

This appeal is focussed as against the order passed in C.M.A.No.111 of 2001 on the file of the District Judge, Trichy, dated 03.05.2002, in setting aside the order passed in H.M.O.P.No.49 of 1998 on the file of the Principal Subordinate Judge, Trichy, dated 16.08.2001.

2. For convenience sake, the parties are referred to hereunder as husband and wife.

3. Both the Courts below detailed and delineated the averments as found set out in the petition as well as in the counter and reply. Even then, I am of the view that this being a matrimonial matter, it is just and necessary to broadly but briefly, narratively but precisely set out the facts thus:

The nitty-gritty, the gist and kernel of the case of the petitioner as stood exposed from the petition which was filed under Section 13(1)(i)(a) of the Hindu Marriages Act, by the husband Anand, (hereinafter referred to as 'the husband'.) as against the respondent Indu (hereinafter referred to as 'the wife'.) on the ground of cruelty, would run thus:

(i) Anand, and Indu, got married as per the Hindu Rites and Customs on 11.09.1995 at Trichy as arranged by the elders. Within a short span of time after marriage, the couple started living at Manipal for a period of eight months together, where he understood that the wife was interested in separating the husband from his parents and insisted upon him to obtain properties from them. Since the husband had to take up the examinations relating to his higher studies there in Manipal itself, he sent his wife to her parents house in Chennai. Subsequently, the husband was compelled to live in the house of the wife as "Veetu Mappillai". Even though he got employment in Kerala, he could not accept that appointment as Doctor, because the wife was pregnant by that time. Subsequently, the wife sensing that fetus was a female one, she underwent abortion voluntarily. The wife was instrumental in creating ill-will between the two families of the spouses. The wife indulged in perpetrating mental cruelty to the husband. He was humiliated by the wife, her parents and the brother-in-law of the husband. The wife often intimidated that the wife would put the husband in trouble by giving complaint as against him under the Dowry Prohibition Act.

(ii) During the month of August, 1997, the husband went to Manipal for a few days and took advice from his Professor there as he got fed up with wife's cruelty towards him. Subsequently, she pleaded for mercy and thereupon, both of them rejoined and started living in Chennai with wife's parents till October 1997. But, she indulged in recidivism. The husband went to Coimbatore and got appointment in Ganga Hospital. Since, she expressed her desire to rejoin, he permitted her to do so, but that lasted only for a week. She was often quarreling with the husband. She wanted the husband to estrange his parents. Therefore she frequently intimidated the husband that she would commit suicide. One Baskaran tried to mediate between the couple, but it failed. The parents of the wife were not in any way helpful for the husband and the wife to live peacefully. The husband issued legal notice on 19.03.1998 for which there was no reply. The husband apprehended danger to his life at the hands of his wife, because she caused mental and physical cruelty to him. Ultimately, he was driven to the extent of filing the petition for divorce.

4. Per contra, denying and refuting, challenging and impugning, the allegations/averments in the petition, the respondent wife filed the counter with the averments inter alia thus:

(i) The parents of the wife spent a sum of Rs.50,000/- for celebrating the wedding notice ceremony and the husband's mother and younger sister demanded Rs.25,000/- by cash and also demanded a ring for the husband. Such demands were duly complied with by the wife's parents. On the husband's side, various silver articles were demanded along with the gold ornaments of 100 sovereigns, for which also the wife's parents agreed. A new Maruthi car as dowry was demanded on the side of the husband, for which also the wife's parents agreed. Since the car could not be purchased by the wife's father by paying hard cash, he availed the hire purchase facility and a Maruthi car was accordingly, purchased in the name of the wife's father and it was handed over to the husband. On the side of the husband a sum of Rs.5,00,000/- (Rupees Five Lakhs only) was also demanded as dowry, but the parents of the wife could not pay immediately. The marriage was solemnized at the expenses of the wife's parents. After celebration of the marriage, a cottage was booked at Kodaikanal for the newly married couple to enjoy their honey-moon, but the mother of the husband prevented the couple from visiting Kodaikanal, because the said amount of Rs.5,00,000/- was not paid as dowry by the wife's parents.

(ii) During the stay of the couple at Manipal, the said Maruthi car was with them and the husband was using it. The husband was continuing his higher studies at Manipal.

(iii) The wife was not cruel towards the husband and she never tried to boss over him. In fact, the husband's mother and second sister ill-treated the wife and she was put to untold miseries. In fact, the wife's father from Libia sent on 20.01.1995 a Demand Draft worth about Rs.62,000/- (Rupees Sixty Two Thousand only) to the brother of the husband Sathya Prabhu who was in England. Such Demand Draft was sent as part of the dowry for complying with the dowry demand on the side of the husband. There were demands of dowry by the mother of the husband on various occasions and it was also complied with. At the first Diwali, there was a demand of dowry of Rs.10,000/- by the mother of the husband and thereupon, a draft for a sum of Rs.10,000/- was sent to the husband. The wife neither intended to separate the husband from his parents and his relatives nor compelled him to obtain properties from his parents.

(iv) The husband and the wife lived in Manipal for a period of ten months so to say from October 1995 to July 1996 and she never demanded him to be "Veetu Mappillai", as alleged in the petition. Under the pretext of preparing for the examinations, the husband sent away the wife from Manipal to Chennai. The husband was in the habit of consuming alcohol and driving the car speedily and he was also in the habit of smoking. The wife's attempt to dissuade him from his bad habits ended in a fiasco. In fact, the wife's father helped the husband's family by helping them to bring back the husband's brother Sathya Prabhu to India from England as he had love affair with one poor Gujarathi girl there and married her therein England itself. However, the parents of the husband accused falsely as though the father of the wife was instrumental for the marriage between Sathya Prabhu and the said Gujarathi girl. The husband of his own accord stayed with the wife at the house of the wife's parents in Chennai and not under any compulsion.

(v) The husband was in the habit of visiting his sister's house at Chennai and at her instigation, he used to pick up quarrels with the wife. The wife was mentally tortured by the husband and because of such mental torture, the wife delivered a dead fetus on the nineteenth week of pregnancy. The

husband was in the habit of consuming alcohol and return home late in the night and levelled false allegations as against her at the instigation of his mother and sister. The husband once again left for Manipal without informing the wife and after some time, he was brought back to Chennai at the initiation of the wife. The husband compelled the wife to make arrangements for incorporating his name in the R.C.Book of the said Maruthi car in replacement of the name of her father. Only after the clearance of the loan, that could be done. When the father of the wife wanted the car to be taken for some purpose, the husband beat the wife. The husband signed as security for his brother-in-law in Syndicate Bank, Egmore with the intention to obtain a portion of that loan amount as dowry.

(vi) Since the husband could not get the dowry as expected by him, he deserted the wife. In fact, she was taken by the husband to a death ceremony of her grandfather at Salem and there, he left her and went away. All steps taken by the wife through mediation center ended in vain due to the husband's attitude.

