

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

+ MAT.APP.92/2009

% Date of Decision: January 14, 2013

SUMAN KAUSHIK Appellant
Through : Mr.S.Rajappa, Advocate
along with appellant in person

versus

N.P.KAUSHIK Respondent
Through : Mr.D.P.Kaushik, Advocate
along with respondent in person

CORAM:
HON'BLE MS. JUSTICE VEENA BIRBAL

VEENA BIRBAL, J.

1. By way of this appeal under Section 28 of Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act'), appellant has challenged impugned judgment/ decree dated 06.07.2009 passed by the learned ADJ, Delhi by which the divorce petition of respondent/husband has been allowed and the marriage between the parties is dissolved by decree of divorce on the ground of cruelty.

2. Briefly the facts relevant for the disposal of the present appeal are as under:-

The parties were married to each other on 06.03.1987 in accordance with Hindu rites and ceremonies at Chandigarh. After marriage, they had lived together as husband and wife and a daughter Nitika @ Gitika was born from their wedlock on 15.01.1988. The child since birth is living with the appellant/wife. It is admitted position that w.e.f. 16.10.1987 parties are living separately.

3. In the year 1996, respondent/husband had filed a divorce petition against appellant/wife seeking dissolution of marriage on the ground of cruelty and desertion. The respondent/husband had alleged that after marriage, he started living with the appellant/wife at Flat No. 5186, Gulabi Bagh, Delhi which was allotted to him by Delhi Administration being a member of Delhi Judicial Service. The duty hours of respondent/husband were from 10 a.m. to 5 p.m. while that of appellant/wife was from 10 a.m. to 5.30 p.m. The parents of the respondent/husband are permanent residents of Banur (District Patiala). They both were living in the aforesaid Government accommodation. They used to leave for duty together. There was a maid servant who was doing household work. Initially, they were living happily. It is alleged that from the beginning of marriage, the appellant/wife used to humiliate him by saying that she was in superior service as compared to that of respondent/husband who was in the service of State level only. She used to show her superiority complex and also used to loose temper unnecessarily. However, respondent/husband used to overlook the same with the hope that better sense would prevail upon her and she would improve with the passage of time. However, with the passage of time, there was no change in her

behaviour. It is alleged that she became cruel towards the respondent and used to snub him on every point.

4. It is alleged that in the second week of July, 1987, the brother of respondent namely, Dinesh and sister had come to see them. They were supposed to stay with them for a week. The appellant/wife did not welcome them and started grumbling that they had no business to come to their house. On the next date of their visit i.e. on 14.07.1987 the appellant/wife took the issue of their visit and started quarrelling with the respondent on the issue of preparation of breakfast as the maid servant had not come on that day. In a fit of anger, appellant/wife left for the office and deliberately bolted the entrance-cum-exit of the house from outside leaving the respondent/husband, his brother and sister trapped inside the house. With the help of neighbours, respondent, his brother and sister were able to come out of the house. On that day, respondent/husband also reached his office late. Due to the aforesaid act of the appellant/wife, the respondent/husband suffered great mental tension and torture. The respondent tried to make her understand and advised her not to behave in that manner. However, instead of listening his advice, she started shouting at the respondent/husband by saying that he was nobody to tell her anything and she was the absolute master of the household. It is alleged that because of the aforesaid incident, his brother and sister had left for their house within 2 days of their visit i.e. on 15.07.1987. It was alleged that during pregnancy, the appellant/wife was given proper care and nourishing diet. During pregnancy she attended her duties regularly. The respondent/husband invariably used to pick her up from her office after duty hours. The respondent had duty hours from 10.00

AM to 5.00 PM while that of appellant/wife were from 10.00 AM to 5.30 PM. There he had to wait for long hours. Appellant/wife would keep herself in the office in order to harass the respondent. In the first week of September, 1987, when the respondent/husband went to pick her up from her office and sent a message through a peon, within the hearing of respondent, the appellant told the peon to let him wait as he had no work except to disturb her. It was further alleged that appellant was a sharp tongue woman and in anger she never bothered as to what she was talking against the respondent/husband and his family members.

5. On their first Diwali, they had decided to celebrate at the house of parents of the respondent at Banur. Appellant/wife took leave for 5 days from her office and on 16.10.1987 she went to Chandigarh where her parents were settled with the understanding that she would join him at Banur on Diwali which fell on 22.10.1987. However, appellant/wife did not come on the day of Diwali at his parents' house. Respondent tried to contact her on phone but without any result. While returning from Banur, respondent/husband asked her to accompany him but appellant/wife refused by saying that she would join him in a couple of days. Thereafter, respondent/husband had tried to contact her on telephone and wrote even 2-3 letters but there was no response from the side of the appellant.

6. Respondent/husband was also not informed about the birth of the child which took place on 15.01.1988 at Chandigarh. However, as the respondent/husband was knowing the approximate date of delivery as 20.1.1988, he went to Chandigarh on 17.01.1988 by taking two days' leave from his office. The sister of respondent/husband was also living at

Chandigarh at that time. The respondent/husband along with his brother-in-law Sh. Ashok Sharma went to the house of his in-laws at Chandigarh where they learnt that the daughter was born to appellant/wife on 15.01.1988. However, they were not allowed to meet the child and were insulted by the parents of appellant/wife and they also refused to disclose as to where the child was born. It was alleged that the father of the appellant/wife was to retire shortly. Her father was also in Government service. After the retirement of her father in the year 1988, the appellant/wife got the Govt. accommodation allotted to her father in her own name where her parents continued to stay with her till they constructed their own house in Panchkula in the year 1990. Had the appellant/wife not got the said government accommodation allotted in her name her parents would have been rendered shelterless. The aforesaid act and conduct of appellant/wife had caused great mental torture and agony to him. The appellant/wife also got herself transferred to Shimla in March/April, 1988. However, she did not join at Shimla but joined at Chandigarh where she remained posted upto December, 1990. She got herself transferred to Chandigarh without informing or consulting the respondent/husband and the same was done by her in order to intentionally leave the respondent/husband and to facilitate her parents in retaining the government accommodation at Chandigarh.

7. Thereafter, in December 1990, after the house of her parents was constructed, she got herself re-transferred to Delhi and was posted as Deputy Director in Ministry of Agriculture, Krishi Bhawan. It is alleged that during the period of 16.10.1987 to 17.12.1990 the appellant/wife did not contact the

respondent though he had been trying to contact her. The appellant/wife and her parents had been very rude to respondent on phone.

8. It is alleged that in June, 1988, the sister of respondent/husband and her husband Shri Ashok Sharma had gone to the house of appellant/wife for reconciliation and asked her as to why she was not joining the respondent/husband. They were not permitted to enter the house though appellant/wife was very much there. Her parents were also very rude to them. Again, in October 1988 and March 1989 efforts from the side of the respondent/husband were made for reconciliation but without any results.

