

Pankaj Mahajan vs Dimple @ Kajal on 30 September, 2011

Equivalent citations: AIRONLINE 2011 SC 17, (2012) 1 CAL HN 34, (2011) 3 DMC 241, (2011) 2 CLR 922, (2012) 1 MARRI LJ 20, (2012) 4 KER LT 6, (2011) 3 GUJ LH 513, (2011) 2 HINDU LR 424, (2011) 4 KER LJ 528, (2012) 1 MAD LJ 146, (2011) 5 MAD LW 690, (2012) 1 ALL WC 983, (2011) 4 CIVIL COURT CASE 538, 2011 (12) SCC 1, (2012) 3 CIV LJ 84, (2011) 4 REC CIV R 534, (2011) 11 SCALE 278, 2012 (1) SCC (CRI) 345, (2012) MATLR 178, (2011) 4 CIVILCOURTC 538, (2012) 2 JCR 8 (SC), (2012) 1 WLC (SC) CIVIL 68, (2012) 1 WLC(SC)CVL 68, (2011) 2 CLR 922 (SC), (2012) 1 ALL MR 473 (SC), (2012) 1 ALLMR 473

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Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8402 OF 2011

(Arising out of S.L.P. (Civil) No. 29641 of 2009)

Pankaj Mahajan

.... Appellant(s)

Versus

Dimple @ Kajal

.... Respondent(s)

J U D G M E N T

P.Sathasivam,J.

1) Leave granted.

2) This appeal is directed against the final judgment and

order dated 06.08.2009 passed by the High Court of Punjab & Haryana at Chandigarh in FAO No. M-123 of 2006 whereby the High Court allowed the appeal filed by the respondent herein and set aside the judgment and decree dated 29.04.2006 passed by the Additional District Judge(Ad-hoc)-

cum-Presiding Officer, Fast Track Court, Ropar filed under Section 13 of the Hindu Marriage Act, 1955 (in short 'the Act').

3) Brief facts:

(a) The marriage of Pankaj Mahajan-appellant husband and

Dimple @ Kajal, respondent-wife, was solemnized on 02.10.2000 at Amritsar. After the marriage, the parties cohabited and resided together as husband and wife at Amritsar in the parents' house of the appellant-husband, but later on shifted to a rented house in Tilak Nagar, Shivala Road, Amritsar. On 11.07.2001, a female child was born, who is now in the custody of the respondent-wife.

(b) After the marriage, the appellant-husband found that the respondent-wife was acting in very abnormal manner, as she used to abruptly get very aggressive, hostile and suspicious in nature. In a fit of anger, she used to give threats that she would bring an end to her life by committing suicide and involve the appellant-husband and his family members in a criminal case, unless she was provided a separate residence.

On one occasion, she attempted to commit suicide by jumping from the terrace but was saved because of timely intervention of the appellant-husband.

(c) Succumbing to the pressure of the respondent-wife, the appellant-husband shifted to a rented house on 28.11.2001 at a monthly rent of Rs.3,200/- and started living with her, but the behaviour of the respondent-wife became more aggressive and she repeated threats of suicide even in the rented house.

On enquiry, the appellant-husband came to know that the respondent-wife was suffering from acute mental depression coupled with schizophrenia even prior to the marriage and was taking treatment for the same. The appellant-husband hoping that the respondent-wife would become alright took her to various doctors, but her mental condition did not improve and she became more and more violent and aggressive. She insulted and humiliated the appellant-husband in front of his colleagues and relatives several times and even on one occasion she pushed the appellant-husband from the staircase causing fracture in his right forearm.

(d) On 23.03.2002, the appellant-husband wrote a letter to his mother-in-law stating therein that the respondent-wife was repeatedly threatening to commit suicide and even on 19.04.2002, he wrote a letter to the SSP, Amritsar regarding the factum of repeated threats to commit suicide given by the respondent-wife. On 24.05.2002, the appellant-husband filed a petition under Section 13 of the Act in the District Court at Amritsar for dissolution of marriage by a decree of divorce. By order dated 29.04.2006, the Additional District Judge, Ropar, granted a decree of divorce in favour of the appellant-husband.

(e) Being aggrieved by the above-said order, the respondent-

wife filed FAO No. M-123 of 2006 before the High Court of Punjab & Haryana at Chandigarh. The High Court, by order dated 06.08.2009, allowed the appeal filed by the respondent-

wife and set aside the judgment and decree dated 29.04.2006 passed by the Additional District Judge(Ad-hoc)-cum-

Presiding Officer, Fast Track Court, Ropar. Aggrieved by the said decision, the appellant-husband has preferred this appeal before this Court by way of special leave petition.

