

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

% *Judgment reserved on: January 21, 2013*
Judgment pronounced on: February 18, 2013

+ **MAT.APP. 103/2010**

SANGEETA Appellant
Represented by: Mr.Manish Kapoor, Adv.

versus

HITESH KUMAR Respondent
Represented by: Mr.R.K.Saxena, Adv.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.

1. Present is an appeal under Section 28 of Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') against impugned judgment/decreed dated July 21, 2010 passed by the Judge-02, Family Court, Rohini Courts, Delhi whereby petition of respondent/husband under Section 13(1)(ia) of the Act has been allowed and marriage between the parties has been dissolved on the ground of cruelty.
2. Briefly stated, the facts relevant for the disposal of present appeal are as under:-

Marriage between the parties was solemnized on September 11, 2000 at Delhi. It is alleged that they have lived together for few years and from April 29, 2007, they are living separately. On July 29, 2006, a son was born

from their wedlock who is presently in the custody of appellant/wife. On September 11, 2007, respondent/husband had filed a divorce petition against the appellant alleging therein that from the very beginning of the marriage appellant started visiting frequently to her parental home and whenever the respondent asked her to reduce the visits she used to feel offended. He had alleged that the appellant/wife used to neglect, misbehave and maltreat his parents. After marriage they had gone for honeymoon to Nainital. The behaviour of respondent was not proper and the trip was curtailed. Initially, the appellant/wife started living with him in the matrimonial home where his parents and grandmother were also living. Appellant was not speaking to them and was disrespecting them. He had alleged that on November 15, 2000 she went to her parental home and the respondent had asked her to inform his parents but appellant told that she was not having any respect for his parents and came back after 3-4 days, that too after much persuasion.

3. In February 2001, the respondent had taken her to Vaishno Devi. Even there also the behaviour of appellant was not proper. Even after returning back from there she was not talking to him. While living in the matrimonial home the appellant had called her parents and demanded for a separate kitchen in their presence. The parents of respondent agreed and a separate kitchen was permitted on the first floor of their house. It is alleged that after separate kitchen appellant remained normal for few days. Thereafter appellant started going to her parents' house very frequently.

4. It is alleged that in the last week of November 2001, the appellant did not come back from school. Respondent had to go to her parent's house to enquire as to where she had gone. However, his parents were not bothered. Appellant was not found there. However, next day she came back after

attending the school of her own to the matrimonial home and when respondent asked her as to where she had gone she stated that he was an orthodox and a conservative type of man. She packed her things and again went to her home and did not come back. It is alleged that on June 21, 2002 on the birthday of the appellant, respondent went to her house but she refused to meet him and locked the room from inside. Feeling humiliated and finding no alternative he had left the gift at her parents' house. While he was leaving appellant came and had thrown away the gift and told him to take away the same.

5. It is alleged that on September 18, 2002 appellant came all of a sudden to his office and created scene in the presence of colleagues of the respondent. She had abused him in the presence of staff and by saying that respondent was a useless fellow and was a son of a bitch who had ruined her life. She had manhandled the respondent and his colleagues and after much persuasion she cooled down and left the office giving threats to him as a result of which respondent had to lodge a report in P.S. Tilak Marg, New Delhi.

6. It is alleged that on November 19, 2002 i.e. after about one year of her leaving the matrimonial home she came back and locked herself in a room. Her parents were also informed on phone. Seeing the circumstances out of control the respondent had to call PCR. Police came there and the door of the room was got opened and then with the intervention of police she patched up the matter and started living with him. Even thereafter her behaviour had not changed. Her behaviour towards his mother and grandmother became worsened and the appellant started demanding a separate residence. Respondent being the only son and as his parents were not keeping good health, he did not agree. But the appellant was very much

adamant and finding no alternative he shifted to a separate rented accommodation at S-20, Vijay Vihar, Uttam Nagar, New Delhi and from there shifted to Krishna Park Extn. Uttam Nagar, New Delhi. There they lived upto June, 2005. Even living at rented accommodation she was making frequent visits to her parents' house. Thereafter, respondent purchased his own house i.e. house No.B-6, Shiv Bazar, Uttam Nagar, New Delhi and on July 1, 2005 they had shifted to their own house.

