Bombay High Court
Madanlal Sharma vs Santosh Sharma on 28 November, 1979
Author: R Jahagirdar
Bench: R Jahagirdar
JUDGMENT R.A. Jahagirdar, J.

1. The appellant has by this appeal challenged the order of a Judge of the City Civil Court dismissing his petition filed against the respondent for a decree for divorce. The petition, being M.J. Petition No. 6636 of 1973, was filed by the appellant in the City Civil Court at Bombay on 14th of August, 1973 again the respondent alleging that the respondent was guilty of acts of cruelty which would entitle the appellant to a decree for divorce dissolving the marriage of the appellant and the respondent which had taken place on 16th of June, 1965 at Delhi.

2. In the ordinary course, this appeal would have been disposed of on an appreciation of the evidence. However, the Hindu Marriage Act, 1955, which governs the parties and under which the petition for divorce was filed, was substantially amended in the year 1976 and a new ground which would be the basis of a decree for divorce was added in section 13 of the said Act. From the arguments advanced by the Advocates appearing both for the appellant and the respondent before me and on the facts and circumstances of this case it became necessary to consider the proper meaning and legal effect of Clause (ia) of section 13(1) of the Hindu Marriage Act. Before I proceed to do it the facts which led to the filing of the petition must be stated. As already mentioned above, the parties were married at Delhi on 16th of June, 1965. Two years thereafter, that is in the year 1967, they came to Bombay. The appellant's arrival in Bombay was necessitated by the exigencies of his employment, it is on record that the appellant is employed in the State Bank of India. Two years after their arrival in Bombay, an ownership flat was acquired at Andheri, a suburb of Bombay, by the appellant. The couple has been blessed with three children; the first child who is a daughter was born on 18th of June, 1967; and the second child, a son, was born on 18th of October, 1968. Thereafter, there was some spacing and on 3rd of August, 1972 the last child, which is a daughter, was born.

3. It is also in evidence that sometime in February, 1973 the appellant left the house at Andheri and thus he also left his wife and the three children in the flat at Andheri and went to reside in a separate house at Vikhroli, which is another suburb of Bombay. Before that, however, on 23rd of January, 1973 he gave a registered notice to the respondent alleging that the respondent was guilty of several acts of misconduct such as failing to attend to house hold duties, failing to look after a child and her education, behaving in an insulting and humiliating , manner particularly of using most abusive words in Punjabi language not followed by the neighbours; running from the house on the road at some times shouting and crying without any reason or provocation with a view to create an impression that the appellant was harassing and assaulting her and of neglecting to cook food or of keeping the same ready when the appellant returned from the office fully tired. The act of misconduct which is mentioned at No. 5 on page 4 of this notice (Ex. B on the record) is of making baseless and cheap allegations "against the character of my client involving even nearest relations of sister and mother as well as the maid servant and any name that came to your tongue just to use abusive and provocative language". By the said notice the Advocate for the appellant mentioned that

the regular repetition of the respondent's behaviour has made it impossible for the appellant to continue to stay in the house though the same belongs to him. He told the respondent that she had no right to the said premises and further that by her behaviour she had forfeited any right whatsoever to stay as the wife of the appellant in the said premises. It was further mentioned that the appellant having been sufficiently humiliated in the neighbourhood and the house itself, the appellant had decided to give up the said flat. The respondent was called upon to make her own arrangements for staying elsewhere failing which the appellant would take action for judicial separation and also to deal with the property in accordance with law. I have felt it necessary to refer to the allegations made in the notice it the outset itself because it will obviate the necessity of reverting to the contents of this notice later when the appreciation of the rival contentions is to be made. Apart from referring to the baseless and cheap allegations against the character of the appellant involving, among others, a maid servant, it has not been alleged in this notice that the respondent made any allegations of infidelity on the part of the appellant or of the appellant's illicit relations with any person.

