

Reserved on 27.09.2019

Delivered on 27.01.2020

Court No. - 34

Case :- FIRST APPEAL No. - 291 of 2010

Appellant :- Rajesh Kumar Singh

Respondent :- Smt. Suman Yadav

Counsel for Appellant :- Pramod Kumar Sharma, Ashutosh Singh, Manish Kumar Niranjana

Counsel for Respondent :- Pradeep Kumar, Praveen Kumar, Rama Goel Bansal

Hon'ble Sudhir Agarwal, J.

Hon'ble Rajeev Misra, J.

(Delivered by Hon'ble Rajeev Misra, J.)

1. This is plaintiff's appeal under section 19 of Family Court's Act 1984 (hereinafter referred to as "Act, 1984") arising out of judgement and decree dated 15.05.2010 passed by Civil Judge (Senior Division) Etawah in Case No. 199 of 2002 (Rajesh Kumar Singh Vs. Smt. Suman Yadav) under section 13 of Hindu Marriage Act, 1955 (hereinafter referred to as "Act, 1955") whereby, marriage petition filed by Plaintiff-Appellant for divorce on the ground of 'cruelty' has been dismissed. We may mention here that copy of decree dated 15.05.2010 has not been appended alongwith memo of appeal nor same has been filed subsequently. We therefore have examined original record to ascertain the same. Since decree dated 15.05.2010 passed by Court below is on record, we have proceeded with the matter.

2. We have heard Mr. Ashutosh Singh, learned counsel for Plaintiff-Appellant (hereinafter referred to as 'Appellant') and Mr. Praveen Kumar, learned counsel representing Defendant-Respondent (hereinafter referred to as 'Respondent').

3. According to plaintiff allegations, marriage of Appellant was solemnised with respondent on 09.02.1999 in accordance with Hindu Rites and Customs. After marriage Respondent came to her matrimonial home. However, according to Appellant, Respondent failed to discharge her spousal obligations and caused mental cruelty to Appellant. Allegation of cruelty alleged to have been committed by Respondent was sought to be substantiated by alleging that Respondent by her acts has not allowed Appellant to live in peace. She has started neglecting parents as well as brothers and sisters of Appellant. She also misbehaved with family members of Appellant. She also insulted Appellant in front of his friends. In spite of repeated request, there was no change in the attitude and conduct of Respondent. As such, Respondent caused mental cruelty upon Appellant. It was also alleged that conduct of Respondent was never smooth and cordial with Appellant. Repeatedly, Respondent uttered bad words against Appellant. Whenever, relatives of Appellant came to his house, Respondent insulted Appellant. She never prepared tea and snacks for guests nor she ever cooked food properly. Even on trivial issues, she would indulge in exchange of hot words. Such conduct has become a daily routine on the part of Respondent resulting in commission of mental cruelty upon Appellant and his family members. Family members of Appellant as well as Appellant attempted to pacify respondent, but no heed was paid by her. As long as Respondent stayed at her matrimonial home at Math, she repeatedly insulted Appellant and his family members. After a few days, Appellant took Respondent to IFFCO Township, Anwla, in the hope and belief that Respondent will behave properly. Contrary to aforesaid belief, conduct of Respondent toward Appellant became bad, day by day. It is also alleged that though Appellant and Respondent stayed together at IFFCO Township, Anwla, but no conjugal relation was established between parties as Respondent always refused to establish physical relation. According to Appellant, Respondent persistently stated that her marriage has wrongly been solemnized with Appellant contrary to

