

Calcutta High Court

Smt. Santana Banerjee vs Sachindra Nath Banerjee on 28 September, 1989

Equivalent citations: AIR 1990 Cal 367, 94 CWN 769, II (1990) DMC 33

Author: G Ray

Bench: G Ray, P K Banerjee

ORDER G.N. Ray, J.

1. This appeal is directed against the judgment and decree passed by the learned Additional District Judge, 14th Court at Alipore in Matrimonial Suit No. 14? of 1979. By the aforesaid judgment and decree, the said Matrimonial Suit for decree for divorce prayed for by the applicant respondent husband Sri Sachindra Nath Banerjee against the appellant wife Smt. Santana Banerjee was allowed.

2. The case of the applicant husband was, inter alia, that the parties to the suit were Hindus and were married according to the Hindu rites. But from the very beginning of the marriage, the wife failed and neglected to maintain the proper marital relationship between the parties and in the application the applicant husband gave instances of improper behaviour of the wife for which the husband suffered a great mental torture. It was, inter alia, contended by the husband that the wife was over conscious about her family background and social status of her father and grandfather and she indulged in openly commenting that the husband and his family members were rustic and uncultured. The applicant husband further contended that the wife used to hurl abuse in the name of the cousin brother of the applicant that he was a drunkard and she also used to make reckless and unfounded allegations touching the character of almost all the members in the family of the husband including the cousin brother, own elder brother and other members of the family. The wife was also in the habit of finding fault with other members of the family and according to her assessment every female member of the husbands family was unchaste and every male member of the house was guilty of moral degradation. On account of such reckless abuse by the wife, the life of the petitioner became totally miserable. The husband also alleged that the wife had no intention to live as a house-wife and she used to pose herself most sophisticated society girl and used to comment that she had enough money with which she can maintain a person like his husbands status. It was also alleged that the wife was in the habit of concealing important facts and she never disclosed that she was a Radio Artist or that she got service as a teacher in a School. She had no intention to live in the family house of the husband and she always insisted that the husband should live separately near about the residence of her elder sister and she started teasing and threatening the husband to make the life of the husband miserable and ruin if the husband would not concede to the proposal to stay with her as a dummy husband at a place of her choice. The husband further contended that the wife insisted that the husband should sever all connections with the husbands family and would also allow the wife to do whatever she liked and to mix with the men of her choice as a society girl despite objections made by the husband. The husband also contended that the wife had no intention to consummate the marriage and she refused to sexual relation on the alleged ground that she was not prepared to become a mother at the cost of her youth. The wife also lodged false complaints to the Calcutta Police authorities against the husband on various false allegations, but it was ultimately proved that such allegations were false and baseless and the complaint was mala fide and motivated. The husband also stated that he took the wife for a pleasure trip to various places and immediately on return from such tour the wife did not go to the family residence of her

husband, but went to her sisters place and denied the husbands right to the society of the wife. It was contended that the aforesaid acts caused great mental pain to the husband and he became totally broken down. The husband alleged that he had not condoned the cruelty on the part of the wife and prayed for divorce on the ground of cruelty. It may be noted here that the husband made an application for amendment of the plaint for incorporating the fact that the husband and the wife went on a pleasure trip on 7th May, 1975 and after returning back on or about 22nd May, 1975 from such pleasure trip, the wife in spite of repeated requests of the husband did not accompany the husband to the family residence but left the husbands company and lived in the residence of her sister.

3. The trial court allowed the application for amendment, but on revision made by the wife before this Court, the said amendment was disallowed by this Court.

4. The appellant wife in her written statement and the additional written statement denied the allegations made by the husband in the application for divorce. It was contended by the wife that the husband himself had been living a desolute life and was of desultory habits, very often returning late at night to his house and even sometimes stayed away from home at night to which the wife dissented. In order to cover up his own omissions and commissions, the husband indulged in issues of falsehood. It was contended by the wife that she came from a very ancient, respectable, cultured, illustrious, conservative and well known family of Howrah and her father was an eminent lawyer and was also the Chairman of the Bally Municipality for sometime doing various benevolent works. Her grandfather was a Judge of this Court. On the contrary, the environment at the husbands house was extremely deplorable. The elder cousin brother of the husband used to drink like a fish and the eldest brother of the husband had developed an unusual illegitimate sexual relationship with his cousin sister, as a result of which an illegitimate child was born and they ultimately married. The wife, however, contended that despite unpleasant and unwelcome atmosphere in the family residential house of the husband, the wife tried her best to adjust herself to the situation by bearing with great fortitude, insults and threats administered on occasions both by husband and by the brothers and sisters and the parents of the husband. It was also alleged that the husband used to indulge in personal assaults upon the wife. It was also alleged by the wife that despite her request made to the husband and the members of the family to take her back to the family residence of the husband, no one took back the wife from the place of her elder sister where she had been residing and on 6th July, 1976 the wife went herself to meet her husband personally at the office of the State Bank of India at Middleton Street, Calcutta for making an effort for honourable settlement with the petitioner for the purpose of living together peacefully at her matrimonial home. But she had received a lifes lesson on that day. On an intimation being sent by the wife through another employee of the Bank, the husband came down and took the wife outside the office building and suddenly left the place asking the wife to wait. While the wife was waiting for husbands return, two or three antisocials, obviously at the instance of the husband, came to threaten the wife that they would elope her if she would venture to enter the office premises any day in future. Out of fear she ran inside the office to reach the 8th floor in a lift but she was told that the husband was not in the seat in the 8th Floor. After sometime, the husband returned to the office and met the wife near the lift and practically dragged her down to the street where she found a taxi waiting with a gentleman sitting inside to receive her. The petitioner asked her to get into the taxi, but suspecting some foul