4) Heard Mr. Nidhesh Gupta, learned senior counsel for the appellant-husband and Mr. B.K. Satija, learned counsel for the respondent-wife.

Discussion:

5) It is not in dispute that the petition for dissolution of marriage for granting a decree of divorce under Section 13 of the Act came to be filed by the appellant-husband before the District Court at Amritsar. The marriage was solemnized between the parties at Amritsar on 02.10.2000. Since the case of the appellant-husband as well as the respondent-wife has already been narrated, there is no need to traverse the same once again. The fact remains that it was the appellant-

husband who approached the court for a decree of divorce on the grounds of 'cruelty' and 'unsound mind' of the respondent-

wife which is incurable, hence we have to see whether the appellant-husband has made out a case for divorce on these grounds.

6) Section 13 of the Act, which is useful for our present purpose, reads as under:-

"13. Divorce (1) 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--

(i) xxx (i-a) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or (ib) xxx

(ii) xxx

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation .--In this clause,--

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;....."

Section 13 specifies the grounds on which a decree of divorce may be obtained by either party to the marriage. The onus of proving that the other spouse is incurably of unsound mind or is suffering from mental disorder lies on the party alleging it.

It must be proved by cogent and clear evidence.

7) In the case on hand, since the appellant-husband has approached the District Court for a decree of divorce, the onus is on him to prove the grounds put-forth by him. As regards the ground alleged by the appellant-husband for a decree of divorce i.e. the respondent-wife is suffering from unsound mind/mental disorder/schizophrenia, apart from his own evidence as PW-4, various Doctors, who treated her and other witnesses were also examined. From the side of the appellant-

husband, Dr. Paramjit Singh (PW-1), Dr. Ravinder Mohan Sharma (PW-2), Dr. Virendra Mohan (PW-3) and Dr. Gurpreet Inder Singh Miglani (PW-7), who had given treatment to the respondent-wife for mental disorder, were examined.

8) Dr. Paramjit Singh (PW-1), Professor and Head Psychiatry Department, Medical College, Amritsar in his evidence stated as follows:-

"The respondent remained admitted in my Department at Amritsar from 17.12.2001 to 28.12.2001. This disease is Bipolar Affective Disorder. I treated her during this period. She was admitted in Emergency because her disease was in quite serious stage. In this disease, the patient can commit suicide. When she came, she was

aggressive and irritable. If the proper treatment is not given to the respondent then her aggressive nature can be prolonged. The respondent Kajal was treated by me by giving electric shock for four times during her stay in the ward M.R.I. i.e. Magnetic Resonance Imaging. MRI has got no concern with the disease with which the respondent was suffering. This disease is treatable but not curable. I have seen the certificate issued by me which is Ex.P1. It bears my signatures and is correct Ex. P2 i.e. Discharge Certificate. I have brought the original record of the Department concerning the respondent both in- door as well as out-door. A certified copy of the same attested by me is Ex. P3. These are correct according to the original record brought by me today in the court. The respondent was brought to the Hospital for her admission and treatment by Sh. S.K. Mahajan son of later Sh. Gian Chand and Pankaj Mahajan. I have seen the receipts today in the court which relate to our hospital and the same are Ex. P4 to Ex. P7 and Ex. P8 is the receipt regarding room rent of our Hospital. On 08.10.2002, father of the respondent had brought her to our hospital and she was treated by me as well as other doctors of department of our hospital from 08.10.2002. After the discharge from the Hospital, the respondent was brought to our hospital for treatment by her father on 22.01.2002, 02.02.2002, 09.02.2002, 15.04.2002, 08.08.2002, 08.10.2002, 21.11.2002, 05.02.2003 and 20.06.2003."

(Emphasis supplied) In cross-examination, he admitted that when the respondent-

wife was discharged from the hospital, she was not perfectly alright, however, she was able to return home. He further admitted that in the original record of Ex. P3 some entries were made by him and some by junior doctors, who worked with him. All the entries made therein are correct. He also stated that during the treatment, he did not notice abnormal behaviour of the respondent-wife.

