



environment for the upbringing of her child has been treated as an act of cruelty and desertion by the Courts below. We are constrained to observe that the approach adopted by the learned Family Court, as affirmed by the High Court, is not only legally unsustainable but also deeply disquieting. The endeavour of the appellant to establish her own dental clinic at Ahmedabad, rather than allowing the professional qualification she had earned through years of effort to lie dormant and go waste, has been viewed with disapproval, merely because her stance did not conform to the expectation of the husband and the in-laws that she must abandon her aspirations and reside with her husband at a remote location on account of his posting as an Army Officer.

**4.** The reasoning which permeates the impugned judgments appears to be founded upon deeply entrenched archaic societal assumptions that a wife's professional identity is subject to an implied spousal veto; that her autonomy must yield to the geographical and occupational demands of her husband; and that her decision to secure a safer and more conducive environment for the upbringing of her child, even at the cost of living separately for

certain periods, would construe as a matrimonial default. Such assumptions, rooted in a conservative patriarchal understanding of marital roles, are wholly incompatible with the progressive evolution of society, where dignity, autonomy, and equal participation of women in all spheres are increasingly recognised as fundamental to social advancement.

**5.** It must be emphasised that a well-educated and professionally qualified woman cannot be expected to be confined within the rigid boundaries of matrimonial obligations alone. Marriage does not eclipse her individuality, nor does it subjugate her identity under that of her spouse. It is for both the husband and the wife to balance their marital ties in a manner that respects mutual aspirations, and not for one to unilaterally dictate the life choices of the other. As has been recognised in the evolving discourse on matrimonial jurisprudence, a woman can no longer be treated as a mere appendage to the household of the husband, and her independent intellectual and professional identity and aspirations must receive due credence and respect.

**6.** What is portrayed as defiance in the impugned judgments is, in truth, an assertion of independence;

what is labelled as desertion is, on a closer scrutiny, a consequence of circumstances shaped by professional commitments, the welfare of the minor child, and the realities of life. To characterise such conduct as cruelty or desertion is to effectively penalise the appellant for exercising choices that are integral to her dignity and personhood. The expectation that a woman must invariably sacrifice her career and conform to traditional notions of an obedient wife meant for cohabitation, irrespective of her own aspirations or the welfare of the child, reflects a line of reasoning that is archaic, ultra-conservative, and cannot be countenanced in the present day scenario when women are leading various professional fields from the forefront.

**7.** The factual matrix, as it unfolds from the record, would demonstrate that the conduct attributed to the appellant as cruelty or desertion was, in reality, a manifestation of legitimate choices made in pursuit of professional fulfilment and responsible parenthood. It is in this backdrop and keeping in view the need to harmonise matrimonial obligations with the constitutional guarantee of

individual autonomy, that the present *lis* warrants adjudication with a fine balance.

**Background: -**

**8.** The appellant and the respondent were married on 3<sup>rd</sup> September, 2009. The appellant is a qualified dentist, and the respondent was serving in the Indian Army and was posted at Pune.

**9.** The appellant started her own private dental clinic at Pune in the month of June, 2010. A year later, the respondent came to be posted at Kargil. The appellant sacrificed her dental practice to be besides her husband (respondent) and shifted to Kargil. Both stayed together at Kargil for over four months. During this period, the appellant conceived. Finding the circumstances not conducive to her pregnancy, particularly in view of the limited medical facilities at Kargil, the place of posting of the respondent, the appellant returned to Ahmedabad and started living with her in-laws.

**10.** However, as per the appellant, owing to the difference in religious background from which the parties hail (the appellant is a Christian and the respondent is a Hindu), the relationship between them started going southwards. The appellant

thereafter moved to her parental home at Ahmedabad. She gave birth to a female child on 12<sup>th</sup> April, 2012, who continues to be in her care and custody.

**11.** After the birth of the daughter, the appellant went to Kargil to stay with the respondent, where the child developed certain medical complications, to be specific, seizure episodes, and was required to be admitted to the military hospital. As the condition of the child did not show improvement and in view of the limited specialized medical facilities available at Kargil, the parties returned to Ahmedabad with the child so that she could be provided proper further treatment.