play she refused to get into the taxi. On the refusal to get into the taxi the gentleman went away with the taxi and the husband wanted to take the wife to Sealdah. On the way, the husband threatened the wife that he would kidnap her and nothing could be known about her existence. This frightened her so much so that she left her husbands company and started living at Paikpara. The wife was so perturbed that on the very next morning she went to Lal Bazar Police Head Quarter to meet the Police Commissioner and the Deputy Commissioner to report the said incidents and was advised by the police authorities to put her grievance in writing. She got her grievances typed and personally handed over the same to the Commissioner and Deputy Commissioner of Police. It was also alleged by the wife that the husband was always anxious to get particulars of the assets either movable or immovable which she inherited from her parents and the husband used to press the wife at all material times to make over to the husband all her movable assets by way of cash, ornaments and other securities and all papers relating to immovable properties. It was also alleged that the gifts and presentations made at her at the time of marriage were kept concealed from her and were never given to her. Even the ornaments and other valuables belonging to the wife and kept at the family residence of the husband were practically seized by the husband and the family members. The wife denied that she ever concealed important facts to the husband and it was contended that even before the marriage the husband and his family members knew that she was a radio artist and the petitioner had complete knowledge about the wifes taking the job of a teacher and with the approval of the members of the family she continued as a teacher. The wife denied that any false complaint was lodged by the wife to the police and it was asserted by the wife that what actually happened was reported to the police under a frightful situation. The wife also alleged that the husband had sexual perversion but she opposed at all material time proposals for abnormal and most unusual sexual pleasures which often tant-amounted to beastly way of thing, but because of the wifes refusal to indecent proposal of the husband he was infuriated from time to time. The wife also alleged that the wife had reasons to suspect from various facts and circumstances with regard to un-seemingly conduct and affair with an office girl colleague named Alo to the knowledge and consent of the husbands own sister. The wife also alleged that the husband was suffering from some sort of mental disorder which is termed as Schizophrenia. The wife alleged that after return from the pleasure trip, with the consent of the husband the wife had been to Paikpara in her elder sisters residence and she stayed there with the consent of the husband. The wife had never deserted the husband. On the contrary, the petitioner husband intended to desert the wife and did not take her back to the marital home.

5. The applicant husband got himself examined in the said matrimonial suit and it was stated by the husband that from the very beginning of their marriage the relationship between the husband and the wife was not happy. The wife used to pose as a lady coming from a very high society and she never cared to disclose that she was a radio artist and she often used to leave her matrimonial home in order to attend radio programme without the consent of her husband. The wife did not care to take consent from the parents of the husband before moving out and she used to be have with him in a very rough and rude manner and occasionally she used to flare up. She had not even the courtesy to be have properly with the parents and other senior members of the husbands family. The husband stated in his deposition that the wife used to abuse him continuously and she used to make disparaging remarks about the elder brother and elder cousin brother of the husband. She also made disparaging comments regarding the marriage of his elder brother alleging that the elder brother

had gone to an illegal marriage as a result of which an illegitimate child was born. She lodged a false complaint against the husband for which the husband was called at the Police Headquarters at Lalbazar, but on enquiry it was proved that the complaint was false one. It was stated by the husband that because of the complaint made by the wife, the police officers went to the Bank where the husband was employed and the husband got a tremendous mental shock because of such arrival of police in the office of the husband. The wife indulged to use vulgar language against the husband and the members of his family and she used to think that she was a fashionable lady and she used to treat the members of his family as rustic and rough. Such conduct of the wife brought immeasurable mental pain to the husband. The husband also alleged that the wife used to decline the proposal for cohabitation on the plea that she could not stake her youth and she declined to bear child. The husband also stated that it was not possible any further to live with the wife because he apprehended that the wife would cause enormous harm to the husband both physically and mentally. The husband also stated that he did not condone the conduct of the wife. He also stated that in order to overcome the fissure surfaced in the relationship between the parties and to save the honour and prestige of the family, the husband took the wife to various places in North India in order to have reapproachment in their relation, but such hope of a happy married life was in shambles and the wife did not give the peace which he had longed so much. On return from the tour, the husband went to the family residence but the wife declined to accompany him at the family residence and went to her elder sisters Paikpara residence. The husband strongly denied the allegation of the wife that he had any affair with his office colleague known as ALO. The husband also alleged that the elder sister of the wife and her husband were also not favourably disposed of towards the husband and they also used to make uncharitable remarks against the husband and the members of the family.

6. The elder brother of the husband also deposed and it was stated by the elder brother that the wife used to make intemperate, discourteous, disparaging and ugly remarks against the husbands parents, brothers and their wives.