9) Dr. Ravinder Mohan Sharma (PW-2), Senior Medical Officer, Punjab Mental Hospital, Amritsar, stated as under:

"According to file No. 57914 the patient was examined in the out door by Dr. Charu Chawla, Senior Resident whose handwriting I identified as she has been working with me. After examining the patient and recording the history, she has diagnosed her to be a case of Bipolar Affective Disorder with which I agreed and advised her treatment in my own hand. There is another entry dated 16.01.2002 again in my own hand where I had advised her treatment. The second file No. 58803 is in the hand of Dr. Purnima Singh, who after examining presented the case to Dr. Manjit Singh who made a diagnosis of depressive episode and advised her medical treatment dated 21.02.2002. I identified the handwriting of Dr. Purnima Singh and Dr. Manjit Singh as I had been working with them. I have seen the original outdoor ticket of respondent and the same are Ex. P11 and Ex. P12. As per the history recorded in file No. 58803, there is a mention of suicide ideas and threats and it is recorded that she had attempted suicide once. As per the record, hers is a history of abusive and irritable behaviour. On 16.01.2002 she was advised injection by me because she was irritable and restless. It is not a simple yes or no answer to the question whether the

disease is curable or not. It is an episodic illness which patient getting episodes of mental illness and with treatment in between she can remain normal. The intensity and frequency of these episodes is highly unpredictable and varies from patient to patient. Generally, the frequency increases with every episode. The disease of the respondent is treatable but cannot be definitely say curable. MRI has got nothing to do with this disease of respondent." (Emphasis supplied) In cross-examination, he reaffirmed what he had stated in examination-in-chief.

10) Dr. Virendra Mohan (PW-3), M.D. Psychiatry, Dharampur, District Solan, H.P. stated as follows:-

"Patient Dimple, aged 23 years, female (single) d/o Shri Prem Kumar, village Shivaji Nagar, House No. 810/11 Ludhiana was admitted on 22.05.1998 and discharged on 06.06.1998. She was suffering from mental disorder at that time. She was diagnosed as Chronic Paranoid Schizophrenia for the last four years. She got admitted by her father Shri Prem Kumar, and the history of the patient was described to me. I have recorded the history as told by her father. He told that she was having mental symptoms for the last 4 to 5 years. The sleep was less. She was having acute psychotic symptoms at the time of admission. I have mentioned the history of the patient in the register which I have brought today, and the attested true copy of the same is Ex.PW3/As she was admitted in-door because she showed acute mental symptoms. She had paranoid symptoms. She was suicidal and also she could harm herself and others. The patient was restless and she could harm and attack others as well, and could cause injury. It has been recorded in the history of the patient that her Nana had been suffering from the mental disease. There was no test for diagnosing this disease from which the respondent was suffering. Only the history tells about the earlier condition of the patient. I cannot say if the disease for which the respondent was suffering is definitely curable or not. This disease is known for relapses. There is no direct relationship in the stress or strain with the disease. This disease is not related to nose or throat. There can be no finding in MRI regarding this kind of disease. There may be suicidal tendency of such type of person suffering from this disease. The respondent was admitted in the hospital due to abnormal behaviour. I had observed that she passed stool in her cloth, she has visual hallucination. During her admission, she also stated that she wanted to marry her cousin and she was also laughing herself. She was admitted twice in my mental Hospital at Dharampur. I got signatures of father of the respondent in my register, whenever she got admitted by her father in my hospital and the register bears the signatures of her father. Second time, she was admitted by her father Prem Kumar on 28.09.1999 and was discharged on 05.10.1999. That time she was more excited and more elated and at that time the diagnosis was quarry mania. This time she did not have any paranoid symptoms. Her address was recorded this time 810/11 Shivaji Nagar, Ludhiana. Usually, if patient remains symptoms free for two years they can get married, but other partner should know the problem so that the treatment should be continued."

(Emphasis supplied) In cross-examination, PW-3 stated that during the treatment in his hospital, the respondent-wife responded very well to the treatment. No suicidal action was taken by her during the treatment in his hospital for the second time. He also stated that if the patient remained symptoms free then she is manageable. According to him, as per the records, the respondent-wife was manageable.

11) Dr. Gurpreet Inder Singh Miglani (PW-7), Associate Professor and Incharge, Department of Psychiatry, Guru Ram Dass Medical Hospital, Amritsar stated as under:-

"I remained posted in Guru Teg Bahadur Sahib Charitable Hospital at Ludhiana from 1995 to 1998. I was working there as Consultant for Psychiatry. I have seen the original file produced in the Court today relating to Dimple d/o Prem Kumar r/o Shastri Nagar, H.No. 257-A Ludhiana. Dimple was got admitted in our Hospital on 15.06.1996 at 06:50 a.m. by her father Prem Kumar in the Emergency Ward. She was suffering from a very violent behaviour and she has to be given Electric Convulsive Therapy (ECT) on the same day in the operation theater. Subsequently also five ECTs were given as her violence was not being controlled along with other anti psychotic drugs. A diagnosis of F 2004 was made according to ICD 10 at the time of discharge on 15.07.1996. She was labeled as suffering from Paranoid Schizophrenia with incomplete remission and discharged on stable condition. Due consent for ECTs in operation theater under general anesthesia were taken from the father of the patient."