9. It is alleged that after a gap of about 3 years i.e. on 17.12.1990 when respondent/husband had reached his house at Gulabi Bagh after court hours at about 5.15 p.m., he was surprised to see the appellant/wife creating scence and shouting loudly. The appellant/wife had entered his flat forcibly at about 5 p.m. and started shouting loudly at his brother and sister who had come from Banur to see him. The appellant/wife had shouted at them by saying that they had no business to stay in her flat and she created a scene in order to lower the prestige of the respondent/husband in the eyes of his colleagues and neighbours. After creating a scene, she went to the police station and lodged a false FIR at P.S. Pratap Nagar by leveling false allegations of dowry, maltreatment and throwing of the child by the respondent/husband on the floor. The appellant/wife went to the extent of getting these false allegations published in various newspapers including the Times of India, Delhi edition dated 19.12.1990 and Indian Express edition dated 20.02.1990 in order to defame the respondent/husband.

10. The respondent/husband had to apply for anticipatory bail which was granted on 18.12.1990 and was confirmed on 19.12.1990, by the court of Sessions. The bail application was strongly opposed by appellant/wife. A challan against respondent was also filed under Section 498-A IPC.

11. Further allegations are that the grant of anticipatory bail to respondent/husband was not liked by appellant/wife. She sent a letter dated 9.1.1991 purported to be written by a Babbar Khalsa International, a militant outfit threatening the respondent/husband and his family members with dire consequences. It is alleged that in order to harass the respondent/husband another complaint on 8.7.1991 under Section 406 IPC was lodged by her against respondent, his brother and sister. It is alleged that it was an afterthought. There was no reason why the allegations made in complaint dated 8.7.1991 were mentioned in the earlier FIR dated 17.12.1990. By lodging the said complaint, she tried to get the respondent arrested at about 8.00 p.m. on 8.7.1991 as appellant/wife was accompanied by her brother Dinesh Sharma and 8-10 other persons and police officials came to the residence of respondent at 1506, Gulabi Bagh, Delhi. The concerned SHO without producing any search warrant, made search in the house of respondent at the instance of appellant and her brother. The SHO even threatened to arrest the respondent in case the recovery was not made but could not succeed in his attempt. The concerned SHO had to face contempt proceedings who later tendered conditional apology.

12. Further case is that the respondent/husband had to again seek anticipatory bail which was opposed by the appellant/wife. The appellant/wife appeared in court with her maternal uncle. However, the

anticipatory bail was granted to him. Thereafter, appellant/wife filed a Crl. Misc. (M) Petition No. 2693/1991 in this court for cancellation of the bail granted to him. The same was disposed of vide order dated 12.04.1996 by this court. Even the appellant/wife tried to get him suspended from the service and in this regard she moved an application to the Chief Justice of this court. The appellant/wife also moved to Mahila Dakshata Samiti for using its influence in getting the respondent/husband suspended. Accordingly, the three member delegation comprising of President and two other office bearers of the Samiti had met the Chief Justice and pleaded for suspension of the respondent. However, their request was rejected. It is alleged that in order to humiliate the respondent, the appellant/wife got the news circulated in newspaper.

13. Further allegations are that on 28.01.1992, appellant/wife conspired with her maternal uncle Col. O.P. Mehta (Retd.) to get the respondent/husband killed through his Orderly Mange Ram by administering poison mixed with drinking water. Her maternal uncle threatened him, advanced a brief case full of currency notes to said Orderly Mange Ram to do the alleged act or they would kidnap his school going children. The said Mange Ram had informed the said incident to respondent on the next day. It is alleged that to malign his image, the appellant/wife had been giving false statement to the Press that the respondent/husband had demanded Toyota car from her. Respondent/husband has alleged that the appellant had caused a great mental tension and torture and agony to him. It is also alleged that the appellant/wife had deserted him for a continuous period of more than 2 years immediately preceding the filing of the present petition and she had deserted

him without any reasonable cause. The respondent/husband had prayed for dissolution of marriage on the ground of cruelty and desertion.

14. The appellant/wife had opposed the divorce petition by filing a detailed written statement wherein she had denied all the allegations of cruelty and desertion levelled against her. She has alleged that after marriage she was taken to matrimonial home at Banur where respondent's mother had taken entire amount which was given to her at the time of marriage by her relatives and friends. Within 2-3 days of the marriage, the respondent/husband and his mother had asked her to give back all the clothes and jewellery which they had given to her at the time of marriage. The appellant/wife was also told that her parents had given insufficient dowry. After 2-3 days of their marriage, they had come back to Delhi where the respondent/husband started harassing, taunting and torturing her for insufficient dowry. Respondent/husband used to give examples of other Magistrates by saying that they had been given dowry worth ₹ 11 lakhs in their marriage whereas her parents had not even given ₹ 1 lakh in cash. He had also told her that his family members were expecting a Maruti Car but they had not given even a scooter. It is alleged that in the month of March, 1987 the parties had gone to Banur where respondent's mother again started torturing her for not bringing ₹ 1 lakh in cash from her parents. His mother abused her and made her life miserable. The parties came back to Delhi in the second week of March, 1987.

15. It is alleged that when she got salary in the month of April, 1987 the same was kept by the respondent/husband and she was given only ₹ 100/- for expenses for the said month. The respondent also inquired from her about

her bank account and receipt of salary prior to her marriage. Respondent told her that she should hand over entire salary to him on the first day of every month. She had alleged that her husband was not spending a penny from his salary and did not disclose the same to her. Again in April, 1987 they had visited Banur where the mother of the respondent harassed her physically and mentally. It is alleged that from there they had gone to Chandigarh where the respondent had quarreled with her mother and demanded scooter, colour television, cash of ₹ 1 lakh. While returning from there, they came back to Banur and the mother of the respondent again asked her to bring ₹ 1 lakh cash from her parents and taunted that her parents had married their daughter in two '*takas*'.

16. Appellant/wife had denied that the brother and sister of the husband had come to Delhi in July, 1987. As per her, in second week of June 1987, they had gone to Banur. The family members of the respondent including his elder sisters were also there when she was taunted by them for bringing insufficient dowry and was asked to bring scooter, colour TV from her parents. She was maltreated, harassed by them. Respondent/husband also took their side. After 2 days, the respondent left the appellant at her parent's house at Chandigarh and was forced to stay there for non-fulfilment of the dowry demands. After few days, respondent had brought her back to Banur. It is alleged that in a fit of anger he had come back to Delhi on the same day with his two younger sisters. While she had stayed at Banur, where the mother of respondent and other family members made her stay uncomfortable. The mother of respondent forcibly took her ear tops which was the only remaining items of jewellery left with her. On 29.06.1987,

appellant/wife came to Delhi of her own. The appellant had to wait till 10 o'clock at night as respondent/husband and his sisters had locked the house and had gone somewhere out. On their return, she asked as to where they had gone. Hearing that, they became furious and the appellant/wife was not allowed to enter the house. Next day, the brother of the respondent namely Dinesh Kaushik also came there. They all used to harass her for non-fulfilment of dowry demands. She was not allowed to take breakfast. She used to sleep without having dinner at night. Her office colleague Mrs.Sarin used to order lunch and pay for her. Once she tried to enter the kitchen, Dinesh Kaushik brother of respondent had hit her with a container. At that time, she was in a family way. Her health was deteriorating in the matrimonial home. Her maternal uncle Col. O.P. Mehta (Retd.) advised them to behave properly but he was humiliated by them and they continued to harass her till they had left for Banur on 04.07.1987.