7. A clerk of the State Bank of India also deposed for the petitioner husband. It was deposed by the said office colleague of the husband that the wife had been to the office of the husband and had heated exchange of words and quarrelled with the husband there. In the course of such incident, some office colleague of the husband and the said witness tried to persuade the wife to leave the place and to impress upon her that she would not rake up trouble in the office because the husband had some prestige in the office.

8. The wife got herself examined and she stated in her deposition that she was not indifferent to domestic matters and domestic chores of the father-in-laws family and she also denied that she was not willing to lead the life of a traditional Bengali married wife. She stated that she was an artist of All India Radio and the said fact was known to the husband and his family members and as a matter of fact, the husband escorted the wife to the Radio Station on some occasions. She further deposed to the effect that from June, 1975 onwards the husband used to stay with her sister at Calcutta but he used to come and stay one night with the wife every week at the family residential house at Joynagar. Such state of affairs continued till third week of October, 1975. She stated that on 11th October, 1975 she had been to her elder sisters house at Paikpara but because of an appointment in

All India Radio, she could not come back to the family residential house and thereafter she fell ill and had to remain there for treatment. She stated in her deposition that on 6th July, 1976 she had been to the office of the husband to request him to take her back to Joynagar but the husband paid no heed to such request and had the wife threatened by some anti-social elements. Such antisocial elements accosted the wife on the entrance of the office of the husband. The husband came down and asked, the wife to board a taxi shared by an unknown stranger. On her refusal to do so, the husband threatened her with kidnapping. The wife stated in her deposition that although she would admit that the economic status of her fathers family and the family of the husband were on equal footing, the cultural and idiological status were different. She further stated that she stayed with her elder sister for sometime and since 1978 she had been staying in her own flat at Purbasa Housing Estate. She denied that she had ever disclosed anybody that the cousin brothers of her husband used to drink like fish and become intoxicated and she also did not disclose to anybody that her husbands elder brother had gone through illegal marriage. The elder sister of the wife also deposed in her favour. She had stated that after return from the pleasure trip, her sister and her husband went to their family residence and she also denied that she had informed the husband about the wifes taking a job as a School teacher. She also denied that she had insulted and/or humiliated the husband and/or their relations. The elder brother of the wife also deposed in favour of the wife. He also stated that at the occasion of Bhatridwitiya in 1975 he was invited at the family residence of the husband where his sister had been staying and he attended the Bhatridwitiya ceremony.

9. It may be noted in this connection that the letter written by the wife to her elder sister and also the letter written by the husband to the said elder sister on the same post card while they were out on a pleasure trip some photographs taken at that time and a book presented by the husband to the wife and also a letter written by the wife to the father of the husband, sometime after the Durga Puja were tendered in evidence by the wife and were exhibited. It will reveal from the post card written by the wife to which the husband also added a note to the elder sister of the wife that they have been moving from place to place and they were keeping well. It will transpire from the writings on the book presented by the husband to his wife that such book was presented by the husband on 28th August, 1975.

10. The learned trial Judge on consideration of the respective cases of the parties and oral and documentary evidences adduced in the said proceedings, inter alia, came to the finding that the wife tried to place a high profile with regard to the cultural and social background of her fathers family and comparatively "a very low profile of the family of the husband. The learned Judge held that she also expressed her feelings in that regard by asserting in her evidence that the cultural and ideological status of the two families were different. The learned Trial Judge also observed that in the written statement she made disparaging and derogatory remarks against the husbands cousin brother, eldest brother and eldests brothers wife. Considering the facts and circumstance, the learned Trial Judge came to the conclusion that it was quite probable that the wife had made disparaging and discourteous remarks about the husband and the members of his family. He also came to the finding that such remarks could not be considered as justified by any stretch of imagination. The learned Trial Judge held that in the aforesaid circumstances it could be easily concluded that such discourteous, disparaging and insulting remarks had caused enormous mental anguish and trouble to the husband. The learned Trial Judge also observed that the wife in her

written statement complained that she had strong reason to suspect that her husband had an improper affair with one of his office colleague named Alo with the knowledge and consent of his own sister. The said fact was denied by the husband. The learned trial Judge observed that the suspicion of the wife about husbands fidelity highlighted her attitude towards the husband. The learned Judge also noted that the wife was a radio artist but even after marriage her address at the radio station was her elder sisters address at Paikpara and later at Purbasa Housing Estate where she owned a flat. The wife had a Bank account but in such account she had not given her address of her matrimonial home. The learned trial Judge noted that the wife was secretive in nature and never conducted herself in a manner befitting to a Bengalee housewife. The aforesaid conduct of the wife was indicative of the fact that she did not consider herself as an integral part of her husbands family and she did not allow to merge herself in the mainstream of the life in the husbands family. The learned trial Judge however held that looking to the photographs taken at places during the pleasure trip and also considering the living style at the hill station it appeared that the trip was properly enjoyed and the couple hummed the tune of swan-song. The learned trial Judge came to the conclusion that the marriage was consummated and the case of the wife that she had ceased to live in the matrimonial home since 2nd December, 1975 was worthy of credence. The learned trial Judge noted that the carping attitude of the wife about the husband was manifested by her allegation of beastality against the husband. The learned Judge held that the husband strongly denied such allegation and there was no basis to hold that the husband suffered from any sexual aberrations leading to sodomy. The learned trial Judge also held that such allegations were unfounded and the same highlighted the fact that the wife held her husband in a very low estimation causing enormous mental pain. According to the learned trial Judge, the wife was indifferent and apathetic towards her married life and was not interested to be united with the husband. The learned trial Judge further held that the wife made false complaints to the police and also made false and unfounded allegation of having an affair with the husbands office colleague 'Alo'. By her conduct she denied the society of her husband. The learned trial Judge was of the view that cruelty was to be judged on the basis of evidence on record and the totality of the circumstances of the case and considering the facts and circumstances, the learned trial Judge was of the view that the conduct of the wife amounted to cruelty and he also came to the finding that the evidence on record did not indicate that the husband had condoned such cruelty. In that view of the matter, the learned trial Judge allowed the application of the husband and passed a decree for divorce against the wife.