5. The reply was filed by the husband denying the averments/allegations in the counter.

6. Before the trial Court, on the side of the petitioner, the husband examined himself as P.W.1 along with the Mediator Baskaran and the father of the husband, Rengasamy as P.W.2 and P.W.3 respectively and Exs.A.1 to A.18 were marked. On the side of the respondent, the wife examined herself as R.W.1 along with her father, Purusothaman as R.W.2 and Exs.B.1 to B.15 were marked. During the second appellate stage before this Court, Exs.A.19, A.20 and A.21 and Exs.B.16 and B.17 were marked as additional evidence on respective sides.

7. The perusal of the depositions of P.W.1 and P.W.2 would clearly show that Exs.A.14, A.15 and A.16 were not marked in the chronological order during the cross-examination of R.W.1 the wife, by the advocate for the husband. The third F.I.R was marked as Ex.A.14. But, in the written arguments submitted on the wife's side, it was referred to as Ex.A.16.

8. It so happened that during the pendency of the H.M.O.P before the trial Court, the wife lodged as many as three criminal complaints whereupon, the husband and his relatives including his father were proceeded against and that was also considered by the trial Court and ultimately, the trial Court granted the decree of divorce, as against which the appeal was filed before the District Court which reversed the finding of the trial Court and dismissed the petition for divorce.

9. Being aggrieved by and dissatisfied with, the judgment and decree of the first appellate Court, the husband filed this second appeal on the following main grounds:

The first appellate Court ignored the subsequent occurrences which proved to be fatal to the matrimonial relationship between the husband and the wife. The first appellate Court simply ignored the wife's conduct in filing criminal complaints and even it went to the extent of holding that the wife's act of objecting to the anticipatory bail petition moved by the husband, as the one based on ignorance of law on her part. The first appellate Court was wrong in giving a finding that the wife had no blameworthy conduct as against the husband. The first appellate Court misunderstood the evidence and failed to apply the trite proposition of law governing the grant of

divorce. The first appellate Court failed to consider the evidence of P.W.3. Accordingly, the husband prayed for setting aside the order of the first appellate Court and for restoring the decree of the trial Court in granting divorce.

10. My learned Predecessor framed the following substantial questions of law at the time of admitting this second appeal as under: "1. Whether decretal order of the Lower Appellate Court suffers from legal infirmities such as erroneous approach to the facts of the case misreading of evidence and on the ground of adopting different yardstick while appreciating the case of the respective parties particularly in regard to the harassment caused to the husband and the subsequent conduct of the wife?

2. Whether the Lower Appellate Court is right in ignoring the subsequent conduct of the wife regardless of the settled principles of law as held by this Court and the Supreme Court of India?

3. Whether the order in appeal is liable to be set aside on the ground of want of consideration of relevant facts such as likelihood of re-union and subsequent conduct of the wife?"

11. Heard both sides in entirety.

12. A re'sume' of facts absolutely necessary and germane for the disposal of this second appeal in nutshell would run thus:

The husband presses for divorce on the ground of cruelty meted out to him by the wife. According to him, she was bent upon making him to get himself separated from his parents and relatives and also to obtain the properties of his father even during his life time and that she was giving mental torture to him. Precisely the husband's plea is that she wanted to cudgel and nose lead him and boss over him in addition to make him to dance to her tunes and that often her attitude teed him off. Whereas the wife would accuse the husband and his mother and sister as guilty of dowry harassment and cruelty both mental and physical towards her. The whys and wherefores for the rift according to the wife, is dowry harassment.

13. This is a peculiar case in which during the pendency of the proceedings as many as three criminal complaints emerged at the instance of the wife as against the husband and his relatives as under: Sl. No. Cr.No.

Under Sections Dated No. of Accused 462 of 2000 U/s Man missing 12800 566 of 2000 Sec. 323, 354, 506(1) I.P.C.

31100 29 of 2000 S.498(A), 506(1) I.P.C r/w S.4 of Dowry Prohibition Act. 41100

14. The case in Cr.No.462 of 2000 was registered by the police on the complaint of the wife as though her husband during the pendency of the case before the trial Court was found missing for which his own parents and relatives all in ten in number were responsible, but that was closed by the police. The husband would explain that he went to France voluntarily in connection with his

medical studies and that was twisted by the wife so as to harass his parents and relatives.

15. The case in Cr.No.566 of 2000 during the pendency of the H.M.O.P emerged on the complaint lodged by the wife as against the husband's father, mother, sister and sister's husband for the offences punishable under Sections 323, 354 and 506(1) I.P.C mainly on the ground that when she went to the house of the husband's parents, for negotiations during the pendency of the H.M.O.P, she was beaten and intimidated and her modesty was outraged. It appears, the Criminal Court as per the judgment Ex.A.21 acquitted all the accused. The wife would contend that as against the acquittal, she preferred revision as evidenced by Ex.B.17.

16. The case in Cr.No.29 of 2000 was emerged at the instance of the wife as against the husband, his parents, and his relatives altogether eleven in number for the offences punishable under Sections 498(A) and 506(i) I.P.C read with Section 4 of the Dowry Prohibition Act, on the ground that they all demanded dowry and harassed her. According to the husband, the police already dropped that matter as and the Magistrate also recorded the same. But, the wife got it reopened as per Ex.B.16 and she has been pressurizing the police authorities to proceed with her complaint. In addition to the mutual serious allegations made by the husband and the wife as against each other, and having indulged in slinging mud as against each other, during the pendency of the H.M.O.P, very serious and unsavory developments took place and thereby the rift in their matrimonial relationship got widened abysmally and that such subsequent developments warrant serious consideration in deciding this matter.

17. The husband seeks divorce only on one ground, to wit, cruelty. Hence, it is just and necessary to refer to various decisions of the Honourable Apex Court relating to the definition of cruelty as it is well known that the term cruelty has not been defined in the Hindu Marriage Act. The following decisions of the Honourable Apex Court could fruitfully be cited:

(i) Savitri Pandey v. Prem Chandra Pandey reported in (2002) 2 Supreme Court Cases 73. An excerpt from it, would run thus:

"6. Treating the petitioner with cruelty is a ground for divorce under Section 13(1)(i-a) of the Act. Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, suffering or to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. "Cruelty", therefore, pos tulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other. In the instant case both the trial court as well as the High Court have found on facts that the

wife had failed to prove the allegations of cruelty attributed to the respondent. Concurrent findings of fact arrived at by the courts cannot be disturbed by this Court in exercise of powers under Article 136 of the Constitution of India. Otherwise also the averments made in the petition and the evidence led in support thereof clearly show that the allegations, even if held to have been proved, would only show the sensitivity of the appellant with respect to the conduct of the respondent which cannot be termed more than ordinary wear and tear of the family life."