7. Even there also her behaviour did not change. She had no love and affection for his parents. In January, 2006 his mother had fallen sick and the respondent received a call from his father that his mother was lying unconscious. The respondent rushed back to his house and found that his mother was taken to hospital. The respondent informed about the condition of his mother to her but she did not come nor visited the hospital, though her mother stayed for two days in the hospital. However, she went to her parents' house. After the discharge of his mother he came to his house and found that the house was locked and respondent had to wait for two hours for the return of appellant. Appellant did not like respondent looking after his parents. While staying at their own house she did not allow him to have sex and rather she shifted in another room and they were living like strangers. Despite that he was caring for her as she was pregnant.

8. On July 29, 2006, appellant gave birth to a child. His parents came to see the child on August 1, 2006 and they had brought certain gifts. It is alleged that respondent did not accept the gifts and insulted them. It is alleged that on August 27, 2006, his friend Ramesh Arora had come to the house. The appellant misbehaved with respondent in the presence of his friend as a result of which his friend had to leave the house. The appellant had no respect for the respondent and she had severed her relationship with

him.

9. Further allegations are that on April 27, 2007 when the respondent was getting ready to go to his friend's house the appellant had hidden the keys of the scooter and when he asked for it the appellant refused and uttered filthy language. Again on April 29, 2007 the respondent requested her for handing over the keys of the scooter. The appellant did not give the keys and started quarreling with him as a result of which the respondent had to leave the house. While leaving the house the appellant threatened that if in case he would come back, she would call the police. It is alleged that respondent came back in the evening and found the house was locked he kept waiting till 9 P.M. but appellant did not come back as a result of which he went to his friends' house and spent the night there. Next evening he again went to his house. Appellant did not open the door. He had lodged a report with the police but the police did not act upon it. Thereafter, number of efforts were made by him for entering the house but the appellant did not allow him to enter the house or meet his child. She had called her mother who was supporting her.

10. On June 9, 2007, the respondent went to his house and with great difficulty the appellant had opened the door but did not allow him to enter nor allowed him to meet his son. He was not even allowed to meet his son. When he asked to know the reason as she was not allowing him to enter in his house, she replied that it was not his house and he should forget it. If he would enter the house she would call the police and will make an allegation that he was trying to rape her.

11. Respondent had alleged that since January, 2006 the appellant had severed all her relations with him. It is alleged that since the beginning of marriage appellant has treated him with utmost cruelty. It is alleged that her

behaviour had caused mental agony to him. He had not condoned the acts of cruelty in any manner. She prevented him from cohabitation since January, 2006 which had also caused him mental cruelty. He had prayed for the grant of divorce.

12. The appellant/wife had opposed the divorce petition by filing a written statement wherein she had admitted the date of marriage between them and had also admitted that a son was born out of the wedlock on July 29, 2006. She has admitted that since April 29, 2007 they are living separately. Appellant/wife has denied each and every allegation of cruelty levelled by the respondent against her. The appellant has alleged that the appellant had not come to court with clean hands and had filed the divorce petition to harass her. She had alleged that she was harassed and taunted for bringing insufficient dowry articles by the respondent and his family members. She had alleged that the respondent under the undue influence of his parents used to demand dowry and also used to beat her up. She had given the dates as to when the dowry demands were allegedly made upon her. She had alleged that she repeatedly turned out of the matrimonial home for non-fulfilment of alleged dowry demands. She had further alleged that she was allowed to enter only when she used to fulfil their demands. She has denied that she had shown disrespect towards his parents, as is alleged. She had alleged that it was her in-laws who used to abuse and insult her in front of relatives and neighbours. His parents were having no love and affection for her. She is a teacher and early morning she used to go to school and all the cooking work was being done by her. She had alleged that it is the respondent who was not interested in living with her. She had alleged that respondent was a habitual drunkard and in the state of drunkenness he used to beat her and throw her out of the matrimonial home and asked her to bring cash and other

articles. She had never gone to her parents' home out of her own free will and it was only due to the fulfilment of the dowry demand she had to go there. She had alleged that respondent used to come home in a heavy drunken condition and without any reason used to fight with her.

