then it could be said that it would amount to cruelty. However, on examination of the case, the Family Court did not find any reliable evidence to believe that the respondent

treated the appellant with cruelty. Accordingly, the suit was dismissed.

16. The record has been perused. In the examination-in-chief by way of an affidavit, the appellant affirmed the contents of the petition.

17. In his cross-examination, PW.1 stated that they have been married for 09 years. In October 2017, his wife lodged a complaint with the police. He stated that in their nine years of marriage, no neighbours had filed any complaints about the quarrels between the appellant and the respondent. However, it is stated that the neighbours would fight and get the houses vacated. The registered marriage on 04.05.2009 was admitted but, it is stated that the mother of PW.1 passed away on 07.01.2009. Before his mother passed away, both of them got married in the temple. He stated that his sisters told the respondent to leave the appellant. He denied the suggestion that before marriage, he worked as an activist of Bajarangdal, which is a Hindu organisation. His wife used to worship a Hindu religious guru because of which he liked her. The respondent was known to him since three years prior to marriage. They used to call the respondent to their house to

perform the Amma Bhagavan Pooja. He admitted that, before marriage, he knew the respondent's character, behaviour and family background. His sisters used to behave very affectionately with the respondent.

18. It is stated that seven months before their registered marriage, they were married at Venkateshwara temple. On a suggestion he denied that since he was a Bajrang Dal worker their marriage was performed by the workers of the Bajrang Dal. Guru Raj and Bhagyamma who were satsang workers performed the marriage. Before marriage, he, and his father and mother used to attend the satsang which was conducted by his wife. Neither his family nor the respondent's family knew about the marriage. He admitted that his father passed away on 04.08.2006. The registered marriage took place after one year of his father's death. He stated that his wife is mentally unstable, but he did not take her to a doctor, because whenever he asked her, she would not come. It is admitted by the PW.1 that for eight years after marriage, both of them lived well. She denied the suggestion that the quarrel started only after his elder sisters began visiting their house. When he was living in a rented house, rental agreement was made for 11 months. He denied the suggestion that after 11

months, house owner increased the rent and that he quarrelled with the owner, that he then put that blame on wife. He denied that on 04.07.2018, he did not beat his wife and did not throw her out of the house. His wife had lodged a false police complaint against him. On 14.08.2014, his wife had given a complaint to the Women Protection Officer. Regarding the allegation that, although the police had issued a notice asking the PW.1 to appear, he told them that since a case was already pending before the Court, he would deal with it there.

19. The PW-2 is Chandrashekar who claimed in his affidavit to be the friend of the appellant for the past 30 years. He stated that he and the appellant used to go to Amma Bhagwan Satsang where the respondent used to preach and later the appellant and respondent got married. He stated that when the appellant took a rented house, he had gone to that house and he was shocked to see that the respondent speaks to the appellant without giving him any respect. Instead of a sofa to sit on, she gave him an old chair. As soon as he got up from the chair, she poured turmeric water on the chair. In front of him, she said to the appellant not to bring his friend as it will become dirty. The appellant told him that every day he is experiencing the same kind of mental torture. He said that

whatever is done by the appellant, she says would cause impurity and made him stay away. He had complained to him that he is not able to lead a married life peacefully. Even though he brought all the groceries needed for the house, everyday she did not give him proper food and that he had to eat his breakfast and meals in the hotel. He stated that the appellant said that she had built a relationship with a rented house owner and their family and was humiliating him because of which his life had become unbearable. She even went to the shop where the appellant work and fought. The PW.2 had told her that if this behaviour came on, nobody would keep her in a rented house. He stated that she made false accusations on the appellant, saying that she was pregnant and had a miscarriage on the previous day as the appellant had beaten her. Later he came to know that the appellant was assaulted and thrown out of the house and then he was living in his aunt's house.

20. In his cross-examination, PW.2 stated that he did not know that the appellant's mother passed away on 07.01.2009 and that the parties got married on 04.05.2009. He stated that he did not go to their marriage. He stated that after the parties got married and had started living together, he visited their house twice two years ago when they were living in

Navule. He visited there home once when they were living in Siddaganga Layout. He denied the suggestion that it is false to state that the appellant had told him that the respondent was causing him mental harassment and was not allowing him to lead a marital life and was keeping him away on the ground of ritual purity restrictions and that he was unable to live even a single day peacefully. He said that he went with both of them to Gerusoppa. Until then, the PW.2, the appellant and the respondent used to meet outside and talk. After both parties had separated, the respondent met him after 15 days. After 15 days of their separation, when the respondent met him she herself told him that they were living separately. He denied the suggestion that he knew that the parties were living well together earlier. It was stated that the appellant was living at his aunt's house in Bapuji Nagar, but the PW.2 did not know the name of the aunt. He admitted that the respondent was a Guru in Amma Bhagwan Satsang and they used to go there.

