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

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Date of Decision: 9th April, 2018

+ MAT.APP. 62/2011 & C.M. Nos. 16979/2011, 19900/2016,
28099/2016 and 5315/2017

R Petitioner
Through: Ms. Reena Jain Malhotra,
Advocate along with petitioner
present in person

versus

J Respondent
Through: Ms. Vandana Sharma,
Advocate along with
respondent present in person

+ MAT.APP. 69/2011

J Petitioner
Through: Ms. Vandana Sharma,
Advocate along with petitioner
present in person

versus

R Respondent
Through: Ms. Reena Jain Malhotra,
Advocate along with
respondent present in person

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

J U D G M E N T

1. 'J' and 'R' got married on 03rd July, 1978 and two children were born out of their wedlock, namely a daughter, Pooja on 29th October, 1980 and a son, Raghav on 04th September, 1983. On 29th November, 2002, 'J' instituted a petition for dissolution of marriage

on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955 against 'R' which resulted in the judgment dated 06th June, 2011 whereby the learned Trial Court rejected the prayer for grant of decree of divorce but passed a decree for judicial separation under Section 13A of the Hindu Marriage Act. Both the parties have challenged the impugned judgment. The husband is seeking a decree of divorce on the ground of cruelty whereas the wife is seeking setting aside of the decree of judicial separation. For the sake of convenience, the husband and wife are referred to as "the petitioner" and "the respondent" respectively, as per their nomenclature before the Trial Court.

2. The petitioner sought the decree for divorce on the ground of cruelty against the respondent on various grounds, inter alia, that the respondent was extremely suspicious towards him and often accused him of flirting around followed by abuses and tantrums along with callous and irresponsible behaviour towards his mother till she died, and was also irresponsible and callous towards the brother and sister of the petitioner. Soon after the death of the petitioner's brother in 1999, the respondent's suspicious nature went beyond all reason and tolerance when the respondent started accusing the petitioner of having an affair with the widow of his brother, Anuradha Dang. The respondent made such accusations not only in front of their children but also in front of his relatives, neighbours, police, friends and servants which resulted in feeling of deep anguish, disappointment and frustration in the petitioner. The continuous course of abuse and humiliating treatment was calculated to torture and render the life of

the petitioner miserable, and the continuous unjustifiable conduct and behaviour of the respondent affected the physical and mental health of the petitioner, wherein the petitioner also suffered a massive heart attack in July, 2010. The petitioner was also accused of ignoring the welfare and education of his own children, while taking care of the children of his deceased brother on the premise that he was having an extra marital affair with the widow of his brother. The continued torture, both mental and physical of the petitioner at the hands of the respondent ultimately led to the end of their matrimonial relationship.

3. The respondent contested the petition on various grounds, *inter alia*, that the parties were happily married for more than 25 years and the petitioner started victimising the respondent after developing an extra-marital affair with the widow of his brother, Anuradha Dang. According to the respondent, the petitioner deserted the respondent after committing acts of cruelty and indulging in immoral acts. The respondent pleaded that she was informed by her friends that the petitioner was seen frequently at different restaurants, cinemas, clubs and shopping complexes with Anuradha Dang. She further pleaded that in 2000 the petitioner on multiple occasions, went to India to spend weekends with Anuradha Dang. The respondent pleaded that the petitioner was having immoral relationship with Anuradha Dang and in summer of 1995, the petitioner left the respondent in UK to continue his illicit affair Anuradha Dang. The respondent came to India on the death of her mother-in-law and found that her place has been usurped by Anuradha Dang, who was acting as petitioner's wife. The respondent pleaded that the petitioner in front of his various

friends, told the respondent that as per the custom in Lucknow, the younger brother takes over his widowed sister-in-law and on another occasion, Anuradha Dang told the respondent that we should live together and share the petitioner as a husband and father of our children. During the petitioner's posting at Asian Development Bank, Philippines, the petitioner made extended official trips to Delhi to continue his adulterous relationship with Anuradha Dang and together they watched pornographic videos and spent time on weekends as informed by the well-wishers and friends of respondent who encountered petitioner and Anuradha Dang. The respondent further pleaded that the relationship between the petitioner and Anuradha Dang adversely affected their children who questioned the respondent about the relationship. The respondent denied the allegations of cruelty made by the petitioner and pleaded that the petitioner was cruel to the respondent.