13. She had alleged that the respondent was not interested to take her to honeymoon and after persuasion of the relatives and his friends he got ready and had asked the appellant/wife to bring a sum of ₹50,000/- from her parents. When her parents gave the said amount only then he had agreed for honeymoon trip. She had alleged that the honeymoon trip was curtailed as he was unable to drink there daily. She has denied that she was avoiding sex with him.

14. She had alleged that a day before November 15, 2000 respondent and his parents had harassed her. She had alleged that respondent gave beatings to her and asked her to bring cash from her parents otherwise he would not allow her to enter the matrimonial home and for fulfilment of their demands she was turned out of the matrimonial home and due to that reason she had gone to her parents' home on November 15, 2000. She had alleged that her parents had also spoken to the respondent to take her back from the parental home but respondent had demanded ₹2 lakhs from them. It is alleged that her parents could arrange only ₹50,000/- and after taking the said amount respondent agreed to take her back.

15. Appellant had alleged that she never avoided sex with him as it is a part of married life. She had alleged that during her stay in the matrimonial home she was beaten by the respondent in the drunken state and his mother and grandmother did not use to stop him but rather told to put kerosene oil on her so that they could get relief from her. She had alleged that the respondent had a habit of heavy drinking and used to involve himself in

gambling and also had other bad habits as a result of which there used to be quarrel between them. She had alleged that her parents were fed up of the frequent demands of the respondent but in order to save her matrimonial life they were fulfilling the alleged demands of the respondent. She had alleged that one week prior to his birthday the respondent had left her at her parental home and told her to bring a big gift from her parents and in the evening when respondent came back to celebrate his birthday and had brought certain gifts the respondent was not happy with the gifts and started scolding her and also tried to beat her. Even his parents also created scene. The respondent told her that he was expecting the keys of new car on his birthday but she had brought a useless gift which is of no use to him. She had alleged that the respondent was also having relations with other women prior to their marriage as well as even after marriage and whenever she objected to it the respondent told her not to interfere in the matter. She had denied that on her birthday she refused to meet the appellant and locked herself in a room. She had alleged that on her birthday the respondent did not wish her and when she told him about her birthday he replied that there was no need to celebrate that day as she was unlucky for him.

16. She had denied that she went to his office on September 18, 2002 and created scene over there. She had denied having quarrel with his parents as was alleged in the divorce petition. She had alleged that she was never interested in a separate accommodation and it was only the respondent who wanted separate accommodation for the reasons best known to him. She had admitted having shifted to a rented accommodation and thereafter to another accommodation i.e. B-6, Shani Bazar, Uttam Nagar, New Delhi. She had denied that the said house was purchased by the respondent. She had alleged that he had taken some amount from his father and the remaining

consideration amount was paid from the earning/savings of the appellant.

17. The appellant had also alleged that when her mother-in-law had fallen sick she remained with her in the hospital. Thereafter, she went to her matrimonial home and stayed there. She had alleged that she had two abortions during the stay of the respondent with her and sometimes on her refusal the respondent used to say that if she would refuse he would satisfy himself outside which he used to do before marriage. She had alleged that the respondent is a womanizer having relations with various other women and petitioner had come to know it much later. He had kept it a secret in order to save his reputation in the society. She had alleged that the parents of the respondent had no love and affection for their grandson and no one from his side had come to see the child. She had denied having misbehaved with the friend of the respondent or did not offer proper tea as was alleged.

18. She had alleged that the maid servant of the house had left the house because the respondent was keeping a bad eye on her and whenever he had found her alone he used to tease her. She had denied that they were staying like strangers in the house. She had alleged that all the marital obligations were fulfilled by her till the time the respondent had stayed with her. She had alleged that on April 29, 2007 respondent himself had left her and did not come to live with her. She had alleged that she had lived under constant fear in the matrimonial home. She has alleged that a frivolous divorce petition was filed and the same ought to have been dismissed.

19. A replication was filed by the respondent/husband wherein he has denied the allegations levelled by the wife against him and his family members. He had reiterated the stand taken in the divorce petition.