(ii) Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate reported in (2003) 6 Supreme Court Cases 334. An excerpt from it, would run thus: "6. In V. Bhagat v. D. Bhagat 2 it was observed that mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other and the parties cannot reasonably also be expected to live together or that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It was also considered to be not necessary to prove that the mental cruelty is such as to cause injury to the health of the wronged party. That was a case wherein the husband filed a petition against the wife for divorce on the ground of adultery. In the written statement filed by the wife in the said proceedings, she alleged that the husband was "suffering from mental hallucination", that his was a "morbid mind ... for which he needs expert psychiatric treatment", and that he was "suffering from paranoid disorder" etc. and that during cross-examination several questions were put to him suggesting that the petitioner and several members of his family including his grandfather were lunatics and that the streak of insanity was running in the entire family. It is in the said context this Court though he ld the allegations levelled against the wife were not proved, the counter-allegations made by the wife against the husband certainly constituted mental cruelty of such a nature that the husband cannot reasonably be asked to live with the wife thereafter. The husband, it was also held, would be justified to say that it is not possible for him to live with the wife. In rejecting the stand of the wife that she wants to live with her husband, this Court observed that she was deliberately feigning a posture, wholly unnatural and beyond comprehension of a reasonable person and held that in such circumstances the obvious conclusion has to be that she has resolved to live in agony only to make life a miserable hell for the husband, as well. ...

11. ... To satisfy the requirement of clause (i-a) of sub-section (1) of Section 13 of the Act, it is not as though the cruel treatment for any particular duration or period has been statutorily stipulated to be necessary. As to what constitutes the required mental cruelty for purposes of the said provision, in our view, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct, but really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home. If the taunts, complaints and reproaches are of ordinary nature only, the courts perhaps need consider the further question as to whether their continuance or persistence over a period of time render, what normally would, otherwise, not be so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonably conclude that the maintenance of matrimonial home is not possible any longer. ..."

(iii) Parveen Mehta v. Inderjit Mehta reported in (2002) 5 Supreme Court Cases 706. An excerpt from it, would run thus:

"17. This Court, construing the question of mental cruelty under Section 13(1)(i-a) of the Act, in the case of G.V.N. Kameswara Rao v. G. Jabilli [(2002) 2 SCC 296] observed: (SCC pp. 303-04, para 12) "12. The court has to come to a conclusion whether the acts committed by the counter-petitioner amount to cruelty, and it is to be assessed having regard to the status of the parties in social life, their customs, traditions and other similar circumstances. Having regard to the sanctity and importance of marriages in a community life, the court should consider whether the conduct of the counter-petitioner is such that it has become intolerable for the petitioner to suffer any longer and to live together is impossible, and then only the court can find that there is cruelty on the part of the counter-petitioner. This is to be judged not from a solitary incident, but on an overall consideration of all relevant circumstances."

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

(iii) A.Jayachandra v. Aneel Kaur reported in 2005-2-L.W.149. An excerpt from it, would run thus:

"10. The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb, or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of his spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, a proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or

omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes."

18. I am of the considered opinion that the aforesaid excerpts from the decisions of the Honourable Apex Court would be more than sufficient to have a clear understanding as to what type of conduct of a spouse would constitute cruelty as against the other spouse and in the light of the aforesaid decisions, it is just and necessary to analyse and scrutinize the evidence in this case.

19. I am fully aware of the fact that this is a second appeal, but it is a matrimonial matter which has come before this Court after divergent conclusions arrived at by the Courts below. The trial Court granted divorce whereas the first appellate Court reversed it. Hence, the Counsel on either side virtually argued in entirety drawing the attention of this Court to the entire evidence on record.

20. The learned Counsel for the husband would commence his argument by pointing out that within a short span of time after marriage, the husband and wife started living at Manipal so as to enable the husband to continue his further studies (M.S.Ortho..) as he is a Doctor by profession; admittedly, the wife completed the M.B.B.S course just before the marriage; for about ten months, the couple lived there during which period the wife indulged in bickerings and dickerings and also in torturing the husband; during the month of August 1996, the husband for the purpose of preparing for his examinations intensively, made arrangements for the wife to live with her parents in Chennai and that after completing his examinations, he started living with his wife in Chennai as compelled by his wife. Relating to the stay at Manipal, the husband would describe that period as one not a period of happiness as the wife indulged in brainwashing him to separate himself from his father and his family members and that too after getting properties from his father.

21. Whereas the learned Counsel for the wife would highlight placing reliance on Ex.B.7, the letter written by one Dr.Rajasekaran, to the husband to the effect that Indu, the wife referred to in this case, was excellent in cooking and showing hospitality towards Rajasekaran when he visited Manipal. I would like to hold that this sort of letter cannot be relied on by either of the parties to prove the conduct and attitude of a spouse as against the other and that no more elaboration is required in this regard. More often, than not the spouses might be at logger heads as against each other, but courteous and kind towards visitors to their house.

22. The learned Counsel for the wife also would refer to Ex.A.8, the copy of the pre-litigation notice sent by the husband to the wife on 19.03.1998 and develop his argument that at paragraph No.4 of Ex.A.8, the husband averred that for ten months, there was no problem at Manipal between the husband and the wife and thereafter alone, according to the husband, the wife started picking up quarrels.

23. In the paragraph No.8 of the petition, the husband averred that even while they were at Manipal, she started pestering the husband to get himself separated from his parents and to obtain the

properties from them. As such, Ex.A.8, the pre-litigation notice has to be read in entirety. In paragraph No.3 itself, he sets out the attitude of the wife and in paragraph No.4, he generally stated that for ten months, there was no problem. As such, it cannot be stated as though there was no grievance while they were living together at Manipal.

24. Before this Court on the side of the wife, a plea was canvassed to the effect that actually there was no problem between the wife and the husband while they were living at Manipal. But, the perusal of the counter would convey a different idea. The wife would accuse the husband and his mother and younger sister as the persons interested in obtaining dowry; the husband was a drunkard and smoker indulging in drunken driving and a late comer so to say, Johnny come lately at night and indulged in levelling unfounded allegations as against the wife. The facts detailed and delineated supra need not be reiterated here.

25. It is the consistent case of the wife that even before the marriage itself, the dowry demand started from the side of the husband and that alone even made the couple not to go and have the stay at Kodaikanal, despite her father made arrangements for engaging a cottage for the couple to have their honey-moon. As such, on the side of the wife, it cannot be heard to contend that they were living happily. I need not dilate on those facts and mere reading of pleadings and depositions of P.W.1 and R.W.1 would demonstrate the same.