4. The learned Trial Court framed the following issues:

- “1. Whether the respondent has, after solemnization of marriage treated the petitioner with cruelty? OPP*
- 2. Whether the petitioner has not come to the court with clean hands or has taken advantage of his own wrongs as stated in the WS? OPR*
- 3. Whether the petitioner is entitled to relief claimed? OPP*
- 4. Relief.”*

5. The petitioner examined himself as PW-1 and his friend, Uday Chatterjee as PW-2 whereas the respondent examined herself as RW-1, her son Raghav Dang as RW-2, Sunil Singhal as RW-3 and Praveena Singhal as RW-4.

Findings of the Trial Court

6. Learned Trial Court decided issue no.1 in favour of the petitioner. The conclusion on the findings of the Trial Court with respect to issue no.1 are as under: -

“In view of the above evidence available on record, it cannot be said that the petitioner was having any kind of illicit relationship with his sister in law. Rather from the material available on record, it appears that consequent upon departure of his brother from this world in the year 1999, the petitioner, as a good brother-in-law and having soft corner for the family of his brother, rendered some help to Ms. Anuradha Dang and her children, but from all this, it cannot be said that he was having illicit relations with his sister in law.

Herein, it cannot be said that the allegation of extra marital relations of the petitioner with his sister in law Ms. Anuradha Dang, even since the departure of her husband, have been made in a fit of anger or under an emotional stress. These have been made in a formal pleading filed in the Court.

Here also, questions to the effect that petitioner has extra marital relations with his sister-in-law ever since the departure of her husband, were put in the cross-examination of the petitioner. These are not the mere protestations of an injured wife. These assertions cannot but constitute mental cruelty.

From the above discussion, the established facts and applying the settled law referred to above, this Court holds that the petitioner has succeeded in establishing his case that the respondent subjected him to cruelty by levelling false allegation that he has illicit relations with his widowed sister-in-law, for whose family he has actually soft corner and desire to help after departure of his brother from this world.

This issue is, therefore, decided in favour of the petitioner and against the respondent.”

(Emphasis supplied)

7. Learned Trial Court decided issue no.2 in favour of the petitioner. The conclusion of the findings of the Trial Court with

respect to issue no.2 are as under: -

“In view of the above discussion, this Court finds that it is not a case where petitioner can be said to have condoned the acts of cruelty of the respondent or to have cohabited with the respondent even after filing of the petition or that he is taking advantage of any own wrong.

Therefore, issue No.2 is decided against the respondent and in favour of the petitioner.”

8. With respect to issue no.3 and 4, the learned Trial Court declined the decree of divorce to the petitioner on the ground that there was a possibility of the parties living together as husband and wife and they had a son of marriageable age who loved them and had regard for both of them. The conclusion of the findings of the Trial Court with respect to issue no.3 and 4 are reproduced hereunder:

“11. Petitioner has sued his wife-respondent to have decree of divorce. As held above, petitioner has proved his case that he has been subjected to cruelty by the respondent.

Section 13A of Hindu Marriage Act provides that in any proceeding under this Act, on a petition for dissolution of marriage by a decree of divorce, except in so far as the petition is founded on the grounds mentioned in clauses (ii), (vi) and (vii) of sub-section (1) of section 13, the court may, if it considers it just so to do having regard to the circumstances of the case, pass instead a decree for judicial separation.

Findings recorded under issues No.1 and 2 entitle the petitioner to decree of divorce, but in the given facts and circumstances of this case, Court finds it just and proper to pass a decree for judicial separation instead of a decree of divorce. Following are the facts and circumstances which have led the Court to arrive at this conclusion: -

(a) that at the time of marriage of their daughter, the couple agreed not to let the world know that they had differences on account of cruelty;

- (b) *that the parties, who, got married in the year 1978 have a son of marriageable age who loves them and has regard for both of them,*
- (c) *that there is possibility of the couple living together as husband and wife;*

In view of the above findings, this petition is dismissed so far as prayer for grant of decree of divorce is concerned, but a decree of judicial separation is passed in favour of the petitioner and against the respondent as an alternative relief available U/s 13 of Hindu Marriage Act.”