4. Since the respondent did not comply with the requisitions contained in this notice, the appellant filed the petition for judicial separation on 14th of August, 1973 on the ground of what the appellant called cruelty. The acts of cruelty enumerated in the petition are practically the same which have been mentioned in the notice. There are, however, a few more acts mentioned in the petition. One of them is alleged act of the respondent in bringing the children to the office of the appellant on 5th of April, 1973 and leaving them there after creating a scene. At the time when this petition for judicial separation was filed, what can be for brevity's sake called the ground of cruelty was not available for obtaining a decree of divorce. Section 10(1)(b) of the Hindu Marriage Act, as it stood before the amendment of 1976, permitted a party to a marriage to present a petition praying for a decree for judicial separation on that ground that the other party "has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party." In the year 1976, by Act No. LXVIII of 1976 the Parliament made several changes under the Hindu Marriage Act. Section 10 which deals with judicial separation, after the amendment, only mentions that either party to a marriage may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of section 13 and in the case of a wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been presented. In other words, the grounds on which a petition for judicial separation can be presented are not enumerated in section 10, but are by incorporation mentioned as those enumerated in section 13 of the Act. I have already mentioned above that prior to the amendment of 1976 the ground of cruelty was not one of the grounds on which a petition could be presented for divorce. After the amendment of 1976, section 13 allows a party to present a petition for the dissolution of the marriage by a decree of divorce on the ground that the other party "(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelly." The difference in the language relating to the ground cruelty as it was in section 10 prior to the amendment of 1976 and now in section 13 after the amendment is too striking to be missed even by casual observer. The difference in the language of the provision prior the amendment of 1976 and the provision after the amendment of 1976 has led to considerable debate before me in this appeal. At this stage I may mention that after the Hindu Marriage Act was amended in 1976, the appellant amended his petition by substituting the prayer for divorce in place

of an original prayer for judicial separation. This was the only amendment which was made by the appellant in his petition before the trial Court after the amendment of the Hindu Marriage Act in 1976.

5. The respondent filed her written statement on 21st of January, 1974 and denied that she has been guilty of the acts of cruelty alleged against her by the appellant. In paragraph 9 of her written statement, however, the respondent mentioned that when she was in the Maternity Home for about 10 days during her last confinement in August 1972 the appellant had developed illicit connection with the maid servant employed by the family. The allegation about the illicit relationship between the appellant and the maid servant was made by the respondent on the basis of what her neighbours told her after she returned from the hospital. It is unnecessary to refer to the other averments in the written statement except to mention that the respondent denied the various acts of cruelty alleged against her.

6. The learned trial Judge raised four issues the first of which was as follows.

"Whether the petitioner proves that the respondent has been guilty of cruelty as alleged in the petition."

The second issue related to the question of the condonation of the acts of cruelty, if they were proved. The third and fourth issues related to the custody of the minor children and the maintenance of the respondent. While considering issue No. 1 before him, the learned trial Judge addressed himself to two questions. One related to the standard of proof required in a case of divorce under the Hindu Marriage Act on the ground of cruelty and secondly the meaning of cruelty itself. On consideration of some of the authorities which were cited before him the learned trial Judge came to the conclusion that the burden of proof in a case of divorce was higher than in a case of judicial separation and he preferred to follow what he thought was the law laid down by the decisions of the Supreme Court in Mahendra Minakshi v. Sushila, White v. White, , and Bipin Chander Shah v. Prabhavati, . In other words, he came to the conclusion that in a case of divorce the burden of proving the matrimonial offence was higher and the case must be proved beyond reasonable doubt and not merely on preponderance of probability. This view which the learned trial Judge took must be held to be erroneous in view of a decision of this Court in Kamal Tukaram Choudhary v. Rumchandra Laxman Vagulde, 1978 Mah.L.J. 598. This decision survey's the relevant authorities of the Supreme Court upto that date and also refers to the provisions of section 25(3) of the Hindu Marriage Act. In that case a question had arisen as to the standard of proof required for substantiating the charge of unchastity. It was held that in the light of the judgment of the Supreme Court in Dr. N.G. Dastane v. Mrs. S. Dastane, , the burden of proving matrimonal offences was no higher than in civil proceedings, that is, a fact can be established if it is proved by preponderance of probability. The learned trial Judge was in error in making a distinction between a case for judicial separation and a case for divorce, because the law laid down by the Supreme Court in Dastane v. Dastane does not make any such distinction and secondly section 25(3) of the Hindu Marriage Act itself does not make any such distinction. On the question of the burden of proof, therefore, one must proceed on the basis that the law laid down by the Supreme Court in Dastane v. Dastane is the last word.