17. Further allegations of the appellant/wife are that the respondent/husband had asked her to reduce her GPF contribution and even asked her to withdraw money from GPF account. Her brother Dinesh Sharma had come in the month of August and had stayed with the parties at Gulabi Bagh for a night. He got worried on seeing the physical health of the appellant. Appellant/wife had told him that respondent and his family members were harassing her for non-fulfilment of dowry demands. Her husband had shouted at her brother when he told them to treat her properly. Her husband had told even her brother that they had not given colour television, scooter and ₹ 1 lakh cash in the marriage. Next day her brother had given her ₹ 2,000/- for purchasing ear rings on the eve of 'Raksha Bandhan' and left for

Gujarat. Those ₹ 2,000/- were taken by the husband and had also threatened her to withdraw money from bank. Left with no option, she had to withdraw the money from the bank account from time to time and had to give it to the respondent.

18. In August, 1987, appellant/wife had taken a loan of ₹ 10,000/- from Thrift and Credit Society of her office for purchasing colour TV in order to meet the illegal demand of the respondent/husband. The said TV was purchased on 08.09.1987 but the respondent had taken the receipt in his own name.

19. It is alleged that no care was taken of her during her pregnancy. She was not even taken for regular medical check-up. Her haemoglobin had come down. Feet were also swollen. In October, 1987, her mother-in-law had come and started taunting her in one way or other and had demanded utensils, clothes and had demanded ₹ 30,000/- on the occasion of *Karwa Chauth*. When the appellant had shown her inability to meet the demand, the respondent and his mother abused her and physically assaulted her. The mother of the respondent had told her that even the rent for stay in the flat was ₹ 2,000/- per month. The respondent and his mother used to lock the kitchen and she was deprived of food. On 08.10.1987, she was physically assaulted by her husband and his mother for non-fulfilment of their demands of dowry and gifts. Due to severe pain, she had to take leave from her office.

20. Further allegations are that in the second week of October, 1987 her brother Dinesh Sharma had come to Delhi on his way to Chandigarh. He

found the appellant quite weak. She told her brother about the behaviour of the respondent and his mother who suggested for adjustment and left for Chandigarh. She also told her brother about the demands raised by the respondent and his mother and that she was assaulted and tortured by them due to non-fulfilment of their demands. She had also told her brother about the purchase of colour TV by her.

21. Further allegations are that in order to escape from the torture of the respondent, she took leave for five days for taking rest at her parents' home at Chandigarh as her blood pressure was high and hemoglobin was low and feet were badly swollen. She had also requested her mother-in-law as well as respondent/husband to visit Chandigarh and to take her to Banur on the eve of Diwali, however, on the day of Diwali nobody had come to Chandigarh to take her to Banur. Even the respondent and his mother came back to Delhi without meeting her. Further allegations are that thereafter she wrote various letters to respondent giving the details of her condition of health and that she was advised bed rest and requested him to visit Chandigarh and not to pressurize for dowry demands. It is alleged that the respondent never responded to her letters nor enquired about her health. Her brother wrote a letter to her maternal uncle Col. H.K.L.Mehta at Faridabad to see her condition. On receiving the said letter, her maternal uncle had visited Chandigarh. Thereafter, her uncle wrote a letter to her brother Dinesh Sharma at Gujarat and also to her mother at Chandigarh about the alleged illegal demands of respondent and maltreatment being given to her in the matrimonial home.

22. The appellant had further alleged that on 31.12.1987, respondent came to her parents' house at Chandigarh where her parents complained about the alleged maltreatment meted out to the appellant. Thereupon, the respondent started quarreling with them and also abused the appellant and her parents and told that he would not allow the appellant to enter the matrimonial home unless and until their demands of dowry were fulfilled. At that time, one of their family friends Sh. D.C. Jain was also present at that time who told the respondent not to raise the dowry demands. Thereupon, the respondent had left their house.

23. Her further stand is that the respondent and his family members had never made any effort for reconciliation. She had denied that the respondent had written any letter to her or had visited her parental home as was alleged by him. She had denied that the respondent was not informed about the birth of the child. She has stated that her sister's husband, namely, Dr. N.M. Sharma is a doctor in a hospital at Chandigarh where she gave birth to a daughter on 15.01.1988 and the respondent had visited the hospital on 18.01.1988 after her discharge. There, he had met Dr. N.M. Sharma who told him that the appellant had gone to her parental home and also requested the respondent to go there and see the newly born child but respondent refused to go there.

24. The appellant has also denied the allegations that she had got herself transferred from Delhi to Chandigarh to facilitate her father to retain the Government accommodation as the construction of the house of her father was going on at that time. In February, 1988 she went to Gulabi Bagh house of respondent where he abused her and told her as to why she had

come. He had also accused her of giving birth to a female child and not fulfilling the dowry demands. Feeling insulted, she went to the house of her maternal uncle at Noida and stayed there the whole night. In these circumstances, she got herself transferred to Chandigarh as there was no one to look after the child at Delhi. The appellant has further alleged that on 04.04.1988, she again went to meet the respondent at his Gulabi Bagh house along with her brother-in-law Dr. N.M. Sharma for reconciliation. She also told the respondent that she would get her transfer order cancelled and would join him at Delhi. However, the respondent did not agree. In August, 1988, she along with her maternal uncle had gone to meet the respondent at Patiala House Court. After office hours, her uncle took both of them to Boat Club and left them there to settle their differences but respondent abused her and told her that he was not interested in keeping her and was interested in remarriage so that he could get handsome dowry.

25. On 13.05.1989, the brother-in-law of respondent namely Sh. A.K. Sharma wrote a letter to her father stating that he should take away few articles from Delhi and further wrote "*Aage Ke Liye Hamari Tumhari Jai Ram Ji Ki*". According to her, the aforesaid letter clearly shows that the respondent had made up his mind not to keep the appellant in the matrimonial home. Further allegations are that the marriage of sister of respondent was fixed for 04.02.1990 at Banur. Neither the appellant nor her parents were invited. Her father of his own on 03.02.1990 along with her two maternal uncles, namely, Col. (Retd.) O.P. Malhotra and Sh. H.K.L. Mehta, father-in-law of her elder sister Mr.R.R.Sharma, his son Dr.Rajesh Bhanot and their neighbour Sh. D.C. Jain went to Banur at the house of one

Padam who is known to both the families. There the respondent and his father were called. However, only his father came who informed that the respondent was not interested in reconciliation. On request made by the persons who had gone there, his father asked about the bank balance of the appellant and put a condition that the appellant should hand over all her salary for the past 3 years and also told for fulfilment of their demands. Only then he would persuade his son to keep the appellant and the child.

26. Again, in second week of June 1990, the appellant made efforts for reconciliation and went to meet respondent at Gulabi Bagh but the respondent threatened her and pushed her out of the house and bolted the door. In August, 1990, her brother Dinesh Sharma had also met the respondent at Tis Hazari Court and thereafter at his residence but the respondent kept the fulfilment of demand of ₹ 1 lakh cash and that the appellant should hand over all her salary for the past 3 years only then he would discuss the matter further. On 12.11.1990, appellant/wife visited Delhi as she was expecting the promotion orders. She went and met the respondent at Tis Hazari Court as well as on the same evening at Gulabi Bagh. She informed the respondent about her promotion and also told him that she wanted to join him at Delhi but respondent and his younger brother Dinesh Kaushik insulted and abused her. She was not even allowed to stay for one night there in the house of the respondent.

