

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 10.10.2013
Pronounced on: 22.10.2013

+ FAO No.151/2013 & CM Nos. 5566/2013 & 11210/2013

CHARU NAGWANI Appellant

Through: Sh. Shiv Charan Garg with Mr. Imran
Khan and Mr. Shashank Mittal, Advocates.

Versus

LAKHMI CHAND NAGWANI Respondent

Through: Dr. M.K. Gahlaut, Advocate.

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

MR. JUSTICE S. RAVINDRA BHAT

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1. This is a wife's appeal under Section 19 of the Family Courts Act, 1984, directed against a judgment and order decreeing dissolution of her marriage with the respondent (hereafter called "the husband"). This Court had the benefit of considering the Trial court records.

2. The brief facts of the case are that the parties to the proceedings got married on 01.09.2008. It was a second marriage for both of them; the wife had a son - a minor child at the time of the second marriage (named Gautam) and the husband had two daughters, both living with their mother

(his divorced first wife). The husband filed for divorce claiming that the wife had treated him with cruelty. He cited several grounds, such as the wife's persistent demands to adopt the wife's son; her alleged designs on his property and various other acts of mental cruelty. The most serious charge – and ground – of mental cruelty was the wife's acts of cruelty, including alleged physical violence, in the form of beating up of the husband's 93 year old mother, who lived with the couple.

3. The husband alleged in the pleadings and during the course of his evidence that initially the wife behaved properly but later started pressurizing him to adopt Gautam, her child. To save the marriage he agreed to take the child to the matrimonial home but refused to adopt him and assured that he would adopt him only when everything turned to be fine. The husband stated that he has taken care of the child and that he even borne his educational and other expenses. The child, however, did not behave properly with him and never acted sensibly and even addressed him as 'pagal'. He further alleged that wife and her family members pressurized him to get separated from his mother. He stated that the wife had threatened to implicate him in a false case of dowry if he did not purchase a new house in her name and as well as that of her child. Though, the husband tried to make her realize his financial constraints, she was unwilling to listen and tortured him mentally as well as physically. The husband stated that the family members of both spouses met on several occasions to resolve the issues and the wife who had gone to her parental house was brought back with the assurance that she would behave properly and discharge her matrimonial responsibilities. There was, however, no change in the circumstances. It was alleged that the husband was once beaten by wife's brother-in-law Yashpal who also extended threats of dire

consequences. The husband further alleged that wife had tried to commit suicide and despite his effort to make her understand the importance of matrimonial obligations, she did not change. She even alleged that he and his family members would be implicated in false criminal cases. She fought with him on small and trivial issues such as household expenses, child fees etc. She never cooked food and he had to order meals from outside. The wife, it was alleged, made excuses such as chest pain and avoided doing household work. The husband got her examined but her reports turned out to alright.

4. The husband claimed that on 22.07.2010 whilst he was going to the shop in the morning, the wife called him over telephone threatening to commit suicide. Upon his rushing back, he found nothing of that sort had happened. The wife threatened that she would not let him live peacefully till her demands were met. It was then that the husband lodged complaint with the SHO, Shalimar Bagh regarding the incident. That evening when he returned from the shop he was not allowed to enter the house. In these set of circumstances, the following day i.e. on 23.07.2010 the wife left the matrimonial house and in the course of the day the husband came to know that she had left along with her child and had also taken all her jewellery, cash and other articles kept at home. The husband tried to contact the wife but she refused to talk to him and instead threatened him of dire consequences. Despite his best efforts he could not get her back. Having regard to all these factors, he felt that he could no longer live with the wife or cohabit with her.

5. The wife in her written statement alleged that the husband's relatives, i.e., mother, sister-in-law, sisters, brothers, etc. started making demands for dowry and harassed her upon her expressing inability to fulfill them. She alleged that the aforesaid family members had inflicted physical

