

* **HIGH COURT OF DELHI : NEW DELHI**

MAT App. No.61 of 2005

% Judgment reserved on: 16th May, 2008

Judgment delivered on: 2nd July, 2008

Sh. Surender Pal
S/o. Sh. Devender Singh
R/o. T-1704, Desh Bandhu Gupta Road
Anand Parbat Chowk, Karol Bagh,
New Delhi Appellant

Through: Mr. Rajan Bhatia, Adv.

Versus

Smt. Kanwaljit Kaur
W/o. Shri Surender Pal
D/o. Sh. Harpal Singh
R/o. 126, M.D.D.A. Colony
Laxman Chowk,
Dehradun (Uttranchal)... Respondent.

Through: Nemo.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? Yes

V.B.Gupta, J.

The present appeal has been filed by the Appellant/Husband against the judgment dated 20.01.05 passed by Sh. J.P.S. Malik, Additional districts Judge, New Delhi whereby the Trial Court dismissed the divorce petition of the Appellant on the ground of cruelty/desertion.

2. Brief facts leading to the dispute are that the marriage between the parties was solemnized as per Sikh rites and ceremonies on 24.01.99 at Gurudwara Rakab Ganj, New Delhi. The Appellant and Respondent were relatives and Respondent is the daughter of maternal uncle of the Appellant. Out of the wedlock between the parties, a female child was born on 20.10.99.

3. It is alleged that immediately after the marriage, the Respondent started making demands from the Appellant to live separately from his parents and in the alternative shift to Dehradun where parents of the Respondent were residing and start his business there. Respondent used to pick up quarrel on petty matters. Soon after the parties

returned from honeymoon, the Respondent at the instance of her parents reiterated her demand on 15.02.99 for having a separate residence and when petitioner expressed his inability, the Respondent started shouting at Appellant in presence of all his family members.

4. On 24.02.99, Respondent left the matrimonial home and went to her parents place at Dehradun against the wishes of the Appellant and it was only when Appellant and his brother had gone to Dehradun on 10.03.99 that Respondent returned after much persuasion.

5. It is alleged that after the birth of the child, behavior of the Respondent changed completely and she started staying away from household chores, started neglecting day to day needs of the petitioner and when on 20.01.2000, the Appellant tried to make Respondent understand not to spoil their martial life, the Respondent in a fit of anger got flared up and started abusing him by catching hold of his collar. On the day of his marriage anniversary i.e. on 24.01.2000, Respondent locked herself inside a room and did not allow the Appellant to enter the room. Again on 20.10.2000 on the birthday of the child, the Respondent

reiterated her demand for a separate residence or shifting permanently to Dehradun after taking share from the parents of the Appellant and when not agreed to, started shouting at the father of the Appellant and in a fit of anger, threw the child down on the floor and even tried to manhandle the father of the Appellant.

6. On 25.12.2000, the Respondent left the matrimonial home and went to Dehradun in the absence of the Appellant without any permission or consent, lived there upto March, 2001 and resumed cohabitation after much persuasion.

7. It is alleged that on 21.03.01, the family of the Appellant had made arrangement for a path at Gurudwara Fateh Nagar, New Delhi, Respondent declined to go there and Appellant had also to excuse himself stating that he had urgent work at his shop. Reluctantly, Appellant opted to accompany the Respondent to Dehradun and was compelled to start the family business of father and brother of Respondent at Dehradun.

8. After about one month, the Appellant was directed to shift to the house of brother of Respondent at Lucknow. There was a quarrel over financial matters and the parties were turned out from there on 25.05.01.

9. Thereafter, the parties stayed at Dehradun at the parents house of the Respondent.

10. On 08.06.01, the Respondent and her parents asked the Appellant to take his share from his parents and directed to transfer the share in the name of the Respondent and settle down in Dehradun for all times to come.

11. On 09.06.01, the Appellant came back to Delhi.

12. On 29.07.02, Appellant along with his parents went to Dehradun and requested the Respondent to join him in the matrimonial home. All efforts failed.

13. Under these circumstances, the Appellant filed the Divorce petition before the Trial court alleging that he has been subjected to cruelty by the Respondent who has withdrawn herself from the company of the Appellant.

14. Process was sent repeatedly to the Respondent at her Dehradun address. Report was received that Respondent was residing in Mumbai. Respondent could not be served in ordinary way and service was effected by proclamation in Dainik Jagran. Since none appeared for the Respondent, proceedings were ordered to be taken as ex-parte against her by the Trial Court and the divorce petition was dismissed by the Trial Court vide order dated 20.01.05.

15. It is alleged by the Appellant that even during the pendency of the proceedings, before the Trial Court, the Respondent entered into a compromise with the Appellant on 11.12.02 and paid a sum of Rs. 2 Lacs to the Respondent in terms of Mutual compromise entered into between the Appellant and the Respondent but the Respondent did not act upon the compromise and she never extended any cooperation to ensure the dissolution of marriage by mutual consent.

16. It has been contented by Ld. Counsel for the Appellant that the Trial Court has failed to appreciate the totality of the circumstances and has wrongly arrived at the conclusion that the Appellant has failed to bring out the

instances of cruelty attributed to him by the Respondent. Further, it is submitted that the Trial Court has failed to appreciate the fact that except the allegations that the Respondent has been insisting upon him to live separately from his parents and the other allegations are trivial in nature being the normal wear and tear of domestic life. The allegations so mentioned in the petition are of severe nature which caused a great impact on the mind of the Appellant and has hampered his day to day working due to the unsettled matrimonial life. The trial Court has failed to appreciate the fact that the allegations leveled by the Appellant are not sufficient and no ground of cruelty is made out against the Respondent or that the Appellant is not entitled for the relief of dissolution of marriage with the Respondent on the ground of cruelty or desertion.