21. PW.3 is Smt. Roopa, who was another witness on behalf of the appellant. It is stated by her that the appellant and respondent were tenants in a portion of the house where she used to reside. About nine years ago, they came as tenants for a period of 11 months. Later, the respondent behaved

abnormally in her conduct. The water motor switch for all the houses in the area was located near appellant's house. Whenever the tenants went to turn off the switch, thereafter the respondent would pour water at the spot where the tenants stood. She used to splash water on the switch board. She used to do pooja at midnight, run the mixer at night, causing disturbance to the neighbouring houses. She and the tenants informed the appellant that because of some behaviour, the tenants were getting troubled and the house owner was asking them to vacate. The appellant used to return home late on a few occasions and PW.3 had told him that because he was returning late, it was causing difficulty in locking the gate. The respondent suddenly came and fought with PW.3 asking that why is she talking to her husband. She also poured water and turmeric on the gate and on her husband. She stated that she informed her husband about this matter and they made them vacate the rented house before the completion of the lease period.

22. In her cross-examination, PW.3 stated that the appellant was staying as a tenant in her house and they are not their relatives. She denied the suggestion that her father-in-law and two brothers-in-law were living together in the ground floor

of the house. She admitted that the appellant and the respondent were living on the first floor of the house. She denied that she, her husband and children were living in the house attached to the ground floor. She said that she used to go there only to sleep while all meals were taken to the ground floor house. She also denied that the conversation from the ground floor of the house could not be heard in the house situated adjacent to it. She said that the motor is placed in the ground floor and the switch for the motor is placed in the first floor, so that the people on the first floor can use it when they need water. She stated that the appellant and the respondent lived in their house on rent for 10 months. Since the respondent used to quarrel with them and cause trouble, they had thought of filing a complaint against her, but since the appellant requested them not to file the complaint, they did not file it. She denied that though the respondent did not do anything, she was giving a false statement based on the appellant's words. She also denied that the respondent had made a theft allegation against her.

23. One Smt. Vasanthi appeared as PW.4 who stated in her examination-in-chief that the appellant was her sister's son. She stated that the marriage of the appellant and the

respondent caused grief to her sister and she passed away three months after their marriage due to mental trauma. Thereafter, the appellant rented and lived in houses in various localities. Each time the respondent would quarrel with the landlords of the rented houses, suspected the women of the house and did not show respect to her husband. Though she repeatedly advised both of them to live with understanding and maintain love and trust with the whole family, the respondent would tell her that she would live as she wished, and the PW.4 may choose to come or not to their house. After the marriage of the appellant, her sister's daughters never visited the appellant's house and their relations were restricted. The appellant mentally lost courage and endured violence from the respondent in the house. Whenever the PW.4 advised them, the respondent threatened that she would commit suicide and send her siblings to jail. Eight years later, when the siblings of the appellant's came to enquire about his welfare for a first time, the respondent made false accusations against them and expelled them from the house and lodged a complaint with the police. As a result, the appellant decided that it would not be possible to continue life with the respondent and informed that he would file for divorce.

24. In her cross-examination, PW.4 stated that she came to know about the marriage of the parties one month after their marriage. She admitted that her sister passed away on 07.01.2009 and that the parties were married on 04.05.2009. She stated that her sister had passed away before the marriage of the parties. She said she was not annoyed about the marriage of the appellant and the respondent. Her sister was annoyed. When she went to the appellant's house, she told the respondent to live together happily. To this the respondent told her that the way she came is open for her to go back, that she may be. She denied that either she or her family tried in any way to separate the appellant and the respondent. She admitted that her family did not like their marriage so they did not visit their house and they did not visit the house of PW.4. After the parties separated, the appellant visited the family house of PW.4.

