

A.F.R.

Reserved on: 16.10.2019

Delivered on: 20.12.2019

Court No. - 34

Case :- FIRST APPEAL No. - 780 of 2017

Appellant :- Shri Vishnu Shankar Pandey

Respondent :- Smt. Maya Pandey

Counsel for Appellant :- Harish K. Yadav, Harish Kr. Yadav

Counsel for Respondent :- Brijesh Shukla, Arvind Kumar Tiwari

Hon'ble Sudhir Agarwal, J.

Hon'ble Rajeev Misra, J.

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

1. Challenge in this appeal under Section 19 of Family Courts Act, 1984 (hereinafter referred to as 'Act, 1984') is to the judgement dated 25.8.2014 and decree dated 17.9.2014, passed by Additional Principal Judge, Family Court/Additional District and Sessions Judge (Court No. 3), Allahabad, dismissing Matrimonial Petition No. 239 of 2009 (Sri Vishnu Shanker Pandey Vs. Smt. Maya Pandey) under section 13 of Hindu Marriage Act, 1955 (hereinafter referred to as 'Act, 1955') filed by plaintiff-appellant for dissolution of marriage of the parties.

2. Plaintiff-appellant Sri Vishnu Shanker Pandey (hereinafter referred to as 'appellant') filed Matrimonial Petition No. 239 of 2009 (Sri Vishnu Shanker Pandey Vs. Smt. Maya Pandey) for divorce on the grounds of cruelty and desertion. According to plaintiff's allegations, marriage of parties was solemnized 28-29 years prior to institution of above mentioned matrimonial petition. From wedlock of parties, three children namely, Sarita Pandey- Date of Birth 9.12.1984, Surya Prakash Pandey- Date of Birth 2.11.1987 and Ved Prakash Pandey- Date of Birth 5.11.1989, were born. Appellant retired from post of Honorary Lieutenant from Indian

Army and started residing at 6/5 Madhuwan Vihar Colony, Umarpur Niva, P.S. Dhoomanganj, District Allahabad. All three children have become major and are residing with appellant. Eldest daughter of appellant Km. Sarita Pandey is working in a private institute at Civil Lines Allahabad. Plaintiff alleged that defendant respondent Maya Pandey, wife of appellant (hereinafter referred to as 'respondent'), is also residing with him. However, since last three years, conduct of respondent has gone bad and she indulges in garrulous talking, which has disturbed peace of house. Aforesaid conduct of respondent amounts to commission of mental cruelty upon appellant. Contrary to her spousal obligations, respondent by her conduct and behaviour has totally dissolved peace and tranquillity of house. Whenever appellant tried to persuade respondent to give up her such conduct, she always behaved rudely and with arrogance and thereby, committing mental cruelty upon appellant. Consequently, it is impossible for appellant to live with respondent. For the last three years, respondent has miserably failed to discharge her spousal obligations even though plaintiff has all along been faithful, nor ever committed such act which may cause pain and agony to respondent. In spite of aforesaid, respondent has continuously by her false and frivolous allegations degraded prestige of appellant by alleging that appellant is not maintaining respondent and further commits physical atrocities upon her. Appellant alleged that on 10.11.2008, he again persuaded respondent to mend her ways but in vain. To the contrary, on the basis of false, fabricated and incorrect allegations, respondent started residing separately from plaintiff. In furtherance of aforesaid respondent filed an application under section 125 Cr.P.C. claiming maintenance. Though parties are living together in same house but they are not in conjugal relationship or in co-habitation. As such, in the same house parties are living separately. Cause of action was pleaded to be continuous since 10.11.2008. On the aforesaid factual foundation, appellant filed Matrimonial Petition No. 239 of 2009 (Sri Vishnu Shanker Pandey Vs. Smt. Maya Pandey) under section 13 of

Act, 1955 for dissolution of marriage.