(Emphasis supplied) In cross-examination, he has stated that he cannot say exactly about the disease of the respondent-wife whether it can be treatable or not at this stage. He further stated that the disease of the respondent can be cured or it can aggravate after a lapse of time.

12) It is relevant to point out that the documents produced from the side of the respondent-wife, particularly, medical report issued by Dr. Harjeet Singh, Consultant Psychiatrist, RW-4 shows as:

"Impression: Bipolar Affective (Mood) Disorder, currently in remission."

"Advice: marital therapy for the couple. Follow up as and when required."

The said Report has been marked as Annexure R10. A fair typed copy of relevant extract of Ex. P3 shows that "Mood according to patient is euthenics." The Annexure along with the counter affidavit of the respondent-wife filed in this Court, particularly, Certificate issued by the Doctor refers "suicide threats made by her on some occasions".

13) The appellant-husband was examined as PW-4.

According to him, the marriage with respondent-wife was solemnized on 02.10.2000 and it was an arranged marriage.

After marriage, both of them went to Vaishno Devi, however, in the meanwhile he noticed some strange facial expressions and behaviour of his wife-Dimple. He subsequently came to know that she was suffering from some serious disease. She used to become annoyed and angry on petty issues, abuse and fight with him, flaunt her father's status and influence, comb her hair throughout the day, cry like children, apply brakes of a moving vehicle, call strangers in the house and offer them tea.

Even once she called a washerman in the house and gave him Rs. 200/- unnecessarily and when he said 'thanks' she immediately snatched the money from his hands and slapped him for no reason and, thereafter, she abused him and pushed him out of the house. According to him, such things had become her everyday chores. She used to wake up very late in the morning. Whenever his mother and sister called her to join them, she started abusing and insulting them. She used to call his mother stupid and his sister as wretched. One day, when his friend Sumit came to their house, she insulted him when he was sitting in the drawing room on the ground floor and when the appellant-husband was coming down to join him, she pushed him from stairs and started laughing, as a result, he fell down and got fractured. She was in the habit of listening to phone calls of Madan Lal, the landlord (PW-5) and used to abuse his relatives over phone. One day, when the landlord (PW-5) told them that he is fed up with the appellant and his family and asked to leave the house immediately thereupon, the respondent-Dimple slapped him on his face for which he had to apologise him for her acts. Even, one day, she threw the infant child towards him.

14) In order to show that his marriage was an arranged one he explained that he knows the father of the respondent-wife prior to the marriage as he was his Boss in Life Insurance Corporation office, Amritsar Division. He worked under him for a period of 6-8 months. He further explained that the behaviour of the respondent-wife came to his notice after 1= months' after their marriage and he immediately disclosed this fact to her father. The treatment was given to the respondent-

wife for the first time on 06.09.2001 for her abnormal behaviour.

15) Another important witness examined on the side of the appellant-husband is Madan Lal (PW-5), the landlord, who rented his house to them. In his evidence, PW-5 deposed that he is resident of H.No. 62, Tilak Nagar, Amritsar and his wife is also residing with him. He rented out a portion of the building to the appellant-husband and respondent-wife which was on the first floor. He and his wife were residing on the ground floor. According to PW-5, the respondent-wife usually remained sitting in the portion of his house during the day time where he is residing with his family unless and until the appellant-husband return home. She used to sit with his daughter and daughter-in-law and remained talking with them. She also quarrels with his wife and daughter due to the use of telephone. He explained that his daughter-in-law told him that the respondent-wife often threatens to commit suicide. The High Court, without looking into the evidence of Madan Lal (PW-5), erroneously concluded that his evidence was of no help. On the other hand, PW-5 has specifically narrated the behaviour of the respondent with his wife, daughter-in-law and the agony he himself had undergone and highlighted all those details in the Court.

16) Apart from the above oral evidence, the appellant-

husband has also pressed into service a copy of an affidavit of the respondent-wife i.e. Annexure-R3. In the said affidavit, the respondent-wife has stated that she threatened to commit suicide so many times to her in-laws and she even tried to commit suicide by way of jumping from the roof of the house on the intervening night of 19-20.09.2001 but could not succeed due to timely intervention of her husband. She also stated that she realized that her attempt to commit suicide was at the instance of her parents and now she is repentant for her actions for threatening to commit suicide and apologise for the same with the assurance not to repeat such type of actions in future.