27. Appellant has alleged that she joined her duties at New Delhi on 17.12.1990 and in the evening she went to the house of the respondent at Gulabi Bagh along with her daughter who was by then 3 years of age and the respondent/husband had not yet reached home. The brother and sister of the

respondent stopped her from entering the house. However, she insisted for meeting the respondent. By that time, the respondent/husband had also reached. He became furious and he along with his sister and brother had caught the appellant and dragged her out of the house. The child was also thrown against the wall by the respondent by saying “take away your daughter” as a result of which the daughter suffered deep injury on her head and started bleeding profusely. The clothes of the appellant as well as the child were soaked with blood. They did not even bother for taking the child to the hospital for treatment. One lady Mrs.Chauhan had come for her rescue. The hospital authorities reported the matter to the police and on her complaint FIR under Section 323, 325, 498A/34 IPC and Section 4 of Dowry Prohibition Act was registered against the respondent and his family members. She has denied the allegations that she opposed the bail application of the respondent or that she got fake allegations published in various newspapers. According to her, the newspaper had reported the incident after registration of FIR and she had come to know of the reporting only through newspaper. She has denied having given any threats to the respondent or his family members. She denied that a letter dated 09.01.1990 purported to have been written by “Babbar Khalsa International” threatening the respondent with dire consequences. She has denied that in order to cause further harassment, she lodged another complaint on 08.07.1991. Appellant has denied that she had opposed the anticipatory bail application or that she made serious efforts to get the respondent suspended. She has stated having filed a Criminal Misc. (Main) petition u/s 482 read with section 439(2) of Cr.P.C. before this court and also for expunging the remarks made in the anticipatory bail order against her which were expunged by this court. She

has denied that she had approached Mahila Dakshita Samiti in order to get the respondent suspended. She has denied that she conspired with her maternal uncle to get the respondent killed through his orderly Mange Ram. She has denied all the allegations levelled by the respondent/husband against her. According to her, she was tortured by the respondent/husband and his family members for dowry.

28. The replication was filed by the respondent/husband denying all the allegations made by the appellant/wife against him in the written statement and the averments made in the divorce petition were reiterated.

29. On the pleadings of the parties, the following issues were framed by the learned Addl. District Judge on 26.07.2000:-

- “1. Whether the respondent has treated the petitioner with cruelty after the solemnization of the marriage? OPP.
2. Whether the respondent has deserted the petitioner for a period of not less than two years immediately preceding the presentation of the petition? OPP.
3. Whether the petitioner is trying to take benefits of his own wrongs?
4. Relief.”

30. To substantiate his case, the respondent/husband had examined himself as PW 1 and Sh.Ashok Kumar Verma, Administrative Officer (Judl.) Vigilance Branch, Delhi High Court as PW-2 before the Id.trial court. To rebut the stand of the respondent, the appellant/wife had examined

herself as RW-1. Besides herself, she had also examined 12 witnesses namely Sh.D.C.Jain as RW2, Ms.Geetika as RW3, Dr.Rajesh Bhanot as RW4, Sh.Kuldeep Jain as RW5, Sh.Robin Charan as RW6, Sh.H.K.L.Mehta as RW 7, Col.(Retd.) O.P.Mehta as RW8, Dr.N.M.Sharma as RW9, Sh.Padam as RW10, Sh.Sunil Dutt as RW 12 and Sh.Dinesh Kumar Sharma as RW13.

31. The learned trial court had heard the parties at length. After considering the material on record, the learned ADJ has held that the respondent/husband has failed to prove the allegations of desertion whereas he has been able to prove the allegations of cruelty against the appellant and accordingly dissolved the marriage between the parties by decree of divorce on the ground of cruelty.

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

33. Learned counsel for the appellant has contended that the evidence as recorded does not establish the allegations of cruelty levelled against the appellant/wife. It is contended that there are allegations of desertion against appellant-wife also. However, as per finding given by the learned ADJ the allegation of desertion are not proved. It is contended that in view of the said finding, it cannot be said that allegations of cruelty are proved. It is further contended that even allegations of cruelty are not established. It is contended that the evidence of respondent that after marriage parties were going to office together is not believable as the office hours of appellant/wife were from 9 am whereas that of respondent/husband were from 10 am to 5.30 pm, so there was no question of their going to office

together. It is contended that evidence on record does not establish that respondent used to go and pick her up from office. The appellant/wife has relied upon statement Ex.RW12/A of Mrs.Sarin wherein she has stated that respondent was never seen in the office. It is further contended that reading the evidence on record, it cannot be said that respondent/husband used to go to the office of appellant/wife to pick her up and the trial court has wrongly believed the said deposition.

34. It is further contended that no maid servant was employed by respondent/husband. It was the appellant who used to do the entire household work. The allegations of respondent/husband that appellant/wife was having superiority complex and used to loose temper and was a sharp tongue woman are not made out from the evidence. It is contended that the evidence led by appellant demolishes the deposition of respondent to this effect. It is contended that it is the respondent/husband who had maltreated the appellant in the matrimonial home and used to keep her entire salary. It is contended that evidence led by the appellant in this regard has not been discussed by the Id. trial court. Respondent/husband used to ask her to withdraw money from GPF. There is clear evidence in this regard. Even this aspect has not been dealt with by the learned ADJ. It is contended that a decent marriage was performed by her parents and right from beginning the appellant and his family were not happy as respondent/husband being a Judicial Officer, his family was expecting sufficient dowry. It is contended that the respondent/husband and his family had maltreated the appellant due to non fulfillment of dowry demands. It is contended that the evidence led by the appellant/wife clearly establishes that from the beginning of marriage,

demand of ₹ 1lakh cash, scooter, colour T.V. were raised from her. It is contended that the trial court has dealt with one side of evidence i.e., only the evidence led by respondent and has not considered the evidence led by the appellant. Respondent and his mother were torturing her for bringing insufficient dowry. All her clothes, jewellery and cash were taken by her mother immediately after the marriage. It is contended that even evidence of appellant and other witnesses produced by her clearly establishes that efforts for reconciliation were made by the appellant and her family members whereas it was the respondent who was never interested in keeping her. Even his family members were not interested in keeping her. It is contended that on 16.10.1987, appellant went to her parent's house at Chandigarh due to her ill health. It is further contended that even their attitude did not change with the birth of child. It is contended that respondent never visited to see the child. It is the appellant herself who has brought up the child since birth. It is further contended that even at the stage of advance stage of pregnancy, respondent did not write any letter to her nor visited her. Instead he visited his parents at Banur and appellant was totally neglected in matrimonial home.

