Supreme Court of India
Dr.(Mrs.) Malathi Ravi, M.D vs Dr. B.V . Ravi M.D on 30 June, 1947
Author: D Misra
Bench: Sudhansu Jyoti Mukhopadhaya, Dipak Misra

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5862 OF 2014
(Arising out of S.L.P. (C) No. 17 of 2010)

Dr. (Mrs.) Malathi Ravi, M.D. ... Appellant

Versus

Dr. B.V. Ravi, M.D. ...Respondent

J U D G M E N T

Dipak Misra, J.

Leave granted.

Marriage as a social institution is an affirmance of civilized social order where two individuals, capable of entering into wedlock, have pledged themselves to the institutional norms and values and promised to each other a cemented bond to sustain and maintain the marital obligation. It stands as an embodiment for continuance of the human race. Despite the pledge and promises, on certain occasions, individual incompatibilities, attitudinal differences based upon egocentric perception of situations, maladjustment phenomenon or propensity for non-adjustment or refusal for adjustment gets eminently projected that compels both the spouses to take intolerable positions abandoning individual responsibility, proclivity of asserting superiority complex, betrayal of trust which is the cornerstone of life, and sometimes a pervert sense of revenge, a dreadful diet, or sheer sense of envy bring the cracks in the relationship when either both the spouses or one of the spouses crave for dissolution of marriage – freedom from the institutional and individual bond. The case at hand initiated by the husband for dissolution of marriage was viewed from a different perspective by the learned Family Court Judge who declined to grant divorce as the factum of desertion as requisite in law was not proved but the High Court, considering certain facts and taking note of subsequent events for which the appellant was found responsible, granted divorce. The High Court perceived the acts of the appellant as a reflection of attitude of revenge in marriage or for vengeance after the reunion pursuant to the decree for restitution of marriage. The justifiability of the said analysis within the parameters of Section 13(1) of the Hindu Marriage Act, 1955 (for brevity "the Act") is the subject-matter of assail in this appeal, by special leave, wherein the judgment and decree dated 11.09.2009 passed by the High Court of Karnataka in MFA No. 9164 of 2004 reversing the decree for restitution of conjugal rights granted in favour of the wife and passing a decree for dissolution of marriage by way of divorce allowing the petition preferred by the respondent-husband, is called in question.

The respondent-husband, an Associate Professor in Ambedkar Medical College, Kadugondanahalli, Bangalore, filed a petition, M.S. No. 5 of 2001 under Section 13(1) the Act seeking for a decree for judicial separation and dissolution of marriage. However, in course of the proceeding the petition was amended abandoning the prayer for judicial separation and converting the petition to one under Section 13(1)(ib) of the Act seeking dissolution of marriage by way of divorce.

In the petition filed before the Family court, it was averred by the respondent-husband that the marriage between the parties was solemnized in accordance with Hindu Rites and customs on 23.11.1994. After the marriage the husband and wife stayed together for one and a half years in the house of the father of the husband but from the very first day the appellant-wife was non-cooperative, arrogant and her behaviour towards the family members of the husband was unacceptable. Despite the misunderstanding, a male child was born in the wedlock and thereafter, the wife took the child and left the house and chose not to come back to the husband or his family for a period of three years. It was pleaded that there had been a marital discord and total non-compatibility, and she had deserted him severing all ties. It was also alleged that she had left the tender child in the custody of her parents and joined a post graduate course in the Medical College of Gulbarga. All the efforts by the husband to bring her back became an exercise in futility inasmuch as the letters written by him were never replied. Despite the non-responsive attitude of the wife, he, without abandoning the hope for reconciliation for leading a normal married life, went to the house of his in-laws, but her parents ill treated him by forcibly throwing him out of the house.

It was the assertion of the husband that after she completed her course, she started staying with her parents along with the child at Bangalore and neither he nor his family members were invited for the naming giving ceremony of the child. As set forth, the conduct of the wife caused immense mental hurt and trauma, and he suffered unbearable mental agony when the family members of his wife abused and ill treated him while he had gone to pacify her and bring her back to the matrimonial home. All his solicitations and beseechments through letters to have normalcy went in vain which compelled him to issue a notice through his counsel but she chose not to respond to the same. Under these circumstances, the petition was filed for judicial separation and thereafter, as has been stated earlier, prayer was amended seeking dissolution of marriage on the ground of desertion since she had deliberately withdrawn from his society.

