

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

Judgment delivered on : March 27, 2015.

+ MAT.APP.(F.C.) 52/2013

SHIPALI SHARMA

..... Appellant

Through: Mr. Vikas Singh Senior Advocate
with Mr.S. Venkatesh, Mr. Anuj P.
Agarwala, Advocates

versus

GAURAV SHARMA

..... Respondent

Through: Mr.S.C. Singhal, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

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KAILASH GAMBHIR, J.

1. The present appeal has been preferred by the appellant under Section 19 of the Family Courts Act, 1984, read with Section 28 of the Hindu Marriage Act, 1955 against judgment/decreed dated 11.09.2013 passed by the learned Family Court, Rohini, New Delhi in HMA No.164/2010, whereby the marriage between the appellant and respondent has been dissolved on the ground of cruelty under Section 13(1)(i)(ia) of the Hindu Marriage Act, 1955.

2. Assailing the legality and correctness of the impugned judgment, Mr. Vikas Singh, learned Senior Advocate, counsel for the appellant

vehemently contended that all the four incidents that have been cited in the impugned judgment establishing cruelty on the part of the appellant pertains to the period prior to August 2006 and as per the own testimony of the respondent, he admitted that he was having normal physical relationship with the appellant till August 2006 and this admission on the part of the respondent demolishes his own case as all the alleged acts of cruelty committed by the appellant prior to August 2006 stood condoned because of the respondent having normal physical relationship with the appellant till that period. In support of his submission learned counsel for the appellant placed reliance on the judgment of the Apex Court in the case of *Dr. N.G. Dastane vs. Mrs. S. Dastane, reported as (1975) 2 SCC 326*. Counsel also argued that under Section 23 of the Hindu Marriage Act, a duty is cast on the Court to satisfy itself, irrespective of the fact whether such a petition is defended or not, that the petitioner seeking divorce on the ground of cruelty has not in any manner condoned the acts of cruelty. Submission of learned counsel for the appellant is that in the impugned judgment the finding of the learned Family Court that *'moreover no suggestion has been given with regard to the fact if all the cruelties have been condoned by the petitioner'* is contrary to the mandate of Section 23 of the Hindu Marriage Act, as even in the absence of any

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suggestion given by the appellant suggesting the respondent about condoning of the previous acts of cruelty, the Court cannot abdicate its responsibility to satisfy itself about such conduct of the petitioner of condoning the previous acts of cruelty. Counsel submits that the learned Family Court has not followed the mandate of Section 23 of the Hindu Marriage Act and thus has committed grave illegality in passing the impugned judgment on the ground of cruelty.

3. Learned counsel for the appellant also argued that the impugned judgment suffers from the vice of non application of mind. While referring to the purported incident of 16.7.2006, when the appellant had allegedly beaten the respondent, the learned counsel for the appellant submits that the learned Family Court failed to appreciate that it was a mere bald statement not supported by any evidence either in the form of a medical report or an independent witness to prove the same. Citing another instances of non application of mind on the part of the learned Family Court, learned counsel for the appellant submitted that in the impugned judgment it has been held that *'abusing the petitioner in filthy language and labelling him as pimp must have caused immense mental suffering to the petitioner'*, without appreciating the fact that the respondent was not present during the hospital visits of appellant on MAT. APP. (FC) No.52/2013

1.8.2005 and 3.8.2005, when the alleged words were uttered by the appellant.

4. Another instance of non application of mind cited by the learned counsel for the appellant pertains to the seventh incident. This incident again pertains to first week of August 2006 when the appellant became furious and started beating the respondent when she was informed that there was no occasion to inform the relatives about her miscarriage. The other incidents on which the learned Family Court placed reliance, while passing decree of divorce on the ground of cruelty were also not proved by the respondent in evidence.

5. Counsel also argued that the respondent with a view to frustrate the present appeal preferred by the appellant and with a view to overreach the legal process, again got married during the pendency of the present appeal and such an utter haste on the part of the respondent to re-marry shows his complacency and conduct to defeat the rights of the appellant.

6. Counsel also argued that one of the grave acts of cruelty attributed to the appellant in the petition was that she started levelling false allegations that the respondent was having illicit relationship with his own mother. This allegation was sought to be proved by the respondent with the help of the testimony of his father who entered the witness box

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as PW-2. Laying challenge to the testimony of PW-2, and that of the respondent himself, Counsel submitted that this incident is also of the period prior to August 2006, which stands condoned due to the continuous physical relationship of the respondent with the appellant till August 2006. Further as per the own case of the respondent, set up in his written statement, it was in the presence of his mother that such allegations were levelled by the appellant and not in the presence of his father who entered in the witness box, however the respondent failed to bring on record his mother to prove the same. Counsel thus submitted that no credence can be attached to the testimony of PW-2, father in law of appellant who was not present at the time of alleged utterances.