3. Suit filed by appellant was contested by respondent. She filed written statement dated 14.9.2009, whereby not only plaint allegations were denied but additional pleas were also raised. Except for paragraphs 1 and 2 of plaint, remaining paragraphs were denied. In additional pleas respondent admitted that from wedlock of parties, three children namely, Km. Sarita Pandey, Surya Prakash Pandey and Ved Prakash Pandey were born. Appellant retired from Indian Army from the post of Honorary Lieutenant. All three children are still studying and preparing for their examinations. However, appellant does not bear their expenses, as such all expenses are borne by father of respondent. Eldest daughter Km. Sarita Pandey has still not completed her studies and she is continuing the same. However, she is working in a private institute at Civil Lines, Allahabad. Respondent never behaved with appellant in a manner which is unbecoming of a pious and faithful wife nor she ever displayed such conduct on basis of which, it could be alleged that respondent has caused physical/mental cruelty to appellant. To the Contrary, it is appellant who has committed cruelty upon her by continuously assaulting her physically. On account of aforesaid conduct, respondent disclosed the same to her father upon which he repeatedly requested appellant to give up his rude and immoral behaviour which is unbecoming of a caring husband and ideal father. However, irrespective of above, inhuman conduct of appellant continued unabated and on 20.12.2008, appellant in a drunken position, assaulted respondent, ousted her from house, forcing respondent to reside in a room outside her matrimonial home. No maintenance was paid by appellant on account of which it was impossible for respondent to reside with plaintiff. Respondent was always performing her spousal obligations but inspite of above, appellant committed cruelty upon her by his deed and conduct and further failed to maintain her. She never insulted appellant. It was on account of aforesaid action of appellant that respondent faced despair and destitution forcing her to initiate

proceedings under section 125 Cr.P.C. for grant of maintenance. From 20.12.2008, parties are living separately in the same house. Three children are residing with respondent and expenses for maintaining the respondent and her three children are being borne by father of respondent. It is on account of aforesaid that respondent is unable to discharge her spousal obligations. On the aforesaid defence, respondent prayed for dismissal of suit for divorce.

4. Appellant filed a rejoinder affidavit (Paper No. 16 Ga) to the written statement filed by respondent whereby, Appellant reiterated and reaffirmed allegations made in plaint.

5. On the above pleading of parties, Court below framed following issues for determination:

(I) Whether appellant was married to respondent in the year 1980.

(ii) Whether respondent is not having marital co-habitation with appellant since January, 2006.

(iii) Whether respondent is not discharging her marital obligations since February, 2006.

(iv) Whether respondent is committing physical and mental cruelty upon appellant since February, 2006 and without any reason is maintaining distance from appellant since February, 2006.

(v) Whether on 10.11.2008 inspite of persuasion made by appellant requesting respondent not to cause cruelty, respondent threatened appellant that she will not reside with him but live separately.

(vi) Whether appellant always committed physical cruelty upon respondent in a drunkard position and further committed mental cruelty upon her. On 20.12.2008, appellant physically assaulted respondent as such, respondent along with her three children is residing separately. No amount of maintenance is being paid by appellant to respondent as such, entire expenses are being borne by father of respondent, yet appellant

repeatedly, extends threat to respondent of killing her.

6. After aforesaid issues were framed, parties went to trial. Appellant in support of his case adduced himself as P.W.1. Further appellant also filed documentary evidence which is detailed in paragraph 6 of impugned judgement. Respondent adduced herself as D.W. 1 to establish her defence. Respondent also adduced documentary evidence as detailed in paragraph 6 of impugned judgement.

7. Court below on the basis of pleadings of parties, oral and documentary evidence adduced, as well as submissions urged on behalf of parties, examined the issues so framed. Court below accordingly re-framed the issues which arose for determination i.e:

(I) Whether respondent has deserted appellant without any valid reason.

(ii) Whether respondent has displayed cruel behaviour against appellant.

(iii) Whether appellant is entitled to any relief.