and mental cruelties on her in the matrimonial home. It was stated that initially -- at the time of marriage, the husband himself agreed to lend his name to her son Gautam. However, when this was done and the name was changed in the school records, the husband nevertheless made an issue of it. It was further alleged that the husband and his mother first demanded for a 29 inches television set worth ₹15,000/- in December, 2008; at that time her parents gave the amount to the husband. The sister-in-law Rajbala forcibly took the gold ring gifted to the wife by another relative in January, 2009. The wife mentioned other incidents such as deprivation of her mobile phone in February, 2009, etc. It was alleged that in May, 2009, again a sum of ₹30,000/- was given by the wife's father to the husband. When she was gifted a pair of diamond tops on 01.07.2009, the husband forced her to bring a pair of diamond tops for his mother too. She, however, refused to meet this demand. The wife stated that when she had organized a function in October, 2009 for her son, the husband refused to spend any money and she was forced to fall back upon her parents. On the occasion of the wife's brother's marriage, the husband threatened not to attend the occasion if he and his family members were not paid ₹1,00,000/-. This compelled the wife's parents to gift gold and other jewellery items to the husband's mother, ₹11,000/- in cash with gifts to other members and one gold necklace weighing 24.34 grams to her. When Gautam's eyes were to be operated in March, 2010, the husband refused to pay anything for his expenses; the wife was again forced to depend on her parents and spent ₹20,000/- for the surgery and medication. The husband did not even visit the hospital to see the child. The wife also narrated certain other incidents amounting to ill-treatment and misbehavior including her being pushed and humiliated in front of her parents in the matrimonial home; denial of any medical treatment to her in July, 2010 when she had viral fever. She also

alleged that the husband terrorized Gautam by showing him the knife four or five times.

6. In support of the allegations, the husband - petitioner examined himself as the sole witness; likewise the wife examined herself as RW-1. In the evidence, the husband, upon cross-examination, stated that he was informed by his mother that she had been assaulted by the wife; he did not remember any specific date or day when such incident occurred. He also stated that his mother was never medically examined and that no report was lodged with police or any other authority. The husband denied that he had agreed to adopt Gautam before marriage and later resiled from it. He stated that he used to pay school fees and bore other expenses of the child while he stayed with him but that those expenses were borne by the wife's parents when the child was with them. Though in the examination-in-chief (by way of affidavit), he deposed that wife's brother-in-law had beaten him, he admitted that he had never been so beaten.

7. After considering the entirety of evidence which included the oral depositions of husband and the wife, the Trial Court was of the opinion that the husband had established his allegations regarding mental cruelty by the wife. A decree for dissolution of marriage was, therefore, issued. The following extracts of the Trial Court's impugned judgment contain the essential reasoning which persuaded the learned Judge to decree dissolution of marriage: -

45. It is a general rule that one who asserts a fact or claim has to prove it. The burden of proof is on him, who asserts it and not on him who denies. [Reliance placed on 1 (2005) DMC 397 (DB)]. The nature of proof required in the matrimonial matters is different. The facts alleged by a spouse about their private intimate life are not supposed to be known to any other person and no corroboration can be accepted in such as case. To seek a corroboration to a fact

alleged by a spouse to a marriage regarding the healthy or unhealthy character of either intimate relation which belongs to sacred and secret precincts of marital life, and which are known only to the spouses and which are not supposed to be known to any other living soul on the surface of the planet, would amount to shutting one's eye towards the facts of life and reality. Corroboration, therefore, to the version of either spouse can hardly be expected to come from any other independent source. Such matters are always decided on a preponderance of probabilities. (Reliance placed on A versus B – 1985 Matrimonial Law Reporter 326).

46. It is, also, well-settled law that where accusations and allegations have been leveled by the parties against each other, the court has to consider the context in which such accusations etc. have been made. The court, also, has to keep in mind the physical and mental condition of the parties, as well as their social status and has to consider the impact of the personalities and conduct of one spouse on the mind of the other, weighing all the incidents and quarrels between the spouses from that point of view. The conduct has to be examined in the light of other spouse's capacity for endurance and the extent to which that capacity is known to the spouse (Reliance placed on 151 (2008) DLT 341 – Surrender Pal vs Kanwaljeet Kaur)."

8. The learned Judge thereafter went on to notice that the husband and wife respectively married second time and that the husband expected the wife to live with him and look after his 93 years old mother, at the same time according to the Trial Court, the husband never intended to adopt Gautam who he knew was a child from the wife's previous marriage. The husband also lent his name to Gautam. Thereafter, the Court went on to discuss the wife's grievance that the husband did not pay any amount for the treatment of Gautam and for the function organized. The Court then held: -

“54. The Petitioner has brought over the record through his testimony that the behaviour of the Respondent changed after about a week of Master Gautam joining them in the matrimonial home. The Petitioner has testified that master Gautam did not act sensibly and called him as “Pagal” while staying with them. The Petitioner, therefore, did not like him at all. It has to be kept in mind that he had never wanted to bring him to his house. Apparently, the Petitioner never accepted Master Gautam as his son, in any capacity. He, however, agreed for his stay with them and even bore his educational and other expenses, just to save his marriage with the Respondent, it being his second marriage. The principal cause of rift/differences between the parties is, clearly, the child Master Gautam only.