The wife filed objections contending, inter alia, that when she was residing in the matrimonial home, the sister and brother-in-law of the husband, who stayed in the opposite house, were frequent visitors and their interference affected the normal stream of life of the couple. They influenced the husband that he should not allow his wife to prosecute her studies and be kept at home as an unpaid servant of the house. The husband, as pleaded, was torn in conflict as he could not treat the wife in the manner by his sister and brother-in-law had desired and also could not openly express disagreement. At that juncture, as she was in the family way, as per the customs, she came to her parental home and by the time the child was born the sister and brother-in-law had been successful in poisoning the mind of the husband as a result of which neither he nor his relatives, though properly invited, did not turn up for the naming ceremony. All her attempts to come back to the matrimonial home did not produce any result since the husband was acting under the ill-advice of his sister and brother-in-law. It was put forth that he had without any reasonable cause or excuse

refused to perform his marital obligations. The plea of mental hurt and trauma was controverted on the assertion that she had never treated him with cruelty nor was he summarily thrown out of the house of her parents.

Be it stated, the wife in the same petition filed an application under Section 9 of the Act for restitution of conjugal rights to which an objection was filed by the husband stating, inter alia, that no case had been made out for restitution of conjugal rights but, on the contrary, vexatious allegations had been made. It was further averred that the wife had deserted him for more than five years and she had been harassing him constantly and consistently.

In support of their respective pleas the husband and wife filed evidence by way of affidavit and were cross-examined at length by the other side. On behalf of the husband 12 documents were exhibited as Exts. P-1 to P-12 and the wife examined one witness and exhibited four documents, Exts. R-1 to R-

4. The family court formulated the following points for consideration: -

"(1) Whether the petitioner proves that respondent assaulted him for a continuous period of not less than 2 years immediately proceeding the presentation of the petition?

Whether the respondent proves that the petitioner without reasonable excuse withdrawn from the society?

Whether the petitioner is entitled for decree of divorce as prayed for?

Whether the respondent is entitled for decree of restitution of conjugal right as prayed for?

What order?" The learned Principal Judge of the family court, appreciating the oral and documentary evidence on record came to hold that the material on record gave an impression that there was no scuffle between the husband and the wife; that even after the birth of the child the husband and his family members used to visit the wife at her parental home to see the child; that there was no material on record to show that when he went to his in-laws house to see the child, he was ill-treated in any manner; that after the child was born he had taken the child along with her for vaccination and spent sometime; that though the husband and his relatives were invited for naming ceremony of the child, they chose not to attend; that the husband was able to recognize his son from the photograph in Ext. R-2; that the plea of the husband that he was not allowed to see the child did not deserve acceptation; that the circumstances did not establish that wife had any intention to bring the conjugal relationship to an end but, on the contrary, she was residing in her parents' house for delivery and then had to remain at Gulbarga for prosecuting her higher studies; that while she was studying at Gulbarga, as is evident from Ext. R-4, the husband stayed there for two days, i.e., 27.5.1999 and 28.5.1999; that from the letters vide Exts. P-3, P-7, P-9 and P-11 nothing was discernible to the effect that the wife went to Gulbarga for her studies without his permission and she had deserted him; that the husband had not disclosed from what date he stopped visiting the house of the wife's parents after the birth of the child; that the letters written by the husband did not

reflect the non- cooperative conduct of the wife; that there was no sufficient evidence to come to a definite conclusion that the wife had deserted the husband with an intention to bring the matrimonial relationship to an end; that assuming there was desertion yet the same was not for a continuous period of two years immediately preceding the presentation of the petition; that the husband only wrote letters after 15.9.1999 and nothing had been brought on record to show what steps he had taken for resumption of marital ties with the wife if she had deserted him; that the wife was not allowed to come back to the matrimonial home because of intervention of his sister and brother-in-law; that the explanation given by the wife to her non-response to the letters was that when she was thinking to reply the petition had already been filed was acceptable; that as the husband was working at Ambedkar Medical College in the Department of Biochemistry and wife had joined in the Department of Pathology which would show that she was willing to join the husband to lead a normal marital life; and that it was the husband who had withdrawn from the society of the wife without any reasonable cause. Being of this view, the learned Family Judge dismissed the application for divorce and allowed the application of the wife filed under Section 23(a) read with Section 9 of the Act for restitution of conjugal rights.