11. Mr. Chatterjee, the learned counsel appearing for the appellant, has contended that the case of alleged indifferent attitude of the wife and making disparaging remarks against the husband and the members of his family had not been specifically pleaded in the application for divorce and such case could not be substantiated by cogent evidence. Referring to the evidence of the elder brother of the husband, Mr. Chatterjee has contended that sweeping comments about disparaging remarks alleged to have" been made by the wife, was made by the said witness, but the said deposition does not demonstrate when and how the disparging remarks had been made. Mr. Chatterjee has contended that the said deposition is not worthy of credence. Mr. Chatterjee has also submitted that the learned trial Judge has drawn an adverse inference against the wife for her statement in the deposition to the effect that although economically the family of her father and the family of her father-in-law were equal, but socially and culturally the two families were different. Mr. Chatterjee has contended that there was no occasion to draw any adverse inference against the wife for such

deposition. The statement made by the wife to the aforesaid effect was justified in the facts and circumstances of the case. There is no manner of doubt that the family of the father of the wife had a very high social and cultural background and both the father and the grandfather of the wife were highly respectable and well placed in the society. It has not been brought in evidence that socially and culturally the family of the father-in-law could be compared to the family of the father of the wife. Mr. Chatterjee has submitted that the wife has categorically stated in her written statement and also in her deposition that she wanted to adjust herself in the family of her husband although there were difficulties and she was not disrespectful either to her husband or to the members of his family. Mr. Chatterjee has submitted that the allegations of making disparaging remarks by the wife against the husband and the members of the family practically stand uncorroborated and no reliance should be placed on such allegations. He has submitted that the husband initially stated in the application for divorce that only upto 18th April, 1975, the husband and the wife stayed together. The said allegation was false on the face of it. Sometime in May, 1975, the husband admittedly took the wife for a pleasure trip at various places where they lived together happily which will be revealed from the photographs taken on those places and the letters written by the husband and the wife to the elder sister of the wife. As a matter of fact, the learned trial Judge has also come to the finding that the pleasure trip was utilised properly by the husband and the wife. Realising that the case sought to be made out in the pleading was bound to fail, the husband attempted to amend the plaint by stating that after April, 1975, the husband left with the wife for a pleasure trip but after return from the pleasure trip the wife did not come to the matrimonial home and left for her sisters residence. Such amendment was allowed although it should not have been allowed by the learned trial Judge for introducing a false and concocted story. This Court, in revision, rightly rejected such amendment. Mr. Chatterjee has submitted that the pleading of the husband, as it stands, reveals that the husband has resorted to falsehood and the case of the husband should not be believed. Mr. Chatterjee has contended that in any event, even assuming that the wife made disparaging remarks and failed and neglected to behave in a manner expected of bride, thereby causing mental pain and anguish to the husband, the husband had condoned such lapses on the part of the wife which will be evident from the fact that after April, 1975 they had been on a pleasure trip where they lived happily. Mr. Chatterjee has contended that the learned trial Judge has come to the finding that the marriage was consummated and the case of the wife that she lived in the matrimonial home upto 2nd December, 1975 appeared to be probable. Mr. Chatterjee has contended that until and unless the husband can establish convincingly that even thereafter the husband was subjected to physical and mental cruelty by the wife warranting a decree for divorce and such acts of mental and physical cruelty had not been condoned by the husband, no decree for divorce could be passed by the learned trial Judge. Mr. Chatterjee has contended that this important aspect has been lost sight of by the learned trial Judge and an erroneous decision has been made in the instant case. Mr. Chatterjee has contended that even if it is accepted that wife failed to disclose to the husband or the members of his family that she was a Radio Artist or that she had accepted a job as a School teacher, such failure to disclose the said facts does not amount to cruelty warranting a decree for divorce. Mr. Chatterjee has contended that there may be occasion of lapses on the part of a spouse, but all lapses are not cruelty warranting a decree for divorce. Oversensibility on the part of a spouse and consequential suffering of mental pain should not be taken to be act of cruelty warranting a decree for divorce. Referring to a Bench decision of this Court made in the case of Sm. Saptami Sarkar v. Jagadish Sarkar, reported in (1969) 73 Cal WN 502, Mr. Chatterjee has contended that corroboration in a matrimonial cause