55. The Respondent tried to put-up a case that the Petitioner misinformed/misrepresented to her that he had no child and that he had not informed her that his old mother would stay with them. She has relied on an alleged bio-data (of the Petitioner) marked ‘A’ on record. The said bio-data, however, is not signed by the Petitioner and she has failed to prove the said document in accordance with law. The Petitioner himself has claimed that he never gave his personal particulars in writing to the Respondent. In any case, even if the Petitioner had made any such misrepresentations, the same were not material. The reason being that the Respondent admittedly served her mother-in-law, cooked food for her and did the other household work as well. Further, the Petitioner had two daughters from his first marriage but both of them remained in the care and custody of the first wife. The Respondent was, therefore, not affected in any manner by the alleged misrepresentation (s), if any, on the part of the Petitioner. Her plea is, therefore, rejected outright.

56. The Respondent, also, tried to make out that she is a dowry victim. She has testified that the Petitioner and his family members started raising demands of dowry shortly after the marriage. She stated that in May 2009, she was enquired about the amount of money she had received from her first husband at the time of divorce. Admittedly, she did

not disclose the amount. She claims that she was ill-treated and beaten up on that day. However, she neither lodged any complaint with the police nor informed any of her family members. Further, she claimed that the Petitioner raised demand for a scooter in May, 2009 and her brothers gave a sum of Rs.30,000/- to him. Her brothers had even gone to buy scooter with the Petitioner. She has, however, failed to examine any of her brothers or father to prove the alleged demand of Rs.30,000/-. She also alleged that on 01.07.2009, the Petitioner raised demand for diamond ear-rings for his mother or in the alternative to get a sum of Rs.15,000/- from her parents. She, admittedly, did not lodge any complaint regarding the said demand but allegedly informed her father. She, however, has failed to produce/examine her father in support of her said claim. Her father could have been the best witness to prove her claim but for the reason best known to her, she failed to examine him. Her father has been always guiding her and was present with her on almost every date of hearing during the trial. In fact, he played an active role but surprisingly, neither he nor his son(s) appeared in the witness box. I am, therefore, constrained to draw an adverse inference against the Respondent. I am convinced that no such demands (as claimed by the Respondent) were ever raised/made by the Petitioner and his family members.”

9. The Court then held that the allegations (of cruelty and demands of dowry) by the husband towards the wife were not substantiated. In paragraph 60, the Court discussed that the parties were from the middle class section and had considered the marriage proposal from their own angles since it was their second attempt at matrimony. Thereafter in paragraph 62 inexplicably the Court speculated as to why the husband sold his property, i.e., the original matrimonial home and wondered that possibly it was on account of age difference between the spouses and that the wife's family expected that she would get the property and that the ultimate beneficiary could be her son Gautam. The Court in paragraph 64

expressed displeasure about the intervention of the wife's father and drew an adverse inference because he did not step into the witness box: -

“64. I have observed the conduct of the Respondent and her father in the court room during the trial proceedings. The father of the Respondent used every possible opportunity to intervene and prevailed upon the Respondent not to resolve the matter/dispute with the Petitioner amicably. He was always vocal with his demand that the Respondent gets a house for her and her son. In fact, the father of the Respondent never let the Respondent resolve her issues/differences with the Petitioner amicably. His intervention was too prominent to be ignored and the said father of the Respondent, strangely, did not enter the witness box to support the claim of his daughter. He acted from behind the screen only. Here, I deem it expedient to repeat and re-emphasize the circumstances of the parties, leading to their marriage. It is necessary to understand the mind-set of the parties.”

10. Finally, the Court summed up and held that cruelty had been proved, in the following terms: -

“66. On considering the entire evidence, on record, I find the version of the Petitioner more probable than that of the Respondent. He has admitted that the Respondent cooked food for him and his mother and did the other household work also, till she stayed in the matrimonial home. He, also admitted that the brother of the Respondent had not beaten him but had only extended threats. In fact, the Petitioner has admitted the things truthfully, even at the cost of contradicting his own pleadings. He denied that any dowry was given at the time of marriage, but admitted in his cross-examination that all the articles belonging to the Respondent were returned at Police Station Maurya Enclave after FIR under Section 496/408 IPC was registered against him and his family members. The articles given to the Respondent technically may not be 'dowry' and the same could be the customary articles given by her family members voluntarily. The petitioner returned the same to the Respondent. However, he transferred the property which he, admittedly,

owned at the time of marriage to his brother and the only explanation for the same could be his apprehensions that the Respondent would one day make claim for the same.