7. In support of his case, the appellant examined himself and two witnesses. One of them, Jaywant Shamrao Kharote, was an officer of the State Bank of India where the appellant himself is working. The other witness, Kumar Melaram Chauhan, known as K.V. Prakash is a well-wisher of the family of the appellant and the respondent. The respondent examined herself and two witnesses. One of them, Vidya Prakash Sharma, is the uncle of the respondent, while the second one, Mathus Koshi, was the neighbour of this family at Andheri. After considering the evidence that was thus brought on record through the deposition of these witnesses, the learned trial Judge noticed that of the various allegations made in respect of the behaviour of the wife, none except the allegation that the wife made false imputations of immorality against the appellant were such that could be called sufficiently grave and weighty to amount to acts of cruelty. Running on the road, quarrelling with the members of the family, using what has been characterised as abusive language against the appellant and his relatives and even taking the children to the office of the appellant and leaving them there these and other acts mentioned by the appellant would not constitute a conduct amounting to cruelty on the part of the respondent. In my opinion, the learned trial Judge's view in this regard is correct. All these acts which have been mentioned by the appellant are in the nature of quarrels which are the symptoms of the wear and tear of married life and could not be regarded as acts of cruelty warranting a decree for divorce. The learned Judge in paragraph 11 of his judgment has mentioned that the only allegation which is material is the allegation that the wife made false imputations against the husband's morality and it is this allegation which has to be considered.

8. I am not referring to the evidence in any details because, in my opinion, mention of some facts which can be said to have been established after going through the evidence with the assistance of the learned Advocates appearing for the parties can be sufficient. I am confining myself to the question or cruelty on the basis of the false allegation regarding the illicit ointimacy between the appellant and the maid servant. The evidence discloses that for some months before the respondent went to the hospital for her third delivery in the month of August 1972 a maid servant who was aged 12 or 14 years had been engaged by this family on a part time basis. During the time when the respondent was in the hospital, this maid servant named Gulab was working on full time basis. According to the appellant, after the respondent returned from the hospital, she alleged that the appellant had developed illicit relations with the said main servant. The learned trial Judge has come to the conclusion that there was no basis for the wife to make such serious imputations against the morality of her husband. However, noticing that mere imputation of immorality could not be regarded as an act of cruelty within the meaning of section 13(1)(ia) of the Hindu Marriage Act, the learned trial Judge refused to grant the decree of divorce. The learned trial Judge understood the law that it is not merely the imputation that is crucial, but the effect of that imputation on the health---physical or mental---of the appellant that was relevant. The learned trial Judge did not find in the evidence any deleterious effect on the health of the appellant by the allegations made by the wife.

9. I may proceed to mention that the respondent did not make allegations of immorality on the part of the appellant is established by the evidence on record. The allegation is undoubtedly of a serious nature because it related to the alleged ilicit intimacy between the appellant having three children and a maid servant who was minor at that time. It is also true that the respondent repeated these allegations in her written statement and further followed it up by repeating the same allegations in

her evidence before the Court. The question is whether these allegations often repeated are sufficient to hold that the respondent treated the appellant with cruelty as contemplated under section 13(1)(ia) of the Hindu Marriage Act.

