

Suman Kapur vs Sudhir Kapur on 7 November, 2008

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Bench: D.K. Jain, C.K. Thakker

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6582 OF 2008
ARISING OUT OF
SPECIAL LEAVE PETITION (CIVIL) NO. 10907 OF 2007

SUMAN KAPUR . . . APPELLANT

VERSUS

SUDHIR KAPUR . . . RESPONDENT

J U D G M E N T

C.K. THAKKER, J.

1. Leave granted.

2. The present appeal is filed by the appellant-wife being aggrieved and dissatisfied with the decree of divorce dated August 07, 2004 passed by the Additional District Judge, Delhi in HMA No. 322/2001/96 and confirmed by the High Court of Delhi on January 29, 2007 in Matrimonial Appeal No. 62 of 2004.

3. The facts in nutshell are that the appellant Suman Kapur is the wife and respondent Sudhir Kapur is the husband. The matrimonial alliance was entered into between the parties as per Hindu rites and rituals in Delhi on March 04, 1984. It was the case of the appellant that both the parties were friends from childhood and were knowing each other since 1966. They had also studied together in the same school. They were very close since 1974 and after a friendship of more than a decade, they decided to marry. The marriage was inter-caste marriage. Though initially parents of both the parties were opposed to the marriage, subsequently, they consented. The parties have no issue from the said wedlock.

4. The appellant has a brilliant academic record and has been the recipient of the prestigious Lalor Foundation Fellowship of United States of America (USA), offered to young scientists for outstanding performance in the area of research. According to her, at the time of her marriage, she was in employment with the Department of Bio-chemistry in the All India Institute of Medical Sciences (AIIMS) and was also pursuing her Ph.D.

5. It is the case of the appellant that she conceived for the first time in 1984, within a period of about one month of the marriage, but on account of being exposed to harmful radiations as a part of lab work of her Ph.D. thesis, she decided to terminate the pregnancy. The appellant asserted that it was done with the knowledge and consent of the respondent-husband.

6. Again, in 1985, she conceived. But even that pregnancy was required to be terminated on the ground of an acute kidney infection for which she had to undergo an IVP, which entailed six abdominal X-rays and radiometric urinary reflect test with radioactive drinking dye. She claimed that even the second pregnancy was terminated with the knowledge and consent of the respondent-husband.

7. According to the appellant, third time she became pregnant in 1989, but she suffered natural abortion on account of having a congenitally small uterus and thus prone to recurrent miscarriages.

8. It is the case of the appellant that though she was well-placed and having good job in AIIMS in Delhi, only with a view to accompany her husband who was serving in Bombay, she left the job. In 1988, the parties together left for USA. The appellant was awarded Lalor Foundation Fellowship in USA for which she had to move to Kansas city and could not join the respondent-husband at the place of his work.

9. The case of the respondent-husband, on the other hand was that since solemnization of marriage between the parties, the attitude, conduct and behaviour of the appellant-wife towards the respondent as well as his family members was indignant and rude. It was alleged by him that first pregnancy was terminated in 1984 by the appellant-wife without consent and even without knowledge of the respondent. Same thing was repeated at the time of termination of second pregnancy in 1985. He was kept in complete dark about the so-called miscarriage by the appellant-wife in 1989. The respondent was thus very much aggrieved since he was denied the joy of feeling of fatherhood and the parents of the respondent were also deprived of grand-parenthood of a new arrival. It was also contended by the respondent that the attitude of the appellant-wife towards

her in-laws was humiliating. Several instances were cited in support of the said conduct and behaviour by the husband.