Petitioner's Contentions

9. The petitioner has been able to prove his case of cruelty as ground for dissolution of the marriage and is entitled to decree of divorce. Reliance is placed on ***Shobha Rani v. Madhukar Reddi***, AIR 1988 SC 121 and ***A. Jayachandra v. Aneel Kaur***, 2005(2) SCC 22.

10. The conduct complained by the petitioner against the respondent was extremely severe in nature, weighty and certainly no reasonable person would be expected to endure it, the factum of which has also been observed by the Trial Court in the impugned judgment, in spite of which the petitioner has been saddled with the order of a judicial separation instead of decree of a divorce which would have restored a semblance of dignity to the battered self-respect of the petitioner in front of all people associated with him who were a witness to his trauma for more than ten years.

11. The accusations levelled by the respondent against the petitioner, resulted in a lot of mental pain and anguish in the mind of the petitioner. It is a settled law that physical violence is not a necessary ingredient of cruelty. Unending accusations and imputations can cause more pain and misery than physical violence.

The Trial Court has committed a manifest error and perversity of thought in misinterpreting the preponderance of probabilities as given in its order granting the relief of judicial separation instead of divorce which was prayed for. The unwarranted acts of mental cruelty as elaborately stated in the petition for divorce, rejoinder, evidence and the impugned judgment have devastated the petitioner. Reliance was placed on ***Kiran Mandal v. Mohinio Mandal*** I(1994) DMC 256.

12. The respondent/wife was entertaining suspicion that the petitioner/husband had illicit relations with Anuradha Dang. The substantive evidence of PW-1, PW-2, RW-2, RW-3 and RW-4 establishes the factual position that PW-1 was maintaining relations with Anuradha Dang only to demonstrate his care and concern for the well being and welfare for his deceased brother's family. Moreover, such illicit relations were categorically denied by PW-2, friend of the petitioner, RW-2 and RW-3 relations of the respondent and RW-4 son of the petitioner and the respondent. In fact, during cross-examination of the witnesses, blatant suggestion was given to the petitioner that he had illicit relations with the widow of his deceased brother. There was no basis for imputing such reckless allegations against her own husband by the respondent. Reliance was placed on ***Samar Ghosh v. Jaya Ghosh*** (2007) 4 SCC 511, ***Naveen Kohli v. Neelu Kohli*** (2006) 4 SCC 558, ***Vinitha Saxena v. Pankaj Pandit*** (2006) 3 SCC 778 and ***Hoovamma v. Vishwanth*** ILR 2009 Kar 4193.

13. Out of 25 years of marriage, the parties have lived separately for 11 years, most of which has been spent in acrimonious allegations against each other in the litigation embarked upon by both the parties.

There is no possibility of retrieval of the marriage and decree of divorce be granted to end the agony of both the parties.

14. The marriage between the petitioner and the respondent is dead emotionally and practically and there is no chance of its being retrieved, the continuance of such a marriage would amount to cruelty. Reliance was placed on ***Romesh Chander v. Savitri*** (1995) 2 SCC 7 and ***Satish Sitole v. Ganga*** passed in Civil Appeal No.7567/2004 on 10th July, 2008.

15. The petitioner suffered a massive heart attack in July, 2010 even then the respondent was not deterred in refraining from filing and pursuing frivolous cases against the petitioner nor did she bother to enquire about his health. Now the parties have no feelings and emotions towards each other. The entire substratum of the marriage has already disappeared.

Respondent's contentions

16. The petitioner tortured and cheated the respondent. The petitioner used to maltreat the respondent in front of his common friends and relatives. The petitioner called the respondent insane before the whole gathering and humiliated her. The said incident was also corroborated by the two witnesses namely Sunil Singhal and his wife Praveena Singhal. Both the witnesses confirmed the said incident.