**12.** The aforesaid sequence of events precipitated severe discord between the spouses. The appellant thereupon approached the competent Army authorities seeking maintenance for herself and the minor child. The Army authorities, *vide* order dated 12<sup>th</sup> May, 2014, allowed the application and directed the respondent to pay 22% of his salary to the appellant and 5.5% to the minor daughter. It appears that the said order was passed in terms of the

applicable Army instructions governing maintenance to dependents.

**13.** The order granting maintenance was challenged by the respondent before the Armed Forces Tribunal, Lucknow. The matrimonial strife between the parties escalated, leading to initiation of multiple proceedings before different fora, including the learned Family Court No.2 of Ahmedabad City at Ahmedabad<sup>1</sup>. During the pendency of such proceedings, efforts were made to bring about a reconciliation between the parties; however, the same did not fructify. Thereafter, by order dated 11<sup>th</sup> February, 2022, the learned Family Court granted interim maintenance to the tune of Rs.55,000/- per month (Rs.35,000/- to the appellant and Rs.20,000/- to the minor daughter).

**14.** In revision preferred by the respondent before the High Court for assailing the said order, the quantum of interim maintenance was modified and the amount payable to the appellant was scaled down to Rs.25,000/- per month, while the amount of Rs.20,000/- per month awarded to the minor

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<sup>1</sup> Hereinafter, referred to as the “Family Court”.

daughter as maintenance was maintained. The same terms of maintenance were finalized by the learned Family Court *vide* final order dated 30<sup>th</sup> September, 2022.

**15.** In the intervening period, the respondent had also filed Family Suit No. 2361 of 2017 seeking dissolution of marriage. During the course of the said proceedings, he also moved an application under Section 195 of the Code of Criminal Procedure<sup>2</sup>, 1973 read with Section 340 CrPC (Exh. 54), alleging that the appellant had made false statements on oath in proceedings relating to interim maintenance, and sought her prosecution for perjury. The learned Family Court, *vide* judgment and decree dated 30<sup>th</sup> September, 2022, decreed the suit for divorce on the grounds of cruelty and desertion attributed to the appellant and simultaneously, by the same judgment, rejected the aforesaid application of the respondent (Exh.54).

**16.** Being aggrieved, the appellant preferred a First Appeal to the High Court at Gujarat at Ahmedabad<sup>3</sup> challenging the decree of divorce, whereas the

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<sup>2</sup> For short, 'CrPC'.

<sup>3</sup> Hereinafter, referred to as the "High Court".

respondent preferred a separate First Appeal challenging the rejection of his application filed under Section 195 of the CrPC read with Section 340 CrPC.

**17.** While pressing the appeal, the appellant simply urged for expunging of the observations and findings pertaining to desertion and cruelty while not contesting the grant of divorce, whereas the respondent pressed hard for acceptance of his appeal and prosecution of the appellant for perjury.

**18.** The Division Bench of the High Court dismissed both the appeals by judgment dated 12<sup>th</sup> August, 2024 which is assailed by both the parties in this appeal by special leave.

**19.** We have heard the learned counsel for the appellant and the respondent, who appeared in-person, and have considered the submissions advanced. The appellant Ms. Ann has just prayed for expungement of the findings of desertion and cruelty which prayer was hotly contested by the respondent Saurabh Dutt. Thus, we have perused and gone through the findings of the Family Court on these issues and find the same to be appalling and totally unacceptable.

**20.** At this stage, we would like to extract the findings recorded by the learned Family Court, while granting divorce and dissolving the marriage of the parties, which are as below:-

- (i) That the appellant was not inclined to continue with the marriage, as she gave precedence to her career by operating a dental clinic at Ahmedabad;
- (ii) That the appellant got invitation cards printed for the opening of her dental clinic and circulated the same without the knowledge of the respondent and his family, which, according to the learned Family Court, amounted to cruelty, as it was expected of a wife or daughter-in-law that any such step be taken with the knowledge of the husband or his family;
- (iii) That the setting up of the dental clinic without informing the family was not reflective of healthy family relations and, according to the learned Family Court, such conduct, amounted to disregard for the emotions and feelings of the family;

