

Bench: D Mohapatra, B Kumar.

CASE NO.:

Appeal (civil) 3930 of 2002

PETITIONER:

PARVEEN MEHTA

Vs.

RESPONDENT:

INDERJIT MEHTA

DATE OF JUDGMENT: 11/07/2002

BENCH:

D.P. MOHAPATRA, BRIJESH KUMAR.

JUDGMENT:

D.P.MOHAPATRA,J.

Leave granted.

What is the meaning and import of the

expression 'cruelty' as a matrimonial offence is the core question on the determination of which depends the result and the fate of this case.

The appellant is the wife of the respondent. They were married according to Hindu rites and customs on 6th December, 1985. The marriage was preceded by negotiation between the two families, ring exchange ceremony, etc. A meeting between the boy and the girl was also arranged at Yamuna Nagar in the State of Haryana. After marriage the spouses stayed together at Panipat where the respondent was posted as a Judicial Officer. They lived together till 28th April, 1986 when they parted company never to stay together again. It is the case of the respondent that right from the first day of the marriage he sensed something abnormal with his wife; he was unable to consummate the marriage as there was no cooperation from the side of the wife for sexual intercourse. Despite several attempts cohabitation was not possible for lack of cooperation on the part of the wife. It is the further case of the respondent that when he first met his wife when some members of the two families met he had noticed that she was looking very frail and weak. When he wanted to know the reason for such state of her health her father and other relations told him that she had been undergoing a strict diet control and had been making efforts to reduce her weight.

On questioning his wife immediately after the marriage the respondent could ascertain that she was suffering from some ailment and she was under the treatment of Vaid Amar Nath Sastry of Chandigarh. On 10th December, 1985 the respondent took his wife to see Mr.Sastry at Chandigarh who informed him that father of the girl was his close friend and he was already seized of the problems of her health. He gave some medicines to be taken by her. Thereafter they returned to Yamuna Nagar where parents of the respondent were living. Subsequently, the respondent took the appellant to Panipat where he was posted and they started living there.

and continued with the medicines. In February, 1986 the appellant agreed to be examined by Dr.B.M.Nagpal of Civil Hospital, Panipat. The doctor advised a thorough check up and diagnosis. However, this was not possible since the appellant did not cooperate and ultimately gave out because she was not interested in taking any medical treatment.

The respondent further alleged that the state of health of the appellant continued to deteriorate; she continued to lose weight; she suffered from asthmatic attacks; on account of her ailment her behavior became quarrelsome; and on trifling matters she threatened to leave the matrimonial home. It was further contended that during her stay at Panipat when Surinder Singh Rao and Virender Jain, friends of the respondent visited his place, the appellant refused to prepare tea and started misbehaving with him in presence of the outsiders thereby causing embarrassment to him. Ultimately on 28th April, 1986 her brother and brother's wife came to Panipat and took the appellant with them. It was the further case of the respondent that when the appellant was with her parents several attempts were made by him offering to give her the best possible medical treatment so that the condition of her health may improve and both of them could lead a happy married life. All such attempts failed. The offer of medical treatment was rejected and even nature of the ailment suffered by her was not disclosed to the respondent.

On one occasion when Shri S.K. Jain, a senior officer of the Judicial Service, then the Legal Remembrancer of Haryana and who later became a Judge of the High Court was discussing the matter with the parties with a view to bring about a settlement the appellant caught hold of the shirt collar of the respondent and created an ugly and embarrassing situation. Again on 30th July 1986 the appellant accompanied by a number of persons searched for the respondent in the Court premises at Kaithal and not finding him there forcibly entered his house and threatened him. A report about the incident was sent to the superior officer of the respondent. Alleging the aforesaid facts and circumstances the respondent filed the petition in August, 1996 seeking dissolution of the marriage on the grounds of cruelty and desertion.

The appellant refuted the allegations made in the petition. She denied that her husband had been misled regarding the state of her health before their marriage. She alleged that the marriage was duly consummated and the phera ceremony was performed; and that her husband had been expressing full love and affection towards her. She denied that she suffered from any serious ailment and had been treated by Vaid Amar Nath Sastri. It was her case that she had become pregnant from the wedlock but unfortunately there was miscarriage. It was the further case of the appellant that the respondent and his parents wanted to pressurise the appellant and her parents to agree for a divorce by mutual consent. On 21st June, 1987 when a meeting of relations of both sides took place at the house of her mother's sister Smt.Parakash Kapur at Yamuna Nagar the respondent stated that the appellant was too frail and weak; that she must be suffering from some disease and therefore, he was not prepared to take her back. Thereafter several attempts were made by her parents and other relations to persuade the respondent to take the appellant to his house but such attempts were of no avail on account of want of any response from the respondent and his parents.