20. On the pleadings of the parties, following issues were framed:-

“(i) Whether after the solemnization of marriage, the

respondent has treated the petitioner with cruelty? OPP

(ii) Whether the petitioner is entitled for a decree of divorce on the ground as prayed for? OPP

(iii) Relief.”

21. To prove his case, the respondent/husband himself appeared as PW1. Besides himself, he has also produced two witnesses i.e. Shri Ramesh Arora as PW2 with Shri Ved Prakash Sharma as PW3. On the other hand, appellant (RW1) in her evidence has appeared as RW1.

22. After considering the material on record and hearing arguments, learned ADJ allowed the petition and dissolved the marriage between the parties on the ground of cruelty.

23. Aggrieved with the same, the present appeal is filed.

24. Learned counsel for the appellant has contended that evidence led by the respondent before the learned trial court does not establishes that the appellant has treated respondent with cruelty. It is contended that the trial court has ignored the evidence led by the appellant and that the stand put forth by the appellant in the written statement has been taken into consideration and it has been held that the same constitutes mental cruelty. It is further contended that if the evidence of the respondent is scanned and scrutinised carefully, the allegations of cruelty are not established. It is contended that finding of the learned ADJ are perverse.

25. On the other hand, learned counsel appearing for the respondent has contended that the learned trial court has discussed and appreciated the evidence with utmost prudence and objectivity. There is nothing on record to show that any material aspect of the evidence has been ignored or some extraneous material has been considered in arriving at the conclusion that appellant has treated the respondent with cruelty. It is contended that

appellant has levelled serious allegations in the written statement that respondent is a chain smoker, womanizer, habitual drinker and he had raised dowry demands of ₹ 50000/- as well as ₹ 2 lakh. It is contended that no evidence has been led by her to substantiate these serious allegations which itself constitute cruelty. It is contended that there is no perversity or illegality in the impugned order which calls for interference of this court.

26. The cruelty is a ground for divorce under Section 13 of the Act and the relevant portion of this Section reads as under;

“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 (ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or (ib) to (vii) x x x explanation- x x x”

27. The word 'cruelty' has not been defined in the 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.”

28. 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”.

29. It is well settled that cruelty may be mental or physical, intentional or unintentional. Mental cruelty consists of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party. If the cruelty is physical, the court will have no problem in determining it. It is a question of fact and degree. In physical cruelty

there can be tangible and direct evidence but in 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 effects of the incidents that are brought out in evidence. The concept of proof beyond the shadow of doubt is to be applied to criminal trials and not to civil matters and certainly of matters of delicate personal relationship as that of husband and wife. First the enquiry must begin as to the nature of maltreatment, the impact of such treatment in the mind of 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 when the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact of injurious effect on the other spouse need not be enquired into or considered. In such case, the cruelty will be established if the conduct itself is proved or admitted.

30. The 'mental cruelty' has been examined by the Supreme Court in **Parveen Mehta v. Inderjit Mehta: (2002) 5 SCC 706**, wherein it is held as under:-

“21. Cruelty for the purpose of Section 13(1)(i-a) is to be taken as a behaviour 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 behaviour or behavioural 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 or matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehavior in isolation and then pose the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the Petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.”

31. The Supreme Court has explained the concept and scope of cruelty in

A. Jayachandra v. Aneel Kaur : AIR 2005 SC 534, as under:

“12. 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.”

32. In **Samar Ghosh v. Jaya Ghosh: (2007) 4 SCC 511**, the Supreme Court, after referring to its previous decisions and referring to the concept of cruelty, which includes mental cruelty, in English, American, Canadian and Australian cases, has observed as under:-

“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 is one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other cases. 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.”