17. The petitioner himself withdrew from the company and society of the respondent, he himself deserted the respondent. The petitioner cannot be allowed to take the undue advantage of his own misdeeds and acts of cruelty by seeking the decree of divorce against the

respondent, who in fact is the aggrieved and victim of the said misdeeds of the petitioner.

18. The respondent in her cross-examination proved many times that she saw Anuradha Dang in her master bedroom with her husband in August, 1999. Even the son of the respondent confirmed in his affidavit that his father was rude to his mother/respondent.

19. The learned Trial Court ignored the admission of the petitioner that he made Anuradha Dang as his beneficiary in the UK Citibank Pension Plan and also a beneficiary in his shares of Reliance. The petitioner also admitted that he made Anuradha Dang and her children as his dependents in his Kris Flyer Programme in USA. The petitioner made Anuradha Dang and her children as his dependents along with the respondent. The learned Trial Court failed to appreciate the fact that even in the very private affairs of the family, the petitioner was including the name of Anuradha Dang without the knowledge of the respondent.

20. The parties were living together and were cohabitating till 2007 that is even after filing of the divorce petition in 2002. The respondent has filed around 99 photographs to show that the parties are living happily and are even cohabitating, spending holidays, going for dinners, celebrating important functions together. The petitioner admitted all the photographs during his cross-examination and tried to give false justification.

21. The respondent is the legally wedded wife of the petitioner and she deserves equal rights in the decisions taken by the petitioner for the welfare of the family. The petitioner failed to prove his case that

respondent was cruel to the petitioner. The respondent is the victim of mental torture and cruelty at the hands of the petitioner. It further shows that the respondent always wanted to live with her husband in all the circumstances.

22. The learned Trial Court was also at fault in stopping the interim maintenance of the respondent and by not ordering for the permanent alimony as per the section 25 of the Hindu Marriage Act. It is a settled law that the permanent alimony and maintenance can be granted on basis of oral application also. The respondent was entitled to monthly maintenance from the date of application till final order including future maintenance and litigation expenses. Reliance is placed on *Umarani v. D. Vivekanandan*, II (2000) DMC (Mad). The petitioner is a man of means and has many properties at Saraswati Kunj, Delhi, Anand Lok, Delhi, Navjeevan Vihar, Delhi, Qutub View Apartment, Delhi, two flats at London and much more. He has got shares and deposits worth crores of Rupees in India and Abroad. He is getting regular income in dollars and pounds but despite of all this, the learned Trial Court deprived the respondent from her equal legal rights over the income and assets of the petitioner.

Findings

23. The object of a trial is first to ascertain the truth and then do justice on the basis of truth. It is the fundamental duty of the Court to ascertain the truth. The Indian Evidence Act, 1872 does not define truth. In *Ved Parkash Kharbanda v. Vimal Bindal*, 2013 (198) DLT 555, this Court discussed the meaning of truth and principles relating to the discovery of truth and Sections 3 and 114 of the Indian

Evidence Act, 1872 have been summarized as under:

“21. Summary of Principles

21.1 Truth should be the Guiding Star in the Entire Judicial Process

- *Truth is foundation of Justice. Dispensation of justice, based on truth, is an essential and inevitable feature in the justice delivery system. Justice is truth in action.*
- *It is the duty of the Judge to discover truth to do complete justice. The entire judicial system has been created only to discern and find out the real truth.*
- *The justice based on truth would establish peace in the society. For the common man truth and justice are synonymous. So when truth fails, justice fails. People would have faith in Courts when truth alone triumphs.*
- *Every trial is voyage of discovery in which truth is the quest. Truth should be reigning objective of every trial. Judge has to play an active role to discover the truth and he should explore all avenues open to him in order to discover the truth.*
- *The Trial Judge is the key-man in the judicial system and he is in a unique position to strongly impact the quality of a trial to affect system's capacity to produce and assimilate truth. The Trial Judge should explore all avenues open to him in order to discover the truth. Trial Judge has the advantage of looking at the demeanour of the witnesses. In spite of the right of appeal, there are many cases in which appeals are not filed. It is mostly with the Trial Judge rather than with the appellate Judge that the members of the general public come in contact, whether as parties or as witnesses.*