- (iv) That the request made by the appellant that, during visits to Ahmedabad, she be permitted to stay at her parental home was also treated as an act of cruelty, as, according to the learned Family Court, a married woman is expected to reside with her husband at the matrimonial home;
- (v) That whenever the parties came to Ahmedabad, they resided separately, as the appellant stayed at her parental home while the respondent stayed at his own residence;
- (vi) That the allegation of the respondent that, on one occasion, the appellant did not permit his mother to take the minor daughter in her lap or to touch her, allegedly on account of fear of infection, was also treated to be indicative of cruelty;
- (vii) It was observed by the learned Family Court, in paragraph 26 of the judgment, that it was the bounden duty of a wife to reside with her husband wherever he may choose to reside, and that the husband could not be deprived of his conjugal rights except under special circumstances which absolved the wife of

such duty. The appellant's attempt to run her own dental clinic was held to be indicative of an intent not to reside with the respondent at his place of posting and was accordingly treated as desertion;

(viii) In paragraph 27 of the judgment, the learned Family Court observed that the marriage between the parties had irretrievably broken down and that a decree of divorce was warranted on account of such breakdown, resulting from acts of cruelty and desertion on the part of the appellant.

**21.** Having gone through the above findings recorded by the learned Family Judge, we find the approach of the Presiding Judge to be pedantic and regressive, to say the least. The endeavour on the part of the appellant to choose a more secure place for bringing up her minor daughter, who suffered from a concerning medical condition, could not have been construed as an act of desertion under any circumstances.

**22.** True it is that, in ideal conditions, an army officer's wife would be expected to accompany her

husband even if the posting is at difficult locations. However, merely because the wife decided to reside at Ahmedabad with the primary intention to provide a safer environment and better health care to her daughter, where she could also pursue her professional career, branding such conduct as constituting cruelty or desertion was atrocious to say the least.

**23.** It reflects an ultra-conservative and myopic approach of the Presiding Officer. To brandish the effort of the wife to pursue her own career goals as acts of cruelty, as the same may have hurt the sentiments of the husband or the in-laws, is highly objectionable and deplorable in the era where the society proudly talks of women empowerment.

**24.** The learned Family Judge laid much emphasis on the incident wherein the appellant inaugurated her dental clinic without informing the respondent or her in-laws. The said act was held to be an act of cruelty. Looking to the approach that the respondent has displayed all throughout the proceedings, it is apparent that his attitude was of male chauvinism claiming an exalted status on account of Army service and never to promote or support the career of his own

wife, herself a qualified Dentist. Under such circumstances, if at all, the appellant opened the dental clinic without disclosing the same to the respondent, it must have been a decision taken out of sheer compulsion and to deter her husband from obstructing her rightful pursuit of a professional career.

**25.** Needless to state that the appellant must have put in great efforts and expenditure for acquiring the degree in Dentistry. Thus, the approach of the Family Court was clearly meant to convey that the wife even though having a degree in Dentistry, should have sacrificed her own career to go and stay with her husband at his place of posting and failure to do so, tantamounted to committing cruelty by deserting her husband. This approach can never be countenanced and deserves to be deprecated.

**26.** In the present world, where women are making strides in leaps and bounds, merely because the husband was an Army Officer posted in a remote location, the expectation that the wife could not even think of pursuing her career in Dentistry, is indicative of regressive and feudalistic mindset. We are afraid that the learned Family Court would never

have taken the same view if there was a role reversal and the wife was serving in the Army while the husband was a medical professional. In such circumstances the husband would never be expected to sacrifice his career merely to remain by the side of his wife; his failure to do so would certainly not be branded as cruelty and desertion.

**27.** We are of the firm view that in such a situation, striking a balance is necessary. If, at all, the wife intended to pursue her medical career, then the same should have been supported rather than deterring her efforts. The husband should have taken pride in the fact that his wife was in pursuit of her career goals rather than holding her responsible for breakdown of the marriage on the ground that she did not join him at Kargil by sacrificing her career. If the lady, having acquired the degree in Dentistry, did not utilise the same, that, in our opinion, would be a sinful wastage of talent and resources because the seat against which she had acquired the degree, would go abegging.