33. In the case of **Sujata Patil vs. Uday Madhukar Patil 2006 Supp. SCR 955** the ‘cruelty’ has been explained as under:-

“7. The word "cruelty" and the kind or degree of "cruelty" necessary which may amount to a matrimonial offence has not been defined in the Act. What is cruel treatment is to a large extent a question of fact or a mixed question of law and fact and no dogmatic answer can be given to the variety of problems that arise before the court in these kind of cases. The law has no standard by which to measure the nature and degree of cruel treatment that may satisfy the test. It may consist of a display of temperament, emotion or pervasion whereby one gives vent to his or her feelings, without intending to injure the

other. It need not consist of direct action against the other but may be misconduct indirectly affecting the other spouse even though it is not aimed at that spouse. It is necessary to weigh all the incidents and quarrels between the parties keeping in view the impact of the personality and conduct of one spouse upon the mind of the other. Cruelty may be inferred from the facts and matrimonial relations of the parties and interaction in their daily life disclosed by the evidence and inference on the said point can only be drawn after all the facts have been taken into consideration. Where there is proof of a deliberate course of conduct on the part of one, intended to hurt and humiliate the other spouse, and such a conduct is persisted, cruelty can easily be inferred. Neither actual nor presumed intention to hurt the other spouse is a necessary element in cruelty.”

34. Keeping in view the above enunciation of law pertaining to mental cruelty, it is to be seen whether on the basis of evidence on record, respondent has made out a case of mental cruelty within the meaning of section 13(1)(i-a) of the Act.

35. It is admitted position that after marriage, parties shifted from the parental home of respondent after December, 2002 and lived in a rented accommodation uptil June, 2005 and thereafter had lived in their own house at B-6, Shani Bazar Road, Uttam Nagar, New Delhi uptil April 29, 2007.

36. The respondent has filed affidavit Ex.PW1/A by way of evidence wherein he has deposed about each and every averments of the divorce petition. He has stated on oath that from the beginning of marriage, the respondent started visiting her parental home very frequently without informing any one. Whenever he called her to know about her whereabouts she used to say that she was about to inform. He has further stated that whenever he advise her to reduce the visits, she felt offended. She did not allow him to have physical relations with her and their relationship established after one year of marriage. She was not respecting his parents

as well as the respondent. He had taken her for honeymoon. However, due to her behaviour, the trip was cut short. After returning from honeymoon, the appellant was having indifferent attitude towards his family. He has stated that on 15.11.2000 while leaving for the job in the morning, appellant told him that she would stay in her parents' home and would not come back. When he asked her to seek the permission of his parents, appellant had told that she had no feeling of elders towards his parents. She packed her baggage and left the house. The respondent went to her parent's house after 3-4 days and brought her back after much persuasions. Immediately after few months of marriage, on the demand of appellant, a separate kitchen was arranged for her at the first floor of his parent's home. Even thereafter she kept on visiting her parental home. Respondent has stated that due to her frequent visits, he had a disturbed married life and appellant was not bothered about his food. Respondent has deposed that in the month of March, 2001 before one week of Holi, appellant started packing her clothes for going to her parent's house. When respondent stopped her from packing the clothes, she shouted "*You son of bitch, how you dare to stop me*". A scene was created and her parents were informed on phone who had come and stated that appellant would live in her own style and if anybody dare to interfere would be put behind the bars. Despite that, on the next date, she went to her parent's home from the school and did not come back nor felt sorry for her behaviour. It was only the respondent who spoke to her on phone one day before his birthday and asked her to come back. On 12.4.2001 she came to the matrimonial home and entered in her room and uttered filthy words towards him and his parents and threatened that she would commit suicide if anybody would enter her room.

37. Further evidence of respondent is that in the last week of November,

2001 she again did not come back from the school. Respondent went to her parent home and checked whether she was there but she was not found even there. On the next day, she came back to her matrimonial home after attending the school. On being asked as to where she had gone, she packed her goods and left the company of the respondent. Thereafter, respondent made number of efforts to bring her back but she did not come back. Respondent has stated that on 19.11.2002 i.e., after one year, she came back and went to her room and locked herself there. The PCR was called which got the room opened and after much persuasion appellant agreed to live with the respondent.