67. The conduct of the Petitioner, therefore, appears quite normal in the circumstances, in which he found himself. He, apparently, did whatever he could, for Master Gautam. He lent his name as father. He used to sign the progress report of the child as father/guardian. He bore all his educational and other expenses. However, he did not incur any expenses for the medical treatment of Master Gautam. He also, did not spend any amount when 'paath of Sukhmani Sahab' was organized for the child Master Gautam. He could not do so primarily because he has/had not accepted Master Gautam in his family and had financial constraints, also. The respondent, on the other hand, tried her best to manipulate the things. She took false pleas of dowry demands and ill-treatment meted to her by the Petitioner. She tried to take possession of the house property forcibly. During the trial of the petition also, she at the insistence of her father, remained adamant to get the house property for her and the minor son from the Petitioner. Her version, therefore, does not appear to be probable, does not appeal to senses and does not inspire any confidence. Her conduct in the matrimonial home, as brought over the record by the Petitioner, clearly amounts to cruelty. I, therefore, hold that the Respondent treated the Petitioner with cruelty after the marriage. The issue is, accordingly, decided against the Respondent and in favour of the Petitioner.

Issue No.2. Whether the Petitioner is entitled to the decree of divorce on the ground as prayed? OPP”

11. The wife urges that the Trial Court completely overlooked that the husband was under a duty to prove the acts of cruelty alleged by him. Counsel emphasized that the most serious act of cruelty alleged, i.e., physical assault upon the husband's mother had in fact not been proved. It was highlighted that no approximate date or month was attributed to the

attack and that the husband did not take his mother for medical examination. It was pointed out even the husband's version is unbelievable because he admitted not being present when such alleged attack took place. Likewise, argued the counsel, the husband's allegation of being beaten up by the wife's brother -in-law had not been substantiated; he admitted in cross-examination that he had not been beaten. Furthermore, even though he alleged that the wife took away all jewellery in his absence when she returned to the parental home, yet in cross-examination he admitted that the jewellery was returned in the police station to her. These clearly showed that the husband levelled false allegations which prejudiced the mind of the Court. Counsel further stated that the husband manipulated the situation deliberately by showing that his property was sold to his brother-in-law even though he continued to reside in it. This was in order to prepare the ground work in his later petition for divorce. Learned counsel argued that the Trial Court was unduly swayed by the fact that the wife's father assisted her in the Court proceedings that should not have influenced the Court into concluding that the husband had in fact proved the allegations of mental cruelty as to entitle him to divorce. It was stated that the entire record disclosed that the evidence of one party contradicted the other. In these circumstances, the Court should have relied on something more than the mere hunch, to vouchsafe one party's truthfulness, unless that party's testimony is substantially convincing. By entirely believing the testimony of husband on the ground that the wife had failed to show or support her allegations about cruelty in the hands of the husband, the Court ignored the vital fact that the burden of proof was upon the husband.

12. It was argued on behalf of the husband that the approach and findings of the Trial Court were justified. Counsel emphasized the fact that

what emerges even from the reading of the wife's evidence or testimony was that though unaware of her designs about the adoption of her son, the husband cared for child and even was willing to give his name, yet when the pressure to adopt him mounted, he resisted it, not unreasonably. Counsel stated that even though the assault on the mother could not be proved by her production - since she was a 93 year old woman, that omission could not be considered fatal; nor could the husband be faulted for not reporting the matter to the police since the interest of the family was at stake. Counsel emphasized that by making false allegations of cruelty and dowry demands and harassment against the husband, the wife had indulged in a conduct amounting to mental cruelty which entitled him to the grant of relief of dissolution of marriage. In these circumstances, submitted the counsel, the findings and judgment of the Trial Court were in order and required no interference.

Analysis and findings

13. The question which this Court has to decide in the present case is whether the respondent husband had successfully proved that the appellant wife had indulged in cruel behaviour as to entitle him to a decree for divorce.

