Bench: V Sirpurkar, S S Nijjar

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5387 OF 2007

MANISHA TYAGI .....APPELLANT

VERSUS

DEEPAK KUMAR ...RESPONDENT

JUDGMENT

SURINDER SINGH NIJJAR, J.

1. In this appeal the wife has challenged the judgment of High Court of Punjab and Haryana in LPA No.1625/01 dated 25.8.2006 whereby the High Court set aside the judgment of the Trial Court and the Judgment of Ld. Single Judge and granted a decree of divorce to the husband.

2. Marriage between the parties was celebrated according to Hindu rites at New Delhi on 17.11.1991. For a short period after the marriage, the couple stayed at Meerut where the husband was posted as a Captain in the Indian Army. Mutual cohabitation of the parties seems to have come to an end on 30.12.1992. They have been living separately since 31.12.1992. They have a daughter who was born on 2.6.1993.

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3. On 24.11.1993 the husband filed a petition under Section 13 of the Hindu Marriage Act being Matrimonial Case No.644 of 1993 for dissolution of the marriage. Later on the petition was amended and filed in the Court of District Judge of Gurgaon on 28.11.1995 pursuant to the order issued by this Court in a transfer petition.

4. The husband has mentioned numerous instances of cruelty in

paragraph 7 of the divorce petition. He has described the wife as quarrelsome, rude and ill-mannered. He had gone to the extent of terming his wife to be schizophrenic, making his life a living hell. He goes on to narrate that all efforts at conciliation even by his parents did not yield any result. He then proceeds to state that his wife is misusing her position as a practising advocate. According to him she has been constantly threatening him as well as his family that since she and her two uncles are advocates they would make the lives of the husband and his family miserable. The husband then complains that the wife has been making baseless complaints to his superiors. This has affected his career prospects in the Army. He makes a special reference to a statutory complaint dated 10.12.1993 in which according to him the wife had made numerous false allegations about the behaviour of the husband and his family even prior to the marriage ceremony.

5. We may notice here the contents of the statutory complaint. She complained about the exorbitant demands made by the husband's family for dowry. She complained that within days of the marriage the husband

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started behaving in a strange manner; throwing household articles and clothes all around in the room and also mimicking the sound of different animals and sometimes barking like a dog. She had also claimed that she had never seen a human being behaving that way even if very heavily drunk, as he was most of the times she remained in his company. She has stated that the husband and in-laws had willfully and cruelly treated her and had spared no effort to cause her mental harm and inflicted grave injuries. She also complains that there is danger to her life, limb

and health. They had pressurised her to meet not only their unlawful demands of money but also for spurious reasons. She ends the complaint with the comment that she has a child to support. She requested that an enquiry be held into the conduct of the husband which is not only rude, indiscreet, disgraceful and unbecoming of an Army officer but he has committed the offences under the Penal Code.

6. The husband further complains that even during this short period of cohabitation the behaviour of the wife was erratic, inhuman and unbearable. In order to cause mental agony to the husband the wife would deliberately indulge in erratic sexual behaviour. She would intentionally interrupt the coitus. On many occasions she even refused to share the bed with him.

7. The husband then makes a grievance that the wife had made a complaint to the Women Cell, Nanakpura, New Delhi where notice was received by the husband for appearance on 28.1.1994. She had also

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registered FIR No.10 on 19.1.1994 with Police Station, Keshavpuram, Delhi under Section 406, 498-A, IPC. The police raided the flat of the parents of the husband at Noida on 22.1.1994 along with the wife. She even took away all her belongings including the Maruti car. The husband in fact goes on further to allege that she even took the ornaments belonging to the husband and his parents. It is further alleged that the husband and the parents had to approach the court for anticipatory bail. She then filed a petition for maintenance before the Family Court, Meerut. She also lodged an FIR on 18.8.1999 under Section 354/506/34. She made false allegations against his father,

advocate and the son of the advocate. With these allegations the husband had gone to court seeking divorce.

