

Neutral Citation No. - 2024:AHC:137694-DB

Court No. - 39

Case :- FIRST APPEAL No. - 480 of 2010

Appellant :- Basant Kumar Dwivedi

Respondent :- Smt. Kanchan Dwivedi

Counsel for Appellant :- Samiran Chatterjee, S. Chatterjee

Counsel for Respondent :- Kumar Sambhav

with

Case :- FIRST APPEAL No. - 447 of 2010

Appellant :- Basant Kumar Dwivedi

Respondent :- Smt. Kanchan Dwivedi

Counsel for Appellant :- Samiran Chatterjee, S. Chatterjee

Counsel for Respondent :- Kumar Shabhav

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Donadi Ramesh, J.

1. This is an old appeal. On the last date, none had appeared to oppose the appeal. Accordingly, we directed the appeal to be listed peremptorily, today. Sri S. Chatterjee, learned counsel for the appellant has placed on record notice sent to the counsel for the respondent informing him about the date fixed.

2. List has been revised. None has appeared for the respondent in either call. Accordingly, the appeals have been proceeded.

3. First Appeal No. 447 of 2010 has been filed under Section 28 of the Hindu Marriage Act, 1955 arising from judgment and order dated 23.7.2010 passed by Additional District Judge, Court No. 1, Ballia, in O.S. No. 57 of 2003 (Smt. Kanchan Dwivedi Vs. Basant Kumar

Dwivedi), whereby the learned Court below has decreed the suit proceeding and granted decree for restitution of conjugal rights, in favour of the respondent. By separate order dated 23.7.2010, passed by District Judge, Court No. 1, Ballia in O.S. 286 of 2002, the learned Court below has dismissed the divorce suit instituted by the appellant.

4. We have first heard learned counsel for the appellant in First Appeal No. 447 of 2010 arising from decree for restitution of conjugal rights.

5. Relying on the record, learned counsel for the appellant states, it cannot be disputed that the parties were married on 29.4.1992. While the appellant belongs to Haridwar (now in the State of Uttarakhand), the respondent belongs to Ballia, in the State of Uttar Pradesh. The appellant is an Engineer by profession. At the time of their marriage, the appellant was residing at Delhi upon his re-employment at Central Public Works Department, New Delhi. On the other hand, the respondent though educated, was not gainfully employed at the time of their marriage. However, she cohabited with the appellant barely for two years. Even during that period, the parties suffered acrimonious relationship. The appellant attributes cruel conduct to the respondent, inasmuch as she is described to have used foul language towards the appellant and his family members and to have willfully deserted the appellant on many occasions, without prior notice or on false pretext etc. In any case, the respondent permanently deserted the appellant on 8.11.1995, when she moved to her parents' place at Ballia. She has never cohabited with the appellant since then. 29 years have passed. There are no children born to the parties. Soon after the respondent deserted the appellant, she gained government employment as a Primary Teacher in District Ballia. She has been working in that capacity since then.

6. As to the grounds to oppose the decree of restitution of conjugal rights granted by the learned Court below, learned counsel for the appellant would submit, besides the desertion and cruel behaviour offered by the

respondent as has been referred to above, all efforts made by the appellant in the year 1996-97, to revive the matrimonial relationship between the parties, failed. In such circumstances, the appellant filed divorce suit proceeding bearing Petition No. 138 of 1999 in the Court of Civil Judge, Senior Division at Haridwar. At the instance of the respondent, upon order passed by the Supreme Court, those proceedings were transferred to Ballia, whereby they came to be numbered as Case No. 286 of 2002.

7. After the institution of the divorce case proceeding and almost 7 years after the marriage between the parties, the respondent first lodged a criminal case bearing Case No. 340 of 1999, under Sections 498A and 406 IPC and Section 3/4 of D.P. Act against the appellant on 6.9.1999, under Section 498A IPC, making malicious and completely false allegations of demand of dowry as also of cruelty. Those allegations are described to be completely false on the strength of oral testimony of the brother of the respondent, Arvind Kumar Pandey. Referring to the statement of the brother of the respondent, namely, Arvind Kumar Pandey, it has been strenuously urged that the said witness completely disproved the allegations of demand of dowry. He categorically stated that no demand of dowry had been made in his presence, either by the present appellant or his father. He further stated that the house of the appellant was well-furnished and that the father of the appellant was employed with Bharat Heavy Electrical Limited.