17. The cruelty is a ground for divorce under Section 13 of the Hindu Marriage Act, 1955 (for short as the "Act"). Section 13 provides, so far as it is material:

"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) x x x x x

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

(ib) to (vii) x x x x x x
Explanation- x x x x x x”

18. The word 'cruelty' has not been defined in the Hindu Marriage Act. D. Tolstoy in his celebrated book "*The Law and Practice of Divorce and Matrimonial Causes*" (Sixth Edition, p. 61) defined cruelty in these words:

“Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such a 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.”

19. The *Shorter 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”.

20. The term "mental cruelty" has been defined in *Black's Law Dictionary* [8th Edition, 2004] as under:

“Mental Cruelty - 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.”

21. 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."

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

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

23. In ***Dr. N.G. Dastane v. S. Dastane, AIR 1975 SC 1534***, the Apex Court has observed as under;

"...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 for him to live with the Respondent".

24. In the case of ***Shobha Rani v. Madhukar Reddi, AIR 1988 SC 121***, the Apex Court has observed as under;

“Section 13(1)(ia) uses the word “treated the petitioner with cruelty”. The word “cruelty” has not been defined. Indeed it could not have been defined. It has been used in relation to human conduct or human behavior. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical 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. First, the enquiry must begin as to the nature of the 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. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.”

The Court further observed;

“The context and the set up in which the word “cruelty” has been used in the Section seems to us, that intention is not a necessary element in cruelty. That the word has to be understood in the ordinary sense of the term in matrimonial affairs. If the intention to harm, harass or hurt could be inferred by the nature of the conduct or

brutal act complained of, cruelty could be easily established. But the absence of intention should not make any difference in the case, if by ordinary sense in human affairs, that act complained of could otherwise be regarded as cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment."

25. In the case of ***V. Bhagat v. D. Bhagat, (1994) 1 SSC 337***, the Apex Court has observed as under:

"Mental cruelty in Section 13 (1)(ia) 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.”

26. Again in ***Savitri Pandey v. Prem Chandra Pandey***, ***AIR 2002 SC 591***, the Apex Court has observed as under;

“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.”

27. In ***Praveen Mehta v. Inderjit Mehta***, ***AIR 2002 SC 2582***, the Apex Court has laid down as to what constitute cruelty;

“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 behavior 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.”

28. Again in ***A. Jayachandra v. Aneel Kaur, AIR 2005 SC 534***, a three judge Bench of Apex Court observed that ;

“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 Court further held;

"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 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 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.”

29. The Apex Court in ***Vinita Saxena v. Pankaj Pandit***, ***AIR 2006 SC 1662***, has observed as under;

“As to what constitute the required mental cruelty for purposes of the said provision, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct but 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.

If the taunts, complaints and reproaches are of ordinary nature only, the court perhaps need consider the further question as to whether their continuance or persistence over a period of time render, what normally would, otherwise, not be so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonably conclude that the maintenance of matrimonial home is not possible any longer.”

30. Thus, in view of the above decisions, it is clear that as regard the allegations of cruelty, the allegations are trivial in nature being the normal wear and tear of domestic life. There is no allegation of any acts of cruelty on the part of the Respondent against the Appellant when they were living in Dehradun and Lucknow. The acts alleged are not

sufficient for the Appellant to conclude that it was no longer safe for him to live in the company of the Respondent. No grounds of cruelty are made out against the Respondent. Therefore, The Appellant is not entitled to the relief of dissolution of his marriage with the Respondent on the ground of cruelty.

31. Further, Section 13 (1)(ib) of the Act provides Desertion for the ground of Divorce. It reads as follows;

“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) x x x x x x

(ia) x x x x x

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

(ii) to (vii) x x x x

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 willful neglect of the petitioner by the

other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.”

32. "Desertion", for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations, i.e., not permitting of allowing and facilitating the cohabitation between the parties. The proof desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and procreation of children. Desertion is not a single act complete in itself; it is a continuous course of conduct to be determined under the facts and circumstances of each case.

33. The Apex Court in ***Bipinchandra Jaisinghbhai Shah v. Prabhavati***, AIR 1957 SC 176 has observed as under;

"For the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (*animus deserendi*). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively. Here a difference between the English law and the law as enacted by the Bombay Legislature may be pointed out. Whereas under the English law those essential conditions must continue throughout the course of the three years immediately preceding the institution of the suit for divorce, under the Act, the period is four years without specifying that it should immediately precede the commencement of proceedings for divorce. Whether the omission of the last clause has any practical result need not detain us, as it does not call for decision in the present case. Desertion is a matter of inference to be drawn from the facts and circumstances of each case. The inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say, the facts

have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. If, in fact, there has been a separation, the essential question always is whether that act could be attributable to an *animus deserendi*. The offence of desertion commences when the fact of separation and the *animus deserendi* co-exist. But it is not necessary that they should commence at the same time. The de facto separation may have commenced without the necessary *animus deserendi* coincide in point of time; for example, when the separating spouse abandons the marital home with the intention, express or implied, of bringing cohabitation permanently to a close.”

34. The Apex Court again reiterated the legal position in **Lachman Utamchand Kirpalani v. Meena alias Mota, AIR 1964 SC 40.**

35. The offence of desertion is complete only after the period of two years is spent. Thus, the petition by the husband before completion of two years from the alleged date of desertion was rightly dismissed by the Trial Court.

36. In the backdrop of the spirit of a number of decided cases, the learned Additional District Judge was fully

justified in not decreeing the Appellant's petition for divorce.

37. The present appeal is accordingly dismissed.

38. Trial court record be sent back.

**V. B. GUPTA
(JUDGE)**

2nd July, 2008
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