21.2 What is 'Truth' and how to discover it

- *Law's Truth is synonymous with facts established in accordance with the procedure prescribed by law.*
- *The purpose of judicial inquiry is to establish the existence of facts in accordance with law.*
- *Facts are proved through lawfully prescribed methods and standards.*

- *The belief of Courts about existence of facts must be based on reason, rationality and justification, strictly on the basis of relevant and admissible evidence, judicial notice or legally permitted presumptions. It must be based on a prescribed methodology of proof. It must be objective and verifiable.*

21.3 Section 3 of Indian Evidence Act, 1872

- *“Evidence” of a fact and “proof” of a fact are not synonymous terms. “Proof” in the strict sense means the effect of evidence.*
- *A fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.*
- *The term “after considering the matters before it” in Section 3 of the Evidence Act means that for judging whether a fact is or not proved, the Court is entitled to take into consideration all matters before it which shall include the statement of the witnesses, admissions of the parties, confession of the accused, documents proved in evidence, judicial notice, demeanour of witnesses, local inspections and presumptions.*
- *The term “believes it to exist” in the definition of “proof” is a “judicial belief” of the Judge based on logical/rational thinking and the power of reason, and the Court is required to give reasons for the belief. The reasons are live links between the mind of the decision maker and the belief formed. Reasons convey judicial idea in words and sentences. Reasons are rational explanation of the conclusion. Reason is the very life of law. It is the heart beat of every belief and without it, law becomes lifeless. Reasons also ensure transparency and fairness in the decision making process. The reasons substitute subjectivity by objectivity. Recording of reasons also play as a vital restraint on possible arbitrary use of the judicial power. The recording of reasons serve the following four purposes:-*
 - *To clarify the thought process.*

- To explain the decision to the parties.
- To communicate the reasons to the public.
- To provide the reasons for an appellate Court to consider.
- Non-recording of reasons would cause prejudice to the litigant who would be unable to know the ground which weighed with the Court and also cause impediment in his taking adequate grounds before the appellate Court in the event of challenge.
- Nothing can be said to be “proved”, however much material there may be available, until the Court believes the fact to exist or considers its existence so probable that a prudent man will act under the supposition that it exists. For example, ten witnesses may say that they saw the sun rising from the West and all the witnesses may withstand the cross-examination, the Court would not believe it to be true being against the law of nature and, therefore, the fact is ‘disproved’. In mathematical terms, the entire evidence is multiplied with zero and, therefore, it is not required to be put on judicial scales. Where the Court believes the case of both the parties, their respective case is to be put on judicial scales to apply the test of preponderance.
- The approach of the Trial Court has to be as under:-
- If on consideration of all the matters before it, the Court believes a fact to exist or considers its existence probable, the fact is said to be ‘proved’. On the other hand, if the Court does not believe a fact either to exist or probable, such fact is said to be ‘disproved’. A fact is said to be ‘not proved’ if it is neither proved nor disproved.
- The test whether a fact is proved is such degree of probability as would satisfy the mind of a reasonable man as to its existence. The standard of certainty required is of a prudent man. The Judge like a prudent man has to use its own judgment and experience and is not bound by any rule except his own judicial discretion, human experience, and judicial sense.

21.4 Section 114 of the Indian Evidence Act, 1872

- *Section 114 is a useful device to aid the Court in its quest for truth by using common sense as a judicial tool. Section 114 recognizes the general power of the Court to raise inferences as to the existence or non-existence of unknown facts on proof or admission of other facts.*
- *Presumption of fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts.*
- *The source of presumptions is the common course of natural events, human conduct and public or private business, and the Section proceeds on the assumption that just as in nature there prevails a fixed order of things, so the volitional acts of men placed in similar circumstances exhibits, on the whole, a distinct uniformity which is traceable to the impulses of human nature, customs and habits of society.*
- *The illustrations though taken from different spheres of human activity, are not exhaustive. They are based upon human experience and have to be applied in the context of the facts of each case. The illustrations are merely examples of circumstances in which certain presumptions may be made. Other presumptions of a similar kind in similar circumstances can be made under the provisions of the section itself.*
- *Presumption in law of evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts the Court can draw an inference and that would remain until such inference is either disproved or dispelled.*
- *Presumptions of fact can be used by the Courts in the course of administration of justice to remove lacunae in the chain of direct evidence before it. The function of a presumption is to fill a gap in evidence.*
- *Section 114 of the Indian Evidence Act applies to both civil and criminal proceedings.*
- *Whether or not a presumption can be drawn under the section in a particular case depends ultimately upon the facts and circumstances of each case. No hard and fast rule can be laid down. Human behaviour is so complex and room must be left for play in the joints. It is not possible to*