After the said judgment and decree was passed by the learned Family Judge, the respondent did not prefer an appeal immediately. He waited for the wife to join and for the said purpose he wrote letters to her and as there was no response, he sent a notice through his counsel. The wife, eventually, joined on 22.8.2004 at the matrimonial house being accompanied by her relative who was working in the Police Department. As the turn of events would uncurtain, the wife lodged an FIR No. 401/2004 dated 17.10.2004 at Basaveshwaranagar alleging demand of dowry against the husband, mother and sister as a consequence of which the husband was arrested being an accused for the offences under Section 498A and 506 read with Section 34 of the Indian Penal Code and also under the provisions of Dowry Prohibition Act. He remained in custody for a day until he was enlarged on bail. His parents were compelled to hide themselves and moved an application under Section 438 of the Code of Criminal Procedure and, ultimately, availed the benefit of said provision. After all these events took place, the husband preferred an appeal along with application for condonation of delay before the High Court which formed the subject-matter of M.F.A. No. 9164/04 (FC). The High Court condoned the delay, took note of the grounds urged in the memorandum of appeal, appreciated the subsequent events that reflected the conduct of the wife and opined that the attitude of the wife confirmed that she never had the intention of leading a normal married life with the husband and, in fact, she wanted to stay separately with the husband and dictate terms which had hurt his feelings. The High Court further came to the conclusion that the husband had made efforts to go to Gulbarga on many an occasion, tried to convince the wife to come back to the matrimonial home, but all his diligent efforts met with miserable failure. As the impugned judgment would reflect, the behaviour of the wife established that she deliberately stayed away from the marital home and intentionally caused mental agony by putting the husband and his family to go through a criminal litigation. That apart, the High Court took the long separation into account and, accordingly, set aside the judgment and decree for restitution of conjugal rights and passed a decree for dissolution of marriage between the parties.

We have heard Mr. Shanth Kumar V. Mohale, learned counsel for the appellant and Mr. Balaji Srinivasan, learned counsel for the respondent.

Assailing the legal sustainability of the judgment of the High Court, Mr. Shanth Kumar, learned counsel appearing for the appellant, submitted that when the petition for divorce was founded solely on the ground of desertion and a finding was returned by the family court that the ingredients stipulated under Section 13(1)(ib) of the Act were not satisfied making out a case of desertion on the part of the wife, the High Court should have concurred with the same and not proceeded to make out a case for the respondent-husband on the foundation of mental cruelty. It is urged by him that the High Court has taken note of subsequent events into consideration without affording an opportunity to the appellant to controvert the said material and that alone makes the decision vulnerable in law. Learned counsel would submit that the High Court has erroneously determined the period of communication of letters and the silence maintained by the wife which is factually incorrect and, in fact, the concept of desertion, as is understood in law, has not been proven by way of adequate evidence but, on the contrary, the analysis of evidence on record by the Family Court goes a long way to show that there was, in fact, no desertion on the part of the wife to make out a case for divorce. It is his further submission that the High Court has opined that the marriage between the parties had irretrievably been broken and, therefore, it was requisite to grant a decree for dissolution of marriage by divorce which cannot be a ground for grant of divorce. Learned counsel has placed reliance on the decisions in Lachman Utamchand Kirpalani v. Meena @ Mota[1], K. Narayanan v. K. Sreedevi[2], Mohinder Singh v. Harbens Kaur[3] and Smt. Indira Gangele v. Shailendra Kumar Gangele[4].