38. The aforesaid evidence of the respondent has gone unrebutted. Only a vague suggestion was given that appellant had pressurised her to bring money from her parents to which he has denied. The defence taken in the written statement was that she never visited her parents' home frequently. She has further alleged in the written statement that respondent and his family members had misbehaved and maltreated her. Whenever she returned from the school, her mother-in-law used to harass her for bringing insufficient dowry. Her further stand was that her husband is a habitual drinker and in a state of drunkenness, he used to beat her and throw her out of the house and asked her to bring cash and other articles. The appellant has also taken a stand in the written statement that on 15th November, 2000, respondent in a state of drunkenness gave beatings to her and asked her to bring cash from her parental home. Left with no option, she had to leave her matrimonial home. Her parents had spoken to the respondent and he had demanded ₹ 2 lakh from them. Her parents had shown their inability to give such an amount. Thereupon respondent refused to take her back. As a result, her parents had to arrange for ₹50,000/- and on taking that amount,

respondent had taken her back to the matrimonial home. Her further stand in the written stand is that even thereafter she had gone to her parental home for fulfilling the demands of respondent and her parents were fed up from his demands but to save the matrimonial life of appellant, they were fulfilling his demands by lending money. In written statement, she has also taken a stand that respondent was not ready to take her for honeymoon. Only on persuasion by relatives and friends, he got ready and asked her to bring ₹ 50000/- from her parents. When her parents gave the said amount, he got ready for going to honeymoon.

39. The appellant has not led any evidence to substantiate her stand taken in written statement. There is no deposition about allegations of harassment, demanding of cash amount by respondent and his family members or beatings being given to her in a drunken state by the respondent has been made by her in her affidavit Ex.RW 1/A. No suggestion has been given to the respondent in cross-examination that on account of aforesaid alleged reasons she was forced to go to her parental home. The appellant has not produced her parents in the evidence to substantiate her stand that she was harassed by her respondent and his family members on account of demand by them or that she had gone to her parental home for fulfilling the alleged demands of respondent. There is no evidence that the cash amount was given for taking her to honeymoon or subsequently by her parents as is alleged.

40. In view of the above discussion, the allegations of frequent visits to her parental home has been established. The evidence on record establishes that appellant was not caring for the respondent and was depriving him of the marital bliss. The evidence discussed above also establish that appellant was not respecting his parents and was using abusive language against them.

41. The evidence of the respondent that on his birthday, appellant had come to her matrimonial home from her parents house and had and misbehaved with everybody and locked herself in her room and threatened to commit suicide in case he would enter the room has not challenged in cross-examination. In the written statement her stand is that one week prior to his birthday, respondent left her at her parent's home and told that he wanted a big gift on his birthday. On the day of his birthday when she came back to her matrimonial home with certain gifts. On seeing the gifts, a scene was created and respondent tried to beat her and told her that he was expecting a car. However, she has not led any evidence to substantiate her stand nor any suggestion was given by the respondent in this regard while cross-examining him.

42. Respondent has further deposed that in the last week of November, 2001, she did not come back from school. Respondent went to her parent's house with his brother-in-law to know about her whereabouts but they were not worried about her and told him not to worry. Next day, she came back of her own. When respondent asked her to know as to where she had gone, she became furious and shouted at him and on the next day, she again went to her parent's house and thereafter respondent made number of attempts to bring her back but she did not come back. The respondent has also deposed about the incident of his birthday as to how she had misbehaved with him. She came back after one year in the matrimonial house and locked herself in the room. The police was called and she made allegations that respondent had tried to kill her twice. There is no cross-examination of respondent on the above deposition. In written statement, she has denied the allegations and has taken the stand that respondent had relations with other women prior to marriage and even after marriage, he continued the same and whenever

she objected he had scolded her. The stand taken is not put while cross-examining the respondent. The specific stand taken in written statement was not stated in her evidence/affidavit Ex.RW1/A.

43. It has also come in the evidence that parties shifted from the parental home of respondent after December, 2002 and lived in a rented accommodation upto June, 2005 and thereafter had lived in their own house at B-6, Shani Bazar Road, Uttam Nagar, New Delhi upto April 29, 2007.