17) Though the trial Court accepted the claim of cruelty, the High Court reversed the said conclusion and completely rejected the claim of divorce even under unsound mind. In the impugned judgment, though the High Court has adverted to the evidence of four doctors, without proper appreciation, arrived at an erroneous conclusion that mere evidence of mental illness is not sufficient to seek decree for divorce. In spite of abundant materials, unfortunately, the High Court has erroneously concluded that only wordings of Section 13(1)(iii) of the Act were merely reproduced without adverting to the facts of the case. According to the High Court, necessary materials were not pleaded. We are unable to accept the said conclusion. Without proper discussion and adequate reasons, the High Court rejected the evidence of the appellant-husband as PW-4. A perusal of his evidence clearly show the agony and treatment meted out immediately after the marriage due to mental disorder/unsound mind of the respondent-wife.

18) From the materials placed on record, we are satisfied that the appellant-husband has brought cogent materials on record to show that the respondent-wife is suffering from mental disorder, i.e., Schizophrenia. From the side of the appellant-

husband, various doctors and other witnesses were examined to prove that the respondent-wife was suffering from mental disorder. We have already extensively quoted the statements of Dr. Paramjit Singh (PW-1), Dr. Ravinder Mohan Sharma (PW-2), Dr. Virendra Mohan (PW-3) and Dr. Gurpreet Inder Singh Miglani (PW-7) - all the four doctors/Psychiatrists who treated the respondent-wife, prescribed medicines and also expressed the view that it is "incurable". Even the respondent-

wife and her father themselves admitted in their cross-

examination that the respondent had taken treatment from the said Doctors for mental illness. Thus, it is proved beyond doubt that the respondent-wife is suffering from mental disorder/Schizophrenia and it is not reasonably expected to live with her and the appellant-husband has made out a case for a decree of divorce and the decree should have been granted in favour of the appellant-husband and against the respondent-wife.

19) The High Court, by impugned order, negated the plea of the appellant-husband under Section 13(1)(iii) of the Act on the ground that the appellant-husband has merely reproduced the wordings of the Section without applying the same to the facts of the case and that it was not pleaded that it was a case of continuous or intermittent disorder. The aforesaid reasoning of the High Court is completely erroneous and contrary to the material on record which we have already demonstrated.

20) Coming to the pleadings before the High Court, the appellant-husband had specifically pleaded that the respondent-wife was suffering from Schizophrenia, which is a kind of mental disorder and he had pointed out specific incidents to show that the respondent-wife was not of sound mind. The relevant portion of the petition for divorce filed by the appellant is reproduced hereunder:

"4. That the petitioner shortly after his marriage found the respondent to be acting in a very abnormal manner. She would abruptly get very aggressive, hostile and suspicious in nature, ought to hit any body available in her company and her suspicion would go to such an extent that she should not like to take food without some other member of the family consuming the same. The respondent would also in a fit of anger declare that she will bring an end to her life by committing suicide and would have the petitioner and all the family members involved in a false criminal case unless she was provided with separate place of residence.....Enquiries made in the meantime revealed that the respondent has been suffering from acute mental depression coupled with Schizophrenia, a mental disorder and illness at intervals with Psychopathic disorder since developed into mania, which prompted her to become more and more violent and aggressive and on one such occasion she repeated threat of suicide and attempted jumping from the house of her in-laws on 19/20.09.2001 but could not succeed in her attempt due to timely intervention of her husband, who is the petitioner...All the same hoping that treatment may cure the respondent she was got treated by the petitioner and her parents from various places in connection with her mental illness but such treatment provided to her including administering her electric shocks, did not improve the state of affairs. She was so treated as indoor and outdoor patient in Shri Guru Teg Bahadur Hospital, Amritsar in Psychiatric Department in Dr. Vidya Sagar Mental Health Institute and in Bhatti Neuro Psychiatric Hospital till the end of the year 2001 but all the intensive and costly treatment did not yield fruit and she could not be cured of her mental sickness. The respondent is, therefore, suffering from major mental disorder in which she has suicidal tendency and becomes aggressive and violent in her behaviour for which she was getting treatment, as referred above, before as well as after the marriage. She has been given anti-psychic treatment and even electric therapy at four occasions at least to the knowledge of the petitioner but the things did not improve therewith. The respondent has, therefore, been suffering incurably from unsoundness of mind and has been so suffering continuously or intermittently from mental disorder of such a kind and such an extent that the petitioner cannot reasonably be expected to live with the respondent.