formulate a series of exact propositions and con-flue human behaviour within straitjackets.

- *No rule of evidence can guide the Judge on the fundamental question whether evidence as to a relevant fact should be believed or not. Secondly, assuming that the Judge believes very few cases, guide him on the question what inference he should draw from it as to assist a Judge in the very smallest degree in determining the master question of the whole subject – whether and how far he ought to believe what the witnesses say? The rules of evidence do not guide what inference the Judge ought to draw from the facts in which, after considering the statements made to him, he believes. In every judicial proceeding whatever these two questions – Is this true, and, if it is true what then? - ought to be constantly present in the mind of the Judge, and the rules of evidence do not throw the smallest portion of light upon them.”*

24. Applying the aforesaid principles of law to the facts of the present case and on careful consideration of the matters before the Court, this Court is of the view that the allegations of illicit relationship levelled by the respondent/wife against her husband are not true.

25. This Court agrees with the finding of the learned Trial Court that the respondent/wife has failed to prove any illicit relationship between the petitioner/husband and his widowed sister-in-law, Anuradha Dang. The respondent has levelled false allegations of an illicit relationship between the petitioner and Anuradha Dang in the written statement which clearly amounts to cruelty. The Trial Court has analysed the evidence of the parties in detail in paras 8 and 9 of the impugned judgment (at 11 to 38 of the impugned judgement) which are not repeated herein for the sake of brevity and this Court

agrees with the said analysis and the reasoned findings of the Ld. Trial Court.

26. In *Swati v. Arvind Mudgal*, 218 (2015) DLT 729, this Court has held that false, scandalous and malicious allegations made in the written statement amount to cruelty. Relevant portion of the said judgement is reproduced herein under:

“False, scandalous and malicious allegations made in the written statement amount to cruelty

29.1. In *V. Bhagat v. D. Bhagat* (1994) 1 SCC 337 the wife, in her written statement, alleged that the respondent was suffering from mental hallucination, that he was a morbid mind and needed expert psychiatric treatment and that he was suffering from paranoid disorder. The wife’s counsel in her cross-examination suggested several questions to the husband that several members of his family, including her grandfather, were lunatics. The Supreme Court held the pleadings of the wife and the questions in cross-examination are bound to cause immense mental pain and anguish to the husband.

29.2. In *Vijay Kumar Ramchandra Bhate v. Neelam Vijaykumar Bhate*, (2003) 6 SCC 334, the husband made disgusting accusations of unchastity and indecent accusations against the wife with a neighbor in the written statement. The Supreme Court held that the allegations are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous to live with her husband.

29.3. In *Navin Kohli v. Neelu Kohli*, (2006) 4 SCC 558, the wife got an advertisement issued in the newspaper that her husband was her employee. She got another news item published cautioning his business associates to avoid dealing with him. The Supreme Court treated all this as mental cruelty to the husband.

29.4. In *K. Srinivas Rao v. D.A. Deepa*, (2013) 5 SCC 226, the wife made false and defamatory allegations against her husband and his mother to the police. The wife also lodged a complaint with the Karnataka High Court where her husband was employed, seeking his removal from the job. The Family Court granted a decree of divorce, which was set aside by the High Court in appeal on the ground that the parties stayed together only for a day. The Supreme Court held that a spouse can cause mental cruelty by his/her conduct even while he or she is not staying under the roof. Staying together under the same roof was not a pre-condition for mental cruelty. Relevant portion of the said judgment is reproduced hereunder:

“16. Thus, to the instances illustrative of mental cruelty noted in *Samar Ghosh*[(2007) 4 SCC 511], we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.