26. The wife, as an afterthought, cannot try to project a case as though they lived happily for considerable time after marriage, so to say for a period of two years or so. The wife would project the case as though the dowry demand was the main factor for the rift in the matrimonial relationship between the husband and the wife. But, if that be so, it is not known as to why she had not given any reply to the pre-litigation notice, Ex.A.8, but only after the institution of the case for divorce, the wife had come forward with the theory of dowry. She would try to expound by stating that she was for reunion and hence no reply was given to the notice. However, the factual analysis would evince otherwise.

27. Had really the husband wanted to extract dowry, he would not have chosen to stay with the wife and his parents in Chennai for several months. It is a common sense proposition that a husband who is interested in dowry, would insist "Dowry Payment" as sine quo non i.e., a condition precedent for his living with his wife.

28. In this case, admittedly, from January 1997 till November 1997, the husband and the wife lived in Chennai along with the parents of the wife. This is a peculiar feature which normally one cannot come across in a case of dowry demand. I would like to observe from the voluminous matrimonial cases, which I have come across in Courts that the husband and his family members expecting dowry from the wife's side, would not permit the husband to stay with the wife along with the wife's parents and such a husband also would not be interested in living with the wife in the house along with the parents of the wife.

29. I am justified in observing as above from various other events which admittedly occurred in the course of the relationship between the parents' families of the spouses in this case.

30. Both sides in unison would put forth the case to the effect that when the husband's brother namely Sathya Prabhu was in London, he had some love affair with a Gujarathi girl; the parents of the husband wanted the help of the wife's father, R.W.2 herein, in that matter while R.W.2 was in Libia; it so happened that R.W.2, the wife's father went to London and had his own role in it as narrated by him in his deposition. On the side of the wife, it is argued as though P.W.3 (husband's father) persuaded Sathya Prabhu not to marry the said Gujarathi girl and he should come back to India and for that alone, R.W.2 (wife's father) was asked to intervene.

31. Whereas P.W.1 would try to project as though R.W.2 who is also a Doctor, went to England and stayed there for one month in connection with his medical studies, on the side of the husband, R.W.2 in fact, was instrumental in bringing about the marriage between Sathya Prabhu and the said Gujarathi girl, but it was denied on the wife's side. This Court is not very particular as to what role actually R.W.2 played. But, one fact is clear that there were some amount of cordial relationship between the two families during that period. Ex.B.11, the passport of R.W.2, the father of the wife, would demonstrate that he visited London from Libia during the year 1996, so to say, before the actual separation resulted between the husband and the wife in this case.

32. It is also in evidence that a sum of Rs.62,000/- was sent by R.W.2 to the said Sathya Prabhu. However, on the side of the wife, it is contended that the said amount was sent to Sathya Prabhu as part of the demand of dowry, whereas on the side of the husband, it is contended during arguments that R.W.2, the father of the wife, could not send the money directly to India to his family and hence, that amount was sent by R.W.2 to Sathya Prabhu and in turn, P.W.3, the father of the husband paid the money to the family of R.W.2 herein, in India. It is also in evidence that a sum of Rs.75,000/- was sent to R.W.2 by P.W.3 for the purpose of enabling him to go to England for the purpose of bringing about some fruitful results in the matter of Sathya Prabhu.

33. The pertinent question arises, if really the husband's parents' family and the wife's parents' family were at logger heads due to Rs.5,00,000/- dowry problem, it is not known as to how on the side of the husband, they would have requested R.W.2, the father of the wife, to go over to London relating to Sathya Prabhu's matter. Ex.B.1, the letter written by P.W.3, the father of the husband, to R.W.2, the father of the wife, which was marked during the cross- examination of P.W.3, would speak volumes about the non-inimical attitude that prevailed between the two families as on 29.10.1996. The said letter evidences that P.W.3 sent two Demand Drafts totaling a sum of Rs.75,000/- so as to enable R.W.2 to do the needful at London and that if he would be in need of more money, he could get it from one Dr.Somasundaram in London. The deposition of P.W.3 Rengasamy, the father of the husband would be to the effect that R.W.2 of his own accord sent a sum of Rs.62,000/- from Libia in foreign currency to Sathya Prabhu without the permission of P.W.3; however, R.W.2 subsequently, after coming to India got back the money from P.W.3. It is also the contention of P.W.3 that he gave the aforesaid sum of Rs.75,000/- in two Demand Drafts by way of loan, but such an explanation is turned out to be false in view of Ex.B.1 as already referred to supra and discussed. I am at a loss to understand as to how dowry could be paid by R.W.2 to Sathya Prabhu and in the meanwhile, P.W.3 could send two demand drafts totally for Rs.75,000/- (Rupees Seventy Five Thousand only) to R.W.2. A mere analysis of evidence would highlight and spotlight that both sides tried their level best to give their own explanation out of their figment of

imagination. As such, after the arisal of the litigation, each side twisted the facts and projected before the Court on that money matter relating to Sathya Prabhu, some explanation which no one would be able to digest. Those events would show that before separation between the husband and the wife in this case, there were some dealings between the two families and some cordial relationship was also there and if dowry was a problem, certainly such sort of relationship might not have existed, is my firm view in this case.

34. As has been already highlighted supra, each side only after the arisal of the litigation between the husband and the wife, tried to give different colours to those money transactions. Ex.B.1, the letter would not indicate anything that there was any dowry problem between the two families on 29.10.1996. As such, the dowry theory as put forth by the wife, appears to be an afterthought.

35. On the one hand, the husband would state that after the return of R.W.2, the father of the wife, from the foreign country, it was P.W.1, the husband who made arrangements for his father-in-law to secure a job in Karaikal, whereas that fact was denied. Generally, the facts are admitted, but each side is trying to give a kind of explanation so as to support their respective pleas which they have taken in this case.

36. Both sides in unison would put forth the case that on 20.06.1997, while the husband and the wife were living together in Chennai, the wife underwent abortion and she delivered a dead fetus. The cumulative effect of the evidence would show that the husband was aware of such abortion. On a later date, the wife would accuse the husband, that it was because of dowry demand and mental torture given to her by the husband, such abortion took place. Whereas the husband would state that she voluntarily underwent abortion because she found that quite antithetical to her desire to have a male child, a female fetus was in her womb. Both the Courts below correctly held that each of the spouses, was not justified in accusing each other for the delivery of the dead fetus. The first appellate Court in paragraph Nos.58 and 59 correctly discussed at length as to how both sides were not justified in passing allegations as against each other relating to the delivery of the dead fetus by the wife.

