

Court No. - 39

Case :- FIRST APPEAL No. - 71 of 2012

Appellant :- Smt. Abhilasha Shrotri

Respondent :- Rajendra Prasad Shrotri

Counsel for Appellant :- S.N. Pandey, Havaladar Verma, K.K. Tiwari

Counsel for Respondent :- S.K. Chaturvedi, S.P. Sharma

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Donadi Ramesh, J.

1. List revised. None is present for the respondent, in either call.
2. Heard Sri K.K. Tiwari, learned counsel for the appellant.
3. The present appeal has been filed under Section 19 of the Family Courts Act, 1984 arising from the judgment and order dated 22.03.2004 passed by the Judge, Family Court, Jhansi in Original Suit No.134 of 2001 (Rajendra Prasad Shrotri Vs. Abhilash Shrotri). By that order, learned court below has dissolved the marriage between the parties under Section 13 of the Hindu Marriage Act, 1955.
4. Marriage between the parties was solemnized on 10.03.1989. Thirty five years have passed since then. A child was born to the parties in 1991. He would be about 33 years of age today. Parties first separated after few years of marriage. Upon a settlement first reached on 21.03.1999 they cohabited for some time. Again, they separated on 11.11.1999. Yet another settlement was reached between them and they cohabited for some more time from 21.03.2001. However, their relationships fell apart again. They have remained separated since then.
5. Bad relationship between the parties is evidenced in two other / earlier proceedings; one for dissolution of marriage being Original Suit No.2 of 1990 instituted by the respondent. It was dismissed as withdrawn on 17.11.1995 (perhaps upon settlement reached between parties at that time). Later the respondent instituted another proceeding for restitution of

conjugal rights being Original Suit No.386 of 1999. With respect to that proceedings, learned court below has further recorded, the same came to be dismissed as withdrawn occasioned by the stand taken by the present appellant in parallel proceedings instituted under Section 18 of the Hindu Adoptions and Maintenance Act, 1956. There, the appellant expressed wilful desire to not cohabit with the respondent.

6. At the same time, allegations and counter allegations are the only sentiments that consistently survived in the relationship between the parties. The respondent alleged, from very beginning - the appellant had offered cruel behaviour towards the respondent and his family members. Occasioned by that, his mother committed suicide by consuming poisonous substance. Reason for that suicide apart, the parties had last separated in 2001. Twenty three years have passed since then. There is no room for their matrimonial relationship being revived at this belated stage in the context of bad relationship suffered by them over a long period of time.

7. Seen in that light, the allegations of cruelty exist. The appellant was described to have abandoned her matrimonial home for no good reason. She is also alleged to have resisted all efforts made by the respondent and his family members to revive the matrimonial relationship between the parties. In that context, oral evidence was led by the respondent (PW-1), his sister Smt. Sudha Pandey (PW-2) and his cousin brother Rajiv Vaid (PW-3). Though the appellant set up a plea of demand of dowry but it was proven before learned court below that the marriage performed was a simple marriage not involving any demand of dowry. The allegation of domestic violence though set up by the appellant was also not proven - in absence of any medical report or police complaint etc.

8. Thus, insofar as cruelty was alleged by the respondent, this much was proven that the appellant had voluntarily parted company without any justifiable reason proven by her. Cruelty is not defined by the statute.

9. However, in **N.G. Dastane (DR) Vs. S. Dastane, (1975) 2 SCC 326**, the Supreme Court observed:

“30...

The inquiry therefore has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent. It is not necessary, as under the English law, that the cruelty must be of such a character as to cause "danger" to life, limb or health or as to give rise to a reasonable apprehension of such a danger. Clearly, danger to life, limb or health or a reasonable apprehension of it is a higher requirement than a reasonable apprehension that it is harmful or injurious for one spouse to live with the other.