her wishes and therefore, she did not establish physical relation with Appellant. As such Appellant was under mental stress for long period. On account of aforesaid conduct, time and again altercations took place. Respondent consistently threatened to falsely implicate Appellant in criminal cases regarding dowry. Parents of Respondent were also informed about aforesaid conduct of Respondent. They came and also tried to console Respondent in the belief that everything will get alright with passage of time, and left Appellant's home. On 25.05.2000, Respondent assaulted Appellant, but to save himself Appellant locked himself in a room. Appellant is alleged to have come out of room at 11.00 PM but even thereafter Respondent assaulted Appellant. It is further alleged that Respondent used to say that only after death of Appellant, she can have a happy life. Information of aforesaid incident was given to Police on 100 Dial Number upon which Police arrived at the spot on 12.00 PM. Police held conciliation proceedings with Respondent and thereafter, left. Respondent is alleged to have informed her parents and brother about aforesaid incident on telephone upon which parents of Respondent and her brother abused parents of Appellant on telephone and further extended his threat on telephone. Thereafter, an information was given to Senior Superintendent of Police, Jhansi, vide application dated 30.05.2000 submitted by father of Respondent. Upon aforesaid information, parents and brother of Respondent came to the house of Appellant at B-4, IFFCO, Anwala and instead of requesting Respondent to improve her conduct, abused Appellant. They were bent upon to assault Appellant. They also extended threat to Appellant of falsely implicating him in dowry case. On account of such conduct mental cruelty was caused to Appellant. To save himself, Appellant gave an application dated 29.05.2000 to Security Officer at IFFCO, Anwala that his brother-in-law and other relatives of his wife are forceably staying in his house without his consent. Upon receipt of this application Security Officer, Anwala is alleged to have passed order directing other inmates of house of Appellant

to leave. It is on such direction that brother-in-law and other relatives of wife of Appellant left Appellant's house. However, according to Appellant while leaving they took away expensive jewellery and other items which were received by Appellant as gift and Rs. 10,000/- cash, kept in Almirah and Respondent also accompanied them. After few days, Respondent alone came to the Office of Appellant and started residing with Appellant. However, again she started harassing appellant and used to indulge in exchange of hot and bad words with Appellant. In spite of repeated attempts made by Appellant requesting Respondent to mend her ways, there was no improvement in her conduct towards Appellant. Ultimately, upon repeated query, Respondent is alleged to have disclosed her desire to get divorced from Appellant. On disclosure of aforesaid fact, Appellant had a dialogue with his brothers-in-law but they did not pay any heed. Consequently, Appellant filed Case No. 282 of 2001 in Family Court, Jhansi and returned to Anwla. Thereafter, Appellant came to know that a false F.I.R. has been lodged by father of Respondent against Appellant and his family members regarding demand of dowry. Thereafter, father-in-law of Appellant is alleged to have taken U-turn, on account of which, Appellant submitted a withdrawl application in Divorce Suit. Subsequently, Police submitted a final report in criminal case lodged by father-in-law of Appellant. After aforesaid incident, Appellant and Respondent stayed together under the protection of father of Respondent but just as father-in-law of Appellant left IFFCO Township, Anwla, conduct of Respondent towards Appellant was as before. On 17.01.2002 Appellant went to Bijnor to attend marriage of his friend's brother. In absence of Appellant, Respondent requested her brother to come to Anwla and thereafter, she got an F.I.R. registered as Case Crime No. 43 of 2002, under Sections 498A, 323 and 3/4 Dowry Prohibition Act against Appellant and his family. Appellant is alleged to have returned on 18.01.2002 at 1.00 PM and went to attend his duties, which was in night shift. Upon return from duty, an information was received on telephone by

Appellant that his father's health has become serious, therefore, he submitted a leave application on 19.01.2002 and proceeded for his home town at Math. On 19.01.2002 itself, while Appellant was on his way to Math, he was arrested and detained up to 21.01.2002. Thereafter, Appellant was sent to Jail on false allegations. Upon arrest of Appellant, he had to remain in Jail for two months. During this period, Respondent left her matrimonial home at Anwla and also took expensive goods alongwith her. On aforesaid factual premise, Appellant pleaded that cohabitation of Appellant and Respondent is now impossible and therefore, on account of false case lodged by Respondent against Appellant and his family members which was registered as Case Crime No. 43 of 2002 under 498A, 323, 504, 307 I.P.C. and Section 3/4 Dowry Prohibition Act, Appellant filed a suit for divorce on the ground of cruelty.