35. It is contended that it is the respondent who had committed cruelty upon her and he cannot take advantage of his own wrongs. It is contended that the letters written by father of appellant to respondent dated 12.10.1987 Ex. PW1/R, letter by appellant's mother to her son Ex RW 13/1 and other material record establishes the dowry demands were raised upon the appellant. Learned counsel for the appellant has submitted that the evidence of Smt. Sarin supports the contention of appellant that she was not fed

during pregnancy. It is contended that even TV was purchased from the amount given by the appellant. It is contended that since the behaviour of the respondent was not proper and there was no one to look after the child, she had to stay with her parents and had to apply for transfer to Chandigarh. It is contended that she had brought the child for the first time to Delhi on 17.12.1990 and the respondent had thrown the child. Respondent even threw minor daughter against the wall. She took the child to hospital and FIR u/s 323/325/498A/201 read with Section 34 IPC was registered against the respondent and his family members. It is contended that second FIR was registered on 08.07.1991 as the respondent had refused to give her dowry articles, as such Section 406 was added. It is contended that respondent never paid any attention to the child. According to her, it is the respondent/husband who was never interested in keeping her and the findings of the learned ADJ are perverse. It is contended that to cover up maltreatment, false petition of divorce with false allegations was filed against her.

36. On behalf of the respondent, it is contended that the appellant used to humiliate him and was having superiority complex. The appellant was objecting to the visit of his brother and sisters in his house at Delhi. It is contended that at the time of marriage, her salary was ₹ 2785/- p.m. and on 16.9.1987 the balance in her pass book was approx ₹14000/-. The respondent has relied upon her pass book to show that the appellant had withdrawn ₹ 4,000/- on 7.8.1987 and had purchased ear rings on 8.8.1987 from Mehra sons and she was not spending any money. It is contended that she is making false allegations that her salary was being taken up by the appellant. It is

contended that her evidence is not worthy of belief. When she left the matrimonial home on 16.10.1987 there was sufficient balance in her account. The respondent has referred to the letter of her father dated 12.10.1987 i.e., Ex.PW 1/R and has contended that there is no mention of alleged demand of dowry in the said letter. It is stated that even the letters of her family members relied upon by appellant do not mention about alleged specific demands though as per her specific demands of cash of ₹ 1 lakh, scooter, colour T.V were made from the beginning of marriage and continued till she lived with him. It is contended that evidence on record also establishes that the respondent had gone happily to Chandigarh on 16.10.1987 and therefore did not bother for the respondent. It is contended that respondent was not informed about birth of the child. He was not informed about the transfer of appellant to Chandigarh. It is contended that the respondent was having a superiority complex. All the allegations made in the divorce petition have been established against her in the evidence led by the respondent. The evidence of respondent on material points is not demolished in cross-examination. Respondent has lodged false cases against him i.e. vide FIR. All her evidence about the dowry demands is false and fabricated. It is a cooked up story. It is contended that every effort was made by the appellant to see that the respondent be removed from the service. It is contended that there is clear evidence in this regard. It is contended that the respondent is paying regular maintenance for the child as per order passed by the court. It is contended that there is no perversity in the judgment of the trial court.

37. 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”

38. 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.”

39. 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”.

40. 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.”

41. 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.

42. 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.”

43. The Supreme Court has explained the concept and scope of cruelty in **A. Jayachandra v. Aneel Kaur : AIR 2005 SC 534**, as under:

“10. 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, nor 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.

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

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

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.”

44. In **Sujata Uday Patil v. Uday Madhukar Patil: 2007(2) ALD 45 (SC)**, the Supreme Court held as follows:

“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.”

45. 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.”

46. Keeping in view the aforesaid enunciation of law pertaining to ‘mental cruelty’, the evidence is scrutinized.

47. The main stand of the appellant is that the allegations of cruelty are not proved and it is the respondent/husband who had treated her with cruelty and from the beginning of marriage the dowry demands were raised upon her. It is contended that respondent is trying to take the benefit of his own wrongs.

48. In the written statement, she had taken a stand that immediately after marriage, she was taken to Banur District Patiala where her mother-in-law had taken all the cash given to her by friends and relatives at the time of marriage. Within 2-3 days of her marriage, respondent/husband and his

mother had asked her to return all jewellery/clothes which they had given her. She was taunted for bringing insufficient dowry. After 2-3 days of marriage respondent started torturing her for insufficient dowry. It is alleged that he told her that he was a Judicial Officer and dowry was not given as per his status. Further allegations are that the respondent/husband used to give examples of Magistrates having got ₹ 11 lakhs in the marriage whereas her parents had not given even ₹ 1 lakh. She had also alleged that the respondent had told her that they were expecting Maruti car but even a scooter was not given and he had told her to bring ₹ 1 lakh cash from her parents. She had also alleged that in March, 1987, they had again gone to Banur where the mother of the respondent had raised a demand of ₹ 1 lakh in cash. She has alleged in the written statement as to when the alleged demands were raised. In evidence i.e., affidavit Ex.RW 1/X the appellant/wife has reiterated the alleged demands on oath. She was cross-examined at length. In cross-examination, she has admitted that no demand was raised at the time of marriage from respondent's side. In her evidence by way of affidavit Ex.RW1/X, she has reiterated the stand taken in the written statement and has stated that immediately after marriage when she had reached at matrimonial home at Banur, the entire cash amount of ₹ 9,000/- was taken which was given to her at the time of marriage by her parents and relatives whereas no such figure is stated in the written statement. The names of relatives who had given cash is also not disclosed.

49. The respondent had denied having raised dowry demands as is alleged. It is her stand that all the demands were made from the beginning of marriage and she had informed her parents about the same as well as to

her brother who had been visiting her in the matrimonial home. But these specific demands of cash of ₹ 1 lakh, scooter, colour T.V. have come for the first time in FIR no.134/90 registered on 17.12.990 as is seen from the charge sheet Ex.RW 1/A. Though there are letters on record i.e., letter Ex PW 1/R written by father of the appellant to respondent, letter written by her maternal uncle to her brother and mother i.e., Ex.RW 1/F and Ex.RW 1/G respectively, letter Ex.RW 13/1 by mother of the appellant to her brother. Prior to lodging of aforesaid FIR. However, there is no mention of specific demands in the aforesaid letters as is alleged by her.

50. The appellant has further stated in her affidavit Ex.RW 1/X that the respondent had sent a threatening letter dated 18.10.1987 Ex.PW1/R1 to her father in order to impress upon the alleged demands. The said letter reads as under:-

“Dear Uncle,

I am constrained to write you this letter. As a father you would definitely have a soft corner for your daughter but even then I think it proper to inform you before anything serious happens. I brought my mother to Delhi after persuading her a lot. Suman did not tolerate her presence. Earlier too my sisters were shouted at and told to leave immediately. If the things continue like this and I am compelled to choose between my parents and my wife; very clearly I would choose for my parents.

Regards

Yours sincerely

Narinder.”

The letter mentions about behavior of appellant with his mother and sisters. Reading the said letter, it cannot be said that same was written due to non fulfillment of alleged demands.

51. Learned counsel for the appellant has also relied upon letter dated 12.10.1987 Ex.PW1/R written by father of the appellant to respondent in support of contention of demand of dowry. However, nothing is stated about the alleged specific demands in the said letter as is alleged in the written statement and in affidavit Ex.RW1/X. The appellant/wife has also relied upon letter dated 9.12.1987 Ex.RW1/F and Ex.RW1/G to substantiate her stand. Ex.RW1/F is the letter dated 09.12.1987 written by Sh.H.K.L.Mehta, maternal uncle of the appellant/wife to her brother Dinesh Sharma RW13. Ex.RW 1/G is the letter written by Sh.H.K.L.Mehta to the mother of appellant. Even in the said letters there is no mention of specific demands of dowry as are alleged by appellant/wife. Prima facie, the evidence led by her does not substantiate her stand.