37. Both the Courts below clearly gave a finding that the husband even though had got a job at Kerala, while the wife was pregnant, he has not chosen to go over there, but he preferred to be with her during her pregnancy and that would clearly demonstrate that he was affectionate towards the wife. In such a case, the core question arises as to whether there would have been any dowry torture by the husband or his relatives. The trial Court correctly pointed out that as per the evidence available, the husband and the wife never lived for any considerable time along with the parents of the husband and such fact is also quite obvious from the perusal of the pleadings as well as the depositions of R.W.1, the wife and P.W.1, the husband. The first appellate Court at paragraph No.67 and in paragraph No.68 of its judgment, simply refrained from giving any finding on dowry harassment on the ground that the police investigation is pending. The appellate Court was not correct in its approach. From the available materials, it ought to have given a specific finding. However, in paragraph No.68, the appellate Judge disbelieved correctly the dowry theory relating to "Maruthi Car". It is the duty of the Court seized of the matter to decide on all issues from the materials on record.

38. At this juncture, I would like to recollect the definition of dowry as per Section 2 of the Dowry Prohibition Act, 1961. The important ingredient of 'dowry' is that the demand shall be in connection with the marriage and then only, that would constitute dowry. But, in this case, the marriage took place as early as on 11.09.1995 and both of them lived together upto the end of the year 1997 with certain breaks as already narrated supra. Here, the sequence of events does not show that the husband ever demanded dowry. Had he been interested in dowry, he would not have chosen to live with his wife in Chennai during her pregnancy and also started living with her in Coimbatore thereafter also. Cordial relationships as narrated supra would not have existed between the two families, had there been such demand of dowry of Rs.5,00,000/- (Rupees Five Lakhs only).

39. The husband after such delivery of dead fetus by the wife went to Manipal for about few days and took advice from his Professor and accordingly, it appears, his Professor advised him to have a separate matrimonial home at Chennai itself. However, after his return to Chennai, the wife asked the husband to be with her parents. During November, 1997, he got employment in Ganga Nursing Home in Coimbatore. The wife subsequently, according to the husband, joined him at Coimbatore on a promise that she would not trouble him with her demands as she did earlier, compelling him to estrange himself from his parents etc. But, they lived only for a week or so in Coimbatore because the husband felt that the wife's stay with him would not be conducive for his peace of mind, due to her cruel conduct towards him. It is the case of the wife that the husband took her to her grandfather's funeral ceremony at Salem and there, he left her and went away and thereafter, there was no reunion between them.

40. On the side of the wife, it was argued that absolutely there was no evidence to the effect that the wife was causing mental or physical cruelty to the husband and as such, in the absence of such proof, the only presumption is that because of dowry demand alone, the husband shunned the company of the wife. The dowry theory cannot be countenanced for the reasons discussed supra. Such a plea emerged only as an afterthought.

41. It is a trite proposition of law that witnesses might lie, but the circumstances will not lie. The circumstances dealt with in my discussion would show that the dowry was not the problem between the spouses, but there was incompatibility between the two. The wife, only in the counter has set out various allegations as against the husband as though he was indulging in drunken driving, smoking etc. P.W.2, Baskaran, the relative of P.W.1, in his evidence, would depose in support of the husband. However, it seems the wife filed a case as against P.W.2 and his wife also. In such a case, his evidence relegated itself to a lower position in the eye of the law.

42. Ex.B.3, the photograph shows as though the wife's brother gave currency bundle to P.W.1, the husband around the time of wedding notice ceremony. Similarly, there are other marked photographs such as Exs.A.3 and B.9 in this case, which shows the currency notes. It is the version on husband's side that the money was taken back by the wife's side as revealed in one other photograph. In the written arguments submitted by the wife's side, various explanations emerged. Simply because in the photographs, some currency notes were found, there is no presumption that it was part of dowry as the evidence in this case demonstrates that in some families, placing money on the plate is part of the rituals and from that, the Court cannot jump to the conclusion that there was

dowry demand and it was met from the wife's side.

43. On the wife's side, it is contended that Maruthi car and huge quantity of jewels were demanded as dowry by the husband's side and accordingly, Maruthi car was purchased by the father of the wife by way of hire purchase agreement in his name and handed it over to the husband, which the husband and the wife used it at Manipal. On the wife's side, it was alleged as though R.W.1, the husband stood as surety for obtaining loan by R.W.1's brother with the expectation that he would give dowry. These are allegations which emerged after the dispute has arisen between the parties and not borne by any clinching evidence. The facts alleged relating to Dowry Harassment are conflicting with the fact of dowry harassment as found set out in the third F.I.R, Ex.A.14. A mere perusal of the counter of the wife with Ex.A.14, the third F.I.R, would clearly demonstrate that as an afterthought, she improved upon her earlier version and heaped up unfounded allegations as against her husband and his relatives. Certain excerpts from Ex.A.14, would run thus:

" ... My husband and in laws used to beat and torture almost every day demanding money for constructing a Nurshing Home. Mr.Vasudeva Reddiar used to visit my parents and keep on demanding to arrange atleast Rs.20 lakhs for constructing Nursing Home.

... Since then my father in law, my mother in law, sister in laws and Dr.Prabakar used to keep on harassing me demanding Rs.20 lakhs as dowry who had M.S(Ortho) had obtained Rs.20 lakhs as dowry. ..."

44. The above excerpts from Ex.A.14 would clearly show that such versions are not found in the counter filed by her. Furthermore, the allegations as found in the aforesaid excerpts from Ex.A.14, according to the wife, are relating to pre-litigation stage. As such, in one breathe, she would allege as though Rs.5,00,000/- (Rupees Five Lakhs only) was demanded as dowry and in another breathe, she would allege as Rs.20,00,000/- (Rupees Twenty Lakhs only) were demanded. A perusal of Ex.A.14 would also clearly show that she alleged about the intervention of various other persons for causing rift in the matrimonial relationship between the husband and the wife and that she would state that her husband connived at and deserted her, but that was not the case of the wife earlier. It is therefore crystal clear that as an afterthought, she levelled various allegations in the third F.I.R.

45. No doubt, the pertinent question arises as to what actuated and accentuated, propelled and impelled the husband to separate himself from the wife and the discussions supra would show that it was not a dowry problem at all. In such a case, it is evident and clear that the husband could not tolerate the conduct of the wife.

46. The husband would contend that the wife often threatened him that she would commit suicide and also rope in, the husband and his parents in dowry case etc. But, in fact, the subsequent conduct of the wife in giving dowry complaint, proves the plea of the husband that the wife intimidated so.

47. As has been already highlighted above, each one is trying to explain the events, in their own way so as to support each one's plea. The marriage took place on 11.09.1995 and both of them with certain break periods lived upto the end of the year 1997 and thereafter, the said H.M.O.P for

divorce was filed by the husband in the month of April 1998. Before the filing of H.M.O.P, at the instance of the wife, the Legal Aid Centre tried to bring about compromise between the parties and that too, after the issuance of legal notice by the husband. But, it ended in a fiasco.