8. In such facts, it is submitted that the learned Court below has completely misread the evidence. Both grounds for divorce were made out. First, the appellant was entitled for dissolution of marriage on the ground of unexplained and voluntary desertion by the respondent. For absolutely no rhyme or reason or conduct attributable to the appellant, she refused to cohabit with the appellant in the year 1995 itself. She did not institute any proceeding for restitution of conjugal rights till after the

divorce case proceeding was instituted by the appellant. Not only the respondent had voluntarily deserted the appellant, but also she offered cruel behaviour by first ill-treating the appellant and his family members during her brief stay at her matrimonial home, and in any case, she offered extremely cruel behaviour by lodging a completely false First Information Report in the year 1997, making malicious allegation of demand of dowry against all family members of the appellant including his minor siblings. Those allegations are proven to be false on the strength of the evidence led by the respondent herself, inasmuch as her brother (Arvind Kumar Pandey) completely disproved the allegation of demand of dowry. Being a government servant, the appellant is described to have been put at grave risk upon such false allegations made by the respondent. While the respondent never wanted to cohabit with the appellant, only to dissuade the appellant from pressing any proceeding seeking desertion of her marriage, she lodged the first criminal prosecution.

9. As to cruelty, learned counsel for the appellant has relied on a decision of the Supreme Court in **A. Jayachandra Vs. Aneel Kaur, 2005 (1) AWC (SC)**. Relevant paragraphs of the said judgment, are as under:

“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 (See Sobh Rani v. Madhukar Reddi, AIR 1988 SC 121).

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 hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court. (See [Dastane v. Dastane](#), AIR 1975 SC 1534).

15. On reading of judgments of the trial Court and the High Court one

thing is clear. While the trial Court analysed the evidence in great detail and found that the accepted stand of the respondent-wife regarding her behaviour and conduct caused mental agony and amounted to mental cruelty, the High Court did not discuss the evidence at all. On the specious ground that witnesses from the hospital were not examined and, therefore, adverse inference was to be drawn. There was not even any discussion as to how the evidence led was insufficient to establish mental cruelty. The High Court's view that if at all it was a fact that respondent was using abusive language and making allegations of adultery with nursing staff, some witnesses from the hospital were necessary to be examined is clearly indefensible. That alone should not have been made the determinative factor to discard evidence on record. On that ground alone the judgment of the High Court is vulnerable. The evidence as led and which is practically undisputed is that the respondent had asked the husband to do certain things which cannot be termed to be a simple advice for proper behaviour. For example in her evidence respondent clearly accepted that she had said five things to be followed by him. Surprisingly, most of them related to ladies working in the hospital. Though respondent tried to show that they were simple and harmless advice, yet on a bare reading thereof it is clear that there were clear manifestations of her suspecting the husband's fidelity, character and reputation. By way of illustration, it may be indicated that the first so called advice was not to ask certain female staff members to come and work on off-duty hours when nobody else was available in the hospital. Second was not to work behind the closed doors with certain members of the staff. Contrary to what she had stated about having full faith in her husband, the so called advices were nothing but casting doubt on the reputation, character and fidelity of her husband. Constant nagging on those aspects, certainly amounted to causing indelible mental agony and amounts to cruelty. The respondent was not an ordinary woman. She was a doctor in the hospital and knew the importance of the nature of duty and the necessity of members of the staff working even during off hours and the working conditions. There was another instance which was specifically dealt with by the trial Court. Same related to the alleged extra marital relationships of the appellant with another married lady who was wife of his friend. Though the respondent tried to explain that she was not responsible for making any such aspersions, the inevitable conclusion is to the contrary.