52. Learned counsel for the appellant has contended that the allegations of the respondent that the appellant/wife used to humiliate him by alleging that she was in superior service and often used to show her superiority complex and used to lose her temper unnecessarily are not proved. It is contended that the other allegations of cruelty that the appellant does not welcome brother and sister of respondent when they had come to stay for a week at Gulabi Bagh. It is contended that there is no sufficient evidence to establish the aforesaid allegations. On the other hand, the contention of the respondent is that there is ample evidence in this regard and the same stands established from his evidence.

53. The respondent/husband in his evidence as PW1 has stated about the aforesaid allegations on oath. The respondent has stated that after marriage, they were residing in Flat No. 1586, Gulabi Bagh only both of them were residing and there was a maid servant in the house who used to come and do the work. He has also deposed that the appellant while residing with him used to show superiority complex by saying that she was working in Central Government as Class-I officer whereas he was only in State Government service and she also used to say that she was getting much more salary as compared to him. She used to loose her temper on petty matters and quite often used to shout at him and he used to tolerate with the hope that better sense would prevail upon her but there was no change in her behavior. The respondent has not been cross-examined on the deposition of showing of superiority complex by the appellant, losing her temper on petty matters and snubbing the respondent/husband. His testimony has gone unchallenged. There is clear evidence on record and it cannot be said that the finding of the learned trial court is without evidence, as is contended. On the basis of evidence on record, Id. trial court has observed that both are well educated and it was not expected of a newly married person to behave in such a manner. No illegality is seen in the finding of the Id. trial court.

54. The respondent has also deposed in detail about the visit of his sister and brother Dinesh Kaushik as having come to his house from native place in the second week of July, 1987. The appellant had misbehaved with them and on the next day, i.e. on 14.07.1987 the maid servant did not come to do the job. The appellant lost temper and shouted at him and his brother and sister. He tried to pacify her and told that they will do the work of

preparation of breakfast for them. She shouted at her brother and sister and they left the house on the next day i.e. on 15.07.1987 without completing their stay of one week. He has also deposed that on the dispute of preparation of breakfast, the respondent angrily left the house bolting the entrance-cum-exit door from outside and the said door was got opened with the help of neighbour. The appellant/wife has denied the same in her evidence. However, as per her, she had gone to Banur in June, 1987 where she was not treated properly and on 29.06.1987 she came back to Delhi. When she reached Delhi, she found the two sisters of respondent in Delhi in the house of respondent. On the next day, brother of respondent namely Dinesh Kaushik had also come to Gulabi Bagh from Banur. As per her evidence, they were abusing her for non fulfillment of dowry demands and she was not allowed to take breakfast and had to sleep without dinner and she had told about their treatment to her office colleague Smt. Sarin who used to order lunch and pay for her. Reading the evidence, the visit of respondent's brother and sisters in the second week of July is not proved but the appellant has admitted the visits of two sisters on 29.06.1987 and that of his brother Dinesh Kaushik on 30.06.1987. There is some variation about date of visit. The respondent has also relied upon letter Ex.PW1/R1 to substantiate his stand. The aforesaid letter is also reproduced above wherein respondent had written to her father that when he had brought his mother, the appellant did not tolerate her presence. Earlier she had shouted at his sisters. Appellant/wife has nowhere stated that the contents of the aforesaid letter are incorrect. The learned trial court has relied upon the letter and has held that appellant was not treating his family members properly in the matrimonial home and had shouted upon his sisters to leave her house. On the other

hand, appellant has relied upon the statement Ex.RW12/A of her colleague Ms. S.B. Sarin to substantiate that during the stay of his sisters and brother in Delhi she was not provided breakfast. It may be noticed that the said witness had not appeared in the divorce proceedings but had given her statement in criminal case i.e., FIR No. 134/1990 P.S. Pratap Nagar u/s 323/498A/406 IPC. In these circumstances, the trial court has not considered her evidence. Even assuming the same can be taken into consideration, no dates are given mentioned as to when she had allegedly ordered lunch for her. Further, she is a close friend of appellant/wife and her office colleague. The chances of her deposing in favour of appellant/wife cannot be ruled out. The aforesaid evidence pointed by appellant is of no use.

55. The other allegations of cruelty alleged by the respondent are that whenever he used to pick her from her office, the appellant used to keep him waiting in order to harass him. In September, 1987, he overheard appellant/wife telling the peon that let the respondent wait as he had no other work except to disturb her. The respondent has deposed the same in detail in his evidence. Learned counsel for appellant has contended that respondent/husband could not tell the number of the floor in which her office was situated in cross-examination as such it cannot be believed that respondent used to visit her at Yojana Bhavan to pick her up. Reading the evidence on record of both the parties, it cannot be said that respondent did not used to go to pick her up and did not hear the comment as is deposed by him. The finding of the Ld.trial court in this regard cannot said to be perverse.

56. The other allegations are that both of them had decided to celebrate their first Diwali at his parent's house at Banur. The appellant/wife took leave for five days from his office and went to Chandigarh at her parent's house with the understanding that she would join him on Diwali which was on 22.10.1987. However, she did not join him on that day or even thereafter and he tried to contact her on phone but of no result. While returning from Banur to Delhi, he asked her to accompany but she refused and told that she would join him in a couple of days. The appellant/wife in written statement has denied these allegations. Moreover, She had admitted having taken leave for five days and had gone to Chandigarh. Her version is that in the first week of October, 1987 her mother-in-law had come in her matrimonial home at Delhi and was torturing her and had demanded utensils, clothes worth ₹ 30,000/- on the occasion of Karvachauth. When she showed her inability, the respondent and his mother started quarreling with her and had physically assaulted her. The respondent had also threatened her of dire consequences. They both started locking the kitchen and was not even provided food. She had alleged that on 08.10.1987, she was physically assaulted by the respondent/husband and his mother in the morning for not fulfilling their demands of dowry and gifts due to which she suffered severe pain and did not go to office on the next day and the mother of the respondent told him to throw her out of the house. She had further alleged that in the second week of October, 1987, her brother Sh. Dinesh Sharma RW-13 had come to Delhi to know about her welfare. She narrated the demands of karvachauth as well as maltreatment being given to her by respondent/husband and his mother. Even the respondent and his mother demanded the aforesaid articles from him. As they had made her life

miserable she took leave and went to Chandigarh for five days as her BP was high, haemoglobin was low and feet were swollen. While going she told them that she would join them on the eve of Diwali, but no one came to take her. Her brother Dinesh Sharma was worried about the treatment being given to her, as such he wrote a letter to his uncle Mr. H.K.L.Mehta at Faridabad to enquire about her health. Her uncle had visited Chandigarh and thereafter had written letters to her brother at Gujarat and Chandigarh.

57. Learned counsel for the appellant/wife has contended that the Id. trial Judge has not examined the oral and documentary evidence led by her substantiating the circumstances which forced her to go to Chandigarh on 16th October, 1987.