5. That on one such occasion under the fit of insanity the respondent pushed the petitioner from the staircase leading to their residential portion causing the petitioner fracture of right hand for which he got treatment from, Dr. Hardas Singh Sandhu in the last week of November, 2001. Such aggressiveness was not first of its kind and in the past also the respondent under the fit of insanity ventured to slap the petitioner in his face in the presence of his parents....."

The above averments make it clear that the appellant-

husband, after narrating specific incidents of abnormal behaviour of the respondent-wife had duly pleaded that she was suffering continuously/intermittently from 'incurable' mental disorder of such a nature that he cannot be reasonably expected to live with her. It was also stated therein that due to her unsoundness, the respondent-wife was not able to lead a married life and thus the appellant-husband was entitled to a decree of divorce. Apart from this, the appellant-husband had brought cogent evidence on record to show that the respondent-wife was not in a fit state of mind whereas the respondent-wife could not lead any acceptable evidence to rebut the same. We have already pointed out that the respondent and her father admitted her mental illness and periodic treatment from the doctors mentioned above. No doubt, it was pointed out that after the marriage, the couple was blessed with a female child and at present she is studying in a school and there is no dispute about the same. It is clear from the respondent's evidence that from the date of delivery of child, the child was periodically taken care of by her grand-

parents. It is also relevant to note that whenever the child was with respondent-wife, she (the mother) was not taking appropriate care which is clear from the evidence of the appellant-husband (PW-4) and their landlord, Madan Lal (PW-5). One incident which was referred to was that many a times the respondent-wife casually threw the child facing opposite to her. Under these circumstances, the High Court ought to have accepted the case of the appellant-husband.

21) The High Court rejected the plea of the appellant-

husband regarding cruelty on the ground that apart from his statement, there is no evidence to prove the same and Madan Lal (PW-5), being hearsay, his evidence was not reliable. As rightly pointed out by Mr. Nidhesh Gupta, learned senior counsel for the appellant-husband that as far as Madan Lal (PW-5) is concerned, the High Court has only referred to his cross-examination without even advertng to the examination-

in-chief wherein he had categorically stated about cruelty meted out by respondent-wife to the appellant-husband. The relevant portion of the evidence of PW-5 is as follows:

"Thereafter Pankaj Mahajan, his wife Dimple alias Kajal and their infant child aged about 4-5 months started living on the upper portion of my house. They lived in my house on rent upto 30.11.2002. After some days of taking of the house on rent by them, I felt that the girl Dimple was not taking any interest in household affairs and she used to avoid doing household works.....

.....She used to sit idle after Pankaj's going to office and was not breast-feeding the child even after child's uncontrollable crying. Not only this, she used to come down and sit in our bedroom for long hours unnecessarily and talking rubbish and repeating on the same thing again and again. Many times when I asked Dimple why she behaves like this and whether she is alright or not, then she did not reply back and kept mum and whenever she answered to my queries, she used to say that I want

to die and my heart says that I should commit suicide. When I heard this from the mouth of Dimple, I become doubly sure that she is mentally unsound and due to her unsound behaviour even my family too become disturbed and started living in constant fear because it appeared from her behaviour that she will do something extreme one day and if she does so, then apart from her in-laws, all of us too will be unnecessarily implicated in the criminal case. Dimple used to come to our house during lunch time and demand food for herself and used to sit in our house for long hours and whenever Pankaj used to come back from his office, she used to tell him that we will go to our portion after taking meals from us. She used to repeat one thing many times. One day, she even went to the extent of saying that you are cooking food every day-then why don't you keep us as your paying guest because I cannot prepare food myself and I also cannot look after my child. Mostly Dimple used to leave her child with my daughter-in-law and request my daughter-in-law that she should change clothes, bath the child and give her canned milk. My daughter-in-law did all this for 5-6 times, but one day my daughter-in-law clearly told Dimple that this is your duty and she herself should look after the child. On hearing all this, Dimple immediately turned red in anger and slapped my daughter-in-law and called her idiot."

It is clear from the above that the respondent-wife was not of sound mind and she did not look after the household work rather she used to give threats to commit suicide. She did not even make food for the appellant-husband and he had to arrange the same from outside. Apart from this, she used to embarrass the appellant-husband before his landlord's family and because of her weird behaviour and threats to commit suicide, the appellant-husband was forced to leave the rented accommodation. Madan Lal, the landlord, PW-5 has also highlighted several instances when the respondent-wife used to quarrel with her husband and he had to face humiliation in front of others because of her behaviour. Inasmuch as PW-5 was living in the same house on the ground floor and the appellant-husband and the respondent-wife were living on the first floor, the said witness being the eye-witness to the cruelty meted out by the respondent-wife to the appellant-husband, as he had himself seen the behaviour and the activities of the respondent-wife including humiliation and threats of committing suicide, cannot be thrown out. Under those circumstances, the observation of the High Court that the statement of PW-5 is only hearsay is liable to be rejected.