7. Based on the above submissions, the learned counsel for the appellant strongly urged for setting aside the judgment and decree dated 11.09.2013 passed by learned Family Court.

8. Refuting the aforesaid submissions of learned counsel for the appellant, Mr. S.C Singhal, the learned counsel for the respondents submitted that the learned family court has convincingly dealt with various instances of cruelty committed by the appellant and none of these acts of cruelties were ever condoned or connived by the respondent.

Counsel also argued that even the allegations levelled by the appellant in

her written statement and in the complaint filed by her under the Domestic Violence Act are sufficient enough to prove cruelty on the part of the appellant as these allegations are not only defamatory, indecent and immoral but they are out rightly unfounded and baseless causing serious aspersion on the character of the respondent and that of his father. To level the allegations against the father in law that he used to come in her room wearing banyan and pyjama, normally on the weekends and use to sit on her bed causing embarrassment to the appellant and also to allege that the respondent was having illicit relationship with his own mother clearly indicates that to what extent the appellant had gone to cause immense harassment, cruelty and pain to the respondent. Counsel also argued that the court has to take into consideration the totality of various acts of cruelties committed by the appellant and then examine whether such acts or even any isolated act could cause grave mental cruelty to the other spouse. Counsel further submitted that while examining these facts, the court shall also take into consideration the allegations levelled by the other party in his/her pleadings and complaints etc., filed during the course of their matrimony. Based on the above submissions, the learned counsel for the respondent submitted that the learned Family Court has analysed all the allegations based on the pleadings on record and the

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evidence adduced by the parties and there is no illegality or any kind of infirmity in the reasoning given by the learned family court to pass judgment on the ground of cruelty. In support of his arguments, learned counsel relied on the following judgments:

- i. Dr. (Mrs.) Malathi Ravi, MD v. Dr. B. V. Ravi, MD (arising out of SLP (Civil) 17/2010;*
- ii. Smt. Nitu Aggarwal v. Shri Gireesh Gupta, MAT APP. 98/2010, dated 19.11.2010;*
- iii. K. Srinivas v. K. Sunita, AIR 2015, SCCR 5;*
- iv. Suman Kapur v. Sudhir Kapur, 2008 (14) SCALE 404;*
- v. V. Bhagat v. D. Bhagat (Mrs.), 1994 1 SCC 337;*
- vi. Savitri Balchandani vs. Mulchand Balchandani F.A.O No. 124 of 1984 decided on 14-2-1986, Delhi High Court.*

9. We have heard the learned counsel for the parties and also gone through the impugned judgment passed by the learned Family Court.

10. Marriage as a social institution is an affirmation of civilized social order where two individuals, capable of entering into wedlock, have pledged themselves to the institutional norms and values and promised to each other a cemented bond to sustain and maintain the marital obligation. It stands as an embodiment for continuance of the human race. Despite the pledge and promises, on certain occasions, individual incompatibilities, attitudinal differences based upon egocentric perception

of situations, maladjustment phenomenon or propensity for non-adjustment or refusal for adjustment gets eminently projected that compels both the spouses to take intolerable positions abandoning individual responsibility, proclivity of asserting superiority complex, betrayal of trust which is the cornerstone of life, and sometimes a perverted sense of revenge, a dreadful diet, or sheer sense of envy bring the cracks in the relationship when either both the spouses or one of the spouses crave for dissolution of marriage -freedom from the institutional and individual bond. (***Malathi Ravi v. B.V. Ravi (Supra)***)

11. Cruelty is one of the grounds envisaged under clause (ia) of section 13(1)(i) of Hindu marriage Act, 1955 and the same reads as under:-

*“Any marriage solemnised, 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—
(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or”*

12. Cruelty, which is a ground for dissolution of marriage, may be defined as wilful 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. "Cruelty", postulates the conduct of a party which causes a reasonable apprehension to other person's mind that it would be harmful or injurious for him/her to live

with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other.

13. As such cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment-on 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 cases where the conduct complained of is itself bad enough and per se unlawful or illegal, in such cases the impact or injurious effect of the same on the other spouse need not be enquired into or considered and the cruelty will be deemed to have been established if the conduct itself is proved or admitted.

14. Mental cruelty has also been examined by this Court in ***Parveen***

Mehta v. Inderjit Mehta (2002) 5 SCC 706, thus;

“Cruelty for the purpose of Section 13(1)(ia) is to be taken as a behavior by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental Cruelty is a state of mind and feeling with one of the spouses due to the behavior or behavioral pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. It is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehavior in isolation and then pose the question whether such behavior is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other.”