58. In examination-in-chief, the respondent/husband has deposed on oath that in 1987 Diwali was on 22nd October. On 16th October, they had decided to celebrate Diwali at Banur. The appellant/wife left for Chandigarh on the said date with assurance that she would join him. He has deposed that distance between Chandigarh and Banur was 16 miles but appellant/wife did not join him which had caused great mental tension to him. The respondent/husband has denied having raised any demands on Karvachauth as was alleged by appellant/wife in written statement. In cross-examination, he has denied having ever assaulted or given physically beating to her or locked kitchen for non-fulfilment of alleged demands. He has denied even the visit of his mother to his house in October, 1987.

59. The appellant/wife in her evidence has stated that she had left Chandigarh because of her ill health and has also stated about the demands

of “karvachuth” and ill treatment being given to her by respondent and his mother. However, she has not placed any medical evidence on record to show that in October, 1987 her condition had deteriorated and due to that reason she had to go to Chandigarh though she was undergoing medical checkup being pregnant at that time. Further it has also come in her evidence that she had gone alone to Chandigarh. It is not her case that she had requested the respondent to accompany her as allegedly she was not well nor it is her case that he family members had taken her to Chandigarh. It has come in the evidence that her brother had come to meet her in the second week of October, 1987. In these circumstances, her deposition that her health had deteriorated and due to that reason, she went to Chandigarh is not believable. Appellant has stated that respondent and his mother were not allowing her to enter kitchen whereas her brother RW-13 Dinesh Sharma in his affidavit Ex. RW13/A has stated that in October, 1987 when he had gone to the house of his sister at Gulabi Bagh, he found appellant/wife in the kitchen. Even the said allegation is not believable. The appellant/wife had stated that after seeing her condition her brother Dinesh Sharma had written a letter from Gujarat to her uncle Mr H.K.L. Mehta. However, no such letter is produced despite the fact that Sh. H.K.L. Mehta has appeared as witness in this case as RW-7. The letters Ex.RW 1/F and RW 1/G written by Shri H.K.L.Mehta after meeting appellant Chandigarh do not mention anything about alleged demands of “karvachuth”.

60. Further in written statement, she had admitted that while going to Chandigarh on 16.10.1987, she had told the respondent that she would join them on the eve of Diwali. On the one hand, she has stated that her

condition deteriorated, due to that reason she had gone to Chandigarh. On the other hand, she had admitted having stated to respondent while leaving for Chandigarh that she would be joining them. Both are contradictory things. If, her health had deteriorated, how she had agreed that she would be joining them at Chandigarh. The appellant/wife has admitted that she was at Chandigarh on the day of Diwali and distance between Chandigarh and Banur which has come on record is only 16 K.ms. The same is also not denied by her. No reasons were given why she had not gone to Banur. There is nothing on record to show that she made any effort to visit Banur on the day of Diwali especially when her brother and her other family members were present at Chandigarh. In these circumstances, no illegality is seen in the finding of the Id. trial court that by not attending the first Diwali celebration in the house of the respondent/husband, the appellant/wife had caused mental cruelty to him.

61. As regards allegations of not informing about the birth of child to respondent-husband, it has come in the evidence of respondent that the expected date of delivery of appellant was 20.1.1988. Respondent has deposed that as he did not get any message from the appellant or her parents, he went to Chandigarh on 17.1.1988 by taking two days leave from his office. The respondent/husband has stated that his sister also lives at Chandigarh and he along with his brother-in-law Mr.Ashok Sharma went to his in-law's house at 406, Sector 22, Chandigarh where they learnt that appellant/wife was blessed with a daughter on 15.1.1988 but they refused to disclose where the child was born. The respondent/husband has also deposed that thereupon he went to the General Hospital, Sector 16,

Chandigarh where the appellant sister's husband Dr.N.M.Sharma met who used to reside in the hospital complex. Dr.N.M.Sharma took him to his residence and respondent asked him to assist him in meeting his daughter. Thereupon, Dr.N.M.Sharma rang up appellant's parents who told that they would give a return call. but he waited for the return call. There was no response call and getting disappointed, he came back which caused great mental tension and agony. On being cross-examined, a suggestion was given that respondent never visited Chandigarh. Another suggestion was given that expected date of delivery was not 20.1.1988. The appellant/wife has relied upon document Ex.RW 9/B to show that expected date of delivery was 11.1.1988. However, the said document is of Chandigarh Hospital and dated 30.11.1987 when the appellant had already gone to Chandigarh. The said document was not in the knowledge of respondent-husband, as such, it cannot be said that respondent knew the date of delivery was 11.1.1988. The appellant in the evidence has stated that her parents had informed the respondent about birth of the child through letters but neither the appellant nor his parents visited her. The appellant/wife had not specified any date on which her father had written the alleged letters. The appellant/wife has admitted in the evidence that she had come to know through her sister's husband Dr.N.M.Sharma that on 18.1.1988, after her discharge from the hospital, respondent/husband had visited there. This shows that respondent had gone to meet the child and the appellant/wife there otherwise there was no reason of visiting Dr.N.M.Sharma, by the respondent/husband. Thus the stand of respondent/husband that he was not informed about birth of daughter and was not allowed to meet appellant/wife and child and the said

conduct caused cruelty to him stands established. No perversity is seen in the findings of the Ld.trial court.

62. Further evidence of respondent is that appellant-wife did not contact him at all from 16th October, 1987 to 17th December, 1990 as she was not interested in joining him and she got herself transferred to Chandigarh without consulting her which had caused mental torture to him.

63. The appellant has contended that after birth of child she wrote several letters to respondent/husband but respondent did not respond. It is contended that in February, 1988, when appellant came to Delhi, respondent/husband abused her and accusing her of giving birth to a female child and not fulfilling dowry demands. As result of which, she had to apply for transfer to Chandigarh as there was no one to look after the child in Delhi. It is contended that trial court has not considered the evidence led by her to prove circumstances which forced her to take transfer.

64. The appellant has deposed that she had written several letters to respondent after the birth of the child but he did not respond. The same is totally denied by the respondent in the pleadings as well as in evidence. No specific date either in the pleadings or in the evidence is given as to when she had written the alleged letters. Appellant has deposed that she came to Delhi on 17.2.1988 but respondent has refused to keep her and therefore she got herself transferred to Chandigarh. Respondent has denied the same in the evidence. There are words against words. The said deposition of appellant is not believable especially when in January, 1988, respondent had gone to Chandigarh and was not allowed to meet the child.

65. It is not the stand of appellant that she consulted or informed her husband about her transfer to Chandigarh. The evidence on record establishes that appellant got herself transferred to Chandigarh without consulting the respondent and she remained posted at Chandigarh from 6.4.1988 to mid of December, 1990. The transfer order of respondent is Ex.RW-1/J and the same is dated 23.03.1988. Considering the evidence that the appellant-wife got herself transferred on 23rd March, 1988 vide transfer order Ex.RW-1/J her evidence that she had come to Delhi on 4.4.1988 with her brother-in-law Mr.N.M.Sharma for reconciliation and for allowing her to stay in the matrimonial house does not inspire confidence. In these circumstances, the deposition of respondent is more believable wherein he has stated that appellant had come with her brother in law on 4.4.1988 at Gulabi Bagh for taking her clothes etc as she was transferred to Chandigarh.