25. In the examination-in-chief, the DW.1 stated that she is the legally wedded wife of the appellant. It was stated that the appellant and she lived together happily for sometime and thereafter the appellant began to neglect the respondent and used to say that his friends, relatives and well-wishers were taunting about the marriage of a Muslim who is older than

him. Several times he used to say that he wants to dissolve the marriage by filing a joint suit. She stated that the main question was with respect to her caste and other allegations were made only to create reasons to get divorced. The appellant invented several false facts and filed the suit on false grounds. She is ready and willing to live with him and cooperate with him in all respects. The suit was filed by the appellant only on the instigation of his relatives who are opposing the marriage of a Muslim girl more aged than him. She admitted giving a petition to the Mahila Police, Shivamogga to set right the matter as the appellant was giving pinpricks to her. Since he did not stop his conduct, another complaint was lodged by the DW.1 against the sisters of the appellant as both of them had come to their matrimonial home and abused her in vulgar language. On 04.07.2018, the appellant and his sisters had assaulted her and she lodged a complaint against them on 12.07.2018. She said that she being a Muslim lady by birth, converted to Hinduism to live as a Hindu and performed marriage with the appellant and now she has no other way except the appellant with whom she intends to live peacefully.

26. In the cross-examination of DW.1, she stated that before marriage she was residing in 5<sup>th</sup> Cross, Shanthinagar,

Shivamogga. Before her marriage she did not know the area in which the appellant's house was located. She admitted that an acquaintance developed between the appellant and her because she was a follower of Amma Bhagawan. She also admitted that since there was an acquaintance between the appellant and her, they used to talk when they came to the satsang. To the suggestion that the appellant and she liked each other because she followed the Hindu religion, DW.1 answered that it was true that they liked each other but she did not follow the Hindu religion at that time. She embraced the Hindu religion after getting married.

26.1. Thereafter DW.1 went to the house where the appellant resided. She admitted that since they were close and liked each other, they decided to get married. It was denied that the appellant informed his mother about his marrying the respondent, and that his mother refused. The suggestion was also denied that the appellant suggested that they should not get married for the time being. She also denied that she did not agree to the proposal of the appellant and she pressurized the appellant and married him at Lakshmi Venkateshwara Temple on 30.11.2008. She denied that the appellant had invitation cards printed regarding their getting married on that date

(30.11.2008). She denied having instructed her advocate that before their marriage was registered, Bajrang Dal activists got them married at the Venkateshwara Temple in Lal Bahadur Shastri Nagar and for that reason the advocate of DW.1 asked some question during the appellant's cross-examination. She denied that on 30.11.2008 the appellant and she got married and were residing in the house where the appellant's mother was residing. It was denied that at the time of registering of their marriage on 04.05.2009 they gave the address of Ragigudda House where they were residing. When Ex.P1 (Marriage Certificate) was shown to DW.1 and it was pointed out that the address given was 7<sup>th</sup> Cross, Shanti Nagar, the witness answered that the address belonged to the appellant. She denied that after getting married and registering the marriage, she resided with the appellant at 7<sup>th</sup> Cross, Shanti Nagar. She never went to that house and they directly rented another house and both of them moved there in June 2009. She denied that the appellant's mother lived cordially and adjusted with her and that despite this, she did not respect the appellant's mother and subjected her to mental cruelty. She denied that due to her harsh nature, the appellant's mother

became bedridden and that it was because of the respondent that she breathed her last.

26.2. DW.1 stated that after they got married at the Kote Anjaneya Temple and for one month after the marriage was registered, she stayed at her mother's house. When her mother-in-law passed away, she was not at the appellant's house. When DW.1 was shown Ex. D9 (rental agreement of 17.07.2009), she stated that both of them had resided in the house in the address as stated as her address in the suit. When the case was filed, both of them were living together at the same address. To the suggestion that her husband was residing at 6<sup>th</sup> Cross, Bapujinagar, DW.1 answered that he was with her when the case was filed and later, he went and settled at that address. She admitted having made complaints to the police station against her husband four to five times. She had given the complaint marked as Ex. P15 on 04.07.2018. She denied that she had kicked her husband out of the house even before making that complaint. She admitted that in the complaint she had stated that her husband had left the house nine months ago and had filed for divorce in collusion with his sisters to marry someone else.