22) In addition to the evidence, the appellant-husband had categorically pleaded in his petition for divorce about the cruelty meted out to him. He narrated the incidents when she used to give threats to commit suicide and had even tried to commit suicide by jumping from the terrace and also pushed him from the staircase resulting in fracture in his right forearm. Due to her mental disorder, on various occasions, she even slapped him. She was also most disrespectful to his parents and she even forced him to live separately from them.

His evidence in the form of an affidavit filed before the trial Court is available in the paper book wherein he narrated all the sufferings meted out by her. It is useful to refer the relevant portion from the same:

"My wife Dimple used to become annoyed and angry on petty issues. She used to abuse and fight with me. She used to flaunt her father's status and influence. She used to comb her hair throughout the day. She used to cry like children. She used to apply brakes of a moving vehicle. She used to call strangers in the house and offer them tea. Once she even called a washerman in the house and gave him Rs. 200/- unnecessarily and when he said thanks she immediately snatched Rs. 200/- from his hands and slapped him for no rhyme or reason and thereafter she abused him and pushed him out of the house. In fact, such things had become her everyday chores. She used to tell me everything about sex lives and relationship of her maternal uncle and aunt. She was in the habit of not sleeping throughout night and also used to keep me awake throughout night and whenever I tried to sleep, she used to insist me to talk to her and whenever I told her to allow me to sleep, she used to press my neck. She used to wake up the child from deep slumber and start slapping her for no reason. She was in the habit of wrapping the child in wrapper throughout continuously and due to which child used to weep continuously. She used to say that she is obsessed and hears outer world's voices and barking of dogs. She used to tell me that she is regularly seeing evil spirits. She used to go out for roaming at 2-3 a.m. in the night. Whenever I refused to listen or agree to her demands, she used to throw dirty clothes upon me. She was in the bad habit of keeping the door of toilet opened throughout the day even while she was bathing or refreshing herself. She used to doubt everything whenever she started eating her food. She also used to doubt her mother and sister and used to say that both of them have immoral character. She was in the habit of opening and closing the central locking system of the car. She was in the habit of increasing the volume of TV to the maximum unnecessarily. Whenever I used to go to office, she used to stop me from going and when I told her that I have to go to office, she used to say that she will commit suicide. In fact she was in the habit of pressing and coaxing me for all her needs and desires. She used to say that I want to live with Happy and also used to say that she has no interest in living with me. She stressed that she will leave me and starts living with Happy. (Happy is the son of my wife's elder paternal uncle.) She was in the habit of unnecessarily arguing with my parents and used to abuse them and whenever I stopped her from doing so, she used to threaten me that she will commit suicide. However, I used to request my parents to look after her in my absence. But she used to misbehave and insult them. She used to say that she will buy her own house and will start living in that house because this house is very small for her needs and she feels suffocated in this house. Although my house is in a very posh colony and it is a very spacious, airy, open and large house. I noticed that condition of Dimple is becoming worse every day. I became sure that she is actually mad and she is concealing her madness from me. I noticed that she used to keep some medicine in her purse and used to take that medicine often. She was actually sex-hungry and was not interested in doing any household works. She never showed any interest in keeping her bedroom and drawing clean and tidy. She was in the habit of wearing the clothes of 3-4 days regularly. She used to wake up very late in the morning. Whenever my mother and sister called her to join them, she was abusing and insulting them. She used to call my mother stupid and my sister as

wretched. However, I controlled myself and kept on tolerating her conduct, because all of us were in the fervent hope that one day God will cure her....One day, my friend Sumit came to my house. Earlier also he used to come to my house as he is also working with me in the LIC. He wished Dimple and enquired about her and instead of welcoming him, Dimple insulted him by saying why are you coming to our house uncalled every day. He felt very insulted and sat in the drawing room on the ground floor and when I was also coming down to join him, Dimple pushed me from stairs and started laughing unnecessarily. As a result of aforesaid pushing, I fell down and bones of my right arm and wrist got fractured. Perchance, Ashok Kumar too had come to my house on that day and he was repeatedly asking for meals. But when he saw my condition, he immediately took me to the Hospital of Dr. Hardas where plaster was applied on my arm and wrist. When we came back, to my utter shock and surprise, Dimple did not even notice any change in me and did not remotely felt that I have received fractures in my arm and wrist and plaster has been applied on my arm. One day when we were sitting in the drawing room, I called Dimple and asked her to bring tea for me. At that time she was wearing very dirty clothes. So, I asked her to immediately go and change her dirty clothes and wear some good clothes. But instead of changing her clothes, she started abusing me and even slapped me on my face. Thereupon my mother asked her why she is behaving like this, upon which she rose her hands to slap my mother too, but my sister stopped her from doing so. We narrated all the above incidents of Dimple to her father. He expressed his shock and apologized on her behalf and advised us to start living separately and said that she will start behaving properly and nicely."