4. Upon issue of summons, Respondent appeared in suit filed by Appellant and filed her written statement denying plaint allegations. Respondent also raised additional pleas. According to Respondent, marriage of parties was solemnized on 09.02.1999. Appellant is resident of Kasba Math, District-Jhansi. However, as Appellant was working as Assistant Engineer at IFFCO Township, Anwla, he started residing at Bareilly after marriage. Respondent also pleaded that after marriage, she came to Bareilly to reside with Appellant. However, parents of Appellant, his sister and his brother-Rameshwar Yadav also resided. They committed cruelty upon Respondent for demand of dowry. Consequently, an F.I.R. was lodged, which was registered as Case Crime No. 294 of 2001 under Section 498A, 323, 506 I.P.C. and 3/4 Dowry Prohibition Act, against Appellant and his family members. Respondent had also sustained injuries on account of which, she was medically examined at Bareilly on 23.09.2001. Appellant and his family members had committed mental and physical cruelty upon Respondent for fulfillment of their demand of Rs. 5 Lakhs and Sumo Car as additional dowry. Information regarding aforesaid was given by Respondent to her parents vide inland letter. After aforesaid

F.I.R. had been lodged, Appellant entered into compromise with Respondent. Police of Police Station-Bhamaura therefore submitted a final report on account of compromise. After closure of above mentioned criminal case, Appellant again started committing cruelty upon Respondent and attempted to kill her. Accordingly, a F.I.R. being Case Crime No. 43 of 2002 under Sections 307, 498A I.P.C. and 3/4 Dowry Prohibition Act was lodged. Respondent is MBA, as such an educated lady belonging to an educated and well to do family. Appellant is highly educated as he is an engineer but on account of his lust for dowry he has become a cruel and violent man. Somehow or the other, Appellant wants to obtain a decree of divorce and thereafter, re-marry with a girl of his choice. Respondent being a pious and religious lady cannot even think of second marriage and wants to discharge her marital obligations towards Appellant. It was also pleaded that marriage is a sacred event in the life of a Hindu and bond between husband and wife is of permanent character which is not to be broken on whims. Appellant is a man of western thoughts who does not believe in Hindu ideals. Appellant and his family members were never satisfied with the marriage and always caused physical and mental cruelty upon Respondent to fulfill their lust for additional dowry. Respondent never misbehaved with Appellant or his family members nor ever refused to do house-hold work. She has performed all works with perfection, which are expected to be done by a daughter-in-law/ wife. Ever since Appellant has ousted Respondent from his home, he has never attempted to bring back Respondent to her marital home. On false and non-existent grounds, present suit for divorce has been filed. Respondent is always ready and willing to reside with Appellant and discharge her spousal obligations. On this defence, it was pleaded that suit for divorce filed by Appellant is liable to be dismissed.

5. Appellant filed a replication whereby he rejoined the allegations made in marriage petition.

6. On the pleadings of parties, Court below framed following issues for

determination:

- A. Whether Respondent has behaved with cruelty with Appellant as alleged in plaint.
- B. Whether Appellant has himself behaved with cruelty with Respondent as alleged in written statement.
- C. Relief.

7. After issues were framed, parties went to trial. Appellant in support of his case filed certified copy of judgement dated 25.02.2009 vide list of documents (Paper No. 125 Ga) and complete certified of order-sheet alongwith affidavit vide list of documents (Paper No. 14 Ga). Appellant further adduced himself as P.W.-1, Ashok Kumar as P.W.-2 and Shailendra Pati Tripathi as P.W.-3.

8. Respondent in order to establish her defence also filed documentary evidence. Vide list of documents (Paper No. 49 Ga), Respondent filed photocopy of F.I.R., photocopy of injury report, certified copy of summoning order and photocopy of letter. Vide list of documents (Paper No. 117 Ga), Respondent filed photographs of marriage, certified copy of F.I.R. pertaining to Case Crime No.261 of 2001, certified copy of order dated 16.05.2009, certified copy of charges framed, copy of letter sent by Respondent to her father alongwith envelop, certified copy of statement of Ramveer in earlier suit filed by Appellant before Family Court, Jhansi, certified copy of order dated 06.12.2001, certified copy of application dated 27.11.2001, certified copy of objections filed by Appellant in proceedings under Section 125 Cr.P.C., certified copy of order passed in proceedings under Section 125 Cr.P.C., photocopy of affidavit filed by appellant in Case Crime No. 294 of 2002 and photocopy of agreement deed executed by Appellant. Respondent also adduced oral evidence to prove her defence. Accordingly, respondent adduced herself as D.W.-1 and Matadeen as D.W.-2.