Mr. Balaji Srinivasan, learned counsel for the respondent-husband, has urged that if the petition filed by the husband is read in entirety, it would be clear that the husband had clearly pleaded about the mental hurt and trauma that he had suffered because of the treatment meted out to him by his wife and her family members. He has drawn our attention to the evidence to show that for a long seven and a half years despite the best efforts he could not get marital cooperation from his wife and as the High Court has accepted the same, the impugned judgment is flawless. He has highlighted about the non-responsive proclivity of the wife when she chose not to reply to the letters of the husband beseeching her to join his company while she was staying at Gulbarga. He has also drawn our attention to the cross-examination of the husband where he has deposed that after the delivery of the son on 12.1.1998 when she was discharged, he and his mother had gone to bring the wife and the child to their home but she went to her parental home and further neither he nor his family members were invited for the naming ceremony which was performed in October, 1998. Learned counsel has drawn our attention to the subsequent events which have been brought on record by way of affidavit as well as the rejoinder filed by the appellant-wife to the counter affidavit to highlight the subsequent conduct for the purpose of demonstrating the cruel treatment of the wife. It is canvassed by him that the subsequent events can be taken note of for the purpose of mental cruelty by this Court and the decree of divorce granted by the High Court should not be disturbed.

To appreciate the rivalised submissions raised at the Bar, we have carefully perused the petition and the evidence adduced by the parties and the judgment of the Family Court and that of the High Court. The plea that was raised for grant of divorce was under Section 13(1)(ib) of the Act. It provides for grant of divorce on the ground of desertion for a continuous period of not less than two year immediately preceding the presentation of the petition. The aforesaid provision stipulates that a husband or wife would be entitled to a dissolution of marriage by decree of divorce if the other

party has deserted the party seeking the divorce for a continuous period of not less than two years immediately preceding the presentation of the petition. Desertion, as a ground for divorce, was inserted to Section 13 by Act 68/1976. Prior to the amendment it was only a ground for judicial separation. Dealing with the concept of desertion, this Court in Savitri Pandey v. Prem Chandra Pandey[5] has ruled thus:- "Desertion", for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations i.e. not permitting or allowing and facilitating the cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. After referring to a host of authorities and the views of various authors, this Court in Bipinchandra Jaisinghbai Shah v. Prabhavati1 held that if a spouse abandons the other in a state of temporary passion, for example, anger [pic]or disgust without intending permanently to cease cohabitation, it will not amount to desertion.

In the said case, reference was also made to Lachman Utamchand Kirpalani's case wherein it has been held that desertion in its essence means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly two elements are essential so far as the deserted spouse is concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation.

In the case at hand, the Family Court, on the basis of the evidence brought on record, has recorded a finding that there was no desertion for a continuous period of two years. The High Court has reversed it by emphasizing on certain aspects of conduct. Analysing the evidence, we are of the considered opinion that it is not established that the appellant- wife had deserted the husband for a continuous period of not less than two years immediately preceding the presentation of the petition. It is because the petition was presented in the year 2001 and during the cross- examination of the husband it has been admitted by him that he had gone to Gulbarga in May, 1999 for two days. The Family Court, on the basis of material brought on record, has opined that there is no sufficient evidence to come to a definite conclusion that the wife deserted him with intention to bring the matrimonial relationship to an end and further the period of two years was not completed. The High Court, as it seems to us, has not dealt with this aspect in an appropriate manner and opined that the wife had no intention to lead a normal married life with the husband. Therefore, the allegation of

desertion, as enshrined under Section 13(1)(ib) has not been established. The finding on that score as recorded by the learned Principal Judge, Family Court, deserves to be affirmed and we so do.

Presently to the factual matrix in entirety and the subsequent events. We are absolutely conscious that the relief of dissolution of marriage was sought on the ground of desertion. The submission of the learned counsel for the appellant is that neither subsequent events nor the plea of cruelty could have been considered. There is no cavil over the fact that the petition was filed under Section 13(1)(ib). However, on a perusal of the petition it transpires that there are assertions of ill-treatment, mental agony and torture suffered by the husband.