15. In ***A. Jayachandra v. Aneel Kaur (2005) 2 SCC 22***, the Court observed as under:

“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 wilful 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 the 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 a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial dispute.”

16. In **Vinita Saxena v. Pankaj Pandit (2006) 3 SCC 778**, the Court said;

“It is settled by a catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the section. It is to be determined on whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such willful treatment of the party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case.

The word "cruelty" has not been defined and it 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. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In

such cases, the cruelty will be established if the conduct itself is proved or admitted.”

It was further stated:

“Each case depends on its own facts and must be judged on these facts. The concept of cruelty has varied from time to time, from place to place and from individual to individual in its application according to social status of the persons involved and their economic conditions and other matters. The question whether the act complained of was a cruel act is to be determined from the whole facts and the matrimonial relations between the parties. In this connection, the culture, temperament and status in life and many other things are the factors which have to be considered.

The legal concept of cruelty which is not defined by the statute is generally described as conduct of such character as to have caused danger to life, limb or health (bodily and mental) or to give rise to reasonable apprehension of such danger. The general rule in all questions of cruelty is that the whole matrimonial relations must be considered, that rule is of a special value when the cruelty consists not of violent act but of injurious reproaches, complaints, accusations or taunts. It may be mental such as indifference and frigidity towards the wife, denial of a company to her, hatred and abhorrence for wife, or physical, like acts of violence and abstinence from sexual intercourse without reasonable cause. It must be proved that one partner in the marriage however mindless of the consequences has behaved in a way which the other spouse could not in the circumstances be called upon to endure, and that misconduct has caused injury to health or a reasonable apprehension of such injury. There are two sides to be considered in case of apprehension of such injury. There are two sides to be considered in case of cruelty. From the appellants, ought this appellant to be called on to endure the conduct? From the respondent's side, was this conduct excusable? The Court has then to decide whether the sum total of the reprehensible conduct was cruel. That depends on whether the cumulative conduct was sufficiently serious to say that from a reasonable person's point of view after a consideration of any excuse which the respondent might have in the circumstances, the conduct is such that the petitioner ought not be called upon to endure.”

17. Recently, in ***Samar Ghosh v. Jaya Ghosh (2007) 4 SCC 511***, this

Court held;

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

- (i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.*
- (ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.*
- (iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.*
- (iv) Mental Cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.*
- (v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.*
- (vi) Sustained unjustifiable conduct and behavior of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.*
- (vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.*
- (viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a*

ground for grant of divorce on the ground of mental cruelty.

- (ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.*
- (x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behavior of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.*
- (xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.*
- (xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.*
- (xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.*
- (xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”*

18. Every divorce case has its own story to tell. Any petitioner approaching the Court to seek a divorce on the ground of cruelty is required to give specific instances and acts of cruelty which are

complained of by him and wherever possible with precise dates and the places where such acts were committed. Any kind of vagueness and evasiveness in the allegations will prove fatal to the case of the petitioner. It cannot be proved by mere allegations in the pleadings but the same are to be proved with the help of evidence and if possible, through independent witnesses. It is an undeniable fact that seldom witnesses, who are privy to the marital discord of husband and wife are their own respective family members and therefore the courts ought to be cautious enough while determining the truth behind the depositions of these witnesses.

19. Another settled legal principle with regard to cruelty is that the petitioner who is claiming decree on the ground of cruelty should not have condoned in any manner the acts of cruelties complained off and if the acts are so condoned, then the petitioner would not be entitled to grant of the decree. This principle is envisaged in Section 23(1)(b) of the Hindu Marriage Act, which states as under:

Decree in proceedings:

(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that—

.....

*(b) where the ground of the petition is the ground specified⁴⁸ [***] in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or*

where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and and in such a case, but not otherwise, the court shall decree such relief accordingly.”

20. The condonation of previous acts of cruelty means forgiveness on the part of the petitioner of such acts of cruelties committed by the other spouse and the same restores the other spouse to the same position as he or she occupied before committing such an act. In the present appeal, the principle contention raised by the appellant to assail the legality and correctness of the judgment and decree passed by learned Family Court is that in the facts of the present case, the respondent admitted his physical relationship with the appellant till August 2006, which clearly shows that all the previous acts of cruelties even if the same were proved by him, stood condoned and after August 2006, since there is no other allegation levelled by the respondent, therefore he is not entitled to grant of divorce under Section 13(1)(i) (ia) of the Act.