resting on cruelty may not be a matter of law, but a matter of precaution. He has submitted that the wild allegations of cruelty made by the husband must be tested very carefully and in the absence of corroboration, such allegations should not be accepted to bring dissolution of marriage. Referring to a decision of the Delhi High Court made in the case of Asoke Kumar Bhatnagar v. Sabnam Bhatnagar reported in (1989) 1 DMC 285 : (AIR 1989 Delhi 121), Mr. Chatterjee has contended that specific allegations in detail should be pleaded in a matrimonial cause which should be proved by proper evidence. Although there cannot be any universal application of the principle that "No detail, no relief", the importance of specific allegations to be pleaded should not be lost sight of. Mr. Chatterjee has also referred to a Bench decision of this Court made in the case of Pranab Biswas v. Smt. Mrinmayee Dassi, . It has been held in the said decision that cruelty simpliciter is not a ground for passing a decree for judicial separation under Section 10(1) of the Hindu Marriage Act. The cruelty of a particular nature and of a particular virulence only entails the consequence of judicial separation. The cruelty will be such as to cause a reasonable apprehension in the mind of the applicant that it will be harmful or injurious for the applicant to live with the other party. Mr. Chatterjee has submitted that in the facts of the case it cannot be held that the alleged cruelty was of such a nature that a reasonable apprehension was caused in the mind of the husband that it was harmful or injurious for the husband to live with the wife. Mr. Chatterjee has also referred to another bench decision of this Court made in the case of Sm. Aloka Dey v. Mrinal Kami Dey, . It has been held in the said decision that if it appears from the evidence that trouble was not entirely due to wife's uncontrollable temper but the other side has also contributed to it and there was nothing to suggest that she deliberately intended to upset husband's mental and physical health, the acts of uncontrollable temper likely to cause mental cruelty to the husband will not warrant a decree for judicial separation. Mr. Chatterjee has also referred to another Bench decision of this Court made in the case of Krishna Sarbadhikary v. Alok Sarbadhikary . Referring to the said decision, Mr. Chatterjee has contended that it is quite likely that there may be misunderstanding and discord in the conjugal life but for such trivialities the relationship between the husband and the wife cannot be dissolved by passing a decree for divorce and until and unless it is established by cogent evidence that the alleged mental cruelty was to such an extent that it crossed the limit of tolerance of the husband, no decree for divorce can be passed. Mr. Chatterjee has contended that the instant case does not justify a decree for divorce and the husband has miserably failed to prove that there had been such mental cruelty which really warrants a decree for divorce. In any event, by the conduct of the parties, it has not been clearly demonstrated that even if there was any mental cruelty warranting a decree for divorce, such cruelty has been condoned and as such the question of passing any decree for divorce does not arise in the facts of this case.

12. Mr. Shyamaprasanna Roy Chowdhury, the learned counsel appearing for the respondent husband, has however submitted that it has been specifically pleaded in the application of the husband that the wife indulged in making disparaging remarks about the husband and the close relations of his family which caused great mental pain to the husband. The said fact was also stated in the evidence and the elder brother of the husband has also said that the wife indulged in making disparaging remarks about the husband and the members of his family. Mr. Roy Chowdhury has contended that if the wife estimates the family of the husband as not cultured and alleges that some of the members were drunkards and some of the members had indecent sexual relationship and got illegal marriage out of which a illegitimate child is born, such allegation cannot but create a great