First we intend to state the subsequent events. As has been narrated earlier, after the application of the wife was allowed granting restitution of conjugal rights, the husband communicated to her to join him, but she chose not to join him immediately and thereafter went to the matrimonial home along with a relative who is a police officer. After she stayed for a brief period at the matrimonial home, she left her husband and thereafter lodged FIR No. 401/2004 on 17.10.2004 for the offences under Sections 498A and 506/34 of the Indian Penal Code and the provisions under Dowry Prohibition Act, 1961 against the husband, his mother and the sister. Because of the FIR the husband was arrested and remained in custody for a day. The ladies availed the benefit of anticipatory bail. The learned trial Magistrate, as we find, recorded a judgment of acquittal. Against the judgment of acquittal, the appellant preferred an appeal before the High Court after obtaining special leave which was ultimately dismissed as withdrawn since in the meantime the State had preferred an appeal before the Court of Session. At this juncture, we make it absolutely clear that we will not advert to the legal tenability of the judgment of acquittal as the appeal, as we have been apprised, is sub-judice. However, we take note of certain aspects which have been taken note of by the High Court and also brought on record for a different purpose.

The seminal question that has to be addressed is whether under these circumstances the decree for divorce granted by the High Court should be interfered with. We must immediately state that the High Court has referred to certain grounds stated in the memorandum of appeal and taken note of certain subsequent facts. We accept the submission of the learned counsel for the appellant that the grounds stated in the memorandum of appeal which were not established by way of evidence could not have been pressed into service or taken aid of. But, it needs no special emphasis to state that the subsequent conduct of the wife can be taken into consideration. It settled in law that subsequent facts under certain circumstances can be taken into consideration.

In A. Jayachandra v. Aneel Kaur[6] it has been held thus: -

“If acts subsequent to the filing of the divorce petition can be looked into to infer condonation of the aberrations, acts subsequent to the filing of the petition can be taken note of to show a pattern in the behaviour and conduct.” In Suman Kapur v. Sudhir Kapur[7] this Court had accepted what the High Court had taken note of despite the fact that it was a subsequent event. It is necessary to reproduce the necessary paragraphs from the said decision to perceive the approach of this Court: -

"46. 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 Awegtalewis).

[pic]47. 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 an American woman whose social security number was wrongly typed in the income tax return of the respondent husband." From the acceptance of the reasons of the High Court by this Court, it is quite clear that subsequent events which are established on the basis of non-disputed material brought on record can be taken into consideration. Having held that, the question would be whether a decree for divorce on the ground of mental cruelty can be granted. We have already opined that the ground of desertion has not been proved. Having not accepted the ground of desertion, the two issues that remain for consideration whether the issue of mental cruelty deserves to be accepted in the obtaining factual matrix in the absence of a prayer in the relief clause, and further whether the situation has become such that it can be held that under the existing factual scenario it would not be proper to keep the marriage ties alive. Learned counsel for the appellant has urged with vehemence that when dissolution of marriage was sought on the ground of desertion alone, the issue of mental cruelty can neither be raised nor can be addressed to. Regard being had to the said submission, we are constrained to pose the question whether in a case of the present nature we should require the respondent-husband to amend the petition and direct the learned Family Judge to consider the issue of mental cruelty or we should ignore the fetter of technicality and consider the pleadings and evidence brought on record as well as the subsequent facts which are incontrovertible so that the lis is put to rest. In our considered opinion the issue of mental cruelty should be addressed to by this Court for the sake of doing complete justice. We think, it is the bounden duty of this Court to do so and not to leave the parties to fight the battle afresh after expiry of thirteen years of litigation. Dealing with the plea of mental cruelty which is perceptible from the material on record would not affect any substantive right of the appellant. It would be only condoning a minor technical aspect. Administration of justice provokes our judicial conscience that it is a fit case where the plentitude of power conferred on this Court under Article 142 deserves to be invoked, more so, when the ground is statutorily permissible. By such exercise we are certain that it would neither be supplanting the substantive law nor would it be building a structure which does not exist. It would be logical to do so and illogical to refrain from doing so.

Before we proceed to deal with the issue of mental cruelty, it is appropriate to state how the said concept has been viewed by this Court. In Vinit Saxena v. Pankaj Pandit[8], while dealing with the issue of mental cruelty, the Court held as follows: -

"31. 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 wilful 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.