26.3. A complaint was given to the Samarasa Sadan on 13.11.2017 by her husband asking them to send his wife to him. She had visited that Sadana and a discussion took place there on the complaint. The people at the Sadana told her husband to take his wife along but her husband said that he would file a case in Court and walked out from there. She admitted that their house owner had filed O.S.No.597/2018 against her to vacate the rented house at Siddaganga Extension. She had engaged a lawyer and filed an objection in that case. She had not yet vacated that rented house. She admitted that her complaint was given to Vinobha Nagar Police Station. She denied that her husband did not instruct the owner to file the complaint and that her husband had no connection with that complaint. Though she had told the police that she would vacate the house within three months, but she did not vacate the house within three months because she was admitted to the hospital at that time. She had produced a document regarding being admitted to the hospital at that time. She admitted that on 04.01.2018 she gave a complaint to Vinobha Nagar Police Station against her husband and his sisters. She denied that the purpose of her giving such

complaints was that her husband's sisters would never come to their house.

26.4. On 18.04.2019, she had gone to her husband's elder brother Shivakumar's shop because her husband had asked her to come. When she went near that shop, her husband was there and she went inside the shop because he himself told her to come in. She denied that she had trespassed into that shop with an intention of ruining her husband's reputation, beat him and abused him in foul language. She also denied that due to this behaviour of hers, the reputation of the owner of the shop where her husband worked and her husband's reputation were damaged.

26.5. DW.1 denied that after her husband made a complaint to the police regarding her acts in that shop, the police had called her on phone and she did not receive it. She denied that she pressurized her husband that whatever rented house they took, it had to be a two bedroom house. She also denied that she pressurized her husband to stay in different room so that she could spend private moments. She denied that she named the room in which she was, as Rani room and her husband's room was Raja. She denied that she used to tell

her husband that since her room is Rani Antahpura, he should not enter the room without her permission.

26.6. DW.1 denied that although her husband brought provisions every month, she did not cook and serve him tasty food. She denied that if her husband attended any functions of his relatives and came home, she would pour salt water and turmeric water on him before getting him inside. She also denied that she made her husband stand outside and poured water on his body and the neighbours used to see this and laugh. She denied that her husband and she led a marital life for only one year and for the remaining seven years she did not let her husband near her to lead a conjugal life. She denied that she had never become pregnant. Her husband had taken her to a doctor, Dr. Arundhathi, when she had a miscarriage. She had three miscarriages and on those occasions her husband did not take her to the doctor. She denied the suggestion that the doctors had opined that she could not conceive.

26.7. DW.1 denied that every day she used to sleep keeping a knife under her bed and that for the last seven years she did not allow her husband's sisters to come into their house. She denied that when her husband came to have

physical contact with her she used to threaten him that she would file a rape case against him. She also denied that if her husband left the house in the morning wearing kumkum on his forehead and when he returned in the evening if that kumkum was not on his forehead, she would ask him which woman he went with. She denied that when she was newly married and went to her husband's house her mother-in-law gave her two gold bangles, a pair of earrings and a gold Mangal Sutra chain. She denied that her husband had to do the household chores himself and had to wash his own clothes. She also denied that when her husband left for work, she did not give him breakfast properly and for that reason he had to eat at a hotel. She denied that when her husband met with an accident, she did not help him apply ointment because she did not want to touch him.

27. The points that arise for determination are:-

- (i) Whether the appellant proves that the respondent has since the solemnization of the marriage treated him with cruelty?
- (ii) Whether the appellant proves that the respondent has been incurably of unsound mind, or has been suffering continuously or intermittently from mental

disorder of such a kind and to such an extent that the appellant cannot reasonably be expected to live with the respondent?

28. The appellant filed the suit under Section 27(1)(d) and (e) of the Special Marriage Act seeking a decree of divorce. The own case of the appellant is that their marriage was solemnized on 04.05.2009 before the Sub-Registrar, Shivamogga under the Special Marriage Act; that after their marriage the parties used to reside in their respective parents' house till the death of the appellant's mother. It is stated that after the appellant's mother's death, as per the respondent's wishes the appellant got a rented house in Vinobha Nagara, Shivamogga and for about six months they led a joyful married life; that thereafter the respondent put a condition that the appellant's mother and sisters would not come to their house; that therefore, the appellant's mother got depressed and lost her life and his sisters stopped coming to that house and for the past 8 years, the appellant had not seen his sisters' face. However, in his cross-examination as PW-1, the appellant stated that his mother died on 07.01.2009 that is much before the solemnization of marriage on 04.05.2009. Moreover, he did not choose to produce any of his sisters as witnesses. They

were the best persons to state whether they had stopped coming to the appellant's house due to objection by the respondent.