9. In the light of pleadings of parties, oral and documentary evidence

adduced by parties, Court below proceeded to evaluate Issues 1 and 2 together. Upon consideration of pleadings, oral and documentary evidence adduced by parties, Court below came to conclusion that Appellant has failed to establish commission of cruelty by Respondent-wife upon him. While arriving at aforesaid conclusion, Court below further observed that Appellant has not adduced any reliable evidence. Further, in respect of allegations made by Appellant, which castigate the character of Respondent on account of theft etc. committed by her, Court below observed that no proceeding was initiated by Appellant against Respondent. Therefore, allegations regarding theft etc. leveled by Appellant against respondent are not liable to be believed.

10. On the aforesaid findings, Court below dismissed suit of Appellant vide judgement and decree dated 15.05.2010. Thus, feeling aggrieved by aforesaid judgement and decree, Appellant has now come before us by means of present First Appeal under Section 19 of Act 1984.

11. Mr. Ashutosh Singh, learned counsel for Appellant has challenged impugned judgement and decree passed by Court below with vehemence. He submits that Appellant had duly pleaded commission of cruelty upon him by Respondent-wife and established the same by producing documentary and oral evidence. It is thus urged that pleadings raised in the plaint were founded on correct facts and their truthfulness has been established by the oral evidence of P.W.-1, Appellant-Rakesh Kumar Singh and P.W.-2 Ashok Kumar as well as documentary evidence adduced by Appellant. As such, impugned judgement and decree passed by Court below being perverse cannot be sustained in law or fact. Hence same are liable to be set aside by this Court.

12. Mr. Praveen Kumar, learned counsel for Respondent-wife on the other hand has supported impugned judgement and decree on the basis of findings recorded therein as well as observations made by Court below in the impugned judgement. According to learned counsel for Respondent, from perusal of plaint of divorce suit filed by Appellant it is apparent that

only allegations of cruelty have been levelled against Respondent but no specific instances of cruelty have been given. Elaborating his arguments, he further contends that in order to succeed in a suit for divorce in terms of Section 13 (1) (i-a) of Act, 1955, Appellant (Plaintiff) must plead and prove specific instances of cruelty as a single instance of cruelty by itself is not sufficient enough to grant divorce. In the present case, Appellant miserably failed to plead and prove specific instances of cruelty committed by Respondent upon him. Allegations of cruelty made in the plaint even if considered cumulatively, do not make out a case of commission of physical or mental cruelty upon Appellant by Respondent. Further more allegations of 'cruelty' made in the plaint do not go to suggest that there has been continued ill-treatment, cessation of marital intercourse, studied neglect, indifference, which may lead to inference of 'cruelty'. To buttress his submission, he has referred to **Manish Tyagi Vs. Deepak Kumar, 2010 (4) SCC 339**.

13. On the varied submissions made by counsel for parties, issues which arise for consideration in this appeal may be summarized as follows:-

I. Whether Appellant has duly pleaded and proved commission of cruelty by respondent.

II. Whether finding recorded by Court below in respect of cruelty alleged by appellant can be said to be illegal or perverse.

14. Before proceeding to consider the issues involve in the present appeal, it is appropriate to reproduce Section 13 of Act, 1955 which provides grounds on which a decree of divorce can be prayed for:

“ 13 Divorce. --(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party--

[(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(i-b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

(ii) has ceased to be a Hindu by conversion to another religion; or

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

Explanation.--In this clause,--

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

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

*(iv) has, [***] been suffering from a virulent and incurable form of leprosy; or*

*(v) has, [***] been suffering from venereal disease in a communicable form; or*

(vi) has renounced the world by entering any religious order; or

*(vi) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive; [***]*

[Explanation. In this sub-section, the expression desertion means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its

grammatical variations and cognate expressions shall be construed accordingly.]

*(viii) [***]*

*(ix) [***]*

[(1-A) Either party to a marriage, whether solemnised before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground--

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of 22 [one year] or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of 22 [one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,---

(i) in the case of any marriage solemnised before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnisation of the marriage of the petitioner: Provided that in either case the other wife is alive at the time of the presentation of the petition; or

(ii) that the husband has, since the solemnisation of the marriage, been guilty of rape, sodomy or [bestiality; or]

[(iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) [or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898)], a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the

passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards; or [(iv) that her marriage (whether consummated or not) was solemnised before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.]