10. The respondent-husband, therefore, filed HMA No. 322/2001/96 in the Court of Additional District Judge, Delhi under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') for getting divorce from the appellant-wife. Two grounds were taken by the respondent-husband in the said petition, i.e. (i) cruelty and (ii) desertion. It was alleged by the husband that the wife was all throughout conscious, mindful and worried of one thing and that was her career. In view of her thinking only in one direction, she deprived the respondent-husband of conjugal rights and matrimonial obligations. She also treated the family members of the respondent-husband with cruelty. She, without consent or even knowledge of the respondent-husband, got her pregnancy terminated twice in 1984 as well as in 1985 and falsely stated that there was natural miscarriage at the time of third pregnancy in 1989. At no point of time, she had taken consent of the husband nor even she had informed about the termination of pregnancy or about miscarriage to the respondent. At several occasions, she had stated that she was not interested at all in living with the respondent-husband and to perform marital obligations. She had made it explicitly clear to the respondent-husband that she was not willing to be a mother at the cost of her career. She had specifically told the respondent-husband that if he was very much interested and eager to be a father and his mother (respondent's mother) wanted to be a grand-mother, he could enter into marriage tie with any other woman, but the appellant-wife would not give up her career. She had also stated that she had no objection if the respondent adopts a child which action would not adversely affect her career. She had issued a notice to the respondent-husband that it would be better that they would peacefully separate from each other so that the respondent-husband may be able to fulfil the wishes of his parents and the appellant-wife may pursue her future career. The respondent-husband, therefore, submitted that the case attracted both the provisions, viz. (i) cruelty on the part of the wife under clause (ia) of sub-section (1) of Section 13 and (ii) desertion of matrimonial home and refusal to perform marital obligations falling under clause (ib) of sub-section (1) of Section 13 of the Act. On both the grounds, the respondent-husband was entitled to a decree of divorce.

11. The appellant-wife in her objections denied the allegations of the husband. According to her, she was doing her best to please her husband as well as her in-laws. Precisely for that purpose, she had left her service in Delhi and joined the husband. It was admitted that she was in service and was also interested in career as she was well-educated lady and wanted to contribute to the society. But that did not mean that she was not performing her marital obligations. It was an admitted fact that immediately after her marriage, she conceived and she was very happy about it. Unfortunately, however, for the circumstances beyond her control, she was compelled to get the pregnancy terminated with the knowledge and consent of her husband. The same thing was repeated in 1985. In 1989, there was natural miscarriage. She also contended that she had to go to USA for receiving prestigious award of Lalor Foundation Fellowship. According to her, instead of being happy about the progress of the wife, the husband had initiated the present proceedings with jealousy and hence, he was not entitled to a decree of divorce. Even otherwise, there was no cruelty on her part. According to the wife, during regular intervals, the parties used to stay together and the appellant had never refused to perform her matrimonial obligations or even had shown her intention to

deprive the husband of conjugal rights. It was, therefore, submitted that the husband was not entitled to the relief sought by him and the petition was liable to be dismissed.

12. The trial Court after hearing the parties held that the husband was not entitled to a decree of divorce on the ground that the wife had deserted the husband for a continuous period of not less than two years immediately preceding the presentation of the petition. He, however, held that it was fully established by the husband that there was cruelty on the part of the wife. The wife without the knowledge and consent of the husband got her pregnancy terminated twice - firstly in 1984 and secondly in 1985. The husband was also not informed about natural miscarriage in 1989. A finding was also recorded by the trial Court that the wife was not ready and willing to perform matrimonial obligations and she always attempted to stay away from her husband by depriving conjugal rights of the husband. It was, therefore, a case of mental cruelty. The trial Court also referred to several letters written by wife to the husband, and notice issued by the wife through an advocate which went to show that she was not interested in performing marital obligations and continuing marital relations with the husband. The Court also relied upon various entries made by the appellant-wife in her diary which suggested that all throughout she was worrying about her future and her career. For wife, according to the trial Court, her career was the most important factor and not matrimonial obligations. The trial Court, therefore, held that the case was covered by mental cruelty which was shown by the wife towards the husband and the husband was entitled to a decree of divorce on that ground.

13. Being aggrieved by the decree passed by the trial Court, the wife preferred an appeal in the High Court of Delhi. The High Court again appreciated the evidence on record and confirmed the decree of divorce passed by the trial Court. The High Court, however, held that it was not necessary for the Court to consider mental cruelty so far as termination of pregnancy was concerned, since in the opinion of the High Court, even otherwise from the letters and entries in diary, it was proved that there was mental cruelty on the part of the wife. Accordingly, the decree of divorce passed by the trial Court was confirmed by the High Court.