32. *One other matter which needs to be clarified is that though under Section 10 (1) (b), the apprehension of the petitioner that it will be harmful or injurious to live with the other party has to be reasonable, it is wrong, except in the context of such apprehension, to import the concept of a reasonable man as known to the law of negligence for judging of matrimonial relations. Spouses are undoubtedly supposed and expected to conduct their joint venture as best as they might but it is no function of a court inquiring into a charge of cruelty to philosophise on the modalities of married life. Some one may want to keep late hours to finish the day's work and some one may want to get up early for a morning round of golf. The Court cannot apply to the habits or hobbies of these the test whether a reasonable man situated similarly will behave in a similar fashion.*

"The question whether the misconduct complained of constitutes cruelty and the like for divorce purposes is determined primarily by its effect upon the particular person complaining of the acts. The question is not whether the conduct would be cruel to a reasonable person or a person of average or normal sensibilities, but whether it would have that effect upon the aggrieved spouse. That which may be cruel to one person may be laughed off by another, and what may not be cruel to an individual under one set of circumstances may be extreme cruelty under another set of circumstances (American Jurisprudence).

*The Court has to deal, not with an ideal husband and ideal wife (assuming any such exist) but with the particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court for, even if they may not be able to drown their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures. As said by Lord Reid in his speech in *Gollins v. Gollins*,*

"In matrimonial cases we are not concerned with the reasonable man, as we are in cases of negligence. We are dealing with this man and this woman and the fewer a priori assumptions we make

about them the better. In cruelty cases one can hardly ever even start with a presumption that the parties are reasonable people, because it is hard to imagine any cruelty case ever arising if both the spouses think and behave as reasonable people."

50. *These defences to the charge of cruelty must accordingly be rejected. However, learned Counsel for the respondent is right in stressing the warning given by Denning L.J., in Kaslejsky v. Kaslefsky that :*

"If the door of cruelty were opened too wide, we should soon find ourselves granting divorce for incompatibility of temperament. This is an easy path to tread especially in undefended cases. The temptation must be resisted lest we slip into a state of affairs where the institution of marriage itself is imperilled."

55. *Condonation means forgiveness of the matrimonial offence and the restoration of offending spouse to the same position as he or she occupied before the offence was committed. To constitute condonation there must be, therefore, two things : forgiveness and restoration. The Law and Practice of Divorce and Matrimonial Causes by D. Tolstoy Sixth Ed., p. 75. The evidence of condonation in this case is, in our opinion, as strong and satisfactory as the evidence of cruelty. But that evidence does not consist in the mere fact that the spouses continued to share a common home during or for some time after the spell of cruelty. Cruelty, generally, does not consist of a single, isolated act but consists in most cases of a series of acts spread over a period of time. Law does not require that at the first appearance of accrual act, the other spouse must leave the matrimonial home lest the continued co-habitation be construed as condonation. Such a construction will hinder reconciliation and thereby frustrate the benign purpose of marriage laws."*

Then in **Shobha Rani VS. Madhukar Reddy, (1988) 1 SCC 105**, the Supreme Court observed:

*"5. It will be necessary to bear in mind that there has been a marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as **Lord Denning said in Sheldon v. Sheldon***

"the categories of cruelty are not closed". Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour; capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty.

9. A new dimension has been given to the concept of cruelty. Explanation to Section 498-A provides that any wilful conduct which is of such a nature as is likely to drive a woman to commit suicide would constitute cruelty. Such wilful conduct which is likely to cause grave injury or danger to life, limb or health (whether mental or physical of the woman) would also amount to cruelty. Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security would also constitute cruelty."

Again, in **Pawan Kumar Vs. State of Haryana, (1998) 3 SCC 309**, the Supreme Court observed:

18. In our considered opinion, cruelty or harassment need not be physical. Even mental torture in a given case would be a case of cruelty and harassment within the meaning of Sections 304-B and 498-A IPC. Explanation (a) to Section 498-A itself refers to both mental and physical cruelty. In view of Explanation (a) the argument is, before it constitutes to be a cruelty there has to be wilful conduct. Again wilful conduct means, conduct wilfully done; this may be inferred by direct or indirect evidence which could be construed to be such. We find, in the present case, on account of not satisfying the demand of the aforesaid goods, right from the next day, she was repeatedly taunted, maltreated and mentally tortured by being called ugly etc. A girl dreams of great days ahead with hope and aspiration when entering into a marriage, and if from the very next day the husband starts taunting her for not bringing dowry and calling her ugly, there cannot be greater mental torture, harassment or cruelty for any bride. There was a quarrel a day before her death. This by itself, in our considered opinion, would constitute to be a wilful act to be a cruelty both within the meaning of Section 498-A and Section 304-B IPC.