10. It has been argued before me vehemently by Mr. Vora that such imputations as have been made by the respondent caused reasonable apprehension in the mind of the appellant them it was injurious or harmful for him to live with the respondent, in any case, says Mr. Vora, the change in the language of the ground of cruelty introduced after the amendment of 1976 requires the appellant to prove only that the respondent treated him with cruelty as it is understood in the ordinary sense. Mr. Vora contended that it is not even necessary for the appellant to prove that cruelty was such as to cause a reasonable apprehension in his mind that it was unsafe for him to live with the respondent. Mr. Jaisinghani, the learned Advocate appearing for the respondent, however, has canvassed the view that after the amendment of 1976, a greater degree of cruelty than what was envisaged under section 10(1)(b) of the Act as it stood prior to the amendment of 1978 is now required to be proved by a spouse seeking divorce on the ground of cruelty. Mr. Jaisinghani contended that the change in the language brought about by the amendment of 1976 was neither accidental nor unintentional. On the other hand, this change has been brought about in order to restore the legal position as it stood before the Supreme Court gave its decision in Dastane v. Dastane. According to Mr. Jaisinghani, the phraseology which has been now used in section 13 requires a person seeking divorce on the ground of cruelty to prove that the other party was guilty of wilful and unjustifiable conduct of such a 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. It is not enough, says Mr. Jaisinghani, that the acts complained of should give rise to a reasonable apprehension of harm or injury of living with the other spouse. In other words, according to Mr. Jaisinghani, the degree of cruelty which has now to be established is much higher than what was required under section 10(l)(b) of the Act prior to 1976. In order to appreciate the rival contentions, it is necessary to take note of the provisions contained not only in the Hindu Marriage Act, but also the provisions in the Special Marriage Act, 1954. It is further necessary to examine the development of the case law on this subject, because without doing so, it is in my opinion difficult to understand the importance of the amendment made in the year 1976.

11. It may be mentioned at this stage that the expression in section 13(1)(ia) of the Hindu Marriage Act is identical with the expression to be found in section 27(1)(b) of the Special Marriage Act, which also deals with the ground for divorce. In the judgment given by Vaidya J. which was ultimately affirmed on different grounds by the Supreme Court in Dastane v. Dastane, the development of the law relating to cruelty has been traced, with respect, with admirable clarity. The judgment delivered by Vaidya J. is reported in A.l.R. 1970 Bombay, 312. There in it has been held that cruelty means legal cruelty as understood in English Law, namely, injury causing danger to life, or limb or health or reasonable apprehension of such injury. It has been mentioned that before the Hindu Marriage Act 1955, the Indian courts generally applied the principles followed by the English Courts in deciding this question in so far as they were applicable to conditions in Indian society. Note was taken of the decision of the Privy Counsel in Moonshee Bugloor Ruheem v. Shamsoonnissa Begum, (1866-67) Moore's Indian Appeals 551. The following passage found in Tolstoy's Divorce and Matrimonial Causes, was regarded as the correct exposition of the law relating to cruelty :

"Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such a 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."

Vaidya J. referred to some further decisions given by the English Courts and noticed the march of the Indian Courts with the English Courts in expounding the concept of cruelty.

12. That the law relating to cruelty under section 10(1)(b) of the Act was understood to mean the cruelty as laid down under the English law can also be seen from some decisions of other High courts. In Kusum Lata v. Kampta Prasad, A.l.R. 1865 Allahabad, 280 M.H. Beg J. (as he then was) has held that the effect of the accusation or conduct upon the petitioner must be determined. Beg J. referred to the exposition of the law to be found in Halsbury's Laws of England and held that in so far as the allegations of unchastity or other allegations which may cause pain to the complaining spouse are concerned, three tests have to be considered. The first was the question whether the allegation was true. The second was whether the accusation was aimed at the complaining spouse. The third was the effect of the accusation upon the complaining spouse. In fact the third test was regarded as the crucial and decisive test in all such cases. It is not necessary for me to refer to this decision in greater detail except to mention that the law of cruelty as it was understood under the English Law was practically engrafted by the Indian decisions into the relevant Indian law.