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35. 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." In Samar Ghosh v. Jaya Ghosh[9], this Court has given certain illustrative examples wherefrom inference of mental cruelty can be drawn. The Court itself has observed that they are illustrative and not exhaustive. We think it appropriate to reproduce some of the illustrations: - "(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.

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(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.

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(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.

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(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 [pic]the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

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(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." In the said case the Court has also observed thus: -

"99. ... The human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in the other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances...." In Vishwanath Agrawal, s/o Sitaram Agrawal v. Sarla Vishwanath Agrawal[10], while dealing with mental cruelty, it has been opined thus: - "22. The expression "cruelty" has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status." In the said case, analyzing the subsequent events and the conduct of the wife, who was responsible for publication in a newspaper certain humiliating aspects about the husband, the Court held as follows: - "In our considered opinion, a normal reasonable man is bound to feel the sting and the pungency. The conduct and circumstances make it graphically clear that the respondent wife had really humiliated him and caused mental cruelty. Her conduct clearly exposits that it has resulted in causing agony and anguish in the mind of the husband. She had publicised in the newspapers that he was a womaniser and a drunkard. She had made wild allegations about his character. She had made an effort to prosecute him in criminal litigations which she had failed to prove. The feeling of deep anguish, disappointment, agony and frustration of the husband is obvious." In U. Sree v. U. Srinivas[11], the Court, taking note of the deposition of the husband that the wife had consistently ill treated him inasmuch as she had shown her immense dislike towards his "sadhna" in music and had exhibited total indifference to him, observed as follows: - "It has graphically been demonstrated that she had not shown the slightest concern for the public image of her husband on many an occasion by putting him in a situation of embarrassment leading to humiliation. She has made wild allegations about the conspiracy in the family of her husband to get him remarried for the greed of dowry and there is no iota of evidence on record to substantiate the same. This, in fact, is an aspersion not only on the character of the husband but also a maladroit effort to malign the reputation of the family." In K. Srinivas Rao v. D.A. Deepa[12], while dealing with the instances of mental cruelty, the court opined that to the illustrations given in the case of Samar Ghosh certain

other illustrations could be added. We think it seemly to reproduce the observations: -

"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." Presently, we shall advert to the material on record. It is luminous from it that the wife has made allegations that the sister and brother-in-law of the husband used to interfere in the day-to-day affairs of the husband and he was caught in conflict. The said aspect has really not been proven. It has been brought on record that the sister and brother-in-law are highly educated and nothing has been suggested to the husband in the cross- examination that he was pressurized by his sister in any manner whatsoever. It is her allegation that the sister and brother-in-law of the husband were pressurizing him not to allow the wife to prosecute higher studies and to keep her as an unpaid servant in the house. On a studied evaluation of the evidence and the material brought on record it is demonstrable that the wife herself has admitted that the husband had given his consent for her higher education and, in fact, assisted her. Thus, the aforesaid allegation has not been proven. The allegation that the husband was instigated to keep her at home as an unpaid servant is quite a disturbing allegation when viewed from the spectrum of gender sensitivity and any sensitive person would be hurt when his behavior has remotely not reflected that attitude. The second aspect which has surfaced from the evidence is that the wife had gone to the parental home for delivery and therefrom she went to the hospital where she gave birth to a male child. However, as the evidence would show, the husband despite all his co-operation as a father, when had gone to the hospital to bring the wife and child to his house, she along with the child had gone to her parental house. This aspect of the evidence has gone totally unchallenged. Perceived from a social point of view, it reflects the egocentric attitude of the wife and her non-concern how such an act is likely to hurt the father of the child. The next thing that has come in evidence is that the respondent was not invited at the time of naming ceremony. He has categorically disputed the suggestion that he and his family members were invited to the ceremony. It is interesting to note that a suggestion has been given that they did not attend the ceremony as in the invitation card the names of the parents of the husband had not been printed. It has been asserted by the husband that the said incident had caused him tremendous mental pain. View from a different angle, it tantamounts to totally ignoring the family of the husband.

Another incident deserves to be noted. The wife went to Gulbarga to join her studies and the husband was not aware of it and only come to know when one professor told about it. Thereafter he went to Gulbarga and stayed in a hotel and met the wife in the hostel on both the days. Despite his request to come to the house she showed disinclination. When he enquired about the child, he was told that the child was in her mother's house. These are the incidents which are antecedent to the filing of the petition.