21. The case set up by the respondent is based on certain incidents to prove cruelty on the part of the appellant. It is important here to analyse as to how the learned Family Court has dealt with these instances of cruelty in the impugned judgment passed by it.

22. On a careful perusal of the impugned judgment, we find that according to the learned Family Court the respondent has succeeded in proving fourth, fifth and seventh instance. The discussion of learned Family Court on these instances has been reproduced as under:-

“25. The fourth instance is regarding the allegation of illicit relation of the mother of the petitioner with him when she stated that the petitioner should continue to have relations with his mother rather than with respondent. Speaking such a language must have come as a shocker to petitioner and must have added insult to injury especially after the miscarriage of respondent. In cross-examination, no question has been asked in order to demolish this specific serious allegation against the respondent. This leads us to irresistible inference that such an incident must have happened between the petitioner and respondent, which must have caused untold mental pain to the petitioner, levelling such kind of allegation against a period this almost a sin.

26. In Indian society, the mother has a special status which is equal to that of a Goddess. Therefore, even, thinking in such a manner itself is committing more than a sin. This also shows the mental level of the respondent to which she can go down to and she has not spared him in splashing more dirt and filth than anything else. This must have mentally wrecked the petitioner.

27. The fifth instance is incident of 16.07.2006, when the respondent without any rhyme or reason started beating the petitioner, broke her chain and bangles demonstrating that she had become widow and the petitioner has died for all intents and purposes. The respondent, then, caught hold of the petitioner and banged his head on the bed and the petitioner has reported this incident to the police also. The petitioner has given a specific incident of beatings given to him and more seriously the respondent had broken her chain and bangles. In Hindu society, chain and bangles have special value and they are not merely articles of fashion. This signifies the special bondage between husband and wife. Breaking the same means breaking the relationship. The incident must have caused tremendous mental pain and agony to the petitioner. No detail cross-examination has been conducted by the respondent and only suggestion has been given denying the incident.

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30. *The seventh instance is of first week of August 2006, when the respondent became furious and started beating the petitioner when she was informed by the petitioner that there was no occasion to inform the relatives about the miscarriage of the respondent. In the cross-examination only a suggestion has been given denying any such incident. It is believable that such an incident may have happened and in response to not having got a proper reply from the petitioner, she may have indulged herself in beating him."*

23. Besides the aforesaid instances, the learned Family Court found that the testimony of PW-2 – Dr. Jagmohan Sharma, father of the respondent, also supported the case of the respondent in proving the ground of cruelty against the petitioner. The relevant part dealing on this aspect is reproduced as under:-

"... since about two weeks of marriage, the respondent had been alleging petitioner's illicit relations with his mother, I cannot tell the dates when she so alleged, as she used to say number of times. These allegations were not made in presence of any outsider. Respondent had said the petitioner that he had physical relationship with his mother. It is correct that such allegations had been made by the respondent prior to 16.07.2006 and August 2006. As per me, this is a serious allegation..."

24. In the rebuttal evidence, the petitioner also introduced four instances about the wrongs committed by the respondent in which learned Family Court found no semblance of truth.

25. In para 50 of the impugned judgment the learned Family Court has crystallised its reasoning on the said instances of cruelties which were

proved by the respondent in the evidence. In paras 52 and 53 of the impugned judgment, the discussion is on the plea of the appellant with regard to condonation of the acts of cruelty because of normal physical relationship between the parties till August 2006 and negating such plea of the appellant, the learned Family Court in the following paras, held as under:-

“52. During the course of arguments, learned counsel for the respondent has urged that since the petitioner in his cross-examination has admitted that he was having normal physical relations with the respondent till August 2006 which implies that whatever cruelty that has been caused to the petitioner stands condoned.

53. There is no force in the submission made by Ld. Counsel for the respondent for the simple reason that main instances of cruelties had been committed in an around that period and even subsequent thereto. Therefore, only by saying that he had physical relation with her till August 2006 shall not negate the effect of serious cruelties committed upon the petitioner. Moreover, no suggestion has been given with regard to the fact if all the cruelties have been condoned by the petitioner.”

26. Let us now analyse these three instances one by one. Starting from fourth incident, which is regarding the alleged allegation of illicit relationship of the respondent with his mother. The learned Family Court is correct in saying that in the Indian Society the mother has a special status, which is equal to that of a goddess and therefore, even thinking in such a manner itself amounts to committing more than a sin. The Court further observed that this also shows the mental level to which the

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appellant can go down to, that she has not even spared the respondent in splashing more dirt and filth than anything else. No doubt, that such kind of conduct cannot be appreciated but the precise question before this court is whether the respondent really succeeded in proving any such utterances made by the appellant.