Explanation. --This clause applies whether the marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).]

STATE AMENDMENT

Uttar Pradesh.-- In its application to Hindus domiciled in Uttar Pradesh and also when either party to the marriage was not at the time of marriage a Hindu domiciled in Uttar Pradesh, in section 13--

(i) in sub-section (1), after clause (i) insert (and shall be deemed always to have been inserted) the following

“(1-a) has persistently or repeatedly treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party; or”, and

(ii) for clause (viii) (since repealed) substituted and deem always to have been so substituted for following.

“(viii) has not resumed cohabitation after the passing of a decree for judicial separation against that party and--

(a) a period of two years has elapsed since the passing of such decree, or

(b) the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of other party; or.”

15. Section 13 (i-a) of the Act of 1955 clearly provides that a decree of divorce can be granted in case after the solemnization of marriage, the petitioner has been treated with 'cruelty'.

16. The term 'cruelty' has not been defined in Act, 1955 or Act 1984 as such, same has been the subject matter of debate for long. Various decisions of Apex Court as well as our Court give an idea regarding the

meaning of term 'cruelty' and what are its constituents. A Division Bench of this Court in ***Smt. Sarita Devi Vs. Sri Ashok Kumar Singh reported in 2018 (3) AWC 2328*** has considered the question of cruelty in detail in paragraphs 16, 17, 18 and 19, which are as under :-

“16. In Samar Ghosh vs. Jaya Ghosh (2007) 4 SCC 511 Court considered the concept of cruelty and referring to 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'.

17. In Black's Law Dictionary, 8th Edition, 2004, term "mental cruelty" has been defined as under:

"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."

18. The concept of cruelty has been summarized in Halsbury's Laws of England, Vol.13, 4th Edition Para 1269, 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."

19. In 24 American Jurisprudence 2d, the term "mental cruelty" has been defined as under:

"Mental Cruelty as a course of unprovoked conduct toward one's spouse which causes embarrassment, humiliation, and anguish so as to render the spouse's life miserable and unendurable. The plaintiff must show a course of conduct on the part of the defendant which so endangers the physical or mental health of the plaintiff as to render continued cohabitation unsafe or improper, although the plaintiff need not establish actual instances of physical abuse. "

17. In **Vishwanath Sitram Agarwal Vs. San. Sarle Vishwanath Agarwal, 2012 (7) SCC 288**, Court considered various earlier decisions with regard to meaning of term 'cruelty'. Their Lordships observed as follows in paragraphs 22 to 32:-

"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.

23. In Sirajmohmedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan [(1981) 4 SCC 250 : 1981 SCC (Cri) 829] , a two-Judge Bench approved the concept of legal cruelty as expounded in Pancho v. Ram Prasad [AIR 1956 All 41] wherein

it was stated thus: (Pancho case [AIR 1956 All 41] , AIR p. 43, para 3)

“3. ... Conception of legal cruelty undergoes changes according to the changes and advancement of social concept and standards of living. With the advancement of our social conceptions, this feature has obtained legislative recognition that a second marriage is a sufficient ground for separate residence and separate maintenance. Moreover, to establish legal cruelty, it is not necessary that physical violence should be used.

Continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and an assertion on the part of the husband that the wife is unchaste are all factors which may undermine the health of a wife.”

It is apt to note here that the said observations were made while dealing with the Hindu Married Women's Right to Separate Residence and Maintenance Act (19 of 1946). This Court, after reproducing the passage, has observed that the learned Judge has put his finger on the correct aspect and object of mental cruelty.

24. In Shobha Rani v. Madhukar Reddi [(1988) 1 SCC 105 : 1988 SCC (Cri) 60] , while dealing with “cruelty” under Section 13(1)(i-a) of the Act, this Court observed that the said provision does not define “cruelty” and the same could not be defined. “Cruelty” may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem to determine it. It is a question of fact and degree. If it is mental, the problem presents difficulty. Thereafter, the Bench proceeded to state as follows: (SCC p. 108, para 4)

“4. ... First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on 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. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the 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.”