mental agony which any educated person cannot normally stand. Mr. Roy Chowdhury has contended that the wife has made such statement in the written statement itself and in her deposition also she stated so. The learned trial Judge, therefore, was justified in coming to the conclusion that the wife had made such disparaging remarks against the husband and the members of the family and the case of the husband to that extent cannot but be believed. Mr. Roy Chowdhury has also contended that it has been specifically stated that the wife made false allegations against the husband before the police authorities for which the police came to the office of the husband, thereby lowering him in the estimation of his colleagues causing great mental pain. The said fact has been proved by cogent evidences and in the written statement the wife alleged that the husband engaged anti-social elements against the wife, made attempts to get the wife kidnapped by stranger and threatened the wife with dire consequence for which the wife made complaints to the police authorities for such alleged acts on the part of the husband. Mr. Roy Chowdhury has contended that even in the evidence, the wife stuck to this false case sought to be made out by her in her pleading and stated that she was accosted by the antisocial elements and the husband attempted to get herself kidnapped by a stranger in a taxi. The said case was not found correct by the police and has not been believed by the learned trial Judge and no Court can believe such false and reckless statement unworthy of credence. Mr. Roy Chowdhury has contended that it is not the case of the wife that on a prior appointment the wife had been to the office which is a branch office of State Bank of India in Calcutta so that the husband may engage anti-socials to accost the wife at the entrance and/or to arrange with a stranger to get the wife kidnapped in a taxi. On the face of the written statement and the evidences adduced by the wife it is quite evident that without notice the wife had been to the office viz. the branch office of the State Bank of India at Calcutta. It is unbelievable that at the entrance of the said branch office of the Bank or at the entrance of the building in a busy area of Calcutta in a day time, a young lady was accosted by anti-socials to which no protest was raised by the pedestrians or any other person passing near the gate of the building including the durwans. Mr. Roy Chowdhury has submitted that unless the husband is an expert astrologer who can foresee the events he cannot arrange anti-socials to accost the wife and, or to engage a stranger for the purpose of kidnapping the wife immediately on the spot. Such allegations are blatantly false and the said allegations in the written statement itself must be construed to be acts of cruelty for warranting a decree for divorce. Mr. Roy Chowdhury has submitted that the police caused enquiries pursuant to the said false allegations of the wife but dropped the matter because it transpired that the allegations were false and motivated. Mr. Roy Chowdhury has contended that it has been very strenuously contended by the learned counsel of the appellant that if a spouse becomes unnecessarily touchy and suffers mental pain because of some lapses and/ or rifts in the conjugal life, a decree for divorce cannot be passed and on a consideration of totality of the circumstances, the Court should carefully come to a finding whether there has been cruelty to such extent which warrants a decree for divorce. Mr. Roy Chowdhury has submitted that as a proposition of law such submission cannot but be accepted but the facts in the instant case depict completely a different picture. Mr. Roy Chowdhury has contended that in the written statement the wife alleged sexual aberration and bestiality against the husband which have been rightly disbelieved by the learned trial Judge. The wife also alleged in the written statement that the husband was insane suffering from schizophrenia. The wife went to the length of alleging immoral sexual connection with an office colleague named Alo and it was extremely unfortunate that false allegation against the husband was made by further alleging that such immoral relationship was continued with the

consent and knowledge of the sister of the husband. Mr. Roy Chowdhury has contended that the husband has stated that in order to have a reproachment of the fissure surfacing on the relationship of the parties he took the wife for a pleasure trip to various places and tried to keep the wife comfortable as far as practicable. In spite of the said fact the wife did not respond to the approach and it is not the case that the husband wiped of all the humiliations hurled on him and accepted the wife by condoning her lapses. Merely because the husband made attempts to repair the married life it will not amount to condonation of the lapses on the part of the wife. Mr. Roy Chowdhury has contended that the learned counsel for the appellant has drawn the attention of the court that the husband presented a book to the wife in August, 1975 which, according to the learned counsel, demonstrates that the husband had condoned the lapses of the wife, even if any. Mr. Roy Chowdhury has, however, submitted that any particular incident should not be considered separately out of context and the entire facts when taken into consideration in their proper perspective reveal that the husband made attempts to effect reconciliation for a peaceful married life by taking the wife on pleasure trips and presentation of book. But it is the positive case of the husband that all such attempts were of no avail and it is not the case that after such attempts, the couple lived peacefully as husband and wife without any rancour against each other. Mr. Roy Chowdhury has contended that even if it is assumed for the arguments sake that the husband had condoned the lapses on the part of the wife by accepting the wife as a life's partner and took her to a pleasure trip and made presentation of a book, the subsequent conduct of the wife by coming to the office and quarrelling with the husband, thereby lowering him at the estimation of his colleagues, by making false allegation to the police leading thereby police investigation to harass the husband, by making allegations of infidelity for an alleged sexual affair with an office colleague with knowledge and consent of the husband's own sister, by falsely alleging that the husband was suffering from sexual aberrations and offence of bestiality and by making disparaging remarks against the husband and the members of his family cannot but cause great mental pain not to be tolerated by the husband or any other man of his status and social background. Such subsequent conduct of cruelty has undoubtedly not been condoned. Hence, even on that score, the decree for divorce can be granted. In this connection, Mr. Roy Chowdhury has referred to a number of decisions of this Court and other High Courts. Referring to the decision of *Krishna v. Alope* (Supra) and *Rita v. Brij Kishore Gandhi*, Mr. Roy Chowdhury has submitted that attempt for reproachment should not be constituted as condonation of cruelty. For the purpose of constituting condonation of cruelty it must be proved by cogent facts that a spouse wanted to accept the other spouse with a spirit of forgiveness of the offence of cruelty and accepted the other spouse with such spirit and lived thereafter a peaceful conjugal life. Even indulging to cohabitation at times or on some occasions will not amount to condonation of cruelty. Referring to another Bench decision of this Court made in the case of *Nemai Kumar Ghosh v. Sm. Mita Ghosh*, Mr. Roy Chowdhury has contended that if any imputation against the character of a spouse is alleged without any foundation such imputation amounts to mental cruelty warranting a decree for divorce. In the case of *Nemai Kumar Ghosh*, the wife made baseless allegations against the husband suspecting illicit connection with the elder brother's wife, although the husband held the elder brother's wife in a high esteem. In the said case, it was held by this Court that such allegation amounted to great mental pain to the husband and amounted to cruelty warranting a decree for divorce. Referring to the decision of the Supreme Court made in the case of *Dr. N. G. Dastane v. Mrs. S. Dastane*, Mr. Roy Chowdhury has submitted that it has been held in the said decision that the court should consider the facts and totality of the