On the pleadings of the parties, the Trial Court framed the following issues :

"1) Whether the respondent-wife has

deserted the petitioner, if so, its

effect? OPP

2) Whether the respondent-wife is

guilty of cruelty, if so, its effect?

OPP

3) Whether this petition is barred by

latches, in accordance with

Section 23(1a) and (d) of the Act?

OPP

4) Relief."

Both the parties led evidence, both oral and documentary, in support of their cases. The Trial Court on assessing the evidence on record, dismissed the petition for divorce filed by the respondent.

The respondent filed an appeal, FAO No.42-M/99 before the High Court assailing the judgment of the Trial Court. The appeal was allowed by the learned Single Judge by the judgment rendered on 1st June, 2000. The learned Single Judge granted the prayer of the respondent for dissolution of the marriage on the ground of cruelty and further held that as the marriage took place about 14 years ago and there was no child out of the wedlock it would be in the interest of justice that the parties should be separated from each other. The operative portion of the judgment is quoted hereunder :

"In view of the discussion as such the only conclusion which can be arrived

at is that despite the fact that the

respondent is a good lady but has

created the aforesaid situation because of her own act and conduct concerning

the non-disclosure of her state of

health and concealment by her above

acted as a mental and physical cruelty to the appellant which entitles him to a decree of divorce. Therefore, the

findings of the learned District Judge on issue Nos.1 to 3 are reversed.

For the foregoing reasons, the

appeal is allowed, marriage between

the parties stands dissolved and a

decree of divorce on the grounds of

desertion and cruelty is hereby granted in favour of the appellant (husband)

and against the respondent (wife). In the circumstances of the case, the

parties are left to bear their own costs. However, it would be appropriate to

ask the husband not to remarry till

30.9.2000. Hence ordered accordingly."

The wife, who is the appellant herein, filed an appeal before the Division Bench, Letters Patent Appeal No.1000 of 2000, assailing the judgment of the learned Single Judge. The Division Bench of the High Court by the judgment rendered on 8th August, 2000 dismissed the Letters Patent Appeal in limine. The Division Bench held: "Even otherwise, in the facts and circumstances of the case in hand, in our view, it cannot be said that the husband has tried to take advantage of any wrong on his part. Rather, he did make the best possible effort to explore the possibility of detecting the deficiency or disease, if any, and for treatment of poor health of his wife. But, all in vain. We find no merit in the Letters Patent Appeal. It is, therefore, dismissed in limine." The said judgment is under challenge in this appeal.

Shri Ujjagar Singh, learned senior counsel appearing for the appellant contended that in the context of facts and circumstances of the case the High Court has erred in granting the prayer for divorce by the respondent on the sole ground of cruelty. He further contended that even assuming that the spouses did not enjoy normal sexual relationship with each other on account of frail health of the appellant and there were heated exchanges between the parties followed by the appellant catching hold of shirt collar of the husband, that is not sufficient to establish a case of cruelty for the purpose of Section 13(1)(ia) of the Act. Shri Singh also contended that if the ground of cruelty fails then the further ground stated in favour of the decree of divorce that the marriage has irretrievably broken down will be of no avail to the respondent.

Shri Sudhir Chandra, learned senior counsel appearing for the respondent strenuously contended that in the facts and circumstances of the case the High Court rightly recorded the finding of cruelty by the appellant towards the respondent. Elucidating the point Shri Sudhir Chandra submitted that the respondent was kept in the dark about the poor state of health of the appellant at the time of the marriage negotiations despite the query made by him about the reason for her frail and weak health. After marriage when the respondent was prepared to provide the best possible medical treatment to improve her health neither the appellant nor her parents extended their cooperation in the matter. Further, the erratic and impulsive behavior of the wife caused serious embarrassment to the respondent before his friends and colleagues. The cumulative effect of all the aforesaid facts and circumstances of the case, according to Shri Sudhir Chandra, give rise to reasonable apprehension in the mind of the respondent that it is not safe to continue matrimonial relationship with the appellant. Thus a case of cruelty for the purpose of Section 13(1)(ia) was made out. It was the further contention of Shri Sudhir Chandra that the respondent remarried in December, 2000, two years after the judgment of the Single Judge and nearly four months after the judgment of the Division Bench was rendered. In the facts and circumstances of the case, urged Shri Sudhir Chandra, this is not a fit case for this Court to interfere with the judgment and decree passed by the High Court in exercise of its jurisdiction under Article 136 of the Constitution of India.