**28.** It also appears that the Courts below gave much credence to the assertion of the respondent to the effect that the appellant sought to coerce him to

convert to Christianity and that such conduct amounted to cruelty. In this regard, it may be noted that the material on record does not indicate any clear or credible evidence substantiating such allegations, which seem to arise in the backdrop of competing claims made by the parties during the course of intense matrimonial discord. The only circumstance that emerges with some degree of consistency is that the respondent had accompanied the appellant to the Velankanni Church in Tamil Nadu, which, by itself, would not constitute coercion or cruelty. This aspect may also be viewed in the context of the fact that the marriage between the parties was a love marriage, solemnised in accordance with the customs and rites of both Hindu and Christian faiths, and was subsequently registered under the Special Marriage Act.

**29.** Having observed the approach of the respondent during the course of hearings and the thrust of his submissions seeking prosecution of the appellant, we are convinced that he has an attitude of domineering and control, which must have been the probable cause for the appellant taking the steps for gaining independence and pursuing her career

goals. The steps so taken by the appellant Ms. Ann were absolutely justified in view of the prevailing facts and circumstances.

**30.** Furthermore, the learned Family Court also attributed the irretrievable breakdown of the marriage to the so-called acts of cruelty and desertion on the part of the appellant. In view of the findings recorded *supra*, the said observations are absolutely baseless and unsustainable.

**31.** The judgment of the learned Family Court has been affirmed by the High Court *vide* judgment dated 12<sup>th</sup> August, 2024. Suffice it to say that having found the observations made by the learned Family Court regarding cruelty and desertion attributed to the appellant to be unjustified and untenable in the eyes of law, we are convinced that the same deserved to be expunged and scored off the record.

**32.** As the learned counsel for the appellant has, on instructions, stated that the appellant is no longer hopeful of a patch-up or resumption of matrimony with the respondent, and as the respondent has reportedly remarried, we are not inclined to disturb the decree of divorce passed by the learned Family Court and affirmed by the High Court. The same is

accordingly upheld, with the observations regarding cruelty and desertion being expressly expunged and set aside. The decree shall be deemed to have been passed on the ground of irretrievable breakdown of marriage.

**33.** The appeal is thus partly allowed.

**34.** Pending application(s), if any, shall stand disposed of.

**SLP(Civil) No. 28451 of 2024**

**35.** We have heard the petitioner, who appeared in-person, in support of his special leave petition assailing the rejection of his application filed under Section 195 of CrPC read with Section 340 CrPC, seeking prosecution of the respondent for perjury.

**36.** Having given our thoughtful consideration to the submissions of Shri Saurabh Iqbal Bahadur Dutt, the petitioner appearing in-person and after going through the impugned orders and the other material placed on record, we are of the firm opinion that the allegations made by the petitioner seeking prosecution of his ex-wife, the respondent herein, appear to be instigated by personal vendetta and spiteful approach. The same also seems to be fuelled by anger and pent-up frustration owing to multiple

cases and complaints filed by the respondent against him and his family members.

**37.** In view of the order passed by us in Civil Appeal arising out of SLP (Civil) No.25076 of 2024, and upon thoughtful consideration of the submissions advanced by the petitioner appearing in-person, as also upon perusal of the impugned orders and the material placed on record, we are of the firm opinion that the allegations made by him do not disclose the necessary ingredients of the offence of perjury or giving false evidence so as to direct prosecution of the respondent. The grievances sought to be projected appear to stem from a hyper-technical dissection of the material on record, in the backdrop of multiple disputes between the parties arising from escalated matrimonial acrimony. Concurrent findings have been recorded by the Courts below in rejecting the application and the appeal of the petitioner and thus, we do not find any justifiable reason to entertain the prayer made in this petition seeking prosecution of the respondent, by taking recourse to the procedure provided under Section 195 CrPC read with Section 340 CrPC.

**38.** The special leave petition lacks merit and is dismissed as such.

**39.** Pending application(s), if any, shall stand disposed of.

.....**J.**  
**(VIKRAM NATH)**

.....**J.**  
**(SANDEEP MEHTA)**

**NEW DELHI;**  
**MAY 12, 2026.**