48. The trial Court disbelieved the dowry theory as put forth on the wife's side. As such, there would have been some chance of reunion between the couple, as the matter stood as on the date of filing of the petition for divorce, but because of the wife's acts subsequent to the filing of H.M.O.P, the rift in the matrimonial relationship between the husband and the wife got widened abysmally in addition to getting snowballed to such an extent that each one projecting oneself before the trial Court itself that they could not see eye to eye on any issue and they tried to cut the ground under the feet of each other. In fact, both the Courts below considered the seriousness of the subsequent conduct of the wife in fanning the flame and aggravating the problem to the maximum extent, leaving no chance for reunion.

49. The core question arises as to whether the subsequent events namely the filing of three criminal complaints by the wife as against the husband and his relatives, could be taken as additional reasons for granting divorce. The first appellate Court in Paragraph Nos.63, 64 and 65 elaborately dealt with the case laws cited on both sides and held that subsequent events in matrimonial cases could be considered even without amendment of the petition for divorce and I confirm such a view.

50. The learned Counsel for the husband cited the decision in J.Jermans v. Aliammal and others reported in 1999 (7) Supreme Court Cases 382. An excerpt from it, would run thus:

"33. It may be noted here that there is a fundamental difference between a case of raising additional ground based on the pleadings and the material available on record and a case of taking a new plea not borne out by the pleadings. In the former case no amendment of pleadings is required whereas in the latter it is necessary to amend the pleadings. The Court/Rent Controller in its discretion, with a view to do complete justice between the parties, may allow a party either to raise additional ground or take a new plea, as the case may be, if the circumstances so justify like a plea based on subsequent events." One other precedent is as under:

In S.Murugan v. Vaikunda Lakshmi reported in 1998 (2) L.W 100, it has been held thus:

"Subsequent events like allegations in the written statement can be taken into account in certain circumstances when (1) litigation between the parties ought to be shortened and (2) to do complete justice between the parties."

51. Whereas the learned Counsel for the wife cited the decision in Om Prakash Gupta v. Ranbir B.Goyal reported in AIR 2002 SUPREME COURT 665. An excerpt from it, would run thus:

"11. The ordinary rule of civil laws is that the rights of the parties stand crystallised on the date of the institution of the suit and therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take a note of subsequent events and mould the relief accordingly subject to the following conditions being

satisfied: (i) that the relief as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; (iii) that such subsequent event is brought to the notice of the Court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise."

52. The learned Counsel for the wife would interpret J.Jermans's case cited supra to the effect that the husband cannot rely on subsequent events without amendment of pleadings. The words "new plea cannot be allowed to be raised without effecting amendment of pleadings" in the said decision connote that there shall no new plea, but here only additional admitted facts and happenings are relied on by the husband. The plea of cruelty remains unchanged.

53. The learned Counsel for the wife also would submit that as per the decision in Om Prakash Gupta's case cited supra, there should be amendment of pleadings. I would like to reiterate without being tautologous that here, subsequent events as additional facts showing the attitude of the wife as against the husband and his relatives are placed to buttress the plea of cruelty and it is not a new plea and both sides fully understood the relevant allegations as well and cross-examination was also conducted touching upon those documents evidencing the subsequent conduct of the wife.

54. Hence, I am of the considered opinion that both the Courts below are right in relying on the subsequent events. No doubt, the husband did not get the H.M.O.P amended so as to incorporate the additional facts namely, the act of the wife having filed three criminal complaints as against the husband and his relatives. Even then, on the husband's side, the evidence was adduced relating to the subsequent events and the wife's side also cross-examination was conducted on that aspect.

55. Here, it is pertinent to point out that the husband during the trial never relied on any additional grounds except the plea of cruelty and not any other ground such as desertion, etc. But, he adduced more facts in the form of evidence to show the cruelty meted out by the wife as against the husband and his relatives and the relevant documents marked at the second appeal stage are as under:

Sl.No.

Exhibit Documents Ex.A.19 Certified copy of the order dated 28.02.2001, passed by the learned Judicial Magistrate, Thuraiyur, in Further Action Dropped No.6 of 2001.

Ex.A.20 Certified copy of the order dated 15.02.2005, passed by the learned Judicial Magistrate, Thuraiyur, in Crl.M.P.No.1062 of 2005.

Ex.A.21 Certified copy of the judgment dated 15.03.2005, passed by the learned Judicial Magistrate, Thuraiyur, in C.C.No.278 of 2001.

56. The wife also filed M.P.No.2 of 2007 to recall the order, but in my opinion, there need not be any recalling of such order as my learned Predecessor had chosen to allow such additional evidence to be placed before this Court as those are all certified copies of Court proceedings which the husband had

not created, but all those emerged consequent upon the complaints lodged at the instance of the wife admittedly.

57. On the wife's side also, M.P.No.1 of 2007 was filed for reception of additional documents and in fact, the other side had no objection and consequently, those two documents are marked as under: Sl.No.

Exhibit Documents Ex.B.16 The photocopy of the order of this Court dated 02.01.2007 passed in Crl.R.C.(MD)No.657 of 2005.

Ex.B.17 The Copy of the Memorandum of Grounds of Criminal Revision Petition filed before this Court in Crl.R.C.SR.No.5269 of 2007 as against the order of acquittal in C.C.No.278 of 2001.

58. The wife went to the extent of lodging F.I.R as though the husband was missing and that his relatives are trying to arrange for his second marriage. Ten of his relatives were roped in as accused during the pendency of H.M.O.P. But, the fact remains that as revealed from the deposition of P.W.1 as well as the findings of both the Courts below, the husband went to France and that fact was twisted by the wife and she deliberately wanted to cause harm to the ten relatives of the husband.

59. A mere perusal of the F.I.R would show that how she was not justified in roping in as many as the ten relatives of the husband, including her in-laws. No plausible explanation has been given as to why she should have suspected as many as ten persons which include both males and females as the persons responsible for the missing of her husband who in fact had gone to France for his medical studies.

60. On the wife's side, it was tried to be explained and expounded as though she wanted to prevent the second marriage of her husband and that she suspected that the husband was secreted by his ten relatives so as to make arrangements for his second marriage. The very argument which has been put forth so as to explain the conduct of the wife in lodging the F.I.R, is not convincing, but it shows that the wife was bent upon filing false complaints having ulterior motive.

61. The husband issued pre-litigation notice, expressing his desire not to live with the wife. Before the Mediation centre also, he took similar stand and thereafter, he filed the petition for divorce and in such a case, I am at a loss to understand as to how the wife can lodge an F.I.R as though her husband was willing to reunite with her and it was only the husband's relatives including his parents, had illegally detained him and tried to compel him to marry some other girl for opulent dowry and that too under intimidation. The relevant portion of the F.I.R extracted hereunder would speak volumes about the malicious intention of the wife in lodging such a complaint:

"I apprehend that my husband is confined illegally by my in laws and my husband is kept under threat by my in laws to get him married to another girl. Already the police has enquired my in laws to know my husband whereabouts. But my in laws are willfully hiding my husband and are refusing to disclose where my husband is residing. I request the police to take further action to find my husband and make him appear before me." (emphasis supplied.) Action was dropped by the police

in that matter.