14. The said order has been challenged in the present proceedings. On July 16, 2007, notice was issued by this Court. The respondent appeared and affidavit-in-reply and affidavit-in-rejoinder were thereafter filed. Considering the nature of controversy, the Registry was directed to place the matter for final hearing and accordingly, the matter has been placed before us.

15. We have heard the learned counsel for the parties.

16. The learned counsel for the appellant contended that both the courts had committed an error of law in granting a decree of divorce against the appellant-wife. It was submitted that the courts below ought not to have held that there was mental cruelty on the part of the appellant-wife and the respondent-husband was entitled to a decree of divorce on that ground. It was also submitted that once the High Court has not considered the allegation as to termination of pregnancy without the consent of the husband, no decree for divorce on the ground of mental cruelty could have been passed by it. Even if all the allegations leveled against the wife had been accepted, they were in the nature of 'normal wear and tear' in a matrimonial life of a couple which would not fall within the

mischievous of clause (ia) of sub- section (1) of Section 13 of the Act and the orders passed by the courts below are liable to be set aside. It was further submitted that even otherwise, the wife is entitled to an appropriate relief from this Court inasmuch as from the evidence, it is clearly established that the High Court confirmed the decree passed by the trial Court on January 29, 2007 and before the period of filing Special Leave to Appeal to this Court expires, the respondent- husband entered into re-marriage with a third party and from the said wedlock, he is having an issue. It was, therefore, submitted that the husband has created a situation which had seriously prejudiced the appellant and the Court may not allow the respondent-husband to take undue advantage of the situation created by him.

17. The learned counsel for the respondent-husband, on the other hand, supported the decree passed by the trial Court and confirmed by the High Court. It was urged that the trial Court on the basis of evidence adduced by the parties recorded a finding of fact that the conduct and behaviour of the wife was in the nature of mental cruelty and accordingly allowed the petition filed by the husband. The High Court, though convinced on all grounds, did not think it fit to enter into correctness or otherwise of the finding recorded with regard to illegal termination of pregnancy by wife without the knowledge and consent of the husband since it was convinced that even otherwise on the basis of evidence on record, mental cruelty of the wife was established. It was not necessary for the High Court to consider and to record a finding as to illegal termination of pregnancy by wife since the decree passed by the trial Court could be confirmed. As far as mental cruelty is concerned, on the basis of other evidence and material on record, a finding had been recorded by the trial Court. The said finding was a finding of fact which was confirmed by the High Court. In exercise of jurisdiction under Article 136 of the Constitution, this Court will not interfere with the said finding and hence the appeal deserves to be dismissed.

18. Regarding re-marriage by the husband, it was stated that after the decree of divorce passed by the trial Court, the husband did not re-marry. But the decree of divorce was confirmed by the High Court. The husband thereafter had taken the action which cannot be said to be illegal or otherwise unlawful. The wife, therefore, cannot take a technical contention that the husband should have waited till the period of filing Special Leave to Appeal to this Court would expire. It was, therefore, submitted that the appeal deserves to be dismissed.

19. Having heard the learned counsel for the parties, on the facts and in the circumstances of the case, in our opinion, it cannot be said that by recording a finding as to mental cruelty by the wife against the husband, the Courts below had committed any illegality.

20. Section 13 of the Hindu Marriage Act provides for grant of divorce in certain cases. It enacts that any marriage solemnized whether before or after the commencement of the Act may be dissolved on a petition presented either by the husband or by the wife on any of the grounds specified therein. Clause (ia) of sub- section (1) of Section 13 declares that a decree of divorce may be passed by a Court on the ground that after the solemnization of marriage, the opposite party has treated the petitioner with cruelty.

21. Now, it is well-settled that the expression 'cruelty' includes both (i) physical cruelty; and (ii) mental cruelty. The parties in this connection, invited our attention to English as well as Indian authorities. We will refer to some of them.

