CASE NO.:
Appeal (civil) 7763-7764 of 2004

PETITIONER:
A. Jayachandra

RESPONDENT:
Aneel Kaur

DATE OF JUDGMENT: 02/12/2004

BENCH:
RUMA PAL, ARIJIT PASAYAT & C.K.THAKKER

JUDGMENT:
J U D G M E N T

(Arising out of S.L.P (C) Nos. 8655-8656 of 2003)

ARIJIT PASAYAT, J.

Leave granted.

Parties to a marriage tying nuptial knot are supposed to bring about the union of souls. It creates a new relationship of love, affection, care and concern between the husband and wife. According to Hindu Vedic philosophy it is sanskar \026 a sacrament; one of the sixteen important sacraments essential to be taken during one's lifetime. There may be physical union as a result of marriage for procreation to perpetuate the lineal progeny for ensuring spiritual salvation and performance of religious rites, but what is essentially contemplated is union of two souls. Marriage is considered to be a junction of three important duties i.e. social, religious and spiritual.

This case presents a very unpleasant tale of two highly educated professionals (doctors by profession) fighting a bitter matrimonial battle.

Background facts sans unnecessary details are as follows:

The appellant (hereinafter referred to as the 'husband') and the respondent (hereinafter referred to as the 'wife') tied nuptial knot on 10.10.1978. They were blessed with two children. Both are majors by now. The marriage was what is commonly known as "love marriage". Appellant and the respondent were co-students in the medical college. They belong to different parts of the country; the appellant-husband is a Telugu Brahmin while the respondent-wife belongs to Sikh religion. They were both working in the hospital which was established by the appellant's father Dr. A. Ram Murthy. Allegedly finding the behaviour of the respondent-wife obnoxious, humiliating and amounting to mental cruelty, a notice was given by the appellant-husband on 5.3.1997 seeking divorce by mutual consent to avoid unnecessary complications. It was stated therein that they had not shared the bed and there was no physical contact between them for over two years. It was indicted in the notice that the respondent had treated appellant with cruelty and her conduct amounted to desertion for two years and was, therefore, neither safe, desirable nor advisable to continue marital relationship. A response was given by respondent on 21.3.1997 denying the allegations. It was suggested that there should be a free and heart to heart discussion to sort out the problems for a harmonious married life. The aforesaid task which admittedly took place did not bring any result and ultimately a petition under Section 13 of the Hindu Marriage Act, 1955 (in short the 'Act') was filed before Family Courts, Hyderabad. It was categorically stated therein that the behaviour and

conduct of the respondent was causing immense emotional stress, mental agony, and there being no sharing of the bed and cohabitation for more than two years, prayer was made to grant decree of divorce for dissolving the marriage between the parties. It was specifically stated that the respondent has ill-treated her husband, abused him in vulgar language in the home and at the hospital and at other places thereby causing mental agony, damage and loss personally and professionally and also in the social circle; allegations were made about his character. Caveats were filed at different places with a view to forestall legal action, and create an impression of innocence. Caveats were admittedly lodged at the wrong address of the appellant. Counter affidavit was filed by the respondent denying the allegations. It was stated that her bona fide acts in advising her husband to act properly and to be decent in his behaviour was misconstrued and was being projected as nagging and insulting behaviour. The petition for divorce was filed on unfounded allegations.

At this juncture it would be relevant to note that after the petition was filed by the appellant-husband, a suit for injunction bearing OA No. 89/97 in respect of right to practise in the hospital was filed by the respondent. The said suit was not objected to by the appellant and the suit was decreed on 20.11.1997. Subsequently, an execution petition was filed praying for attachment of hospital equipments belonging to the appellant, and also for civil detention of the appellant for alleged disobedience of the order of injunction. It was categorically stated by the respondent during trial that she was not willing to withdraw the application until divorce case was finalized. An application for maintenance was also filed before the Family Court, Hyderabad, where the matter was pending claiming a sum of Rs.13,000/- p.m., though admittedly the respondent is a professional doctor. Subsequently, another suit was filed for perpetual and mandatory injunction bearing O.S. No. 43/1999 against the appellant for allowing respondent and the staff appointed by her use of certain portion of the hospital and use of the medical instruments.