Next, in **Samar Ghosh V. Jaya Ghosh (2007) 4 SCC 511**, the Supreme Court observed:

"16. The learned Additional District Judge came to the finding that the appellant has succeeded in proving the case of mental cruelty against the respondent, therefore, the decree was granted by the order dated 19.12.1996 and the marriage between the parties was dissolved. The respondent, aggrieved by the said judgment of the learned Additional District Judge, filed an appeal before the High Court. The

Division Bench of the High Court vide judgment dated 20.5.2003 reversed the judgment of the Additional District Judge on the ground that the appellant has not been able to prove the allegation of mental cruelty. The findings of the High Court, in brief, are recapitulated as under:

I. The High Court arrived at the finding that it was certainly within the right of the respondent-wife having such a high status in life to decide when she would like to have a child after marriage.

II. The High Court also held that the appellant has failed to disclose in the pleadings when the respondent took the final decision of not having a child.

III. The High Court held that the appellant also failed to give the approximate date when the respondent conveyed this decision to the appellant.

IV. The High Court held that the appellant started living with the respondent, therefore, that amounted to condonation of the acts of cruelty.

V. The High Court disbelieved the appellant on the issue of respondent's refusing to cohabit with him, because he failed to give the date, month or the year when the respondent conveyed this decision to him.

VI. The High Court held that the appellant's and the respondent's sleeping in separate rooms did not lead to the conclusion that they did not cohabit.

VII. The High Court also observed that it was quite proper for the respondent with such high status and having one daughter by her previous husband, not to sleep in the same bed with the appellant.

VIII. The High Court observed that refusal to cook in such a context when the parties belonged to high strata of society and the wife also has to go to office, cannot amount to mental cruelty.

IX. The High Court's findings that during illness of the husband, wife's not meeting the husband to know about his health did not amount to mental cruelty.

Later, in **Parveen Mehta Vs. Inderjit Mehta, (2002) 5 SCC 706**, the Supreme Court observed:

"21. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty,

mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other."

In Savitri Pandey Vs. Prem Chandra Pandey, (2002) 2 SCC 73,
the Supreme Court observed:

"6. Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other."

As to the fact allegations that may constitute cruelty, in
Vijaykumar Ramchandra Bhate Vs. Neela Vijaykumar Bhate, (2003)
6 SCC 334, the Supreme Court further observed:

"7. The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1)(i-a) of the Act. The position of law in this regard has come to be well settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra-marital relationship is a grave assault on the character, honour,

reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law has also come to be firmly laid down by this Court. On going through the relevant portions of such allegations, we find that no exception could be taken to the findings recorded by the Family Court as well as the High Court. We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible."

Also, in **Vinita Saxena Vs. Pankaj Pandey, (2006) 3 SCC 778**, the Supreme Court observed:

"37. As to what constitutes the required mental cruelty for the purposes of the said provision, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct but really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home.

38. If the taunts, complaints and reproaches are of ordinary nature only, the court perhaps need consider the further question as to whether their continuance or persistence over a period of time render, what normally would, otherwise, not be so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonably conclude that the maintenance of matrimonial home is not possible any longer."

Another analysis of the concept of cruelty was made by the Supreme Court in **A. Jayachandra Vs. Aneel Kaur, (2005) 2 SCC 22**. There, the Supreme Court observed:

"10. The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital/ties of the particular society to which the parties belong, their social values, status, environment in

which they live. Cruelty/as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

11. The expression "cruelty" has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

12. To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct, taking into

consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

13. The court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

14. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and

hypersensitive approach would be counterproductive to the institution of marriage. The courts do not have to deal with ideal husbands and ideal wives. It has to deal with a particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court.”