29. In his cross-examination for the first time, the PW-1 states that the marriage took place seven months before their registered marriage at Venkateshwara Temple. However, this statement is without any pleading by the appellant. Therefore, this part of his deposition cannot be relied on.

30. The allegations of abnormal conduct of the respondent of washing clothes and switching on mixer at midnight for no reason at Vinobha Nagar rented house and that when the neighbours objected, the respondent started quarrelling with them and therefore the owner of the house asked them to vacate the house, could be proved by producing the owner of the rented house and the neighbours to corroborate his oral testimony. The owner and neighbour of the house were material witnesses to prove the alleged conduct of the appellant. Except for his self-serving oral testimony, no corroborative evidence is placed by the appellant. It is pertinent to mention here that in his cross-examination he has stated that he has no objection to bringing the neighbours of that

house and bringing the owner of that house for examination as witness.

31. Regarding the second rented house where they stayed, where the respondent is said to have objected to the death rituals of the daughter of the landlord, the appellant did not examine the owner of the second rented house or the neighbours to prove his case. He has however, examined one witness by name of Roopa wife of Shashidhar as PW.3 whose deposition is noted above. She is stated to be a housewife. However, the ownership of the house by PW.3 is not established. Moreover, PW.3 has not corroborated the stand of the appellant with regard to the respondent objecting to the funeral rituals of the daughter of the owner of the house.

32. PW-3 has stated in her affidavit with regard to the respondent's alleged abnormal conduct that the water-motor switch for all the houses in the area was located near appellant's house; that whenever the tenants went to turn off the switch, thereafter the respondent would pour water at the spot where the tenants stood; that she used to splash water on the switchboard; that she used to do pooja at midnight, run the mixer at night, causing disturbance to the neighbouring

houses; that the PW-3 and the tenants informed the appellant that because of some behaviour, the tenants were getting troubled and the house owner was asking them to vacate. However, from the cross-examination of the PW-3 it appears that the PW-3 stayed on the ground floor and the first floor was occupied by tenants which included the appellant and respondent. The switchboard of the water pump was on the first floor. Allegedly, the tenants had complained to the PW-3 regarding the respondent's abnormal conduct. So, the testimony of the PW-3 is based on hearsay. None of the tenants of that house have been produced by the appellant to prove the alleged abnormal conduct of the respondent.

33. The PW-3 has deposed that the appellant used to return home late on a few occasions and PW.3 had told him that because he was returning late, it was causing difficulty in locking the gate. The respondent suddenly came and fought with PW.3 asking why was she talking to her husband. She also poured water and turmeric on the gate and on her husband. She stated that she informed her husband about this matter and they made them vacate the rented house before the completion of the lease period. No reference to any such behaviour by the respondent has been made by the appellant in

the petition with regard to their stay in the second rented house.

34. The appellant did take the respondent for medical consultation to one Dr. Nagaraj and to Usha Nursing Home, Shivamogga, to which the respondent states that though she was normal, she was forcibly taken by the appellant. It is the own case of the appellant in his affidavit that the doctors advised the respondent with regard to gynecological aspect. No medical prescriptions have been produced and neither have the doctors been produced to give evidence as to the mental condition of the respondent. As a matter of fact, the advice of the Doctor regarding inability of the respondent to conceive has been cited by the appellant in his petition as a reason to seek dissolution of marriage.

35. Though the appellant has alleged that he was forced to repeatedly change houses due to the abnormal conduct of the respondent, however, it is seen from the rent agreement Ex.P-14 that the period of the agreement was for 11 months. No independent witness or material has been produced by the appellant to prove that he was forced to change the houses due to the abnormal conduct of the respondent. None of the other house owners have been produced by the appellant

to demonstrate that they had forcibly evicted the parties from their houses.

36. The appellant's allegation of denial of cohabitation has been denied by the respondent both in her pleadings as well as in her testimony. She has repeatedly stated in her testimony that she wants to lead a normal married life with her husband. She has made allegations of being beaten up and being harassed by the appellant and his sisters.