8. The Trial Court also took notice of the counter allegations made by the wife. She claimed that the husband and his family had started treating her with cruelty when the unwarranted demands for dowry were not met by her parents. She also claimed that the husband is deliberately disrupting the marriage as he wants to get married to someone else. She however admitted that the couple had separated on 31.12.1992. She complains about the deliberate neglect by the husband of his matrimonial as well as parental duties towards the new born daughter. She denied all the allegations made by the husband with regard to her erratic behaviour. She dwells on the illegal demands made by the in-laws for cash, jeweler and electronic items. She states that the

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marriage was celebrated under shadow of extortion. She was harassed by the in-laws and rudely informed that they were expecting a sum of more than 30-lakh rupees to be spent in the marriage as her father was working abroad. On the very first day when she went to the matrimonial home she was informed by the mother-in-law that her son was destined to marry twice as per the horoscope. She reiterates the allegations about the erratic behaviour of the husband. She states that in his show of temper he threw household things at her. She was constantly beaten on one pretext or the other. Denying the allegations with regard to sexual misbehaviour she stated that in fact the respondent tried to have sexual intercourse during menstruation period or after conception. She had asked him to desist from acting in such an unnatural manner but to no

effect. She further admitted having made the complaint but she denied

that these are made as a counter blast to the divorce petition filed by the

husband.

9. On the basis of the pleadings of the parties the Trial Court framed

the following issues:

"1. Whether respondent has been

exercising such cruelty towards the petitioner so as to entitle the petitioner to the dissolution of the marriage? OPP

2. Whether the petitioner has been ill-

treating the respondent and as such, cannot take benefit of his own cruel and tortuous acts, if so, to what effect? OPR

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3. Whether the petitioner is bad as

premature?

OPP

4. Whether the petition is malafide? OPR

5. Relief."

10. The Trial Court on evaluation of the entire evidence however held

as follows:

"Although the circumstances mentioned

above clearly reveal that it is a case of broken marriage, however, there is no ground given in Section 13 of the Hindu Marriage Act, where a decree of divorce can be founded on the proof of irretrievably broken marriage. In this regard, I may cite a recent judgment of our own Hon'ble High Court reported as Rupinder Kaur Vs. Gurjit Singh Sandhu (1997-3) P.L.R. 553. It is laid down in this decision that even if the marriage is assumed to have (illegible) for irretrievably, it is not ground to dissolve the marriage.

However, the situation reached between the

parties is of the doing of the petitioner and it is well cherished principle laid down in Section 11 of the Hindu Marriage Act that a party cannot be permitted to take benefit of his own wrongs.

For the discussion made above and the

conclusions reached thereon, I hold that the petitioner has been unsuccessful in proving the respondent to have treated him with cruelty of the nature as to entitle him to a decree of divorce. It is however, proved on the other side that the petitioner had harassed the respondent for getting his demand and the demands of his parents fulfilled. However, the respondent has prayed for no relief on that ground. Issue No.1 is, therefore, decided against the petitioner while Issue No.2 is decided in favour of the

respondent."

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11. Aggrieved by the aforesaid findings the respondent filed F.A.O.

No.16-M of 2000 in the Punjab and Haryana High Court. The Learned

Single Judge independently examines the entire evidence and the

material on the record. Upon evaluation of the entire evidence the

Learned Single Judge observed that both the parties are at fault.

According to the Learned Single Judge the wife had crossed "Lakshman

Rekha". Apart from what was stated by the Trial Court, the Learned

Single Judge notices that the wife had not only made allegations about

the unnatural demands of the husband for sexual intercourse when she

was pregnant but she had also made an allegation that he had wanted to

commit the act of sodomy with her which she resisted. The Learned

Single Judge concludes that the evidence led by the husband with regard

to cruelty of the wife is not such that he can be granted a decree of

divorce under Section 13 of the Hindu Marriage Act. At the same time,

adverting to the behaviour of wife the Learned Single Judge observed as

follows:

"I have considered the contentions of the parties with reference to the documents and first of all I must say here that respondent had

crossed "Lakshman Rekha". I do not deny that a woman has no rights after the lawful marriage. She expects love and affection, financial and physical security, equal respect and lots more but at the same time, the wife must remain

within the limits. She should not perform her acts in such a manner that it may bring

incalculable miseries for the husband and his family members She should not go to hat extent

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that it may be difficult for her to return from that point."

12. The final conclusion reached by the Learned Single Judge is as

follows:

"I have made an independent assessment of the oral evidence and am of the opinion that both the parties are at fault. The respondent exceeded the limits of decency when she went to the extent of lodging a false FIR and when she tried to humiliate the appellant in the eye of his superiors by writing a very damaging letter Ex. PW2/1 without knowing its consequences."

13. In view of the aforesaid conclusions the Learned Single Judge

granted the alternative relief to the husband by passing a decree for

judicial separation under Section 10 of the Hindu Marriage Act. This

decree was passed with the hope that the parties would ponder upon the

situation and may be able to re-unite for the welfare of the child. If, on

the other hand, the parties do not reconcile within the statutory period of

one year it will be open to either of them to seek a decree of divorce.