62. It is therefore crystal clear that she during the pendency of H.M.O.P wanted to intimidate the husband's relatives, so that the husband could be coerced to withdraw the divorce petition. For better appreciation, I would like to extract hereunder the names of the accused in that man missing F.I.R and their respective relationship with the husband as under: Sl.No.

Accused Name of the Accused Relationship with the wife A.1 Sunitha Gandhi Anand's 2nd sister A.2 Dr.Prabakar Anand's 2nd sister's husband A.3 Rangasamy Anand's father A.4 Saroja Rangasamy Anand's mother A.5 Thenmozhi Anand's 1st sister A.6 Rammohan Anand's 1st sister's husband A.7 Sathya Prabhu Anand's brother A.8 Vasudeva Reddy Anand's uncle A.9 Mrs.Vasudeva Reddy Wife of Vasudeva Reddy A.10 Manjula Baskar Anand's cousin sister

63. The findings of the Courts below are that both the families are having status of their own and affluence and it is also quite obvious, the wife's side family could be described as 'family of Doctors', so much so, on the Doctor husband's side, his brother is an educated person who studied in London and his brother-in-law is a Doctor and his father is a bus operator having fleet of buses. In such a case, it is crystal clear that the very lodging of such false F.I.R as against both male and female relatives of the husband amounts to cruelty.

64. The learned Counsel for the wife would argue that neither P.W.1 nor P.W.3 in the deposition highlighted as to how such complaints were false and how the husband was affected by such complaints. In my opinion, such an argument cannot be countenanced. When circumstances are ex facie and prima facie demonstrate cruelty, there is no requirement on the part of P.W.1 and P.W.3 to depose in very many words that because of such false F.I.R lodged as against them by the wife, they have been put to harassment and cruelty both mental and physical. In fact, such an expectation on the wife's side that the witnesses should have spoken like that, would amount to expectation of artificial element in the evidence.

65. As such, I am of the considered opinion that such filing of false complaint clearly exposes the wife's attitude towards the husband and his relatives and that the husband therefore was justified in his deposition that even while she was with him, she was bent upon in compelling and pressurizing him in estranging his parents and relatives and his plea is found to have been proved beyond doubt.

66. By way of adding fuel to the fire, she filed the second F.I.R on 03.11.2000 so to say, within a period of three months from the first F.I.R and the fact remains that the first F.I.R was closed by the police. The second F.I.R is to the effect that when she went to the husband's house seeking compromise, she was beaten by the persons whose names were found in the first F.I.R, and they are her in-laws and her husband's sister, sister's husband.

67. The case in C.C.No.278 of 2001 which emerged consequent upon the said F.I.R dated 03.11.2000 ended in acquittal. On the wife's side, it was contended by placing reliance on Ex.B.17, that revision has been filed as against such acquittal, but so far nothing is shown as to what is the number of the Criminal Revision Petition etc. Such meek attempts made to keep alive the matter so as to project as

though finality has not been attained relating to that case, cannot be taken as a good defence on the wife's side. The criminal Court acquitted the accused long ago by doubting the version of the wife referred to in this case. After such long delay, it seems, action has been taken as against such acquittal. Now, according to the wife, that finding of the criminal court has not reached finality. The very attitude of the wife in allegedly going to the house of the husband and having invited an unsavory incident on herself, cannot be appreciated.

68. Fourth accused, Dr.Prabhakaran, was not in the scene of crime as per F.I.R, but he allegedly phoned at the time of incident from somewhere, to which A.3 stated about the incident, for which Dr.Prabhakaran was arrayed in F.I.R as A.4 and the fact remains that consequent C.C proceeded without Dr.Prabhakaran being arrayed as accused and the entire case ended in acquittal. As such arraying Dr.Prabhakaran in the F.I.R shows how the complaint was harsh towards the relatives of the husband.

69. The unassailable fact is that in connection with that case registered in Cr.No.462 of 2000, P.W.3 was imprisoned for one day and thereafter, only he could get bail and ultimately, he was acquitted. As such, on the wife's side, it is argued as though for the purpose of protecting her own safety and security, she had lodged such complaints and that she could not be expected to tolerate such injury and humiliation suffered by her. But, one fact is clear that the rift in the matrimonial relationship got worsened beyond repair in view of the wife's attitude in approaching the problem.

70. I am of the considered opinion that she ought not to have gone there to the house of her father-in-law at all, when the H.M.O.P was pending in the trial Court and that too, when she already lodged an F.I.R as referred to supra. Attached to the trial Court, there are facilities for mediation and it is well known to everyone.

71. Even in that F.I.R, she would state that during her matrimonial life for about two and half years with her husband, he did not beat her and never abused her. But, while deposing before the Court, she as R.W.1, had a volte face and would go to the extent of deposing that the said version was wrongly inserted in the F.I.R. This clearly exposes the inimical attitude of the wife as against the husband. In fact, in the F.I.R itself, the wife being a Doctor by profession, in Tamil clearly and categorically set out that for about two and half years, she lived happily with her husband and he did not beat her or cruelly treat her or abused her. But, before the trial Court, she did not want to project her husband as a good man, but as a bad man. This attitude in no way, can be taken as a positive and conducive attitude on the part of the wife for resuming cohabitation with the husband.

72. The third F.I.R emerged on 04.11.2000 so to say, within exactly a day after the emergence of the second F.I.R. The third F.I.R in Cr.No.29 of 2000 was registered for the offences punishable under Sections 498(A) and 506 I.P.C read with Section 4 of Dowry Prohibition Act as against the eleven persons including her husband.

73. As such, in the last F.I.R, the name of the husband has been shown as eleventh accused and other ten accused persons are none, but the very same ten persons shown in the first F.I.R, except for replacement of one Ram Mohan by Baskaran. The said Baskaran is the husband of Manjula. The

H.M.O.P was filed during the month of April 1998, but on 04.11.2000, the third F.I.R was lodged alleging as against her husband and his relatives, cruelty and dowry harassment. This clearly shows as to how during the pendency of the proceedings, she determined once for all that there were no probabilities or even remote possibilities of resuming cohabitation with the husband. In fact, admittedly, the police referred the case as mistake of fact and the Magistrate also recorded it. However, it was got reopened by her by filing a petition before this Court and obtaining order as per Ex.B.16, and subsequently, the investigation was got transferred from one police agency to another and now still, it appears, the investigation is pending. Every time, the police version was also that she was not co-operating for investigation for which her argument was that she wanted reunion and hence she did not pursue it. When the husband applied for anticipatory bail, it was the wife who entered appearance as the intervener and resisted the grant of anticipatory bail. But, the wife during arguments would try to conceal and camouflage her inimical attitude as against her husband. As such, no more dilation on the issues is required that the wife has expressed her antipathy, abomination, abhorrence, dislike, odium and detest as against her husband and her in-laws and she also understood fully that there was no chance of reunion and she was bent upon in giving mental and physical torture to the husband and his relatives by filing such belated complaints.