Mental Cruelty

22. The concept of cruelty has been dealt with in Halsbury's Laws of England [Vol.13, 4th Edition Para 1269] as under;

"The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints, accusations or taunts. In cases where no violence is averred, it is undesirable to consider judicial pronouncements with a view to creating certain categories of acts or conduct as having or lacking the nature or quality which renders them capable or incapable in all circumstances of amounting to cruelty; for it is the effect of the conduct rather than its nature which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the impact of the personality and conduct of one spouse on the mind of the other, weighing all incidents and quarrels between the spouses from that point of view; further, the conduct alleged must be examined in the light of the complainant's capacity for endurance and the extent to which that capacity is known to the other spouse".

23. In *Gollins V. Gollins* 1964 AC 644:

(1963)2 All ER 966, Lord Reid stated:

"No one has ever attempted to give a comprehensive definition of cruelty and I do not intend to try to do so. Much must depend on the knowledge and intention of the respondent, on the nature of his (or her) conduct, and on the character and physical or mental weakness of the spouses, and probably no general statement is equally applicable in all cases except the requirement that the party seeking relief must show actual or probable injury to life, limb or health".

24. Lord Pearce also made similar observations;

"It is impossible to give a comprehensive definition of cruelty, but when reprehensible conduct or departure from normal standards of conjugal kindness causes injury to health or an apprehension of it, is, I think, cruelty if a reasonable person, after taking due account of the temperament and all the other particular circumstances would considered that the conduct complained of is such that this spouse should not be called on to endure it".

[see also Russell v. Russell, (1897) AC 395 : (1895-99) All ER Rep 1].

25. The test of cruelty has been laid down by this court in the leading case of N.G. Dastane v. S. Dastane, (1975)2 SCC 326 thus:

"The enquiry therefore has to be whether the conduct charges as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent...."

26. In Sirajmohmedkhan Janmohamadkhan v. Haizunnisa Yasinkhan & Anr., (1981) 4 SCC 250, this Court stated that the concept of legal cruelty changes according to the changes and advancement of social concept and standards of living. It was further stated that to establish legal cruelty, it is not necessary that physical violence should be used. Continuous cessation of marital intercourse or total indifference on the part of the husband towards marital obligations would lead to legal cruelty.

27. In Shobha Rani v. Madhukar Reddi, (1988) 1 SCC 105, this Court examined the concept of cruelty. It was observed that the term 'cruelty' has not been defined in the Hindu Marriage Act. It has been used in Section 13(1)(ia) of the Act in the context of human conduct and behavior in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one spouse which adversely affects the other spouse. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of degree which is relevant. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the other spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, 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. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Mens rea is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment.

28. In V. Bhagat v. D. Bhagat (Mrs.), (1994) 1 SCC 337, the Court observed;

"Mental Cruelty in Section 13(1)(ia) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to 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, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, 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. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment or conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made".

29. This Court in Chetan Dass v. Kamla Devi, (2001) 4 SCC 250, stated;

"Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of "irretrievably broken marriage" as a straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case".

30. 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."

31. 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."

32. 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".

33. 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."

34. 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".

35. Now, coming to the facts of the case, from the evidence of Smt. Vimal Kapur (mother- in-law of appellant-wife and mother of respondent-husband) who is examined as PW 1 and Sudhir Kapur, husband-PW 2, the trial Court held that the wife was interested in her career only and she had neglected towards matrimonial obligations and exercise of conjugal rights by the husband. The trial Court also held that termination of pregnancy by wife was without consent or even knowledge of the husband which was in the nature of mental cruelty. But keeping the said element of mental cruelty aside, the High Court was convinced that the allegation of mental cruelty towards the husband by the wife was clearly established from the evidence on record adduced by the respondent-husband.

The High Court noted that the appellant-wife was constantly and continuously avoiding staying with the husband and preventing him to have matrimonial relations. From the letters of the appellant-wife also, the High Court held that it was the wife who had stated that she had completely lost interest in the marriage and she was willing to get divorce. The High Court further noted that the appellant-wife sent a notice through her advocate to the respondent-husband during the pendency of mediation proceedings in the High Court wherein she alleged that the respondent was having another wife in USA whose identity was concealed. This was based on the fact that in his income-tax return, the husband mentioned the Social Security Number of his wife as 476-15-6010, a number which did not belong to the appellant-wife, but to some American lady (Sarah Awegta Lewis). The High Court, however, recorded a finding of fact accepting the explanation of the husband that there was merely a typographical error in giving Social Security Number allotted to the appellant which was 476-15-6030. According to the High Court, taking undue advantage of the error in Social Security Number, the appellant wife had gone to the extent of making serious allegation that the respondent had married to an American woman whose Social Security Number was wrongly typed in the income tax return of the respondent-husband.