13. In Pamjula Venkatramayya v. Pamjula Mahalakshmamma, , interpreting Clause (b) of section 10(1) of the Hindu Marriage Act, the Andhra Pradesh High Court held that the law on the subject has to be gathered from the important cases decided in England. It was noticed that the courts in India have accepted and adapted to conditions in India the principles enunciated in those English cases. It was held that a reading of some of the important cases in this behalf would indicate that the term 'legal cruelty' meant conduct of such a character as to have caused danger to life, limb or health (bodily or mental), or to give rise to a reasonable apprehension of such danger. This indeed was the principle enunciated first in Russell v. Russell, 1897 A.C. 395 by the House of Lords. It cannot be denied that this decision has been consistently followed by the courts in all subsequent cases. It is unnecessary to refer to further decisions. It is enough to state that what Vaidya J. has said in Dastane v. Dastane, , regarding the march of Indian courts with English Courts correctly represents the development of the same law in India. Irrespective of the difference in the expression used under the different Acts relating to the ground of cruelty, it was always understood by the different High Courts in India that cruelty must amount to a wilful and unjustifiable conduct of such a character as to cause danger to life, limb or health bodily or mental or as to give rise to a reasonable apprehension of such danger.

14. The decision of Vaidya J. was the subject matter of an appeal before the Supreme Court in Dastane v. Dastane, . Chandrachud J. (as he then was) delivering the judgment on behalf of the Court noted the observations made by Vaidya J. relating to the march of the Indian courts with the English courts and also noted that Vaidya J. had adopted the concept of cruelty as enunciated in D. Tolstoy's "The Law and Practice of Divorce and Matrimonial Causes". Chandrachud J. then proceeded to mention that an awareness of foreign decisions could be a useful asset in interpreting our own laws, but one should remember that we have to interpret a specific provision of a specific

enactment, namely, section 10(1)(b) of the Hindu Marriage Act. It was pointed out that what constituted cruelty must depend upon the terms of the statute. Under section 10(1)(b) of the Act, as it then stood what was to be determined was not whether the petitioner had proved the charge of cruelty. Having regard to the principles of English, but whether the petitioner proved that the respondent has treated him with such cruelty as to cause a reasonable apprehension in his mind that it would be harmful or injurious for him to live with the respondent. It was specifically pointed out that it was not necessary, as under the English law, that the cruelty must be of such a character as to cause danger to life, limb or health or as to give rise to a reasonable apprehension of such danger. Thereafter, the following sentence occurs in the said judgment :

"Clearly, danger to life, limb or health or a reasonable apprehension of it is a higher requirement than a reasonable apprehension that it is harmful or injurious for one spouse to live with the other."

By this decision, the Supreme Court in unmistakable terms laid down that under section 10(1)(b) of the Hindu Marriage Act as it then stood, the concept of cruelty as understood in English law was irrelevant and the act of the respondent must be judged in the light of the words used in the Indian statute. From this it is clear that the view taken by the different High Courts on the concept of cruelty as it was understood prior to the decision in Dastane v. Dastane, was erroneous. It is necessary to bear in mind that the English law was developed right from Russell v. Russell, 1897 A.C. 395 to the present day on the basis that the person petitioning for divorce on the ground of cruelty must prove that the other spouse has treated the petitioner with cruelty. In view of the decision of the Supreme Court in Dastane's case, the law which was relevant under the concept of the respondent treating the petitioner with cruelty would become irrelevant to an expression like the one used in section 10(1)(b) of the Act before the amendment.

15. Thereafter, as already mentioned earlier, the Parliament amended several provisions of the Hindu Marriage Act and specifically mentioned that a person may present a petition for divorce on the ground, among others, that the other party "(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty". The question that has to be considered is whether by making this amendment the Parliament have intended to make relevant the English decisions to cases arising under section 13 of the Hindu Marriage Act. Before I proceed to consider this question in the light of the rules on interpretation of statutes, it is profitable to notice the view taken by different High Courts of an analogous provision to be found in the Special Marriage Act 1954. Under this Act, a petition for divorce may be presented either by the husband or by the wife on the ground that the respondent "(d) has since the solemnisation of the marriage treated the petitioner with cruelty" (section 27(1)). If it is seen, as it will be seen by an examination of the decisions touching upon this provisions under the Special Marriage Act, that the view taken by the different High Courts is in line with the view taken by the English decisions, then, according to me, it is clear that the Parliament intended that the higher degree of cruelty that is required under the English law has also to be proved under the amended provisions of section 13 of the Hindu Marriage Act.