8. In respect of issue no.1, Court below concluded that since factum of marriage between parties is admitted, date of marriage, therefore, is irrelevant. Issue nos. 1, 2 and 3 as originally framed were considered together. Court below opined that three issues reframed subsequently are included in Original Issue No.3. Upon evaluation of pleadings on record, Court below held that plaintiff has instituted the suit on 23.3.2009. Cause of action for desertion pleaded in plaint is 10.11.2008, which was said to be continuous. As per mandate of Section 13 (i-b), a period of two years must have lapsed from date of desertion up to the date of filing of suit for pleading divorce on the ground of desertion. Aforesaid pre-condition is not satisfied in present case. It was thus held by Court below that appellant has failed to establish desertion on part of respondent. Court below further concluded that respondent is residing separately along with her three children. Conduct of appellant towards respondent is unbecoming of a good husband, as he repeatedly commits physical assault upon respondent in a drunken position and therefore, respondent started

residing separately from 20.12.2008. Appellant himself has forced respondent to live separately, as such, there is a valid reason for respondent in residing separately. Consequently, it cannot be said that respondent has deserted appellant. Issue Nos. 4, 5 and 6 were decided together by Court below. Upon evaluation of evidence of parties, as well as pleadings on record, Court below concluded that appellant has failed to establish commission of physical and mental cruelty by respondent upon appellant. Court below further concluded that since plaintiff has failed to prove the grounds of desertion and cruelty upon which plaintiff claimed decree of divorce, no relief prayed for by plaintiff can be granted. On the aforesaid findings, Court below dismissed suit of plaintiff vide judgement dated 25.8.2014 and decree dated 17.9.2014. Thus feeling aggrieved by aforesaid judgement and decree passed by Court below, plaintiff has now come to this Court by means of present first appeal.

9. We have heard Mr. Harish K. Yadav, learned counsel for appellant. Though cause list was revised, none appeared for respondent even though names of Brijesh Shukla and Arvind Kumar Tiwari, Advocates, were duly printed in the cause list as counsel for respondent. As such we proceeded with hearing of present first appeal by hearing learned counsel for appellant.

10. Mr. Harish K. Yadav, learned counsel for appellant, in challenge to impugned judgement and decree passed by Court below has submitted that the same are manifestly illegal and liable to be quashed by this Court. He further submits that findings recorded by court below on twin issues namely, cruelty and desertion are wholly illegal, perverse and erroneous. On the basis of material on record, commission of cruelty by respondent upon appellant and further her act of deserting appellant are duly proved. Consequently, judgement and decree passed by Court below are liable to be set aside and suit filed by appellant for divorce on grounds of cruelty and desertion is liable to be decreed by this Court.

11. Before proceeding to examine the submissions urged by learned

counsel for appellant, it would be appropriate to reproduce Section 13 of Act 1955, which provides for grounds of divorce:

“ 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) deleted

(ix) deleted

[(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"."

12. From perusal of above quoted Section 13 of Act, 1955, it is explicit that cruelty and desertion are grounds recognised in law for granting a decree of divorce. While cruelty as a ground of divorce is duly provided for in Section 13 (1) (i-a) of Act, 1955, desertion as a ground of divorce is duly provided for in Section 13 (1) (i-b) of Act, 1955. Under scheme of Act, 1955, grounds of divorce mentioned in Section 13 are independent

grounds. Fulfilment of one of the grounds mentioned in Section 13 of Act, 1955 by itself is sufficient to grant divorce. It may also be noted that cruelty and desertion are independent grounds of divorce and have to be proved independently by direct evidence. They are not inter-dependant. However, one important factor distinguishing the aforesaid grounds of divorce is that while there is no pre-requisite for pleading cruelty but in case a plea of desertion is pleaded then a period of two years from date of desertion must have elapsed prior to the date of institution of suit by plaintiff. Period subsequent to institution of suit cannot be taken into consideration for determining desertion on the part of respondent in a suit for divorce.

13. The term 'cruelty' has not been defined in the Act of 1956 and therefore, same has been subject matter of debate for long. Different Courts in India have tried to explain meaning of term 'cruelty' and also crystalize the actions which can constitute cruelty. In doing so varied aspects of human nature in the changing vicissitudes of time have been taken into consideration.