36. The High Court also observed that the appellant wanted to pursue her professional career to achieve success. In her written statement itself, she had admitted that she was very much interested in her career; that she was independent since 1979 and she was keen to live independent life.

37. The High Court also took a serious note of an entry in the personal diary of the appellant-wife dated September 14, 1986 wherein she stated;

"I said, "we started this journey as two individuals and if you can do so fine otherwise forget and don't bring the ghost of parents in between the two of us. He did not like the use of words ghosts and first cursed my vocabulary and then he said "you do not have any, but I have better ties".

At this I told him you are given these 15 days and you can find another wife for yourself. He has this notion that he will go to USA (NY) and I will stay with his parents and I told him I will not and he says this was the deal in July and when I refuted he said "no you had promised". I told him you have just now paid the fine and you are again using the same tricks again. Naturally, he did not like and said to me "I am not and have never with you played tricks". I said sorry- I do not trust you any further and he said it is your fault. It may now be my fault but I think it is just quits. I don't think I will write to anybody back in Delhi now for 15 days and if I can find myself work here any kind".

38. From the above letter, it is clear that the appellant-wife had described the parents of the husband as 'ghost'.

39. In the letter dated June 21, 1988, she stated;

"I really wish you would understand my urge in pursuing my freedom away from the hawk eyes of your mother, sister and all other relatives. But, as I am not ready to share the economic gains of this job with you and other family members. I don't

expect either you or them to understand my need and commitment for this job, or any job. I am bound to cause friction with so many people around me- I was at war with just you around me in Bombay."

40. In another letter, she stated that the respondent-husband should not make a condition for the wife of living together. She stated;

"I am not a good person to waste all your potential, emotion on. I do not deserve it.

... ..

Please do not make living together a condition for the coming few months. And do not read from these lines that I do not miss you- I do so individually and circumstantially- but as is my way of working I am not ready to stop myself for bonds and I believe the same for you. I wish the best and topmost for you-the most perfect, one can hope to be and wish that nothing becomes a barrier between you and your achievements. Even me. It will be best if we could help each other constructively; I also believe that we can do so- it is just that we believe in different things.

... ..

If possible, stand out of all this mess and try to work the best possible solution for us and your family. I do want you to remember that you are only one son and your family commitments. I would honour- but not at the cost of my spiritual search in life."

41. She further said that the respondent- husband should not bring her marital status preventing her from pursuing her career in the name of marriage. She stated that when she was unable to give even a child to the respondent- husband, up to what stage, they should live together. She clarified that she did not want to close her avenues in life at least at that stage. She also did not want to forego her chances whatever she would believe about her chances. She did not believe in love any more. She expressly stated that she did not believe in Indian social value system and she was very happy in the foreign country.

42. She stated;

"Mujhe is vivah ke naam per apne raste se mat roke. Ho sakta he mein he galat hoon-per mujhe nahin lagta. Dampati ke tarah hum saath ji liye hein- purani quality of life se kuch neechey hi star per jiye hein- ye aur koin jaane ya na jaane- Cambridge school se ek dosre ko bada hota dekh suman- sudhir achhey se jaante hein. Es vivah mein aapko santan bhi na de saki- phir kahan tak jaruri hai ki hum saath rahe? Aap mere vicharo se to kabhi sahmat nahin honge per auron ki rai kar lein-jis kisiki bhi- apni jindgi suljha lein. Mujh se ye ummid karma chod de ke kisi vyaktigat (per mujh