As noted earlier, the learned Single Judge granted the respondent's prayer for dissolution of the marriage on the ground of 'cruelty'. Therefore, the question arises whether in the facts and circumstances of the case a case for divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (for short 'the Act') has been made out. The answer to this question depends on determination of the question formulated earlier. In Section 13(1) it is laid down that :

"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

xxx xxx xxx

(ia) has, after the solemnization of  
the marriage, treated the petitioner  
with cruelty;"

Under the statutory provision cruelty includes both physical and mental cruelty. The legal conception of cruelty and the kind of degree of cruelty necessary to amount to a matrimonial offence has not been defined under the Act. Probably, the Legislature has advisedly refrained from making any attempt at giving a comprehensive definition of the expression that may cover all cases, realising the danger in making such attempt. The accepted legal meaning in England as also in India of this expression, which is rather difficult to define, had been 'conduct of such character as to have caused danger to life, limb or health (bodily or mental), or as to give rise to a reasonable apprehension of such danger' (Russel v. Russel [(1897) AC 395 and Mulla Hindu Law, 17th Edition, Volume II page 87]. The provision in clause (ia) of Section 13(1), which was introduced by the Marriage Laws (Amendment) Act 68 of 1976, simply states that 'treated the petitioner with cruelty'. The object, it would seem, was to give a definition exclusive or inclusive, which will amply meet every particular act or conduct and not fail in some circumstances. By the amendment the Legislature must, therefore, be understood to have left to the courts to determine on the facts and circumstances of each case whether the conduct amounts to cruelty. This is just as well since actions of men are so diverse and infinite that it is almost impossible to expect a general definition which could be exhaustive and not fail in some cases. It seems permissible, therefore, to enter a caveat against any judicial attempt in that direction (Mulla Hindu Law, 17th Edition, Volume II, page 87).

This Court in the case of Dastane vs. Dastane, AIR 1975 SC 1534, examined the matrimonial ground of cruelty as it was stated in the old Section 10(1)(b) and observed that any inquiry covered by that provision had 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 to live with the respondent. It was further observed that it was 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 though, of course, harm or injury to health, reputation, the working character or the like would be an important consideration in determining whether the conduct of the respondent amounts to cruelty or not. In essence what must be taken as fairly settled position is that though the clause does not in terms say so it is abundantly clear that the application of the rule must depend on the circumstances of each case; that 'cruelty' contemplated is conduct of such type that the petitioner cannot reasonably be expected to live with the respondent. The treatment accorded to the petitioner must be such as to cause an apprehension in the mind of the petitioner that cohabitation will be so harmful or injurious that she or he cannot reasonably be expected to live with the respondent having regard to the circumstances of each case, keeping always in view the character and condition of the parties, their status environments and social values, as also the customs and traditions governing them.

In the case of Savitri Pandey vs. Prem Chandra Pandey, (2002) 2 SCC 73, this Court construing the question of 'cruelty' as a ground of divorce under Section 13(1)(ia) of the Act made the following observations :

"Treating the petitioner with cruelty is a ground for divorce under Section

13(1)(i-a) of the Act. 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. In the instant case both the

trial court as well as the High Court

have found on facts that the wife had

failed to prove the allegations of cruelty attributed to the respondent.

Concurrent findings of fact arrived at by the courts cannot be disturbed by

this Court in exercise of powers under Article 136 of the Constitution of India. Otherwise also the averments made in

the petition and the evidence led in

support thereof clearly show that the

allegations, even if held to have been proved, would only show the sensitivity of the appellant with respect to the

conduct of the respondent which

cannot be termed more than ordinary

wear and tear of the family life."

This Court, construing the question of mental cruelty under Section 13(1)(ia) of the Act, in the case of G.V.N.Kameswara Rao vs. G.Jabilli, (2002) 2 SCC 296, observed :

"The court has to come to a conclusion whether the acts committed by the

counter-petitioner amount to cruelty,

and it is to be assessed having regard to the status of the parties in social life, their customs, traditions and other similar circumstances. Having regard

to the sanctity and importance of

marriages in a community life, the

court should consider whether the

conduct of the counter-petitioner is

such that it has become intolerable for the petitioner to suffer any longer and to live together is impossible, and then only the court can find that there is

cruelty on the part of the counter-

petitioner. This is to be judged not

from a solitary incident, but on an

overall consideration of all relevant

circumstances."