14. Aggrieved by the aforesaid judgment the wife went in appeal before

the Division Bench in LPA No.1625/01. The Division Bench noticed the

extensive pleadings as well as the evidence led by the parties. On a re-

evaluation of the evidence the Division Bench concluded that all efforts of

reconciliation between parties have failed. They have been living

separately since 31.12.1992. According to the Division Bench the

marriage has irretrievably broken down. The Division Bench sums up

the entire matrimonial scene of the parties in the following words:

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"The allegations and counter allegations had flown thick and proper in this case. To an extent these did receive support by the evidence led by the respective parties. The learned Single Judge chose a middle-path by holding that both the parties were at fault and accordingly granted decree of judicial separation instead of divorce. To what effect and what difference it has made to the lives of parties can not really be made out. The parties are living separately since

31.12.1992. Though not revealed from the

record but we can assume that efforts must

have been made for reconciliation between the parties at the trial and at the first appellate stage. Both the parties continue to differ and have refused to patch up. As noticed earlier, we also failed in our efforts to bring this

matrimonial dispute to some agreed solution. What is left of this marriage? Both the parties though educated but are still standing firm on their respective stands. They both seem to be totally unconcerned about their young child and have continued with their combatant attitude without any remorse. This marriage, if we may say, has irretrievably broken down. That of course cannot be a ground for granting divorce between this fighting couple. No wonder, the Hon'ble Supreme Court in a latest decision in Naveen Kohli vs. Neelu Kohli, 2006 (3) Scale 252 has made a recommendation to the executive to provide this as a legal ground for divorce. Till the law is amended, we will remain handicapped to act even in those cases where one finds that a marriage just cannot work and existence thereof is nothing but an agony for both the parties. We, as such, are required to decide if the

allegations of cruelty made by the respondent were proved or not."

15. While reappreciating evidence the Division Bench notices the

averments made by the wife in paragraphs 13 and 31 of the Statutory

Complaint dated 10.12.1993 wherein she had stated as follows:

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"13. On 2.12.1991, my husband started

behaving in a strange manner throwing the

household articles and clothes all around in the room and also mimicking the sound different animals and some times barking like a dog. I was not only stunned but also shocked because I had never seen a human being behaving that way even if very heavily drunk as he was most of the time I remained in his company. I was not allowed to touch any thing which belong to him. When I told my mother-in-law, she warned me to ensure that I obeyed all orders given to me, either my husband or in laws."

"31. My health started deteriorating. My mind was disturbed to the extreme. Now another form of torture, unnatural sex. He

would thrust on me at odd hours. I was no

longer a human being but a slave to his wild passions."

16. It is also observed that the wife has not denied the aforesaid

averments while giving her evidence. She had in fact further elaborated

the allegation of sodomy made by her in the complaint. The conclusion

recorded by the Division Bench is as follows:

"We have given our thoughtful consideration to the while issue. It cannot be disputed that the appellant had made the

averments in paras 13 and 31 of the complaints, which have been reproduced above. She has

also not denied the same, rather while giving her evidence, she had further elaborated the

allegations of sodomy made by her in the

complaint. Wife cannot deny that she had compared her husband to a barking dog that

she also made allegations against him for having behaved in a strange manner. She had also

referred to him as heavy drunkard. Even if we leave aside the other allegations as made by the husband, we think that describing husband as

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dog and mimicking as animals and making

allegations of sodomy would be enough to say that these amounted to cruelty on her part

towards her husband. It cannot be denied that the wife had lodged various complaints and

criminal proceedings against the respondent- husband. FIR under sections 498-A and 406

IPC was got registered by the wife. Respondent- husband, however, earned acquittal in this case. Another complaint filed before the Police Station Civil Lines, Meerut ended in dropping of the proceedings. Yet in another FIR got registered under Sections 417, 419 and 420 IPC, the

respondent-husband was discharged. The record also reveals that still another FIR was got registered under Sections 354 and 506 read with Section 34 IPC on 18.8.1999 against the father- in-law, an Advocate and son of an Advocate by the appellant-wife. We think that this conduct would exceed all bounds of moderation. A daughter-in-law making an allegation against her old and infirm father-in-law for molesting her would certainly be an intolerable behaviour, which can be termed nothing but an act of

immense cruelty for a son, who was none else than the husband of such complaint-wife. This FIR was quashed on 20.3.2002. Seeing the

cumulative effect of all these allegations, we would not have any hesitation to hold that the allegations of cruelty made by the respondent- husband stand established."