Next, in **Naveen Kohli Vs. Neelu Kohli, (2006) 4 SCC 558**, the Supreme Court observed:

“51. The word "cruelty" has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case. There may be instances of cruelty by unintentional but inexcusable conduct of any party. The cruel treatment may also result from the cultural conflict between the parties. Mental cruelty can be caused by a party when the other spouse levels an allegation that the petitioner is a mental patient, or that he requires expert psychological treatment to restore his mental health, that he is suffering from paranoid disorder and mental hallucinations, and to crown it all, to allege that he and all the members of his family are a bunch of lunatics. The allegation that members of the petitioner's family are lunatics and that a streak of insanity runs through his entire family is also an act of mental cruelty.”

Also, the Supreme Court considered the occurrence of irretrievable break down of a Hindu marriage and its impact on the legal relationship between the parties. There, it was observed:

"66. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. Because of the change of circumstances and for covering a large number of cases where the marriages are virtually dead and unless this concept is pressed into service, the divorce cannot be granted. Ultimately, it is for the legislature whether to include irretrievable breakdown of marriage as a ground of divorce or not but in our considered opinion the legislature must consider irretrievable breakdown of marriage as a ground for grant of divorce under the Hindu Marriage Act, 1955.

"74. We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

75. *Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.*

76. *Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied forever to a marriage that in fact has ceased to exist.*

77. *Some jurists have also expressed their apprehension for introduction of irretrievable breakdown of marriage as a ground for grant of the decree of divorce. In their opinion, such an amendment in the Act would put human ingenuity at a premium and throw wide open the doors to litigation, and will create more problems than are sought to be solved.*

78. *The other majority view, which is shared by most jurists, according to the Law Commission Report, is that human life has a short span and situations causing misery cannot be allowed to continue indefinitely. A halt has to be called at some stage. Law cannot turn a blind eye to such situations, nor can it decline to give adequate response to the necessities arising therefrom."*

The concept of cruelty was re-examined in **Samar Ghosh Vs. Jaya Ghosh, (2007) 4 SCC 511**. The Supreme Court observed:

"39. Shorter Oxford Dictionary defines "cruelty" as "the quality of being cruel; disposition of inflicting suffering; delight in or indifference to another's pain; mercilessness; hard-heartedness".

40. *The term "mental cruelty" has been defined in Black's Law Dictionary as under:*

"Mental cruelty. As a ground for divorce, one spouse's course of conduct (not involving actual violence) that creates such anguish that it endangers the life/ physical health, or mental health of the other spouse."

41. *The concept of cruelty has been summarised in Halsbury's Laws of England" as under:*

"The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. In cases where no violence is averred, it is undesirable to consider judicial pronouncements with a view to creating certain categories of acts or conduct as having or lacking the nature or quality which renders them capable or incapable in all circumstances of amounting to cruelty; for it is the effect of the conduct rather than its nature which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The court should bear in mind the physical and mental condition of the parties as well as

their social status, and should consider the impact of the personality and conduct of one spouse on the mind of the other, weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complainant's capacity for endurance and the extent to which that capacity is known to the other spouse. Malevolent intention is not essential to cruelty but it is an important element where it exists."

Later, in **Vishwanath Agrawal Vs. Sarla Vishwanath Agrawal, (2012) 7 SCC 288**, the same issue was thus summarized:

"22. The expression "cruelty" has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social/status."

Recently, in **Jaydeep Majumdar Vs. Bharti Jaiswal Majumdar, (2021) 3 SCC 742**, the Supreme Court further observed:

"10. For considering dissolution of marriage at the instance of a spouse who allege mental cruelty, the result of such mental cruelty must be such that it is not possible to continue with the matrimonial relationship. In other words, the wronged party cannot be expected to condone such conduct and continue to live with his/her spouse. The degree of tolerance will vary from one couple to another and the Court will have to bear in mind the background, the level of education and also the status of the parties, in order to determine whether the cruelty alleged is sufficient to justify dissolution of marriage, at the instance of the wronged party.

13. Proceeding with the above understanding, the question which requires to be answered here is whether the conduct of the respondent would fall within the realm of mental cruelty. Here the allegations are levelled by a highly educated spouse and they do have the propensity to irreparably damage the character and reputation of the appellant. When the reputation of the spouse is sullied amongst his colleagues, his superiors and the society at large, it would be difficult to expect condonation of such conduct by the affected party.

15. Therefore, we are of the considered opinion that the High Court was in error in describing the broken relationship as normal wear and tear of middle class married life."