16. In T.K. Saravanaperumal v. Shishikana Perumal, I.L.R. 1969(1) Mad. 845, the concept of cruelty arising under section 27 of the Special Marriage Act has been examined at great length. "Legal Cruelty" as explained in Rayden on Divorce has been accepted by the said decision. Similarly, the

judgments in Collins v. Collins, 1964 A.C. 644, Williams v. Williams, 1964 A.C. 698 have been mentioned with approval. The view that has developed by the English decisions has been endorsed by the Madras High Court in the aforesaid case. Similarly, in Jyotish Chandra Guha v. Meera Guha, A.I.R 1970 Cal. 226 the legal concept of cruelty as mentioned in section 27(d) of the Special Marriage Act is held to be one that has been developed by the English Courts. While so doing, the relevant volumes of Halsbury's Laws of England have been referred to and it has been noted that the legal concept of cruelty involves a conduct of such character as to have caused danger to life, limb or health or as to give rise to a reasonable apprehension of such danger. I do not find any other decisions touching upon this aspect of the case. Summarising, therefore, it can be said that whether under the Hindu Marriage Act or whether under the Special Marriage Act, cruelty as a ground for judicial separation or for divorce was understood to mean such conduct as to cause danger to life, limb or health or as to give raise to a reasonable apprehension of such danger. This was despite the fact that the expressions used in the Special Marriage Act and the Hindu Marriage Act were different. It was for the first time demonstrated by the Supreme Court in Dastane v. Dastane, that the two expressions meant two different things and the expression under section 10(1)(b) of the Hindu marriage Act involved cruelty of a lesser degree.

17. While considering the effect of the amendment, one must bear in mind that a change in the phraseology brought about by an amendment creates the presumption that the legislature intended a change of meaning. It has been mentioned by Crawford in his 'Statutory Construction' (at page 618), that the mere fact that the legislature enacts an amendment is of itself an indication of intention, as a general rule, to alter the pre-existing law. It is needless to any that the pre-existing law includes the law as interpreted by the courts. The intention of the Parliament in the instant case has to be gathered also from the fact that the Parliament after deleting the previously existing phraseology brought on the statute book an expression which is identical to the one used in the Special Marriage Act. Both the Special Marriage Act and the Hindu Marriage Act are pari materia and while interpreting an expression which is found in one Act, it is permissible, may, it is even necessary, to bear in mind the decisions given by the courts in relation to the same expression under the other law. Maxwell on the Interpretation of Statutes refers to general presumption that the same expression is presumed to be used in the same sense throughout an Act or a series of cognate Acts. There is also a presumption that a change of wording denotes a change in meaning. (See page 282, 12th Edition). Considering these rules of interpretation, it is clear, in my opinion, that the Parliament intended to bring the provision relating to cruelty under the Hindu Marriage Act on per with the concept of cruelty as it is found under the Special Marriage Act. By this amendment, the Parliament nullified the effect of the decision of the Supreme Court in Dastane v. Dastane. This in fact has an effect of restoring the law as it was understood prior to Dastane v. Dastane, under the Hindu Marriage Act. Since the expression relating to the ground of cruelty in these two Acts, which are pari materia, is the same and since under the Special Marriage Act the ground of cruelty has always been understood to mean cruelty as it is understood under the English law, it must now be held that the concept of cruelty under section 13(1)(ia) of the Hindu Marriage Act must involve the same meaning as it is understood under the English law. In other words, cruelty as a ground for divorce must mean cruelty of such a character as to cause danger to life, limb or health or as to give rise to a reasonable apprehension of such danger. As has been mentioned by the Supreme Court in Dastane v. Dastane, this concept involves a reasonable apprehension of a higher requirement than

the reasonable apprehension mentioned in section 10(1)(b) of the Hindu Marriage Act before its amendment.