circumstances for the purpose of finding whether the alleged lapses are ordinary wear and tear of a married life. Spouses are undoubtedly supposed and expected to conduct their joint venture as best as they might but it is no function of the court inquiring into a charge of cruelty to philosophise on the modalities of married life. The Court has to deal not with an ideal husband and ideal wife, but with a particular man and woman before it. Mr. Roy Chowdhury has submitted that the conduct of the wife clearly demonstrates that wife had never accepted the husband and the family of the husband with such affection and respect as expected of a wife. She never adjusted herself with the family of the husband. She had a very high idea about social status of her fathers family and her accomplishment as a Radio Artist and as a modern society girl. She indulged in making disparaging remarks not once but on a number of occasions and treated her husband and the members of his family with contempt. It is not the case of making some disrespectful and disparaging remarks once out of provocation but it is a case of persistent behaviour bearing ill will and disrespect against the husband and the members of his family. Mr. Roy Chowdhury has, therefore, submitted that the court was justified in passing a decree on the ground of cruelty. Referring to the decision , Mr. Roy Chowdhury has contended that reliefs can also be granted on the basis of events that have taken place subsequent to a suit. In moulding the relief, the Appeal Court could take into account of the facts that came into existence even after the decree. In the said decision, reliance was placed in the decisions , and AIR 1948 FC 5. Mr. Roy Chowdhury has also referred to a Bench decision of this Court made in the case of Harendra Nath Burman v. Suprova Burman . It has been held in the said decision that cause of action arising subsequent to the filing of the suit in consequence with the allegations in the written statement can be taken into consideration by the trial court including the Court of appeal and the Court can grant relief on such consideration of the subsequent events. It has been held that ordinarily a lis has to be determined on the cause of action made in the pleadings. It is nevertheless well settled that it is open to the court including the court of appeal to take notice of the events which have happened after the institution of the suit and to afford relief to the parties where it is necessary to do complete justice to the case. Mr. Roy Chowdhury, has, therefore, submitted that no interference is called for in this appeal and the same should be dismissed with costs.

13. After considering the respective contentions of the learned counsel for the parties and the materials on record, it appears to us that the case of the husband that the wife used to indulge in making disparaging and insulting remarks against the husband and the members of his family should be accepted. The husband and his elder brother have stated that such disparaging remarks were hurled by the wife. In the written statement, the wife has made disparaging remarks against the elder brother and cousin brothers of the husband. She has alleged that the cousin brothers were drunkards and the elder brother had developed immoral sexual relation with a close relation and had gone into an illegal marriage with such relation. The wife alleged sexual perversity and bestiality against the husband and also alleged in the written statement that the husband was suffering from schizophrenia. She also alleged in the written statement that the husband engaged anti-socials against the wife when she went to her husbands office. The husband also threatened her with dire consequence and tried to get her kidnapped by a stranger engaged by the husband. It is not the case of the wife that on a prior information, the wife had been to the State Bank of Indias branch office in Calcutta where his husband was an employee. The wife all on a sudden had been to the said branch of the State Bank in Calcutta during office hours. Unless the husband is an astrologer and could

forecast the events, it is inconceivable that the husband could immediately engage anti-socials to accost and threaten the wife at the gate on near the lift and could arrange for getting the wife kidnapped by a stranger at the entrance or near the gate of the said branch of the bank, when the wife came to meet him. Even if it is assumed, that within minutes, the husband could engage anti-socials to accost and threaten the wife at the gate of the said branch or engage a man with a taxi to get the wife kidnapped, the allegations of the wife being highly improbable should not be accepted as true. In a broad day light during banking hours in the city of Calcutta, the story that the wife was accosted by anti-socials by holding out threats of dire consequence and/or a stranger with a taxi attempted to kidnap her without being noticed by the customers of the State Bank of India and other passers by and the wife did not raise any hue and cry to draw the attention of good number of persons reasonably expected to be present there, cannot be accepted to be probable. It is the positive case of the wife that over the said incidents, a written complaint was lodged by her before the Commissioner of Police and an enquiry was made by the police. The allegations are serious in nature and make out a case of cognizable offence but it is in evidence (Ext. D) that the police after investigation did not proceed any further for any cognizable offence but informed the wife that she might seek redress in a court of law. The learned trial Judge was justified in not believing the said false case sought to be made by the wife. Such false allegations and false complaint to the police and consequential investigation by the police by coming to the Bank and calling the husband at the police headquarter cannot but cause great mental pain to the husband. The wife also alleged illicit sexual relation of the husband with an office colleague named Alo. The most unfortunate part of the allegation is that such illicit relation was stated to be with knowledge and consent of the husband's own sister. The said allegations could not be established by any reliable evidence and we have no manner of doubt that such allegations were false and motivated. The said false imputation against the character of the husband is undoubtedly a cruelty, without any provocation, justifying a decree for divorce. The wife alleged sexual perversity against the husband and also charged the husband with the offence amounting to bestiality. It does not appear that the wife had ever stated about such conduct to any person of her confidence and/or to her elder sister who arranged the marriage of the sister and with whom the wife had resided for a long time. The learned trial Judge has not believed such allegations made by the wife and we are also not inclined to believe the same. It is really unfortunate that the wife not only made all such false allegations against the husband in her written statement but even reiterated the same in her deposition. Such false and motivated allegations cannot but cause great mental pain to the husband and we are inclined to accept the case of the husband that the cruelty meted out to the husband at the hands of the wife has completely upset him and he has broken down. Considering the facts and circumstances of the case, it appears to us that it is not the case of making some disrespectful and disparaging remarks once out of grave provocation but we are of the view that the wife indulged in making disrespectful and disparaging remarks against the husband and his close relations imputing against the character of such relations which cannot but terribly upset the husband thereby causing great mental pain amounting to cruelty under the Hindu Marriage Act. It appears to us that the case of the husband that the wife used to indulge in making disrespectful and disparaging remarks against very close relations of the husband causing great mental pain to the husband is highly probable and should be accepted. The elder brother of the husband in his deposition has stated that the wife made such remarks. Mr. Chatterjee, the learned counsel of the appellant has some justification to comment that the deposition of the elder brother is sweeping and lacks in precision. Even if the said deposition is not