More recently, in **Roopa Soni Vs. Kamalnarayan Soni, (2023) SCC Online SC 1127**, the Supreme Court observed:

“5. The word 'cruelty' under Section 13(1)(ia) of the Act of 1955 has got no fixed meaning, and therefore, gives a very wide discretion to the Court to apply it liberally and contextually. What is cruelty in one case may not be the same for another. As stated, it has to be applied from person to person while taking note of the attending circumstances.

7. We would like to emphasize that an element of subjectivity has to be applied albeit, what constitutes cruelty is objective. Therefore, what is cruelty for a woman in a given case may not be cruelty for a man, and a relatively more elastic and broad approach is required when we examine a case in which a wife seeks divorce. Section 13(1) of the Act of 1955 sets contours and rigours for grant of divorce at the instance of both the parties. Historically, the law of divorce was predominantly built on a conservative canvas based on the fault theory. Preservation of marital sanctity from a societal perspective was considered a prevailing factor. With the adoption of a libertarian attitude, the grounds for separation or dissolution of marriage have been construed with latitudinarianism.”

10. Thus, subjective and inherently varied, individual human behaviour in the context of matrimonial relationship may be construed as cruelty to ones spouse, depending on facts of each case and its proven effect on the other spouse. The complete denial of company to ones spouse, without any justifiable reason, may itself amount to cruelty. It is not cohabitation on physical intimacy that may dictate the definition of cruelty. We are aware that that test if imported may be regressive and in any case outdated. At the same time, any person who enters into matrimonial relationship, does undertake a social and personal obligation to enjoy and share his / her company with their chosen spouse. A spouse who out of choice completely deprives the other of his / her company, for no rhyme or reason may be seen to have committed cruelty when that conduct (continuous and unabated over years) is seen through the eyes of other spouse. A Hindu marriage is a sacrament and not just a social contract where one partner abandons the other without reason or just cause or existing or valid circumstance necessitating that conduct, the sacrament loses its soul and spirit, though it may continue to hold its external form and body. Thus to a third party the form may be visible and they may continue to visualize the marriage as exist at the same time to the spouse the sacrament may remain dead. That death of the spirit and soul of a

Hindu marriage may constitute cruelty to the spouse who may be thus left alone devoid of not only physical company completely deprived of company of their spouse, at all planes of human existence.

11. In the present facts, over a long period of time, the appellant has offered consistent conduct of depriving the respondent of her company. She specifically stated in the collateral proceedings that she did not have any intent to revive her matrimonial relationship with the respondent. Thus, though desertion was not pleaded as a ground seeking divorce, it also cannot be said that the appellant had any desire to cohabit with the respondent. The case is otherwise. The appellant never wished to revive her matrimonial relationship with the respondent and she deprived her marriage and her spouse any opportunity to share company. That conduct is seen to have been committed and retained over 23 years, without any reason or circumstances leading to it.

12. In view of the above, decree of divorce granted by learned court below does not warrant any interference by this Court in the facts of this case, cited above.

13. However, as to grant of permanent alimony, we find that learned Court below has not made any consideration. In face of marriage between parties being admitted, there is no exceptional circumstance proven by the respondent to deprive the appellant of minimal amount for the sustenance of life and liberty of the appellant with minimal dignity while keeping in mind, the status of the appellant remained as a homemaker with no independent source of income. Accordingly, we peg the amount of permanent alimony at Rs.5,00,000/-. Here the respondent neither appeared nor raised any objection to award of permanent alimony.

14. Marriage between the parties shall remain dissolved in terms of the impugned decree granted by the learned court below. Yet the appellant was entitled to receive Rs.5,00,000/- from the respondent towards

permanent alimony. That amount we award. It may be paid within a period of three months from today subject to the appellant serving a copy of this judgment on the respondent by Registered Post A.D. If the decretal amount is not paid within time contemplated by this Court, the same will attract 8% interest from the date of expiry of three months or from the date of knowledge of this judgment, till the date of actual payment.

15. Accordingly, the present appeal is **partly allowed**.

Order Date :- 6.8.2024

rkg

(Donadi Ramesh, J.)

(S.D. Singh, J.)