14. A Division Bench of this Court in *Smt. Sarita Devi Vs. Sri Ashok Kumar Singh reported in 2018 (3) AWC 2328* has considered the concept of 'cruelty' in detail by referring to the meaning assigned to the term in different dictionaries and text. Following has been observed in paragraphs 16, 17, 18 and 19:-

"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, "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. Plaintiff must show a course of conduct on the part of Defendant which so endangers the physical or mental health of Plaintiff as to render continued cohabitation unsafe or improper, although Plaintiff need not establish actual instances of physical abuse. "

15. In **Vishwanath Sitram Agarwal Vs. San. Sarle Vishwanath Agarwal, 2012 (7) SCC 288**, Supreme 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)*

9. 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....”

16. 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.”

17. Reference in this regard may be made 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.”

18. Court in **N.G. Dastane V. S. Dastane (1975) 2 SCC 326** considered the concept of 'mental cruelty' and observed as follows:

"The enquiry therefore has to be whether the conduct charges as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent. "

19. 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 a 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.”

20. 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 vs. Jaya Ghosh (2007) 4 SCC 511**, 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."

21. With the aid of meaning of the term “physical cruelty” and “mental cruelty” this Court has now to examine the issue involved in present appeal: Whether plaintiff-appellant was able to establish commission of 'cruelty' by Defendant-Respondent before Court below and findings to the contrary recorded by Court below are illegal, perverse and erroneous or not.

22. When plaint of divorce suit is examined to ascertain as to how allegations regarding commission of cruelty by respondent were pleased, this Court finds that same have been pleased in paragraphs 6 and 7 of plaint. The same are reproduced herein under for ready reference:

6. यह कि वादी की पत्नी प्रतिवादिनी वादी के मकान में ही रह रही है। और विगत तीन वर्षों से उसका व्यवहार काफी खराब हो गया है और वह प्रतिवादिनी वादी के साथ बेवजह बगैर सिर पैर की बातों को लेकर वादी के साथ लडती झगडती है और विगत तीन वर्षों से घर की शान्ति भंग कर दी है तथा अपने कूरता पूर्ण आचरण से वादी को मानसिक रूप से उत्पीडित करती रही है तथा साथ में पत्नी धर्म दायित्वों के बिपरीत अपने आचरण व व्यवहार द्वारा वादी की सुख शान्ति को समाप्त कर दिया है और जब कभी वादी उसे समझाने का प्रयास करता है तो प्रतिवादिनी अपने कूरता पूर्ण व्यवहार व आचरण से प्रतिक्षण वादी को उत्पीडित करती आ रही है। जिस कारण अब वादी प्रतिवादिनी के साथ एक साथ रहना सम्भव नहीं है।

7. यह कि वादी के मकान में ही प्रतिवादिनी रहती है और विगत तीन वर्षों से ज्यादा से पत्नी धर्म के दायित्वों का निर्वहन नहीं करती है फिर भी वादी अपने पतिधर्म के दायित्वों को निर्वहन करता आ रहा है और उसे किसी प्रकार की तकलीफ नहीं देता है इसके बावजूद प्रतिवादिनी वादी को हर तरह से असत्य कथनों द्वारा समाज में अपमानित करती आ रही है कि वादी उसका भरण पोषण नहीं करता है उसको मारता पीटता है और खाना पानी नहीं देता है।

That the wife of plaintiff herein called as defendant is staying in the house of plaintiff only and her behaviour has worsened since last three years as defendant picks up quarrel and fights with

plaintiff without any rhyme or reason thereby disrupting the peace and tranquillity of the house since last three years. She had been causing mental harassment to the plaintiff by her cruel behaviour and contrary to her duties as a wife, she has destroyed the peace and tranquility of plaintiff by her conduct and behaviour. Whenever plaintiff tries to reason with her, she causes harassment to the plaintiff by her cruel and traumatic behaviour due to which it has become impossible for plaintiff to cohabit with the defendant.

That the defendant resides in the house of plaintiff only and has failed to discharge obligations of a wife while on the other hand plaintiff continues to discharge duties of a husband and is not a source of any discomfort to her. Despite this, defendant continues to insult the plaintiff in society by cooking up by all kinds of false narratives like plaintiff refuses to provide maintenance to her, beats her and refuses to provide food as well as nourishment to her.