66. No justified reasons are given in her evidence as to why she has got herself transferred to Chandigarh without consulting her husband. The evidence on record establishes that she got herself transferred to Chandigarh without consulting her husband and the case of the respondent that same had caused great mental torture to him is proved. The appellant has also relied upon letter Ex.RW 1/X4 written by respondent's brother-in-law Shri A.K.Sharma which was produced in evidence by her and the said letter was admitted by the respondent. The stand of the respondent is that the said letter was written only after the appellant had already got herself transferred to Chandigarh without consulting the respondent. The letter does not help the appellant/wife in any manner. In these circumstances the contention of

appellant that she made efforts for reconciliation in August, 1988 and then on 03.02.1990 and evidence of witnesses produced by her has no relevancy.

67. As regards the visit of appellant/wife on 17.12.1990, the allegations of the respondent are that the appellant came to his house on said date at Gulabi Bagh, created a scene and thereafter lodged false FIR under Sections 498A/406/323/34 IPC at P.S. Pratap Nagar wherein she had levelled false allegations of dowry demand and also of throwing the child on the floor. The stand of the appellant is that the brother and the sister of the respondent had stopped her from entering the house and in the meantime her respondent had also come who misbehaved with her and asked her to get out of the house. According to her, his brother and sister caught hold of her and dragged her out of the house and threw the child against the wall. Respondent has denied all these allegations. According to him, she was creating scene on seeing his brother and sister in his house and asked them as to why they had come from Banur that they had no business to stay in his flat. In evidence also, respondent has given his version whereas the appellant/wife has given her own version. There are words against words. The criminal case in respect of FIR under Section 498A/406/323/34 IPC is still pending trial. It has been held in various judgments of the court that lodging of criminal cases by themselves would not constitute cruelty. Reference is made to judgments of this court in **Sheo Nath Singh vs. Sujate 2007 III AD (Delhi) 673; Harish Chander Drall vs. Suresh Wati (2007) DMC 450.** In any event the learned ADJ has not held lodging of criminal cases by appellant against husband as ground of cruelty.

68. The other stand of appellant is that her visit to the house of respondent on 08.07.1991 with Police in the evening was within the knowledge of respondent and the same was not planned one as is held by learned ADJ. According to her, she had gone to the police station on 18.4.1991 and gave an application for return of dowry articles which were in possession of respondent and his family members. On 6.7.1991, IO had visited the house of the respondent and informed that appellant wanted return of dowry articles and the respondent gave no objection and asked him to fix date and time. Thereafter, IO fixed the date and time with appellant and told the appellant to visit the police station and from there they had gone to the house of respondent. The stand of respondent is that she wanted to get him arrested at 8.00 p.m. on the said date and at odd hours appellant visited his house with police officials. In evidence, both appellant and respondent have deposed about their respective stands. The learned trial court has observed that the best witness was IO and the SHO to prove that they had informed the respondent about the recovery to be effected on 8.7.1991 between 5 pm to 7 pm. IO was not examined by the appellant to substantiate her stand. Accordingly, it has been held by the Id. trial court that recovery was planned in order to harass the respondent. It has also come on record that appellant had gone to the house of the respondent along with police and other persons at odd hours for the recovery of dowry articles. The finding of the Ld. trial court that recovery is given on the basis of evidence on record. No illegality is seen in the aforesaid finding.

69. The other contention of Ld. counsel appearing for the appellant is that the Ld. trial court has wrongly held that appellant had appeared

personally in the court and opposed the anticipatory bail application of respondent in respect of a criminal case. It is contended that appellant had appeared in the Sessions Court pursuant to the order of the said order dated 15.7.1991, as such, same cannot constitute cruelty as is held by Ld. trial court. The contention of the respondent is that appellant had filed a Crl.Misc. Petition before this court wherein she had prayed for cancellation of bail. It is admitted position that appellant had filed a Crl.Misc. Petition No.2693/1991 before this court. The relevant order of this court dated 12.7.1996 has been perused which shows that the counsel for the appellant had submitted that application was not pressed for cancellation of bail in view of the delay caused in the matter. There was other prayer also expunging of remarks against the appellant. The relevant finding of the trial court in this regard is as under:-

“Though she has submitted in her written arguments that as the petitioner was threatening her, therefore, she had applied for cancellation of Bail. But this argument is beyond her pleadings. In the absence of any cogent reason assigned by the respondent seeking cancellation of Bail will cause mental cruelty to the petitioner. Moreover, she did not press for cancellation of Bail on account of delay but not on merits. Thus, the subsequent behavior and conduct of the respondent that she went to the extent of seeking cancellation of bail of the petitioner without assigning any cogent reason also constitutes mental cruelty.”

The finding of the Ld.trial court is based on material on record.

70. The finding of the learned trial court that the appellant got published articles Ex.PW 1/4 in Tribune dated 6.1.1991 and in Indian Express dated

9.4.1995 Ex.PW 1/5 magazine section Ex.PW 1/6 against the respondent are also based on evidence on record. It has also been noted by the learned trial court that Ex.PW 1/6 pertains to interview of the appellant. The Ld.trial court has given justified reasons in coming to conclusion that it was the appellant who had got these items published which had caused cruelty to the respondent. The evidence on record also establishes that appellant had written complaints Ex.PW 2/3, Ex.PW 2/4, Ex.PW 2/8 to the Chief Justice of this court against the respondent. Ex.PW 2/5 is the copy of complaint addressed to the Deputy Minister, Ministry of Commerce, Government of India, forwarding letter of which is EX.PW 2/6. In few complaints, request is made for suspension of respondent from service. The various complaints on record are proved by Shri Ashok Kumar Verma, PW-2, Administrative Officer (Judl.) of this court. The stand of the appellant is that she was defending her matrimonial rights and in order to prevent the respondent from misusing his position the complaints were made. Nothing has been placed on record to show that the respondent was misusing the position. Appellant is a Senior Government Officer. She ought to have known the consequences of the said complaints. There is nothing on record to show that any such complaint was filed against her by the respondent. There was no justification on her part to request the Chief Justice of this court for suspending him. Her stand has been rightly rejected by learned trial court. No illegality is seen in the finding of the learned trial court that the same had caused mental cruelty to the respondent.

71. The contention of the learned counsel for appellant that when allegations of desertion are not proved against the appellant, in that view of the matter it cannot be said that the allegation of cruelty stands proved. The contention raised has no force. Under the Act both are separate grounds on which marriage can be dissolved between the parties, if proved. It cannot be said that if petition fails on the ground of desertion it ought to fail on the ground of cruelty as well.

72. As noted above, parties have lived together only for 7 months i.e. from 6.3.1987 to 16.10.1987. For the last 25 years they are living separately and are litigating since 1990. The efforts of reconciliation made from time to time by this court as well as before the court below have failed. Considering their family background, social status, their education, the positions on which they are working i.e. one is a Judicial Officer in Delhi and the other is a Senior Government Officer, the conduct complained of by the respondent is grave and weighty and the same constitutes mental cruelty within the meaning of Section 13(1)(ia) of the Act. The Ld.trial court has given detailed reasoning supported with relevant case law in coming to conclusion that behavior and conduct of appellant caused mental agony to respondent. After examining the evidence led by the parties in detail as is discussed above, there is no ground to interfere with the reasoning and conclusions arrived at by the trial court.

There is no perversity or illegality in the impugned order. No case for interference is made out. The appeal is dismissed. There is no order as to costs.

January 14, 2013
ssb/kks

VEENA BIRBAL, J.