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29. In our opinion, the High Court wrongly held that because the appellant husband and the respondent wife did not stay together there is no question of the parties causing cruelty to each other. Staying together under the same roof is not a precondition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. In a given case, while staying away, a spouse can cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse's life miserable. This is what has happened in this case.

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It is also to be noted that the appellant husband and the

respondent wife are staying apart from 27-4-1999. Thus, they are living separately for more than ten years. This separation has created an unbridgeable distance between the two. As held in Samar Ghosh [(2007) 4 SCC 511], if we refuse to sever the tie, it may lead to mental cruelty.”

(Emphasis supplied)

29.5. In *Hemwati Tripathi v. Harish Narain Tripathi*, (2011) 181 DLT 237, the husband levelled false, scandalous and malicious allegations against the wife that she had relationship with one sadhu and her stay out of the house during nights in the written statement which was held to be cruelty and wife was granted decree of divorce against the husband. Relevant portion of the said judgment is reproduced hereunder:

*“16. In the facts of the present case also despite the fact that the physical beating given by the respondent on many occasions by itself constitutes cruelty, but the scandalous allegations leveled by the respondent attacking the moral character of the appellant or attributing her relationship with some Sadhu certainly amounts to worse form of cruelty in the absence of any corroboration to such allegations. That the ratio of *Ashok Kumar v. Santosh Sharma* (supra) and *Savitri Balchandani* (supra) wherein it was held that a decree of divorce on the ground of cruelty can be passed on the strength of false, baseless, scandalous and malicious allegations in the written statement by one party on the other is thus found applicable to the facts of the present case because in the case at hand the husband has not led any evidence in support of his allegations.*

...serious and malicious allegations of the appellant having relationship with one Sadhu and her staying out of the house during nights also leveled by the respondent and as per the settled legal position, casting such aspersions on the character of the other spouse has the affect of causing deleterious affect on the mind of such spouse and the same is a worse form of cruelty. It has not been denied by the respondent that no evidence was led by him to prove that the appellant used to go out during

night to stay with that Sadhu.”

(Emphasis supplied)

29.6. *In D.N. Sharma Sharma v. Usha Sharma AIR 2004 Delhi 198, the husband filed a petition for divorce against the wife who levelled false allegations against the husband having extra martial relations with a lady in the written statement which was held to be cruelty sufficient to dissolve the marriage between the parties. Relevant portion of the judgment of this Court is as under:*

“2. In the written statement, the respondent besides denying the allegations of assault etc. upon the appellant also stated that the appellant wanted to get rid of the respondent in order to marry another lady Sushila Bist with whom the appellant was having affair for the last almost 20 years and for whom the appellant not only used to misbehave with the respondent but also forced her to leave the matrimonial home alongwith the daughter...

... It was also stated that the appellant was having an affair with Sushila Bist with whom he had even been going to hill stations secretly and was roaming with her openly. It was alleged that the appellant had even displayed his photographs with Sushila Bist in the drawing room and he had thrown to wind all norms of decency as he openly moved around and even used to bring her home in later years in the presence of grown up daughters. It was alleged that the appellant was so engrossed with Sushila Bist that he totally neglected his family and started harassing them. It was also alleged that the appellant wanted to live with his mistress Sushila Bist after obtaining divorce and wanted to legalise her illegal deeds of secret marriage with the said lady.

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16. In view of the aforesaid, in my opinion, writing letters to the authorities making slanderous allegations against the appellant, repeating the same not only in her own statement but also suggesting them to the appellant during the course of his cross-examination lends

credence to the fact that the wife was persisting them to humiliate and wounding the feelings of the husband which have made impossible for him to live in the matrimonial home with the wife. These allegations are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial life causing profound and lasting disruption driving the husband to feel deeply hurt and reasonably apprehend that it was impossible for him to live with the respondent.”