18. Mr. Vora, however, invited my attention to the statement of object and reasons accompanying the bill which ultimately amended the Hindu Marriage Act in 1976. The concluding sentence in the statement of objects and reasons reads as follows :

"The objects of the legislation are mainly, (1) to liberalise the provisions relating to divorce; (2) to enable expeditions disposal of proceedings under the Act; and (3) to remove certain anomalies and handicaps that have come to light after the passing of the Acts."

(See Gazettes of India, Extra Ordinary, Part II, section 2, Jan-April 1976, page 780).

Mr. Vora contends that the view which I am taking militates against the intention of the legislature as is expressed in the statement of objects and reasons. I am unable to accept this contention of Mr. Vora. In the first place, the statement of objects and reasons cannot be referred to except for the purpose of finding out what the State of affairs was before the amendment. It cannot be referred to for understanding the meaning of any particular words in the statute itself. The statement of objects and reasons has always been held to be an unsafe guide while interpreting the substantive provisions of any enactment. Secondly, even though the Act intended to make and has actually made liberal some provisions relating to divorce, on a particular aspect a provision may not be made liberal. If the provision of cruelty as a ground of divorce were to be liberal, then in view of the decision of the Supreme Court in Dastane v. Dastane, it was not even necessary to amend the Act. The fact that the Parliament thought it fit to amend the ground relating to cruelty and bring it on per with the language used in the Special Marriage Act shows that on this aspect the intention of the legislature, as it is revealed through the words, was not to liberalise the ground relating to cruelty. Further more, "where a word has been construed judicially in a certain legal area, it is, I think, right to give it the same meaning if it occurs in a statute dealing with the same general subject matter, unless the context makes it clear that the word must have a different construction. "(See Maxwell on the Interpretation of Statutes, 12th, Edition, page 278). I have, therefore, no hesitation in holding that the expression to be found in section 13(1)(ia) of the Hindu Marriage Act endorses necessarily the concept of cruelty as it is understood under the English law.

19. Considered from this point if one examines the evidence in the present case, it is not difficult to see that the appellant has miserably failed to prove cruelty on the part of the respondent. In no part of his deposition which extends over several pages, has it been mentioned by him in words or otherwise that the conduct of the respondent posed a danger to his health, physical or mental. It is true, as Mr. Vora points out, that if he has laid before the Court the facts, the Court itself should draw the necessary inference. However, I find that even those facts from which such an inference could be drawn have not been mentioned by the appellant in his deposition. For example, he has not mentioned what the offset of the allegation made by the respondent was on his mental or physical health. If it has been proved that as a result of the allegation made by the respondent the petitioner's health was affected, then the Court would be justified in drawing an inference that there could be a reasonable apprehension in the mind of the appellant of a danger to his health. Unfortunately for

the appellant, no such material has been brought on record. It may be recalled that the allegation relating to the appellant's illicit intimacy with the maid servant is said to have been made by the respondent sometime in August 1972 when she had returned from the hospital after her delivery. Within a few days thereafter the said servant was dismissed from the service. In the cross-examination the appellant has said that those allegations were made not only during the time when Gulab was in their service but also before Gulab was in their service, but admitted that the respondent did not make any such allegation after Gulab left their service. I have already noted earlier that after giving the notice in January 1973 the appellant left the house in February 1973. So between August 1972 and February 1973 no allegation of infidelity on his part was made by the respondent. The petition for judicial separation was filed about six months after the appellant left the house. It is not the appellant's case that the respondent persisted in making the allegations even after he left the house, indeed, I have already noted the admission made by him that after Gulab left their service, the respondent did not make any allegation of infidelity on his part.

20. Mr. Vora pointed out that though she has not made those allegations in his presence after Gulab left the service, she is shown to have made such allegations to others. One Kunwar Vedprakash (P.W. 3) examined on behalf of the appellant has stated in paragraph 10 of his deposition that he enquired and found out that respondent's complaints about the appellant's behaviour with Gulab was false and that the respondent continued to make those allegations even after Gulab left the house. Reliance by Mr. Vora on this evidence is hopelessly misplaced. In the first place, this statement of witness Kunwar consists of hearsay and cannot be read into evidence at all. The persons who are alleged to have told him on his enquiry that the respondent continued to make those allegations have not been identified or have not been examined. Secondly, the appellant himself does not say that he knew that the respondent had continued to make those allegations even after Gulab had left their service.