74. As has been already pointed out above, this Court is not very much concerned about the outcome of the investigation which has got reopened. However, the attitude of the wife as set out supra in the facts and circumstances of the case, could rightly be understood.

75. The trial Court after understanding fully the sequence of events as well as the evidentiary aspects, correctly arrived at the conclusion that the divorce was the only solution between the two. However, the first appellate Court on sympathetic grounds reversed the decree of divorce. The discussions of the first appellate Court were far from satisfactory. The appellate Court simply tried to see justifiable reasons in the subsequent conduct of the wife by observing at the end of the paragraph No.71 of its judgment as under: "Objection petition by the wife, might have arisen due to wrong advice to her. However, highly educated the people are, legal knowledge is not sufficient. Even assuming that there was sufficient knowledge, even educated women are under compelling necessity to act according to the direction of the members of her family, because they are under the protective wing of the family. R.W.1 was not given opportunity to explain the same. Under such circumstances, it can't be concluded that only in order to cause harassment the wife opposed the bail application." (emphasis supplied.)

76. A mere reading of the aforesaid excerpt from the judgment of the first appellate Court would show as to how the first appellate Court simply out of sympathy reversed the divorce decree.

77. At this juncture, I would like to recollect the decision of the Honourable Apex Court in *A.Jayachandra v. Aneel Kaur* reported in 2005-2-L.W.149 as already highlighted supra. Further excerpts from it, would run thus:

"13. The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However insignificant

or trifling, such conduct may cause pain in the mind of an other. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

14. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court."

78. The Honourable Apex Court in Naveen Kohli v. Neelu Kohli reported in AIR 2006 SUPREME COURT 1675 held that filing of criminal complaints would amount to cruelty and paragraph Nos.89 and 90 are extracted hereunder for ready reference:

"89. The High Court ought to have appreciated that there is no acceptable way in which the parties can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied forever to a marriage that in fact has ceased to exist.

90. Undoubtedly, it is the obligation of the Court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. In the instant case, there has been total disappearance of emotional substratum in the marriage. The course which has been adopted by the High Court would encourage continuous bickering, perpetual bitterness and may lead to immorality."

79. As such, the Honourable Apex Court took into account its various earlier decisions and arrived at the conclusion. Here, the discussions supra would clearly show that absolutely there is no possibility of reunion between the husband and the wife and it is because of the mental and physical cruelty caused by the wife to the husband and from the subsequent conducts also of the wife, this Court could reasonably arrive at the conclusion that the husband was justified in filing the petition for divorce before the Court as his living with the wife was impossible.

80. The learned Counsel for the husband relied on one other decision of the Honourable Apex Court in G.V.N.Kameswara Rao v. G.Jabilli reported in (2002) 2 Supreme Court Cases 296. An excerpt

from it, would run thus: "8. Another important incident, which found favour with the Family Court is that the respondent had filed a criminal complaint before the police alleging that she was beaten by the appellant and his mother. The appellant and his mother were called to the police station and they had to be there for more than 10 hours. The explanation offered by the respondent for this incident is far from satisfactory. According to the respondent, she was being ill-treated by the appellant and his mother, and on one day, while preparing the breakfast when she used the blender for grinding the pulses, her mother-in-law got angry and scolded her saying that she had not brought any article from her house, so she should not have used the blender. Further, the respondent alleged that the appellant and his mother threw away all her bags and clothes and the appellant's mother asked her son to get the respondent out and the appellant became wild and gave a blow to the respondent with a sharp-edged weapon and it was under those circumstances that with bleeding injuries, she had gone to the police station and filed a complaint before the police. It is important to note that the police did not register any case evidently as it was a domestic quarrel and not of a serious nature, and the incident shows the innate lack of self-control which had driven the respondent to this inexorable conduct. But, the humiliation and agony suffered by the appellant and his mother, considering their status in life and the social circumstances, was too much." It is therefore clear that filing false complaint and harassing the husband and his relatives would amount to cruelty.

81. The learned Counsel for the wife would submit that in the petition, there is no detailing and delineating of each and every act of cruelty. No doubt, if there is one or two specific incidents, that could be detailed and delineated with dates. But, if the conduct of the wife is so incompatible and it was persisting every now and then, then the Court cannot expect the husband to detail and delineate the dates and events in *seriatim*.

82. The concept condonation as put forth on wife's side placing reliance on the decision of the Honourable Apex Court in *Dastane v. Dastane* reported in AIR 1975 SUPREME COURT 1534, is not applicable in this case as mere living as husband and wife from the date of marriage i.e, 11.09.1995 till the end of the year 1997 with break periods, can by no stretch of imagination be taken as condonation of acts of cruelty committed by the wife. The evidence of P.W.1 and R.W.1 would clearly show that because he could not live at Coimbatore with the wife due to her recidivism in her act of cruelty, he took her to Salem and left her there during her grandfather's funeral ceremony.

83. The learned Counsel for the wife placing reliance on the decisions in

(i)*Savitri Pandey v. Prem Chandra Pandey* reported in (2002) 2 Supreme Court Cases 73 and (ii) *Naveen Kohli v. Neelu Kohli* reported in AIR 2006 SUPREME COURT 1675, would develop his argument that the Honourable Apex Court invoking its power under Article 142 of the Constitution of India granted divorce in various matters on the ground of irretrievable break down of marriage, but the lower Court and the High Court cannot do so. I am of the opinion that here, in view of the facts and circumstances discussed supra, there is no necessity to refer to theory of irretrievable break down of marriage, but the ground of cruelty has been proved and it was the wife who has ushered in divorce, in the matrimonial life between her husband and herself.

84. The records would speak by itself that several Honourable Judges of this Court who dealt with this matter tried to bring about the compromise between the parties, but all ended in vein. Earlier, even before me, the talk of compromise was undertaken, but that did not fructify.

85. As such, I am of the opinion that the trial Court was right in granting the decree of divorce and the first appellate Court was wrong in reversing the judgment of the trial Court. Accordingly, the judgment of the first appellate Court is set aside and the decree of divorce granted by the trial Court is upheld and restored and confirmed. Accordingly, there shall be divorce between the parties.

86. Ultimately for the foregoing reasons, a fortiori, I would hold that there is no other alternative but to uphold and restore and confirm the decree of divorce granted by the trial Court after setting aside the judgment and decree of the first appellate Court and accordingly, it is ordered and the Civil Miscellaneous Second Appeal is allowed. No costs.

rsb To

1.The District Judge, Trichy.

2.The Principal Subordinate Judge, Trichy.