We have already stated the legal position that subsequent events can be taken note of. After the judgment and decree was passed by the learned Family Judge, the husband sent a notice through his counsel dated 14.7.2004 and intimated her as follows: -

"According to the operative portion of the order, my client has to welcome you to join him with the child within three months which please note.

My client's address is Dr. B.V. Ravi, M.D., residing in No. 428. 2nd Across, 6th Main, 3rd Stage, 3rd Block, Basaveshwaranagar, Bangalore-79 and his Telephone No. 23229865. In obedience to the Hon'ble Court order, you called upon to join Dr. B.V. Ravi to the above said address any day after 18th of July, 2004, as this period upto 17th is inauspicious because of "Ashada"." As it appears, she did not join and the husband was compelled to send a telegram. Thereafter, on 13.8.2004 a reply was sent on her behalf that she would be joining after 15.8.2004 but the exact date was not intimated. Thereafter, on 14.8.2004 a reply was sent to the legal notice dated 14.7.2004 sent by the husband. It is appropriate to reproduce the relevant two paragraphs: -

"In this context, we hereby inform you that our client will be coming to join your client in the above said address along with the child on Sunday the 22nd August 2004 as the auspicious NIJASHRAVANA MONTH commences from 16th August 2004.

Further our client expects reasonable amount of care and cordiality from your client's side. Please ensure the same." The purpose of referring to these communications is that despite obtaining decree for restitution of conjugal rights the wife waited till the last day of the expiration of the period as per the decree to join the husband. There may be no legal fallacy, but the attitude gets reflected. The reply also states that there is expectation of reasonable amount of care and cordiality. This reflects both, a sense of doubt and a hidden threat. As the facts unfurl, the wife stays for two months and then leaves the matrimonial home and lodges the first information report against the husband and his mother and sister for the offences punishable under Sections 498A, 506/34 of the Indian Penal Code and under the provisions of Dowry Prohibition Act. The husband suffers a day's custody and the mother and the sister availed anticipatory bail.

The High Court has taken note of all these aspects and held that the wife has no intention to lead a normal marital life. That apart, the High Court has returned a finding that the marriage has irretrievably been broken down. Of course, such an observation has been made on the ground of conduct. This Court in certain cases, namely, G.V.N. Kameswara Rao v. G. Jabilli[13], Parveen Mehta v. Inderjit Mehta[14], Vijayakumar R. Bhate v. Neela Vijayakumar Bhate[15], Durga Prasanna Tripathy v. Arundhati Tripathy[16], Naveen Kohli v. Neelu Kohli[17] and Samar Ghosh v. Jaya Ghosh (supra), has invoked the principle of irretrievably breaking down of marriage.

For the present, we shall restrict our delineation to the issue whether the aforesaid acts would constitute mental cruelty. We have already referred to few authorities to indicate what the concept of mental cruelty means. Mental cruelty and its effect cannot be stated with arithmetical exactitude. It varies from individual to individual, from society to society and also depends on the status of the persons. What would be a mental cruelty in the life of two individuals belonging to particular strata of the society may not amount to mental cruelty in respect of another couple belonging to a different stratum of society. The agonized feeling or for that matter a sense of disappointment can take place by certain acts causing a grievous dent at the mental level. The inference has to be drawn from the attending circumstances. As we have enumerated the incidents, we are disposed to think that the

husband has reasons to feel that he has been humiliated, for allegations have been made against him which are not correct; his relatives have been dragged into the matrimonial controversy, the assertions in the written statement depict him as if he had tacitly conceded to have harboured notions of gender insensitivity or some kind of male chauvinism, his parents and he are ignored in the naming ceremony of the son, and he comes to learn from others that the wife had gone to Gulbarga to prosecute her studies. That apart, the communications, after the decree for restitution of conjugal rights, indicate the attitude of the wife as if she is playing a game of Chess. The launching of criminal prosecution can be perceived from the spectrum of conduct. The learned Magistrate has recorded the judgment of acquittal. The wife had preferred an appeal before the High Court after obtaining leave. After the State Government prefers an appeal in the Court of Session, she chooses to withdraw the appeal. But she intends, as the pleadings would show, that the case should reach the logical conclusion. This conduct manifestly shows the widening of the rift between the parties. It has only increased the bitterness. In such a situation, the husband is likely to lament in every breath and the vibrancy of life melts to give way to sad story of life.