25. After so stating, this Court observed in Shobha Rani case[(1988) 1 SCC 105 : 1988 SCC (Cri) 60] about the marked change in life in modern times and the sea change in matrimonial duties and responsibilities. It has been observed that: (SCC p. 108, para 5)

“5. ... when a spouse makes a 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.”

26. Their Lordships in Shobha Rani case [(1988) 1 SCC 105 : 1988 SCC (Cri) 60] referred to the observations made in Sheldon v.Sheldon [1966 P 62 : (1966) 2 WLR 993 : (1966) 2 All ER 257 (CA)] wherein Lord Denning stated, “the categories of cruelty are not closed”. Thereafter, the Bench proceeded to state thus: (Shobha Rani case [(1988) 1 SCC 105 : 1988 SCC (Cri) 60] , SCC p. 109, paras 5-6)

“5. ... 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.

6. *These preliminary observations are intended to emphasise that the court in matrimonial cases is not concerned with ideals in family life. The court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord Reid observed in Gollinsv. Gollins [1964 AC 644 : (1963) 3 WLR 176 : (1963) 2 All ER 966 (HL)] : (All ER p. 972 G-H)*

7. *'... In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with this man or this woman.'*

8. *(emphasis in original)*

27. *In V. Bhagat v. D. Bhagat [(1994) 1 SCC 337] , a two-Judge Bench referred to the amendment that had taken place in Sections 10 and 13(1)(i-a) after the (Hindu) Marriage Laws (Amendment) Act, 1976 and proceeded to hold that the earlier requirement that such cruelty has caused a reasonable apprehension in the mind of a spouse that it would be harmful or injurious for him/her to live with the other one is no longer the requirement. Thereafter, this Court proceeded to deal with what constitutes mental cruelty as contemplated in Section 13(1)(i-a) and observed that mental cruelty in the said provision can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. To put it differently, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It was further*

observed, while arriving at such conclusion, that regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances. What is cruelty in one case may not amount to cruelty in another case and it has to be determined in each case keeping in view the facts and circumstances of that case. That apart, the accusations and allegations have to be scrutinised in the context in which they are made. Be it noted, in the said case, this Court quoted extensively from the allegations made in the written statement and the evidence brought on record and came to hold that the said allegations and counter-allegations were not in the realm of ordinary plea of defence and did amount to mental cruelty.

28. In Parveen Mehta v. Inderjit Mehta [(2002) 5 SCC 706 : AIR 2002 SC 2582] , it has been held that mental cruelty is a state of mind and feeling with one of the spouses due to behaviour or behavioural pattern by the other. Mental cruelty cannot be established by direct evidence and 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.” (Parveen Mehta case[(2002) 5 SCC 706 : AIR 2002 SC 2582] , SCC p. 716, para 21) The facts and circumstances are to be assessed emerging from the evidence on record and thereafter, a fair inference has to be drawn whether the petitioner in the divorce petition has been subjected to mental cruelty due to the conduct of the other.

29. In Vijaykumar Ramchandra Bhate v. Neela

Vijaykumar Bhate [(2003) 6 SCC 334 : AIR 2003 SC 2462], it has been opined that a conscious and deliberate statement levelled with pungency and that too placed on record, through the written statement, cannot be so lightly ignored or brushed aside.

30. *In A. Jayachandra v. Aneel Kaur [(2005) 2 SCC 22]*, it has been ruled that 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 and environment in which they live. If from the conduct of the spouse, it is established and/or an inference can legitimately be 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 the same would amount to cruelty. While dealing with the concept of mental cruelty, enquiry must begin as to the nature of cruel treatment and the impact of such treatment on the mind of the spouse. It has to be seen whether the conduct is such that no reasonable person would tolerate it.

31. *In Vinita Saxena v. Pankaj Pandit [(2006) 3 SCC 778]*, it has been ruled that as to what constitutes mental cruelty for the purposes of Section 13(1)(i-a) will not depend upon the numerical count of such incident or only on the continuous course of such conduct but one has to 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.