37. PW-2 is Chandrashekar who claimed in his affidavit to be the friend of the appellant for the past 30 years. He stated that he and the appellant used to go to Amma Bhagwan satsang where the respondent used to preach and later the appellant and respondent got married. He stated that when the appellant took a rented house, he had gone to that house and he was shocked to see that the respondent speaks to the appellant without giving him any respect. Instead of a sofa to sit on, she gave him an old chair. As soon as he got up from the chair, she poured turmeric water on the chair. In front of him, she said to the appellant not to bring his friend as it will become dirty. The appellant told him that every day he is experiencing the same kind of mental torture. He said that whatever is done by the appellant, she says would cause

impurity and made him stay away. The appellant had complained to him that he is not able to lead a married life peacefully. Even though he brought all the groceries needed for the house, everyday she did not give him proper food and that he had to eat his breakfast and meals in the hotel.

38. PW.4 is the aunt of the appellant. She has deposed that the respondent always quarrelled with the owner of the rented houses and neighbours and suspected the appellant for having illicit relationship with other women. She had also stated that, she had also advised the respondent time and again. PW.4 had deposed that, after eight years, when the sisters of the appellant came to the house of the appellant, the respondent made false allegations and filed false complaints. It is when the rented accommodation was availed of by the parties that the alleged strange behavior and bad behavior of the respondent started. The PW-4 appears to be deposing with regard to the allegations which she came to know by hearsay.

39. There is nothing on record to show why the appellant continued the relationship with the respondent for over eight years. Moreover, the sisters of the appellant could have been the material witnesses to corroborate the allegations made by the appellant and the PW.4, but no explanation is

offered by the appellant that why he did not examine his sisters.

40. Though the complaint on record do reveal that the allegations were made by the respondent against the appellant and his family members, but, as it emerges from the deposition of the DW.1, there were pressing circumstances that compelled her to approach the police station on the ground of cruelty being meted-out by the appellant. It is noted that the police concerned had called the appellant and his sisters and at that time they had given the undertaking, which were exhibited as Ex.P11 and Ex.P12. It is noted that the petition was filed before the Family Court on 02.01.2018. However, the endorsements issued by the police, Ex.P6 is dated 06.07.2018, Ex.P7 is dated 30.06.2018 and Ex.P8 is dated 04.07.2018.

41. It is the own case of the appellant that the appellant and respondent have resided separately till the time of the death of the appellant's mother. Their marriage was registered nearly four months after the death of his mother. He has failed to prove that due to the abnormal behaviour of the respondent, he was separated from his family members. The lack of cohabitation has also not been proved.

42. At this stage it is pertinent to refer to the provisions of Section 27(1)(d) and 27(1)(e) of the Special Marriage Act, 1954. It reads as follows: -

**"27. Divorce.—***(1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court either by the husband or the wife on the ground that the respondent—*

*(a) .....*

*(b) .....*

*(c) .....*

*(d) has since the solemnization of the marriage treated the petitioner with cruelty; or*

*(e) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.*

*Explanation.—In this clause,—*

*(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;*

*(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the respondent, and whether or not it requires or is susceptible to medical treatment; ....."*

43. The expression used in Section 27(1)(d) is different from Section 13 (1)(ia) of the Hindu Marriage Act, 1955. Section 27(1)(d) states:

*"..... (d) has **since** the solemnization of the marriage treated the petitioner with cruelty;"*

Section 13 (1)(ia) states:

*"..... (ia) has, after the solemnization of the marriage, treated the petitioner with cruelty;"*

44. Therefore, under the Special Marriage Act, it is to be demonstrated that ever since the solemnization of marriage, the respondent has treated the appellant with cruelty. That is not so under the Hindu Marriage Act. It is noted that the Special Marriage Act was amended by Act 68 of 1976 with clauses (a) and (b) of Section 27 (1) being substituted. But clause (d) of Section 27 (1) remained unchanged. The appellant has therefore, not been able to prove that the respondent has since the solemnization of the marriage treated him with cruelty.

45. As regards Section 27(1)(e) of the Special Marriage Act, it is clear from a bare reading of the provision that there has to be a proper diagnosis and treatment of the respondent and it is only after reliable and cogent evidence is led regarding

unsoundness of mind or mental disorder or psychopathic disorder and is duly proved, can the petition for divorce on that ground can be granted. The appellant has failed to prove that the respondent has been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the appellant cannot reasonably be expected to live with the respondent.

46. In view of the aforesaid, we find no merit in this appeal and it is accordingly dismissed.

**Sd/-  
(JAYANT BANERJI)  
JUDGE**

**Sd/-  
(K. V. ARAVIND)  
JUDGE**

KG/KGR/KSR