From this kind of attitude and treatment it can be inferred that the husband has been treated with mental cruelty and definitely he has faced ignominy being an Associate Professor in a Government Medical College. When one enjoys social status working in a Government hospital, this humiliation affects the reputation. That apart, it can be well imagined the slight he might be facing. In fact, the chain of events might have compelled him to go through the whole gamut of emotions. It certainly must have hurt his self-respect and human sensibility. The sanguine concept of marriage presumably has become illusory and it would not be inapposite to say that the wife has shown anaemic emotional disposition to the husband. Therefore, the decree of divorce granted by the High Court deserves to be affirmed singularly on the ground of mental cruelty.

Presently, we shall proceed to deal with grant of maintenance. Both the appellant and the respondent are doctors and have their respective jobs. The son is hardly sixteen years old and definitely would require financial support for education and other supportive things to lead a life befitting his social status. The High Court, while granting a decree for divorce should have adverted to it. However, we do not think it appropriate to keep anything alive in this regard between the parties. The controversy is to be put to rest on this score also. Considering the totality of circumstances, the status the appellant enjoys and the strata to which the parties belong, it becomes the bounden duty of the respondent to provide for maintenance and education for the son who is sixteen years old. At this juncture, we may note that a proceeding was initiated before the learned Principal Judge, Family Court, Bangalore and in the said proceeding the learned Principal Judge passed the following order: -

“Matter is settled before the mediation centre where in parties have entered into a memorandum of settlement.

Contents of the Memorandum of Settlement are admitted by the Parties. Court is satisfied that the same is voluntary.

As per the terms of settlement para 5 clause (i) petitioner has deposited Rs.3,00,000/- in the name of minor child in Karnataka Bank, copy of fixed deposit receipt and R.D. Account pass book are filed along with memo. Hence petition is allowed in terms of settlement.

Memorandum of settlement shall be a part of the decree." Learned counsel for the respondent would submit that the amount has been settled. Though there has been a settlement of Rs.3,00,000/- yet that was at a different time and under different circumstances. The present appeal was pending. The duty of this Court is to see that the young son born in the wedlock must get acceptable comfort as well as proper education. It is the duty of the Court also to see that a minor son should not live in discomfort or should be deprived of requisite modern education. We are conscious, the appellant is earning but that does not necessarily mean that the father should be absolved of his liability. Regard being had to the social status and strata and the concept of effective availing of education we fix a sum of Rs.25,00,000/- (twenty five lacs) excluding the amount already paid towards the maintenance and education of the son. The said amount shall be deposited by the respondent within a period of six months before the learned Principal Judge, Family Court at Bangalore and the amount shall be kept in a fixed deposit in a nationalized bank in the joint account of the appellant and the minor son so that she can draw quarterly interest and expend on her son. After the son attains majority the joint account shall continue and they would be at liberty to draw the amount for the education or any urgent need of the son.

With the aforesaid directions, we affirm the decree for divorce passed by the High Court. The appeal stands disposed of accordingly but without any order as to costs.

.....J.

[Sudhansu Jyoti Mukhopadhaya] .....J.

[Dipak Misra] New Delhi;

June 30, 2014.

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[1] AIR 1964 SC 40
[2] AIR 1990 Ker 151
[3] AIR 1992 P&H 8
[4] AIR 1993 MP 59
[5] (2002) 2 SCC 73
[6] (2005) 2 SCC 22
[7] (2009) 1 SCC 422
[8] (2006) 3 SCC 778
[9] (2007) 4 SCC 511
[10] (2012) 7 SCC 288
[11] (2013) 2 SCC 114
[12] (2013) 5 SCC 226
[13] (2002) 2 SCC 296
[14] (2002) 5 SCC 706

[15] (2003) 6 SCC 334
[16] (2005) 7 SCC 353
[17] (2006) 4 SCC 558