16. The matter can be looked at from another angle. If acts subsequent to the filing of the divorce petition can be looked into to infer condonation of the aberrations, acts subsequent to the filing of the petition can be taken note of to show a pattern in the behaviour and conduct. In the instant case, after filing of the divorce petition a suit for injunction was filed, and the respondent went to the extent of seeking detention of the respondent. She filed a petition for maintenance which was also dismissed. Several caveat petitions were lodged and as noted above, with wrong address. The respondent in her evidence clearly accepted that she intended to proceed with the execution proceedings, and prayer for arrest till the divorce case was finalized. When the respondent gives priority to her profession over her husband's freedom it points unerringly at disharmony, diffusion and disintegration of marital unity, from which the Court can deduce about irretrievable breaking of marriage.”

10. Having heard learned counsel for the appellant and having perused

the record, 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 one's spouse, without any justifiable reason, may itself amount to cruelty. It is not cohabitation or physical intimacy that may dictate the definition of cruelty. We are aware that that test if strictly applied 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 existing at the same time, to the spouses 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 not only of physical company but also completely deprived of company of their spouse, at all planes of human existence.

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

“31. ...

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 Collins 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 **Gananath Pattnaik Vs. State of Orissa, (2002) 2 SCC 619**, the Supreme Court observed:

“99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the

parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded 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. In such like situations, it may lead 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 Bhatte Vs. Neela Vijaykumar Bhatte, (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."

12. In view of such discussion, the submissions advanced by learned

counsel for the appellant are found to be borne out from the record. Thus, we find that the respondent had deserted company of the appellant of her own free will without any instigation offered by the appellant. She thus deserted the appellant and abandoned her matrimonial home in the year 1995. In any case, she has resided with her parents since then. She is gainfully employed at Ballia for last 27 years. Though, the decree for restitution of conjugal rights was passed in her favour, its operation was stayed by this Court.

13. In any case, besides the desertion and lack of cohabitation for long period of 29 years, we also accept the submission advanced by learned counsel for the appellant that the respondent had offered extremely cruel behaviour towards the appellant and his family members had led to reasonable apprehension in the mind of the appellant that it may be harmful or injurious to continue to live with the respondent. Besides the initial acrimonious relationship suffered by the parties, wherein harsh words may have been spoken and harsh conduct may have been offered by the respondent and she had deserted the appellant for no reason, lodging of false criminal prosecution in 1997 even before any other proceeding had been instituted by the appellant clearly amounted to the last straw on the camels' back. It broke the backbone of trust in the marriage between the parties. The appellant being a government servant was put to grave risk on such false allegations of demand of dowry and cruelty occasioned by her. The fact that those allegations were false, may not be doubted in face of the categorical statement of the respondent's brother namely, Arvind Kumar Pandey, who completely disproved the allegation of demand of dowry.

14. Once, it was known from before to the respondent that there was no demand of dowry in the marriage, the fact that she chose to make such allegations most recklessly against all family members of the appellant including the minor siblings of the appellant, leaves us with no doubt that

the conduct of the respondent was extremely cruel. For the purpose of Section 13 of the Act, as amended by the U.P. Amendment, legally, no spouse whether male or female may be expected to continue in a matrimonial relationship at the risk of malicious criminal prosecution. Criminal prosecution certainly leads to loss of dignity and reputation, besides other consequences that may arise, if a person is arrested or tried for the offence alleged.

15. The above aspects have completely escaped the attention of the learned Court below, while appreciating the evidence led by the parties. Its findings and conclusions are based on surmises and conjectures and not on credible material. Accordingly, the decree for restitution of conjugal rights cannot be sustained and it is set aside.

16. Also, in view of facts found proven, as noted above, the marriage between the parties is dissolved. Both the appeals are allowed. The judgment and order dated 23.7.2010 passed by Additional District Judge, Court No. 1, Ballia, in O.S. No. 57 of 2003 as well as the judgment and order dated 23.7.2010, passed by District Judge, Court No. 1, Ballia in O.S. 286 of 2002 are set aside.

17. On the issue of alimony, the respondent is described to be a government teacher, working in that capacity since 1997 and there are no children born to the parties. No maintenance is claimed and none is required to be provided in the present facts.

18. Both the appeals are allowed. No order as to costs.

Order Date :- 28.08.2024

Noman

(Donadi Ramesh, J.) (S.D. Singh, J.)