All the above details in the form of assertion in the affidavit clearly show that the appellant-husband faced cruelty at the hands of the respondent on several occasions.

23) It is well settled that giving repeated threats to commit suicide amounts to cruelty. When such a thing is repeated in the form of sign or gesture, no spouse can live peacefully. In the case on hand, the appellant-husband has placed adequate materials to show that the respondent-wife used to give repeated threats to commit suicide and once even tried to commit suicide by jumping from the terrace. Cruelty postulates a treatment of a spouse with such cruelty as to create reasonable apprehension in his mind that it would be harmful or injurious for him to live with the other party. The acts of the respondent-wife are of such quality or magnitude and consequence as to cause pain, agony and suffering to the appellant-husband which amounted to cruelty in matrimonial law. From the pleadings and evidence, the following instances of cruelty are specifically pleaded and stated. They are:

- i. Giving repeated threats to commit suicide and even trying to commit suicide on one occasion by jumping from the terrace.
- ii. Pushing the appellant from the staircase resulting into fracture of his right forearm.
- iii. Slapping the appellant and assaulting him.
- iv. Misbehaving with the colleagues and relatives of the appellant causing humiliation and embarrassment to

him.

- v. Not attending to household chores and not even making food for the appellant, leaving him to fend for himself.
- vi. Not taking care of the baby.
- vii. Insulting the parents of the appellant and misbehaving with them.
- viii. Forcing the appellant to live separately from his parents.
- ix. Causing nuisance to the landlord's family of the appellant, causing the said landlord to force the appellant to vacate the premises.
- x. Repeated fits of insanity, abnormal behaviour

causing great mental tension to the appellant. xi. Always quarreling with the appellant and abusing him.

xii. Always behaving in an abnormal manner and doing weird acts causing great mental cruelty to the appellant.

24) All these factual details culled out from the pleadings and evidence of both the parties clearly show the conduct of the respondent-wife towards the appellant-husband. With these acceptable facts and details, it cannot be concluded that the appellant-husband has not made out a case of cruelty at the hands of the respondent-wife. We are satisfied that the appellant-husband had placed ample evidence on record that the respondent-wife is suffering from "mental disorder" and due to her acts and conduct, she caused grave mental cruelty to him and it is not possible for the parties to live with each other, therefore, a decree of divorce deserves to be granted in favour of the appellant-husband. In addition to the same, it was also brought to our notice that because of the abovementioned reasons, both appellant-husband and the respondent-wife are living separately for the last more than nine years. There is no possibility to unite the chain of marital life between the appellant-husband and the respondent-wife.

25) In the light of the facts and circumstances as discussed above, in our view, the impugned order of the High Court resulted in grave miscarriage of justice to the appellant-

husband, more particularly, the High Court failed to consider the relevant material aspects from the pleadings and the evidence, the ultimate conclusion cannot be sustained. The appellant-husband established and proved both grounds in terms of Section 13 of the Act. In the result, the appeal stands allowed. The divorce petition filed by the appellant-husband stands accepted and a decree of divorce is hereby passed dissolving the marriage of the appellant with the respondent from today, i.e. 30.09.2011. The impugned order of the High Court dated 06.08.2009 in FAO No. M-123 of 2006 is set aside. The appellant-husband is directed to pay an amount of Rs. 2 (Two) lakhs as alimony to the respondent-wife in two equal instalments within a period of three months from today and to deposit Rs. 3 (Three) lakhs in the name of his daughter in the shape of three FDRs in a nearest nationalised bank in three equal instalments commencing from January, 2012 ending with June, 2012. On attaining majority, the daughter is permitted to withdraw the amount. Till such period, the respondent-wife is permitted to withdraw accrued interest once in three months directly from the bank from the said deposit for the benefit and welfare of their daughter.

.....J. (P. SATHASIVAM)J. (DR. B.S. CHAUHAN) NEW DELHI;

SEPTEMBER 30, 2011.