accepted by way of corroboration of the husband's evidence, the uncorroborated testimony of the husband may reasonably be accepted as being highly probable and in this connection we may refer to the principle of accepting a case if it appears to be probable as indicated in Dastane's case (supra). It may also be noted here that in the written statement and in her deposition, the wife made such disparaging remarks and it is quite likely that she made such remarks before the husband and other members of the family. We have indicated hereinbefore that the wife made imputation against the character of the husband, made allegation of engaging anti-socials against the wife and threatening her with dire consequence and also alleged that the husband engaged a stranger to get the wife kidnapped and made false complaint to the police against the husband. Such acts cannot be treated as mere austerity of temper, petulance of manner, rudeness of language or want of civil attention to the needs of the husband. In this connection, we may refer to the inimitable expression made in Dastane's case (supra) "that passion and petulance have perhaps to be suffered in silence as the price what turns out to be an injudicious selection of a partner. But if such passion and petulance as persist and assume such a proportion which become unbearable to the husband or any reasonable man in the society of the husband, such passion and petulance cannot but amount to cruelty". The cruelty meted out to the husband must be held to be of a very grave nature not expected to be borne out by the husband or any man in the society of the husband. Mr. Chatterjee has very strongly contended that in the facts of the case it is apparent that at least up to December, 1975 the couple lived together as husband wife. The husband admittedly took the wife in May 1975 for a pleasure trip and the learned trial Judge has very rightly held that the days spent on pleasure trip were the days of humming a swan-song. Mr. Chatterjee has contended that in the aforesaid circumstances, the case of cruelty sought to be made out in the pleading must fail because the husband had condoned the cruelty, even if any, up to December, 1975. The husband has, however, stated that in an attempt to bring harmony to the marital relation between the parties, he took the wife to a pleasure trip but such attempt proved abortive because the wife remained intemperate and humiliated and insulted him even thereafter and did not intend to build up a marital home as expected of a Bengali wife. He has stated that he did not condone the acts of cruelty of the wife. The learned trial Judge has accepted the case of the husband and has held that there was no condonation of cruelty by the husband. We are also inclined to accept the case of the husband that the cruelty of the wife was not condoned by the husband. The law is well settled that cohabitation at times and or living together in an attempt to repair the fissures in the relationship of husband and wife by themselves may not amount to condonation. To constitute condonation, the offended spouse must accept the offending partner with a spirit of forgiveness and by wiping off the unpleasant memories, start the conjugal life as if on a clean slate. In the instant case, it does not appear to us that the husband accepted the wife with a spirit of forgiveness and started the conjugal life as if on a clean state by wiping off all unpleasant memories. With an offended soul he made attempts of repair of the marital home but to no effect. That apart, the wife even after the institution of the suit indulged in making reckless, false and motivated allegations against the husband and his close relations not only in her written statement but also in her deposition as indicated earlier. Such facts undoubtedly constitute cruelty of a very grave nature. In our view, the court not only can take into consideration of the subsequent events after the institution of the suit but also should take note of such subsequent events if the same have a bearing on the lis between the parties and consideration of such facts may lead to proper justice in the case and shorten the course of litigation. It may be noted here that on the aforesaid false allegations of the wife constituting cruelty of a grave nature, the husband will be

entitled to bring a fresh proceeding for divorce and it will be only unjust and improper and opposed to salutary principle of shortening the course of litigation to shut out the husband from relying on the subsequent events proved and established in this proceeding on the ground that such subsequent events were not the foundation of the pleading of the husband on the basis of which the proceeding in question was initiated. We, therefore, find no reason to interfere with the judgment and decree passed by the learned trial Judge. The appeal, therefore, fails and is dismissed with costs. Before we end, we may place on record that on the submission made by the learned counsel for the appellant wife that an attempt for reconciliation by the Court may be successful, we had interview with the husband and wife in chamber but such attempt for reconciliation proved abortive.

Pabitra Kumar Banerjee, J.

14. I agree.

15. Later.

A prayer for stay of the judgment and decree of the appeal has been made by the learned counsel for the appellant. In the facts of the case, the prayer is rejected.

16. Appeal dismissed.