(English translation by Court)

23. When allegations made in paragraphs 6 and 7 of plaint are examined, it is apparent that they do not spell out specific instances of 'cruelty' but only allegations of 'cruelty'. We may point out that a single instance in isolation is not sufficient for dissolution of marriage on the ground of 'cruelty' as held by Apex Court in **Neelam Kumar Vs. Dayarani, 2010 (13) SCC 298**.

24. Law on the subject now stands crystallized. Plaintiff in order to succeed in a suit for divorce on the ground of commission of 'cruelty' by respondent must plead specific instances of 'cruelty' or make such allegations of 'cruelty' which if considered cumulatively, lead to a reasonable apprehension in the mind of other that it would be harmful or injurious to reside with other spouse. Therefore, what has to be examined by Court in the present case is "whether averments made in paragraphs 6 and 7 of plaint satisfy the aforesaid test".

25. Upon examination of averments made in paragraphs 6 and 7 of plaint, it cannot be said that allegations of 'cruelty' alleged by appellant when considered cumulatively lead to the inescapable conclusion that they cannot cause reasonable apprehension in mind of appellant that it would be harmful or injurious to reside with respondent.

26. From perusal of plaint of divorce suit filed by appellant it is apparent that divorce was instituted vide plaint dated 21.03.2009. Therefore, as per mandate of Section 13 (1) (i-b) of Act, 1955, appellant was required to plead that respondent has deserted plaintiff for a continuous period of not less than two years immediately preceding the presentation of the petition. What has been pleaded in paragraph 8 of the plaint is to the following effect :

8. यह कि जब वादी ने दिनांक 10-11-08 को प्रतिवादिनी को समझाया कि वह उसे मानसिक व सामाजिक रूप से अपने गलत आचरण व व्यवहार से अपमानित व उत्पीडित न करें। उसने वादी के विरुद्ध मिथ्या आरोप लगाते हुए धमकाया कि अब वह उसके साथ नहीं रहेगी और उससे भरण पोषण लेकर अलग रहेगी और अपना स्वतन्त्र जीवन व्यतीत करेगी और पतपश्चात उसने असत्य कथनों के आधार पर अर्न्तगत धारा 125 दं० प्र० संहिता के तहत तीनों बच्चों के फर्जी नाम व नाबालिग उम्र दर्शाकर इस न्यायालय में भरण पोषण दाखिल किया है।

That when plaintiff counselled her to not harass him mentally and stop insulting him in front of society by her wrong conduct and behaviour, she threatened him while levelling false and mythical charges that she shall no longer cohabit with him and shall reside separately and live an independent life after taking maintenance from him. Thereafter she filed an application under Section 125 Cr.P.C. before this Court for maintenance mentioning forged names of all three kids who have attained majority showing them as minors and on the basis of false statements.

(English Translation by Court)

27. Plain reading of paragraph 8 of plaint shows that appellant alleged that respondent has deserted appellant on 10.11.2008 from when Appellant has started residing separately from respondent. The suit has been instituted vide plaint dated 21.3.2009. Therefore, the pre-requisite for grant of divorce on ground of desertion i.e. expiry of two years from the date of desertion, has to be in existence on the date of institution of suit has not been established by appellant. In view of above, finding recorded by Court below that appellant has failed to establish desertion on part of respondent for a continuous period of two years prior to institution of suit cannot be said to be illegal, perverse or erroneous.

28. In view of discussions made herein above, it cannot be said that findings recorded by Court below that appellant has failed to establish

commission of 'cruelty' upon him by respondent and also 'desertion' are illegal, perverse or erroneous. As appellant has failed to prove 'cruelty' and desertion on the part of respondent on the basis of which he prayed for a decree of divorce, Court below has rightly dismissed the suit of appellant. Consequently, this appeal fails and is liable to be dismissed. It is accordingly dismissed. Costs made easy.

Order Date :- 20.12.2019

Arshad