14. It is well settled that acts of cruelty are neither straitjacketed nor capable of exhaustive listing. They are entirely fact dependent, based largely on the contextual setting of the parties, the contemporary times, the lifestyles they lead or are accustomed to live and the extent to which they have known each other. The subjective and elusive nature of what constitutes "cruelty" – especially mental cruelty, was discussed by the Supreme Court in an illuminating judgment reported as *Samar Ghosh vs.*

Jaya Ghosh (2007) 4 SCC 511 where the Court after analyzing the entire law on the aspect of mental cruelty outlined non exhaustive situations which can be treated as mental cruelty:

"72 On proper analysis and scrutiny of the judgments of this Court and other Courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

73. Human mind is extremely complex and human behavior is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behavior in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in 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. 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 strait-jacket 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 while taking aforementioned factors in consideration.

74. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behavior which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behavior of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill- conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behavior of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

15. As may be seen, it is not every act which is deemed reproachable by the complaining spouse, but aggravated conduct which makes life with the other spouse unbearable that constitutes cruelty. This emerges from the emphasis on *"sustained course of abusive and humiliating treatment*

calculated to torture, discommode or render miserable life of the spouse”; “Sustained unjustifiable conduct and behavior of one spouse actually affecting physical and mental health of the other spouse.” and “(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure” which amount to mental cruelty.

16. In the present case, the husband levelled the following allegations:

- (1) Initially, the wife was well behaved; however, she started to neglect him and acted cruelly towards him and his mother. The acts of cruelty included frequent neglect or omission to cook;
- (2) The wife used to treat the husband’s mother cruelly and even beat her physically. The mother is a 93 year old.
- (3) The wife frequently threatened that she would falsely implicate the husband and his relatives in criminal cases, including demands for dowry;
- (4) The wife and her relatives persisted that the husband should not only care for her son, Gautam, but also adopt him, though he was unwilling to commit on that score.
- (5) The wife had designs over his property, which was the reason why she wanted him to adopt Gautam.
- (6) The wife’s brother-in-law, Yashpal, beat up the husband physically.

17. The record reveals that apart from the oral testimony of the husband and wife, no one else stepped into the witness box. Only a police complaint was sought to be proved. There was no other documentary evidence.

Therefore, the court had before it two conflicting – and diametrically opposed versions. Whilst there is no thumb rule that conflicting testimonies cannot lead a court to arrive at a just conclusion, the Court should be slow in holding that one party's version is to be preferred over the other's. That would amount to giving unjustified weight or preference for one party's version.

18. The materials in the form of the husband's evidence (he being the petitioner seeking divorce) did not prove or establish the allegation that the wife had beaten his mother. This is evident from the husband's inability to mention any time- even an approximate date or month, of the year when such incident took place. Most importantly, he deposed that this was told to him by his mother. The relevant part of his deposition is as follows:

“the respondent never assaulted my mother in the matrimonial home. I do not remember any specific date or day when the respondent assaulted my mother, I was informed by my mother only that the respondent had assaulted only. My mother was never got medically examined anywhere when the respondent assaulted her. No report was also lodged with police or any other authority regarding her assault. Efforts were tried to make the respondent understand to not assault my mother in various meetings arranged with her family members but I do not remember any date/time of such meetings.”

Granted that in our country there is reluctance to report matters to the police, unless the matter is serious and that omission can be overlooked in this case, yet the fact remains that the allegation of physical violence was not proved, and was hearsay. Even if the mother was invalid and could not be expected to depose in court, the husband could have ensured that her testimony was recorded through a commissioner appointed by the court. The allegation of physical cruelty to the mother, therefore, was not

established. As will be explained hereafter, the significance of this was entirely lost upon the Trial Court, which nevertheless gave weightage to the husband's evidence on the ground that his version appeared to be truthful.

19. The second allegation which the husband had specifically made was that the wife's brother-in-law, Yashpal had beaten him. This was reiterated in the affidavit. Yet, in the course of his cross-examination he admitted that no such incident had taken place. This too was an important aspect.

20. The third aspect is that the husband alleged that the wife used to threaten him frequently to lodge false cases against him and his relatives, unless her conditions were met with. There was no iota of evidence on this aspect, save the police complaint alleging commission of offences under Section 498A IPC after the wife left the matrimonial home.

21. The husband, in his evidence had stated that the wife left the matrimonial home with jewellery and never returned. In the course of his deposition, he admitted that items of jewellery were handed over to the wife at the police station after she had left the matrimonial home.

22. In the petition alleging cruelty, the husband alleged that the wife never cared for him and his mother and that the mother had to cook food at home:

"That not only this the respondent never used to take care of the petitioner or mother and at this stage also the petitioner's mother had to cook food for petitioner and the respondent never cared about them."

This allegation was repeated in the affidavit evidence of the husband:

"the mother had to cook food for the deponent and the respondent never cared about them."