32. *In Samar Ghosh v. Jaya Ghosh [(2007) 4 SCC 511]*, this Court, after surveying the previous decisions and referring to the concept of cruelty, which includes mental cruelty, in English, American, Canadian and Australian cases, has observed that: (SCC pp. 545-46, paras 99-100)

“99. ... The 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 the 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....”

18. In **Ravi Kumar Vs. Julmi Devi 2010 (4) SCC 476**, following was observed in paragraphs 19 to 22:-

“19. It may be true that there is no definition of cruelty under the said Act. Actually such a definition is not possible. In matrimonial relationship, cruelty would obviously mean absence of mutual respect and understanding between the spouses which embitters the relationship and often leads to various outbursts of behaviour which can be termed as cruelty. Sometime cruelty in a matrimonial relationship may take the form of violence, sometime it may take a different form. At times, it may be just an attitude or an approach. Silence in some situations may amount to cruelty.

20. Therefore, cruelty in matrimonial behaviour defies any definition and its categories can never be closed. Whether the

husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire facts and circumstances of the given case and not by any predetermined rigid formula. Cruelty in matrimonial cases can be of infinite variety—it may be subtle or even brutal and may be by gestures and words. That possibly explains why Lord Denning in Sheldon v. Sheldon [(1966) 2 WLR 993 : (1966) 2 All ER 257 (CA)] held that categories of cruelty in matrimonial cases are never closed.

21. This Court is reminded of what was said by Lord Reid in Gollins v. Gollins [1964 AC 644 : (1963) 3 WLR 176 : (1963) 2 All ER 966 (HL)] about judging cruelty in matrimonial cases. The pertinent observations are: (AC p. 660)

“... 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.”

The aforesaid passage was quoted with approval by this Court in N.G. Dastane (Dr.) v. S. Dastane [(1975) 2 SCC 326].

22. About the changing perception of cruelty in matrimonial cases, this Court observed in Shobha Rani v. Madhukar Reddi [(1988) 1 SCC 105 : 1988 SCC (Cri) 60 : AIR 1988 SC 121] at AIR p. 123, para 5 of the report: (SCC p. 108, para 5)

“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.”

19. Reference in this regard may be had to the judgement in **K. Srinivas Rao Vs. D. A. Deepa, 2013 (5) SCC 226** wherein following has been observed in paragraphs 10 and 16:

“10. Under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, a marriage can be dissolved by a decree of divorce on a petition presented either by the husband or the wife on the ground that the other party has, after solemnisation of the marriage, treated the petitioner with cruelty. In a series of judgments this Court has repeatedly stated the meaning and outlined the scope of the term “cruelty”. Cruelty is evident where one spouse has so treated the other and manifested such feelings towards her or him as to cause in her or his mind reasonable apprehension that it will be harmful or injurious to live with the other spouse. Cruelty may be physical or mental.

16. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh [(2007) 4 SCC 511], we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.”

20. With regard to mental cruelty reference be made to the judgement

in **A. Jaya Chandra Vs. Aneel Kaur, 2005 (2) SCC 22**. The aforesaid judgement has also been considered by the Division Bench in **Smt. Sarita Devi** (supra) and following has been observed in paragraph-26 of the judgement.

“26. In A. Jayachandra v. Aneel Kaur, (2005) 2 SCC 22, Court observed that conduct of spouse, if established, an inference can legitimately be drawn that treatment of spouse is such that it causes an apprehension in the mind of other spouse, about his or her mental welfare then this conduct amounts to cruelty. Court observed that when a petition for divorce on the ground of cruelty is considered, Court must bear in mind that the problems before it are those of human beings and psychological changes in a spouse's conduct have to be borne in mind before disposing of petition for divorce. Before a conduct can be called cruelty, it must touch a certain pitch of severity. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty.”

21. In **K. Srinivas Rao Vs. D.A. Deepa (2013) 5 SCC 226**, while dealing with the instances of mental cruelty, Court opined that to the illustrations given in the case of **Samar Ghosh** (supra) certain other illustrations could be added. We think it seemly to reproduce the observations:

"Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse."

22. With the aid of the meaning of the term “physical cruelty” and “mental cruelty” this Court has now to examine, whether Appellant was able to establish the same before Court below and findings recorded by

Court below on aforesaid are illegal, perverse and erroneous or not.