27. The pleadings in this regard have been averred by the respondent in para 6(c) of the petition which reads as under:-

“That since the petitioner remained disturbed with such foul language and threats and tried to counsel the respondent, she further started levelling more false allegations that the petitioner has illicit relations with the mother and says this thing very often that since he is keeping relations with his mother then why had married to respondent. The allegations are not only false but also in nature and certainly no son or mother can even hear these kinds of allegations but the respondent did not hesitate at all even levelling these kinds of allegations in front of the mother of the petitioner as well.”

28. From the above pleadings, it can be clearly seen that the respondent has not referred to any particular date, month and year as to when such kind of allegation was levelled by the appellant. The allegation to this effect is vague and evasive on the very face of it. Moreover, as per the respondent, this allegation was levelled by the appellant in front of his mother, however the mother who could have been the best witness to prove the same, was not brought as witness and instead the respondent

produced his father PW-2 to prove the fact. In his cross examination PW-2 deposed that he cannot tell the dates when such allegation was made by the petitioner as she used to say it a number of times. This shows that even PW-2 does not have any specific recollection of any event. He further deposed that it was not made in the presence of any outsider, which also ousts the possibility to prove this allegation through some independent witness. Due to such vagueness and evasiveness in the allegation, we can hardly believe it to be true. Usually such kind of allegations are levelled by the people to bolster their case of cruelty, however, in the absence of any cogent evidence to prove the same, it is hard for the court to believe them. Further, as per the testimony of PW-2, this allegation of illicit relationship was made by the appellant prior to August 2006 and as per own evidence of the respondent, he admitted the fact that he was having normal physical relationship with the appellant until August 2006. By no stretch of imagination it can be believed that the husband would have normal physical relationship with his wife even after being well aware of such filthy and crude allegations levelled by her. The allegation levelled by the respondent therefore appears to this Court ex facie false and preposterous.

29. Coming to the other instance i.e. fifth instance, which is of 16th July 2006 when the appellant started beating the respondent and broke her chain and bangles' demonstrating that she has become a widow and the respondent has died. This instance was found to have been proved by the learned Family Court since no detailed cross examination was conducted by the respondent and only suggestion given to the appellant was denying the incident. Similarly the seventh incident, when the appellant became furious and started beating the respondent when she was informed by the respondent that there was no occasion to inform the relatives about her miscarriage, was also believed by the learned Family Court on the ground that there was no effective cross examination except denial of the incident in the suggestion given by the petitioner to the respondent. The learned Family Court also held that it is believable that such an incident may have happened as in response to not having got a proper reply from the respondent, the appellant may have indulged herself in beating him.

30. With regard to these last two incidents, we find considerable merit in the contention raised by counsel for the appellant that due to admission of the respondent that he was having a normal physical relationship with

appellant till August 2006, these acts of cruelty even if the same are taken to be proved on record, stand condoned by the respondent.

31. The authoritative pronouncements of the Apex Court in the case of ***Dr. N.G. Dastane vs. Mrs. S. Dastane, (Supra)*** has eloquently explained this theory of condonation as envisaged under Section 23(1)(b) of the Hindu Marriage Act. The relevant part of the said judgment are reproduced as under:-

"condonation means forgiveness of the matrimonial offence and the restoration of offending spouse to the same position as he or she occupied before the offence was committed. To constitute condonation there must be, therefore, two things: forgiveness and restoration".

32. While reiterating this judgment, the Division bench of this Court in case of ***J.P. Sharma v. Shasffi Bala reported in ILR 1979 Delhi 288,*** held as under:

"The evidence in this case, as already discussed, shows that despite wife's alleged cruelty and mental illness, the parties led a normal married life from September/October, 1970 till September 15, 1971 when the wife was finally shunted out of the house. During this period the parties had cohabited as is evident from the fact that the wife had an abortion in March, 1971. The facts show that the husband had condoned the cruelty if there was any. The appeal is, therefore, dismissed with costs."

33. In the present case, it is not disputed by the respondent that he had normal physical relationship with the appellant till August 2006. The relationship of the respondent with the appellant clearly shows that such

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acts of cruelty which were committed by the appellant before August 2006, stood condoned by him. Since no other incident after the said period has been pleaded and proved by the respondent to prove cruelty on the part of the appellant, we do not find any sufficient ground to grant the decree of divorce to the respondent in the present case.

34. In the light of the aforesaid discussion, the present appeal filed by the appellant is allowed. Resultantly, judgment and decree dated 11.09.2013, passed by the learned Family Court, is set aside.

KAILASH GAMBHIR, J.

I.S. MEHTA, J.

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