44. Respondent has also deposed in affidavit Ex.PW1/A that after some time of shifting at rented accommodation, she started visiting her parent's house more frequently. He has stated in the affidavit that in the first week of January, 2006, he received a telephonic call in the mid night from his father that his mother is lying unconscious due to deficiency in sugar. He immediately rushed to his parent's house and took his mother to the hospital where she was admitted in ICU. His mother remained in hospital for two days but she did not bother to see his ailing mother despite being informed and went to her parent's house. Respondent has further deposed that after discharge of his mother, he came to his house and found it locked. Thereafter, he rang the appellant who arrived after two hours. On being asked why she had not once visited the hospital, appellant shouted upon him by saying that what was the need for him to return back. Appellant told that his top priority was his parents and when he would realise his responsibility towards appellant and the child. Respondent has further deposed that in the night when he tried to make her understand about the family relations and made an attempt to cohabit with her, she refused and abused him in filthy language. Thereafter she shifted in another room and threatened him that if he dare to come in her home, she would file a complaint of rape against him. Respondent has further deposed that after the aforesaid incidents, appellant

and respondent started living in separate rooms. Respondent has further deposed that he tried to reconcile the matter but he failed in his attempts. Despite indifferent behaviour of appellant, he never turned his face from the appellant as she was in a family way. There is no cross-examination of respondent on the aforesaid deposition. In her affidavit Ex.RW1/A, she has stated that she used to visit her mother-in-law. Nothing is stated as to when she had visited her mother-in-law in the hospital or in the house when she was discharged from the hospital. No details have been given.

45. About child birth, respondent has deposed that a son was born to the appellant on July 29, 2006. In the evidence Ex.PW1/A, he has clearly stated on oath that his parents as well as his grandmother had come to see the newly born child on August 1, 2006 and had brought certain gifts but appellant refused to accept the gifts and misbehaved with them. The details are given in the affidavit Ex PW 1/A. The evidence of respondent is not challenged in cross-examination. No suggestion is given to respondent that this parents did not visit to see the child nor she had stated in her evidence.

46. Respondent has also deposed in his evidence that appellant was reluctant in having physical relations with him and their physical relations started late after marriage. In cross-examination, a suggestion is given to respondent that he was incapable of doing sexual intercourse with her due to that reason there was no physical relations. In para 15 of written statement, she has taken a stand that she was fulfilling the sexual desire of respondent whenever he felt like doing it. In para 8 of written statement stand taken is that it was the respondent who was refusing co-habitation with her as he used to tell her that she was not a woman of his taste. The different stands taken in written statement were not put to him in cross-examination nor it is stated in her affidavit Ex.RW 7/A. Rather scandalous suggestion is given in

the cross-examination questioning his sexual potency which is not even her case in the written statement. The appellant is also not consistent in her stand.

47. Further reading the evidence on record it stands established that they were not having healthy physical relations due to her frequent visits and long stay without any cause or reason to her parent's house as well as due to her behaviour as is discussed above. Respondent has categorically stated in the evidence/affidavit Ex.PW 1/A that they were residing in separate rooms in the same house since January 2006 as appellant had quarrelled with her as he had stayed with her mother for two days when she was hospitalized. There is also evidence of respondent that on 27.4.2007 when he was ready to go to his friend's house, appellant had hidden the keys of the scooter and said that *"ye scooter tere baap ka nahin hai, jana hai to paidal jao"* (*The scooter does not belong to his father and if he has to go, he should go bare foot*). On April 29, 2007, respondent again asked for keys of scooter but appellant started quarrelling and stated that she would not live with him. His further evidence is that to avoid any argument, he left the house and when he came back, house was found locked and he waited upto 9 pm and thereafter went to stay in his friend's house. Thereafter on the next evening, when he came to his house, appellant did not open the house and threatened that he would call the police if he tried to enter the house. Appellant has taken the stand in written statement that respondent had left the house by stating that he was going to see his ailing mother and therefore did not turn up to live with her though she tried to contact him on his mobile phone. However, nothing has been stated in her evidence Ex.RW 1/A to substantiate that she tried to contact him on mobile phones whereas respondent has stated in his evidence that he went three-four times to house

house but appellant did not allow his entry. Respondent has further stated in evidence that since 29.4.2007, he is living in a rented accommodation which stand corroborated from the police complaint Ex.PW 1/2.

48. There is evidence on record of the friend of the respondent of Mr.Ramesh Arora, PW-2 which also establishes uttering of harsh words by the appellant to the respondent.