Quoting with approval the following passage from the judgment in V.Bhagat vs. D.Bhagat, (1994) 1 SCC 337, this Court observed therein:

"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 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".

Clause (ia) of sub-Section (1) of Section 13 of the Act is comprehensive enough to include cases of physical as also mental cruelty. It was formerly thought that actual physical harm or reasonable apprehension of it was the prime ingredient of this matrimonial offence. That doctrine is now repudiated and the modern view has been that mental cruelty can cause even more grievous injury and create in the mind of the injured spouse reasonable apprehension that it will be harmful or unsafe to live with the other party. The principle that cruelty may be inferred from the whole facts and matrimonial relations of the parties and interaction in their daily life disclosed by the evidence is of greater cogency in cases falling under the head of mental cruelty. Thus mental cruelty has to be established from the facts (Mulla Hindu Law, 17th Edition, Volume II, page 91).

In the case in hand the foundation of the case of 'cruelty' as a matrimonial offence is based on the allegations made by the husband that right from the day one after marriage the wife was not prepared to cooperate with him in having sexual intercourse on account of which the marriage could not be consummated. When the husband offered to have the wife treated medically she refused. As the condition of her health deteriorated she became irritating and unreasonable in her behaviour towards the husband. She misbehaved with his friends and relations. She even abused him, scolded him and caught hold of his shirt collar in presence of elderly persons like Shri S.K.Jain. This Court in the case of Dr.N.G.Dastane Vs. Mrs.S.Dastane (supra), observed : "Sex plays an important role in marital life and cannot be separated from other factors which lend to matrimony a sense of fruition and fulfillment".

Cruelty for the purpose of Section 13(1)(ia) is to be taken as a behavior 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 behavior or behavioral pattern by the other. Unlike the case of physical cruelty the 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 misbehavior 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.

Judged in the light of the principles discussed above what we find is that right from the beginning the matrimonial relationship between the parties was not normal; the spouses stayed together at the matrimonial home for a short period of about six months; the respondent had been trying to persuade the appellant and her parents to agree to go for proper medical treatment to improve her health so that the parties may lead a normal sexual life; all such attempts proved futile. The appellant even refused to subject herself to medical test as advised by the doctor. After 21st June, 1987 she stayed away from the matrimonial home and the respondent was deprived of her company. In such circumstances, the respondent who was enjoying normal health was likely to feel a sense of anguish and frustration in being deprived of normal cohabitation that every married person expects to enjoy and also social embarrassment due to the behavior of the appellant. Further, the conduct of the appellant in approaching the police complaining against her husband and his parents and in not accepting the advice of the superior judicial officer Mr.S.K.Jain and taking a false plea in the case that she had conceived but unfortunately there was miscarriage are bound to cause a sense of mental depression in the respondent. The cumulative effect of all these on the mind of the respondent, in our considered view, amounts to mental cruelty caused due to the stubborn attitude and inexplicably unreasonable conduct of the appellant.

The learned Single Judge in his judgment has discussed the evidence in detail and has based his findings on such discussions. In the Letters Patent Appeal the Division Bench on consideration of the facts and circumstances of the case agreed with the findings recorded by the learned Single Judge. In the context of the facts and circumstances on record we are of the view that the learned Single Judge rightly came to the conclusion that the prayer of the respondent for dissolution of the marriage on the ground of cruelty under Section 13(1)(ia) of the Act was acceptable. Therefore, the Division Bench committed no error in upholding the judgment of the learned Single Judge.

As noted earlier the parties were married on 6th December, 1985. They stayed together for a short period till 28th April 1986 when they parted company. Despite several attempts by relatives and well-wishers no conciliation between them was possible. The petition for the dissolution of the marriage was filed in the year 1996. In the meantime so many years have elapsed since the spouses parted company. In these circumstances it can be reasonably inferred that the marriage between the parties has broken down irretrievably without any fault on the part of the respondent. Further the respondent has re- married in the year 2000. On this ground also the decision of the High Court in favour of the respondent's prayer for dissolution of the marriage should not be disturbed. Accordingly this appeal fails and is dismissed. There will, however, be no order for costs.