se unrelated) ya samajik karan se abhi mein apna rehne sochne ka tarika badloon. Jaisa maine pehle likha- jindagi ji kar jaise bhi, job hi, jab bhi samajh aayega tabhi aayega, jaise main apne liye chhot chahti hoon vaise he apni oar se jitna mujhe adhikar hein aapko bhi mukt karti hoon. Meine to kareeb chheh page par hi ye patr samapt kar diya-except for some help that I needed for car, etc-buy your fax today was quite unsettling. I don't like to close my avenues in life- at lease not yet. I was naove to believe whatever I did for marriage as a constitution and marriage to you. I am not ready to forgo my chances- whatever I believe to be chances for what I have experienced as being married. I think the best alternative will be you stay in India for some more time. Chances are that even if you get an assignment outside Kansas we would be living separately. So decide for yourself cause when time comes I am going to do so for myself. I will this time not make a compromise and regret it a few months later and make both our lives miserable. I have done that several times in the past-at least you should have enough of it to stop trying to push me against my belief.

My way of loving is not like that. I do not even believe in love any more. There is no bigger lie that any one could tell another person. I do not even believe in the Indian social value system. So I am better off being here away from every person and every thing that I grew up with. Whenever I have understood things to be a different shade I will decide whether I want to be here or there."

43. The High Court, in contrast, referred to the letters written by the respondent- husband. It noted that those letters were full of love and affection. According to the High Court, the husband tried his level best to keep the marriage tie to subsist and made all attempts to persuade the wife explaining and convincing her about the sacred relations of husband and wife, the need and necessity of child in their life and also feelings of his parents who wanted to become grand parents. According to the High Court, however, nothing could persuade the wife who was only after her career. In the light of the above facts and circumstances, the Court held that the trial Court did not commit any error of fact or of law in passing the decree for divorce on the ground of mental cruelty.

44. The High Court in paragraph 28 of the judgment stated;

"Applying the above principles to the facts of the present case, I feel the respondent has been able to establish and prove 'cruelty' under Section 13(1) (ia) of the Act. The conduct of the appellant has been examined above. I have referred to the letters exchanged between the parties during the period 1986 onwards till 1994. Some of the letters have been written by the appellant herself. These letters reveal the conflict and difference between the parties. The present case also reveals that the respondent was bending over his heels to placate and woo the appellant till 1994 but thereafter gave up. The respondent was deeply in love and was emotionally attached to her. He has however over the passage of time developed a hatred and ill-will for the appellant. There is no apparent ground and reason for the same except the conduct of the appellant."

45. We find no infirmity in the approach of the High Court. The finding relating to mental cruelty recorded by the trial Court and confirmed by the High Court suffers from no infirmity and we see no reason to interfere with the said finding.

46. The fact, however, remains and it has been brought to the notice of this Court that the respondent got re-married on March 05, 2007 before the expiry of period of filing Special Leave to Appeal to this Court under Article 136 of the Constitution. It was also stated that a child was born from the said wedlock on December 20, 2007. Thus, the marriage had been performed within a period of ninety days of the order impugned in the present appeal.

47. Since, we are confirming the decree of divorce on the ground of mental cruelty as held by both the courts, i.e. the trial Court as well as by the High Court, no relief can be granted so far as the reversal of decree of the courts below is concerned. At the same time, however, in our opinion, the respondent-husband should not have re-married before the expiry of period stipulated for filling Special Leave to Appeal in this Court by the wife.

48. It is true that filing of appeal under Article 136 of the Constitution is not a right of the party. It is the discretion conferred on this Court to grant leave to the applicant to file appeal in appropriate cases. But, since the Constitution allows a party to approach this Court within a period of ninety days from an order passed by the High Court, we are of the view that no precipitate action could have been taken by the respondent-husband by creating the situation of fait accompli. Considering the matter in its entirety, though we are neither allowing the appeal nor setting aside the decree of divorce granted by the trial Court and confirmed by the appellate Court in favour of respondent-husband, on the facts and in the circumstances of the case, in our opinion, ends of justice would be met if we direct the respondent-husband to pay an amount of Rs. Five lakhs to the appellant-wife. The said payment will be made on or before 31st December, 2008.

49. The appeal is disposed of accordingly. The parties will bear their own costs all throughout.

.....J. (C.K. THAKKER) NEW DELHI,
.....J. November 07, 2008. (D.K. JAIN)