21. Mr. Vora then proceeded to point out that the respondent had repeated her allegations in the written statement and has followed it up by repeating those allegations in her deposition before the Court. Personally I am of the opinion that the allegations made by the respondent against the appellant relating to the alleged illicit intimacy between the appellant and the maid servant are in bad taste. Serious view indeed might be taken of the allegations so made when it has not been shown to be true. The manner in which the respondent has repeated the allegations and the words used for couching those allegations are undoubtedly in bad taste. One may even suggest that the allegations are obscene. Yet, this by itself will not constitute cruelty which would entitle the appellant to obtain divorce. As has bean pointed out by the House of Lords in Collins v. Collins, (1963)2 All England Law Reports 966, whether cruelty on a matrimonial offence, has been established is a question of fact and degree which should be determined by taking into account the particular individuals concerned and the particular circumstances of the case, rather than by any objective standard. It was necessary for the appellant to depose and to prove the effect of the allegations which have been made by the respondent even in her written statement. I notice, after a diligent search in the deposition of the appellant, that he has not made a reference to the allegations made by the respondent in her written statement. The third test, which Beg J. mentioned in Kusum Lata's case, cannot be forgotten in this context. As has been pointed out by Beg J., if the complaining spouse was quite insensitive to a particular kind of insult or accusation which may cause a nervous break down

to another spouse, the test to be applied in the case of such a spouse will be different. The question is; what sort of person the wife was and how the husband's conduct affected her ? In the instant case, no evidence has been led to prove that the acts of the respondent affected the health, mental or physical, of the appellant. On the other hand, it has been mentioned by the appellant himself that the respondent used to make allegations against him only to use abusive and provocative language and that she did not mean that what she abused was a true fact. The learned trial Judge has rightly interpreted this part of the evidence of the appellant to mean that it did not have any deleterious effect on the mind of the appellant. It has been elicited in the cross examination of the appellant that he attends his office regularly and that his work is found to be satisfactory by his superiors. He has also admitted that he enjoys normal health, and apart from for cough and cold he had not gone to any doctor for treatment. The appellant has added that he was leading a normal life. In view of the legal position, it is not possible to accept the further submission of Mr. Vora that an allegation of infidelity against a husband, as an allegation of unchastity against a wife, should by itself be treated as an act of cruelty. Even an allegation of unchastity has not been per se held to be an act of cruelty against a wife. The third test suggested by Beg J. has always been applied.

22. Mr. Vora still urged that the cumulative effect of the various acts of what has been characterised as cruelty on the part of the respondent should be considered and if so considered it can be reasonably inferred that there is a reasonable apprehension in the mind of the appellant or danger to his life. I find that there are not many facts the cumulative effect of which is to be considered. Upto the year 1972 despite what the appellant has said about the stranger or eccentric behaviour of the respondent, no act was such as would have caused any mental or physical pain to the appellant. Upto the end of July 1972, at any rate, when the couple be got a child, it cannot be said that the marital conditions created by the respondent were such as to cause a reasonable apprehension in the mind of the appellant of danger to his life or health. After August 1972, only one act or cruelty has been alleged against the respondent and that is that the respondent took the children to the office of the appellant and left them there. The appellant says that after this he had to take the children with the assistance of a peon to his place at Vikhroli. It is impossible to characterise this as an act of cruelty warranting a decree for divorce. It may be an eccentric act on the part of the respondent, but it is impossible to dub it as an act of cruelty. I am, therefore, of the opinion that the appellant has not proved that the respondent has treated him with cruelty as to enable a Court to pass a decree of divorce in his favour.

23. In the result, this appeal must fail and is accordingly dismissed with costs.