17. Since the allegation of cruelty made by the husband had been

accepted, the Division Bench further observed as follows:

"We would, accordingly, hold that the

finding of the learned Single Judge in grating partial relief and that of the trial Judge in declining the relief of divorce cannot be

sustained. We would, accordingly, set aside both the judgments and hold that the cruelty alleged by the respondent husband stands

proved. As a result, we will dismiss the appeal

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and modify the judgment of the learned Single Judge to hold that the decree of divorce prayed by the respondent-husband is granted."

The aforesaid judgment has been challenged by the wife in the

present appeal.

18. We have heard the counsel for the parties. Ms. Kamini Jaiswal,

appearing for the appellant, submitted that order passed by the High

Court could not have been passed in an appeal filed by the wife. The

husband had not filed any appeal. Both the courts below had given

concurrent findings that that the allegations of the husband about

cruelty of the wife have not been proved. These findings were based on a

thorough evaluation of the evidence by the Trial Court as well as the

learned Single Judge of the High Court. The Division Bench reversed the

findings without any recording any independent reasons. Learned

Counsel made a reference to the observations of the Trial Court wherein

it has been observed that averments made in paragraph 13 would not

amount to calling her husband a dog. The District Judge had observed

"to say that a person started barking like a dog and that that person is a

dog are two different things. In Para 13 of exh. PW2/1, the respondent

only speaks about unhuman behaviour of her husband and she cannot

be taken as addressing her husband as dog in this paragraph".

19. The Trial Court also observed that the allegations made in

paragraph 31 of the Statutory Complaint about unnatural sex cannot be

equated with sodomy. The Trial Court also came to the conclusion that

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it is a case of broken marriage. However, in the absence of a ground under Section 13 of the Hindu Marriage Act where a decree of divorce can be founded on the proof of irretrievable broken marriage, it would not be a ground to dissolve the marriage. It is also pointed out that these findings were not rejected by the Appellate Court. According to the learned counsel on this short ground the judgment of the Division Bench is liable to be set aside.

20. On the other hand, Mr. Rajender Kumar, appearing for the husband submitted that the High Court possibly could not have granted the decree on the basis of irretrievable break down of marriage. However, the High Court has granted the decree of divorce upon re-appreciation of the evidence and recording an independent finding that the conduct of the wife amounts to cruelty which would entitle the husband to a decree of divorce. According to the learned counsel substantial justice has been done between the parties and the judgment does not call for any interference. It has also been pointed out by the learned counsel that, a petition was filed for divorce on the basis of the decree of judicial separation which had been granted by the learned Single Judge. However proceedings in the aforesaid case have been kept in abeyance due to the pendency of the appeals in the High Court and this Court. Learned counsel submitted that there is absolutely no room for reconciliation between the parties. Therefore, the judgment of the High Court need not be reversed at this stage.

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21. We have considered the submissions made by the learned counsel.

The Trial Court as well as the Appellate Court have both concluded that

the behaviour of the husband as well as the wife falls short of the

standard required to establish mental cruelty in terms of Section 13(1)

(i-a).

22. At this stage we may notice the observations made by this Court in

the case of Naveen Kohli vs. Neelu Kohli (2006) 4 SCC 558. In this

case the Court examined the development and evolution of the concept of

mental cruelty in matrimonial causes. In paragraph 35 it is observed as

follows:

"35. The petition for divorce was filed primarily on the ground of cruelty. It may be pertinent to note that, prior to 1976 amendment in the Hindu Marriage Act, 1955 cruelly was not a ground for claiming divorce under the Hindu Marriage Act. It was only a ground for claiming judicial separation under Section 10 of the Act. By the 1976 amendment, cruelty was made a

ground for divorce and the words which have been omitted from Section 10 are "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". Therefore, it is not necessary for a party

claiming divorce to prove that the cruel

treatment is of such a nature as to cause an apprehension-reasonable apprehension - that it will be harmful or injurious for him or her to live with the other party."

23. The classic example of the definition of cruelty in the pre-1976 era

is given in the well known decision of this Court in the case of N.G.

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Dastane vs. S. Dastane (1975) 2 SCC 326, wherein it is observed as

follows:

"The enquiry has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner as reasonable apprehension that it would be harmful or

injurious for him to live with the respondent".