49. There is also evidence of Sh.Ved Prakash PW3 who has stated that appellant had come to their office on September 18, 2002 and shouted and abused the respondent in his presence as well as other office colleagues. There is no cross-examination on his material evidence.

50. Considering the totality of evidence, it is seen that parties have lived together for a period of six-seven years and during that period, appellant had been going frequently to her parental home and stayed there for a long period without any reason. Frequent visits are proved by respondent as per evidence discussed above. On one occasion, it was for one year i.e., from November 2001 to November 19, 2002 that too without any justified reason. Her stand is that she had gone for fulfilling of demands. However, no evidence is led to substantiate the same. The physical relationship between the appellant and respondent was also not normal due to her frequent visits and also due to behaviour of respondent as is discussed above. The manner in which respondent was treating respondent and his family members has also been discussed in the evidence above. The evidence on record establishes that she has no respect for the respondent and his parents. She even did not come to see her mother-in-law when she had fallen sick.

51. The totality of evidence on record establishes proof of deliberate course of conduct on the part of the appellant to hurt and humiliate the respondent and her conduct persisted throughout the period she lived with

the respondent, such a conduct of the appellant constitutes mental cruelty. Reference in this regard is made from Sujata Uday Patil case (supra).

52. Further perusal of the written statement filed by the appellant before the trial court shows that she has levelled allegations of character assassination against the respondent in the written statement by stating that appellant was having an eye on the maid servant and used to tease her. She has alleged in the written statement that respondent is a womanizer and having illicit relations with other women and whenever she had refused to cohabit, respondent used to say that if she cannot satisfy himself, he would satisfy himself from outside which he was doing before marriage. She has alleged that he is a habitual drinker. No evidence is led by her on these allegations of character assassination. In cross-examination, no suggestion was given about these serious allegations. These allegations amount to grave assault on the character and reputation of respondent who is an Administrative Officer (Judicial) in this court. The appellant is also a teacher. Before making allegations she ought to have realised its impact on the mind of other person as well as his reputation in the society. These allegations are also sufficient to constitute mental cruelty. Such allegations of character assassination amount to cruelty. The Supreme Court in **Vijay Kumar Ramchandra Bhate vs Neela Vijaykumar Bhate: AIR 2003 SC 2462** has held that:-

“7. The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1)(i-a) of the Act. The position of law in this regard has come to be well settled and declared that leveling disgusting accusations of unchastity and indecent familiarity

with a person outside wedlock and allegations of extra marital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross- examination satisfy the requirement of law has also come to be firmly laid down by this Court. On going through the relevant portions of such allegations, we find that no exception could be taken to the findings recorded by the Family Court as well as the High Court. We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible.”

53. In **Vimla Devi Vs. Ram Babu: ANU/UP/0483/2004**, the Division Bench of the Allahabad High Court has held as under:-

“There is a long line of decisions holding that false, scandalous, malicious, baseless and unproved allegations made by one spouse whether in letters or other writings or plaint or a written statement or even in appeal or by any other mode amounts to cruelty. Such allegations may result in maligning either of the spouses or his/her relations. Such allegations do cause great mental agony either to the husband or the wife as the case may be.”

54. Further the appellant has also levelled false allegations of dowry demand against the respondent and his family members. As discussed above, she has repeatedly alleged in the written statement that she was going

to her parental home because she was repeatedly turned out from her matrimonial home as the respondent and his family members had raised dowry demand of ₹2 lakhs upon her but her parents had given her only ₹50,000/-. Nothing has been substantiated by her in her evidence. Not even a whisper has been made in this regard in the evidence. Even in the CAW cell, a case was filed which was got closed by her.

55. It may be noticed that efforts for reconciliation were made by the trial court as well as by this court but the same proved futile.

56. In view of the above discussion, no illegality or perversity is seen in the impugned order. The behaviour of appellant has resulted in causing mental cruelty to the respondent within the meaning of section 13(1)(i-a) of the Act.

57. Appeal stands dismissed. There is no order as to costs.

(VEENA BIRBAL)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

FEBRUARY 18, 2013
ssb/kks