23. It is an undisputed fact that marriage of appellant was solemnized with respondent on 09.02.1999 in accordance with Hindu Rites and Customs. It is also an undisputed fact that appellant is working as an Assistant Engineer at IFFCO Township, Anwla whereas respondent is also in Government job from 24.12.2005, as is evident from order dated 06.12.2007 passed by this Court in Criminal Revision No. 2329 of 2003 (Rajesh Kumar Singh Vs. Smt. Suman and another), Divorce petition was presented in the year 2002 i.e. after more than three years of marriage. While plaintiff has alleged commission of physical and mental cruelty by respondent upon him, which have necessitated proceedings for divorce, respondent on the other hand has pleaded her full faith in appellant, ready to discharge her spousal obligations but has been prevented from doing so on account of physical and mental harassment caused to her on account of additional demand of dowry by Appellant and his family members.

24. When plaint of divorce suit filed by plaintiff is examined in the above noted background, then it is apparent that plaintiff has only alleged allegations of 'cruelty' but has not pointed out specific instances of cruelty. It is also apparent that only vague and bald allegations have been made against appellant, which even if taken together, do not lead to a reasonable apprehension in the mind of appellant that it would be harmful or injurious to reside with respondent.

25. Court below upon appreciation of pleadings, oral and documentary evidence, has concluded that exchange of words between husband and wife is a common phenomena but that by itself is not sufficient to constitute 'cruelty'. It is for this reason that we have referred to the meaning of term 'cruelty' as defined in various texts and also the meaning assigned to the term by Courts. When we examine the allegations made in the plaint, meticulously described in paragraph 3 of this judgement, we find that the same neither disclose any instance of 'cruelty' nor the allegations so made if construed cumulatively can lead to the conclusion

that they have caused reasonable apprehension in the mind of appellant that it would be harmful or injurious to reside with respondent.

26. P.W.-1, Rajesh Kumar Singh is working as an Assistant Engineer at IFFCO Township, Anwla. He is not a family member of appellant as such he cannot have any personal knowledge about relationship between parties. P.W.-2, Ashok Kumar Yadav is brother of appellant. His testimony is vague as it is based upon hearsay evidence. What exactly is cause of difference between parties has not been deposed by him. His entire testimony is not worthy of credit. P.W.-3, Shailendra Pati Tripathi is working as a System Analyst and residing at IFFCO Township, Anwla. This witness is also not a family member of appellant. As such, he cannot have any personal knowledge of events which took place at matrimonial home of respondent. This witness has only tried to support appellant by stating on oath the facts which are borne out from record. Father and mother of appellant as well as his sister have not come forward to support appellant even when it was specifically alleged that respondent misbehaved with her in-laws. They were the best witnesses to prove the conduct of appellant as alleged in plaint but Appellant has chosen not to produce them.

27. To the contrary, D.W.-1 i.e. respondent and D.W.-2, Matadeen, father-in-law of appellant have fully supported written statement. We have carefully examined their statements. It is apparent from perusal of same that on account of non-fulfillment of additional demand of dowry by appellant and his family members, respondent was subjected to physical and mental cruelty. The stand taken by respondent that she is ready to discharge her marital obligations and live with the appellant is conclusive proof of fallacy of allegations levelled by appellant. It is for above reason that no cogent evidence could be adduced by appellant to prove the alleged theft committed by respondent.

28. Learned counsel for appellant is therefore not correct in submitting that allegations of cruelty made in plaint stood proved by oral and

documentary evidence adduced by plaintiff. To the contrary what is proved on record is the inhuman conduct of appellant towards respondent.

29. Consequently, we do not find any illegality or perversity in the findings recorded by Court below on the two issues relating to cruelty framed by it. Since the findings recorded by Court below are not liable to be disturbed, the conclusion drawn by Court below remains unaffected. We therefore answer both the points against appellant.

30. In view of discussions made above, present appeal fails and is liable to be dismissed. It is accordingly dismissed with costs, which we quantify as Rs.2 Lakhs. Appellant shall deposit the aforesaid cost with Court below within a period of one month from today by means of Account Payee Bank Draft drawn in favour of respondent (wife), which shall be remitted to her immediately, after deposit by appellant.

Order Date :- 27.01.2020
YK