24. This is no longer the required standard. Now it would be sufficient

to show that the conduct of one of the spouses is so abnormal and below

the accepted norm that the other spouse could not reasonably be expected to put up with it. The conduct is no longer required to be so atrociously abominable which would cause a reasonable apprehension that it would be harmful or injurious to continue the cohabitation with the other spouse. Therefore to establish cruelty it is not necessary that physical violence should be used. However continued ill-treatment cessation of marital intercourse, studied neglect, indifference of one spouse to the other may lead to an inference of cruelty. However in this case even with aforesaid standard both the Trial Court and the Appellate Court had accepted that the conduct of the wife did not amount to cruelty of such a nature to enable the husband to obtain a decree of divorce.

25. We may notice here the observations made by this Court in the case of Shobha Rani vs. Madhukar Reddi (1988) 1 SCC 105 wherein the concept of cruelty has been stated as under:

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"The word "cruelty" has not been defined in the Hindu Marriage Act. It has been used in Section 13(1)(i-a) of the Act in the context of human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of fact and degree. It if it mental, the enquiry must begin as to the nature of the cruel treatment and then as to 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, 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. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act

complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot b e denied on the ground that there has been no deliberate or willful ill-treatment."

26. In the case of V. Bhagat vs. D. Bhagat (1994) 1 SCC 337, this

Court while examining the concept of mental cruelty observed as follows:

"16. Mental cruelty in Section 13(1)(i-a) 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. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live

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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 is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, 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 which it is neither possible nor desirable to set out

exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and

allegations, regard must also be had to the context in which they were made."

27. Taking into consideration the conduct of the parties over a period

of time, the Trial Court as well as the Appellate Court concluded that the

husband had failed to establish cruelty on the part of the wife which will

be sufficient to grant a decree of divorce.

28. The Appellate Court further came to the conclusion that since both

the parties made extremely serious allegations, it would be appropriate

as the parties were not compelled to live together. The Appellate Court

came to the conclusion that it would be more appropriate to give the

couple some time to ponder over the issue especially keeping in view the

welfare of their daughter. If in due course they manage to reconcile their

differences the decree of judicial separation would be of no consequence.

On the other hand, if the parties continued with their adamant attitudes

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it would be possible for either party to seek dissolution of the marriage

on the basis of the aforesaid decree of judicial separation.

29. As noticed earlier the husband did not challenge the aforesaid

decree of the Appellate Court, he was content to wait for one year and there after seeking decree of divorce. In fact upon the expiry of one year he has actually filed the necessary proceedings seeking decree of divorce in the Court of District Judge, Gurgaon on 9.5.2002. These proceedings are still pending.

30. On the other hand the wife had filed the Latest Patent Appeal challenging the grant of decree of judicial separation to the husband by the Appellate Court. We are of the opinion that the High Court erred in granting a decree of divorce to the husband. She had come in appeal before the Division Bench complaining that the Appellate Court had wrongly granted the decree of judicial separation even after concurring with the findings of the Trial Court that the husband had failed to establish cruelty by the wife. Therefore even if the appeal had been dismissed, the findings recorded by the Trial Court in her favour would have remained intact. The effect of the order passed by the Division Bench is as if an appeal of the husband against the decree of judicial separation has been allowed. Both the parties had failed to make out a case of divorce against each other. The husband had accepted these findings. Therefore he was quite content to wait for the statutory period to lapse before filing the petition for divorce, which he actually did on

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9.5.2002. On the basis of the proven facts the Trial Court was more inclined to believe the wife, whereas the learned Single Judge of the High court found both the parties to be at fault. Hence the middle path of judicial separation had been accepted. Therefore, it was not a case where it was necessary for the Division Bench to correct any glaring and

serious errors committed by the court below which had resulted in miscarriage of justice. In our opinion there was no compelling necessity, independently placed before the Division Bench to justify reversal, of the decree of judicial separation. In such circumstances it was wholly inappropriate for the Division of High Court to have granted a decree of divorce to the husband.

31. For the aforesaid reasons, we are unable to uphold the judgment and the decree of the Division Bench. Consequently, we allow the appeal. We set aside the Judgment and the Order passed by the Division Bench and restore the Order passed by the learned Single Judge in FAO No. 16-M of 2000.

32. There shall be no order as to costs.

.....J (V.S. SIRPURKAR)

.....J (SURINDER SINGH NIJJAR)

NEW DELHI,

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FEBRUARY 10, 2010.

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