(Emphasis supplied)

29.7. In *Jay Dayal v. Shakuntala Devi* AIR 2004 Delhi 39, the wife sought divorce against the husband who levelled allegations of unchastity and indecent familiarity of the wife with different persons outside the wedlock and having extra martial relations with other persons in the written statement which was held to be cruelty which caused reasonable apprehension in her mind that it is dangerous to live with the husband. Relevant portion of the said judgment is reproduced hereunder:

“2. ... It was alleged that the appellant issued a legal notice dated 6.12.1996, levelling serious allegations of immorality on the petitioner and her having illicit relations with one Mr. Kishore Kumar and then filed a complaint dated 9.5.1997, with the Commissioner of Police levelling similar allegations...

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9. ... It is thus clear that the appellant has levelled disgusting allegations of unchastity and indecent familiarity of the respondent with different persons outside wedlock and her having extra martial relations with other persons. These themselves, in my opinion, will amount to cruelty.

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11. In view of the foregoing these allegations without anything else by themselves, in my opinion, amount to the appellant treating the respondent with cruelty causing

reasonable apprehension in her mind that it is dangerous to live with the appellant. In my opinion, therefore, the Trial Court was fully justified in dissolving the marriage of the parties by a decree of divorce and no case had been made out to interfere with the same...”

(Emphasis supplied)

29.8. In *Ramesh Kumar v. Aakash Sharma, II* (2008) DMC 315, the husband sought divorce against the wife who levelled allegations in the written statement that the husband was having illicit sexual relation with sister-in-law. However, the wife could not prove or substantiate these allegations and therefore, it was held to be cruelty by the Himachal Pradesh High Court. Relevant portion of the said judgment is reproduced hereunder:

“21. The evidence on record leaves no doubt in my mind that the appellant has been subjected to constant mental cruelty by the respondent more especially her allegations of sexual misbehaviour and mis-conduct against the appellant accusing him of having illicit sexual relations with his sister-in-law (Bhabhi), for consideration, who is treating him like a younger brother. The evidence, clearly points out to the fact that the respondent has treated the appellant with cruelty within the meaning of the Act. In terms of the pronouncement of the Hon'ble Supreme Court in Samar Ghosh's case, I am satisfied that not only has the marriage broken down irretrievably because of the acts on the part of the respondent, and it is not possible for the appellant to live in an atmosphere which is vitiated and surcharged by allegations of adultery etc. Indian Society is sensitive to the relationships of brother and sister and mother and son which are not only respected but venerated. There has been no cohabitation between the parties since 1982.”

(Emphasis supplied)”

27. With respect to the respondent's contention that she was living together and was cohabiting with the petitioner till 2007 and even after filing of the divorce petition in 2002, learned Trial Court

has rejected the same and the detailed reasons are recorded by the learned Trial Court in para 10 of the impugned judgment (at 38 to 57 of the impugned judgement). This Court agrees with the reasons and findings of the learned Trial Court which are not repeated herein for the sake of brevity.

28. This Court agrees with the learned Trial Court that the respondent has treated the petitioner with cruelty and the petitioner has neither condoned the acts of cruelty nor cohabited with the respondent. The petitioner has not taken advantage of any wrong as alleged by the respondent. This Court is of the view that the petitioner is entitled to a decree of divorce on the ground of cruelty. This Court agrees with the well reasoned findings of the learned Trial Court except the conclusion recorded in para 11.

29. The finding of the learned Trial Court recorded in para 11 of the impugned judgment declining the decree of divorce and instead awarding a decree of judicial separation to the petitioner/husband is hereby set aside. The marriage between the parties is dissolved by a decree of divorce on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955.

30. The MAT.APP. 62/2011 is dismissed and MAT.APP. 69/2011 is allowed. Pending applications are disposed of.

31. The respondent is at liberty to file an application for permanent alimony and maintenance under Section 25 of the Hindu Marriage Act before the Trial Court. However, the respondent shall continue getting the rent of the house at Coleman Court, London and shall be entitled to exclusive possession, use and residence in HIG Flat No.49, Nav

Jeevan Vihar, New Delhi in respect of which the petitioner has already given an undertaking in the written submissions to not disturb the said arrangement.

APRIL 09, 2018
rsk/dk

J.R. MIDHA
(JUDGE)