Evidence was led by the parties. The respondent stated in her evidence that she had complete faith and trust in her husband and no doubt about his integrity and character. But at the same time, she stated that she had advised him on five counts to be discreet and decent in his behaviour. By judgment dated 18.6.2001 Family Court, Hyderabad, passed decree for judicial separation with effect from the date of the decree. Though the Family Court found that unfounded allegations which caused mental agony were made by the respondent, and her alleged acts clearly caused mental agony and mental cruelty, yet keeping in view the welfare of the children instead of decree for divorce a decree for judicial separation was felt to be more appropriate. Both the appellant and respondent challenged the judgment before the High Court. While the appellant-husband took the stand that a decree for divorce should have been passed, the respondent-wife questioned legality of the decree for judicial separation. By the impugned judgment a Division Bench of the High Court dismissed the husband’s appeal while allowing the wife’s appeal. It was held that the materials on records were not sufficient to prove any mental cruelty. The entire evidence led by the appellant did not even emit smell of cruelty. It was noted that even if it was a fact that the respondent was using abusive language and making allegations of adultery with nursing staff, the husband ought to have examined some witnesses from the hospital and since it was not done, cruelty was not established.

Learned counsel for the appellant submitted that the approach of the High Court is clearly erroneous. It did not examine the evidence led in detail and upset the findings recorded by the trial Court after analyzing the evidence in great detail. It was not even pointed out as to how the evidence led by the appellant was in any way deficient to

prove cruelty. Mere non-examination of staff of the hospital cannot be a ground to discard the cogent and credible evidence led by the appellant. It was further submitted that mental cruelty was clearly established and in any event the marriage has broken down irretrievably and on that score alone the decree of divorce should have been passed.

Learned counsel for the respondent-wife submitted that no particulars of alleged cruelty were indicated. Making vague allegations about the mis-behaviour was not sufficient for accepting the prayer for divorce. The evidence was scanty and in no way established mental cruelty. What amounts to cruelty has been dealt with by this Court in S. Hanumantha Rao v. S. Ramani (1999 (3) SCC 620). The accepted factual position shows that till 1993 the relationship was smooth except some stray incidents of discord which are normal in any marriage and such normal wear and tear in relationship cannot be a ground for seeking divorce. It was submitted that even if it is accepted, for the sake of argument, that marriage has broken down that cannot be a ground to grant a decree for divorce. Reference was made to the decisions of this Court in Chetan Dass v. Kamla Devi (AIR 2001 SC 1709), G.V.N. Kameswara Rao v. G. Jabilli (2002 (2) SCC 296) and Shyam Sunder Kohli v. Sushma Kohli @ Satya Devi (JT 2004 (8) SC 166).

Further submission was that in the case at hand it cannot be said that the requisite ingredients for constituting cruelty have been satisfied.

The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of his spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, a proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

The expression ’cruelty’ has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the

spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted (See Sobh Rani v. Madhukar Reddi, AIR 1988 SC 121).

To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse’s conduct have to be borne in mind before disposing of the petition for divorce. However insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other’s fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court. (See Dastane v. Dastane, AIR 1975 SC 1534).

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

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

Several decisions, as noted above, cited by learned counsel for the respondent to contend even if marriage has broken down irretrievably decree of divorce cannot be passed. In all these cases it has been categorically held that in extreme cases the Court can direct dissolution of marriage on the ground that the marriage broken down irretrievably as is clear from paragraph 9 of Shiv Sunder's case (supra). The factual position in each of the other cases is also distinguishable. It was held that long absence of physical company

cannot be a ground for divorce if the same was on account of husband's conduct. In Shiv Sunder's case (supra) it was noted that the husband was leading adulterous life and he cannot take advantage of his wife shunning his company. Though the High Court held by the impugned judgment that the said case was similar, it unfortunately failed to notice the relevant factual difference in the two cases. It is true that irretrievable breaking of marriage is not one of the statutory grounds on which Court can direct dissolution of marriage, this Court has with a view to do complete justice and shorten the agony of the parties engaged in long drawn legal battle, directed in those cases dissolution of marriage. But as noted in the said cases themselves those were exceptional cases.

In the aforesaid legal and factual background the inevitable conclusion is that the appellant is entitled to a decree of divorce and we direct accordingly.

The appeals are allowed with no order as to costs.

JUDIS