In the course of his cross-examination, however he admitted that those allegations were baseless, deposing that:

“It is correct that the respondent used to prepare meals for me and my mother and also do other household work also in the matrimonial home.”

Yet, strangely, the contradictions and false averments and depositions on oath – as indeed they were, on the part of the husband, were made a virtue of by the Trial Court:

“I find the version of the Petitioner more probable than that of the Respondent. He has admitted that the Respondent cooked food for him and his mother and did the other household work also, till she stayed in the matrimonial home. He, also admitted that the brother of the Respondent had not beaten him but had only extended threats. In fact, the Petitioner has admitted the things truthfully, even at the cost of contradicting his own pleadings.”

Similarly, the Trial Court virtually gave a clean chit to the petitioner (for being “truthful”) in cross examination, though he deposed on what was clearly an untruth, in his affidavit that:

“He denied that any dowry was given at the time of marriage, but admitted in his cross-examination that all the articles belonging to the Respondent were returned at Police Station Maurya Enclave after FIR under Section 496/408 IPC was registered against him and his family members. The articles given to the Respondent technically may not be ‘dowry’ and the same could be the customary articles given by her family members voluntarily. The petitioner returned the same to the Respondent.”

This finding completely overlooked the husband’s falsehood that the wife had taken away all the jewellery when she left the matrimonial home:

“That on 23-7-2010 when the deponent came from the shop in the evening, he came to know from his mother that the parents and brother of the respondent took away the respondent and the child with them and while leaving the house, the respondent had taken away her entire articles and jewellery.”

23. In the entire analysis of the evidence, the Trial Court appears to have been overwhelmed by the display of “truthfulness” by the husband when he made admissions contrary to his pleadings and affidavit evidence. This, in the opinion of this court, coloured the learned judge’s perspective to the extent that he overlooked that the husband’s admissions established his false averments, and knocked the bottom out of several serious allegations against the wife, constituting mental cruelty. The Court had to weigh these admissions to arrive at the probability of the totality of allegations, as against what had been established, also keeping in mind that the husband’s admissions in cross-examination severely undermined his credibility as a witness. The only aspects which stood admitted – and perhaps not seriously disputed, were that the wife’s son, Gautam, to a certain extent had been cared for by the husband. The husband at the same time had reservations about the course pressed upon him by the wife, i.e. to adopt him. Apparently feeling insecure on this aspect, he sold his property to his brother-in-law. As against these facts- which had the tendency to fatally undermine the husband’s case and allegations, the Trial Court weighed the probabilities of the allegations levelled by the wife and held that she had not established that the husband acted cruelly toward her. After recording the allegations of cruelty and dowry demands levelled by the wife, and discussing her testimony, the Court stated:

“She, admittedly, did not lodge any complaint regarding the said demand but allegedly informed her father. She, however, has failed to produce/examine her father in support

of her said claim. Her father could have been the best witness to prove her claim but for the reason best known to her, she failed to examine him. Her father has been always guiding her and was present with her on almost every date of hearing during the trial. In fact, he played an active role but surprisingly, neither he nor his son(s) appeared in the witness box. I am, therefore, constrained to draw an adverse inference against the Respondent. I am convinced that no such demands (as claimed by the Respondent) were ever raised/made by the Petitioner and his family members.”

24. The entire approach and discussion by the Trial Court, thus centred around how despite initially levelling allegations and then reiterating them in his affidavit, the husband made admissions to the contrary in his cross-examination and, therefore, was a more reliable witness, who could be believed. In this court’s opinion the Trial Court appears to have missed the point that the husband had to establish the acts of cruelty made against the wife. Under no circumstance could he be considered a “truthful” witness, having brazenly levelled false allegations which constituted his cause for approaching the court. Not only that, the learned judge gave undue weight to the fact that the wife could not establish the acts of cruelty alleged by her- a point weighed against her, again overlooking that she was not the petitioner seeking divorce. Nor were the allegations of such nature and character as to constitute unbearable conduct that could amount to cruelty, by their mere making.

25. On an overall conspectus of the facts, and having considered the record and evidence led on behalf of the parties, this Court is of opinion that the husband (respondent) failed to prove his allegations that the wife (appellant) had inflicted mental cruelty upon him, within the meaning of Section 13 (1) (ia) of the Hindu Marriage Act, 1956 as to be entitled to a decree for divorce. The findings and judgment of the Trial Court are

consequently set aside. The appeal is accordingly allowed along with pending applications without any order as to costs.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

OCTOBER 22, 2013